

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION HOLDEN AT APO, ABUJA F.C.T.**

CLERK: MRS. CHARITY E. & MR. B. BARDE

COURT NO. 28

SUIT NO. FCT/HC/M/5449/09

19TH JUNE, 2012

BETWEEN:

DAVID ALUNYOAPPLICANT

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. THE COMMISSIONER OF POLICE FCT**
- 3. THE OFFICER-IN-CHARGE, SPECIAL
ANTI-ROBBERY SQUAD (SARS) FCT**

RESPONDENTS

JUDGMENT

(DELIVERED BY HON. JUSTICE S.B BELGORE)

On the 5/10/10, Mr. Eshiemomoh Paul, learned counsel to the applicant, Mr. David Alunyo, moved a motion on Notice, pursuant to Order 1 Rule 1 and 2(6) of the Fundamental Rights Enforcement Procedure Rules, 2009. The application prayed for the following:

1. A DECLARATION that the arrest and detention of the applicant by officers and men under control of the 3rd respondent and on the instruction of the 2nd and 1st respondents between Tuesday the 25/8/09 and Thursday 27/8/09 without reasonable proof of he having committed any offence was illegal and unconstitutional as it violates the applicants rights to personal liberty and fair hearing.

2. A DECLARATION that the physical torture and dehumanizing treatment meted out to the applicant by men of the Special Anti-Robbery Squad under the control, instruction and supervision of the 3rd respondent and answerable to the 2nd and 1st respondent between 9: 30am of Tuesday 25/8/2009 and 9:00pm of Thursday 27/8/2009 are unlawful and unconstitutional same having violated the applicant's constitutional right to freedom from torture guaranteed under the constitution of Nigeria 1999.
3. A DECLARATION that the continued harassment by way of invitation, and seizure of the applicants Toyota Camry Saloon Car as demanded by one Mrs. Julius acting in concert with her husband Mr. Julius and continued threat of detention of the applicant on daily basis without any charged or trial before any court of law is unconstitutional and illegal same being in violation of the rights of the applicant guaranteed under the 1999 constitution of Nigeria.
4. AN Order of perpetual injunction restraining the respondents jointly and or severally by themselves, their agents, privies, servants from further arresting, detaining, harassing or inviting the applicant or subjecting him to torture on account of the complaint of alleged theft of Honda CRV Mini Jeep lodged by one Mrs. Julius and her husband Mr. Julius.
5. Damages in the sum of N5, 000, 000. 00

In support of the application is a 4-paragraphs grounds for the reliefs being sought, the 22-paragraphs statement of facts in support of the application, a verifying affidavits and a 25-paragraphs affidavits in support. There is also a further affidavits of 11-paragraphs in support of this application and deposed to by the applicant himself.

On that day, learned counsel to the applicant his earlier filed written addresses dated 25/7/10 as his argument in this case. He submitted orally that paragraph 7 (c) of the counter-affidavit contradict exhibit 'A' of the Respondent relied upon. Exhibit 'A' is the statement of

the complainant a warrant at police station citing the case of Dominic Peter Ekanem Vs Assistant Inspector General of Police (2008) CH 12 178, Mr. Eshiemomoh Paul argued that the Respondent in performing their duties ought to do so in according with the law. Learned counsel said if truly eth police believed the applicant is a thief, why didn't they arrest him instead of claiming they 'invite' him to the police station. *He argued that their case is essentially on the detention of the applicant and the way he was tortured while in that detention cell.* Arguing the two issues he formulated for determination in his written address, Mr. Paul, relied on the cases of **ONOMEKU VS CP, DELTA STATE COMMAND AND 2 OTHERS (2007) CHR 173; ADINUSO VS OMEIRE (2006) CHR 345, APUGO VS STATE (2006) 27 NSCQR 201, ABASIN BAUDA VS GUNSRATNE (2005) CHR 291, A. G. ADAMAWA VS A. G. FEDERATION (2005) 24 NSCQR 129, MAJA VS SAMONRIS (2002) 9 NSCQR 546,** and Section 86 and Section 87 of the evidence Act. Learned counsel finally urged the count to grant all the reliefs in this application.

On the other side, Mr. Malik Taiwo, learned counsel to the Respondents referred to their 25 paragraphs counter –affidavits, the attached exhibit 'A' and their written address dated 2/11/09. He adopted the address has his argument in court. Learned counsel submitted addressed in this application is whether the police pursuant to Section 4 of police Act, can investigate any complaints against any person. He argued that whether the police 'invited' or 'arrested' the applicant is not the issue because the police has the power to do the two. On why the applicant has not been taken to court, he said there is a pending order of a competent court staying all actions in respect of this case. But for that order, according to Mr. Taiwo, the applicant would have been taken to court. (Where is that order? Not shown to the court). Learned counsel then referred to all the cases cited in his written address that is, **FAMUROTI VS AGBEKE (1995)5 NWLR (PT 189) 13; EGBESIMBE VS ONUZURUIKE (2003)13 WRN 78; FAJEMIROKUN VS COMMERCIAL BANK CREDIT LYONNAISE (NIG) LTD (2002) 10 NWLR (PT 744) 95, and FAWEHINMI VS I. G. P (2000) 7 NWLR (PT 655) 48,**

and submitted that Section 35 (7) of the 1999 constitution says Section 35(4) of the same constitution cannot be compiled with in cases of capital offences learned counsel said the allegation against the applicant is armed robbery which is a capital offence. He argued further that the suspicion that led to applicant's detention is reasonable because the applicant knows the security in the car having worked on it before the theft of the car.

On the issue of torture of the applicant while in detention, learned counsel to the Respondents referred to paragraphs 12, 13, 14, and 18 of their counter – affidavits and finally urged the court to dismiss the application

On that day of 5/10/10, the court adjourned for judgment. But as it were, at the point of writing the judgment, I discovered that there were material contradictions in the supporting affidavits and the counter-affidavit. I then ordered that the parties should produce oral evidence in order to resolve all these conflicts. That was on 25/11/10.

Following that order of 25/11/10, the applicant called two witnesses in court while the Respondents called no witness. In fact, and very unfortunate, since that 5/10/10, the Respondent's counsel disappeared from the scene. On all subsequent adjournment dates of the case in court that is 27/1/11, 3/2/11, 21/2/11, 2/3/11, 12/4/11, 31/5/11, 10/10/11, 15/2/12, 17/4/12 and 21/5/12, the Respondent's counsel only came to court twice. That was on 12/4/11 and 10/10/11. When it became clear to the court that the Respondent's counsel would not attend the court for purposes of cross-examination of the two witnesses produced by the applicant and nor are they to call any witness, I adjourned for judgment based on the new oral evidence and the written addresses already adopted by counsel.

Now, following that order and for oral testimonies, one Sunday Alunyo as PW1 gave evidence first. He is a mechanical Engineer and first cousin of the applicant. Here, I feel free to reproduce in full, his testimony in court. It is runs thus:

On the 1/7/09, I received a call that my cousin was arrested by the police. I went there, that is Special Anti-robbery Squad (SARS). I met a friend there, his name is PSP Idoko. He told me my cousin is in their custody. He said they told him the man that is David is a thief. He said if I love myself I should not go close to him (David). I told him David is my cousin and that we grew up together and that he is not a thief.

I was not opportune to see David because I was told they have taken him to his house for a search. I stayed behind for sometimes. Later they brought him to the station in handcuff I saw a lot of blood on his face. He could not speak with me. I pleaded with PSP Idoko that they should not beat him. The I. P. O. even told me that they will not only beat him but that they will shoot him.

I requested for his bail. They refused. I went back home. On 2/7/09 I went back to the same station at Abattoir Garki. On that day, I was directed to O. C. Igwe. I met him, the O. C. Igwe told me to go him because anybody find with David will be shot. But before I left, they allowed me to give him goods. On that day, he (David) could not see or hear very well. His condition was bad. I still apply for his bail and they still refused, I then left.

On 3/7/09, I went back to the same station, O. C. Igwe asked the I. P. O. to bring him (David) from the cell. But they eventually did not bring him out from the cell. I later left the station. On 4/07/09, I went back to the station, that day, they told me that they have discovered he (David) is not a thief. They said I can now bail him. I took him on bail. On this 4th day, David's condition was bad. His left arm was swollen and tied with a rubber. His car was not released to him. So, two of us went home together.

At home, because he could not see properly, we went to the hospital. The hospital is Bwari medical centre.

This PW1 was bit cross-examined by the Respondents.

The applicant himself, Mr. David Alunyo, gave oral evidence as PW2. His physical appearance in court betrayed his unhealthy state and the signs of his being sick. His eyes were swollen a reddish. He was obviously not in good condition of health. He testified as follows:

On 1/7/09, police arrested me and took me to SAR office at Abattoir Garki. They said I stole one car from one lady by name Bezhe (Mrs.) I told them I worked for the woman before, I did not steal her car. Then they started beating me with stick on my back. About ten policemen they started beating me with stick. I fell down on ground. They carried me up, put handcuffed on my hands. They took me to my house. Three policemen, searched my house. They even asked my children where I put short gun. My children said their father don't have anything like that. They later ask my wife to give them biro and paper. They wrote that they came, searched my house and did not find any criminal something. They took me back to their office and put me in the cell.

On that 1st night, they brought me out of the cell around 10:00pm. They naked me, asked me to lie inside one crave iron and one of them chuked me. I started vibrating. They dropped me down and started beating me again. Later, they took me back to the cell.

On 2nd day, (2/7/09), they took me out of the cell in the afternoon. I saw my cousin, Sunday Anunyo. He (Sunday) gave me food. After eating, they took me back to the cell. In the night they brought me out around 10: 00pm. They said I should run away into the bush, I said no I will not run away I want to see the end of the matter, they took me back to the cell.

On the 3rd day, 3/7/09, they brought me out around 9: 00am. They told me that will be the end of me. They put one plyer on my finger. I started crying and shouting calling God. They hit the plyer on my toe again. They took me back to cell. In the cell, the people in the cell started beating me again.

On the 4th day, 4/7/09, I saw my wife. She brought food for me. I ate and they returned my back to the cell. Later, they brought me back again, they tied my left arm with rubber. They said my brother is here to

bail me. Then I met my brother that is cousin. In the evening they granted me bail.

We went home, I could not see nor hear well. After at 2 days, I was taken to the hospital in Bwari. After about 4 days, police called me to take away my vehicle from their station. When I went there, I saw my vehicle broken into. I called Simon that is I. P. O. I told him that my wallet containing driving license etc was taken from the car. He said why should I accuse him of stealing anything. I was given the vehicle.

I went to the High Court on 16/7/09 to do affidavit for the missing item. Police said I should be reporting everyday. That is why I reported to my lawyer.

He too was not cross-examined. Since, the oral evidence in court by PW1 and PW2 were not contradicted, those testimonies were open to court to believe them. The effect of an unchallenged peace of evidence has become trite and settled law in this country. It is an elementary principle of law by now, that where an allegation of fact is made by a party and it is not controverted by the other party, the allegation must be taken as undisputed. See **MAERSK LINE VS ADIDE INVESTMENT LTD (2002) 11 NWLR (PT)317; FATB LTD VS. EZGBU (1994) 9 NWLR (PT 367) 149.** Similarly, where evidence is led such as in this case and that evidence is not challenged and/or controverted by the adverse party, the trial court has no option that to rely on same as the truth of the fact that they were adduced to prove. See **LAWAL VS U.T.C. NIG PLC (2005) 13 NWLR (PT 943) 601.**

Following from the above principle and the oral evidence of PW1 and PW2, the following facts stands clearly and are therefore acceptable to the court, to wit:

1. The applicant was accused of stealing a car.
2. The applicant was detained following an arrest at police station (SARS) for 3 days. From 1/7/09 to 4/7/09.
3. Consequent upon the arrest and detention of the applicant, he was thoroughly beaten, stripped naked, handcuffed, tied with a rubber as a result of which his health fastly deteriorated.

4. Applicant's vehicle that was taken from him was later released to him.
5. On the 2nd day of his detention, he was taken to hospital.
6. Applicant was on the 4th day of his detention granted police bail.

The most important germane question or issue at this stage is whether or not the applicant is entitled to all the reliefs being claimed having regard to the finding of facts before this court.

I must stress here that the bone of contention in this Fundamental Right action by the application is not on the proprietary or otherwise of the applicant's initial invitation or arrest by the police. On this point I am at one with the applicant's counsel. The big and hotly contested issue is the detention of the applicant and the harsh treatment he was subjected to while in detention. So, the cardinal issue is, whether the detention and torture occasioned on him by the Respondents is excusable in law or not. I had earlier reviewed the submissions of the learned counsel on this point. I need not repeat them.

It suffices for me and for the purpose of just determination of this case to say that arrest and detention of a person must not be arbitrary. Arrest properly made cannot constitute a breach of fundamental rights. A citizen who is arrested by the police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence cannot sue the police in court for breach of his fundamental rights. See **OKANO VS COP AND ANOTHER (2001) ICHR 407.**

Having a "reasonable suspicion" pre-supposes the existence of facts or information which should or would satisfy an objective person that the person concerned may have committed the offence or is likely to commit the offence. What may be regarded as 'reasonable' will however depend upon all circumstances. I am glad that no issue is joined as to the legality of the arrest of the applicant to ab initio. But was the detention beyond the prescribed limit and was the injury

inflicted right in law? The answer is in the negative. The applicant was detained for 3 days. This is unconstitutional. By the provisions of Section 35(5) of the 1999 constitution as amended, arrest and detention of a citizen should only be for ONE DAY. The point must be made clearly that any violation of a citizen's guaranteed fundamental right, for however short a period, must attract penalty under the law. See **ALABO VS BOYES (1984) 5 NCLR 830; JIMOH VS A. G. FEDERATION (1988) 4 RLRA513**. To make the matter worse, the applicant was subjected to grave inhuman condition, indignity and brutality which is not expected of any civilized police force. The conduct of the affected police officers who handled the investigation left much to be desired. It is roundly condemnable. A person or state agents who are called upon to deprive other citizens or persons of their personal liberties in the discharge of what they consider to be their duty should strictly observe the civilized forms and rule of law. See **JIMOH'S CASE (Supra)**.

The applicant interestingly is praying for relief of perpetual injunction against the Respondents and against further arrest and detention. My short answer or reaction to this is that a court cannot be moved to make an order of perpetual injunction or blank of injunction against any further arrest or detention. If the applicant is again wrongfully arrested and detained in future, the doors of the court are always open and justice shall be dispensed without fear or favour, affection or ill-will. See the same **JIMOH'S CASE (Supra)**.

The applicant also claims as general damages, the sum of N5 million Naira. General damages is a pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment or injury whether to his person or property through the unlawful acts or omission of another. It is obtainable by success in an action for a wrong which is either a tort or a breach of contract or for compensation in Fundamental Right breaches as in this case. See **SEVEN-UP BOTTLING COMPANY PLC VS ABIOLA & SON BOTTLING COMPANY LTD & ANOTHER (2002) 2 NWLR (PT 750) 40**. Now, having found that the applicant was unconstitutionally detained

beyond the prescribed limit, and having found that he was tortured and brutalized in violation of his Fundamental Rights, I award a sum of N2, 000, 000 as compensation or general damages in his favours against the Respondents jointly and severally.

In conclusion, reliefs 1& 2, 3, and 5 succeeds. And they are granted to the extent specified adore Relief 4 is refused.

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S. B. BELGORE
(JUDGE)