

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO—JUDGE**

SUIT NO: FCT/HC/CV/1361/17

BETWEEN:

- 1. MR. EMMANUEL C.ANYIGBO**
- 2. MRS. TINA ANYIGBO.....APPLICANTS**

AND

- 1. MR. OLA DAVID SALAKO**
- 2. MRS. GBEMISOLA SALAKO**
- 3. THE INSPECTOR GENERAL OF POLICE**
- 4. THE ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 7**
- 5. THE COMMISSIONER OF POLICE**
- 6. AREA COMMANDER, KUBWA AREA COMMAND**
- 7. DIVISIONAL POLICE OFFICER, KUBWA.....RESPONDENTS**

D.K. YA'U FOR THE APPLICANT

V.C. OKWARAOHA FOR THE 1ST AND 2ND RESPONDENTS

F.C. OGBOBE FOR THE 3RD TO 7TH RESPONDENTS.

JUDGMENT

The Applicants filed a Motion on Notice on the 4th of April 2017, which was dated the same day and brought pursuant to **Sections 35, 41 and 46 of the Constitution of the Federal Republic of Nigeria (As Amended) and Article VI, XII (1) of the African Charter on Human and Peoples Right, Cap 10, Laws of the Federation 2004**, seeking the following Orders of Court: -

1. An Order of this Honourable Court restraining the 1st to 7th Respondents from arresting, detaining, harassing and torturing the Applicants.

2. An Order of this Honourable Court for the Sum of Ten Million Naira (N10, 000, 000.00) Only, as Aggravating Damages against the 1st and 2nd Respondents for the violation of the Applicant's Fundamental Human Rights.
3. An Order of this Honourable Court for the Sum of Ten Million Naira (N10, 000, 000.00) Only, as Aggravated Damages against the 3rd to the 7th Respondents for harassment, embarrassment shock, psychological trauma and emotional torture and inconveniences caused to the Applicant.
4. An for such Further Orders as this Honourable Court may deem fit to grant in the circumstances of this case.

Filed in support of this Motion is a Fourteen Paragraph Affidavit deposed to by the 1st Applicant, A Statement made pursuant to **Order 11 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009**, and a Written Address of Counsel.

The Grounds for seeking these Reliefs are twofold, namely: -

1. The threat to arrest and detain the Applicants by the 3rd to the 7th Respondents on the false allegation by the 1st and 2nd Respondents is illegal, unconstitutional, unlawful and a violation of the Applicants right to personal liberty and freedom of movement as guaranteed by **Section 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 As Amended and Article VI and XII (1) of the African Charter on Human and Peoples Right, Cap 10, Laws of the Federal Republic of Nigeria.**
2. The Police in Nigeria cannot usurp the Power of the Court to judicially determine whether the Applicants are guilty of an Offence on mere Allegations.

Upon service of the Processes on the Respondents, they all filed Motions to regulate their Processes, which were filed out of time and on the 8th day of May 2017, the 1st and 2nd Respondents filed a Joint Counter Affidavit, dated the same day. This Counter Affidavit was deposed to by the 1st Respondent and it contained Eighteen Paragraph Averments and

was supported by Four Documentary Exhibits, namely, An Executed Deed of Assignment, An Irrevocable Power of Attorney, in favour of the 2nd Respondents, both dated the 25th day of January 2016, and a Purported Original Document relating to a Plot of Land in issue between the Applicants and the 1st and 2nd Respondents.

Also filed in support was a Written Address of Counsel representing the 1st and 2nd Respondents.

As regards the 3rd to the 7th Respondents, they filed on the 17th of November 2017, a Seven Paragraph Counter Affidavit deposed to by Sgt. Philip Thumba, a Police Officer and Litigation Secretary to the Legal Section, FCT Command, Abuja, annexing Two Exhibits, which were a Statement of Complaint of Forgery against the 1st and 2nd Respondents, the Statement volunteered by the 1st Respondent to the Police and finally the Written Statement by Counsel to the 3rd to 7th Respondent in opposition to the Applicants Application.

In response to the Counter Affidavit filed by the 1st and 2nd Respondent, the Applicant filed a Further and Better Affidavit of Eighteen Paragraphs in support of their Application to enforce their Fundamental Human Rights. On the 13th day of February 2018, Learned Counsel for the Applicants sought for a date to respond to the Counter Affidavit filed by the 3rd to the 7th Respondent, but failed to do so on Record.

On the 25th of September 2018, Learned Counsel representing the 1st and 2nd Respondents rightfully observed that the Applicant's Counsel failed to respond, noting that the matter had lingered before the Court at his instance and the Court granted one more adjournment for Definite Hearing and ordered for Affidavit of Service on the Applicants.

By the next adjourned date, the Applicants and their Counsel were not represented in Court and Learned Counsel for the 1st to 2nd Respondents evoked **Order 12 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009** to urge the Court to Order that the Written

Address filed by the Applicants Counsel be deemed as adopted, since the Applicants Counsel had notice of the date set for adoption.

Based on the above Rules and further by **Order 33 Rule 4 of the Rules of the FCT High Court 2018**, which states that where a Party is absent, he shall be deemed to have adopted his Written Address, this Court permitted the adoption of Final Written Addresses to proceed on the 5th of November 2018.

In his Final Written Address, Learned Counsel representing the Applicants did not raise any issue for determination but argued that the Law is trite that an accused person is presumed innocent until proven guilty in a Court of Law. By virtue of **Section 46 (1) of the 1999 Constitution, and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009**, any person who fears that his rights are being infringed upon, or likely to be infringed upon is entitled to approach a Court for redress. He cited the cases of **OGUGU VS THE STATE (1994) 9 NWLR PT 366, 1 AT 206 and OKECHUKWU VS ETUK OKWU (1998) 8 NWLR PT 562 AT 513 AT 526**. Further, he argued that by virtue of **Section 36 (1) of the 1999 Constitution (As Amended)**, the Applicants must show how his Civil Rights are being infringed. Further citing the Cases of **UZOKWU & ORS VS IGWE EZEONU II (1991) 6 NWLR PT 200, 708 AT 763-778; MINISTER OF INTERNAL AFFAIRS VS SHUGABA (1982), 3 NCLR 915; CHIEF F.R.A. WILLIAMS VS MAJEKODUNMI (1962) 1 ALL NLR AT 413 AND ALH. ADEBEWO VS AGF (1962) WNLR AT 169**, he argued that Citizens enjoyed the Right of Free Movement.

The Facts as presented by the Applicants in their Supporting Affidavit are that on the 26th day of January 2016, he sold his Plot of Land to the 2nd Respondent, who then took over the land, fencing and gating the Property. According to their evidence, the 1st and 2nd Respondents also built a Security House, which is presently being occupied by their relations. According to him, the 2nd Respondent came to his house with heavily armed Policemen, who forced their entry into his residence threatening to brutalize his wife if she did not produce her husband. They also threatened

to arrest, detain and torture her and reluctantly left, promising to return. The 1st Applicant averred that he was under serious threats of arrest, detention and brutalization by the Police based on the false information given to the Police by the 1st and 2nd Respondents.

According to Counsel, the 3rd to 7th Respondents are about to arrest the Applicants and they are under the threat of arrest and detention and cited the case of **CHIMA UBANI VS DIRECTOR STATE SECURITY SERVICES AND ANOR (1999) 11 NWLR PT 625 AT PAGES 148-149**, to state that no one should be deprived of his freedom, except for reasons and conditions previously laid down by the Law.

He finally urged the Court to hold that the Applicants were entitled to the reliefs sought by them on the strength of their arguments and processes placed before the Court.

Learned Counsel representing the 1st and 2nd Respondents, on his own part, raised three issues for determination, namely: -

1. Whether the Applicants' Human Rights were violated by the 1st and 2nd Respondents
2. Whether there is the imminent likelihood of the violation of the Applicants Rights under Sections 35, 41 and 46 of the 1999 Constitution with respect to human dignity and personal liberty by the Respondents or their Agents, and
3. Whether the Applicants are entitled to the reliefs sought in this Application.

Arguing on these Issues seriatim, Learned Counsel submitted that the 1st and 2nd Respondents did not violate any rights by making a report to the Law Enforcement Agencies, as it was their Civic Duty to give information to the Police on Criminal Cases. In this instance, all they did, was merely furnish the Applicants' contact details to the Police in regard to an investigation and he cited the case of **OBONG IME ATAKPA VS UDOM JAMES EBETOR (2015) 3 NWLR PT 1447, AT 572**, where the Court of Appeal Calabar Division held inter alia that a Report to the Police does not,

without more, amount to instigating the Police in any way, so long as the Police are left to use their own discretion to take further steps in the matter. He countered the allegations made by the Applicants in their Affidavit by stating that they were illogical and false and cannot be supported by any evidence.

In regard to the imminent likelihood of violation, Learned Counsel submitted that there was none citing **Section 35 (1) (c) of the 1999 Constitution (As Amended)** which laid the exception of “for the purpose of bringing him before a Court in execution of the Order of a Court or upon a reasonable suspicion of his having committed a Criminal Offence, or to such extent as may be reasonably necessary to prevent his committing a Criminal Offence”.

He cited further, the case of **OKANU VS IMO STATE COMMISSIONER OF POLICE (2001) 1 CHR 407**, which held inter alia that in the legitimate exercise of the duty to investigate and arrest persons, the Police cannot be sued in Court for breach of fundamental rights.

As regards the final issue raised by him, Learned Counsel cited the cases of **PAVEX INTERNATIONAL CO LTD VS IBWA (1994) 5 NWLR PT 347 AT 685 AND OKAFOR VS AG ANAMBRA STATE (1991) 6 NWLR PT 200 AT 659** to submit that the Application before the Court was merely a Pre-emptor calculated to shield the Applicant from due and lawful investigation for the offences of forgery before the Police, and it was noted that the Applicants placed nothing before the Court to show that his rights was or is about to be violated as there was no threat from any quarters. In conclusion, learned counsel argued that this Application was frivolous, lacking in merit and was an Abuse of Court Process. He therefore urged the Court to dismiss the Application with costs of N10, 000, 000.00 (Ten Million Naira)Only.

Learned Counsel to the 3rd to 7th Respondents, in his Written Address, raised Two Issues for the Court’s determination, namely: -

1. Whether the Respondent in the performance of its Statutory Duties has the power to investigate the Criminal Allegations against the Applicant and
2. Whether the Applicants have proved a breach of their Fundamental Human Rights to be entitled to the Reliefs being sought.

Citing **Sections 214, 215 and 216 of the 1999 Constitution (As Amended) and Sections 4 and 23 of the Police Act** as well as the decided Cases of **FAWEHINMI VS IGP (2007) 7 NWLR PT 665 C.A. 481 AT 504; GBAJOR VS OGUNBUREGUI (1961) 1 ALL NLR 853; FCMB VS ETTE (2008) 22 WRN 1 PARAS A-C; ONA VS OKENWA (2010) 7 NWLR PT 1194 AT 512; EKWENUGO VS FRN (2001) 6 NWLR PT 708, 171 AT 185 AND DOKUBO ASARI VS FRN (2007) 12 NWLR PT 1048, 320 AT 633 AT PARAS A-C**, Learned Counsel representing the 3rd to 7th Respondents submitted in essence that the Police Force were Statutorily empowered to carry out certain functions and duties of investigation, arrest and detention where necessary, and for the protection of lives and properties and based on all these, the 3rd to 7th Respondents did not breach any rights of the Applicants. It was trite that no citizen's freedom was absolute and where there was reasonable suspicion, his liberty could be temporarily impaired.

According to counsel, the 1st Applicant was invited by phone to appear at the Area Commanders' Office Kubwa, to provide an explanation in respect of criminal allegations but instead went into hiding, refusing to honour the invitation extended to him. The Applicant is not one of the persons statutorily immune from criminal investigations and prosecution under **Sections 308 and 35 (7) of the 1999 Constitution** and he urged the Court to dismiss this Suit with substantial costs.

In respect of the second issue, it was argued that the Applicants did not place before this Court, any material facts to show how his rights were breached but only led inconsistent, misplaced evidence before the Court, in an attempt to mislead. He who asserts must prove and the Court was referred to the cases of **FAJEMIROKUN VS COMMERCIAL BANK (2009) 2**

MJSC PT 11, 114 AT 140 AT PARA C; OYEWOLE SUNDAY VS ADAMU SHEHU (1995) 8 NWLR PT 414 AT 484 AND DANGOTE VS CSC PLATEAU STATE (2001) 9 NWLR PT 717 AT 132 as well as SECTIONS 131 TO 133 OF THE EVIDENCE ACT, 2011.

In conclusion, Learned Counsel urged the Court to dismiss the Application for lacking in merit, or strike out the Suit for being premature and frivolous and award exemplary costs against the Applicants in favour of the Respondents.

Now, the Undeniable Fact from the Perspectives of the Parties before the Court is that there was a Transaction dated the 25th day of January 2016 entered between the Applicants and the 1st and 2nd Respondents that involved the Sale of Land in Kubwa. The Title Deeds presented by the 1st Applicant bore the name of the Original Allottee, Dr. T.K.S. Abam. The 1st Respondent then paid the Applicants the Sum of Four Million, Two Hundred Thousand Naira (N4, 200, 000), who in turn executed a Deed of Assignment and An Irrevocable Power of Attorney in favour of the 2nd Respondent. After the Sale, the 1st Respondent proceeded to develop the Land, building a Fence, Gate and Security House.

Subsequently, upon an invitation to the FCDA from the Kubwa Area Command Police Force, the 1st Respondent discovered that there was an allegation of Criminal Trespass made against him by the Original Allottee, who informed him that he never sold his plot of land to anyone.

Based on the Statement the 1st Respondent gave to the Police, he explained his part and provided the contact details of the 1st Applicant from whom he bought the said land to the Police, who were to investigate the Complaint.

From the above facts, there were divergent narrations of events by the Parties.

According to the 1st Applicant, he sold **his** land, Plot L211 Kubwa Extension III, FCDA Scheme in Bwari Area Council FCT, Abuja, free of all

encumbrances to the 2nd Respondent, who took over possession. On the 4th day of April 2017, the 2nd Respondent, in company of Armed Officers of the 3rd to 7th Respondents barged into his house, threatened his wife, asking her to produce her husband. She had to scream for help from the Neighbours and the Policemen, after making several threats to arrest, detain and torture her, reluctantly left the premises but promised to return. He stated that he was unaware of the invitation by the Police and he believed that the 1st and 2nd Respondents gave false information about them to the Police.

The 1st Respondent on his part stated that when he received the Police invite, he notified the 1st Applicant and asked him to accompany him to the Station, but he failed to do so. He made a Statement to the Police stating clearly the origin of his Title to the Plot of land and volunteered the Name, Address and Phone Number of the 1st Applicant, who sold the land to him. He denied ever visiting the Residence of the Applicants with the Police and pointed out that some of the 1st Applicant's actions were criminal in nature.

The 3rd Respondent had averred in their own Counter Affidavit that based on a Complaint of Forgery made to them by the Original Allottee, the Police invited the 1st Respondent who implicated the 1st Applicant. According to him, the 1st Applicant was invited severally through telephone calls to appear before them on this complaint of forgery but he vehemently refused to appear, and before they could take any further action, he was served with a copy of this Suit. At no time were the Applicants arrested, detained or harassed and at no time did the Police visit their residence.

It was expected that in the face of these apparent denials by all the Respondents, the Applicants would provide irrefutable evidence to evince the fact that his residence was indeed visited and that threats were made to both his wife and himself. In his Further and Better Affidavit, he maintained that the 1st and 2nd Respondents were still in possession and that there was no Court Action or Police Action challenging their Proprietary Rights to the Land. He also challenged the fact that the Original Allottee had confronted the Respondents, adding that his transaction with the Respondents was a Civil Action. He stated in Paragraph 15 that he was hiding under his bed in

fear of possible armed robbers who stormed his house around 2 a.m. on that fateful day.

By this averment alone, the story of the 1st Applicant appears to have changed from an invasion by the Police to an Invasion by "*Possible armed robbers*". The Court was expecting a clarification but none was provided. There was no explanation offered as to how the Land became "his" Property and did not explain to the Court how he knew that the Original Allottee did not challenge the 1st and 2nd Respondents. More importantly, he never explained to the Court how he obtained his Right to the Land, since the Original Title deeds he furnished the 1st Respondent still bore his name. Had the 1st Applicant claimed to buy the land from a Secondary Owner and not the Original Allottee, he may have been able to detach himself from the allegation of fraud made against the 1st and 2nd Respondent. But, the Title Deeds he himself furnished the 1st and 2nd Respondents for the exchange of monetary gain shows that he was directly involved with the Original Allottee. There was nowhere in his averments or arguments challenging the Original Allottee in regard to Title or a Sale and neither did he provide any explanation as to how he came into possession of the Title Documents in the first place. He also did not provide Evidence of any Transaction between himself and Dr. Abam.

More importantly is the fact that it remained uncontroverted that it was the 1st Applicant who gave the 1st and 2nd Respondents the Title documents such as the Certificate of Occupancy (Customary), the Acknowledgment Receipt for the Regularization of Land Titles and the Deed of Assignment.

The Court has had a very close look at the documentary evidence provided by the Respondents and can see that the Deed of Assignment contained the Signature of the 1st Applicant as the Assignor and Beneficial Owner of the said Land. This Signature tallied with the Signature in the Court's Processes. How he came about the Bwari Area Council Receipt was left unanswered as well as how the Photocopy of the 1st Applicant's International Passport came into the 1st Respondent's possession.

In the said Deed of Assignment at Paragraphs 3 and 4, the 1st Applicant was stated to be the bona fide and beneficial owner of the land in question and that he was transferring what rightfully belongs to him. He witnessed that the land was free from encumbrances and the 1st Applicant went further to covenant that if there be any dispute arising on the matter of the land, he should be held responsible to either settle it or refund Mrs. Gbemisola Salako's fund back to her. He also promised peaceful and uninterrupted enjoyment of the land, further vouching that he did not misrepresent the true status of the Property or Documents relating to the land in his sale to the 2nd Respondent. His signature can clearly be seen on this Agreement Document dated the 9th of February 2016.

Since all the Title Documents the 1st Applicant presented to the 1st and 2nd Respondents all bore the name of Dr. T.K.S. Abam, the 1st Applicant in the face of the Petition written by Dr. T.K.S Abam to the effect that he never sold his land to anyone, it was expected that the 1st Applicant would be asked to explain how he came about those documents he presented to the Police. The imputation of fraud and forgery was evident and this imputation could not be dispelled without his presence before the Police to answer as to how he came about those disputed documents.

In his Further and Better Affidavit, at Paragraphs 7 and 8, all the 1st and 2nd Applicants could say was that there was no case before the Police and the Courts challenging the 1st and 2nd Respondent's possessory rights and that Dr. Abam never confronted or challenged the 1st and 2nd Respondent's possession. All this was stated without any proof of how he knew these facts he averred. The Applicants did not also state the nature of the false information given to the Police by the 1st and 2nd Respondents.

The 1st and 2nd Respondents clearly had a civic duty to report to the Police the details of what they knew about the transaction in question and this report cannot in any conceivable way be seen to be instigating the Police to take any negative action against the 1st and 2nd Applicants.

As regards the 3rd to 7th Respondent, who are the Police, by virtue of **Section 4 of the Police Act, Chapter P19, in Part 2**, the General Duties of

the Police Force were spelt out which includes the Prevention and Detection of Crime, the Apprehension of Offenders, the Preservation of Law and Order, the Protection of Life and Property and the Due Enforcement of All Laws and Regulations with which they are directly charged.

By the above Provision and that of **Section 35 (1)(c) of the 1999 Constitution**, the Respondents could upon Reasonable Suspicion of a Criminal Offence being committed, and in furtherance of their Powers under the Police Act to prevent the commission of a Criminal Offence, deprive the Applicants of their Personal Liberty pending Investigations. **See the Case of EKPU VS AG Federation (1998) HRLRA @ 391** where it was held that the Arresting Authority must show that the arrest was effected in accordance to the Law.

From the averments deposed to in favour of the 3rd to 7th Respondents, they stated that they did not visit the residence of the Applicants and had only communicated to him the invite to the Police Station by the medium of a telephone conversation. It was stated that before they could take action to visit his residence, he had filed this action before the Court.

In the face of this apparent denial, it was expected that the Applicants would file a Further and Better Affidavit challenging these assertions, but none was forthcoming, even though the Court had granted an adjournment for the Applicant to respond. It is trite that where averments in an affidavit is not challenged, they are deemed true and correct, unless the assertions are in themselves incredulous and unworthy of belief.

There was instead a very loud deafening silence from the Applicant to this contention.

In the case of **AKANBI & ORS VS C.O.P. KWARA STATE & ORS (2018) LPELR-44049 (CA)**, it was held inter alia that "...The truth is that the fundamental right of the Appellants to freedom of movement and personal liberty is neither unlimited nor is it a right to lawlessness and impunity. Indeed, once Criminal allegations are made against a citizen, it is Constitutional and statutory duty of the Police to investigate, as

investigation and detection of crime is one of the primary duties assigned to the Police under Section 4 of the Police Act. See **OMOTUNDE VSOMOTUNDE (2001) 9 NWLR (PT 718) 525; COSMOS DESMOND VS OKENWA (2010) LPELR - 4781 (CA); AGUDI VS. COMMISSIONER OF POLICE (2013) ALL FWLR (PT. 660) 1247 at 1295, 1296.**

In LUNA VS COMMISSIONER OF POLICE RIVERS STATE COMMAND (2010) LPELR - 8642 (CA) the Court of Appeal held that the Power of the Police under **Sections 214 and 216 of the Constitution and Sections 4 and 24 of the Police Act** should not be fettered by the Court unless there is a good reason". It further held thus: "It is trite that, the power of the 1st and 2nd Respondents to arrest and detain, pending investigation in some cases is Constitutional and is derived from **Sections 214 and 216 of the Constitution of the Federal Republic of Nigeria 1999**. The Court was of the considered view that mere power cannot by virtue of **Section 35(1) of the 1999 Constitution** amount to a breach of the Appellant's fundamental right, even if such exercise results in the curtailing of her freedom of movement of liberty. I hasten to say that if the contrary is the case, all persons arrested by the Police, may as well Claim breach of their fundamental rights. It is generally not the business of the Court to fetter this discretion. See the case of: **FAWEHINMI VS I.G.P. (2002) FWLR (PT. 108) 1355 at 1376- 1377**. Also in the case of **BISHOP NYONG DAVIS AYAKNDUE & ORS VS BISHOP E.E. EKPRIEREN & ORS(2012) LPELR - 20071 (CA)** the Court held inter alia that: "The Law is that the arrest properly made by the Police cannot constitute a Breach of Fundamental Rights. A citizen who is arrested by the Police in the legitimate exercise of their duty on Grounds of reasonable suspicion of having committed an offence cannot sue the Police in Court for Breach of Fundamental Rights." **PER OWOADE, J.C.A. (PP. 21-24, PARAS. F-F).**

Therefore, in the absence of contradictory evidence that the Police only called him by the telephone and in absence of positive proof that they visited his residence, the Applicants have failed to satisfy the Court that there was an infringement of his rights as claimed. In his Further Affidavit,

he in fact, threw a spanner into the works by claiming that he thought they were armed robbers that visited his house on that fateful night.

Therefore, the Applicants case has not been substantiated in any satisfactory form and is found unmeritorious and in conclusion the Court holds as follows: -

1. An Order of this Honourable Court will not be made restraining the 1st to 7th Respondents from arresting, detaining, harassing and torturing the Applicants.
2. The Prayer seeking the Sum of Ten Million Naira (N10, 000, 000.00) Only, as Aggravating Damages against the 1st and 2nd Respondents for the violation of the Applicant's Fundamental Human Rights fails as unmeritorious.
3. The Claim for the Sum of Ten Million Naira (N10, 000, 000.00) Only, as Aggravated Damages against the 3rd to the 7th Respondents for harassment, embarrassment shock, psychological trauma and emotional torture and inconveniences caused to the Applicant also fails and the case of the Applicants fail in its entirety and is accordingly dismissed.

HON. JUSTICE A.A.I. BANJOKO

JUDGE