

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 18TH DAY OF FEBRUARY,
2019
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/0322/17

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BEETWEEN:

1. MRS. IDRIS HASSANA DANJUMA)
2. SHEHU EMMANUEL).....APPLICANTS

AND

1. INSPECTOR GEENRAL OF POLICE }
2. SP. GANA PETER }
3. ACP KOLO YUSUF }RESPONDENTS
4. COMMANDANT OF SPECIAL }
TACTICAL SQUAD }

J U D G M E N T

The Originating application is dated the 30th of November 2017. It is brought pursuant to Order 2 Rule 1 of the Fundamental Rights (Enforcement) Procedure Rules 2009, Sections 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 as Amended and under the inherent jurisdiction of the Court.

The Applicant claims the following reliefs.

- a. A Declaration that the intimidation threat and arrest of the 1st Applicant by the Respondents in respect of a matter which is pending in Court vide Suit CV/2155/17 is a violation of the right to personal liberty and freedom of movement guaranteed by Sections 35 and 36 of the 1999 Constitution.
- b. An Order setting aside the letter of invitation issued against the 1st Applicant dated 28/11/17.
- c. An Order restraining the Respondents by themselves, privies, servants and or agents by whatsoever name called from harassing, threatening, inviting, arresting, intimidating or violating the fundamental rights of the Applicants.
- d. General damages of N5 Million against the Respondents jointly and severally for breach of the Applicants fundamental right.

In support of the application is a statement which Learned Counsel to the Applicants relied upon.

It contains the Name and Addresses and Description of the Applicants, the reliefs sought and the grounds upon which the reliefs are sought. The grounds for the application are similar to the affidavit filed in support of the application.

Learned Counsel to the Applicant also rely on the said affidavit deposed to by 1st Applicant. She deposes as follows:

On the 15/05/17 at about 7 a.m Officers of the 1st Respondent led heavily armed Policemen to the house of the 2nd Applicant where his entire family was brutalized. That on 23/05/17, the 2nd Applicant was arrested and detained by the Officers of the 1st Respondent till 28th of May 2017. He was granted bail. The 1st Applicant stood as surety for the 2nd Applicant. Exhibit A is the application for bail. That after his bail, the 2nd Applicant initiated a Fundamental Right Enforcement Proceedings against the 1st and 4th Respondents. The Court process is Exhibit B. The case

is still pending. That instead of the Applicants to wait for the determination of the Suit, the Respondents started harassing, intimidating and inviting the 1st Applicant who is the Surety to the 2nd Applicant. The letter of invitation is Exhibit C. That the letter of invitation is a clear violation of 1st Applicant's rights which could render Suit No. CV/2155/17 nugatory. That the Respondents equally filed a Counter Affidavit in the other Suit. That if the Respondents are not restrained, they will arrest, intimidate, harass, torture and detain the 1st Applicant indefinitely That since the invitation of the 1st Applicant by the Respondent, the 1st Applicant is traumatized by the intimidation by the Respondents. That it is in the interest of justice to grant the application. The Respondents will not be prejudiced. The Respondents were served with the Originating Motion on the 1st of February 2018.

From the records of Court, the Respondents filed a Counter Affidavit on the 19th day of February 2018.

By Order 11 Rule 6 of the Fundamental Rights Enforcement Procedure Rules 2009, where the

Respondent intends to oppose the application, he shall file his Written Address within 5 days of the Service on him of such application and may accompany it with a Counter Affidavit. The Respondent failed to file his Written Address and the Counter Affidavit within the time provided by the rules of Court. They are not regularized. The Respondents' Written Address and counter Affidavit which are in the Court's file are therefore hereby discountenanced. Nevertheless, the Applicants must prove their case to the satisfaction of Court to enable the Court grant the reliefs sought.

The Applicant's Counsel adopted his Written Address. He submits that the Respondent lacks the power to invite or arrest the Applicant while Exhibit B is still pending.

I have read the Originating Motion and Affidavit. I have also considered the Written Address of Applicant's Counsel. This application is brought pursuant to Sections 35 and 36 of the 1999 Constitution

as Amended. Section 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria as Amended states:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

- a. In execution of the sentence or Order of Court in respect of a criminal offence of which he has been found guilty.***
- b. By reason of his failure to comply with the Order of the Court or in order to secure the fulfillment of any obligation imposed upon him by law.***
- c. For the purpose of bringing him before a Court in execution of the Order of a Court or upon 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.***
- d. In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.***

- e. ***In the case of a person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community or***
- f. ***For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.”***

Section 36 states:

“In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality, etc.”

The only grouse of the Applicant necessitating this application can be found in paragraphs 11 and 12 of the Affidavit filed in support. It states:

“11. That to the chagrin of the Applicants instead of the Respondents waiting for the determination of the Suits filed by the 2nd Applicant which is still pending at the FCT High Court No. 6, the Respondents tactically started harassing, intimidating and inviting the 1st Applicant who is the Surety to the 2nd Applicant. The invitation is Exhibit C.

“12. That the letter of invitation is a clear violation of the Rights of the 1st Applicant which if allowed will render Suit No CV/2155/17 pending before HON. JUSTICE M.M DODO nugatory.”

Exhibit C is dated 28/11/17 addressed to Director Personnel Management Department, National Assembly Complex, Abuja.

It is titled ***‘Invitation to Police RE:- MRS. IDRIS HASSANA DANJUMA’***

It reads:

“This office is investigating a case of criminal conspiracy, intimidation, breach

of trust and forgery, in which the above name featured as a Surety.

2. You are kindly requested to release Mrs. Idris Hassana Danjuma to interview the undersigned officer on 4/12/17 by 1000hrs at IGP Special Tactical Squad (STS) Headquarters, Abuja, for fact finding through SP Gana Peter with Telephone No. 08033119661...”

The invitation letter Exhibit C is clear. The Applicant is being invited as a Surety. The reason for the invitation is a fact finding mission in respect of the offences stated.

By Sections 4 and 23 of the Police Act, the Police have powers to investigate, arrest and prosecute persons suspected to have committed criminal offences.

A mere letter of invitation as contained in Exhibit C has not and cannot amount to a deprivation of liberty or fair hearing neither does it amount to any indignity.

In my humble view, the 1st Applicant would have honoured the letter of invitation and the subsequent acts of the Respondent would have either doused her fears or confirmed her suspicion. At this point, it is my view and I so hold that the Respondents have not breached the fundamental rights of the Applicants.

The application lacks merit and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
18/02/19.