

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 12

SUIT NO: FCT/HC/CV/2404/2016

BETWEEN:

MR KINGSLEY OKPARA.....APPLICANT

VS

- 1. NIGERIA POLICE FORCE**
- 2. INSPECTOR GENERAL OF POLICE**
- 3. COMMISSIONER OF POLICE FCT**
- 4. ASSISTANT COMMISSIONER OF POLICE SPECIAL
ANTI-ROBBERY SQUAD**
- 5. OFFICER AZUKA ("SARS UNIT").....RESPONDENTS**

RULING/JUDGMENT

By a Motion on Notice dated 23/8/16 and filed same day, brought pursuant to Sections, 34, 35 and 36 (5) and 41 of Constitution of the Federal Republic of Nigeria (As Amended), and Article 4, 5, 6 and 12 of African Charter on Human & Peoples Rights (Ratification and Enforcement) Act and under the inherent jurisdiction of this Court, the Applicant seek the following reliefs as follows:-

- (1) A Declaration** that the arrest and continuous detention of the Applicant by all the Respondents and their agents, at the

Special Anti-Robbery Squad ("SARS") office at Garki, Area 11, Abuja without arraignment since October 2015 up to the time of this application constitutes an infringement on the Applicant's right to personal dignity, personal liberty, freedom of movement and presumption of innocence guaranteed under Section 34, 35, 36 (5) and 41 Constitution of the Federal Republic of Nigeria 1999 (As Amended); as well as Article 4,5,6 and 12 African Charter on Human & Peoples Rights (Ratification and Enforcement) Act Cap. A9 Vol. 1 Laws of the Federation of Nigeria 2004.

2. **AN ORDER OF THIS HONOURABLE COURT** releasing the Applicant on bail pending his arraignment or trial unconditionally for lack of diligent investigation and for the unwarranted oppression suffered by the Applicant or in the alternative, admitting the Applicant to Bail pending his arraignment before a Court of Law, in the most liberal terms possible.
3. **AN ORDER OF INJUNCTION** restraining the Respondents, whether by themselves or by their officers, agents, servants, privies or otherwise however from further detaining the Applicant without an arraignment or trial, or from in any manner infringing further his fundamental rights as enshrined in the **Constitution of the Federal Republic of Nigeria 1999 (As Amended) as well as Article 4, 5, 6 and 12 African Charter on Human & Peoples Rights**

(Ratification and Enforcement) Act Cap, A9 Vol. 1 Laws of the Federal of Nigeria 2004.

4. **AN ORDER** directing the Respondents jointly and severally to pay to the Applicant General, Punitive and exemplary Damages in the sum of ₦30,000,000.00 (Thirty Million Naira) only, for continuous detention without arraignment, emotional trauma arising from continuous detention and infringement of the dignity of his person by the Respondents and their agents as well as shattering his constitutional right to the presumption of innocence which conducts are arbitrary, capricious, oppressive and unconstitutional.
5. **AND FOR ANY SUCH FURTHER OR OTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT

- I. The continuous detention of the Applicant by all the Respondents and their agents, at the Special Anti-Robbery Squad ("SARS") without arraignment since October 2015 up to the time of this application constitutes an infringement on the Applicant's right to personal liberty, freedom of movement and presumption of innocence and dignity of his person as guaranteed under Sections **34, 35, 36 (5) and 41 Constitution of the Federal Republic of Nigeria 1999 (As Amended)** as well as **Article 4, 5, 6 and 12 African**

Charter on Human & Peoples Rights (Ratification and Enforcement) Act Cap, A9 Vol. 1 Laws of the Federation of Nigeria 2004.

- II. It is a cardinal principle of law that where there is a right which has been violated, there must be a remedy in law (ubi jus ubi remedium).
- III. The Applicant is entitled to declaratory reliefs as well as damages for infringement on his constitutional, fundamental and legal rights.
- IV. It is equally imperative that the Respondents be restrained from further unlawful and unconstitutional actions.

In support of this application is a 5 paragraph affidavit deposed to by Mrs. Rachel Okpara, wife of the Applicant. Pursuant to Order 11 Rules 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, (hereinafter called the Rules), the Applicant filed a Statement of Facts, setting out the name, description of the Applicant, the reliefs sought and the grounds for seeking the reliefs. Also filed is a Written Address.

The processes were first served on the Respondents on the 26/8/2016 and thereafter by subsequent Hearing Notices as ordered by this court dated 1/9/2016 and 2/2/2017, but failed to react or file a counter-affidavit to the application.

At the hearing of this Motion, on 2/2/17, Applicant Counsel, E. K. Ehkamagam Esq, relies on all the averments contained in the affidavit in support and facts contained in the Statement in compliance with Order 11 Rule 3 of the Rules. Also adopts the said Written Submission as his oral argument in support.

In the said Address, counsel formulated two issues for determination which is;

“Whether the arrest and continuous detention of the Applicant by the joint efforts of the 1st – 5th Respondents without first concluding investigation and without arraignment and trial constitute an ultravires action and a breach of the Applicant’s fundamental rights under 34, 35, 36 (5) and 41 of 1999 Constitution of the Federal Republic of Nigeria 1999 (As Amended) cited in this application.

Submitting, counsel relying on the Sections 34, 35, 36 (5) and 41 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and the judicial authorities cited and in particular Paras 3 (a – f) of the affidavit in support, that the Applicant’s right have been violated, therefore entitled to the reliefs sought. On the reliefs for damages, submits that the Applicant has satisfied the grounds set out for the grant of the award. Commended the court to the following judicial authorities; *Odogu Vs Attn-Gen of Federation & Ors* (2000) 2 HRLRA *Doiba & Ors Vs Mueme* (1999) 10 NWLR (PT.622) 174 185 Para D – F; 189 – 190 Para H – C. *Onogoruwa & Ors Vs I.G.P. & Ors* (1991) 5 NWLR (PT. 193) 593, 648 C – D. *Williams Vs Daily*

Times of Nigeria Ltd (1990) 1 NWLR (PT.124) 1, 30 G – H and urge the court to grant the reliefs sought.

Having carefully considered the processes filed, submission of counsel, the court finds that only one issue calls for determination;

“Whether consequent upon the facts contained in the Applicant’s application, the Respondents have violated and continued to violate the Applicant’s fundamental human rights”.

This Applicant’s application essentially, touches on alleged violation of fundamental humanrights by Respondents which he contends contravenes Section 34, 35, 36 and 41 of the 1999 Constitution (As Amended).

Section 34 of 1999 Constitution reads;

“Every individual is entitled to respect for dignity of his person” and accordingly.

- (a) No person shall be subjected to torture or inhuman or degrading treatment.
- (b) No person shall be held in slavery or servitude and
- (c) No person shall be required to perform forced or compulsory labour.

Section 35 (1) reads:-

“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”

And

Section 36 (1) reads:-

“In the determination of his Civil Rights and obligations, including any question or determination by or against any Government 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”.

Section 36 (5)

Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty”.

Section 41 reads

“Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from”.

In the light of these constitutional provisions, it is essential to examine the acts complained of, to find whether there is a violation of these Provisions complained of by the Applicant. Fundamental Rights has been defined as “A Right guaranteed in the Nigeria Constitution and it is a Right to which every person is entitled when he is not subjected to the disabilities enumerated in the constitution to enjoy by virtue of being a human being. See the case of Joseph Odogwu Vs A.G. Federation (1996) 6 NWLR PT 546 page 508. In Nemu Vs A.G. Lagos State (1996) 6 NWLR PT 453, 42 the Court of Appeal held that “If these rights guaranteed under Chapter IV of

the Constitution are to be meaningful, they must be thoroughly examined from every angle and determined in an action complaining of their breach. When breached, they must be address in all circumstances as appropriate". In my view, what this means is that the court must consider the facts available to it from the affidavit evidence to determine whether or not there has been a breach.

The question to asked in this instant, is whether the continuous detention of the Applicant without preferring a charge against him before competent court of law or releasing him on bail by Respondents is justified in the circumstance of this case.

The Applicant has by his affidavit evidence stated facts contained in Para 3 (a – f) indicating that his that his fundamental human rights as guaranteed by the, Constitution of Federal Republic of Nigeria 1999 (As Amended) and Article 4,5,6,and 12 of African Charter on Human and Peoples Right in particular, Section 35 and 36, have been infringed upon by the Respondents. Unfortunately, the Respondents who were duly served with this instant application and all other processes failed to react or file a counter-affidavit to the application and were not represented at the hearing. The implication of this is that they are indifferent to this action.

The liberty of every citizen of Nigeria is guaranteed under Section 35 of the 1999 Constitution of Nigeria (As Amended). However, the said Section 35 also provides the grounds upon which such liberty can be curtailed. What this means is that the said Section 35 is not an absolute right. By Section 35 (4), any person who is arrested or detained in accordance with sub-

Section (1) (c) shall be brought before a court of law within a reasonable time, and if he is not tried within a period of two months from the date of his arrest or detention be released unconditional or upon conditions as are reasonably necessary to ensure that he appears for trial at a later date. Again, Section 35 (2) of 1999 Constitution of Republic of Nigeria (As Amended) provides that any person who is arrested or detained shall have the right to remain silent or avoid answering question until after consultation with a legal Practitioner or any other person of his choice. Furthermore, Section 36 (1) of the 1999 Constitution of Federal Republic of Nigeria (As Amended) guaranteed a person's right to fair hearing.

In this instant case, the Applicant, in summary, contends that he has been in detention by the Respondents since October 2015 and still being kept in custody for an offence being suspected to have purchase stolen vehicle.

That the 5th Respondent refused to approve his bail. Further that the Respondent have denied him access to legal counsel and aids from Human Rights agencies, while in detention. The Respondents failed to challenge or counter this averment of the Applicant and by virtue of the Provision of Order VIII Rule 3 of the Rules, where the Respondent elects not to file a counter-affidavit to the main application; the court shall presume that the Respondent has accepted the facts as presented by the Applicant. Consequently, the court is bound to believe the Applicant, more so where it is reasonable to so do. See the case of Dim Vs Ememou (2009) 10 NWLR PT.1139 393 Para G.

It is not in controversy that the Respondents are by virtue of Section 4 of the Police Act empowered to investigate, arrest, interrogate, search and detain any suspect, however, such exercise of powers must be done in accordance with the law. Where there is such deprivation of liberty of any person in the exercise of their powers, the law provides that such a person so arrested or detained shall be brought to court within a reasonable time. See Section 35 (4) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended). The facts from the affidavit evidence of the Applicant before this court which the Respondents failed to challenge shows that the Applicant has been detained by the Respondents for an offence since October 2015 and still being kept in custody from that period to the time of hearing this application which exceeds two (2) months period prescribed by law for such a person to be arraigned or charged to court of competent jurisdiction. Consequently, in accordance with the Provisions of Section 35 (4) (a) (b) of the 1999 Constitution (As Amended), I hold that the Applicant's right to personal liberty as enshrined in Section 35 of the 1999 Constitution As Amended has been violated.

Furthermore, by virtue of the provisions of Section 35 (2) of the 1999 Constitution (As Amended) any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal Practitioner or any other person of his own choice. The Applicant in his application has shown that their lawyer has been refused access to him in detention. Again the Respondents did not countered these facts by failing to file a counter-affidavit to the claim of the Applicant. The court is bound to believe the Applicant. Consequently,

in line with the Provisions of Section 35 (2) of 1999 Constitution (As Amended), the action of the Respondents violates the Applicant's Fundamental Human Right and I so hold.

In the whole, based on the facts on the affidavit evidence of the Applicant which remains uncontroverted and unchallenged by the Respondents, it is the finding of this court that the arrest and continuous detention of the Applicant is unlawful and violates the Applicant's Fundamental Human Rights.

I will now consider the reliefs sought in the light of the finding of court.

On relief 1, the Applicant is praying for a declaratory relief. It is settled that an Applicant seeking this relief must prove his case by satisfying the court, by cogent and credible evidence that he is entitled to such declaratory relief sought. Therefore, where an Applicant on his own evidence fails to prove his claim for declaration, the claim must fail and be dismissed. See the case of *Agbana Vs Owa* (2004) 13 NWLR (PT. 889) 1 @ 17, *Bello Vs Eweka* (1981) 1 SC 109.

It is for the Applicant to establish that his rights as stated therein has been violated, Respondents, the facts relied on are those facts stated in Paras 3 (a – f) of the supporting affidavit. I have in course of this Ruling, stated that the Respondents were duly served with the processes and subsequent Hearing Notices, yet failed to react to it. This leaves this court in line with the Provisions of Order VIII Rule 3 of the Rules; presume that the Respondents have accepted the facts presented by the Applicant as true.

In the absence of any controverting evidence from the Respondent in the face of the heavy allegation against them, as stated in the supporting affidavit, I have no difficulty in holding that this relief succeed and declare that the Applicant's right has been violated by the Respondents.

On relief 2, An Order of court, releasing the Applicant on bail.

By Para 3 (a, b, c and f) of the supporting affidavit, it is contended that since the arrest sometimes in October, 2015 on the grounds of being suspected to have purchase a stolen vehicle, the Applicant has been refused bail and continued to remain in detention with the Respondent up till the time of hearing this application. Again these facts were not controverted. By Section 35 (4) a person arrested and detained in line with sub-section 1 (c), must be taken to court of law with a reasonable time. The detention of the Applicant for more than a year, without administrative bail, and or bringing him before a competent court of law on a charge, to say least of clear breach of these Provisions of the Constitution and is condemnable. This certainly not within the ambit of the hallowed quote "Upholding the Rule of Law". Accordingly, I shall allow this relief. It is hereby ordered that the Applicant be released unconditionally or be charged to a court of competent jurisdiction by the Respondents, within 24 hours from the receipt of this Order served on the Respondents.

On relief 3, An Order of Injunction, restraining the Respondents from further detaining the Applicant without arraignment or trial.

From the affidavit evidence, Para 3 (f), the Applicant has stated that since his arrest he has been in continuous detention for a period well over a year

now, this facts not controverted by the Respondents. Granted that it is not the practice of court to allow itself to be used to shield a party against criminal investigation, to do so will amount to an interference with the powers of the Respondents in the exercise of their statutory powers of investigation, arrest, detention and prevention of crime. It is also not the practice of court to issue a judicial fiat to prevent the Respondent from exercising their statutory powers. See A.G. Anambra State Vs Chris Uba (2009) 15 NWLR (PT. 847) 44 @ 67Para F – G. However, the exercise of the court to consider the grant which is discretionary, the court in this instance, finds that the Applicant have shown that they deserve the court's protection, to the extent of this reliefs sought. The Respondent having failed to react to this relief and having found that the action of the Respondent failing to comply with the Provisions of Section 35 (4) of the 1999 Constitution and is condemnable, hold that this relief should succeed to the extent that the Respondent be restrained from further detaining the Applicant without arraignment or trial in line with the statutory Provisions cited above.

On the relief 4, directing the Respondents jointly and severally to pay to Applicant general, punitive and exemplary damages in the sum of ₦30,000.00 Naira) (Thirty Million Naira).

In this instance, in line with the averments contained, the Applicant made heavy submission to court with several judicial authorities, on why this court can grant this relief sought.

Firstly, this court has found that there is a breach or violation of the Applicant's Fundamental Rights and noting that the Respondents have failed to react to the processes. I am in agreement that in the absence of any controverting evidence from the Respondents, and taking a cue from the authority cited, and the court having satisfied itself that the Respondents act is condemnable, will align myself with the principle that teaching the Defendant that tort does not pay as enunciated in *Broome Vs Cassell* (1972) AC 1079, cited in the case of *Williams Vs Daily Times of Nigeria Ltd* (1990) 1 NWLR(Pt.124) 1, 30 Para G – H. Accordingly, it is hereby ordered that the sum of ₦3,000,000.00 (Three Million Naira) only be paid as General , Punitive and Exemplary damages for the continuous detention without arraignment, emotional trauma arising from continuous detention and infringement of the dignity of his person by the Respondent and their agents.

In summary, it is the finding of the court as follows:-

- (1) Reliefs 1, 2, 3 are hereby granted as prayed and to the extent as stated in the body of this Judgment.
- (2) It is hereby ordered that the sum of ₦3,000,000.00 (Three Million Naira) only be paid to the Applicant being General, Punitive and exemplary damages for the continuous detention without arraignment, emotional trauma arising from the continuous detention and infringement of the dignity of his person by the Respondents and their agents.

This is the judgment of the court.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

15/1/2019

E.K. EKHAMAGAM FOR THE APPLICANT

NO REPRESENTATION FOR THE RESPONDENTS