

**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/2736/18

BETWEEN:

- 1. NDABAWA UMAR**
- 2. MUSA ABDULLAHI**
- 3. ABBAS BALA.....APPLICANTS**

AND

- 1. ATTORNEY GENERAL OF THE FEDERATION**
- 2. INSPECTOR GENERAL OF POLICE.....RESPONDENTS**

RULING/JUDGMENT

The Applicant herein filed this application for enforcement of their Fundamental Rights by Motion on Notice dated 11/9/18 but filed on 12/9/18, brought pursuant to Order 11 Rule 1 – 7 Fundamental Right (Enforcement Procedure) Rules 2009, Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Section 35, 36, 41 & 46 of the Constitution of the Federal Republic of Nigeria, Order 2 Rule 6 FCT High Court (Civil Procedure) Rule 2018. And under the inherent jurisdiction of the Honourable Court seeking the following reliefs:-

- (1) **AN ORDER** declaring the arrest and detention of the Applicants from 8th day of May, 2018 and 15th day of May, 2018

respectively till date without granting them an administrative bail and without any formal arraignment of the Applicants in any court to law to face any allegation against them, IF ANY till date by men and officers of the 2nd Respondent; Intelligent Response Team (I.R.T) at Special Anti-Robbery Squad (Abattoir Garki Abuja) without charging the Applicants to court for any offence is illegal, unlawful as same amounts to a violation of the Applicants' Fundamental Rights as enshrined in the Constitution.

(2) **AN ORDER OF COURT** mandating men and officers of Intelligent Response Team (I.R.T) of the 2nd Respondent to release the Applicants unconditionally on bail as the continuous detention of the Applicants by officers of the 2nd Respondent is illegal, unlawful as same amount to a violation of the Applicant's Fundamental Rights as enshrined in the Constitution.

(3) **AN ORDER** of perpetual Injunction restraining the Respondents jointly and severally, their servant, officers and Privies from re-arresting and detaining the Applicants until the final determination of the substantive matter herein.

(4) The sum of N100,000,000 (One Hundred Million Naira) only jointly

and severally against the Respondents as general damages or compensation to the Applicants for the unlawful illegal and unconstitutional arrest and detention as well as the wrongful acts of the Respondents on the Applicants.

- (5) And for such further or incidental orders as the Honourable Court may deem fit to make in the circumstances.

Filed is a Statement of facts of Applicants, reliefs sought and the grounds for seeking the reliefs. Also filed is a 23 Paragraph affidavit in support with one Exhibit marked "A". Also filed a Written Address in support, adopts same as their oral argument.

The Respondents were duly served the Motion on 18/10/18 but did react nor file a counter-affidavit in opposition to the application. It is therefore, taken as unchallenged and the court can act on the facts before it.

In the Written Address, Adejoh Jibrin Yusuf Esq. of Applicant Counsel, submitted a lone issue for determination and that is;

"Whether or not the Respondents most especially 2nd Respondent have inherent and unlimited power to unlawfully arrest, continuously detained unlawfully an Applicant without regard to the breached Fundamental Rights of the Applicant as enshrined in the 1999 Constitution and Fundamental Rights (Enforcement Procedure) Rules 2009.

And submits the continuous detention of Applicants for so long without bringing them to court or allowing their relations or any interested party to have access to them amount to depriving Applicants their personal liberty and fair hearing and by extension right to life since it is not known what has become of Applicants in the custody of men and officers of 2nd Respondent. That their arrest and continuous detention has infringed on their personal liberty which is constitutional right, that such inalienable right can only be curtailed as permitted by law and not otherwise. Commend the court to Sections 34 (1), (4), (a), (b), (5) (a) (b), 35 (1) (4) (5) of the 1999 Constitution. Further, submits that Applicants be unconditionally released moreso that they have spent more days in detention than they would have assuming, but not conceding that they have committed an offence and found guilty, referred further to Section 36 (1) (5), 46 (1) (2) of 1999 Constitution. Submit the inalienable right of Applicants has been violated and as such court should issue directives to Respondents to unconditionally release Applicants forthwith that Applicants who have been held in detention by Respondents since 8/5/18 and 15/5/18 are innocent in the eye of the law and should be released unconditionally.

Having carefully considered the affidavit evidence of Applicants, the submission of learned counsel for Applicants, the annexed Exhibit "A", the authorities cited and noting that it is unchallenged and uncontroverted, I find that only one issue can be distilled for determination and that is;

"Whether from the facts and circumstances of this matter, the Applicants' fundamental rights have been violated to entitle him to the reliefs claimed against the Respondents".

The Applicants application essentially touches on the alleged violation of their fundamental human rights by Respondents which they contends contravenes Section 34 (1), 35 (1), (4), (5) and 36 (1) of the 1999 Constitution (As Amended).

SECTION 34 (1)

“Every individual is entitled to respect of the dignity of his person”

SECTION 35 (1)

“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”.

By Sub-Section 4 of Section 35

“Any person who is arrested or detained in accordance with sub-section 1 (c) of this Section shall be brought before a court of law within a reasonable time and if not tried within a period of”.

- (a) Two months from the date of his arrest or detention in the case of a person who is in custody or is entitled to bail; or
- (b) Three months from the date of his arrest or detention in the case of a person who has been released on bail.....”.

And by sub-section 5 “In sub-section 4 of the Section, the expression “a reasonable time” means

- (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and
- (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable”.

SECTION 36 (1) reads:-

“In the determination of his civil rights and obligation 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”.

In the light of these Constitution Provisions, it is necessary to examine the acts complained of to ascertain whether there is a violation of these provisions complained of by Applicants. Fundamental Right 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 subject to the disabilities enumerated in the Constitution to enjoy by virtue of being a human. See the case of Joseph Odogwu Vs A.G., Federation (1996) 6 NWLR (PT. 546 at 508. In Nemu Vs A.G., Lagos State (1996) 6 NWLR (PT.453 at 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 in an action complaining of their breach. When breached, they are to be addressed in all the circumstances as appropriate”. In my view, what this

means is that the court must consider the facts made available to it from the affidavit evidence to determine whether or not there has been a violation or infringement of those rights.

The question to be asked in this instant application is whether the arrest and continuous detention of the Applicants without preferring a charge against them before a competent court of law or releasing them on bail by 2nd Respondent is justified in the circumstances of this case.

The Applicants have by their affidavit evidence, paragraph 8 – 20 thereof, stated facts indicating that their fundamental human rights as guaranteed by the Constitution of Federal Republic of Nigeria 1999 (As Amended), in particular Section 34, 35 and 36 have been infringed upon by the Respondents. Unfortunately, the Respondents who were duly served with this Suit failed and/or neglected to react or file a counter-affidavit to the application and were not represented at the hearing. The implication 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. Furthermore Section 36 (1) guaranteed a person's right to fair hearing.

In this instant case, the Applicants contends that on 8th May, 2018, men and officers of 2nd Respondents arrested 3rd Applicant without being informed of any form of allegation against him and that on 15th May, 2018, officers of 2nd Respondent from Intelligent Response Team (IRT) arrested 1st and 2nd Applicants, took them to their office with handcuff and their two hands on their back and from that time till date they are still under custody. Further that uptill the time of filing this Suit, they unaware of any form of allegation against them. Statedthat sequel to the arrest, several efforts were made with a view to know the reason behind their arrest and unlawful continuous detention but to no avail and every effort put in place both oral and formal application to secure administrative bail proved abortive. That when all human efforts to secured bail failed, their counsel wrote a formal letter and addressed same to Commander Inspector General of Police Intelligent Response Team. Stated further that from the date of arrest of Applicants till date, they are still being detained.

It is not in controversy that the Police are by virtue of Section 4 of the Police Act empowered to investigate, interrogate, search and detain any suspect, however, in the exercise of this statutory powers, must abide by the law. Where there is such deprivation of liberty of any person so arrested or detained, shall be brought to within a reasonable time. See Section 35 (4) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). The facts from the affidavit evidence of the Applicants before this court the Respondents failed to challenge or controvert shows

that the Applicants have been detained by officers and men of the 2nd Respondent for an undisclosed reason since on the 8th of May 2018 and 15th of May, 2018 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 line with the Provisions of Section 35 (4) (a) (b) of the 1999 Constitution (As Amended), I hold that the Applicants right to personal liberty as enshrined in Section 35 of the 1999 Constitution (As Amended) has been violated.

Now to the reliefs sought.

The relief 1 of Applicant is declaratory relief sought against Respondents. In an application for declaratory relief, it is settled that an Applicant must prove his case by satisfying the court by cogent and credible evidence that he is entitled to such declaratory reliefs. Therefore, where an Applicant on his own evidence fails to prove his claim for declaration, the claim must be dismissed. See *Agbana Vs Owa* (2004) 13 NWLR PT. 889 1 and Pg. 17. See also *Beuo Vs Eweka* (1981) 1, SC 109.

It is for the Applicants to establish that their arrest and continuous detention is unjust, unlawful and a violation of their rights. The facts relied upon by Applicants are contained in Paragraphs 8 – 20 of the affidavit evidence in support of this application. I have stated the Respondents failed to react to the processes served on them and this leaves the court in line with Order VIII Rule 3 of Fundamental Human Right (enforcement

Procedure) Rules, to presume that the Respondents have accepted the facts as true as presented by Applicants.

The Police has the statutory duty to investigate, detain and search any suspect pursuant to any complaint made to them and in exercising that power, shall be done in accordance with the law. In this case, the court is not given opportunity or hearing the other side, that is the Respondents and wonder why the Police who were duly served with the application failed to react to the facts relied upon by Applicants against them. The court is not given a clue for the reason behind the action of men and officers of 2nd Respondent to warrant the continuous detention of Applicants till date. From all of these the Respondent having failed to counter the averments of Applicants, I have no difficulty in holding that the Applicants have proved their case to be entitled to this relief.

On relief 2, from the affidavit evidence of Applicants, the Applicants were arrested and kept in custody by men and officers of 2nd Respondent on 8th of May 2018 and 15th of May, 2018 and still being detained since then. These facts were not controverted. The court is not also given facts as to the reason for their continuous detention and there is no facts stating that they have been released. It is on this basis that I grant the relief 2 of Applicants.

On relief 3, the Applicants having established their case and the court having found that the fundamental rights of the Applicants have been violated, I hereby grant the relief 3.

On relief 4, having found that there is a breach of their fundamental right and noting that the Respondents have failed in their duty to respond to the processes served on them, I shall allow damages to be awarded flowing from that breach.

However, the facts deposed and relied on by the Applicants does state any role played by the 1st Respondent as to make them liable to any damages. I therefore hold that damages should be against the 2nd Respondent only. I so hold.

From all of these, Judgment is hereby entered for the Applicants as follows;

1. It is hereby declare that the arrest and detention of the Applicants from 8th day of May, 2018 and 15th day of May, 2018 respectively till date without granting them an administrative bail and without any formal arraignment of the Applicant in any court of law to face any allegation against them, if any, till date by men and officers of the 2nd Respondent intelligent Response Team is illegal, unlawful and a violation of the Applicants fundamental rights.
2. The men and officers Intelligent Response Team of 2nd Respondent are hereby order to release the Applicants unconditionally on bail forthwith.
3. The Respondents jointly and severally their servants, officers and Privies are hereby restrain from re-arresting and detaining the Applicants.

4. It is hereby ordered that the 2nd Respondents shall pay the sum of ₦1,500,000.00 (One Million Five Hundred Thousand Naira) only as damages to the Applicants.

This is the Judgment of the court.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

5/2/2019

ADEJOH JIBRIN YUSUF ESQ FOR THE APPLICANTS

NO REPRESENTATION FOR THE RESPONDENTS.