



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/1899/18

BETWEEN:

MISS SAFIAT ADEJOAPPLICANT

AND

**1. THE INSPECTOR GENRAL OF POLICE)
2. COMMISSIONER OF POLICE, FCT).....RESPONDENTS
3. DPO, KARU POLICE STATION, FCT)**

JUDGMENT

By an Originating Motion on notice filed on 25th May, 2018 and brought pursuant to Order 2(1) of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent powers and jurisdiction of this Court the Applicant is praying the Court for the following reliefs:

- 1. A declaration that the arrest and detention of the applicant on the first day of May, 2018 by the officers of the respondents attached to Karu Police Station, FCT in the face of no recognizable offence known to law amount**

to an infringement on the fundamental right of the applicant.

- 2. A declaration that the arrest and detention of the applicant on the first day of May, 2018 by the officers of respondents attached to Karu Police Station, FCT in the face of no recognizable offence known to law is unlawful.**
- 3. A declaration that the applicant's fundamental human rights has been grossly violated by the men and officers of the respondents and as a result the applicant is entitled to monetary compensation and public apology.**
- 4. An Order directing the respondents to pay to the applicant the sum of N20,000,000.00 (Twenty Million Naira) as general damages for unlawfully arresting, detaining and for psychologically torturing the applicant.**
- 5. An Order directing the respondents to tender an unreserved public apology to the applicant and publish same in at least one of the national dailies.**
- 6. And for such further orders as the Honourable Court may deem fit to make in the circumstance.**

There is a 40-paragraph affidavit in support personally deposed to by the Applicant. Exhibit "A" attached to the affidavit is the Applicant's Solicitors letter of 4th May, 2018 addressed to the 3rd Respondent. The Applicant also filed a statement pursuant to Order 2(3) showing her name, description, the reliefs sought and the grounds upon which they are sought. There is also a further affidavit of 17-paragraph. Mr. Ndubuisi Kalu Esq of Counsel also filed a written address in line with the Rules.

The Respondents with leave of Court filed a joint counter affidavit of 32-paragraph deposed to by one Sergeant Philip Tumba, a Litigation Clerk attached to the Legal Section, Criminal Investigation and Intelligence Department, FCT Police Command. Photocopies of certain documents were annexed and marked as exhibit NPF 1-5. Exhibit NPF 1 dated 30th April, 2018 is a letter of Complaint signed by one Mr. Eemah Mene Godfrey and addressed to the Area Commander, Karu Area command. Exhibit NPF 2 is a blurred photocopy of a photograph while exhibit NPF 3 is the statement of the Applicant to the Police on 1st May, 2018. Finally an application for Bail of the Applicant at the Police station by one Abu Adejo is christened by the Applicant as exhibit 4 and 5. In other words, exhibit 4 and 5 refers to one document. Mr. Patrick Ogele Esq filed a

written address in support of the counter affidavit in obedience to the Rules.

I have calmly perused the processes put forward by parties and it is clear to me that the case of the Applicant is founded on the allegation that her arrest and detention by the Respondents was unconstitutional as it infringed on her rights to personal liberty. Reliefs 1-3 which are declaratory in nature sufficiently captured this point.

The evidence of the Applicant is that she works with Ultimate Lounge at One Man village as a sale girl. That in the course of her assignment she met one Mr. Austin (aka Prof.) who is a patron of the Lounge. Paragraph 3-12, 19-22 and 24 of the affidavit in support tell her story with clarity:

3. That in the course of my duty I came across one man popularly known as Prof. although his real name is Mr. Austin.

4. That I know the said Prof (Mr. Austin) as a customer who comes to drink in the Lounge where I work and that the said man also usually come to the Lounge to use one or two guest rooms attached to the Lounge with his female friends.

5. That sometime in the month of April, 2018, the said Prof. (Mr. Austin) came to the Lounge where I work with a female friend.

6. That the said Prof. came to the Lounge sometime in April, 2018 with his female friend in the afternoon when I was yet to resume work for the day as I usually resume in the evening.
7. That the Prof. (Mr. Austin) paid for one of the rooms in the Lounge wherein he spent sometime with his female friend whom he came with after taking some bottles of drinks.
8. That about a day or more after Prof. (Mr. Austin) spent time in one of the rooms in the Lounge with his female friend, the said female friend of Prof. (Mr. Austin) came to the Lounge with an envelope.
9. That it was at this juncture that a colleague of mine told me that the Prof. came to the Lounge the previous day with the female that brought the envelope.
10. That the said female friend of Prof. (Mr. Austin) whom I have no relationship with gave me an envelope to give to Prof. (Mr. Austin) which I refused to take initially.
11. That I insisted after plenty pleading from the said girl that the girl must call Prof. (Mr. Austin) in my presence before I can take the envelope to keep for Prof. (Mr. Austin).

12. That the said female friend of Prof. (Mr. Austin) called him in my presence and Prof. (Mr. Austin) instructed me on phone to please keep the said envelope for him that the sender being his female friend is his student.

19. That on the first day of May, 2018, while I was in my place of work at the shopping centre, one man village, Karu LGA, Nasarawa State, the said Prof. (Mr. Austin) came with some females who introduced themselves as police officers from Karu, FCT.

20. That one of the female officers told me that I was under arrest when I asked why, she said I should enter the vehicle they came with and that I will be told in the police station.

21. That I was taken to Karu Police station, in FCT, I was shocked when a nude picture of the said Prof. (Mr. Austin) was shown to me as the content of the envelope that I received for Prof. (Mr. Austin) from his female friend.

22. That one of the female officers who arrested me told me at the police station that I was arrested because they can't find the girl that gave me the envelope.

24. That I was taking (sic) to Karu Police Station at about 4:30pm and was detained till much later the next day."

The Respondents in their defence indicated that they acted upon a criminal petition (i.e. exhibit NPF 1) against the Applicant by one Mr. Eemah Mene Godfrey. That she was invited on 1st May, 2018 in the course of routine investigation and released the same day. Exhibit 4 was called in aid by the Respondent to show that the Applicant was released on bail after her arrest on 1st May, 2018.

Now the law is settled as rightly submitted by the learned Counsel to the Respondents that the Police as an institution is vested with statutory power to investigate allegations that touches on crime. See Section 24 of Police Act and the case of **IGBO & ORS VS DURUEKE & ORS (2014) LPELR-22816 (CA)** where Ekpe, JCA has this to say:

“...suffice it to say that the Nigeria Police Force and its operatives whether at the Federal, State or Zonal Command are empowered by the Police Act, the Constitution and other relevant laws in that regard to investigate crimes or perceived danger which have been reported to them. The police however have absolute discretion as to who to, arrest, charge and prosecute and in so doing arrests may be made and invitations extended to persons who they reasonably believe have committed an offence. There is no gainsaying the fact that in the course of their duty

they are enjoined to conduct their investigations in line with the principles of the rule of law and that they must act judiciously and judicially.”

In essence the Police in so far as the law is concerned is empowered to investigate, make arrest and even prosecute where crime is involved. However, the above authority clearly indicated that investigations must be conducted in line with established principle of Law.

In this case the Respondents stated that they acted on a criminal petition (i.e. exhibit NPF 1). I have seen and read the exhibit titled “Complain for deformation of character, criminal conspiracy and threat to life” (sic) and I agree with the learned Counsel to the Respondents that the petition is criminal in nature. If that be the case, it would be wrong for the Respondents to fold their arms upon the receipt of such petition. Under such circumstances the Police was right in inviting the Applicant to shed some light on the matter. After all, the Applicant admitted that she was the person that received the parcel at the root of the alleged conspiracy and blackmail on behalf of the petitioner. To that extent the invitation and/or arrest of the Applicant by the Police cannot be faulted.

The next question is whether the Applicant was detained by the Respondents in defiance of Constitutional stipulation. In dealing

with this question the point must be made that the liberty of citizens is viewed by the Constitution as a weighty issue. Therefore no citizen of this country may be denied of such liberty on flimsy grounds. Thus in *ENE & ORS V. BASSEY & ORS* (2014) LPELR-23524 (CA) the Court (per Ndukwe-Anyanwu, JCA) held that:

“The Police have not been given unbridled power to deprive citizens of their liberty while the case against them is still being investigated.”

Section 35 of the Constitution is very clear on this point. The Section provides as follows:

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 in accordance with a procedure permitted by law.

(a) -----

(b) -----

(c) For the purpose of bringing him before a court in execution of the order of the 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”.

By the same token, subsection (4) provides as follows:

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

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not 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,

he shall (without prejudice to any further proceeding that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date”.

Subsection 5 says:

“In subsection (4) of this section, the expression “a reasonable time” means:

(a) in the case of an arrest or detention in any place where there is 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 a longer period as the circumstances may be considered by the court to be reasonable”.

From the foregoing, it is clear that for the detention of the Applicant to be unlawful she must have being kept in custody beyond the 24 hours laid down by the Constitution. On this point the Applicant stated at paragraph 24 of her affidavit as follows:

“That I was taking (sic) to Karu Police Station at about 4:30pm and was detained till much later the next day.”

I have stated elsewhere above that the Respondents denied the above averment. Consequently the Applicant ought to be specific with facts relating to the time she was released from custody. It is not enough to say that she “was detained till much later the next day.” In situations like this the Applicant ought to throw more light on her alleged detention by the Respondents. For example, if the Applicant was arrested by 4:30pm on 1st May, 2018 she ought to state the specific time of her release the following day to enable the Court determine whether such detention (if proved) is beyond the 24 hours allowed by the Constitution. The Applicant filed a further affidavit of 17-paragraph where it was averred that **“she was detained till the following day”**. This non-specific approach by the

Applicant on the time frame of her detention is fatal to her claim. The effect of the foregoing development is that the Applicant has not demonstrated on the face of her affidavit evidence that she was detained beyond 24 hours as stipulated by the Constitution.

For the records the further affidavit of the Applicant dwelt extensively on allegation of extortion of money from the Applicant before her release. In the absence of any relief connected to the alleged extortion of the sum of N15,000.00 (Fifteen Thousand Naira) I do not see any reason to dabble into such allegation as it would be a mere academic exercise.

Let me also add for the record that the Applicant has attacked the counter affidavit of the Respondents on the ground that the deponent have no direct knowledge of all the fact stated therein. It is not correct as wrongly stated by the Applicant that a deponent must have first hand information of the facts deposed to. Once the informant of the deponent is seized of the facts deposed to, the validity of such information cannot questioned. It is one of the exceptions to the hearsay rule. In this matter Sgt. Philip Tumba who is the deponent has stated that facts deposed to in the counter affidavit of the Respondents are either within his personal knowledge or based on information received from Sgt. Theresa Ajeibi of Karu Area Command where the petition which ignited the

investigation in dispute was lodged. The counter affidavit is therefore in order.

At the end of the day I have come to the inevitable conclusion that the allegation of unlawful detention is not proved. Accordingly reliefs 1, 2 and 3 which in essence are for a declaration that the arrest and detention of the Applicant constitutes an infringement on the Applicant's right cannot succeed. The reliefs are refused and dismissed for want of merit.

Relief 4 is for general damages of N20Million for unlawful arrest, detention and psychological torture. This claim is no doubt consequential in nature. It has no life of its own. The failure of the principal claim also marked the failure of this claim as there can be no damages where the Applicant has not established any infringement of her right. The claim for damages on that score is liable to be and is hereby dismissed for want of merit.

The last claim is for public apology. This claim is rooted in the provision of Section 35(6) of the Constitution which provides as follows:

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this

subsection, “the appropriate authority or person” means an authority or person specified by law.”

Having held that the arrest of the Applicant is lawful and that there is nothing to support the allegation of illegal detention the claim for public apology cannot be granted. It is trite law that you cannot put something upon nothing (as stated by Lord Denning, MR in **UAC V. MCFOY**) and expect it to stand. The claim is therefore refused and dismissed for want of merit.

At the end of the day the Applicant’s case fails in its entirety and accordingly dismissed as such.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
22/05/2019