

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 30, NYANYA, ABUJA

SUITNO: FCT/HC/CV/1992/18

BEFORE HIS LORDSHIP:

HON. JUSTICE MUAWIYAH BABA IDRIS

BETWEEN:

ALHAJI MOHAMMED SANI ZUBAIR

APPLICANT

AND

- 1. THE CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION.**
- 2. ECONOMIC AND FINANCIAL CRIMES COMMISSION. RESPONDENTS**
- 3. MR. OKENNA AGUECHE**

22/05/2019

Parties are not in court.

JUDGMENT

The originating motion is prays for:

- 1. A DECLARATION** that the arrest and detention of the Applicant on 30th May, 2018 to 1st June, 2018 and continuous threat of arrest and detention of the applicant on the ground of a purported loan debt owed by one Dr. Ikang Etim Basey to the 3rd Respondent, a person the Applicant did not know or have any transaction with by the 1st and 2nd Respondents, their servants, agents and privies is illegal, unlawful, unconstitutional and a gross violation of the Applicant's right to personal liberty and freedom of movement guaranteed under sections 35, 36 and 41 constitution of the Federal Republic of Nigeria 1999 (As amended) and Articles 6 and 12 (1) African Charter on Human and People Right (Ratification and Enforcement) Act Cap A9 Vol. 1 LFN 2004.
- 2. AN ORDER** of injunction restraining the 1st and 2nd Respondents, their officers, servants, agents and privies or howsoever described from harassing, intimidating, arresting and /or detaining the Applicant in

breach of his fundamental rights to personal liberty and freedom of movement contrary to sections 35 and 41 constitution of the Federal republic of Nigeria 1999 (As amended) as well as Articles 2, 6 and 12 African Charter on Human and People Right (Ratification and Enforcement) Act Cap A9 Vol. 1 LFN 2004 respectively.

3. **AN ORDER** of injunction restraining the 1st and 2nd Respondent, their officers, servants, agents and privies or howsoever described from compelling the Applicant to make any refund or write any undertaken of refund to the 3rd Respondent in breach of the Applicant fundamental rights to personal liberty and freedom of movement contrary to sections 35 and 41 constitution of the Federal republic of Nigeria 1999 (As amended) as well as Articles 2, 6 and 12 African Charter on Human and People Right (Ratification and Enforcement) Act Cap A9 Vol. 1 LFN 2004 respectively.
4. **AN ORDER** of court quashing any form of undertaken of indebtedness written by the Applicant while in custody of the 1ST and 2nd Respondent and in breach of the Applicant fundamentals same having been done illegally, ultra vires the act that established the 1st and 2nd Respondents and in breach of the applicant fundamental rights to personal liberty and freedom of movement contrary to sections 35 and 41 constitution of the Federal republic of Nigeria 1999 (As amended) as well as Articles 2, 6 and 12 African Charter on Human and People Right (Ratification and Enforcement) Act Cap A9 Vol. 1 LFN 2004 respectively.
5. **AN ORDER** directing the respondents jointly and severally to pay to the Applicant damages in the sum of N5,000,000 (Five Million Naira) on the footing of exemplary and aggravated damages for the unlawful violation of his fundamental Human Rights by the Respondents being illegal, unlawful, oppressive, arbitrary, capricious and unconstitutional.
6. **AN ORDER** directing the 1st and 2nd Respondent to publish apologies to the Applicant in at least two national daily newspapers for the gross breach of the Applicant's fundamental rights in accordance with sections 35(6) constitution of the Federal Republic of Nigeria, 1999(As Amended).
7. **AND FOR 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 arrest and detention of the Applicant on 30th May,2019 to 1st June, 2018 and continuous threat of arrest and detention of the Applicant on the ground of a purported loan debt owed by one Dr.

Ikang Etim Bassey to the 3rd Respondent, a person the Applicant did not know or have any transaction with by the 1st and 2nd Respondents, their servants, agents, and privies is illegal, unlawful, unconstitutional and a gross violation of the Applicant's right to person liberty and freedom of movement guaranteed under section 35,36 and 41 constitution of the Federal Republic of Nigeria 1999 (As amended) and Articles 6 and 12 (1) African Charter on Human and peoples right (Ratification and Enforcement) Act Cap A9 Vol. 1 LFN 2004.

- ii. The Applicant is entitled to declaratory reliefs and damages for the unlawful violation and infringement of his constitutional, fundamental and legal rights.
- iii. There has been no charge laid against the Applicant for any infraction of the law in any court by the Respondents.

It is supported by affidavit of paragraph deposed to by the Applicant. Paragraph 4 is reproduced.

4. That I hereby states as follow:

- i. Sometimes in February 2017, I was introduced to Dr. Ikang Etim Bassey by one Richard who is into business of buying and selling of gold in Accra, Ghana.
- ii. That myself and Richard have been doing the business of buying and selling of gold together for years.
- iii. In line with the above, the said Dr. Ikang Bassey was to join in our gold business wherein everyone will contribute his own shares and we then share the profit.
- iv. That the said Dr. Ikang Etim Bassey requested that I should introduce him to a bureau de change where he could change money to dollar for the purpose of contributing his own quota of the business and also for his other business dealings.
- iv. That I introduced him to one Mutunchi Venture where he transferred monies from his account to the said bureau de change in the tranche of \$100,000,\$45,00 and \$25,000 dollars

- v. That after Dr. Ikang Etim Bassey contribution in the gold business and we are expecting the business to yield, we continue to relate well and as well following up on our business venture.
- vi. That on 28th may, I received a call from Dr. Ikang Etim Bassey to see him at the Accountant General office near old CBN office in Garki
- vii. That I yielded to his call on my arrival, I was arrested by an EFCC official and taken to their office nearby beside Abuja Electricity Distribution Company at Garki for interrogation.
- viii. That I was informed by the official of the EFCC led by Mr. Musa Ibrahim, madam mary and Abdul Rahaman Arabo that Dr. Ikang Etim Bassey has being on investigation since January, 2018 on a certain amount of money cumulating to N80,000,000(Eighty Million Naira) which he borrowed from one Mr. Okenna Aguneche and all the cheques issued by the said Dr. Ikang Etim Basey for the refunds bounced.
- ix. That I was also informed by the official of the EFCC aforementioned above that the said Dr. Ikang Etim Bassey told them that said Dr. Ikang Etim Bassey told them that he invested part of the money he borrowed from Mr. Okenna Aguneche to invest in our gold business ventures.
- x. That I explained what I know about the gold business to the official of the 1st and 2nd Respondents and that I did not know that D. Ikang Etim Bassey borrowed money from Mr. Okenna Aguneche to invest in our business. I told them that I have never met Mr. Aguneche let alone borrowing money from him.
- xi. That the said Mr. Okenna Aguneche confirmed that he doesn't know me and we have never met.
- xii. That pursuant to the above, the officials of the 1st and 2nd Respondents asked me to leave and report back on 30 may, 2018.
- xiii. That on 30th may, 2018 when I reported at the 1st and 2nd Respondents office close to Accountant General of the Federation office in Garki. The 1st and 2nd Respondents officials asked me to reduce my statement into writing and after which to my chagrin surprise, the officials of the 1st and 2nd Respondents said I would be compelled together with Dr. Ikang Etim Bassey to pay back Mr. Okennna Aguneche load/borrowed money which didn't know how it was collected by Dr. Ikang Etim Bassey.

- xiv. That I told them that I have never met Mr. Okenna Aguneche let alone borrowing money from him
- xv. That the officials of the 1st and 2nd Respondents detained me and lock me up at their office at Idi Agbon House in Wuse II and I was released on 1st June 2018 after I was made to write an undertaken of indebtedness/ refund to them.
- xvi. That the officials of the 1st and 2nd Respondents also ask me to bring part of the refund in the sum of \$25,000 dollars on or before 7th June, 2018 to their officer failing which I will be detained.
- xvii. That the 1st and 2nd Respondents threaten me that if I do not bring the money as ordered that I will be detained and be made to go through torture that I have never experience before in my life.
- xviii. That my business for now cannot produce the money being demanded from me by the Respondents.
- xix. That I sought the advice of Oladimeji Ekengba at his Chambers on 4th June 2018 at about 8.00am and he informed me that the respondents are not debt collectors under the law and their arrest and threat as well as detention are in violation of my fundamental rights.
- xx. That it will be in the interest of justice for this Honourable court to allow the Reliefs that I seek in order to protect my rights from being grossly violated by the Respondent.

1st and 2nd Respondent counter affidavit of 21 paragraph was deposed to by one Mary Jafun, one of the investigation officers. Exhibit EFCC 1-4 A&4B are attached. Paragraph 6-19 are reproduced:

- 6. I aver that the facts herein deposed in this counter affidavit, except where expressly stated, are fact within my personal knowledge, information and belief and same having been derived by me during the course of investigating the allegations in the aforesaid petition dated 8th January 2018 which deals with Obtaining by false pretences, Issuance of dud cheques and forgery. A copy of the said petition is hereto annexed and marked EXHIBIT EFCC1.
- 10. That contrary to the deposition in paragraph 4 (xiii) of the affidavit in support, Applicant did not report of the 1st and 2nd Respondents to know office address at No. 5, Fomella Street, Off Ademola Adetokunbo

Crescent, Wuse ii, on 30th May, 2018 and officials of the 1st and 2nd Respondents never stated that the Applicant would be compelled together with one Dr. Ikang Etim Bassey to pay back loan/borrowed money to Okenna Aguneche or any person.

11. I state further to the deposition in paragraph 10 above that the officials of the 1st and 2nd Respondents are not debt recovery agents/agency and there was no intention on the part of the officials of the 1st and 2nd Respondents to compel the Applicant to pay back loan/borrowed money to Okanna Aguneche.
12. I state that contrary to the fact deposed by the Applicant in paragraph 4 (xiii) of the affidavit in support, the Applicant freely wrote in his extrajudicial statement that he agreed to refund the \$25,000 dollars given to one Mr. Richard having know that it was the fraudulently received same being proceeds of economic and financial crime. A copy of the extrajudicial statement is hereto annexed and marked EXHIBIT EFCC2.
13. I stated that, contrary to the fact deposed by the Applicant in paragraph 4(xv) of the affidavit in support, upon completion of his extrajudicial statement on 30th may, 2018, Applicant was offered administrative bail and did acknowledge receipt by appending his signature on the face of the conditions for bail and did form. A copy of the conditions for bail form is hereto annexed and marked EXHIBIT EFCC3.
14. I further state that the Applicant was not able to fulfill the bail conditions until the 1st of June, 2018 when his sureties were available to him on bail and for their identities and status to be verified by officers of the 1st and 2nd Respondents.
15. I state that contrary to the fact deposed in paragraph 4(xv) of the affidavit in support, the release of the Applicant on the 1st June, 2018 was not predicated on his being made to write an undertaking of indebtedness/refund to the officials of the 1st and 2nd Respondents as alleged by the Applicant but due to his failure and inability to provide two reliable sureties timorously whose identities and status had to be diligently verified by officers of the 1st and 2nd Respondents before his

release was effected. Copies of the sureties verification forms hereto annexed and marked EXHIBIT EFCC 4A and 4B respectively.

16. I deny the deposition in paragraph 4 (xvi) of the affidavit in support as same is false and further state that no official of the 1st and 2nd Respondent asked or requested the Applicant to bring part of the refund in the sum \$25,000 dollars or any sum on or before 7th June, 2018 and failing for which he will be detained.
17. I deny the deposition in paragraph 4(xvii) of the affidavit in support as it is false and misleading and also state to the contrary that neither did the 1st and 2nd Respondents meet or interfaced with the Applicant nor did they threatened him at any time to bring money or be made to go through torture or be detained if he fails to comply with his purported order.
18. I aver that contrary to the fact deposed by the Applicant in paragraph 4(xix) of the affidavit in support, there was no threat of arrest or detention by the 1st and 2nd Respondents so described on the face of the fundamental rights as alleged by the Applicant.
19. I state that this Application filed by the Applicant is misconceived and only intended to shield the Applicant whose name featured as a suspect from being investigated by officers of the 1st and 2nd Respondents.

The applicant filed a further affidavit of 6 paragraphs

4. That I now depose as follows:

- i Contrary to paragraphs 6,7,and 8 of the counter Affidavit of Mary Jafun, the 1st and 2nd Respondent did not carry out their function as professional particularly as show from Exhibit EFCC1 attached to the counter Affidavit that the said Exhibit was produced to deceived this Court into believing that there was indeed a petition written on behalf of the 3rd Respondent. A perusal of Exhibit EFCC 1 will show that the petition was written even show that the petition was before the alleged event occurred and the whole essence of the petition shows a case of money lending with interest contrary to the laws of Nigeria.

- ii. Contrary to paragraphs 10,11, and 12 of the counter Affidavit, the whole essence of Exhibit EFCC1 is debt recovery which is not within the mandate of the 1st and 2nd Respondent.
- iii. that I know as fact that since the contra/loan agreement given by the 3rd Defendant to Dr. Ikang Bassey as shown from Exhibit EFCC 1 secured by an equitable mortgage with various properties, it is the responsibilities of the 3rd Respondent to legally activate same through the court and rather than using the 1st and 2nd Respondents to achieve an illegal aim. The said Dr. Ikang Bassey whom I had dealings with has not said nor complained that the transaction is fraudulent and as such the 1st and 2nd Respondents lack the capacity to call the transaction fraudulent.
- iv. That further to the above and contrary to paragraphs 15,16, and 17 of the counter Affidavit; I was made to admit to refund the sum of \$25,000 dollars, a sum I did not collect from the 3rd Respondent under duress of regaining my freedom.
- v. That contrary to paragraph 13 and 14 of the counter Affidavit, the 1st and 2nd Respondents bail granted to me was onerous and intended to have me kept in detention in order to compel me complied with the forceful undertaken of refund. This can be gleaned from Exhibit EFCC3 when the 1st and 2nd Respondents requested me a business man to produce two serving directors in any Federal Ministry or agency, with landed properties in Abuja municipal Area.
- vi. That contrary to paragraphs 16,17,18,19 ,20, and 21, the 1st and 2nd Respondents operate through their officers and any act of the officers are imputed to them particularly as the said Mr. Musa Ibrahim, Mary Jafun and Abdul Rahaman Arabo were the ones who compelled me to write undertaken of refund in a purely civil transaction that I knows next to nothing about.
- Vii That contrary to paragraph 10 of the counter Affidavit, I never said that I reported at N0.5, fomella street, Off Ademola Adetokumbo Crescent, Wuse Ii, Abuja on 30th May, 2018 but that their officials of the 1st and 2nd Respondents detained me and locked me up at their office at Idi Agbon House in Wuse after I was arrest at their office close to Accountant

General of the Federation. This is consistent with my deposition in paragraph 4(xiii) of my Affidavit in support of the Originating motion on notice.

- iv. The interest of justice will better be served if the Application is granted the prayers sought.

In his written address learned counsel for the Applicant raised the following sold issue:

Whether this Hon. Court ought to exercise its discretion in allowing the reliefs sought in this application.

Learned counsel for the 1st and 2nd Respondents raised the following issue:

“Whether in view of the Application before this Hon. Court the applicant has sufficiently plead proven facts in his affidavit in support to make against the 1st and 2nd Respondents to entitled him to any of the relief being sought out a credible case of violation of Fundamental rights against the 1st and 2nd Respondents to entitle him to any of the reliefs being sought in the circumstances.

The 3rd Respondent did not file counter affidavit or written address.

I have read the written addresses of the learned counsel and considered the arguments. I may refer to the submissions of the learned counsel.

Let me say that court has limited power to intervene in an application for enforcement of fundamental right in accordance with s. 46(1) of the 1999 constitution (as amended) that is to say unless there is a breach or likely breach of a fundamental right of citizen the courts have no power to interfere with the statutory functions of an agency of government unless there is good reason. See LUNA VS. COP REVERS STATE COMMAND (2010) LPELR-8642(CA).

The applicant admitted that Dr. Bassey contributed into their business and he introduced to Mutunchi venture (a Bureau de change. That after Dr. Bassey contributed in their gold biz the applicant said they were expecting the biz to yield and they are relating well with (Para. 4iii- v. of the affidavit in support)

Therefore there is no dispute to the fact that Dr. Bassey invested the money into the gold business.

The applicant averred that he was detained from 30/5/18 and only released on bail on 1/6/18 and EXH. EFCC 3 shows that the applicant was granted bail and Exh. EFCC 4A & 4B he was able to fulfill the conditions on 1/6/18. The law is trite that the only obligation on a security agencies is to offer an arrested or detained person bail. It is the business of the arrested or detained person provide qualified surety to stand for him. Stay after the grant of bail cannot be a breach of the fundamental right of the applicant. See UTUMBA JUSTUS OLUGBENGA DANIEL VS. EFCC (2016) LPELR-41173 (CA) and ENE & ORS VS. BASSEY & ORS BASSEY & ORS (2014) LPELR-23524 (CA); and EKPU VS. A-G FED (1998) HRLRA

The applicant alleged in his further and better affidavit that the 1st and 2nd Respondents know that he cannot fulfill the condition that is to say the bail condition was excessive. It is trite that a bail condition is excessive and cannot be met by a person it is incumbent on him to request for a review of the condition.

It is the submission of the learned counsel for the applicant that the Applicant has no business with the petition before the (Exh. EFCC 1) before the 1st and 2nd Respondents. By their affidavit the 1st and Respondent averred that the invitation of the Applicant by them was sequel to investigation the agency was carrying out and that the applicant made statement (Exh. EFCC2).

Section 41 of the Economic and Financial Crime (Estb.) Act 2004 gives the 1st and 2nd Respondents power to investigate allegation of crimes.

Investigation is the process of under-taking a careful search, Study, close inquiry, scrutiny, detailed examination of the allegation to ascertain the true facts of the crime.

See DANGABAR VS. FRN (2014) 12 NWLR (PT.1422) and MANNIR LIMAN (ALIAS MANDUASO) VS. THE STATE (2016) LPERLR- 40260 (CA).

I agree with the 1st and 2nd defendant Respondents that their proven to investigate includes powers of arrest. There is no doubt that the 1st and 2nd Respondents has the duty to chase and trace proceeds of crimes. The

Applicant admitted that Dr. Basseyy who has a petition against (Exh. EFCC1) invested same money in their gold business and according the 1st and 2nd Respondent the applicant was invited because his name was mention before Dr. Basseyy.

In the case of BISHOP NYONG DAVIS AYAKNDUE & ORS VS. BISHOP E.E EPERIREN & ORS (2012) LPERLR-2007,(CA) the court of Appeal held 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 exercised of their duty having committed on offence cannot sue the police in court for breach of fundamental rights”

Therefore, the cause of action in this application can only crystallized when the detention of the applicant exceeds the constitutional provision of 24 hour without granting him bail. In the instant case the application was granted bail but he could not fulfil the bail conditions until the next days.

The applicant averred that he was made indebtedness/refund to the Respondent. There is no document attached to show that he made undertaking the 1st and 2nd Respondents attached the statement of the applicant (Exh. EFCC2). In promise to refund the sum of \$25,000 Dollars by next week 7th June,2018” This not issue of debt did not arise in the entire statement.

In conclusion, I hold that the applicant is not entitled to any of the reliefs sought in this application.

The application is without substance.

It is accordingly dismissed.

HON. JUSTICE MUAWYAH BABA IDRIS

22/5/2019

APPEARANCE

Richard Dauda Esq. for the 1st and 2nd Respondent.