

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 12 BWARI, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

**SUIT NO. FCT/HC/CV/3074/2018**

**BETWEEN:**

ABDULKADIR SHEHU ..... APPLICANT

**AND**

1. THE INSPECTOR GENERAL OF POLICE
2. ALHAJI ILIYASU ..... RESPONDENTS

**JUDGMENT**

**DELIVERED ON 4<sup>TH</sup> JULY, 2019**

By an application brought pursuant to order II Rules 1, and 2, of the Fundamental Rights (Enforcement Procedure) Rules 2009, and Section 34, 35, and 46 of the Constitution of the Federal Republic of Nigeria 1999 (As amended) and Article 5, 6 and 7 of the African Charter on Human and Peoples (Ratification and Enforcement) Act, Cap A, 9, LFN, 2010 and under the inherent jurisdiction of the Honourable Court to secure the enforcement of the Fundamental Right of the applicant to personal liberty and respect to dignity of his human person as enshrined in sections 35 (1), 34 (1) the Constitution of the Federal Republic of Nigeria 1999 (as amended) herein after refers to as "The Constitution"

and Article 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap a, 9 LFN, 2010. Herein after refers to as "the African Charter".

The application is supported by a 27 paragraphs Affidavit and 25 paragraphs affidavit of urgency respectively deposed to by **ISHIAKU SHEHU**, the elder brother of Applicant. The Applicant seeks from the Honourable Court the following relief(s) as captured in the face of the motion paper:

- a. A declaration that the arrest, re-arrest, detention and continue detention of the applicant by the 1<sup>st</sup> Respondent under the continue prompting of and false allegation of the 2<sup>nd</sup> Respondent since the 15<sup>th</sup> day of June, 2018 to 14<sup>th</sup> day of September, 2018 and the 8th day of October, 2018 till date without trial is unlawful, unconstitutional, and a breach of the Applicant's Fundamental Human Right to personal liberty as guaranteed under Section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 ( as amended) and Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A, 9 Laws of the Federation of Nigeria, 2010.
- b. A declaration that the torture, and continue torture of the Applicant while in detention by the 1st Respondent under

the prompting of and false allegation by the 2nd Respondent since the 15th day of June, 2018 to 14th day of September, 2018 and 8th day of October, 2018 till date without trial is unlawful, and a breach of the Applicant's Fundamental Human Right to dignity as guaranteed under Section 34(1) (a) of the Constitution of the Federal Republic of Nigeria 1999 ( as amended) and Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A, 9 Laws of the Federation of Nigeria, 2010.

- c. A declaration that the Applicant is entitle to his fundamental right to freedom of liberty and respect to the dignity of his Human person as guaranteed by Section 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) respectively and Article 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A, 9 Laws of the Federation of Nigeria, 2010.
- d. A declaration that the arrest, re-arrest, detention and continue detention of the applicant by the 1st Respondent under the prompting of and false allegation of the 2nd Respondent since the 15th day of June, 2018 to 14th day of

September, 2018 and the 8th day of October, 2018 till date without trial is unlawful and entitles the Applicant to compensation as provided under section 323 (1) of the Administration of criminal Justice Act, LFN, 2015.

- e. An order of the Honourable Court, mandating the 1st Respondent to release the Applicant unconditionally or alternatively.
- f. An order of the Honourable Court mandating the 1st Respondent to release the Applicant on administrative bail on liberal terms.
- g. An order of the Honourable Court directing the 1st Respondent to pay the Applicant the sum of ***N50,000,000.00 (Fifty Million Naira)*** as Exemplary and Aggravated Damages for the breach and continue breach of the Applicant's fundamental right to liberty and dignity of the human person since the 15th day of June, 2018 till date.
- h. An order of the Honourable Court directing the 2nd Respondent to pay the Applicant the sum of ***N15,000,000.00 (Fifteen Million Naira)*** as compensation for false and vexatious accusation that caused the breach and continue breach of the Applicant's fundamental right to liberty and dignity of the human person

by the 1st Respondent since the 15th day of June, 2018 till date.

The facts constituting or leading to this Application are stated and deposed to in the Applicant's Affidavit in support of this application. The Applicant approached this Honourable Court upon the respondents' contravention and continued contravention of his Fundamental Rights to liberty and dignity of his Human person respectively.

On the issues for determination, the applicant submits;

- I. Whether the 1st Respondents can arrest, detain and continue to detain, the applicant since the 15th day of June, 2018 to 14th day of September, 2018 and 8th day of October, 2018 till date without trial.*
- II. Whether the 1st Respondent can torture and continue to torture the applicant while in custody since the 15th day of June, 2018 to 14th day of September, 2018 and 8th day of October, 2018 till date without trial for the purpose of extracting confessional statement.*

*III. If issues i and ii above are answered in the negative, whether the Applicant is not entitled to the reliefs sought by this application.*

In arguing issue one (i) the applicant counsel submits that the 1st Respondent cannot arrest, detain and continue to detain the Applicant since the 15th day of June, 2018 to 14th day of September, 2018 and 8th day of October, 2018 till date without trial.

He contended that though the 1st Respondent by virtue of section 4 of the Police Act, is statutorily empowered to arrest and detain any person suspected to have committed an offence, the 1st Respondent is not statutorily empowered to arrest, detain and continue to detain such person suspected to have committed a criminal offence indefinitely without trial or conviction by a competent court of law.

He also contended that by reason of Section 35 (1) and (2) of the Constitution, the 1st Respondent cannot keep the Applicant in perpetual custody without trial thus, in the decided authority of ***EKANEM v A.I.G.P (2008) ALL FWLR (pt 420) CA 775 at p. 783 para. B - E***, on when the right to personal liberty of a person can be denied held that:-

*"The operative provision of Section 35 (1) of the 1999 Constitution states that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save and in accordance with the procedure permitted by law..."*

By virtue of Section 35 (4) of the Constitution which provides as thus:

*"(4) Any person who is arrested or 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 of - (a) Two months from the date of his arrest or detention in case of a person in custody or is not entitle to bail;*

*(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 proceedings 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"*

He submits that the 1st Respondent cannot arrest, re-arrest, detain and continue to detain the Applicant since the 15th day of June, 2018 to 14th day of September, 2018 and 8th day of October, 2018 till date without trial or an Order of a court of law.

In the instant case, the applicant was arrested since the 15th day of June, 2018 on a trump up allegation made by 2nd Respondent in bad faith without any substantial evidence against the Applicant. He referred the court to **paragraphs 9, 10, 11, 12, 13, and 14** of the Affidavit in support of the Applicant's Application.

He submits that it is not in dispute that the reason while the 1st Respondent is still keeping the Applicant in custody is the failure of the Applicant and his family to raise the Two Million Naira (N2,000,000.00) bribe demanded by the 1st Respondent as a condition precedent for the bail of the Applicant.



He also contends that the provisions of Section 35(1) of the constitution is reemphasized and recognized globally by virtue of Article 5 of the African Charter which stipulates that:

*"Every individual shall have right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law in particular; no one may be arbitrarily arrested or detained."*

He also submits that the Applicant whom has remained in custody since the 15<sup>th</sup> day of June, 2018 have been kept over and above the proscribed period the 1st Respondent is permitted by law to keep him without trial and his fundamental rights to liberty as guaranteed by the Constitution and the African Charter has been flagrantly abused, trampled on and completely infringed on by the 1<sup>st</sup> Respondent under the false accusation made *mala fide* by the 2nd Respondent. Thus in **ADESANYA V FRN (2012) ALL FWLR (PT 649) CA 1067**, the court held that:

*"By the provisions of Sections 33-35, 1999 Constitution, no one shall be held liable and*

*punished or deprived of liberty, unless he has been tried and found guilty by a court for an act or omission which constituted an offence at the time of the alleged offence..."*

In the instant case he contended that the 1st Respondent has already found the applicant guilty and have decided to punish him for refusing to give a bribe of Two Million Naira to secure his bail and continue to keep him in custody since 15<sup>th</sup> June, 2018 till date without trial.

He urged the Court to resolve issue one above in favour of the Applicant and accordingly hold that the 1<sup>st</sup> Respondents cannot arrest, detain and continue to detain, the Applicant since 15<sup>th</sup> day of June, 2018 till date without trial.

In arguing issue two (ii), the Applicant Counsel submits that the 1<sup>st</sup> Respondent cannot torture or continue to torture the Applicant for the purpose of extracting confessional statement from the Applicant or for any reason whatsoever...

Section 34 of the Constitution states that ***"Every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture or***

***inhuman or degrading treatment***" this all important fundamental right of the human person was also recognized globally and accordingly. ***Article 5 of the African charter provides thus;***

*"Every individual shall have the right to the respect of the dignity of inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, and torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. "*

In the instant case, the Applicant is being persistently tortured by the 1st Respondent for the purpose of extracting confessional statement from him and thereby subjected to all manners of degrading and inhuman treatment by the 1<sup>st</sup> Respondent. He referred the court to ***paragraph 24 of the Affidavit in support of his application.***

He added that the persistent torture of the Applicant by the 1st Respondent is a gross abuse of the Applicant's right to dignity of his human person and accordingly, urge the Honourable court to

so hold. He urged the court to resolve issue two (ii) above in favour of the Applicant.

In arguing issue three (iii), Applicant counsel submits that the arrest, detention and continue detention of the Applicant as well as his persistent torture by the 1st Respondent without trial since the 15<sup>th</sup> day of June, 2018 is an abuse of the Applicant fundamental rights.

He contended also that the legal principle of "ubi jus ibe remedium" is very apt in the instant case and no wrong can go without a remedy. Thus in ***NANA v AG CROSS RIVER STATE (2008) ALL FWLR (pt 401) CA 807 at P840, para E-F***, the court held that:

*"It is the duty of the court to safeguard the rights and liberties of the individual and to protect him from any abuse or misuse of power (Federal Civil Service Commission v Laoye (1989) 2 NWLR (pt. 106) 652: African v. N.I.F.O.R (1987) 2 NWLR (Pt. 59) referred to."*

He contends that having established the indisputable fact that the Applicant's fundamental right to dignity and respect to his human

person, this court has the statutory duty to safeguard the right and liberty of the Applicant. Thus Section 46 of the Constitution and Article 7 of the African Charter respectively, confer unlimited powers on this Honourable Court to enforce the fundamental right of the Applicant by granting all the reliefs sought by this Application.

The law is well settled that where there is an infraction of an Applicant's right to personal liberty, the Applicant is entitled as a remedy to compensation and public apology. See Section 36(6) of the Constitution in this regard.

The court has since settled the law that an infraction of a person's right to personal liberty will result in compensation and apology from the appropriate authority or person involved. See the case of **NWANGURU v. DURU (2004) 2 NWLR (PT. 751) 265 AT 280 AND ABIOLA v. ABACHA (1998) 1 HRLRA 447.**

He humbly submits that the duty of this Honourable court in enforcing the fundamental right of the Applicant has been clearly enunciated in **FEDERAL CIVIL SERVICE COMMISSION v NWOYE (1998) 2 NWLR pt. 16 650, 702 D-F.** Where the Supreme Court per Oputa JSC (as then was) held as follows:

*"It is the duty of Court to safeguard the rights and liberties of individual and protects him from any abuse or misuse of power when the court is described as the last hope of a common man, that implies that it is the duty or judicial duty which it owes to the course of justice to ensure that any encroachment on the rights of the individual, any coercive action is justified by law. In the equal combat between those on whom such power bears, the court's primary duty is protection from abuse of power".*

He contend very strongly that granting all the reliefs sought by the Applicant in this application as well as the monetary compensation in damages is the only way the applicant who has suffered unjustly can be given justice by this Honourable ciourt to rekindle the hope of the ordinary man in our judicial system in the dispensation of Justice thus, in ***NANA v. AG CROSS RIVER STATE (2008) (supra) at p. 842 para. B-E***, the Court held that:

*"If a right has been infringed whether it is fundamental or statutory right and the aggrieved party comes to the court for enforcement of the right. It will not be given complete relief if the court merely declares the existence of such right or the fact that the existing right has been infringed. It is the duty of the Court to order a proper remedy. Ubi jus ibi remedium..."*

In the instant case, He contends that the proper remedy is the grant of all the reliefs sought by the Applicant in this Application.

He further submits that relief "**H**" as claimed by the Applicant against the 2nd respondent in this application is predicated on the grounds that the allegation against the Applicant by the 2nd respondent upon which the Applicant was arrested, detained and tortured by the 1<sup>st</sup> Respondent are false and fabricated to the knowledge of the 2<sup>nd</sup> Respondent who threatened to deal with the Applicant ruthlessly on the mistaken believe that the Applicant fits in the description given to him by his purported adaptors, that the 2<sup>nd</sup> Respondent has displayed high level of irresponsibility, hatred and desire to ensure that the Applicant

remains in custody or properly as he would wish the Applicant dies in custody by after being warned and advised by the IRT unit of the 1<sup>st</sup> Respondent, he to execute his devilish desire for the Applicant went to the FCT Command Anti-kidnapping squad of the 1<sup>st</sup> Respondent to re-arrest the Applicant barely two weeks of his release.

He contended that from the above facts this Honourable Court does not require any scientific prove or legal microscope to see that the allegation of the 2<sup>nd</sup> Respondent against the Applicant which has occasioned the gross abuse of the fundamental right of the Applicant was made mala fide to the 1st Respondent by the 2nd Respondent in order carry out his devilish desire to punish and avenge his mistaken believe that the Applicant is the master-mind of his alleged kidnap.

He submits that the 2<sup>nd</sup> Respondent is liable to compensate the Applicant for the false accusation against him which has occasioned the fragrant abuse of his fundamental rights to liberty and dignity of his human person. In ***FAJEMIROKUN v COMMERCE BANK LTD. (2009) ALL FWLR SC 1***. The Apex court affirmed this position at ***p. 6 para. G - H*** when it held on when a party who reports criminal offences to the police would be held culpable:



*"It is the duty of citizens of this country to report cases of commission of crime to the police for their investigation and what happens after such report is entirely the responsibility of the police. The citizen cannot be held culpable for doing their civic duty unless it is shown that it is done mala fides"*

He submits the culpability of the 2nd Respondent is clearly seen on the ground that his allegations against the Applicant was to avenge his mistaken believe that the Applicant masterminded his alleged adoption and the conviction of his brother who attempted to assassinate the Applicant for the same reason.

He also contended that the position of the law on when a party who reports a criminal offences to the police would be held culpable as stated above have now been given statutory recognition and force of law by reason of section 323 of the Administration of Criminal Justice Act, LFN 2015 which provides that:

*"Where a person causes the arrest, or arrest and charge of a defendant or defendants and it*

*appears to the court that there was no sufficient ground for causing the arrest, or that the accusation is false, vexatious or frivolous, it may for reason recorded, order the person to pay reasonable compensation to the defendant or defendants arrested and charged."*

He submits that the introduction of the above section in the Administration of Criminal Justice Act, LFN 2015 is to curb the menace caused by people like the 2<sup>nd</sup> respondent who in other to avenge personal grievance give false and vexatious allegation to the Police.

He urged the Honourable court not to encourage the likes of the 2<sup>nd</sup> Respondent in their act of dealing with their perceived enemies with trump up criminal allegation to have them incarcerated unjustly. This explains the reason why the Supreme Court in its own wisdom in the case of ***FBN v A-G FEDERATION (2018) 31 WRN 124 S.C at p. 169, lines 15-20*** held that :

*"This Court made it very clear that a person, who has established that he was unlawfully detained, as in this case, does not have to pray for*

*compensation before he is awarded one. He is entitle to compensation automatically. But where he claims a specific amount, it is for the court to consider the claim and award, in its opinion, and amount that would be justified to compensate him."*

He urged the court to resolve this issue in favour of the Applicant.

Now, having carefully perused the Application of the Applicant, it is clear from the record of the court that the respondent were duly served with the Application and signed by placing the Office stamp of the 1<sup>st</sup> Defendant i.e. the Office of the Inspector General of Police as proof of service dated the 31<sup>st</sup> day of October, 2018. And the certificate of service was sworn to by Abubakar Sadiq a clerical officer of the Court who stated that the 2<sup>nd</sup> defendant refused to collect service by disobeying the court order he then throw the service process on him. Equally too, hearing notice was served on both the 1<sup>st</sup> & 2<sup>nd</sup> defendants upon which they both failed to appear in court at the hearing on the suit which commenced on the 8th November, 2018. Despite that no written excuse from both the defendants showing reason why they fail to appear in court and by the rules of the court fundamental rights

cases are to be dealt with dispatch. To that extent therefore, the court agree with the learned counsel of the Applicant to proceed to the hearing of the case.

I have carefully perused the motion on notice brought pursuant to order 2 Rule 1 & 2 of the Fundamental right (Enforcement Procedure) Rules 2009 and section 34, 35, & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and article 5, 6 & 7 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap A, Laws of the Federation of Nigeria, 2010 and under the inherent Jurisdiction of the Honourable Court.

I have carefully perused the declarations sought by the Applicant A - H and the grounds upon which the reliefs are sought i to VI. I have equally gone through the submission of counsel to the Applicant and all the case laws cited where he submitted among other reasons adduced in support of his argument that the Applicant was unlawfully arrested, tortured and detained and that by virtue of the providence of Section 35 (4) of the Constitution, the person arrested must be brought before the court of law within a reasonable time and he is entitled to be informed why he was arrested. He cited many authorities in support of this e.g the

case of **NANA v AG CROSS RIVER STATE (2008) ALL FWLR (pt 401) CA 807 @ pg. 840 para. E - F.**

Now, under Chapter IV of the 1999 Constitution Section 34(1) A provides that:

*"No person shall be subjected to torture or to inhumane degrading treatment"*

The applicant has told this court that he was beaten and tortured due to the false accusation made against him by the 2nd Defendant which has occasioned the fragrant abused of his Fundamental rights to Liberty and dignity of his person. To my mind, this definitely does not define the role of Nigerian Police Force, No wonder despite the service of this process on them the 1<sup>st</sup> and 2<sup>nd</sup> Defendant they failed to appear in court which by all imagination has clearly shown that they have no defence. Meanwhile see the Case of **AFRIBANK NIG PLC v ONYEMA & ANOTHER (2004) 2 NWLR pt. 85, pg. 654 @ 680 PER NZEAKO J.S.C** it was held inter-earlier that:

*"The Police Force is a responsible institution which is entrusted with the security of the country and the people."*

It is therefore unacceptable by any standard, for the 1<sup>st</sup> Respondent to be involved in the acts complained of by the Applicant.

Furthermore, by section 35(3) of the constitution of the Federal Republic of Nigeria 1999 provide:

*"Any person who is arrested and detained shall be informed in writing within 24 hours (in a language that he understands)" of the facts and grounds for his arrest and detention.*

From the Affidavit evidence accompanying the Application, the Applicant has stated clearly that he was arrested, beaten, tortured and detain in the custody of 1<sup>st</sup> Defendant since 15<sup>th</sup> day of June, 2018 to 14<sup>th</sup> day of September, 2018 and 8<sup>th</sup> day of October 2018 till date by the 1st respondent that the Applicant has been denied Administrative bail and also refused to be brought before a competent court of law for trial. See paragraph ii, iii, iv and that the Applicant Health has greatly suffered a setback as is still in custody of the 1st Respondent.

This is a clear violation of the Applicant Fundamental Right see Section 35(6) of the Constitution 1999 which provides thus:

*"Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person"*

An authority: is a body charged with the power and duty of exercising prescribed functions.

Person is defined as: The object of rights and duties that is capable of having rights and of being liable for duties. See OSBORN concise Law Dictionary 7th Edition by Roger Barend

It is my humble belief that the respondents fall under this definition.

Finally, the Applicant seeks compensation from the respondents in addition to the declaratory and orders sought A - H. It was held in the case of *ABIOLA v ABACHA (1998) HRLRA pg. 447 @ 454 Ratio 9* it was held that:

*"An applicant seeking redress for the infringement of his fundamental rights is in addition to declaratory and injunctive orders also entitled to an award of damages. Therefore an*

*infringement of Fundamental Rights of a Nigerian Citizen must attract compensatory damage and in some cases exemplary damages will be awarded against the Defendant in three (3) instances one of which is*

*i) In the case of oppressive arbitrary or unconstitutional action by the servant of the government"*

See the case of *OBINNA v COMMISSIONER OF POLICE (2007) NWLR ( pt 1045) pg. 414 Ratio 4 & 5 (B).*

In the circumstances therefore, having satisfy that this application is unchallenged by the 1<sup>st</sup> & 2<sup>nd</sup> Defendant, I hold that the Applicant Application has merit and it is hereby succeed. That is to say, this Application is hereby granted and on the hold I award damages in the sum of Six Million Naira (~~₦~~6, 000,000) that is each Defendant shall pay Three Million Naira (~~₦~~3, 000,000) as compensation to the Applicant. I so hold.

Lastly that the Applicant shall be release from the custody of the 1<sup>st</sup> Respondent with immediate effect and produce before this Honourable Court.



**APPEARANCE:**

**I. H. Abia Esq.** for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

The Applicant is not in court.

Sign

Hon. Judge

04/07/2019