

**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/BW/41/2019**

BETWEEN

HON. OFOR CHUKWUEGBO APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. DCP KOLO YUSUF
3. ASP DOGO MATHEW
4. THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)
5. HON. CHIME OJI RESPONDENTS

JUDGMENT

DELIVERED ON 24TH SEPTEMBER, 2019

By a Motion on Notice dated and filed on the 23rd day of January, 2019 and brought pursuant to Sections 6 (6) (A), 35, 41 and 46 of the 1999 Constitution as Amended, Order 2 Rules 1,2,3,4 and 6 of the Fundamental Rights (Enforcement Procedure) Rules, Articles 4, 6 and 7 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act and under the inherent jurisdiction of this Honourable Court, the Applicant initiated the instant suit against the Respondents praying this Honourable Court for the under-listed supplications:

1. **A DECLARATION** that the incessant threat of arrest and detention of the Applicant by the 1st - 4th Respondents in active connivance with the 5th Respondent, to keep the Applicant out of his campaign and election to represent the people of Enugu North and South Federal Constituency of Enugu State at the Federal House of Representatives, for the February 16th general elections, is illegal and unconstitutional as it undermines the Applicant's right to personal liberty guaranteed under Section 35 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. **A DECLARATION** that the incessant threat of arrest and detention of the Applicant by the 1st - 4th Respondents at the instigation of the 5th Respondent to keep the Applicant out of his campaign and election to represent the people of Enugu North and South Federal Constituency of Enugu State at the Federal House of Representatives, for the February 16th general elections over an allegation that the Applicant gave false information to the Independent National Electoral Commission (INEC) as to his age and on forgery of West African Examination Council Certificate allegedly submitted to INEC and to Enugu State University of Technology, is illegal unconstitutional as it undermines

the Applicant's right to personal liberty guaranteed under Section 35 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

3. **AN ORDER** of injunction restraining the 1st -4th Respondents by themselves, their agents, privies, servants, howsoever so (sic) so called from interfering with the liberty of the Applicant based on the complaint or petition of the 5th Respondent or whosoever on the alleged falsification of Certificate and false information presented to the Independent National Electoral Commission (INEC)
4. **AN ORDER** of injunction restraining the Respondents by themselves, their agents, privies and servants from further harassment, threat of arrest, arrest and or detention of the Applicant on the basis of the facts and circumstances giving rise to this application or otherwise howsoever or in any manner whatsoever as to disturb or impede the liberty or peaceful and lawful movement or activities of the Applicant.
5. The sum of Fifty Million Naira (N50, 000, 000.00) as damages in favour of the Applicant against the Respondents, jointly and severally for incessant harassment and psychological trauma caused to the

Applicant in their continued threat of arrest and intimidation.

6. **AND FOR SUCH FURTHER** or other orders and (sic) this Honourable Court may deem fit to make in the circumstances.

In support of his application before this Honourable Court, the Applicant amassed mammoth documentary evidence by an affidavit of twenty-one paragraph sworn to at the Registry of this Honourable Court on the 23rd day of January, 2019 and a further affidavit of seven paragraph equally deposed to by the Applicant himself at the Registry of this Honourable Court on the 12th day of April, 2019. Attached to the two sets of affidavit are two documentary exhibits marked as **EXHIBIT 1a** Certified True Copy of the Ruling of the Federal High Court delivered on the 30th May, 2013 in ***SUIT NO. FHC/EN/CS/122/2012*** and **EXHIBIT 2A** which is a Certified True Copy of the Ruling His Worship E. D. Ebiwari of Abuja Magistrate Court in ***FIR NO: CR/123/2018***. In compliance with the Rules governing this peculiar proceeding, the Applicant further filed a Statement, verifying affidavit and written address. When served with the processes of the Applicant, excepting the 4th Respondent, the Respondents chose not to file any process in reaction to the case initiated against them by the Applicant. In its own reaction, the 4th Respondent essentially rested its defence

[contained in its counter-affidavit of eight paragraph which was deposed to by one Marcel Machi on the 4th February, 2019] on the argument that the case of the Applicant is "*false, speculative, concocted and or rather facts within the strict knowledge of the Applicant*" especially in view of the fact that the it [the 4th Respondent] "*has never had any dealings with the Applicant in this case*".

The Applicant formulated a solitary issue for the resolution of this case, which I will recast to focus the course of this Ruling appropriately. The sole issue reads:

Whether having regards to the facts and circumstances of this case, the Applicant is not entitled to the enforcement of his fundamental rights as guaranteed by the Constitution of the Federal Republic of Nigeria and African Charter on Human and People's Right (Ratification and Enforcement) Act.

In proceeding to clear the cobwebs accumulated by this suit as manifested by the body of facts and evidence assembled before this Court, I remind myself of two very important facts that would hasten the resolution the issue in controversy. First, the 4th Respondent on oath averred affirmatively that it has never

had any dealings with the Applicant in this case [see paragraph 5 of its counter-affidavit]. I need to capture at this stage the 4th respondent's paragraph affidavit and written address. The 4th respondent who was served with clear averment in the applicant's affidavit, failed to controvert any of them in any material particulars. The applicant who claimed the 5th respondent boasted that police and EFCC were going to arrest him, saw the first wave come to pass and has good cause to fear that he may be arrested by the 4th respondent. Learned counsel to the 4th respondent ought to have stated in their counter affidavit whether the applicant is under investigation, and if so, is it related to the subject matter of this suit. It is my humble but firm view, that the affidavit of the 4th respondent is hollow and evasive as such of no moment and has no evidential value; I so hold. The 4th respondent raised in his address that the suit discloses no reasonable cause of action having regard to the state of the relief and affidavit in support. I have carefully perused all the processes filed by the Applicant, as it is only his process that the court is entitled to examine in determining if it had jurisdiction or discloses any reasonable cause of action. This suit, like any other suit, commenced under the FREP can be predicated on fear entertained for the likely breach of the fundamental rights as enshrined in the constitution and not the breach itself, for this reason the cause

of action concept works differently than in other civil cases, I so hold. The said contention and argument collapses and it is hereby discountenanced. The 4th respondent is accordingly sailing on the same boat with the other respondents who filed nothing. The only redeeming feature is that no action or breach has occurred on their part, which will give rise to damages in law, I so hold.

Now dealing with the other respondents, I wish to reiterate that the 1st -3rd and 5th Respondents refused and neglected to file any process in rebuttal of the suit of the Applicant against them. I have perused the records of this Court and I am satisfied that the 1st, 2nd, 3rd and 5th were duly served with processes in this proceedings in accordance with the tenor of the Ex-parte Order of this Court made at the request of the Applicant on the 24th day of January, 2019. Yet again, the Records of this Court amply confirm that the absentee set of Respondents that is to say the 1st, 2nd, 3rd and 5th Respondents were duly served with requisite hearing notices on two different dates as ordered by this Court yet they neither filed any processes nor appeared before this Court in defence of the suit brought against them by the Applicant. There is no gainsaying the obvious that this conduct of the absentee set of Respondents that is to say the 1st, 2nd, 3rd and 5th Respondents

has fatal legal consequences that are well-known and entrenched in our jurisprudence.

Of old, it has been the law that when facts deposed to in an affidavit are unchallenged, the court may accept those facts as true and correct, ***Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417.*** In ***ADESINA & ANOR V. COMMISSIONER. IFON-ILOBU BOUNDARY COMMISSION, OSOGBO & ANOR,*** Our Supreme Court [through Adio, J.S.C. of blessed memory] reminds us that: *"If a party deposes to certain facts in an affidavit, his adversary who wishes to dispute the facts so stated, has a duty to swear to an affidavit to the contrary, otherwise the facts deposed to may be regarded as duly established."* In **Badejo** (Suing by her next friend Dr. Babafemi **Badejo**) **v. Minister of Education,** [1996] 8 **NWLR,** [pt. 464] p.15, the Supreme Court [through Mohammed, J.S.C.] made this enduring pronouncement:

"It is an elementary principle of law that facts contained in an affidavit form part of documentary evidence before the court. Where an affidavit is filed deposing to certain facts, and the other party does not file a counter-

affidavit or a reply to a counter-affidavit, the facts deposed to in the affidavit would be deemed unchallenged and undisputed - See Adekola Alagbe v. His Highness Samuel Abimbola and 2 Ors. (1978) 2 SC 39."

I am bound in this Court by the foregoing Supreme Court decisions on this point of law. The parties in dispute before me in the resolution of this suit are, equally bound by those cited Supreme Court authorities. Unequivocally, the absentee Respondents are deemed to have accepted as correct all the depositions contained in the two sets of the Applicant's affidavit, ***Attorney-General Plateau State v. Attorney-General Nasarawa State (2005) 9 NWLR (Pt. 930) page 421***. This being the prevalent and unbending state of the law, I am bound to stand by decided cases [*stare decisis*] in entering a verdict in the instant suit being of similar circumstances to the case of, ***Badejo v. Federal Ministry of Education (1996) 8 NWLR (Pt. 464) page 15; (1996) 9 - 10 SCNJ 51***. I have reviewed the facts and circumstances encircling the case of the Applicant as he has forcefully placed before me in this Court. The Applicant as noted earlier accompanied his affidavit evidence with two documentary exhibits. **EXHIBIT 1** [a Certified True Copy of the Ruling of the

Federal High Court delivered on the 30th May, 2013 in **SUIT NO. FHC/EN/CS/122/2012** and **EXHIBIT 2A** which is a Certified True Copy of the Ruling His Worship E. D. Ebiwari of Abuja Magistrate Court in **FIR NO: CR/123/2018**. I have dispassionately and fastidiously studied the said exhibits. The outcome of my intimate survey of those pieces of evidence leaves me with the inevitable view that on the strength of one of those exhibits alone [coupled with the refusal of the absentee Respondents to challenge the Applicant's suit], the Applicant's agitations before this Court will have received a soothing damper, **ex-parte: Adesina (1996) 6 NWLR (Pt. 442) page 254**. I will explain anon. **EXHIBIT 2A** which is a Certified True Copy of the Ruling His Worship E. D. Ebiwari of Abuja Magistrate Court in **FIR NO: CR/123/2018**. Our country is a country governed by laws. We practice constitutional democracy of which our amended 1999 Constitution of the Federal Republic of Nigeria, 1999 is the *fons et origo*. The said *grund norm* by its **Section 36(9)** lucidly provides as follows:

No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or

for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

The above has shown how the rule against double jeopardy is grafted in our criminal jurisprudence as one of the numerous constitutional safeguards available to all citizens who may come under suspicion of having committed any criminal offence. Double jeopardy has been defined by the Supreme Court. In ***NIGERIAN ARMY V. AMINU-KANO (2010) LPELR-2013(SC)***, the Apex Court noted saliently that:

Even in its ordinary usage, "double jeopardy" connotes the unlawful procedure of subjecting a person to a trial on two separate occasions for the same offence (see: The Lexicon Webster Dictionary, 1980 reprint, vol. 1 page 298). In law also, it connotes the act of being prosecuted or tried twice for substantially

On the accepted facts of this case as made out by the Applicant, putting the Applicant on trial by the Respondents or any of the prosecutorial agencies on the basis of the factual circumstances eventuating in **EXHIBIT 2A** would undoubtedly amount to double jeopardy. Our laws protect him from that

misfortune. It is the position of our laws that once a man has faced the court of law for an offence and has been convicted or acquitted by the court, such a man cannot be charged to court on the same facts and offence on a later date, ***IGBINEDION v. FRN (2014) LPELR-22766(CA)***. It is my view that this venerable position of the law cannot now change in the instant case. The conclusion I must now reach is that facts averred by the Applicant in his two sets of affidavit in support of his case are considered credible and therefore acceptable for being acted on as well established.

Another aspect of this case, that boggles the mind is that it is the agents of the 1st, 2nd and 3rd respondents, the Nigerian police that prosecuted the instant applicants. How can they continue an investigation over a matter to which the applicant has been prosecuted and acquitted. This is a thorough abuse of power and I declare the purported invitation and detention of the applicant by the 1st – 3rd respondent as illegal and any product of such illegality is null and void. Upon Exhibit 2, the ruling of the Magistrate court, the applicant cannot be tried for any offence relating to forgery or false information of his school certificate in Enugu State University of Technology by any person or authority within the federation, except the decision is vacated by an appellate court, I so hold. It is imperative I

reproduce the last paragraph of the said ruling, per His worship E. D. Ebiwari:

“ The ingredients of the alleged offences of forgery and false information have not been proved by the prosecution. In order to convince the court in this regard, the prosecution must lead direct evidence against the defendant as per the alleged offences which prosecution has failed woefully to do. For the defendant's result to be false, forgery must be proved. There is no platform upon which the allegation of forgery and false information against the defendant could stand. This case is doomed and bound to collapse. Since the prosecution has failed to satisfactorily prove the ingredients of forgery and false information against the defendant, I hereby uphold the no case submission made by the defendant counsel. Defendant is accordingly discharged and acquitted...”

what is not clear in this ruling, this investigation is an abuse of process and unconstitutional, I so declare. The Applicant's

reliefs 1, 2, 3 and 4 are meritorious, they succeed and I hereby grant them as prayed on the face of the Motion on Notice. As cost follows event, award of Five Million Naira damages is hereby made jointly and severally against the Respondents excluding the 4th and 5th Respondent and in favour of the Applicant.

This shall be the judgment of this Court. Registrar of court to enroll same.

APPEARANCE:

Parties absent in court

Sign

Hon. Judge

24/09/2019