

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 13 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/2771/2018

BETWEEN:

SADIQ ABDULLAHI APPLICANT

AND

1. THE NIGERIA POLICE
2. INSPECTOR GENERAL OF POLICE
3. ATTORNEY GENERAL OF THE FEDERATION RESPONDENTS

JUDGMENT

DELIVERED ON 19TH SEPTEMBER, 2019

The Applicant commenced this action under the fundamental rights (enforcement procedure) rules 2009 herein after referred as FREPR seeking for the following reliefs:-

1. A Declaration that, the arrest and detention of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Division, FCT, Abuja from 8th June, 2018 to 19th June, 2018, without just causes, was an infringement and a breach of the Fundamental Rights of the Applicant and that such arrest detention was unlawful,

unconstitutional and contrary to Section 35 (4) Constitution of the Federal Republic of Nigeria (as amended).

2. A Declaration that the arrest and detention of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Police Division state from 8th June, 2018 to 19th June, 2018, without informing the Applicant the facts and grounds for which he was arrested and detained constitute an infringement and a breach of the fundamental right of the Applicant and same is unconstitutional and contrary to Section 35 (3) of the Constitution of the Federal Republic of Nigeria (as amended).
3. A Declaration that the locking up of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Police Division FCT, Abuja from 8th June, 2018 to 19th June, 2018 and failure and the refusal of the 1st and 2nd Respondents to bring the Applicant before a Court of law after his arrest and detention within one day as provided by Section 35 (4) (5) of the Constitution constitute an infringement and a breach of the Fundamental Rights of the Applicant and same is unlawful.
4. A Declaration that, even if any offence was committed, the Applicant was entitled to be brought before a Court of law

within a reasonable time and / or that his detention and incarceration was unlawful.

5. A Declaration that the arraignment of the Applicant on the 19th June, 2018, in Court by the 1st, 2nd and 3rd Respondents without probable and just causes over alleged offences without trial was wrongful, barbaric and malicious and that the Applicant is entitled to claim damages.
6. A Declaration that Applicant was entitled under the law to his liberty and human dignity.
7. A Declaration that the unlawful and wrongful arrest and detention of the Applicant from the 8th June, 2018 to 19th June, 2018 by the Nigeria police which led to the unlawful arraignment of the Applicant on the 19th June, 2018 and the consequential detention of the Applicant in prison custody, Keffi for 35 days was barbaric, inhuman, and a gross violation of the Fundamental Rights to liberty and human dignity, committed by the Government of the Federal Republic of Nigeria against the Applicant, its citizen.
8. N600,000,000.00 (Six Hundred Million Naira Only) jointly and severally against Respondents being damages suffered by the Applicant physically, medically, financially,

emotionally and psychologically for deprivation of his Fundamental Rights.

9. N100, 000,000.00 (One Hundred Million Naira Only) as punitive damages jointly and severally against Respondents for the violation of the Applicant human rights.
10. N10, 000,000.00 (Ten Million Naira Only) as punitive damages jointly and severally against Respondents for the torture of the Applicant.
11. N30, 000,000.00 (Thirty Million Naira Only) as punitive damages jointly and severally against Respondents for malicious prosecution of the Applicant.
12. N500, 000.00 (Five Hundred Thousand Naira Only) as cost of this suit.
13. Interest on the judgment sum at the rate of 21% (Twenty One Percent) per Annum until Liquidation of the entire sum.
14. An order directing the Respondents to apologies to the Applicant in 3 daily Newspaper, for wrongful detention, malicious prosecution and violation of the Fundamental Rights of the Applicant.

The said application was grounded on grounds A – I, the notice of application for order enforcing a fundamental right vide a motion on notice is dated 23/08/2018 but filed on 13/09/2018. The

Applicant deposed to a 49 paragraphed affidavit with exhibits a – c2, and a written address in support, as his argument in support of the motion. He further filed a further affidavit in response to the counter affidavits of the 1st and 2nd Respondents as well as the 3rd Respondent.

The 1st and 2nd Respondents expectedly filed a 7 paragraphed counter affidavit on the 08/03/2019 and deposed to by one Isaiah Igwanigie, pursuant to the leave and orders of this Court enlarging time and deem same as properly filed and served.

The third Defendant filed a counter affidavit of 6 paragraphs on the 23/09/2018 and deposed to by one Yaga Benyamim a litigation officer in the Federal Ministry of Justice. The 3rd Respondent equally filed a written address in support on compliance with the FREPR.

On the 14/05/2019, when the application came up for hearing, Friday Onuche Esq. Moved his application, and urged the Court to grant same.

1st and 2nd Respondents represented by K. O. Abdulkareem Esq. Adopted there processes including the counter affidavit of 15/04/2019 and urged the Court to dismiss the application.

Expectedly, the 3rd Respondent submitted that they filed a 6 paragraphed affidavit together with a written address and adopted same and urged the Court to dismiss the application.

I have carefully read through the processes filed by the respective parties, equally seen the exhibits annexed, given deep and thoughtful consideration to all of it.

The simple issue calling for determination “whether the Applicant, in the circumstances of this case is entitled to the reliefs sought?

For the Applicant to claim his fundamental rights under Section 35(1) he must demonstrate that his personal liberty was curtailed by the Respondents and that the curtailment is not in furtherance to Section 35 (1) (a) (f) and also Section 35 (2) – (5) were not complied with by the arresting officers. In the instant case the Applicant alleged that he was arrested on the 08/06/2018 and was incarcerated before his worship H. Aliyu at Karu Magistrate Court. He stated that this amounted to a breach of his rights under Section 35 of the Constitution to how the 1st and 2nd Respondents fared in this allegation.

A careful perusal of paragraph 5 (g) of their counter affidavit, they said the Applicant was arrested on the 12/06/2018 and granted bail immediately but he could not meet the bail condition

as there was no one to stand as a surety for him. I have carefully gone through the affidavit of parties, I am inclined to believe the story told by the Applicant.

In doing so, I rely on the provisions of Section of the evidence act on withholding of evidence, as the police station diary would have resolved this sole issue if the 1st and 2nd Respondent has exhibited same, I so hold. I also reject the contention that the Applicant was granted bail immediately. The question is where is the document evidencing the bail granted and the conditions therein, no single document, in the custody of the 1st and 2nd Defendants were produced to support their wild and false statements in Court.

It is my view that the Applicant affidavit shifted the evidential burden on the 1st and 2nd Respondents and in my view they failed to discharge the onus shifted to them. One may further ask, the Applicant having claimed not to be granted bail, a negative assertion, is there any burden on him to so show that he was given bail? I think not.

Assuming I am to go along with the evidence of the 1st and 2nd Respondents that the Applicant was detained on the 12/06/2018 and charged to Court on the 19/06/2018, it leads to the same

conclusion, that they breached his fundamental rights under Section 35 of the 1999 Constitution (as amended), I so hold.

Again the 1st and 2nd Respondents never showed that the continuous detention of the Applicant for over 24 hours is as a result of an order imposed by a Court.

The Applicant alleged that the 1st and 2nd Respondents never informed him of the reasons of his arrest. The 1st and 2nd Respondents stated in paragraph 5 (j) that the Applicant was informed of the offence he was being detained for during his arrest and interrogation.

Again, the 1st and 2nd Respondents did not tender or exhibit any document to substantiate it, including the statement of the Applicant who was their suspect, I will also invoke Section of the evidence act, and hold that none existed. the notice ought by Section 35(2) be in writing and in the language the Applicant understand, I so hold. It is my further view that the contention of the 1st and 2nd Respondents cannot fly in the face of Section 6, 10, 15 of the Administration of Criminal Justice Act 2015 which provides on what the Respondents shall do upon arresting a suspect. They must inform a next of kin of any person as the suspect wants, record his arrest and detained

and give a copy to the suspect. These legal safeguards are to avoid situation like the instant case. I think I am done here. From all I have said, the Applicant right as enshrined in Section 35 of the Constitution has been flagrantly and recklessly breached by the 1st and 2nd Defendants. I so hold.

The events that happened during the arraignment trial and the striking out of the charge before the magistrate Court, are not matters which this Court can entertain by the FREPR, which is specially designed to deal with issues of breach or likely breach of fundamental rights, those claims being incompetent are hereby struck out and the 3rd Defendant has no case to answer. I so hold.

Judgment is entered in favour of the Applicants, in the following terms:-

1. That the arrest and detention of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Division, FCT, Abuja from 8th June, 2018 to 19th June, 2018, without just causes, was an infringement and a breach of the Fundamental Rights of the Applicant and that such arrest detention was unlawful, unconstitutional and

contrary to Section 35 (4) Constitution of the Federal Republic of Nigeria (as amended).

2. That the arrest and detention of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Police Division state from 8th June, 2018 to 19th June, 2018, without informing the Applicant the facts and grounds for which he was arrested and detained constitute an infringement and a breach of the fundamental right of the Applicant and same is unconstitutional and contrary to Section 35 (3) of the Constitution of the Federal Republic of Nigeria (as amended).
3. That the locking up of the Applicant in the cells of the 1st and 2nd Respondents at their detention facilities at Karu Police Division FCT, Abuja from 8th June, 2018 to 19th June, 2018 and failure and the refusal of the 1st and 2nd Respondents to bring the Applicant before a Court of law after his arrest and detention within one day as provided by Section 35 (4) (5) of the Constitution constitute an infringement and a breach of the Fundamental Rights of the Applicant and same is unlawful.
4. That even if any offence was committed, the Applicant was entitled to be brought before a Court of law within a

reasonable time and / or that his detention and incarceration was unlawful.

5. Relief 5 is refused
6. That Applicant was entitled under the law to his liberty and human dignity.
7. Relief 7 is refused.
8. Relief 8, 9, 10, 11 are not granted as prayed while relief 12 is dismissed.
9. I award damages of N2, 000,000 against the 1st and 2nd Respondents, to this end, N1, 000,000.00 is to be paid by the 1st and 2nd Respondents, while the N500, 000 each shall be paid by the person occupying the office of D. P. O in charge of Karu Police Station as at 08/06/2018 – 19/06/2018, the remaining N500, 000 shall be paid by the I. P. O in charge of the case, Personally and the damages.
10. Post judgment interest of 10% from today until the judgment sum is liquidated.
11. Relief 14 is granted, to this end the 1st and 2nd Respondents shall public apologies to the Applicant by placing same at a conspicuous area of their offices or police station in Karu and at the notice board of this Honourable Court, it is so ordered.

I have carefully created this order to aid the respect of the rules of law in Nigeria and enhance police reform. When damages go personally to DPO's and IPO's, they will live up to their responsibilities. When a bird learns how to fly without perching, the hunter learns to shoot without aiming. I say no more.

APPEARANCE:

I. H. Abia Esq. for the 1st and 2nd Respondents

The Applicant is not in court.

Sign

Hon. Judge

19/09/2019