

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 31: GUDU - ABUJA
ON TUESDAY THE 2ND DAY OF JULY, 2019.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/1609/2019

BETWEEN

RAPHAEL ALABI -----APPLICANT

AND

- 1. THE NIGERIA POLICE FORCE**
- 2. INSPECTOR-GENERAL OF POLICE, NIGERIA
POLICE FORCE**
- 3. COMMISSIONER OF POLICE, =====RESPONDENTS
IGP MONITORING UNIT, NIGERIA POLICE
FORCE**
- 4. OFFICER-IN-CHARGE, IGP MONITORING UNIT,
NIGERIA POLICE FORCE**

JUDGMENT

By a motion on notice brought pursuant to paragraph 3(f) & (g) of the preamble and Order 11 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Sections 35(1), (4) & (5) & of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of this Court praying the following:

- a. A DECLARATION that the acts and conduct of the Officers of the 1st Respondents on 4th April, 2019, at or around Federal Ministry of Agriculture Gate Area 11 Garki, in pouncing on the Applicant, arresting and whisking him away to the office of the 4th Respondent before subsequently detaining him at the premises of

the DPO, Maitama Divisional Head Quarters, Nigerian Police Force till date, violates the Applicant's right to dignity of human person guaranteed under Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended) and is unconstitutional, illegal, null and void.

- b. A DECLARATION that the detention of the Applicant in the premises of the DPO Maitama Divisional Head Quarters, Nigerian Police Force since on or about 4th April, 2019, till date, by the 1st-4 Respondents without arraignment in Court violates his rights to personal liberty and freedom of movement guaranteed under Section 35(1), (4) & (5) and Section 41(1) of the 1999 CFRN (as amended) and is unconstitutional, illegal, null and void.
- c. A DECLARATION that the acts of the 1st – 4th Respondents' Officers in pouncing on, arresting and detaining the Applicant beyond twenty-fours and his continuous detention violated the Applicant's fundamental human rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- d. AN ORDER of this Honourable Court, compelling the Respondents jointly or severally to release the Applicant on bail pending the conclusion of their investigation and/or arraignment in a Court of competent jurisdiction.
- e. AN ORDER OF PERPETUAL INJUNCTION, restraining the Respondents, either acting by themselves, or through their agents, officers, servants, privies or howsoever otherwise described, from further pouncing on, arresting and/or detaining the Applicant in connection with the facts of the instant application.

- f. GENERAL DAMAGES in the sum of N10,000,000.00 (Ten Million Naira) only to the Applicant jointly and severally against the Respondents for breaching the Applicant's fundamental human rights guaranteed under Sections 34(1)(a), 35(1), 4 & 5 and Section 41(1) of the 1999 Constitution.
- g. The cost of filing and prosecuting this suit assessed at the sum of N500,000.00 (Five Hundred Naira) only.
- h. SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this application.

The grounds upon which the Applicant seeks the reliefs are that: -

- a. On the 4th day of April, 2019, the Applicant left the premises of the Federal Ministry of Agriculture at or about 12pm where he had gone to visit his friend when the officers of the 1st – 4th Respondents opposite the entrance of Nigerian Television Authority (NTA) pounced on him, arrested him and took him to the premises of the 2nd – 4th Respondents for interrogation in respect of a transaction involving the just-concluded general election of 23rd February, 2019.
- b. After interrogation, the Applicant was detained at the premises of the Divisional Head Quarters, Nigerian Police Force on the same 4th April, 2019, where he is still being detained till date without being arraigned in Court or granted bail pending arraignment.
- c. The Applicant has prostate cancer and his health is deteriorating, as he is continuously detained in the premises of the Divisional Head Quarters, Nigerian Police Force.

- d. The allegation against the Applicant is one, which he ought to have been granted bail by the Respondents' Officers pending conclusion of investigation and/or arraignment in Court.
- e. By pouncing on the Applicant in the way and manner the 1st Respondents' Officers did on April, 2019, arresting and whisking him away, the 1st - 4th Respondents and their Officers jointly and severally contravene the provision of Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- f. By detaining the Applicant since April, 2019, without granting him bail and/or arraigning him in a competent Court of law within the period provided in the Constitution, the Respondents jointly and severally contravened the provisions of Sections and 35(1), (4) (5) and Section 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- g. By breaching the Applicant's fundamental rights under Sections 34(1)(a) 35(1), (4) & (5) and Section 41(1) of the 1999 Constitution (as amended), the Applicant is entitled to damages and compensation in accordance with the law, particularly as provided under Section 35(6) of the 1999 Constitution.

Filed along with the application is a statement and an affidavit of 16 paragraphs deposed to by Hamira Kulawe, a close friend of the Applicant. From the facts as stated in the affidavit, it is the case of the Applicant that on the 4th day of April, 2019, the Applicant left the premises of the Federal Ministry of Agriculture at or about 12pm where he had gone to visit his friend when the officers of the 1st —

4th Respondents opposite the entrance of Nigerian Television Authority (NTA) pounced on him, arrested him and took him to the premises of the 2nd — 4th Respondents for interrogation in respect of a transaction involving the just-concluded general election of 23rd February, 2019.

That after interrogation, the Applicant was detained at the premises of the Divisional Head Quarters, Nigerian Police Force on the same 4th April, 2019, where he is still being detained till date without being arraigned in Court or granted bail pending arraignment.

That Applicant's health is deteriorating on daily basis as he is continuously detained and efforts to release the Applicant on bail pending conclusion of investigation and/or arraignment in Court to enable him seek medical attention on his failing health, has been frustrated by both the Respondents and the nominal Complainant.

That detaining the Applicant since April, 2019, without granting him bail and/or arraigning him in a competent Court of law within the period provided in the Constitution and despite his deteriorating health condition, the 1st — 4th Respondents and their officers jointly and severally contravened the provisions of Sections 35(1), (4) & (5) and Section 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), thus applicant is entitled to damages and compensation in accordance with the law, particularly as provided under Section 35(6) of the 1999 CFRN.

The Applicant's Counsel in moving the application informed the Court that eventually, the Applicant was released from custody after 9 days upon Respondents being served with Court processes. Counsel relied on all the paragraphs of the affidavit, the accompanying statement and the

arguments in the Written Address. Counsel in the written address raised two issues for determination by this Court thus;

1. Whether having regard to the facts and circumstances of this case, the Applicant's fundamental human rights contained in Sections 34(1)(a) 35(1), (4) & (5) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), were not breached by the Respondents?
2. Whether the Applicant is entitled to the reliefs sought in this application.

On issue one, Counsel submitted that by Sections 34(1)(a) 35(1), (4) & (5) and 41(1) of the 1999 Constitution of Nigeria, the Applicant is entitled to dignity of his human person and ought not to be pounced upon or molested as happened on 4th April, 2019. Submitted that Applicant is entitled to his personal liberty and ought to be able to move freely without being restrained.

Submitted that the Courts have ensured that citizens' rights are protected and prevented from being abused or breached except in the circumstances permitted by law. Relied on the case of *Inusa Saidu v. The State* (1982) 4 SC 41 @ Pp 66-70; *Ubani v. Director, SSS* (1999) 11 NWLR (Pt. 625) p. 129 at p. 148 - 149, Para H A.

Submitted that there was arbitrariness in the arrest and detention of the Applicant in the instant case and urged the Court to enforce the Applicant's rights against the arbitrary arrest and to resolve this issue in favour of the Applicant and hold that from the facts and circumstances of this case, the Respondents have breached the Applicants' fundamental human rights, as contained in 34(1)(a) 35(1), (4)

& (5) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

On issue number two, Counsel submitted that the Respondents, having breached the fundamental rights of the Applicant as earlier canvassed, the Applicant is entitled to the reliefs sought in this application. Relied on Sections 46(1) & 35(6) of the 1999 CFRN (as amended) and Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and the case of *Ray Ekpu & 2 Ors v. Attorney-General of the Federation & 2 Ors* (1998) vol. 1 HRLRA Pg. 391 @ Pg. 421 Para B-D, where the Court held as follows:

"Where the arrest and detention of a citizen is held to be illegal, unlawful and unconstitutional he is entitled to an award of compensatory damages for the infringement of his fundamental rights guaranteed under the constitution and the African Charter on Human and People's Rights. Additionally he is also entitled to claim and be awarded damages for the violation of his rights such as wrongs done to his personal rights, right not to be assaulted, right not to be imprisoned, right to go wherever he may go and right not to be tortured."

Counsel relied on *Jim-Jaja v. C.O.P., Rivers State* [2013] 6 NWLR (Pt. 1350) pg. 225 SC @ Pg. 254 Para F, *Nemi v. A.G., Lagos State* (1996) 6 NWLR (Pt. 452) Pg. 42 at P. 55, Para D – E and submitted that from the above authorities, the Applicant is entitled to compensation in the form of damages for the violation of his rights guaranteed under the Constitution. Counsel urged the Court to so hold and resolve the second issue for determination in favour of the Applicant.

Counsel submitted finally that this Court be swayed by the arguments in the Written Address, the cases cited therein and the depositions in the Affidavits supporting the application and grant this application.

The Applicant also filed another application dated the 10th day of June 2019 praying for

1. A DECLARATION that the continuous seizure and detention of the Applicant's Toyota Venza 2010 Model Car with Registration Number RBC 113 MJ by the Officers of the 1st - Respondents since 4th April, 2019, when the car was seized from him after his arrest and detention is unconstitutional, illegal, null and void.
2. AN ORDER of this Court, directing the Respondents, their agents, officials, servants, privies or howsoever described, to release the Applicant's Toyota Venza 2010 Model Car with Registration Number RBC 113 MJ seized and detained since 4th April, 2019, to him with immediate effect, same not being connected with or pertaining to the transaction involving the just-concluded general election of 23rd February, 2019, for which the Applicant was arrested and detained on 4th April, 2019.
3. AN ORDER OF PERPETUAL INJUNCTION, restraining the Respondents, their agents, officials, servants, privies or howsoever described, from further seizing and detaining the Applicant's Toyota Venza 2010 Model Car with Registration Number RBC 113 MJ in connection with or pertaining to the transaction involving the just-concluded

general election of 23rd February, 2019, for which the Applicant was arrested and detained on April, 2019.

The grounds upon which the Applicant is seeking the above orders are that; the Applicant upon his arrest on 4th April, 2019, in respect of a transaction gone sour between him and the nominal complainant involving the just-concluded general election of 23rd February, 2019 the Applicant's Toyota Venza 2010 Model Car with Registration Number RBC 113 MJ was seized by the Officers of the 1st-4th Respondents and detained in the premises of the 1st Respondent till date.

That the Applicant purchased the said car on the 16th day of June, 2018 long before the transaction between him and the nominal Complainant; and the car is therefore not connected with or pertain to the allegations for which the Applicant was arrested and detained before his release. That the continuous seizure and detention of Applicant's car has imposed unquantifiable hardship on the Applicant whose business activities have been crippled as he requires the car to carry on his business and now relies on few friends for money to be able to cater for his personal and family needs. That all efforts to secure the release of the said car proved abortive as the Officers of the Respondents refused to accede to the Applicant's request for the release of his car hence this application.

Attached to the application is an affidavit of 7 paragraphs and a written address. Counsel in the written address raised a sole issue for determination, which is "Whether having regard to the facts and circumstances of this case, this Court ought not to grant the instant application?"

Counsel submitted that by Section 36(5) & (6)(2) of the 1999 Constitution of Nigeria (as amended), on presumption of innocence, there is no basis for the Respondents to endlessly detain the Applicant's car, more so that the car is totally unconnected with the transaction between him and the nominal Complainant for which the Applicant was arrested. Submitted that the acts of the Respondents runs contrary to the constitutional provision and urged the Court to intervene and grant the instant application as prayed.

The Respondents although served with the Applicant's application and hearing notice, failed to file a counter affidavit in opposition to the Applicant's application. The law is well settled that, where parties to a suit have been duly notified of the hearing date and a party, for no justifiable reason, decides not to participate in the proceedings or file any process, the case of the other person, once it is not discredited in any legal way should be the case to be considered on merit. The other party that refused to avail itself with the opportunity cannot complain of lack of fair hearing. See **Newswatch Communications Ltd V. Atta (2006) 12 NWLR (pt. 993) 144 at 171-175; Ajomale V. Yadau No. 2 (1991) 5 NWLR pt. 191, 266**. In this instant case, the Respondents did not appear and no evidence was adduced on the Respondents behalf and as such, whatever outcome of this proceeding will be binding on the Respondents.

Having gone through the processes and evidence of Applicant, the issue that is germane to this application is **"whether the action of the Respondents constitute a violation of the Applicant's Fundamental Rights as provided for in the Constitution of the Federal Republic of**

Nigeria 1999 (as amended) to warrant the reliefs sought by the Applicant.”

Fundamental rights are fundamental because they are guaranteed by the Constitution. The 1999 Constitution provides in Section 46(1) thus

“Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress”

Hence, there are three instances under Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria when a person may invoke the Fundamental Rights (Enforcement Procedure) Rules, 1979 to seek redress in a Court, namely when it is alleged that any of the provisions of Chapter IV has been, or is likely to be contravened in any state in relation to him. The three instances laid out above first is when the fundamental right “has been” infringed upon, second being when “its being” infringed upon and the third being when “its likely to be contravened” upon.

Fundamental rights given to individuals extends to the action of not only the State but also the action of all government agencies and private individuals, hence, where the fundamental right is being threatened, that individual has the right to apply to Court for the enforcement of his fundamental rights.

In the instant case, Applicant was arrested by the Respondents on the 4th April 2019 and subsequently interrogated by the Respondents but after interrogation, Applicant was detained in the premises of the DPO, Maitama Divisional Head Quarters Nigeria Police Force for 9 days, without being charged to Court. Respondents only released Applicant on

bail after being served with processes from this Court not minding that the allegations against the Applicant, which is “obtaining money by false pretence” is a bailable offence. This is an infringement on Applicant’s right to personal liberty. Section 35(6) of the 1999 Constitution provides that any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

Furthermore, Section 35(1) of the 1999 Constitution and Article 6 of the African Charter states that nobody shall have his right to liberty taken away, abridged or violated. Section 35(1) (C) of the 1999 Constitution goes further to state the exceptions to an individual’s right to personal liberty. The said Section 35 (1) (c) states

“For the purpose of bringing him before a Court in execution of the order of a 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”

In any event, where a person as in this case is arrested and detained upon suspicion of having committed a criminal offence, such a person should be taken to Court within a reasonable time.

Section 35(4) of the 1999 Constitution states that any arrested or detained person should be taken to Court within a reasonable time, hence where the person is detained in an area where there is no competent Court within 40km radius, the police or whoever is holding the person must charge him to Court within a period of one day and if there is no Court within 50km radius then he must be charged to Court within 48hours of his arrest and detention. Any arrest and detention

inconsistent with the above position of the law amounts to a violation of the right to personal liberty of the individual. See **OBEKPA VS. COP** (1981) 5 NCLR 420 where it was held that release on bail is “a basic right” of any person accused of a non-capital offence.

Respondents in this case have failed to justify the detention of the Applicant as Respondents were duly served with the Court processes but failed to react to same nor file a defence neither did Respondents attend Court nor were Respondents legally represented by Counsel. It would therefore appear that Respondents do not have any justification for detaining the Applicant for 9 days and further detaining the Applicant’s Toyota Venza Car, till date.

It is settled law that in a matter contested by affidavit such as application for enforcement of fundamental human rights, failure by the Respondents to file a counter affidavit to controvert or challenge the averments or depositions in an affidavit in support leaves the Court with no option than to deem such affidavit as admitted or proved. See **MAISAJE VS. HASSAN** (2004) 11 NWLR (PT.883) 81, **BANK OF THE NORTH VS. ADEGOKE** (2006) 10 NWLR (PT 988) 339.

In view of the above, I am of the view and so HOLD that Respondents have breached Applicant’s right to personal liberty and his rights to own property. Applicant also applied for an order of perpetual injunction restraining the Respondents from further pouncing on, arresting and/or detaining the applicant in connection with the facts of this instant application. The Supreme Court has warned in a plethora of cases that the Courts do not have the powers to issue declaratory and injunctive reliefs with a view to impeding the result of police investigation made pursuant to the statutory duty under Section 4 of the Police Act. See IGP

VS. UBAH (2015) 11 NWLR (PT1470 405 but Applicant in this case is seeking an injunction restraining the Police from further arresting and detaining him in connection with the facts of this case. This court does not have the powers to impede Police investigation in relation to this case but this Court sure has the powers to restrain the police from further arresting and detaining the Applicants without due recourse to the provisions of the law safeguarding the Applicant's right to liberty.

Consequently. It is hereby declared as follows:

1. That the acts and conduct of the Officers of the 1st to 3rd Respondents on 4th April, 2019, at or around Federal Ministry of Agriculture Gate Area 11 Garki, in pouncing on the Applicant, arresting and whisking him away to the office of the 4th Respondent before subsequently detaining him at the premises of the DPO, Maitama Divisional Head Quarters, Nigerian Police Force for 9 days, violates the Applicant's right to dignity of human person and right to personal liberty as enshrined in the Constitution is hereby declared unconstitutional, illegal, null and void.
2. That the detention of the Applicant in the premises of the DPO Maitama Divisional Head Quarters, Nigerian Police Force since on or about 4th April, 2019, for 9 days, by the Respondents without arraignment in Court violates his rights to personal liberty and freedom of movement guaranteed under Section 35(1), (4) & (5) and Section 41(1) of the 1999 CFRN and is unconstitutional, illegal, null and void.

3. That the acts of the Respondents in pouncing on, arresting and detaining the Applicant beyond twenty-four hours and his continuous detention violated the Applicant's fundamental human rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria.

IT IS FURTHER HEREBY ORDERED AS FOLLOWS:-

4. An Order of Perpetual Injunction is hereby granted restraining the Respondents, either acting by themselves, or through their agents, officers, servants, privies or howsoever otherwise described from further pouncing on, arresting and/or detaining the Applicant **in connection with the facts of the instant application without due recourse to the provisions of the law.**
5. GENERAL DAMAGES in the sum of ₦10,000,000.00 (Ten Million Naira) only, is hereby awarded to the Applicant jointly and severally against the Respondents for breaching the Applicant's fundamental human rights guaranteed under Sections 34(1)(a), 35(1), 4 & 5 and Section 41(1) of the 1999 Constitution.
6. That the Respondents through their agents, officials, servants, privies or howsoever described, release forthwith to the Applicant on bond, his Toyota Venza 2010 Model Car with Registration Number RBC 113 MJ seized and detained since 4th April, 2019 in connection with the facts of this case and Respondents are further restrained from further detaining the said Toyota Venza 2010 Model Car **without**

**due recourse to the laws of the Federal Republic of
Nigeria.**

PARTIES: Applicant present.

APPEARANCES: H. O. Akwaji, Esq., for the Applicant. Respondents not represented.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
2ND JULY, 2019**