

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION  
HOLDEN AT JABI FCT ABUJA  
SUIT NO: CV/1574/2019**

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN  
BETWEEN:**

**ADEOTI SHERIFAT ADENIKE \_\_\_\_\_ APPLICANT**

**AND**

**1. THE COMMISSIONER OF POLICE }  
FCT COMMAND } \_\_\_\_\_ RESPONDENTS  
2. ALH. MURTALA AKANBI }**

**JUDGMENT**

The applicant herein came before this court by the originating motion with No. CV/1574/19 praying the court for the following:

- 1) an order to secure the enforcement of the fundamental Human Rights of the applicant as guaranteed and protected under sections 33, 35, 36, 37, 41 and 46 of the constitution of the Federal Republic of Nigeria, 1999, as amended in terms of the reliefs in the statement accompanying the affidavit in support of the application and the grounds set out in the copy of the statement served herewith and;
- 2) and for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this application.

The application is supported by twenty one paragraphed affidavit deposed to by one Adeoti Sherifat Adenike who is the applicant.

The application is also accompanied by a statement of facts in which the applicant sought for the following reliefs;

- a) a declaration that the trespass, threat to life, intimidating and humiliation of the applicant constitutes an infringement of the applicant's fundamental right guaranteed and protected by sections 33(1), 34(1), 35(1) (4) and (5) and section 36 of the

1999 constitution of the Federal Republic of Nigeria, as amended.

- b) an order of injunction restraining the 2<sup>nd</sup> respondent from further trespassing and intimidating the applicant herself, husband and children pending the determination of the application for fundamental rights;
- c) the sum of N100,000,000.00 (Hundred Million Naira) only against the 2<sup>nd</sup> respondent for the unwarranted infringement of the applicant's fundamental rights;
- d) an order directing a written apology to the applicant by the 2<sup>nd</sup> respondent and such apology be published in three National Dailies circulated in Nigeria.

The grounds upon which the reliefs were sought include;

- a) Articles 4 and 5 of African Charter on Human and People's Rights and sections 34 and 41 of the 1999 constitution which guaranteed right to life, dignity of human person, personal liberty, freedom of movement and right to own property which grossly violated, by the respondents in the circumstances of this case is a serious infringement of his constitutional right guaranteed under sections 33, 34, 35, 41 of the 1999 constitution of the Federal Republic of Nigeria, as amended;
- b) That the conducts of the 2<sup>nd</sup> respondent is arbitrary illegal, harsh, oppressive, unconstitutional for unwarranted intimidation, threat to life, and dignity of the applicant which give rise for a cause of action to the applicant to enforce her guaranteed fundamental rights under the constitution.

In support of this application attached are:

- 1) Letter to the Inspector General of Police dated the 29<sup>th</sup> of September, 2017 written by one Adeoti Kamaldeen Debo;
- 2) a response from the office of the Inspector General of Police dated the 30<sup>th</sup> day of May, 2018 signed by one ACP Usman A.K. Umar;
- 3) another response from the National Human Rights Commission addressed to Adeoti Kamaldeen Debo dated the 13<sup>th</sup> October 2017 signed by one Rabi A. Anwar;
- 4) a police extract made in favour of the applicant accompanied by an affidavit dated the 19<sup>th</sup> of July, 2018;

5) photocopies of exhibits showing the vandalism of household properties.

In compliance with the rules of court, the application was accompanied by a written address.

The counsel to the 1<sup>st</sup> respondent filed an application dated the 24<sup>th</sup> day of May, 2019 praying the court for the following;

- 1) an order of this Honourable Court extending time within which the 1<sup>st</sup> respondent/applicant can file and serve its counter affidavit and preliminary objection to the application for enforcement of the fundamental rights out of time;
- 2) an order of this Honourable court deeming the said counter affidavit and preliminary objection herein attached and marked as EXH. A and B respectively as having been properly filed and served;
- 3) and for such further other orders as this Honourable court may deem fit to make in the circumstances.

This application was granted vide the ruling of this court dated the 18<sup>th</sup> day of June, 2019.

Thus, going by the counter affidavit of ten paragraphs of the 1<sup>st</sup> respondent and by paragraphs 5 and 6, it is stated that the 1<sup>st</sup> respondent neither arrested nor detained the applicant whatsoever, and that the 1<sup>st</sup> respondent did not violate any of the fundamental rights of the applicant as provided under chapter iv of the constitution of the Federal Republic of Nigeria, 1999 as amended, and by paragraph 7, it is stated that the applicant has no claim against the 1<sup>st</sup> respondent.

And by the notice of preliminary objection of the 1<sup>st</sup> respondent the grounds upon which the objection was raised include;

- 1) that the applicant has not disclosed any cause of action against the 1<sup>st</sup> respondent;
- 2) that the applicant has no relief against the 1<sup>st</sup> respondent hence this Honourable court lacks requisite jurisdiction to determine this suit against the 1<sup>st</sup> respondent.

In his address on this, the counsel to the 1<sup>st</sup> respondent formulated the following questions for this court to determine:

- 1) Whether the applicant has disclosed any reasonable cause of action against the 1<sup>st</sup> respondent;

2) Whether the applicant has any relief against the 1<sup>st</sup> respondent?

The counsel submitted that taken into consideration the facts deposed to in the affidavit in support of the applicant for enforcement of the fundamental rights of the applicant, it is discernible that the applicant has not disclosed any single cause of action against the 1<sup>st</sup> respondent and in this he cited the case of **Nissan (Nig) Ltd V. Yoganathan (2009) All FWLR (pt 494) ratio 3 and 4**, this is in defining the cause of action. He further submitted that the applicant has not stated any fact as to wrongful act done or committed by the 1<sup>st</sup> respondent to warrant this action against it, and to that, there is no factual situation of the existence of which entitles one person to obtain a remedy against another. The counsel further cited the case of **Bello V. A.G, Oyo State (1986) 5 NWLR (pt 45) p. 828**, and the case of **Thomas V. Olufosoye (1986) NWLR (pt 18) 669**, and he then submitted that the applicant has no any relief sought against the 1<sup>st</sup> respondent and he cited the case of **the Registered Trustees of Living Bread Christian Centre V. Lt. Col. S.T. Olubobokun (RTD) 2017 1 NWLR (Pt 1545) 1 at 53** to the effect that where there is no breach, the issue of damages cannot arise.

The counsel then finally submitted that for the fact that the 1<sup>st</sup> respondent has not arrested nor detained the applicant, the invocation of the provision of the constitution relating to enforcement of the fundamental rights of the applicant is unwarranted and therefore, urge this court to strike out the name of the 1<sup>st</sup> respondent.

Thus, it is apparent that the service of the counter affidavit was effected on the counsel to the applicant, and there has been no response in that regard thereby confirming the averments as are contained in the counter affidavit of the 1<sup>st</sup> respondent. It is also very glaring and having looked at the affidavit in support of the applicant's application particularly paragraph 18 (iii) where it is only stated that the 1<sup>st</sup> respondent among its duties conferred by statute are to arrest any offender, prevent crime occurrence and protection of lives and property.

To this, I am constrained to find that the above averments constitute a factual situation indicating that there is a complaint as

of wrong doing on the part of the 1<sup>st</sup> respondent, and from the totality of the averments as are contained in the affidavit in support of the applicant's application for enforcement of fundamental rights there is nothing averred against the 1<sup>st</sup> respondent. It is equally to note that there is nothing contained in the statement of facts that the 1<sup>st</sup> respondent has done one thing or the other to warrant the inclusion of its name in the suit.

I therefore, come to agree with the counsel to the 1<sup>st</sup> respondent that a cause of action is the fact which when proved will entitle a claimant to a remedy against a defendant, and it is a combination of facts which give rise to a right to sue. See the case of **Fabunmi V. University of Ibadan (2018) All FWLR (Pt 943) p. 645 at 658 paras. A – B**. It was further held in the same case that in order to determine whether the claim of a claimant discloses a cause of action fit to be tried, the court needs only to have regard to the statement of claim of the claimant which alone determines whether or not the claim brought before the court is justiciable. In the instant case there is nothing justiciable, going by the averments in the affidavit in support of this application for enforcement of the fundamental rights of the applicant, to show that this action is justiciable against the 1<sup>st</sup> respondent.

In the light of the foregoing consideration, I have no option than to hold that the claim of the applicant does not disclose any cause of action against the 1<sup>st</sup> respondent and I therefore so hold. The name of the 1<sup>st</sup> respondent in this case is hereby struck out, and the action against it is struck out accordingly. See the case of **Jambo V. Governor, Rivers State (2007) All FWLR (pt 394) p. 316 at 329 paras. G-A**.

Let me observe that the counsel to the applicant for the enforcement of fundamental right did not deem it ripe or appropriate to come to the court to move such, and therefore, such motion can be treated by this court as an abandoned motion, and the best thing to be done is to strike it out. See the case of **Esoho V. Asuquo (2007) All FWLR (pt 359) p. 1357 at 1370 paras. C-E**.

The application of the applicant for the enforcement of fundamental right is hereby struck out accordingly.

Signed

Hon. Judge  
30/9/19

Appearances:

Chakpo Dauda Esq. appeared for the applicant.  
Adesola C. Akiola Esq. appeared for the 1<sup>st</sup>  
respondent.

Signed  
Hon. Judge  
30/9/19