

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 6TH DAY OF DECEMBER, 2019

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/BW/113/19

BETWEEN:

ROBERT ATAR BOBAI & 3 ORS

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}

APPLICANTS

AND

1. COMMISSIONER OF POLICE

2. JERRY OF ANTI ROBBERY SQUAD

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}

DEFENDANTS

JUDGEMENT

On the 7/5/19, Robert Atar Bobai, a staff of the FCT Water Board along with Ayodeji Onigbogi, Ogar Robert Onuche and Didam Chechet alleged that their Fundamental Right as enshrined in CAP 4 of the 1999 Constitution has been breached. The action is against Commissioner of Police and Mr Jerry of the Special Anti-Robbery Squad (SARS)

According to Robert who deposed to the Affidavit in Support of the Application, he alleged that the Commissioner of Police and Jerry Violated their right under **Section 34, 35 37 and 41 of the 1999 Constitution as amended.**

They claimed that on the 25/4/19 while in a Bar called Blue Berry at Dutse, Bwari Road Abuja, some Policemen who were not dressed as Police descended on

them at the Bar and searched everyone present. That in the cause of the search, they like all the other People at the Bar were beaten with “KOBOKO”, assaulted and eventually arrested and detained for 4 hours. That they were only released after the men had extorted N50, 000 (Fifty Thousand naira) only from all of them. This action took place around 7:30 pm in the evening. That when he inquired from the men why they come to ransack the place they said to him thus:

Paragraph 9 Affidavit in support

“...You criminal. This garden is a designated black sport and anybody found here is a suspect. That good people do not come here”

That when he asked the men whether they have search warrant:

“... They became furious, cocked their Guns, shut in the air sporadically and threatened that if they did not enter their vehicle their body will be riddled with bullets”

The Applicant were forced into the vehicle together with 3 other unnamed customers of the Bars. First they were taken to FCDA Housing Estate Police station at Kubwa before they were “transshipped to another Vehicle that took them to SARS FCT Command. Their phones were collected and they were eventually allowed to go home after their unnamed and undisclosed friends came to their rescued and gave N50, 000 in cash to the Jerry and his friends at SARS Office

They also alleged that the Respondents had since been spying on the Bar, threatening to re-arrest and arrest anybody seen around the Bar without any Order of the Court by harassing, intimidating and Violating their Fundamental right, thereby causing the Bar to loose its customers as people are afraid of being arrested if they go to the Bar.

Angry, about the action of Jerry and his unnamed Cohorts the applicants on the 7/5/19 instituted this action seeking for the following Reliefs:

- 1. An Order of this Court restraining the Respondent their Servants, Agents, privies and howsoever describe from re-arresting and detaining the Applicant without a lawful order of a Court of competent Jurisdiction.**
- 2. A Declaration that the assault, Battery and act of intimidation, harassment, detention and further threat to detained the applicants unlawfully by the Respondent without any Court Order, amounts to infraction of their Right to dignity of Human person and also right to**

personal liberty as guaranteed by Section 34 and Section 35 of the 1999 Constitution as Amended

- 3. A Declaration that the act of the Respondent in unlawfully spying and hovering around the Bar and incessant threat from the Respondent agents demanding how the Applicant go in and out of the Bar without Court Order amounts to infraction of the Applicants Right to freedom of movement as guaranteed by Section 37 and 41 respectively of said Constitution.**
- 4. An Order of this Court directing the Respondents to pay to the Applicants the sum of N10million only as compensation for infringing the Applicant's said Rights.**

The Applicants supported the application with an Affidavit of 16 paragraph deposed to and unbehalf of the Applicant by the 1st Applicant Robert Atar Bobai. They attached one Exhibit which is the staff I.D Card of the 1st Applicant. The Respondents were served with the said Application but they did not enter any appearance in person or in paper. They did not equally file any Counter Affidavit opposing the Application. No Counsel represented them too. The Court ensured that Hearing Notices were served on them too.

The Applicant based the Application on these 2 Grounds:

1. That the respondent without Justification but in other to impose the power of Rule by might upon themselves have continued to infringe on the Fundamental Right of the Applicants by beating, detaining and threatening to re-arrest and detain the applicants again without any Order of Court and have continued consistently to harass and intimidate the Applicants which is an Abuse of their Fundamental Right to liberty as enshrined in **Section 35, 1999 Constitution as amended.**
2. That the Action of the Respondents in the circumstance of this Case in preventing the Applicants from free movement to attend to their exercise or leisure by trailing them unnecessarily, spying and hovering around the Bar, violated the Applicant Right to Private life and family life and also the Right to Freedom of movement and therefore unconstitutional illegal null and void, being contrary to **Section 37 and 41 of 1999 Constitution as amended and Art 10(1)and (2) and Art 29(6) Africa Charter on Human and People Right CAP A9 LFN 2004**

In the written address, the Applicants raised 2 Issues for determine which are:

1. **“Whether they are entitle to enjoy the Right to Personal Liberty, private and family life and Freedom of Movement as enshrined and guaranteed by provision of Section 35(1) 37 and 41(1) of the said Constitution**
2. **Whether in the circumstance of the facts leading to this application, the Applicants are entitled to the Reliefs Sought bearing in mind the facts deposed to in the Affidavit in support of this Application**

On Issue NO 1, The Applicants Counsel submitted that the applicants are garbed with the robe of encompassing Right to personal Liberty, Private and family life as well as Freedom of Movement He Referred to **Section 35(1), 37 and 41 of 1999 Constitution as amended.**

That they have been arrested, beaten, assaulted, detained, harassed, intimidated, threatened to be re-arrested, tortured and detained by the Respondents again. That all these are done in fragrant disregard of any procedure permitted by law. That the threat to carry out unlawful act by the Respondent amount to flagrant violation of the Applicants' said Right. That the cited Provisions of the Constitution guaranteed the right of the Citizen to move freely throughout Nigeria and reside in any part thereof. That the Applicants as Nigerian are entitled to the enforcement of the said right hence this Application before this Court. That when the Constitution confers a right to on individuals like the applicants, such right cannot be trampled on by anyone without following or in accordance with legal procedure. He referred to the case of

Eperokun vs University of Lagos (1985)4 NWLR(PT34)112@163

Again, that infallibility of the Provision of the Constitution is certain and that there is no way anyone can toy with it deliberately as the Respondent are threatening to be do and have done (in this case) without being in violation. That in this case the Right of the Applicants have been breached, continued to be breached and threatened to be further breached by harassment and intimidation by the Respondents.

That beyond argument the applicants are entitled to those Right as stipulated in this application. They urged the Court to so hold.

On Issue No 2: whether the applicants are entitled to the Reliefs sought in the circumstance of this case. They submitted that fundamental rights procedure is sui generis and that any infringement on any of the rights of the applicant once established attracts a compensation. That the procedure for enforcement of Fundamental Right was specifically promulgated to protect the citizen's Rights

from abuse and violation by the authorities and persons. That by virtue of **Section 35(6)** of the said Constitution reveals that the Word “shall” was used in the said Provision connoting compulsion and obligation imposed therein. That **Section 35 and Section 46** are placed on higher pedestal in that allegation of violation/infringement of Right has to be specifically established and proven. That it is only then that compensation for damages can stand. He cited the case of **Ugba vs Suswan (2013) 4 NWLR(PT1345)465 Paragraph C**

He further submitted that damages are paid as a way of compensation even if none is claimed. But that in this case the Applicants claimed damages of N10million against the Respondents.

That the applicants were arrested, detained, beaten, assaulted intimidated and further threatened to be intimidated, re-arrested and detained unlawfully by the Respondents without any reasonable or justifiable cause, and are entitled to seek redress from this Court. That no law or power like that of the Respondents can create any Rule that would cause an infraction on the Right of the citizens. That the Respondents have in the circumstance of the this application violated the Rights of the applicants by the said arrest, beating, detention and further threat to re-arrest and detain the Applicants without a subsisting Order of the Court of competent Jurisdiction. That the infraction of the Right of the applicants in this application is illegal, wrongful, unconstitutional, null and void. They urged the Court to so hold and grant them all the Reliefs Sought.

Since the Respondents did not file any Counter Affidavit in opposition or even enter appearance this Judgment is based on the submission made by the Applicants in their Affidavit and Written Address which they adopted as their oral submission in support of this applicant and on the law.

In the recent supreme case of:

FBN PLC VS A-G Fed (2018)7NWLR (PT1617)129 Paragraph 6,

the apex Court held:

“For a party to be entitled to exemplary damages it is his duty to prove that the action of the Respondent is extraneously reprehensible. Such damages are awarded when a Defendant’s willful act was Malicious, Violent, Oppressive, Fraudulent, Wanton, and grossly reckless. Such damages are awarded both as punishment and to set a public example they reward Plaintiff for the horrible nature of what he/she went through or suffered. The applicants in a Fundamental Right matters are placed on a higher pedestal than in the ordinary civil matter. The Onus is on the applicants to show that

he was unlawfully arrested and detained and as such his Fundamentally Right has been violated. Once proved the applicants is entitled to Compensation and Apology.

FBN VS A-G Fed (2018)7 NWLR (PT1617) p 128

Again other primary object of an award of damages is to compensate the Plaintiff from the harm done to him or possibly 2nd object is to punish the Defendant for his conduct in inflicting the harm on the Applicant.

Fundamental Right are sui generis. They are peculiar and often times do not follow the Rules of Evidence strictly. They are specialized as provided in **CAP 4 1999 Constitution** as amended. They are sacred or semi sacred in that once it is established with facts and Evidence where available, the Court has no reason not to say so.

Again, where it is so established the Applicant without more is entitled to compensation by way of damages payable by the Respondent and even an apology in any National daily. But to earn that damages/compensate, it is incumbent on the applicant to establish that there is actually an infringement or threat to infringe those right by the Respondent. This means that granting the relief on compensation is not a matter of course, it must be earned. To so earn, the applicant must establish the infringement. That Onus on him must be discharged. It is not a matter of anchoring on the weakness of the case of the Respondent. So where the applicant fails to so establish the infringement the onus is said to be stalked with him and remains there. Where that is the case , it is said that the applicant has not been able to establish that his Right, as alleged had been infringe and as such he will not have any right to compensation as Provided for in **Section 35(6) and Section 46 1999 Constitution** as amended These Rights are opened to all the citizens – the Governor and the governed. It is the Right of the Nigerians to move freely, enjoy private and public or family life. These Right as conferred cannot under any guess be trample upon by another individual fellow citizen or organ of the government without being in accordance of a procedure permitted by law. It then means that the right of an individual under the Constitution is not absolute. It can be tampered with but should not also be Violated by those safe guarding it with impurity. That is the decision of the Supreme Court in the case of

1. Eperokum VS University of Lagos (1985) 4 NWLR (PT34) 112@ 163.

2. Emeka Ekwenugo VS FRN Supra

The provision of the CAP 4 1999 as regard and the fundamental rights of citizen are promulgated to safeguard and protect the citizens Right from being abused by the person in and out of authority.

The provision of **Section 214 to 216 of the Constitution as amended** is on the powers of the police and its establishment. **Section 4 Police Act** set out the powers, duty and Rights of the Police to execute the power or carry out their duty and the extent to which they can exercise those powers. Chief among them is the power to arrest, detain, interrogate, investigate and prosecute anyone who have violated the law suspected to have committed or about to commit any crime. These vast powers are there in other to protect the life and property of citizen of the Country. These Rights wide as it is, must not under any disguise be abused by the same Police who are empowered to protect the citizen.

To enjoy such Right, the Applicant must establish that there is an infringement of those Right **Jim Jaja VS. COP Rivers State. (2013) 6 NWLR (PT1350) 245 paragraph A-B.**

In as much as the law and the Court frown at the violation of citizen Right by the Police, the Court also frowns citizens misinterpreting the action of the Police taken in the Course of exercising their legitimate Right in carrying out its duty under the law. The obstruction of the Police in exercise of their duty under the law Police Act and the Constitution is an infringement on the Right of the Police. It is also an actionable wrong by the person so obstruct the Police. Again not all action taken by police tantamount to infringement of a citizen Right so once the action taken by police is within the ambits of the law and in the course of their duty, it is said that such action is legitimate and Constitutional.

Again not all arrest and detentions are Unconstitutional or amount to breach or attempted breach of the Right of a Citizen. As long as the force is reasonable it is lawful. That is why the Law/ Court requires that the applicant challenging the infringement of his right should ensure that he establish (though not beyond all reasonable doubt) that his Right has been breached. Unless and until the applicant had discharged that Onus, he will not end the compensation in form of damages payable by the Respondent. This is so in order to checkmate any tendency for people to abuse that sacred provision of the Constitution.

In this case as already detailed summarized above can it be said that the Respondents have actually by their action, as detailed stated by the Applicants, violated the fundamental Right of the Applicant to personal liberty, freedom of movement and

family life to the extent that this Court should award N10million naira as compensation, notwithstanding that the Respondents did not file any Counter Affidavit in Opposition to the Application filed against them.

Again have they been able to establish that their Right has been infringed by the action of the Respondents and that they are entitled to the Compensation as provided in **Section 46 1999 Constitution as amended** was the right of the Applicant violated.

Also is the action of the Respondent within the ambits of the Law that they are not suppose to pay any compensation to the Applicants. Before answering the question raised and not taking the question seriatim, it is imperative to note that through the Respondent did not file any Counter Affidavit will not make the Court to swallow hook line and sinker the Submission of the Applicant in the written address in Support of the application. The Court is duty bound to evaluate the facts as present by the Applicants before it can come up with its decision.

In answer to the question it is the humbly view of this Court that the Right of the applicants were not Violated by the action of the Respondent per se as the action was taken within the cause of the duty of the Respondents.

To state with, it is known that the police in the Special Anti Robbery Squad (SARS) did not dress as regular police men when they are on duty because disguise is part of their dress Code. It is recognised as such and that mode of dressing is legitimate. It is the law that police is permitted to arrest and interrogate any one arrested upon suspected of committing, about to commit or having committed a crime but the law requires the police to inform the person arrested on reason for the arrest otherwise the arrest will be unlawful, illegal and wrong.

In this case going by the facts in Paragraph 9 and 10 of the Affidavit in support the police informed the Applicants that they searched the place because

“... This garden is a designated black spot and any body found here is a suspect, that good people do not come here”

The above speaks for itself. It is Evidence that the search of the Bar was based on information which the Police must have received upon which the idea of searching the Bar was based. The Police has a Right to search any premises based on information once such search is conducted in accordance with the law or procedure permitted by law, their action is legitimate such action search of the premises no doubt entails the use of reasonable because force as the Police have use because they do not know what awaits them in the same Bar in which information has it has been designated as a Black spot.

The averment of the 1st Applicant in Paragraph 8 of the Affidavit shows that the only reason the police went to the premises was to search same based on the information they have at hand.

Yes the police took the Applicant to first FCDA housing Estate Police station in Kubwa, and then to the FCT SARS office, Abuja. That is the right and correct procedure and protocol of Police duty. Since the premise was searched based on the fact that it is a block spot as designated, the Police were right to take the people they found in the Bar. The 1-4 applicants as well as the other 3 unnamed person to the station for interrogation so as to know whether any of them were the person who had made the Bar to be designated as Black spot.

This arrest and short detention for 4 hours is within the ambits of the power of the Police to arrest and interrogate and detain any suspect. The detention was for less than 4 hours when one calculate that they were first taken to the Police command in charge of where the Bar is located and then to the SARS office at their Abuja Command. All these within 4 hours including the transport. That the FCDA Housing Estate Command was well aware of the mission and of the men of SARS in their territory. The dropping of the original vehicle further confirming that as confirmed by the 1st Applicant Paragraph 11.

They force us into their vehicle (arrest) with other 3 customers of the Bar who were in the garden and first took us to Federal Capital development Authority (FCDA) Housing Estate Police station in Kubwa Abuja, transhipped us into another vehicle and finally took us to SARS FCT Command.

It is clear that the detention was done not in the police station but at the SARS FCT Command office as confirmed by the 1st Applicant

Paragraph 12:

“...There at SARS FCT Command they detained us (Applicants)”

The collection of phones from the Applicants were also part of the action taking legitimately by the Police in cause of their duty as empowered under **Section 4 P.A** Hear the 1st applicant in Paragraph 12

“...They detained us after collecting our phones for four hours into the midnight”

it is the law that once a person is arrested the Police must grant bail within 24hours where there is a Court within 40kilometer radius from the place of arrest or 48 hours maximum after which the person must be charged to Court.

In this case the Police released the applicants within “...4 hours into midnight”

Meanwhile the whole debacle of search and arrest stated at about 7:20 PM on 25th April 2019 between 7.20pm and midnight the search arrest and detention has ended.

The Police did not commit any wrong by the search arrest and detention which lasted for about 4 hours.

The allegation of collection of N50, 000(fifty thousand naira) is not substantiated by the Applicants to start with; they did not tell the Court names of their friend who they claimed contributed the N50, 000. The statement of the Applicants in Paragraph 13 is highly unsubstantiated. Hear them Paragraph 13

We pleaded with them to give us our phones to enable us transfer the money but they only gave us our phones to call those that will give us the money .When our friend came, we collected N50,000 and gave to them case before they could release us.

One would have expected the Applicants to at least tell the Court the number of their friends that came to raise the money, their names and address. The applicants failure to state, so made their submission to that effect fundamental unsubstantiated and hard to believe one wonder why the applicants decide to hide the name and identity of their so called friends. This Court does not believe that the applicants gave the N50, 000 to the SARS men as they claimed.

By telling the applicants that the place is designated black spot was information enough. It covers the ground that the Police must inform suspects why he is been arrested and the reason for searching the premises.

Spying is part of the legitimate work of the police. The facts raised in part of Paragraph 14 is part of the work of the police such spying i guess is in the cause of their duty based on the information the Respondent must have heard before coming for the search and arrest and subsequent detention citizen are often eager to report that Police harassed and brutalized them, They often don't report about their resistance to arrest, search or interrogation by Police.

Going by Paragraph 8 the Police first searched the premises. Hear the 1st Applicant. Paragraph 8

“...They searched every where the Bar, the Garden etc.... there was nothing incriminating they could lay hand on from any of us (Applicants)

The cocking of Gun by the Police as alleged in Paragraph 10 and the shutting into the air sporadically must have been done not because the 1st Applicant asked the Police their search and arrest warrant. It is because the Applicants were resisting arrest that is why the police now according to the 1st Applicant

“...The Police threatened that if we do not enter their vehicle our bodies will be riddled with bullets.”

No Police will threaten anyone who was asked to enter police vehicle and had complied with that order

The Police cocking the gun and threaten to riddled the applicants bodies with bullets puts no one in doubt that the applicants resisted or attempted to resist arrest. Otherwise the Police would not have suddenly

“...Became furious, cock their guns, shut in the air sporadically and threaten to riddle the (applicants) bodies with bullet.”

The applicants obviously wanted to resist arrest that spared the police to threat as they did.

The applicants did not state who the other people taken to police station were. The allegations of the Applicants about the threat to further arrest are all made up. They did not state whether this threat is by phone calls or physical threat. So also their allegation of the Respondent turning them into cash cow. To start with, there is no facts to show that the Respondent had asked for any money from the Applicants or that applicants had paid any money to Respondent after said arrest and detention of 25/4/19 so also the allegation of

“...Someone business is already bleeding as their customers have become scared of patronizing them for fear of unlawful arrest by the Respondents.”

From averment in paragraph 1-3 of the Affidavit in supports. It is obvious that neither the 1st Applicant nor the 2nd -4th Applicant were the owners of the Bar, if any of them is the applicants did not state so. This Court therefore wonders why the Applicants particularly the 1st Applicant who disposed to the Affidavit in Support of this application was concerned about

“...Someone business already bleeding and their Customer became scared of patronizing them.”

In as much as the Applicant have the Right to enjoy themselves in any garden and spot they like and have done so for a given period of time, the Police has the Right to search a place with or without a warrant depending on circumstance. After all not in all cases that a Police must first get the search warrant before embarking on the searching of a place/ premises. One wonders why the owner of the Bar/Garden is not one of the applicants, rather the people that patronize the Bar are the once complaining on his/her behalf.

All in all, the actions of the Police in its entirety in this case are legitimate. Those actions were done in the course of Police/Respondents performing their legitimate duty under the law in accordance with the Constitution Provision and **Section 4 and Police Act Section4 P.A.**

The force they used in the searching of the premises are within legitimate limits, so also is the arrest and detention for about 4 hours. The Police therefore did not in any way violate the Right of the Applicants as alleged. The Police action is not illegal, it is rather Constitutional. The force used is in commensurate with the action, circumstance and excisgenesis of the occasion the Applicant did not establish that the alleged Rights were infringed. This Court does not believe that those Right were infringed. That being the case the Applicants are not entitle to any compensation by way of damages as such compensation is not granted as a matter of Course. It must be maintained and the Applicant in this case does not merit any compensation. Citizen of Nigerian should know that not all action taken by Police amounts or should be viewed as infringing the Right of the citizen. This application is not meritorious .

No one should obstruct the Police from doing its legitimate duties.

This is the Judgement of this Court delivered by me today 6/12/2019.

K.N OGBONNAYA

HON. JUDGE