

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO –F.C.T- ABUJA**

**CLERK: CHARITY**

**COURT NO. 16**

**SUIT NO: FCT/HC/CV/2943/17**

**DATE:10/12/2019**

**BETWEEN**

- 1. MR.ALBERT IRABOR**
- 2. KINGSLEY AKPORAYE-ARAH ESQ**
- 3. CHIEF AUSTINE ARAH**
- 4. CHIEF CHUKWUEMEKA OKEKE**

**AND**

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. ABDU BABA AGAJE**
- 3. AHMAD KIMGO**
- 4. SULEIMAN ABDULKADIR**
- 5. YAKUBU SHEHU MISSAU**
- 6. ABUBAKAR AHMED SIDI**
- 7. MOHAMMED BASHIR ISMAILA**

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

By a motion on notice dated 20<sup>th</sup> day of September 2017 brought pursuant to Order 2 Rules 1 and 2 of the Fundamental Rights Enforcement Rules 2009, Sections 44 and 46 of the 1999 Nigerian Constitution as amended and under the inherent jurisdiction of the this honourable Court. The motion was filed on the 21<sup>st</sup> September, 2017. It prayed the court for the following reliefs;

1. A declaration that the invitation, harassment, arrest and threat of arrest of the Applicants over the purchase of the land in Abuja

which is purely a civil transaction by the Respondents is unlawful and constitutes an infringement of the Applicants Fundamental rights as guaranteed by section 34,35 and 46 of the 1999 constitution of the Federal Republic of Nigeria as amended.

2. An order of perpetual injunction restraining the respondents by themselves, their agents, privies or any person acting for them from further harassing and threatening the applicants over the particular land purchase transaction culminating to this suit.

3. One Hundred Million Naira (N 100,000,000) only against the respondents jointly and or severally as damages for the unwarranted infringement of the Applicants fundamental rights.

The grounds upon which the reliefs sought are premised are as follows:

(a) The 1<sup>st</sup> Applicant is the Director Administration of First choice properties Ltd which carries on business at House 59,11 crescents, off Dona King Restaurant, Kado Estate phase 1, Abuja.

(b) The 2<sup>nd</sup> Applicant is the Company Secretary/Legal Adviser of First choice Properties Limited at the same address as stated above.

(c) The 3<sup>rd</sup> Applicant is the Managing Director of First choice properties Limited also of the same address as stated in paragraph 1 above.

(d) The 4<sup>th</sup> Applicant is the Director Projects of the First Choice Properties Limited also of the same address as paragraph one above.

(e) The first Respondent is the Inspector General of Police who supervises the actions of all policemen within the Federal Republic of Nigeria whose headquarters is at Area 11, Garki, Abuja.

(f) The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents are the persons who instigated the invitation, arrest, harassment and threat of arrest of the Applicants by the Police

(g) The fact is that sometime in the year 2011, the 2<sup>nd</sup> to 7<sup>th</sup> Respondents deposited money for some plots of land in the estate

being developed by the Applicants company(First Choice Properties Limited)known as plot 1750 Dape District, Abuja, FCT.

(h) That is the course of the transaction, there was a third party interest on the plot of land leading to a land dispute in suit No: FCT/HC/CV/800/11 which is still pending at court 28,Jabi, Abuja.

(i) That because of the pending litigation ,construction work was stopped on the site pursuant to which the 2<sup>nd</sup> to 7<sup>th</sup> respondents started making agitations for refund of the funds they paid and eventually instituted an action against the Applicants' company in suit No: FCT/HC/CV/2422/15

(j) That the suit was struck out by the court on some technical reasons but instead of the 2<sup>nd</sup> to 7<sup>th</sup> Respondents to regularise their position, they went and petitioned the Economic and Financial Crimes Commission (EFCC) Lagos office attempting to criminalise an otherwise commercial transaction.

(k) That the Applicant's company through her lawyers wrote a complaint letter to the EFCC stating reasons why the case should be handled by the EFCC head office in Abuja where the transaction in issue took place and where the subject matter in question is domiciled

(l) That the 2<sup>nd</sup> to 7<sup>th</sup> respondents feeling unsatisfied with the transfer of the case to Abuja by the EFCC now went and concocted a fresh petition to the Nigeria police and manipulated the case to be investigated from Lagos

(m) That on Tuesday 12<sup>th</sup> of September, 2017, officers and men of the 1<sup>st</sup> respondent in company with the 2<sup>nd</sup> Respondent stormed the office of the Applicants and without any prior invitation as is customary with the police and without any valid warrant of arrest, arrested the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who were in the office as the 3<sup>rd</sup> and 4<sup>th</sup> respondents were out of town

(n) That while the 2<sup>nd</sup> Applicant was subsequently released after a lengthy interrogation at Life Camp Police Station, Abuja and his international passport confiscated, the 1<sup>st</sup> Applicant was taken to Lagos state by last flight and detained till the evening of Wednesday 13<sup>th</sup> September 2017 on the direct instigation of the 2<sup>nd</sup> to 7<sup>th</sup> respondents, who provided the police with the necessary logistics and in fact the 2<sup>nd</sup> Respondent on ground vehemently refused that the 1<sup>st</sup> Applicant be granted bail and formally invited by the police

(o) That it was on the release of the 1<sup>st</sup> Applicant on Wednesday 13<sup>th</sup> September, 2017 that he was now given an official letter of invitation to give to the 3<sup>rd</sup> and 4<sup>th</sup> Applicants to appear in Lagos the next day being Thursday 14<sup>th</sup> September, 2017 less than twenty four(24)hours notice.

(p) That the above scenario clearly indicates to the Applicants that the respondents are on a predetermined mission to cause them harm. The Applicants are therefore sufficiently threatened that their fundamental rights will be curtailed using the instrumentality of the Police.

The Applicants' learned counsel while moving the motion summarily said the Application is supported by an affidavit verifying the statement of facts, statement of facts and an affidavit in support of the motion to which six(6) documents were exhibited. He adopted the written address filed along with the motion and also referred the court to cases of **EFCC VS DIAMOND BANK(2018)8NWLR(P1620)61, GUSAU VS UMERIKE(2012)28 WRN11 and A.G.F VS AGBAKOBA(1999)3 SCNJ** which he did not supply or make available for the court.

He finally urged the court to grant the application.

The learned counsel to the 1<sup>st</sup> Respondent said they have filed a counter affidavit of a paragraphs to which 5 exhibits were annexed.

He submitted that they denied all the allegation made by the applicants in the their supporting affidavit and their reliefs as there is nothing to show that the 2<sup>nd</sup> Applicant's passport was seized by the 1<sup>st</sup> respondent as nothing of such is contained in their reliefs

Finally, he urged the court to dismiss the entire application.

According to the 2<sup>nd</sup> – 7<sup>th</sup> respondents learned counsel, he said that they have filed a 9 paragraphs counter affidavit in opposition to the grant of this application to which exhibit A1 is attached. He adopted their written address as their argument in opposing the grant of this application. He submitted further that it is their civic responsibility to report suspicious scam or fraud or crime to police and that how police carried out their function not their business. He finally urged the court to dismiss the Applications

In short reply, the Applicants' counsel said they filed further affidavit and reply on point of law to the 2<sup>nd</sup> -7<sup>th</sup> Respondents response. He relied on all the affidavits and adopted the reply on point of law as his further argument in persuading the court to grant the application.

It is pertinent to say at this juncture that the facts of this case is as stated in the verifying facts in support of this motion save that the applicants have paid N5,000,000 to the 2<sup>nd</sup> – 7<sup>th</sup> Respondents out of the whole money deposited by them as part payment of their allocated plots upon which they had started developing before it was demolished by the Federal Capital Development Control. See the affidavit in support, counter-affidavit of the 2<sup>nd</sup> – 7<sup>th</sup> respondents.

The applicants formulated one issue for determination while the 2<sup>nd</sup> – 7<sup>th</sup> respondents formulated two issues for determination.

The sole issue formulated by the Applicants is as follows: 'whether or not from the circumstances of the case the Applicants are entitled to the reliefs sought'?

While the two issues submitted for determination by 2<sup>nd</sup> – 7<sup>th</sup> respondent are as follows:

(a) Whether the 2<sup>nd</sup> -7<sup>th</sup> Respondents have a right to report the commission of a crime against to the 1<sup>st</sup> Respondent and if yes, does that constitute a breach of the Applicants Fundamental Right?

(b) Whether considering the Applicants affidavit in support of motion and the relief sought and exhibit 'A1 , the Applicants have made out any case to be entitled to the reliefs sought

I want to adopt the sole issue formulated by the Applicants' learned counsel as it can subsume the two issues submitted for determination by the 2<sup>nd</sup> -7<sup>th</sup> Respondents.

The main question begging for answer is considering the facts and circumstances of this case, can we say with all seriousness that Applicants are entitled to the reliefs sought or can we blame the 2<sup>nd</sup> – 7<sup>th</sup> Respondents for reporting the matter to the Police.

It is the argument of the Applicants that by the provisions of S.46(i) of the 1999 constitution as amended, a person is not required by law to sit down and wait until his rights are infringed upon before he could approach court and seek for redress.

They submitted further that where parties have a dispute over a land transaction, the police is not the appropriate place to take the matter to. They referred the court to the case of **IGWE VS EZEANOCHIE(2010)43 WRN 123.**

According to 2<sup>nd</sup> – 7<sup>th</sup> Respondent, it is their contention that the combined effects of section 4 and 24(i)(b) of police Act, section 18 of administration of criminal Justice Act, police are empowered to accept complain from any person who made such complaint to them for the purposes of investigation. They further argued that they cannot control the way that the 1<sup>st</sup> Respondent goes about the complaint they made. For all these arguments, they cited the case of **ISHENO VS JULIUS BERGER NIGERIA PLC(2008) Vol. 4 MJSC 104.**

To start with, I must make it abundantly clear that, the issue of land transaction between the Applicants and 2<sup>nd</sup> – 7<sup>th</sup> Respondent is not before this court to decide by this motion. What is before the court to pronounce upon is that whether the report or complaint made by the 2<sup>nd</sup> – 7<sup>th</sup> respondents to the police is right or wrong and the consequences of the police action vis-a vis the fundamental rights of the Applicants.

I think the matter is simple and I am not prepared to beat around the bush.

I agree entirely with the learned counsel to the respondents that section 4 of Police Act empowers them to prevent, defect, apprehend, maintain law and order and prosecute offenders.

And I agree with the 1<sup>st</sup> Respondent counsel that they have acted properly within the law having swung to action upon complain laid before them which led to the arrest and detention of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants

It is trite law that a citizen who is arrested by the police in the legitimate exercise of their duty and on ground of suspicion of having committed an offence cannot sue the police in court for breach of his fundamental rights. See **OKANO VS COP&ANO(2001) ICHR 407.** And it is in evidence that the 1<sup>st</sup> applicant was released on bail on the day he was arrested while the 2<sup>nd</sup> applicant was released on bail on the following day. See paragraph 16 of affidavit in support. There is no element of torture, beating and unnecessary detention made against the 1<sup>st</sup> Respondent.

Based on the evidence before the court, the applicants arrest and detention considering the circumstances of this case is in order and therefore lawful.

In effect, therefore and without much ado, the Applicants are not entitled to any of their reliefs sought.

In short, this application lack merits and it is therefore refused.

.....  
**Signed Judge**