

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT NO: FCT/HC/CV/1020/19**

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

AMACHIGH ERDOO.....APPLICANT

AND

INSPECTOR GENERAL OF POLICE

(NIGERIAN POLICE FORCE (NPF)RESPONDENT

Appearances:

T. J. Aondo Esq appearing with Rose Adole Esq, Patience Idi Esq for the applicant.

JUDGMENT

By the originating motion with No. CV/1020/19 dated and filed the 6th of February, 2019 whereof the applicant seeks for the following:

- 1) A declaration that the arrest of the applicant on Monday 22nd November, 2018 at her Matrimonial home in Tungan Wakili, Dei Dei Abuja and her continue detention without any legal justification is unconstitutional, illegal and a violation of her fundamental human rights as guaranteed under the constitution of the Federal Republic of Nigeria 1999 (as amended);
- 2) An order compelling the respondents to release the applicant from unlawful detention forthwith;
- 3) A declaration that the arrest of the applicant and continuous detention of the applicant on Monday 22nd November, 2018 without arraignment is unconstitutional, illegal and a violation of her fundamental right as guaranteed under the constitution of the Federal Republic of Nigeria (as amended);
- 4) An order of perpetual injunction restraining the respondents jointly and severally either acting by themselves or through their

privies, servants, agents or anybody howsoever called or described from further harassing, intimidating, unlawfully arresting and detaining the applicant at the Asokoro Police Station, Abuja;

- 5) An order of this Honourable Court compelling the respondents to jointly and or severally pay the applicant the sum of N10,000,000= (Ten Million Naira) only being damages for the unlawful arrest and continued detention of the applicant at Asokoro Police Station on Monday 22nd November, 2018; and
- 6) For such further or other order as this Honourable Court may deem fit to make in the circumstances of this application.

The motion is supported by seventeen paragraphed affidavit deposed to by one Charles Amachigh, being the husband of the applicant and in which the applicant relies upon all the averment contained in the affidavit.

The applicant also filed a statement of fact and the grounds upon which the application was filed to include:

- a) The applicant's arrest and continued detention is a violation of her right to personal liberty and is contrary to sections 34, 35, 36, 37 and 38 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 5, 6, 7 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. 10 revised laws of the Federation 2009;
- b) The continued detention of the applicant is a breach of her fundamental rights guaranteed under sections 34, 35, 36, 37 and 38 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 5 & 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. 10 revised laws of the Federation 2009.
- c) The applicant's constitutional right to presumption of innocence, personal liberty and freedom of movement has been violated by the respondents;
- d) The applicants are entitled to redress in the manner sought before this court.

Attached to the application are the following documents:

- 1) Application for bail of the applicant written to the Inspector General of Police through the Commissioner of Police FCT

command dated the 22nd day of January, 2019 by the solicitor of the applicant;

- 2) Letter of complaints against the continuous unlawful detention of the applicant by the Nigerian Police since 22nd November, 2018 written to the Chairman, Police Service Commission dated the 4th day of February, 2019.

The counsel to the applicant filed a written address in support of the motion which he adopts on his oral argument.

The respondents were duly served in which the 2nd respondent took a step to have filed an application for its name to be removed and the application was so granted thereby removing the name of the 2nd respondent, however, the 1st respondent did not deem it appropriate to file a response in opposition to the application in spite of the service of the process and the hearing notice.

This inaction by the 1st respondent could have been treated as an admission to all the averments as are contained in the supporting affidavit, however, for the facts that the reliefs sought are mainly declaratory, the claimant has to succeed on the strength of his claims and not on the admission of the defendants. See the case of **Aerobell Nig Ltd v. N.D.I.C. (2018) All FWLR (pt 947) p. 1240 at pp. 1267 – 1268 paras. H –B** where the Court of Appeal Lagos Division held that an originating process seeking for declarations and enforcement orders must be able to stand on its own. The applicant must be able to prove that he is entitled to the declarations sought from the trial court. An admission by a defendant or defence in defence will not relieve the applicant of this burden. By the authority cited above, it could be inferred to mean that this court has to evaluate the affidavit evidence of the applicant with a view to see whether the applicant merit the grant of the application. See the case of **Mbang v. Janet (2015) All FWLR (pt 767) 768 at 784 para. E.**

Thus, by paragraph 8 of the affidavit in support of the application, it is deposed to the fact that the applicant was arrested by the Nigerian Police Force on the 22nd of November, 2018 to the Gwagwa Police Station where upon she was subsequently detained by officers of the C.I.D. FCT Command at the Asokoro Police Station, and by paragraph 9, the arrest and detention was in connection with an allegation levelled against her by Mr. Ezekiel Iorhule over his missing child of two years and

that the child had earlier on visited the applicant's home with his elder one to chat with her children.

It is in the affidavit that the applicant's arrest and continuous detention has caused a lot of physiological trauma as hardship to the applicant, the four children and his in-law's parents.

It is also in the affidavit that the applicant was informed that the continued detention is unlawful and there is need to restrain the respondents from further breach of the applicant's fundamental right.

In his written address the counsel to the applicant raised one issue for this court to determine:

“whether the respondent is in breach of the applicant's fundamental rights as guaranteed under the constitution of the Federal Republic of Nigeria 1999, as amended so as to be entitled to the relief sought in this application?”

The counsel submitted that the applicant was arrested by the police on the 22nd November, 2018 and has been in detention without being arraigned before any court of competent jurisdiction thereby violating her right, and to this he cited section 35 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) to the effect that the constitution does not confer power on the respondent to arbitrarily deprive citizens of their right to personal liberty, and he cited the cases of **Oyewole Fashawe v. A.G. Federation & 3 Ors (2007) CHR 80 at 100 paras C – D** and **Johnson v. Lufadeju & Anor (2002) 8 NWLR (pt 768) at 192**. He also cited the cases of **FCDA v. Joshua Gyuhu Sule (1994) 3 NWLR (pt 332) 257**, **Bello v. The Dicesean Synod of Lagos (1973) 3 E.C.S.C.R. (pt 1) at 334**.

The counsel further submitted that where there is evidence of arrest, the burden will then be shifted on the respondents to prove that the arrest is lawful, and he referred to **Fajemiroken v. CB. (CL) Nig Ltd (2002) 10 NWLR (pt 334) CA at 111 – 112**.

The counsel further submitted that by reason of the unlawful arrest and detention, the applicant has suffered severe damage to her reputation, the entire family life and health, and he referred to the case of **I.G.P. v. Ikpila (2016) 9 NWLR (pt 1517) p. 288 paras. F – H**.

He further submitted that the applicant having established that she suffered the wrongs, and she is entitled to redress, and he cited the case of **Comptroller of Nigerian Prisons v. Adekanye (1999) 10 NWLR (pt 623)**

p. 400 to the effect detention of a man by a fellow man is a violation of the law of a God and man. He further cited the cases of **Okonkwo v. Ogbodu (1996) 5 NWLR (pt 449) p. 420 at 435 para. F** and **Nwangwu v. Duru (2002) 2 NWLR (pt 751) p. 265 at 279 paras. E – G**. the counsel then urged the court to grant the reliefs sought by the applicant.

Thus, let me adopt the already formulated issue for determination as I found it so apt, that is to say:

“ whether the respondent is in breach of the applicant's fundamental right as guaranteed under the constitution of the Federal Republic of Nigeria 1999 (as amended) so as to be entitled to the reliefs sought as this application?

The fundamental right to personal liberty is very sacrosanct and should not be violated, that is to say the right to personal liberty is one that should be construed in favour of the citizen or an accused person. See the case of **Assistant Inspector General of Police v. Ezeanya (2016) All FWLR (pt 830) 1351 at 1367 paras. A – D** where the court of Appeal Benin Division held that the constitution of the Federal Republic of Nigeria (as amended) is unambiguous, clear and categorical about the rights of Nigerian citizens, and it does not leave anybody in doubt as to what should be done or as to how a citizen should proceed when it comes to matters of curbing or curtailing a citizen's right section 35 and 36 of the constitution are aimed primarily at protecting individuals from unlawful deprivation of their freedom through abuse of power by law enforcement and security agencies.

It is in the affidavit of the applicant that the applicant was arrested upon a complaint made against her for the lost of a child, and by this it could be inferred that she is reasonably suspected of having committed a crime, and if that is the case, section 35 (4) of the constitution of the Federal Republic of Nigeria 1999 (as amended) will come to limelight and which provides.:

“any person who is arrested or detained in accordance with subsection 1 (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:

- a) Two months from the date of his arrest or detention in the case of a person who is in custody is or is not entitled to bail;
- or

b) Three months from the date of his arrest or detention in the case of a person who has been released on bail.

See the case of **Agundi v. Commissioner of Police (2013) All FWLR (pt 660) p. 1259 at pp.1259-1296 paras. F – A and p. 1297 paras. F-G**. By this, it could be inferred to mean that any person who is reasonably suspected of having committed a crime must be brought before a court of competent jurisdiction, within a reasonable time. The reasonable time here means a period of two months if a person is in custody or if he is not entitled to bail. In the instant case the applicant is said to have been arrested upon a complaint by someone else for a missing child and she has been in detention since the 22nd day of November, 2018, this is barely one year and some days. Certainly the detaining authority is in breach of the above provision of the constitution.

It was held in the case of **Ahuruowye v. Ikonne (2015) All FWLR (pt. 861) p. 1244 at pp. 1293 – 1294 paras. H – C** that the right to personal liberty as is enshrined in section 35(1) is a right which needs for the courts to stress every nerve to enforce it and to be proactive and if necessary, to show their impetuous readiness to complement or surpass the efforts of the executive by an inspiring approach to the definition or recognition of circumstances of human right where appropriate or feasible.

It is on the above premise that I have to declare that the continued detention of the applicant from the 22nd day of November, 2018 till date without being taken to any court of competent jurisdiction for arraignment is against the provision of section 35 (4) (a) (b) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and this act of detention is completely unconstitutional, unlawful, unwarranted and illegal.

Thus, when a person is arrested or detained by the police in connection with an allegation of reasonable suspicious of a crime and they are actively pursuing investigation of the matter, the duty of the police in the appropriate case is to offer bail to the suspect and/or bring him before a law court within one day or two days as the case may be, no matter under whatever section of the law he might have been charged. See the case of **Assistant Inspector General of Police v. Ezeanya (supra)**. In the instant case, I have to invoke Order X1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 which provides:

“at the hearing of any application under these Rules, the court may make such order, issue such writs, and give such directions as it may consider just or the Fundamental Right provided for in the constitution or African Charters on Human and people’s Rights (Ratification and Enforcement) Act to which the applicant may be entitled.”

By the above quoted provision, this court is empowered to use its discretion to give an order or issue any direction as it may consider just, and as in the instant case, I have to give an order as the applicant may be entitled to.

I therefore, order that, the applicant having been reasonably suspected of committing an offence, be arraigned by the respondent before the court of competent jurisdiction forthwith.

Alternatively the respondent is hereby ordered to release the applicant on bail pending the conclusion of the investigation forthwith.

On the issue of the claim of N10,000,000= Damages made by the applicant, I have to refer to section 35 (6) of the constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

“any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person, and in this subsection “the appropriate authority or person” means an authority or person specified by law.”

See the case of **Ahuruonye V. Ikonne (supra)** where the court held that by the above quoted provision in the cases involving an infraction of the fundamental rights of a citizen, such damages that will serve as a deterrent against naked, arrogant, arbitrary and oppressive abuse of power ought to be acknowledged by the court, but such award must not be excessive. In the instant case what the applicant claims is to my mind very excessive. The court is fixing an amount for the infringement of fundamental rights, the following factors, among others, will be taken into consideration:

- a) The frequency of the type of violation in recent times;
- b) The continually depreciating value of the naira;
- c) The motivation for the violation;
- d) The status of the applicant;

e) The undeserved embarrassment meted out to the applicant including procuring losses;
and (f) the conduct of the parties generally, particularly the respondent. See the case of **Attah V. Inspector General of Police (2015) All FWLR (pt 805) p. 112 at 145 paras. C-E.**

In the instant case, the applicant has not provided sufficient evidence to show the existence of those guidelines to enable this court assess the damages, and to this, I have to award what is reasonable in the circumstances.

The sum of N500,000.00 is hereby awarded to the applicant payable by the respondent as damages for the psychological trauma caused to her due to prolonged unlawful detention.

Thus, the counsel to the applicant made mention of section 35 (7) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and which provides:

“Nothing in this section shall be construed:

a) in relation to subsection (4) of this section, as applying in the case of a person arrested and detained upon reasonable suspicion of having committed a capital offence.”

In a nutshell what this subsection provides is that if the offence to which the applicant is reasonably suspected to have committed is a capital offence, then the provision of section 35(4) of the constitution as considered above will not apply.

In the instant case, and in the affidavit in support of this application it is not mentioned whether the offence which the applicant is reasonably suspected to have committed is a capital offence or a non capital offence, and that is why the application is wholly considered on the premise that the offence to which the applicant is reasonably suspected to have committed is a non capital offences as it relates to missing of a child, hence this subsection 7 (a) of section 35 of the constitution of the Federal Republic of Nigeria is not taken into consideration.

Signed
Hon. Judge
4/12/2019