

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 28TH DAY OF JANUARY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/065/2018

BETWEEN

LUKMAN ADEDEJI BADMUS

--- APPLICANT

AND

**1. THE ECONOMIC & FINANCIAL CRIMES
COMMISSION [EFCC]**

2. THE INSPECTOR-GENERAL OF POLICE

3. THE COMMISSIONER OF POLICE FCT, ABUJA

RESPONDENTS

JUDGMENT

The applicant commenced this action on 1/11/2018 vide Originating Motion for the enforcement of his fundamental rights. In the Amended Originating Motion filed on 17/9/2019, the applicant seeks the following reliefs as set out in the Statement in support:

1. A declaration that the applicant was unduly detained, harassed and subjected to inhuman and degrading treatment while in the custody of the 2nd respondent for about 23 days without bail and that same amounted to a violation of applicant's guaranteed constitutional rights.

2. A declaration that the multiplicity of investigation of the same matters or related matters by each of the respondents amounts to torture, harassment and degrading treatment and a gross violation of the applicant's constitutional rights.
3. An order directing the respondents to arraign the applicant before a competent court of law if he is reasonably suspected to have committed any offence.
4. An order restraining the respondents from further subjecting the applicant to incessant and frequent arrests and detention in respect of the matter or related matters without bringing or arraigning him before a Court of law.
5. And for such further or other order as the Honourable Court may deem fit and just to make in the circumstances of this case.

The applicant filed the following affidavits in support of the reliefs sought:

- a) 34-paragraph verifying affidavit filed on 17/9/2019; attached therewith are Exhibits A, B, C, D & E.
- b) 8-paragraph further and better affidavit filed on 17/9/2019.
- c) 2nd further and better affidavit filed on 17/9/2019 numbered paragraphs [a]-[l]; attached therewith is Exhibit A.

Learned counsel for the applicant, S. M. Nwosu Esq., filed a written address along with the Amended Originating Motion on 17/9/2019. Mr. Nwosu also filed a reply on points of law along with the further and better affidavit.

In opposition, Yusuf Musa, a litigation secretary in the 1st respondent, filed a 24-paragraph counter affidavit on 30/10/2019; attached therewith are Exhibits EFCC 1, 2, 2A, 3 & 3A. Aishatu Ibrahim Esq., learned counsel for the 1st respondent, filed a written address. The 2nd & 3rd respondents did not file any process and did not attend Court in spite of hearing notices served on them. At the hearing of the suit on 31/10/2019, Tamunotonye Ekundayo Esq. adopted the applicant's processes while Aishatu Ibrahim Esq. adopted 1st respondent's processes.

In his verifying affidavit, the applicant stated as follows:

1. He is the managing director of A-One Executive Professional Services Ltd.
2. By a letter dated 7/7/2015 [Exhibit A], Federal Capital Territory [FCT] Administration awarded a contract to Tripod Resources Ltd. for provision of access road to Senate Staff Mass Housing quarters, Kuje, Abuja. The parties entered into a contract agreement dated 10/8/2015 [Exhibit B]; the contract agreement was executed by Obi Ogoh, representatives of Tripod Resources Ltd. and FCT Administration.

3. Tripod Resources Ltd. and Obi Ogohwere unable to mobilize to the site and commence work; and FCT Administration was in the process of revoking the said contract worth N680,561,817.08.
4. The applicant narrated how Obi Ogoh appealed to him to partner with Tripod Resources Ltd. for the job to be executed. He agreed to partner with Tripod Resources Limited in the name of his company. The Project Partnership Agreement dated 11/7/2017 is Exhibit C.
5. His company provided the required capital for the first phase of the project with the hope that mobilization will be paid within one month of commencement as provision for funding the project was made in the 2017 budget to the tune of N180,000,000.00.
6. With the assurances by Tripod Resources Ltd. and Obi Ogoh, he went all out to raise the required funding by borrowing monies on interest from various lenders and sub-contractors totalling 22. He also engaged the services of other vendors who rendered various services towards the execution of the project on credit.
7. The 22 sub-contractors, the amount of credit given by each of them and the amount he has repaid to them are set out in paragraph 12 of the affidavit. The total amount of credit given by the sub-contractors is N170,500,000.00 while the total amount he has repaid is N38,900,000.00.
8. After about 3 months of construction, he did not receive any payment from Tripod Resources Ltd. and Obi Ogoh; and he was indebted to

various sub-contractors. His creditors began to file petitions against him in almost all the security agencies calling him a fraudster and a cheat.

9. When he honoured the invitation of the Economic and Financial Crimes Commission [EFCC] and further investigations into the petition at EFCC, it was discovered to his surprise that Obi Ogo had collected payment through the Skye Bank account of Tripod Resources Ltd. to the tune of N103,000,000.00 from FCT Administration since 2016 even before the said Partnership Agreement.
10. Based on the investigations carried out by officers of EFCC and the advice by the officers, additional agreements and resolutions were executed between himself, Tripod Resources Ltd. and Obi Ogo as an addendum to the first Project Partnership Agreement; the additional agreement is Exhibit D.
11. Shortly after executing the additional agreements, FCT Administration paid N79,000,000.00 out of which Tripod Resources Ltd. and Obi Ogo paid him the sum of N42,000,000.00 as his share on the project and another N7,000,000.00 for a debt owed with respect to a separate transaction.
12. Due to the misrepresentation of facts by Tripod Resources Ltd. and Obi Ogo and the diversion of the project funds, he became indebted to various creditors to the tune of N170,500,000.00.

13. He has continuously been arrested, detained, molested by respondents on the complaint of the various creditors who he owes on account of the contract. Since May 2018, he has spent every week at the different offices of the respondents.
14. He is compelled by the respondents to make an appearance and payment of specific sums to offset the debt owed to his creditors on a weekly basis regardless of the fact that the respondents are not debt recovery agencies.
15. For his failure to produce the specific sum requested by the respondents, he was detained for days, subjected to untold hardship and he was denied the opportunity to make any contact.
16. The respondents have failed to charge him before any competent court for any crime but have mandated his presence in their various offices on a weekly basis.
17. Attendance at the respondents' offices on a weekly basis has deprived him the opportunity to source for alternative means of raising funds to pay off his creditors.
18. He has suffered grave health challenges because of the constant detention by the respondents; his medical report is Exhibit E. He is being treated like a common criminal for a purely contractual matter without being charged to court for any crime.

In the further affidavit, the applicant stated that:

1. He has been constantly harassed by officers from the offices of all the respondents particularly the office of the 1st respondent. The officers of the 1st respondent namely: Alex Achonu, Geradin, Nwosu and ChellenoOparahave on a weekly basis asked him to present himself at their headquarters at Jabi District, Abuja for the civil matter he had with Timothy [CEO of Tibigan].
2. He has gone to the various offices of the respondents on a weekly basis to make reports and pay in various sums of money. He was made to write a statement at the 1st respondent's office on 17/12/2018 and LawalAnka was provided as his surety for his bail.
3. He has also been harassed by officers of the other respondents. The names of the officers of the 2nd& 3rd respondents, the days they arrested him and the number of days he was detained are stated in paragraph 6.

In the applicant's 2nd further and better affidavit, he stated that:

1. The petitions annexed by the 1st respondent [to the counter affidavit] are borne out of civil transactions and agreements.
2. The entire transaction between him and the petitioners who were sub-contractors was a resultant effect of a failed parent contract with Tripod Resources Ltd., Obi Ogoh and FCT Administration; he has instituted a civil action against all of them. The writ of summons is Exhibit A.

3. The respondents have made it impossible for him to do any business as he is constantly arrested on a weekly basis, some of which consists of 2 to 5 days detention before he is released.
4. If he has committed a crime it shouldn't take the respondents a full year to commence a criminal trial against him as he has made statements in response to the various petitions to the respondents.
5. The cheques issued to the petitioners were borne out of genuine expectance of payment to him, which failed.

In the 1st respondent's counter affidavit, Yusuf Musa stated that:

1. Detectives Alex Achonu, Geraldine and AliyuBakoDoma[members of the investigating team detailed to investigate the cases against the applicant] and Aishatu Ibrahim [counsel to the 1st respondent] informed him of the following facts, which he verily believed to be true:
 - i. On 5/6/2018, the 1st respondent received a petition [Exhibit EFCC 1] from one AnslemOkore and Charles Nwankwo both of Ansel Computers Ltd. against the applicant. The petition was assigned to Extractive Industry Fraud Section (EIFS) for investigation.
 - ii. The petition alleged that the applicant obtained 50 units of HP desktop computers by false pretence, which he claimed was for supply to Tertiary Education Trust Fund (Tetfund).

- iii. It was further alleged that the applicant issued cheques for the sum of N9,000,000.00 being cost of the computers which was returned unpaid upon presentation at the bank due to insufficient funds in his accounts.
- iv. In the course of investigation into the petition, the complainants were invited and they made statements; the statements of the complainants are Exhibit EFCC2 & 2A.
- v. The applicant was also invited. His statement was taken and he was promptly released on bail. Upon his release on bail, the applicant failed to make himself available in furtherance of investigation into the case.
- vi. On 10/7/2018, another petition was received by the EFCC from Timothy Ogbeye, Wele George and Mr. Vincent against the applicant wherein there was an allegation of cheating in respect of supplies made to the applicant. The petition was assigned to the Counter Terrorism and General Investigation Unit (CTGI) Team 9 on 13/8/2018.
- vii. The complainants were invited and they made statements; their statements are Exhibit EFCC3 & 3A. In course of investigation, the operatives of the 1st respondent called the applicant on phone inviting him to respond to the allegations against him but he refused to honour the invitation until the 12/12/2018.

- viii. On that day, the applicant made a written response to the petition and he was promptly released on bail to MuhammedYahayaEsq. and Mr.Lawal S. Ibrahim.
- ix. At all times the applicant visited the 1st respondent's office in furtherance of investigation, he was neither detained nor denied any opportunity to make any contact.
2. The applicant was never arrested, detained or molested by any staff of 1st respondent. No staff of the 1st respondent compelled the applicant to pay any amount to any creditor and he was never detained at any time for failure to pay any amount. No staff of the 1st respondent ever treated the applicant like a criminal.
3. The investigation into the allegation against the applicant is on-going and upon completion of investigation, a criminal charge will be filed when a *prima facie* case is established against the applicant.
4. Contrary to the depositions in the applicant's 2nd further and better affidavit, he was never detained by the 1st respondent in the course of investigating the petitions against him and the 1st respondent has never made any incessant call to the applicant.
5. The applicant has jumped administrative bail granted to him thereby frustrating investigation into the case.The grant of the application will prejudice the investigation by the 1st respondent and will make the applicant untouchable.

In his written address, learned counsel for the applicant posited that the issue for determination is whether the respondents can continuously subject the applicant to frequent arrest and detention at will in respect of the same matter or related matters without bringing him before a court of law.

The applicant's counsel stated that sections 35 and 36 of the 1999 Constitution [as amended] - which respectively guarantee the right to personal liberty and the right to fair hearing - form the bedrock of the applicant's case. He referred to the case of **Chief [Mrs.] Olufunmilayo Ransome-Kuti & Ors. v. Attorney General of the Federation [1985] 6 SC 245** to support the view that the fundamental rights guaranteed by the Constitution are sacrosanct. S. M. Nwosu Esq. argued that even though respondents have the power to arrest and detain any person reasonably suspected to have committed an offence, they are enjoined [and duty bound] to bring the person before a court of law within 24 hours where they do not release him on bail.

It was further argued that the respondents have not arraigned the applicant before a court of law, which shall after hearing the parties make an order in respect of his liberty. Rather, the respondents have resorted to detaining the applicant at will and on one occasion, he was detained for 23 days. Mr. S. M. Nwosu submitted that this is a clear breach of sections 35 & 36 of the 1999 Constitution [as amended]. He referred to **Military Governor v. Nwauwa [1997] 2 SCNJ 60**. He also submitted that the incessant detention of the applicant by the respondents is unlawful, illegal and unconstitutional.

In the reply on points of law, learned applicant's counsel stressed that even though a security agency cannot be stopped from investigating a complaint or carrying out its duties, no law allows any security agency to tamper with the fundamental rights of citizens. He pointed out that the officers of the 1st respondent listed in the further and better affidavit have constantly harassed the applicant with phone calls. Mr.Nwosu concluded that investigations do not last forever; if the applicant has been found to have committed an offence, he should be charged to a competent court for justice.

On the other hand, learned counsel for the 1st respondent is of the view that the issue for determination is whether the applicant has made out a case against the 1st respondent as to warrant the grant of the reliefs sought as contained in the motion paper.

The 1st respondent's counsel stated that by virtue of sections 6 & 7 of the Economic and Financial Crimes Commission [Establishment] Act, 2004, the 1st respondent is created to carry out investigations as to whether any person has committed an offence under the Act or other law relating to economic and financial crimes. Also, section 41 of the Act gives the 1st respondent all the powers exercisable by the Nigeria Police Force. The case of **Fewehinmi v. IGP [2000] 7 NWLR [Pt. 665] 481** was cited on the power of the Police to carry out investigate as to whether, or by whom, an offence has been committed. It was submitted that 1st respondent has the statutory duty to investigate the petitions against the applicant.

Aishatu Ibrahim Esq. further submitted that section 35[1][c] of the 1999 Constitution [as amended] empowers the 1st respondent to arrest a person upon reasonable suspicion of having committed an offence and to detain and release the suspect on bail upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. Thus, the 1st respondent was right to have released the applicant on bail on condition to ensure his appearance on a later date.

Learned 1st respondent's counsel also reasoned that the case of the applicant is aimed to shield him from investigation and prosecution. Aishatu Ibrahim Esq. referred to the case of **A.G. of Anmabra State v. Uba [2005] 15 NWLR [Pt. 947] 67** to support the submission that for a person to go to court to be shielded from criminal investigation and prosecution amounts to interference with the powers given by the Constitution to law officers in respect of criminal investigation.

Now, in the light of applicant's reliefs and the submissions of both counsel, the Court is of the view that the issue for determination is whether the applicant is entitled to the grant of his reliefs. The applicant's reliefs will be considered in turn.

Relief 1:

The applicant seeks a declaration that he was unduly detained, harassed and subjected to inhuman and degrading treatment in the custody of the

2nd respondent for about 23 days without bail and that same amounted to a violation of his constitutional right. In the Statement in support of the Originating Motion, part of the grounds for the reliefs is that the officers of the 2nd respondent on one occasion detained the applicant for about 23 days without bail under very harsh and severe condition. The deposition in paragraph 6 of the further and better affidavit supports this fact. This fact is not challenged as the 2nd respondent did not file any counter affidavit.

Section 35 of the 1999 Constitution [as amended] provides that every person shall be entitled to his personal liberty. However, by section 35[1][c], a person may be deprived of his liberty “... upon reasonable suspicion of his having committed a criminal offence ...”Section 35[4] thereof provides that a person arrested and detained in accordance with section 35[1][c] shall be brought before a court of law within a reasonable time. The expression ‘a reasonable time’ is defined in section 35[5] to mean [a] in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and [b] in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

By these provisions, where a person is arrested or detained upon reasonable suspicion of having committed an offence, he should be charged to a court of law within a reasonable time as defined in section 35[5]. Where the person is not charged to court as aforesaid, he should be released on bail. From the applicant’s affidavits, his arrest and detention by the 2nd respondent was

based on complaints made by sub-contractors and suppliers he was indebted to. The 2nd respondent has power to arrest and detain the applicant for the purpose of investigating the said complaints by virtue of section 35[1] of the 1999 Constitution [as amended]. However, the 2nd respondent was bound to comply with the provisions of section 35[4] thereof. Since the 2nd respondent detained the applicant for 23 days without charging him to court, I hold that relief 1 has merit and is hereby granted.

Relief 2:

In relief 2, applicant seeks a declaration that the multiplicity of investigation of the same matters or related matters by each of the respondents amounts to torture, harassment and degrading treatment and a gross violation of the applicant's constitutional rights. From the applicant's affidavits, some of the suppliers/sub-contractors wrote petitions against him to the respondents. It is deposed in the counter affidavit that Anslem Okore and Charles Nwankwo wrote the first petition [Exhibit EFCC 1] to EFCC while Timothy Obgbeye, Wele George and Mr. Vincent wrote the second petition [Exhibit EFCC 2] to EFCC. There is no deposition by the applicant that the petitions to EFCC were the same petition written to the Police.

As rightly stated by Aishatu Ibrahim Esq., the EFCC and the Police [i.e. the respondents] are statutorily empowered to investigate any criminal allegation or complaint made to them. Thus, there is no basis to grant the declaration sought by the applicant in relief 2. The relief is refused.

Relief 3:

The applicant seeks an order directing the respondents to arraign him before a competent Court of law if he is reasonably suspected to have committed any offence. It is trite that the respondents have the power to investigate complaints made to them and to prosecute the offender where they are satisfied that a *prima facie* case has been made against him. The Court is of the view that the Police, EFCC and other law enforcement agencies have the discretion to decide who to prosecute and when to prosecute an offender. See **Akpa v. State [2008] 14 NWLR [Pt. 1106] 72.** The Court cannot compel the respondents to prosecute the applicant. This relief is refused.

Relief 4:

Applicant seeks an order to restrain the respondents from further subjecting him to incessant and frequent arrests and detention in respect of the matter or related matters without arraigning him before a court of law.

In paragraphs 24 & 25 of his affidavit, the applicant stated that since May 2018, he has spent every week at the different offices of the respondents. In paragraph 3 of the further and better affidavit, he listed the officers of the 1st respondent who have asked him on a weekly basis to present himself at their Headquarters at Jabi, Abuja. In paragraph 6 thereof, the applicant listed the officers of the 2nd & 3rd respondents who have either invited him or arrested him on the various dates stated therein.

In paragraphs 9, 11 & 17 of the counter affidavit of the 1st respondent, Yusuf Musa deposed that: [i] investigation into the allegations against the applicant is still on-going; and [ii] the 1st respondent has never made incessant calls or arrest of the applicant.

Since the 1st respondent denied the allegation that it arrested and/or detained the applicant, the Court can safely infer that 1st respondent does not intend to arrest or detain the applicant while it continues with the investigation of the petitions against him. Thus, I hold the view that the 1st respondent will not be prejudiced by the grant of an order restraining it from arresting or detaining the applicant in respect of any matter connected with, or pertaining to, the petitions against him while it continues with the investigation. Besides, there is nothing before the Court to justify the arrest or detention of the applicant since he is on bail.

The 2nd& 3rd respondents did not deny the allegation of incessant arrests and detention of the applicant after his detention for 23 days. By section 46[2] of the 1999 Constitution [as amended] and Order XI of the Fundamental Rights [Enforcement Procedure] Rules 2009, the Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of protecting the rights of the applicant. I consider it appropriate to make an order to restrain the 2nd& 3rd respondents from further arresting or detaining the applicant in respect of any matter connected with, or pertaining to, the petitions against him.

CONCLUSION

In conclusion, I grant the following orders in favour of the applicant against the respondents:

1. A declaration that the detention of the applicant by the 2nd respondent for about 23 days was a violation of his constitutional right to personal liberty.
2. An order restraining the 1st respondent from arresting and/or detaining or further arresting and/or detaining the applicant in respect of the petitions against him while it continues with the investigation.
3. An order restraining the 2nd & 3rd respondents from further arresting and/or detaining the applicant in respect of the petition against him.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of counsel:

Uma Ntima Esq. for the applicant.