

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 2ND DAY OF MARCH, 2020

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 10

SUIT NO: CV/2536/2018

BETWEEN:

1. MR. GEORGE AKU

2. MR. EDIBO ANTHONY ATTAH

}

---- APPLICANTS

AND

1. COMMISSIONER OF POLICE

2. C.S. ORJI ESQ

}

---- DEFENDANTS

JUDGMENT

The application before the Court is pursuant to Section 46(1) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Order II Rules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Article 6 and 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act) and under

the inherent jurisdiction of this Court. The applicants herein are praying for the following reliefs:

- “1. An order admitting the applicants on bail pending the determination of this case as the case between the parties is purely civil and contractual and not criminal.*
- 2. A declaration that the arrest, detention, humiliation and the act of the 1st and 2nd Respondents forcing the applicants to continually pay sums of money to guarantee their liberty is the most flagrant trampling and violation of their fundamental rights and therefore unconstitutional and void.*
- 3. A declaration that the use of the 1st Respondent and his privies for recovery of an alleged debt in a contractual matter is unconstitutional and therefore null and void and of no effect.*
- 4. A declaration that the use of force and threat by the 1st and 2nd Respondents on the applicants to pay the sums*

of money totaling N750,000.00 (Seven Hundred and Fifty Thousand Naira) while in their custody in favour of the 2nd Respondent is a violation of the fundamental right of the applicants and therefore unconstitutional, null and void.

5. An order for payment by the Respondents jointly and severally in favour of the applicants the sum of N10,000,000.00 (Ten Million Naira) for the violation of their fundamental rights.

6. An order of perpetual injunction restraining the respondents either by themselves, their agents servants or privies however so called from arresting, detaining, threatening, humiliating or forcing the applicants to effect payment through the 1st and 2nd respondent over a contractual matter.”

The application is supported by a 20 paragraphs affidavit duly sworn to by the 2nd applicant. Also in support

is the Statement showing the name and address of the applicants, the reliefs sought and the grounds upon which the reliefs are sought. Learned Counsel to the applicants **Charles H.T. Uhegbu Esq** also filed a written address in compliance with the Fundamental Rights (Enforcement Procedure) Rules, 2009.

Counsel raised 3 issues for determination as follows:

- “1. Whether the applicants fundamental rights have been breached.*
- 2. Whether the applicants fundamental human rights are indeed in danger of being further violated.*
- 3. Whether the applicants are entitled to the reliefs sought.”*

In response, the 1st respondent filed 13 paragraphs counter affidavit supported by a written address duly adopted by **Wilson Madaki Esq**. Attached are exhibits. Three issues were raised in the written address as follows:

- “1. Whether the applicants have made out a case under the Fundamental Rights (Enforcement Procedure) Rules that will entitle him to the reliefs sought in his application.*
- 2. Whether the invitation of the applicants that they stood surety for Dr. Mrs. Scholastica Emerole, constituted violation of their fundamental right.*
- 3. Whether this Court can restrain the 1st Respondent from the performance of his statutory duties.*

On his part the 2nd respondent filed a counter affidavit of 37 paragraphs. Attached are several documents. Also in support is a written address duly adopted by Obiora Ilo Esq. A sole issue was raised therein for determination. The issue is;

“Whether in the circumstance, the applicants fundamental rights have been breached as claimed by the applicants in their application to warrant the reliefs sought therein.”

The applicants filed further and better affidavits in answer to the counter affidavit filed by the 1st and 2nd respondents. The 2nd Respondents filed a counter affidavit to the further and better affidavit of the applicants.

All the arguments and submissions of learned counsel are on record. This includes the submission of counsel to the applicants abandoning relief No. 1 as they are now on bail.

From the averments in the supporting affidavit, counter affidavit and the further and better affidavits filed by the applicants, one issue is germane for determination; that is;

“Whether the applicants are entitled to the reliefs sought in this application.”

Fundamental right is a right guaranteed in the Nigeria constitution and it is a right, which every person is entitled to when he is not subject to the disabilities enumerated in

the constitution to be enjoyed by virtue of being a human being. See Odogwu vs. A.G Federation (1998) 6 NWLR (part 457) 632, W.A.E.C. vs. Adeyanju (2008) 6 MJSC 1 at 33. It must be stated also that every human being has certain fundamental rights which every individual and government must uphold and respect. See Universal Declaration of Human Rights 1948 and African Charter on Human and Peoples Right 1981.

Now the summary of the case of the applicants is that sometime in 2016 they stood as sureties for one Scholastica Chizuibe over a financial transaction with the 2nd respondent. Cheques issued by Mrs. Scholastica to the 2nd respondent bounced, and he made a criminal complaint to the Police. Mrs. Scholastica however ran away and the applicants have been arrested and detained three times since September, 2016 on the ground that if they fail to pay the money they will be continually detained.

The applicants averred that they were arrested on the 13/6/2018 and released on the 19/6/2018 a period of 8 days thereby violating their fundamental rights to freedom. They have been on constant invitation to the Police who have asked them to be paying N200,000.00 (Two Hundred Thousand Naira) monthly installment, until the money owed by Mrs. Scholastica is fully repaid.

The 1st respondent on the other hand claimed that on the 14/4/2016 the office of Deputy Inspector General of Police (DIG) FCIID received a petition from one Chris Ozongwu Esq on behalf of the 2nd respondent alleging Criminal Breach of Trust and Issuance of dud cheque against one Mrs. Scholastica. That the applicants stood as sureties to Mrs. Scholastica and promised to produce her any time until the case is finally disposed off or charged to Court. It was when Mrs. Scholastica jumped bail that the applicants were invited and given three months to produce her. At the expiration of the three months, the applicants

reported to the Police with an Undertaking to pay the 2nd respondent the sum of N6,190,000.00 (Six Million, One Hundred and Ninety Million Thousand Naira).

That the applicants were subsequently charged before Magistrate Court 13 Wuse Zone 2 for Screening of Offender. The 1st respondent denied ever detaining or threatening to detain the applicants.

On his part, the 2nd respondent also stated that when Mrs. Scholastica was arrested and detained, the applicants came and applied for her bail and stood as sureties for her. That when Mrs. Scholastica jumped bail, the applicants were given two options, either to produce her or be arraigned before the Court. That the applicants were arrested by the Police on the 11/4/2018 and were released on the 12/4/2018 upon the bail application of one Mr. Adams Ogabo. The 2nd respondent averred that the applicants approached him to settle the matter and

proposed to pay the money owed. They have so far paid the sum of N800,000.00 (Eight Hundred Thousand Naira). That his petition to the Police was as a result of the issuance of dud cheque and criminal breach of trust against Mrs. Scholastica.

The applicants in their further affidavit in response to averments in 1st respondents counter affidavit have admitted being charged to Court on the 7/2/2019 but however averred that it was after the filing of this suit that the 1st respondent ran to file the suit to avoid liability.

On the 2nd respondents counter affidavit, the applicants have averred in the further and better affidavit that between 2014 - 2019, they have been arrested and detained three times and on each occasion, it was more than 48 hours.

The position of law is that unless and until a party's breached right comes within the purview of those rights as

clearly protected by constitution, the constitutional provision and the adjectival arrangement equally put in place cannot be exploited to remedy whatever the party has suffered. See Ejefor vs. Okeke (2000) 7 NWLR (part 665) page 363 at ratio 6

The applicants have averred that they were arrested on the 13/6/2018 and released on the 19/6/2018 a period beyond the Constitutional 48 hours thus infringing on their fundamental rights.

The law is that in an action for unlawful arrest and detention in breach of a party's constitutional right to freedom, the onus is on the defendant to prove that the arrest was on reasonable grounds. See Sky Power Airways Ltd. vs, Ajuma Olima & Anor. (2005) 8 NELR (Part 957) page 224.

In other words, the onus is on the person who admits detention of another to prove that the detention was lawful.

See Fajemiroken vs. Commercial Bank (Credit Lyonnais) Nig Ltd & anor (2002) 10 NWLR (part 774) page 95. Similarly, in Jimoh vs. A.G. Federation (1998) 1 HRLRA page 513, the Court held;

“The burden of proving the legality or constitutionality of the arrest and or detention of a person is on the arresting authority. Therefore, it is the respondents duty to justify the arrest of the applicant. Where the respondents, having admitted the arrest and detention of the applicant, the onus is on them to prove that such arrest or detention is lawful.”

See also Iyere vs. Doru 5 NWLR (part 44) page 665 SC,
Abiola vs. Abacha (1998) 1 HRLRA page 453.

The 1st respondent confirmed the arrest and detention of the applicants but qualified the period of arrest to be one (1) day between 11/4/2018 to 12/4/2018. The bail

bond for release of the applicants is attached to the 2nd respondent's counter affidavit. In the applicants further and better affidavit it was averred that they were kept in detention beyond 48 hours on three occasions between 2016 to 2019. The applicants however did not rebut the evidence that they were arrested on 11/4/2018 and released 12/4/2018 going by the bail bond signed by their surety one Mr. Adams Ogabo. The application dated 12/4/2018 reads thus:

"APPLICATION FOR BAIL

I humbly wish to write and apply for the bail of the following persons Mr. George Aku and Anthony Edibo who are my brothers and detained in your custody for an alleged offences of criminal conspiracy and Screening of Offender.

I promise to produce them at anytime they are needed until the case is disposed off and I will be

grateful if my humble application will be given due consideration and approved.

Thanks.”

Now, to determine the justification of the applicants arrest, recourse must necessarily be made to Section 4 of the Police Act Cap 359 LFN (1990) Cap P19 LFN (2004) which provides thus:

“The Police shall be employed for the prevention and detection of crime, apprehension of offenders, the preservation of law and order; the protection of live’s and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required by them by, or under the authority of this or any other Act.”

Further Section 24(1)(a) of the same Act, empowers them to arrest without a warrant;

“Any person whom he finds committing any felony, misdemeanor or simple offence or whom he reasonably suspects of having committed or being about to commit any felony, misdemeanor or breach of peace.”

From these provisions it is clear that the 1st respondent is empowered by the Act, and acted within the bounds of his duties having suspected the applicants for Criminal conspiracy and Screening of Offender. It is a basic and settled elementary principle of law that he who asserts must prove and that a claimant must succeed on the strength of his case and not on the weakness of the defence. See Section 137(1) of the Evidence Act, 2011, COP vs. Oguntayo (1993) 6 NWLR (part 299), Ahmed vs. Abu & anor (2016) LPELR - 40261 (CA), Fashanu vs. Adekoya (1989) 6 SC 83, Olowu vs. Olowu (1985) 3 NWLR (part 13) 372.

The applicants by their positive assertion have the duty and burden to discharge before the Court showing positive unequivocal proof of the fact of detention between 2016 and 2019. The applicants needed to have done more by positive evidence as to dates as the burden of proving their case rested solely on them. In this instance, it was well within the powers of the 1st respondent to arrest the applicants for the alleged offence of Screening of Offender. No evidence was given in rebuttal of the fact that the arrest was made on 11/4/2018 and released on 12/4/2018. Therefore, the Court finds unmeritorious the prayer sought for an order declaring the arrest and detention of the applicants by the respondents. I hold also that there was no humiliation of the applicants.

As regards the 2nd leg of prayer No. 2, prayers 3 and 4, the question is whether the Police by their action or inaction has taken up the role of debt recovery agents?

Under Section 4 of the Police Act, the Nigerian Police are given the duty to prevent crime, detect crime, apprehend offenders, preserve law and order, protect life and property and enforce all laws and regulations with which they are directly charged. See Chukwuma vs. COP (2005)8 NWLR (part 927) page 278, Guda vs. Kitta (1999) 12 NWLR (part 629) page 21.

Indeed, the Police are the outward civil authority of the power and might of a civilized state. And the generality of the public is potentially affected one way or the other by their action or inaction. See Fawehinmi vs. IGP (2002) 7 NWLR (part 767) page 606. As rightly submitted by the learned counsel to the applicant, the Police are not and should not in any community of civilized people be used as debt or levy collectors, or in the resolution or settlement of disputes among people, as such use of the Police often lead to infringement on the fundamental rights of others. See Igwe vs. Ezeanochie (2010) 7 NWLR (part 1192) page 61.

The 1st respondent has denied this allegation as earlier mentioned. Upon perusing Exhibit NPF4 i.e. Statement of the 1st applicant to the 1st respondent, the 1st applicant stated thus:

“Myself and Anthony Edibo were arrested by the Police to produce the woman and when we could not find her, then we undertook to pay the money out of which we paid the sum of Five Hundred and Twenty Thousand Naira (N520,000.00) and another Two Hundred Thousand Naira (N200,000.00) while we are still looking for the said Dr. Mrs. Scholastica.”

A careful perusal of the above together with Exhibit NPF 6, which is the Undertaking written by the applicants, I cannot see any element of force or duress as alleged by the applicants.

In the case of Fidelis Iroanya vs. George Ugolu & anor (2009 – 2010) CHR page 101 at 116, B.A. Nwankwo J, admonished the Police thus:

“The Police should resist the temptation of being converted into instruments of debt recovery, which function is outside the scope of the Police Act.”

Similarly, in Mr. Gabriel Jim Jaja vs. COP & 2 ors (2011) 2 NWLR (part 1231) page 375 Eko, JCA stated:

“Police duties under the relevant statutes including the Police Act do not enjoin the Police to act as debt collectors. Debt collection is therefore ultra vires their enabling statutes. Once a transaction is in a form of a contract the Police are enjoined to exercise restraint....”

In this instance, no force was used by the Police nor did they threaten the applicants to pay the sums of money

alleged to have been refunded by the applicants. This is evident from the Undertaking Exhibit NPF6. It states:

“We, Mr. Edibo Anthony and George Aku today being 19/6/18 hereby under our hands undertake to pay the sum of N200,000 on or before 19th of July, 2018 to Barr. Orji Sunday Chukwu in respect of the amount Dr. Mrs. Scholastica Emerole is owing him. After the above stated payment we shall equally pay the remaining balance of outstanding amount.

We understand that Dr. Mrs. Scholastica Emerole is owing Barr. Orji Sunday Chukwu the sum of N6,190,000.00. We understand that this undertaking will be used against us if we fail as stated above.

This undertaking is made voluntarily without any form of duress.

Signed Edibo Anthony and George Aku”

From the above, it is clear that the applicants were neither forced or threatened by the respondents before they undertook on their own volition to pay the money owed by Mrs. Scholastica. It was also within the right of the 2nd respondent to report Mrs. Scholastica to the Police. Therefore prayers 3 and 4 as sought by the applicants fail accordingly.

As regards the relief seeking the sum of N10 Million against the respondents for the violation of the applicants rights, it is clear from the entirety of facts presented before the Court that the respondents acted within the bounds of their duties.

I hold that there was a reasonable ground and reason for the arrest of the applicant's ab initio which is Screening of Offender.

Therefore going through the evidence and the reason for the arrest of the applicants, considering also that they

have been charged to Court for the same reason (Screening of Offender), I find it very difficult to grant an order for payment of N10 Million in favour of the Applicants. I find prayer No. 5 unmeritorious in the circumstance.

As regards the prayer seeking an order of perpetual injunction restraining the respondents, their privies and agents from arresting, detaining, threatening, humiliating or forcing the applicants to effect payment through the 1st and 2nd respondent, it is noted that the matter is now before a competent Court of law and thus the Police shall confine themselves to their duties as prescribed by law and are also restrained from doing any act by way of giving effect/enforcing the Undertaking made by the applicants.

SIGNED

HONOURABLE JUDGE

Appearances:

Charles H.T. Uhegbu – for the Applicant

Wisdom Madaki – for the 1st Respondent

Obiora Ilo – for the 2nd Respondent with him H.C. Okoye