

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/3185/19
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN

JACOB OTOR APPLICANT

AND

**INDEPENDENT CORRUPT PRACTICESRESPONDENT
& OTHER RELATED OFFENCES COMMISSION**

JUDGMENT

The Applicant herein approached this Honourable Court and sought for the following from the Respondent.

1. An Order enforcing the Applicant's fundamental rights in terms of the reliefs sought in the statement accompanying the affidavit in support of the application.
2. A Declaration that the harassment, intimidation, arrest and detention of the Applicant by the Respondent from the 20th of September, 2019 to 23rd of September, 2019 is unlawful, unconstitutional and in breach of the Applicant's rights and respect for the dignity of his person and personal liberty, as guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).
3. A Declaration that the arrest of the Applicant on the 20th day of September, 2019 by the Respondent at

House No. A6, Plot 3111, Aso Groove Estate Cadastral Zone F04, Mpape, Abuja and his subsequent detention till 23rd September, 2019, at the Respondent's Head Office in Abuja is unconstitutional and is breach of the Applicant's right to freedom of movement within and outside the jurisdiction of this Honourable Court.

4. A Declaration that the compulsory taking possession of the Applicant's Mobile phone, a Tecno model with phone number 08085899241 at House No. A6, Plot 3111, Aso Groove Estate Cadastral Zone F04, Mpape, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court by the Respondent is unlawful, illegal, unconstitutional and a breach of the Applicant's Fundamental Human Rights, as a guaranteed under the Constitution of Federal Republic of Nigeria 1999 (as amended).

5. An Order restraining the Respondent and its privies, officers, agents or anybody deriving authority through the Respondent from further harassing, embarrassing, humiliating, arresting or detaining, intimidating and threatening the Applicant.
6. An Order of this Honourable Court that the Respondent release the Appellant's Tecno Model Phone with phone No: 08085899241 which was compulsorily taken from the Applicant on 20th September, 2019, to the Applicant forthwith.
7. An Order directing the Respondent to publish a written apology to the Applicant in two daily newspapers with Nation-wide circulation.
8. An Order of this Honourable Court compelling the Respondent to pay the Applicant the sum of ₦10,000,000.00 (Ten Million Naira) only being damages/compensation for his unlawful arrest and detention from 20th of September, 2019 to 23rd of

September, 2019 in violation of the Applicant's fundamental rights as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

9. An Order of this Honourable Court compelling the Respondent to pay the Applicant the sum of ₦1,000,000.00 (One Million Naira) being Applicant's mobile phone of Tecno Model with Phone Number 08085899241 in violation of the Applicant's fundamental rights as enshrined in Section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
10. An Order for the award of 10% interest per annum on the Judgment sum awarded in reliefs 8 & 9 above until same is liquidated.
11. And For Such Further or Other Order(s) as this Honourable Court may deem fit to make in the circumstances of this application.

In support of the application is a 42 paragraph affidavit duly deposed to by the Applicant himself.

The case of the Applicant as distilled from the affidavit in support of the application is that he is a house keeper to one AliyuSanda at house No. A6, Plot 3111, Aso Groove Estate Cadastral Zone F04, Mpape, Abuja.

It is the deposition of the Applicant that on 20th of September, 2019 his Employer AliyuSanda's Wife sent him on an errand and on returning back, he saw men heavily armed with all sorts of sophisticated weapons and ammunitions some in a Hiace bus, and other laid siege at the residence.

That the Officers of the Respondent on sighting him, collected his mobile phone, a Techno Model with Phone number 08085899241, handcuffed him and shoved him into the back of the Hiace Bus parked.

The Applicant avers that while he was in the bus, the Officer of the Respondent forcefully damaged the entrance door to the house entrance.

That when his employer, AliyuSanda came out of the house, he was also shoved into the said bus and before the Hiace bus left the residence of his employer, the Respondent wrote *'keep off seized by ICPC'*.

Applicant avers further that he was intimidated, harassed and forcefully taken and detained in the office of the Respondent.

That the Respondent refused to release him despite the submission of his Lawyer and that he was detained from 20th of September,2019 to 23rd September, 2019 before he was eventually granted bail.

That while in detention he was informed that a text message has entered his phone which he denied that he

does not know. And that he has never made any call to his employer.

In line with the Fundamental Rules, statement and grounds upon which the application is brought was filed.

Learned Counsel for the Applicant filed a written address wherein a sole issue for determination to wit; *whether from the facts, the Respondent is in breach of the Applicant's Fundamental Rights so as to entitle him to the grant of the Reliefs Sought before this Court.*

While arguing on the above, counsel relied on Section 35 of the 1999 Constitution in urging the Court to grant the application.

Upon service, the Respondent filed a counter affidavit of 6 paragraphs duly deposed to by one Iliya Marcus an Officer with the Respondent.

It is the counter affidavit of the Respondent that the Respondent sometime in August, 2018 received a Petition

from Aso Saving and Loans Plc. alleging fraudulent activities against one MaimunaSanda, a former Executive Director at Aso Savings and Loans Plc, and requesting an investigation into the source of huge amounts of money in Dollars.

Respondent avers that there was also allegation of residential houses having been developed and financed by Aso Saving and Loan Plc. in Aso Groove Estate, situated at Plot 3111 Cadastral Zone F04, Mpape for sale to the public at the sum of N210,000,000 Million of which Mrs.MaimunaSanda by virtue of her position in Aso Saving and Loans Plc handed over the keys to her son AliyuSanda through his Company Nature Assets Ltd. without payment.

That the Applicant was invited through Exhibit '1' and he acknowledge the receipt of the invitation vide Exhibit '2' but refused to honour same and warrant of arrest was obtained against the Applicant vide Exhibit '3'.

The Respondent further avers that, on reaching the Applicant employer house, they saw the Applicant and when they sought to know who he was and what he was doing in the house in question his phone rang and a text message was sent to the Applicant saying *‘pls Jacob tell your oga or madam to no come outside police are there right now pls’*” the transcribed attached as Exhibit ‘4’.

That on this note the Respondent arrested the Applicant and statement was taken vide Exhibit ‘5’ and that bail was granted to the Applicant vide Exhibit ‘6’.

Respondent avers that they are investigating allegations of false pretences and fraud in the acquisition of a property belonging to the Applicant Employer and not the transaction between the Nature Assets Limited and Aso Savings and Loans Plc.

In line with law and procedure, written address was filed wherein the following issues were formulated for determination to wit;

- a. *Whether the arrest of the Applicant was done within the ambit of the law.*
- b. *Whether on grant of administrative bail to the Applicant by the Respondent, he can still maintain and sustain a claim for breach of Fundamental Human Right to Personal Liberty.*
- c. *Whether having regard to the Applicant's affidavit in support of his motion and the Counter Affidavit filed by the Respondent, the Applicant has made a case to entitle him to the reliefs sought.*

Learned Counsel argued above issues succinctly, citing Section 36(2) of the ICPC Act 2000 in urging the Court to dismiss the Application.

I have read carefully the affidavit in support of the application of the Applicant for the enforcement of Fundamental Right.

I have equally read carefully the counter affidavit filed by the Respondent, Independent Corrupt Practices Commission (ICPC) in opposition to the application for the enforcement of Fundamental Rights.

Fundamental Rights have been said to be premodial.. some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (SAN) have opined that these rights are already possessed and enjoyed by individuals and that the “Bills of Rights” as we know them today “created no right de novo but declared and preserved already existing rights, which they extended against the legislature”.

It is instructive to note that the Magna Carta 1215 otherwise called “Great charter,” came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke’s concept of “due process of law” was also a product of similar conflicts and dissensions between the

king and parliament.. nor was the Bill of Rights 1689 handed down on a “platter of Gold”.. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by king Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written consitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated.

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American peolpe took the glorian path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights

which is said to be fashioned after the English Bill of Rights..

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

“We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness.”

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not peculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the

2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self-determination which they believed could offer them an escape route from the “tyranny” of the majority ethnic groups in the regions.

The commission that investigated their fears went out of its way to recommend the entrenchment of Fundamental Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

We have had our Fundamental Human Rights carefully captured and entrenched under chapter IV of the 1999 constitution of the Federal Republic of Nigeria as

amended.. as sacrosanct as those rights contained in chapter IV of the Constitution of Federal Republic of Nigeria are, once there is any good reason for any of the rights to be curtailed, they shall so be and remain in abeyance in accordance with the law and constitution.

Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to court to seek protection on the slightest believe that they are being invited by law enforcement agencies..

The essence of this legal window is to ensure that every action by government or her agencies are done according to law.

With the aforesaid brief historical background of human right, I now proceed to consider the grouse of the Applicant vis – a – viz the defence of respondents before me.

First; *whether the arrest of the Applicant was done within the ambit of the law?*

The statutory powers of investigation and prosecution under the Corrupt Practices and Related Offences Act, 2000 (ICPC ACT 2000) Section 36 (2) of the ICPC Act, 2000 provides that:

‘Whenever it is necessary to do so, an Officer of the Commission exercising any power under sub-section (1) shall obtain a warrant from a Judge or Magistrate to-

- (a) Break open any outer or inner door or window of any premises and enter thereto, or otherwise forcibly enter the premises and every part thereof;
- (b) Remove by force any obstruction to such entry search, seizure or removal as he is empowered to effect; or

(c) Detain any person found in or any premises or in any conveyance search under sub-section (1), or until such premises or conveyance has been searched”

Qst...Has the Respondent complied with the above provision? Exhibit ICPC 3 which is the warrant of arrest was attached to the counter affidavit of the Respondent and was signed by Senior Magistrate 1 Aminu Ali Eri. It is the deposition of the Respondents that in the course of executing the warrant, the Applicant obstructed the Respondent Officers by placing calls and sending text messages to his employer (AliyuSanda) about the activities of the Respondent who are outside the premises to enforce the arrest warrant.

The Respondent stated that the Applicant phone was also seized because he used it for the obstruction of the arrest of his employer. Some incriminating text messages likely from an informant that have been aiding AliyuSanda

(Applicant Employer) in evading arrest were found on the Applicant phone. The phone is still under investigation, having submitted relevant information about it to the telecom provider to determine the extent of communication and interference with investigation.

It is instructive to note the position of Supreme Court on the issue of Lawful arrest and requirement. This was stated in the case of *ADEGBOYEGA IBIKUNLE VS STATE (2007) LPELR – 8068 (SC)*.

“By virtue of Section 7(1) and (2) of the Criminal Procedure Law, if any Person or Police Officer acting under a Warrant of Arrest or otherwise having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such Police Officer, allow him free ingress thereto and afford all

reasonable facilities to search therein for the person sought to be arrested. If ingress cannot be obtained under Section 7(1) any such person or Police Officer may enter such place and search therein for the person to be arrested, and in order to effect an entrance into such place may break open, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.”

From above, can it be safely said that the arrest of the Applicant was done in accordance with the extant law?

Without any hesitation, I answer the pauser in the affirmative.

On the refusal of the Respondent to grant the Applicant an Administrative bail, it is trite that individual's right to personal liberty is guaranteed under the Constitution of the Federal Republic of Nigeria, 1999 as amended, however this does not preclude the invitation of citizens

to answer questions bordering on commission of crimes leveled against them in line with a procedure permitted by law as stated under Section 35(1) of the 1999 CFRN as amended.

By Exhibit 'ICPC6', the Applicant was granted bail same date but the Applicant failed to perfect his bail when it was granted, hence was released on bail on the 23rd of September, 2019 when the bail conditions were met vide Exhibit 'ICPC 7'.

From the above, therefore, it is clear that the Respondent did not detain the Applicant beyond the Constitutional permit period as argued by Applicant's counsel. I so hold.

It is indeed our collective responsibility to ensure all hands are on deck for all agencies of government to work well and achieve the desired results.

However, that cannot be done in utter disregard for the constitutionally provided rights, which are well guaranteed.

The Nigerian Constitution is founded on the Rule of Law the primary meaning of which is that everything must be done according to law.

It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary power which Coke colourfully spoke of as ‘golden and straight metwand of law as opposed to the uncertain and crooked cord of discretion.

The law should be even handed between the government and citizens..***OBASEKI (JSC)*** as he then was, re-echoed the essence of the Rule of Law in the case of ***GOVERNMENT OF LAGOS STATE VS OJOKWU (1986) ALL NLR 233.***

Indeed, the Rule of Law knows no fear, it is never cowed down; it can only be silenced. But once it is not silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence. See ***GARBA VS FEDERAL CIVIL SERVICE COMMISSION & ANOR (1988) NWLR (Pt. 71)449.***

MOH'D BELLO (then CJN) at the 6th International Appellate Judges Conference in Abuja in 1992, said:-

“Judges should excel by doing the essence of justice which is to give a person what is lawfully due to him, to compel him to do what the law obliges him to do and restrain him from doing what the law enjoins him not to do”.

It is my considered Judgment that the Applicant, being desirous of covering his tracks hurriedly rushed to court to frustrate the Respondent from investigating him. Applicant who desperately made efforts to sway this court vide his affidavit deposition, has failed to convince the

court legally speaking. It is my Judgment that Respondent be allowed to conclude its investigation.

There is no right of Applicant known to law that has been breached and or worthy of any judicial injunction by way of Order.

Courts must refrain from clipping the wings of Independent Corrupt Practices Commission (ICPC) unnecessarily.

The primary relief is declaratory in nature. The affidavit evidence of the Respondent is more superior and very technically and legally convincing. I disagree with the Applicant.

I shall refuse this application because it is most unmeritorious and specially packaged to emotionally sway this court into agreeing with it.

God forbid.

Application is refused.

On the whole therefore, Suit No. **CV/3185/19** having failed to meet the requirements of the Fundamental Human Rights Rules is hereby dismissed.

Justice Y. Halilu
Hon. Judge
12th March, 2020

APPEARANCE

R. OKOTIE – EBOH – for Applicant with B. TARFA and
N.C IGBEZOR.

ENO IGHODARO – YAHAYA – for the Respondents.