

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/126/19
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN:

MR. IGWE ONYESOM UGOCHUKWU APPLICANT

AND

**REGISTERED TRUSTEES OF ROAD
TRANSPORT EMPLOYERS
ASSOCIATION OF NIGERIA** } **RESPONDENT**

JUDGMENT

The Applicant in this suit approached the court for the enforcement of his Fundamental Right as inscribed in the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

The Applicant sought for the following reliefs against the Defendant to wit;

1. Declaration that the act of conscription and assaulting the Applicant who is not a member of the Respondent, while enforcing Respondent's rules on him and impounding his car, a Peugeot 206 with Registration Number: AE 855 KJR without a court order and without a reasonable cause by the Respondent's agents on the 27th June, 2019 on the Julius Berger bridge, within the Wuse Zone 6 District of Abuja on the allegation of 'carrying passengers', (an offence not known by law) is illegal, reckless, outrageous and amount to breach of

Applicant's Fundamental Rights to human dignity, personal liberty, Fair Hearing, Freedom of Association and freedom of movement, as provided and guaranteed by section 34, 35, 36, 40 and 41 Constitution of the Federal Republic of Nigeria, 1999.

2. A Declaration that the forceful driving of the Applicant (a non – member of Respondent) in his Peugeot 206 with Registration Number: AE 855 KJR by the Respondent to its Operation Field Base at 2nd Gate Jabi Motor Park Utako from the Bergger Bridge of Zone 6 of Wuse District Abuja against his consent for the purposes of imposing fine for forceful registration as a member of Respondent, and giving permission by the Respondent Association in consequent of violating any rules made by the Respondent on the 27th June, 2019 is illegal, reckless, outrageous and amount to breach of Applicant's

Fundamental Rights to human dignity, personal liberty, fair hearing, freedom of association and freedom of movement, as provided and guaranteed by section 34, 35, 36, 40 and 41 Constitution of the Federal Republic of Nigeria, 1999.

3. A Declaration that the act of extorting, imposing, or collection of fines of Thirteen Thousand Naira (N13,000.00) or any other amount from the Applicant who is not a member of Respondent against his consent and without a Court Order for forceful registration, giving of permission or any other reason whatsoever by Respondent while enforcing Respondent's rules on the 27th June, 2019 against Applicant is illegal, reckless, outrageous and constitute a gross violation of the Fundamental Rights of the Applicant to fair hearing and freedom of Association provided and guaranteed under section

36 and 40 Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

4. A Declaration that the Respondent's act of impounding the Applicant's 206 Peugeot car, with Registration Number AE 855 KJR on the Julius Berger Bridge at the Zone 6 Wuse District of Abuja on the 27th June, 2019, for a purported offence of "carrying passengers without permission" or any other offence stipulated by any rules purportedly made by the Respondent when the Applicant is not a member of the Respondent is illegal, reckless, outrageous and constitute a gross violation of the Fundamental Rights of the Applicant to Right of ownership of property as provided and guaranteed under section 44 Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and also amounts to trespass to Applicant's property.

5. A Declaration that the Respondent, a Registered Incorporated Trustee under the Companies and Allied matters Act (CAMA) is not statutorily clothed with authority to make laws to regulate the use of vehicles in FCT or anywhere in Nigeria or impose and /or collect fines for offence(s) from non – members, or penalize the act of the Applicant or any other person from carrying or dropping anybody on any road in Abuja or anywhere in Nigeria.
6. An Order of this Honourable court directing the Respondent to forthwith refund to the Applicant the sum of Thirteen Thousand Naira (N13,000.00) or any other amount illegally/wrongfully collected from the Applicant by the Respondent as fine for forceful registration or giving of permission without any legal authority whatsoever.
7. An award of the sum of (N50,000,000.00) Fifty Million Naira only, as general and exemplary

damages to the Applicant against the Respondent for its capricious, wilful, reckless and outrageous breach of Applicant's Fundamental Rights to Human dignity, personal liberty, fair hearing, freedom of Association, freedom of movement and right to ownership of property, as provided and guaranteed by sections 34, 35, 36, 40, 41 and 44 Constitution of the Federal Republic of Nigeria, 1999 through his unlawful arrest, harassment, embarrassment forceful possession of his car and extorting the sum of Thirteen Thousand Naira (N13,000.00) or any other amount by the Respondent without any court order for the purposes of fine or for forceful Registration and giving of permission, on the 27th June, 2019.

8. The sum of Ten Million Naira as general Damages against the Respondents for its illegal, capricious, violent, reckless trespass to Applicant's property a 206 Peugeot Car with Registration No. AE 855 KJR on

27th June, 2019 from Julius berger Bridge Wuse to its Operation Field Base at 2nd Gate Utako.

9. 10% interest on the judgment sum from the date of the judgment to the date of final liquidation of the Judgment sum.

The Applciant raised the following questions for determination to wit;

- a. Whether having regards to sections 4(2) and 279(a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Respondent and her agents who are private citizens, by name ROAD TRANSPORT EMPLOYERS ASSOCIATION OF NIGERIA can legislate and/or make laws regulating road users or other members of the public who are not the Respondent's members on the use to which they can put their vehicles, and penalize by way of imposing and collecting fines whatsoever in the name of forceful registration or giving permission to any

person for wrong usage and/or violating such Respondent's Laws/Rules.

- b. Whether having regards to section 36(8) and (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), "carrying of passengers without authorization" of Respondent as alleged by the Respondent on the 27th June, 2019 is an offence defined by and/or punishable under any law within the Federal Capital Territory.
- c. Whether having regards to section 36(6) of the Constitution of the Federal Republic of Nigeria 1999, (as amended), the Respondent can impose penalty and/or punish the Applicant or any other person who is not their member for whatever offence created by any rules made by the Respondent without an order of Court in the guise of giving permission or forceful registration as a member of Respondent.

d. Whether the Respondent was right and has powers under the law to arrest or in any other manner restrict the free movement of the Applicant or any other Nigerian who is not Respondent's member against his consent, impound his vehicle or any other property, impose and collect fines from the Applicant or any other person who is not a member of the Respondent for any offence created by any rules made by the Respondent under the guise of giving permission or forceful registration of the person as a member of the Respondent.

If questions 1 – 4 are answered in the negative, then:

e. Whether the act of arresting and assaulting the Applicant, without a court order and without a reasonable cause and forcefully driving the Applicant to Respondent's Operation Field base at 2nd Gate, Jabi Motor Park Utako, Abuja against his consent by the Respondent's agents on the 27th June, 2019 from

the Julius Berger bridge, within the Wuse Zone 6 District of Abuja does not amount to breach of Applicant's Fundamental Rights to human dignity, personal liberty and freedom of movement as provided and guaranteed by sections 34, 35 and 41 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- f. Whether the impounding and forceful possession of Applicant's 206 Peugeot car with Registration Number AE 855 KJR on the allegation of 'carrying passengers' (as offence not known by law) or for violating any rules made by the Respondent on the use of car and imposing fine without a court order does not amount to breach of Applicant's Fundamental Right to fair hearing and Right to ownership of property as provided and guaranteed by sections 36 and 44 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- g. Whether the Enforcement of any rules made by the Respondent on the Applicant who is not a member of Respondent Association, or compelling the registration of Applicant with Respondent against his consent or extorting money in the guise of forceful registration or giving permission by the Respondent Association to the Applicant who is not her member in compliance of the Respondent's rules against Applicant's consent does not amount to breach of Applicant's Fundamental Rights to freedom of Association as provided and guaranteed by section 40 of Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- h. If the answer in questions 1-4 above are answered in the negative, and question 5-7 are answer in affirmation, then whether the Applicant is entitled to both general and exemplary/aggravated damages for the physical public assault, embarrassment and

psychological trauma he was subjected to by agents of Respondent in the course of his illegal arrest by conscripting him into and forcefully driving him in his car like a common criminal in the presence of his family members and his neighbour's wife, illegal possession of his car, extortion of N13,000.00 or any other amount for purposes of forceful registration as a member of the association or for permission to use his car for any purpose against his consent, by the Respondent, on the 27th June, 2019.

In support of the originating application is the ground upon which the application is brought, affidavit in support of the application and written address.

The affidavit in support was duly deposed to by IgweOnyesomUgochukwu the Applicant himself.

It is the deposition of the Applicant that on 27th June, 2019, while he was going to his office located at **No. 27 Fandriana Close Wuse 2, Abuja**, he was carrying his

wife and lifted his neighbour's wife Mrs. Chris Okeke and his sister who were all going to Wuse at the back of his car.

That he parked by the road side on the Julius Berger Bridge around 8:00am in the morning for his neighbour's and the sister to alight from the car and they were coming down from the car that morning, some fearful and strange looking young men numbering five in number swooped on him like armed robbers and even assaulted him and his wife.

The Applicant avers that another members of the group immediately forced open his car door, held his left hand and leg and was dragging him out of his car like a common criminal.

That after he was dragged out of his car that one of them told him that they are members of Task Force of Road Transport Union and whether I am a member.

It is the averment of the Applicant that he told them that he was not carrying passenger rather the people in his car are members of his family and his neighbour. That he was forcefully driven to Utako leaving his wife on the ground at the Julius Berger Bridge.

That he was forced to pay ₦13,000.00 (Thirteen Thousand Naira) only before leaving the area. The evidence of payment are annexed as Exhibit 'AA2', 'AA3' and 'AA4' respectively.

In line with law and procedure, a written address was filed wherein Learned Counsel distilled the following issues for determination to wit;

1. Whether the arrest and assault of Applicant, impounding of his vehicle, driving him forcefully from Julius Berger Bridge Zone 6 Wuse to Respondent's Office at Jabi Motor Park Utako on 27th June, 2019, extorting money from him as fine and permission and registering him as a member of

the Respondent by the Respondent against his consent amounts to a violation of the Fundamental Rights of the Applicant to Human Dignity, Personal Liberty, Fair Hearing, Freedom of Association, Freedom of Movement and Right to Ownership or property, as provided and guaranteed by Sections 34, 35, 36, 40, 41 and 44 Constitution of the Federal Republic of Nigeria 1999.

2. Whether the violent and reprehensible conducts of the Respondent in violating his Fundamental Rights in the instant case entitles the Applicant to general and exemplary damages against the Respondent.
3. Whether the unlawful possession and impounding of the Applicant's vehicle and driving same from Julius Berger Bridge Wuse to Respondent's Office at Jabi Motor Park Utako Abuja by the Respondent against his will and consent on 27th June, 2019 amount to a

trespass to Applicant's chattel which entitles him to general damages.

Learned Counsel contended while arguing on the issues formulated that, the law is trite that every person shall be entitled to his human dignity as envisaged under Section 34(1) of the Constitution of the Federal Republic of Nigeria. And that his Right to Personal Liberty and Freedom of Movement was deprived by the Respondent and therefore he is entitle to the reliefs sought and court was urge to so hold. Learned Counsel cited and relied on the cases of ***OKAFOR VS LAGOS STATE GOVERNMENT (2017) NWLR (Pt. 1556)404 CA at 410 ratio 4; DIAMOND BANK PLC. VS OPARA (2018) NWLR (Pt. 1617)92 SC. at 98 ratio 6.***

I wish to state that human rights are normal principles or norms that describe certain standards of human behaviour, and are regulating protected as legal rights in municipal and international law. They are commonly understood as

inalienable fundamental rights. These rights are based on the belief that everyone is equal and should have some rights and opportunities.

I have gone through the reliefs sought supported by grounds, affidavit and written address in support of Applicant's under consideration. It is instructive to state at this stage that the Respondent despite service of the originating motion on them, failed and refused to enter appearance or file response to the allegation. The court is therefore left with only the application of the Applicant, i.e claim of the Applicant.

The court therefore formulate alone issue to be determine to wit; whether in the circumstances of this application, Applicant's right to human dignity as enshrined and guaranteed by the constitution of Federal Republic of Nigeria 1999 is not violated, has been adopted by this court as issue for determination.

The law on the determinant factor of action to be brought under Fundamental Human Rights (Enforcement procedure) 2009 is well settled. Only actions founded on breach of any of the Fundamental Human Right guaranteed under chapter IV of 1999 Constitution as (Amended) of Federal Republic of Nigeria can be enforced under the rules.

It is also a condition precedent to the exercise of the court's jurisdiction that the enforcement of Fundamental Human Right or the securing of the enforcement thereof should be the main claim and not an ancillary claim.

Per Akintan (JSC) (as he then was) in *WAEC VS. AKINKUMI (2008) 4 SC I*.

At this point, I shall attempt in summary to state the fulcrom of Applicant application.

The Applicant, IgweOnyesomUgochukwu, approached this Court for various declaratory reliefs ranging from perpetual injunction, compensatory damages and others.

Applicant stated in his affidavit in support of the application for Enforcement of Fundamental Human Right that he was driving his car and that he picked his wife and his neighbour's wife. That he parked by the road side on the Julius Berger bridge only to be arrested and dragged by the Respondent.

The facts and more were not denied by the Respondent. The law is that where therefore a Plaintiff files his statement of claim raising an allegation of facts against the Defendant such Defendant who does not admit of the truth of the allegation must file a defence to contradict, controvert, challenge or deny the allegation. Where no defence is filed, the Defendant is deemed to have admitted the claim and the court may peremptorily enter

judgment against the Defendant *EMODI & ORS VS EMODI & ORS (2013) LPELR 21221 (CA)*.

The liberty to make any accusations is circumscribed both by the right to make it, the duty not to injure another by the accusations and the right of any person wrongly accused and injured thereby to seek appropriate redress in the court. The courts have been established to protect both rights where validly exercised. They are not established to protect the citizen who falsely even if erroneously, believe in the exercise of a right.

See *AKILU VS FAHEHINMI (No. 2) (1989) (pt. 102) 122*.

The Fundamental Human Rights Enforcement Procedure is truly an outlet for people whose rights have been trampled upon with impunity.

It is certainly a procedure that does not have in contemplation complaints from people who are not plain and straight forward, and or dubious or crafty.

Gold diggers equally would have no room to live in.

Applicant, who is a legal practitioner, approached this court for the reliefs as endorsed on the body of the originating motion, provided in the preceding part of this judgment.

The Applicant has the right to own property under section 40 and 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended), and such right can only be denied where the Applicant has breached any part of our extant laws.

Indeed it is enough provocation that the Respondent behaved the way they did.

As stated from the preceeding part of this judgment, Respondent did not file defence despite receipt of service on them.

It is trite law that facts as contained in paragraphs of affidavit not denied are deemed admitted. This court is left with a one way matter, Defendant having waived its right to present her side of the story. Applicant who dragged Respondent to court for the enforcement of his right is clearly entitled to judgment.

Accordingly, judgment is hereby entered in favour of Applicant.

Consequently, the following declarations are hereby made;

- a. Declaration is **hereby made** that the act of conscription and assaulting the Applicant who is not a member of the Respondent, while enforcing Respondent's rules on him and impounding his car a

Peugeot 206 with Registration Number: AE 855 KJR without a court order and without a reasonable cause by the Respondent's agents on the 27th June, 2019 on the Julius Bergger bridge, within the Wuse Zone 6 District of Abuja on the allegation of 'carrying passengers', (an offence not known by law) is illegal, reckless, outrageous and amount to breach of Applicant's Fundamental Rights to human dignity, personal liberty, Fair Hearing, Freedom of Association and freedom of movement, as provided and guaranteed by section 34, 35, 36, 40 and 41 Constitution of the Federal Republic of Nigeria, 1999.

- b. A Declaration is also **hereby made** that the forceful driving of the Applicant (a non – member of Respondent) in his Peugeot 206 with Registration Number: AE 855 KJR by the Respondent to its Operation Field Base at 2nd Gate Jabi Motor Park

Utako from the Bergger Bridge of Zone 6 of Wuse District Abuja against his consent for the purposes of imposing fine for forceful registration as a member of Respondent, and giving permission by the Respondent Association in consequent of violating any rules made by the Respondent on the 27th June, 2019 is illegal, reckless, outrageous and amount to breach of Applicant's Fundamental Rights to Human dignity, personal liberty, fair hearing, freedom of association and freedom of movement, as provided and guaranteed by section 34, 35, 36, 40 and 41 Constitution of the Federal Republic of Nigeria, 1999.

- c. A Declaration that the act of extorting, imposing, or collection of fines of Thirteen Thousand Naira (N13,000.00) or any other amount from the Applicant who is not a member of Respondent against his consent and without a Court Order for forceful

registration, giving of permission or any other reason whatsoever by Respondent while enforcing Respondent's rules on the 27th June, 2019 against Applicant is illegal, reckless, outrageous and constitute a gross violation of the Fundamental Rights of the Applicant to fair hearing and freedom of Association provided and guaranteed under section 36 and 40 Constitution of the Federal Republic of Nigeria, 1999 (as Amended) is **hereby granted**.

- d. A Declaration also made that the Respondent's act of impounding the Applicant's 206 Peugeot car, with Registration Number AE 855 KJR on the Julius Berger Bridge at the Zone 6 Wuse District of Abuja on the 27th June, 2019, for a purported offence of "carrying passengers without permission" or any other offence stipulated by any rules purportedly made by the Respondent when the Applicant is not a member of the Respondent is illegal, reckless,

outrageous and constitute a gross violation of the Fundamental Rights of the Applicant to Right of ownership of property as provided and guaranteed under section 44 Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and also amounts to trespass to Applicant's property is **hereby granted**.

- e. A Declaration that the Respondent, a Registered Incorporated Trustee under the Companies and Allied matters Act (CAMA) is not statutorily clothed with authority to make laws to regulate the use of vehicles in FCT or anywhere in Nigeria or impose and /or collect fines for offence(s) from non – members, or penalize the act of the Applicant or any other person from carrying or dropping anybody on any road in Abuja or anywhere in Nigeria.
- f. An Order of this Honourable court directing the Respondent to forthwith refund to the Applicant the sum of Thirteen Thousand Naira (N13,000.00) or any

other amount illegally/wrongfully collected from the Applicant by the Respondent as fine for forceful registration or giving of permission without any legal authority whatsoever is **hereby granted**.

- g. An award of the sum of (N1,000,000.00) One Million Naira only, as general and exemplary damages to the Applicant against the Respondent for its capricious, wilful, reckless and outrageous breach of Applicant's Fundamental Rights to Human dignity, personal liberty, fair hearing, freedom of Association, freedom of movement and right to ownership of property, as provided and guaranteed by sections 34, 35, 36, 40, 41 and 44 Constitution of the Federal Republic of Nigeria, 1999 through his unlawful arrest, harassment, forceful possession of his car and extorting the sum of Thirteen Thousand Naira (N13,000.00) or any other amount by the Respondent without any court order for the purposes of fine or for

forceful Registration and giving of permission, on the 27th June, 2019 is **hereby granted**.

I hereby award N100,000.00 as filing fees.

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

APPEARANCE

IGWE O.O – for the Applicant who represent himself.

Respondent not in court and not represented.