

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/2778/19
DATE: : THURSDAY 12TH MARCH, 2020

BETWEEN:

1. SANUSI BALA
2. IBRAHIM NURADEEM } **APPLICANTS**

AND

1. THE NIGERIAN POLICE FORCE
2. INSPECTOR GENERAL OF POLICE
3. DCP ABBA KYARI
4. DSP AYUBA NEHIMAH
5. INSPECTOR JOSEPH MUSA } **RESPONDENTS**

JUDGMENT

The Applicants herein approached this Honourable Court vide originating Motion for the enforcement of their Fundamental Right and sought for the following:-

1. A Declaration of this Honourable Court that the act of continuing detention, torture, intimidation and subjection to conditions only suitable for animals of the 1st and 2nd Applicants since January, 2019, till date, by the 1st, 2nd, 3rd, 4th and 5th Respondents is unlawful and illegal and contrary to the provisions of the Constitution of the federal Republic of Nigeria 1999 (as amended), the Fundamental Right (Enforcement Procedure) Rules 2009, Articles 4, 5, 6 and 12 of the African Charter on Humans and Peoples Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004, and the United Nations Declaration of Human Right, 1948.

2. A declaration of this Honourable Court that the 1st, 2nd, 3rd, 4th and 5th Respondents cannot continue to detain, torture and intimidate the 1st and 2nd Applicants from sometime in January 2019 till date, beyond the constitutionally allowed period for restraining a citizen's right to freedom of movement as unlawful and illegal, reckless and an infringement on the Applicant's Fundamental Human Right as enshrined in Section 34 of the 1999 Constitution of Federal Republic of Nigeria (as amended) as well as Article 4 of the African Charter of Human and People's Rights (Ratification and Enforcement Right) Act, Cap A9 Laws of the Federation of Nigeria 2004 and the United Nations Declaration on Human Right, 1948.

3. An Order of this Honourable Court mandating the 1st, 2nd, 3rd, 4th and 5th Respondents to forthwith, release the 1st and 2nd Applicants unconditionally.

4. An Order of this Honourable Court mandating the Respondents jointly and severally to pay to the Applicants jointly a general damage of the sum of N20,000,000.00 (Twenty Million Naira) only, for the torture, intimidation, unlawful continuing detention of the Applicants from January 2019 till date and the resultant loss of earning of the Applicants.
5. An Order mandating the Respondents to jointly and severally to pay to the Applicant N1,000,000.00 (One Million Naira) only being cost of this suit.
6. And such further Order as this Honourable Court may deem fit to make in the circumstances.

In support of the application is an affidavit of 12 paragraph duly deposed to by one Umar MaikudiYakubu a blood relation of the 1st Applicant.

The case of the Applicants as distilled from the affidavit of Umar MaikudiYakubu is that sometime in December,

2018 whilst on a business visit to Kaduna, Kaduna State, the 1st Applicant got in contact with the 2nd Applicant Ibrahim Nuradeem who sold a fairly used Peugeot 406 Wagon car to him at the selling price of N600,000.00 (Six Hundred Thousand Naira) only.

Applicants aver that while the 1st Applicant was using the said car, he found a handset in the pigeon hole of the car and after inquiry from the 2nd Applicant who said he forgot the phone in the said car and the handset was given to one Lawal Umar for the purpose of sending same back to the 2nd Applicant.

Applicants further aver that they did not hear any news of the said handset until the 1st Applicant was arrested by the men of the Inspector General of Police intelligence Response team in January, 2019.

It is further deposition of the Applicants that the 1st Applicant was arrested and taken to Abuja and was detained alongside the 2nd Applicant on the account that

the said handset belongs to a victim of a stolen car which is entirely different from the Peugeot 406 wagon car sold to the 1st Applicant.

That the Applicants are being tortured and kept under a living condition that is unfit for any human being.

It is further the deposition of the Applicants that the health condition of the Applicants are seriously getting worse due to the continued detention under a poorly kept facility. And that the Applicant briefed a lawyer to file this action and were charged N1,000,000.00 (One Million naira) vide Exhibit “A”.

In compliance with the law, statement accompanying the originating process, ground upon which the application was brought and written address was filed.

In its written address, the Applicants formulated one issues for determination to wit;

a. Whether the continuing detention and maltreatment of the Applicants by the Respondent is unlawful to entitle the Applicant to the grant of this application by virtue of section 33, 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Articles 4, 5, 6 and 12 of the African Charter on Human and people's Right (Ratification and Enforcement Right) and the United Nations Declaration on Human Right, 1948 application.

Learned counsel while arguing on the sole issue submitted that by virtue of Order 11 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules 2009 section 41, 35(1) and 36(1) of the 1999 Constitution guaranteed everybody right and this right cannot be taken away by any person including the Respondent as done in this case.

Counsel urge the court to grant this application in the interest of justice.

Upon service, the Respondents filed a counter affidavit of 26 paragraphs duly deposed to by one Inspector Joseph Musa in the office of the Respondents.

It is the deposition of the Respondents that it received a petition from the military Headquarters, Guards Brigade titled "Request for Assistance on a missing service personnel 2005 NA/56/443 SGT Richard Akaeze – cook B1, with the following telephone numbers 08092006965 and 0703477750 vide Exhibit "A".

That based on the analysis which were carried out on the two lines, and the Imet No. 353195098552464 of the phone that the two lines were inserted were tracked to one Abdullahi Mohammed and upon his arrest he led the team to Sanusi Ahmed.

It is further the counter affidavit of the Respondent that Sanusi Ahmed informed the police that he got the phone from one IdrisHabibu and Mohammed Musa and both

were arrested. And they made statement vide Exhibit “B1” and “B2” Respectively.

That the Police continued to run the analysis until the phone number 08139009482 who called the Sergeant Richard Okaeze was tracked to Mohammed Lawal Umar at Kano State. Mohammed Lawal Umar upon his arrest led them to SanusiBala 1st Applicant in this case. And the 1st Applicant made useful statement vide Exhibit “D”.

That in the course of investigation the Applicant led them and the police recovered the following cars.

- a. ToyotaAvensis recovered in Zamfara State
- b. Peugeot 406 Salon car recovered in BirniKebbi
- c. Honda Civic recovered in Sokoto State
- d. Peugeot 206 recovered in Niger State
- e. Mazda recovered in Kaduna State.

It is therefore the position of the Respondents that the arrest of the Applicant are lawful as the Applicants were arrested for criminal conspiracy to wit; armed robbery, having in possession of robbed cars and kidnapping of Sergeant Richard Akaeze.

That it will be in the interest of justice to dismiss this application.

A written address was filed wherein learned counsel submit that the arrest and detention of the Applicant are done in line with the law and procedure.

Court was urge to dismiss same.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggest by the constitution and with due regard to the spirit, purport and object of the bill of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provision and bindingness of Bill of Rights on the state and its structures.

Permit me to observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place..., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilised standard known to modern society.

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of motion on notice stating grounds and affidavit in support which serves as evidence.

It is the evidence of Applicant as distilled from the affidavit of Umar Maikudi Yakabu that the Applicant were arrested, detained in Abuja under dehumanizing situation since January, 2019 on the allegation which the Applicants are innocent of.

That the Applicants are not aware of any stolen car and did not buy any stolen car. And the court should grant the reliefs sought.

It is further the evidence of Applicants that they were denied food, access to lawyer, friends and family members.

Applicants also stated in their affidavit that the police refused them bail and or charge them to court or take their statement.

The Respondents on their part maintained in their counter affidavit that it received a petition from the Nigerian Army on the missing of its personnel, SGT Richard

Akaeze cook. And his phone numbers were supplied in the petition.

That the Respondent swung into action and the Applicant were arrested in connection with his car and phone.

Respondents stated that investigation was ongoing as the Applicant are notorious arm robbers who operate across states.

There is no gain saying that it is the duty of the police among other duties, to protect lives and property and to also defect crime. I however must be quick to mention that such exercise of duty shall be done in obedience to the provisions of our laws, i.e the Constitution of the FRN 1999 and the Police Act.

S.A of the Police Act then comes handy at this juncture..the said section has this to say:-

“The police shall be employed for the prevention and detention of crime, the apprehension of law and

order, the protection of life 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 without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It truly therefore, means that when a suspect is arrested on a reasonable suspicion to have committed a crime, he shall be treated within the confines of the law.

Treatment within the province of the law entails granting him administrative Bail where necessary or arraigning him in court where investigation is concluded within the regulation period as provided under the law.

If however a suspect isn't likely to be arraigned in court or not likely to be granted bail within two days, then it becomes most necessary for a detention order to be sought from a court of law for an initial 14 days which is

renewable pursuant to section 296(1) of Administration of Criminal Justice Act (ACJA) 2015.

Section 35(1) of the Constitution of FRN states that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with procedure permitted by law:-

- a) *“For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”*

Section 35(1) of the constitution of Federal Republic of Nigeria 1999 as amended specifically provides that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not be kept

in such detention for a period longer than the maximum period of imprisonment presumed for the offence.

35(4) which also provides that any person who is arrested or detained in accordance with (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 two months from the date of his arrest or detention in the case of a person who is in custody or entitle to bail, or three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

The expression of reasonable time under sub (4) of the constitution means one day where there is court of competent jurisdiction within a radius of 40 Kilometers,

or two days or such longer period as the circumstances may be considered by the court to be reasonable.

It is certainly not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

A wrongdoer is often a man who has left something undone, not always one who has done something...

Richard Joseph Daley, an American Politician who lived between 1902–1972 once said, “Get the thing straight once and for all” the policeman isn’t there to create disorder, the policeman is there to preserve disorder.

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for suspects to

claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very people who have the power to protect such rights or other persons who wield other unauthorised powers.

Applicants in the application in view, have stated in their affidavit in support that they are innocent of all allegation against them.

A closer look at and consideration of the Respondents' counter affidavit says a lot.

Applicants have made statements to the police in the current investigation ongoing.. I am clearly not at home with the averments of the Applicants with respect to their innocence.

The court shall not grant protection to people to shield them from investigation, even though such investigation

shall be done within the confirm of the law as I stated earlier.. now that Respondents have not exhibited any order of court mandating them to keep the Applicants, now that Applicants seek remedies against Respondents who are not above the law, I am inclined to making the following observations:-

Eventhough from the counter affidavit and the annextures, Applicants have a reason to be investigated by the Respondents, Respondents ought to have obtained court order to avoid keeping suspects perpetually.

As civilized society, we have laws guiding us and no person or group shall act with impunity.

Reliefs 1 and 2 as captured on the originating motion are hereby granted. With respect to relief 3, i.e order for the release of the Applicants, I make no such order.

I however direct that Respondents shall arraign the Applicants before a court of competent jurisdiction forthwith i.e within two days.

I am constrained to give this direction because from the annexures to the counter affidavit, Applicants made useful statements to the police on the missing military personnel. This court cannot make any order for the unconditional release of the Applicants.

I also make no award of damages and Professional fees.

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

APPEARANCES

OBINNA S. NWOSU – for the Applicants

Respondents not in court and not represented.