

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 6TH DAY OF MARCH, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/BW/CV/60/20

BETWEEN:

MR IGOCHE ISAH HENRY

APPLICANT

AND

- 1. MR CHIMA OCONNAYA**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. THE COMMANDANT, SPECIAL TACTICAL
SQUAD NIGERIA POLICE FORCE, ABUJA**
- 4. SUPOL OCHE, STS OFFICE, ABUJA**

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RESPONDENTS

JUDGMENT

On the 8/1/20 the Plaintiff Igoche Henry instituted this action against Chima Ogonnaya, IGP, Commandant Special Tactical Squard Nigeria Police Force and Supol Oche STS Office Abuja.

In the Originating Process he seek the following Reliefs:

1. An Order for the enforcement of the Applicant's Fundamental Human Rights to Personal liberty, Private

- and Family Life and Freedom to own and enjoy his private property as enshrined in sections 35,37 and 43 of the Constitution of the Federal republic of Nigeria as amended which is being infringed by the Respondent.
2. A Declaration that the Order of the 3rd Respondent through the 4th Respondent stopping the Applicant from further developing his property lying and situate at Plot No. A40G, Dawaki Extension 1 layout Dawaki Abuja, without any order of Court or reasonable justification for the period of over six months to a violation of Applicant's right to acquire, own and disposes of properties as enshrined under section 43 of the 1999 Constitution as amended.
 3. A Declaration that the recurring invitation of the Applicant by the 4th Respondent upon the complaint of the 1st Respondent with respect to dispute over title to plot No. A40G, Dawaki Extension 1 Layout, Dawaki Abuja, a purely civil dispute over which the 2nd -4th respondents has no jurisdiction is ultra vires, illegal and a violation of the Applicant right to his Personal Liberty as contained in sections 35 and 37 of the 1999 Constitution as amended.
 4. An Order of Perpetual Injunction restraining the Respondents either by themselves, privies, servants, assigns or whosoever from further interfering with the personal liberty and freedom of the Applicant to own and develop Plot No A40G, Dawaki Extension 1 layout, Dawaki Abuja.
 5. An Order of this Honorable Court awarding the sum of Five Hundred Thousand Naira (N500,000.00) only as general damages or compensation jointly and severally against the Respondents in favour of the Applicant for the violation of his fundamental rights to his personal

liberty and freedom to acquire and own property without let or hindrance.

6. And for such other Order or further Order(s) that this Honorable Court may deem fit to make in the circumstance.

The application is based on the ground that those rights as listed above have been infringed by Respondents and that he is entitled to the reliefs sought.

According to the Applicant, he bought the property from the original Allottee- Lenwe Harvest sometime in 2018 he was handed over the title documents and he took possession of the Land. He attached 2 Documents marked as Exhibit A1 & A2. That he was in unchallenged occupation of the property and had fenced and farmed the land since then. But that in May 2019 he engaged the service of an Architect who designed the structure to be built on the land and actually commenced building the land after securing the necessary approval that in mid May 2019 the 1st Respondent invaded the property in the company of hoodlums and harassed his workmen, threatening them to leave the property that on reaching the 1st Respondent he threatened to demolish the fence and disrupt the construction. That 1st Defendant, later came with 2nd & 3rd Respondent under the command of the 4th Respondent who commanded the workmen to stop work.

That the same men invited him to their station and coerced him to make a statement and to submit the title document to them. Since May 2019 and he was forced to make financial commitment too.

That after sometime he sent his workmen to the property but they were accosted by men from the 4th respondent office who ordered them to stop work. That ever since he has been stopped from further construction on the land. Without any

order of the Court or Law suit challenging his Title to the land. That he has suffered greatly as a result of the activities of the Respondents and had suffered losses. That if the 1st Respondent has any adverse Claim to the land he should challenge same in the law Court. That there is no crime involved in his Title or ownership to the land to warrant interference by the 2-4 Respondents.

That the action of the respondents infringe his personal liberty, private and family life and freedom to acquire and own property.

He supported the application with an Affidavit of 20 paragraph. In the written Address he raised 2 issues for determination which are:

1. “whether the facts contained in the Affidavit, he has been able to establish a cause of violation of his Rights by the Respondents.”
2. “whether in view of the above he is entitled to the reliefs sought.”

The applicant submitted that he has been able to make out a case of breach of those rights which are protected by CAP 1999 Constitution as amended.

That the present application is based on both current and future breaches. He referred to paragraph 4-5 of Affidavit in support. That threat to arrest, harassment intimidation, and stoppage of developmental activities and persecution of the applicant and his workmen by Respondents amount to gross violation of the said rights as provided. That his acquisition of the property is legal civil and not criminal in nature and should not invoke violation of his Constitutional rights. He submitted that the action of the Respondents amount to gross violation of his right. He urged Court to so hold.

On issue 2, on whether he is entitled to the reliefs sought, he submitted answering same in the affirmative and that the Applicant is entitled to apply to High court for redress since his right has been threatened and violated. That the Court has power to grant the relief. He referred to Order xi Fundamental Right Enforcement Procedure 2009. He referred to the case of:

1. Lonester Drilling vs Oleksndr (2003) 16 WRN 74@84
2. Ministry of Internal Affairs Vs. Shugaba (1982) 3 NCLR 915 @ 105
3. Mtsor Vs. Adeke (2005) ALL FWLR (PT.257)

That he is entitled to the order of this Court restraining the Respondents from infringing on his right and also for the award of damages for the wrongful interference by the Respondents. He urged the Court to resolve all the questions in his favour/in the interest of the applicant and grant his relief.

The 1st Respondent did not file any Counter Affidavit. He did not enter appearance too.

The 2-4 Respondent filed a Counter Affidavit of 25 paragraph they attached 3 documents marked as Exhibit A-C. which are a copy of Petition written to 2-4 Respondents by the 1st Respondent. Applicants' statement to the police investigation Activities which the police wrote to the Director Lands (AGIS)

In the 25 paragraph Counter Affidavit the 2-4 Respondents averred that Court should take judicial notice of the provision of section 4 Police Act, Section 122 Evidence Act 2011.

They also averred on the 20/5/19 the 2-4 received a letter of complaint from the 1st Respondent on behalf of his client who lives abroad. The complaint was from the Law Firm of Betrich Associates. It was based on allegation of reasonable suspicion that the applicant had committed offence of criminal trespass,

unlawful possession of property, forgery and intimidation. They attached copy of the said letter as Exhibit A.

The 2-4 Respondents invited the Applicant on the same 20/5/19 showed him the Petition. After reading same he offered a written statement which the 2-4 Respondents attached as Exhibit B that the Applicant claimed he bought the land in question from one Hajiya. But he could not state the name of the Hajiya who he claimed that he paid N6.5 million to. He could not also furnished the documents of title to the land he claimed he bought.

That the 1st respondent who was also invited to the station brought out all the documents of title to the land.

That the Applicant was asked to go and produce the documents of title and bring the Hajiya he claimed to purchase the land from.

That after his release on the 20/5/19 the Applicant disappeared. That the next they heard of him was the service of the Originating process of this case where he claimed to have purchase the land from Lenwe Harvest. Meanwhile the Applicant had claimed that he sold the land to one Alex Ohiri Ozurumba for N14 million. They averred that the Applicant spent less than one hour in the office of the 2-4 Respondent on the 20/5/19. That there was no bail bond or need for bail bond as the Applicant was not arrested or detained. He was only invited to exercise his right to fair hearing by stating his own side of the story after the Petition was served on him at the station. That their investigation revealed that the Applicant is a one man squad specialized in fraud and land racketeering in FCT. That the visit to the Res was in the cause of the investigation of the allegation made against the Applicant, and

to maintain law and Order in conformity with the rules and procedure permitted by law.

That the Applicant could not state who coarsed him to make commitment financially and otherwise and to what extent. That the 2-4 Respondents had in the course of doing their statutory duty written to the Director of Lands at AGIS. They attached the letter as Exhibit C. that the averment by the Applicant about arrest, detention and all worth not are only to mislead the Court as his rights were never violated by 2-4 Respondents. That this suit is only a ploy to mislead the Court and frustrate the Police investigation in order to cover his criminal conduct. They urged the Court not to refuse the application and protect the rights of the parties in this suit.

In the Written Address the 2-4 Respondents submitted that they have a right under the law to invite, investigate and interrogate the Applicant given the nature of the Petition against him. That from their investigation the Applicant never present any paper for the land but later claimed the title documents presented by the 1st Respondent. He never brought the Hajiya he bought the land from. He has not been able to present any document or evidence to show and establish unlawful arrest and detention or intimidation by the 2-4 Respondents. That he never denied the allegation made against him before the police.

That apart from questioning the Applicant for less than one hour in the office of the 2-4 Respondent he was never detained and his right to freedom of movement and liberty was never violated. That Applicant urging the Court to grant perpetual injunction is a ploy to escape from his crime.

That the right of the Applicant was never violated or threatened to be violated as he tries to portray. They urged the Court to so

hold and dismiss this application. They referred to the following cases:

Turks Nig.Ltd Vs Aigboro (2001) 10 WRN 78

Tukur VS. Govt of Gongola State (1989) 4 NWLR (PT.117) 517.

EFCC VS Ekeocha (2008) 4 NWLR (PT.1106) 161

They further submitted that the Court should not allow the Applicant to obstruct the police from partaking its duty as statutorily provided. They referred to the case of:

Chris Uba Vs A.G Anambra (2005) 33 WRN 191

They concluded that the invitation of Applicant by 2-4 Respondents was sequel to the allegation of crime made against Applicant in the letter of complaint-Exhibit A that action of 2-4 Respondent is lawful and in accordance with a procedure permitted under the Police Act and the Constitution.

They urged the Court to discountenance the submission of the Applicant and dismiss action as the right of the Applicant is not absolute. They referred to the provision of Section 45 1999 Constitution as amended.

That Applicant is not entitled to any compensation under Section 46 1999 Constitution because his was not unlawfully arrested or detained by the 2-4 Respondents and he has not established through his Affidavit that his right has been violated or infringed or likely to be violated or infringed. That his application is based on falsity, fraud and it is intended to justify his criminal conduct.

In response to issues raised in the Counter Affidavit the applicant filed a further affidavit of 18 paragraphs which he

deposed to in person. He averred that there is a disparity in between land in issue and the subject matter of which he was invited by the Police. That 2-4 Respondents stopping him and his workmen from construction of the land is a violation of his right and that he was coerced into writing the statement at the Police. He urged the Court to grant his application in the interest of justice.

Let it be known to all and sundry that once there is a Petition/Complaint by any one against any citizen and Police invited the person to their station, avail the person a copy of the Petition and ask the person to volunteer statement in writing, it is not and should not be termed infringement of the person's right under Chapter 4 1999 Constitution or Order 2 Fundamental Rights Enforcement Procedure Rule 2009. Such invitation is legal and is deemed done following a procedure permitted by law. By such invitation the person invited is given opportunity to exercise his right to fair hearing as guaranteed under the constitution. So stating the time spent in the Police station in the cause of the invitation should not be viewed as an arrest and detention because it is not so.

In this case from the story of the Applicant and the 2-4 Respondents can it be said that the action of the 2-4 Respondents is unlawful, illegal and a violation of the right of the Applicant in that the applicant has established that his right has been and continued to be threatened by the 2-4 Respondents based on the Petition from the 1st Respondent.

It is my humble view that the invitation by the 2-4 Respondents was in accordance with a procedure permitted by law to the extent of the said invitation to the police and releasing the Applicant within one hour after the invitation.

But a closer look at the Petition upon which the 2-4 based their invitation shows that the land in issue is Plot 488/1199 Dawaki Extension Relocation Layout. The Plot in the 2-4 Respondent's letter to the Director lands is Plot 40G. This fundamental contradiction is worrisome. It means that the basis for the Petition is different from the reason for the invitation. Yes the police followed due process in inviting the Applicant but the content of the Petition shows that there is a fundamental difference in the Plot No. and the name of the person accused of trespass.

In the petition it states:

“That on 24th may this miscreants by name Moh. M. Muaz came to the site with things and machetes trying to butcher people on site”

Meanwhile the name of the Applicant is Igoche Isah Henry and not Moh. M. Muaz. Even in the 1st paragraph of the letter/Petition it states:

“...that our Client is the owner of Plot 488/1199 Dawaki extension Relocation Layout Abuja.”

The only similarity between the two Plots is only that they are both situate at Dawaki.

Again the statement of the Applicant to the Police is on the Plot 40G and not on Plot 488/1199 Dawaki.

He had Claimed he bought the land from one Hajiya in 2015 and not last year as the Moh. M. Muaz had claimed going by the averment in the Petition to the police.

In the Statement the Applicant had claimed that he sold the land to Ohiri last year for N14 million. He also stated that he was at the same site trying to secure a land he had sold to Ohiri Ozumba when he was Petitioned by someone alleging

trespass. That it was that allegation that made him to be invited by the Police. Mean while he said he bought the land from one Hajiya whose name he cannot remember. He did not attach any of the documents he claimed he had sent to Bwari Area Council with his picture and letter of allocation. In his Affidavit in support he had told Court that he was doing construction work on the Plot 40G when the 1st Respondent came with hoodlums. That he had sold the land to Ohiri yet he did not call Ohiri as a party.

This Court finds it difficult to believe that the Applicant who had made a statement to Police that he sold the Plot 40G to Ohiri should at the same time be in the said land he had sold since 2016. There is a fundamental cover up in this case. Why should the Applicant be at the said land constructing after selling same to Ohiri for N14 million. Again why should the Police invite Applicant in the cause of investigation based on a Petition-Criminal Complaint on a totally different Plot of land which according to the Petition was trespassed into by Moh. M.Muaz.

These welcoming and unwelcoming issues in this case from the averment of both parties makes it hard for this Court to reconcile the issue of violation of fundamental rights of the Applicant and the denial of the violation.

From all indication there is no petition on record in this case that is based on trespass unto the said Plot 40G. There was no case of hoodlums before the invitation. The invitation, going by statement of the Applicant to the Police was on alleged Petition on trespass. The Police did not attach such Petition to justify their invitation. So stopping the Applicant from doing work on the Respondent is not in line with the law.

The letter of the Police to Director Lands show that there is an ongoing investigation on the land Plot 40.G. but that Petition is

not before this Court. Police has a right to write to AGIS as they did instead of stopping the work at the Plot 40G they should have charged the matter to court.

From all these the police inviting the applicant to their station was the right thing to do but inviting him based on allegation of trespass to land by Moh.M.Muaz on Plot 488/1199 Dawaki is wrong.

The Police violated his right to the extent of the false complaint. The police should therefore apologize to the Applicant in writing for that fundamental error. Police should not interfere with the Construction.

This is the Judgment of this Court.

Delivered today-----day of -----2020 by me.

K.N.OGONNAYA
HON.JUDGE