

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

SUIT NO. FCT/HC/CV/1952/2018

B E T W E E N:

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| <ol style="list-style-type: none">1. CHIEF GEORGE ALI2. SIMON ALI3. PIUS MONDAY ALI | } | APPLICANTS |
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AND

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| <ol style="list-style-type: none">1. INSPECTOR GENERAL OF POLICE2. DEPUTY INSPECTOR GENERAL OF POLICE3. AIR-VICE MARSHAL EMMANUEL EJEH (RTD) | } | RESPONDENTS |
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J U D G M E N T

The Applicants are by this Fundamental Rights action praying this for the enforcement of their Fundamental Human Rights against the Respondents.

The application is supported by a 42 paragraph affidavit in support dated 31st May, 2018 deposed to by the 1st Applicant, George Ali. The facts that are pertinent to this application are that sometimes in July 2017, the 3rd Respondent called to inform the deponent that his brother, Anthony Ali who is resident in America loaned the sum of \$100,000.00

(One Hundred Thousand United States Dollars) hence the deponent is to mediate in order for him to recoup his funds.

Through the efforts of the 2nd Applicant, who is the 1st Applicant's junior brother, a sum of ~~N~~5,000,000.00 (Five Million Naira) was raised in a partial refund of the loan. This notwithstanding the 1st Applicant Deponent was still called for questioning by the 1st and 2nd Respondents, the Police to explain all he knew about the loan advanced to his U.S. Based Brother.

Whilst at the station the 1st and 2nd Respondents got the 1st Applicant's brother's number from the 3rd Respondent when 1st Applicant's brother was called by the 1st and 2nd Respondent, he confirmed owing the 3rd Respondent. Regardless of this information the 1st Applicant had to bail himself out on self recognition as a retired States Security Service Officer. Aside from this, the 1st Applicant was also summoned by his village elders to come and explain his role in the loan transaction involving his brother.

After deposit of ~~N~~2,000,000.00 (Two Million Naira) by one Oche into the 3rd Respondent's account, the 1st Applicant was again summoned by the Police for his attention on the 22nd May, 2018. 1st Applicant recounted that he was asked by the Police when he intends to

refund the \$100,000.00 and he explained that he is not the guarantor or surety of his US based Brother.

1st Applicant also asserts that there are plans by the 3rd Respondent to abduct him and forcefully take him to the Policemen, that is, the 1st and 2nd Respondents. Aside from his harassment by the Respondents, the 1st Applicant also maintains that his younger brother, 2nd and 3rd Applicants are constantly receiving threatening calls and harassments by the Respondents.

1st Applicant asserts that unless that Respondents are restrained by this Court their constitutional right to personal liberty and freedom will be infringed.

Two sets of counter affidavits were filed in reaction to the Applicant's affidavit in support. One Inspector Joshua Yohanna a litigation officer attached to the Legal Section of the Force Criminal Intelligence and Investigation Department deposed for a 21 paragraph counter affidavit.

He contends that the facts in the affidavit in support are misleading and incorrect. He recounted that on the 14th August, 2017 they received a petition from Victor Giwa & Associates on behalf of the 3rd Respondent. By the petition, the 1st Applicant was alleged to have been

engaged in criminal conspiracy, breach of trust, threat to life and obtaining by false pretence.

The petition also noted that the Applicants with intent to defraud, conspired and deceitfully collected the sum of \$100,000.00 from the 3rd Respondent and told him i.e, the 3rd Respondent that they can import spare parts of vehicles from the United States. After nine years of non-performance, the Respondents got threat messages from the Applicants. It was also recounted by the deponent that the 1st Applicant was released on the same day of his arrest after he volunteered to make a statement.

The 1st and 2nd Respondents vehemently denied that the Appellants were ever arrested, detained, abducted nor where their personal liberty infringed by them. He contended that the Applicants failed to honour the 1st and 2nd Respondent's invitation rather they have been running from pillar to pole.

The 3rd Respondent personally deposed to a 24 paragraph affidavit dated 15th August, 2018. The 3rd Respondent admitted that he petitioned against the Applicants to the Police, after repeated calls by the 3rd Defendant for the refund his money. He said that the Applicants had remitted five million to him. "After series of pressures from 1st and 2nd Respondents. He posits that the 1st and 2nd Respondents are

carrying out their lawful and constitutional duties” All Counsel filed and exchanged written addresses, Chief Emeka Obegolu Counsel for the Applicant, in his written address dated 30th May, 2018 formulated an issue for determination, they are;

1. Whether the Applicants are entitled to apply for the enforcement and protection of their Fundamental Human Rights.
2. Counsel for the 1st and 2nd Respondents in his written address dated 28th June, 2018 also formulated a lone issue for determination, that is,
3. Whether the Applicants in the circumstance of his application is entitled to the reliefs sought in the application.

Victor Giwa Esq., Counsel for the 3rd Defendant in his written address dated 15th August, 2018 formulated a lone issue for determination that is, whether or not the Honourable Court has jurisdiction to entertain this suit.

I will consider the submissions of the 3rd Respondent’s Counsel first bearing in mind that the sole issue formulated by him bothers on a threshold point, that is on this Court’s jurisdiction to entertain this suit. Counsel for the 3rd Defendant commended this Court to the decision in **GOVERNOR OF KWARA STATE v. LAFIAJI (2005) 5 N.W.L.R. (PART 917) page 139 at 151, Ratio 1** where it was held that in determining

jurisdiction, the Court will only consider the Writ of Summons and Statement of Claim. He also relied on Order 2 Rule 1 of the High Court of the FCT Civil Procedure Rules, 2018 which prescribes that suits are to be commenced by a writ, Originating Summons, Originating Motion or Petition, this being the case, Counsel posits that this suit is incompetent in so far as it was commenced by a Motion on Notice.

Counsel for the 3rd Respondent, reasons that having not constituted this suit by way of originating summons, Order ix of the Fundamental Enforcement Rules, 2009 had been breached.

I have carefully read Order ix of the fundamental enforcement rules which provides that noncompliance with requirement as to time, place or manner is not complied with such noncompliance will not render an action for the enforcement of fundamental right a nullity except it relates to mode of commencement of the action by the Applicant or the subject matter is not within the contemplation of Chapter 14 of the African Charter as Human and People's Right.

I have carefully considered the submissions of the 3rd Respondent's Counsel, however I consider his submissions with respects, misplaced and baseless having regard to Order II Rule 2 of the Enforcement of Fundamental Human Rights.

It provides thus that:

An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall subject to the provisions of these rules, lie without the leave of the Court.

Under the interpretation provision of the same enforcement rules, originating application means every application other than an application on a pending cause or matter.

When the foregoing provisions are applied to the manner this suit was commenced, I am not left in doubt that this Motion on Notice as an originating process upon which this suit for the enforcement of fundamental right has been properly instituted.

Similarly, it must be noted that the objective of the fundamental enforcement rules is to ensure that the Enforcement of Fundamental Human Rights is not prejudiced on account of noncompliance with any of the enforcement rules, Order iv Rule 4 of the Enforcement Rules provides thus:

“Where in the Court of any Human Rights proceedings, any situation arises for which there is or appears to be no adequate provisions in these rules, the Civil Procedure Rules of the Court for the time being in force shall apply”

My take from the foregoing provisions is that fundamental rights actions can be commenced in any of the manner provided in the High Court of the FCT Civil Procedure Rules. Order 2 Rule 1 recognizes the commencement of a suit by way of an originating or by a Motion on Notice as in the instant case. There is nothing before this Court to show that this action stems from a pending suit, this being the case the objection predicated on the noncompliance of this suit is lacking in merit and it is accordingly overruled.

In answer to the 3rd Respondent's lone issue, I hold that this Court is seized with jurisdiction to entertain this suit. My answer is in the affirmative.

Turning to the 1st and 2nd Respondents' lone issue for determination, that is, whether the Applicant is entitled to the reliefs sought, Learned Counsel for the 1st and 2nd Respondents, Madaki W. Emmanuel Esq., contends that the Applicants have not disclosed any cause of action against the Respondents. Consequently, the Respondents fears that the 1st and 2nd Respondents may be arrested, detained and prosecuted based on the petition against him.

He contends that there is no proof threat that the Applicants will be unlawfully detained. He reasons that the inference of arrest and detention are not sufficient facts for the Enforcement of Fundamental

Human Right. He then commended this Court to the decision in **IVIEHAGBOR v. BUZUAYE (1999) 9 N.W.L.R. (PART 620) page 553.**

He also went on to submit that by the operation of Section 4 of the Police Act, Cap. 359, LFN 1990, the 1st and 2nd Respondents as Police Officers are who are only empowered to protect life, property and prevent crime.

He posits that in the instant scenario, the Police did not trump up the allegations rather it was predicated on a petition, Exhibit A. He went on to argue that the Respondents did not take the laws into their hands but called for Police Intervention in furtherance of their statutory responsibility. Learned Counsel for the 1st and 2nd Respondents relied on Section 24(1) of the Police Act as well as Section 35(i)(c) of the 1999 Constitution, as amended. Learned Counsel posits that allowing this application would amount to stripping the Police of its powers under the law and lead to lawlessness and chaos.

In sum, the 1st and 2nd Respondents' Counsel argued that the Applicants are not entitled to the reliefs sought.

I am however unable to allude to the submission of Counsel for the 1st and 2nd Respondents that a case of fundamental human rights can only be initiated only when there is actual threat or breach of a Fundamental Human Right. It is needful to restate Order 1 Rule 1 of the

Fundamental Right (Enforcement Procedure) Rules 2009 which envisages the operation of the Fundamental Human Rights Enforcement where it is likely or it is appears to be threatened it provides.

“Any person who alleges that any of the fundamental rights provides for in the constitution or African Charter on Human and Peoples Right (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the Court in the state where the infringement occurs or is likely to occur, for redress”
(Emphasis are mine).

Going by foregoing this provision, the Applicants are rightfully entitled to file this suit having regard to the facts and circumstance of this case. The fear of arrest, threat, harassment and or intimidation is quite manifest hence the Applicants cannot be wronged for running to Court to express their apprehension and enforce their fundamental rights.

Unlike in regular suits where a wrong must have been occasioned in order to constitute a cause of action, the mere likelihood of arrest, intimidation creates a cause of action by the operation of Order 1 Rule 1 of the Fundamental Rights Enforcement Rules.

I am also persuaded that the conducts of the Respondents are untoward and indeed reckless. Going by the evidence from both parties it is obvious that the objective behind the 1st and 2nd Respondents role is

to serve as debt recovery agents for and on behalf of the 3rd Respondent.

The counter affidavit of the 3rd Respondent is a clear manifestation of the unbridled use of the Police Officers in carrying out duties which are not within their official responsibility. The 3rd Respondent contends that the *“2nd Applicant remitted the sum of ₦5,000,000.00 (Five Million Naira) thereafter a sum of ₦2,000,000.00 (Two Million Naira) after series of pressures from the 1st and 2nd Respondents with the hope that I will withdraw the case from the 1st and 2nd Respondents”*

One wonders whether it is the duty of the Police to put a citizen under pressure in order to extract ₦5,000,000.00 (Five Million Naira) from him and pay over the funds to the person being owed. Their conduct to my mind mirrors the moral decadence and wanton abuse of office by the Nigerian Police Force today. I have also considered the counter affidavit filed by Salihu Omeiza Esq., wherein he averred that notwithstanding the order of restraint made by this Court, the 1st Applicant was brought down to the Force Headquarters Abuja where he has been detained on a matter that is purely civil in nature. I am thus in agreement with the Applicants' Counsel that Section 35(1) of the Constitution of the Federal Republic of Nigeria has been breached by the Respondents.

It provides that:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty”

The detention of the 1st Applicant and the diverse acts of intimidation and harassment occasioned by Respondents are undoubtedly in contravention of the African Charter on Human and Peoples Right Ratification and Enforcement Act.

All parties in this suit are consensual that the subject matter of the petition leading to the harassment of the Applicants stems from a commercial transaction, in relation to the importation of vehicle parts between the 3rd Respondent and the Applicants’ Brothers. The Applicants are neither parties to the importation agreement nor are they guarantors and even where they are, the 3rd Respondent’s right to recovery is certainly not within the precincts of the Police Station or Headquarters.

The functions of the Police under Section 4 of the Police Act is *“...the Police an States that the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of the land 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 initially duties which or without Nigeria*

as may be required by them by, or under the authority of this or any other Act...

The 1st and 2nd Respondents undoubtedly over stepped their official bounds and threw caution to the wind by using their cohesive powers to recover debts arising from simple contract.

The decision in **MCLAREN v. JENNINGS (2003) 3 N.W.L.R. (PART 808) 475 at para 4** is quite apt, there it was held that:

*“Section 4 of the Police Act which deals with the general duties of the Nigeria Police does not empower the police to enforce a contract or to collect rents or common debts...This is not one of the statutory the Court held in the case of **AFRIBANK (NIG.) PLC v. ONYIMA (2004) 2 N.W.L.R. (PART 858 page 660 para. 6**”* it was held:

The Police is a respectable institution which is entrusted with the security of the country and the people. It is not a debt collector and should never be involved in such services.

It follows that the powers of the Police is not open ended and subject to abuse and wanton deprivation of a citizens fundamental human rights.

In **UBANI v. DIRECTOR SS (1999) 11 N.W.L.R. (PART 625) pages 129 at 148 – 149**, the Court held that:

“No one may be deprived of his freedom except for reason and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”

The diverse threats, harassments, intimidation and 3rd Respondents threat of arrest at his Son’s wedding by the 1st and 2nd Respondents are wanton abuse of the powers of the Police and an aberration to the Applicant’s Fundamental Human Right.

In the light of the foregoing considerations I am of the view and will so hold that the Applicants Fundamental Human Rights have been violated by the Respondents.

Applicants’ case against the Respondents succeeds accordingly they are entitled to remedies sought in their reliefs. See the case of **WEMI v. A.G. LAGOS STATE (1996) 6 N.W.L.R. (PART 452) page 42 at page 55 paras. D – E**, it was held:

*“The issue of redress may turn on what is appropriate remedy. For instance, an infraction of a person’s liberty is remediable under Section 32(6) at his instance by “compensation and public apology from the appropriate authority or person. This is in addition to his entitlement to be released if he is still unlawfully detained. As regards right to freedom of movement under Section 38, although no remedy is specified by that section, it has been established in **MINISTER OF INTERNAL AFFAIRS***

v. SHUGABA (1982) 3 N.C.L.R. that damages are a remedy. This again is in addition to the restoration of the right to freedom of movement I will now proceed to examine the reliefs sought.

The Respondents by themselves, their agents, officials and privies, however called are hereby restrained from harassing or further harassment, threatening or further threatening, intimidating, unlawfully arresting and/or unlawfully detaining depriving the Applicants in any manner whatsoever or to disturb and impede the liberty or peaceful and lawful movement and activities of the Applicants in respect of this matter.

The Respondents are respectively ordered to pay the sum of ~~₦~~3,000,000.00 (Three Million Naira) damages jointly and severally against the Respondents for the unlawful threat, detention and continuous harassment of the Applicant.

**O.O. Goodluck,
Hon. Judge.
29th January, 2020.**

APPEARANCES

Parties absent

Olaonipekun Rosiji Esq. Holding the brief of Emeka Obegoh Esq.:

For the Applicants

E. A. Dawodu Esq.: For the 3rd Respondent

1st and 2nd Respondents are unrepresented.