

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE FICMC

ON MONDAY THE 24TH DAY OF FEBRUARY, 2020

SUIT NO: FCT/HC/CV/127/2018

BETWEEN:

MR ANIEKAN UDOH APPLICANT

AND

<p>(1) ECONOMIC AND FINANACIAL CRIMES COMMISSION (EFCC)</p> <p>(2) EFCC AGENT ABDULLAHI</p> <p>(3) EFCC AGENT ALLISON</p> <p>(4) EFCC AGENT MRS BRIGGS</p> <p>(5) EFCC AGENT DARE FOLARIN</p>	}	<p>RESPONDENTS</p>
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JUDGMENT

By a motion on notice filed on 7/11/2018 and predicated on Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Section 46(1) of the 1999 Constitution of Nigeria and inherent jurisdiction of the Court, the Applicant seeks for the following reliefs

- “(1) A DECLARATION that the incessant harassment, arrest and detention of the Applicant by the Respondents for not committing any crime save for having had lawful business

transaction with one Stephen Okonkwo and Kenneth Ekwunno , is unconstitutional, unlawful and illegal as it offends Section 34(1)(a) and did not come under any of the exceptions stated in Section 35(1)(a) & (f) of the Constitution of the Federal Republic of Nigeria 1999 and also infringed Articles 6 & 7(2) African Charter on Human and Peoples Rights (Ratification and Enforcement) Act

2 A DECLARATION that the continued invitation of the Applicant to report to the office of the Respondents both at Port Harcourt, Rivers State and Abuja, by the 14th of November 2018, or any other day, on the allegation that one Mr. Stephen Okonkwo, one Mr. Kenneth Ekwunno, one Messrs. Fingassoil and Gas Ltd and One Messrs Hicks Integrated Services Ltd who were being investigated by the Respondents for some cases mentioned the Applicant as a person whom they had sometime in the past had legitimate business transactions with and without having any pending petition against the Applicant, amounts to intimidation and a grave violation which offends Section 34(1)(a) and did not come under any of the exceptions stated in Section 35(1)(a) & (f) of the Constitution of the Federal Republic of Nigeria, 1999 and also infringed Articles 6 & 7(2) African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

3. AN ORDER pursuant to grant of prayer 1 and 2 above quashing forth with the said further invitation to the Applicant to appear before the Respondents at its Port Harcourt office or Abuja office by the 14th of November 2018 or any other date in connection with this matter.

4. AN ORDER of perpetual injunction restraining the Respondents either by themselves, their agents, servants, functionaries, assigns representatives, whatsoever or however described from further inviting, arresting, threatening to arrest, detaining or threatening to detain or interfere with the Applicant's fundamental right to personal liberty and freedom as protected by Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) in connection with the allegations being investigated against one Mr. Stephen Okonkwo, and Kenneth Ekwunno, Messrs Fingassoil and Gas Ltd and One Messrs Hicks Integrated Services Ltd who only mentioned the Applicant in their statement to the Respondents as business friend without more.
5. AN ORDER OF COURT MANDATING the Respondents to issue an apology in writing to the Applicant within 7 days of making the Order for the breach of their Fundamental Rights constitutionally guaranteed.
6. The sum of N10,000.000.00 (Ten Million Naira) only as compensation to the Applicant against the Respondents, jointly and severally, for the breach of his fundamental rights constitutionally guaranteed pursuant to Section 35(6) of the Constitution of the Federal Republic of Nigeria, 1999 by the Respondents.
7. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances”

The application is supported by a 32-paragraph affidavit and 15-paragraph further Affidavit deposed to by the Applicant and Statement

containing the Reliefs sought and Grounds upon which the application is brought and Written Addresses of the Applicant's Counsel.

By the records of the Court, the Application was served on the Respondents on 13/11/2018. They filed a 7-paragraph Counter affidavit along with the Written Address of their Counsel on 23/11/2018.

At the hearing on 15/1/2020 the Respondents were absent and not represented by Counsel. The Learned Counsel for the Applicant, relying on his processes urged the Court in the terms of the application. The Court consistent with the provision of Order XII Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 deemed the Respondents' Counter affidavit as adopted. Judgment was then reserved for today 24/2/2020.

I have carefully read and digested the averments in the affidavits of the parties and submission of their learned counsel.

The cardinal issue that calls for determination is whether or not the Applicant has made out a case to justify a grant of the reliefs sought in the motion on notice.

In the affidavit in support, the Applicant averred inter alia, that he is a business man and independent oil marketer and carries on petroleum products business in the name of Addgas Petroleum and Investment Limited. The 1st Respondent is the agency of Government charged, inter alia, with the duty of investigating and prosecuting Economic and Financial Crimes in Nigeria. The 2nd to 5th Respondents are agents of the 1st Respondent.

Sometime in 2017, he assisted one of his friend, Mr. Stephen Okonkwo with a loan of N7,500,000.00 which money he paid to him in three instalments and same has been paid back to him.

In the course of his business one Kenneth Ekwunno whom he met through one of his Friends Chief Tony ordered for supply of some petroleum products to the value of N11,000,000.00 which products were paid for by Kenneth Ekwunno. After the payment of the N11,000,000.00 the supply order was cancelled by Kenneth Ekwunno and refund of the money called for.

He repaid to the said Kenneth Ekwunno the total sum of N9,500,000.00 and presently has a balance of N1,500,000 to pay to him.

The Respondents have since 2017 been inviting him to their Port Harcourt Office on the allegation that one Stephen Okonkwo, one Kenneth Ekwunno Messrs Fingassoil and Gas Limited and Messrs Hicks Integrated Services Ltd whom the Respondents were investigating mentioned his name as a person they have had some business transactions with in the past.

He was not shown any Petition against him nor informed of any offence against him or his company but was rather threatened with detention and was requested to make Statement to the Respondents on the investigation being carried out on Stephen Okonkwo.

He was kept in their custody in Port Harcourt by the Respondents in February 2018 from morning till midnight before he was allowed to go.

He is suffering from severe terminal illness which is aggravated by the Respondents incessant threats and intimidation which he informed them about. Copies of his Medical reports in this regard are attached as Exhibits A1-A6.

Neither he nor his Company Addgas Petroleum and Investment Limited had ever got involved in any fraudulent or criminal activity which warrant, the Respondents' acts of intimidation and harassment in the named investigation.

On 22/10/2018, the Respondents invited him to their Port Harcourt Office and kept him in their detention cell for three days without any medical attention on the same allegation in the case being investigated against Stephen Okonkwo, Kenneth Ekwunno and their two Company aforesaid.

He was not allowed to go on account of his severe health condition and same deteriorated. He was only allowed to go in the evening of 24/10/2018.

He has been subjected to psychological and mental torture as a result of threat to further arrest and detain him.

He has informed the Respondents that he neither knew nor had any business with the Companies of the above named individuals but the Respondents who have refused to present any petition or complaint by the said persons against him are insisting that he must be subjected to investigation and torture.

The Economic and Financial Crimes Commission has a duty to operate under the rule of law. The oral invitation by its officers to him to appear in their office on 14/11/2018 and 14/12/2018 notwithstanding the fact that he had answered to their summons several times and there was no petition existing against him or his company allegedly committing any crime is illegal, unlawful null and void.

He had been threatened by the agents of the Respondents that he would face another arrest and detention both in Port Harcourt and Abuja by 14/11/2018 and 14/12/2018 except if he admits being involved in the crime for which Stephen Okonkwo and Kenneth Ekwunno and their Companies were being investigated.

Despite his health challenges the Respondent have threatened to arrest and detain him thereby causing him psychological torture and forcing him to go into hiding.

In view of the above breaches, he is entitled to monetary compensation and apology in writing from the Respondents.

When he was released from the Respondents' detention and he went to National Hospital Abuja for medical treatment on 1/11/2018, the doctor confirmed to him that his medical condition has deteriorated.

The incessant invitations by the Respondents and threat to further detain him have made him to be psychologically unsettled and even lost some jobs and made him breach some of his contractual obligations.

He was informed by his counsel that Section 34(1)(a) and 35(1) of the 1999 Constitution of Nigeria guaranteed his rights to personal dignity and liberty and that nobody has a right to subject him to any degrading treatment or humiliation or torture. That he is equally entitled to personal liberty as provided in Section 35(1) of the 1999 Constitution and shall not be deprived of such liberty save under the circumstances provided in Subsection a-f thereof. That he is also entitled to the rights to freedom of movement as provided in Section 41(1) of the 1999 Constitution of Nigeria.

His arrest and detention by the Respondents and continued threats to arrest and detain him for a purely business transaction he had with his friends amount to breach of his fundamental right as guaranteed in Chapter IV of the 1999 Constitution of Nigeria. The Court can help him protect his said rights as well as protect him from the threat and intimidation of the Respondents.

In their Counter Affidavit it was averred on behalf of the Respondents by the 5th Respondent inter alia, that he is a Detective of the Economic and Financial Crimes Commission (EFCC). That the averments in paragraphs 5, 8,9, 13 to 30 of the Applicant's affidavit in support of the Application are untrue.

The EFCC received different petitions and in the course of investigation the name and phone numbers of the Applicant featured prominently. One of such Petitions was written against Kenneth Uche Ekwunnu and two others by Hon. Joshua Olaoye of Clev Josh Limited dated 15/2/2016. A copy of the Petition is attached as Exhibit EFCC1. The Petition disclosed that the said Kenneth Ekwunnu defrauded Hon.

Joshua Olaoye of about N46,500,500.00 under the guise of purchasing MT779 block.

In the course of investigation, the said Mr. Kenneth Ekwunnu admitted of defrauding the Complainant and mentioned the named of the Applicant as a beneficiary of the proceeds of crime. A copy of the Statement is attached as Exhibit EFCC2. .

It becomes very necessary to invite the Applicant to come and clear the air on his involvement.

The Applicant in his voluntary Statement to the EFCC on 22/10/2018 admitted knowing Kenneth as well as collecting about N11,000,000.00 from him for the purposes of diesel. Attached as Exhibit EFCC3 is a copy of his Statement.

The Applicant was granted administrative bail on same day. However, he could not perfect the administrative bail until 24/10/2018. A copy of his administrative bail and Bail Bond are attached as Exhibit EFCC 4 and EFCC 5 respectively.

The case is still being investigated and there is need to interview both Mr. Kenneth Ekwunnu and the Applicant hence the further invitation.

The Applicant's name was mentioned by Otuma firstborn in his extra judicial statement before the commission as Engr. Edinga P. Allen in a separate Petition written by Deinno Suto Bose Esq on behalf of Mr. Solomon Lamptey (a Ghanaian national) against one Otuma first born and Engr. Edinga P. Allen and others in an alleged case of Advance fee

fraud, forgery and impersonation. A copy of the Petition is attached as Exhibit EFCC 6 .

In the course of investigation Mr. Otuma firstborn in his voluntary Statement admitted giving about N13,000,000.00 (which was part of the money he received from Mr. Solomon Lamptey) to Rextronics Ventures with account number 0157716833 on the instruction of one Engr. Edinga P. Allen. A copy of the Petition is attached as Exhibit EFCC 7. The said Engr. Edinga P. Allen was introduced to him as a Staff of NNPC and would help him source for crude oil.

Mr. Solomon Lamptey (the Petitioner) also paid about N18,000,000.00 to Mr. Otuma firstborn who subsequently paid N16,000,000.00 to Engr. Edinga P. Allen.

Mr. Otuma in his voluntary Statement admitted that Mr. Edinga P. Allen was a fraudulent person and also not an NNPC Staff.

It became necessary for the Respondents to find out the identity of the so called Engr. Edinga P. Allen and owner of Rextronics Ventures. Mr. Otuma firstborn further identified the Applicant as Engr. Edinga P. Allen in his voluntary statement when both of them met at the Respondents office in Port Harcourt. A copy of the Statement is attached as EFCC 8.

In the course of investigation on the owner of Rextronics Venture, one Mr. Stephen Okonkwo was invited to determine his culpability in the case. In his voluntary statement he admitted having received money from one man known to him as Captain Joe with phone numbers:

08093835263, 08033835263 A copy of his statement is attached as Exhibit EFCC 9.

In the quest of finding out who Captain Joe is, one Austine Peak Aniekan, the biological son of the Applicant, was invited and in his voluntary statement he identify the above numbers to be that of his father, the Applicant in this suit. A copy of the statement is attached as Exhibit EFCC 10.

The Applicant has been using different names to defraud people. There are several petitions where his name featured prominently.

The Respondents did not violate any law in carrying out their statutory functions as provided for in the Economic and Financial Crimes Commissions (Establishment) Act 2004 regarding the instant suit. The EFCC is only carrying out its statutory function of investigating reasonable allegation of economic and financial crimes and money laundering.

There is need to further interview the Applicant as investigation is still on going.

The Respondents have not in any way violated the fundamental human rights of the Applicant. It is in the interest of justice to refuse the application.

In his further affidavit, filed on 25/1/2019 in response to the Respondents Counter affidavit, the Applicant averred inter alia, that paragraphs 3, to 6 of the Counter Affidavit are not true.

He is not aware of Kenneth Ekwunnu's involvement in any fraudulent dealing as the transaction he had with him was a legitimate business of supply of petroleum products. The N11,000,000.00 paid to him by Mr. Ekwunno was for the supply of petroleum product out of which he refunded N9,500,000.00 when the latter rescinded the contract.

His name is Aniekan Udoh and he does not bear the name Engr. Edinga P. Allen neither does he bear the name Captain Joe. He never represented himself as an NNPC Staff neither did he indulge in the fraudulent acts alleged against him by the Respondents.

He was detained at the 1st Respondent's detention facility for unfounded reasons and mere suspicion and he is still threatened with further arrest and detention.

The bail condition given to him while in the 1st Respondents custody was such that he could not meet the condition. The Respondents knew that he could not get two directors in the Federal Agency who had landed property in Port Harcourt municipality who would stand as sureties for him.

The Respondents have obtained statements from him while he was in their custody in Port Harcourt and the further invitation and threat of arresting him are no longer necessary for their investigation of the petitions against Mr Kenneth Ekwunnu or any other person.

Further invitation from the Respondents and detention in their facility would seriously deteriorated his health condition.

As foresaid, the cardinal issue that calls for determination in this matter is whether or not the Applicant has made out a case to justify a grant of the reliefs sought in the originating motion.

As aforesaid too, both parties filed and exchanged Written Addresses in support of their respective contentions. I have carefully read and digested them as well as the averments in their affidavits.

Before proceeding further, it is pertinent the Court considers a procedural issue which is manifest. It is observed upon examination of the records of the Court that the Applicant's motion on notice was served on the Respondents on 13/11/2018. They filed their Written Address along with their Counter Affidavit in response on 23/11/2018.

The Written Address and Counter Affidavit were thus filed 10 days after the Applicant's motion was served on the Respondents.

Order 11 Rules 5 and 5 fundamental Rights (Enforcement Procedure) Rules 2009 ("FREPR") makes provisions guiding filing and service of processes in a fundamental rights enforcement matter.

Order 11 Rules 5 and 6 provides:-

"Every application shall be accompanied by a Written Address which shall be succinct argument in support of the grounds of the application.

(6) Where the Respondent intends to oppose the application, he shall file his Written Address within 5 days after the service on

him of such application and may accompany it with a Counter Affidavit”.

By the provision of Rule 6 reproduced above, a Respondent who intends to oppose an Applicant’s application is under a duty to file his Written Address within 5 days of receipt of the Applicant’s application. The operative word used in the rule is “shall” which connotes mandatoriness. In this matter, and as aforesaid, the Applicant’s motion was served on the Respondents on 13/11/2018 but they filed their Written Address with affidavit in response on 23/11/2018- clearly 10 days after receipt of the Application. This undoubtedly is in violation of the provision of Order 11 Rules 5 and 6 of the FREPR. There is no written explanation offered for this breach by the Respondents in the records, of the Court. They also did not deem it necessary to apply for and obtain an order extending time for them to file process, from the Court. Indeed, as shown by the records, they merely filed the process and did not even bother to appear in Court on the scheduled hearing day despite Hearing Notice served on them. The Respondents having filed and served their Response to the Applicant’s application in breach of the provision of Order 11 Rules 5 and 6 of the FREPR and in the absence of any remedial application in the records, the Response is incompetent in the eyes of the law. The Response having been found to be incompetent is hereby struck out and will not be countenanced by the Court.

This said, the Court now turns to the Applicant’s Application. The question is whether he has made out a case to warrant a grant of the reliefs sought in the motion in the light of the provisions of the law even in the absence of a response from the Respondents.

The 1999 Constitution of Nigeria (as amended) has in Section 46(1) made provision with regard to the Court which has jurisdiction to entertain an application alleging breach of any fundamental right provided for in Chapter IV of the Constitution. It provides:-

“Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a high Court in that state for redress”

Order 11 Rule 1 of the FREPR makes a similar provisions in these words:-

“Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People’s Rights (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.

Provided that where the infringement occurs in a state which has no Division of the Federal High Court, the division of the Federal High Court administratively responsible for the state shall have jurisdiction...”

My humble understanding of the foregoing provisions of the 1999 Constitution of Nigeria (as amended) and the Fundamental Rights Enforcement Procedure Rules 2009 is that an Applicant who complain that any of his fundamental rights guaranteed in Chapter IV of the Constitution has been, is being likely to be contravened in any

state in relation to him is to apply to High Court or Federal High Court in that State for redress. Where there is no provisions of the Federal High Court in the state, the one administratively responsible for that state shall have jurisdiction. In TUKUR V. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (Pt. 117) p.517, The Supreme Court held that an application to secure the enforcement of the human rights of any person must be filed in the High Court of a State where the infringement takes place. The action will be incompetent if the application is filed outside the state where the infringement took place see:- MILITARY ADMINISTRATOR BENUE STATE V. ABAYILO (2001) FWLR (PT 45) P. 602.

In this case an overview of the averments in the Applicant's affidavits in support of the Application shows he avered that the Respondent detained him in their detention facility in Port Harcourt from 22/10/2018 to 24/10/2018 when he was released on Bail. For clarity, he avered as follows in paragraphs 16 and 17 of his affidavit in support:-

"16 .That the Respondents on the 22nd of October 2018 invited me to their Port Harcourt Office and kept me in the detention cell in their office for three (3) days without any medical attention on same allegation of investigating my involvement with the case being investigated against Stephen Okonkwo and Kenneth Ekwunnu, Messrs Fingassoil and Gas Ltd and Messrs Hicks Integrated Services Ltd.

(17) That the Respondents refused to consider my plea, to be allowed to go because of my severe health condition but was kept in the cell where my health situation deteriorated and

became very bad before I was allowed to go in the evening of 24th of October 2018”.

From the foregoing averments it is apparent that the Respondents conduct on which this action is predicated and on the basis of which he seeks the declaration in this suit was his detention by them in their cell in their office in Port Harcourt. The Applicant has not avered he was detained by the Respondents in any other place than in their cell in their office in Port Harcourt. He also avered that they further threatened to detain him in Port Harcourt by the 14th of November 2018 except he admitted being involved in the crime being investigated against Stephen Okonkwo, Kenneth Ekwunno and their Companies aforesaid.

The Applicant having made his detention in the Respondents' cell in their office in Port Harcourt the foundation of this suit, it becomes apparent that the alleged breach of the Applicant's fundamental right to the dignity of his person and liberty provided for in Section 34(1)(a) and 35 (1) of the 1999 Constitution of Nigeria and pursuant to which he seeks the declaration in this suit occurred in Port Harcourt in Rivers State. This being the case, it cannot be gainsaid that the Court that is seised of jurisdiction to entertain the action is High Court of Rivers State or Federal High Court, Port Harcourt Division, but certainly not this Court. This is because no part of the breach of the aforesaid Applicant's fundamental rights occurred in the Federal Capital Territory Abuja. The alleged breach(es) began and ended in Port Harcourt.

By reason of these, it is clear that by instituting this action in this Court, the Applicant approached the wrong Court. As required by the provision of Section 46(1) of the 1999 Constitution of Nigeria (as amended) and Order 11 Rule 1 of the FREPR 2009, and held in TURKUR GOV. OF GONGOLA STATE (supra), the alleged and/or threatened breach of the Applicant's rights to dignity of his person and personal liberty having occurred in Port Harcourt the action should have been commenced in High Court or Federal High Court in Port Harcourt. The action having been commenced in this Court, in the circumstances, the Court does not have the jurisdiction to hear and determine it.

By reason of this, the action is incompetent. Being incompetent by reason of lack of jurisdiction, the fate that awaits it is an order striking it out. The suit is struck out.

I make no order as to cost.

Signed
Hon. Judge
24/2/2020

LEGAL REPRESENTATIONS:

- (1) ATUEGWU C. OKAFOR Esq for the Applicant
- (2) BABASHANI U. SANDA Esq for the Respondents