IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 5TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14, APO, ABUJA

SUIT NO: FCT/HC/CV/0574/18

IN THE MATTER OF AN APPLICATION BY MALLAM ALI IBRAHIM UBA & 4 OTHERS FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL HUMAN RIGHTS

BETWEEN

1. MALLAM ALI IBRAHIM UBA
2. MALLAM ABDUL WAHAB IDRIS
3. MALLAM SULEIMAN ADBULSALAM
4. GENERAL HOUSING & PRODUCTS LTD.
5. SYSTEMS PROPERTY & DEV. CO. LTD.

APPLICANTS

AND

1. THE ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE
2. THE STATE SECURITY SERVICE
3. ALH. YUSUF MAGAJI BICHI, DIRECTOR GENERAL, STATE SECURITY SERVICE
4. MR. GODWIN BASSEY, DIRECTOR OF OPERATIONS, STATE SECURITY SERVICE
5. MALLAM ADO MUAZU, FCT DIRECTOR OF DSS

RESPONDENTS

JUDGMENT

At the time material to this suit, the 1st – 3rd Applicants were employed as construction workers by the 4th and 5th Applicants at the site of the property they were co-developing at No. 3, Queen Elizabeth Street, Asokoro, Abuja. The 4th and 5th Applicants permitted the 1st – 3rd Applicants to reside at the construction site in order to ease their work and for security of the building materials that were kept on the site.

The Applicants claimed that on 24/11/2018, some officers of the 2nd Respondent invaded the premises, ordered the 1st – 3rd Respondents out of the site, and took over occupation of the premises.

The 1st Applicant also contended that he was arrested in the process, taken to the office of the 2nd Respondent, where he was detained and tortured for over three (3) hours, without

being informed of the reason for his arrest and detention; that without asking him to make any statement, he was later released and that upon returning to the premises, the officers of the 2nd Respondent who mounted guard over the house, and did not allow he, the 2nd and 3rd Applicants entry into the premises; that efforts made by the 4th Applicant to get the 3rd Respondent to get the officers of the 2nd Respondent to vacate the premises and restore the 1st – 3rd Applicants back thereto proved abortive.

Being aggrieved by the alleged rights violations of the Respondents, the Applicants commenced the instant action for the enforcement of their fundamental rights, *vide* originating Motion on Notice filed in this Court on 07/02/2019, pursuant to the **Fundamental Rights (Enforcement Procedure) Rules, 2009**, whereby they

claimed against the Respondents, the principal reliefs set out as follows:

1. ***A declaration that the invasion of the residence and place of work of the Applicants and forceful eviction of the Applicants at gun point by the officers of the 2nd Respondent are unconstitutional, illegal and a gross violation of the Applicants' right to personal liberty, right to freedom of movement and right to dignity of human person as guaranteed by sections 33, 34, 35, 41 and 46 of the 1999 Constitution of the Federal Republic of Nigeria and Articles 5, 6, 7 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004.***

2. ***A declaration that the action of the 2nd to 4th Respondents to embark on forceful eviction of the Applicants from their residence and place of work is unconstitutional, illegal and***

outside the scope of the duties of the 2nd to the 4th Respondents amounts to gross abuse of office because their action is totally outside the scope of their duties as contained in Section 2 Subsection 3 of the National Security Agencies Act Cap N74 Laws of the Federation of Nigeria 2010.

3. ***An order perpetually restraining the Respondents from further harassing, intimidating and/or evicting the Applicants either by themselves or by their officers, agents, servants, privies or howsoever called in respect of the matter that gave rise to this action without an order of a court of competent jurisdiction.***

4. ***An order of this Honourable Court directing the Respondents to vacate No. 3, Queen Elizabeth Street, Asokoro District and/or remove whoever is or are occupation of No. 3 Queen Elizabeth Street, Asokoro, Abuja in their stead and restore the***

Applicants into possession and occupation of the said No. 3 Queen Elizabeth Street, Asokoro, Abuja.

5. ***An order directing the 1st to the 4th Respondents to pay to the Applicants the sum of Five Hundred Million Naira (₦500,000,000.00), as compensation and damages for the unlawful invasion and forceful eviction of the Applicants from their residence and place of work and making them homeless since the 24th day of November 2018, which constitutes a violation of their right to personal liberty, right to freedom of movement and right to dignity of human person as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples Rights.***

6. ***A Mandatory order directing the Respondents to tender unreserved apology to the Applicants for the unlawful infringement of their fundamental rights.***

In response to the originating motion on notice, the 2nd – 5th Respondents filed a Counter Affidavit on 17/10/2019, through one **Tanko Musa,** a personnel of the State Security Service attached to the Legal Department at the Headquarters, Abuja. He denied the totality of the allegations and claims of the Applicants, stating that the entirety of the action is speculative.

The 2nd – 5th Applicants further filed a Notice of Preliminary Objection on 22/05/2019, challenging the competence of the suit and the jurisdiction of the Court to entertain the same on ground that the 2nd Respondent is an agency of the Federal Government and that the High Court of a State (including the FCT) lacked jurisdiction to entertain matters involving an agency of the Federal Government of Nigeria.

The Applicants responded to the objection by filing a Reply address on 10/10/2019.

The Court heard both the objection and the substantive originating motion on notice together on 05/11/2019.

I had carefully considered the totality of what I consider as familiar arguments canvassed by the 2nd Respondent's learned counsel in support of the objection. Learned counsel's contention is with relations to the interpretation of the provisions of **s. 251(1) (q), (r) and (s)** of the **Constitution** which confer exclusive jurisdiction to the Federal High Court with respect to matters affecting the Federal Government or any of its agencies where issues relating to the operation and interpretation of the Constitution are involved; or actions for declaration or injunction affecting the validity of any executive or

administrative action or decision by the Federal Government or any of its agencies; and thus argued that the reliefs sought by the Applicant in the instant suit were within the contemplation of those **sub-sections** of **s. 251** of the **Constitution** cited in the foregoing and as such the Federal High Court, to the exclusion of all other Courts, have jurisdiction to entertain such an action. Learned counsel relied on a number of familiar authorities, including *NEPA Vs. Edegbero [2002] 18 NWLR (Pt. 798) 79; DG, SSS Vs. Ojukwu [2006] 13 NWLR (Pt. 998) 575; Aniakor Vs. Nigeria Police Force [2014] 15 NWLR (Pt. 1429) 155 and Adetona Vs. Igele [2011] LPELR-159(SC)*, and urged the Court to decline jurisdiction to entertain the suit.

In his brief response to the objection, the Applicants' learned counsel contended that by the provision of **Order 2 Rule 1** of the **Fundamental Rights (Enforcement Procedure)**

Rules, 2009, the Applicants have a choice either to institute the action either at the Federal High Court or at the High Court of the FCT, depending on where the violation complained of occurred. Learned counsel relied on the Supreme Court authority of *Federal University of Technology, Minna Vs. Olutayo [2017] LPELR-43827(SC)*, where it was held that the High Court of a State and the Federal High Court both have concurrent jurisdiction to entertain fundamental rights enforcement proceedings.

Learned Applicants' counsel further contended that on the basis of the decision of the Supreme Court above cited, there is no dichotomy of jurisdiction between the Federal High Court and the State High Court or the High Court of the FCT, to entertain cases of violation of fundamental rights involving the Federal Government or any of its agencies.

Learned counsel therefore urged the Court to dismiss the objection.

It is not in doubt that any suit whose subject matter or cause of action is within the realm contemplated by the provision of **s. 251(1) (q)** and **(r)** of the **Constitution,** in so far as it affects the Federal Government or any of its agencies, is within the exclusive jurisdictional competence of the Federal High Court. That is clear and undebatable.

However, where a suit, as in the present case, simply alleges infringement of a citizen's sacrosanct fundamental human rights preserved by the provisions of **Chapter IV** of the **Constitution**; the same **Chapter IV**, *vide* **s. 46(1)** thereof, clearly sets out the course open to any citizen who alleges that any of the fundamental rights preserved in that

Chapter has been, is being or is likely to be breached, for judicial redress.

It will therefore be a total misconception of the purport of **Chapter IV** of the **Constitution** for anyone to import acts alleged to be done in breach of a citizen's fundamental rights by an agency of the Federal Government into those contemplated in **s. 251(1) (q) and (r)** of the **Constitution,** and thereby argue that such an action is within the exclusive jurisdictional competence of the Federal High Court.

In practical terms, there is no suit involving allegations of violations of fundamental rights that the security agencies, which are agencies of the Executive arm of Government are not the alleged violators. That being so, if the drafters of the **Constitution** had intended to add to the already overcrowded jurisdiction of the Federal High Court by

conferring exclusivity to it on matters ensuing from **Chapter IV** of the **Constitution,** it would have been expressly so provided in **s. 46,** as it is in **s. 251** of the **Constitution**.

This Court has been consistent in its view, which remains unbended, that a State High Court, including the FCT High Court, has unfettered jurisdiction to entertain any matter predicated on any of the provisions of **Chapter IV** of the **Constitution,** by virtue of **s. 46, s. 6 (6) (b) and s. 257** thereof, regardless that the Federal Government or any of its agencies is a party.

The position of this Court was again reaffirmed by the Court of Appeal in *EFCC Vs. Agbele [2018] LPELR-22521(CA)*, which case was decided at the trial by this Court. The Court of Appeal, whilst affirming the decision of this Court on the same issue as to whether or not the State High Court

(including FCT High Court), had jurisdiction to entertain a fundamental rights suit in which an agency of the Federal Government is a party, relied on the decision of the Supreme Court in *John Shoy Int'l Ltd vs. FHA [2017] All FWLR (Pt. 892) 984*, where it was held that any action founded on the enforcement of fundamental rights does not fall within the enumerated items under **s. 251(1)** of the **Constitution** over which the Federal High Court has exclusive jurisdiction. See also *Futmina Vs. Olutayo [2017] LPELR-43827(SC)*, where the Supreme Court held as follows:

> "***On this issue, I have no hesitation agreeing with the respondent's counsel that the settled position of the law that the jurisdiction to entertain actions for the enforcement of any of the fundamental rights guaranteed by the Constitution in Chapter IV thereof is concurrently***

vested in the Federal High Court and the State High Court. This is without with prejudice to whether any of the parties is either the Federal Government or an agent or agency of the Federal Government. NEPA v. EDEGBERO (supra) is accordingly inapplicable as it does not deal with enforcement of fundamental rights. On the other hand, GARBA v. UNIVERSITY OF MAIDUGURI (supra); JACK v. UNIVERSITY OF AGRICULTURE (supra) as well as GAFAR v. GOVERNMENT OF KWARA STATE (supra) are very apposite."

In the present suit, the complaints of the Applicants are that the Respondents invaded their residence, forcefully evicted them and took over occupation of the premises; and as such approached this Court to seek redress for the alleged violation of their fundamental rights to personal liberty, right to freedom of movement and right to the dignity of their persons.

In such a case therefore, it needs be re-emphasized that the purported actions of the Respondents, in forcefully evicting the Applicants from their residence, arresting and detaining the 1st Applicant as alleged, cannot by any stretch of interpretation be held to constitute executive or administrative action or decision of agents of the Federal Government of Nigeria for which an action to challenge validity of such can only be entertained exclusively by the Federal High Court by virtue of the provision of **section 251(1)(r)** of the **Constitution.**

In other words, where it is alleged that the Police, or indeed any of the security agencies arrests or detains a citizen in pursuance of their statutory duties enumerated in the **Police Act** and such like; such acts, to my mind, could not, by any stretch of interpretation, be said to be in pursuance of executive or administrative action or decision. Rather, such

actions are only done by the Police, in seeking to perform its statutory duties of enforcement of the laws of the land.

The conclusion is therefore that the Applicants' cause of action is totally unrelated to matters upon which the Federal High Court is conferred with exclusive jurisdiction by virtue of **section 251(1) (q), (r)** and **(s)** of the **Constitution** to entertain. This position is again reinforced by the decision of the Court of Appeal in Osunde Vs. Baba *[2015] All FWLR (Pt. 781) 1482*, where it was held as follows:

> ***"I am in agreement with the appellants that the subject matter of the instant case does not fall within those matters captured by s. 251 of the Constitution. It is apparent that the appellants are agents of the state government; the wrong alleged against them was in pursuance of the duty reposed on them by the state… I***

equally agree with the appellants that this falls within the exclusive purview of the state High Court. The learned trial judge's holding to the effect that he had no jurisdiction to try the instant case was made in error and I so hold."

On the whole, I hold that the instant action is competently filed in this Court by virtue of the combined provisions of **sections 46(1), 6(6) (b)** and **257** of the **Constitution;** and this Court is eminently vested with jurisdiction to entertain the same. The objection of the 2nd Respondent is accordingly overruled and dismissed.

Proceeding to the main claim, I had carefully examined and considered the totality of the facts deposed in the affidavit evidence placed before the Court by the contending sides, together with the totality of the written arguments

canvassed by their respective learned counsel in the written submissions filed alongside their processes.

Now, the question of infringement of fundamental rights is largely a question of fact and the provisions of **Chapter IV** of the **Constitution** are sacrosanct on the issue. The law also remains trite that he who asserts must prove; therefore, the onus is on the Applicants who have prayed the Court for declaratory and other reliefs in this action to place before the Court sufficient material facts required to sustain the reliefs claimed; failure of which the Court will be entitled to dismiss the action. See *Onah Vs. Okenwa [2010] 7 NWLR (Pt. 1194) 512 @ 535; Dongtoe Vs. C.S.C., Plateau State [2005] 1NHRLR Vol. 1 78(SC) @ 116.*

As such, it is incumbent on the Applicants to prove, by credible affidavit evidence, that their fundamental rights as

enumerated in the reliefs claimed were breached by the alleged acts and conducts of the Respondents.

I had again examined critically the affidavit evidence placed before the Court, as deposed by the 1st Applicant. The property at No. 3, Queen Elizabeth Street, Asokoro, Abuja, from where he alleged that he and the 2nd and 3rd Applicants were evicted by the officers of the 2nd Respondent, is not their permanent residence and they did not claim to own the property. They were merely employed by the 4th and 5th Applicants as construction workers on the premised where they were given temporary accommodation for the duration of the construction work, in order to ease their movement and to further secure building materials on site.

The 1st Applicant further deposed in paragraphs 7 and 8 of his affidavit that on 24/11/2018, about seven (7) officers of the 2nd Respondent came in a Toyota Hilux Van, forcefully gained entry into the premises, and evicted he and the 2nd and 3rd Applicants. He went on, in *paragraphs 9, 10, 11* of his affidavit to further allege that the officers of the 2nd Respondent took him away to their office, tortured him, chained his legs, put a torture jacket on him for over three (3) hours, without informing him of the reason for his arrest, detention and torture or why he and the 2nd and 3rd Applicants were thrown out of their accommodation; and that he was not asked to make any statement before he was released.

A further examination of the affidavit of the 1st Applicant further revealed that the main grievance of the Applicants is the alleged forceful eviction of the 1st - 3rd Applicants from

and occupation of the premises aforementioned by the officers of the 2nd Respondent; and on the basis of which they had sued for alleged violation of their right to personal liberty, right to freedom of movement and right to the dignity of their human persons.

The question then is whether, on the basis of the facts deposed by the 1st Applicant to support the instant action, he has deposed to sufficient facts to sustain the alleged infringements against the Respondents.

In the Counter Affidavit filed on behalf of the 2nd – 5th Respondents, **Tanko Musa**, personnel of the 2nd Respondent, totally denied knowledge of the allegations of the Applicants. He denied the totality of the acts alleged in the affidavit in support of the application against officers of the 2nd Respondent, that they did not carry out any such

invasion; or forcefully ejected the 1st – 3rd Applicants, or detained and tortured the 1st Applicant or occupied the premises as alleged. He maintained that the case of the Applicants is merely speculative.

This brings me back to the affidavit deposed to by the 1st Applicant through which I had taken time to wade again. The deponent failed to identify any of the seven officers of the 2nd Respondent who allegedly invaded the premises on the said date. He failed to identify which office he claimed he was taken to where he was chained and tortured. In short the Applicant has not deposed to any concrete facts that would link the 2nd Respondent without doubt to the events that allegedly took place on 24/11/2018 at the premises where he and the 2nd Respondent worked as construction workers.

The position of the law is well known that a party who seeks declaratory relief is duty bound to adduce cogent and credible evidence to support his entitlement to the declaratory relief. In the present case, my finding is that the story narrated by the 1st Applicant in his affidavit in support of the application does not pin down the 2nd Respondent or his officers to the commission of the alleged acts, as he failed to adduce concrete and positive evidence linking the 2nd Respondent to the allegations of the house invasion.

There is also nothing in the affidavit to suggest that the 1st and 2nd Applicants were detained beyond the period permitted by the provision of **s. 35(4)** and **(5)** of the **Constitution**. There is also nothing to suggest that the Applicants' fundamental right to freedom of movement was curtailed by the Respondents. Again, the Applicants failed to clearly link the 2nd Respondent or any of the other

Respondents to the indignities and torture he allegedly suffered as a result of the alleged forceful eviction.

On the part of the 4 and 5th Applicants, no facts whatsoever were placed before the Court to show how their fundamental rights have been breached. In other words, they have disclosed no cause of action whatsoever against any of the Respondents. I so hold.

Again, I had examined the reliefs claimed in the light of the affidavit evidence on record. In my view, the case made up by the Applicants, if at all there is a case, at best is tortuous in nature, in which case their remedy only lies in an action for trespass simpliciter, to be begun by civil Writ and not in fundamental rights enforcement. It is not enough to couch reliefs in the nature of fundamental rights enforcement; it is the facts deposed in support that discloses the real cause of

action. In *PPMC Ltd. Vs. Akinyemi [2018] LPELR-22093(CA)*, the Applicant alleged that his truck was unlawfully seized by a Task Force purportedly set up by Edo State Government and proceeded to file an action for the enforcement of his fundamental right. The Court of Appeal, held that the action was founded in the tort of detinue but wrongly commenced as a fundamental rights enforcement suit.

In totality, I have no difficulty in holding, apart from the fact that the facts relied on by the Applicants to ground this suit do not disclose infringement of fundamental rights; but also that they have failed to establish their entitlement to the declaratory and other injunctive reliefs claimed in this action. In short, this action is feeble, lacked in merit and in substance. It shall be and is hereby accordingly dismissed. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
05/02/2020

***Legal representation*:**

C. O. C. Emeka-Izima, Esq. – *for the Applicant*

Elizabeth Alabi (Mrs.) – *for the 3rd and 4th Respondents*

Paul Atayi, Esq. (with **James Ogar, Esq.**) – *for the 5th Respondent*

1st and 2nd Respondents unrepresented by counsel