

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON TUESDAY 4TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14, APO, ABUJA

SUIT NO: FCT/HC/CV/1604/19

IN THE MATTER OF AN APPLICATION BY MR. IFEANYI ISRAEL FOR THE ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHTS

BETWEEN

MR. IFEANYI ISRAEL APPLICANT

AND

- | | | |
|--|---|-------------|
| 1. THE NIGERIA POLICE FORCE | } | RESPONDENTS |
| 2. INSPECTOR GENERAL OF POLICE | | |
| 3. ECONOMIC AND FINANCIAL CRIMES COMMISSION | | |
| 4. CHUKWUMA FELIX NKPANA | | |
| 5. DR. J. K. OKOYE | | |

JUDGMENT

The Applicant in this action was the erstwhile property manager appointed by the 5th Respondent to manage his landed properties severally located in Abuja, FCT and

Lagos, Lagos State. This relationship went on between the two parties from June, 2010 until sometime in August, 2018, when the 5th Respondent decided to disengage the Applicant's services.

Several months later, on 18/03/2019, the 4th Respondent, an officer of the 3rd Respondent, called the Applicant on the phone to invite him to the 3rd Respondent's office over an undisclosed offence being investigated against him. The Applicant demanded for a written invitation from the 4th Respondent when he refused to disclose the offence the Applicant allegedly committed.

On the same day, the Applicant was arrested by one **Inspector Paul Odey** of the IGP-IRT and was kept at the SARS detention facility in Guzape, Abuja; and subsequently on 19/03/2019, he was handed over to the 4th Respondent

who took him to the office of the 3rd Respondent at No. 5, Fomella Street, Wuse II, Abuja, where he was detained up until 22/03/2019; that it was only in the course of interrogation he realized that he was arrested upon trumped up allegation of indebtedness to the 5th Respondent over his stewardship as the 5th Respondent property manager; that in spite of the fact that he denied being indebted to the 5th Respondent, the 3rd and 4th Respondents had continued to request him to report in their office on Tuesdays and Fridays of every week, thereby obstructing his business; and that the 1st – 4th Respondents have not preferred any criminal charge against him in any Court of law.

These, briefly, were facts gathered from the Affidavit deposed to by the Applicant to commence the instant action for the enforcement of his fundamental rights, *vide*

originating Motion on Notice filed in this Court on 11/04/2019, pursuant to the **Fundamental Rights (Enforcement Procedure) Rules, 2009**, whereby he claimed against the Respondents, the reliefs set out as follows:

- 1. A declaration that the arrest, torture and detention of the Applicant at the detention facility of the 1st and 2nd Respondents at IGP-IRT Office, Guzape, FCT, Abuja (SARS Office) by one Inspector Paul Odeh, a Police Officer attached to IGP-IRT at the instance and behest of the 4th and 5th Respondents on 18th March, 2019, for daring to demand a written invitation from the 4th Respondent, is unlawful, unconstitutional and a flagrant infringement on the Applicant's fundamental right to personal liberty protected under section 35(1) & (3) of the Constitution of the FRN (as amended).***
- 2. A declaration that the arrest, torture and detention of the Applicant by the 3rd and 4th Respondents at the instance of the 5th Respondent from the 19th day of March, 2019 to the 22nd***

day of March, 2019 and continuous invitation of the Applicant by the 3rd – 5th Respondents to appear before the 3rd and 4th Respondents on every Tuesday and Friday of every week on the ground of a purported investigation of an allegation that the Applicant did not remit all rents he recovered for the 5th Respondent while acting as the 5th Respondent's Estate Agent, at the detention facility of the 3rd Respondent at No.5 Fomella Street, Wuse II, FCT-Abuja, in a place where there are courts of competent jurisdiction within a radius of forty kilometers, without bringing him before a court of law within a period of one day or period of two days in any case, is unlawful, unreasonable, unconstitutional and a flagrant infringement on the Applicant's fundamental rights on personal liberty and freedom of movement protected under sections 35 (1), (4) & (5) and 41 of the 1999 of the FRN (as amended).

- 3. An order restraining the Respondents from further violation of the Applicant's rights of freedom of movement and personal liberty by mandating him to be appearing before the 3rd and 4th Respondents on every Tuesday and Friday of every week without preferring any criminal charge against the Applicant.**
- 4. An order restraining the 1st – 4th Respondents from further constituting themselves into debt recovery agents for the 5th Respondent by interfering in a purely contractual and/or agency relationship between the Applicant and the 5th Respondent.**
- 5. An order restraining the Respondents from further arresting, detaining and/or by any means howsoever harassing the Applicant in connection with the purported non-remittance of part of rents due to the 5th Respondent by the Applicant which the Respondents are purportedly investigating.**

6. An order mandating the Respondents jointly and severally to pay the Applicant the sum of Twenty Million Naira (N20,000,000.00) being damages for the breach of the Applicant's Fundamental Rights to personal liberty and freedom of movement in terms of the reliefs sought in the statement accompanying the Affidavit in support of the application.

In response to the action, the 3rd and 4th Respondents filed a Counter Affidavit on 13/05/2019, deposed to by the 4th Respondent and to which some documents were attached as exhibits. He denied the totality of the Applicant's allegations. He stated that the 5th Respondent wrote a Petition to the 3rd Respondent against the Applicant, alleging fraud and criminal diversion of the sum of **N132,503,000.00**, being rental proceeds collected by the Applicant from properties he managed for the 5th

Respondent; and that the petition, copy of which is attached to the Counter Affidavit, was assigned to his team for investigation. He further stated that on 19/03/2019, the same day the Applicant was arrested, he was granted bail and was served with conditions of bail; that the Applicant could not meet the conditions of bail until 21/03/2019 and that he was released the following day, 22/03/2019. The 3rd and 4th Respondents denied torturing, intimidating or unlawfully detaining the Applicant.

On his part, the 5th Respondent deposed to a Counter Affidavit on 13/05/2019. He confirmed that he appointed the Applicant as his property manager for a period of about twelve (12) years; that during this period, the Applicant had collected huge rents from some of his tenants at his various properties without remitting the same to him; that at several account reconciliation meetings held with the

Applicant, he admitted to withholding a total sum of **₦132,503,000.00** of rents from properties he managed for the 5th Respondent, which he promised to pay back; that in the process, he (5th Respondent), disengaged the Applicant as his property manager; that it was when the Applicant failed to refund the rent he had misappropriated that he lodged a Petition with the 3rd Respondent, resulting in his invitation by the 3rd and 4th Respondents; that he did not collude with the 3rd and 4th Respondents in the course of their carrying out their statutory duties and that he did not in any way infringe on the Applicant's fundamental rights.

The Applicant also deposed to Further Affidavits on 17/05/2019 and 21/05/2019 in further response to the Counter Affidavits of the respective 3rd and 4th; Respondents; and 5th Respondent. He denied misappropriating rents from the 5th Respondent's properties.

It should be stated that the records of the Court bear out that the 1st and 2nd Respondents were duly served with the originating motion on notice and hearing notices for the scheduled hearing dates; but they failed to respond to the application and were not represented by counsel all through the proceedings.

I had proceeded to examine the totality of the facts deposed in the affidavit evidence placed before the Court by the contending sides in this case, 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, as correctly canvassed by the 3rd and 4th Respondents' learned counsel, the Applicant who has prayed the Court for declaratory and other reliefs in this action has the onus of placing 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 Applicant to prove, by credible affidavit evidence, that his fundamental rights to personal liberty and freedom of movement were breached by the alleged acts and conducts of the Respondents.

It is also very pertinent and significant to quickly emphasize and put in proper perspective, as I proceed, the duty of the

Court, whilst entertaining claims under the Fundamental Rights Enforcement Procedure. That duty is certainly not to conduct a criminal investigation, inquiry or trial; neither is it to establish the guilt or innocence of any party as relating to any allegation of crime. Its essence is also not to establish the liability or otherwise of a party with respect to whatever civil transactions he/she may have been involved or engaged with another party. The focal essence of the **FREP** is simply and strictly for the Court to enforce the protection of citizens' fundamental rights preserved by **Chapter IV** of the **Constitution** and the other recognized Human Rights Instruments, where an infringement is established or perceived.

The procedure under the **FREP Rules**, pursuant to the provisions of **s. 46(1)** of the **Constitution**, entitles any person who alleges that any of the provisions of **Chapter IV**

of the **Constitution** and any other recognized Human Rights Instruments which make provisions for the fundamental liberties of citizens, has been, is being or is likely to be contravened in relation to him/her, to apply to the appropriate Court in the state where the infringement occurred or perceived to occur, for redress.

The 5th Respondent is not a law enforcement agent. So then, in what way did he infringe on the Applicant's fundamental rights to his personal liberty and his freedom of movement?

The affidavit evidence deposed to by both the Applicant and the 5th Respondent was clear to the extent that at some time the Applicant had a working relationship with the 5th Respondent as his property manager; which relationship went awry at some point and the 5th Respondent had to disengage the Applicant on 10th August, 2018. The Applicant alleged, in paragraph 17 of the Affidavit in

support of his application, that the 5th Respondent mobilized one **Inspector Paul Odeh** to effect his arrest, after he refused to heed the telephone invitation of the 4th Respondent to the office of the 3rd Defendant, on 18/03/2019; and that upon his arrest he was detained at the SARS office of the 1st Respondent, in Guzape, Abuja, from 18/03/2019 to 19/03/2019.

However, the Applicant failed to depose to sufficient facts as to how he came about the information that it was the 5th Respondent that mobilized the officer of the 1st and 2nd Respondent to effect his arrest.

I therefore hold, on the trite principle of law that a party seeking declaratory relief is duty bound to adduce cogent and credible evidence to support his entitlement to the declaratory relief, that the Applicant has failed to advance

any cogent evidence that the 5th Respondent unduly or without legal justification, instigated his arrest and detention by the Police on 18/03/2019.

Next to be considered is the Applicant's allegation that the 1st and 2nd Respondents infringed on his fundamental right to personal liberty, guaranteed by s. 35 of the **Constitution**, by detaining him from 18/03/2019 and handing him over to the 3rd and 4th Respondents, the following day, 19/03/2019. He further deposed in paragraph 17 of his Affidavit in support that the Police severely tortured and dealt with him for daring to talk back at the 4th Respondent.

It is apparent that the allegations of the Applicant here are bare. They are not supported by any concrete or cogent

evidence other than the bare depositions in the Affidavit in support.

Moreover, it is apparent, from the affidavit evidence of the respective 3rd, 4th and 5th Respondents that it was the Petition written by the 5th Respondent that instigated the Applicant's arrest in the first place by the 1st and 2nd Respondents. If that is so, then the arrest could not have amounted to unlawful arrest as alleged. I so hold.

Again, by the Applicant's admission, he was not detained beyond the period permitted by law. As it is well known, the right to personal liberty is not an absolute right as correctly submitted by learned counsel for the 3rd and 4th Respondents. Right to personal liberty is limited by the circumstances set out in s. **35(1)(a)-(f)** of the **Constitution**.

The provision of s. **35(4)** and **(5)** of the **Constitution**, is also clear to the extent that any person who is arrested or detained in accordance with **subsection 1(c)** of s. **35** shall be brought before a Court of law within one day of the arrest and detention.

In the present case, it cannot be said that the detention of the Applicant by officers of the 1st and 2nd Respondents, from 18/03/2019 to 19/03/2019, constituted unlawful arrest and detention, since it is not shown to have exceeded the period allowed by s. **35(4)** and **(5)** of the **Constitution**.

I so hold.

To that extent, I must hold that the Applicant had failed to establish, with credible evidence that the 1st and 2nd Respondents violated his fundamental right to personal liberty, as alleged.

The Applicant again alleged, in paragraph 18 of his Affidavit in support that the 3rd and 4th Respondents unlawfully detained him in their detention facilities at Wuse II, Abuja, from 19/03/2019 up until 22/03/2019, a period of three to four days.

To controvert this allegation, the 4th Respondent deposed in paragraphs 19 – 22 of his Counter Affidavit that the same day the 3rd Respondent took custody of the Applicant, he was offered administrative bail by giving him bail conditions which he did not meet until 21/03/2019 and that he was subsequently released on 22/03/2019 when the sureties' documents were approved. To further substantiate his claim, the 4th Respondent attached to his Counter Affidavit, copies of the document by which the Applicant was offered provisional administrative bail on 19/03/2019 and the other bail documents as **Exhibits EFCC4 – 5(f)**.

The position of the law, as correctly canvassed by learned counsel for the 3rd and 4th Respondents, is that once the Police have offered bail to an arrested or detained person, any further stay in custody by that person until he satisfies the conditions of bail and is taken up by someone on bail cannot properly be regarded as unlawful detention under the **Constitution**. See Augustine Eda Vs. COP, Bendel State [1982] 3 NCLR 228; EFCC Vs. Chukwurah [2018] LPELR-21276(CA).

In the present case, the uncontroverted affidavit evidence on record is that the Applicant was offered bail on 19/03/2019, the same day he was taken to the 3rd and 4th Respondents' custody and that he did not fulfill the bail conditions until 21/03/2019. That he was not eventually released until 22/03/2019 cannot be held to constitute unlawful detention. I so hold.

In totality, on the basis of the affidavit evidence before the Court, the Applicant has failed to establish that the 3rd and 4th Respondent unlawfully detained him.

The Applicant has also alleged that the 3rd and 4th Respondents' directive that he should be reporting at their office Tuesday and Friday of every week without preferring any criminal charge against him further constituted breach of his right to personal liberty and freedom of movement.

Now, I had examined the document by which the 3rd Respondent offered the Applicant administrative bail, **Exhibit EFCC 4**. Part of the bail conditions stated in the document is that the Applicant shall **“Report to the Commission at every given date and time;”** which offer the Applicant did not state that he rejected.

I therefore fault the Applicant's contention that the requirement that he should report at the 3rd Respondent's office twice weekly constituted further infringement of his right to personal liberty and/or breach of his freedom of movement.

I further note that even though the Applicant was released on 22/03/2019; he rushed to Court barely three weeks after, on 11/04/2019, to file the present application.

In my view, the Applicant merely filed this application with the sole aim of obstructing or stalling the 3rd Respondent from performing its statutory functions, which includes investigation and prosecution of financial crimes and offences. I daresay that no responsible Court will shield any citizen from being investigated or prosecuted for allegations

of commission of crime; or prevent security and anti corruption agencies from performing their statutory duties.

See A. G., Anambra State Vs. Chief Chris Uba [2005] 15 NWLR (Pt. 947) 44, cited by the 5th Respondent's learned counsel.

The Applicant has again prayed the Court to restrain the 1st – 4th Respondents from further constituting themselves into debt recovery agents of the 5th Respondent by interfering in a purely contractual and/or agency relationship between the Applicant and the 5th Respondent.

However, as it is gathered from the copious affidavit evidence of the respective 4th and 5th Respondents, to which a gamut of documents were attached, it is not in question that the case reported by the 5th Respondent against the Applicant to the 3rd Respondent is that of fraud and criminal

diversion and misappropriation of rental proceeds to the tune of **₦132.5 million**, arising from the Applicant's stewardship as estate manager of the 5th Respondent's six (6) properties located variously in Abuja and Lagos. The Applicant is therefore in error to have contended that the 1st – 4th Respondents were employed by the 5th Respondent to recover debt. The allegation leveled against the Applicant, from the facts placed before the Court, bothered on financial crime; not merely debt recovery as the Applicant attempted to colour and trivialize it.

It is needless to further state that both civil and criminal actions could ensue from a civil or contractual transaction, depending on the roles played by individuals involved in the transaction. See FRN Vs. Vijay Lalwani [2013] LPELR-20376(CA).

As such, the fact that the relationship between the Applicant and the 5th Respondent was that of principal and agent, does not foreclose the 5th Respondent from reporting suspicions of commission of crime against the Applicant to the security or anti corruption agencies. I must further hold that, where, in the course of investigation by the 3rd Respondent, the Applicant offered to refund the sums involved in the alleged crime, the 3rd Respondent cannot, in the circumstances, be held to be acting as debt-collectors at the instance of the 5th Respondent. I so hold.

As I had remarked earlier on, the Applicant merely filed the instant action in order to obstruct and stall the 3rd Respondent from performing its statutory duties of investigating and probably prosecuting allegations of financial crimes leveled against him by the 5th Respondent. In as much as the duty of this Court, in a case of enforcement

of fundamental rights, is not to engage in criminal trial of an allegation of crime, at least on the basis of documents exhibited by the 5th Respondent to his Counter Affidavit, the Applicant seemed to have somewhat admitted the allegations leveled against him by the 5th Respondent.

The Applicant has also failed to make a meaningful case for the harassment by the 1st – 4th Respondents and having also failed to substantiate his substantive claims for violation of his fundamental rights as alleged, his claim both for injunction and damages must fail woefully.

In the final analysis, on the basis of the totality of the facts placed before the Court, the instant action is not only frivolous and lacking in merit; it is, in the view of the Court, orchestrated by the Applicant to prevent or obstruct the 3rd Respondent from conducting proper investigation of the case

of misappropriation and fraud reported against him by his erstwhile client, the 5th Respondent. The action shall be and is hereby accordingly dismissed. I award costs of this action, in the sum of ~~N~~**200,000.00** against the Applicant, in favour of each sets of the 3rd and 4th Respondents; and the 5th Respondents respectively.

OLUKAYODE A. ADENIYI
(Presiding Judge)
04/02/2020

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 Respondent unrepresented by counsel