

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON THURSDAY 13TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14, APO, ABUJA

SUIT NO: FCT/HC/CV/1752/19

IN THE MATTER OF AN APPLICATION BY MR. S. O. ABANG FOR THE ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHTS

BETWEEN

MR. S. O. ABANG APPLICANT

AND

1. PASTOR MAXELL EXPRESS OKAURU
(*Aka Dr. Maxell Express Onobere Okauru*)
2. GABRIEL ESEGINE, ESQ.
3. NIGERIA POLICE FORCE
4. INSPECTOR GENERAL OF POLICE
5. A.S.P. ABDULLAHI AMINU SOKOTO
6. PROPHETESS ANNE MAXELL OKAURU

RESPONDENTS

JUDGMENT

The Applicant, a legal practitioner, commenced the present action for the enforcement of his fundamental human rights, *vide* originating Motion on Notice filed on

26/11/2019, wherein he sought against the Respondents, the reliefs set out as follows:

1. An Order of this Honourable Court for the enforcement of the fundamental right to life, fundamental right to personal liberty, fundamental right to dignity of human person and fundamental right to move freely of the Applicant under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 LFN 2004, and in terms of the specific reliefs sought in the Statement accompanying the Application.

2. A declaration that the Applicant is entitled to his fundamental right to life, fundamental right to personal liberty, fundamental right to dignity of human person, fundamental right to move freely throughout Nigeria as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and

under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 LFN 2004.

3. A declaration that the conduct of the 1st, 2nd, 3rd, 4th, & 7th Respondents against the Applicant are unlawful, unconstitutional and amount to a threatened contravention of the Applicant's fundamental right to life as enshrined in Section 33(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

4. An order against the 1st, 2nd, 3rd, 4th, & 7th Respondents jointly and severally to pay the sum of One Billion Naira to the Applicant as compensation for the threatened contravention of the Applicant's fundamental right to life.

5. A declaration that the conduct of the 1st, 2nd, 3rd, 4th, & 7th Respondents against the Applicant are unlawful, unconstitutional and amount to a threatened contravention of

the Applicant's fundamental right to personal liberty as enshrined in Section 35(1)(a)-(e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

6. An order against the 1st, 2nd, 3rd, 4th, & 7th Respondents jointly and severally to pay the sum of ₦200,000,000.00 (Two Hundred Million Naira) as compensation to the Applicant for the threatened contravention of the Applicant's fundamental right to personal liberty.

7. A declaration that the conduct of the Respondents against the Applicant are unlawful, unconstitutional and amount to a likely contravention of the Applicant's fundamental right to life as enshrined in Section 33(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 4 of the

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

8. An order against the Respondents jointly and severally to pay the sum of One Billion Naira to the Applicant as compensation for the likely contravention of the Applicant's fundamental right to life.

9. A declaration that the conduct of the Respondents against the Applicant are unlawful, unconstitutional and amount to a likely contravention of the Applicant's fundamental right to person liberty as enshrined in Section 35(1)(a)-(e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

10. An order against the Respondents jointly and severally to pay the sum of ₦200,000,000.00 (Two Hundred Million Naira) as compensation to the Applicant for the likely

contravention of the Applicant's fundamental right to personal liberty.

11. A declaration that the conduct of the 1st, 2nd, 3rd, 4th, 5th & 7th Respondents against the Applicant are unlawful, unconstitutional and amount to a contravention of the Applicant's fundamental right to dignity of human person as guaranteed in Section 34(10(a)) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

12. An order against the 1st, 2nd, 3rd, 4th, 5th & 7th Respondents jointly and severally to pay the sum of ₦200,000,000.00 (Two Hundred Million Naira) as compensation to the Applicant for the contravention of the Applicant's fundamental right to dignity of human person.

- 13. A declaration that the conduct of the Respondents against the Applicant are unlawful, unconstitutional and amount to a likely further contravention of the Applicant's fundamental right to dignity of human person as guaranteed in Section 34(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and Articles 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.**
- 14. An order against the Respondents jointly and severally to pay the sum of ₦200,000,000.00 (Two Hundred Million Naira) as compensation to the Applicant for the likely further contravention of the Applicant's fundamental right to dignity of human person.**
- 15. An order of injunction restraining the Respondents, by themselves, their agents, privies and/or servants from arresting or detaining the Applicant on grounds of his legal representation or processes he filed in Courts for his client (Mr. Samson Oluseye Abudiore) or his client's witnesses in respect**

of the pending suits (Case No. CR/916/2018 between Mr. Samson Oluseye Abudiore and Maxel Okauru & Anor. at Grade 1 Area Court, Karshi, Abuja; Commissioner of Police v. Samson Oluseye, Case No. CR/484/2018 at Grade 1 Area Court, Arab Road, Kubwa, Abuja; and Samson Oluseye Abudiore v. Quick Cash Advance Ltd. & 2 Ors. Suit No: CV/256/2018 before His Lordship, Hon. Justice A. A. I Banjoko of the High Court 6, Jabi, Abuja).

- 16. A public apology published in two national dailies by the 1st Respondent for the violation of the fundamental rights of the Applicant.**
- 17. Costs of suit of the sum of ₦500,000.00 (Five Hundred Thousand Naira).**
- 18. 10% interest per annum on the judgment sum from date of judgment till full liquidation.**

The summary of the case of the Applicant, as can be deduced from the processes filed to support the application, including an affidavit of 126 paragraphs deposed to in person by the Applicant, is that he was learned counsel representing one **Mr. Samson Oluseye Abudiore** in criminal and civil matters involving his said client and the 1st and 7th Respondents (who are a couple); and of which the 2nd Respondent, a legal practitioner, was counsel representing the said 1st and 7th Respondents in the said suits; that the 1st, 2nd and 7th Respondents conspired with the 5th Respondent, a Police Officer, to threaten and harass him and also to terminate his life in the course of the performance of his professional duties for his client with respect to the cases involving the 1st and 7th Respondents and his said client, pending at the **Grade 1 Area Court, Karshi, Abuja**; and **Grade 1 Area Court,**

Arab Road, Kubwa, Abuja; that sometime in December, 2018, the 1st, 2nd and 7th Respondents used the 5th Respondent to attempt to lure him to the Police Force Headquarters, by giving the said 5th Respondent his phone number to make calls to him to invite him to the Police Headquarters; that when that scheme failed, the 1st, 2nd and 7th Respondents again in the premises of the **Grade 1 Area Court, Karshi, Abuja**, on March 28, 2019, when he went for his normal professional duties to represent his client, the 1st and 2nd Respondents, in the presence of some other lawyers, harassed him and had planted a Police Officer at the Court premises to arrest him in the line of his professional duties for his client, but that one of the lawyers in the Court on that day drove him away from the Court premises; that the 1st and 7th Respondents again instigated the 6th Respondent, another Police Officer from

the Force Headquarters, to arrest his client, **Mr. Samson Oluseye Abudiore**, on 12th April, 2019, upon accusation that he conspired with other witnesses to depose to false statements in the civil suit he filed against **Quick Cash Advance Ltd.**, owned by the 1st and 7th Respondents, then pending at the High Court of FCT, *coram* **A. A. I. Banjoko, J.**; that the target of the 6th Respondent, by arresting and detaining his client was to lure him the Police Headquarters to seek for the release of his client and get him arrested and detained, but that he refused to show up; that he has been mentally and psychologically tortured by the Respondents' acts of his imminent arrest, detention and torture and termination of his life on grounds of legal representation of his client; and that because of these threats, he has restricted his movements

and have not been able to freely engage in private legal practice, which invariably has also affected his income.

In the Counter Affidavits filed by the 1st Respondent, for himself and on behalf of the 7th Respondent on 16/09/2019; the Counter Affidavit filed by the 2nd Respondent on 17/06/2019; and the Counter Affidavit filed by the 6th Respondent on behalf of the 3rd – 6th Respondents on 06/08/2019, they all roundly denied the totality of the allegations leveled against them respectively by the Applicant.

The Applicant proceeded to file Further and Better Affidavits in response to the Counter Affidavits of the respective 1st & 7th Respondents; and the 2nd Respondent.

I had proceeded to carefully examine and consider the totality of the facts deposed in the gamut of 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 Applicant who has prayed the Court for far reaching declaratory and other positive 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] 1 NHRLR Vol. 1 78(SC) @ 116.

As correctly submitted by the 2nd Respondent, in order for the Applicant to successfully establish that his fundamental rights to personal liberty, to the dignity of his person, his freedom of movement and his right to life, as preserved by the provisions of **sections 34, 35, 41 and 33** of the **Constitution** of the Federal Republic of Nigeria, **1999**, were threatened by the alleged acts and conducts of the Respondents, it is incumbent on him to adduce cogent and credible affidavit evidence in support thereof. See *Fajemirokun Vs. C.B (CT) Nigeria Ltd. [2002] 10 NWLR (Pt. 774) 95.*

As I proceed, I consider it needful and pertinent to restate and put in proper perspective, what I understand as the duty of the Court whilst entertaining a fundamental rights enforcement action. 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. The Court equally lacked the competence 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 in an action of this nature.

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 grievances of the Applicant in the instant action, although crafted in unnecessarily unwieldy 126 paragraphs of affidavit he deposed to have been summarized in the foregoing. I have again examined more critically the totality of his depositions in the light of the Counter Affidavit deposed to by the respective Respondents, where all his allegations were debunked.

With respect to the Applicant's allegation that he was threatened with arrest by the 5th Respondent, when he put a call through to him, the 6th Respondent, in his Counter

Affidavit deposed that the 5th Respondent called the Applicant in his presence for the sole reason of inviting him with respect to a Petition written against him and some other persons, by the 1st Respondent, for the alleged commission of offences of Joint Act, Dishonest Falsification of Court Processes, Conspiracy and so on. A copy of the said Petition, dated, 1st February, 2019, was attached as **Exhibit NPF 1**, to the 3rd – 6th Respondent's Counter Affidavit.

With respect to the allegation that the 1st and 2nd Respondents brought a Police Officer to the premises of **Grade 1 Area Court, Karshi, Abuja**, on 28th March, 2019, with the aim of getting the Applicant arrested and detained; both the 1st and 2nd Respondents, in their respective Counter Affidavits debunked this allegation, and deposed categorically that the person the Applicant

assumed to be a plain clothed Police Officer was the 1st Respondent's surety, one **Mr. Daniel Kinda**, a staff of the **Federal Inland Revenue Service (FIRS)**, who had accompanied him to Court that day as was his usual practice, with respect to the criminal matter filed against he and his wife, the 7th Respondent, by the Applicant's client, **Mr. Samson Oluseye Abudiore**. This fact was further debunked by the 3rd – 6th Respondents in paragraph 9 of the 6th Respondent's Counter Affidavit, where he stated that no Police Officer accompanied the 1st and 2nd Respondents to the Court on 28th March, 2019, as alleged.

The Applicant further alleged that the 3rd – 6th Respondents arrested his said client and detained him with a view to luring him (the Applicant) to the Force Headquarters to be arrested and detained. However, the

6th Respondent denied this claim in paragraphs 10 – 18 of his Counter Affidavit, stating essentially that the Applicant's said client was arrested with respect to the same Petition in **Exhibit NPF 1**, which was written against both the Applicant, his client and some other persons.

As it is well known, a party seeking declaratory reliefs is duty bound to adduce cogent evidence in support of his claim in order to be entitled thereto. In the present case, it does not appear to me that the Applicant has adduced cogent and credible affidavit evidence to substantiate the allegations of threat to the infringement of his fundamental rights aforestated. All the acts he alleged against each of the Respondents were satisfactorily debunked by the respective Respondents. Mere invitation by the 3rd – 6th Respondents for the Applicant to come and answer to the Petition written against him cannot be

construed to constitute a threat to his fundamental right to personal liberty; more so that the right to personal liberty is not absolute, but subject to the provisos set out in **paragraphs (a) – (f) of s. 35(1) of the Constitution.**

I agree with the submissions of the 3rd – 6th Respondents' learned counsel in this regard that the 3rd – 6th Respondents have not been shown to have breached any provision of **Chapter IV of the Constitution** in the manner by which they invited the Applicant for questioning in further investigation of the 1st Respondent's Petition against him and some other persons. I so hold.

I further hold that the Applicant has failed woefully to establish, with credible factual evidence, that the Respondents threatened to breach his fundamental rights

to freedom of movement, right to the dignity of his person and his right to life.

On the whole, upon an appraisal of the totality of the materials placed before the Court, it seems to me that the Applicant was merely crying wolf where there was none. My finding is further that the facts deposed to support the allegations against the Respondents, in totality, were spurious, speculative, feeble and mostly irrelevant to the case he tried to make out. I so hold.

In the final analysis I must agree with the submissions of the respective learned counsel for the respective Respondents in holding that there is no iota of merit in this application. Indeed I must state that this action is a sheer waste of precious judicial time. Substantial portion of the affidavit filed by the Applicant were devoted to matters totally

unrelated to a fundamental rights enforcement action. Accordingly, I must and I hereby dismiss the Applicant's action in its entirety. I make no orders as to costs.

OLUKAYODE A. ADENIYI
(Presiding Judge)
13/02/2020

Legal representation:

S. O. Abang, Esq. – *appears in person (Applicant)*

Gabriel Esegine, Esq. (with Joseph Usman, Esq.) – *for the 1st, 2nd and 7th Respondents*

S. E. Onele, Esq. – *for the 3rd – 6th Respondents*