

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 22 WUSE ZONE 2ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
THIS 31ST DAY OF JANUARY, 2020
SUIT NO: CV/684/2018

BETWEEN:

MUHAMMED GANA -----APPLICANT

AND

THE CORPS MARSHAL -----RESPONDENT

YUSUF ABUBAKAR holding the brief of BASHIR S. AHMAD for the Applicant.

JUDGEMENT

This is an application for the enforcement of the fundamental rights of the applicant brought pursuant to Order 2, Rule 2 of the Fundamental Rights (Enforcement Procedure) Rule 2009 and under the inherent jurisdiction of the court. Wherein the applicant prays for the following reliefs:

1. A declaration that, the respondents acts of beating the applicant in the public and in their office, tearing his cloths forcing him into their operation Hilux, detaining him for hours and continuous detention of the applicant's **Mazda 323 YAB 253 YR** and **Tecno T350** and **Tecno 465** without legal justification, has amounted to violation of the applicant's fundamental rights to personal liberty, dignity of human person and freedom of movement and right to own immovable

property as guaranteed under Sections 34, 35, 36 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. An order of mandatory injunction compelling the respondent whether by himself, his officers, servants, agents, privies or howsoever named to forthwith release the applicant's **Mazda 323 YAB 253 YR** and **Tecno T350** and **Tecno 465** and a further Order restraining them from further detaining or infringing the applicant's fundamental rights, except in strict compliance with the constitutional provisions of the 1999 Constitution (as amended).
4. An order for the payment of **₦100 Million Naira** to the applicant by the respondent as aggravated and exemplary damages and compensation for the aforesaid violations of the applicant's fundamental rights.
5. A written apology published in at least two National Dailies to the applicant by the respondent apologizing for the unwarranted and unjustified violation of the applicant's right to personal liberty, dignity of human person and freedom of movement and right to own immovable property as guaranteed under Sections 34, 35, 36 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
6. Cost of proceedings.

The application is supported by a fifteen (15) paragraph affidavit deposed to by the applicant with five (5) exhibits attached, statement of the applicant and the written address of counsel.

The applicant narrated his ordeal in paragraphs 5-14 of the affidavit in support. Where he stated as follows:

That on the 5th September, 2018 he loaded his car **Mazda 323 YAB 253 YR** with passengers around Area 1 roundabout Abuja when suddenly an officer of the respondent called Atta Andrew jumped into his car and held the steering, struggling to take control of the car from him and as a result of the struggle he had to control the car to the road side and they landed in a road side ditch with all the passengers screaming. That immediately the car stopped in the ditch, Mr. Andrew called for their Hilux patrol vehicle and he was forced in while been seriously beaten up by the officers of the respondent. And his vehicle was towed to the Zone 7 office of the respondent in Abuja, where he was brutalized and detained for more than three (3) hours with his cloth torn up by the officers of the respondents. The picture of the torn white shirt and blue trouser are attached and marked as Exhibits A1 and A2 respectively. While he was detained in the respondent's office for more than three (3) hours and nearly naked one Good Samaritan amongst the officers of the respondents called Zamfara assisted him with a stripe blue and white to cover his body. The picture of the shirt is attached to the affidavit as Exhibit B. He was also tear gassed, his car impounded and his two Tecno Cell phones (**Tecno T350 and Tecno 465**) were confiscated from him. The purchase receipts of the two (2) cell phones are attached and marked as Exhibit C1 and C2 respectively. That since his ordeal he has been rendered jobless and also could not communicate. He suffered injuries which he had to treat at a chemist in Bwari as going to the hospital was too expensive for him. And that he has been going to the respondent's office begging to know his offence and his punishment but he was snubbed by the respondent. When he got tired of the respondent's attitude, he briefed his lawyers (Bashir S. Ahmad Esq) who formally wrote to the respondents directly for his intervention but to no avail. The copy of the letter is attached and marked as Exhibit D.

And that notwithstanding his lawyer's letter the respondent has not retraced their steps about the breach of his fundamental right.

The grounds for the reliefs sought as captured in the statement of Particulars are:

- i. That the conduct of the respondent is reprehensible enough to warrant the intervention of the court.
- ii. That the desperate overzealous and unjustified action by the respondent to unlawfully arrest, detain, beat and tear the cloths of the applicant in addition to continuous detention of his car and cell phones amount to infringement of his fundamental rights as guaranteed under the Constitution of Nigeria 1999 (as amended).

Contrarily, the respondent in an 8 paragraph counter-affidavit deposed to by one Peter Ogboche Salihu, a senior legal officer with the Federal Road Safety Commission averred that he was informed by one Gada Salihu Abubakar Senior Route Commander (SRC) PINC02072 on the 21st February, 2015 and about 3:00pm in their office during the course of his normal duties and he verily believed him as follows:

- 3a. "That the applicant on the 5th of September, 2018 while driving a **Mazda 323** with registration **No. YAB 253 YR** along Area 1 Roundabout was arrested for overloading his vehicle and not being in possession of a valid driver's license."
- b. "That the applicant was duly informed of the nature of his offence by an arresting Marshal Attah Andrew RMA1 with PIN no. M070209741 was directed to take the applicant to Federal Road Safety Commission in Wuse Zone 7, Abuja."

- c. "That the applicant on seeing the Marshal opening his car and had one of his legs inside the applicant's car and in an attempt to avoid being taken to the Federal Road Safety Commission office zoomed off in a reckless and dangerous manner."
- d. "That the applicant could not control his speed, lost control of the steering and fell into a ditch injuring Marshal Attah Andrew and damaging Marshal Attah Andrew's android phone, **Infinite Note 6** in the process."
- e. "That the cost of the Infinite Note 6 is ~~₦40,000~~ **(Forty Thousand Naira)** only shown to me and marked as Exhibit A is a copy of the purchase receipt of the said infinite Note 6 phone."
- f. "That Marshal Attah sustained serious bodily injuries and was lying down helpless and lifeless and was unconscious for about two hours."
- g. "That Marshal Attah was put on FRSC ambulance and resuscitated by team of Doctors at the Accident and Emergency ward of FRSC clinic Gwarimpa, Abuja."
- h. "That Marshal Attah incurred financial expenses as a result. Copy of the Medical receipt for the sum of **₦13,300 (Thirteen Thousand Three Hundred Naira)** is hereby annexed and marked Exhibit B."
- i. "That it took the intervention of the patrolling police team who saw the applicant's reckless driving before the applicant was finally arrested and handed over to Deputy Corp Commander, Oga Ochi, Federal Road Safety Commission FCT Command Head of Operations at its Wuse Zone 7 office Abuja."
- j. "That the vehicle of the applicant was towed by officers of the Federal Road Safety Commission to their Wuse Zone 7 office."
- k. "That the applicant was booked for the traffic offence of overloading, drivers license violation and dangerous driving and promptly issued with a Notice of Offence ticket."

1. "That the applicant was not at any time beaten-up by officers of the Federal Road Safety Commission."
4. "That the Federal Road Safety Commission filed a charge against the applicant at Senior Magistrate Court, Karu Abuja. A copy of the Charge/Notice of Offence together with the court summons is hereby annexed and marked Exhibit C and C1."
5. "I know as a fact that the applicant is fully aware of the pendency of the charge against him being **Suit No. CR/81/2018** at the Senior Magistrate Court Karu."
6. "I know as a fact that the respondent as presently constituted in this suit is not a juristic person capable of being sued."
7. "That the suit of the applicant is incompetent and is lacking in merit."

The counter-affidavit has the written address of the counsel in support. Two issues were formulated for determination by the court to wit:

- a. Whether or not any of the Fundamental Right of the applicant was infringed upon by the Federal Road Safety Commission.
- b. Whether the respondent as presently constituted in this suit is Juristic person capable of being sued.

Furthermore the applicant filed a 12 paragraph further and better affidavit dated 1st March, 2019 in response to the respondent's counter-affidavit. And in the further and better affidavit, the applicant stated:

That the said Attah Andrew did not arrest him in a normal way of arrest but he rather ambushed him by trying to take control of his steering from outside which led to their landing into a roadside ditch. That he was not arrested for overloading nor was he asked to provide a driver's license. And was not informed of committing any

offence and that Exhibit C and C1 attached to the respondent's counter-affidavit were not served on him and that is why the respondent did not attach endorsed copies. That Exhibit C1 was filed on the 17th December 2018, after his counsel served the respondent with Exhibit D attached to his affidavit of the application on the 22nd November, 2018. That he did not injure Mr. Andrew or any officer of the respondent and that Exhibits A and B of the respondents counter-affidavit have nothing to do with the instant case as the incident took place on the 5th September, 2018 whereas Exhibits A and B of the respondents counter-affidavit bear 11th September 2018 and there is no medical prescription recommending the purchase of the purported drug in Exhibit A and B since Mr. Andrew was said to be unconscious. That he was not arrested by the police as alleged by the respondent for which he would have been charged to court for criminal assault and mischief against Mr. Andrew.

The counsel to the parties filed along with the affidavits and counter-affidavit written addresses which were adopted as their written arguments in court.

I have calmly gone through the affidavit, the counter-affidavit and the further and better affidavit as filled by the applicant and the respondent and wish to state as follows:

That I found the story of the applicant more probable than that of the respondent. A critical assessment of the facts contained in the counter-affidavit will show that the deponent merely stated that the applicant was arrested but failed to state how the arrest of the applicant was effected by the arresting officer. Also there is no fact in the counter-affidavit which suggests that the applicant was served with Exhibit C the Notice of Offence or that when he was served he tried to escape. I believe the statement of the applicant when he said

the arresting officer Atta Andrew jumped into his car and held the steering struggling to take control from him. The act of jumping into the car of a traffic offender or struggling to take control of the steering wheel from him is a dangerous and crude manner of arrest.

In exercising the right to arrest an alleged offender under the provision of Section 10(4) and 18(1) of the Federal Road Safety Commission Act, the officer of the Corp should employ international best practices. Furthermore in paragraph 7, 8, and 9 of the affidavit in support of the application, the applicant claimed that he was forced into the Hilux Patrol Van of the respondent, taken to their office where he was detained and stripped almost naked. These allegations as weighty as they are were not denied in anyway by the respondents in their counter-affidavit. These facts are deemed admitted by the respondents. The acts of beating the applicant and stripping him half naked is callous, inhuman and a gross violation of the applicant's rights to dignity as a human being.

The provision of Section 34(1) of the 1999 Constitution provides that every individual is entitled to respect for the dignity of his person and accordingly:

“(a) No person shall be subjected to torture or to inhuman or degrading treatment”

The applicant has shown by the uncontroverted affidavit that he was subjected to inhuman and degrading treatment by the respondent. He is therefore entitled to enforce his right under the provision of Section 34 (1) of the 1999 Constitution as amended. Furthermore looking at the facts contained in the counter-affidavit, the deponent in my view is not competent to depose to the said affidavit. His depositions run contrary to the provisions of Section 115(3) and (4) of the Evidence Act 2011 which provides:

115(3): *When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the fact and circumstances forming the ground of his belief.* (Emphasis mine).

(4): When such beliefs derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the information and the time, place and circumstances of the information. (Emphasis mine).

The deponent, have not complied with the provision of Section 115(3)(4) by setting forth explicitly the facts and circumstances forming the ground of his belief. In the instant case there is no fact linking the informant with the arresting officer. It is not enough to say that the informant was a Senior Route Commander. Was he at the scene where the applicant was arrested? It is not for me to assume that he was there with the arresting officer. And if he was, he ought to be the one to give a vivid narrative of what transpired between the applicant and the arresting officer and not the deponent in the instant case. The fact that a deponent states that he verily believes what an informant told him does not make the statement to be true or be accorded any probative value by the court. A deponent must as a matter of necessity state the grounds for his belief in any information he received from another person, explicitly otherwise it will amount to hearsay. In the circumstance the paragraphs 3a-i, paragraphs 4 & 5 of the counter-affidavit are all hearsay and therefore lack probative value. Furthermore paragraph 6 is a legal conclusion and it is struck out accordingly.

Also the counsel to the respondent contended that the respondent referred to as Corp Marshal by the applicant is not a juristic person

and cannot be sued. The counsel relied on the provision of section 10(1) of the Federal Road Safety Commission (Establishment Act) 2007 which provides “There is established for the commission a body to be known as the Federal Road Safety Corps (in this Act referred to as the Corps)” which shall consist of such number of uninformed and non-uninformed members as may be determined from time to time, by the commission. He also relied on Section 7(1) of the Act Provides:

- (1) *There shall be Corps Marshal of the Corps who shall be appointed by the president and who shall be a person possessing sound knowledge, or ability in the organization and administration of road traffic and road safety matters.*
- (2) *The Corps Marshal shall be the Chief Executive of the Corps and shall without prejudice to his powers to delegate in appropriate circumstances, be exclusively responsible for the execution of the policies and decision of the commission and for carrying into effect day to day activities of the Corps.*

The counsel argued that the intention of the legislators was that the chief executive of Federal Road Safety Commission shall be known and addressed as “**Corps Marshal, Federal Road Safety Corps.**” The counsel relied on the authority of **AFRICAN IVORY INSURANCE COMPANY LTD & ORS V. COMMISSION FOR INSURANCE (1997) LPELR 6248 CA; THE REGISTERED TRUSTEE OF THE AIRLINE OPERATORS OF NIGERIA V. NAMA (2014) LPELR 22372(SC).**

In response the applicant’s counsel submitted that the objection was not raised properly in accordance with Order VII(2) of the Fundamental Right Enforcement Rule which provides that the respondent’s notice of preliminary objection must be filed along with the counter-affidavit to the main application. He urged the court to discountenance the objection. In my humble opinion this omission or

default on the part of the respondent is an irregularity which is cured by the provision of Order IX Rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009 and therefore does not affect the competence of the application as constituted. The position held by the applicant's counsel is therefore upheld

With respect to the juristic personality of the respondent, learned counsel to the applicant argued that a community reading of Section 1 of the Federal Road Safety Commission Act and Section 10 of Act show that the commission and the corps are two distinct entities even though established by the same law. He drew inference from the case of the Nigerian Police headed by the Inspector General of Police and the Police Service Commission headed by the chairman and both established by the constitution as two separate entities with different functions. He contended that the respondent is the only juristic person that can be sued for offence committed by members of the corps and therefore urged the court to dismiss the opposition of the respondent's counsel. A juristic personality is a human being, artificial persons, such as body corporate clothed with legal personality by statute or law creating them and are competent to sue and be sued. See the case of **ONYNIKE V. PEOPLE OF LAGOS STATE & ORS (2013) LPELR 24809 CA** where the Court of Appeal per **Dongbam Memsem JCA** defined a juristic person thus:

'A juristic person is a legal entity through which the law of a particular legal system service to permit groups of national person to act as if they were a composite individual for certain purposes. It is a legal function which does not mean that this specific entities are human beings but rather that the law allows them to act as people for certain limited purposes, usually lawsuit, property ownership etc.'

I agree with the submission of learned counsel to the applicant that the combined effect of Section 2(b), 7(2) and 10(1) of the Federal Road Safety Commission Act shows that the Corps Marshal is an office created by statute and saddled with the responsibility of affairs of the Federal Road Safety Corps and It is of no moment therefore that the word 'Federal Road Safety Corps' was not inserted after the title of the respondent 'Corps Marshal' I do not think that the respondent was misled that the word 'Corps Marshal' refers to the Corps Marshal of Federal Road Safety Corps. In addition, the failure of the applicant to put the word 'Federal Road Safety Corps' is not fatal to the applicant's case. The objection of the respondent wallow in technicalities and an application for enforcement of fundamental right abhors all forms of technicalities.

The objection is misconceived and is hereby discountenanced. On the whole, from the affidavit, and further affidavit and the Exhibits attached thereto, the applicant have established a breach of his fundamental right by the respondent, and thus entitled him to enforce his fundamental right under the provision of section 34(1) and 35(1) of the 1999 constitution. Consequently it is hereby declared that the respondent's acts of beating the applicant in the public and in their office, tearing his clothes, forcing him into their operational vehicle, detaining him for hours and continuous detention of the applicant's **Mazda 323 YAB 253 YR** and **Techno T350** and **465** are without any legal justification and this amounted to violation of the applicant's fundamental rights to personal liberty, dignity of human person and freedom of movement.

The Respondent is to ensure that a written apology be published on at least two National Dailies apologizing for the unwarranted and unjustified violation of the applicant's right to personal liberty, dignity of human person and freedom of movement and right to own

immovable property as guaranteed under Sections 34, 35, 36 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Also the respondent whether by himself, his officers, servants, agents or privies are hereby ordered to forthwith release the applicant's **Mazda 323, YAB 253 YR** and **Techno T350** and **Techno 465**. The respondent is further restrained from further detaining or infringing the applicants fundamental right save and except in strict compliance with the provision of the 1999 Constitution. Finally, the applicant is automatically entitled to damages. The sum of **₦5,000,000.00 (Five Million Naira)** is awarded as damages for the breach of his fundamental right pursuant to the provision of section 34, 35 and 36 of the 1999 constitution as amended.

SIGNED

HON. JUDGE
31/1/2020