IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 5TH DAY OF MARCH, 2020.
BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO -ADEBIYI
SUIT NO. CV/2650/2019

IN THE MATTER OF FUNDAMENTAL RIGHT RULES 2009

BETWEEN

1. **MATHIAS ANIMEM**
2. **CHIEF THADDEUS AHAR ----------APPLICANTS**

AND

1. **THE INSPECTOR GENERAL OF POLICE**
2. **NIGERIA POLICE FORCE ----------RESPONDENTS**

JUDGMENT

This is a Rights Enforcement action commenced against the Respondents pursuant to sections 34, 35 and 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Articles 5, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and enforcement) Act and Orders II Rules 1, 2, 3 and 5 of the Fundamental Human Rights (Enforcement Procedure) Rules 2009. By originating Motion filed on the 14th of August, 2019, the Applicants pray the following:

1. A DECLARATION that the arrest and detention of the applicants was unconstitutional, unlawful and illegal.
2. A DECLARATION that the torture of the applicants by the respondents without trial was unconstitutional and illegal.

3. Five hundred million naira (500,000,000.00) as aggravated and exemplary damages jointly or severally against the Respondents.
4. A public and written apology by the Respondents to the applicants and their family and release of Certificate of Occupancy belonging to the 2nd Applicant.
5. And for such further order(s) as the court might deem fit to make in the circumstances.

The Motion is supported by a statement of facts, a 23 paragraph affidavit in support, deposed to by MathiasAnimem the 1st Applicant, a written address, annexed are exhibits marked Exhibit A – D3 as evidence of facts deposed and an affidavit of compliance.

The Applicant raised two (2) issues for determination, which are;

1. "Whether the act of the respondents against the applicants in the arrest, detention, torture and restriction from freedom of movement constitute breaches of the applicants Fundamental Rights".
2. "Whether where the issue No. A is in the affirmative of the above paragraph, the Applicants are entitled to the reliefs sought against the Respondents".

In summary on the 1st issue, learned counsel submitted that the fundamental rights of the Applicants were breached when the Respondents and its agents arrested, detained and tortured the Applicants without charging the case to any competent court for the alleged offence till date but rather arrested and detained them unconstitutionally without framing any criminal charge(s) against any

of them. Counsel also submitted that the act of the Respondents in the arrest and detention was not only unlawful but illegal and unconstitutional. On this issue, counsel relied on **Section 35 (1) (c), Section 35 (5) (a) & (b) and Section 34 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and 5 of the African Charter on Human and Peoples Rights (Ratification And Enforcement) Act.** He relied on the case of **LAGOS STATE V. CHIEF EMEKA OJUKWU (1986) 1 NWLR (PT. 18) 621.** On the 2nd issue, learned counsel submitted that where there is an establishment of the breaches of the right of the Applicants by the Respondents the remedies are damages to assuage these breaches and it is obvious from the affidavit evidence that the fundamental Rights of the applicants were breached by the Respondents. He cited the cases of **Okonkwo v. Ogbogu (1996) 37 NWLR 580; Odogu v. Attorney General of the Federation (1996) 6 NWLT (Pt. 456) and Anumba v. Shohet (1965) 2 ALL NLR 183 AT 186**.

A concise summary of the facts of this case that are germane and appropriate for the just resolution of the controversy in this case is as may be distilled from the narrative of the 1st Applicant, as endorsed on the affidavit in support of the motion. It is the case of the Applicants that one Honourable Justin Amase requested him and the 2nd Applicant to help him process a plot of land at Wuse Central District Area, Abuja in Federal Capital Territory Administration (FCDA). That they agreed that the processing fee shall be N5Million and he gave N3million as deposit. That he decided to use the name of his wife to process the document. That after they had commenced the procession of the land

and monies paid, he wanted to terminate the agreement and demanded for a refund which they told him was a breach of agreement. That he complained to the officers of the 1st and 2nd Respondents who arrested and detained them for investigation. That on the 4th of July, 2016 they were re-arrested and were taken to Special Anti-Robbery Squad (SARS) and that it was at SARS they were mercilessly and inhumanly tortured. That at SARS CSP James Vondefan used "iron twenty- five inches weight" to hit on the 1st Applicants' both shoulders and the both shoulder bone were broken. That at the time of the inhuman act by CSP James Vondefan, the 1st Applicant collapsed and the 2nd Applicant though equally tortured took 1ct Applicant to Asokoro General Hospital where X-ray of the shoulder was taken. That the Complainant at SARS Honourable Justin Amase moved the case to Force Criminal Investigation Department FCIID Area 10 Garki where they were detained again for Eleven Days from 1st November to 11th November 2016 and was later released on bail with the undertaking to produce the money, even after showing the complainant receipt of N100,000.00 paid in the name of his wife (Mrs. Maureen Mngusonon Amase) to Abuja Geographical information (AGIS) . That till date the Respondents have not charged this case to any court in Nigeria. That the act of the Respondents in breaking the shoulder of the 1st Applicant has caused him permanent deformity and it has affected the means of obtaining his livelihood. That the Respondents in desperation to fulfil the biding of the complainant forcefully took the certificate of occupancy of the 2nd Applicant from him.

The 1st and 2nd Respondents did not file any counter affidavit, although they were served with the originating processes and with hearing notice. Hence they left the case of the applicant unchallenged and uncontroverted. The burden of proof on the Applicants are therefore discharged on minimal proof. **See SKY POWER EXPRESS AIRWAYS LTD V AJUMA OLIMA & ANOR (2005) 18 NWLR Pt (957) 224; NWABUOKU V OTTIH (1961) ALL NLR 487 at 490.**

This notwithstanding, the court must be satisfied that the evidence of the applicant is sufficient to prove his case as minimal proof does not mean no proof. See **MALLE V ABUBAKAR (2007) ALL FWLR (Pt 360) 1569 at 1607 paragraphs C-E**

I have carefully considered the processes filed in this suit, the submissions of counsel and the affidavit evidence in support, inclusive of the attached exhibits. The court will adopt the two (2) issues raised for determination by the Applicants, to wit;

1. "Whether the act of the respondents against the applicants in the arrest, detention, torture and restriction from freedom of movement constitute breaches of the applicants Fundamental Rights".
2. "Whether where the issue No. A is in the affirmative of the above paragraph, the Applicants are entitled to the reliefs sought against the Respondents".

As stated earlier the records of the court show that despite having been served with the Originating processes and subsequently hearing notice (the evidence of service was filed in court by the court bailiff) which were duly stamped and received with the official stamp of the 1st and

2nd Respondents affixed, the 1st and 2nd Respondents have neglected to enter appearance and file pleadings.

Now, even though the burden is on an Applicants who alleges infringement of their fundamental rights to prove same; however, where an Applicant establishes that he was detained beyond the period limited by the Constitution, the onus necessarily shifts on the arresting agency in whose custody the Applicant is, to justify the legality of the detention. See **Ejiofor Vs. Okeke [2000] 7 NWLR (Pt. 665) 363**, where it was held that the onus is on the person who admits detention of another to prove that the detention was lawful. See also **Director of State Security, Kwara State Vs. Nuhu [2014] 14 WRN 123; and Agbakoba Vs. SSS[1994] 6 NWLR (Pt. 351) 425**.

It is clear from the affidavit of 1st Applicant Mathias Animem that the Applicants were arrested on different occasions. Firstly, they were arrested by SARS on the 9th of June 2016 and released the next day, secondly on the 4th of July 2016 and thirdly were detained at Force Criminal Investigation Department FCIID Area 10 Garki Abuja from 1st November to 11th November, 2016 and are currently for an offence unknown to them on bail. This clearly constitutes a flagrant violation of the fundamental rights of the Applicants to personal liberty which is guaranteed by **section 35 of the 1999 Constitution (as amended)**.

Section35 (1) of the Constitution provides that:

> *"Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the circumstances set out in the sub sections to this provision and in accordance with the procedure permitted by law."*

The Court of Appeal extensively considered the application of **section 35 of the Constitution** in the decision of **Aqua Vs. Archibong [2012] LPELR 9293 CA,** where it was held, inter alia, as follows:

> *"As a foundation, every citizen of Nigeria has a constitutionally guaranteed right to his personal liberty which cannot be interfered with or violated except as may be permitted by the Constitution itself or a law made pursuant thereto. ...*
>
> *The essence of the above provision is that persons, officers or agents of the State who in the ordinary course of discharge of their official duties or functions for instance the Police and other security agencies in the country, may be involved in the deprivation or curtailment of a citizen's right to personal liberty, must strictly observe and comply with the provisions of subsection (1) – (5) above. Where the ordinary discharge of their duties or functions warrants the arrest or/and detention of a citizen, they are bound to abide by and act in accordance, strictly, with the provisions of the subsections, otherwise the person whose liberty was curtailed or deprived by them, shall be entitled to compensation and public apology from them since the curtailment or deprivation would in the circumstances, be unlawful."*

See also **Alhaji Bala Gusau & Ors. Vs. Emeka Umezurike & Anor. [2012] LPELR-8000(CA).**

In the present case, even though it is not contested that the Respondents are empowered by **section 35 (1) (c) of the Constitution** to curtail the Applicants' right to personal liberty, where it is suspected that they have committed a criminal offence; however, that power of

curtailment is time bound and not at large. The power of curtailment is regulated by **section 35 (4) of the Constitution**, which provides that any person who is arrested or detained in accordance with **section 35 (1) (c) of the constitution** shall be brought before a Court of law within a reasonable time; and **section 35 (5) of the constitution** defines "a reasonable time" to mean one (1) day in the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of 40 kilometers.

In the present case, it is a notorious fact of which the Court would ordinarily take judicial notice that this Court is within a radius of 40 kilometers to the office of the Special Anti Robbery Squad, Garki, Abuja and Force Criminal Investigation Department FCIID Area 10 Garki Abuja where the Applicants were being detained. In that situation, the Constitution strictly enjoins the Respondents to bring the Applicants before a Court of competent jurisdiction within a period of one day of their arrest and detention. The provision of **section 30 (1) of the ACJA** seems to be in sync with the provision of **section 35 (4) of the Constitution** as that provision also requires the Police to bring any person suspected to have committed any criminal offence before a Court having jurisdiction within twenty four (24) hours of the arrest; and where that cannot be achieved, the suspect should be released on bail, as required by **section 30 (2) of the ACJA**.

Now as I earlier stated, the onus is on the Respondents to prove that the arrest and detention of the Applicants were on reasonable suspicion that they had committed an offence, this they have failed to do.

Assuming but without conceding that the Applicants were arrested upon reasonable suspicion of having committed a criminal offence, the Respondents have the duty to produce the Applicants before a court of law within a period of two days maximum in the circumstances of this application. This again the Respondents failed to do. Assuming any investigation was on going, in the words of **Ndukwe-Anyanwu in ENE & ORS V BASSEY & ORS (2014) LPELR 2354 CA at page 23 paragraphs A-B**:- "the police have not been given unbridled powers to deprive citizens of their liberty while the case against them is still being investigated. See **JOHNSON V LUFADEJU (2002) 8 NWLR (Pt 708) page 203**". The Respondents chose to ignore proceedings in this application. They filed nothing and so have placed nothing before this court to show that the arrest and detention of the Applicants were lawful. It is trite that were facts contained in an affidavit remains unchallenged or uncontroverted, the court should act on it. In the case of **SENATOR MOHAMMED MANA v. PEOPLES DEMOCRATIC PARTY (PDP) & ORS (2011) LPELR-19754(CA)**

> *"It is the law that a party who intends to oppose an application is required to file an affidavit in opposition challenging the truth of the facts contained in the affidavit in support of the application. And where a Respondent does not file an affidavit in opposition to the facts deposed to in the affidavit in support of the application, then the facts deposed to in the affidavit in support of the application is deemed to be true and unchallenged and the Court is entitled to act upon it. See:- - Akanqbe vs. Abimbola (Supra)" Per BADA, J.C.A. (P. 35, paras. A-C"*

The Applicants having established that their arrest and detention were unlawful, I hold that the Applicants right to person liberty as guaranteed by **S. 35 (1) of the 1999 constitution of Federal Republic of Nigeria (as amended)** has been infringed upon by the Respondents.
The 1st Applicant also alleged that the torture of the Applicants by the Respondents was unconstitutional and illegal. This he averred in paragraphs 10, 11, 12, 13, 14 and 15 of the affidavit in support of the motion and in proof of this he attached Exhibits B1, B2 and exhibit C.

The second question for determination in this proceeding is, whether where the 1st issue is in the affirmative, the Applicants are entitled to the reliefs sought against the Respondents.
Aggravated and exemplary damages, is more or less punitive in outlook and intended to act as a sort of 'retributive' sanction. They may also be awarded where statute provides. Like special damages, exemplary and aggravated damages must be strictly proved, by showing that the defendant's reprehensible conduct has caused the Plaintiff to suffer some injury, which is quantifiable in money's worth. **See, *Rookes v Barnard* (1964) AC 1129. Eliochin (Nigeria) Ltd v. Mbadiwe[1986] 1 NWLR, p. 47.** The Court of Appeal in **ZENITH BANK PLC & ANOR V. EKEREUWEM & ANOR (2011) LPELR-5121(CA)** laid down Function of exemplary damages and circumstances in which they can be awarded as follows;

> *"Exemplary damages, also known as punitive damages, are intended to punish and deter blame worthy conduct and thereby*

prevent the occurrence of the same act in future. The circumstances in which exemplary damages may be awarded as well laid out by Tobi, JCA (as he then was) in the case of Onagoruwa vs. I.G.P (1991) 5 NWLR (pt. 193) 593 at 647 - 648 are:

"(a) Where there is an express authorization by statute.

(b) In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.

(c) Where the defendants' conduct had been calculated by the him to make a profit for himself exceed the compensation might well the compensation payable to the plaintiff.

In order to succeed, a plaintiff must be able to prove any of these conditions. He needs not prove all the three conditions to succeed. Once any of the three conditions is proved, a court of law will award exemplary damages".

We have found as a fact that the 1st and 2nd Respondent's act was illegal, oppressive, arbitrary and unconstitutional hence the Applicants are entitled to aggravated and exemplary damages. More particularly as the 1st Applicant suffered a broken shoulder which has greatly hindered his pursuit for his means of livelihood.

In view of all the forgoing, judgment is hereby entered for the Applicants as follows:

1. It is hereby declared that the arrest and detention of the Applicants by the Respondents is unconstitutional, unlawful and illegal.
2. It is hereby further declared that the torture of the Applicants by the Respondents without trial is unconstitutional and illegal.
3. Consequent upon the above, the 1st and 2nd Respondents jointly are hereby ordered to pay to the Applicants as aggravated and exemplary damages assessed to be in the sum of N50,000,000.00 (Fifty Million Naira) only.
4. The Respondents are hereby ordered to release the Certificate of Occupancy belonging to the 2nd Applicant (CHIEF THADDEUS AHAR) in their possession to him immediately.

. **Parties:** Absent

Appearances: S. E. Oti for the Applicants. Respondents are not represented.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
5TH MARCH, 2020