

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE. S.U. BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 34</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/683/19</b>
<b>DATE:</b>	<b>5<sup>TH</sup> MARCH, 2020</b>

**BETWEEN:**

**BILAL YUSUF..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE & 3 ORS..... RESPONDENTS**

**APPEARANCE**

Obinna .S. Nwosu Esq for the Applicant.

**JUDGMENT**

Before the court is an originating motion brought pursuant to Sections 33, 34, 35, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) order 11 Rules 1-5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 4, 5, 6 and 12 of the African Charter on Human and people’s Rights (Ratification and Enforcement) Act, CAP A9 laws of the Federation of Nigeria 2004; United Nations Declaration on Human Rights 1948, and under the inherent Jurisdiction of this Court. The Applicant herein prayed this court for the following:-

- (1) A Declaration of this Honourable Court that the act of continuing detention, torture, intimidation and subjection to conditions only suitable for animals of the Applicant since June, 2019 till date, by the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents is unlawful and illegal and contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Fundamental Rights (Enforcement Procedure) Rules 2009; Articles 4, 5, 6 and 12 of the African Charter on Human and people's Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004; and the United Nations Declaration on Human Rights, 1948.
- (2) A Declaration of this Honourable Court that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents cannot continue to detain, torture and intimidate the Applicant from sometime in June, 2019 till date, beyond the Constitutionally allowed period for restraining a citizen's Rights to freedom of movement as unlawful and illegal, reckless and an infringement on the Applicant's Fundamental Human Rights as enshrined in Section 34 of the 1999 Constitution of the federal Republic of Nigeria 1999 (as amended) as well as Article 4 of the African Charter on Human and People's Rights (Ratification and Enforcement Right) Act, Cap A9 Laws of the Federation of the Nigeria 2004 and the United Nations Declaration on Human Rights, 1948.
- (3) AN ORDER of this Honourable Court Mandating the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents to, forthwith, release the Applicant unconditionally.
- (4) AN ORDER of this Honourable Court mandating the Respondents, jointly and severally to pay to the Applicant general damages in the sum of **₦10,000,000.00 (Ten Million Naira)** only, for the torture, intimidation, unlawful continuing detention of the Applicant from sometime in June, 2019 till date and the resultant loss of earnings of the Applicant.
- (5) AN ORDER mandating the Respondents, jointly and severally, to pay to the Applicant **₦1, 500,000.00 (One Million, Five Hundred Thousand Naira)** only, being cost of this suit.
- (6) AND SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

The originating motion which is dated 19<sup>th</sup> day of December, 2019 and filed same day, is supported by a statement accompanying the Application, an Affidavit of 10 paragraphs deposed by one Rafi'u Ahmed Ishaq, brother of the Applicant as well as an Exhibit marked Exhibit A. Also filed in support of the Application are

grounds upon which same is predicated and a written address dated 19<sup>th</sup> December, 2019.

From the Court records, all the Respondents were duly served, but only the 2<sup>nd</sup> Respondent filed a process in Response to this Application.

The 2<sup>nd</sup> Respondents (Police Service Commission) filed a 13 paragraphed counter Affidavit deposed by one Haruna Usman, a Senior Executive officer attached to legal Department of the police service Commission, as well as a written address dated 22<sup>nd</sup> day of January, 2019.

This matter came up for hearing on the 28-01-2020, and Abbas Yahaya Esq with Y. D. Muazu Esq appeared for the 2<sup>nd</sup> Respondent and Adopted all the processes filed on its behalf.

In addressing the court Yahaya Esq, submitted that there's nothing on the face of the Application to show that the 2<sup>nd</sup> Respondent had participated in the harassment and detention of the Applicant. And, that there's equally nothing to show that it delegated, ordered or directed any of the Respondents in participating in the violation of the Applicant's Rights. On this premise, the learned counsel urged the court to strike out the name of the 2<sup>nd</sup> Respondent for being wrongfully joined in this suit.

In response to this Application made by the learned Counsel to the 2<sup>nd</sup> Respondent, the learned Applicant's counsel Obinna .S. Nwosu Esq, informed the court that he was not opposed to striking out the name of the Respondent.

In the circumstances therefore, the Application made by learned counsel to the 2<sup>nd</sup> Respondent, is hereby granted as prayed.

Accordingly the police service Commission listed herein as the 2<sup>nd</sup> Respondent in this suit, be and is hereby struck-out.

Coming back to the merits of the Application, a lone issue for determination is formulated in the Applicant's written address and it is as follows:-

***“Whether the continuing detention and maltreatment of the Applicant by the Respondent is unlawful and entitles the Applicant to the grant of this Application by virtue of Sections 33, 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) as well as Articles 4, 5, 6 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, and the United Nations Declaration on Human Rights, 1948?”***

In arguing the issue, it is submitted by the learned counsel that the Fundamental Rights of the Applicant is being trampled upon by the Respondents.

That these rights enjoy universal recognition and are inherent in humans. Reference was made to the case of HASSAN VS E. F. C. C (2014) 1 NWLR (PT. 1389) 607 at 653.

It is submitted that these Rights of the Applicant are derived from natural or Fundamental Rights which without them neither liberty nor justice would exist.

That these freedoms are essential to the concepts of liberty inherent in Human nature and consequently inalienable. That they are rights without presumption of cost and prevailing to all human beings, universal, and all people have and should enjoy them and be as standards of justification or criticism in a country.

Reference was made to the guarantees under CFRN 1999 (as amended), African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, to argue that this Honourable Court has a duty to protect these Rights.

Again reference was also made to the case of ANOZIE VS I. G. P (2016) 11 NWLR (PT. 1524) Page 405 paragraphs B-C.

It is submitted that these inalienable Rights are limited by law but can only be deprived in accordance with the provisions of the CFRN (1999) as amended, particularly Section 35 (1) thereof.

It is submitted on this premise that the Applicant, whether being suspected to have committed an offence cannot be denied the rights of his personal liberty save in the cases provided by the Constitution and in accordance with a procedure permitted by law. That denial of the Applicant's Right to personal liberty beyond the time frame permitted by the Constitution is not only unlawful but an aberration of all known laws of humanity, and the court is urged to so hold.

Reference was made to the cases of AKILA VS DIRECTOR GENERAL S. S. S. (2014) 2 NWLR (PT. 1392) 443 at 463.

UBANI VS DIRECTOR, STATE SECURITY SERVICE (1999) 11 NWLR (PT. 625) 129, 148-149, PARAGRAPHS H-A.

COMPTROLLER OF NIGERIAN PRISONS VS ADEKANYA (1996) 6 NWLR (PT. 607) 381, 142-427.

OBIEGWU VS A. G FEDERATION (2014) 5 NWLR (PT. 1399) 218, paragraphs D-F.

NWANGWU VS DURU (2002)2 (NWLR) (PT. 751) 265.

Consequently, learned counsel submits that where a man is deprived of his liberty and same is done not in accordance with the law, then surely as the court has maintained, the right to liberty of such a person has been infringed upon and it entitles him to remedy. Reference was made to Section 35 (6) of the CFRN 1999 (as amended).

The court is then urged to grant order of compensation as prayed for in the sum of ₦20,000,000.00 (Twenty Million Naira).

The Court is also urged to invoke the provisions of Section 41 of the CFRN 1999 (As Amended) on freedom of movement, as no one should be deprived of their right to freedom of movement.

The court is also urged to hold and condemn the acts of the Respondents for denying the Applicant of this inalienable Right, on this, reference was made to the case of OKAFOR VS LAGOS STATE GOVERNMENT & ANOR (2016) LPELR-41066.

The court is also urged to look at the Applicant's Affidavit which shows that the Applicant's Fundamental Human Rights has been breached and to protect and enforce those rights. Reference was made to ANOZIE VS I. G. P (Supra).

It is submitted further that there is no basis for the Respondents to have arrested and detained the Applicant from sometime in June, 2019 till date for almost six (6) months now without trial and with utter disregard and recourse to a court of law, that same amounts to a breach of the Applicant's Fundamental Human Rights, since the Respondents are subject to the dictates of the law. That the actions of the Respondents is indeed oppressive, arbitrary and unconstitutional, thus bringing same within the ambit of the laid down conditions

for the award of exemplary damages to serve as a deterrent to all law enforcement agencies.

It is submitted that these agencies should be reminded that the court is not only the last hope of the common man, but that the law is no respecter of persons, since all men are subject to the law.

Learned counsel further submitted that the Applicant today, stands in one of the great cathedrals in this country, built on the premises that the Respondents and only the Respondents will be held liable to bear the full consequence of their actions.

Finally counsel urged the court to grant the reliefs sought.

Now I have carefully considered the Application along with all the processes filed in support of the Application, particularly the supporting Affidavit. In my humble view, the issue for determination is whether the Applicant has made out a case against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to be entitled to the reliefs sought in this Application?

In the Applicant's supporting Affidavit particularly paragraph 7 E-K thereof, the deponent avers thus:-

***“ (e) That on or about 17<sup>th</sup> of June, 2019, the Applicant left home and informed his wife and children that he was going to BOSSO in Minna Niger State to visit a brother friend from the same tribe as the Applicant, and further informed them that he will be back the next day”.***

***(f) That on getting to Bossso, the Applicant woke up the next morning of 18<sup>th</sup> June, 2019 to a Police raid around the area the Applicant's friend lives and everyone rounded up by the police including passersby and some of the neighbors that were found in the vicinity.***

***(g) That the Applicant was not told what his offence was upon being arrested alongside others that were equally arrested during the police raid.***

***(h) That the Applicant was not allowed to contact any member of his family or even his lawyer.***

***(i) That the Applicant was subsequently bundled alongside others straight to Abuja wherein the Applicant has remained detained till date.***

***(j) That the Applicant has been left in a deplorable condition of near starvation, poor health condition, torture to the point of admitting things he knows nothing about as well as the loss of his dignity to his Human Person.***

***(k) That the Applicant did not commit any offence, and has never been involved in any criminal activity in the past.”***

By virtue of order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, any person who alleges that any of the fundamental Rights provided for in the Constitution or African Charter on Human and People’s Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur, for redress.

See Section 46 (1) and (2) CFRN 1999 (as amended).

Therefore, in the instant case, going by the averments contained in the Applicant’s affidavit, he was arrested in Bosso Niger State on or about 18<sup>th</sup> June, 2019 through a police raid along with others and brought to Abuja. That the Applicant has remained in detention till date without being allowed to contact any member of his family or even his lawyer. And that he is left in a deplorable condition, subjected to torture and was not told of the reasons for his arrest. Therefore, he alleges that his fundamental Human Rights have been breached contrary to the provisions of Sections 33, 34, 35 and 41 of the Constitution FRN 1999 as amended and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

It is noteworthy to point out at the onset, that although the Respondents are empowered under the police Act to invite, arrest and detain suspects under

reasonable suspicion of having committed an offence or for the purpose of preventing the commission of a crime or of investigating crime, such exercise of powers must not be Arbitrary. The Constitution of the Federal Republic of Nigeria which is the ground norm, has no doubt laid the procedure to be followed in such instances as constitutional safeguards guaranteed to citizens of this country under chapter iv of the same Constitution.

On this premise see the cases of DOKUBO ASARI VS FRN (2007)12 NWLR (PT. 1048) 320 at 360; MITIN VS C. O. P BAYELSA STATE & ORS (2017) LPELR. First of all, Section 35 (1) of the Constitution 1999 (as amended) provides:-

***“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.”***

Section 35 (2) provides that every person arrested or detained has the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

Likewise, Section 6 (1) of the Administration of criminal Justice Act 2015, provides that at the time of arresting a suspect, the Police or persons making the arrest shall inform the suspect immediately of the reason for the arrest. Indeed, this provision clearly re-echoes the Constitutional provision under Section 35 (3) which provides:-

***“Any person who is arrested or detained shall be informed in writing within twenty four hours and in a language that he understands of the facts and grounds for his arrest and detention”.***

Furthermore, under the provision of Section 35 (4) of the CFRN 1999 as amended, such a suspect who is arrested or detained shall be brought before a court of law within a reasonable time, that reasonable time is to be not more than 2 days or 48 hours.



By subsection 5 (a), the Respondents in this case are required to bring the suspect before a court of law in one day since he's detained in Abuja where there is a court within 40 Kilometer Radius.

From the depositions in the supporting Affidavit of the Applicant it is averred that he was not informed of the reason for his arrest, he was not allowed to contact his lawyer, and has remained in detention till date without being brought before a Court of competent jurisdiction. All these constitute clear violations of his Fundamental Human Rights.

In addition to depriving the Applicant of his rights, subjecting the Applicant to torture in inhuman conditions clearly breaches his fundamental Right to dignity of the Human person. His Rights to liberty as well as freedom of movement have also been violated in the instant case since the Applicant as stated earlier is still in detention.

The Respondents despite being served with this Application, have not filed any counter Affidavit or any other process to challenge this Application. They are therefore deemed to have admitted the depositions contained in the Affidavit of the Applicant and this court has a duty to act on them.

On this premise, see the case of HEIN NEBUNG K. G. VS U. B. A PLC (2012) 10 NWLR (PT. 1326) 357 at 384, paragraph G thus:-

***“Where evidence is uncontroverted, unchallenged and credible, the court will be left with no option than to accept same.”***

Therefore, since the Applicant has successfully proved that his arrest and detention are unlawful, the Constitution under Section 35 (6) provides a remedy thus:-

***“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person and in this subsection” the appropriate authority, or person” means an authority or person specified by law”.***

Likewise, in the Applicant's supporting Affidavit, it is deposed in paragraph 8 as follows:-

***“That I briefed my lawyers whose law firm is Rostano & Franck Attorneys to file this suit for the preservation of the Applicant's Human Right and I paid a total sum of ₦1,500,000.00 (One Million Five Hundred Thousand Naira) only, as their legal fees for the prosecution of this matter. Attached herein is the payment Receipt from the said law firm marked as Exhibit A”.***

The above proves that the said expenses were incurred on behalf of the Applicant in consequence of his illegal arrest and detention. I also refer to Exhibit A attached.

Therefore, on the whole, the issue for determination is hereby resolved in favour of the Applicant against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

Consequently, it is hereby declared and ordered as follows:-

1. The act of continuing detention, torture, intimidation and subjection of the Applicant to inhumane treatment since June, 2019 till date by the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents is unlawful and illegal and contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended); and Articles 4, 5, 6 and 12 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004; and the United Nations Declaration on Human and People's Rights 1948.
2. The act of the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents of arresting and detaining the Applicant without promptly informing him of the reasons for his arrest and detention, and preventing him from having access to a legal practitioner of his choice, and continued detention from June, 2019 till date without being charged or brought before a court of law, is illegal, unlawful and contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
3. The 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents are hereby mandated/ordered to forthwith, release the Applicant unconditionally.

4. The 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents are hereby mandated jointly and severally to pay to the Applicant general damages in the Sum of **₦2,000,000.00 (Two Million Naira Only)** for the torture, intimidation, unlawful continuing detention of the Applicant from sometime in June, 2019 till date.
5. The 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents are mandated to issue a public apology to the Applicant for the illegal, unlawful, and unconstitutional arrest and detention and continuing detention of the Applicant from sometime in June, 2019 till date.
6. The Respondents are hereby mandated to jointly and severally pay to the Applicant the sum of **₦1, 500,000.00 (One Million, Five Hundred Thousand Naira Only)**, being cost of this Suit as evidenced in Exhibit A.

Signed

***HON. JUSTICE SAMIRAH UMAR BATURE***

5/03/2020

Applicant's Counsel: We are most grateful for the well considered Ruling.