

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. S.U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 34
CASE NUMBER:	SUIT NO. FCT/HC/CV/2126/19
DATE:	29th JANUARY, 2020

BETWEEN:

SHOMGBER AZAGYO VICTOR.....APPLICANT

AND

UGONNA CHINYERE ONYEDIKACHI & 2 ORSRESPONDENTS

APPEARANCE

V. G. Omoreni Esq for Claimant.

JUDGMENT

By an amended motion on Notice dated and filed 11/10/2019, brought pursuant to order 2 Rules (1) (2) & (3) of the fundamental Rights (Enforcement Procedure) Rules 2009. Section 34, 35 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Articles 4, 5, & 6, of the African charter on human and people’s Rights (Ratification and Enforcement) Act, cap A9, LFN 2004, and under the inherent jurisdiction of this Honourable Court, the Applicant herein prayed this court for the following Reliefs:-

- (i) A Declaration that the detention of the applicant, by the Respondents, on or about the 29th day of November, 2018 for period of 3 (three days) without charging the Applicant to court, is illegal, unconstitutional, and a gross violation of the Applicant's right to personal liberty, guaranteed and protected by section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Article 6 of the African charter on Human & people's right (Ratification & Enforcement) Act (CAP A9) LFN 2004.
- (ii) A Declaration that the Detention of the Applicant an or about 29th day of November 2018, for a period of three days after the applicant's arrest, entitles the applicant to a compensation and public apology in accordance with Section 35 (6) of the 1999 Constitution (as amended).
- (iii) A Declaration that the detention of the Applicant on or about the 29th day of November 2018, for a period of three days after the applicant's in humane conditions and hinging his bail I on the consent of the 1st Respondent the Nominal Complainant Constitutes a gross Violation of the applicant's fundamental right to the dignity of human person as enshrined under Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 6 of the African charter an Human and people's Right (Ratification and Enforcement) Act.
- (iv) An order directing the Respondents to pay the Applicant special Damages in the Sum of Ninety –Eight Thousand Naira (₦98,000.00) only being the cost of items carted away during the raid on the applicant's house made up as follow:-
 - (a) 3 pieces of packet shirts at ₦20,000 per shirt ₦60,000.00.
 - (b) 1 pair of shoes at ₦38,000= ₦38,000.00.
- (V) An order directing the Respondents to pay the Applicant GENERAL DAMAGES in the Sum of Six million Naira only (₦6,000,000.00) only and to public apology in a National daily following the unconstitutional Detention of the Applicant by the Respondents for a period three days without being arraigned before a court of law.

The grounds upon which the reliefs are sought are as follows:-

- (i) The Applicant on or about the 29th day of November 2018, was detained by the Respondents on a false allegation of theft, and was not released on bail or charged to court within 48 hours.
- (ii) The detention of the Applicant by the Respondents on or about the 29th day of November 2018, under inhumane conditions for a period of more than two days is contrary to the provisions of Section 35 (5) of the 1999 Constitution (as amended) which prescribes a maximum period of two days for a suspect to be in detention without trial.
- (iii) That detaining the Applicant on the whim of the 1st Respondent and containing her consent before being released on bail is contrary to the provision of Section 34 of the 1999 constitution which provides for the right to human dignity.
- (iv) The Applicant till date was never charged to court.

In support of the Application is a statement setting out the name and description of the Applicant herein, an Affidavit of 14 paragraphs deposed to by the Applicant himself **SHOMGBER AZAGYO VICTOR**, as well as a written address dated 11th day of October, 2019.

In the said written address learned counsel to the Applicant Chinyere Moneme Esq, formulated three issues for determination thus:-

- (1) Whether the Applicant's Fundamental Human right was breached by the Respondent's, following the Applicant's detention in inhuman conditions on the whim of the 1st Respondent for more than two days without being charged to/or arraigned before a competent court of law.
- (2) Whether the detention of the applicant under poor sanitary conditions and making the Applicant sleep on the bare floor at Kubusa Divisional Police Station does not amount to inhuman and degrading treatment contrary to the provisions of Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999. (as amended) and therefore illegal and unconstitutional.
- (3) Whether the Applicant is entitled to damages in the circumstance?

In arguing the issues, the learned Applicant's Counsel submitted an issue one that it is trite law that the right and liberty of a person is one of the most cherished fundamental rights after the right to life. That this includes guarantee from physical restraint. That the arrest and detention of the Applicant herein can only be done lawfully in execution of the order of a competent court for some reason that is permitted by law and same circumstances envisioned by the Constitution of the Federal Republic of Nigeria.

Reference was made to the provisions of Section 35 (1) of the constitution as well as Section 35 (4) of the constitution.

Learned counsel submitted that the Applicant's right to personal liberty guaranteed and protected by the Constitution cannot and should not be infringed upon arbitrarily by any one and in this particular instance, the Respondents their agents, servants or privies, in circumstances that are unknown to and not contemplated by law. That thus, the detention of an individual for a period exceeding two days without being released or charged to a competent court of law, is a violation of the right of the individual.

Reference was made to the case of MAMMAN VS STATE (2012) ALL FWLR (PT.621) 1542 AT 1556 paragraphs D-G; NDLA VS OMIDINA (2013) 16 NWLR (PT. 1381) 589 at 6 paragraphs A-D.

That in ONYIRIOHA VS I. G. P (2009) 3 NWLR (PT. 128) 342, the court held that by virtue of Sections 35 (1) and 36 (5) of the 1999 Constitution, every citizen of Nigeria is entitled to his personal liberty and no one shall be deprived of the liberty except as stipulated by the Constitution or statute.

Reference was also made to the case of EDO VS COMMISSIONER OF POLICE (1962) 1 ALL NLR 92.

It is submitted further that every person that is alleged to have committed an offence shall be presumed innocent until the contrary is proved. Reference was made to Section 36 (5) of the 1999 Constitution. And submitted that the courts have in a plethora of cases, consistently and revisionary recognized the

constitutionality of the presumption of innocence as enshrined in the Constitution. That no matter how seemingly grave, heinous or unconscionable an alleged offence against a suspect or any person might look, he is still entitled to the presumption guaranteed under the Constitution. The learned counsel referred to the case of *KALU VS NIGERIAN ARMY* (2016) 4 NWLR (PT. 1185) 433 AT 446, paragraphs F-G.

The court is then urged to resolve issue are in favour of the applicant and order the Respondent to pay for the infringement of this applicant's Right of personal liberty, movement and human dignity.

On issue two, the learned counsel submitted that the Applicant's right was breached when he was detained under very poor sanitary conditions and made to sleep on the bare floor for three days. That, he suffered untold physical and mental trauma which he is yet to recover from. That he was also denied bail even after producing credible sureties on the 1st day of his detention and was told to obtain the consent of the 1st Respondent before he could be released on bail. That these acts of the men of the 2nd and 3rd Respondents at the instance of the 1st Respondent are acts of torture and inhumane treatment contrary to the fundamental rights of the Applicant as enshrined under the Constitution.

On issue three, the learned Counsel submitted that it is trite, that where there is a right and it is infringed upon, there is a remedy. That the court sits at the position make sure that rights of citizens are protected and compensated where this has been breached, or is being breached. That the clear import of section 35 (6) is to this effect, as such is entitled to compensation by way of pecuniary damages.

Reference was made to the case of *OKONKWO VS OGBOOGU* (1996) 5 NWLR (PT. 449); as well as the Fundamental Rights (Enforcement Procedure Rules) 2009.

Finally counsel submitted that justice demands that the Applicant should be adequately compensated to assuage the unwarranted breach of his

Fundamental Human Rights based on the whims of the 1st Respondents and to serve as a deterrent to the Respondents who use their powers to harass and humiliate ordinary members of the society.

The court is urged to grant the reliefs sought by the Applicant herein.

From the records of the court, all the three Respondents were duly served. Out of the three, only the 1st Respondent filed a process in opposition to this Application.

The 1st Respondent's counter affidavit has 10 paragraphs deposed to by UGONNA CHINYERE OKOROAFOR, the 1st Respondent. It is dated and filed 4/11/19. There is equally a written address which supports the 1st Respondents counter Affidavit in opposition to the Applicant's amended motion (originating motion) filed in 21-10-2019.

In the 1st Respondent's written address in support of the counter affidavit. Issue for determination are formulated by her counsel Maduakolam Igire Esq, as follows:-

- (1) Whether or not the 2nd & 3rd Respondents are under legal duty to investigate the direct complaint lodged by the 1st Respondent who is the nominal complainant against crime of Robbery and whether the arrest of the applicant upon reasonable suspicion of having committed an offence thereto amounts to an infringement of the Applicant's Fundamental Right having regard to the provision of Section 149 of the criminal procedure code and section 35 (1) (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). And
- (2) Whether the Applicant from the totality of material facts before this Honourable court has made out a case against the 1st Respondent to entitle him to the reliefs sought.

In arguing the issue, the learned counsel submitted that by virtue of Sections of the police Act Cap P19 LFN 2004, the Police have statutory duty to carry out an investigation into the complaint of armed Robbery Criminal complaint reported by the 1st Respondent, and that the invitation of the Applicant in connection with

the matter does not amount to infringement of the Applicant's Fundamental Right as guaranteed under the 1999 CFRN (as amended: reliance was placed on the case of HASSAN VS EFCC (2014) 11 NWLR (PT. 1389) 607 at 630.

That once a Criminal Complaint is made, such as in this case, the Police have a Constitutional and statutory duty to investigate the Allegation. That the police under Section 24 of the Act, is empowered to invite, and even arrest without warrant any person whom any other person alleges to have committed a felony or misdemeanor. Reliance was placed on the cases of AGBI VS OGBEH (2005) 8 NWLR (PT. 926) 4; CHRISTILIEB PLC VS MAJEKODUNMI (2008) 16 NWLR PT. 1113, 40; IBIKUNLE VS STATE (2007) 2 NWLR (P. 1019) 546, as well as Section 35 (1) (c) of the 1999 CFRN (as amended).

The learned counsel submits, that Armed Robbery allegation upon which the Applicant was invited by the police is a serious offence and the police also have power to arrest such a person.

Reference was made to the cases of FAWEHINMI VS I. G. P (2002) 7 NWLR (PT.767) 693 paragraph E; LEWIS VS C. O. P (2003) 8 NWLR (PT. 927) 278 at 281; AG ANAMBRA STATE VS UBA (2005) 15 NWLR (PT. 927) 44 at 67, paragraph G-G; ONAH VS OKENWA (2010) 7 NWLR (PT.1194) 512 at 533-536.

It is further submitted, that the intention of the Applicant in this case is to mislead the court and be shielded from being investigated and prosecuted. Reference was made to the case of NKIRUKA VS C. O. P (2001)1 CH-HR 407, PER OGBE JCA at page 410.

It is submitted that this Honourable Court needs to be cautious in granting a restraining order meant to prevent Constituted authorities from carrying out their constitutional and statutory duties as the court is being invited to do in this particular case by the Applicant. That this court cannot interfere with the criminal investigation powers of the Respondents.

Reference was made to the case of BASSEY VS ALFA (2010) ALL FWLR (PT. 1077) 1501, paragraphs H-A, per OWODE JCA; GABRIEL NZEWI & ORS VS C. O. P AWKA & ORS (2001) 2 HRLR, 157 at 158; A. E. E. G. S. A VS EKE SPIFF (2009) MJSC

(PT-) page 71 (citation Incomplete) ; EKWENUGO VS A. I. G (2008) ALL FWLR PT. 420 77 at 78.

It is submitted by the learned counsel that the acts of the 2nd and 3rd Respondent in this case is seeking to do by way of investigation complaint laid by the 1st Respondent to protect the interest of the public. That the court cannot grant the reliefs sought which will amount to placing individual right over public interest. On this, reference was made to Section 45 of the CFRN 1999 (as amended) and HASSAN VS E. F. C. C (Supra) at page 632.

The learned counsel submits that there is no credible, compelling and cogent facts disclosed before this Honourable Court by the Applicant that his arrest was within the ambit of the law.

That the Applicant's affidavit is false, incompetent and meant to mislead this Honourable Court. Counsel urged the court to discountenance same. He referred to EZEMBA VS IBENEME & ANOR (2004) 14 NWLR (PT. 894)617; A.G ANAMBARA STATE VS A .G FEDERATION (2005) 9 NWLR (PT. 981) 572.

Counsel submits further that all the reliefs sought by the applicant being equitable remedies can only be granted if the applicant shows that, he came to court with clean hands. That in the instant case the Applicant has no clean hands. Reference was made to the case of AWONUSI VS AWONUSI (2007) ALL FWLR (PT. 391) 1647, RATIO 10.

On issue 2, it is submitted that the Applicant has not made out any case against the 1st Respondent to warrant the grant of the reliefs sought from this Honourable Court.

Reference was made to the Decision of Honourable Justice A. Lerris Allagoa in suit No. FHC/J/C5/55/2015 (unreported) case of HYGINUS OZOR VS B. N INVESTMENT VENTURES NIG LTD AND 2 ORS, delivered on the 30th day of June 2015, in finally urging the court to dismiss this Application and award cost of ₦50,000.00 against the Applicant.

Counsel also made reference to the case of A.G ANAMBARA VS U. B. A (2005) 15 NWLR (PT. 947) 44 at 67, paragraph G-G.

In addition to his Affidavit in support of this Application, the Applicant also filed a further Affidavit in opposition to the 1st Respondents Counter-Affidavit dated 4-11-19. The further Affidavit of 26 paragraphs which is deposed to by Applicant is dated and filed 12-11-2019.

It is also supported by some unmarked annexures and applicant's reply on points of law dated 12-11-2019.

In the Applicant's reply on points of law, two issues were further formulated thus:-

- (i) Whether the arrest and detention of the Applicant based on the 1st Respondent was based on reasonable suspicion of the commission of a crime and whether the report by the 1st Respondent disclosed a prima facie case against the Applicant.
- (ii) Whether from the facts and circumstances of this case the Applicant has proven that his fundamental Rights were infringed by the Respondents and is entitled to damages.

It is submitted therein that facts admitted need no further proof and that the Applicant has admitted the following facts:-

- (i) That 1st Respondent in paragraphs 3f of her counter affidavit admits that the 2nd and 3rd Respondents invited the Applicant for interrogation.
- (ii) In paragraph 3g of her counter affidavit, the 1st Respondent states that the police arrested the Applicant because he came back late that very night and that he is a security man.
- (iii) In paragraph 3j of her counter affidavit, the 1st Respondent states that she saw the Applicant the very next day.

It is submitted further that the report of the 1st Respondent which led to the subsequent interrogation and detention of the Applicant was based on malice and not based on reasonable suspicion of having committed crime.

Reference was made to the Definitions of “Interrogation and “Reasonable Suspicion” in the Blacks law Dictionary 8th Edition at pages 838 and 1487.

The court is urged to consider the acts of the Respondents as that which occasioned miscarriage of justice and a breach of his fundamental Human rights.

The court is also urged to hold that no prime facie case against the Applicant.

Reference was also made to the case of ONAN VS OKENWA (2010) 7 NWLR (PT. 1194) 512 at 533-536. And paragraph 3g of the 1st Respondent’s counter affidavit.

That the allegation of the Applicant coming back home that very day late at night does not amount to reasonable suspicion nor disclose a prima facie case to warrant the breach of the Applicant’s Fundamental Rights.

That the breach makes all the respondents jointly and severally liable for the breach of the applicant’s fundamental rights and urged the court to so hold.

On issue two, it is submitted that the question of infringement is a question of fact not law and that the court is to examine the Applicant’s affidavit.

Reference was made to the case of OKAFOR VS LAGOS STATE GOVERNMENT & ANOR (2016) LPELR-41066. Page 28.

And OANDO PLC VS FARMATIC BIOGAS WEST AFRICA LTD & ANOR LPELR-45564, PAGE 25. Paragraph A-D.

Section 167 (d) of the Evidence Act 2011, on presumption of facts.

The court is urged to consider that the 2nd and 3rd Respondents are deemed to have admitted the Applicant’s assertions in his motion for enforcement of his fundamental rights by not responding by way of a counter Affidavit to those grave allegations made by the Applicant.

Reference was also made to the cases of JIM JAJA VS RIVERS STATE (2013) 6 NWLR (PT. 350) P 225; ARULOAN VS C. D. P LAGOS STATE (2016) LEPELR-40190.

The court is urged to grant the prayers of the Applicant and reliefs sought before this Honourable Court.

Now, I have carefully considered this Application the affidavit in support of the Application, the grounds upon which same is predicated, the reliefs sought, as well as the address in support of same. I have equally considered the counter-affidavit of the 1st Respondent in opposition of the Application and the address in support of same.

I have also considered the applicant's further Affidavit in opposition to the 1st Respondent's counter-affidavit, the (unmarked) Annexures, as well as the written address on points of law in support of the further Affidavit of the Applicant.

From all the submissions presented on both sides of this Application, it is my humble view that the issues for determination are as follows:-

- (1) Whether the fundamental Human Rights of the Applicant were breached by the Respondent in this case?
- (2) Whether the Applicant is entitled to the reliefs sought.

It is instructive to note at the onset that the 2nd and 3rd Respondents have not filed any counter affidavit and a written address as required by law to challenge or contradict the depositions of the Applicant in the supporting affidavit. I shall discuss the legal implication of this in due course.

However, let me focus on the first Respondent who has filed processes in response to this application.

It should be borne in mind that such Applications are usually governed by the fundamental Rights Enforcement Procedure Rules 2009. It is therefore sought and won on the paragraphs of the supporting affidavit and the written address.

In the Applicant's supporting Affidavit, particularly paragraphs 1 and 10 thereof, the Applicant avers that he was arrested on or about the 29th day of November, at Ipent 4 Estate, Lokogoma, Abuja and was detained by the Respondents for three days under inhumane conditions.

He avers in paragraph 10 as stated inter alia that the Respondents did not find any stolen items in his house.

Now Although, the Applicant in his affidavit was silent as to the allegation against him leadings to his arrests, in the statement in support of this application, it is stated that the Applicant was falsely accused of theft by one Ugonna Chinyere Okoroafor the 1st Respondent.

In the 1st Respondent's Counter-Affidavit in opposition to this Application, deposed to by the 1st Respondent it deposed in paragraph 3 thereof, as follows:-

Paragraph 3 :- That I do hereby deny all the paragraphs of the Affidavit in support of the Application and state as follows:-

- a. That on 21st day of November 2018, armed Robbers invaded our flat and woke everybody up.
- b. That the Armed Robbers made away with my jewelry, wedding ring, clothing materials, ATM cards, my money, television, DVD set Laptop, children school bag and all the drinks in the Refrigerator.
- c. That on the 22nd day of November, 2018 I went to police station at Kubusa and reported the incident of Robbery.
- d. That I was asked to make statement at the police station which I did.
- e. That the police visited the scene of the crime and discovered that the Applicant also is the only person that lives in the compound as the gate man.
- f. That the police invited the Applicant for investigation as part of their Constitutional powers to investigate Crime.
- g. That I know that the Armed Robbers walked in to the compound without any breakage of gate keys or wall as a result of the Applicant who comes back late that very day.
- h. That I do not know what later happened at the police station as I do not work with the Nigeria police force.
- i. That I know as a fact that the Nigeria police have Constitutional powers to investigate Crimes, detain and release suspects.

j. That I know as a fact that I saw the Applicant in the compound the next day.

However, on the part of the Applicant, it is deposed in his further affidavit in opposition to the 1st Respondent's Counter Affidavit particularly paragraph 4, 5, 7, 8, 9, 10, 10, 13 thereof thus:-

Paragraph 4:-

That I am not in a position to admit or deny paragraphs 3B of the 1st Respondents Counter-Affidavit. I only know that the 1st Respondent told the officers of the 2nd and 3rd Respondents to my hearing during the course of my detention that I was responsible for the Robbery in the compound because I came back late that very day.

Paragraph 5:-

"That the contents of paragraphs 3e, 3f, 3g, 3h, 3i, 3j, 4, 5, 6, 7, 8, 9, 10 are false and deposed to in bad faith"

Paragraph 7:-

"That paragraph 3e is vehemently denied, I do not live in the compound as a gate man. I am a driver and have worked as a driver since 2016. A copy of my driver's license is hereby attached and marked Exhibit A."

Paragraph 8:-

"That in further denial and response to paragraph 3e, I am a driver employed by TOUGH DOWN LOGISTICS NIGERIA LTD. A copy of my Employment letter is hereby attached and marked Exhibit B."

Paragraph 9:-

"That paragraph 3f is denied and 1st Respondent put to the strictest proof thereof. I was never invited by the police. I Aver that the police came to our estate in Ipent 4 Lokogoma, Abuja based on the report of the 1st Respondent that I am a security man and a suspect who comes back late

and whisked me away like a common Criminal in the presence of witnesses.”

Paragraph 10:-

“That paragraph 3g is denied. I do not know how the armed robbers entered into the compound. I also did not come back home late at night that very day.”

Paragraph 13:-

“That in further Response to paragraph 3h, the 1st Respondent asked officers of the 2nd and 3rd Respondents to detain me because I left the gate open as a security man. Informed the 2nd and 3rd Respondents that I did not leave the gate open and i am not a security man but nobody believed me.”

Paragraph 15:-

“That I know as a fact that there was no reason for my arrest and detention besides the fact that the 1st Responded reported that Robbers walked into our compound because the gate was left open due to the fact that I come back late that very night.”

Now, it is quite clear from the depositions in the 1st Respondent’s Counter Affidavit, that the allegation that she instigated the 2nd and 3rd Respondents to arrest and detain the Applicant is denied.

Therefore, the Onus is on the Applicant to prove his assertions in line with the settled principle of law. The Applicant in his further Affidavit to the 1st Respondent’s Counter Affidavit, has deposed in paragraph 3 (e) thereof, that he is not a gate man in the compound in question, but rather at the time of the incident, he was employed as a driver since 2016, I going by his depositions in paragraph 7 thereof. I also refer to Exhibit A & B annexed as an Exhibit in support of this Application.

Also in paragraph 13, he deposed to the fact that it was the 1st Respondent that asked the officers of the 2nd and 3rd Respondents to detain him because he left the gate open as a security man. That he informed the 2nd and 3rd Respondents that he did not leave the gate open and that he's not a security man but nobody believed him.

It is clear from the depositions of the 1st Respondent in her Counter-Affidavit that she was a Victim of a Robbery in her home on the 21st day of November, 2018. That by paragraph 3 (a), she states that on that day armed Robbers invaded their flat and woke everybody up and she was robbed. This led to her reporting the robbery to Kubusa police station on the 22nd day of November, 2018, which subsequently led to the arrest and detention of the Applicant.

Therefore as a Victim of a Robbery, the 1st Respondent has a right and duty to report to the police i.e The 2nd and 3rd Respondents saddled with the responsibility of checkmating and preventing crime and prosecution of offenders.

This position was re-instated in the case of ONAH VS OKENWA (2010) 7 NWLR (PT. 1194) at page 536 paragraph E-H, where it was held that:-

".....Every person in Nigeria who feels an offence has been committed has a right to report to the Nigeria police force. Once that right of complaint to the police who are custodians of order in the society is exercised, the right shifts to the police to exercise their statutory powers under Section 4 of the police Act."

It was further held in ONAH VS OKENWA (Supra) at page 537, paragraphs A-C thus:-

"The question whether a party instigated the police against his adversary has to be established by evidence to claim instigation requires evidence as to the facts to support the allegation that the complaint was not made in good faith or that it is a fabricated story which caused the police to arrest and detain."

In the instant case, in the Applicant's Affidavit, he avers among other things that he heard the 1st Respondent telling men of the 2nd and 3rd Respondents during the course of his detention that he was responsible for the Robbery in the compound because he came back late that very day.

I refer to paragraph 4 of the Applicant's further Affidavit.

Therefore, the question that comes to mind here is whether the 1st Respondent's complaint of Armed robbery and information given in consequence thereof, was made in bad faith as fabricated?

Firstly, it must be born in mind that to witness Armed Robbery is no doubt a harrowing experience for anyone.

Having gone through the traumatic experience of Armed Robbery, it would be very easy for the 1st Respondent in my view to see any one as a suspect.

Indeed, since such information was given to the police during the period of the Applicant's detention when the matter was being investigated, it is my firm opinion that from the evidence put forth in this case, the 1st Respondent merely complained to the police, and she had a duty to supply any other information relevant to the investigation.

Therefore, I do not see anything to show that her report and information given to the police was made in bad faith. The Applicant herein has not shown that the initial report was made against him as one of the alleged Armed Robbers, but that according to his deposition in paragraph 4 of his further Affidavit, the information was given to the 2nd and 3rd Respondents during the course of his detention.

And since the 1st Respondent merely exercised her legal right to lay a complaint or report the Armed Robbery to the police, how the police conduct its investigations is something beyond the nominal complaints control. This also includes the issue of bail where the Applicant alleges that he was refused bail by the police which was hinged on the approval or consent of the 1st Respondent.

I refer to the depositions in paragraph 7, 8 of the Applicant's Affidavit, paragraph 19 of the Applicant's further Affidavit.

It is noteworthy to point out that the power to consider and grant administrative bail (this case inclusive) lies with the law enforcement agencies (in this case the police) and not a private citizen or a nominal complainant. Therefore, in the instant case, the power to grant administrative bail was within the purview of the 2nd and 3rd Respondents and not the purview of the 1st Respondents, and thereby she cannot in any way be held liable, I so hold.

Therefore, on the whole, I am of the view as stated earlier that the 1st Respondents complain to the police was not made in bad faith and as such has not breached the Applicant's rights in any way. I so hold.

This brings me to the 2nd and 3rd Respondents. Despite being served with the court processes in this Application, they've failed, neglected or refused to file any response or Counter Affidavit to challenge or contradict the averments in the Affidavits of the Applicant.

In paragraph 3 to 5 of the Applicants Affidavit, he avers thus:-

"That upon my arrest, I was taken into custody and kept at the Kubusa police station, within the jurisdiction of this Honourable Court."

"That during the period of my arrest which lasted three days, I was not charged to or arraigned before any court of law."

"That my detention by the Respondents has subjected me to inhumane conditions wherein I slept on the bare floor and it was difficult for me to feed regularly to maintain good personal hygiene."

In paragraphs 9 and 10, he states:-

"That during my detention the nominal complainant in the company of the officers of the 2nd and 3rd Respondents raided my house and ransacked the entire house."

"That the Respondents did not find any stolen item in my house."

In paragraph 13 (i) (ii) (iii) (iv) and (v), the Applicant states:-

- (i) That my Fundamental rights to personal Liberty, movement and human dignity was violated by the Respondents due to my detention by the Respondents.
- (ii) That the Respondents should have charged me to court since or released me on bail rather than keep me in detention for three days.
- (iii) That the Respondents should not have raided my house without obtaining a search warrant.
- (iv) That it was wrong to keep me incarcerated on the whim of the 1st respondent.
- (v) That it has become necessary to make this application since my right to personal liberty, movement and human dignity has been infringed upon.

According to the Applicant in paragraphs 11 and 23, consequent upon the raid of his house the 2nd and 3rd Respondents carted away a pair of his shoes and three shirts and have not returned the seized items to him till date.

In paragraphs 14, 20 (e) and f, 24 of the further affidavit of the Applicant, it is deposed thus:-

“That paragraph 3j is not correct, that I know that the Nigeria police have the Constitutional power to investigate crimes, detain suspects upon reasonable suspicion of commission of a crime and do not have the powers to detain suspects for prolonged periods without charging them to courts.”

Paragraph 20 (e) and (f):-

“That the police informed her that my shoe and three shirts looked suspicious and after taking away my shoe and three new shirts, the officers of the 2nd and 3rd respondents made my wife Mrs. Blessing Azagyo to Sign behind a document which I was not given to read.”

“That I asked the police officers to at least allow me put on a bathroom slippers before going back to the station to which Mrs. Grace Edache slapped me in the presence of my wife, Mrs Blessing Azagyo, the Estate

Manager Mr. Godwin Abimku and the 1st Respondent and while in handcuffs bundled me back to the Kubusa police station.”

Paragraph 24:-

“That till the date of filing this suit, I am still yet to be charged to court.”

The 2nd and 3rd Respondents as stated earlier have not challenged this application. Therefore, all the above averments of the Applicant are therefore deemed admitted. On this please see the case of AGBOR VS THE POLYTECHNIC CALABAR (2009) LPELR 8690.

Furthermore, it should be borne in mind and re-echoed at this Juncture that while the 2nd and 3rd Respondents are empowered under the law to invite, arrest and detain suspects, such must be done according to law. The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the ground norm.

Therefore, the 2nd and 3rd Respondents have a duty to act within the ambit of the law.

In the case of JIM JAJA VS C. O. P (2011) 2 NWLR (pt. 123) at398, paragraph C-D, it was held thus:-

“...A Nigeria citizen is absolutely entitled to his freedom and cannot be deprived of it until and unless due process of law is meticulously observed.”

Most importantly, by the provision of Section 35 (1) of the 1999 CFRN (as amended), every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the cases stated therein. This includes where a person is reasonably suspected of having committed a criminal offence. In that situation, that Right to personal liberty may be temporarily curtailed. By the same provision i.e Section 35 of the Constitution, two days is the time allowed for a suspect to be arrested and detained please see Section 35 (5) of the CFRN (As Amended).

In the instant case, the Applicant has deposed to the fact that he was arrested and detained for three days. Therefore, this clearly shows that his arrest and detention above the Constitutionally allowed period, is unconstitutional and breached his fundamental Right as guaranteed under Section 35 of the CFRN 1999 (as amended). I so hold. It is also clear that he was never charged to court for any offence.

The consequence is that the Applicant is entitled to compensation and public apology in accordance with Section 35 (6) of the CFRN 1999 (as amended). I so hold.

The applicant also alleges that he was subjected to detention in inhumane condition, which thereby violates his Fundamental Right to the dignity of a human person as enshrined under Section 34 (1) of the Constitution of the FRN 1999 (as amended) and Articles 6 of the African charter on Human and people's rights (Ratification & Enforcement) Act.

From the averments contained in the two Affidavits of the Applicant, I find that his fundamental right to human dignity was breached by the 2nd and 3rd Respondents when he was detained in inhumane conditions, handcuffed and slapped by Mrs. Grace Ediache the I. P. O of Kubusa police station, in violation of Section 34 (1) of the CFRN 1999 (as amended) as well as Articles 6 of the African charter on Human & people's Right (Ratification & Enforcement) Act.

The two issues for determination are hereby resolved in favour of the Applicant against the 2nd and 3rd Respondents. I so hold. Accordingly, it is hereby declared as follows:-

- (1) The detention of the Applicant by the 2nd and 3rd Respondents on or about the 29th day of November, 2018 for a period of 3 (three) days without charging the Applicant to court, is illegal, unconstitutional, and a gross violation of the Applicant's right to personal liberty, guaranteed and protected by section 35 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 6 of the African charter on Human and people's rights (Ratification Enforcement) Act, (CAP A9) LFN, 2004.

- (2) The detention of the Applicant on or about the 29th day of November, 2018 for a period of three days after his arrest entitles him to compensation and public apology in accordance with Section 35 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as altered).
- (3) The detention of the Applicant on or about the 29th of November, 2018, for a period of three days and subjected to detention in inhumane conditions and hinging his bail on the consent of the 1st Respondent the Nominal complainant, is a gross violation of the Applicant's Fundamental Right to Dignity of the human person as enshrined under Section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) and Article 6 of the African charter on Human & people's Right (Ratification & Enforcement) Act.
- (4) Relief No. 4 does not constitute damages since more often than not; special damages are termed "out of pocket expenses and same has to be specially proved. It therefore fails.
- (5) The Applicant, however, is entitled to general damages and the 2nd and 3rd Respondents are hereby ordered to pay the Applicant the Sum of ₦500,000,00 as General damages and also to publish a public apology to the Applicant in a National daily following the inhumane treatment and unconstitutional detention for three days without being charged before a court of law.

Signed

Hon. Justice Samirah Umar Bature

16-1-2020

Applicant's Counsel: We thank the Court for the Industry.

1st Respondent's Counsel: We commend the Court for the industry put into this Ruling.