

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 24
CASE NUMBER : SUIT NO: CV/2678/19
DATE: : MONDAY 4TH MAY, 2020

BETWEEN

IFEANYI EMMANUEL EGBUCHE APPLICANT

AND

1. ZENITH BANK PLC. } RESPONDENTS
2. INSPECTOR GENERAL OF POLICE }

JUDGMENT

The Applicant vide Originating Motion dated the 14th day of August, 2019 approached this Honourable Court for the following:-

- i. A Declaration that the actions of Police Officers under the active control of the 2nd Respondent in torturing and brutalizing the Applicant from 11th June, 2019 to 14th June, 2019 at Maitama Police Station and also from 17th June 2019 to 9th July, 2019 at Garki Police Divisional Headquarters on account of the Applicant's refusal to forcefully transfer House A9, 4th Avenue, Sunny Vale Estate Lokogoma District, Abuja to the 2nd Respondent constitute a gross violation and infringement of the Applicant's fundamental right to dignity of human person as guaranteed by Section 34 of Constitution of Federal Republic of Nigeria 1999 (as amended) and Article 5 of African Charter on Human

&Peoples’ Rights (Ratification & Enforcement) Act CAP A9 LFN 2004 and are accordingly wrongful and illegal.

- ii. A Declaration that the actions of Police Officers under the control of the 2nd Respondent in detaining the Applicant at the 2nd Respondent’s detention facility/cell at Maitama Police Divisional Headquarters from 11th June, 2019 to 14th June, 2019 and also at Garki Police Divisional Headquarters from 17th June, 2019 to 9th July, 2019 on account of the Applicant’s refusal to forcefully transfer House A9, 4th Avenue, Sunny Vale Estate Lokogoma to the 2nd Respondent constitutes a gross violation and infraction of the Applicant’s Fundamental Right to Personal Liberty as guaranteed by Section 35 of the Constitution of the Federal Republic of Nigeria 1999(as amended) and Article 6 African Charter on Human & Peoples’

- Rights (Ratification & Enforcement) Act CAP A9 LFN 2004 and is accordingly wrongful and illegal.
- iii. A Declaration that the actions of the Respondents acting jointly and severally in 2019 in forcing the Applicant to execute a deed vesting and transferring House A9, 4th Avenue, Sunny Vale Estate Lokogoma Abuja to the 1st Respondent constitutes an infraction into the Applicant's Fundamental Rights to own immovable property as guaranteed under Sections 43 and 44 Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 14 of African Charter on Human & Peoples' Rights (Ratification & Enforcement) Act CAP A9 LFN 2004 and is accordingly wrongful and illegal.
- iv. An Order enforcing the Applicant's Fundamental Rights to Dignity of Human Person and Personal Liberty as guaranteed by Sections 34 & 35 respectively of Constitution of the Federal

- Republic of Nigeria 1999 (as amended) and Articles 5 and 6 respectively of African Charter on Human & Peoples' Rights (Ratification & Enforcement) Act CAP A9 LFN 2004.
- v. An Order of Court enforcing the Applicant's Fundamental Rights to own immovable property as guaranteed under Sections 43 and 44 Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 14 African Charter on Human & Peoples' Rights (Ratification & Enforcement) Act CAP A9 LFN 2004.
- vi. A Declaration that the 1st and 2nd Respondents acting jointly or severally cannot legally foist the Applicant to vest House A9, 4th Avenue, Sunny Vale Estate Lokogoma, Abuja on the 1st Respondent as issues of purchase of house and execution to transfer instruments are all civil rights enforceable in the Court of Law and the actions of the 1st Respondent in engaging Officers of the 2nd

Respondent of foist a sale and transfer of the said House A9, 4th Avenue, Sunny Vale Estate Lokogoma, Abuja is wrongful and illegal.

vii. A Declaration that the actions of the 1st and 2nd Respondents acting jointly or severally in forcefully ejecting the Applicant from House A9, 4th Avenue, Sunny Vale Estate Lokogoma, Abuja on the 8th day of July, 2019 and their concomitant act of laying siege and taking forceful possession of the said house from the said 8th July, 2019 till date is wrongful and illegal.

viii. An Order of Court, setting aside **annexure A**, the purported “Deed of Assignment” between the Applicant and the 1st Respondent which vested House A9, 4th Avenue, Sunny Vale Estate Lokogoma to the 1st Respondent as the same was executed under duress.

ix. An Order of Court directing the 1st and 2nd Respondents to immediately vacate the Applicant’s

House A9, 4th Avenue, Sunny Vale Estate Lokogoma, Abuja.

- x. An Order or perpetual injunction restraining the 1st and 2nd Respondents from arresting or causing the arrest of the Applicant in connection with the Applicant's refusal to accede to a forceful give-away and/or sale of House A9 4th Avenue, Sunny Vale Estate Lokogoma Abuja to the 1st Respondent.
- xi. An Order directing and mandating the 1st Respondent to tender an apology to the Applicant by particularly publishing the said apology in a national newspaper widely read in Nigeria for their wrongful complaint to police and which complaint was the reason for the Applicant's arrest, intimidation, detention and torture.
- xii. An award of ₦800,000,000.00 (Eight Hundred Million Naira Only) jointly and severally against all the Respondents as general damages.

- xiii. An award of N5Million as cost of action.
- xiv. An award of 10% post Judgment interest per annum on the entire judgment sum from the date of Judgment till same is fully liquidated.

The following grounds were also filed in support;

- i. The 1st Respondent constituted itself into an outlaw. Orchestrated a preposterous story that it repaid a loan/debt incurred by the Applicant.
- ii. The Applicant record while in the services of the 1st Respondent was unblemished. No debt nor loan was incurred by the 1st Respondent on account of the Applicant.
- iii. The 1st Respondent threw decency and responsiveness to the winds. They became vindictive and connived with the 2nd Respondent to design an ungodly ploy to compulsorily acquire the residence where the Applicant lived.

- iv. The Respondents arrested, detained and tortured the Applicant from 11th June, 2019 to 14th June, 2019 at the 2nd Respondent detention facility at Maitama Police Divisional Headquarters.
- v. The 1st Respondent in further consummation of their ploy caused the matter to be transferred to FCT Police Command whereat they re-arrested, detained and tortured the Applicant again from 17th June, 2019 to 9th July, 2019.
- vi. The Applicant was maltreated, tortured and humiliated by the Respondents while in detention. The Applicant was intimidated and reduced to nothingness as if he is less human.
- vii. The 2nd Respondent at the wish of the 1st Respondent tortured and intimidated the Applicant and foist him to execute an instrument transferring House A9, 4th Avenue, Sunny Vale Estate Lokogoma Abuja to the 1st Respondent.

In support of the application is an affidavit of 26 paragraph deposed to by the Applicant himself.

It is the case of the Applicant that he was a former staff of Zenith Bank Plc the 1st Respondent in this case.

Application avers that sometimes on the 11th day of June, 2019, the Abuja Zonal Head of the 1st Respondent (Mr. Louis Udom) told him that Mr. Francis Eknonye (The Chief Inspector) wants him to accompany him to Maitama Police Station for purpose of given explanations about a customer's account transaction and that upon arrival, he was arrested and detained.

Applicant avers that at the police station, the Respondent tried to prevail on him to execute a land instrument transferring House A9, 4th Avenue, Sunny Vale Estate, Lokogoma District, Abuja to the 1st Respondent. That the Police brought him out and claimed that he stole about ₦129,340,000.00 from a customer of the bank and that the bank has paid the customer and therefore need refund.

That he was detained from 11th June to 14th June, 2019 and the case was transferred to FCT Command after search was conducted in his house and not incriminating things found.

It is further the affidavit of the Applicant that he was detained in FCT Command from 17th June, 2019 to 23rd June, 2019 even though he met all bail condition.

That during his incarceration at the FCT, Command Headquarters, Chukwuka N. Ekpunobi and Francis Eknoye both Branch Managers and Chief Inspector of the Bank severally tried to force him to execute an instrument assigning House A9, 4th Avenue, Sunny Vale Estate Lokogoma to the 1st Respondent Bank but that he refused. And this led to serious torture.

That at the peak of this torture, he signed the document vide Exhibit 'A'.

Applicant avers further that the Police on the 8th July, 2019 took him to the house and his property were removed from the House and locked up the house.

Applicant stated that on the 1st August 2019, DSP Baba Barau called him to report at Command Headquarter and upon arrival, he was ask to signed a purchase receipt in the sum of ₦129, 340,000.00 for the property in question vide Exhibit 'B', and that after the torture, he resigned from the service of the 1st Respondent vide Exhibit 'C1' & 'C2' respectively. Applicant averred that several voice calls and messages threat were made out to him vide Exhibit 'D'.

That it will be in the interest of justice to grant this application.

In line with law and procedure, a written address was filed wherein, a sole issue for determination was formulated to

wit, *whether vide affidavit in support the Applicant has shown genuine cause to merit a grant of the application.*

In arguing the above issue, learned counsel submit that the Respondent breached the fundamental right of the Applicant by infringing on his Right to Dignity inherent in human person contrary to Section 34(1) of the Constitution and Right to acquire and own immovable property contrary to Section 43 of the Constitution. And court was urge to so hold.

Upon service, the 1st Respondent filed a counter affidavit of 56 paragraph deposed to by one Chukwuemeka Awachie a Staff of the Respondent.

It is the deposition of the Respondent that sometime on the 30th day of May, 2019, the 1st Respondent received a letter of complaint from one of its customers, One Emmanuel Ayodele Oke with Account Number

1006187324 that unauthorized transaction has been noticed on his said Account Number **1006187324** with the bank vide Annexure ZB1.

That the bank in the course of investigation discovered that the below named transactions were not authorized by the customer/account holder namely:

- a. Transfer made from Customer's Account Number 1006187324 to Cartrends Global Concept's Account Number 1015188503 with Zenith Bank Plc on 8th February, 2019 in the sum of ₦88,500,000.00 (Eighty Eight Million, Five Hundred Thousand Naira) only.
- b. Transfers made from Customer's Account Number 1006187324 to Fayla-Guaranty Ventures Account Number 3795062025 with First City Monument Bank Plc. (FCMB).

That consequent upon the 1st Respondent's findings, the Applicant being a Marketing Staff of the Bank and the Account Officer of the Bank's Customer (Mr. Emmanuel

Ayodele Oke) was issued a query and of which the Applicant responded to attached Annexure ZB2 and ZB3 respectively.

A further investigation by the 1st Respondent Bank upon a cursory review of the instruments i.e transfer forms purportedly signed by the Bank's Customer, Mr. Emmanuel Ayodele Oke showed a sharp difference with the signatures on the Customer's mandate card vide Annexure ZB4.

The 1st Respondent's Bank's further findings revealed through inquiries to NIBISS and Applicant's Bank Verification Number (BVN) 22155927580 showed that the Applicant is a Director/Signatory to Obianuju Farms Limited maintaining an account with Access (Diamond) Bank with Account Number 0046662429, the very account through which the amount of ₦88,500,000.00 was fraudulently transferred to.

That aside from the sum of ₦88,500,000.00 above referred to, it was discovered by the 1st Respondent Bank that between February, 13th and May 16th, 2019, various sums totaling ₦40,840,000.00 were transferred from its Customer, Mr. Emmanuel Ayodele Oke's account to Fayla-Guaranty Ventures Account Number 3795062025 Bank (FCMB).

Respondent avers that upon being confronted with the complaint lodged by the 1st Respondent's Bank, Applicant owned up to have masterminded the fraudulent act and that the monies transferred were transferred without the consent/authority of the authorized signatory and that the monies i.e the Customer's funds was used by him to purchase a 5 Bedroom Duplex with 2 Bedroom Boys Quarters located at Plot A9, Sunny Vale Homes, Dakwo, Abuja worth ₦46,000,000.00 as a carcass/uncompleted building and the balance of the total sum of ₦129,340,000.00 was used to complete and/or renovate

and furnish the said property. Attached and marked Annexure ZB8 is a copy of the letter of allocation of the said property located at Sunny Vale.

Consequent upon approval of the 1st Respondent's Management and on the instruction of the Customer, the Customer, Mr. Emmanuel Ayodele Oke's account with the Bank was closed and the Bank Manager's Cheques were issued for the refunded sum of ₦129, 340,000.00 and the balance of the account after the closure of the said account. Attach herewith are the Manager's cheques through which the amount of ₦129,340,000.00 was refunded to the Customer and the balance of ₦1,501,032.5k after close of the Customer's Account. They are marked Annexures ZB9 and ZB10 respectively.

That at a meeting held on Tuesday 9th July, 2019 at the office of the FCT Police Command wherein he was physically present with other co-bank staff, the Applicant and his representatives were present; It was unanimously

agreed by the parties i.e the 1st Respondent Bank, and the Applicant that since the 1st Respondent Bank has agreed to refund the total sum of ₦129,340,000.00 to the Customer affected by the authorized transfers. The Applicant had agreed at the meeting to transfer the property which he bought with the proceeds of unlawful transfers to the 1st Respondent Bank to enable the Bank re-sell the property and recoup the money refunded to the Customer.

That while the Applicant was being awaited to get the transfer documents between the Applicant and Rosal Services Limited, the 1st Respondent Bank yet got another complaint from its Customer, Emmanuel Ayodele Oke vide a letter dated 28th July, 2019, wherein he complained of yet another fraudulent transfer from his Domiciliary Account Number 5366076292 with the 1st Respondent Bank wherein the sum of USD8, 500.00 (Eight Thousand Five Hundred US Dollars) was transferred into one

Account Number 5070653033 in the name of One Elkridge Farms and Investment Limited on 5th April, 2019 with the 1st Respondent Bank. Attached and marked Annexure ZB11 is the said Letter of Complaint.

That having confirmed that the Applicant had committed another fraud on the 1st Respondent Bank's Customer's Account i.e Emmanuel Ayodele Oke's Account, the Applicant was invited to the Bank's Disciplinary Committee for him to explain the transfer of USD8,500.00 from the Customer's Account which was done without the approval and/or confirmation from the signatory to the said account.

In line with law and procedure, a sole issue was formulated for determination to wit;

Whether the Applicant has placed any materia fact as to induce this Honourable Court to exercise its inherent jurisdiction and discretion to his favour under the

Fundamental Rights Enforcement Procedure against the 1st Respondent.

Arguing on the above, Learned Counsel submit that every citizen of Nigeria has the Civic Responsibility to report any suspicion of crime to the Police or any Law Enforcement Agency for the purpose of maintaining public peace and decorum. ***OPARAOCHA & ANOR VS OBICHERE & ORS (2016) LPELR – 40615 (CA).***

Counsel argued further that once Criminal allegations are made against a Citizen, it is a constitutional and statutory duty of the police to investigate, as investigation and detection of crime is one of the primary duties assigned to the Police under Section 4 of the Police Act. ***ONAH VS OKENWA (2011) ALL FWLR (Pt. 565)357 at 375.***

Court was urged to dismiss the application in the interest of justice.

Upon service, Applicant filed a further and better affidavit wherein he stated that before transfers are made, the Branch Manager and importantly the Fund Transfer Unit usually compare and confirm signatures on the mandate card with that on the application and to depose that the signature on the mandate card is different from the one on the transfer form is to indirectly say that both the Branch Manager and the Fund Transfer Unit that approved the transfers are grossly incompetent.

That annexure ZB4 which is the mandate card has no instructions for written confirmation by the Customer for Bank Transfers as falsely peddled by the 1st Respondent. That the cheque confirmation box in annexure ZB4 has no instruction. That I am relying on the mandate card and have circled the portion dealing with confirmation. That this mandate card is already an annexure KC1 in this reply affidavit.

That annexures ZB6A which are bundle of seven (7) transfer forms are genuine and passed all validity test. That I am relying on these seven annexures in my reply affidavit. That these transfer forms were all filled and completed by Emmanuel Ayodele Oke himself (this fact was admitted in paragraph two (2) of annexure ZB1 relied upon by the Respondents).

That he has a long time cordial relationship with the customer called Emmanuel Ayodele Oke.

That in furtherance to their thriving relationship, Emmanuel Ayodele Oke came up with a proposal to enter into Real Estate Business with the Applicant for purchase of lands and houses and sell with profits.

That paragraph 43 of the counter-affidavit is a big lie. That if the purported USD8, 500.00 is in the account of Elkridge Farms and Investment Limited, the Respondent cannot release the said money back to Emmanuel Ayodele Oke without hearing from the said Elkridge Farms and

Investment Limited. That this line of lie and its negative implications were not properly considered by the Respondent.

That the 1st Respondent is only being mischievous at paragraph 47 of their counter-affidavit and the 1st Respondent did not just make a report to the police but actively engaged the police to intimidate, torture and coerce him to cede the house to the 1st Respondent. The use of police as a tool of intimidation is very common with the 1st Respondent Bank. Applicant then urged the court to grant its reliefs.

Court:-I have read carefully the affidavit in support of the application of the Applicant for the enforcement of his Fundamental Right, under the Fundamental Human Rights Enforcement Rules 2009, as amended.

I have equally read carefully the counter affidavit filed by the 1st Respondent, Zenith Bank Plc. in opposition to the application for the enforcement of Fundamental Rights;it

is instructive to note that the 2nd Respondent despite service, failed and or neglected to file its response by way of counter affidavit.

Fundamental Human Right has a chequered for history dating back to the origin of man. It is said to be premodial... some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (S.A.N) have opined that these rights are already possessed and enjoyed by individuals and that the “Bills of Rights” as we know them today created no right de novo but declared and preserved already existing rights, which they extended against the legislature.

It is instructive to note that magna carta 1215 otherwise called “Great charter” came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke’s concept of “due process of law” was also a product of similar conflicts and discision between the king and

parliament.. nor was the Bill of Rights 1689 handed down on a “platter of Gold”.. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by king Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written consitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated.

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American peolpe took the glorian path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights

which is said to be fashioned after the English Bills of Rights.

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

“We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certaininalienable rights that among these are life, liberty and pursuit of happiness.”

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not perculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd

world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the “turannng” of the majority ethnic groups in the regions.

The commission that investigated their fears went out of its way to recommend the entrenchment of Fundamental Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

We have had our Fundamental Human Rights carefully captured and entrenched under chapter IV of the 1999 constitution of the Federal Republic of Nigeria as

amended.. as sacrosanct as those rights contained in chapter IV of the Constitution of Federal Republic of Nigeria are, once there is any good reason for any of the rights to be curtailed, they shall so be and remain in abeyance in accordance with the law and constitution.

Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to court to seek protection on the slightest believe that they are being invited by law enforcement agencies..

The essence of this legal window is to ensure that every action by government or her agencies is done according to law.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggest by the constitution and with due regard to the spirit, purport and object of the bills of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provisions and bindingness of Bills of Rights on the state and its structures.

Permit me to also observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place.., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilised standard known to modern society.

It is the evidence of Applicant as distilled from his affidavit that he was arrested, detained by the 2nd Respondent without recourse to his Fundamental Rights as provided by law.

The 2nd Respondent who allegedly detained the Applicant did not file any counter affidavit to deny the allegation. But however the 1st Respondent copiously deposed in their counter affidavit the reason for the detention.

Once a party has averred to facts in an affidavit, it behoves on the adverse party to contradict those facts in a counter affidavit if they do not represent the true position. The exception to this general rule however is where averments in the affidavit in support of an application are contradictory or if taken together are not sufficient to sustain the Applicant's prayers, then a counter affidavit is most unnecessary. See ***CHIJIKE AGU VS OKPOKP (2009) LPELR 8280 (C A) See ORUNLOLA VS ADEOYE (1996) NWLR (Pt. 401)***

From the averments contained in the affidavits of Applicant and Respondents, can it be safely said that the Fundamental Rights of the Applicant have been breached by the Respondents?

The Applicant stated that he was arrested and detained from 11th June to 14th June, 2019 and from 17th June to 9th July, 2019 before he was released.

Applicant stated copiously in paragraphs of his affidavit how he was tortured by the Respondent. For avoidance of doubt, the said relevant paragraphs of the affidavit are reproduced for ease of reference;

Paragraph 6 “That Officers of the 2nd Respondent at Maitama Police Station confiscated my international passport before throwing me into their cell. That I was granted bail on the 14th June, 2019 and Officers under the control of the 2nd Respondent took me to my residence at House A9, 4th Avenue Sunny Vale Estate in handcuffs for search of the premises. That after the search, they saw nothing incriminating. That I was detained from 11th June, 2019 to 14th June, 2019 at Maitama Police Station and spent a total of 4 days in cell at Maitama Police Divisional Headquarters”.

Paragraph 7 “That police authorities at Maitama Police Station decided not to unleash further torture and pressure when the house search did not unveil any incriminating material and not happy about this development, the 1st Respondent caused the case to be transferred to FCT Command Headquarters at Garki and by 17th of June, 2019, the case was successfully transferred and assigned to Anti-Fraud Unit of FCT Command Headquarters”.

Paragraph 8 “That upon arrival at FCT Command Headquarters, I was yet detained from the 17th June, 2019 to 23rd June, 2019 (total of additional 23days) when I was granted bail. That I met all conditions of bail but the police insisted that I must produce original purchase documents of House A9, 4th Avenue Sunny Vale Estate as a pre-condition for my release and since I did not have the said documents, they threw me back into the cell claiming they will get Court Order from a

Magistrate Court to regularize my detention beyond 48hours and the Police finally released me on 9th July, 2019. That my detention was from 17th June, 2019 to 9th July, 2019.”

On their part, the 1st Respondent stated as thus in their affidavit.

Paragraph 24 *“That upon being confronted with the complaint lodged by the 1st Respondent Bank, the Applicant owed up to have mastermind the fraudulent act and that the monies transferred were transferred without the consent/authority of the authorized signatory and that the monies i.e the Customer’s funds was used by him to purchase a 5 Bedroom Duplex with 2 Bedroom Boys Quarters located at Plot A9, Sunny Vale Homes, Dakwo, Abuja worth N46,000,000.00 as a carcass/uncompleted building and the balance of the total sum of N129,340,000.00 was used to complete and/or renovate and furnish the said property. Attached*

and marked Annexure ZB8 is a copy of the letter of allocation of the said property located at Sunny Vale.”

Paragraph 29 “That at a meeting held on Tuesday 9th July, 2019 at the office of the FCT Police Command wherein I was physically present with my other co-bank staff, the Applicant and his representatives were present; It was unanimously agreed by the parties i.e the 1st Respondent Bank, and the Applicant that parties i.e the 1st Respondent Bank, and the Applicant that since the 1st Respondent Bank has agreed to refund the total sum of N129,340,000.00 to the Customer affected by the unauthorized transfers, the Applicant had agreed at the meeting to transfer the property which he bought with the proceeds of unlawful transfers to the 1st Respondent Bank to enable the Bank re-sell the property and recoup the money refunded to the Customer”.

Paragraph 34 “That while the Applicant was being awaited to get the transfer documents between the

Applicant and Rosal Services Limited, the 1st Respondent Bank yet got another complaint from its Customer, Emmanuel Ayodele Oke vide a letter dated 28th July, from his domiciliary Account Number 5366076292 with the 1st Respondent Bank wherein the sum of USD8, 500.00 (Eight Thousand Five Hundred US Dollars) was transferred into one Account Number 5070653033 in the name of One Elkridge Farms and Investment Limited on 5th April, 2019 with the 1st Respondent Bank. Attached and marked Annexure ZB11 is the said letter of Complaint”.

Indeed, it takes two to speak the truth, one to speak and another to hear. In this case both Applicant and Respondents have spoken and the Judge has heard from all.

The liberty to make any accusation is circumscribed both by the right to make it, the duty not to injure another by

the accusation and the right of any appropriate redress in the court.

AKILU VS FAWELUMI IN (No. 2) (1989) (Pt. 102) 122

It is true that the police have a duty to protect life and property and to detect crime. All these must be done within the confines of the law establishing the police and the constitution of Federal Republic of Nigeria 1999 as amended and under the Police Act, section 4 of the police Act provides thus:-

“The police shall be employed for the prevention and detention of crime, the apprehension of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within

or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It truly therefore, means that when a suspect is arrested on a reasonable suspicion to have committed a crime, he shall be treated within the confines of the law.

What is the position of law i.e constitution with regard detention and justifiability?

Was the liberty of Applicant curtailed?

Section 35(1) of the 1999 Constitution of Federal Republic of Nigeria has this to say;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 procedure permitted by law:-

- a) *“For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”*

The said section specifically provides that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not be kept in such detention for a period longer than the maximum period of imprisonment presumed for the offence.

Section 35 (4) of the 1999 Constitution also provides that any person who is arrested or detained in accordance with (1)(c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of two months from the date of his arrest or detention in the case of a person who is in custody or entitle to bail, or three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

The expression of reasonable time under sub (4) of the constitution means one day where there is court of competent jurisdiction within a radius of 40 Kilometers, or two days or such longer period as the circumstances may be considered by the court to be reasonable.

It is certainly not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

A wrongdoer is often a man who has left something undone, not always one who has done something.

Permit me to observe that the Fundamental Human Right Procedure is one that seek to give protection to human rights which clearly is protected under chapter IV of the Constitution of Federal Republic of Nigeria 1999 as amended.

Citizens who imbued with such rights must consciously guard against curtailing of such right by their actions.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very people who have the power to protect such rights or other persons who wield other unauthorised powers.

Applicant in the application in view, has stated in his affidavit in support that he was innocent of all allegation against him.

I have taken time to appreciate the case of the Applicant by conceding the exhibits both annexed by Applicant on the one hand and the 1st Respondent on the other hand.

A perusal of the Applicant's affidavit, and the 1st Respondent affidavit especially Exhibit 'ZB5' will reveal how transfers were made from the Customer's Account Number **1006187324** to an account the Applicant has interest without the consent and authority of the owner.

Applicant in his further and better affidavit avers that Exhibit ZB6A which are bundles of seven (7) transfer forms are genuine and passed all validity test.

The question is Emmanuel Ayodele Oke a Director in Cartends Global Concept a Company owned by the Applicant.

Where is the agreement or evidence that the said Emmanuel Ayodele Oke entered with the Applicant to be part of his business?

If Emmanuel Ayodele Oke is part of the business of the Applicant, why did the bank refund his money vide Exhibit 'ZB9' and 'ZB10' in evidence?

Indeed, the Applicant is economical with the truth.

It is indeed, the duty of citizens of this country to report cases of Commissions of Crime to the Police for their investigation and what happens after such report is made entirely the responsibility of the police.

And once criminal allegation are made against a citizen, it is a constitutional and statutory duty of the police to investigate, as investigation and detection of crime is one of the primary duties assigned to the police under Section 4 of the Police Act. ***ONAH VS OKENWA (2011) ALL FWLR (Pt. 565)357 at 375.***

It is trite that, the power of the Police to arrest and detain, pending investigation in some cases is constitutional and is derived from sections 214 and 216 of the Constitution of the Federal Republic of Nigeria 1999. Such arrest and investigation cannot amount to breach of Fundamental Right. ***MR. BABY JUSTINA LUNA VS C.O.P RIVERS STATE & ORSCITATION (2010) LPELR 8642 (CA).***

Applicant who is trusted with customer's funds, decided in breach of the fiduciary relationship to help himself with the customer's funds by transferring various sums into different accounts where he had interest... Applicant who carried out the said transaction got arrested by the 2nd Respondent and detained for days, hence this originating motion.

The averments contained in the affidavit in support of the originating motion for Enforcement of Fundamental Right is not just irreconcilably at variance with common sense, but same has exposed the fact that Applicant is most economical with the truth.

The 2nd Respondent who ought to have filed counter affidavit to say their part of the story, did not say a word even though 1st Respondent attempted to insulate 2nd Respondent by annexing documents which clearly exposed the fact that Applicant indeed did commit a

crime which has caused his invitation, arrest and subsequent detention by the 2nd Respondent.

It is the law that fact averred in affidavit can only be countered by filing counter affidavit.

The exception is where the facts are either self-contradictory or admission as in Applicant's situation.

There is no wrong committed against the Applicant in the eyes of the law for there to be remedy (*ubi jus ibi remedium*).. I rely on ***OGEWO VS KOMOLAFE (2010) LPELR 4820 (CA)***.

On the whole, having made above far reaching observation, I consider the present action adventurously time wasting..

Said suit **No. FCT/HC/CV/2678/19** is liable to be dismissed for want of merit and time wasting. Same is hereby dismissed in the interest of justice.

Justice Y. Halilu

Hon. Judge
4th May, 2020

APPEARANCES

K. C MUOEMEKA – for the Applicant.

ALERO PESSU – for the 1st Respondent.