

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/500/18
DATE: : MONDAY 4TH MAY, 2020

BETWEEN

KALU NWAFOR APPLICANT

AND

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. THE NIGERIA POLICE FORCE**
- 3. ACP. KOLO YUSUF (ASSISTANT
COMMISSIONER OF POLICE IN
CHARGE OF SPECIAL TECHNICAL
SQUAD (STS) GUZAPE, ABUJA**
- 4. DR. DIKKO D. IBRAHIM**
- 5. EL-TREXONE FARMS LIMITED**

RESPONDENTS

JUDGMENT

The Applicant approached this Honourable Court for the enforcement of his Fundamental Right to wit;

1. A Declaration that the arrest and detention of the Applicant by Policemen and Officers under the control of the 1st, 2nd and 3rd Respondents on the complaint of the 4th and 5th Respondents for failure to pay back an officially approved and invested money for and on behalf of the 5th Respondents (which investment is still running) on Thursday the 6th day of December, 2018 without reasonable proof of he having committed any criminal offence was illegal and unconstitutional as it violates the Applicants rights to personal liberty, dignity of his person, freedom of movement and fair hearing under Sections 35, 41 and 36 respectively of the 1999 Constitution (as amended) and Articles 6,7,10 of the African Charter on Human and Peoples Rights (CAP. 10 LFN 1990).

2. A Declaration that the torture and/or dehumanizing and degrading treatments meted out to the Applicant by Policemen and Officers under the control of the 1st to 3rd Respondents from 11:40am to 5:50pm of Thursday, the 6th day of December, 2018 while taking him from NAWA Complex, Kado District, Abuja to the Special Task Squad (STS) Office, Guzape, Abuja and also at the STS Office while being held and/or in detention at the said Office on the Complaint of the 4th and 5th Respondents for failure to pay back on officially approved and invested money for and on behalf of the 5th Respondents (which investment is still running) are unlawful and unconstitutional same having violated the Applicant's Constitutional Right to dignity of human person and freedom from torture guaranteed under Section 34 of the Constitution of Nigeria 1999 (as amended), Article 5 of the African Charter on Human and Peoples Rights (Ratification and

Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 and Article 3 of the Universal Declaration of Human Rights.

3. A Declaration that the continued harassment by way of invitations, compulsion, duress and intimidation to pay back an alleged money as demanded by the 4th and 5th Respondents and continued threat of detention and imprisonment of the Applicant on daily basis without any charge or trial before any court of law is unconstitutional and illegal same being in violation of the rights of the Applicant guaranteed under the 1999 Constitution of Nigeria.
4. A Declaration that the 1st to 3rd Respondents, not being debt collectors, abused their office and acted contrary to the provisions of Section 34(1)(a), 35(5), (6) and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Section 4 of the Police Act by unlawfully, unconstitutionally and

illegally arresting, torturing and detaining the Applicant in a bid to recover money or for the Applicant to pay back an officially approved and invested money for and on behalf of the 5th Respondents (which investment is still running).

5. An Order of perpetual injunction restraining the 1st, 2nd and 3rd Respondents jointly and/or severally by themselves, their officers, agents, privies, servants from further arresting or detaining or harassing or inviting the Applicant or subjecting him to torture, harassment, intimidation and compulsion to pay back an approved and invested money for and on behalf of the 5th Respondents (which investment is still running) without an Order of a court of competent jurisdiction.
6. A mandatory Order of Court directing the Respondents jointly and severally to tender an unreserved public apology to the Applicant for the

unconstitutional, illegal, unlawful arrest, detention, torture and inhuman or degrading treatments meted out on the Applicant by Policemen and Officers of the 1st, 2nd and 3rd Respondents by publishing the said apology in two National Daily Newspaper.

7. An Order directing the Respondents jointly and severally to pay to the Applicant the sum of ₦50,000,000.00 (Fifty Hundred Million Naira) only as compensation and damages for the unlawful arrest, detention, torture, dehumanization, humiliation, psychological trauma and shock of the Applicant and the violation of his right to personal liberty, right to dignity of human person and right to freedom of movement as guaranteed in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap. A9, Laws

of the Federation of Nigeria, 2004 and the Universal Declaration of Human Rights.

8. An Order directing the Respondents jointly and severally to pay to the Applicant the sum of ₦1,300,000.00 (One Million and Three Hundred Thousand Naira) only being the cost of litigation in this application.
9. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

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

- a. The Applicant is a Nigerian Citizen, adult and an employee of the 5th Respondent owed by the 4th Respondent.

- b. Article 3 of the Universal Declaration of Human Rights provides: *“everyone has the right to life, liberty and security of person”*.
- c. Article 8 of the Universal Declaration of Human Rights provides *“everyone has the right to an effective remedy by the competent National Tribunal for acts violating the Fundamental Rights granted him by the constitution or by law.”*
- d. Section 3(b)(i) and (ii) of the preamble of the Fundamental Rights (Enforcement Procedure) Rules 2009 provides:
- “3(b) For the purpose of advancing but never for the purpose of restricting the Applicants right and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in*

themselves or from parts of larger documents like constitutions, such bills includes:-

- (i) The African Charter on Human and Peoples' Rights and the Instruments (including protocols) in the African Regional Human Rights System.*
- (ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations Human Rights System.*

In support of the application is a statement Pursuant to Fundamental Right and an affidavit of 44 paragraph duly deposed to by the Applicant himself was filed.

It is the deposition of the Applicant that he was an employee of the 5th Respondent where the 4th Respondent is the owner and Managing Director. The letter of appointment was annexed as Exhibit '1'.

It is the averment of the Applicant that the 5th Respondent is the company wherein he was appointed as an officer

and from whose account the sum of ₦4,770,000.00 was approved by the 4th Respondent for investment in online trading for income making and profitable purpose through department. The memo is attached as Exhibit '2'.

That all throughout the transaction, he regularly briefed the 4th and the 5th Respondent, a copy of internal memo was attached as Exhibit '3'.

That surprisingly he was served with a letter of suspension on the 21st November, 2018 vide Exhibit '4'.

Applicant avers that he was invited to the office of the 5th Respondent and that the 4th Respondent urgently wants the invested money and without given the opportunity 5th Respondent called Police Officer who arrested him to Jahi District Police Station.

That he paid ₦150,000.00 to the 5th Defendant on the 5th December, 2018. That he promised to raise the remaining sum on the 6th December, 2018.

It is further the affidavit of the Applicant that on the 6th December, 2018 he was invited by the Police and that he was arrested, beaten and bundled into a waiting 306 Peugeot Car and was taken to Special Technical Squad Guzape, Abuja.

That the beating was so much that on the 8th December, 2018, he was taken to the National Hospital, Abuja vide Exhibit '5' and the result of the test conducted on him was annexed as Exhibit '6'.

That since his arrest till date he was not charge to any court and that he engaged the services of a Lawyer to institute this action and was charge the sum of ₦1,300,00.00 vide Exhibit '7'.

In line with law and procedure, the Applicant filed a written address wherein two issues were formulated for determination to wit;

- i. *Whether the Applicant's Fundamental Rights have been infringed by his arrest, torture and/or dehumanizing treatment, detention by Officers and men of the 1st to 3rd Respondents on the Complaint of the 4th and 5th Respondents for recovery of an officially approved and invested money for and on behalf of the 5th Respondent (which investment is still running) on Thursday 6th December, 2018 without reasonable proof of he having committed any criminal offence by the 1st to 3rd Respondents having regards to the provisions of Section 35, 36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Articles 6 and 7 of the African Charter on Human and Peoples Rights (Cap 10 Laws of the Federation of Nigeria 1990 and Articles 3 of the Universal Declaration of Human Rights.*

ii. *Whether the Applicant is entitled to the reliefs sought having regard to the Provisions of Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

On issue one, whether the Applicant's Fundamental Rights have been infringed by his arrest, torture and/or dehumanizing treatment, detention by Officers and men of the 1st to 3rd Respondents on the Complaint of the 4th and 5th Respondents for recovery of an officially approved and invested money for and on behalf of the 5th Respondent (which investment is still running) on Thursday 6th December, 2018 without reasonable proof of he having committed any criminal offence by the 1st to 3rd Respondents having regards to the provisions of Section 35, 36, 37 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Articles 6 and 7 of the African Charter on Human and Peoples Rights (Cap 10 Laws of the Federation of Nigeria 1990

and Articles 3 of the Universal Declaration of Human Rights.

Learned Counsel submit that every person in this country is entitled to his personal liberty and no person shall be deprived of such liberty and that the power of police as provided under Section 4 of the Police Act must be in accordance with the rule of law and legality at all time.

FAWEHINMI VS I.G.P (2002)7 NWLR (Pt. 767) 606.

Learned Counsel submit further that it is unlawful, illegal and unconstitutional that the 1st to 3rd Respondents have constituted themselves into a court of law in dealing with the matter as it concerns the Applicant and the 4th and 5th Respondents. Contrary to Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999.

On issue two, *whether the Applicant is entitled to the reliefs sought having regard to the Provisions of Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

Learned Counsel submit that by virtue of Section 46(1) of the 1999 Constitution and Section 8 of the Universal Declaration of Human Right, the Applicant has the right to an effective remedy by the competent National or Court for acts violating his Fundamental Right.

It is further the submission of counsel that whenever there is an application of this nature before the court, the court is under the duty to ensure that the rights of the Applicant are not whittled down. ***AKULEGA VS BENUE STATE CIVIL SERVICE COMMISSION (2002)2 CHR 1 at 2 (Pt. 10).***

Learned Counsel finally urge the court to grant this application in the interest of justice.

Upon service, 1st and 2nd Respondents filed their counter affidavit whereas 3rd, 4th and 5th Respondents failed and or neglected to file counter affidavit.

In its counter affidavit, 1st & 2nd Respondent filed 8 paragraphs counter affidavit duly deposed to by One Isaiah Igwanigie a Litigation Secretary in the law firm of the Counsel to the 1st and 2nd Respondents.

It is the deposition of the Respondents that the 1st and 2nd Respondents never sent any of its officers/agents to go and arrest the Applicant or any one so related and neither did the 1st and 2nd Respondents connive with 4th and 5th Respondents to arrest the Applicant.

That 1st and 2nd Respondents did not authorize any of its men or agents to inflict injuries on the Applicant neither did the 1st and 2nd Respondents give any directives to any of its men or agents to harass the life of the Applicant and none of its men were instructed to recover any money by the 4th & 5th Respondents.

The 1st and 2nd Respondents aver that they did not know the Applicant or have any dealings with the Applicant, neither did the 1st and 2nd Respondents receive any

petition from the 4th & 5th Respondents against the Applicant.

That the exhibit attached to the Applicant's affidavit have no bearing with the 1st and 2nd Respondents.

In line with law, a written address was filed wherein two issues were formulated for determination to wit;

- a. *Whether the Applicant is entitled to the reliefs sought having regards to the materials and evidence already placed before this Honourable Court giving the circumstance of same.*
- b. *Whether on the materials before the court, the Applicant has been able to prove that his Fundamental Human Right(s) was violated or likely to be violated by the 1st and 2nd Respondents or any of their men/agents to entitle them to the reliefs sought.*

On issue one, *whether the Applicant is entitled to the reliefs sought having regards to the materials and evidence already placed before this Honourable Court giving the circumstance of same.*

Learned Counsel submit that, he who asserts a thing must prove the existence of same, and that the Applicant has woefully failed to prove the alleged violation of his Fundamental Rights by the 1st and 2nd Respondents and therefore not entitled to any of the declaratory reliefs sought before this court, as same cannot be granted without proof.

SARAKI VS KOTOYE (1992)9 NWLR Part 264 at 188 – 189.

Learned Counsel submit further that, it is the duty of the Applicant alleging the breach of his Fundamental Rights to place sufficient evidence before the court and that in instant case, the Applicant did put sufficient evidence before the court and that bare averment of infraction in an

affidavit cannot suffice especially where there is serious challenge.

FAJEMIROKUN VS C.B (CL) (NIG) LTD. & ANOR (2002)10 NWLR (Pt. 744) at 95.

On issue two, *whether on the materials before the court, the Applicant has been able to prove that his Fundamental Human Right(s) was violated or likely to be violated by the 1st and 2nd Respondents or any of their men/agents to entitle them to the reliefs sought.*

Counsel submit that the Applicant has failed to prove by credible evidence that his right has been violated by the 1st and 2nd Respondents in Order to be entitled to the relief sought.

Learned Counsel finally submit that the case of the Applicant is vague and only speculative.

Upon service, the Applicant filed a further affidavit wherein the Applicant avers that the 1st Respondent is the

Inspector General of Police and that the Special Task Squad is headed by the 3rd Respondent and that it is the Officer and Men of the 1st and 2nd Respondents that arrested and torture him.

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 and 2nd Respondents in opposition to the application for the enforcement of Fundamental Rights, and the further and better affidavit filed by the Applicant in line with the Rules of Enforcement of Fundamental Rights.

Fundamental Rights have been said to be premodial.. some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (SAN) 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 dissensions 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 people took the glorious path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights which is said to be fashioned after the English Bill 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 certain inalienable 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 peculiar 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 “tyronny” of the majority ethnic groups in the regions.

The commission that investigate their fears went out of its way to recommend the entrenchment of Fundamenatl 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 Fundament Human Rights carefully captured and entrached 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 curtailed, they shall so be and remaine in abeyance in accordance with the law and constitution.

Fundamental Human Right Enforcement Rules is not an outter for the dubious and criminal elements who alway

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 a gencies 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 bill 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 provision and bidingness of Bill of Rights on the state and its structures.

Permit me to 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.

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of motion on notice stating grounds and affidavit in support which serves as evidence.

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

1st and 2nd Respondents throughout their counter affidavit stated that they did not know the Applicant and have

never arrested the Applicant. Whereas the 4th and 5th Respondents did not file any counter affidavit.

It remains trite that facts deposed to in affidavit that are not challenged are deemed admitted and acted upon by the court. See *MADU VS THE STATE (2011) LPELR 3973*.

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 *CHIJIJOKE AGU VS OKPOKP (2009) LPELR 8280 (C A)* See *ORUNLOLA VS ADEOYE (1996) NWLR (Pt. 401)*

The question that naturally follows, is, from the affidavit in support of the application in view, can it be said that

the Applicant has established the case of breach of Fundamental Human Right against the Respondents?

The Applicant stated that he was arrested and detained, tortured and that he was hospitalized. The Respondent on their part refused arresting and or torturing the Applicant.

Who took the Applicant on bail?

Why did the Applicant refuse to deposed to the fact that he was suretiedby somebody?

Applicant stated copiously that he was invited by the 1st Respondent to their office in Jahi District where he was arrested and was detained on his arrival.

All this assertion were not backed up with evidence for the court to peruse through.

On their part, the 1st and 2nd Respondents denied having any record of the invitation of the Applicant in their office and that there is no cause of action against the 1st Respondent.

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.

Qst... Has the Respondents arrested the Applicant?

Poser ... Has the Applicant liberty curtailed? For the purpose of clarity, I shall re- produce relevant portion of section 35(1), 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.”*

Section 35(1) of the constitution of Federal Republic of Nigeria 1999 as amended 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.

See 35(4) which 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 be 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...

Richard Joseph Daley, an American Politician who lived between 1902–1972 once said, “Get the thing straight once and for all” the policeman isn’t there to create disorder, the policeman is there to preserve disorder.

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

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 arrested, detained and tortured.

A perusal of the Applicant's affidavit, will reveal that there is no single document to buttress the facts of his invitation and detention by the 1st and 2nd Respondents.

This present application is self-seeking and gold digging.

I shall therefore dismiss this originating motion for above reasons. Accordingly, **Suit No. FCT/HC/CV/500/18** is hereby dismissed.

Justice Y Halilu
Hon. Judge
4th May, 2020

APEARANCES

C. U Ikegwonu – for the Applicant.

Respondents not in court and not represented.