

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON WEDNESDAY 18TH MAY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/771/13

BETWEEN:

1. EMMANUEL OKPE
2. MALIKI MADUGU

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APPLICANTS

AND

1. INSPECTOR GENERAL OF POLICE
2. INSPECTOR PROVOST ONUTUH
(SIB FCT POLICE COMMAND)
3. SERGENT MONFA (SIB FCT POLICE COMMAND)
4. COMMISSIONER OF POLICE FCT COMMAND
5. SHABEL SHEKARAU

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RESPONDENTS

JUDGEMENT

In this case predicated on FREP the Applicants claims the following:

- (1) A Declaration that the attempt to recover an alleged Eight Hundred Thousand Naira (~~N~~800,000.00) through the instrumentality of the office of the Respondents is unconstitutional, illegal and unlawful.

- (2) A Declaration that the arrest and threat to arrest and detention of the Applicants for failing to pay the said Eight Hundred Thousand Naira (~~₦~~800,000.00) to the office of the 2nd & 3rd Defendants is illegal and unconstitutional and oppressive as it violated their right as guaranteed under **S. 35, 1999 Constitution as amended.**
- (3) An Order of Injunction restraining the Respondents, their agents, servants, privies, officers and otherwise howsoever called from further harassing, arresting and detaining the Applicants on account of the fact leading to this application.
- (4) An Order of Five Million Naira (~~₦~~5,000,000.00) damage against the Respondents.

The application is based on the 2 grounds which are:

That the arrest and threat of arrest and detention of the Applicants without reasonable cause is a violation of their Fundamental Rights as guaranteed by **S. 35 (1) 1999 Constitution as amended.**

And that the said threat to arrest and detain Applicants in an attempt to recover the alleged debt arising from a commercial transaction is unconstitutional and a violation of the said **S. 35 (1)** of the Constitution.

They supported the application with an Affidavit of 40 paragraphs and they attached a document which is offer of Terms of Grant of Conveyance of Approval.

In the 4 page Written Address the Plaintiff's Counsel raised 2 Issues for determination which are:

- (1) Whether they are entitled to the Reliefs sought.**
- (2) Whether the threat of arrest and detention by Respondents is lawful and constitutional.**

On Issue No.1, he referred to **S. 46 (1) & (2)** as well as **S. 35 (6) 1999 Constitution as amended** and submitted that all the Reliefs of the Applicants fall within the purview of the said provision of the Constitution. That the threat to arrest and detain them and attempt to recover money debt by the 1st – 4th Respondents is contrary to their statutory powers. Hence that they are entitled to the Reliefs sought.

On Issue No.2, he submitted that by the facts in paragraph 3 – 40 of the Affidavit in support as well as the grounds of the application the Applicants are harassed over a purely commercial and civil transaction by the Respondents. That in this case the transaction is a concluded land sale and that there is no change of fraud impugned by the Respondents against the Applicants. That there is no reasonable grounds for suspecting the Applicants or any threat of arrest and any threat of arrest based on unreasonable suspicion is unlawful and unconstitutional. That by S.

4 Police Act acting as Debt Recovery Agents is outside the purview of the 1st – 4th Respondents. He referred to the case of:

Afribank V. Onyima

(2004) 2 NWLR (PT. 858) 654 @ 680

That the action of the 1st – 4th Respondents in this regard is action as Debt Recovery Agency. He referred to paragraph 21 – 35 of Affidavit in support as well as EXH A attached to this application.

That right of the Applicants have been violated by the Respondents as they detained the Applicants and threaten to further arrest and detain them. Hence constituted themselves as Debt Recovery Agency. That such action is illegal and unconstitutional. He referred to the Supreme Court case of:

Okonkwo V. Ogbogu

(1996) 37 NWLR (PT. 580) 190

He urged Court to grant their Reliefs.

In a 24 paragraphs Counter Affidavit, the Respondents vehemently opposed the application. They attached 3 documents marked as EXH A, B & C which are Statements made by the Applicants to the Police.

In their Written Address they raised 3 Issues for determination which are:

- (1) **Whether taking into consideration all the facts in this case the Respondents acted within the law.**
- (2) **Whether the Applicants' right have been infringed or threatened by Respondent.**
- (3) **Whether the Applicants are entitled to the Reliefs sought.**

On Issue No. 1, they submitted that by virtue of S. 4 Police Act the Respondents are empowered to protect life and property and prevent and defeat crime, apprehend offender too. They cited the cases of:

Dr. Onagoruwa V. IGP

(1991) 5 NWLR (PT. 593) Paragraph 4

Fawehumi V. IGP

(2007) NWLR (PT. 655) 481 @ 503

SS. 4 & 23 Police Act.

That by the Exhibits attached to their Counter Affidavit there was a complaint of forgery, criminal conspiracy, breach of trust and cheating against the Applicants. That Police invited them for the purpose of investigation, that preliminary investigation have been conducted. That the invitation was to help Police investigate the crime allegedly committed. They referred to **S. 26 Police Act**. That the invitation was to enable the Applicants clarify the allegation against them.

That by **S. 214, 1999 Constitution as amended** the 1st – 4th Respondents can arrest and detain any one upon suspicion of committing an offence. That there is no restriction on the power of Police in that regard and there is also no Court to restrict invitation, arrest and detention of the Applicant in that regard. That Respondents had shown in paragraph 3 – 5 of their Counter Affidavit that there was a complaint of forgery against Applicants consequent upon which they were invited for purpose of investigation. That such invitation does not amount to violation of the Applicants' right. They urged the Court to so hold.

On Issue No. 2, they submitted that the investigation is still ongoing and that preliminary investigation has shown that there exists Prima Facie case against the Applicants consequent upon which they will be charged to Court. That being the case their action does not fall within the purview of the Rights guaranteed under CAP 4, 1999 Constitution as amended since such right is qualified and not absolute. They referred to **S. 35 (1) (c) 1999 Constitution as amended** and **paragraph 3 – 5** of their Counter Affidavit.

That the Applicants have not been able to establish the infringement of their rights and as such this action must fail. That Applicants failed to state when and where they were detained the number of days of the detention. That the Applicants' rights were not in any way infringed as they did not put any material fact before the Court to establish that. That mere allegation of arrest, detention is not sufficient to entitle

Applicants to the Reliefs sought. They have not been able to show that the action of the Respondents was not in accordance with a procedure permitted by law. They referred to the case of:

**Ezeaduka V. Maduka
(1997) 8 NWLR (PT. 578) 635**

On Issue No. 3, they submitted that since the Applicants failed to establish the infringement of their rights, they are not entitled to the Reliefs sought. That the Order of Injunction sought against the Respondents, the Applicants failed to comply with the condition precedent for the grant of Injunction as stated in the case of:

**Kotoye V. CBN
(1989) 1 NWLR (PT.98) 414 @ 423**

That no Court has power to stop the government agency like Respondents from performing its statutory duties. That the Order sought by Applicants in that regard meant that Court should interfere with the constitutional duties and powers of the Police. They urged Court to dismiss the application as it lacks merit and devoid of substance.

COURT:

The extent and scope of the duties and the powers of the Police who are Respondents in this case are clearly contained in both **S. 4, 20, 23 and 26 Police Act** as well as in **S. 216, 1999 Constitution as amended**. As

wide as such powers is, it does not extend to the Police acting as Debt Recovery Agency. No Court is allowed to interfere with the legal and lawful discharge of the duties of the Police once such duty is done with the ambit of the law and the procedure permitted by law.

In the same vane, no citizen's right is absolute. Even the right can be tampered with by a procedure permitted by law. See **S. 35, 1999 Constitution as amended.**

It is imperative to state that once the Police has received a complaint based on allegation of crime and had invited the persons accused of committing or about or suspected to have committed a crime and such person is informed about the complaint and is given chance to state his own side of the story, such action by Police is not and should not be interpreted or misconstrued as violation of a citizen's right under CAP 4 of the 1999 Constitution as amended or Order II FREP 2009. Such action is legal once it is a procedure permitted by law as stipulated under **S. 35, 1999 Constitution as amended** and within what is stipulated under the Police Act S. 4, 23 & 26 as well as S. 215, 1999 Constitution as amended.

Once the Police invited a person, informs him of the complaint made against him, gave him chance to state in writing his side of the story, it is said to be done in a procedure permitted by law. Where the person spends some time in the Police in the cause of stating his side of the story, it cannot be said to be an arrest or detention as it is only allowing that person the time

and right to exercise his own right to be heard as guaranteed under the CAP 4 of the 1999 Constitution as amended.

So citizens should desist from misinterpreting such provision by stating that their rights has been infringed once they are invited by the Police in the course of investigation of allegation made against such persons.

In this case the Applicants alleged that the Police acted as Debt Recovery Agent for the 5th Respondent who made complaint against them and that they were not given a copy of the petition which fact the Police denied. They also alleged that they were arrested and detained by Police and asked to make an undertaking to refund the money. The Respondents denied that also. They stated that the 5th Respondent made a written complaint which they attached as EXH A. That they showed it to the Applicants whom they invited to their office at Karu. They attached Statements made by the 2 Applicants. The Complaint by the 5th Respondent shows what the 5th Respondent wanted the 1st – 4th Respondents to do for him. That is stated in **paragraph 2 line 6 – 7** of EXH A.

“... this petition on fake title documents, conspiracy, cheating, breach of trust and threat to life”.

The above does not in any way show that the complaint is on Debt Recovery or for 1st – 4th Respondents to act as Debt Recovery Agency for the 5th Respondent.

Again the 2 Applicant have in their own hand and statement made to the Police stated their stories – how they were involved with the land deal and the payment of Six Hundred and Thirty Thousand Naira (₦630,000.00). That after that the 5th Respondent asked for refund when he discovered anomaly in the land documents. By that invitation by 1st – 4th Respondents it is clearly that 1st – 4th Respondents acted within the ambits of the and in accordance with a procedure permitted by law by virtue of **S. 35 of the 1999 Constitution as amended** as well as with their powers to invite, investigate, interrogate, interview and obtain statement of any person suspected to have or alleged to have committed an offence. That invitation by the Police is in accordance with the law and it is also legal and lawful. It is not a violation or infringement of the Right of the Applicants.

The averment by the Applicant that they were not given a copy of the complaint made by the 5th Respondent is not true because how come they both made statement reflecting on the issue of the land deal. That can only be because they were duly notified most probably by given a copy of the complaint which afforded basis of their statement in the Police. The time they spent in writing the statement and the interview should not be construed to amount to arrest and detention.

The 1st – 4th Respondents acted rightly and wisely in that regard. Even when there was detention the Applicants had stated that Bail was granted to both that same day. That also shows that there was no

infringement as the action of the Police in granting bail was within their powers under the law and Constitution.

In the concluding paragraph of the complaint the 5th Respondent stated:

“Sir I plead for your prompt intervention even as I solicit for projection and redress from the Police under your command”.

There is no element of seeking for action as Debt Recovery Agent for the 5th Respondent. The 5th Respondent is right in going to the Police to make a formal report when he discovered that the Applicants’ deal was fake rather than taking laws into his hand by seeking self help. Doing so shows that the 5th Respondent is law abiding.

A closer look at the document EXH.A land documents attached by the Applicants shows that it has a cancellation across its face. Maybe the land document is not regular in that regard. That must have been the reason that the Applicants did not challenge the 5th Respondents for stating that he is no longer interested. That must also have been the reason for the Applicants to readily accept to refund the money involved. But the delay in refunding brings to the fore the element of criminal offence of fake document of title, conspiracy, cheating, breach of trust. The Applicant’s failure to place the beacons on the land further shows intent to defraud the 5th Respondent. The disparity between the

document EXH A by Applicant and the EXH B by Respondent in the different title documents also shows the fakeness of the documents and the illegality of the land deal which is what the 5th Respondent complained of and the 1st – 4th Respondents are called upon to investigate which orchestrated the invitation of the Applicants to the Police Station at Karu to have their say.

All in all it is very clear that the Applicants have not been able to establish that the 1st – 4th Respondents on the instigation and complaint of the 5th Respondent infringed their Fundamental Right as alleged.

As already severally stated, the 1st – 4th Respondents acted within the ambits of the land. The 5th Respondent was right in making the complaint in writing as required by the Constitution. There is no infringement or breach of Right of the Applicants as alleged. The 1st – 4th Respondents did not infringe the Rights of the Applicants.

This application from all indication is unmeritorious and is therefore DISMISSED.

This is the Judgement of this Court.

Delivered today the ____ day of _____ 2020 by me.

K.N. OGBONNAYA
HON. JUDGE