

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY, THE 3RD DAY OF JULY, 2020

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1554/20

BETWEEN:

YAU LIKITA

PLAINTIFF

AND

1. INSPECTOR GENERAL OF POLICE
 2. DEPUTY COMMISSIONER OF POLICE ABBA KYARI
 3. INSPECTOR ABDULRAHMAN IN CHARGE
IG INTELLIGENT RESPONDENTS TEAM KATARI
 4. ASHIRU (IPO) (NOW IN PANTAIIKA ANNEX)
- } --- RESPONDENTS

JUDGMENT

In this application predicated on FREP, the Applicant is seeking for the enforcement of his fundamental right to freedom of movement and personal liberty. He alleged that the Respondents had arrested and detained him for over 7 months preceding the institution of this application. That he was arrested sometime in September 2019 in a restaurant/bar at Kagama by the men of the 1st Respondent.

That he was moved to Police cell in Katari in Kachia LGA of Kaduna State. That he was later moved to Abuja and was paraded with others in a Telecast on NTA

National TV and also in Channels Television as one of band of Kidnappers. Meanwhile, while he was still at the 1st Respondent's office at Pantaika he was informed that he was being arrested as a suspected Kidnapper before he was taken to Katari Police Cell in Kachia Local Government Area of Kaduna State.

That he has been in custody of the Respondents in Abuja since then without being charged to Court. That Respondents have denied him access to his family and his Counsel since after the Telecast.

That the 3rd & 4th Respondents had extorted money from his family to up to the tune of Five Million Naira (N5, 000,000.00) promising to give same to the 2nd Respondent. But that they discovered through the Counsel to the Applicant that the said money never got to the 2nd Respondent. That he is innocent of all that he is accused of. That he has been tortured and beaten by the Respondents. Based on the above, the Applicant Yau Likita is seeking the following Reliefs against the Respondents for violating his right to personal liberty and freedom of movement based on the long incarceration by the Respondents for over 7 months. The Reliefs are:

- (1) An Order declaring that the Applicant's right to personal liberty and freedom of movement as guaranteed under SS. 33 (1), 34 (1) (a) – (c), S. 35 (1) (c), 4 (a) & (b), 5 (a) – (b), S. 36 (1) & (6) and S. 41 of 1999 Constitution as amended as well as Article 3, 4, 6, 7 (b) & (d) and S. 12 African Charter CAP AG LFN 2004.**

- (2) A Declaration that Respondents have no legal right to detain him for seven (7) months without taking him to Court for trial.**
- (3) A Declaration that detention of Applicant for seven (7) months without trial is illegal and unconstitutional.**
- (4) Ten Million Naira (N10, 000,000.00) compensation.**
- (5) Apology. Omnibus prayer.**

He supported the application with an Affidavit of 24 paragraphs.

He based the application on the following grounds:

That the Applicant was arrested on suspicion of been a kidnapper. That he has been detained for seven (7) months without taking him to Court and had denied him access to his Counsel and his family. Also that Respondents has no right to detain him for seven (7) months. That it is the Court that has the right to exercise such powers. That unless the Applicant is released by the grant of this application he will be kept in the custody of the Respondents forever.

In the Written Address he raised 2 Issues for determination which are:

- (1) Whether the Applicant is entitled to all the Reliefs sought therein.**
- (2) Whether the Respondents have right to detain the Applicant for seven (7) months without trial.**

On Issue No.1, he submitted that the **S.34 (1), 35 (1), 36 (5), S.41 (1) 1999 Constitution as amended** provided for the right of human dignity, personal liberty and freedom of movement respectively. Again that Order 3 Rule 1 FREP provides that the Applicant is entitled to seek redress in Court. If any right of the parties are infringed or likely to be infringed.

He submitted further that his detention for seven (7) months is a breach of his personal liberty and dignity of his human person. He referred to the case of:

Eze Emmanuel Irondi Ogonna V. Amaechi Egbulefu & 3 Ors
(2018) LPELR – 43810 (CA)

Gusau & Ors V. Umezurie & Ors
(2012) All FWLR (PT. 655) 291

Where the Court held that a detention no matter how short can lie a breach of Fundamental Right.

He further submitted that his detention is wrongful and unlawful. That S. 35 (4) 1999 Constitution as amended stipulates the time within which after a lawful arrest by Security Agents, a Suspect should be prosecuted before a Court of competent jurisdiction. That it is unlawful to detain him for seven (7) months and still continue. That the action of the Respondents is a breach of his right.

He urged Court to hold in favour of Applicant and compel the Respondents to produce the Applicant in Court.

On Issue No.2, he submitted that though Respondents have the right to arrest and detain him but they have no right to keep him in custody in perpetuity without trial. He referred to the case of:

Eze Emmanuel Irondi Ogonna V. Amaechi Egbulefu (Supra)

That in the above case the Court of Appeal condemned the unlawful detention without trial no matter how short. That such action is illegal and unconstitutional. He urged Court to grant the Reliefs as payed.

On the 4th of June, 2020 all the Respondents were served with the Originating Process/Application. They were equally served with Hearing Notices that the matter is scheduled for Hearing. They did not file any Counter Affidavit to challenge the application. They did not enter appearance in paper or in person. No Counsel represented them also.

COURT:

It is imperative to state that by provision of the FREP, a Respondent has within five (5) days to respond to an application predicated on FREP. In this case the Respondents did not file any response even fourteen (14) days after they were served with this application. Notwithstanding that, the Court will not just deem as admitted all the issue raised by the Applicant. The Court will in the interest of justice still evaluate the facts raised by the Applicant to ascertain whether or not the Applicant's Right has been and was infringed as alleged.

To start with, every citizen has right to freedom of movement, liberty and dignity of his human person under the CAP 4 of the Constitution. But such Rights are not absolute. Those Rights can be temporarily tampered with in accordance with the procedure permitted by law. Such procedure must be in relation to maintenance of Law and Order. Or in fulfilment of an Order of Court. See S. 35 (1) 1999 Constitution as amended.

It is also imperative to state that the Respondents as a Law Enforcement Agency of government has the power under the Constitution **S. 254 of the 1999 Constitution as amended** as well as in **S.4 Police Act** to arrest, detain, investigate and where necessary prosecute offenders and violators of our laws in order to maintain Law and Order in the society.

Also the Constitution provide that any person detained after an arrest should be brought before a Court of competent jurisdiction with a maximum of two (2) days – forty-eight (48) hours where there is a Court within 40 (forty) kilometre radius from the place of detention. **S. 35 (6) 1999 Constitution as amended.**

But it is important to point out that in as much as the forty-eight (48) hours rules applies, it is clear that many investigations of a crime committed by a Detainee may very likely not be completed within forty-eight (48) hours for such Accused person to be arraigned before the Court. That means that effecting the forty-eight (48) hours rules depends on the nature of the offence committed and the investigation too.

In this case, the Applicant by the averment was arrested in September 2019. He was, according to him, informed by Police that his arrest was based on allegation of kidnapping – paragraph 5 of Affidavit in support. That he was informed about that at the Pantaika Cell/Office of the Respondents where he alleged that he was beaten and tortured to confess.

By that information by Respondents the arrest was in line with the procedure laid down in the Constitution which requires that Accused person must be informed about the reason of his arrest and detention. That action is based on procedure permitted by law as required. At least the Applicant knew from inception why he was arrested and detained by Respondents.

Again the Respondents have right to transfer the Applicant to a better facility. Hence the transfer of the Applicant from Kajama in Kachia Local Government Area of Kaduna State to Abuja, FCT is in line with procedure permitted by law.

Going by the alleged detention for over seven (7) months without trial and based on the nature of the case allegedly committed by the Applicant which is kidnapping, it is very clear that the Respondents need more than forty-eight (48) hours to conclude investigation of the Applicant who was paraded with other Nigerians in the NTA and Channels Telecast in November 2019. That action is in line with the law given the nature of the offence allegedly committed by him. Though seven (7) months is long enough to do substantial investigation on the case of the Applicant.

The allegation of given out about Five Million Naira (₦5, 000,000.00) to 3rd and 4th Respondents for onward delivery to 2nd Respondent is unsubstantiated and indicting on the part of the Applicant himself. It is unsubstantiated because there is no evidence to show that the money was given to 3rd& 4th Respondents by the family of Applicant for and on his behalf. Again the fact that the Applicant gave out the said whopping sum of Five Million Naira (₦5, 000,000.00) shows that they were trying to “Buy” the freedom of the Applicant probably because they knew his hands may not be clean as regards the offence he is allegedly accused to have been committed.

Since there is no documentary evidence to substantiate the alleged bribery of payment of the said Five Million Naira (₦5, 000,000.00), this Court holds that the said fact is a mere hearsay. So also the averment in paragraph 7 of the Affidavit in support that 3rd Respondent said that he was reliably informed that the Applicant has a lot of heads of cattle. That applies to the averment on the death of the Applicant’s father, dying because of the arrest and continued detention of the Applicant based on Heart Attack. There is no Medical Paper from any hospital to substantiate that.

On torture and beating of Applicant – paragraph 5 – 13, it is imperative to state that not every “beating and torture” should be regarded as an infringement. This is because given the nature of an alleged offence, the Police have a right to apply such force within a

reasonable limit in the course of investigation, in order to extract the truth from the Detainee.

In this case it is very obvious that that is what applied in this case, police to that extent acted within the acceptable limit.

In any application based on FREP for the applicant to succeed, he must establish through the facts in the Affidavit in support of his application that actually his Right was breached. It is an onus which is on him and which he alone can discharge with establishing those facts. Unless and until he does that, the onus is still on him. Where he succeeds the onus shifts to the Respondent who must with the facts in their Counter Affidavit discharge the onus by justifying their action or denying same as the case may warrant. Where the Respondent fails to do so, then it is held that he is “civilly” guilty or that they have infringed the Right of the Applicant as alleged. Where that is the case the Court will hold that the Right of the Applicant was breached and will grant the Reliefs as appropriate.

In this case going by the submission of the Applicant in the facts as contained in the Affidavit vis-a vis the extant provision of S.4 Police Act, can it be said that the Applicant has established that his Right was infringed by the Respondents in that he is entitled to the Reliefs sought? Can it also be said that the Respondents continuous incarceration of the Applicant for more than seven (7) months is a breach of his Right and that the Respondents have no right to detain him for that long without trial.

It is the humble but strong view of this Court that the Applicant has not been able to establish the infringement of his Right by the Respondents so much so that the Court should grant all the Reliefs as sought in this case.

To start with, the Police has a right to arrest and detain him as they did. The detention was in accordance with the procedure permitted by law in that he was informed from the inception about the reason for his detention even before he was taken to Katari a Detention facility at Kachia Local Government Area of Kaduna State. That action was in accordance with S. 35 (6) 1999 Constitution as amended. Ab initio he knew why he was being arrested and detained.

Again the Respondents have a right to arrest and detain any suspect who has or is about to commit an offence. The arrest and detention can last beyond the forty-eight (48) hours Rule as provided by the Constitution. The detention beyond forty-eight (48) hours without trial is because of the nature of the alleged offence of Kidnapping.

It is clear that Police cannot conclude investigation on issue concerning kidnapping within forty-eight (48) hours. Though seven (7) months is long enough for them to have done substantial investigation to warrant arraignment of the Applicant in Court. So the Police should without delay prosecute the Applicant by arraigning him in a Court of competent jurisdiction.

The family of the Applicant who gladly doled out large sum of money allegedly given to 3rd& 4th Respondents could not substantiate that with any document.

All in all, the Police have a right to detain the Applicant. The Applicant has not been able to establish that his Right was infringed as alleged. He is therefore not entitled to the Reliefs sought.

This is the Judgement of the Court.

Delivered to the ____ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**