IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS: T. P. SALLAH & ORS
DATE: 6/05/2020

FCT/HC/CV/2510/19

BETWEEN:-

CHIROMA USMAN .... APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. DEPUTY COMMISSIONER OF POLICE (ABBA KYARI)
3. ALHAJI JADA (POLICE OFFICER UNDER THE 1ST& 2NDRESPONDENTS)
4. MR. BEN (POLICE OFFICER UNDER THE 1ST& 2NDRESPONDENTS)
5. MANJA (POLICE OFFICER UNDER THE 1ST & 2NDRESPONDENTS)

RESPONDENTS

JUDGMENT

The Applicant commenced this suit against the Respondents vide a motion on notice dated 20th July,2019 and filed on 23rd July,2019 pursuant to the provisions of the Fundamental Rights (Enforcement) Procedure Rules 2009 and the Constitution of the Federal Republic of Nigeria 1999 (as amended)seeking the grant of the following reliefs:-

1. An Order of this Honourable Court admitting the Applicant to bail pending the arraignment of the Applicant before any Court of competent jurisdiction.
2. An Order of this Honourable Court directing the Respondents to pay the Applicant the sum of N50,0000,000 as damages for unlawfully detaining the Applicant for over eight months without proper arraignment before any Court of competent jurisdiction.
3. Any other orders as the Court may deem it necessary to make in the circumstance of this case.

The grounds for the application are set out on the face of the motion papers and reproduced hereunder as follows:-

a. The Applicant was detained for over eight months by the Respondents without being arraigned before any Court of competent jurisdiction.
b. The Applicant did not commit any offence against anybody or law.
c. That the Applicant is being tortured in the Respondents' custody.

In support of the application, the Applicant filed a Statement setting out the relevant information as required under the provisions of the extant Fundamental Rights Enforcement Procedure Rules. An affidavit deposed to by one Maryam Chiroma,wife of the Applicant (who is in custody),was also filed in support of the application along with the Applicant's Counsel's written address.

The 1st Respondent was served with the Applicant's processes in this suit on 26th July, 2019 while the 2nd – 5th Respondents were served through the 1st Respondent,pursuant to an order for substituted service granted by this Court on 1st August, 2019 presided over by Affen J, as a vacation judge. Then pursuant to the service of Court processes on the Respondentsa notice of preliminary objection dated 5th August,2019 was filed by one G.I. Ayanna, Esq. of IGP-IRT (SARS Premises) FCT, Abuja by which the Respondents challenge the competence of the instant suit and seek the following reliefs:-

1. An Order of this Honourable Court striking out and dismissing this suit against the 1st and 2nd Respondents as incompetent, lacking in merit, and disclosing no cause of action.
2. An Order of this Honourable Court dismissing the suit against the Respondents as the 3rd and 5th Respondents are

unknown and not in the employment of the 1st and 2ndRespondents, and thus not proper parties in this suit.
3. An Order of this Honourable Court dismissing and striking out this suit for lack of jurisdiction.
4. And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this suit.

Also filed is the 1st, 2nd and 4thRespondents' Counter Affidavit and written address in opposition to the Applicant's substantive application.

The Applicant's Counsel filed a Reply on Points of Law to the Preliminary Objection.

At the hearing of the application the Applicant's Counsel adopted his written address. The Respondents were however absent despite notice of hearing date. Hence,pursuant to the Applicant's Counsel's oral application, the Respondents' written address was deemed adopted in accordance with the provisions of the extant Fundamental Rights Enforcement Procedure Rules, 2019.

ISSUES FOR DETERMINATION:

In his written address, the Applicants' Counsel formulated and argued three issues for determination of the instant application to wit:-

1. Whether the Respondent has breached the Constitutional rightsof the Applicant by detaining the Applicant for over eight months without arraigning him before any Court of competent jurisdiction and
2. Whether my lord can intervene to prevent the flagrant abuse of constitutional rights of the Applicant regard being had to the factual situation.
3. Whether where the Court finds the breach of the Applicant's right can award damages.

In his Reply on Points of law, the Applicant's Counsel formulated a further number of four issues as follows:-

1. Whether this Court has the required jurisdiction to entertain the application for enforcement of the fundamental rights of the Applicant.
2. Whether our constitution allows the Respondents to continuously detain the Applicant for ten months without arraigning him before a Court of competent jurisdiction to determine his guilt or otherwise.
3. Whether the relief sought by the Applicant deserves the sympathy of this Honourable Court.
4. Whether it is right for the Respondents to refuse to file a counter affidavit *in a serious matter as this.*

By their address, the 1st, 2nd and 4thRespondents raise the following issues for determination:-

a. Whether the Court has the jurisdiction to hear this suit considering that the parties are not proper before this Honourable Court.
b. Whether the Applicant's fundamental human rights as guaranteed by the 1999 Constitution of Nigeria as amended has been breached, harassed or threatened by the action of the Respondents.
c. Whether taking into consideration all the facts of this case, the Respondents acted within the law.
d. Whether the Applicantis entitled to the reliefs sought.

I have looked at all the processes filed before this Court and I am of the firm opinion that the issues before this Court can simply be divided into two i.e.

1. Whether this Honourable Court has the jurisdiction to entertain this suit.
2. Whether the Applicant is entitled to the reliefs sought vide his substantive application for enforcement of his fundamental rights.

The issues formulated by the respective parties can be adequately addressed thereunder.

I will therefore take the first issue which bothers on jurisdiction as follows:-

> **"***Whether this Honourable Court has the jurisdiction to entertain this suit."*

Arguing the issue of the jurisdiction of this Court, which is the main point of their preliminary objection, the 1st, 2nd and 4thRespondents submitted that the 3rd and 5thRespondents in this suit are not known to them and are imaginary as they do not have anybody in their employment with such names. Relying on the case of ***DAIRO V, REGISTERED TRUSTEES, T.A.D., LAGOS (2018) 1 NWLR (PT. 1599),*** the 1st, 2nd and 4thRespondents urged this Court to decline jurisdiction in this suit for lack of proper parties.

Replying on points of law, the Applicant's Counsel submitted that the Court is to look at the plaintiff's claim to determine jurisdiction and not the Defendant's defence. He relied on the cases of ***INEC V ISBIR, (2010)51 WRN 107 at IIIRI, GOV. CROSS RIVERS STATE V N.T.A, (2013) 24 WRN 130 at 138****ratio 2 and page 160 lines 5-15, and* ***APGA V ANYANU,(2014) 14 WRN 1at 11and also page 32 lines 25-35.***

Now from their submissions, it would appear that the 1st, 2nd and 4thRespondents' grouse for raising the objection to jurisdiction is the joinder of the 3rd and 5thRespondents to this suit. I shall therefore limit myself to this point.

In their Counter Affidavit which accompanied their address, the 1st, 2nd and 4thRespondents had averred that the 3rd and 5thRespondents named in this suit are inexistent as the 1st and 2ndRespondents do not have such persons under their employment.

Now I have perused the reliefs sought in the preliminary objection of the 1st, 2nd and 4thRespondents and i have looked closely at the Applicant's affidavit in support of his application for enforcement of his fundamental rights. And I agree with learned Counsel for the Applicant that it is the processes i.e affidavit evidence filed in the suit by the Applicant that determines the cause of action. In the instant case, aside the Applicant describing the 3rd and 5thRespondents as officers of the Nigeria Police force as averred at paragraph 4 of his affidavit to the effect that the 3rd and 5thRespondent can be served Court processes through the 1stRespondent,there is nothing else describing the 3rd and 5thRespondents or linking the 3rd and 5thRespondents to the Applicant's cause of action. Theaverments in the affidavit of the Applicant is devoid of facts disclosing a cause of action against the 3rd and 5thRespondents.

The Applicant who had another opportunity of properly describing who the 3rd and 5thRespondents are in the scheme of things, did not file a further affidavit against the 1st, 2nd and 4thRespondents deposition in their counter affidavit that the 3rd and 5thRespondents are unknown as there are no such persons under the employment of the 1st and 2ndRespondents.

The mere allegation and description of the 3rd and 5thRespondents as officers of the Nigeria Police Force, in view of the 1st, 2nd and 4thRespondents' averment at paragraph 5 of the canter affidavit that they have no such persons in their employ, is insufficient to establish a cause of action against the 3rd and 5thRespondents in this suit.I therefore agree with the 1st, 2nd and 4thRespondents'Counsel that the joinder of the 3rd and 5thRespondents in this suit is improper in the circumstances. I however do not agree that this Court does not have jurisdiction to entertain the Applicant's suit simply because of the misjoinder of the 3rd and 5thRespondents thereto.

It is settled law that non-joinder or misjoinder of parties will not be fatal to an action and no proceedings shall be rendered null and void for lack of competence or jurisdiction simply because a plaintiff joins a party who ought not to have been joined. Where there is more than a single Defendant, the competence of any one of them to be sued, would not simpliciter affect and defeat the competence of the action on ground of want of proper parties as such a situation can be remedied by simply striking out the incompetent or unnecessary Defendant in an action. – see the cases of **CROSS RIVER *STATE NEWSPAPER CORP. V. ONI (1995) 1 NWLR PT. 371 P. 270*** *and* ***USUAH V. G.O.C. NIGERIA LTD. & ORS.(2012) LPELR-7913(CA)****.In the case of* ***Hon. EFE GODFREY OFOBEUKU V DPP & ANOR, (2015)LPELR 24899***, The Court of Appeal held thus:-"suffice it to say that the current wisdom of the superior Courts is that even none – joinder of a necessary party would not vitiate an action or rob the Court of jurisdiction so long the issues before the Court be justly and fairly be resolved between the very parties before the Court.

And so the misjoinder of the 3rd and 5thRespondents to the instant suit will not affect the competence of the Applicant's suit against the 1st, 2nd and 4thRespondents. Consequently, while the names of the 3rd and 5thRespondents ought to be struck out of the instant suit, and they are accordingly struck out, this Court nevertheless has the jurisdiction to entertain this suit against the 1st, 2nd and 4thRespondents. The instant issue for determination is hereby resolved against the 1st, 2nd and 4thRespondents. Their preliminary objection thus fails and it is accordinglydismissed.

ISSUE NUMBER TWO

"Whether the Applicant is entitled to the reliefs sought vide his substantive application for enforcement of his fundamental rights".

The gist of the facts relied upon by the Applicant for the instant application as per his affidavit in support is that being a commercial taxi driver, he was contracted to transport one OnukWambe to the hospital for urgent medical attention at Keffi, Nassarawa State along with three other persons (family members of OnukWambe). The Applicant drove OnukWambe and his family to the hospital on 18th December,2018 andone of the passengers the wife of OnukWambestopped him at Gitata Village to collect her phone battery along the way. The Applicantreturned home only to be informed later that day of the said Onuk's demise. The Applicant immediately returned to pick the deceased and his family back to Gaijo Village. On 24th December,2018 however, the Applicant's car was stopped and his passengers asked to drop by heavily armed policemen who then drove him to S.A.R.S. Abbatoir Abuja. The Applicant averred that he was molested by the Policemen at SARS for eight days and was subsequently informed that he was part of the assassins responsible for the unfortunate murder of the former Chief of Defencestaff late Alex Badeh on 18th December,2018 and the Applicant had no option but to comply with directives given him by the Respondents.

The Applicant averred that the Police confirmed from the hospital (where OnukWambe died)that the Applicant was at the hospital on the day and time of Alex Badeh's assassination but still refused to release the Applicant. That the death certificate of OnuWambe has been seized from his family by the security agencies while the hospital where he died was warned not to issue one in orderto truncate the Applicant's chances of exonerating himself of the serious allegations against him. That the co-accused who named the Applicant also stated that he was tortured into making a statement implicating himself, the Applicant and others. The Applicant averred that the police searched his house but did not find anything incriminating. That it has been eight months but the Applicant was never arraigned before any Court of justice to try his innocence or otherwise. That if admitted to bail he will

provide reliable sureties, attend his trial and not tamper with any investigation.

On the otherhand in their Counter Affidavit, the 1st, 2nd and 4thRespondents averred that the Applicant is a suspect in the assassination of the former Chief of Staff and Chief of Air Force, Alex Badeh. That the Applicant was tracked through discreet and intelligent surveillance upon the confession of his accomplice one ShaiboRabo, also tracked by the Police. The said ShaiboRabo's statement was annexed as Exhibit A. The 1st, 2nd and 4thRespondents averred that the Applicant also made confessional statement vide Exhibit B admitting committing the offence. That the Applicant further made confessional statement which was televised on National Television. The 1st, 2nd and 4thRespondents denied forcing the Applicant to make any confession or harassing or threatening him.That the Police have treated the case diligently in line with the Constitutional mandate and global best practices. That efforts are in top gear to arrest other accomplices in the case as it is a clear case of criminal conspiracy and murder.

In his address, learned Counsel to the Applicant submitted that the extent to which the Respondents can detain a suspect is 24 hours and where it is established that he is detained for more than eight months, the law is that his constitutionally guaranteed right is breached and this Court can deal with the situation. Counsel contended that the facts in this case is clear that the Applicant was detained for over eight months and is presently in detention by the Respondents. Relying on Chapter IV of the 1999 Constitution, he submitted that the Respondents' act is a breach of the Applicant's right and is therefore illegal and unconstitutional. He urged this Court to hold as such.

In their address, the 1st, 2nd and 4thRespondents submitted that the totality of facts before this Court shows that the Applicant's fundamental right has not been infringed in any way by the Respondents' actions. They posit that they are

empowered to arrest and detain any person for the purpose of bringing him before the Court upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence. They referred this Court to Section 35(1)(c) of the 1999 Constitution of Nigeria as amended and Section 4 of the Police Act. They submitted that the offence for which the Applicant was arrested and investigated is a capital offence and Section 35(7) of the 1999 Constitution of the Federal Republic of Nigeria as amended lays to rest all controversies in the matter. The learned Counsel on behalf of the Respondents submitted that the Applicant's failure to establish any infringement of his rights means his action must fail. The 1st, 2nd and 4thRespondents relied on the case of ***FAJEMIROKUN V. CBN NIG. LTD (2002) 10 NWLR PT. 77 P. 95***. He urged this Court to hold that the Respondents acted within the ambits of the lawand dismiss the instant application as lacking in merit and devoid in substance.

Replying on points of law, the Applicant's Counsel submitted that the Respondents are not allowed to detain the Applicant for ten months without arraigning him before a Court of competent jurisdiction unless by order of Court as under Section 35(7) of the Constitution of Nigeria as amended. He contended that the main relief sought by the Applicant is neither conditional or non-conditional release but a bail pending the intent of the Respondents to formally arraign him before a Court of competent jurisdiction. He contended that the law is that where the Respondent refuses to file a counter affidavit to an affidavit in support of motion as in this case, the Court is to deem such refusal to file a counter as an admission of facts contained in the motion. He relied on the case of ***CBN V. DANTRANS (NIG.) LTD & ORS (2018) LPELR-46678(CA).***

To resolve the issues in contention in instant application, firstly on Applicant's Counsel's contention as to the 1st, 2nd and 4thRespondents' refusal to file a counter affidavit, such

contention is not supported by the records of this Court. By the records of this Court, an 11paragraph counter affidavit was filed by the 1st, 2nd and 4thRespondents along with their written address which was deemed adopted at the hearing of this suit on 23rd January, 2020pursuant to the Applicant's Counsel's application and in accordance with the Fundamental Rights Procedure Rules, 2009. The contention of the Applicant's Counsel to this effect istherefore misconceived and it is accordingly discountenanced.

Having said the above,the instant application is one brought by the Applicant for the enforcement of his fundamental rights. The law is that the burden of proof thus lies on the Applicant to establish by credible affidavit evidence that his fundamental right was breached. – see the decision of the Court of Appeal in the case of ***FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2002) 10 NWLR (PT. 774) P. 95 at PP. 613–614 PARAS. H-A*** which decision was upheld by the Supreme Court in ***FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2009) 5 NWLR (PT. 1135) P. 588****. See also* ***MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (2010) LPELR-4781(CA)****.*

Now the main relief of the instant application is for an order admitting the Applicant to bail pending his possible arraignment by the Respondents before aCourt of competent jurisdiction.

Under **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** every person (including the Applicant) is guaranteed his personal liberty.

It appearsthere is no dispute amongst parties that the Applicant was detained by the Police (1st, 2nd and 4thRespondents) on suspicion of having committed the unlawful killing of one Alex Badeh. By virtue of the provisions of **Section 35(1)(c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** a person can

lawfully lose his personal liberty upon reasonable suspicion of his having committed a criminal offence. I believe judicial notice must be taken of the duties of the Police (1st, 2nd and 4thRespondents) to investigate and prosecute the commission of crime and thereto exercise the power to arrest and detain suspected criminal offenders under relevant provisions of the **CFRN 1999 as amended**, the **Police Act** and the **Administration of Criminal Justice Act 2015** (**ACJA**). I must mention here that the aforementioned duties and powers of the police is not being disputed by the Applicant. Such duties and powers must however be exercised in accordance with the law and, most importantly, in accordance with constitutional provisions affecting the right to personal liberty of persons. This is where the Applicant's grouse lies. The Applicant's simple grouse is that he has been detained by the 1st, 2nd and 4thRespondents for a period over eight months far longer than Constitutionally allowed without being charged to a Court of competent jurisdiction.

It seems not to be in dispute that the Applicant is being detained by the 1st, 2nd and 4thRespondents for a period of more than eight months from 24th December,2018 till date of the instant application without being charged to Court for the offence of which he is being suspected to have committed.

Now, by virtue of **Section 35(4) and (5) of the Constitution**, the period within which a person detained (upon reasonable suspicion of having committed a criminal offence) may be lawfully detained in police custody before being charged to Court is a maximum of two days or such longer period as the Court may consider to be reasonable in the circumstances.

Subsection 35(4)(a) and (b) further provides that if such a person is not tried within a period of

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) 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.

Now the operative words of section 35 (4) (a) and (b) 1999 Constitution as follows:-

Release upon conditions as are reasonably necessary to ensure appearance for trial at a later date simply means bail with conditions and that is what the Applicant is asking for vide the instant application for enforcement of his fundamental right.

The 1st, 2nd and 4thRespondents have however referred this Court to **Section 35(7) of the Constitution** which provides as follows:-

(7) Nothing in this section shall be construed –

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence;

The offence for which the Applicant is suspected by the 1st, 2nd and 4thRespondents to have committed is the unlawful killing of one Alex Badeh. Under the Penal Code,the offence of culpable homicide could be punishable with death upon conviction. The Applicant is thus suspected of having committed a capital offence. While I concede that the Constitution, vide **Subsection 7 of Section 35**, makes some exceptions with regards to a person suspected of having committed a capital offence, I do not believe it is the intention of the framers of our Constitution that law enforcement agencies shall keep individuals in detention custody in perpetuity and continue to deny them their day in Court simply because the offence they are being suspected of is a capital offence. EVERYONE, and I repeat, EVERYONE suspected of a criminal offence (whether capital or not) is

entitled to be charged to Court to test his or her culpability. Everyone deserves their day in Court and it is a constitutional right.

Section 30(3) of the Administration of Criminal Justice Act 2015also provides as follows:-

> *(3) Where a suspect is taken into custody and it appears to the police officer in charge of the station that the offence is of a capital nature, the arrested suspect shall be detained in custody, and the police officer shall refer the matter to the Attorney General of the Federation for legal advice and cause the suspect to be taken before a Court having jurisdiction with respect to the offence within a reasonable time.*

It follows that **Subsection 7 of Section 35** of the Constitution cannot be treated as a blanket licence to keep a person suspected of a capital offence in detention in perpetuity without taking him to Court.

Thus, under **Section 35(4)(a)** of the Constitution, a person detained who is not entitled to bail should be released if after two months he is not charged to Court. I believe the proper interpretation of **Section 35** is therefore that a person suspected of a capital offence who is not entitled to be released under **Subsection 7** by virtue of the nature of the offence, should be released if he is not charged to Court within two months of his detention.

The Court of Appeal in the case of ***EDDI V. C.O.P. (2007) ALL FWLR PT. 367 P. 960; (2006) LPELR-9816(CA)***held that it is a travesty of justice to detain an accused person in prison custody for almost two years without arraigning him before a Court of competent jurisdiction for his trial and it amounts to a violation of his fundamental right as enshrined in section 35(4) of the Constitution of the Federal Republic of Nigeria, 1999.

The Court of Appeal held per Muntaka-Coomassie JCA (as he then was) as follows:-

> *"My lords, and with tremendous respect to the learned Counsel, it appears to me misty and blurred in this matter - as to whether, it is right to have kept the Appellant in prison custody for a period extending to almost two years without formally filing a charge against him before the High Court of Justice that has jurisdiction to determine the allegation against him. The Respondent in its brief did not, in any way, make any effort to arraign the Appellant before the competent Court for trial. It is as if they were contended with the Appellant being remanded in prison custody. He can remain there for as long as they want, without bringing him to face justice. This definitely is against the spirit of the 1999 Constitution of the Federal Republic of Nigeria. Particularly Section 35(4) thereof"*
>
> *"With respect, while the personal liberty of an accused may be denied under Section 35 (1) as it is in this case, he must under Section 35 (4) (a) be arraigned for trial within two months, failure of which the accused person is entitled to bail either un-conditionally or on conditions as may be reasonably necessary to ensure that he appears for trial at a later date.*
>
> *In the case at hand, the Order made by the Chief Magistrate's Court by which the appellant was remanded in prison custody was valid pursuance to Section 35 (i) (c) of the Constitution. What is Constitutionally required of the Respondent by virtue of Section 35 (4) (a) is to ensure that the Appellant is arraigned before a competent Court within two (2) months from the date the Appellant was remanded in custody. This step, the Respondent, with respect, has failed woefully to actualize. As a result the Appellant is entitled to be released on bail. It is to be noted that this Section applies to both Capital and non -Capital offences. The main*

intention and purpose of this Section is to prevent a situation like this, where an accused would be perpetually detained in custody without arraigning him to Court to face Justice. If the Respondent has been genuinely concerned with this problem of the prevalence of the allegation against the accused person in this case, he ought to have timeously arraigned him to face his trial before a competent Court of law so that justice would be seen to be done to both parties and the society."

I have said that it is not in dispute that the 1st, 2nd and 4thRespondents have been detaining the Applicant on suspicion of having committed a capital offence for over eight months. Aside of the fact that the Applicant is suspected of having committed a capital offence, there is nothing in the 1st, 2nd and 4thRespondents' counter affidavit to explain why he is being detained for that long without being charged to Court. i.e from 24th December,2018 to date.The 1st, 2nd and 4thRespondents have offered no reason to this Court for the Court to come to the conclusion that the Applicant's extended stay in their detention is reasonable in the circumstances. Further from the counter affidavit evidence of the 1st,2nd and 4thRespondents, there is nothing to suggest when the Applicant would be arraign before a Court of competent jurisdiction. In otherwords, the 1st, 2nd and 4thRespondents are contended and satisfied by detaining the Applicant in their custody without trial.

In the case of ***OSENI RAJI V. COMMISSIONER OF POLICE (2018) LPELR-46310(CA)*** the Appellant was suspected of having committed the offences of **murder**, **armed robbery** and kidnapping (also capital offences). He was brought before a Magistrate Courtfor the sole purpose of getting him remanded and he was so remanded. After spending a considerable period oftime in Police custody without a formal charge, the Appellant filed a Summons for Bail pending his trial which was heard by the High Court and dismissed. Dissatisfied with the ruling, the Appellant appealed to the

Court of Appeal which allowed the appeal. The Court of Appeal held that

> *"Contrary depositions in the counter-affidavit, without further explanation or evidence, will not do. More is required from the Respondent to deny the Applicant his liberty. The deposition in the counter affidavit that the DPP would soon give his legal advice and "promptly" prosecute the Appellant is yet to be given effect. The counter affidavit was deposed to on the 16th day of May, 2017. That was one year and six months ago. The impression one is given is that the Respondent's sole intention is to perpetually keep the Appellant in prison custody without any plan to get him prosecuted. This is clearly an abuse of power which should not be condoned.*
>
> *With respect, the refusal by the learned Judge of the lower Court to admit the Appellant to bail in the absence of any formal charge and proof of evidence is not sound in law. The allusion to the area of the country where the Appellant was brought from is uncalled for and unfortunate. This has nothing to do in the consideration of an application for bail. In the circumstance, the learned Judge of the lower Court cannot be said to have exercised his discretion, in respect of the application, judicially and judiciously. If there is no formal charge and there is no proof of evidence before a Courtseized of an application for bail, no interference of the commission of a crime can be drawn to warrant a refusal of bail."*

The 1st, 2nd and 4thRespondents in this case have not bothered to tell the Court why they have not charged the Applicant to Court in over eight months since his detention in their custody commenced from 24th December,2018 to date. They have not told this Court when exactly they intend to charge the Applicant to Court or even if they intend to do so. It appears they are simply comfortable with keeping the Applicant in prison custody without any plan to charge him to Court.

It does not matter the nature of the offence against him or even the nature of evidence discovered against him, the Applicant is entitled to be brought before a competent Courtof law within a reasonable time and if he is not, he is to be released (either conditionally or unconditionally) after two months of his detention provided by section 35 (4) of the Constitution of the Federal Republic of Nigeria (as amended).

The averments of the 1st, 2nd and 4thRespondents at paragraphs 9,10,11 and 12 of the counter affidavit to the effect that the Applicant confessed to the commission of the crime in both his confessional statement and on National television and many persons and International Organizations including International Community are interested in the case is not the issue at hand. The point must be made clear here that the fact that the Applicant made confessional statement or certain persons or organizations are interested in the matter because of the calibre of the deceased cannot defeat the letter and spirit of our lawi.e the constitution of the Federal Republic of Nigeria (as amended).

In other words, the fact still remains that the 1st , 2nd and 4thRespondents had and have been keeping the Applicant in detention for a period beyond the two months allowed by law and that contravenes section 35 (4) of the constitution of the Federal Republic of Nigeria 1999 (as amended). Thus, the facts as alluded by the Respondents in their counter affidavit appears misconceived with the facts and circumstances of the instant application by the Applicant which is simply charge or arraign me before a Court of competent jurisdiction to hear and determine the allegation against me rather than detaining me without trial.

Hence therefore, in the circumstances of this application for enforcement of the Applicant's fundamental rights and the affidavit evidence in support of application vis-à-vis the counter affidavit evidence of the 1st , 2nd and 4thRespondents, there is no doubt that the Applicanthas deposed to cogent and material facts in the affidavit in support of his application and

the facts are capable and worthy of believe and I accordingly believe same.

Thus, based on the forgoing and in particular the affidavit evidence in support of application by the Applicant, I am persuaded to exercise my discretion judicially and judiciously in the interest of justice and do hereby make the following orders:-

(1) The 1st, 2nd and 4thRespondent are hereby ordered to within two (2) weeks from today, to arraign or charge the Applicant before a Court of Competent jurisdiction in accordance with section 30 (3) of the Administration of Criminal Justice Act 2015;

(2) Failing to comply with one (1) above, the 1st, 2nd and 4thRespondents are hereby ordered to release the Applicant on bail on the following conditions:-

(a) Two sureties in the sum of N500,000.00 each and one of sureties must be the chairman or secretary of the Road Transport Association of the Local Government where the Applicant carries out his business of taxi driving;

(b) The second surety must be resident herein Abuja and owed landed property worth not below the value of N100,000,000.00 and such property must be verified by the Respondent and Court Registrar and title documents accordingly deposited in Court.

In respect of the claim for damages, it is hereby refused and dismissed.

In conclusion the application succeeds in part and that is the position of this Honourable Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
6/05/2020

G.J Ayanna:-For the Respondents.
M.E Sherriff:-For the Applicant.

Sign
Judge
6/05/2020