

**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: 13/05/2020
FCT/HC/CV/312/19**

BETWEEN

MR. ERIC EZEALA

....

CLAIMANT

AND

**1. INSPECTOR GENERAL OF POLICE
2. COMMISSIONER OF POLICE FCT** }

DEFENDANTS

JUDGMENT

The instant suit was commenced by the Claimant against the Defendants by an originating summons filed on 13th November, 2019 pursuant to the provisions of Order II of the Fundamental Right (Enforcement) Procedure Rules 2009 and under the inherent jurisdiction of this Honourable Court seeking the grant of the following reliefs:-

1. A declaration that the Defendants have no powers under the law to detain the Claimant beyond the period as provided in the constitution of the Federal Republic of Nigeria 1999 as amended.
2. A declaration that the continued detention of the Claimant by the Defendants beyond the period provided under the Constitution of the Federal Republic of Nigeria 1999 as amended is wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.

3. An order directing the Defendants to produce the Claimant who is presently and continuously in the detention of the Defendants since 16th July 2017 before this Court so that his bail application can be heard.
4. The sum of N100,000,000.00 (One Hundred Million Naira) only as general damages against the Defendants.

The foregoing reliefs are sought pursuant to the following questions of which the Claimant seeks determination:-

1. Whether the Defendants have powers under the law to detain the Claimant beyond the period as provided in the constitution of the Federal Republic of Nigeria 1999 as amended.
2. Whether the detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.
3. Whether the continued detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.

The Applicants filed, in support of the application, a Statement setting out the relevant information, an affidavit of 14 paragraphs with exhibit marked exhibit "A" and a verifying affidavit both deposed to by one Mrs. Helida Ezeala (the Claimant's mother) on behalf of the Claimant who is alleged to be in custody of the Defendants. The Claimant's Counsel also filed a written address.

The Defendants were served with the originating summons and other processes in this suit on the 12th and 16th December, 2019 respectively. The evidence of service was filed Court.

Although there is proof of service as well as certificate of service file by the Court bailiff that the Defendants were served with the originating processes and hearing notices, they did not file any response to the instant application.

The Claimant's Counsel therefore formulated and argued the following issues for determination of the instant application to wit:-

1. Whether the Defendants have powers under the law to detain the Claimant beyond the period as provided in the constitution of the Federal Republic of Nigeria 1999 as amended.
2. Whether the detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.
3. Whether the continued detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.
4. Whether this honourable Court has power to make an order directing the Defendants to produce the Claimant who is presently and continuously in the detention of the Defendants since 16th July 2017 before this Court so that his bail application can be heard.
5. Whether the Claimant is entitled to compensation sought by this suit.

The facts relied upon in support of the Claimant's instant application for the enforcement of his fundamental rights are contained in his affidavit in support deposed to by his mother. The relevant paragraphs of the affidavit in support are reproduced hereunder:-

1. That I am the mother of the Claimant in this suit.
2. That by virtue of my aforesaid position I am conversant with the facts herein deposed.
3. That the 1st Defendant is known to me as the head of the Nigeria police.
4. That the 2nd Defendant heads the SARS police station Abattoir FCT Abuja where my son was brought to and detained by the police officers from the Defendants.
5. That on the 16th day of July 2017, the Claimant was arrested by the Police Officers from the Defendants in my presence at our family house in UmuoduUmukabia Ehime-Mbano L.G.A. Imo State and was taken to Abuja and was detained at SARS Police Station Abattoir FCT Abuja.
6. That when the claimant was asking the officers from the Defendants what he did and they refused to tell him I approached them and asked them, my children, what did my son do? They said that I should come to Abuja if I want to know.
7. That on 17th July 2017 I followed them up to Abuja and to the SARS police station Abattoir where they confirmed that the name of the Claimant is on their list but that I cannot see him, then tell me the offence he committed, the officers at the gate said that they are not the IPO that I should look for the IPO.
8. That that is how I continued going to SARS in search of IPO to the Claimant case, today it is this officer and when you call the officer he says he is not, tomorrow is another officer until I overstressed myself and became ill.
9. That on the 2nd September 2017 the Nigeria Police Force in confirmation that the Claimant is in their detention published in SUN NEWSPAPER that Mr Eric EZEALA the 2nd in command to the popular kidnapper ChukwudiDumemeOnuamadike (Evans) has been arrested. The said SUN NEWSPAPER publication is hereby attached and marked as exhibit "A".
10. That on reading this publication I cried that they have killed my son, if my son is the 2nd in command to Evans

how manage has Evans been charged to Court and my son has not been charged to Court?

11. That up till date I have not seen my son, the Claimant, I do not know what he did, outside the police publication which cannot be believed by any reasonable being, the only thing I know is that I was told by the Police men from the Defendants who arrested him that they were taking the Claimant to SARS police station Abattoir FCT Abuja.
12. That I do not know if my son, the Claimant is alive or not.
13. That I am informed by Chijioke Kanu Esq. the solicitor handling this case in his office at ground floor Labour house, at about 10 am on the 23rd day of October 2019 of the following facts and I verily believe him to be true that the Defendant has no right to detain the Claimant beyond the period provided under the constitution.
14. That I depose to this affidavit in good faith believing the content true in accordance with the Oaths Act.

Arguing his first issue for determination, Counsel to the Claimant conceded that the Defendants have powers to detain any person who is suspected or alleged to have committed a crime. It is however his submission that the Defendants have no powers under the law to detain the Claimant or any person beyond the period provided under the Constitution of the Federal Republic of Nigeria 1999 as amended. He relied on Section 35(1), (4) and (5) of said Constitution. He urged this Court to resolve the first issue for determination in favour of the Claimant/Applicant.

Now in the resolution of this issue, the instant action is one brought by the Claimant for the enforcement of his fundamental rights. The law is that the burden of proof lies on the Claimant 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 paragraphs 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).***

It is relevant to reiterate at this stage that although the Defendants were served with the originating processes and hearing notices in this suit, they did not file any response to the instant application. The facts adduced by the Claimant in his affidavit in support of his originating summons for enforcement of his fundamental rights thus stands unchallenged as the Defendants have failed to file any counter affidavit to challenge same. The law on the implication of failure of a party to file a counter-affidavit to controvert the averments in the affidavit filed in support of an originating summons against him is that he is deemed to have admitted the facts deposed to in such affidavit and such unchallenged and uncontroverted facts are treated as established. – see the cases of ***INAKOJU V. ADELEKE (2007) 4 NWLR (PT. 1025) P. 423, THE GOVERNOR OF KOGI STATE & ORS V. OBA S. A. MOHAMMED (2008) LPELR-5013(CA) and AYALA V. DANIEL & ORS (2019) LPELR-47184(CA).*** The facts alleged by the Claimant in support of his originating summons in the instant case are therefore deemed admitted and thus established.

Now, the established fact as per the affidavit evidence before this Court is that the Claimant was arrested by police officers from the Defendants on 16th July, 2017 at his family house in Imo State and taken to Abuja where he was further detained at SARS Police Station Abattoir FCT Abuja. Aside of a newspaper publication (Exhibit A) indicating that the Claimant was linked to a notorious kidnapper, nothing further is known about the whereabouts of the Claimant in the custody of the Defendants.

Under **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** provides in a

nutshell that every person (including the Claimant) is guaranteed his personal liberty. The circumstances under which a person may be lawfully deprived of his personal liberty and the procedure to be followed in order to lawfully curtail such right to personal liberty have been copiously spelt out under the provisions of the said **Section 35 of the Constitution**.

It is not in dispute that the Defendants are officers of the Nigeria Police Force. This Honourable Court can take judicial notice of the Defendants' statutory duties to detect and prevent crime as well as to apprehend and prosecute suspected criminal offenders under the provisions of the **Police Act**, the **Administration of Criminal Justice Act 2015 (ACJA)** and the **Constitution of the Federal Republic of Nigeria 1999 (as amended)**. They are therefore equipped with the power to arrest and detain a person upon reasonable suspicion of his having committed a criminal offence in accordance with **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**.

From the facts and claim before this Court, it appears the Claimant is not challenging the legality of his arrest by the Defendants. It is however the legality and constitutionality of the Claimant's continued detention in the custody of the Defendants that the Claimant is challenging vide the instant suit.

Under **Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** a person arrested or detained upon reasonable suspicion of having committed a criminal offence (*inter alia*) shall be brought before a Court of law within a reasonable time. **Subsection (5) of Section 35** defines the expression 'reasonable time' as used in **subsection (4)** of that section to mean:-

- (a) *In the case of an arrest or detention in any place where there is a Court of competent jurisdiction*

within a radius of forty kilometres, a period of one day; and

(b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable.

By virtue of **Section 35(4) and (5) of the Constitution** therefore, 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. See also the case of **EFCC V. OYUBU & ORS (2019) LPELR-47555(CA)** wherein it was held by the Court of Appeal as follows:-

"Even when a person is arrested or detained within the scope of the law, he must be brought before a Court for prosecution and this must be done within the time frame stated by law. This is a 24 hours time-frame or 48 hours depending on how close a Court is to the location of the scene of crime or place of arrest. Apart from the Constitution, the Administration of Criminal Justice Act, 2015 makes provision for such a position. The law makes provision for law enforcement agents to arrest and detain a person who is alleged to have committed an offence. In doing this, the procedure is to do a proper investigation and if it shows that a person has a hand in the crime than he can be arrested and brought to Court within 24 hours or maximum of 48 hours."

The established fact before this Court is that the Claimant was arrested by the Defendants on 16th July, 2017 and is still being detained by the Defendants without being charged to Court. The date of filing of the instant suit is 13th November, 2019. This is to say the Claimant has been in detention or custody of the Defendants for over two years now. This means that the Claimant has been detained beyond the 48 hours limitation

period prescribed by the Constitution without being brought to Court. Except good cause is shown, such period of detention beyond two days as in this case would be unconstitutional and the Defendants would lack the power to detain the Claimant for such period of time. The onus therefore shifts to the Defendants to show that the length of the Claimant's detention in their custody is justifiable and lawful in the circumstances. See **EJEFOR V. OKEKE (2000) 7 NWLR (PT. 665) P. 363** and **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (supra)**. It was held in **EFCC V. OYUBU & ORS (supra)** that

"The Appellants arrested the 1st Respondent on 2nd August,2016. The Appellants should ordinarily bring the 1st Respondent for trial before a Court before the 4th August 2016 depending on the hour he was arrested. This was not the case here. Up till the 15th August,2016, the 1st Respondent was not brought to Court or charged before any Court. The 1st Respondent has been in the custody of the Appellants all these days without been brought before any Court. This is a clear violation. What is left, therefore, is for the Appellant to justify keeping the 1st Respondent in their custody for all these days."

The Defendants in this case did not deem it fit to explain to this Court why they have detained the Claimant beyond the period permitted by the Constitution and without being brought to Court. The Defendants have thus failed to provide justification for detaining the Claimant for such a period in breach of constitutional provisions earlier mentioned. In the circumstances, therefore the Defendants have neither the authority nor power to detain the Claimant beyond the period constitutionally allowed.

Pursuant to the foregoing, the first issue for determination is hereby resolved in favour of the Claimant and against the Defendants and the resolution of the first question in favour of the Claimant thus entitles him to the grant of the first relief of the originating summons. Accordingly, the first relief of the claimant is hereby granted

ISSUE NO. TWO

Whether the detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.

On his second issue, learned Counsel to the Claimant submitted that the detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing. Counsel contended that the detention of the Claimant became unlawful beyond the attainment of a day of his detention at which point the Defendants lost the power in law to detain the Claimant.

It has been established that the Defendants have detained the Claimant beyond the maximum period of two days without being taken to Court. I have found under issue No. 1 that the Defendants lacked the power or authority to do this. It is a breach of **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, particularly **Subsections 4 and 5**. Consequently, the detention of the Claimant by the Defendants for more than 2 days is unlawful, unconstitutional and a breach of the Claimant's right to personal liberty under **Section 35 of the Constitution**. See the case of ***EFCC V. OYUBU & ORS (supra)***. And it must be noted that from the affidavit evidence of the claimant he has been in detention and under the custody of the Defendants since his arrest on 16th July, 2017. Thus, from the affidavit evidence of the claimant which has not been controverted by the Defendants, issue No. two is hereby resolved in favour of the Claimant and against the Defendants.

ISSUE NO. THREE

Whether the continued detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is not wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.

On issue No. 3, it is Counsel to the Defendant's submission that the Claimant is presumed innocent of any offence until proven guilty. He posited that the law protects a suspect from suffering any criminal culpability on grounds of allegation or suspicion. He submitted that the continued detention of the Claimant by the Defendants beyond the period provided under the constitution of the Federal Republic of Nigeria 1999 as amended is wrongful and therefore unlawful, illegal and a violation of the Claimant's fundamental rights to personal liberty and hearing.

As I said earlier, by virtue of **Section 35 of the Constitution**, the detention of the Claimant by the Defendants beyond 2 days is unconstitutional and illegal. It follows therefore that the Claimant's continued detention in the custody of the Defendants is unconstitutional, unlawful and a further breach of the Claimant's right to personal liberty as guaranteed by the Constitution. The resolution of issue No. 3 in favour of the Claimant also entitles the claimant to the second relief of his originating summons and the second relief is hereby granted.

ISSUE NO. FOUR

Whether this honourable Court has power to make an order directing the Defendants to produce the Claimant who is presently and continuously in the detention of the Defendants since 16th July 2017

before this Court so that his bail application can be heard.

Counsel to the Claimant's submission on issue No. 4 is that this Court has the inherent power to make an order in a situation as this where someone's rights is in serious breached by directing the police or any other body in charge to produce the person before the Court so that the person's bail application can be heard. Apart from this inherent powers, Counsel further relied on Section 159(1) and (2) of the Administration of Criminal Justice Act 2015. He contended that the plight of the Claimant who has been in the Defendants' custody since 16th July, 2017 without being taken to Court is enough to convince this Honourable Court that the fundamental rights of the claimant are in serious breach. Learned Counsel referred me to sections 33,35, 36,39 and 41 of the Constitution of the Federal Republic of Niger 1999 (as amended) and contended that the claimant is entitled to the 4th relief.

By the fourth relief of the originating summons, the Claimant is seeking an order directing the Defendants to produce the Claimant (who has been in the Defendants' detention) before this Court so that his bail application can be heard.

Now, by virtue of **Section 35(4)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**, a person arrested or detained upon reasonable suspicion of having committed a criminal offence (*inter alia*) shall be brought before a Court of law within a reasonable time and shall be entitled to be released either unconditionally or on conditions to ensure his future appearance at trial if he is still in custody and is not tried within two months of his detention.

Section 158 of the Administration of Criminal Justice Act 2015 provides that a person detained on suspicion of an offence shall be entitled to bail.

Under **Section 159(1) and (2) of the Administration of Criminal Justice Act 2015**, the Court is empowered to order the officer in charge of the detention facility where a person is detained to produce such a detained person at a time and date specified by the Court. On production of such detained person (or subsequently) the Court may make such order or give such directives as it considers appropriate given the circumstances.

This procedure is not strange to the fundamental rights enforcement procedure. Under **Order IV Rule 4(c)(iii) of the Fundamental Rights (Enforcement Procedure) Rules 2009**, an Applicant who alleges wrongful detention may apply *ex-parte* for an interim order for his production before the Court on the date fixed for the hearing of his application for enforcement of his fundamental rights.

What the Claimant could have done was to have included a prayer for bail in his substantive originating summons for enforcement of his fundamental right and then bring an *ex-parte* application for an order to produce him from detention on the day of the hearing of the substantive originating summons. The Claimant in this case did not do that. Without seeking a relief for bail, the Claimant has in his substantive suit sought that he be produced for the hearing of his bail. This presents a slight problem. After hearing and disposing of the substantive suit, there would be nothing left before this Court.

It would however not be keeping with the spirit and intendment of the Fundamental Rights (Enforcement Procedure) Rules 2009 to refuse the Claimant's prayer simply because it is slightly and technically irregular. Except for mode of commencement, this Honourable Court has a duty to overlook irregularities in an application for enforcement of fundamental human rights and make necessary orders and directives to safeguard the fundamental rights of persons. See **Orders IX and XI of the Fundamental Rights (Enforcement Procedure) Rules 2009**. This Honourable

Court has the power to grant the prayer sought, i.e. an order directing the Defendants to produce the Claimant on a specific date for the purpose of determining whether he ought to be released on bail. Mere irregularity ought not to stand in the way of a proper consideration of that prayer in the interest of overall substantial justice.

Now the established fact before this Court is that since his arrest and detention by the Defendants, the whereabouts of the Claimant (who has been in the Defendants' custody since then) has been unknown. The Defendants have not explained the Claimant's whereabouts even though he is in their custody. Thus, therefore, I am satisfied with the affidavit evidence that the Claimant is entitled to the grant of the order directing the Defendants to produce the Claimant from their custody either before this Honourable Court or any Court of competent jurisdiction to determine his eligibility for bail.

The fourth relief of the originating summons ought therefore be granted. Accordingly the Defendants are hereby ordered to produce the claimant either before this Court or any Court of competent jurisdiction within two weeks from today for the purpose of hearing his bail application.

ISSUE NO. FIVE

Whether the Claimant is entitled to compensation sought by this suit.

Counsel submitted on issue No. 5 that where a Court finds that any person is unlawfully arrested or detained, such person is entitled to damages in form of compensation. He relied on Section 35(6) of the Constitution. He urged this Court to hold that the Claimant is entitled to this benefit.

By the fourth relief, the Claimant is seeking N100, 000,000 as general damages against the Defendants.

Under **Section 35(6) of the Constitution**, compensation and public apology is specifically set out as remedy for unlawful arrest and detention. See also the case of **NWANGWU V. DURU (2002) 2 NWLR (PT. 751) P. 265.**

Now in determining this relief I must first state that any order or decision of Court is not only to serve the interest of the parties to a matter but also the impact the order or decision would have on the society generally.

Having said the above, although this Honourable Court has found that the Claimant's fundamental right to personal liberty was breached, I have once again perused the affidavit evidence of the claimant supporting the originating summons and especially exhibit "A" attached thereto. I have perused exhibit A of the claimant and what drew my attention is the Newspaper report titled...." How he betrayed us Gang members", and the report states:-

"Among those arrested is Eric Ezeala (the claimant in this case) another notorious kidnapper and armed robber who owns several mansion in Abuja, Lagos and Imo State. During interrogation he accused Evans of not keeping to their oath of secrecy if caught."

The information contained in exhibit "A" is quite revealing and if one juxtapose the information in exhibit A and what the public is going through because of kidnapping and armed robbery activities of the men of the underworld, public interest must outweigh any right of an individual citizen. In otherword, it is my considered view that award of general damages in form of monetary compensation to the claimant from the public treasury in the circumstances of this case will invariably amount to blessing the allegations against the claimant and for the claimant to do more at the expense of the public interest and the society. I therefore hold the view that the Defendants to take necessary steps in addition to producing him before a Court of competent jurisdiction, to arraign or charge the claimant to Court in order to determine the allegations against him. If at the end of the day the claimant is discharge of the allegations, the claimant can maintain an

action against the Defendants and claim general damages. Hence, therefore, the fourth relief of the claimant is hereby refused.

In conclusion, the instant suit succeeds in part. And that is the judgment of this Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
15/05/2020

M. NonyeOkpora:-For the claimant
Defendants:- not represented by Counsel

Sign
Judge
15/05/2020