

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 24TH DAY OF JUNE, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14, APO, ABUJA

SUIT NO: FCT/HC/CV/65/19

IN THE MATTER OF AN APPLICATION BY MR. BAGWAMS
TIMOTHY ELLY FOR THE ENFORCEMENT OF HIS
FUNDAMENTAL HUMAN RIGHTS

BETWEEN

MR. BAGWAMS TIMOTHY ELLY APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. **ECONOMIC AND FINANCIAL CRIMES COMMISSION**
3. ZAINAB TANKO YAKASAI

} RESPONDENTS

JUDGMENT

The Applicant, an Abuja-based businessman and the 3rd Respondent were long-standing close friends. They were both engaged in a business relationship in which the Applicant proposed to sell to the 3rd Respondent, his garden land located in Mabushi, Abuja, for which

she agreed and paid to him the sum of N9,000,000.00 of the N13,000,000.00 agreed purchase price. The Applicant claimed that soon thereafter, the 3rd Respondent developed cold feet on the business upon her claim that the title documents for the garden were fake. The 3rd Respondent was not impressed by the Applicant's efforts to make her realize that he had genuine title to the garden land. She wrote a petition against him to the 1st and 2nd Respondents respectively, leading to his arrest and detention; that it was only after he was coerced to write an undertaking to refund the money to the 3rd Respondent that he was released on bail twenty four (24) hours thereafter; that he also paid the sum of ₦3.5 million to the officers of the 1st Respondent (IPO), before he was allowed to go on bail.

The grouse of the Applicant is further that the 2nd Respondent is also making plans to re-arrest him if he

refused to pay the balance of the 3rd Respondent's money with respect of a transaction which is purely civil in nature.

On the basis of the facts as summarized in the foregoing, the Applicant commenced the instant action by originating Motion on Notice filed in this Court on 18/10/2019, by which he claimed against the Respondents the reliefs set out as follows:

1. An Order of Court prohibiting the 1st Respondent, their servants, agents and privies from intimidating, arresting, harassing and or detaining the Applicant in respect of the undertaking he made under duress in the office of the 1st Respondent.

2. An Order declaring as unjust, unfair, unconstitutional and unreasonable the facts of the 1st and 2nd Respondents' invitation, investigation and possible prosecution of the Applicant simultaneously on an issue that is purely of a civil character.

- 3. An Order of Court that the present investigation of the dispute between the Applicant and the 3rd Respondent by the 1st and 2nd Respondents is ultra vires the powers of the 1st and 2nd Respondents.**
- 4. An Order of Court compelling the 1st Respondent to pay into the custody of the Chief Registrar of this Court the sum of ₦3,500,000.00 (Three Million, Five Hundred Thousand Naira) only received from the Applicant in the course of the purported investigation.**
- 5. An Order directing the Applicant and the 3rd Respondent to submit to an amicable settlement in accordance with the terms agreed and reached amicably.**
- 6. The sum of ₦5,000,000.00 (Five Million Naira) only jointly and severally against the Respondents as general damages for breach of the Fundamental Rights of the Applicant.**
- 7. Substantial cost of this action.**

The 1st Respondent filed no response to the originating motion on notice and was not represented by learned counsel throughout the proceedings; even though the records of the Court bear out that he was duly served with the processes and hearing notice for the hearing of the suit.

A Counter Affidavit was filed on behalf of the 2nd Respondent on 11/03/2020, wherein it denied the case of the Applicant. Its case is that the Commission received a petition dated 6th August, 2019 from the 3rd Respondent wherein case of criminal conspiracy, obtaining money under false pretenses, forgery, breach of trust, cheating and issuance of dud cheque were reported against the Applicant; that the Applicant was formally invited to respond to the petition, by a letter dated 11th October, 2019, but that he failed to turn up; and that it was incorrect to contend that it was the 3rd Respondent that instigated

the Commission to invite him and that the case reported to the Commission was not about contractual dispute.

The 3rd Respondent, on her part, also filed her Counter Affidavit on 16/03/2020. She confirmed a portion of the Applicant's case, narrating how he offered to sell land to her for her proposed catering and recreational business; how they negotiated and agreed to a purchase price of ₦13,000,000.00; how she paid a deposit of ₦9,000,000.00 to the Applicant; how she later discovered, upon conducting search, that the purported documents of title handed over to her by the Applicant were forged and falsified. She further stated that upon her discovery, she demanded a refund of the money she already advanced to the Applicant, after which he wrote a letter of undertaking to repay the money and also issued to her a cheque for the sum of ₦9,000,000.00 for the refund which

was later returned unpaid for lack of funding in the Applicant's account; that it was on this basis that she petitioned the Applicant to the 1st and 2nd Respondents simultaneously; that the Applicant honoured the 1st Respondent's invitation, whereat he was released on administrative bail, after he made a statement; that he did not honour the 2nd Respondent's invitation; that the 1st Respondent had filed a criminal complaint against the Applicant before the Upper Area Court of the FCT for criminal conspiracy, obtaining under false pretence, forgery, breach of trust, cheating and issuing of dud cheque; that she also filed a civil suit at the FCT High Court to recover her money from the Applicant; that both actions were still pending in the two Courts.

I had proceeded to examine the totality of the facts deposed in the affidavit evidence placed before the Court by the contending sides in this case, together with the totality of the written arguments canvassed by

their respective learned counsel in the written submissions filed alongside their processes.

Now, the question of infringement of fundamental rights is largely a question of fact and the provisions of **Chapter IV** of the **Constitution** clearly set out the specific fundamental rights that are preserved for citizens; breach of which could be lawfully redressed as the case may be.

The law also remains trite that he who asserts must prove; therefore, as correctly canvassed by the respective learned counsel, the Applicant who has prayed the Court for reliefs in this action has the onus of placing before the Court sufficient material facts required to sustain the reliefs claimed, failure of which the Court will be entitled to dismiss the action. See Onah Vs. Okenwa [2010] 7 NWLR (Pt. 1194) 512 @ 535; Dongtoe Vs. C.S.C., Plateau State [2005] 1 NHRLR Vol. 1 78(SC) @ 116.

As such, it is incumbent on the Applicant to prove, by credible affidavit evidence, that his fundamental rights were breached by the alleged acts and conducts of the Respondents.

It is also very pertinent and significant to quickly emphasize and put in proper perspective, as I proceed, the duty of the Court, whilst entertaining claims under the Fundamental Rights Enforcement Procedure. That duty is certainly not to conduct a criminal investigation, inquiry or trial; neither is it to establish the guilt or innocence of any party as relating to any allegation of crime. Its essence is also not to establish the liability or otherwise of a party with respect to whatever civil transactions he/she may have been involved or engaged with another party. The focal essence of the **FREP** is simply and strictly for the Court to enforce the protection of citizens' fundamental rights preserved by **Chapter IV** of the

Constitution and the other recognized Human Rights Instruments, where an infringement is established or perceived.

The procedure under the **FREP Rules**, pursuant to the provisions of **s. 46(1)** of the **Constitution**, entitles any person who alleges that any of the provisions of **Chapter IV** of the **Constitution** and any other recognized Human Rights Instruments which make provisions for the fundamental liberties of citizens, has been, is being or is likely to be contravened in relation to him/her, to apply to the appropriate Court in the state where the infringement occurred or perceived to occur, for redress.

In proceeding, I reckon that the Court must at first examine the reliefs claimed by the Applicant, in order to determine if they are indeed situated within the ambits of infringements of fundamental rights preserved by the provisions of **Chapter IV** of the

Constitution. This is so in that, as has been severally held, the relief claimed in an action is the bedrock of that action; and that no matter how well a claim is formulated and conducted, where the relief claimed does not reflect any cognizable cause of action, the entire action will be a futile exercise at the end of the day. See Joe Golday Co. Ltd. Vs. C. D. B. Plc [2003] FWLR (Pt. 153) 376; WAEC Vs. Akinkunmi [2008] 9 NWLR (Pt. 1091) 151; NPA Plc Vs. Lotus Plastics Ltd. [2005] 19 NWLR (Pt. 959) 158.

What is being said in essence here is that the nature of the reliefs claimed by the Applicant in the instant case shall be the determinant of his fate and what the Court will hand him at the end of the day.

I had carefully examined the reliefs claimed by the Applicant and the totality of the facts placed before the Court in support thereof. My first observation is that the Applicant has alleged no breach of any of his

fundamental rights against the 3rd Respondent. The Applicant prayed for (6) substantive reliefs. The only relief that links the 3rd Respondent to this action is relief (5) thereof whereby the Applicant prays for an order directing the 3rd Respondent to submit to an amicable settlement in accordance with terms agreed and reached amicably.

To my knowledge, a prayer of this nature is not one that could be founded or predicated on any of the fundamental rights preserved for citizens by **Chapter IV** of the **Constitution**. What is more, the Applicant has not made out any cause of action upon which an order compelling the 3rd Respondent to submit to amicable settlement can be made, when the issues involved in the case are already subject of both criminal and civil litigation at different Courts, now pending against the Applicant and between the 3rd Respondent and him.

I must note further that the Applicant has not alleged any wrong doing against the 3rd Respondent, other than reporting allegations of crime against him to the respective 1st and 2nd Respondents. But then, mere reporting of allegations of crime to law enforcement agencies has not been held anywhere to constitute infringement of any of the fundamental rights guaranteed by the provisions of **Chapter IV** of the **Constitution**. It was held in Nwangwu Vs. Duru [2002] 2 NWLR (Pt. 751) 265, that where an individual has lodged a complaint to the Police by way of petition, and the Police have thereupon on their own proceeded to carry out arrest and detention, that act of arrest and detention is that of the Police alone and that such an individual cannot be held liable for the breach of the fundamental rights of the person arrested. See also Bassey Vs. Afia [2010] All FWLR (Pt. 531) 1477.

As such, my finding is that the Applicant has made out no cognizable case of infringement of fundamental rights against the 3rd Respondent and as such there is no basis for her to be joined in this action. I so hold.

Now, with respect to the 1st Respondent, I had again examined the reliefs claimed against him by the Applicant. The only relief, in my view, that has a semblance of relationship to infringement of fundamental rights is relief (1) by which the Applicant prays the Court for an order prohibiting the 1st Respondent from intimidating, arresting, harassing and detaining the Applicant in respect of the undertaking he made under duress in the office of the 1st Respondent.

Parties are *ad idem* that the 1st and 2nd Respondents are law enforcement agencies who have the statutory powers and duties to enforce the law, and on which basis they respectively invited the Applicant to answer

to the petition received from the 3rd Respondent on allegations bordering on obtaining under false pretence, issuance of dud cheque, *inter alia*. Both the Applicant and the 2nd and 3rd Respondents exhibited the said petition to their respective affidavits. The 3rd Respondent also exhibited to her Counter Affidavit, the said dud cheque for the sum of ₦9,000,000.00 issued to her by the Applicant on 26 July, 2019 and drawn on Diamond Bank Plc. There is therefore no doubt that the 1st and 2nd Respondents had good grounds to have invited the Applicant for questioning with respect to the 3rd Respondent's petition. I so hold.

According to the Applicant, he was detained by the officers of the 1st Respondent for a period of 24 hours under the Monitoring, Evaluation/Special Investigation Strategy Unit of the office of the 1st Respondent, after which he was released on bail.

As it is well known, the right to personal liberty is not an absolute right. It is limited by the circumstances set out in s. **35(1)(a)-(f)** of the **Constitution**. The provision of s. **35(4)** and **(5)** of the **Constitution**, is also clear to the extent that any person who is arrested or detained in accordance with **subsection 1(c)** of s. **35** shall be brought before a Court of law within one day of the arrest and detention.

The position of the law is that a party alleging unlawful detention must not only establish the fact of the detention, but also the duration of the detention in order for the Court to determine whether or not there is an infringement of the party's right to personal liberty as guaranteed by s. **35** of the **Constitution**. In other words, the burden of proving the fact of detention and its duration is on the party who alleges the same. See *Alhaji Bala Gusau Vs. Emeka Umezurike* [2012] LPELR 8000(CA).

In the instant case, the Applicant did not established that the 1st Respondent breached his fundamental right to personal liberty by inviting and detaining him for a period of 24 hours as he deposed in *paragraph 18* of his Affidavit in support; or any other fundamental right for that matter.

The Applicant also alleged that he was coerced into giving an undertaking on the 19th August, 2019 to refund the money received from the 3rd Respondent and that he paid the sum of ₦3,500,000.00 as a condition for his release on bail; but he failed to exhibit the purported undertaking and neither did he show evidence of the said payment of the said sum to the 1st Respondent or the 3rd Respondent.

I had examined relief (1) claimed by the Applicant all over again. All he prays for is that the Court should prohibit the 1st Respondent from intimidating, arresting, harassing and or detaining him in respect of

the undertaking he made under duress in the office of the 1st Respondent. As I had earlier found, the Applicant failed to prove that he signed any undertaking under duress. No such undertaking is produced in Court. More fundamentally, the 3rd Respondent deposed that the Police had already charged the Applicant before the Upper Area Court of the FCT, for offences ranging from criminal conspiracy, obtaining under false pretences, criminal breach of trust to forgery and cheating. The 3rd Respondent attached copy of the First Information Report to her Counter Affidavit and stated that the matter is still pending before the Court.

On the basis of this state of affairs, it becomes apparent that the totality of the Applicant's motion on notice, which, coincidentally was filed on 18/10/2019, the same date that the FIR was issued against him, have no basis in law and have been

overtaken by events. The matter has gone beyond restraining the 1st and 2nd Respondents from investigating the petition lodged against him by the 3rd Respondent; or to inquire as to whether or not the 1st and 2nd Respondents had powers to investigate purported disputes against him and the 3rd Respondent.

With respect to the 2nd Respondent, the Applicant has alleged no infringement of his fundamental rights against the Commission. Beyond formally inviting the Applicant for interview upon receiving the 3rd Respondent's petition; which invitation he failed to honour, the 2nd Respondent was not alleged to have done any wrong against the Applicant.

The Applicant also prays the Court to compel the 3rd Respondent to submit to amicable settlement of the dispute between them, when there is a pending civil action filed against him by the 3rd Respondent, where

such amicable settlement could be proposed and canvassed. The 3rd Respondent exhibited to her Counter Affidavit, copies of the Writ of Summons and other processes filed on 16/01/2020 in the FCT High Court against the Applicant for claims for refund of the sum of ₦9,000,000.00 she paid to him for the land transaction that went bad. In this connection, it is pertinent to make the point that, by my understanding of the position of the law, both criminal and civil actions could ensue from a civil or contractual transaction between two or more parties, depending on the roles played by individuals involved in the transaction and other peculiar circumstances of such transaction. See FRN Vs. Vijay Lalwani [2013] LPELR-20376(CA).

The Applicant again prays the Court for damages in the sum of ₦5,000,000.00 against the Respondents for breach of his fundamental rights, whereas he has

failed to establish precisely which specific fundamental right(s) as preserved by the provisions of **Cap IV** of the **Constitution** was/were breached, or apprehensive of being breached by the acts and conducts of the respective Respondents.

In all, I find no merit whatsoever in the instant application. It is frivolous, vexatious, very irritating and a sheer waste of the precious judicial time of this Court. It is surprising that a legal practitioner so called would lend himself to initiating such a ridiculous action, which I describe, at best, as a complete hoax and sham. The motion on notice shall be and is hereby accordingly dismissed. I order the Applicant to pay punitive costs of the action in the sum of **₦250,000.00 (Two Hundred and Fifty Thousand Naira)** only, to each of the 2nd and 3rd Respondents.

OLUKAYODE A. ADENIYI
(Presiding Judge)
24/06/2020

Legal representation:

Matthias Ikyav, Esq. – *for the Applicant*

Richard Dauda, Esq. – *for the 2nd Respondent*

A. Abdul, Esq. (with – **A. A. Sadiq, Esq.**) – *for the 3rd Respondent*

No legal representation for the 1st Respondent