

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON WEDNESDAY 13TH DAY OF MAY 2020
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 14, APO, ABUJA

SUIT NO: FCT/HC/CV/527/19

IN THE MATTER OF AN APPLICATION BY MRS. CHRISTY IGOMU FOR THE ENFORCEMENT OF HER FUNDAMENTAL HUMAN RIGHTS

BETWEEN

MRS CHRISTY IGOMU APPLICANT

AND

1. POLICE OFFICER YOHANNA AYUBA (Divisional Crime Officer, Central Police Station, Abuja)	}	RESPONDENTS
2. COMMISSIONER OF POLICE, FCT, ABUJA		
3. LADY ALHERI		

JUDGMENT

The Applicant is a business woman who claimed to have sometime approached the 3rd Respondent; an insurance broker, and had enquired from her the modalities and cost of procuring Health Insurance Policy for the purpose of facilitating Visa for herself, her husband and her two children. The Applicant

claimed that the 3rd Respondent charged an amount of ₦93,000.00 (Ninety-Three Thousand Naira) only, which amount she claimed was too exorbitant. As a result, she elected to try elsewhere for the service.

The Applicant's case is further that sometime on 19/08/2019, she got an invitation from the Central Police Station, Federal Secretariat, Abuja, upon complaint laid against her by the 3rd Respondent, that she procured Health Insurance Service from her without paying the cost of the service, being the sum of ₦93,000.00 (Ninety Three Thousand Naira) only; that she was detained at the Police Station and was ordered to pay the said sum of money to the 3rd Respondent not later than 30/08/2019, after which she was released on bail; that upon being released on bail she briefed her Solicitors to write a letter to the Officer in Charge of the Central Police Station, urging for immediate discontinuance of her interrogation on a matter that was purely civil and contractual in nature.

It is the Applicant's further case that she heard nothing from the Police about the matter after her Solicitor's intervention, until 03/12/2019, when the 1st Respondent called her and requested her to report at the Police Station the following day; that she considered the incessant invitation by the Police as distractive, traumatic and an infringement of her fundamental rights guaranteed by the provisions of **Ss. 35, 41, 34, and 37** of the **Constitution** of the Federal Republic of Nigeria **1999** and **Article 6** of the **African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 2004**.

On this basis, the Applicant filed the instant action, *vide* Originating Motion on Notice on 05/12/2019, whereby she claimed from the Respondents, reliefs set out as follows:

1.A declaration that the invitation, interrogation, harassment and arrest of the Applicant by the Respondents over a pure contractual dispute is unwarranted, unconstitutional, illegal, ultra vires and

constitutes a flagrant violation of the fundamental rights of the Applicant.

2. A declaration that the invitation, investigation, arrest and detention of the Applicant over a purely commercial contract is ultra vires the powers of the Respondents.

3. A declaration that the 1st and 2nd Respondents being neither parties nor privies to the contract, the subject matter of this case before it or a contract enforcing agency cannot validly invite, arrest, detain or question the Applicant in connection with or relating to the aforesaid contract in violation of the Applicant's fundamental rights as enshrined in Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and African Charter on Human and People's Right.

4. An Order of perpetual injunction restraining the Respondents whether by themselves, or through their servants, agents and privies and whatsoever described from further inviting for possible arrest, detention, harassing and/or in any manner violating the Applicant's

right to personal liberty in respect of the contractual dispute, subject matter of the complaint lodged against the Applicant by the 3rd Respondent.

5. An Order of this Honorable Court awarding damages in the sum of Five Million Naira (₦5,000,000.00) against the 1st and 2nd Respondents for the gross violation of the fundamental rights of the Applicant, physical and psychological trauma occasioned by the invitation, arrest and investigation of the Applicant over a matter that is purely civil and contractual in nature.

The records of the Court bear out that the Respondents were duly served with the originating motion and hearing notices for the scheduled hearing date; however, none of them responded to the action; neither were they represented by learned counsel at the trial proceedings.

I had proceeded to examine the totality of the facts deposed in the uncontroverted affidavit evidence placed before the Court by the Applicant, together with the totality of the written arguments canvassed

by her learned counsel in his written submissions filed alongside the instant application.

As a starting point, it is pertinent to state that the question of infringement of fundamental rights guaranteed specifically by the sacrosanct provisions of **Chapter IV** of the **Constitution**, is largely a question of fact. The law also remains trite that he who asserts must prove; therefore, the Applicant who has prayed the Court for declaratory and other 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] 1NHRLR Vol. 1 78(SC) @ 116.

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 provision 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.

I must at first remark that, going by the reliefs the Applicant prays from this Court, she has not alleged against any of the Respondents, the breach of any specific fundamental right guaranteed her by **Chapter IV** of the **Constitution**. According to the originating processes she filed, she states that the application is filed pursuant to the provisions of **Ss. 35** and **36** of the **Constitution**. Again, in the grounds formulated upon which the application is filed, the Applicant made reference to the rights guaranteed by the provisions of **Ss. 35(1), 41, 34** and **37** of the **Constitution**; as well as **Article 6** of the **African Charter on Human and Peoples Rights**; yet the reliefs prayed for were not hinged on the breach of any specific fundamental right by the Respondents.

Now, by my understanding of the facts deposed in the Affidavit filed by the Applicant to support the present application, her grievances are simply that the Police invited her, arrested her, compelled her to pay some money to the 3rd Respondent for services the 3rd Respondent claimed to have rendered to her which she denied; and which transaction was purely civil in nature; and that the Police invited her once again over the same issue, which invitation she refused to honour.

The first question is whether the Applicant's purported invitation by the Police was justified or could it be said that there was no basis whatsoever for her invitation?

By her own deposition, there was a connection between her and the 3rd Respondent, on whose report to the Police formed the basis of her first invitation. Her case is that the 3rd Respondent claimed she rendered services worth ₱93,000.00 to

the Applicant for which the Applicant refused to pay; whereas the Applicant insisted that the 3rd Respondent never rendered such service to her.

As I had always noted, it is not out of place for an allegation of crime to arise from civil or contractual transactions between citizens. However, even though it is not the duty of this Court to speculate on the specific allegation of crime lodged by the 3rd Respondent to the Police that resulted in the Applicant's initial invitation and detention; the Court cannot overlook the powers and duties of the Police, pursuant to the provisions of **s. 4 of the Police Act**, to arrest, investigate and prosecute allegations of crime.

On this basis, this Court cannot fault the invitation extended by the Police to the Applicant, as mere invitation for purposes of investigating allegations of crime does not and cannot constitute infringement of any of the fundamental rights preserved by the

provisions of **Chapter IV** of the **Constitution**. I so hold.

The Applicant further alleged that her detention by the Police was *ultra vires* their powers and therefore unlawful.

It must be noted that the Applicant's right to personal liberty is not absolute. It is conditional. The provision of **s. 35** of the **Constitution** which protects the Applicant's right to personal liberty also recognizes the duty of the 1st and 2nd Respondents to arrest and detain persons, on reasonable suspicion of commission of crime. See Ransome-Kuti Vs. A. G. Federation [2001] FWLR (Pt. 80) 1637 @ 1696; Udeh Vs. F R N [2001] FWLR (Pt. 61) 1734 @ 1747.

The position of the law is further that the Applicant who alleges unlawful detention has the evidential obligation to prove the duration of the detention, in order for the Court to determine whether or not the

detention constituted infringement of the clear provisions of s. 35(4) & (5) of the **Constitution**, which basically guarantees that a citizen arrested for allegations of commission of crime must not be detained beyond a period of one day or two days as the case may be. See Alhaji Bala Gusau Vs. Emeka Umezurike [2012] LPELR 8000.

In the present case, the Applicant merely deposed that she was arrested and detained and granted bail by the Police; but failed to state the duration or length of time of the detention, which is fundamental to determining the alleged illegality of the detention.

The Applicant has further prayed the Court to perpetually restrain the 1st and 2nd Respondents from further inviting her with respect to the transaction between the 3rd Respondent and her that resulted in the 3rd Respondent's complaint to the Police.

The Applicant related in *paragraphs 11-13* of her Affidavit in support, how, on 03/12/2019, she

received a call from the 1st Respondent, asking her to report to the Central Police Station, the following day; and how she informed him that she was in far away Benue State and how the 1st Respondent shifted grounds and agreed for her to report on 09/12/2019. However, rather than heed the Police invitation, the Applicant proceeded to file the present suit on 05/12/2019.

It has been held in several decided authorities that for a person to approach the Court to be shielded against investigation of allegations of or upon suspicion of commission of a crime, or criminal prosecution, will amount to interference with powers conferred by the **Constitution** on law enforcement agencies, to carry out such investigations and possible prosecution. See Fawehinmi Vs. IGP [2007] 7 NWLR (Pt. 665) 481; A. G. Anambra State Vs. Uba [2005] 15 NWLR (Pt. 947) 44.

It is my view, upon assessment of the totality of the facts deposed by the Applicant to support the instant action that she merely filed this suit with the sole aim of obstructing or stalling the 1st and 2nd Respondents from further investigating whatever allegation lodged against her by the 3rd Respondent.

But I daresay that no responsible Court will grant an order of injunction to perpetually shield any citizen from being investigated or prosecuted for allegations of commission of crime. See also Bamidele Vs. Commissioner for Local Government [1994] 2 NWLR (Pt. 329) 568; Peter Vs. Okoye [2002] FWLR (Pt. 110) 1864.

The Applicant also alleged that the Police ordered her to pay the sum of ₦93,000.00 (Ninety Three Thousand Naira) only to the 3rd Respondent on or before 30/08/2019 or be subjected to **“thorough Police drilling and procedures for recovery of money from suspects.”**

However, the Applicant did not state whether or not she complied with the said Police order; rather she deposed that she briefed her Solicitors who stepped in and wrote a letter to the Police. Copy of the said letter, written on 28/08/2019 and acknowledged by the Police on 29/08/2019, is attached as exhibit to the Affidavit in support.

Whilst I agree with the contention of the Applicant's learned counsel that it is not the duty of the Police to settle or investigate contractual disputes between citizens; or to constitute themselves to a debt collecting agency; there is however no clear cut evidence that the Police indeed compelled the Applicant to pay the said sum of ₦93,000.00 (Ninety Three Thousand Naira) only to the 3rd Respondent in this case.

Contrary to the submissions of the Applicant's learned counsel who submitted that breach of civil or business relation cannot ripen into criminality, my

understanding of the position of the law is that both civil and criminal actions could ensue from a civil or contractual transaction, depending on the roles played by individuals involved in the transaction. Each case must always be assessed on the basis of its peculiar facts. See FRN Vs. Vijay Lalwani [2013] LPELR-20376(CA).

It will therefore be too simplistic to hold that the transaction between the Applicant and the 3rd Respondent was a mere civil or contractual transaction, when the Applicant, by filing the present application, seemed to have stalled further investigation sought to be carried out by the Police on the matter.

Clearly, the Applicant in this case has failed to establish the infringement or threatened infringement of any of her fundamental rights guaranteed by the provisions of **Chapter IV** of the **Constitution**. In the overall analysis therefore, I hold that this suit is not

justiciable. It lacked in merit and in substance. It is speculative, pre-emptive and deliberately filed to stall investigation of petition lodged against the Applicant by the 3rd Respondent with the 1st and 2nd Respondents. The suit shall be and is hereby accordingly dismissed.

OLUKAYODE A. ADENIYI

(Presiding Judge)

13/05/2020

Legal Representation:

Ganny Ajape, Esq. – *for the Applicant*

Respondents unrepresented