IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO
CLERK: CHARITY
COURT NO. 16

SUIT NO: FCT/HC/CV/0575/18

DATE: 08/05/2020

BETWEEN

1. **UGOCHUKWU CHAMBER LINE IHEARINDUEME……………… APPLICANTS**
2. **CHINEDU NWOBODO**

AND

1. **THE POLICE SERVICE COMMISSION**
2. **THE INSPECTOR-GENERAL OF POLICE } ………….. RESPONDENTS**
3. **MR. ONOJA(THE I.P.O.)**

JUDGMENT

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The applicants in this case are two. They are Ugochukwu Chamberline Ihearindueme and Chinedu Nwobodo. They had sued the Police Service Commission;the Inspector –General of Police and one Mr. Onoja who according to them was the InvestigatingPolice Officer.

The applicants filed their application dated 8/1/18 on the same date, pursuant to **Order 2 Rules 1,2,3, 4 and 5 of the Fundamental Right (Enforcement Procedure) Rules,2009** and **Sections 34(1),35(1),40,41(1) and 44(1) of the 1999 Constitution** as amended.

The application seeks six(6) clear reliefs as reflected on the face of the processes filed. The reliefs as couched by the applicants are:

(1)A Declaration that the applicants are entitled to their fundamental rights with respect to the dignity of their person , personal liberty , right to move freely and reside in any part of Nigeria, right to assemble freely and associate with other persons as well as not to have their moveable properties seized and confiscated by anyperson or authority without recourse to the due process of the law.

(2)A Declaration that the arrest, detention,beatings and torture of the applicants on the 4th day of January till date by the 3rd Respondent who is at all time material to this case under the control, supervision and employment of the 1st and 2ndRespondents are illegal, unwanted void and unconstitutional.

(3)An order of this Honourable Court directing the 1st,2nd and 3rd Respondents to release the applicants on bail as well as their **₦7,80:00k** seized from them pending the determination of this case unconditionally or upon such conditions as the Honourable Court may deem fit to make.

(4)An order restraining all the Respondents, theiragents,servants, Security men, privies, officers, operatives howsoever described from further arresting, detaining, harassing infringing upon the applicants’ rights to freely move about anywhere in Nigeria, right to freely associate with other persons as well as further seizing their moveable properties.

(5) An order awarding the Sum of **Five Hundred Million Naira(₦500,000,000)** only damages against all the Respondents jointly and severally for violating the afore-said constitutionally guaranteed human rights of the applicants.

(6) An order award the **sum of Two Hundred Million Naira (₦ 200,000,000 only as exemplary and aggravated)** damages against all the Respondents jointly and severally for violating the already stated constitutionally guaranteed human rights of the applications.

The ground upon which the reliefs are premised are:

(1) As Nigerian citizens the fundamental rights of the applicants are guaranteed by the 1999 constitution of the Federal Republic of Nigeria(as amended) and cannot be taken away save by due process of the law.

(2) The applicant's undue and illegal harassment, arrest, beating, torture and detention from 4/01/18 till date by the 3rd Respondents, who are at all the time material to this case under the control, supervision and employment of the 1st and 2nd Respondents without committing any offence is unconstitutional and in violation of their fundamental rights to personal library, dignity of their persons and freedom of movement.

(3) The 1st and 3rd Respondents have refused and/or failed to arraign or change the applicant before any court for any criminal offence whatsoever.

(4)The applicants' arrest, harassment, beating, torture, detention from the 4/01/18 till date and the restriction of their rights to move freely in Nigeria by the 1st and 3rd Respondents on the afore-said date without any recourse to due process of law are unconstitutional and a violation of the applicants rights to respect to the dignity of their person, personal liberty and free movement in and out of any part of Nigeria, to freely associate with other persons as well as the right not to have their moveable properties seized without recourse to the process of the law.

(5)Where the reason for their arrest, detention,harassment, torture, restriction of free movement and seizure of their moveable Properties savours of criminality, they should have been arraigned before a court of law.

(6)Unless this Honourable Court intervenes by ordering the 1st and 3rd Respondents to put a stop their illegal and unconstitutional actions stated above, they will continue to trample and violate the applicants' fundamental human rights which were granted to them by the ground norm of our father land.

In support of this application is a statement of facts, a 21-paragraphs affidavits deposed to by one Divine Ezinne Ugochukwu, and a further affidavit of 20 paragraphs and Reply on points of law. There is also a written address wherein five(5) issues were formulated.

Upon services of the applicants processes on the Respondents, they too filed a 6 paragraphs counter-affidavits. It is dated 6/3/18 together with a written address. They also filed a further counter –

affidavits to the applicants' further affidavits. It is dated 4/10/18 and it is of 16 paragraphs. There is also a written address.

Perhaps it would not be out of place to quickly gloss over what transpired in court since the inception of this case.

The case was taken in court for the first time on 31/1/18. On that day, we took the applicants motion Ex-parte, number M/2315/18 for substituted service. The motion was granted and we adjourned to 6/3/18 for hearing.

On the 6/3/18, the case could not proceed to hearing because the Respondents were recently served with the applicants' processes. Learned counsel for the Respondents, Dr. James Apoenze then prayed for an adjournment to enable them file their own processes in response to the application. The application was not opposed by Mr. Charles Chimezie of counsel to the applicants. I granted the application.

On 26/6/18, the Respondents' counsel moved an application vide motion on Notice Number m/3504/18 and dated 5/3/18. The motion on Notice prayed essentially for extension of time within which they are to file their response to the originating motion out of time. The application was granted and the applicants' counsel prayed for an adjournment to enable them study the counter-affidavits and then reply to same if need be.

Subsequently, the court was engaged in Election Petition Tribunal assignment and only resumed back in court on the 29/10/19.

By 29/10/19, the applicant's counsel had filed a motion on Notice number M/1038/18 prayed for extension of time to regularise their further affidavits and Reply on points of law to the Respondents

counter-affidavits and written address. This is because the applicants' further affidavits was filed out of time. That motion M/1038/18 at the instance of the applicant is dated 14/11/18 and filed same day.

The Respondents counsel did not oppose the application and it was granted.

Upon the applicants' application for the adjournment which was 0not objected to by the learned counsel to the Respondents' we adjourned and fixed 20/1/20 for hearing.

On 20/1/20 the application was taken and heard in court. The learned counsel to the applicants, Charles Chimezie Esq. adopted his written address as his arguments in support of the application. Referring to the written address of the Respondents' counsel attached to their counter- affidavits, Mr. Chimezie submitted that the case of **FRN VS DOKUBO**heavily relied upon by the Respondents is not applicable. He said Dokubo's case had to do with reason whereas, the complaints of the Respondent against the applicants is armed Robbery. And that even then, no charged has been framed nor presented to any court of law. So, in all, the case of Dokubo is totally different from this one. He urged the court to grant this application.

For all his arguments, both oral and written, learned counsel cited and relied on the cases of**CHIEF CHINEDU EZE & ANOR VS I.G.P & 4 ORS (2007) CHR 43, OTUNBA OYEWOLE FASHAWE VS A.G. FEDERATION & 3 ORS(2007) CHR 8; AGBAKOBA VS DIRECTOR, STATE SECURITY SERVICES & ANOR (1994) 6 NWLR (PT.351) 475; AND A.S.E.S.A VS EKWENEM (2001) FWLR (PT.51)2039.**

On his part, learned counsel for all the Respondents, Mr. I.A. Ayugu with whom was I.C. Oyefeso Esq. also relied on all the paragraphs of their counter –affidavits and adopted the written address attached as his arguments.

Mr. Ayugu further submitted that the applicants were served with their counter –affidavits on 18/3/18 and that they (the applicant) filed a furtheraffidavit on 3-7-18 which is about four(4) months after service on them. According to the learned counsel, this is wrong, since by the provision of Order2Rule 9 of the Fundamental Rights Enforcement Procedure Rules,2009, they had only 5 days to file any further affidavit. Having not done so within 5 days, he urged the court to discountenance the applicant's further affidavit as no process was filed to regularise same. Mr. Ayogu went further to urge me to deem the content of their counter-affidavit as true and correct, samehaving not been denied. Not yet done, learned counsel to the Respondent argued that in case the court would not discountenance the applicants' further affidavit, the court should be mindful of their own further counter-affidavit which they had filed. It is dated 4/10/18 and it is of 16-paagraphs. He also referred to the written address attached to that further counter-affidavit, adopted same as his further argument and urged the court to refuse the application.

In a short reply, learned counsel to the applicant submitted that it is not true that they were served on 18/3/18. He said they were served on 26/6/18 and they filed their further affidavit on 3/7/18 which is about 8 days after and not 4 months. Furthermore, he said he agreed they should have filed by the 5th day after service but the default was regularised by a motion on Notice that the court took & granted on 29/10/19.

Finally, Mr. Charles Chimezie of counsel to the applicants submitted that there is no provision in the Fundamental Rights Enforcement Procedure Rules,2009 which allows a Respondents to file a further counter-affidavits.

He therefore urged me to discountenance the Respondents further counter-affidavit as having no basis in law.

For all the learned counsel to the Respondents'arguments, he cited, *interalia*, the cases of **ONA VS OKENWA (2010)2 NWLR(PT. 1194)512, SAMBO VS NIGERIAN ARMY COUNCIL (2017) 7 NWLR(PT. 1565) 427; LONGE VS F.B.N(2006) (PT. 967) 228; ATAKPA VS EBETOR (2015) 3 NWLR(PT. 1447) 575,UDO VS ESSIEN (2015) 5 NWLR (PT. 1451) 103, HASSAS VS EFCC(2014) 1 NWLR(PT. 1389) 637, I.G.P VS UBAH (2015)11 NWLR (PT. 1471) 433 ETC.**

At this juncture, and very quickly, I must set the record straight by saying thatI agree with the learned counsel to the applicants that the Respondents counter-affidavits was served on them on the 26/6/18 and not 18/3/18. Secondly, I agree also with Mr. Chimezie that he filed and argued an application on 29/10/19 to regularise their further affidavit within 5 days prescribed by the extant rules. I granted the application which effectively cured the lateness of filing on the 8th day after service.

Thirdly, I agree with the applicants' counsel that there is no provision in the Rules that enables a Respondent to file a further counter affidavit.

In effect therefore, the further counter-affidavit of the Respondentsdated 4/10/18 is hereby jettisoned.

Let us now move on. The two learned counsel filed written addresses which they have adopted as their arguments. And they

both frame issues for determination.Infact, the applicants' counsel frame five(5) issues for determination while the Respondents' counsel framed2 issues for determination.

The applicants' five issues for determination are;

(1)Whether or not the harassment, arrest, beating, torture and detention of the applicants from 4/1/2018 till date by the 3rd Respondent who is at all time material to this case under the control, supervision and employment of the 2nd and 3rd Respondents without committing any offence is unconstitutional and in violation of their Fundamental rights to personal liberty, dignity of their person, freedom of movement, freedom from torture as well as not to be visited with an inhuman treatment as provided for in sections **34(1)** and **41(1)** as well as **S. 35(1)** of the **Constitution of the Federal Republic of Nigeria 1999**(as amended).

(2)Whether or not the detention of the applicants at S.A.R.S' detention cell since the 4/1/18 till date thereby stopping the applicants from freely moving in and out of any part of Nigeria violated their right to freedom of movement as provided for in section **34(1) of the constitution of the constitution of the Federal Republic of Nigeria 1999**(as amended).

(3)Whether or not the 1st,2nd and 3rd Respondents' action in forcefully and without any basis harassing, arresting, torturing and detaining the applicants from the 4/01/2018 till date without charging them to court for any offence that

they were arrestedfor, infringed upon their rights to respect to the dignity of their persons as provided for in section **34(1) of the Constitution of the Federal Republic of Nigeria, 1999** (as amended).

(4)Whether or not the actions of 1st,2nd and 3rd Respondents arresting the applicants because as theyput it, they got information that they were known to be associating with one Mr. Plumber who they say committed the offence of armed robbery and upon that basic arrested, detained as well as seized their sum of **₦ 7,800 =** infringed upon the applicants' Right to freely associate with other persons as well as not to have their moveableproperties seized without due recourse to law as provided for in **Sections 40 and 44(1) of the Constitution of the Federal Republic of Nigeria 1999**(as amended)?

(5)Whether or not the applicants are entitled to all the reliefs they are seeking in this application?

The two(2) issues submitted for determination by the Respondents' counsel are:

(a)Whether the applicants have placed compelling and sufficient materials before this Honourable court as to be entitled to the reliefs sought?

(b) Whether the arrest and detention by the Nigerian Police Force in the normal cause of their duty constitutea breach of Fundamental Human Rights.

It is obvious from what I have read out of the various issues submitted by both counsel that there are proliferations and repetitions of one and only one issue. That lone issue is the fifth issue of applicants'issues for determination and the 1st issue of Respondents' issues for determination meaning therefore, the only issue that calls for determination in this case. That issue undoubtedly is:

> "*whether the Applicants have placed compelling and sufficient materials before this Honourable Court as to be entitled to reliefs sought*"

It is my firm view that any or all other issues in this matter shall be dealt with under that broad issue I stated above.

Before forging ahead in determining that issue, I like to statethe facts that are made out before this court in this case. The facts stand out from the affidavit evidence filed which I had earlier referred to and the facts filed along with application under scrutiny.

The facts are:

(1)The 3rd applicant in company of two other policemen arrested the applicants on 4/1/2018.

(2)A search was conducted in the house of the 1st applicant in the evening of that 4/1/2018.

(3) The two applicants were arrested at “Next cash and carry stores, Kadokuch” where they had gone to withdraw money from ATM.

(4) The applicants were taken to S.A.R.S, abattoir, Abuja where they were subsequently detained.

(5) As at 8/1/18 when this application for Enforcement of Fundamental Rights was filed in this court, the applicants were put in detention.They were released later in June 2018.

(6) The basis for the arrest and detention of the applicants according to the Respondents is that they (Respondents) are investigating complaints of Armed Robbery reported to them.

(7) A sum of **₦7,800** was seized from the 1st applicant upon arrest.

Now, to the main issue in contention. Are the applicants entitled to the reliefs being claimed in this court. The reliefs sought are declaratory in nature, restraining orders and general and exemplary and aggravated damages.

Sprouting from the above issue is the question whether or not the arrest and detention of the applicants by the 3rd Respondent amounted to an infringement of the Fundamental Rights of two applicants.

Learned counsel to the applicants submitted that the action of the 3rd Respondent, who at all material times was under the control and supervision of the 1st and 2nd Respondent in arresting, torturing and detaining the applicants violated their rights to personal liberty and freedom of movements and provided for under sections**35(1**) and **41(1**), of the 1999 Constitution as amended. He also argued that failure to charge them to court and the seizure of their sum of **₦7,800 violated** sections **34(1),40** and **44** of the amended 1999 Constitution.

He finally submitted that the applicants are entitled to all the reliefs they sought in this application. He relied on **S.35(6) of the 1999 Constitution** (as amended).

On the contrary, learned counsel to the Respondents argued that the Police did no wrong in effecting the arrest and detention of the applicants. This according to him, is because they acted within the confines of the law and in pursuant of investigation of criminal allegation of armed robbery. He relied particularly on **section 4** of the **Police Ac**t and numerous case law authorities which I had earlier referred to.

All the full arguments of counsel are on record and need not be repeated here.

Now, it must be stated beyond any shadow of doubt, ambiguity or equivocation that an action for enforcement of Fundamental rights would be entertained against a person who has breached, likely to breach those rights. The burden of prove lies on the person making the allegation and the burden must be discharged by credibleevidence.

The principle is well rooted that he who asserts must prove. See.**<u>ONA VS OKENWA(2010) 7 NWLR (PT. 1194)512; SAMBO VS NIGERIA ARMY COUNCIL (2017) 7 NWLR (PT. 1565) 427.</u>**

And in this type of application or suit, the evidence that could sustain any relief are only supplied through affidavit.

The pith and substance of the allegation by the applicants is that they were arrested, detained,tortured, intimidated and harassed by the Respondents and that constitute a breach of their Fundament Rights.

I had already stated the facts plainly made available to the court by both parties and sanctioned by this court earlier in this Judgment. The fact of arrest and detention of applicants were not denied by the Respondents. And I found no evidence of fact of torture against the Respondent. But I found that the Respondents seized a sum of **₦7,800** belonging to the 1st applicant. The applicants were detained for about four days before they approached this court for enforcement of the Fundamental Rights and claim of damages.

It is also a glaring fact that the Respondent did not consider bail in their favour and nor were they charged to court for any offence of whatever nature or gravity.

The Respondents also agreed to all the above findings of this court but claimed they acted constitutionally and under the Police Act. Specifically, they argued that the arrest and detention were done pursuant to investigation of a complaint of armed robbery reported to them. They claimed the applicants are strong suspects or culprits or participant in the alleged armed robbery.

It is beyond controversy that Police officers in this country and indeed in any civilized country are empowered by law to receive and

investigate any criminal complaints occurrence or incidents. See **Section 4 of Police Act**.

The Respondents are police officers. The applicants, incidentally, did not controvert their (Respondents) claim of a report and subsequent investigation of a case of armed robbery. In my view therefore, this firmly established fact is a clear coastline. There are long line of authorities that an arrest properly and reasonable effected by any police officer investigating an alleged crime cannot constitute a breach of Fundamental Rights. See **UDO VSEESIEN (2015)5 NWLR (PT. 1451) 103; OKAWO VS COP & ANOR(2001) ICHR 407.**

In **ATAKPA VS EBETOR(2015) 3 NWLR(PT. 1447)575,** it was held;

> *"They may take any action they deemed fit to take upon investigation. They may arrest, detain and prosecute an alleged offender by virtue of **Section 4 of the Police Act**, **Section 17 to 20 of the Criminal Procedure Act** and **Section 35(1)(c) of the Constitution of the Federal Republic of Nigeria,1999** as amended. In the legitimate discharge of their duties, they cannot be sued in court for breach of Fundamental rights. Such breach does not cover where a respondent has made a legitimate complaint to the police; or cases where the police investigate and act on complaints duly made to them."*

In effect and without wasting precious time, I find no wrong and see none in the arrest of the applicants and their subsequent taken and detention by the Respondent to their office at SARS, Abbatoir Abuja. Therefore, reliefs 1,2, and 3 fails and are hereby refused.

The above is as far as I can travel along in company of the Respondents.We have to part and go our different ways at this juncture or junction.

It was alleged by the applicants that they were arrested on the 4th day of January,2018 when they filed this application they were not released from detention. That is, they were confined in SARS cell from 4th-8th January. That was a period of four days which would translate to 96 hours. They were not granted bail, they were not charged to any court of law and a sum of **₦7,800** was taken away from the 1st applicant. This to my mind is patently wrong, an abuse of power and a clear violation of the provisions of our organic law relating to Fundament rights. Itmanifests that **S.35** of our Constitution, the Supreme law has been trampled upon carelessly, Section 35(4) and (5) provides thus:

"Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he 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.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(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."

It is worth repeating that when a person,even upon reasonable or lawful or justifiable arrest being detained for more than 24 or 48 hours as constitutionally allowed, the person or the police officer would have violated his or her personal Fundamental Rights to freedom of movement. Even if the detention has been for a few hours beyond the prescribed hours or period. In **EZE VS I.G.P(2007) CHR43,**it was held**:**

> *"The length of time of the detention is immaterial to the fact o unlawful detention. See* ***ALABI VS BOLYES*** *where a detention for three hours was held to be a violation of the applicant's right to personal liberty."*

I ask the question,why did the Respondents not apply for an *ex-parte*order before any court to allow them keep the applicants in their custody pending conclusion of investigation? After all, the Fundamental Enforcement Procedure Rules, 2009 allows for that type of application. The Respondents neglected to avail themselves of that material provision of the law. That is very unfortunate to say the least.

In the case of **DURUAKU VS NWOKE (2015)**15 **NWLR** (**PT. 438) 482;** it was held:

> *"A mere allegation of crime or wrong – doing against a suspect, irrespective of its seriousness**, cannot operate** to curtail the Fundamental rights of the suspect nor can it operate to justify incarceration and torture of a suspect."*

See also,**FAWEHINMI VS I.G.P(2002)7 NWLR(PT.767)606.**

In clear term, the applicants were detention beyond constitutional prescribed limit of 24 hours (where there are courts within a radius of 40 kilometres. They were detained at SARS office, Abattoir where there are courts within 40 kilometres of it is radius.

In **GEORGE OLADEJO VS C.O.P AND ANOR, SUIT NO: HOS/MISC. 82/83** of the 7th November, 1998 quoted in **Fawehinmi**:**Nigeria Law of Habeas Corpuspage 331at 334**, it was held that all allegations of criminal offences whethercapital or non-capital must be investigated and charged to court expeditiously. **Section 35 of 1999 constitution** stipulates that an arrested person must be brought to a court within 40 kilometres radius of it. See S.**24 and 27 of Police Act.**

In effect and having regard to the foregone, I found it proved as a fact that the applicants were detained unlawfully and without any legal basis.

In addition. The 1st applicant's money of **₦7,800** was illegally seized. All these amounted to a violation of their Fundamental Rights to own moveable properties. Thus, the provisions of **S.34,40,41 and**

44 of the 1999 Constitution and were contravened by the Respondents. The applicants are entitled to damages.

The question is, how much should I award in their favour.

They are claiming **₦500 million** general damages against all the Respondents jointly and severally for violating their fundamental Rights. In addition, they want **₦200 million as** exemplary and aggravated damages for the same reasons.

General damages are monetary compensation which the law would presumeto have occurred as a result of the injury or loss or harm occasioned to a plaintiff as a result of the unlawful conduct or act of the Defendant. They are not open to precise calculation. The law usually presumed them to have occurred. **See.NIGERIA EXPORT COUNCIL VS BANBA COMM. LTD(2008)24 WRN; SHELL PETROLIUM DEVELOPMENT COMPANY(NIG) LTD VS TIEBO VII AND 4 ORS (1996) 4 NWLR (PT.445) 657; SEVEN-UP BOTTLING COMPANY PLC VS ABIOLA AND SONS BOTTLING CO. LTD AND ANOR (2002) 2 NWLR(PT. 750) 40.**

In this case, the applicants have suffered some mental agony and material loss. I assess a sum of **₦2 million** as damages jointly and severally against the Respondents in favour of the applicants.

In the case of **WILLIAMS VS DAILY TIMES OF NIGERIA LTD(1996) 1 NSCC 15;** the Supreme Court held as follows:

(1) Exemplary damages is awarded in order to punish a defendant whose conduct has been outrageous or scandalous.

(2) Exemplary damages is awarded. Where statute prescribe them for oppressive, arbitrary or unconstitutional action by servants of government.

In relation to (1) above, I do not think it is proper to view the action of the Respondents as outrageous or scandalous as to warrant any punitive action against them in the form of exemplary or aggravated damages. Afterall,they acted or swung into action when a report of Armed Robbery was made to them. They only fell into an error when the applicants were detained beyond the constitutionally prescribed period without bail and without a formal arraignment in court. And it is precisely for that reason that I have awarded a sum of **₦2 million in their favour.** I do not see my way clear in a further award of any exemplary damages in the circumstances of this case. I therefore refused to do so.

Finally, I hereby ordered that the sum of ₦7,800 = seized from the 1st applicant be returned to him immediately.

This application succeeds in part.

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Suleiman Belgore

(Judge) 8-5-2020.