

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 33
CASE NUMBER: SUIT NO. FCT/HC/CV/3070/19
DATE: 14TH MAY, 2020

BETWEEN:

MOHAMMED IBRAHIM BASHIR & 1 OR.....APPLICANT

AND

MR. LEKE OKE & 2 ORS.....DEFENDANT

APPEARANCE

Raphael Oyewole Esq for the 1st Respondent.

Chukwudi prince Oli Esq for the 2nd Respondent.

Charles .C. Iwuchukwu Esq.

JUDGMENT

By an amended originating Motion dated 3rd day of December, 2019, and filed on the 6th day of December, 2019, brought pursuant to order 1, 2, 3 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, sections 35 (1) and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as altered), Articles 4, 5, 6 and 7 of the African charter on Human and people’s rights (Ratification and

Enforcement) Act, CAP 10 LFN, 2004, the Applicants herein prayed the court for the following Reliefs:-

1. A Declaration that the continual harassment of the applicants by the 1st Respondent via the 2nd and 3rd Respondents in a matter which is Civil in nature to wit: tenancy, is ultra vires, unconstitutional, mala fide, repressive, illegal and thus contravenes the Applicants Fundamental Rights to personal liberty and freedom of movement as guaranteed by section 35 of the constitution of the Federal Republic of Nigeria 1999 (as altered) and Articles 6 and 12 of the African Charter on Human and people's Right (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 2004.
2. An order of this Honourable Court staying further proceedings in a Direct Criminal complaint in case No. CR/558/2019 instituted before the upper Area Court of the Federal Capital Territory, Holden in Mpape, Abuja, in a tenancy related matter which same matter and same parties is pending before Her worship Theresa N. Otu of Court 12 District Court Wuse 2 in CV/102/2019 as same is purely Civil in nature, an abuse of court process and that the upper Area court lacks Jurisdiction to entertain the matter.
3. An Order of the Honourable Court for an award of compensation for the psychological trauma, intimidation and harassment by the Nigeria Police force on several occasions, occasioned by the 1st Respondent in the sum of fifteen Million Naira (₦15,000,000.00).
4. General damages and cost of litigation in the sum of ₦5,000,000 (Five Million Naira).
5. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances.

In support of the originating motion, is a statement setting out the name and description of the Applicant grounds upon which the reliefs are being sought, as well as two distinct Affidavits of the Applicants.

The affidavit of the 1st applicant Alhaji Mohammed Ibrahim deposed to by the 1st Applicant himself contains 14 paragraphs and annexures marked Exhibits A1, A2, B1 and B2 Respectively.

While the 2nd Affidavit is that of the 2nd Applicant Alex Obiora, deposed to by the 2nd Applicant himself comprising of 11 paragraphs and annexures marked Exhibits C, D and E respectively.

In support of the originating motion is a written address dated 3rd December, 2019.

In opposing this originating motion, the 1st Respondent filed a Counter Affidavit of 30 paragraphs deposed to by Leke Oke, the 1st Respondent as well as a written address in support of same dated 28th January 2020.

Also in opposition to this originating motion, the 2nd Respondent filed a Counter Affidavit of 4 paragraphs deposed to by one Ofoma Chukwuemerie, a litigation Secretary in the law firm of OLI AND PARTNERS, counsel to the 2nd Respondent in this suit, as well as a written address in support of same dated 16th March, 2020.

In response, the Applicants filed two separate further and Better Affidavits to the 1st and 2nd Respondents Counter Affidavit and written address respectively.

The further and better Affidavit in response to the 1st Respondent's counter Affidavit contains 26 paragraphs deposed to by the 1st Respondent himself.

While, the further and Better Affidavit in response to the 2nd Respondent's Counter Affidavit contains 12 paragraphs deposed to by the 1st Applicant, Alhaji Mohammed Ibrahim Bashir.

Likewise, in further opposition to this originating motion, the 1st Respondent filed a Notice of preliminary objection, brought pursuant to Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and under the inherent Jurisdiction of this Court. Same is supported by 6 grounds upon which the objection is predicated as well as a written address in support of same dated 28th January, 2020 and filed same day.

The applicants responded to the Notice of preliminary objection by filing a reply address on points of law to the 1st Respondent's preliminary objection not the one dated and filed on 28/01/2020 but rather the preliminary objection dated and filed on 14th November, 2019. Learned Applicant's counsel adopted same as their reply on points of law while addressing the court on the 20th day of March, 2020.

Now since the issue of jurisdiction is fundamental as same is raised in the Notice of preliminary objection, it is pertinent that it be considered first.

Therefore, the Applicant's Notice of preliminary objection is predicated upon the following grounds:-

1. The principle Relief sought is not for the enforcement of the Applicant's Fundamental Rights.
2. The Applicants have not shown in their supporting affidavits how the Respondents have in fact infringed or are likely to infringe on their Fundamental Rights.
3. The Reliefs sought by the Applicants are not maintainable under the fundamental Rights (Enforcement Procedure).
4. The competency of suits and indeed the jurisdiction of courts are determined by the claims and the Reliefs sought.
5. The Affidavit of the Applicants offends the provisions of the Evidence Act 2011.

In the 1st Respondent's written address in support of the Notice of preliminary objection, learned Applicants counsel Raphael Oyewole Esq, formulated three issues for determination namely:-

1. Whether this Honourable court has the requisite jurisdiction to entertain this suit?
2. Whether the reliefs of the Applicants are grantable under the Fundamental Rights Enforcement Procedure Rules?
3. Whether the suit of the Applicants does not amount to an abuse of court processes.

In arguing the first issue, learned counsel submitted that it is settled law that the issue of jurisdiction of the trial court is fundamental to adjudication and must first be examined before any other issues. That where a court entertains a suit where it lacks jurisdiction, it would embark in a futile exercise. Reliance was placed on the case of NEPA VS OLAGUNJU (2005) 3 NWLR (PT. 913) page 610.

Learned counsel submitted that in the instant suit this court lacks the jurisdiction to entertain same in view of the Applicants Affidavit as there's no fact to constructively support the allegations.

Counsel submits that it is trite law that the ground and circumstances upon which the reliefs are sought in a fundamental Right Enforcement Procedure matter must be clearly and fully stated in such details as to disclose the infringement being complained of on this, reliance was placed on the case of ECONOMIC AND FINANCIAL CRIMES COMMISSION VS EKEOCHA (2008) 4 NWLR (PT. 1106) 161.

Counsel submits that the instant Application is a waste of the precious time of this court and an attempt to escape justice through an abuse of court process.

On issue two, learned Counsel submitted that the Reliefs sought by the Applicants are not grantable as they are unsupported by facts and are totally unconnected to the Enforcement of any of the Rights as enshrined in chapter 4 of the 1999 Constitution (as amended) or the African Charter on Human and People's Rights.

Counsel submitted that it is trite that the factors that can assist the court to discover the principal claim in a fundamental rights application include the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit.

Counsel relied on the cases of OLAWAJIN VS OBAFEMI AWOLOWO UNIVERSITY (2004) 2 FHCLR 166; CHUKWUAGOR VS CHUKWUAGOR (2006)49 WRN 183; RAYMOND DANGTOE VS CIVIL SERVICE COMMISSION OF PLATEAU STATE (NO. Citation Supplied).

That the 9 grounds predicating this Application as well as the 2 supporting Affidavits of the 1st and 2nd Applicants have disclosed no useful facts to show that the rights of the Applicants have been violated or are currently under threat.

That the grounds upon which the reliefs are sought must clearly and fully be stated in detail as to disclose the infringement being complained of. Reliance was placed on the cases of ECONOMIC AND FINANCIAL CRIME COMMISSION VS EKEOCHA (SUPRA) ; OLISA AGBAKOBA VS DIRECTOR STATE SECURITY SERVICE (1994)6 NWLR (PT. 351.) 475.

On issue three, it is submitted that this suit is an abuse of court process as the reliefs of the applicants are not primarily based on the enforcement of their Fundamental Rights.

That abuse of judicial process entails improper use of the judicial process in litigation when a party improperly uses the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice.

Reliance was placed on the cases of SARAHI VS KOTOYE (1992) 11-12 SCNJ, 26; ALHAJI MUHAMMADU MAIGARI DINGYADI AND ANOR VS INDEPENDENT NATIONAL ELECTORAL COMMISSION AND 2 ORS (2011) 4 SC (PT.1) 1.

This Honourable Court is then urged to hold that the suit of the Applicants is an abuse of Court process and decline jurisdiction because the primary aim of the suit is to truncate the judicial process and stay proceedings of the criminal trial already ongoing at the upper Area Court sitting in Mpape wherein the Applicants have willfully refused to appear inspite of Summons issued on them:

Reliance was also placed on the cases of MADUKOLU VS NKEMDILIM (2001) 46 WRN 1 FSC at 13; ARUBO VS ALYELERU (1993) 3 NWLR (PT. 280) 126 at 142, paragraph B; OWONIKOKO VS ARAWASAIYE (1997) 10 NWLR (PT. 532) 61 at paragraphs C-D.

Finally, counsel urged the Court to resolve issues No. 3 in favour of the 1st Respondent/Applicant and dismiss the Application of the Applicants/Respondents with cost.

On the part of the Applicants/Respondents, it is submitted on all issues their written address by their counsel Charles C. Iwuchukwu Esq, as Follows:-

Firstly on issue one as formulated by the 1st Respondent/Applicant, that from the Affidavits attached to their originating process, this matter is clearly a Fundamental Human Rights action which the court is saddled with requisite powers to adjudicate upon. On jurisdiction, counsel Relied on the Supreme Court decision in HAMZAT VS SANNI (2015) 5 NWLR (PT. 1453) page. 486 at 488- 489; and MADUKULU VS NKEMDILIM (1962) 2 SCNLR 341; ADU VS L. S. T. FE & S. D. V (2017) 11 NWLR (PT. 1575) Page 32 AT 37.

On issue two, counsel referred the court to the two Affidavits of the Applicants as well as certified copies of court processes attached therewith in support of this Application, as well as the case of OKAFORVS LAGOS STATE GOVERNMENT (2017) 4 NWLR (PT. 1556) page 4011 at 413 Ratio 10.

Learned counsel submitted that the reliefs of the Applicants can be granted and urged the court to discountenance the preliminary objection of the 1st Respondent.

Counsel also referred the court to Section 46 (1) of the Constitution of the Federal republic of Nigeria 1999 (as amended).

Learned counsel also urged the court to consider that the cases of OLAWOYIN VS OBAFEMI AWOLOWO UNIVERSITY (SUPRA) CHUKWUNOGO VS CHUKWUNOGO (SUPRA) RAYMOND DANGTOE VS CIVIL SERVICE COMMISSION OF PLATEAU STATE are inapplicable in the instant case and urged the court to discountenance same.

Reference was also made to the inherent powers of this Honourable Court as enshrined under Section 6 (6), b, c and d of the 1999 Constitution (as amended).

On issue three, learned counsel submitted and argued that this suit is not in any way an abuse of court process and referred the court to the case of LOKPOBIRI VS OGOLA (2016)3 NWLR (pt. 1499) page 328 at 344-345.

Learned counsel submitted that in the instant case, It is in fact the 1st Respondent that has abused the process of court by trying to mislead the court by saying that the Applicants refused to appear. But that the Applicants on the 11th day of October, 2019 were arraigned in the Upper Area Court Mpape at 3:00 pm, where they took their plea and were granted bail.

Learned counsel finally urged the court to discountenance the preliminary objection of the 1st Respondent in its entirety and hold that the instant suit is that of fundamental Rights.

I have carefully considered this preliminary objection, the grounds upon which same is predicated as well as the written address in support of same.

I have equally given due consideration to the reply address on points of law of the Applicants/Respondents to the Notice of preliminary objection. In my humble view, the issue for determination is whether the Applicant have made out a case for this preliminary objection to be sustained.

It is first of all pertinent to state that the issue of jurisdiction is Fundamental, and being a threshold issue, the court has to consider whether or not it has the requisite jurisdiction to entertain the instant suit.

For it is trite, that where a court lacks the requisite jurisdiction to entertain a matter, the proceedings no matter how well conducted will be a nullity. On this premise, I refer to the cases of LUFTHANSA VS ODIESE (2006) 7 NWLR (PT. 978) 34 at 72, paragraphs D-B; MADU KOLU VS NKEMDILIM (1962) 2 SCNLR 341; NDAYAKO VS DANTORO (2004) 13 NWLR (PT. 884) 187.

Likewise, it is settled law that in determining whether or not it has jurisdiction, the court is usually guided by the claims before it. In this respect, see the case of F. M. B. N VS UMADIELE (2004) 10 NWLR, (PT. 882) 626 at 652, paragraphs A-G.

This being a suit brought under the Fundamental Rights Enforcement Procedure Rules 2009, it is therefore important to consider whether the reliefs sought are those maintainable pursuant to the provisions of chapter iv of the 1999 Constitution (as amended)

It is the contention of the Applicant herein amongst others that the reliefs sought by the Applicants in their Application are not grantable seeing that they are unsupported by facts and totally unconnected to the Enforcement of any of the Rights as enshrined in Chapter 4 of the 1999 Constitution (as amended).

On the other hand, the Respondents/Applicants in their reply address I have urged the court to look at their Affidavits which show that the matter is a Fundamental Human Rights action which the court has the requisite powers to adjudicate upon.

The first ground of the preliminary objection is that the principal relief sought is not for the Enforcement of the Applicants Fundamental Rights.

I have taken a critical look at the supporting Affidavit of the Applicants in the originating motion as well as the reliefs sought. In particular relief No. 1, which provides thus:-

“A Declaration that the continual harassment of the applicants by the 1st Respondent via the 2nd and 3rd Respondents in a matter which is civil in nature to wit: tenancy is ultravires, unconstitutional, mala fide, repressive, illegal and thus contravenes the Applicant’s Fundamental Rights to personal liberty and freedom of movement as guaranteed by Section 35 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 6 and 12 of the African Charter on Human and People’s rights (Ratification and Enforcement Act (Cap 10) laws of the Federation of Nigeria 2004.”

Likewise, Relief No. 3 is as follows:-

“An Order of the Honourable Court for an award of compensation for the psychological trauma, intimidation and harassment by the Nigeria Police

force on several occasions, occasioned by the 1st Respondent in the sum of fifteen Million Naira (₦15,000,000.00)."

It has been held in a plethora of cases that what can be brought under the Fundamental Rights Procedure is that the Reliefs must primarily be reliefs that allege breach of a Fundamental Right. On this I refer to the case of EFCC VS THOMAS (2018) LPELR-45547 (CA) per NIMPER, JCA, PP 14-19, paragraphs E-D.

Where the court held thus:-

"Where the court is confronted with an application brought under the Fundamental Right (Enforcement Procedure) Rules, it is imperative that the court should critically examine the reliefs sought by the Applicant, the grounds for seeking the Reliefs and the facts contained in the statement accompanying the application and relied on for the reliefs sought, where the facts relied disclose infringement of the fundamental Right of the applicant as the main or basis of the claim, then it is a clear case for the Fundamental Right (Enforcement Procedure) Rules.....the simple guide is that the main reliefs should be a Fundamental Right Reliefs and not an ancillary reliefs....."

See also the cases of UNICAL VS UGOCHUKWU & ORS (2017) LPELR-8293 (CA) PHARMABASE (NIG) LTD VS OLATOKUNBO (2019) LPELR- 48043 (CA).

Therefore, having taken a critical look at the relief sought by the Applicants particularly relief No. 1 reproduced earlier, I am of the view that same constitutes the main or principle relief in this suit which is without doubt a fundamental Right issue pursuant to Chapter iv of the 1999 Constitution (as amended). I so hold.

On the issue as to whether this court has the requisite jurisdiction to entertain this suit, I refer to the three conditions laid down in the case of MADOKOLUM VS NKENDILIM (SUPRA) to determine as to whether or not has court has jurisdiction to entertain the present suit. They are as follows:-

A court is competent when:-

- i. It is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or the other;
- ii. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction, and;
- iii. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Furthermore, Section 46 (1) of the 1999 Constitution (as amended) provides thus:-

“Any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any state in relation to him, may apply to a High Court in that state for redress”.

Therefore flowing from the above, it is clear that in the instant case, there’s nothing to show that the instant case or the principle relief is not a fundamental Right action, or anything to show that this Honourable Court lacks the requisite jurisdiction to entertain this fundamental Rights action.

In the circumstances therefore, I would have to agree with the learned counsel to the Respondents/Applicants that this suit is not an abuse of court process, that this is a Fundamental rights action and this court is saddled with the requisite jurisdiction to entertain same. I so hold.

In view of this, therefore, this issue for determination is hereby resolved against the Applicants in favour of the Respondents. Consequently thus preliminary objection lack merit and is accordingly dismissed in its entirety.

I now move to consider the main suit.

The grounds upon which the Reliefs sought in this originating motion are as follows:-

1. Sometime in July, 2017 the 1st Respondent rented the Applicant's self-contained apartment at No. 17 Dan Suleiman Street Utako Abuja paid for same and packed in.
2. That few months later he requested for little space to place his generator in the compound, same was granted. That instead he brought an industrial/big generator set, a big washing machine and a big deep Freezer which constitutes nuisance to other tenants.
3. That also in the said compound parked about five cars, thus he was approached on the issue and advised to remove the industrial generator and the washing machine from the corridor as same constitutes nuisance to other tenants. Also that he is only allowed to bring in one or two cars to allow other tenants park theirs.
4. That this lingered for a while. Sequel to the expiration of his tenancy, he instituted a suit at the District Court, Court 12 Wuse Zone 2 Abuja dated 01/7/19.
5. In the said suit, he alleged that his right to peaceful possession have been violated and general damages to the tune of Nine Hundred Thousand Naira (₦900,000) amongst other things.
6. The Applicants upon receipt of the Summons filed their statement of Defence and Counter-Claim dated 31/7/19. That the said matter is still subsisting before Her worship Theresa Otu of Court 12 Wuse Zone 2 Abuja.
7. Furthermore, they proceeded on the same matter alleging that the security at the gate harassed him and prevented him from gaining access into his apartment, thus lodged a Direct complaint against the Applicants at the Upper Area Court Mpape F. C. T, Abuja while the matter at Wuse Zone is still subsisting.
8. The Upper Area Court did not in any way subject the Direct Criminal complaint for investigation by the police, instead went ahead to issue criminal Summons to the Applicants dated 25/9/19 signed by the Upper Area Court Judge H. I Muhammad. The said Summons commanded the Applicants, to appear before the Upper Area Court on the 8th October, 2019.

9. That the Upper Area Court has no Jurisdiction to entertain this matter and that the action of the Respondents is arbitrary, repressive, illegal and unconstitutional, and contravenes the Applicants Fundamental Rights to personal liberty and freedom of movement as enshrined in the Constitution.

All the above facts are encapsulated in the two supporting Affidavits of the Applicants.

In the written address of the Applicants, three issues for determination are formulated thus:-

- “(1) Whether the incessant harassment and action of the Applicants by the Respondents is not ultravires, unconstitutional, mala fide, repressive, illegal and an infringement to their Fundamental Rights to personal liberty, and freedom as guaranteed by Section 35 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 6 and 12 of the African Charter on Human and People’s Rights (Ratification and Enforcement Act (Cap 10) laws of the Federation of Nigeria 2004.***
- (2) Whether the Honourable Court has the power to direct the Upper Area Court Mpape to stay proceedings or not for want of jurisdiction/acting in bad faith in a purely Civil matter which is before the District Court Wuse Zone 2.***
- (3) Whether or not the Applicants are entitled to award of damages and compensation in the sum of Twenty Million Naira (20,000,000) for the psychological trauma, harassment and intimidation occasioned by the Respondents.”***

While, the 1st Respondent in the written address formulated a sole issue for determination thus:-

“Whether the Applicants are entitled to their prayers before this court.”

On the part of the 2nd Respondent, a sole issue was formulated for determination thus:-

“Whether in considering the facts and the nature of this case, the Applicants had disclosed any reasonable cause of action against the 2nd Respondent to be entitled to the reliefs sought.”

All the above issues were extensively argued by the Applicants as well as the 1st and 2nd Respondents in their respective written addresses.

Now, I have carefully considered this originating motion, the reliefs sought, the statement in support, the grounds upon which same is predicated, the two supporting Affidavits of the Applicants, the Exhibits attached as well as the written address in support of same.

I have equally given due consideration to the Counter-Affidavits of the 1st and 2nd Respondents as well as their Respective written addresses.

In the same vein, I have also given due consideration to the two further and better Affidavits of the Applicants in response to the two Counter Affidavits of the 1st and 2nd Respondents and the addresses in support of same.

In my humble view, the issue for determination is whether the Applicants have made out a case to be entitled to the reliefs sought?

Now, the brief facts as distilled from the two Affidavits of the Applicants is as follows:-

“That the 1st Applicant is the landlord to the 1st Respondent while the 2nd Applicant is the caretaker/property manager of the 1st Respondent.”

That on the 3rd of July, 2017 the 1st Respondent paid and packed into the Applicants one room self-contained apartment situate at No. 17 Dan Suleiman Street Utako F. C. T Abuja.

However, during the course of the tenancy, disagreement arose between the parties to the tenancy, and the 1st Respondent upon expiration of his tenancy

two months later, instituted a civil matter at the District Court of the Federal Capital Territory Court 12 Wuse Zone 2, presided by Her Worship Theresa N Otu.

That yet again while the matter was still subsisting, a complaint was made against the Applicants at the police station Utako Division and upon interrogating the Applicants the D. P. O of Utako Police station dismissed the matter and admonished them to be at peace with each other as the matter is civil in nature and asked the 1st Respondent to renew his rent and be law abiding.

However that yet again being discontented by the outcome of the matter at Utako police station, the 1st Respondent and his lawyer Vincent Yusuf Esq. filed another petition before the Assistant Inspector General of Police (A.I.G) Zone 7 Abuja. The Applicants were invited and they explained that transpired and in the absence of any prima facie case against the Applicants to warrant detention or otherwise of the Applicants, the matter was resolved.

But, that the 1st Respondent and his lawyer still went to the Upper Area Court Mpape and suo moto instituted a Criminal matter against the Applicants on same facts as contained in the civil Suit earlier referred to.

In paragraphs 12 & 13 of the 1st Applicant's Affidavit, he avers thus:-

Paragraph 12:-

"That the action of the Respondents have caused me severe psychological trauma and a serious distraction. I have not been allowed to do my business peacefully as am being dragged from one court to another, and one police station to another."

Paragraph 13:-

"That it is in the interest of justice to grant this application and to protect me from further and continual breach of Fundamental Rights to liberty and movement as enshrined in our laws."

While the 2nd Applicant in his supporting Affidavit in paragraphs 7, 8 and 9 avers as follows:-

paragraph 7:-

“That as soon as his tenancy expired instead of vacating the said premises, he instituted a civil action in court 12 Wuse Zone 2 before Her Worship Theresa Out Claiming the sum of one Million One Hundred Thousand Naira (₦1,100,000) amongst other things.”

Paragraph 8:-

“That the 1st Respondent is troublesome accusing me falsely of removing his switch that I am harassing and intimidating him whereas, he has been the one dragging us from Utako Police station to AIG ZONE 7 where we were told to go, that the matter is civil in nature.”

Paragraph 9:-

“That the 1st Respondent also filed a criminal case against me and the 1st Applicant before the Upper Area Court Mpape which Summons have also been served on me. Please find attached the said Criminal Summons marked as Exhibit E (CTC COPY).”

It is alleged in their written address in support of this Application that the Applicants were harassed and intimidated and their Rights violated in breach of Section 35 of the 1999 Constitution (as amended).

Reference was also made to Articles 6 and 12 of the African Charter on Human and People’s Rights.

In particular, it is submitted in paragraph 5: 01 (d) of their address as follows:-

“My lord, the multiplicity of suits, incessant police harassment, calls and many more has occasioned the filing of this suit to seek My lord’s protection against the whims and caprices of the Respondents as we sense something sinister by the illegal procedure and case filed at the Upper Area Court, sitting in Mpape far away from the jurisdiction of parties involved in this suit. This strongly suggests that there is a

likelihood of bias to be occasioned. Again we see it as an arrangement and a ploy to incarcerate the Applicants hence this suit."

However, the 1st Respondent in his Counter Affidavit, particularly in paragraphs 9, 10, 11, 12, 13, 14, 15, 19 and 21 avers as follows:-

"Paragraph 9:-

Sometime on November, 2018, the second Applicant who equally resides within the premises (No. 17 Dan Suleiman Street, Utako, Abuja) approached me to request that he be connected to my generator but I declined his request based on reasons best known to me."

"paragraph 10:-

Ever since I declined the request of the 2nd Applicant, he has made it a point of duty to misrepresent me to the 1st Applicant and frustrate my stay in the apartment."

"paragraph 11:-

I inhabited the one bedroom self-contain and enjoyed quiet possession of the property till 8th December, 2018 when I received the letter marked Exhibit C in the 1st Applicant's Affidavit".

"paragraph 12:-

The Applicants incessantly intimidated and harassed me to the point where I filed a civil suit before the District Court Abuja."

"Paragraph 13:-

As soon as the Applicants were served with my plaint on the 18th of July, 2019, the 1st Applicant called to threaten me and categorically told me not to return to my apartment or they will beat me up."

"Paragraph 14:-

True to his word, when I returned home that fateful day, I was molested and prevented from gaining access into the premises until late in the night.”

“Paragraph 15:-

It was the Harassment and daily embarrassment of the Applicants that made me approach the Utako police station with my complaint.”

“Paragraph 19:-

Known to the Applicants is the fact that I have a medical condition with one of my legs and I cannot take the risk of not having a car to drive me to my workplace should any of the cars malfunction.”

“Paragraph 21:-

Because I was dissatisfied with the way and manner my complaint was handled, approached the office of the Assistant Inspector General of Police Zone 7 (AIG Zone 7) and I was advised to file a Direct Criminal Compliant against the Applicants while they compiled their report.”

Mean while, on the part of the 2nd Respondent, it is averred in paragraph 3 e, f, g, and k of the their counter Affidavit that the 2nd Respondent is yet to commence an investigation into the matter and compiling their report thereof pursuant to the Direction of the court before the Applicants filed this Suit.

That the 2nd Respondent did not violate any Fundamental Rights of the Applicants and is not responsible for any suffering or harm suffered by the Applicants as the 2nd Respondent only carried out its statutory responsibility.

That the Applicants are not entitled to the reliefs sought against the 2nd Respondent in the suit herein as 2nd Respondent is not liable.

Same argument is conversed in the 2nd Respondents written address.

I refer to paragraphs 3: 7, 3 : 8, 3 : 9, 3: 10, 3: 11.

Likewise, in paragraph 3: 14, it is submitted that the burden of proving the alleged claims against the 2nd Respondent is on the Applicants.

In paragraph 3 : 20, it is submitted that the facts as deposed to in the Applicants Affidavit did not make out a reasonable cause of action under the Fundamental Rights Procedure.

The same arguments were proffered by the 1st Respondent in the written address.

I refer to paragraph 3 : 1- 3 : 12 of the address.

In particular I refer to paragraph 3 : 7 where it is stated thus:-

“It is obvious that the Affidavit of the Applicants has said nothing about how the actions of any of the Respondents, most importantly the 1st Respondent has particularly infringed upon their Fundamental Rights as Applicants.”

In paragraph 3 : 11, it is stated as follows:-

“My Lord, the trite position of law is that in a Fundamental Right Enforcement matter, the facts and grounds upon which the Application is based must be clearly and fully stated in such details as to disclose the infringement being complained.....”

However, in the further and better Affidavits to the 1st and 2nd Respondents Counter Affidavit, the Applicants have reaffirmed all their averments as earlier stated in their respective Affidavits attached to the originating process.

In effect, both Applicants contend that their Fundamental Rights have been breached and may likely continue to be infringed upon without the court’s intervention, hence the reason for this Application.

From the provision of Section 46 (1) of the Constitution, any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.

Therefore, from the wordings in Section 46 (1) of the Constitution, it is clear that the allegation must be that a Right under Chapter iv of the Constitution has been is being or likely to be contravened in other words, the alleged violation must be shown to have occurred, or is occurring, or is likely to occur in the future.

Therefore, where an Applicant alleges that any of the provisions of chapter iv is breached or has been breached or is likely to be breached, the burden is on that Applicant to prove such allegations. This is usually done by proving same in the supporting Affidavit.

On this premise, I refer to the case of WILLIAM & ANOR VS USENI & ORS (2018) LPELR-46163 (CA) per OGBUNYA OGUNYA, JCA at page, 12, paragraph E-F, where it was held thus:-

“Notably, the burden of proof (Onus Probandi) of breach of Fundamental Right of a citizen resides in an applicant, id est, the respondents in this appeal.....The standard of proof is on the balance of probability or preponderance of evidence.....”

Please also see the cases of JIM JAJA VS C. O. P, RIVERS STATE (2018) LPELR – 46045 (CA) ; IBANGA & ORS VS AKPAN & ORS (2018) LPELR-46167 (CA).

likewise, the court held in the case of MEZUE & ORS VS OKOLO& ORS (2019) LPELR-47666 (CA) as follows:-

“In bringing a matter for the enforcement of Fundamental Rights where such Right had been violated, such fact must be proved by relevant evidence. Section 135 of the Evidence. Act provides thus:- whoever desires any court to give judgment as to any legal Right or liability dependant on the existence of facts which he asserts must prove that those facts exist”He who asserts must prove. The burden of proof lies on an Applicant who applied for the Enforcement of their Fundamental Rights to Establish by credible affidavit evidence that their Fundamental Right was breached. It is the duty of an Applicant alleging breach of his Fundamental Rights to place sufficient evidence before the Court.....”

In the instant case, having thoroughly examined the two supporting Affidavits of the Applicants and all the Exhibits attached, it is my observation that the Applicants were invited by the Utako police, interrogated and released.

subsequently, the two Applicants were again invited by the A. I. G ZONE 7, pursuant to a petition made against them by the 1st Respondent and 1st Respondent was advised to file a Direct Criminal complaint which he did.

It is also a fact that there are two pending cases one civil and one Criminal instituted by the 1st Respondent against the Applicants at District Court Wuse Zone 2 Abuja, as well as Upper Area Court Mpape F. C. T, Abuja before His Worship Theresa Otu of Court 12, Wuse Zone 2, Abuja.

Now, although the Applicants have alleged that their fundamental Rights were breached in particular Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as Articles 6 and 12 of the African Charter on Human and People's Right (Ratification and Enforcement) Act 2004, I do not see any credible and/or sufficient evidence disclosed in their respective Affidavits to prove that their Right to personal liberty was infringed in any way.

The Exhibits attached to this Application merely show that the two cases were instituted against them and nothing more.

The Applicants have not shown in any way by sufficient and credible evidence that their Rights have been, are being or likely to be contravened in any manner by the 1st and 2nd Respondents. I so hold.

In the circumstances, therefore, I find no merit in relief No. 1, same fails and is accordingly dismissed.

Likewise, looking at the Relief No. 2, all I need say is that this Application is neither an appeal nor an Application for judicial review. And on this premises, I would have to agree with the submissions of the 1st and 2nd respondents that this particular Relief is totally unconnected or related in anyway to the provisions of Chapter iv of the 1999 Constitution as amended.

Therefore, this relief equally fails is refused and accordingly refused.

In the same vein and on the whole, since reliefs 1 and 2 fail, the other reliefs are also devoid of merit, as is the whole application in its entirety.

Consequently, therefore the sole issue for determination is hereby resolved in favour of the 1st and 2nd Respondents against the Applicants.

Application is accordingly refused and dismissed in its entirety.

I make no order as to cost.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

14/05/2020.