

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED THE 11TH JULY, 2020

**BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI -
YUSUF**

**IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES 2009 MADE PURSUANT TO SECTION
46(1) AND (2) OF THE CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA 1999 (AS AMENDED).**

BETWEEN:

MATHEW MAJI ---- ---- ---- APPLICANT

AND

**NATIONAL AGENCY FOR THE PROHIBITION
OF TRAFFICKING IN PERSONS -----
RESPONDENT**

JUDGMENT

This is an Originating Motion on Notice brought pursuant to Order 2 Rules 1-5 of the Fundamental Rights

(Enforcement Procedure) Rules 1999, Sections 34, 35, 41 and 46(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999, and the inherent jurisdiction of the Honourable Court. The Applicant is seeking for the following reliefs;

1. **A DECLARATION** that the arrest and detention of the Applicant from **4th May, 2018 – 22nd May, 2018** at the office of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) at Wuse Zone 5, Abuja, by the Respondent, its officers, servants, agents and privies constitute gross violations of the Applicant's rights to dignity of human person, personal liberty and freedom of movement contrary to **Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999; and Articles 2 and 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 Vol. 1 Laws of Federation of Nigeria 2004.**
2. **AN ORDER OF INJUNCTION** restraining the Respondent whether by itself or by its officers, agents, servants, privies or other such persons howsoever called from further arresting, detaining or in any other manner infringing on the fundamental Rights of Applicant as guaranteed by **the Constitution of the**

Federal Republic of Nigeria 1999 (as Amended)
and the **African Charter on Human & Peoples**
Rights (Ratification and Enforcement) Act Cap. A9
LFN 2004.

3. **AN ORDER** directing the Respondent to pay to the Applicant damages in the sum of **₦10 Million** on the footing of exemplary and aggravated damages as compensation for the violations of the Applicant's right, the Applicant's arrest, and detention being oppressive, arbitrary capricious, and unconstitutional, and for injuring the dignity and pride of the Applicant.
4. **AN ORDER** directing the Respondent to publish apologies to the Applicant in at least two (2) national daily newspapers for the gross breaches of the Applicant's fundamental rights in accordance with **Section 35(6) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).**

AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the reliefs are sought are as follows:

1. The Applicant is entitled to the Enforcement of his Fundamental Rights as enshrined in the **Constitution of the Federal Republic of Nigeria; 1999 (as Amended) and African Charter on Human and People's Right (Ratification and Enforcement) Act Cap. A9 LFN, 2004.**
2. The Respondent had on 4th May, 2018 arrested the Applicant by trick for no disclosed reason and kept him in its detention till 22nd May, 2018, well over the permitted period and without taking him to any Court, in utter violation of the provisions of the **Constitution of the Federal Republic of Nigeria; 1999 (As Amended) (CFRN).**
3. All through the period of his detention, the Applicant suffered in the respondents' custody under very congested and unhygienic environment with poor feeding, and was portrayed as a common criminal without any justification, even when the Constitution in any event guarantees his freedom from such detention as an expression of his fundamental right to presumption of innocence in the circumstances.
4. This Honourable Court can and ought to exercise its powers to protect the helpless Applicant from claws of the very powerful Respondent that has acted capriciously, maliciously and in breach of the **CFRN** by

its arrest and detention of the Applicant for no just cause.

5. The Applicant is entitled to compensation, public apology as well as the other reliefs sought herein as a vindication of his rights to personal liberty, freedom of movement and dignity of human person among others.

FACTS IN SUPPORT OF THE APPLICATION ARE:

- i) On or about 30th April, 2018, agents of the Respondent arrested at the Guest House one **Abdulsalam Afeez (the Guest)**, who was at the time lodging at the Guest House, on an allegation of his involvement in human trafficking activities.
- ii) The arrest was curiously also extended to the Guest's House receptionist who was substituted by **Abdulkarim Alheri** the Manager of the Guest House **(the Manager)**, on the sole basis that the Guest was lodging at the Guest House at the time of his arrest.
- iii) Nothing in the Guest's statement or indeed the entire investigation connected the Applicant, the Manager or the Guest House or its receptionist to the alleged human trafficking by **the guest**.

- iv) In the face of the foregoing, agents of the Respondent still proceeded to seal the Guest House and arrest the Applicant by tricks on **4th May, 2018**.
- v) The Applicant was from **4th May, 2018** detained in the Respondent's office under very inhuman conditions in an overcrowded and unhygienic cell with very poor feeding and without the basic access to his visitors including his legal practitioners; until **22nd May, 2018** when he was released.
- vi) The Respondents is fully aware that it is forbidden from detaining the applicant beyond 24 hours save by an order of Court, but has confined the Applicant in its custody as stated above without any such order or even taking him to any Court/Alleging any offence against him.
- vii) The Applicant who has not been charged with any offence and is not a criminal is entitled among other benefits to be compensated in damages and offered apology for the manner in which his rights have been violated in utter disregard on the provisions of the constitution.

The Application is supported by a statement and a 19 – paragraphed affidavit with a written address. The Applicant

filed a further affidavit on the 18th of December, 2019. The Respondent in opposition filed a 5-paragraphed counter-affidavit deposed to by one Juventus Yitnoe, an Investigating Police Officer in the employment of National Agency for the Prohibition of Trafficking in Persons; attached is an exhibit marked exhibit B as well as a written address.

The Applicant in his written address formulated a lone issue for determination:

Whether the Applicant has made out a case for the Enforcement of his Fundamental Rights and is therefore entitled to the reliefs he seeks in this Application.

The Respondent on the other hand also formulated an issue for the determination:

Whether this Honourable court ought to grant the reliefs sought in the suit for the Enforcement of the Rights of the Applicant.

At the hearing of the Application on the 17th, March 2020, both counsel relied on the supporting, further and the counter affidavits and argued the written addresses filed in support of and in opposition to the Application.

I have carefully considered the facts deposed in support of, and in opposition to, the Application. I shall adopt the issue formulated by the Applicant, that is;

Whether the Applicant has made out a case for the Enforcement of his Fundamental Rights and is therefore entitled to the reliefs he seeks in this Application.

The National Agency for the Prohibition of Trafficking in Persons is a Law Enforcement Agent of the Federal Government of Nigeria, which was established to combat human trafficking and other related matters. One of the functions of the Agency is to investigate all cases of trafficking in persons including labour exploitation. The Agency also has the power to investigate whether any person, body or entity has committed an offence under the Act or the offence of trafficking under any other law. It can also arrest, detain and prosecute offenders under the Act or any other law on trafficking in persons in Nigeria. The Fundamental Rights of persons are enshrined in the Constitution of the Federal Republic of Nigeria.

It is the evidence of the Applicant as contained in the affidavit, that the Applicant is an employee of Amazonia Guest House,[hereinafter referred to as Guest House]

which is located at Gwagwalada, Abuja; that sometimes on the 30th of April, 2018 some persons including the some policemen arrested a guest named Abdulsalam Azeez and other guests at the guest house based on some allegations of human trafficking; that the receptionist and Manager of the guest house were also arrested and detained at NAPTIP. The Applicant continued further that on the 4th May, 2018 agents of the Respondents came to the guest house to search; that during the search, the officers of the Respondent drove out everyone including all the guests and sealed up the guest house. He continued further that he was asked to accompany them to their office with the assurance that he will be released the same day. The Applicant stated that when he got to the Respondent's office, the items in the search document were increased from what was earlier stated in the document and he was bundled and abandoned in the cell; that nobody was ready to answer his question or listen to his complaints or explanations. The Applicant stated further that not until the 7th May, 2018 that he was asked to write his statement; that he was eventually released on the 22nd of May, 2018. The Applicant stated in the affidavit the inhuman condition he was subjected to as well as the

type of food he was made to eat in the cell. He stated that he was not allowed access to any visitor and his permission to make calls was subject to the whims and caprices of the Investigating Police Officer. The Applicant continued further that it was until after the 5th day of his detention that he was allowed to receive and make calls, that he is aware that there is a High court within 40 metres radius to the Respondent's office/facility. The Applicant states that whilst in detention he went through serious psychological and mental trauma and he is pained by the fact that he didn't commit any crime; that he merely fulfilled his civic obligation by following the Respondent's agents to their office to make his statement. The Applicant stated that after he was released from detention, neither the Respondent nor its agents offered any explanation to him; that they also refused to release the search document to him despite his several demands. The Applicant stated further that he has been an object of ridicule and he believes that awarding damages as compensation for the way he was treated will serve the interest of justice as well as publication of apologies by the Respondent; that neither he nor the guest house has been involved in any alleged human trafficking activities.

On the part of the Respondent, it is deposed in the counter affidavit that on the 30th April, 2018 officers of the Respondent carried out a sting operation at the Guest House, Gwagwalada Abuja, and 13 victims of trafficking were rescued from the said hotel; that the officers arrested the Receptionist of the hotel and a suspect one Abdulsalam Afeez, they both were taken to the Respondent's office at Plot 2028 Dalaba street, wuse zone 5 Abuja for further investigation. It is further stated in the counter affidavit, that the Applicant herein was also arrested in relation to the activities of the said Abdulsalam Azeez; that it appeared there was a business link between the Applicant and the Abdulsalam Azeez. He continued further, that the Applicant's belongings and phone were temporarily taken away from him on arrival as that is the practice of Law Enforcement Agencies when a suspect is arrested; that subsequently the suspect had access to his phone and lawyer. He continued further that the Applicant was not ordered into the cell, but that he was detained on his arrival at the Agency's holding centre; that the Applicant was never treated as a common criminal in the holding centre; that in the course of investigation, it was established that the lodger in the Guest house Abdulsalam

Afeez had a business relationship with the Applicant's guest house; that the protracted detention of the Applicant was necessitated by his inability to secure a credible surety. The Applicant stated that the guest of the guest house, Abdulsalam Azeez, the Manager of the guest house and the guest house have been charged to court. He attached the charge sheet dated the 13th June, 2018 as exhibit B. The Respondent stated that it will not be in the interest of justice to grant the Application as the Agency was carrying out its statutory duties of investigating a suspected case of human trafficking and exploitation as provided in the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015. Learned counsel to the Respondent argued that the Applicant has failed to substantiate the allegations against the Respondent; he stated that the actions of the Respondent were lawful.

It is not in dispute that the Applicant was arrested and detained by the Respondent. This fact was admitted in the counter affidavit filed on behalf of the Respondent. [See paragraph 3iv of the counter affidavit] The Applicant deposed that he was asked by the Respondent to accompany them to their office on the 4th May 2018, with

the assurance that he will be released that same day, however to his greatest dismay, he was detained in the cell of the Respondent and was eventually released the 22nd May, 2018; see paragraphs 5, 6 and 8 of the affidavit in support of the application. The Respondent's position is that the Applicant was arrested in relation to the activities of one Abdulsalam Afeez as it appeared that there was a business link between the Applicant and the Abdulsalam Afeez. See paragraphs 3 iv, vi, vii, ix, x and xvi of the counter affidavit.

It can be deduced from the counter affidavit that the Applicant was arrested and detained upon reasonable suspicion of having committed a criminal offence.

See para 3 iv of the counter affidavit:

That the Applicant was consequently arrested in relation to the activities of the Abdulsalam Afeez since there appeared to be a business link between the Applicant and Abdulsalam Afeez

Para 3 ix

That the Applicant had to be returned to the Holding centre of the respondent after the search conducted on the Guest House on 4th May, 2018

I have perused the exhibit B attached to the counter affidavit; I do not see where the name of the Applicant was mentioned. Also the Respondent didn't attach the search report conducted on the 4th May 2018 for the court to know whether the Applicant is liable or not. It is trite that for reasonable suspicion to form a basis of an arrest and detention it must be based on facts which were available to the Investigating Agency before the arrest and or detention of a person and where it is necessary to detain a person, an order of the court must be properly obtained. The Respondent in the instant case has failed to prove that there was in existence facts to justify their conclusion that the Applicant had a business link with the said Abdulsalam Afeez. The Respondent has also not denied the fact that the Applicant is an employee of the guest house.

See 136 (1) Evidence Act provides;

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact

shall lie on any particular person, but the burden may in the course of a case be shifted from side to the other.

(2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

Furthermore, the Respondent in paragraph 3i stated that the officers of the Respondent while acting on an intelligence report carried out a sting operation at the guest house, where the Applicant is an employee; they however failed to state the connection or role of the Applicant with the information they had before he was arrested and subsequently detained.

Section 35(5) of the 1999 Constitution provides: 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 kilometers a period of one day.

The Respondent's office is at Wuse Zone 5, Abuja. I am aware that there is a Magistrate/High Court in Wuse Zone 2, which is less than 40 km radius to the office of the

Respondent. Why then would the Respondent detain the Applicant from 4th May, 2018 till the 22/05/18 without taking him before a court of competent jurisdiction?

It is crystal clear from the affidavit in support of, and the counter affidavit that the Applicant was arrested on the 4th May 2018 and detained until the 22nd May, 2018 when he was released.

It is the law that where there is evidence of arrest and detention of an Applicant in an Application for Enforcement of Fundamental Right, the onus is on the Respondent to show that the arrest and detention was lawful. It is stated in the counter affidavit filed by the Respondent that the arrest and subsequent detention of the applicant was lawful; that on the 30th April, 2018 the officers of the Respondent based on intelligence report carried out a sting operation at the guest house, wherein a suspect was arrested for organizing foreign travel which would have promoted labour exploitation; that subsequently the Applicant was also arrested and detained. See paragraphs 3 iv and vi of the affidavit in support of the Application. The Respondent however failed to attach the court order allowing them to detain the

Applicant for that duration. See para 3xvi of the counter affidavit;

That the protracted detention of the Applicant was necessitated by his inability to secure a credible surety

The Respondent didn't state the date the Applicant was granted bail. From the totality of the affidavit in support and the counter affidavit, it is clear that the Applicant was arrested without any justification and the failure to take the Applicant before a competent court of jurisdiction made the Applicant's arrest and subsequent detention illegal, unlawful and a violation of his rights. I therefore hold that the Applicant's arrest and detention from the 4th May 2018 to the 22nd May 2018 is a breach of the Applicant's right to personal liberty.

The Applicant however has not been able to substantiate the fact that his right to human dignity was violated, as same was not buttressed with credible or cogent evidence. The Abdulkarim Alheri, the manager of the guest house, who deposed to the further affidavit, was not in the same cell with the Applicant. See section 8 of the affidavit in support, wherein the Applicant stated;

“The guest [who was also in the same cell as was the manager] repeatedly maintained that he has no relationship with the guest house, myself or the manager beyond the fact that he is a lodger at the guest house in which the manager and I work. But despite this and the absence of any fact disclosing grounds for suspicion of any crime committed by me. I was kept in continued detention in the cell until my eventual release on 22nd May, 2018.”

The burden of prove lies on the Applicant and same has not shifted from him. See Section **131 of the Evidence Act**

(1) Whoever desires the Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.

The Applicant has asked the court to grant an injunction restraining the Respondent or any other person from further arresting, detaining or infringing on his fundamental right. The Respondent, as I stated earlier in this judgment is a statutory body empowered to carry out investigation in all cases of trafficking in persons and other related matters. It can also arrest, detain and prosecute offenders under the Act or any other law on trafficking in

persons in Nigeria. Thus, the Court will not deny the Agency or any of its officers; their statutory powers so long as they abide by the provisions of the Constitution. Thus the relief for an order of injunction restraining the Respondent or its privies... is hereby refused.

I have already held that the personal liberty of the Applicant was breached by the Respondent. The Applicant claims ₦10,000,000.00 (Ten Million Naira) as damages from the Respondent for the unlawful detention. The quantum of damages to be paid by the Respondent to the Applicant will be determined by this Court. In fixing the amount of damages payable by the Respondent to the Applicant, I am guided by the authority of ***JIDE ARULOGUN v. COMMISSIONER OF POLICE, LAGOS STATE & ORS (2016) LPELR-40190(CA)*** "*The Appellant proved that he was unlawfully arrested and detained, and he is, therefore, entitled, by virtue of Section 35(6) of the Constitution, to compensation and apology - see Jim-Jaja v. C.O.P., Rivers State (2013) 6 NWLR (Pt.1350) 225 SC, where the Supreme Court further held as follows-*"*Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the*

victim of the breach. In this respect, the common law principles on the award of damages do not apply to matters brought under the enforcement of fundamental rights procedure - - The procedure for the enforcement of the Fundamental Human Rights was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed." So, fundamental rights matters are placed on a higher pedestal than the ordinary civil matter, in which a claim for damages resulting from a proven injury has to be made specifically and proved." Per AMINA ADAMU AUGIE, J.C.A (Pp. 13-14, para. A)

Consequently in the instant case, the Application for Enforcement of Fundamental Right succeeds, I hereby hold that the arrest and detention of the Applicant by the Respondent from the 4th March, 2018 to 22nd March, 2018 is a violation of the Applicant's right to personal liberty guaranteed and enshrined by section 35 (6) CFRN .

I award the sum of #1,000,000[One Million Naira] only as damages to the Applicant against the Respondent.

There is no order for cost.

ASMAU AKANBI

HON. JUDGE