

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 23
CASE NUMBER : SUIT NO: CV/2783/19
DATE: : WEDNESDAY 15TH JULY, 2020

BETWEEN

UMAR FARUK APPLICANT

AND

**1.THE OFFICER IN CHARGE OF SPECIAL
ANTI ROBBERY SQUAD ABBATTOIR,RESPONDENTS
FEDERAL CAPITAL TERRITORY**

**2. THE COMMISSIONER OF POLICE, FCT
COMMAND ABUJA**

JUDGMENT

The Applicant approached this Honourable Court vide an Originating Motion and sought for the following reliefs;

- a. Declaration that the arrest and detention of the Applicant by the Respondents from 11th day of July, 2019 till date is unconstitutional, null and void.
- b. An Order directing the Respondents, for the immediate release of the Applicant.
- c. An Order restraining the Respondents, their agents, servants, informants however described from further unlawfully arresting and detaining the Applicant in connection with the subject matter of this application.
- d. The sum of Five Million Naira (N5,000,000.00) as damages for unlawful arrest and detention.

The grounds upon which the application was brought are;

- a. The Applicant has fundamental rights to freedom of movement, liberty and dignity under Sections 41, 35 and 34 respectively of the 1999 Constitution (as amended) and the relevant Articles under the African Charter on Human and People's Rights.
- b. The Applicant was arrested without being informed of the offences against him and detained by the Respondents firstly at Jabi Police Out Post on the 11th day of July, 2019 and later transferred/ conveyed to Special Anti Robbery Squad at Abattoir Federal Capital Territory where he is presently held in captivity till date.
- c. The arrest and detention of the Applicant since 11th day of July, 2019 to date constitutes a breach of his Fundamental Rights to freedom of movement, liberty and dignity under Sections 41, 35 and 34 of the 1999 Constitution (as amended) and the relevant Articles

of the African Chartered on Human and People's Rights.

In support of the application is a 6 paragraph affidavit duly deposed to by One Ibrahim Suleiman a Cousin Brother to the Applicant.

It is deposition of the Applicant as distilled from the affidavit in support of the application that he was arrested on the 11th day of July, 2019 at Uke, Karu L.G.A Nasarawa State on allegation bordering on the murder of a Fulani Child by Officers of Special Anti Robbery Squad, Abuja the allegation which he knows nothing about and was taken to the Jabi Police Post and was informed that discreet investigation shall be carried out.

Applicant avers that identification parade was conducted by the police investigation and it shows that he was not culpable as he was not identified or fingered as having participated in the murder.

That he was surprised when he was taken to Special Anti Robbery Office at Abattoir and was detained. And that it will be in the interest of justice to grant this application.

In line with law and procedure a written address was filed wherein a sole issue for determination was formulated for determination to wit;

Whether from the indisputable evidence as contained in the Applicant's statement made Pursuant to Order II Rule 3 the affidavit in support of the application the Respondent has any justification in detaining the Applicant and whether the conduct of the Respondents did not constitute a violation of his Fundamental Rights to Liberty and Freedom of Movement as enshrined in the 1999 Constitution of the Federal Republic of Nigeria as amended.

It is the submission of the Applicant that he is still held in custody from the 11th day of July, 2019 to date is not only breach of his Fundamental Right to Freedom of

Movement but has advanced to the state of inhumanity to man to the Applicant.

Learned Counsel argued further that, the continued detention of the Applicant constitutes a naked and reckless abuse of power the same should not be allowed in decent society.

Court was urged to grant the reliefs sought.

Upon service, the Respondents filed a counter affidavit of 13 paragraph deposed to by One Daniel Agbo a Litigation Clerk in the Law Firm of the 1st and 2nd Respondents.

It is the affidavit of the Respondent that the Applicant did not inform Ibrahim Suleiman of the facts deposed to sometimes on the 3rd week of August, 2019 at the Special Anti Robbery Squad Office as the Applicant was not in the custody at that times.

That the Applicant was arrested on or about the 11th day of July, 2019 on criminal allegations of Culpable

Homicide and was detained in police custody and the next day identification parade was conducted and the Applicant was then transferred to Kuje Prisons that same day and the case file transferred to the Ministry of Justice for prosecution.

That the Applicant is no longer in the Respondent's custody and that the court should dismiss the application in the interest of justice.

In line with law and procedure, a written address was filed wherein a sole issue to wit; *whether the Applicant has made out a case under the Fundamental Rights Enforcement Procedure Rules that will entitle him to the reliefs sought in his application was formulated for determination.*

Arguing on the above issue, learned counsel submit that an examination of the affidavit of the Applicant and the Respondents before the court shows that the Applicants' Fundamental Rights have not been

breached, as infringement is a question of fact not of law so the court ought to examine the affidavit to ascertain whether the Applicants right have been violated.

OKAFOR VS LAGOS STATE GOVERNMENT & ANOR (2016)LEPLR 41666 (CA).

Learned Counsel submit further that Section 35(1) of the Constitution of the 1999 Constitution has an exception to wit, for the purpose of bringing a person to court he can be arrested. Counsel cited and relied on ***DOKUBO VS F.R.N (2009)NSC QLR (Pt. 11) Vol. 37 at 1158.***

Counsel contended further that for a person to run to court to be shielded against criminal investigation and prosecution is an interference with the powers given by the constitution to law officers to control criminal investigation.

AG ANAMBRA STATE VS CHIEF CHRIS UBA AND ORS (2006)15 NWLR (Pt. 947)50.

Court:-I have read carefully the affidavit in support of the application of the Applicant for the enforcement of his Fundamental Right, under the Fundamental Human Rights Enforcement Rules 2009, as amended.

I have equally read carefully the counter affidavit filed by the 1st& 2nd Respondents in opposition to the application for the enforcement of Fundamental Rights.

Fundamental Rights have been said to be premodial.. some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (S.A.N) have opined that these rights are already possessed and enjoyed by individuals and that the “Bills of Rights” as we know them today created no right de novo but declared and preserved already existing rights, which they extended against the legislature.

It is instructive to note that magna carta 1215 otherwise called “Great charter” came to being as a result of the conflict between the king and the barons, and petition of

rights 1628 which is said to embody sir Edward Coke's concept of "due process of law" was also a product of similar conflicts and discision between the king and parliament.. nor was the Bill of Rights 1689 handed down on a "platter of Gold".. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by king Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written consitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated.

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality

of rights to the citizen.. two years after, American people took the glorious path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights which is said to be fashioned after the English Bills of Rights.

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

“We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certaininalienable rights that among these are life, liberty and pursuit of happiness.”

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not peculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the “tyranny” of the majority ethnic groups in the regions.

The commission that investigated their fears went out of its way to recommend the entrenchment of Fundamental Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

We have had our Fundamental Human Rights carefully captured and entrenched under chapter IV of the 1999 constitution of the Federal Republic of Nigeria as amended.. as sacrosanct as those rights contained in chapter IV of the Constitution of Federal Republic of Nigeria are, once there is any good reason for any of the rights to curtailed, they shall so be and remain in abeyance in accordance with the law and constitution.

Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to court to seek protection on the slightest believe that they are being invited by law enforcement agencies..

The essence of this legal window is to ensure that every action by government or her a gencies is done according to law.

Be it known that it is the constitutional duty of court to develop the common law, and to so do that within the matrix of the objective and normative value suggest by

the constitution and with due regard to the spirit, purport and object of the bills of rights.

It is equally the legal duty of police to protect citizen through law and structures designed to afford such protection. There is the need for the police to have regard to the constitutional provisions and bindingness of Bills of Rights on the state and its structures.

Permit me to observe that detention, no matter how short, can amount to breach of Fundamental Human Right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place., that is if there is no legal foundation to base the arrest and or detention of the Applicant.

Where there is basis, the detention must be done in compliance with the provisions of law and in line with civilized standard known to modern society.

Procedurally speaking, application for enforcement of Fundamental Human Right is made by way of motion on notice stating grounds and affidavit in support which serves as evidence.

It is the evidence of Applicant as distilled from his affidavit that he was arrested, detained by the Respondents without recourse to his Fundamental Rights as provided by law.

The Respondents countered this facts by stating that, the Applicant was arrested but was transferred to the prison the next day and file taking to the Ministry of Justice for Prosecution.

The question that naturally follow is, from the affidavit in support of the application in view, can it be said that the Applicant has established the case of breach of Fundamental Human Right against the Respondents?

Indeed, it takes two to speak the truth, one to speak and another to hear. In this case both Applicant and Respondents have spoken and the Judge has heard from all.

The liberty to make any accusation is circumscribed both by the right to make it, the duty not to injure another by the accusation and the right of any appropriate redress in the court.

AKILU VS FAWELUMI IN (No. 2) (1989) (Pt. 102) 122

It is true that the police have a duty to protect life and property and to detect crime. All these must be done within the confines of the law establishing the police and the constitution of Federal Republic of Nigeria 1999 as amended and under the Police Act, section 4 of the police Act provides thus:-

“The police shall be employed for the prevention and detention of crime, the apprehension of law and

order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within

or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

It truly therefore, means that when a suspect is arrested on a reasonable suspicion to have committed a crime, he shall be treated within the confines of the law.

Question... Has the Applicant in view, been treated within the provision of law?

Has his liberty not been curtailed? For the purpose of clarity, I shall re-produce relevant portion of section 35(1), every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with procedure permitted by law:-

- a) *“For the purpose of bringing him before a court in execution of the order of court or upon reasonable suspicion of him having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”*

Section 35(1) of the constitution of Federal Republic of Nigeria 1999 as amended specifically provides that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not be kept in such detention for a period longer than the maximum period of imprisonment presumed for the offence.

See 35(4) which also provides that any person who is arrested or detained in accordance with (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 two months from the date of his arrest or detention in the case of a person who is in custody or entitle to bail, or

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.

The expression of reasonable time under sub (4) of the constitution means one day where there is court of competent jurisdiction within a radius of 40 Kilometers, or two days or such longer period as the circumstances may be considered by the court to be reasonable.

It is certainly not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

The Respondents deposed to in paragraph 9 a, b & c of its affidavit that the Applicant was arrested on the 11th July, 2019 and the next day taken to the prison.

The question that follows is which court was the Applicant arraigned before he was remand in prison?

Where is the evidence of the remand warrant?

Respondents further stated that the Applicant file was taken to Ministry of Justice for Prosecution.

Which Court did the Ministry of Justice arraign the Applicant?

Where is the evidence to show that the file was taken to Ministry of Justice?

This and more questions are begging for answer from the Respondents.

A wrongdoer is often a man who has left something undone, not always one who has done something.

Richard Joseph Daley, an American Politician who lived between 1902–1972 once said, “Get the thing straight

once and for all” the policeman isn’t there to create disorder, the policeman is there to preserve disorder.”

Ignorance of law excuses no man, not that all men know the law, but because it is an excuse everyman will plead, and no man can tell how to refute him.

The procedure for the enforcement of Fundamental Human Right certainly is not an outlet for fraudsters to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable rights would have been or about to be infringed upon by the very people who have the power to protect such rights or other persons who wield other unauthorised powers.

The averments contained in the affidavit in support of the counter affidavit of the Respondents is not just irreconcilably at variance with common sense, but same has exposed the fact that Respondents is most economical with the truth.

It is indeed easier for a camel to pass through the eye of a needle than for the Respondents to sway the court into believing its story.

On the whole, having made the above far-reaching observation, Judgment is hereby entered for the Applicant as follows:-

- a. Declaration that the arrest and detention of the Applicant by the Respondents from 11th day of July, 2019 till date is unconstitutional, null and void.
- b. **I hereby Order** that the Applicant be arraigned in a court of competent jurisdiction forthwith.

Reliefs C and D are **hereby refused**.

Justice Y. Halilu
Hon. Judge
15th July, 2020