

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI
HON. JUDGE HIGH COURT NO. 13
COURT CLERKS: T. P. SALLAH & ORS**

DATE: 13/07/2020

FCT/HC/CV/72/19

BETWEEN

MR. BONAVENTURE OBIAJUNWA AKACHI APPLICANT

AND

**1. SUPOL IBRAHIM GOTAN
2. THE COMMISSIONER OF POLICE IMO STATE
3. THE INSPECTOR GENERAL OF POLICE** } **RESPONDENTS**

JUDGMENT

The instant suit was commenced by the Applicant therein against the Respondents vide motion on notice filed on 18th October, 2019 pursuant to the provisions of the Fundamental Rights (Enforcement) Procedure Rules 2009, the Constitution of the Federal Republic of Nigeria 1999 and under the inherent jurisdiction of this Court praying for the grant of the following reliefs:-

1. A declaration that by the activities of the Respondents necessitating this action, they infringed upon the Applicant's Fundamental Human Rights, to wit, his right to dignity of person and his right to personal liberty;
2. A declaration that the Applicant is entitled to a refund of all the monies extorted from him by the Respondents.
3. An order that the Respondents are jointly and severally liable to the Applicant in the sum of N100,000,000 general damages and N5,280,000 special damages for their acts by

which acts they grievously infringed upon the Applicant's Fundamental Human Rights.

4. An order perpetually restraining the Respondents by themselves, their privies, agents, representatives, associates or whomsoever be from arresting and/or detaining the Applicant in any manner or guise whatsoever with regards to the subject matter of this application.
5. Any further or other orders as the Court may deem fit to make in the circumstances of this suit and in the interest of justice.

In support of the application, the Applicant filed a Statement setting out the relevant information, an affidavit of 14 paragraphs (with five exhibits) deposed to by the Applicant. The Applicant's Counsel also filed his written address dated 16th October, 2019 which he adopted as his oral submissions in support of the application.

Pursuant to leave of this Court granted on 4th November, 2019, the 1st and 2nd Respondents were served with the originating processes through the 3rd Respondent. There is proof and certificate of service by bailiff of Court to this effect in the Court's record. Despite service of the originating processes and hearing notices, the Respondents failed/refused to file anything in opposition to the application or even appear at the hearing of the application. The application was thus heard on 27th May, 2020 and adjourned for the Judgment of this Court.

The Applicant's Counsel formulated and argued the following four issues for the determination of the instant application to wit:-

1. Whether the Applicant is entitled to a declaration that by the activities of the Respondents necessitating the bringing of this action, they infringed upon his Fundamental Human Rights, to wit, his right to the dignity of his person and his right to personal liberty;

2. Whether the Applicant is entitled to a declaration that the Applicant is entitled to a refund of all the monies extorted from him by the Respondents.
3. Whether the Applicant is entitled to an order that the Respondents are jointly and severally liable to him in the sum of N100,000,000 general damages and N5,280,000 special damages for their acts by which acts they infringed upon his Fundamental Human Rights.
4. Whether the Applicant is entitled to an order perpetually restraining the Respondents by themselves, their privies, agents, representatives, or whomsoever be from arresting and/or detaining him in any manner or guise whatsoever with regards to the subject matter of this application.

After due consideration of the reliefs sought in the instant case, I am of the opinion that all the above issues can be adequately addressed together under one single issue, i.e.

Whether the Applicant in this case has established a breach of his fundamental rights as to be entitled to the grant of the reliefs sought in this application.

The above issue distilled by me will therefore be the issue for determination in the instant matter.

Before I proceed, the brief facts relied upon by the Applicant as contained in his affidavit in support of his instant application for the enforcement of his fundamental rights is that he is very sensitive to light and experiences discomfort and excessive tearing in his eyes when exposed to sunlight and flashes of light. As a result of this health challenge, the Applicant purchased a Lexus EX330 vehicle with tinted glasses in November, 2017. He immediately applied to the Deputy Inspector General of Police, Department of Operations in Abuja and obtained a tinted glass permit issued on 14th November, 2017. On returning to Owerri towards the end of November, 2017, Policemen at check-points under the command of 1st Respondent at State CID, Owerri would ask for the Applicant's tinted glass permit but upon being

presented with same, would seize the Applicant's keys for hours, keep him there and demand N50,000 from him. The Applicant's explanation of his health condition fell on deaf ears. This situation occurred a number of times with the said Policemen extorting various sums of monies from the Applicant before letting him go. This continued despite the Applicant obtaining a medical report confirming his medical condition. He further obtained a medical report from the Officer Commanding the Nigeria Police Medical Services, Imo State Police Command, Owerri but upon presenting it to the same Policemen at the usual checkpoint, his car keys were confiscated, he was handcuffed and undressed down to his boxer shorts right at the checkpoint. He was detained at the State CID, Owerri without being informed of the cause and was made to pay further sums of money for his bail. Upon his return to Abuja, the Applicant instructed his Counsel who wrote a letter of complaint to the 3rd Respondents and eventually filed a fundamental rights action with Suit No. CV/1325/18 before the FCT High Court presided by Garba J. which matter has since been adjourned for Ruling. Exhibits 'BONA 1' - 'BONA 5' were attached as tinted glass permit, medical report, letter of notification, letter of complaint and affidavit of service in Suit No. CV/1325/2018.

All the foregoing averments serve as background facts. The crux of the Applicant's complaint before this Court, as per his affidavit, is that on 7th June, 2018, the Respondents (using several Policemen) stormed his premises in Owerri, Imo State, abducted him, stripped him down to his boxer shorts, handcuffed his hands and feet and threw him in the boot compartment of their vehicle. The said Policemen proceeded to search the Applicant's apartment where they found the sum of N280,000 which they took away. The Applicant averred that he was taken to East Gate Hotel, Owerri where he was locked up in a room in handcuffs, beaten mercilessly by the Policemen with gun butts, boots and fists while being called a kidnapper. The Applicant was eventually left to sleep on the floor in his boxers while bound hands and feet. The Applicant

was, through duress, made to call several friends and family members to pay different sums of money into his account. He was then forced to write a statement and thereafter moved by the Policemen in handcuffs to Enugu. Along the way the Applicant was called a kidnapper to other security agents that manned checkpoints. At Enugu, the Policemen took the Applicant to the Diamond Bank branch at Nike Lake Road, Trans Ekulu where he was given an account number to transfer N5,000,000 to, but was later instructed by the said Policemen to withdraw the money in cash and hand over to them; which he did. The Applicant averred that he was later taken by the Policemen to a police station at Enugu where the beatings and other forms of violence and threats continued. He was forced to state (while being recorded on video) that he was an internet fraudster to intimidate him into silence. He was also forced to make written statements that he was an internet fraudster. His Samsung phone was also taken away from him. The Applicant was thereafter handcuffed again by the Policemen and brought to Abuja, FCT where they detained him for two more days at an unknown location. The Policemen subsequently released the Applicant with threat that they would use evidence obtained under duress against him if he dared tell anybody of what happened to him.

Arguing his issues for determination, learned Counsel to the Applicant submitted in his address that the Respondents had no business arresting or detaining the Applicant at all. He contended that this Court has territorial jurisdiction to adjudicate upon this matter. He argued that it is clear that the re-arrest, detention, extortion and false imprisonment of the Applicant by the Respondents and their agents was purely for the purpose of extorting the Applicant and there was no suspicion of crime whatsoever. Counsel submitted therefore that the Applicant is entitled to the declaration that his rights to dignity of his person and to his personal liberty have indeed been infringed upon. He relied on the case **of JIM-JAJA V. C.O.P RIVERS STATE (2011) 2 NWLR (pt. 231) P. 375** as well as Articles V and VI of the African Charter on Human and

People's Rights. He argued that the Applicant is entitled to a refund of all the monies extorted from him by the Respondents and their agents in abuse of their office. He contended that from the clear letters of Section 35(6) of the 1999 Constitution, once a Court is satisfied that an Applicant was unlawfully arrested or detained, he is automatically entitled to compensation whether prayed for or not. According to Counsel, the quantum of damages to be awarded as general damages is dependent on the discretion of the Court. He urged this Court to grant the Applicant general damages. He submitted further that it is the law that once a Court finds a party liable for trespass, it ought to make an order of perpetual injunction against the trespasser to prevent a multiplicity of actions as further trespass is reasonably foreseeable just as in this matter.

Now in the resolution of this issue, the instant action is one brought by the Applicant for the enforcement of his fundamental rights. The law is that the burden of proof lies on the Applicant to establish by credible affidavit evidence that his fundamental right was breached. – see the decision of the Court of Appeal in the case of **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2002) 10 NWLR (PT.774) P. 95** which decision was upheld by the Supreme Court in **FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (2009) 5 NWLR (PT.1135) P. 588**. See also the case of **MR. COSMOS ONAH V. MR. DESMOND OKENWA & ORS (2010) LPELR-4781(CA)**.

It is relevant to reiterate at this stage that although the Respondents were served with the originating processes and hearing notices in this suit, they did not file any response to the instant application. The facts adduced by the Applicant in his affidavit in support of his instant application for enforcement of his fundamental rights thus stands unchallenged as the Respondents have failed to file any counter affidavit to challenge same. The implication in law of the Respondents' failure to file such counter-affidavit to controvert the averments in the affidavit is not lost on me.

They are deemed to have admitted the facts deposed to in such affidavit and such unchallenged and uncontroverted facts are treated as established. – see the cases of ***INAKOJU V. ADELEKE (2007) 4 NWLR (PT.1025) P. 423, THE GOVERNOR OF KOGI STATE & ORS V. OBA S. A. MOHAMMED (2008) LPELR-5013(CA) and AYALA V. DANIEL & ORS (2019) LPELR-47184(CA)***. The facts alleged by the Applicant in support of his application in the instant case are therefore deemed admitted and thus established.

Now, the established fact as per the affidavit evidence before this Court is that the Applicant was abducted on 7th June, 2018 from his residence in Owerri, Imo State by Policemen under the Respondents, taken to East Gate Hotel, Owerri where he was locked up in a room in handcuffs, moved to a police station in Enugu and thereafter brought to Abuja, FCT where he was further detained for two days before being released.

Under **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** every person (including the Applicant) is guaranteed his personal liberty. The circumstances under which a person may be lawfully deprived of his personal liberty and the procedure to be followed in order to lawfully curtail such right to personal liberty have been copiously spelt out under the provisions of the said **Section 35 of the Constitution**.

The position of the law is that where there is evidence of arrest and/or detention of an Applicant (as in the instant case) in an application for enforcement of fundamental right, it is for the respondent to show that the arrest and detention were lawful. – see the cases of ***EJEFOR V. OKEKE (2000) 7 NWLR (PT.665) P. 363 and FAJEMIROKUN V. C.B.(C.L.) (NIG.) LTD. (supra)***. The onus is thus placed on the Respondents (by the law) to show that the detention of the Applicant on 7th June, 2018 is justified and within the

circumstances provided in **Section 35(1)(a) –(f) of the Constitution.**

The Respondents however failed to appear before this Court to justify their actions.

From the facts of this case, it is clear that the Respondents are officers of the Nigeria Police Force. This Honourable Court can and ought to take judicial notice of the Respondents' statutory duties to detect and prevent crime as well as to apprehend and prosecute suspected criminal offenders under the provisions of the **Police Act**, the **Administration of Criminal Justice Act 2015 (ACJA)** and the **Constitution of the Federal Republic of Nigeria 1999 (as amended)**. They are therefore equipped with the power to arrest and detain a person upon reasonable suspicion of his having committed a criminal offence in accordance with **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**.

Section 35(1)(c) of the Constitution allows the arrest of the Applicant by the Respondents on a reasonable suspicion of his having committed a criminal offence. The reasonable suspicion that the Applicant has committed an offence for which he may be arrested or detained depends upon the facts available to the Respondents (the detaining authority in this case) at the time of such detention. – see the case of **CHIEF ITA OKON AQUA V. ETUBOM I. E. ARCHIBONG & ORS. (2012) LPELR-9293(CA)**.

In the case of **OTERI V. OKORODUDU (1970) All N.L.R 199** the Supreme Court per Lewis JSC stated the test for determining 'reasonable suspicion' of commission of an offence. Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective that the person concerned may have committed the offence or likely to commit the offence. – see also the case of

***SUNNY UBOCHI V. CHIEF GODWIN EKPO & ORS (2014)
LPELR-23523(CA).***

Thus, the question now is was there reasonable suspicion of the Applicant having committed a criminal offence thus justifying his detention on 7th June, 2018 in this case? The facts or affidavit evidence before this Court is only that of the Applicant's and certainly does not show this. The Respondents who have the onus of justifying their act of detaining the Applicant did not give any reason for their conduct. The mere fact that they have the power to detain under the law does not give them the right to exercise such power arbitrarily. There must be just cause for the exercise of such power. In the instant case however, none has been shown. It follows that the detention of the Applicant by the Respondents on 7th June, 2018 in Owerri (Imo State), Enugu (Enugu State) and subsequently Abuja (FCT), where he was eventually released two days later, is without just cause, unlawful and an infringement on the Applicant's fundamental right to personal liberty otherwise guaranteed by the provisions of **Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**.

It is also an established fact that the Applicant was on 7th June, 2018 stripped down to his boxer shorts, put in hand and leg cuffs/restraints and carried around in this situation from Owerri to Enugu and finally to Abuja by the Respondents. It is a fact before this Court that the Applicant was beaten with gun butts, boots and fists by the Policemen under the Respondents and called names. The Respondents however failed to justify their said actions by filing counter affidavit to deny, challenge or controvert the facts of the Applicant's affidavit supporting the motion. **Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** provides as follows:-

34.

1. *Every individual is entitled to respect for the dignity of his person, and accordingly:-*

- a. *no person shall be subject to torture or to inhuman or degrading treatment;*
- b. *no person shall be held in slavery or servitude; and*
- c. *no person shall be required to perform forced or compulsory labour.*

See also the case of **EZEADUKWA V. MADUKA (1997) 8 NWLR PT. 518 P. 635.**

Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act to which this Court has been referred by Counsel to the Applicant also provides as follows:-

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

In view of the foregoing provisions, I am of the opinion that the Respondents' acts of stripping the Applicant to near nakedness and putting him in restraints in public as well as beating him amounts to torture and degrading treatment in the circumstances particularly as the Respondents have failed give explanation to this Court why the Applicant deserved such treatment. They clearly breached the Applicant's right to dignity of his person as otherwise provided for under **Section 34(1)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and **Article 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.**

Pursuant to the foregoing, I hold the view that the Applicant is entitled to the first relief of his instant application which is a declaration that the Respondents, by their actions, infringed upon his fundamental right to dignity of his person and right to personal liberty and I so hold.

By the second and third reliefs of the instant application, the Applicant seeks a refund of monies extorted from him by the Respondents in the sum of N5,280,000 as special damages. He also seeks the sum of N100,000,000 as general damages.

Now the fact before this Court is that the Policemen under the Respondents came to the Applicant's house on 7th June, 2018 and searched his apartment where they found the sum of N280,000 which money they took away. They also compelled him to withdraw the sum of N5,000,000 which he was made to hand over to them. Although there is nothing else to support these averments, the fact that the averments were made in an affidavit and were not controverted by the Respondents simply makes any further proof unnecessary. Such facts are deemed established in the circumstances. There is nothing before this Court to justify such extortion... and this is extortion pure and simple. Consequently, I hold the view that the Applicant is entitled to a refund of a total sum of N5,280,000.00 extorted from him by the Respondents on 7th June, 2018 when the incident complained of occurred and I so hold.

Regarding the claim for general damages, compensation and public apology is specifically set out under **Section 35(6) of the Constitution** as remedy for unlawful arrest and detention. See also the case of **NWANGWU V. DURU (2002) 2 NWLR (PT.751) P. 265**. Having found that the Applicant's right to personal liberty was breached through his detention on 7th June, 2018 by the Respondents, it follows that the Applicant is entitled to some quantum of damages as compensation from the Respondents for their act of unlawful detention. See the case of **EFCC V. OYUBU & ORS (2019) LPELR-47555(CA)** wherein the position was held that once a Court comes to the

conclusion that the fundamental right of a person has been infringed, he is entitled to damages.

In the instant case therefore, I hold the view that the Applicant is entitled to the second and third reliefs of his application and I so hold. The quantum of general damages to be awarded is however a matter of discretion of this Court as rightly submitted by Counsel to the Applicant. Hence therefore, the sum of N25,000,000.00 is hereby awarded to the Applicant as general damages against the Respondents.

By the fourth relief of his application, the Applicant seeks an order perpetually restraining the Respondents from arresting or detaining the Applicant in any manner with regards to the subject matter of this application.

I have stated earlier that judicial notice must be taken of the fact that the Respondents have the Constitutional and statutory duty to investigate and prosecute crime. They thus have the power to cause the arrest of persons reasonably suspected of having committed a criminal offence and detain them. The order sought vide the fourth relief of the instant application is rather general in nature as it is vague. If granted, the consequence might be rather grave. The consequence is that where there arises just cause in future to arrest or detain the Applicant in respect of matters connected to this application, the Respondents would have been prevented from performing their lawful duty. It is therefore in the interest of public policy that such an order should not be granted. Rather than grant such an injunction, a person whose fundamental rights has been breached again by the Respondents can always approach the Court again and again for the enforcement of his/her fundamental rights. See the cases of **ATTORNEY-GENERAL OF ANAMBRA STATE V. UBA (2005) 15 NWLR (PT.947) P. 44**, **OGBORU V. PRESIDENT, COURT OF APPEAL (2007) ALL FWLR (PT. 369) P. 1221** and **PETER V. OKOYE (2002) 3 NWLR (PT. 755) P. 529**. See also the cases of **ABAYOMI FABUNMI V.**

INSPECTOR GENERAL OF POLICE, ABUJA & ANOR (2011) LPELR-3550(CA) and MRS. BABY JUSTINA LUNA V. COMMISSIONER OF POLICE RIVERS STATE POLICE COMMAND & ORS (2010) LPELR-8642(CA). It is for this reason that the fourth relief of the instant application must be refused and it is accordingly dismissed. That is the position of this Honourable Court.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
13/07/2020**

Parties:- Absent.

I.R Aleke:-For the Applicant.

Respondents:-Not represented by Counsel.

**Sign
Judge
13/07/2020**