



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/3174/2019

BETWEEN:

DAVID OLUMIDE ADERINOKUN.....APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE)
2. ECOBANK PLC).....RESPONDENTS

JUDGMENT

The Applicant is a Real Estate Business man, based in Lagos. He was contacted sometime in February, 2019 by one Mr. Sunny Ogor to help source for United States Dollars. The Applicant not being a Foreign Exchange Dealer referred Mr. Ogor to one Mr. Chinedu Iyizoba who was in a better position to deal with the transaction. Mr. Iyizoba later confirmed to the Applicant that the transaction was successfully carried out through one Mr. Aluze Agiri.

However, on the 17th August, 2019 operatives of the 1st Respondent traced the Applicant to his office where he was informed that the Foreign Exchange sourced in favour of Mr. Sunny Ogor was fraudulently procured, thereby leading to the arrest of Mr. Aluze

Agiri, Chinedu Iyizoba and Sunny Ogor. That in the course of investigation, Mr. Chinedu Iyizoba had mentioned the name of the Applicant as the person who introduced Mr. Sunny Ogor to him. The Applicant stated that he was forced to make a statement to the officers of the 1st Respondent as a condition for his bail to the effect that he participated in the crime under investigation. Upon compliance with this request, the Applicant was granted bail but re-arrested again and asked to make further self-incriminating statement but he refused. After spending nine (9) days in the detention facility of the 1st Respondent situate at Garki, Abuja – FCT, the Applicant succumbed on ground of his failing health and made further incriminating statement. He was then granted bail on fresh terms which includes a surety who must be a Civil Servant not below Grade Level 14, cash deposit of N2 Million and deposit of a Cheque in the sum of ₦38 Million. The Applicant complied and issued to the Officers of the 1st Respondent four separate blank and undated Fidelity Bank PLC cheques belonging to Trevari Properties and Investment Limited. One of the blank Cheques in the sum of N8 Million was presented for payment but returned unpaid as the Directors of Trevari Properties and Investment Limited who ought to confirm payment declined. This development according to the Applicant has led to a further threat of unlawful arrest, detention

and torture of the Applicant if he fails to take steps that will enable value to be given to the cheque returned unpaid by the Bank.

It is on account of the foregoing that the Applicant approached this Court, pursuant to Section 35(1)(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the relevant provision of the African Charter on Human and People's Right and the Fundamental Rights (Enforcement Procedure) Rules 2009 seeking the following Reliefs:

- a. A DECLARATION that the arrest, harassment, intimidation, interrogation and arbitrary detention of the Applicant by the 1st Respondent over a report made by the 2nd Respondent which arose from a civil dispute is illegal, unlawful, unconstitutional and in total contravention of the Applicant's fundamental rights as guaranteed and protected by the 1999 Constitution (as amended).**
- b. A DECLARATION that the 1st Respondent's continuous intervention in the civil matter is illegal and ultra vires of her statutory duties and powers as she is not a debt recovery agent of the 2nd Respondent.**

- c. A DECLARATION that the 4 (four) Fidelity Bank PLC undated and unaddressed cheques with cheque numbers: 27810085; 27810086; and 27810088 belonging to Trevari Properties and Investment Limited which, at the 1st Respondent's mandate, was tendered by the Applicant as a condition for his administrative bail is overreaching, blackmailing and illegal.**
- d. AN ORDER of Court directing the 1st Respondent to cease all forms of adjudication, meditation, debt recovery tactics, meddling and harassing of the Applicant forthwith.**
- e. AN ORDER of this Honourable Court directing the 1st Respondent to return the 4 (four) Fidelity Bank PLC undated and unaddressed cheques with cheque numbers 27810085; 27810086; 27810087 and 27810085 belonging to Trevari Properties and Investment Limited to the Applicant.**
- f. AN ORDER of Court directing the Respondent's severally and jointly, to pay forthwith the sum of ₦300,000,000.00 (Three Hundred Million Naira) as general and exemplary damages for infringing the Applicant's fundamental rights.**

g. AND such further Orders(s) as the Honourable Court may deem fit to make in the circumstance.

Facts in support of the application are captured in a 28 paragraphs affidavit personally deposed to by the Applicant. In keeping faith with the dictate of the Fundamental Right (Enforcement Procedure) Rules 2009, the Applicant filed a statement showing his name, description, the reliefs sought and the grounds upon which they are sought. Mr. Samuel O. Zibiri SAN also filed a Written Address in support of the application in obedience to the Rules of the Court.

The record of the Court revealed that the Respondents were duly served with Applicant's Originating Motion on Notice. The 1st Respondent, however, opted not to defend the Applicant's claim against it. On the other hand, the 2nd Respondent filed 26-paragraphs Counter Affidavit deposed to by one Joan Wilson (an employee of the 2nd Respondent) where it was contended that the Applicant is not known to the 2nd Respondent and that his name was not mentioned in the petition forwarded to the Police by the 2nd Respondent who reported a case of fraud to the Police. The said petition was attached and marked as Exhibit A1. The Court was therefore urged to absolve the 2nd Respondent of any wrong doing.

I have read the processes filed on behalf of the Applicant and the reaction of the 2nd Respondent and it is my view that the core issue for determination ought to be as follows:

- 1. Whether the invitation and/or arrest of the Applicant by operatives of the 1st Respondent from the FCT Command is legally justifiable taking into account the facts and circumstance of this case.**
- 2. Whether the Applicant has made out a case of illegal detention against the Respondent.**

DETERMINATION OF ISSUES

ISSUE 1

Whether the invitation and/or arrest of the Applicant by operatives of the 1st Respondent from the FCT Command is legally justifiable taking into account the facts and circumstance of this case.

In dealing with this issue, the point must be made that the Police is primarily saddled with the responsibility of combating crime in the society. This extends to investigation and arrest of suspects once there is a reasonable ground to do so. See Section 4 of the Police Act, Cap P19, Laws of the Federation of Nigeria, 2004 as set out below:

“The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation 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.”

See also the case of **ISYAKU & ANOR Vs C.O.P YOBE STATE & ORS (2017) LPELR - 4343 (CA)** where the Law was aptly captured thus:

“It was not in dispute in this matter that the complaint made by the third Respondent to the first and second Respondents against the Appellants was cheating which is a recognized criminal offence under Section 323 of the Penal Code and which is punishable with five years imprisonment or a fine or with both fine and imprisonment. It is trite that every private individual has the right to report a crime or a suspected crime to the police - ISHENO VS JULIUS BERGER (NIG.) PLC (2008) 6 NWLR (PT. 1084) 582, ARAB CONTRACTORS (O.A.O.) NIGERIA LTD VS UMANAH (2013) 4 NMLR (PT. 1344) 323. Section 4 of

the Police Act, Cap 359, Laws of the Federation 1990 states the duties of the Police to include, amongst others, the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are charged. It is trite that once criminal allegations are made against a citizen, the Police has a constitutional and a statutory duty to investigate the allegations - AGBI VS OGBEH (2005) 8 NWLR (PT. 926) 40, CHRISTLIEB PLC VS MAJEKODUNMI (2008) 16 NWLR (PT. 1113) 324 AND ONAH VS OKENWA (2010) 7 NWLR (PT. 1194) 512.”

In this case, it is clear that 2nd Respondent’s petition (Exhibit A1) kick started the investigation which led to the arrest of the Applicant. For avoidance of doubt, Exhibit A1 dated 12th February, 2019 was forwarded by the 2nd Respondent to the Deputy Commissioner of Police, State CID, FCT, Abuja. The title of the petition is self explanatory, to wit:

“Petition in respect of fraudulent transfer of ₦85,645,123.00 from UBE MATCHING GRANT FUND

account 03920097550 to some accounts in other Banks.”

The petitioner on the face of Exhibit A1, explained how over N85 Million was illegally transferred from the 2nd Respondent Bank to an account domiciled in Polaris Bank from where it was further distributed to several Bank accounts with different Banks across the Country. The Applicant admitted that the Police informed him that it was one of the suspects arrested and interrogated by investigators that mentioned his name. If that be the case, I think the Police was right in inviting or arresting the Applicant for questioning. Although, the petition of the 2nd Respondent did not specifically mention the Applicant as an actor in the crime, the Police having discovered that Applicant was mentioned in the course of investigation was right to have interrogated him.

On this point, I agree with Mazi Osigwe Esq, of Counsel to the 2nd Respondent that the Police acted within its statutory power when it caused an investigation into the criminal petition of the 2nd Respondent, thereby leading to the arrest of the Applicant. In my view, the Police acted within the ambit of its statutory power and cannot be faulted. The invitation and interrogation of the Applicant by operatives of the 1st Respondents is therefore in order.

Consequently I resolve this issue in favour of the Respondents and against the Applicant.

ISSUE 2

Whether the Applicant has made out a case of illegal detention against the Respondent.

In the resolution of this issue, I take the liberty to state at the earliest opportunity that an arrest may be lawful in the eye of the Law, yet the attendant detention may become manifestly unlawful. This is so because the Constitution is very clear on the right to personal liberty. Section 35 of the 1999 constitution of the Federal Republic of Nigeria (as amended) provides as follows:

1. "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases in accordance with a procedure permitted by law.

(a) -----

(b) -----

(c) For the purpose of bringing him before a Court in execution of the Order of the Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be

reasonably necessary to prevent his committing a criminal offence”.

By the same token, subsection (4) provides as follows:

“Any person who is arrested and detained in accordance with Subsection (1)(c) of this Section shall be brought before a Court of law within a reasonable time, and if he is not tried within a period of-

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail,

he shall (without prejudice to any further proceeding 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”.

Subsection 5 says:

“In Subsection (4) of this Section, the expression “a reasonable time” means-

- (a) in the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometers, a period of one day; and**
- (b) in any other case a period of two days or such a longer period as the circumstances may be considered by the Court to be reasonable”.**

In this case, the Applicant has stated that upon his arrest for the second time by operatives of the 1st Respondent that he was detained for nine (9) days. Paragraphs 14 to 20 of the Affidavit in Support read as follows:

14. That on the 14th day of August, 2019, I was invited again by the 1st Respondent which I honoured, as a law abiding citizen.

15. That the 1st Respondent compelled me to write further statements which I refused.

16. That due to my refusal to succumb to the 1st Respondent’s duress and intimidation, I was detained by the 1st Respondent for 9 (nine) days.

17. That due to the 1st Respondent’s harassment and intimidation, coupled with my deteriorating health

condition, I eventually complied and wrote further statements, as dictated by the 1st Respondent.

18. That I was informed by the 1st Respondent I would be admitted on an administrative bail with new conditions.

19. That amongst the requirements stipulated by the 1st Respondent to me before the administrative bail could be granted was that I should produce a level 14 Civil Servant and also present the sum of N2,000,000.00 (Two Million Naira) in cash; as well as a cheque for N38,000,000.00 (Thirty-Eight Million Naira).

20. That knowing I needed serious medical attention and fearing (sic) that my liberty would be further infringed upon, I complied with the 1st Respondent's conditions by presenting the sum of N2,000,000.00 (Two Million Naira) to the 1st Respondent and a cheque of N38,000,000.00 (Thirty-Eight Million Naira) through 4 (four) Fidelity Bank PLC. Undated and unaddressed cheque numbers 27810085; 27810086; 27810087 and 27810088 belonging to Trevari Properties and Investment Limited.

There is no denial of any of the above stated facts by the 1st Respondent. In my view, this is a clear case of admission as the evidence of the Applicant is unchallenged by the 1st Respondent. In such situation, the Court is at liberty to act on such unchallenged evidence once satisfied that it is not manifestly perverse and unreliable.

See the case of **ODUNSI VS BAMGBALA (1995) 1 NWLR (PT.374) 641** where Onu, JSC held as follows:

“The law is also settled that where evidence is led by a party to any proceedings as in the instant case and it is not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seised of the proceedings to accept the unchallenged evidence before it”.

See also **FASEUN VS PHARCO (NIG.) LTD. (1965) 2 ALL NLR. 216 AT 220** and **EMAPHIL LTD VS ODILI (1987) 4 NWLR (PT. 67) 915, 939** decided along this trite principle of law.

What has played out from the unchallenged evidence put forward by the Applicant is that the Police without any justifiable ground detained the Applicant for nine (9) days, contrary to the letters and spirit of the Constitution. The Police have no constitutional or

statutory power to keep the Applicant in custody at its pleasure or whims and caprice.

Although, I stated under issue 1 that the Police has the right to interrogate the Applicant pursuant to the 2nd Respondent's criminal complaint, however, the moment it is shown that the Applicant is not implicated in the alleged crime, he ought to be released unconditionally. It would appear that the Police in this case was not honestly interested in investigating the criminal allegation made by the 2nd Respondent against non-specific individuals, but obviously on a voyage of debt recovery. Consequently, the Police used the bail conditions of the Applicant as a smokescreen for debt recovery. As a matter of fact, the Applicant was asked to deposit a cheque in the sum of N38 Million Naira and make cash deposit of N2 Million thereby summing up to N40 Million Naira. The fact that attempt was made to cash one of the cheques deposited with the Police and the threat that Applicant should facilitate the process or risk further arrest strongly, support the point that the Police in this case is on a debt recovery mission.

I am surprised that since the arrest of the Applicant sometimes in February, 2019 and October, 2019 when this application was filed, no criminal charges has been filed against the Applicant in any Court of Law. This has further strengthen the case of the Applicant as it is

clear that his detention is not for any reason other than debt recovery which make the detention illegal *ab initio*.

There are plethora of judicial authorities which made it abundantly clear that the Police as a highly distinguished Institution of the State charged with the responsibility of ensuring safety and security, should not dabble into the murky water of debt recovery. See the case of **OMUMA MICRO-FINANCE BANK (NIGERIA) LIMITED Vs VINCENT N. OJINAKA (2018) LPELR-439888 (CA)** where the Court of Appeal strongly re-echoed its earlier decisions on this point of Law:

“We have held, several times, that one who procures the Police or any Law Enforcement Agency, to dabble in a purely civil contract, to recover debt for the party to an agreement, must be ready to bear the consequences of such unlawful act of the Police/Law Enforcement Agency, acting in abuse of their powers. See the cases OF ANOGWIE & ORS VS ODOM & ORS (2016) LPELR-40214 CA; OGBONNA VS. OGBONNA (2014) LPELR- 22308; (2014) 23 WRN 48, AND ABAH VS UBN PLC & ORS 2015 LPELR -24758 CA, where it was held:
“We have stated repeatedly that the Police or any Law Enforcement Agency, for that matter, including the

Economic and Financial Crimes Commission (EFCC) is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts, under the pretext of doing lawful duties." See the case OF OCEANIC SECURITIES INTERNATIONAL LTD VS BALOGUN & ORS (2013) ALL FWLR (PT. 677) 653; IBIYEYE & ANOR VS. GOLD & ORS (2012) ALL FWLR (PT. 659) 1074."

The Court went further as follows:

"And in the case of Skye Bank Plc Vs. Njoku & Ors (2016) LPELR-40447 (CA), it was held: "...a party that employs the Police or any Law Enforcement Agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided Agency... The Police have no business helping parties to settle or recover debt..." See again OGBONNA VS OGBONNA(2014) 23 WRN 48."

See also the Supreme Court case of **E.F.C.C Vs DIAMOND BANK PLC (2018) 8 NWLR (PT.1680) 61 AT 80** cited by the learned senior counsel for the Applicant of which I am grateful to him. In that case, His Lordship Bage, JSC held thus:

“What is even more disturbing in recent times is the way and manner the Police and some other Security Agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our Security Agencies, particularly the Police, must know that the citizenry’s confidence in them ought to first be ensured by the Agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our Security Agencies, particularly the Police, are not debt recovery agencies. The agencies themselves need to first come to this realization, shun all entreaties in this regard and they will see confidence gradually restored in them.”

His Lordship in a solemn and thought provoking manner held further as follows:

“Where we are now in this Country is that place where our men in “black & blue” command almost no respect from the citizenry because of how low we have sunk. But it is my belief, which belief I must say I hold very dearly, that all hope is not lost, many women and men of deep integrity are in our Security Agencies, and they only need to rise now to the occasion.”

Arising from the foregoing, I find no justification for the intervention of the Police in what is clearly a voyage of debt recovery. It is unfortunate that cases of this nature continue to assault our collective sensibility as a nation. I do hope the authorities concerned will act fast and arrest this disturbing trend before it's too late.

The point must also be made that the role of the 2nd Respondent in this matter is limited to the criminal petition it forwarded to the 1st Respondent. The counter affidavit of the 2nd Respondent is clear that the Applicant was not mentioned in the said petition. I have seen the petition and it clearly corroborated this point. The Applicant in his Affidavit in Support of this application also admitted this point when he deposed at paragraph 24 as follows:

“That the petition written by the 2nd Respondent to the 1st Respondent is not in any way against my person or Company.”

It has also not been shown that the detention of the Applicant was at the instance and direction of the 2nd Respondent. The 2nd Respondent was only performing expected civic duty by reporting allegation of commission of a crime to the Police.

In the consideration of the liability of a Respondent who merely lodged a criminal complaint with the Police, the Supreme Court made it abundantly clear that except it is shown that such Respondent acted malafide he cannot be held liable for breach of Applicant’s fundamental right. I refer to the case of **FAJEMIROKUN VS COMMERCIAL BANK NIGERIA LTD & ANOR (2009) 5 NWLR (PT.1135) 588** where Ogebe, JSC stated the Law thus:

“Generally, it is the duty of citizens of this Country to report cases of commission of crime to the Police for their investigation, and what happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their civil duty, unless it is shown that it is done malafide.”

Having not shown that the 2nd Respondent acted in bad faith in the presentation of its petition to the Police, it is my view that in the circumstances it has not been shown that the claims against the 2nd Respondent are sustainable.

At the end of the day and taking into consideration the three heads of declaratory reliefs sought by the Applicant, I am satisfied that his arrest is lawful. However, I declare the detention of the Applicant for nine (9) days without trial illegal and unconstitutional. I also set aside the requirement imposed on the Applicant to present four blank cheques as a condition precedent for his bail. In the absence of any criminal prosecution, I direct the men and operatives of the 1st Respondents to return the said cheques to the Applicants forthwith. For the avoidance of doubt, the cheques in issue are Fidelity Bank PLC numbers 27810085; 27810086; 27810087 and 27810088 with Trevari Properties and Investment Limited as the account holder.

The prayer for injunction is also granted. An order of perpetual injunction is hereby made restraining the 1st Defendant and his operatives from arresting the Applicant, except in accordance with Constitutional stipulations.

I have also considered the claim for general and exemplary damages in the sum of N300, 000, 000. 00 (Three Hundred Million Naira) against the Respondents for violation of Applicant's fundamental

right. In **GABRIEL JIM-JAJA VS. C.O.P RIVERS STATE & ORS (2012)**
LPELR 20621 SC Mohammed, JSC held that:

Appellant’s unlawful detention by the respondents constitutes a breach of his right to personal liberty as guaranteed under Section 35(1) of the Constitution. The same Constitution has provided under Section 35(6) thus:-

“35(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.”

Accordingly, I award general damages in the sum of N500,000.00 (Five Hundred Thousand Naira) only in favour of the Applicant and against the 1st Respondent.

For the record, the Applicant has not shown that the 2nd Respondent was in anyway guilty of any form of infringement of his fundamental right. The 2nd Respondent is therefore not liable to the Applicant.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
04/11/2020

