

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON MONDAY, 9TH NOVEMBER, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

SUIT NO. FCT/HC/CV/1509/2020

BETWEEN

MR. OKOEKO EVANS

APPLICANT

AND

- 1. THE NIGERIA POLICE FORCE**
- 2. INSPECTOR GENERAL OF POLICE**
- 3. CSP MUAZU [LIFE CAMP POLICE
STATION, ABUJA]**
- 4. OKEREKE OBIOHA LAWRENCE**
- 5. AKINMADE HABIBAT**

RESPONDENTS

JUDGMENT

The applicant commenced this action by originating motion filed on 20/3/2020 for the enforcement of his fundamental rights. In support of the originating motion are: [i] Statement setting out the description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought; [ii] the applicant's 29-paragraph affidavit with Exhibits A, B & C attached therewith; and the written address of U. V. EgelambaEsq.

The applicant's reliefs are as follows:

1. A declaration that the invasion of applicant's business premises, the arrests, intimidation and incessant harassment of the applicant by the respondents amount to a breach of his fundamental rights guaranteed under Chapter 4 of the Constitution of Federal Republic of Nigeria and Articles 5; 6 and 14 of The African Charter on Human and Peoples' Rights [Ratification and Enforcement Act] Cap. 10 Laws of the Federation, 1990.
2. A declaration that the applicant being a purchaser of value of the following cars: Toyota Corolla with registration number BWR 352 BM; Honda Accord with registration number ABC 165 SQ; and Toyota Corolla with registration number ABC 359 BM, without notice of any fraud as such the respondents do not have the jurisdiction to recover the said cars from the applicant, the applicant haven [sic] also sold them at a market overt to the 4th and 5th respondents.
3. A declaration that the act of the respondents, forcefully taking away and seizing the applicant's personal car a Toyota Camry GME 156 DX and 2 cars from the applicant is unlawful, illegal and an abuse of the fundamental rights of applicant as enshrined in the Constitution of the Federal Republic of Nigeria 1999 [as amended].
4. A declaration that the threat of arrest, detention and harassment of the applicant by the respondents except he produces the cars within 48

hours which he has sold in market overt since sometime in 2019 amount to a breach of the applicant's fundamental rights.

5. A declaration that the threat of arrests and harassment by the 4th and 5th respondents of the applicant and his agent [sales man], Nelson Bassey amount to a breach of their fundamental right guaranteed under the Constitution.
6. An order of this court perpetually restraining the respondents, their agents and representatives or any other security agency from further arrest, harassments, intimidation, detention of the applicant and any of his sales persons [such as Mr. Nelson Bassey] with respect to this transaction.
7. An order of this Court perpetually restraining the respondents, their agents and representatives or any other security agency from forcefully seizing the applicant's car and the above mentioned sold cars from the applicant or the purchasers of those cars who are also purchasers of value without notice of any fraud.
8. An order of this Court compelling the respondents and in particular the 3rd respondent to release the applicant's personal car a Toyota Camry with registration number GME 156 DX and other cars which were forcefully taken away from the applicant and his sales [*sic*].
9. An order compelling the respondents to publish a public apology in 2 National dailies to the applicant.

10. An order of the sum of N50,000,000.00 [Fifty Million Naira] only as general damages in favour of the applicant, jointly and severally against the respondents for breach of his fundamental rights.

11. Cost of action at N5,000,000.00 [Five Million Naira] only against the respondents.

12. And for such further other orders as the Court may deem fit to make.

In his affidavit in support of the originating motion, the applicant stated that:

- i. The 3rd respondent is the DPO in-charge of Lifecamp Police Station and officer of the 1st respondent.
- ii. He carries on the business of car sales, and he has a car stand at KadoKuchi opposite Custom Quarters Abuja.
- iii. Sometime in 2019, Mr. Joe OjonugwaAbimaje and one Richard NdubisiUwajebrought 3 cars to his business premises and offered them to him to purchase. The cars are: [i] Toyota Corolla with registration number BWR 352 BM; [ii] Honda Accord with registration number ABC 165 SQ; and [iii] Toyota Corolla with registration number ABC 359 MB.
- iv. He asked for the original vehicle papers of the cars which were handed over to him by Mr. Joe OjonugwaAbimaje and RichardNdubisiUwaje. Upon perusal of the original car papers, he discovered that one was in the name of Mr. Joe OjonugwaAbimaje, the second was in the name of

the wife of Mr. Joe OjonugwaAbimaje [Mrs.Abimaje] and the third car was in the name of Richard NdubisiUwaje. The copies of the Toyota car papers bearing the name of Mr. Joe OjonugwaAbimaje bought by the 4th respondent are Exhibit A.

- v. He carried out verification exercise at the V.I.O. Mabushi office which confirmed the genuineness of the car papers and also confirmed that the cars were registered in the names of Mr. Joe OjonugwaAbimaje, Mrs. Cynthia Abimaje and Richard NdubisiUwaje. The photocopies of the agreements of sale to his salesman [Mr. Nelson] by Mrs. Abimaje and Mr. Ndubisi are Exhibit B.
- vi. After the confirmation as aforesaid, he made payments to Mr. Joe OjonugwaAbimaje and to Richard NdubisiUwaje's GTBank account number: 0175270364 and to Mrs. Abimaje's account. Upon payment, the original car papers were handed over to him along with the cars.
- vii. He sampled the cars at their car stand. Sometime in August 2019, his salesman [Mr. Nelson Bassey] sold 2 of the cars to 4th & 5th respondents who bought them at a market overt from their car stand and original papers of the car handed over to them.
- viii. To his surprise, the 1st & 2nd respondents through the 3rd respondent invaded their office on 9/3/2020 at about 9 a.m., arrested him, detained him at Lifecamp Police Station till 8.30 p.m. and forced him and Mr. Nelson to make an undertaking to produce the said cars within 48

hours else he shall be severely tortured and detained until he provides the cars or pay its equivalent.

- ix. At Lifecamp Police Station, the 3rd respondent informed him that Mr. Abimaje was given the cars by other persons for hire and he registered them in his name and sold them.
- x. He informed the 3rd respondent that he and Mr. Nelson Bassey [who sold the car on his behalf] were not aware of this fact at the time of the transaction even till the cars were sold to the 4th & 5th respondents; but his explanation and entreaties fell on deaf ears.
- xi. Since 9/3/2020, the 1st & 2nd respondents through the 3rd respondent have continually threatened to arrest and detain him in perpetuity until the said cars are recovered.
- xii. The 3rd respondent has forcefully collected the cars from the 4th & 5th respondents. The 4th & 5th respondents have secured the services of the 1st, 2nd & 3rd respondents to arrest and harass him and Mr. Nelson to refund the purchase price of the cars to them.
- xiii. He can no longer go out to carry on his lawful business for fear of arrest and harm by the respondents. His lawyer wrote to the authorities of 1st respondent complaining of this breach; the letter dated 11/3/2020 is Exhibit C.
- xiv. The 3rd respondent arrested him again on 16/3/2020 and seized his personal car and the car is still with 3rd respondent. The 3rd respondent

has threatened to go to the applicant's business premises to forcefully take away more cars if he does not produce the cars he bought from Mr. Abimaje and Mr. Ndubisi.

From the records in the case file, all the respondents were served with the originating processes and hearing notices. None of the respondents filed any process and none of them attended Court. On 5/10/2020, U. V. Egelamba Esq. adopted the applicant's processes.

Learned applicant's counsel formulated three issues for determination, to wit:

1. Whether this Honourable Court can grant this application.
2. Whether the applicant is a purchaser of value without notice of any fraud as such whether the 1st to 3rd respondents or any other security agent can legally recover the cars or debt for the 4th and 5th respondents from the applicant in this circumstance.
3. Whether the seizure of the applicant's personal car in the circumstance of this case by the 3rd respondent who is an officer of the 1st and 2nd respondents amounts to an infringement of the applicant's fundamental rights.

Learned counsel for the applicant referred to **Fajemirokun v. Commercial Bank [Credit Lyonnais [Nig.] Ltd. [2002] 10 NWLR [Pt. 774] 95** where it was held that for an applicant alleging infringement of his fundamental rights to

succeed, he must place all vital evidence regarding the infringement or breach of such rights before the court. It is only thereafter that the burden shifts to the respondent. He stated that the applicant has placed sufficient materials before the Court in his affidavit to support the allegation of breach of his fundamental rights.

U. V. Egelamba Esq. contended that the transactions between Mr. Nelson on his behalf and the 4th & 5th respondents are purely civil transactions and the 1st-3rd respondents are in a voyage of recovering debt for the 4th & 5th respondents and the recovery of the said cars. He submitted that the cars were lawfully transferred to him for value without notice of the alleged fraud by Mr. Abimaje and without notice of the sellers' alleged defective title. He referred to the cases of **Oceanic Securities International Ltd. v. Balogun [2012] All FWLR [Pt. 643] 1880**; and **Diamond Bank Plc. v. H.R.H. Eze [Dr.] Peter Opara & Ors. [2018] LPELR-43907 [SC]** to support the view that the 1st, 2nd & 3rd respondents have no duty to engage in the recovery of debt and enforcement of civil contracts for parties. Mr. Egelamba further referred to sections 22 & 23 of the Sale of Goods Act, 1893, which provide:

22. *Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.*

23. *When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.*

Based on the above provisions, applicant's counsel submitted that the 1st-3rd respondents cannot recover the cars and/or debt for the 4th& 5th respondents from the applicant as he obtained good title from the sellers. He referred to section 44[1] of the 1999 Constitution [as amended], which provides for right to own property; and urged the Court to hold that in the circumstances of this case, the respondents' act of seizing the applicant's personal car is a breach of his right guaranteed under section 44 of the 1999 Constitution [as amended].

It is trite law that where the evidence of a party to a proceeding was not challenged by the opposite party who had the opportunity to do so, it is always open to the court to act on the unchallenged evidence before it. See the case of **Jacob Omman v. Darlington Ekpe [2000] 1 NWLR [Pt. 641] 365.** As I said before, the respondents did not file any process to challenge or controvert the facts relied upon by the applicant. The effect is that the respondents are deemed to have admitted the facts in applicant's affidavit. In particular, the respondents did not challenge the fact that the 3 cars which the applicant bought from Mr. Joe Ojonugwa Abimaje, Mrs. Cynthia Abimaje and

Richard NdubisiUwaje were respectively registered in their names and that he had no knowledge or notice of any defect in their title.

Section 35[1] of the 1999 Constitution [as amended] guarantees the right to personal liberty. Section 44[1] thereof guarantees the right to own moveable property. It provides that: *“No moveable property ... shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria ...”*

The 1st, 2nd& 3rd respondents have not shown any reason to justify the arrests of the applicant on 9/3/2020 and on 16/3/2020 and the seizure of his personal car. They have also not shown any reason to justify the interference with the applicant's right to the 3 cars he bought from Mr. Joe OjonugwaAbimaje, Mrs. Cynthia Abimaje and Richard NdubisiUwaje, two of which were sold to the 4th& 5th respondents; and the interference with his right to his personal car. The Court agrees with Mr. U. V. Egelambathat the applicant's right to personal liberty guaranteed under section 35[1] of the 1999 Constitution [as amended] and his right to own moveable property guaranteed under section 44[1] thereof were violated by the 1st, 2nd& 3rd respondents.

In his affidavit, the applicant stated that the 3rd respondent has forcefully collected the cars he sold to the 4th& 5th respondents from them; and the 4th& 5th respondents have secured the services of the 1st, 2nd& 3rd respondents to arrest and harass him and Mr. Nelson to refund the purchase price of the cars to them. The 3rd respondent has threatened to go to the applicant's business

premises to forcefully take away more cars if he does not produce the cars he bought from Mr. Abimaje and Mr. Ndubisi. In view of the threat to further arrest the applicant, the Court also agrees with applicant's counsel that the respondents are likely to violate the applicant's right to own property and his right to personal liberty.

Section 46[1] of the 1999 Constitution [as amended] provides:

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

By section 46[2] thereof, the Court *"may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter."*

In the light of the foregoing, the applicant's reliefs 1&2 are granted against the 1st, 2nd& 3rd respondents. Relief 4 is granted against the respondents. In relief 3, the applicant seeks a declaratory order that the seizure of his personal car [i.e. a Toyota Camry] and *"2 cars from the applicant"* is unlawful and illegal. The applicant's affidavit evidence is that his personal car [i.e. Toyota Camry] was taken away by the 3rd respondent on 16/3/2020. There is no evidence that 2 other cars were taken away. Thus, relief 3 is granted against the 1st, 2nd& 3rd respondents only in respect to the applicant's Toyota Camry

car. The applicant's relief 5 against the 4th& 5th respondents is the same as relief 4, which is against all the respondents. Relief 4 is refused.

Reliefs 6 & 7 are orders of perpetual injunction to restrain respondents, their agents and representatives or "*any other security agency*" from doing the acts stated in the reliefs. It is trite law that a court cannot make an order against a person who is not a party in the suit before it. See **Ochala&Ors. v. John &Ors. [2019] LPELR-47001 [CA]**. The Court cannot make an order against "*any other security agency*". Relief 6 is granted against the respondents while relief 7 is granted against the 1st, 2nd& 3rd respondents.

In relief 8, applicant seeks an order of the Court to compel the respondents, and in particular the 3rd respondent, to release his personal car i.e. Toyota Camry with registration number GME 156 DX "*and other cars*" which were forcefully taken away from him. From the applicant's affidavit evidence, his personal car [i.e. Toyota Camry] was taken away by the 3rd respondent on 16/3/2020. There is no evidence that any other car was taken away. Thus, this relief is granted against the 1st, 2nd& 3rd respondents only with respect to the Toyota Camry car.

The applicant's relief 9 is an order of Court to compel the respondents to publish an apology in 2 National dailies to the applicant. My view is that the facts of this case do not warrant the grant of this relief. It is refused. In relief 10, the applicant claims the sum of N50 million as general damages for breach of his fundamental rights. Having found that the 1st, 2nd& 3rd respondents

violated the applicant's fundamental rights to personal liberty and to own moveable property, I hold that the applicant is entitled to general damages, against the 1st, 2nd& 3rd respondents, which I assess as N5 million.

CONCLUSION

I enter judgment in favour of the applicant as follows:

1. A declaration that the invasion of the applicant's business premises, the arrests, intimidation and incessant harassment of the applicant by the 1st, 2nd& 3rd respondents amount to a breach of his fundamental rights to liberty and to own moveable property respectively guaranteed under sections 35[1] and 44[1] of the 1999 Constitution [as amended].
2. A declaration that the applicant being a purchaser for value of the following cars: Toyota Corolla with registration number BWR 352 BM; Honda Accord with registration number ABC 165 SQ; and Toyota Corolla with registration number ABC 359 BM without notice of any fraud, the 1st, 2nd& 3rd respondents do not have the jurisdiction or power to recover the said cars from the applicant, the applicant having sold them at a market overt to the 4th and 5th respondents.
3. A declaration that the 1st, 2nd& 3rd respondents' act of forcefully taking away and seizing the applicant's personal car i.e. a Toyota Camry GME 156 DX is unlawful, illegal and a violation of his fundamental rights guaranteed under section 44[1] of the 1999 Constitution [as amended].

4. A declaration that the threat of arrest, detention and harassment of the applicant by the respondents except he produces the cars within 48 hours which he has sold in market overt since sometime in 2019 amount to a breach of his right to personal liberty.
5. An order perpetually restraining the respondents, their agents and representatives from further arrest, harassment, intimidation, detention of the applicant and any of his sales persons [such as Mr. Nelson Bassey] with respect to this transaction.
6. An order perpetually restraining the 1st, 2nd& 3rd respondents, their agents and representatives from forcefully seizing the applicant's car and the above mentioned sold cars from the applicant or the purchasers of those cars who are also purchasers for value without notice of any fraud.
7. An order compelling the 1st, 2nd& 3rd respondents, and in particular the 3rd respondent, to release the applicant's personal car i.e. a Toyota Camry with registration number GME 156 DX, which was forcefully taken away from him.
8. The sum of N5,000,000.00 as general damages against the 1st, 2nd& 3rd respondents for breach of his fundamental rights.
9. Cost of N100,000.00 against the 1st, 2nd& 3rd respondents.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Counsel:

U. V. EgelambaEsq. for the applicant.