

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 12th OF NOVEMBER, 2020.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

MOTION NO: M/9503/2020

BETWEEN

MISS CHIOMA ADAMMA NWADIKE.....APPLICANT

AND

STANLEY CHIDIEBERE UHUABARESPONDENT

JUDGMENT

Before the court is a Motion on Notice filed on the 4th September, 2020 brought pursuant to Sections 6(6)(A),33, 34, 35(1), and 46 (1) of the 1999 Constitution as Amended; Order 2 Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 4, 6, and 7 (1)(B) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) and under the inherent Jurisdiction of this Court.

The application is accompanied with a statement and a supporting affidavit of 19 paragraphs deposed to by Chioma Adamma Nwadike, with attached Exhibits and an accompanying written address.

In opposition to the application before the court, the Respondent filed on the 2nd of October 2020 an 18 paragraph counter affidavit deposed to by Stanley Chidiebere Uhuaba, with an accompanying written address.

On the 6th October 2020 the Applicant replied orally on points of law to the counter affidavit filed by the Respondent.

The Respondent filed a further affidavit on the 19th October 2020.

The reliefs sought by the applicant in her supporting statement are as follows:

1. A Declaration that the constant threat, harassment, attack/slapping, brutality and intimidation of the Applicant at her former residence on the 21st day of February 2020 by Respondent for no just cause was illegal, oppressive, unconstitutional and contravenes Sections 33 and 34 of the 1999 Constitution of the Federal Republic of Nigeria as amended.
2. A Declaration that the trailing and stalking of the Applicant by the Respondent contravenes Section 35(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
3. An Order of Court to restrain the Respondent from further harassing, oppressing, violating and threatening the life of the Applicant.
4. For An Order of Court restraining the Respondent, his agents, privies, heirs, successors in title, family members from coming close to the Applicant by 100 metres at all time.
5. An Order restraining the Respondent, from further breaching the rights of the Applicant to peaceful life and undisturbed peace and dignity to her person as a citizen of the Federal Republic of Nigeria and upon the facts and circumstances of this matter.
6. The sum of Two Million Naira damages, against the Respondent for the violence, physical and psychological trauma suffered as a result of the overt acts of the Respondent on the person of the Applicant.

And for such further Order(s) as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the reliefs are sought are:

1. The Applicant is a banker who currently works with Zenith Bank Plc at Central Area Abuja.
2. The Respondent is a travel agent that works with Travel star Nigeria Ltd located at Kryxtal Lounge building at No. 70 Aminu Kano Crescent, Wuse 2, Abuja.
3. The Applicant on the 30th day of December 2019 got married traditionally to the Respondent under the Native Laws and Customs of her place Umuobi Village in Umezeala Umukabia Autonomous Community of Ehime Mbano LGA in Imo State of Nigeria.
4. Shortly after the said marriage as the Applicant and Respondent returned to Abuja and resided together at No.3 Lagos Street, Trademore Estate, Lugbe, Abuja, the Respondents character towards the Applicant drastically changed that it culminated into domestic violence, physical, emotionally and psychological abuse.
5. The emotional trauma and abuse became so much that at some point it graduated into full blown violence on the Applicant who had to visit a pharmacy occasionally for drug prescriptions to keep the pains sustained from the several battery at bay as she was having a hard time hearing with her left ear which was occasioned by the acts of violence meted on her by the Respondent and the accompanying threats that accompanied the battery further left her in fear of her life and wellbeing.
6. The Applicant and her family on several occasions tried but to no avail to enquire from the Respondent the reason for his behavior towards her and for there to be a change in attitude, but all efforts met a brick wall as the Respondent always threatened to rain fire and brimstone on the Applicant so much so that no man will desire the Applicant by the time he is done with her.

7. The Respondent after several assaults on the Applicant on the 21st day of February asked her to move out of his residence at No.3 Lagos Street Trademore Estate, Lugbe, Abuja in the dead of the night this the Applicant refused to oblige given the ungodly hour, which earned her more assault and battery from the Respondent until the day break. On the 12th day of June 2020, the Respondent requested that the Applicant hand him over her keys of their said apartment and move out of same for no just cause insisting that he was tired of the marriage to the Applicant in the presence of the Applicants elder brother Chibuzor Nwadike who was on scene should the Respondent attempt to assault and batter the Applicant again. It was then that the Applicant gathered few of her belongings and left with her brother to his house at Life Camp even as the Respondent repossessed everything he gave the Applicant as a gift after their wedding, which included her phones containing her social media accounts and bank confidential mails.

8. Some days later, the Applicant to her greatest chagrin discovered that her social media accounts, company mail accounts, bank applications on her phone has been hacked by an unknown person and on further enquiry it was discovered that the Respondent was responsible for same, which he vehemently denied, even as evidence abounded to that effect as the enquiry revealed that the Applicants passwords and log in information to the various accounts were changed to either the Respondents second phone number 09099706448 or email address for reasons best known to the Respondent. The Applicant sought to report the case to the Economic and Financial Crimes Commission vide a petition for further investigation and possible prosecution of the culprit but for the intervention of her family, that was averted.

9. Piqued by the sad turn of events and the nonchalant attitude of the Respondent towards resolving the issues but rather kept creating new

ones every day, the Applicants family on the 28th day of July 2020 returned the bride price paid on behalf of the Applicant vide a mobile transfer which evidenced the transaction in which the Respondent acknowledged, signifying the end of the marriage and thereby severing the bonds of marriage between the duo.

10. Ever since the incident, the Respondent have been following the Applicant around with the guise of getting her to sign off a resolution as a director in a company they both registered, which the Applicant agreed to sign and for the Respondent to stay clear of her path. The Respondent resorted to threats, blackmail, harassment and intimidation even at the work place of the Applicant and has still not presented the resolution to the Applicant to append her signature.

11. Ever since the bride price was returned to the Respondent, several threats of grievous harm has been emanating from the Respondent and members of his family against the person of the Applicant and her family. The Respondent on numerous times has gone to the office of the Applicant to cause chaos but for the intervention of the security operatives on duty same was averted.

12. The Applicant has been living in fear of her life, safety of her and her loved ones who have not been spared of the threats to life, bodily harm, intimidation and harassment by the Respondent and his family members most especially his mother and sister.

13. The Applicant has reported the series of events to the Nigerian Police vide a petition to the office of the Inspector General of Police but nothing tangible was done to restrain the Respondent and his family from their negative threats against the Applicant. The Applicant was not pleased with the slow pace of the investigation occasioned by the perfidy

being exhibited by the respondent when he was invited for questioning and his denial that any of the enumerated events ever took place.

14. The Respondent would not relent in executing his threats as he is a vengeful person and that of his family on the Applicant unless restrained by this Honourable Court.

15. The continued harassment, threats, intimidation of the Applicant before and since the 28th of July, 2020 that the bride price was returned till date is an infringement of her Fundamental Human Rights.

16. It is in the interest of Justice to grant this Application.

Counsel to the Applicant in his written address raised an issue for determination:

1. Whether having regard to the facts and circumstances of this case, the Applicant is not entitled to the enforcement of her Fundamental Rights as guaranteed by the Constitution of the Federal Republic of Nigeria and African Charter on Human and Peoples Rights (Ramification and Enforcement) Act

The written address of the Applicant is before the Court, has been considered and will be referred to where necessary.

The crux of the applicant's case is that:

She got married to the respondent under the native laws and custom of her people in Imo State and that after their marriage they lived in Trademore Estate in Abuja. That rather than a peaceful marriage the marriage culminated into violence on the person of Applicant, and lead to the return of bride price paid on her behalf by her family to the respondent signifying the end of the marriage. That the respondent continued to harass, intimidate and blackmail the

applicant by stalking, trailing and threatening the Applicant in ways that have made her to consider suicide and that the respondent would continue to infringe on the rights of the applicant unless restrained by the Court.

On the other hand, the crux of the respondent's counter affidavit is hereunder summarized;

The respondent didn't deny the marriage between himself and the applicant but averred rather that they had marital issues. That he didn't in any way blackmail, harass or intimidated the applicant. That his attitude has been that of a true husband and ever ready for reconciliation and that he knows as a fact that marriages aren't annulled by purported transfer of N2000 which he didn't receive. And that neither him nor any member of his family has threatened the applicant. That the petition of the applicant through her counsel to the Inspector General of Police was an afterthought.

The Respondent in his written address distilled two issues for determination:

- 1. Whether considering the affidavit evidence of parties in this suit, has the Applicant established that the respondent breached any of her Fundamental Right as enshrines in the Constitution of Federal Republic of Nigeria 1999 (as amended) and or any other law*
- 2. Whether in view of the Affidavit evidence of parties, the Applicant is entitled to the reliefs sought.*

The written address of the Respondent is before the Court, has been considered and will be referred to where necessary.

I have considered the application before the court, the supporting affidavit, the counter affidavit of the Respondent, attached documents

and the accompanying written addresses and the oral submission of Counsel. And I am of the view that the issue for determination is:

Whether from the totality of the affidavit evidence before the court the applicant has succeeded in proving a breach or likelihood of breach of her Fundamental rights by the respondent herein and therefore entitled to reliefs sought.

It is settled law that in an application for the enforcement of fundamental rights, its determination is premised on the affidavit evidence produced and placed before the Court to reach a just determination of the application. See

UKAOBASI V. EZIMORA &ORS (2016) LPELR-40174(CA)(P. 31, Paras. B-E)

BASSEY NKANTA MBANG V. W/PC JANET & ORS. (2015) ALL FWLR (pt.767) 766 AT 784

It is trite that any person who alleges that any of her Fundamental Rights as enshrined in the Constitution has been, is being or likely to be contravened may apply to a court for redress. For ease of reference, Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) is reproduced below:

“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.”

It is the duty of the Court (based on the provisions of Section 46 (1) of the Constitution) to protect and guard the Fundamental Rights of all citizens and to determine if there is a breach of same. See

SAMUEL v. THE CONTROLLER OF PRISONS, FEDERAL PRISONS, UYO, AKWA IBOM STATE & ORS (2013) LPELR-20707(CA) (P. 21, paras. A-E)

In the determination whether the rights of the applicant was breached the court will consider the affidavit evidence of parties and juxtapose same with the 1st and 2nd reliefs of the applicant which are declaratory.

The first and second reliefs are declaratory and premised on Section 33, 34, 35(1) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

I have gone through the supporting and verifying affidavit of the Applicant before the court, particularly paragraph 6, 8, 10, 11, 12, 13, 14 and 16.

It is pertinent to state that none of the averments of the Applicant reveal how she was threatened, harassed, attacked/slapped, brutalized, intimidated, trailed and stalked by the respondent. For better understanding I refer to **Black's Law Dictionary 9th Edition which defines Threat, Harassment and Stalk as;**

Threat: A communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent.

Harassment: Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose.

Stalking: The act or an instance of following another by stealth. The offense of following or loitering near another, often surreptitiously, with the purpose of annoying or harassing that person or committing a further crime such as assault or battery.

Furthermore, Oxford Advanced Learners Dictionary 7th Edition also defines **Threat, Harassment and Stalk** as:

Threat: A statement in which you tell somebody that you will punish or harm them, especially if they do not do what you want: to make threats against somebody

Harass: (Often passive) to annoy or worry somebody by putting pressure on them or saying or doing unpleasant things to them.

Stalk: (Verb) to move slowly and quietly towards an animal or a person, in order to kill, catch or harm it or them, 2. to illegally follow and watch somebody over a long period of time in a way that is annoying or frightening.

It is not unusual in our jurisprudence to make injunctive orders against molestation harassment, threats and such other vices. However the applicant must be able to show evidence of the existence or real likelihood of such action. See:

MEGIBBON V. MEGIBBON (1973) 2ALL ER PG 836

And

VAUGHN V. VAUGHUN (1973) 3 ALL E.R PG 449

The respondent in this instance has categorically denied the allegations of the applicant. The applicant has not led further evidence nor particulars to authenticate her allegations.

It is worthy to state that an applicant who alleged that her right to dignity of human person has been violated, must be able to show how she was threatened, harassed, attacked/slapped, brutalized, intimidated, trailed and stalked by the respondent to the extent that it violates her right to dignity.

It is not enough to merely assert that her right is likely to be or has been violated, she must support this assertions with credible evidence of the circumstances leading to such alleged violation or its likelihood.

FAJEMIROKUN V. C.B. NIG. LTD (2009) 5 NWLR PART 1135 PG 588 AT 613 - 614 PARA H-H OR (2009) LPELR-1231(SC) P. 8, PARAS. D-F.

Flowing from above, Suffice to say, it is my candid view that the applicant has not succeeded in establishing before this court that she was threatened, harassed, attacked/slapped, brutalized, intimidated, trailed and stalked by the respondent. It would also be unconscionable and unlawful to make orders against the respondent's family members who are not parties to this suit. See **OBIOZOR V. NNAMUA (2014) LPELR-23041(CA) (P. 90, PARAS. C-G)**

"It is a settled state of our law that no orders will be made against a person who is not a party originally appearing or joined by court or any of the original parties..."

See also

OTOGBOLU V. ONWUEMENA OKELUWA & ORS (1981) LPELR-24881 (SC) PG 31-32 PARAS E-F PER UWAIS JSC

The House of Lords further held that the view in the same case that an injunction shall not be expressed to be granted against the defendant, his servants and agents, as was sought in the instant case, for that would suggest that a direct order had been made against such servants and agents who were not parties to the case and could not therefore be bound by an injunction. It follows therefore that the learned trial Judge acted correctly when he omitted to extend the injunction to the servants and agents of the defendants.

PDP & ANOR V. INEC & ORS (2012) LPELR-9225 PG 18-19
PARAGRAPHS E-A

“The Court cannot make a finding that will be prejudicial against a person that is neither that is neither before it nor party to the case and cannot in the same vein grant a relief which will affect a person who is not a part in the suit”

See also:

OYEMYEMI & ORS V. OWOEYE & ANOR (2017) LPELR-41903 (SC)
PG 27-28 PARAS D-A where the Supreme Court Per S. Bage JSC held that:

“The effect of order(s) made against persons not joined as a party is that such order is a nullity and of no effect.”

Since it is a declaratory relief, it must be proved on the merit. The court cannot rely on mere assertions of the Applicant. An applicant in a claim for declaratory relief must rely on the strength of his case and not on the weakness of the defence. See CPC V. INEC & ORS (2011) LPELR-8257 (SC) Pg. 80-81, Paras.E-B.

The Applicant has not lead any credible affidavit evidence as to how her right to dignity of human person has been violated by the Respondent as enshrined in Section 34 of the 1999 Constitution.

The Applicant cannot in the circumstance be granted the declaratory reliefs sought for failure to establish entitlement to same.

All the other reliefs sought are consequential reliefs flowing from the declaratory claims. The declaratory reliefs having failed, translates also to the failure of the other claims which have been rendered of no moment and no anchor in the circumstances.

The applicant having failed to establish her right to the main reliefs cannot be entitled to the consequential reliefs thereof.

In the circumstance therefore the issue for determination is resolved against the applicant.

However the applicant has by her omnibus prayed for such further Order(s) as this Honourable Court may deem fit to make in the circumstance.

And it is in view of the Omnibus prayer that this court would make orders, as deemed appropriate in the circumstance.

Consequently and in view of the apparent bad blood currently shown between the parties by their and the alleged fear as expressed by the applicant, I find it expedient in the circumstance to make further orders to prevent a breach of peace or breakdown of law and order. Therefore both parties are hereby restrained from deliberately going close to 50 meters of one another before the final resolution of their marital and /or post marital disagreements.

Where there's however the need for them to come together for any legitimate and reasonable purpose, it should be done under supervision by the police from any of the two police station mentioned in their processes before the Court where their matter has already been incidented.

Signed

Honourable Judge

Representation:

Emeka Chinwuba Esq for Applicant

B.O Obialor Esq for Respondent