

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

FCT/HC/CV/123/19

BETWEEN

OSCAR OSEMEKHA BOSAH..... APPLICANT

AND

- | | | |
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| <p>1. COMMISSIONER OF POLICE, FCT ABUJA</p> <p>2. ADEBAYO OMOLE</p> | } | <p>RESPONDENTS</p> |
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JUDGMENT

Before the Court is a Motion on Notice filed on the 25th October 2019 brought to Section 42 (2) now Section 46 (3) of the 1999 Constitution of the Federal Republic of Nigeria 1999 (As Amended).

The application is supported with a statement and an affidavit of 19 paragraphs deposed to by Nimiebi Osemekha Bosah, the wife of the applicant with an accompanying written address.

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

1. A declaration that the summoning, intimidation, arrest and detention of the Applicant by men of the 1st Respondent is unconstitutional, illegal and flagrant violation of the Applicants Fundamental Human Rights as provided under Section 35 (1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
2. A declaration that the harassment, unwarranted intimidation, arrest and detention of the Applicant from the early hours of the 20th day of October 2019 till date by men of the 1st Respondent headed by the ASP Akperan Gabriel (Okpims Ato) and treated in a manner highly undignifying, stripping him of his clothes and forcing him to sleep on the bare floor by one Detective Gabriel Godwin is a gross violation of his right for the dignity of

- the human person under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under Article 5 of the African Charter on Human and Peoples Right.
3. A declaration that, it is not statutory duty of the police to recover debt.
 4. A declaration that it is not the statutory duty of the police to enforce a civil contract between parties.
 5. A declaration that it is not the statutory duty of the police to interpret and enforce the terms of a tenancy agreement.
 6. A declaration of this Honourable Court that the confiscation and seizure of a black Toyota Corolla SUV car with plate number ABJ609DN which the applicant utilizes for commercial purposes and as a source of livelihood by 1st respondent is illegal and unlawful.
 7. An order of injunction restraining the respondents either by themselves, its assigns or agents from further arresting or detaining the Applicant.
 8. An order commanding the Respondents to pay the sum of N10, 000,000 (Ten Million Naira) only to the applicant as punitive and exemplary damages.
 9. A declaration that the incessant harassment, intimidation and threat to subsequently arrest the Applicant a commercial UBER driver and housing agent, by the 1st and 2nd respondents on a basis of tenancy and agency relationship is illegal and unlawful, being contrary to section 35 (1) (4) of the 1999 Constitution.
 10. A declaration that the arrest and detention of the Applicant on the 20th of October 2019 till date by men of the 1st respondent on the orders of ASP AKPERAN GABRIEL (OKPIMS ATO) in the cell room of the 2nd Respondent is illegal and unlawful, being contrary to Section 35 of the 1999 Constitution.
 11. An order of this Honourable Court commanding the 1st Respondent to immediately release the applicant unconditionally from it custody and detention with immediate effect.
 12. An order of this Honourable Court commanding the Respondents most especially the 1st Respondent to immediately release the confiscated and seized Toyota Corolla with plate number ABJ609DN back to Applicant.

13. An Order of this Honourable Court commanding the Respondents most especially the 1st and 2nd Respondent to Pay the Applicant the sum of ₦10,000,000.00 (ten million naira only) as exemplary, damages, health hazard and punitive measure for his unlawful arrest, detention and hardship caused to him by their actions.
14. An Order commanding the Respondents to further desists from harassing, molesting and threatening the arrest of the Applicant.
15. And for such other order(s) as the Honourable Court may deem fit to make in the circumstances of the case.

The 1st Respondent reacted by filing a Motion on Notice on the 12th November 2019, accompanied by an affidavit of 11 paragraphs, written address and a counter affidavit, attached Exhibits and written address. By an application of the plaintiff's counsel, on 29th January 2020 the first Respondents Motion on Notice was struck out for lack of diligent prosecution.

The 2nd Respondent in response to the application filed on 7th November, 2019 a Counter affidavit deposed to by Adebayo Omole with attached Exhibits and an accompanying written address.

The Applicant filed on the 13th November 2019 a 9 paragraph further affidavit deposed to by Nimiebi Osemekah Bosah being response to the Counter Affidavit of the 2nd Respondent.

The 2nd Respondent filed on the 26th November 2019 a 7 paragraph Further Counter Affidavit in opposition to the Applicants further affidavit deposed to by Adebayo Omole with an attached Exhibit.

The Applicant in his written address filed on 25th October 2019 raised four issues for determination. They are:

- i. Whether the Right of the 1st Respondent to arrest is unlimited.
- ii. Whether in the light of the facts of the case and the affidavit evidence of the applicants. The applicants right have been

threatened or/and violated hence is entitled to protection under the fundamental rights enforcement law.

iii. Whether the police are debt recovery agency.

iv. Whether the applicant is entitled to his personal liberty dignity of his human person and as such damage for the consequential breach.

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

The 2nd Respondent in his written address filed on the 7th November 2019 raised three issues for determination. They are:

- i. Whether upon the facts alleged, the Applicant has established a reasonable cause of action against the 2nd respondent.
- ii. Whether the 2nd Respondent is a necessary party to this proceeding.
- iii. Whether the applicant's suit as constituted against the 2nd respondent constitutes an abuse of process of court.

The written address of the 2nd Respondent is before the Court, has been considered and will be referred to where necessary.

I have considered the application before the court along with all the supporting documents, the counter affidavit of the 2nd respondent, the further affidavit of the applicant and the further counter affidavit of the 2nd respondent, the written addresses of all the parties and the oral submissions of counsel on behalf of the parties. And I am of the view that the main issues arising for determination here are:

1. *Whether from the totality of the affidavit evidence before the court the applicant has succeeded in proving a breach of his Fundamental rights by the respondents herein.*
2. *Whether the applicant is entitled to the reliefs sought in the accompanying statement.*

It is settled law that for grant or refusal of an application of this nature the Court is seized with the duty to determine whether or not the Applicant has made out a prima facie case from the materials placed before it. See

OHAKIM V. C.O.P, IMO STATE (2009) LPELR-8874 (CA) (PP, 29-30, PARAS F-A) Where his Lordship Justice Kekere Ekun JCA (as he then was) postulated that

"The grant of an application for leave to apply to enforce fundamental rights is within the discretionary powers of the High Court".

See also:

W.A.E.C V. ADEYANJU (2008) 9 NWLR Part 1092 Pg 270 at 25 Paras G-B the court stated thus:

"A party seeking relief under section 46(1) of 1999 Constitution and Order 1 rules 2 & 3(1) of Fundamental Rights(Enforcement Procedure) rules must ensure that the main Relief and consequential reliefs point directly to a fundamental right under Chapter IV of the 1999 Constitution and a clear deprivation of the same by the other party being sued"

On the first issue raised, it is pertinent to recount the facts of the case of the Applicant as deposed to by his wife Nimiebi Osamekha Bosah in her attached affidavit:

On the 20th October 2019, the applicant received a call from a tenant in the property at Guzape to urgently come to ratify something in the house he rented to him, that on getting to the property her husband was accosted by men from 2nd respondent stationed at Asokoro division, and that he was arrested and taken together with a Toyota corolla which her husband utilized for Uber services and that on getting to the Asokoro Police Station her husband was stripped of his cloths and taken into a dark cell, that she and her mother made an oral application for bail for her husband, the applicant, but was told that he could not be granted bail on a Sunday that he will either be released on bail or charged to court the next day being Monday. That she was informed by her lawyer on the 24th October 2019 that he met with one officer Abimbola the OC narcotic who told him that the applicant will not be released on bail till further notice. That her husband is being treated inhumanly like a common criminal in the most undignifying manner as he was stripped off his clothes (shirts and pants) and was forced to sleep on a cold floor in a cell room with several people on the bare floor and that to the best of her knowledge her husband has not committed any offence to warrant his harassment, arrest, intimidation, inhuman treatment, threat of torture and detention by the 1st respondent. That up until the time of instituting this action the defendant was still detained by respondent.

On the other hand 2nd respondent's counter affidavit of 7th November 2019 is hereunder summarized.

That the averments contained in the applicant's affidavit are totally untrue, that the application as constituted against him is unwarranted. That contrary to the facts of the applicant that he is the authorized representative of the owner of the four bedroom apartment with BQ situate at Plot 20B, 2nd Avenue,

Paradise Hill, Guzape Asokoro, Abuja and that upon the instructions of the owner he engaged the Applicant with strict instructions to get a tenant a nuclear family to occupy the premises and to ensure minimal wear and tear on the property. That sometime in September 2019, the Applicant presented one Mr. Columbus Akpolagha and Mrs. Nimiebe Akpolagha, as a retired couple willing to rent the premises, the purported couple paid the rent and he drafted the tenancy agreement using the information supplied by the applicant but later he found out they were a fictitious couple. That on the 25th September 2019 he received a call from someone who claimed to have been defrauded by the said applicant, using his premises to collect money from several people fraudulently. He immediately visited the premises and discovered that the applicant had without his knowledge or permission significantly structurally altered the property with more than twelve unrelated occupants. That he immediately lodged a complaint at the Asokoro Division where he made a statement regarding the applicants mischief, willful and malicious damage to his property, criminal breach of trust and obtaining money by false pretence from unsuspecting members of the public using his property.

The Applicant filled on the 13th November 2019 a further affidavit in opposition to the 2nd respondents counter affidavit and it is hereunder summarized:

That the 2nd respondent orally engaged the applicant to get him tenants at any means to occupy the premises at Guzape, that the respondent and the applicant didn't not discuss any semantics as to how the property should be let out, that the 2nd respondent severally put pressure on the applicant to quickly and without ado let out the property by any means, that the applicant didn't present any fictitious name to the 2nd respondent but rather fulfilled his obligation to the 2nd respondent by getting tenants for the property, of which the 2nd respondent was duly paid rent to the tune of ₦3,100,000 only being the rent he demanded for the property. That the 2nd respondent's averment in paragraph 3

of his counter affidavit is not only untrue but also variously speculative as the 2nd respondent did not furnish any evidence or document to substantiate his claim that he gave the applicant strict instruction to let the property to one family. That the 2nd respondent did not place any document exposing the allegation of fraud and that from a mere perusal of all the paragraphs of the 2nd respondents counter affidavit it is very clear that this matter is civil in nature which he intentionally criminalized. That the applicant has remained in the detention of the 1st respondent since the 20th October 2019 a period which is fast close to one month without trial of any sort or arraignment.

The 2nd Respondent on the 26th November 2019 filed a further counter affidavit in opposition to the applicants further-affidavit and it is hereunder summarized.

That the averments contained in the further affidavit of the applicant are totally untrue, vexatious and unreasonable and that the deponent does not have the authority of the applicant to depose to the falsehood blatantly captured under oath in the further affidavit of the applicant and that the applicant out of remorse volunteered a statement before the Nigerian Police. That in fact the said deponent was used as an instrument of fraud by the applicant.

The first issue is whether from the totality of the affidavit evidence before the court the applicant has succeeded in proving a breach of his Fundamental rights by the respondents herein.

Particular consideration would have to be given to the reliefs sought by applicant in this application in order to resolve the first issue, captured above.

I will address this issue vis-à-vis the 1st and 2nd reliefs sought in this application.

The 1st, 2nd, 3rd, 4th, 5th, 6th, 9th and 10th reliefs are declaratory reliefs which this court has jurisdiction to adjudicate upon and which has to be proved on the merit. See **NIGERIAN NAVY V. GARRICK (2006) 4 NWLR (PT.969)69**

It is trite that the grant or refusal of declaratory reliefs is within the discretionary power of the Court which must be exercised judicially and judiciously. See

MOHAMMED V. MOHAMMED & ANOR (2011) LPELR-3729 (CA) (P.48, PARAS B-D) where His Lordship Justice Ogunwumiju resonated that:

There is no doubt that a declaratory relief is an equitable relief the grant of which requires the exercise of the courts discretion which must be done judicially and judiciously...

Recourse would need to be had in the circumstance, first and foremost to the provision of **SECTION 4 OF POLICE ACT; CAP 19 LAWS OF THE FEDERATION OF NIGERIA, 2004** which bestows upon the police certain duties with corresponding powers thus:

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.

By the clear provisions of Section 4 of the Police Act, the Police have the duty and responsibility to prevent crime, to detect crime, apprehend, and detain anyone who is reasonably suspected to have committed a crime and to inter alia preserve law and order. These duties are carried out within the exclusive preserve of the Police upon reasonable suspicion of committing a crime, once invitation is extended to person(s) who they reasonably suspect or believe has committed an offence.

However, the power of the Police as contained in Sections 4 of the Police Act is not absolute. Thus, where not properly used or where abused, the Court can stop the use of the power for that improper purpose, as that would no longer be covered by section 35(1) (c) of the Constitution. They are therefore enjoined to conduct their investigations in line with the principles of the rule of law. See:

IGBO & ORS V. DURUEKE & ORS (2014) LPELR-22816(CA)(Pp. 19-20, paras. D-A) Where His Lordship Justice Ekpe J.C.A resonated that;

"...suffice it to say that the Nigeria Police Force and its operatives whether at the Federal, State or Zonal Command are empowered by the Police Act, the Constitution and other relevant laws in that regard to investigate crimes or perceived danger which have been reported to them. The police however have absolute discretion as to who to, arrest, charge and prosecute and in so doing arrests may be made and invitations extended to persons who they reasonably believe have committed an offence. There is no gainsaying the fact that in the course of their duty they are enjoined to conduct their investigations in line with the principles of the rule of law and that they must act judiciously and judicially." Per EKPE, J.C.A (Pp. 19-20, paras. D-A)

See also;

LUNA V. COMMISSIONER OF POLICE RIVERS STATE POLICE COMMAND & ORS(2010) LPELR-8642(CA)(Pp.13-15.Paras.F-C)

From a glean of the affidavit in support, the applicant through his wife recounted in paragraphs 4, 5, 6, 7 ,8 ,9 and 10 the actions that led to the alleged breach of the applicants fundamental right.

It is trite law that in a claim for the enforcement of fundamental rights, the Court is to examine the relief sought and the facts relied upon and where the facts relied upon disclosed a breach of the fundamental rights of the applicant as the basis of the claim, then there ought to be a redress through the Fundamental Rights (Enforcement procedure) Rules, 2009. See

SEA TRUCKS (NIGERIA) LTD vs. PANYA ANIGBORO (2001) LPELR-3025 NWLR (SC) (PP,28-29, PARAS, G-C) Where His Lordship, Justice Karibi-Whyte J.S.C resonated that;

"The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, here there is a redress through the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of right is ancillary or incidental to the main grievance or complaint, it is incompetent to proceed under the rules. This is because the right, if any, violated, is not synonymous with the substantive claim which is the subject-matter of the action."

See also;

COP, ABIA STATE & ORS v. OKARA & ORS(2014) LPELR-23532(CA)(Pp.49, Paras. A-C).

For better understanding, I refer to Order II Rule 1 of the Fundamental Rights Enforcement (Procedure) Rules 2009 which provides thus:

"Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to

which he is entitled, has been, is being or is likely to be infringed may apply to the Court in the State where the infringement occurs or is likely to occur, for redress:...”

The Applicant by the above provisions and the aforementioned depositions in the affidavit in support, has come before this court to seek redress for infringement of his right to Personal liberty and Dignity of human Person as expressly provided for in Section 35 (1) & (4) and Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

The averments of the applicant has not be controverted or denied by the 1st respondent but the 2nd respondent filed a counter affidavit and a further counter affidavit as reflected above. Nonetheless the court will evaluate the propriety or otherwise of the claims of the applicant against both respondents.

It is imperative to state as earlier observed that Section 4 of the Police Act and Section 35 of the 1999 Constitution (As Amended) does not empower the police to take whatever step they desire to accomplish their aim of investigation and interrogation. There are laid down procedures by law for the purpose of investigation, arrest, interrogation and detention in respect of an alleged crime committed by a suspect.

Where it becomes imperative for the police to lawfully arrest someone who has committed or is reasonably suspected of having committed a criminal offence then the police have the powers under the Constitution and the Police Act to arrest such individual while investigation will be carried out. Undoubtedly, going by the provisions of section 35 (I) (C) and Section 35 (5) (A) and (B) of the 1999 Constitution (as amended), the 1st respondent or her officers, have the power to arrest and detain. However, the Police have not been given unbridled powers to deprive citizens of their right to personal liberty and right to dignity of human person for unjustifiable cause or without following due process.

The applicant by his affidavit averred that the respondents breached his fundamental rights as enshrined in Sections 35 and 34 of the 1999 Constitution. The first two declaratory reliefs sought by the applicant are hinged on these Sections.

These provisions would be carefully examined and the deducible inference from the undisputed affidavit evidence of the applicant juxtaposed with the provisions to decipher whether there's been a breach of these rights.

On the first declaratory relief, the provisions of Section 35 (1) & (4) of the 1999 Constitution (as amended) provides for the Right to personal Liberty. For the purpose of clarity it is hereunder reproduced;

Section 35 (1) & (4) of the 1999 Constitution provides that:

(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 a procedure permitted by law - ...”

(4) Any person who is arrested or 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 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 Applicant averred in his supporting affidavit, particularly in paragraphs 4, 5, 6, 16 and 17 that he was arrested and detained on 20th October 2019 without being granted bail or charged to court, and that he was treated inhumanly in the most undignifying manner.

From the records, as at the 13th November 2019 when this case came up for hearing the Court was informed that the applicant hadn't been released nor produced in accordance with the order of court, made on 30th October 2019.

It was on the 9th January 2020 that applicant's counsel informed the court of his release.

With regard to the number of days Applicant was detained after arrest, I refer to Section 35(4) of the Constitution which provides for reasonable time for detention before arraignment. Section 35(4) provides;

Section 35(4):

Any person who is arrested or 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-

*b. 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 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 Constitution provides in Section 35 (5) which is hereunder reproduced;

Section 35(5):

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 longer period as in the circumstances may be considered by the court to be reasonable.*

See also: Section 30 of Administration of Criminal Justice Act which provides;

Section 30 (1):

Where a suspect has been taken into police custody without a warrant for an offence, other than an offence punishable with death, an officer in charge of a police station shall inquire into case and release the suspect arrested on bail subject to subsection (2) of this section, and where it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.

The Court will also consider the above provision of the law and juxtapose same with the averments of the applicant to determine the propriety of arrest and detention of the applicant.

The averments of the applicant in paragraphs 4, 5 and 16 of his affidavit are hereunder reproduced:

Paragraph 4

That on the 20th October 2019, the applicant when in my company received a call from a tenant in the property at Guzape to urgently come to ratify something in the house he rented to him.

Paragraph 5

That on getting to the property at Guzape my husband was accosted by men from 2nd respondent stationed at Asokoro division; he was arrested and taken together with a Toyota corolla which my husband utilized for uber to the asokoro police station.

Paragraph 16

That I was informed by my lawyer Pascal Jiwuaku Esq at his office in Utako Abuja at about 11am on the 24th of October 2019 and I verily believed him that he had met with one officer Abimbola the OC narcotice where the applicant at time of this affidavit is been detained and that the applicant will not be released on bail till further notice.

It is pertinent to note that this court made two orders for the applicant to be presented in court on the 30th October 2019 and the release of the applicant on the 7th November 2019 respectively but the 1st respondent didn't produce the applicant nor release him as ordered. The counsel to the applicant informed the court on the 9th January 2020 however that the applicant has been released.

The above averments indicate that the applicant was arrested and detained between 20th October 2019 and beyond 7th November 2019 without any evidence of being charged to Court.

It is important to note that although the Police are empowered by the Law to arrest and detain a suspect in the course of their investigation, this power is restricted to specific number of day(s) where he is not charged to Court or granted bail. And they are required within that stipulated period to bring the suspect before a court for the purpose of being charged or for an order for remand if necessary or grant of bail.

See

LUFADEJU & ANOR. V. JOHNSON (2007) LPELR-1795 (SC) P.33-34, Paras. G-A. or (2007) 8 NWLR (Pt.1037) 535 at 566, paras. B.

It is also imperative to note that the averments of the applicant as contained in his attached affidavit was never challenged or countered by the 1st respondent and I have gone through at the counter affidavit of the 2nd respondent and there is no deposition that specifically counters the arrest and detention of the applicant rather he gave evidence on the duty of the applicant to rent his property without alteration of the structure of the building of which he attached exhibits to buttress same. It is pertinent to point out that the main claims before the Court are premised on breach of Fundamental Human Rights and not tenancy, recovery of debt or any other such related claim.

Under the circumstances therefore this Court has the duty to act on the uncontroverted evidence before it.

The affidavit evidence of arrest and detention hasn't been controverted by the respondents.

It is trite law that where evidence given by a party to any proceedings was not challenged or controverted by the opposite party who had the opportunity to do so, it is always open to the court seized of the proceedings to act on such unchallenged evidence before it. See

MAGAJI V. NIGERIAN ARMY (2008) 8 NWLR (Pt.1089) 388 at 393, para. D (SC).

The applicant having shown that he was detained from 20th up until beyond the institution of this action without bail or charge, has ostensibly discharged the burden under the circumstance to prove that his fundamental right to personal liberty as contained in Section 35 has been breached by the 1st respondent. This right has been breached by the detention well beyond the statutorily prescribed period without

bail nor charge before a court. Thus pursuant to this finding the applicant has successfully established a breach of his right in part as claimed in prayer one of the reliefs sought herein.

The 2nd respondent has asserted that he reported a case of mischief, willful and malicious damage to his property, criminal breach of trust and obtaining monies by false pretence from unsuspecting members of the public using his property against the applicant to the 1st respondent. Thus as reflected in the case of **SALIHU V. GANA & ORS (2014) LPELR-23069(CA) (PP. 30-31, PARAS. E-B)** and Section 4 of the Police Act, ordinarily the summoning, arrest and detention cannot be faulted save for the detention herein beyond the stipulated period as in Section 35(4) and (5) of the Constitution.

The second declaratory relief is premised on SECTION 34 of the 1999 Constitution of the Federal Republic of Nigeria which provides that:

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

- a. no person shall be subjected 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.*

The applicant averred in paragraph 17 that:

“That the applicant my husband, at the time of deposing to this affidavit is being treated inhumanly like a common criminal in the most undignifying manner as he was stripped off his clothes (shirts and pants) and was forced to sleep on a cold floor in a cell room with several people on the bare floor.”

The above averment was also not challenged or countered by the 1st Respondent. It is trite that this court has the duty to act on these uncontroverted evidence before it. See;

OGUNYADE V. OSHUNKEYE (2007) ALL FWLR,(389) 1175 AT 1192 - 1193, PARAS. G - A (SC) or LPELR-2355(SC) (Pp.15-16, Paras.G-B) Where his Lordship Justice Musdapher J.S.C. postulated that:

"The law in my view settled that where evidence given by a party to any proceedings was 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 act on the unchallenged evidence before it. Odulaja v. Haddad (1973) 11 SC 357; Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi (1978) 2 SC 79. Unchallenged and uncontradicted evidence ought to be accepted by the court as establishing the facts therein contained".

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

CHIEF FRANCIS IGWE & ORS V. MR GODOY EZEANOCHIE & ORS (2009) LPELR-11885 (CA)(P. 41, PARAS C-D) where his Lordship Justice Ariwoola JCA postulated that:

"it is indeed the duty of Court to protect the constitutionally guaranteed rights of citizens. See Federal Republic of Nigeria Vs. Ifegwu (2003) 13 NWLR (Pt 237) 382 at 409."

See also

SALIHU v. GANA & ORS (2014) LPELR-23069(CA) (P. 24, paras. C-G)

Suffice to say that the 1st respondent not having a counter or response to the applicant, has admitted the facts averred to by the applicant. There is clearly no challenge of the averments that the applicant was arrested and detained from 20th October 2019 and beyond the institution of this suit in an undignifying manner by stripping him of

his clothes and forcing him to lie down on cold floor. These facts are all therefore deemed admitted.

Consequently I am of the view that the applicant has discharged the onus of proof placed on him for breach of his fundamental right to dignity of human person as guaranteed and entrenched under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), against the 1st Respondent.

The 2nd relief is therefore also resolved in favour of the applicant.

The second issue is whether the applicant is entitled to the reliefs sought in the accompanying statement.

The 3rd, 4th and 5th reliefs of the applicant are declaratory and similar, the court will consolidate them and treat them simultaneously. The reliefs are:

3. A declaration that, it is not statutory duty of the police to recover debt.
4. A declaration that it is not the statutory duty of the police to enforce a civil contract between parties.
5. A declaration that it is not the statutory duty of the police to interpret and enforce the terms of a tenancy agreement.

A glean through the supporting affidavit, reveals that the applicant didn't lead evidence on how the police allegedly did or intended to recover debt, allegedly intend to enforce contract nor interpret and enforce the terms of a tenancy agreement.

The applicant averred in paragraph 5 of his attached affidavit that he was arrested and taken together with a Toyota Corolla which the applicant utilized for Uber Services to the Asokoro Police Station.

The applicant hasn't placed sufficient facts before this court for the determination of these reliefs. This is moreso when this is an action under the Fundamental Rights Enforcement Procedure and not for

recovery of debt nor tenancy. These claims are found to be imprecise and incompetent under the circumstance and are therefore not properly claimed before the Court.

Suffices to say that the Court cannot determine the propriety or otherwise of the applicants 3rd – 5th reliefs in the circumstance. See

ADENUGBA VS. OKELOLA (2008) ALL FWLR (PT.398) 292 AT 305 where the court resolved that;

"A Court's decision must be anchored on the evidence adduced before it and on reason. On no account should it be based on the intuition of the judge or conjecture, or what the judge conceives to be fair conclusion..." See also the case of SHASI v. SMITH (2009) 12 MJSC (Pt.11) 150 at 164 - 165 where the Supreme Court held

See also

FIDELITY BANK PLC. V. MRS. COMFORT OGIRI (2012) LPELR-9303(CA) (P. 13, paras. E-G) his Lordship Justice Pemu J.C.A resonated that:

"Where issues for determination formulated by the Appellant is imprecise and riddled with irrelevant complexities and is incomprehensible; where it is too wide, the Rules of Court demand that this Court jettisons same. LAGGA V. SARHUNA (2008) 16 NWLR Pt. 1114, 427; BRIGGS V. CLORSN (2005) 12 NWLR Pt.938. 59." Per PEMU, J.C.A.

Since the 3rd – 5th relief are declaratory reliefs, they must be proved to the hilt. The evidence adduced must be shown to merit the relief sought. It doesn't matter that the facts put forward are undenied. See

OYETUNJI v. AWOYEMI & ORS (2013) LPELR-20226(CA) (P. 34,Paras C-E) Where his Lordship Justice Kekere Ekun postulated that

“In line with the general burden of proof as stated above, it is equally trite that in a claim for a declaratory relief a claimant must succeed on the strength of his own case and not on the weakness of the defence unless there is an aspect of the defendant's case that supports his case.”

Suffice to say the plaintiff has not made competent claim with regard to the 3rd – 5th reliefs, they therefore cannot succeed at this time and are liable to be struck out.

The 6th relief will be examined later in the cause of this judgment alongside the 12th relief.

The 7th relief of the Applicant is for an order of injunction restraining the respondents either by themselves, its assigns or agents from further arresting or detaining the Applicant.

Having gone through the processes before the court, I find that the arrest and detention of the applicant on the 20th of October 2019 and beyond was premised on the information received by the 1st Respondent in the course of investigation of Mischief, willful and malicious damage to the 2nd respondents property, criminal breach of trust and obtaining monies by false pretence from unsuspecting members of the public using 2nd respondents property. The Police has powers to do the needful under such circumstance.

Asking this court to restrain the respondent from further arresting or detaining the applicant by the police would amount to interference with the statutory responsibilities of the police to invite, investigate or arrest anyone reasonably suspected to have committed a crime.

Courts have been admonished in several decided cases to refrain from shielding any person from criminal investigation and prosecution. See

A.G ANAMBRA STATE V. CHIEF CHRIS UBA (2005) 15 NWLR (Pt. 947) Pg.44 at 67, Paras.F. where the Court of Appeal postulated as follows:

“For a person, therefore, to go to court to be shielded against criminal investigation and prosecution is an interference of powers given by the constitution to law officers in control of criminal investigation”.

See also; **SALIHU V. GANA & ORS (2014) LPELR-23069(CA) (Pg. 34, PARAS. A-B)** where his lordship ABIRU, J.C.A. postulated that:

"It has been held that the Fundamental Rights provisions cannot be used, and should not be used, by a person to shield himself from criminal investigation and prosecution”.

Be that as it may I do think an order of injunction restraining the respondents from unlawful Acts would be proper and expedient under the circumstance.

Having found that the applicant’s right was violated, I seize this opportunity to direct that respondents comply with the dictates of the enabling laws while carrying out their investigative or prosecutory duties in respect of the subject matter of a case.

The relief for injunction against 1st respondents therefore succeeds in this wise.

The 8th relief of the applicant is for an order commanding the Respondents to pay the sum of ₦10, 000,000 (Ten Million Naira) only to the applicant as punitive and exemplary damages.

It is well settled that in order to be entitled to award of exemplary damages, it is the duty of plaintiff to prove that the action of respondent is outrageously reprehensible. See;

FBN PLC V. AG. FEDERATION & OTHERS(2013) LPELR-20152 (CA) PG. 73 PARA F where Justice Akomolafe – Wilson J.C.A resonated that;

"For a party to be entitled to exemplary damages, it is his duty to prove that the action of respondent is outrageously reprehensible; which has not been so proved in this case. However, the Appellants are entitled to damages for their unlawful arrest and detention."

ENGR FEMI SONUGA & ANOR V. MINS FCT ABUJA & ANOR (2010) LPELR-19789 CA PG 26, PARAS C-D where Justice Bada resonated that;

"In a Claim for Exemplary damages the party to the suit must show or establish by evidence that the injury or loss he suffered was due to the malicious act of the party against whom he is claiming the exemplary damages. The conduct of the Defendant must be high handed, insolvent, vindictive or malicious showing contempt of the Plaintiff's right or disregard of every principle which actuated the conduct of a gentleman."

It is important to observe that the object of an award of damages is to give compensation to the plaintiff/applicant for damages, loss, or injury which he has suffered. Before damages can be recovered by a claimant, there must be a wrong committed; in other words, damages by a plaintiff must be attributed to the breach of some duties by the defendant. However the quantum to be awarded as damages is at the discretion of the court. See

EFCC V. INUWA & ANOR. (2014) LPELR-23597 (CA) (P.18, PARAS C-G) Where His Lordship Justice Akeju postulated that;

"The award of general damages and the assessment of the quantum to be awarded is squarely at the bossom of the trial judge"

It is trite that the award of damages in a case of violation of a citizen's fundamental right must be such as would constitute a fair balanced estimate of the injuries suffered by the Applicant due to the Respondent's unlawful conduct. See

ARULOGUN V. C.O.P LAGOS & ORS (2016) LPELR-40190(CA) (P. 21, Paras. B-C); (Pp. 13-14, Paras. A-A) where his Lordship, Justice AUGIE, J.C.A (as he then was) resonated that:

"The Appellant proved that he was unlawfully arrested and detained, and he is, therefore, entitled, by virtue of Section 35(6) of the Constitution, to compensation and apology - see Jim-Jaja v. C.O.P., Rivers State (2013) 6 NWLR (Pt.1350)225 SC, where the Supreme Court further held as follows-"Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matters brought under the enforcement of fundamental rights procedure - - The procedure for the enforcement of the Fundamental Human Rights was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation, even if no specific amount is claimed."

For when award can be for exemplary damages. See:

OBINWA V. C.O.P. (2007) 11 N.W.L.R. (PT. 1045) 411 AT 426-427, PARAS. G-C (CA) where his Lordship Justice Owoade JCA resonated that:

"Exemplary damages will be awarded against a defendant in three instances. These are:

(a) Where there is an express authorization by statute.

(b) In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.

(c) Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.

In order to succeed, a plaintiff must be able to prove any of the three conditions. He needs not prove all the three conditions to succeed. Once any of the three conditions is proved, a court of law will award exemplary damages” .

See also

CBN & ORS V AITE OKOJIE (2015) LPELR-24740(SC) PG. 42-43 PARAS D-D, PG 45 PARA E-F

And

ODIBA V. AZEGE (1998) LPELR- 2215(SC) PG 25 PARAS B-D

The applicant is entitled to award of damages for the conduct of 1st respondent which is found inter alia to be oppressive and highhanded. This conduct was also exhibited in their attitude before the Court as they even failed to obey the orders of court for production and release of the applicant. They also disregarded the directives of the Constitution which is the grund norm of the land.

Suffice to say that the Applicant is entitled to compensation for breach of his Fundamental Rights by the high handed and reprehensible action of 1st respondent in the course of his arrest and detention. The 8th relief also succeeds.

The 9th relief of the applicant is for a declaration that the incessant harassment, intimidation and threat to subsequently arrest the Applicant a commercial UBER driver and housing agent, by the 1st and 2nd respondents on a basis of tenancy and agency relationship is

illegal and unlawful, being contrary to section 35 (1) (4) of the 1999 Constitution.

The 2nd respondent has led undisputed affidavit evidence that he reported a case of Applicants Mischief, willful and malicious damage to his property, criminal breach of trust and obtaining monies by false pretence from unsuspecting members of the public using his property. There is no credible fact proffered to suggest that the applicant was arrested for an offence other than the complaint of 2nd respondent. The basis of the arrest of the applicant from facts adduced appear to be the complaint of 2nd respondent and not on the basis of tenancy and agency issues.

What is before the court is a fundamental rights application and the court will act solely on it without giving declarations on what seem like speculations. Suffice to say this relief hereby fails because there is nothing before the court to justify grant of same. See also on this **OYETUNJI v. AWOYEMI & ORS (2013) (Supra)**

The 10th relief is a declaration that the arrest and detention of the Applicant on the 20th of October 2019 till date by men of the 1st respondent on the orders of ASP AKPERAN GABRIEL (OKPIMS ATO) in the cell room of the 2nd Respondent is illegal and unlawful, being contrary to Section 35 of the 1999 Constitution.

This relief appears in substance to be same as the 1st relief which has been granted in part. Moreso there's before court no evidence of 2nd respondent having a cell. It's clear there's no reason to grant this relief.

The 11th relief of the applicant is for an order of this Honourable Court commanding the 1st Respondent to immediately release the applicant unconditionally from it's custody and detention with immediate effect.

The applicant's counsel informed the court on the 9th of January 2020 that the applicant has been released. This relief is therefore now otiose and has been overtaken by events.

The 6th relief is for a declaration of this Honourable Court that the confiscation and seizure of a black Toyota Corolla SUV car with plate number ABJ609DN which the applicant utilizes for commercial purposes and as a source of livelihood by 1st respondent is illegal and unlawful.

As a citizen of this Country the applicant has the Constitutionally guaranteed right to legally acquire and own property. He cannot be deprived of same without just cause.

No justifiable reason has been given why the applicant cannot own immovable property in Nigeria. See

TIMOTHY V. OFORKA (2008) 9 NWLR (PT.1091) 204 AT 216, PARAS. G-H; 217, PARAS. G-H (CA) where his Lordship Justice Denton-West JCA postulated that:

"By virtue of section 43 of the 1999 Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria..."

The confiscation and seizure of the applicant's vehicle by the 1st respondent is hereby found unlawful at this instance. This relief is however resolved in favor of the applicant.

The 12th relief which is for an order of this Honourable Court commanding the Respondents most especially the 1st Respondent to immediately release the confiscated and seized Toyota Corolla with plate number ABJ609DN back to Applicant. The declaratory relief having been granted, it follows that the release of the car which is in the manner of a mandatory injunction be ordered to obviate the need for multiplicity of actions for same. See

FCDA & ORS v. UNIQUE FUTURE LEADERS INTERNATIONAL LTD (2014) LPELR-23170(CA) (P.32,paras.F-G) where his Lordship Justice Mustapher resonated that:

...in addition perpetual injunction is based on final determination of the rights of parties, and it is intended to prevent permanent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement." Oguejeofor v. Afam (2011) LPELR - 4691 (CA)."

The 13th relief of the applicant is for an Order of this Honourable Court commanding the Respondents most especially the 1st and 2nd Respondent to Pay the Applicant the sum of ₦10,000,000.00 (ten million naira only) as exemplary, damages, health hazard and punitive measure for his unlawful arrest, detention and hardship caused to him by their actions.

After a holistic glean of the entire application it suffices to observe that the applicant did not lead any further particulars or evidence in respect of damages, health hazard allegedly caused by the actions of the respondents. Suffice to state that having already granted the relief for punitive and exemplary damages, granting this relief also would amount to a surplusage and double compensation which ought not to be made in the circumstance.

The 14th relief of the applicant is for an Order commanding the Respondents to further desist from harassing, molesting and threatening the arrest of the Applicant. This court has hitherto already acceded to an injunction restraining the 1st respondent, there's no rationale nor evidence led to justify the grant of a further order in this wise.

In the final analysis therefore, this application succeeds in part against the 1st respondent, while no facts nor credible evidence has been placed before the Court revealing any violation or breach of applicant's right by the 2nd respondent. A person cannot be punished just for making a complaint to the Police, moreso when the complaint

hasn't been adjudged to be false or made malafide. See **SALIHU V. GANA & ORS (2014) LPELR-23069(CA) (PP. 30-31, PARAS. E-B)**

Consequently therefore, the entire claims against the 2nd respondent are hereby dismissed. While some of the claims against the 1st respondents succeeds and final orders are hereby made as follows:

1. It is hereby declared that the arrest and detention of the Applicant by men of the 1st Respondent is unconstitutional, illegal and flagrant violation of the Applicants Fundamental Human Rights as provided under Section 35 (1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
2. It is hereby declared that the harassment, unwarranted intimidation, arrest and detention of the Applicant from the early hours of the 20th day of October 2019 till date in a manner highly undignifying, stripping him of his clothes and forcing him to sleep on the bare floor is a gross violation of his right to the dignity of the human person under Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under Article 5 of the African Charter on Human and Peoples Right.
3. The claims number 3, 4 and 5 are found incompetent and accordingly struck out.
4. It is hereby declared that the confiscation and seizure of a black Toyota Corolla SUV Car with plate number ABJ609DN is illegal and unlawful.

Accordingly therefore further orders are hereby made as follows:

5. The claim for declaration of illegality in respect of tenancy and agency has been held to be unproven; this 9th claim is therefore hereby accordingly dismissed.

6. The declaration for unlawful arrest and detention has already been made. The claim number 10 is therefore found to be a supplusage and cannot be granted as it would amount to double compensation. This claim is therefore hereby struck out.
7. The applicant has been released already so claim 11 is of no moment and has become otiose.
8. Order of injunction is hereby made restraining the 1st respondents either by themselves, its assigns or agents from further unlawfully arresting or unlawfully detaining the Applicant.
9. It is hereby ordered that the confiscated and seized Toyota Corolla with plate No. ABJ609DN be released forthwith to the Applicant.
10. Order is hereby made that the 1st respondent pays the sum of ₦1,000,000.00 (one million naira) only to the applicant as exemplary damages for unlawful detention and hardship caused the applicant by their action.

Signed

Honourable Judge

Representation:

Paschal Jiwuaku Esq, Anthony Ndanusa Esq and Kayode Adebayo Esq for the Applicant

Fidelis Ogbobe Esq for 1st Respondent

Majekodunmi Abayomi Esq for 2nd Respondent