

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 2ND DAY OF DECEMBER, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: M/9928/2020

BETWEEN:

ALHAJI MOHAMMED ADEBAYO ----- APPLICANT

AND

1. INSPECTOR GEN. OF POLICE
2. COMMISSIONER OF POLICE
3. MR. DENNIS
4. CSP GAMBO
5. EMMANUEL ODIA

----- RESPONDENTS

JUDGMENT

The Applicant filed a motion on notice for the enforcement of his fundamental human rights. The motion is dated 21st September, 2020 and is brought pursuant to Sections 33(1), 34(1)(a), 35(1) and 46 of the 1999

Constitution (as amended), Article 2 of the African Charter on Human and Peoples Rights, and Order 11 of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The reliefs sought by the Applicant are as follows:

- “a. A declaration that the Applicant is entitled to right to life, dignity of human person, personal liberty and right to own property as enshrined in Section 33(1), 34(1) and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*
- b. A declaration that the incessant arrest, detention, humiliation, continued harassment and intimidation of the Applicant by the Respondents and their agents without commission of any known offence and without justifiable legal reasons whatsoever is not in accordance with the procedure permitted by law and ipso facto illegal, unlawful and unconstitutional.*

- c. A declaration that all post-dated cheques issued by the Applicant while in custody of the 1st - 4th Respondents were issued under duress and compulsorily and ipso facto null and void and of no effect whatsoever.*
- d. A declaration that the seizure of the Applicant's international Passport by the 1st - 4th Respondent without lawful justification is unlawful and illegal.*
- e. N200,000,000:00 (Two Hundred Million Naira) damages for violation of the fundamental rights of the Applicant.*
- f. N100,000,000:00 (One Hundred Million Naira) exemplary damages for the cruel, outrageous and reprehensible conduct of the Respondents.*
- g. 10% interest on the judgment sum from the date of judgment till final liquidation of the judgment sum.*
- h. An order mandating the 1st - 4th Respondents to immediately release to the Applicant his international passport unlawfully seized by the 1st - 4th Respondents.*

- i. An order mandating the 1st – 4th Respondents to immediately return to the Applicant all the cheques issued by the Applicant while in the custody of the 1st – 4th Respondents.*
- j. An order of perpetual injunction restraining the Respondents, their agents, privies and/or subordinates from arresting or further arresting, detaining, harassing and intimidating the applicant.*
- k. An order of perpetual injunction restraining the Respondents, their agents, privies and/or subordinates from seizing or further seizing the Applicant’s international Passport.”*

In support of the application is an affidavit of 49 paragraphs duly deposed to by the Applicant himself. Accompanying the application is the Statement of Facts together with the Grounds upon which the reliefs are sought. Learned counsel to the applicant Chidi Nwankwo

Esq also filed a written address duly adopted on the 15/10/2020. Two issues were formulated for determination as follows:

“1. Whether the arrest, detention, threat of arrest, harassment and intimidation of the Applicant and seizure of his International Passport by the Respondents without commission of any known offence constitutes a violation of his fundamental right.

2. Whether in the circumstances of this case the Applicant is entitled to the reliefs sought.”

The 1st and 2nd Respondents were served with the motion on notice and all other relevant processes on the 29/9/2020. The 3rd and 4th Respondents were served by substituted means, to wit through the 2nd Respondent. The 5th Respondent was also served by substituted means by pasting the Court processes on the Notice Board of the

principal Court house at Jabi, Apo and Maitama on the 29/9/2020. However, none of the Respondents filed any response to the originating motion.

Generally, human rights are the basic entitlements of all human beings in any society. They pertain to humans by virtue of their humanity. The Court in Ransome Kuti & Ors. vs. A.G. Federation (1985)5 NWLR (Part 10) 211 at 229 – 230, held thus:

“It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence.”

A Court therefore which is called upon to enforce or protect the human right of a person must appreciate that it has a sacred duty to perform not only to the claimant but to all humanity. The correct approach in a claim for the enforcement of fundamental rights is to examine the reliefs

sought, the grounds for such reliefs 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, then there is redress through the enforcement of such right under the Fundamental Rights (Enforcement Procedure) Rules. See: Sea Trucks (Nig) Ltd. vs. Anigboro (2001) LPELR - SC 120/1995.

It is settled principle of law that an Applicant for the enforcement of his fundamental right under Chapter IV of the Constitution has the initial onus of showing that the reliefs he claims comes within the purview of fundamental right as encompassed by Sections 33 - 45 of the 1999 Constitution (as amended). This is borne out by the principle of Section 46 of the Constitution. See: Nwagwu vs. Duru (2002)13 WRN Page 158.

The Applicant herein is an international business man who deals in gold with his head office at the United Arab

Emirates. The Applicant averred that sometimes in November, 2018 he borrowed the sum of N12,000,000:00 (Twelve Million Naira) from the 5th Respondent in order to purchase some goods. Because of some challenges, he could not pay back the loan within 90 days as agreed and pleaded with the 5th Respondent to give him more time. The 5th Respondent did not bulge but kept worrying and disturbing the Applicant in respect of the borrowed sum.

In April 2019, the 5th Respondent reported the applicant to the Economic and Financial Crimes Commission (EFCC) and he was invited and warned to refund the money. The operatives of the EFCC kept harassing and intimidating the applicant, constantly reminding him of the dire consequences if he failed to repay the loan. Despite reporting to the EFCC, the 5th Respondent also reported to the FCT Police Command

where the Applicant was invited, and interrogated before he was released on bail.

According to the Applicant, the matter took a monstrous dimension when the 3rd and 4th Respondent's arrested him on the 1st September, 2020 and detained him in respect of the said loan transaction. That the Applicant languished in solitary confinement from the 1st September, 2020 to 4th September, 2020.

The Applicant also averred that the 3rd and 4th Respondents who are investigating the case insisted that he must pay 20% interest per month on the borrowed sum which they calculated and arrived at a staggering sum of N130,000,000:00 (One Hundred and Thirty Million Naira). That the 3rd and 4th Respondents made it clear that the only condition upon which they could release the Applicant on bail is to issue post – dated cheques covering the total sum of N130,000,000:00 in favour of the 5th Respondent. Even

when the applicant said he had no money in his account and he might not be able to redeem the cheques on their maturity, the 3rd and 4th Respondents insisted that he must issue the cheques.

That having stayed in detention for four days under dehumanizing condition, the Applicant had no option than to accept the cruel condition and then issued about fourteen post-dated cheques covering a total sum of N130,000,000:00 (One Hundred and Thirty Million Naira) which he handed over to the 3rd and 4th Respondent's before he was released on bail. That despite the Applicant meeting his bail conditions of producing two sureties, the 3rd and 4th Respondents also collected and impounded the Applicant's international passport.

Finally, the applicant averred that he had no money in his account and he cannot raise the whooping sum of N130,000,000:00 before the 30th September, 2020 as 3rd

and 4th Respondent seriously warned him that if the post – dated cheques are not cleared they will re–arrest and send him back to detention.

The Respondent's as stated earlier did not file any counter affidavit to deny, challenge or controvert the facts contained in the Applicant's affidavit. The law is that where an affidavit is not challenged by a counter affidavit, the facts deposed to in the affidavit remain unchallenged. See: A.G. Rivers State vs. Ude (2006)7 SC (Part 11) page 81, Federal Ministry of Health vs. Comet Shipping Agencies Ltd. (2009)4 NWLR 578 AT 587.

Furthermore, the law is settled that facts in an affidavit not challenged, not contradicted and not controverted by a party are deemed admitted by him unless such facts on the face of them will lead to absurdity if accepted as being the truth of what they try to establish. See: Zenith Bank Plc. vs. Bankolas Investment Ltd. & Anor. (2011) LPELR 9064 (CA).

Now the issue is whether the Applicant's fundamental right to dignity and personal liberty as enshrined in the 1999 Constitution of the Federal Republic of Nigeria has been breached contrary to Sections 34 and 35 of the Constitution.

It is however pertinent to state at this juncture that the right's guaranteed under Chapter IV of the 1999 Constitution are not absolute. There is no doubt that the police have unfettered powers of arrest, detention and investigation of person(s) suspected to have committed an offence pursuant to Section 35(1)(c) of the 1999 Constitution and under the Administration of Criminal Justice Act, 2015. The police in the legitimate discharge of their duties cannot be sued in Court for breach of fundamental rights. See: Atapka vs. Ebetor, (2015)5 NWLR (Part 1447) pages 549 at 574.

From the depositions of the Applicant in the supporting affidavit, the pertinent facts relied upon are contained in paragraphs 4 – 8. I reproduce same below for ease of reference:

“4. That the 5th Respondent is a fellow businessman who lent me money that resulted to the institution of this action.

5. That I am an international businessman with headquarters at Dubai United Arab Emirate. I am a licensed gold dealer. I buy gold from west African Countries and sell at Dubai.

6. That my ordeal in the hands of the Respondents started in November, 2018 when I borrowed the sum of N12,000,000.00 (Twelve Million Naira) from the 5th Respondent to enable me buy some goods. The 5th Respondent lent the said sum to me but insisted that the borrowed sum must be repaid within ninety days.

- 7. That I was not able to repay the said loan within ninety days because my customers to whom I supplied the said goods in Dubai were not able to pay me. I explained this fact to the 5th Respondent pleaded with him to bear with me and give me more time to liquidate the said debt.*
- 8. That the 5th Respondent would not bulge but kept worrying and disturbing me in respect of the borrowed sum.”*

The facts above clearly show that the transaction that gave rise to this case is purely civil in nature with no criminal element.

The duties of the Police under the law is very clear as provided for under Section 4 of the Police Act. The section provides:

“The Police shall be employed for the prevention and detection of crime, apprehension of offenders, the preservation of law and order; the protection of live’s

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 outside Nigeria as may be required by them by, or under the authority of this or any other Act.”

In Abah vs. UBN Plc & ors (2015) LPELR – 24758 (CA),
the Court 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 also Oceanic Securities International Ltd vs. Balogun & ors (2013) All FWLR (part 677) 653.

The Police Force is a respectable institution and should not in any community of civilized people be used as debt or

levy collectors, or in the resolution or settlement of disputes among people, as such use of the Police often lead to infringement on the fundamental rights of others. See Igwe vs. Ezeanochie (2010) 7 NWLR (part 1192) page 61, Afribank (Nig) Plc vs. Onyima (2004) 2 NWLR (part 858) page 654.

In Ibiyeye & anor vs. Gold & anor (2012) All FWLR (part 659) 1074, the Court of Appeal held:

“...The Police have also been condemned and rebuked several times, for abandoning its primary duties of crime detection, prevention and control, to dabbling in enforcement or settlement of debts and contracts between quarrelling parties, and for using its coercive powers to breach citizen’s rights and/or promote illegalities and oppression.”

Thus, the 1st – 4th Respondents based on the affidavit evidence before this Court acted beyond their constitutional

powers as provided by the exceptions in Section 35 of the 1999 Constitution by enforcing contractual obligation between the Applicant and the 5th Respondent.

In the case of Arab Contractors (O.A.O) Nig. Ltd vs. Gillian Umanah (2012) LPELR – 7927, the Court of Appeal held:

“There is a plethora of cases on the fact that a civil arrangement is not a matter for the Police. The Police, as the Respondent’s Counsel has pointed out is not a debt collecting organization. In Igwe vs. Ezeanuchie, (2010) 7 NWLR (part 1192) page 67, this Court held that the Police are not and should to be debt or levy collectors, or in the resolution or settlement of civil disputes amongst people.”

See also the cases of:

1. Agbani vs. Okugbue, (1991) 7 NWLR (part 204) page

391

2. Nkpa vs. Nkume (2001) 6 NWLR (part 710) page 543

3. Afri Bank Nig. Plc vs. Onyima (2004) 4 NWLR (part 858)
654 at 660.

The Applicant in this instance deposed that on the 1st September, 2020, the 3rd and 4th Respondent arrested and threw him into detention in respect of the loan transaction between him and the 5th Respondent. The Applicant remained in detention until 4th September, 2020 when he was released on bail after forcing him to issue about 14 post-dated cheques and also seized his international passport. These averments have not been disputed by the respondents.

Thus, based on the affidavit evidence before this Court, the facts before the Court disclose a civil dispute. It is therefore my view and I so hold that the Applicant's right to personal liberty was infringed upon when he was detained for 4 days in solitary confinement.

The applicant also complained that his right under Section 34(1) of the 1999 Constitution (as amended) was violated. Section 34(1) thereof provides:

34(1). Every individual is entitled to respect for the dignity of his person and accordingly–

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

There is nothing in the affidavit of the Applicant to prove that while in detention he was subjected to torture or to inhuman or degrading treatment. Without much ado, I hold that the Applicant failed to prove that the right under Section 34 of the 1999 Constitution (as amended) was violated by the Respondent's.

The Applicant having successfully proved that his fundamental right to personal liberty has been infringed upon is entitled to damages against the parties that infringed on his rights to personal liberty. 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 also Ogbonna vs. Ogbonna (2014) 23 WRN 48.

The 5th Respondent who took employed the Police to violate the fundamental right of the Applicant shall be liable also in damages.

Furthermore, the applicant has averred that the respondents made him sign 14 post dated cheques while in detention under duress. The respondents did not deny this averment. In the case of Nwadiugwu vs. IGP & ors (2015) LPELR – 26027 (CA) the Court held:

“Once the Police are involved in a matter, and a person signs any document with Police officers breathing down his neck, it is difficult to conclude that such a document was freely signed.”

Therefore, the applicant has asked this Court to declare that the post dated cheques as null and void. In the circumstance, I also hold that the post-dated cheques issued by the Applicant while in custody of the 1st – 4th Respondents were issued under duress and as such are null and with no effect whatsoever.

As regards relief (d), the applicant deposed to the fact that his International Passport was seized by the

Respondents as a condition for his release on bail. I must state once again that the Respondent did not challenge any of the depositions in the supporting affidavit. By the provisions of Section 41(1) of the Constitution, every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

The fundamental right of every Nigerian citizen to exit the country freely is exercisable through the use of International Passport., duly issued by the prescribed authority. Powers to withdraw or cancel a citizens International passport can only be exercised by the Minister of Internal Affairs in accordance with the provisions of the Passport (Miscellaneous Provisions) Act, LFN, 2004.

I am also mindful of the provisions of Section 41(2) of the Constitution which states the conditions under which a

citizen's fundamental right to freedom of movement could be lawfully restricted; one of which conditions, provided in sub-section (a) thereof is where a citizen has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.

It is pertinent to state herein that the seizure of the applicants International Passport was not predicated on suspicion of his having committed a criminal offence. In the case of A.G. & Commissioner of Justice, Kebbi State vs. Jokolo (2013) LPELR - 22349 (CA), the Court of Appeal considered and interpreted the provision of Section 41 of the Constitution as to the legality or otherwise of seizing of a citizens International Passport and held as follows:

“By virtue of the provisions of Section 41 of the 1999 Constitution and Chapter 12(1) of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act, Cap A- G, Laws of the

Federation, 2004...Freedom of movement of every Nigerian consists of freedom within Nigeria and freedom of exit from Nigeria...Where there is evidence of restriction of movement of a person, in an action for enforcement of fundamental rights application, it is for the Respondent to show that the restriction of freedom of movement is lawful. The onus is on the person who admits the imposition of restriction to another to prove or justify that the restriction is lawful.”

The situation here seems to me that the Respondent’s dabbled into civil transactions entered into by two legal persons who have rights and obligations under the Constitution. From the facts adduced by the applicant, it is apparent that there was no lawful or reasonable justification for seizure of the Applicants International

Passport. This in my view infringes on the Applicants right to freedom of movement. I so hold.

In Director, S.S.S vs. Olisa Agbakoba (1999) 3 NWLR (part 595) 34, the Supreme Court affirmed the decision of the Court of Appeal, ordering an immediate release of Agbakoba's International Passport, declared to have been unlawfully seized by the S.S.S., where it held as follows:

"I am of the view that in slightly modified terms, the appellant is entitled to the declaratory relief he claimed and I would grant it. He is also entitled to the injunction he seeks directing the respondent to release his passport."

I therefore do not hesitate in following this decision in holding that the applicant is entitled in the circumstances to an immediate release of his International Passport.

Reliefs (e) and (f) are for damages. The Applicant is praying for the sum of N200,000,000:00 (Two Hundred

Million Naira) as damages for violation of his fundamental rights. The sum of N100,000,000:00 (One Hundred Million Naira) as exemplary damages and 10% interest on the judgment sum.

The law is trite that an Applicant is entitled to monetary compensation where his fundamental rights are breached or infraction of same. See: Candide – Johnson vs. Edgin, (1990)1 NWLR (Part 129). The Court takes violation of fundamental rights of citizens very serious that is why it has no hesitation in compensating citizens whose fundamental rights to personal liberty has been infringed upon, no matter how small the infringement may seem to be. In Alaboh vs. Boyes (1984) 5 NCLR page 830, the Court held:–

“Any violation of a citizens guaranteed fundamental right, for however short a period, must attract penalty under the law.”

Similarly in the case of Gusau vs. Umezurike (2012) 28 WRN 111 at 140 – 141; the Court held:

“Detention, no matter how short, can lie as a breach of fundamental right...”

It is thus the duty of the Court to grant redress to any person who has successfully proved that any of his Fundamental Rights has been, is being, or likely to be contravened. See Igwe vs. Ezeanochie (cited supra).

In the case of Olukunle Akinde vs. Access Bank Plc, (2014) LPELR 22857, the Court of Appeal held that:

In respect of fundamental rights under the Fundamental Rights Rules, once an Applicant proves that his right to liberty had, for instance, been infringed, the Court is entitled to award compensation on liberal terms to the injured party against the party at fault without recourse to common law principles on award of damages.”

As stated earlier, the Respondent's herein did not deny the fact of arrest and detention of the applicant in solitary confinement for 4 days. This certainly is beyond the Constitutionally permitted period. Therefore relief (e) will be granted as prayed.

By Section 35(6) of the 1999 Constitution, the Applicant is entitled to compensation. Therefore relief (e) will be granted.

For exemplary damages, the applicant prayed for N100 Million for the cruel, outrageous and reprehensible conduct of the Respondents. Exemplary damages, also known as punitive or vindictive damages can apply only where the conduct of the defendant merits punishment, and this may be considered to be so where such conduct is wanting. Where the applicant will barely be compensated in damages for the loss that he suffered, where the wrong done to him was aggravated by circumstances of acts such as violence,

oppression, malice, fraud or wanton or wicked conduct of the defendant, where the defendant's conduct in the wrongful act committed against the plaintiff, is sufficiently outrageous to merit punishment, such as where it discloses malice fraud, cruelty, insolence, flagrant disregard to law e.t.c. then exemplary damages will be granted. See Odiba vs. Azege (1998) LPELR - 2215 (SC), G.K.G. Investment Nigeria Ltd vs. NITEL Plc (2009) LPELR - 1294 (SC).

In the case of Williams vs. Daily Times of Nig. Ltd (1996) 1 NSCC page 15 the Supreme Court held that:

- “1. Exemplary damage is awarded in order to punish a defendant whose conduct has been outrageous or scandalous.*
- 2. Exemplary damages are usually awarded where statutes prescribe them and also for oppressive arbitrary and unconstitutional actions by servants of the Government.”*

Before exemplary damages can properly be awarded by a trial Court, there must be evidence in proof of the facts and circumstances which on the balance of probabilities, satisfy it that there is prima facie justification for such an award. In other words, the claim for exemplary damages must be pleaded and proved before it can be awarded. See Sonuga & anor vs. Minsiter, FCT Abuja & anor (2010) LPELR - 19789 (CA). In the case of Odogu vs. A.G. Federation (1996) 6 NWLR (part 456) 508 at 519 - 520 the Supreme Court had held thus:

“Before aggravated and exemplary damages can be awarded, it must be specifically claimed and proved.”

See also Eliochin vs. Mbadiwe (1986) 1 NWLR (part 14) at 47, Onagoruwa vs. I.G.P (1991) 5 NWLR (part 193) page 647.

Thus, exemplary damages fall within the class of special damages that calls for specific pleading and proof by evidence before it can be granted or awarded. In the premise, they also fall within the exception to the general principle of law that what is admitted needs no further proof. See Sonuga & anor vs. Minister FCT, Abuja & anor (cited supra).

I am of the considered view that the conduct of the Respondents do not attract the award of exemplary damages as no malice is disclosed. The claim for exemplary damages is thus refused.

Reliefs (j) and (k) seeks for perpetual injunction restraining the Respondents, their agents, privies and/or subordinates from arresting or further re-arresting , detaining or harassing the applicant, seizing or further seizing the applicants international passport. It is the law that it is improper to grant a perpetual injunction at the

instance of a limited owner of the absolute interest. See Alade vs. Sofolarin & ors (2015) LPELR - 25008 (CA). The right for which the applicant is entitled to pursuant to Section 35 of the 1999 Constitution is not absolute but limited. This prayer will thus be granted and limited only to the facts on record, but certainly not at large.

It is worthy to note that a Court is not allowed to grant perpetual injunction against any future arrest or detention at large. If the Applicant is again wrongfully arrested and detained in future, the doors of the Courts are always open and justice will be dispensed without fear and favour, affection or ill - will. See Jimoh vs. A.G. Federation (1998) 1 HRLRA page 513.

For the totality of reason's given, judgment is entered in favour of the Applicant against the Respondents as follows:

- It is declared that the applicant is entitled to right to life, dignity of human person, personal liberty and right to own property as enshrined in Section 33(1), 34(1) and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- It is also declared that the arrest, detention, continued harassment and intimidation of the applicant by the Respondents without commission of any known offence and without justifiable legal reasons whatsoever is not in accordance with the procedure permitted by law and ipso facto illegal, unlawful and unconstitutional.
- It is declared that all post dated cheques issued by the applicant while in custody of the 1st – 4th Respondents are null and void and of no effect whatsoever. The said post dated cheques shall be returned to the Applicant.

- It is further declared that the seizure of the Applicant's International Passport by the 1st – 4th Respondents without lawful justification is unlawful and illegal. The said International Passport shall be released to the applicant forthwith.
- I award general damages of N2,000,000.00 (Two Million Naira) only against the 1st, 2nd and 5th Respondents for the violation of the Applicants right to personal liberty. For the 3rd and 4th Respondents, they are described in the Applicant's affidavit as officers attached to the CID Section of the FCT Police Command. They appear to be agents of a disclosed principal, the 1st Respondent and thus not liable in damages.
- The Respondents, their agents, privies and/or subordinates are hereby restrained from arresting or further arresting, detaining, harassing and intimidating

the applicant as it relates or in connection with the refund of the sum of N12 Million, without strict observance of the due process of law and the Applicant's inviolable fundamental rights.

- 10% interest is granted on the judgment sum from the date of judgment till final liquidation.

Hon. Justice M.A. Nasir

Appearances:

Chidi Nwankwo Esq – for the Applicant

Respondents absent and not represented