

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 8 NYANYA –ABUJA ON THE 5TH DAY OF NOVEMBER,
2020
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO: FCT/HC/CV/1398/2020

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

UGO EMEKA EBIGBO.....APPLICANT

AND

1. THE NIGERIA POLICE FORCE
2. GENERAL ABDUSALAM ABUBAKAR (RTD)
3. ALHAJI AMINU ABUBAKAR
4. THE DEPUTY INSECTOR GENERAL OF POLICE
(FORCE CRIMINAL INVESTIGATION DEPARTMENT
AREA 10, GARKI ABUJA) } ..RESPONDENTS

JUDGMENT

The Applicant's Originating Motion filed on 12/03/20 is brought pursuant to Order 11 of the Fundamental Rights (Enforcement Procedure) Rules 2009 Section 34 (1) (a), Section 35 (1), (4) and (5) and Section 41(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of the Court.

The application prays the Court for:

- (a) A declaration that the invasion of the Applicant's residence by the men of the 1st Respondent, her arrest and subsequent detention is unlawful, illegal, null and void.
- (b) A declaration that the detention of the Applicant in the premises of the 4th Respondent from the 21st day of February 2020 till date violates her right to personal liberty and freedom of movement guaranteed under Section 35(1) (4) and (5) and Section 41 of the constitution of the Federal republic of Nigeria 1999 as amended.
- (c) Reliefs (c) and (d) are a repetition and a tautology of reliefs (a) and (b).
- (d) An Order compelling the Respondents jointly and severally to release the Applicant on bail pending the conclusion of their investigation or charge her to Court.
- (e) An Order of Perpetual Injunction restraining the Respondents either by themselves, or through their agents, officers, servants, privies or howsoever described from further pouncing on,

arresting and or detaining the Applicant in connection with the facts of this application.

- (f) N150 Million as damages to the Applicant against the Respondents jointly and severally for the breach of the Applicant's fundamental rights as guaranteed under Section 34(1)(a), Section 35(1), (4) and (5), Sections 37 and 41(1) of the 1999 Constitution.

The grounds for the application are as stated on the face of the Motion paper.

Learned Counsel to the Applicant rely on the 23 paragraph Affidavit sworn to by Samuel Ebigbo.

Succinctly, he deposed that he was called to Zone 7 Police Headquarters at about 10:30 p.m on 21/02/20.

That on getting there, the Applicant informed him that she was arrested alongside one Mr. Oluwaseu Anofowose Uzoma, their younger cousin who visited the previous night.

They were both detained at the Zone 7 Police Headquarters.

They were not informed of the crime they had committed.

They got to know through their family Counsel that they were being detained for giving false information to the Police against a very important and highly revered personalities in Nigeria in person of the 2nd and 3rd Respondents which led to the search of their properties in Minna, Niger State.

That the 4th Respondent had ordered that they be incarcerated in the facility and later transfer them to 4th Respondent's Office at Area 10.

That after much persuasion, a photocopy of a Petition titled:

“A Case of Criminal Conspiracy, Armed Robbery, Possession of Illegal Firearms, Aiding and Abetting, Kidnapping, Threat to Life and Threat to Bomb down Government facility with explosive device” by one Suleiman (Surname unknown) and Cohorts signed by

one Patani James Esq stating that it was as a result of the said Petition that they were arrested and detained.

That they read through the Petition but did not find anything indicting the Applicant.

That their Counsel applied for bail for the Applicant and two other persons but the IPO declined to even receive the application stating that it was a weekend and that bail cannot be granted on weekends informing them to come back on Monday (24/02/20).

That on 24/02/20, the bail application was submitted at the AIG's office. It is Exhibit B.

The men of the 1st Respondent still failed to admit the Applicant on bail pending arraignment.

That their Counsel called the 2nd and 3rd Respondents on phone.

The 2nd Respondent did not pick but the 3rd Respondent picked his phone and after listening said he had left the matter in the hands of the 4th Respondent.

The audio recording of the conversation is Exhibit C.

The Applicant was later moved from Zone 7 to FCID Headquarters at Area 10.

A fresh application was made at Area 10, but it was still refused. It is Exhibit D.

The Applicant is frail, weak and is reacting to the cold and mosquito bites at the Respondents' cell which is posing serious health threat.

That it is in the interest of justice to grant the application.

The application is supported by a statement which contains the Name and Description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought.

Learned Counsel also rely on the Verifying Affidavit.

The 1st and 4th Respondents' Counsel rely on the Counter Affidavit dated and sworn to on the 13/05/20.

They depose that:

a. That the Office of the Inspector General of Police received a Petition against members of the Police Force which investigation led to the arrest of the Applicant and 5 others. The Petition is Exhibit NPF1.

The Petition was assigned to 4th Respondent for investigation. The Applicant and 5 others were arrested and their statements obtained voluntarily. The Applicant's statement is Exhibit NPF2.

That investigation revealed the following:

1. That the Petitioner in this case is former Head of State, General Abdulsalami A. Abubakar.
2. That on 29/11/19, A case of criminal conspiracy, aiding and abetting kidnapping, threat to life and to bomb down government facilities with explosive device by one Suleiman and Cohorts written by Patani James Esq on behalf of the Applicant and 5 others.
3. That evidence adduced revealed that the above referred Petition was by the Applicant and 5 others

including Police Officers who hatched the false information,. The Petition is Exhibit NPF3.

4.The Police Officers also used their position to effect the execution of their unlawful acts.

5.The Applicant and other suspects confessed that their motive was to recover huge amount of money purportedly stashed in the house of 2nd and 3rd Respondents.

In furtherance of the above, the Anti-Kidnapping Unit of Zone 7 Command searched the house of the 3rd Respondent in the presence of the Applicant and other suspects but nothing incriminating was found.

That on 21/02/20 when the Applicant and others were arrested, the 1st and 4th Respondents obtained a remand Order for the detention of the Applicant and at the expiration of the aforesaid two weeks, the same Court was approached for extension which was granted.

The remand Orders are Exhibit NPF5.

That before the expiration of the 3rd Remand Order, the Applicant and 5 others were on 20/03/20 charged before Court No. 5 of the High Court of the FCT.

That their arraignment was delayed as a result of the lock-down.

That they were later arraigned before Justice A.B. Mohammed and were granted bail.

They were further remanded in Police facility because they could not perfect their bail and the Correctional Service refused to take custody of inmates due to Covid 19.

That Applicant perfected her bail on 27/04/20 when she was arraigned.

That others were also released when they perfected their bail.

The Applicant was accorded every decorum, civility and respect.

That 1st and 4th Respondents followed due process. That this application is instituted to evade criminal prosecution.

That it is in the interest of justice to dismiss this Application.

The 2nd and 3rd Respondents' Counter Affidavit was deposed to by Alhaji Aminu Abubakar of No.11 Adamu Chiroma Street, Jabi, Abuja.

He said that this application is aimed at tarnishing the good image of the 2nd Respondent.

That they are not a vanguard of any alleged oppression and continuous detention of the Applicant as the Applicant was arrested for giving false information presented to the agents of the 1st Respondent.

That 4th Respondent is not a tool in their hands and that they did not breach the Applicant's fundamental right as the 4th Respondent was doing his statutory duties.

That they were not mastermind behind the arrest and alleged detention of the Applicants as they merely

notified the 1st Respondent on the false information given by the Applicant to the 1st Respondent.

That the audio recording compact disc is not the full conversation between him and the Applicant.

That Applicant's Counsel called 3rd Respondent to further blackmail the 2nd Respondent to withdraw the 2nd Respondent's Petition.

That they did not actively participate and influence the arrest and detention of the Applicant.

Paragraph 11 of the Affidavit is hearsay. I shall discountenance same.

That the Applicant and 5 others acting in concert authored a false Petition dated 29/11/19 written by Patani James Esq against the 2nd Respondent.

That following the above, a detachment of the Police came to their wards house (the premises of one Abdullai Buba which was thoroughly searched).

The team did not see any explosives.

The guard Commander refused the detachment of Policemen to search the guest house of the 2nd Respondent.

The 2nd Respondent thereafter wrote a Petition dated 17/01/20 to the Inspector-General of Police.

It is Exhibit MAM6.

The allegation contained in Exhibit MAM was investigated and was discovered to be false.

That they did not instigate the arrest or detention of the Applicant but merely laid a complaint of the unlawful invasion of their premises as instigated by the Applicant and 5 others.

I have also read the Further and Better Affidavit filed in response to the 1st and 4th and 2nd and 3rd Respondents' Counter Affidavit and considered the Written Addresses of Counsel.

This is an application brought under the Fundamental Rights (Enforcement Procedure) Rules 2009.

By Order 11 Rule 2 of the above rules an application for the enforcement of fundamental right may be made by any originating process accepted by the Court which shall subject to the provisions of these rules, lie without leave of Court.

3. An application shall be supported by a Statement setting out the name, description of the Applicant, the relief sought, the grounds upon which the reliefs are sought and supported by an Affidavit setting out the facts upon which the application is made.

Paragraph 6: Where the Respondent intends to oppose the application, he shall file his Written Address within 5 days of the service on him of such application and may accompany it with a Counter Affidavit.

7. The Applicant may on being served with the Respondent's Written Address file and serve an Address on point of law within 5 days of being served and may accompany it with a Further Affidavit.

The above are the processes envisaged under a Fundamental Human Right application.

Any other process aside the above is extraneous.

Order XV of the fundamental human right are enforcement procedure rules are transitional provisions which are not relevant in the instant case. The resolution of this application will put to rest all the issues canvassed.

In the circumstance of this case, a Counterclaim is a strange process in this application.

The fundamental human rights of the Applicant alleged to be breached are: (1) Right to dignity of human person

(2) Right to personal liberty and right to freedom of movement under Sections 34, 35 and 41 of the 1999 Constitution as amended.

I have earlier summarized the facts in support of the application.

What triggered the arrest of the Applicant was a Petition allegedly written by the Applicant and 5 others which led to the search of the house of the 3rd Respondent's aide and a botched attempt to search the guest house of the 2nd Respondent.

The investigation found the Petition to be false.

The Applicant and others were arrested on 21/02/20. That Applicant's bail application was refused twice from 21/02/20- 24/02/20.

The 1st and 4th Respondents agreed that the Applicant was arrested on 21/01/20 they obtained a Court Order for their detention.

That Applicant and 5 others were eventually charged to Court at the expiration of the said Order. The remand Orders are unmarked. They are attached to the Affidavit. The Affidavit referred to them as Exhibit NPF5.

I have read same. They are dated 21/02/20 to 5/03/20, 18/03/20 to 31/03/20. That the Applicant was charged

to Court on 20/03/20 but the case could not go on because of the Covid 19 Pandemic.

They were eventually arraigned on 27/04/20 before the High Court.

Section 34 of the 1999 Constitution states;

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

(a) No person shall be subjected to torture or degrading treatment.

(b) No person shall be held in slavery or servitude.

(c) No person shall be required to perform forced or compulsory labour”.

Section 35(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.

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

“3 Any person who is arrested or detained shall be informed in writing within 24 hours and in the language that he understands of the facts and grounds for his arrest or detention.

4. Any person who is arrested or detained in accordance with sub Section 1(c) of Section 35 shall be brought before a Court of law within a reasonable time.”

Section 41 of the 1999 Constitution states:

“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.”

In respect of right to dignity of human person, I have gone through the Affidavit evidence. Putting handcuffs on the Applicant around 5:30 a.m. allegedly parading them in the office of the Respondent cannot amount to a breach of Section 34 of the 1999 Constitution. There is no evidence that the Applicant was tortured.

The right to personal liberty of the Applicant was also alleged to be breached.

The law is that right to personal liberty is not absolute.

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases as outlined in subsection a-f which includes for the purpose of bringing the person before the Court in execution of the order of a court or upon reasonable

suspicion of his having committed a criminal offence.”

The Applicant averred in her Affidavit that 1st and 4th Respondents obtained a remand Order for the detention of the Applicant and at the expiration of two weeks approached the same Court for extension which was granted.

Sections 293, 294 and 295 of the Administration of Criminal Justice Act is a procedure permitted by law under which a citizen can be detained as contained in Section 35(1) of the 1999 Constitution.

Exhibit NPF5 are the remand warrant issued by the Magistrate Court for the detention of the Applicant.

In the circumstance, it is my view and I so hold that the Applicant's right to personal liberty and freedom of movement were not breached when she was detained from 21st day of February 2020 - 26th day of February 2020 when she and others were charged to Court.

The 2nd and 3rd Respondents are citizens of Nigeria who are entitled to complain to the Police if they suspect that a criminal offence was and or has been committed against them as contained in Exhibit MAM 6.

There is no evidence to suggest that the 2nd and 3rd Respondents did more than complaining to the 1st and 4th Respondents.

Coming to the office of the 1st and 4th Respondents or sending agents to find out the progress of the case as deposed by the Applicant does not amount to actively participating in their detention. It is the sole duty of the 1st and 4th Respondents to investigate and detect crime.

In my humble view, they did not do more than make a complaint.

They have not therefore breached the fundamental human right of the Applicant as contained in Sections 34, 35 and 41 of the 1999 Constitution and I so hold.

The application fails and it is accordingly dismissed.

Assuming but not conceding that the 1st and 2nd Counter Claimant's Originating Summons is properly before the Court.

I have read the Affidavit filed in support of the Counterclaim.

The Counterclaimants are also alleging a breach of their right to dignity of their persons, right to personal liberty and privacy of their homes contrary to Sections 34, 35 and 37 of the 1999 Constitution as amended.

The 1st Respondent has been charged to Court for giving false information to the Police. There is nothing to suggest that any of the provisions of Chapter 4 is being or likely to be contravened. The 1st and 2nd Counterclaimants' houses were not invaded.

The house of the person allegedly invaded is that of Abdullai Salihu. The house of the 1st Counterclaimant could not be searched because of the refusal of the guard Commander.

Fundamental right applications under the Fundamental Right Enforcement Procedure Rules are personal actions.

The Counterclaimant cannot therefore initiate the proceedings because the said Abdullai Salihu is their ward.

The Police is empowered under our extant laws to conduct investigation and detect crime.

See Section 4 and 23 of the Police Act.

Therefore conducting a search in the house in accordance with the Police Act and the Administration of Criminal Justice Act as the 2nd and 4th Respondents did is not a breach of the Counterclaimants' right as enshrined in Sections 34, 35 and 37 of the 1999 Constitution of the Federal Republic of Nigeria.

The Counterclaimants did not show how their right to respect for the dignity of human person, personal liberty and privacy were breached.

The Counterclaim in my view is bereft of facts upon which it can be granted.

It also fails.

For the totality of reasons given in the main application and the Counterclaim, it is also accordingly dismissed.

.....

HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

05/11/20

