

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON 12TH DAY OF JANUARY, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

BETWEEN:

PRINCE ADEFEMI MABOGUNJE APPLICANT

AND

1. COTIKOM PLUS LTD

2. TOKUNBO AYEKOTI

3. COMMISSIONER OF POLICE FCT COMMAND



RESPONDENTS

PARTIES ABSENT.

APPLICANT'S COUNSEL ABSENT.

**PATIENCE IDI ESQ. WITH DEBORAH OMENKA ESQ. FOR THE RESPONDENTS,
HOLDING THE BRIEF OF T.J. AONDO ESQ.**

JUDGMENT

By a statement filed in support of an application for the enforcement of his fundamental rights, the Applicant seeks the following reliefs against the Respondents:

“i) A declaration that the incessant arrest, intimidation, detention, harassment and threat of arrest and detention of the Applicant and the

laying of siege at the home and office of the Applicant by the men of the 3rd Respondent for purposes of his arrest and detention at the instance of the 1st and 2nd Respondents, on accounts (sic) of the Applicant's failure to repay a loan sum of ₦10, 000, 000.00 (Ten Million Naira) availed him by the 1st and 2nd Respondents and interest accruing thereon, is a flagrant violation of the Applicant's right to personal liberty and self dignity as guaranteed under Sections 35 (1), (4) (5) & (6) and 34 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and, therefore, unlawful, illegal and unconstitutional.

ii) A declaration that the transaction between the Applicant and the 1st and 2nd Respondents and pursuant to which the Applicant is being hounded, haunted, harassed and intimidated is (sic) by the 3rd Respondent (sic) a civil transaction which is outside the constitutional and statutory duties of the 3rd Respondent and therefore amounts to an unlawful breach of the Applicant's fundamental rights.

iii) An order of perpetual injunction restraining the 3rd Respondent, either by itself, agents and/or privies, from further harassment, arrest, threat of arrest and/or laying siege at the home and/or office of the Applicant for the purposes of effecting his arrest and detention pursuant to and/or in connection with the said loan transaction between the Applicant and 1st and 2nd Respondents.

iv) An order of the Honourable court that the Respondents jointly and severally pay to the Applicant the sum of ₦10, 000, 000.00 (Ten Million naira) only as compensation for the unlawful violation of his fundamental human rights through incessant harassment, humiliation and arrest and detention by the 3rd Respondent on account of a purely civil transaction

v) And for further or any other order the Honourable court may deem fit to make in the circumstance.”

The application is supported by a 19 paragraph affidavit and a 3 paragraph verifying affidavit, both deposed to by the Applicant himself, as well as counsel’s written address.

The pith of the Applicant’s complaint is that on 7th April 2017, he borrowed the sum of ₦10million from the 2nd Respondent as long-time family friend and younger brother to inject into a personal business. The interest rate was agreed at ₦2million weekly. See Exhibit A, the loan agreement. It was further agreed that the Applicant would issue the 2nd Respondent with a postdated cheque of ₦12million and that Applicant would deposit the original certificate of occupancy covering the Applicant’s property at Wuye as collateral all of which he obeyed in good faith. The Applicant was unable to repay the loan as agreed and his total indebtedness to the 2nd Respondent was set at ₦16million.

According to the Applicant, the 2nd Respondent requested the Applicant to issue him two cheques of ₦8million each, which the Applicant did, in the honest belief

he would have received payment for the investment he had made before the due dates of the cheques. When it was obvious to the Applicant that he would not have the funds to make good the cheques as expected, he requested the 2nd Respondent not to present the cheques for payment but the 2nd Respondent refused and presented the two cheques which bounced.

That thereafter the 2nd Respondent used the bounced cheques as a tool for the Applicant's arrest by the 3rd Respondent's men at whose office he was forced to undertake in writing on how he would defray the loan and the interest as a condition for his bail and freedom.

He was made to pay ~~N~~2million and the 3rd Respondent's men compelled, coerced and intimidated him into parting with his Tundra van worth about ~~N~~6million to the 1st and 2nd Respondents at the sum of ~~N~~2million, as a way to defray the loan sum and interest further, and to avoid constant invitation and detention at will by the 3rd Respondent without being charged to court for any offence.

Inspite of all his efforts to satisfy the Respondents to have peace of mind, the 1st and 2nd Respondents have resorted to and at will, to use the 3rd Respondent's men to make life unbearable for him and his family with constant harassment, intimidation, humiliation, threat of arrest and detention, laying siege at his home and office, with fully armed and uncountable number of men of the 3rd Respondent, whenever he failed to honour their invitation on the due day he is expected to make further payment, all in a bid to arrest him for his inability to keep faith with the undertaking.

That what he had with the 1st and 2nd Respondents was a simple loan transaction with his friend and brother and issued him cheques without any criminal intent attached to it. That notwithstanding that the 1st and 2nd Respondents have his original title document to the knowledge of the 3rd Respondent, yet the 3rd Respondent continued to do the biddings of the 1st and 2nd Respondents to subject him to all manner of embarrassment, intimidation and discomfort without charging him to a court of law for any criminal offence he has committed.

As a result he has suffered increased blood pressure, hindrance to his freedom of movement to attend to his business for fear of arrest and detention by men of the 3rd Respondent. That the investment he made with the loan till date has yielded no fruit.

In his written address in support of the application learned counsel argued the issue “whether the Respondent’s actions in the circumstances does (sic) not constitute a gross violation of the Applicant’s rights to personal liberty and self dignity as enshrined in sections 35(1) and S. 34 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) so as to entitle (sic) the Applicant to damages and compensation”

He submitted that the unequivocal answer is in the affirmative, as the issue at stake is a case of indebtedness arising from a civil loan transaction between the Applicant and the 1st and 2nd Respondents, which is outside the known statutory duty of the 3rd Respondent which as provided in Section 4 of the Police Act is the detection, prevention, investigation and prosecution of crime.

Rather the 3rd Respondent had turned itself into a debt recovery agency despite several condemnation of such conduct by the court of law. In **EFCC V DIAMOND BANK PLC & 2 ORS (2018) LPELR-44217 SC. PG 23 PARAGRAPHS A-D, P.25-26, PARAGRAPH B-B** per Sidi Dauda Bage, JSC.

Citing **OKONKWO V OGBOGU (1996) 4 SCNJ 130 at 207**, he urged that trespass to a person, however slight gives right to an action to recover damages, even without substantial injury, as damages can be awarded for injury to a man's dignity or the discomfort or inconvenience or for interference to liberty, even without pecuniary loss.

He urged that the actions of the 3rd Respondent in compelling the Applicant to undertake in writing to defray his indebtedness to the 1st and 2nd Defendants through its office and the reliance on the undertaking to hound, harass and intimidate the Applicant in addition to laying siege at his home and office, is an abuse and improper use of power and an infringement of his fundamental rights. And the 1st and 2nd Respondents are equally culpable in instigating the 3rd Respondent to harass and intimidate the Applicant for the purpose of his arrest and detention and leading them on the siege at the home and office of the Applicant.

He urged the court to so hold and grant the Applicant's reliefs.

On 21st May 2020, the 1st and 2nd Respondents responded with a 26 paragraph counter affidavit deposed to by the 2nd Respondent to which exhibits were

attached. Therein he stated inter alia that the Applicant did not request him not to present the two cheques which bounced.

That as a law abiding citizen, he petitioned to the police through his lawyers on the crime of issuing dud cheque committed by the Applicant, for their investigation. He denied knowledge of any situation where the Applicant was forced by the 3rd Respondent on his account to undertake to pay the money owed him on the bounced cheque. He said the officers of the 3rd Respondent did not compel, coerce or intimidate the Applicant into parting with his Tundra van or any other vehicle in order to defray the amount owed him. He denied using the office of the 3rd Respondent at will to arrest, harass, intimidate, humiliate, threaten or make life unbearable for the Applicant and his family over the money owed him or any other issue.

In his written address Mr. Terkaa Aondo formulated two issues for determination thus:

- “1. Whether the 1st and 2nd Respondent (sic) who merely reported the commission of a crime (i.e. issuance of a dud cheque) can be held responsible for the Applicant’s claim for alleged breach of fundamental rights.
2. Whether the Applicant’s arrest was not lawful in view of the complaint made to the 3rd Respondent by the 1st and 2nd Respondent of the commission of the crime.”

Learned counsel answered issue No. 1 in the negative, submitting that it is the duty of every citizen to report to the police the commission of a crime and such citizen will not be held liable for whatever happens after such a report is made.

See **FAJEMIROKUN V CCB NIGERIA LIMITED (2009) 8 NWLR (PT 1135) SC 582 at pg 600; ALHAJI UMARU HABIBU V MAL IBRAHIM USMAN YAKASSA & EFCC SUIT NO. FCT/HC/CV/2333/15** (unreported) delivered by this court on 2nd December 2016.

He urged that the Applicant had failed to show that the 1st and 2nd Respondents took further steps to show malafide after lodging a complaint with the 3rd Respondent.

On issue no. 2, he answered in the affirmative as the police by virtue of Section 4 of the Police Act is empowered to investigate all crimes, which would include criminal breach of trust, cheating and issuance of dud cheque. Section 24 equally empowers the police to cause investigation to be conducted as to whether any person, corporate body or organization has committed an offence under the said Act.

In this instance he argued that the 3rd Respondent was only engaged in investigating a crime under Section 1 of the Dishonoured Cheques (Offences) Act by the Applicant, therefore the case of **UMAR V ABDUSALAM & ORS; EFCC V DIAMOND BANK PLC** relied upon by the Applicant were inapposite.

Finally, he submitted that the arrest of the Applicant was lawful and the injunction granted against the 3rd Respondent was sought and granted in error and on misrepresentation of facts, and ought to be set aside. See **A.G ANAMBRA**

STATE V CHIEF CHRIS UBA (2005) 15 NWLR (Pt 947) 444 AT PG 67 PARAGRAPHS F-G.

He urged the court to dismiss the application as the Applicant has failed to establish the infringement of his fundamental rights.

The 3rd Respondent filed a 26 paragraph counter affidavit deposed to by Alex Onyilo, an investigative Police Officer with the FCT Police Command, in denial of the Applicant's claim.

He stated inter alia that the 3rd Respondent's office received a petition from the office of Anthony Agbonlahor & Associates complaining of issuance of dud cheques against the Applicant. See Exhibits A1-A8.

That the Applicant was invited. He made a confessional statement and was released on bail to Mr. Tule Terwase. See Exhibits B and C1-C5.

That the 3rd Respondent's investigation revealed that a prima facie case of criminal breach of trust and issuance of dud cheque was established against the Applicant and recommended his prosecution. See Exhibits D-G.

That the 3rd Respondent on no occasion coerced, compelled or intimidated the Applicant into parting with a Tundra van or any monies, nor laid siege at no 5 Missau Crescent Garki II Abuja with a team of armed personnel to recover the balance of loan and interest from the Applicant nor was the Applicant arrested, harassed or detained beyond 24 hours by the 3rd Respondent or handcuffed, beaten or dehumanised by the 3rd Respondent.

That the 3rd Respondent can invite the Applicant on just cause to aid investigation when the need arises and it is within the discretion of the 2nd Respondent (?) to determine how to go about its investigation.

In his written address learned counsel submitted that the fundamental rights of the Applicant were not infringed upon and urged the application be dismissed. It was further contended that Commissioner of Police FCT Command is not a juristic person and cannot sue or be sued.

The Applicant in response to the 1st and 2nd Respondents filed a 17 paragraph further and better affidavit deposed to by himself. Therein he maintained that it was the underlying instruction of the 2nd Respondent to the men of the 3rd Respondent to recover the loan sum and the interest accrued on it, whereupon he was made to write an undertaking to make payment through the department of CID in charge of the case on 6th February 2018.

That contrary to the denial of the Respondents, that a report of investigation from the Directorate of Road Traffic Services to Wuye Divisional Police Officer Exhibit IR shows that on 31st May 2019, the 2nd Respondent registered the Applicant's Toyota Tundra in his own name.

That on each occasion he made payment pursuant to the undertaking, he was given a sheet of paper by Corporal Alex Onyilo and his team to write the amount paid and balance left.

That the 2nd Respondent was aware and always went to receive each payment he made to the 3rd Respondent and would call him to try hard to offset the balance in good time as he needed the money for other investments.

In counsel's written address, while it is conceded that liability does not lie against a private citizen (1st and 2nd Respondents) for merely performing their duty in reporting the commission of crime to the law enforcement agency (3rd

Respondent), it was submitted that the performance of that duty must be devoid of any element of bad faith or malice to avail the 1st and 2nd Respondents. Learned counsel urged that malice could be implied from the conduct of the 1st and 2nd Respondents who purportedly reported a case of issuance of dud cheque against the Applicant since 31st January 2018, but failed for over 19 months to inquire why the 3rd Respondent had not taken the necessary steps to charge the Applicant to court for issuance of dud cheque, even in the face of Applicant's alleged confessional statement Exhibit B, but chose the path of engaging the 3rd Respondent to harass, arrest and detain the Applicant to recover the loan sum. He urged the court to find that the 1st and 2nd Respondents went beyond reporting the case of commission of crime against the Applicant to taking active steps in the infraction of the Applicant's fundamental rights. Based on the same facts the court was further urged to hold that the 3rd Respondent turned himself into a debt recovery agent for the 1st and 2nd Respondents.

At the hearing of this application Mr. Emmanuel Ejiofor for the Applicant did not appear in court. Upon the application of Mr. T.J. Aondo for the Respondents, and in compliance with Order XII Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, the court deemed all his processes as adopted. Mr. Aondo for the Respondents was heard and the application was thus adjourned for judgment.

Let me begin by addressing the issue raised by Mr Aondo. On whether 3rd Respondent is a juristic personality. Mr. Ejiofor for the Applicant did not respond to the argument.

My short answer is that the 3rd Respondent is a juristic personality and can sue and be sued. See Section 215 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

“There shall be:

(a)

(b) a Commissioner of Police for each State of the Federation who shall be appointed by the Police Service Commission”

Section 297 of the said Constitution provides for the creation of the Federal Capital Territory, Abuja.

Section 299 of the said Constitution provides:

“The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation...”

Section 12 (1) of the Nigeria Police Act 2020 provides that -

“The Police Service Commission shall appoint such numbers of Commissioners of Police as are required for the efficient performance of the functions of the Police Force

(2) The Police Service Commission shall, from among the Commissioners of Police appointed under subsection (1) assign a Commissioner of Police to a State or the Federal Capital Territory, Abuja.”

It is therefore abundantly clear that the 3rd Respondent is a juristic person.

The issue before this Honourable court is: “whether the Respondents’ action in the circumstances of this case constitutes a gross violation of the Applicant’s right to personal liberty and self dignity as enshrined in section 35 (1) and 34 (1) of the

Constitution of The Federal Republic of Nigeria 1999 (as amended), so as to entitle the Applicant to compensation.”

This encompasses all the issues raised by the parties in this application. The law is trite that he who asserts must prove. See Sections 131-133 Evidence Act 2011.

The onus is therefore on the Applicant to establish that his fundamental rights have been breached, are being breached or likely to be breached by the Respondents, to entitle him to the reliefs sought before this Honourable court.

This he must prove by cogent and compelling evidence. See **ADEKUNLE V AG OGUN STATE (2014) LPELR-22569 CA.**

Section 34 (1) of the Constitution of Federal Republic of Nigeria 1999 (as amended) provides:

“(1) Every individual is entitled to respect for the dignity of his person.....”

Section 35 (1) provides “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 -

(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 proceeding 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.

(5)In subsection (4) of this section the expression “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.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection the appropriate authority or person “means an authority or person specified by law”.

Now, it is the evidence of the Applicant that he issued the postdated cheques to the 1st and 2nd Respondents to repay a loan and interest he had taken from the Respondent for a business deal, a purely civil transaction.

The two cheques upon presentation were returned unpaid. In other words, they bounced.

Pursuant to this the 1st and 2nd Respondents reported a case of issuance of dud cheque and cheating to the 3rd Respondent. See Exhibit A attached to the counter affidavit of the 3rd Respondent.

It was the Applicant’s case that Exhibit A was only a smoke screen by the Respondents to force him to repay the debt he owed the 1st and 2nd Respondents and to harass, arrest and detain him at will if he did not come up with the money.

The Respondents deny this. It is therefore pertinent to look at the facts before the court on both sides.

Exhibit A, the 1st and 2nd Respondents petition against the Applicant was written and dated 31st January 2018 and received by the 3rd Respondent on 2nd February 2018. On 6th February 2018, the Applicant made a written statement to the 3rd Respondent Exhibit B, wherein he admitted having issued the two cheques that bounced.

The Applicant was released on bail on 21st October 2019. See Exhibit C1, C2, attached to 3rd Respondent's counter affidavit.

Investigation did not commence in this case until when Exhibit D dated 23rd October 2019 was written to Access/Diamond Bank Plc seeking information regarding the dud cheques and account opening package of the account related to them. A similar letter was written to the Registrar General, Corporate Affairs Commission Exhibit F1 dated 23rd October 2019 regarding confirmation of registration of Amob Nigeria Limited, the Applicant's company to which the Registrar General, Corporate Affairs Commission responded via Exhibit F2 dated 4th November 2019.

It was not until 31st January 2020 that the 3rd Respondent via Exhibit G, concluded in their police investigation report, that a prima facie case of criminal breach of trust and issuance of dud cheque had been made out against the Applicant. This suit was filed on 25th November 2019. From February 2018 to 31st January 2020 is nearly a span of two years. One wonders then why the 3rd Respondent did not charge the Applicant to court when the Applicant had admitted issuing the dud cheques on 6th February 2018, if truly, they were investigating a case of cheating and issuance of dud cheques.

Section 1 of the Dishonoured Cheques (Offences) Act Cap D11 LFN 2004 provides as follows:

“I. offences in relation to dishonoured cheques e.t.c –

(1) Any person who

(a) obtains or induces the delivery of anything capable of being stolen either to himself or to any other person, or

(b) obtains credit for himself or any other person, by means of a cheque that when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank in which the cheque was drawn, shall be guilty of an offence and on conviction shall-

(i) in the case of an individual be sentenced to imprisonment for two years, without the option of a fine, and

(ii) in the case of a body corporate, be sentenced to a fine of not less than ₦5, 000...”

It is not in doubt therefore that the issuance of a cheque which is dishonoured on grounds of insufficient funds in the account of the drawer in the bank on which the cheque is drawn, creates a reasonable suspicion of commission of an offence by the drawer.

The 1st and 2nd Respondents were therefore in order to have reported the above act of the Applicant to the 3rd Respondents.

But did the 1st and 2nd Respondents stop there? No.

I have read again the counter affidavit of the 1st and 2nd Respondents and nowhere therein did they deny that the Applicant paid the sum of ₦2million, and other sums to them through the 3rd Respondent, rather they aver that they are not aware the 3rd Respondent forced the Applicant to repay.

Paragraph 13 of their counter affidavit states that:

“... I am not aware of any situation where the Applicant was forced by the 3rd Respondent on my account to undertake to repay the money owed me on the bounced cheque.”

And in

Paragraph 14: “That the officers of the 3rd Respondent did not compel, coerce or intimidate the Applicant into parting with his Tundra van or any other vehicle in order to defray the amount owed me.”

15: “That I did not use officers and men of the 3rd Respondent at will to harass, intimidate, humiliate, threaten or make life unbearable for the Applicant or his family over the money owed me or any other issue.”

I have also read carefully the counter affidavit of the 3rd Respondent and nowhere is it indicated that no monies were collected from the Applicant by or through the 3rd Respondent for the 1st and 2nd Respondents. Rather the emphasis is that the Applicant was not compelled to part with a Tundra van or any monies by the 3rd Respondent.

I do not believe the Respondents that there was no compulsion on their part against the Applicant in that regard.

As I said earlier, it is curious that the 3rd Respondent who had all in its power and possession to charge the Applicant to court for issuing dud cheques as at February 2018, waited till 30th January 2020 to come to that conclusion. It can only mean one thing, that they took it upon themselves to recover the debt which the Applicant owed the 1st and 2nd Respondents, which is not part of their statutory duties.

I am fortified in this belief by Exhibit IR attached to the Applicant's further and better affidavit which shows that the Applicant's Tundra vehicle was reregistered on May 31st, 2019 by its new owner the 2nd Respondent, during the pendency of the petition with the 3rd Respondent, yet the Applicant was never charged to court for the offence of issuance of dud cheque, nor was it disclosed that the 1st and 2nd Respondents filed a civil suit for recovery of the loan. 1st and 2nd Respondents cannot therefore pretend that their purpose of writing the petition was not to recover the loan sum and interest owed. The Respondents were quick to commend to me my decision on 2nd December 2016 in the unreported case of **ALHAJI UMARU HABIBU V MALLAM IBRAHIM MUSA YAKASSA & 1 OR SUIT No. FCT/HC/CV/2333/15**. That case is distinguishable from the instant case because the Applicant herein has been able to convince this court that the Respondents used the petition of issuance of dud cheque against the Applicant as a smoke screen to forcefully recover the debt the Applicant owed the 1st and 2nd Respondents using the men of 3rd Respondent. This they did by hounding and harassing and intimidating the Applicant with threat of arrest and detention to compel him to pay the debt owed the 1st and 2nd Respondents thereby breaching the Applicant's fundamental rights.

The 1st and 2nd Respondents having employed the services of the 3rd Respondent's men unlawfully are also liable for the infringement of the Applicant's fundamental rights.

In **CHIEF (HON) JAMES CLEMENT OHANEDUM & ANOR V COMMISSIONER OF POLICE IMO STATE & ORS (2015) LPELR-24318 (CA)** the Court per Mbaba, JCA at pages 25-27 paragraphs A-B made it clear that the powers of the police do not extend to enforcement of private contracts or to recover debts. And a man who procures the police to do such illegal duties for him should be ready to face the consequences of that illegality. His lordship further relied also **UDEAGHA VNWOGWUGWU (2013) LPELR-21819 (CA); EJIOFOR V OKEKE (2000) 7 NWLR (PT 665) 363.**

Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that "anybody who alleges that any of the provisions of this chapter has been, is being or likely to be contravened may apply to the court in that State for redress."

The Applicant has established that his fundamental rights have been breached and are likely to be breached again.

Having stated the above I hold that the Applicant has proved that his fundamental rights to dignity of his person and his fundamental rights to personal liberty as enshrined in Section 34 (1); and Section 35 (1) (4) (5) and (6) of the Constitution of

the Federal Republic of Nigeria 1999 (as amended) have been infringed upon by the Respondents.

Accordingly, I enter judgment in his favour. Section 35 (6) permits the award of compensation to one whose fundamental rights have been breached.

I accordingly award to the Applicant compensation of ~~N~~2million against the 1st to 3rd Respondents jointly and severally for infringement of the Applicant's fundamental rights.

The 3rd Respondent either by himself, agents and or privies is hereby restrained from further arrest of the Applicant in connection with the recovery of the loan from the Applicant.

Hon. Judge