

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 22ND DAY OF JUNE, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 6
SUIT NO: M/9422/2020

BETWEEN:

ALIYU MOHAMMED ----- APPLICANT

AND

1. THE INSPECTOR GENERAL OF POLICE
2. CSP MAGAWATA (DPO MAITAMA POLICE STATION) ----- RESPONDENTS

JUDGMENT

The applicant filed a motion on notice for the enforcement of his fundamental rights pursuant to the provisions of Order 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, guaranteed under Sections 34, 35, and 36 of the Constitution of the Federal Republic of Nigeria, Section 8, 31, 32, and 159 of the

Administration of Criminal Justice Act (ACJA), 2015, and Articles 4, 5, 6, and 7 of the African Charter on Human Rights and Peoples Rights Ratification and Enforcement Act. In support of the application is an affidavit of 16 paragraphs chronicling the facts and evidence to be relied upon at the trial. Also filed is the Statement pursuant to the provisions of Order II Rule (iii) of the Fundamental Rights Enforcement Procedure Rules 2009, the reliefs sought and the grounds for seeking the reliefs. Also filed is an affidavit of urgency.

The applicant has claimed for the following:

- “1. A declaration that the arrest and detention of the applicant by the respondents in lieu of another person and without lawful justification is unlawful and a breach of his constitutional rights and extant laws.
2. An order of the Court compelling the respondents to bring the applicant to Court to show cause why he should not be immediately released or for this Court to

grant him a judicial bail on liberal terms pending the conclusion of any investigations by 1st and 2nd respondents.

3. An order directing the respondents to pay the sum of N5 Million only to the applicant as damages for breach of constitutional right.
4. An order directing the respondents to release the Toyota Hilux with registration No. ABC639GC.
5. omnibus prayer.”

The applicant herein was arrested and detained by the Respondent’s when no petition was written against him and neither was he told of the reason for his arrest. The applicant said he bought scrap trucks upon an auction conducted by the respondents in their premises. He made payments for the accidented trucks, but the vehicles were not given to him. He demanded for a refund of his money and an agreement was written between him and the

auctioneers. He was however surprised when the respondents came and arrested him without any reason.

Lagi Innocent Esq filed a written address on the 31/8/2020. He formulated two issues for determination:

- “1. Whether having regards to the state of the law, the style and action adopted by the respondents in the arrest, detention and treatment of the applicant; the respondents did not act ultra vires their powers and breached the applicant’s fundamental rights?”*
- 2. Whether the applicant is entitled to restitution, compensation and the reliefs claimed?”*

Learned counsel submitted that the right to personal liberty as guaranteed by the Constitution is inviolable and its infraction can be justified and permitted only in such circumstances as are provided by the Constitution or statute. Reference was made to Onyirioha vs. IGP (2009) NWLR (part 1128) 342 at 375, Dibia vs. Igwe (1998) 9 NWLR

(part 564) 78 at 85. He added that the Constitution of Nigeria protects the rights of any person without distinction, against infringement of his Constitutional right. He cited Odafe vs A.G. Federation (2005) CHR 309 at 312. He concluded by submitting that whatever the nature of the complaint against the Applicant, the law presumes him innocent until the contrary is proven. That the detention of the applicant pending the conclusion of investigation is nothing short of presuming him guilty.

The Respondents were served with the Motion on notice and all other processes, but they elected not to file any response to same.

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...”

Article 6 of the African Charter on Human Rights on its part, provides that:

“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law...”

There is no doubt whatsoever that the right to personal liberty is a fundamental and inalienable right of every citizen of Nigeria. Indeed it can be rightly said that such right has been endowed on mankind by God himself. Nonetheless, the right to personal liberty is not absolute going by the provisions of the same law, in particular, Section 35(1)(a), (b), and (c) of the 1999 Constitution. See

Usman vs. The Executive Chairman, EFCC (2018) LPELR – 44678 (CA).

A Court called upon to enforce or protect the human rights must appreciate that it has a sacred duty to perform not only on behalf of the claimant but on behalf of 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 rights under the Fundamental Rights (Enforcement Procedure) Rules. See Sea Trucks (Nig) Ltd vs. Anigboro (2001) LPELR – SC 120/1995.

The applicant herein averred that he was arrested by the respondents without any explanation or justification.

An arrest will be recognized as lawful only if it was made upon reasonable suspicion that the person whose

arrest was made has committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence. See Okwudiba & ors vs. Nwankwo & ors (2018) LPELR - 46074 (CA). What then is reasonable suspicion? The Court of Appeal Kaduna Division on the 14/3/2001 in Ukachukwu Umeh vs. Kris Lorge Inu Ltd suit No. CA/K/242/1996 had this to say:

“In considering whether the arrest of the applicant is illegal, unconstitutional and a violation of the applicant’s right to liberty and dignity of his person, the Court is only concerned with whether or not from the facts deposed to in the affidavit and counter affidavit before the Court there was reasonable suspicion that the applicant has committed an offence at the time he was arrested and detained.”

The applicant has averred that he was arrested without any explanation given. Generally, an arrest should not be made until the Police have concluded their investigation. The essence of reasonable suspicion is to allow the arresting authority to proceed to investigate and to effect arrest where at the point of investigation, there is prima facie case against the person whose arrest is in issue. The onus therefore is on the Police to establish that they acted reasonably effecting the arrest. See Chukwuma vs. COP (1964) NCLR 21, COP Ondo State vs. Obolo (1989) 5 NWLR (part 120) 130. Onah vs. Okenwa (2010) 8 NWLR (part 1195) 512, Duruku vs. Nwoke (2015) 15 NWLR (part 1483) 417.

Further, in respect of particular facts, the burden rests on the party against whom judgment will be given if no evidence were produced in respect of those facts. And once the party produced the evidence, then the burden shifts on

the party against whom judgment will be given if no more evidence were adduced. See Aika vs. Idowu (2006) 9 NWLR (part 984) page 47 at 67, Mani vs. Shanono (2006) 4 NWLR (part 969) at page 156 - 157.

In this instance, the Police i.e. the Respondents were served with the originating motion containing the depositions of the applicant and the allegation of wrongful arrest and detention. The Respondents did not deem it fit to come to Court and explain their actions. They did not file any process in Court. As it stands the deposition of wrongful arrest and detention alleged by the applicant remains unchallenged.

Assuming there was a complaint made to the Respondent for which they wanted to investigate, it is not right to begin investigation with an arrest. Police investigation ought not to start with arrest but with preliminary investigation to verify the said allegation if any

against the applicant. It is only then that they may arrest depending on the circumstances of the case. The Respondent herein without any preliminary investigation, proceeded to arrest and detain the applicant. Eventhough the applicant was released that same day in compliance with the constitutionally prescribed period, the initial arrest in the first place was wrongful.

As stated earlier, the Respondents did not controvert or challenge the depositions in the applicant's affidavit. It is elementary law that evidence whether by affidavit or viva voce that remains uncontroverted, must be believed as being the truth and acted upon by the Court. See A.G. Lagos State vs. Purification Tech (Nig) Ltd (2003) 16 NWLR (part 845) page 1, Adeleke vs. Iyanda (2001) 13 NWLR (part 729) page 1. Facts in an affidavit not challenged, not contradicted and not controverted by a party are deemed to be 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 Invst. Ltd. & Anor. (2011) LPELR 9064 (CA), Ezechukwu vs. Onwuka (2006) 2 NWLR (Part 963) page 151.

The law is that no person can be unlawfully arrested and detained when he has not committed any offence. See Enagbonamuna vs. Osemwegie & ors (2019) LPELR - 46731 (CA). The deprivation of liberty of a citizen is only permitted within the exceptions listed in Section 35 Constitution of the Federal Republic of Nigeria 1999, and it also requires that it should be in accordance with a procedure prescribed by law. It must not be arbitrary. See Chahal vs. UK (1997) 23 EHRR 413.

In the absence of any legitimate reason given for the deprivation of the personal liberty of the applicant, this Court has no hesitation in granting relief 1 as claimed.

Relief No. 2 has been overtaken by events as the applicant himself has averred that he has been released on bail.

The applicant has prayed for N5 Million damages for breach of his Constitutional right. It is settled law that an unlawful arrest and detention no matter how short entitles the applicant to compensation. See Anoliefo v.s Anoliefo & ors (2019) LPELR - 47247 (CA), Iwununne vs. Egbuchulem & ors (2016) LPELR - 40515 (CA).

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...”

The Court cannot gloss over any violation of one’s rights. And by law, detention when wrongly done, is actionable and condemnable, no matter how short. See Okeke & anor vs. Ihezue & ors (2018) LPELR – 45017 (CA). 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.”

Damages in Fundamental Right actions are not at large. Award of damages involves the exercise of discretion by the Court and same must be judiciously and judicially exercised. Having declared that the arrest and detention of the applicant by the Respondents was unlawful and unconstitutional, I hold that the applicant shall be compensated by way of damages.

Finally, the applicant has prayed the Court for an order directing the Respondents to release his Toyota Hilux with registration No. ABC639GC. It is elementary to state that any seizure illegally done must be reversed. In this

instance, the applicant has averred that the respondents took away his Toyota Hilux vehicle and same has not been released. In the first place, the respondents had no basis in law to tamper with the fundamental rights of the applicant let alone seize his vehicle. Having already adjudged their action of arresting the applicant as unlawful and a breach of his Constitutional rights, this relief will thus be granted.

In the circumstance, it is hereby declared that the arrest and detention of the applicant by the Respondent in lieu of another person and without lawful justification is unlawful and a breach of his Constitutional rights.

- The Respondents shall pay the sum of N500,000.00 (Five Hundred Thousand Naira) as damages for breach of the Applicants constitutional right to personal liberty.
- The vehicle with Registration No. ABC639GC seized by the Respondents shall be released forthwith to the Applicant.

Hon. Justice M.A. Nasir

Appearances:

S.A. Mohammed Esq – for the Applicant

Respondents absent and not represented.