

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
DELIVERED THE 23RD JUNE, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ASMAU AKANBI – YUSUF
FCT/HC/CV/3271/2020**

BETWEEN

UMAR ABUBAKAR APPLICANT

AND

INSPECTOR GENERAL OF POLICE RESPONDENT

JUDGMENT

Upon the transfer of the case file from the Federal High Court, the matter was assigned to this court under the hand and seal of the Hon. Chief Judge on the 14th January, 2021. The Applicant by an originating motion filed on the 9th December, 2019 prays the court for the following:

- a. A Declaration that the arrest and continued detention of the Applicant from the 22nd day of July, 2019 to 27th November, 2019 by the Respondent, its privies, agents, officers or representatives is illegal, unlawful, null and void

and amounts to gross violation of sections 34, 35, 36 and 40 of the 1999 Constitution of the Federal Republic of Nigeria [as amended].

- b. An Order of this Honourable court directing the Respondent to pay the Applicant the sum of #1, 000,000 (One Million Naira) for unlawful detention.
- c. An Order of this Honourable court directing the Respondent to tender a formal apology to the Applicant by publishing same in two National daily Newspapers.
- d. An Order of perpetual injunction restraining the Respondent its privies, agents, officers or representatives from further arresting and/ or harassing the Applicant based on the facts leading to this application.
- e. Such further order(s) as this Honourable court may deem fit to make in the circumstances of this case.

The Application is supported by a 10 paragraphed affidavit of Nuruddeen Musa-Umar, a brother to the Applicant, statement in compliance with the Fundamental Rights and Enforcement Procedure Rules [referred to as FREPR] and a written address settled by Bala I. Dakum, Esq. The Respondent on the other hand filed a 5 paragraphed counter affidavit deposed to by Chidimma Nnorom a Litigation Secretary in the office of E. C Ikeji and attached 4 documents marked as EC1-4; also a

written address was settled by Ikeji Ernest Chikwendu of counsel. The Applicant filed a 7 paragraphed further affidavit deposed to by Uthman Isa-Tochukwu and a Reply on point of law settled by Bala I. Dakum Esq.

It is the evidence of the Applicant that he was arrested on the 22nd July, 2019 by the agents of the Respondent while he was on his way to the Federal Secretariat Abuja to protest against the continued detention of Sheikh Ibraheem Zakzaky; that no reason was given for his arrest until the 27th November, 2019 when he was charged before the FCT High Court. It is further stated that the Applicant is a student; that when the Applicant took ill in detention he was denied medical attention and was also kept in an open roof cell.

The Respondent on the other hand denied the Applicant's depositions. It is the stated in the counter affidavit that the Applicant, with 59 others were arrested for attacking and brutally killing DCP Usman k. Umar, DCP Operations FCT Police Command Abuja, Mr Precious Owolabi, a member of the National Youth Service Corps attached to Channels Television; that the Applicant and others wounded several other people at the Eagle Square Abuja on the 22nd July, 2019; that the Applicant and others were charged before the FCT High Court Abuja in Charge No: FCT/HC/CR/32/2019 on the 28th October,

2019 for the offences of criminal conspiracy, culpable homicide punishable with death, attempted culpable homicide, mischief by fire, disturbance of public peace amongst others contrary to Sections 97, 221, 229 of the Penal Code. The Respondent attached the charge as exhibit EC1. It is further stated in the counter affidavit that hearing has commenced against the Applicant before the FCT High Court, Apo and that the offences for which the Applicant and the 59 others are standing trial are capital offences which carries death penalty; that the Applicant and others made confessional statements admitting to the commission of the crime. The confessional statements were marked as exhibit EC2; that due to the nature of the offences and the number of persons involved, the Applicant and others arrested were not immediately charged to court as the investigation could not be completed within the short time.

It is further stated in the counter affidavit that a person arrested can be detained for more than 48 hours to properly conduct investigation into the allegation before charging him to court; that upon the arrest of the Applicant, he was taken to the FCT Police Command and was subsequently remanded in the Kuje Correctional Center by the Order of the FCT High Court. The Applicant's bail application is attached as exhibit ECN4. It is further stated that the Applicant who came all the way from

Zamfara State and armed with dangerous weapons joined others to stage the violent protest at the Eagle Square Abuja to force the Federal Government to release their leader Sheikh Ibraheem Zakzaky. The Respondent denies paragraphs 6, 7 & 8 of the affidavit in support; he stated that the Applicant was informed of the allegation against him in the language he understood and he voluntarily made his statement. The Respondent denies paragraph 8b of the affidavit in support; that there is nothing before the court to show that the Applicant is a student; that it is not true the Applicant took ill while in detention.

The Applicant in the further affidavit filed on his behalf denied paragraph 3j, m, k of the counter affidavit; that he was not informed of his offence as required by law; that he never admitted the alleged offences. He stated further that the Kuje Correctional Centre refused to release his medical report and that he was not arraigned in court until the 27th November, 2019.

I have considered the affidavit evidence and equally gone through the arguments for and against the application, I am of the firm view that the only issue for determination is *whether the arrest and detention of the Applicant from the 22/07/2019 to 27/11/2019 is constitutional.*

Learned counsel to the Applicant argued that the arrest and detention of the Applicant is contrary to the provisions of **s.35 (1) CFRN 1999**. He states further that assuming there were allegations of crime against the Applicant, the Applicant is still presumed innocent; that the Respondent could have charged the Applicant to court where he is suspected to have committed an offence. Counsel referred the court to **IBORI V FRN (2009) 3 NWLR (PT. 1127) 94 PARAS C-D**. It is further the argument of counsel that the treatment meted on the Applicant is deliberate, thus it is a gross violation of the Applicant's fundamental rights to freedom of liberty and presumption of innocence. He urged the court to grant the reliefs of the Applicant and cited **IGWE V EZEANOCHIE (2010) 7 NWLR (PT 1192) 61; EKANEM V AIGP (2008) 5 NWLR PT. 1079**. Counsel to the Applicant submits that based on the depositions contained in the affidavit in support, the Applicant has established that his fundamental rights guaranteed under Sections 34 and 35 of the 1999 Constitution has unjustly been denied; that the burden is on the Respondent to show that the provision of section 35 (3) of the Constitution was complied with. Counsel relied on **ONYEMEH & ORS V EGBUCHULAM & ORS (1996) LPELR 2739 (SC); EDIBO V STATE (2007) LPELR 1012 (SC)**.

It is not in contention that the Applicant was arrested by the Police on the 22nd July, 2019 and was subsequently charged before the FCT High Court on the 28th October, 2019. The contention of the Applicant is that he was unlawfully arrested and detained by the Respondent for a period not recognized by the Constitution and no reason was given for his arrest until when he was charged before the FCT High Court; this was however denied by the Respondent via exhibit EC2, the statements of the Applicant which is dated the 3/08/2019.

Furthermore, it is not in dispute that the Applicant was arrested during a protest in Abuja; whether the protest was lawful or unlawful is not an issue for this court to decide. However on the strength of exhibit ECN 2, it appears to me that the Applicant knew why he was arrested; the Applicant who had the opportunity to either admit or deny making exhibit ECN 2, that is, his statement attached to the counter affidavit never made reference to it in his further affidavit.

It is trite that the right to personal liberty is a fundamental and inalienable right of every citizen of Nigeria; however, the right to personal liberty is not absolute going by the provisions of the Constitution. See also **ALHAJI MUJAHID DOKUBO-ASARI v. FEDERAL REPUBLIC OF NIGERIA (2007) LPELR-958(SC)**

It is thusly provided in the Constitution of the Federal Republic of Nigeria as follows:

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—

- (a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (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

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 -

(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.

(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.

Section 35 (7) provides nothing in this section shall be construed:

- a. In relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence.

[Underlined

emphasis mine]

As stated earlier the contention of the Applicant is that he was arrested and detained beyond the period recognized by the Constitution; this was however controverted by the Respondent. The Respondent deposed that the Applicant and 59 others were arrested for the attack and brutal killings of some persons mentioned in exhibit EC1. [See paragraphs 3a & 3j of the counter affidavit as well as exhibit EC1 attached] and that due to the number of suspects involved; investigation couldn't be completed within a short period of time.

I have considered the arguments for and against the Application; particularly the fact that it is not only the Applicant that was arrested and detained, this can be deduced from the exhibit EC1 that the charge is not only against the Applicant, therefore it is not unlikely that the investigation of the alleged offences against such number of persons could not be concluded within a short period of time.

The exhibit EC1 is the charge filed against the Applicant and 59 others on the 28/10/19; the Applicant was charged along with others in count one for the offence of conspiracy to commit culpable homicide punishable with death; count two for the offence of conspiracy to commit mischief by fire; count three for the offence of conspiracy to commit disturbance of public peace; count four charged with the offence of culpable homicide punishable with death; count five is also the offence of culpable homicide causing the death of one PRECIOUS OWOLABI; count six for the offence of causing grievous hurt to the person of ASP BALA IBRAHIM MAGAJI; Count seven for causing grievous hurt to the person of ASP SANI SHEHU, Count eight for causing wrongful damage and loss to the National Emergency Management Agency by destroying brand new Mercedes Benz water tanker fully equipped Mercedes Benz special intensive care unit, Emergency Ambulance bay, vehicle with registration number 02R-05-FG, fully equipped with emergency medical instrument, drugs and other medications (ii) one rescue tender vehicle with Reg. No 02R-168-FG, (iii) one generator set, a 24 inch. LG Television and a dwelling place used for the custody of the said properties belonging to NEMA. The Count nine is incomplete, thus it shall not be put into consideration.

The offences allegedly committed by the Applicant and the subsequent punishments are as follows:

- i. Count 1 conspiracy to commit culpable homicide, punishment death sentence.
- ii. Count 2 conspiracy to commit mischief by fire punishment is seven years imprisonment.
- iii. Count 3 conspiracy to commit disturbance of public peace, punishment is three years imprisonment
- iv. Count 4 culpable homicide causing the death of DCP Usman K. Umar, punishment is death sentence.
- v. Count 5 of culpable homicide causing the death of one Precious Owolabi, punishment is death sentence.
- vi. Count 6 of causing grievous hurt to the person of ASP BALA IBRAHIM MAGAJI, punishment is three years imprisonment or with fine or with both.
- vii. Count 7 causing grievous hurt to the person of ASP SANI SHEHU, punishment is three years imprisonment or with fine or with both.
- viii. Count 8 mischief by fire or explosive with intent to destroy house, punishment is imprisonment for life or for any less term and shall also be liable to fine.

In the instant case, it seems the Applicant was arrested and detained upon reasonable suspicion of having participated in

the killing of the persons mentioned in EC1. Section 4 of the Police Act states that 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 since it is not in contention that exhibit EC1 is not in existence or that the Applicant has not been arraigned before a court and also considering the allegations against the Applicant, the number of suspects on the charge sheet, it is quite clear that the Respondent acted within the provisions of the law. The provision of the law is that where a person is arrested or detained in respect of capital offence and by virtue of section 35(7) Constitution, his right to absolute liberty can be curtailed pending the conclusion of the investigation of the alleged offences and as can be gleaned from the exhibit EC1, it is clear that some of the offences stated therein are capital in nature, I therefore do not hesitate to hold that the arrest and detention of the Applicant is within the provisions of the Constitution.

In **ALHAJI MUJAHID DOKUBO-ASARI v. FEDERAL REPUBLIC OF NIGERIA (2007) LPELR-958(SC)** the Supreme Court held thus:

“The above provisions of Section 35 of the Constitution leave no one in doubt that the section is not

*absolute. Personal liberty of an individual within the contemplation of **Section 35(1) of the Constitution** is a qualified right in the context of this particular case and by virtue of **subsection (1)(c)** thereof which permits restriction on individual liberty in the course of judicial inquiry or where, lightly as in this case, the appellant was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty, as in this case, can also be curtailed in order to prevent him from committing further offence(s). It is my belief as well that if every person accused of a felony can hide under the canopy of **Section 35 of the Constitution** to escape lawful detention then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, prosperity and tranquility of the society. I find support in so saying from Irikefe's JSC (as he then was) earlier pronounced in the case of **Echeazu v. Commissioner of Police** (1974) NMLR 308 at page 314.”*

Furthermore, the Applicant deposed to the fact that he is a student; he however failed to support his assertion with cogent or credible evidence. It is common knowledge that a student

upon gaining admission into any school must possess a means of identification or better still, a document to show that he is a student of a particular school. None of these documents or any other evidence to support the assertion was provided by the Applicant.

Again, the Applicant stated in Paragraph 8c of his affidavit in support that he took ill while in detention and was denied medical attention; he further stated in his Paragraph 5vi of his further affidavit that the Kuje Correctional Centre refused to release his medical report. These assertions were not supported with any documentary evidence. The Applicant didn't state the way and or manner in which he applied for the medical report.

On the whole, I find as a fact that the Applicant's right to personal liberty can be curtailed where it appears that his act is inimical to the peace of the country. See section **35(7) (a) & section 4 Police Act.**

Conclusively, I hold that the application lacks merit and same is hereby dismissed.

ASMAU AKANBI- YUSUF

[HON. JUDGE]

APPEARANCES

B.I Dakum Esq. for the Applicant

E.C. Ikeji Esq, Kelechi Animba Esq. for the Respondent.