

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 11TH DAY NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: M/9838/2020

BETWEEN:

ALH. MOHAMMED ADEBAYO ----- APPLICANT

AND

1. ECONOMIC AND FINANCIAL
CRIMES COMMISSION }
2. HAJIA BILKISU } ----- RESPONDENTS
3. MADAM BOLA }
4. EMMANUEL ODIA }

JUDGMENT

This ruling is predicated upon an application for the enforcement of Fundamental Right of the applicant dated 17/9/2020 and brought pursuant to Sections 33,34,35 and 46 of the 1999 Constitution of the Federal Republic of Nigeria (As amended) Article 2 of the African Charter on Human and Peoples Rights and Order II of the Fundamental Rights (Enforcement Procedure) Rules 2009. The Applicant is praying this Court for the following reliefs:

- “a. A declaration that the arrest, detention, humiliation, 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.*
- b. N150,000,000:00 (One Hundred and Fifty Million Naira) damages for violation of the fundamental rights of the Applicant.*
- c. 10% interest on the judgment sum from the date of judgment till final liquidation of the judgment sum.*
- d. 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.”*

Also filed is a Statement in support and grounds upon which the reliefs are sought together with a verifying affidavit.

Learned counsel for the applicant **Chidi Nwankwo Esq.** filed a Written Address which he adopted on the 7th October, 2021. In his written submission Learned Counsel formulated the following issues for determination:

“1. Whether the arrest, threat of arrest, detention, harassment and intimidation of the Applicant 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.”

Learned counsel for the Applicant submitted at paragraphs 3.1. to 3.6 of his Written Address to the effect that the continued harassment of the Applicant without

arraigning him before a law Court is a clear violation of his fundamental right to dignity of human person and personal liberty as guaranteed by Sections 34(1) and 35(1) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended). Counsel submitted that a scrupulous and meticulous examination of the facts of this case as encapsulated in the affidavit evidence will show that the Applicant has not committed any crime to warrant his ordeal in the hands of the Respondents. That EFCC was created to fight crimes and not to enforce civil contracts and obligations between two individuals or recover loans.

At paragraphs 3.9 to 3.13 Counsel submitted that the 1st – 3rd Respondents have acted outside the scope and ambit of their statutory duties as stated in the EFCC Act and allowed themselves to be used by the 4th Respondent in pursuit of personal interest and vendetta. Counsel further submitted that it is obvious from the facts of this case that the 1st – 3rd Respondents arrested, detained, intimidated

and harassed the Applicant in order to force him pay the debt owed the 4th Respondent. That this is unlawful and reprehensible because EFCC is not a debt collecting agency.

Learned counsel finally urged this Court to hold that the fundamental rights of the Applicant have been unjustifiably and unlawfully violated by the combined acts of the Respondents, and the Applicant is entitled to the reliefs sought. Counsel made reference to the following authorities:

1. Ekanem vs. I.G.P. (2008)5 NWLR (Part 1079) 97 at 100.
2. Scott – Emukpor vs. Ehiwario (2004)13 NWLR (Part 889) 105 at 108.
3. Skypower Airways Ltd. vs. Olima (2005)18 NWLR (Part 957) 224 at 232.
4. Odogu vs. A.G. Federation & 6 Ors. (2000)2 HRLRA 82 at 86.
5. Ajao vs. Ashiru & Ors. (1973) N.S.C.C. (Vol. 8) 525 at 533.

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

Upon service of the Motion on Notice, the 1st, 2nd and 3rd Respondents filed their joint Counter affidavit on the 15th October, 2020. The 6 paragraphs joint Counter affidavit is deposed to by one Samson Oloje, a Litigation Secretary in the legal and prosecution Department of the 1st Respondent. Attached to the joint Counter affidavit are three annexures marked as EFCC 1, EFCC 2 and EFCC 3 respectively.

M.I. Buba Esq. Counsel representing 1st 2nd and 3rd Respondents also filed a Written Address wherein he formulated two issues for determination as follows:

“1. Whether the Respondents are in breach of the Applicant’s fundamental right.

2. Whether the Applicant is entitled to the reliefs sought.

By the Order of this Court made on the 29th September, 2020, the 4th Respondent was served by substituted means with the Originating processes together with hearing notice. However, the 4th Respondent never appeared nor represented in this suit.

Learned counsel for the 1st – 3rd Respondents submitted at paragraphs 1.1 to 1.5 of his written submission to the effect that the 1st Respondent is empowered to investigate all cases of Economic and Financial Crimes reported to it for possible prosecution where a prima facie case is established.

Counsel submitted that the officers of the 1st Respondent have the same powers and immunities of a Police officer under the Police Act when investigating or prosecuting a case under the Economic and Financial Crimes Commission (EFCC) Act. Counsel went on to submit that the Applicant is not entitled to any of the reliefs as his fundamental right had not been breached. That

investigating offences is not interference with fundamental right of the Applicant and the Applicant cannot ask the Court to stop the 1st Respondent from carrying out its statutory responsibilities.

Counsel finally urged the Court to hold that the fundamental rights of the Applicant have not been breached and dismiss this application in its entirety.

Counsel referred this Court to the following authorities:

1. Sections 6,7,8,13 and 41 of the Economic and Financial Crimes Commission (Establishment) Act, 2004.
2. Femi Omoniyi vs. Isaac Akinoyede & 3 Ors. FHC/EN/M/174/10 (Unreported).
3. Ekwenugo vs. F.R.N. (2001)6 NWLR (Part 708) at 185.

Now, fundamental rights have been defined as basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. It is a right

which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself. It is a primary condition to civilized existence. Fundamental rights also are rights derived from natural or fundamental law, they are of high priority, and compliance with them is mandatory rather than discretionary. See: Mardani (Nig.) Ltd. vs. Galadima & Ors. (2015) LPELR – 25762 (CA), Ransome – Kuti vs. A.G. Federation (1985)2 NWLR (Part 6) 211 at 230.

Therefore, the Courts do not shirk their responsibilities in ensuring that the human rights of the citizens are not compromised and on no account should such right be swept under the carpet or capriciously tampered with by any person, government or any governmental agency under any guise without lawful justification. The Supreme Court in espousing the ideals and quite essence of fundamental rights in Ransome – Kuti & ors vs. Attorney General of the

Federation & ors (supra) per His Lordship Eso JSC, succinctly stated thus:

“What is the nature of a fundamental right? 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...”

It goes without saying that the observance of human rights is a tribute to the Rule of Law. In the case of Joseph Odogu vs. A.G. Federation (1996) NWLR (part 456) at page 508, a fundamental right was defined as a right guaranteed in the Nigeria Constitution and is a right which every person is entitled, when he is not subject to the disabilities enumerated in the Constitution to enjoy, by virtue of being a human being. Articles 5 and 6 of the African Charter on Human and Peoples’ Rights (Ratification Enforcement) Act Cap 10 LFN, 1990, also guarantees the right to every individual to the Dignity of his person and to Liberty and

Security of his person. The United Nations Universal Declaration on Human Rights 1948 also has similar provisions.

After reviewing the Rules regulating the fundamental rights of the individual, it is necessary to examine the acts complained of against the Respondents in conjunction with statutory enactments to determine whether these provisions have been violated or complied with in accordance with the Rule of Law.

Now, the Applicant averred that his ordeal in the hands of the Respondents started in November, 2018 when he borrowed the sum of N12,000,000: (Twelve Million Naira) from the 4th Respondent to enable him buy some goods, upon the agreement that the loan be repaid within ninety days.

According to the Applicant, he was not able to repay the loan within ninety days because his business suffered a

downturn and he lost huge sums of money as a result. The Applicant pleaded for more time within which to repay the loan but the 4th Respondent refused. In April, 2019, the 4th Respondent reported to the 1st Respondent who then invited the Applicant, castigated and warned him to make sure he paid back the sum he borrowed.

The Applicant averred further that he was invited to the office of the 1st – 3rd Respondents for more than fifteen times whereupon the 2nd and 3rd Respondents would ask the Applicant to produce the money he borrowed from the 4th Respondent and failure to do so, the 2nd and 3rd Respondents would rain abuses on him.

The Applicant finally averred that when the persecution, humiliation and harassment by the Respondents became unbearable, he started repaying the loan in piece meal and has so far repaid the sum of N6,050,000: (Six Million, Fifty Thousand Naira).

On the other hand, the 1st to 3rd Respondents in their joint Counter affidavit made out their case to the effect that sometime in March, 2019, a case of Criminal Breach of Trust, Obtaining by False Pretense and Issuance of Dud Cheque was reported to the 1st Respondent against the 4th Respondent. Upon receipt of the Petition, it was referred to the Economic Governance Section and the team of the 2nd and 3rd Respondents was assigned to investigate the case.

In the course of their investigation, the 1st to 3rd Respondents averred that the 4th Respondent was invited and during his interaction with the operatives, he stated that he had paid the money in question to the Applicant. That upon this discovery, the 2nd and 3rd Respondents invited the Applicant through his phone number given to them by the 4th Respondent to come and state how the money that was supposed to be for investment in the 4th Respondent's company ended up in the Applicant's Company account, and to particularly confirm the claim of

the 4th Respondent that he had further invested the money in the Applicant's Company.

The Respondent's further averred that despite several invitations, the Applicant has deliberately refused to make himself available to provide useful information to the operatives of the 1st Respondent. That each time the 2nd and 3rd Respondents invited the Applicant, he would tell them that he was outside the country and could not come to aid the investigation.

The question now is

“Whether the Applicant's fundamental right guaranteed under the 1999 Constitution of the Federal Republic of Nigeria has been breached?”

It is pertinent to state that the Applicant in a Fundamental Right Enforcement has the initial onus to show that he was arrested and detained by the Respondents beyond the time frame stated by the law. It is

only when the Applicant has discharged this duty as required by law to show he was detained, that the Respondent will then show the justification not only for the arrest but for keeping him more than the 24 hours or 48 hours as the case may be. See: E.F.C.C. vs. Oyubu & Ors. (2019) LPELR - 47555 (CA), Ohanedum & Anor vs. C.O.P. (Imo State) & Ors. (2015) LPELR - 2431 (CA).

There is no clear averment in the Applicant's supporting affidavit stating that he was ever arrested and detained by the Respondents beyond the time frame stated by the law.

Furthermore, the 1st to 3rd Respondents in their joint Counter affidavit averred that the Applicant has never for once honoured the series of invitations they extended to him for interaction in respect of this case. That there has never been any physical encounter between the Applicant on one hand, and the 2nd or 3rd Respondents on the other,

let alone to harass, intimidate or rain abuses on the Applicant.

The averments of the 1st – 3rd Respondents were never denied or challenged by the Applicant. The law is settled that when an affidavit is filed deposing to certain facts and the other party does not file a Counter affidavit or a reply to a Counter affidavit, the facts deposed to in the affidavit would be deemed unchallenged and undisputed. Thus, in law, facts in a Counter affidavit not challenged by way of a reply to counter affidavit or further and better affidavit by the adverse party are deemed admitted. See: Dana Airlines Ltd. vs. Mbong & Ors. (2017) LPELR – 43052 (CA), Badejo vs. Federal Ministry of Education (1996)8 NWLR (Part 464)15.

In essence, the 1st – 3rd Respondents evidence in their joint Counter affidavit having not been challenged or denied by the Applicant by way of filing a reply or further and better affidavit will be deemed admitted by him.

It is important to state at this juncture that the 1st Respondent by virtue of the E.F.C.C Act 2004, the Commission is assigned the responsibility of investigating all economic and financial crimes in Nigeria. See: Ozah vs. E.F.C.C. & Ors. (2017) LPELR – 43386 (CA).

It is a body statutorily created with precisely streamlined powers vide Sections 6 and 7 of the EFCC Act, 2004. Under the Act, the 1st Respondent clearly has powers to arrest, investigate and prosecute offenders of economic and financial crimes and other related offences. However, in discharging this statutory mandate, the Respondents (and indeed all other law enforcement agencies) must necessarily act only on genuine complaints alleging the commission of an offence, and generally conduct the operations within the confines of the law by scrupulously observing detention timelines prescribed by law as well as other procedural safeguards required of them in order to maintain the delicate balance between law enforcement on

the one hand, and according due regard and recognition to human rights on the other hand. See Odogu vs. A.G. (cited supra).

In this instance, the 1st – 3rd Respondents only acted upon the Petition Exhibit (EFCC 1) on behalf of one Chidiebere Anyidiegwu against the 4th Respondent Emmanuel Odia. In my opinion, the essence of the complaint or Petition is to enable the Respondents or law enforcement agency to evaluate same and exercise their power(s) on what further actions to take dependent on the strength and credibility of the complaint. See Olatinwo vs. State (2013) 8 NWLR (part 1355) 126. It is only logical that the processing of the Petition would necessarily require the basic step(s) of investigation which is the examination of the facts of the situation. There may or may not be need to call in people for questioning in the process.

In this case, the unchallenged evidence is that the Applicant was only invited and he never honoured the

investigation. The Petition was not even written against the Applicant, his name only featured during the course of investigation which the Respondents in my view were empowered to conduct.

The bottom line is that when the allegation as in Exhibit (EFCC 1) is made, this Court cannot accept the contention that the complainant is doing anything wrong in making the complaint. In Fajemirokun vs. Commercial Bank Nig. Ltd. & anor (2009) LPELR-SC.336/2002, The Supreme Court held thus:

“Generally, it is the duty of citizens of Nigeria to report cases of commission of crimes to the Police for their investigation. What happens after such report is entirely the responsibility of the Police. In other words, citizens of Nigeria cannot be held culpable for doing their civic duty unless it is shown that it was made malafide...”

The Apex Court may have referred to the Police in particular, but this principle extends to all law enforcement agencies like the 1st Respondent. In this instance, I cannot situate any fault in the complaint made to the 1st Respondent against the 4th Respondent. I repeat that the complaint was not even against the Applicant. In this instance, the invitation extended to the Applicant during the course of investigation based on the Petition against the 4th Respondent cannot be elevated to an infringement of the Applicant's Fundamental rights. The Applicant herein did not answer the invitation of the 1st Respondent, he was not intimidated nor harassed by any official of the EFCC to pay any sum of money owed the 4th Respondent. Furthermore, the Bank draft and deposit slips attached to this application as Exhibit A have no bearing with the 4th Respondent and did not bear the name of the Applicant. Even as the 4th Respondent did not file any counter affidavit, there is no iota of evidence linking him to the

actions alleged by the Applicant for which he sought some reliefs.

In Ewulo vs. EFCC & ors (2015) LPELR – 40912 (CA) the Court Per Abubakar, JCA held:

“It is no longer in doubt that Agencies vested with statutory powers to investigate crimes cannot be restrained or arm-twisted by litigation to prevent them from exercising their statutory powers...”

The totality of the case of the Applicant appears compromised for want of proof or credible evidence. A Court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditably proved. The averments of infractions in the supporting affidavit cannot suffice especially here where they are seriously controverted or challenged. The averments of the Applicant cannot be accepted or correct without proof. A plaintiff whose affidavit does not prove the reliefs he seeks must

fail. See A.G. Anambra State vs. A.G. Federation (2005) All FWLR (part 268) 1557 at 1611.

In the final analysis, the issue raised as arising for determination is answered in the negative. For the avoidance of doubt, all the reliefs of the Applicant on the alleged violation of his fundamental rights are not availing. The monetary claim predicated on the alleged violation of the fundamental rights must equally fail. On the whole, the entire case of the Applicant is hereby accordingly dismissed.

Hon. Justice M.A. Nasir

Appearances:

Chidi Nwankwo Esq – for the applicant

M.I. Buba Esq – for the 1st, 2nd, and 3rd Respondents