

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 7TH DECEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CV/1382/2017

BETWEEN:

BERNARD EKWE ----- APPLICANT

AND

1. VICTOR NWADIKE (SP)
2. OLIVER ODIMEGA, (CSP) `
3. INSPECTOR GENERAL OF POLICE
4. OLIVER OTONYO

} ----- RESPONDENTS

JUDGMENT

In his originating motion filed on the 6/4/2017, the applicant seek some reliefs against the respondent's. The reliefs are:

"1. A declaration that the detention of the applicant on the 5/10/2016 and the 3/4/2017 by the 1st and 2nd respondent at the Police Headquarters Abuja, ostensibly on the basis of a petition allegedly written to the 3rd respondent by the 4th respondent without informing the applicant of the facts and grounds for

his detention or giving the applicant a copy of the alleged petition to answer to, constitutes infringement of the applicant's fundamental rights guaranteed under Section 34(1)(a) and 35(3) of the 1999 Constitution of the FRN.

2. A declaration that the 1st and 2nd defendants, having on the 3/4/2017 at the Force Headquarters, Nigeria Police Abuja told the applicant that the applicant had been charged with criminal offence, and would be arraigned before a Court on the 4/4/2017, failed to inform the applicant promptly and in detail of the nature of the offence as required under Section 36(6)(a) of the 1999 Constitution of the FRN and thereby infringed on the applicant's fundamental rights.

3. A declaration that the 1st and 2nd defendants, having on the 3/4/2017 at the Force Headquarters, Nigeria Police Abuja told the applicant that the applicant had been charged with criminal offence, and would be

arraigned before a Court on the 4/4/2017, failed to give the applicant on his demand, adequate time and facilities for the preparation of the applicant's defence, as required under Section 36(6)(b) of the 1999 Constitution of the FRN and thereby infringed on the applicant's fundamental rights.

4. A declaration that the 1st and 2nd defendants, having on the 3/4/2017 at the Force 3/4/2017 informed the applicant that the applicant had been charged with criminal offence, and would be arraigned before a Court on the 4/4/2017, failed to give the applicant on his demand, the names of all persons interviewed by the Police in relation to the alleged offence whether the Police intends to call them as witnesses or not and the copies of all statements made by such person; details of all items or documents recovered by the Police in to the alleged offence including copies of such documents; and copy of the Police investigation report in relation to the alleged offence as required

under Section 36(6)(b) of the 1999 Constitution of the FRN and thereby infringed on the applicants fundamental rights.

- 5. A declaration that the 1st, 2nd and 3rd, respondents lack the Constitutional power and the statutory powers to detain, charge and arraign the applicant before any Court of law based on alleged criminal offence contained in petition written by the 4th respondent arising from purely civil matter between the 4th respondent and Clobek Nig. Ltd a separate juristic person.*
- 6. An order directing the 1st, 2nd and 3rd respondents to show reasonable cause for the detention of the applicant on 5/10/2016 and 3/4/2017 at the Police Headquarters Abuja at the instigation of the 4th respondent.*
- 7. An order of injunction perpetually restraining the 1st, 2nd and 3rd respondent from inviting, detaining, charging or arraigning the applicant for any alleged*

criminal offence based on any report made by the 4th respondent until the 1st, 2nd and 3rd respondents had informed the applicant in writing of the facts and grounds of inviting, detaining, charging or arraigning the applicant and until the 1st, 2nd and 3rd respondents had given to the applicant the adequate facilities and time for the preparation of the applicants defence to such charge.

8. An order that the defendants jointly and severally pay to the applicant the sum of N50,000,000.00 as compensation for infringement of the applicants right to his personal dignity and freedom of movement.”

In support of the motion are (a) Statement setting out the name and description of the applicant, the reliefs sought and the grounds upon which the reliefs are sought. (b) The 20 paragraphs affidavit deposed to by the applicant and Exhibits 1 and 2 attached hereto.

In opposition, 1st to 3rd respondents filed a counter affidavit of 26 paragraphs deposed to by Oliver Odimega, Chief Superintendent of Police on the 2/6/2017.

The 4th respondent also filed a counter affidavit of 16 paragraphs on the 13/6/2017. The applicant on the 23/2/2019 also filed a further affidavit of 16 paragraphs. At the hearing of the originating motion on the 14/10/2021, only applicants counsel and the 4th respondent's counsel were in Court. The 1st to 3rd respondents were absent and not represented though the record showed that they were served with hearing notice.

This Court will therefore have recourse to the processes filed by 1st to 3rd respondents and they are deemed as adopted pursuant to Order XII Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

The applicant herein is the Chairman of the board of directors of Clobek Nigeria Limited, while Clobek Nigeria Ltd is the owner of Clobek Crown Estate. That the 4th

respondent holds a sub-lease of an apartment in Clobek Crown Estate called House C7, in Plot 1946, Sabon Lugbe East Extension Layout Abuja. The applicant avered that 4th respondent had some issues with Clobek Nig. Ltd and Managers of Clobek Crown Estate which resulted in multiple litigations. That the applicant was invited on the 5/10/2016 to the Police Headquarters Abuja by the 2nd respondent. When he got there he was detained from 11am – 7pm. That he was only informed orally of the petition written against him by the 4th Respondent and nothing more. He was again invited on the 3/4/2017 to the Force Headquarters of the Nigeria Police at 4pm and was detained till 9pm by the 2nd respondent despite his repeated demand to be let go to tend to his business. Upon his demand to know why he was invited, 2nd respondent told him that he was invited to see the 1st respondent. Upon seeing the 1st respondent, he was told that there is a criminal charge against him and he must present himself for arraignment on the 4/4/2017 before the Magistrate Court in Mpape by 8am. All efforts to

know the contents/details of the allegation made against him proved abortive. His solicitors wrote and demanded to know the details of the allegation against the applicant vide a letter attached as Exhibit 2, but same fell on deaf ears.

He was also told that he had no right to demand for facilities to prepare for his defence, including, names of persons interviewed, copies of statement and details of items recovered and details of Police report.

The 1st – 3rd respondents on their part stated that the applicant was served with the petition written against him by the 4th respondent before he volunteered his statement. The Certified True Copy of the statement of applicant was attached. That the applicant was released on bail the same day he was invited. On the 3/4/2017, both parties were invited for the purpose of notifying them of the outcome of investigation. The applicant was asked to wait to see the 1st respondent for further information pertaining the date, place and time the case

will be charged to Court. That the applicant in the presence of his counsel met with the 1st respondent. That the Police never denied the applicant information concerning his arrest and detention. The respondent's attached the statement of the parties involved, the Petition written against the applicant and the referral for investigation.

The 4th respondent on his part said he dealt with the applicant as the Managing Director and alter ego of Clobek Nigeria Limited. He wrote a petition to the Inspector General of Police against the applicant dated 15/8/2016. Pursuant to the petition, both parties were invited on the 5/10/2016 to the Police Force Headquarters for a meeting. That the meeting was between 11am and 7pm and the purpose was to settle the misunderstanding between the parties. That the applicant never requested for the Petition written against him but insisted that the issue being discussed was before a Magistrate Court. That he (4th respondent) was informed by the 2nd respondent that the applicant would

be arraigned in a Magistrate Court at Mpape. That as a citizen, he (4th respondent) had a duty to make a complaint against any person suspected to have committed a crime.

Learned counsel to the applicant submitted that the 1st to 3rd respondent's have no right to humiliate and embarrass the applicant at the behest of the 4th respondent based on an unseen and an undisclosed petition. Reference was made to the case of Okoye vs. COP (2015) 17 NWLR (part 1488) 276 at 321 to submit that for the applicant to be on equal footing with the prosecutor at the commencement of the trial, the applicant should be given the necessary facilities to prepare for his defence. He cited Orisakwe vs. Governor of Imo State (1982) 3 NCLR 743 at 758. He urged the Court to hold that the issue whether the applicant has made out a proper case for redress for the enforcement of fundamental right is in the affirmative.

On his part, learned counsel to the 1st – 3rd respondent's submitted that the applicant has the burden

to prove why he brought the respondent's to Court while referring to the cases of Fajemirokun vs. Commercial Bank Nig. Ltd (2009) All FWLR (part 484) 1, Onah vs. Okenwa & 2 ors (2010) 7 NWLR (part 1194) 512 at 535 – 536. He submitted that the case of Okoye vs. COP relied upon by the applicant falls under a situation where a charge is pending before a Court which automatically entitles the defendant to the enjoyment of the rights *ex debito justitiae*, unlike the instant case where there is no charge filed against the applicant. He urged the Court to dismiss this suit with substantial cost.

Learned counsel for 4th respondent submitted that the applicant has not shown that the 4th respondent has violated his fundamental rights. He added that citizens have not only a right but a duty to report the commission of crime to the Police, and that the citizen cannot be held responsible for whatever actions the Police take thereafter except it can be shown that the report was made malafide. Learned counsel further submitted on the

position of the law that the Police have discretion whether or not to investigate allegations of crime made to them, and the Court lacks jurisdiction to interfere with such investigation. That this suit is aimed at interfering with the due investigation of the criminal allegation made against the applicant. He urged the Court not to indulge the applicant and dismiss this suit with cost. He cited Nwangwu vs. Duru (2002) 2 NWLR (part 751) 265, Maduka vs. Ubah (2015) 11 NWLR (part 1470) 201 at 228, Atakpa vs. Ebetor (2015) 3 NWLR (part 1447) 549 at 572, Fawehinmi vs. IGP (2002) 7 NWLR (part 767) 606

The proper approach in a claim for the enforcement of fundamental rights is to examine the reliefs sought, as well as the grounds for such reliefs, along with the facts relied upon, so as to determine whether indeed the claim fall under the Fundamental Rights (Enforcement Procedure) Rules, 2009, for the purpose of ascertaining whether the Court has the necessary jurisdiction to hear and determine the matter under that head. Where the

facts relied upon disclosed a breach or threatened breach of the fundamental rights of the applicant as the basis of the claim, then there is a redress through the Fundamental Rights (Enforcement Procedure) Rules, 2009. See EFCC vs. Ilgboeruche & ors (2019) LPELR - 47268 (CA).

In the case of Jim Jaja vs. COP Rivers State (2013) 22 WRN 39 at 66 the Supreme Court per Muntaka - Commassie, JSC (of blessed memory) stated succinctly thus:

“The procedure for the enforcement of the fundamental human rights was specifically promulgated to protect the Nigerian’s fundamental rights from abuse and violation by the authorities and persons...”

A careful and dispassionate perusal of the case of the applicant as made out in the processes filed in support of the application is that he was arrested and released the same date, but his grouse is that he was not

told the reason for his arrest and the allegation levied against him, let alone the offence for which he was to be charged to Court, despite his repeated demands and demand by his lawyer, thereby violating his right pursuant to Section 36(6) (a – b) of the 1999 Constitution (as amended). Applicant also alleged that his detention on the 5/10/2016 and 3/4/2017 by the 1st and 2nd respondents without informing him of the grounds of his detention or availing him with a copy of the petition, is a violation of his rights under Sections 34(1)(a) and 35(3) of the Constitution.

It is trite that no person can be unlawfully arrested and detained when he has not committed any offence. On the other hand, a person who has committed a criminal offence or reasonably suspected to have done so may be arrested for the purpose of being arraigned in a Court of law. An arrest and detention under the said circumstances or any of them is justified in law and therefore excusable. When a person is therefore charged

with a criminal offence, he shall be entitled to be informed promptly in the language that he understands, and in detail of the nature of the offence; be given adequate time and facilities for the preparation of his defence. See Section 36(6)(a) and (b) of the 1999 Constitution.

The question therefore is whether the applicant's rights have been infringed upon by the respondents.

A party must place before the Court facts necessary, explicit, adequate and sufficient to bring his case within the classes of cases in which the Court may act in his favour. See Sirpi Alusteel Construction (Nig) Ltd vs. SNIG (Nig) Ltd (2000) 2 NWLR (part 644) 22. Facts are said to be the inimitable stories surrounding a case and which the outcome of most, if not all cases depend; they are the springboard of the law and without the proper appreciation of which, the case stands dead from the beginning. See Obasi Brothers Co. Ltd vs. Merchant Bank of Africa Securities Ltd (2005) NWLR (part 929) 117.

Parties in this suit are ad idem that the applicant was indeed invited by the 1st to 3rd respondents on the 5/10/2016. The 1st to 3rd respondent's relied on a petition written against the applicant by the 4th respondent. That the applicant was shown a copy of the petition which is attached as Exhibit NPF 2 before he (applicant) wrote his statement Exhibit NPF1.

I have read through the Statement of the applicant Exhibit NPF Lines 13 - 18 therein are as follows:

“...I was invited to the office of the IG’s Monitoring unit, Force Headquarters and was served with a petition written against me by Mr. Oliver Otonyo. I have read and understood the contents of the petition...”

The applicant in the further affidavit said he was forced to make the statement at the Police Station. That he was threatened and put under duress to make the statement. And for fear of being locked up or humiliated, he had to write what was dictated to him by the 2nd

Respondent CSP Oliver Odimega. He further stated in paragraph 9 that:

“That in any case, Exhibit NPF1 is not a certified true copy of the statement made by me under the 2nd respondents overbearing duress.”

The question is who could have forced the applicant to state freely his state of origin and the schools he attended together with all his professional qualifications. The Police could not have known that the applicant was married with children or the story he narrated regarding what transpired between him and 4th respondent. The Police are certainly not privy to all these personal details.

Let me also address the issue of whether the Statement Exhibit NPF1 is a Certified True Copy (CTC). On the face of the document Exhibit NPF1 there is a stamp bearing the name SP Victor Nwadike, signed and dated 31/5/2017. By Section 168(1) of the Evidence Act, 2011, *“When any judicial or official act is shown to have been*

done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.”

The presumption applies herein, as there is no evidence to the contrary that the certification was rightly and properly done. The assertion by the applicant that Exhibit NPF1 was not a Certified True Copy cannot be true in the circumstance. Assuming the statement Exhibit NPF1 was not certified, this would not have affected its admissibility status. In the case of Jukok International Limited vs. Diamond Bank Plc (2016) 6 NWLR (Part 1507) 55, the Court of Appeal held that:

“...an uncertified copy of a public document attached to an affidavit in support of an originating summons cannot be rejected by the Court simply because it is not certified...”

I hold therefore that the applicant was not threatened or put under any duress before he gave his statement to the Police. The Petition written alleged malicious prosecution, intimidation and constant

harassment against the applicant and it was based on the petition that the applicant was invited together with the complainant. This much was not denied by the applicant. The applicant himself stated he was invited on the 5/10/2016 and 3/4/2017 and was asked to go after he was kept for some hours.

The 1st to 3rd respondents said the applicant was invited and presented with the petition against him and his statement taken. The 4th respondent said they were all invited on the 5/10/2016 for settlement meeting and they were all present, and later asked to go the same day.

An invitation by the Police to a citizen with the aim of ascertaining the veracity or otherwise of allegations leveled against the said citizen, cannot by any stretch of imagination constitute a breach or threat to the fundamental right of the citizen. See Kalio & anor vs. Dawari & ors (2018) LPELR – 44628 (CA).

By Section 4 of the Police Act, the Police shall be employed for the prevention of 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. See Fawehinmi vs. IGP (2002) 7 NWLR (part 767) 606, Ozah vs. EFCC & ors (2017) LPELR 43386

It has to be noted that a mere invitation of a person by the Police without more, is within their powers; except where it can be shown that the Police misused their powers. Thus, the exercise of the powers of the Police to invite and investigate crimes simpliciter cannot amount to a breach of fundamental rights. See Ihua - Maduenyi vs. Robinson & ors (2019) LPELR - 47252 (CA).

There is no clear evidence shown by the applicant that the report made to the Police had no element of justification, or was actuated by any malice. It is part of the statutory responsibilities of the Police to maintain law and order, and the Police had a duty to investigate any

complaint diligently and be convinced before moving into action.

On whether the applicant's right to personal liberty under Section 35 of the 1999 Constitution was infringed, the Section 35 provides that every person shall be entitled to his personal liberty. By section 35(1)(c) thereof, a person may be deprived of his liberty *"for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."*

Section 35(4) thereof provides that a person arrested and detained in accordance with Section 35(1)(c) shall be brought before a Court of law within a reasonable time. The expression 'a reasonable time' is defined in Section 35(5) to mean:

- (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.

In my view, the effect of Section 35(1)(c) and (4) of the 1999 Constitution (as amended) is that where a person is arrested or detained upon reasonable suspicion of having committed a criminal offence, he should be charged to a Court of law within a reasonable time as defined in Section 35(5). Thus, it is necessary that where the person arrested and detained is not charged within a reasonable time, he should be released on bail.

As I have said, the applicant was invited by the Police as a result of the petition made against him by the 4th respondent. The applicant was released the same day on both days he was invited. Infact looking at Exhibit NPF1, it took the applicant less than 2 hours to complete his statement of 5/10/2016. The invitation by the Police is in

exercise of the powers conferred on the police by law, which power cannot be whittled away.

I hold the humble view that the applicant's right to personal liberty was not violated in the circumstance.

Applicant also alleged that his right to dignity of human person under Section 34 of the 1999 Constitution (as amended) was violated by the 1st to 3rd respondent's on the instigation by the 4th respondent. The said Section 34(1) provides that every individual is entitled to respect of his person. Section 34(1)(a) provides that:

"No person shall be subjected to torture or to inhuman or degrading treatment."

The applicant averred that he was invited by the 1st to 3rd respondent's on the two occasions and kept in their office for some hours and he was later asked to go. There is no evidence of torture or inhuman or degrading treatment while the applicant was at the office of the Police. Thus, the applicant failed to discharge this allegation.

The applicant also complained that his right to fair hearing under Section 36(6) of the 1999 Constitution was violated. Section 36(1) of the Constitution protects the right of a person *“to a fair hearing within a reasonable time by a Court or other tribunal...”* in the determination of his civil right and obligations.

Section 36(6)(a) and (b) of the 1999 Constitution (as amended) provides:

“Every person who is charged with a criminal offence shall be entitled to:

- (a) Be informed promptly in the language that he understands and of the nature of the offence:*
- (b) Be given adequate time and facilities for the preparation of his defence.”*

The key word above is ‘charged’ with a criminal offence. Office of the respondents is not ‘a Court or other tribunal’ established by law; and neither has the respondent the powers nor jurisdiction to determine the ‘civil rights and obligations’ of the applicant. The

applicant herein has to be charged before a Court of law or tribunal for the provisions under Section 36(6)(a) and (b) to be invoked. It seems to me that this provision does not apply to the instant application. I hold that the applicant has failed to prove this allegation.

It should be noted that at no time was the applicant arrested by the 1st to 3rd respondents. He only honoured the invitation extended to him. Contrary to the averment of the applicant that he was not informed of the grounds of his detention, it is already a known fact that the applicant was served with a petition written against him thereby necessitating his invitation by the Police. In the light of the foregoing, I hold that the applicant has not shown that any of his rights guaranteed by Sections 34,35 and 36(6) of the 1999 Constitution (as amended) have been or are likely to be breached. In the light of all that I have said, I find no merit in the applicants reliefs (a),(b),(c),(d),(e) and (f). These reliefs are dismissed.

While also dismissing relief (g) this Court needs to restate the position of the law pronounced by the apex Court as well as the Court of Appeal in several decisions where the Court considered the dangerous practice of rushing to the High Court to prevent the Police from inviting, arresting, charging and prosecuting persons who have criminal allegations levelled against them. See Oguejiofor & ors vs. Ibeabuchi (2017) LPELR - 43590 (CA). The order of injunction to perpetually restrain the 1st, 2nd and 3rd respondents from inviting, detaining, charging or arraigning the applicant for any criminal offence based on any report made by the 4th respondent until the 1st, 2nd and 3rd respondents informed the applicant in writing is too wide and tends to curtail the statutory powers of the Police. The Court will not despair in declaring as illegal any improper use of Police powers, but will never at the same time restrain the Police from performing its lawful statutory duties.

Having dismissed all the above reliefs, relief (h) which seeks for compensation of N50,000,000.00 (Fifty Million Naira) is thus of no consequence, and it is also hereby dismissed.

Signed
Honourable Judge

Appearances:

C.E. Wilson – Okereke Esq – for the applicant

K.D. Oguru Esq with him Otoba Okey – for the 4th respondent

1st – 3rd respondent absent and not represented