

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 1<sup>ST</sup> DECEMBER, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 5  
SUIT NO: CV/2009/2020

**BETWEEN:**

KELVIN AYEBAEFIE EMMANUEL ----- APPLICANT

**AND**

1. NIGERIAN POLICE FORCE  
2. NETLINKS SYNERGY LIMITED  
3. PHOTOACADEMY PRODUCTIONS LIMITED

} RESPONDENTS

JUDGMENT

The applicant initiated this suit for the infringement of his fundamental right against the Respondents pursuant to Sections 35, 36 and 37 of the 1999 Constitution of Nigeria (as amended), and Order 2 Rule 1, and Order 11 of the Fundamental Rights (Enforcement Procedure) Rules, 2009. The Applicant is praying the Court for the following reliefs:

*“1. A declaration that the arrest, intimidation and detention of the applicant at the instance of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and keeping of the applicant at the 1<sup>st</sup> respondent’s cell at Anti Vice, Wuse Zone 2, Abuja and AIG, Zone 7, Abuja between 11/1/2020 - 10/2/2020 and 17/6/2020 - 19/6/2020 respectively, seizure of the Applicant’s Apple Laptop, International Passport and freezing of the Applicant’s Bank Account Nos. (Guaranty Trust Bank Account No. 0011975178, Stanbic IBTC Account No. 0033652817, Standard Chartered Bank Account No. 5002808474) and further threat to arrest and detain the applicant without the applicant committing any criminal offence known to law is illegal unconstitutional, null and void, as those actions of the Respondents violates the applicant’s constitutional rights as enshrined in Section 35,36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended);*

- 2) *An order of injunction restraining the Respondents, their agents, assigns privies or anybody whatsoever from arresting, intimidating and detaining the applicant with respect to the circumstances which constitute the subject matter of this suit for which the applicant has been arrested and detained.*
3. *An order compelling the respondents to forthwith unfreeze the applicant's bank account Nos. (Guaranty Trust Bank Account No. 0011975178, Stanbic IBTC Account No. 0033652817, Standard Chartered Bank Account No. 5002808474) and releasing forthwith the applicant's Apple Laptop and applicant's International passport to the applicant.*
4. *The sum of N10,000,000.00 (Ten Million Naira) being damages against the respondents for the infringement on the fundamental human rights of the applicant."*

Attached to the application is a Statement containing the names and description of the applicant, reliefs

sought, and the grounds upon which the reliefs are sought. Also in support is a 13 paragraphs affidavit and a written address duly adopted by Henry O. Chichi Esq. A sole issue was raised therein, that is:

*“Whether the applicant is entitled to the reliefs sought”*

During the course of writing the Ruling, I came across a 19 paragraphs counter affidavit filed by the 2<sup>nd</sup> Respondent and deposed to by one Chukwudi Emmanuel Ngere. Also in support is a written address and several annexures attached. This Court is inclined to have recourse to the process pursuant to the provisions of Order XII Rule 3 of the Fundamental Right (Enforcement Procedure) Rules, 2009 to deem the 2<sup>nd</sup> Respondent’s written address as adopted. Learned counsel formulated two issues therein as follows:

*“1. Whether the applicant has established a case of breach of his fundamental rights by the 2<sup>nd</sup> respondent justifying enforcement.*

*2. Whether the applicant is entitled to damages against the 2<sup>nd</sup> respondent.”*

From the facts of the affidavit and the submissions of counsel, the only issue germane for determination is:

*“Whether the applicant is entitled to the reliefs sought.”*

The fundamental rights enforcement procedures is sui generis and any claim touching on violation of rights to personal liberty guaranteed by the Constitution are usually made pursuant to it. The rules are specifically enacted to govern or regulate actions for enforcement or protection of fundamental rights guaranteed by the Constitution. See Asuquo vs. Sector Commander, FRSC (2019) LPELR – 46846 (CA), F.B.N. Plc vs. A.. Federation (2018) 7 NWLR (part 1617) 121

Now, the settled law, as decided in plethora of authorities is that, for an application for enforcement of any of the fundamental rights entrenched in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria

(as amended) to be grounded, it must be shown by the applicant that, the breach of a fundamental right is the main claim. It therefore means that, if the claim or violation of a fundamental right is only incidental or ancillary to the main claim or relief sought, it would be incompetent to institute the action as one for enforcement of a fundamental right. In other words, it must be shown that the claim for the enforcement of fundamental right is the main otherwise, the claim would be incompetent and liable to be struck out. See Princess vs. Governor of Ogun State & ors (2018) LPELR – 44986 (CA), Emeka vs. Okoroafor & ors (2017) LPELR – 41738 (SC), Okafor & ors vs. Ntoka & ors (2017) LPELR – 42794 (CA).

In the case of W.A.E.C. vs. Adeyanju (2008) 9 NWLR (part 1092) 270, Mohammed JSC, said:

*“I am of the view that the proper approach is to examine the reliefs sought by the respondent as applicant before the trial Court, as a party seeking*

*to enforce her fundamental right, the grounds for seeking the reliefs and the facts relied upon to support the reliefs being sought, if the grounds, upon which the reliefs were sought together with the facts relied upon in support of such reliefs, have disclosed that breach of fundamental right is the main plank upon which the reliefs are being sought, then redress may be sought by the Fundamental Rights (Enforcement Procedure) Rules (1979). However, where the alleged breach of fundamental right is incidental or ancillary to the main complaint, it is incompetent to proceed under the rules.”*

In this instance, the case of the claimant is that he is the director of Lacora Stone Ltd and at his behest got the company to enter into a foreign exchange agreement with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. By the agreement the 2<sup>nd</sup> and 3<sup>rd</sup> respondents gave the applicant’s company the sum of N10 Million and N3 Million respectively to trade in

Forex. The Forex trading went bad and same was duly communicated to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. To the surprise of the applicant, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents caused the 1<sup>st</sup> respondent to arrest the applicant and detained him at Antivice, Wuse Zone 2, Abuja and AIG Zone 7, Abuja between 11/1/2020 to 10/2/2020 and 17/6/2020 to 19/6/2020 respectively because of his failure to remit the said total sum of 13,000,000.00 (Thirteen Million Naira) and/or interest to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. While he was in detention, officers of the 1<sup>st</sup> respondent seized his Apple laptop and international passport and placed his bank accounts with Guaranty Trusty Bank, Stanbic IBTC and Standard Chartered Bank on post no debit. That the 1<sup>st</sup> respondent has threatened to arrest and detain him if he did not refund the money with interest. That he did not commit any criminal offence to be threatened by the respondents.

The 2<sup>nd</sup> respondent in the counter affidavit admitted that the applicant was arrested by the 1<sup>st</sup> respondent



sequel to the petition he wrote to the 1<sup>st</sup> respondent for the issuance of dud cheque. That the case before the 1<sup>st</sup> respondent is issuance of dud cheque and criminal breach of trust. That the 2<sup>nd</sup> respondent is not liable in damages to the applicant.

A party must place before the Court facts necessary, explicit, adequate and sufficient to bring his case within the classes of cases in which 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 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.

It is only when a prima facie case has been made out that the respondents would be requested to justify the contravention or violation. See Olisa Agbakoba vs. DSS &

anor (1994) 6 NWLR (part 351) 475. See also Section 131(1) Evidence Act, 2011. The burden rest on the applicant who must show that he was arrested and detained beyond the time frame stated by 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 24 hours or 48 hours as the case may be. See Ohanedum & anor vs. COP (Imo State) & ors (2015) LPELR – 2431 (CA), Groner & anor vs. EFCC & anor (2014) LPELR – 24466 (CA). The applicant has alleged that he was arrested and detained by the 1<sup>st</sup> respondent at Antivice, Wuse Zone 2, Abuja and AIG Zone 7, Abuja between 11/1/2020 to 10/2/2020 and 17/6/2020 to 19/6/2020 respectively upon the complaint of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents regarding a civil transaction.

This averment was unchallenged and uncontroverted by the 1<sup>st</sup> and 3<sup>rd</sup> respondents as they did not file any counter affidavit. By section 133(2) of the Evidence Act,

2011, if the party who has the burden of proof “*adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.*”

In my considered view, the applicant has adduced satisfactory evidence to prove that the officers of the 1<sup>st</sup> Respondent detained him on 11/1/2020 and released him only on 10/2/2020 and also seized his apple laptop and international passport.

In a case like this, sought on breach or infringement of fundamental right, once there is evidence that the victim was detained, the burden now moves to the police or the detaining authority to show the justification of the arrest or detention. See EFCC vs. Oyubu & ors (2019) LPELR – 47555 (CA).

By the provision of Section 246 of the 1999 Constitution and Section 4 of the Police Act, it is the duty of the Police to investigate any complaint or allegation of crime or any conduct likely to cause breach of peace in the community. The power of the 1<sup>st</sup> respondent to arrest and detain a citizen of Nigeria such as the applicant can only arise if the applicant is reasonably suspected of having committed a criminal offence or about to commit a criminal offence.

Surprisingly, the 1<sup>st</sup> respondent who had the burden to adduce evidence to rebut or disprove the applicants evidence, did not contest any of the averments in the applicant's affidavit despite being served. The 1<sup>st</sup> Respondent failed to adduce any evidence in this regard. The trite principle of law that where there is evidence of arrest and detention of an applicant in an application for enforcement of fundamental right, the onus is on the respondent to show that the arrest and detention were lawful. See Salami vs. Olaoye & anor (2018) LPELR -

47256 (CA), Ejifor vs. Okeke (2000) 7 NWLR (part 665) 363 at 381, Fajemirokun vs. Commercial Bank of Nigeria Ltd (2002) 10 NWLR (part 774) 95 at 111.

In this instance, the 2<sup>nd</sup> respondent in the counter affidavit deposed to the fact that the arrest of the applicant was a result of a complain to for issuance of dud cheque. I have seen the exhibit attached to the counter affidavit i.e. the alleged dud cheque, charge for criminal conspiracy and criminal breach of trust, and the statements attached to the charge sheet e.t.c. The above assertion was not also challenged/controverted by the applicant by way of a reply or further affidavit. Issuance of dud cheque is a criminal offence worthy of investigation which fall within the purview of the statutory powers of the 1<sup>st</sup> Respondent.

In Okano vs. COP & anor (2001) 9 CHR page 407, the Court held:

*“arrest properly made cannot constitute a breach of fundamental rights. A citizen who is arrested by*

*the Police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence cannot sue the Police in Court for breach of his fundamental rights”*

See also Maclaren vs. Jaming (2003) FWLR (part 154) page 528, Agbi vs. Ogbah (2005) 8 NWLR (part 926) page 40, Salihu vs. Gana & ors (2014) LPELR - 23069 (CA). In the circumstances of this case it is clear that the 1<sup>st</sup> Respondent had a reason for arresting the applicant and therefore cannot be found wanting for the arrest.

However, the issue of detention is different from the issue of arrest. The applicant has deposed to the fact that upon his arrest, he was detained for more than one month by the 1<sup>st</sup> respondent at Antivice, Wuse Zone 2, Abuja and AIG Zone 7, Abuja. And in paragraph 6 stated:

*“That while I was in detention, officers of the 1<sup>st</sup> respondent seized my Apple Laptop and my International Passport and caused my bank account Nos. (Guaranty Trust Bank account No.*

*011975178, Stanbic IBTC Account No. 0033652817, Standard Chartered Bank Account No. 5002808474) to be placed on post no debit and also further threatened to arrest and detain me if he fails to pay the total sum of money and/or interest on or before the end of June, 2020 without me committing any criminal offence known to law.”*

Though, the Police had the right to arrest the applicant based on the petition, written by the 2<sup>nd</sup> respondent, it has become clear however that the constitutional provision relating to the fundamental rights of the applicants personal liberty and dignity and the right to peaceful enjoyment of his properties have been encroached upon having kept him beyond the constitutional period without charging him to Court or releasing him on bail. I have noticed the charge attached to the counter affidavit of the 2<sup>nd</sup> respondent. The detention of the applicant was from 11/1/2020 and

lasted till 10/2/2020. The charge was filed on 1/4/2021. Further detention was between the 17/6/2020 to 19/6/2020. To be arrested and detained is clear curtail of liberty to move around.

Section 35(1) 1999 Constitution places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The Court obviously serves as a necessary bulwark in the protection of these rights and any transgression or proved violation are met with necessary legal consequences.

The detention was illegal, unconstitutional and wrongful. The 1<sup>st</sup> Respondent also had no right to seize the applicants laptop, international passport and freeze the applicants accounts. This is a flagrant violation of the applicants fundamental rights in Sections 35 and 44 of the 1999 Constitution. Relief 1 is thus granted as prayed.



By Relief 2, the applicant is praying this Court for an order of injunction restraining the respondents, their agents, assigns and privies or anybody from arresting, intimidating and detaining him in respect of the subject matter for which he was arrested. This relief will be granted as it relates to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. For the 1<sup>st</sup> respondent, it is granted to the extent that the 1<sup>st</sup> respondent before any arrest must have due regard to the due process of the law.

For relief number 3, *the 1<sup>st</sup> Respondents, shall release the applicants Apple Laptop and International Passport. And In the absence of any order of Court, the 1<sup>st</sup> respondent shall take steps to lift the post no debit placed on the applicants (Guaranty Trust Bank account No. 011975178, Stanbic IBTC Account No. 0033652817, Standard Chartered Bank Account No. 5002808474) forthwith.*

The applicant by his Relief 4 is seeking for N10,000,000.00 (Ten Million Naira) damages against the

Respondents. The infringement of fundamental right to liberty, when made out, attracts compensation as a matter of course. In other words compensation will be ordered even when not claimed expressly by the applicant. It is also immaterial how long the breach lasted, it is inconsequential whether it was less than even 24 hours; that goes only to the quantum of compensation to be awarded for the breach and not to the question of the award itself. See Anufi vs. EFCC & anor (2018) LPELR - 43521 (CA), Jim - Jaja vs. COP (2011) 2 NWLR (part 1231) 375 at 393

The applicant has made this claim against all the Respondents. I will consider the respondents individually.

For the 2<sup>nd</sup> respondent, I find no fault in him to be liable in damages. My reason is simple. It is the duty of, as well as the right of every citizen to bring to the notice of the Police a report of specific complaint against a person suspected of having committed an offence. While it is a matter for the Police to decide what action they

would take upon the report being made, it is where the report made is found to be false and the suspect made to suffer some detriment as a result, the person who made the complaint is liable. However, in this instance, it has not been disputed that the 2<sup>nd</sup> Respondent made a report of issuance of Dud cheque to the 1<sup>st</sup> Respondent. The applicant has even been arraigned on a charge in respect of the complaint of the 2<sup>nd</sup> respondent. The law is that merely making a report to a Policeman who on his own responsibility takes the person into custody, is no arrest or detention by the person who made the report. There is no doubt that someone who merely gives information without more, which information leads to the arrest of a suspect by the Police acting within their mandate and responsibility, cannot be liable in an action for unlawful arrest or detention. See IGP & anor vs. Agbinone & ors (2019) LPELR – 46431 (CA), Afribank vs. Onyima (2004) 2 NWLR (part 858) at 654.

I hold that the 2<sup>nd</sup> respondent is not liable in damages in this suit.

For the 3<sup>rd</sup> Respondent I also find no fault in him. My reason is this; the applicant alleged that he had a foreign exchange transaction with the 3<sup>rd</sup> respondent which went bad, and the 3<sup>rd</sup> respondent is one of those that instigated his arrest and detention. Eventhough there is no counter affidavit from the 3<sup>rd</sup> respondent, the burden rest squarely on the applicant to win on the strength of his case. The applicant attached the contract document between Photoacademy Productions Ltd i.e. the 3<sup>rd</sup> respondent and Lacora Stone Limited which he purports to be the director. However, the document attached is between the 3<sup>rd</sup> respondent and Lacora Stone Limited with Kelvin Emmanuel as the Account Manager. The applicant herein is Kelvin Ayebaefie Emmanuel and not Kelvin Emmanuel. Kelvin Ayebaefie Emmanuel is certainly not Kelvin Emmanuel. I therefore find no nexus between

the applicant and the 3<sup>rd</sup> defendant in the transaction that led to his arrest.

For the 1<sup>st</sup> respondent, the law is that arrest and detention no matter how short can still qualify as a breach of fundamental right, as long as such detention is adjudged unlawful. See Gusau vs. Umezurike (2012) LPELR – 8000, Okonkwo vs. Ogbogu (1996) 5 NWLR (part 499) page 420. Having declared that the detention of the applicant by the 1<sup>st</sup> respondent for a period of 30 days and a further detention for a period of 2 days wrongful and unconstitutional, the applicant is entitled to compensation in the form of damages.

In the circumstance and for avoidance of doubt, it is hereby declared that the detention of the applicant in the cell at Anti Vice, Wuse Zone 2, Abuja and AIG, Zone 7, Abuja between 11/1/2020 to 10/2/2020 and 17/6/2020 to 19/6/2020 respectively, is illegal and unconstitutional, and violates the applicant's constitutional right to personal liberty as enshrined in Section 35, of the 1999

Constitution of the Federal Republic of Nigeria (as amended).

- The 1<sup>st</sup> Respondent shall release the Apple Laptop, and International Passport belonging to the applicant in their custody. In the absence of any Court order, the 1<sup>st</sup> Respondent shall immediately take steps to unfreeze the Applicant's (Guaranty Trust Bank Account No. 0011975178, Stanbic IBTC Account No. 0033652817, and Standard Chartered Bank Account No. 5002808474).
- I award the sum of N2,000,000.00 (Two Million Naira) as compensation against the 1<sup>st</sup> respondent for unlawful detention.

Signed

Honourable Judge

**Appearances:**

Applicant in Court

Henry O. Chichi Esq – for the applicant

1<sup>st</sup> and 3<sup>rd</sup> respondent absent and not represented

Tochukwu Ohazuruike Esq – for the 2<sup>nd</sup> respondent