

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 26TH DAY OF NOVEMBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO. FCT/HC/BW/CV/50/21

BETWEEN:

BENNETT EZETA.....APPLICANT

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. THE COMMISSIONER OF POLICE**
- 3. (UNKONWN NAME) THE DPO APO
RESSETLEMENT POLICE STATION.....DEFENDANTS**
- 4. HUSEINI LAUSHI (IPO)**
- 5. PROFICIENT CAPITAL LIMITED**
- 6. SUNDAY OGBONNA**

JUDGMENT

On the 12/2/21 the Plaintiff Bennett Ezeta filed this application Claiming some Relief and Relying on the same grounds. The application is against the IGP, COP, DPO Apo Resettlement Police Station, Huseni Laushi (IPO), Proficient Capital LTD and Sunday Ogbonna.

The Applicant Bennett Ezeta Claimed that all the Respondents has in one way or the other violated his Fundamental Right as enshrined in CAP 4 of the 1999 Constitution Federal Republic of Nigeria as amended. The Reliefs sought and the grounds upon which the Application is set are set hereunder seriatim respectively.

- a. An Order restraining the 1st to 4th Respondents from arresting or attempting to arrest the Applicant over a transaction that is purely civil as constituted in the statement setting the fact of this application and the affidavit attached thereto.
- b. An Order of Interim Injunction restraining the Respondents, their agent, servants, howsoever described from any further form of embarrassment, harassment or detention of the Applicant or his guarantor in connection with the subject matter of this application without an Order of this Honourable Court.
- c. An Order of this Honourable Court awarding the Sum of N4,200,000.00 (Four Million Two Hundred Thousand Naira) Only as exemplary damages against the 1st to 4th Respondents for the harassment, intimidation, of the Applicant over a purely civil transaction which constitute a violation of the Applicant's fundamental Right as guaranteed and by sections 33,34,35(1) and 41(1),44 of the constitution of the federal Republic of Nigeria 1999 as amended.
- d. An Order of this Honourable Court, awarding the sum of N3,000,000 (Three Million Naira) only against the 5th and 6th Respondent, for illegally setting the

law in motion against the Applicant over a civil transaction.

- e. Any other Order or further Orders as this Honourable Court may deem fit to make in the circumstances of this matter.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT

1. That the Applicant has the fundamental right to freedom of movement, liberty, dignity of his human person and presumption of innocence as guaranteed under Sections 34,35 and 36(5) of the constitution of the federal Republic of Nigeria 1999 (as amended), Article 6 & 7 (1) d of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.
2. The transaction that led to the continuous threat and intimidation of the Applicant is purely civil which does not have anything to do with the 1st to 4th Respondent, but the 5th and 6th Respondent decided to unlawfully use the 1st to 4th Respondent who permitted its powers to be used maliciously to intimidate the applicant and by extension his guarantor.
3. The continuous threat and intimidation constitutes a breach of the Applicant's Right to dignity of human person under section 34,35, 36(5) of the Constitution Federal Republic of Nigeria 1999 as amended, Article 6 & 7 (1) D of the African Charter on Human and Peoples Right (Ratification and Enforcement Act).
4. The Respondent consistently threatened, intimidates and summons the Applicant with the sole aim of

detaining and forcing him to perform a civil contract entered into between the 5th, 6th Respondent and the Applicant which has no criminal connotation.

5. That since the threat, intimidation, harassment by the 1st to 4th Respondent on behalf of the 5th and 6th Respondent, the Applicant's life has seriously been affected, as he no longer moves freely nor carry on his business without fear of being illegally arrested, detained and tortured by the 4th Respondent who is desperately making effort to arrest him contrary to his powers to make arrest over a civil matter which is a gross violation of the Applicant's Fundamental Right to Freedom of Movement, Right to liberty, Right to Dignity of Applicant's person as enshrined in Section 33,34,35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
6. This Honourable Court has power and mandate to grant the reliefs sought.

The application is supported by Affidavit of 27 paragraphs and a Written Address of 7 pages. In the said Written Address the Plaintiff raised 2 issues for determination which are:

1. Whether from the facts before this Court the Applicant's right is deserving of protection by this Court.
2. Whether if Issue No: 1 is answered in the affirmative, the applicant is entitled to the Reliefs sought.

ON ISSUE 1: the Applicant submitted that from the fact before the Court it is clear that Applicant have been confronted with attempted arrest, threat and needless

intimidation and harassment over a civil matter transaction that has no criminal element at all.

That threats by 4,5 & 6 Respondents against Applicant amounts to violation of the Applicants right to life, dignity of his person, right to liberty, and freedom of movement as guaranteed in **Ss.33,34,35 and 36 1999 Constitution Federal Republic of Nigeria (as amended)**. He relied on the case of:

ODOGU VS. A-G FEDERATION (1996) 6 NWLR (PT.456)508 @ 522

That from the facts contained in this application the plaintiff has shown sufficient proof that his fundamental right to dignity of his person has been violated. That as such he has place onerous task on the Court to grant the Order as sought. He relied on the case of:

OSHAE VS. COP (2005) 2 NWLR (PT.937) 499

That attempts to arrest the Applicant is an unjustifiable punishment by the Respondent as the issue between them and Applicant is purely civil in nature. That Police has not been arrogated power to meddle into civil transaction which has no criminal element. That they have no right under the law to arrest or attempt to arrest a person over inability to perform an obligation under a contract Agreement. He referred to S. 36(12) 1999 Constitution Federal Republic of Nigeria (as amended). That the action of the Respondent as stated in the Affidavit if permitted will convey a message that to obtain a loan is a criminal offence. That there action violated the Applicant's Right under the Constitution. That applicant's right to institute this action since the

Respondents violated his rights. He referred to the case of:

OMOYINIMUMNI VS. OGUNSIJI (2008) 3 NWLR (PT.474)

UZOUKWU VS. EZEONU II (1999) 6 NWLR (PT.2000) 708.

That if Court does not grant application his right will be subjected to fear and anxiety by the action of 4-6 Respondents. He relied on case of:

A-G FEDERATION VS. ABULE (2005) 11 NWLR (PT.936) PARA B-D

He urged Court to hold that his right has been violated by the Respondent.

ON ISSUE NO.2: if Applicant is entitled to the Reliefs he submitted that all attempted arrest and threats and needless intimidation by Respondents devoid of any basis amounts to arbitrary persecution and extra judicial punishment of the applicant.

That based on their contention the Applicant deserved the reliefs sought as granting the application will send strange signal of discountenance to the Respondents.

The 1-4 Respondents were served the Application but they did not file any Counter to Challenge same.

Upon Receipt of the Application the 5-6 Respondents filed a Counter Affidavit of 12 paragraphs. They also attached 6 documents marked as Exhibit A-F. They also filed Written Address when they raised an issue for determination which is.

“Whether from the facts and circumstances of this case Applicant is entitled to the relief”

The 5-6 Respondent answered the question in the negative in that the Applicant is not entitled to the reliefs sought. That 5-6 Respondent laid complaint petition against the Applicant and his guarantor for issuance of dud cheques to 5 & 6 Respondents. That 1-4 Respondents investigate the offence upon suspicion of the commission of said offence by the Applicant.

That Applicant is not exonerated from being investigated by 1-4 Respondents for the alleged offence. They urged the Court to so hold and dismiss the application.

That the Respondent can only be liable where they deliberately, falsely maliciously and vindictively set in motion for breach of a person’s right. That 5-6 Respondent are not liable for setting in motion machinery for breach of the Applicant’s fundamental rights. They referred to case of:

DURUAKU VS. NWOKE (2015) 15 NWLR (PT.1483) 417

That the 5-6 Respondents the Applicant to 1-4 Respondent for his fraudulent issuance of dud cheques is not deliberately maliciously and vindictively setting machinery in motion for breach of Applicant’s right. They urged Court to dismiss the application.

Again that 1-4 Respondents are not liable for breach of Applicant’s rights too in the circumstance of this case. That by S.4 Police Act the 1-4 are employed to prevent and detect crime, apprehend offenders preserve law and order protect life and property and enforce laws and

regulations. That by S.4 Police Act even where police acts in exercise of its power an arrest under S.4 Police Act cannot constitute a breach of Fundamental Right. That where arrest is in the legitimate exercise of police duty or on ground of reasonable suspicion of having committed an offence Plaintiff cannot succeed against the Police for breach of his fundamental rights. He referred to the case of:

MAC O.EZE VS IGP & ORS (2017) 4 NWLR PG.44 @74-75

That S. 35(1)(a)-(f) limit a person's right to personal liberty upon reasonable suspicion of committing, about to commit or haven committed a crime. He referred to the case of:

AHMADU SAMBO & 3 ORS VS. NIG. ARMY COUNCIL & 5ORS (2017) 7 NWLR (PT.1565) 400 @428 PARA A-E

That Applicant issuance of Dud cheques to 5th Respondent amounts to commission of a criminal offence. That 5 & 6 are therefore not liable in damages for any breach of Applicant's right by reporting the offence to the 1-4 Respondents. That the 1-4 Respondents are not in breach too because they were only performing law given duty of investigation of the offence and urge Court to so hold.

That Plaintiff having not established any breach or acts which suggest that any of his fundamental right is about to be breached by the Respondents is not entitled to the Reliefs sought. They urged Court to dismiss the application with substantial cost awarded in favour of the 5 & 6 Respondents.

COURT:

Once a case is predicated on enforcement of the fundamental right of any one, the onus is on that person to establish with cogent facts and credible evidence showing that actually the action and inaction of the Respondents have in one way or the other infringed or breached the right of the Applicant. It is an onus which must be discharged. Where the Respondents cannot show or established that their action is illegal, legitimate and within the ambits of the law, the Court will hold that such rights were breached and that the Applicant is entitled to the reliefs sought.

It is imperative to state that all those rights as captured in CAP 4 1999 Constitution Federal Republic of Nigeria are not cast in iron. They are not in perpetuity and must be exercised and enjoyed within the ambits of procedure permitted by law.

The Court has reiterated that police like other law enforcement agents are not empowered both under the law Police Act and the Constitution Federal Republic of Nigeria as amended, to engage as debt recovery Agency.

The same Court and the law has equally stated and provided that not every arrest and detention or attempt to arrest and actually arrest and detention are infringement of one's right. Police has a right to detain, question, arrest, interview and interrogate citizens provided it is done following a procedure permitted by law and not arbitrarily.

Once the Police action is established as to be outside the ambit of law, it amounts to breach of a right. Moreso when such alleged breach is predicated on a police acting as debt recovery agency.

The fact that Police should not act as debt recovery agency does not deny police the right to investigate crimes, alleged to have been or being and had been committed by anyone, where such act has the coloration or related to a breach of contract or a commercial venture or even other civil coloration.

Again it is not the intendment of the drafter of the Constitution and the Fundamental Rights Enforcement Procedure Rules that those enactment should be used as a city of refuge to escape criminal indictment by anyone alleged to have committed or had committed or is about to commit an offence. Allowing anyone to utilize those provisions of the law and the Constitution recklessly will defeat the aim and intendment of the drafters and breed recklessness and Judicial anarchy in our polity. The Court of Justice cannot be part of that Judicial recklessness.

In this case the Applicant only alleged attempt to arrest and detained him by the 1-4 Respondents on the instruction and instigation of 5-6 Respondents. He claimed that the 4-5 Respondents has been threatening to arrest and detain him. He never told the Court that he was invited by 1-4 Respondents. He narrated how he went into Loan Agreement with the 5-6 Respondents and how he repaid part of the loans and the rolling over for 30 days. Strangely he did not attach any document of the Loan Agreement and he did not state that he gave dud

cheques to the 5-6 Respondents. Or that his guarantor also gave dud cheques.

He had laboriously stated how the 6th Respondent had threatened his life on daily basis. It is imperative to state that in any matter where there is allegation of breach of fundamental Right and other offences that the fundamental right claim is treated as the main issue while the others are treated as ancillary claims. Where that is the case the Applicant must establish in clear terms with facts and material evidence where necessary and available how, when, where and who violated those rights, for the Court to hold that actually the person's right has been, is being and about to be violated by the Respondent.

In this case going by the facts in support of the Application the Applicant has not been able to show that the Respondents had actually violated or threatened to violate his right to life, the dignity of his person, his freedom of movement e.t.c

To start with he never told this Court that he was invited by the 1-4 Respondents when they received a petition from the 5-6 Respondents on the issue of Dud cheque be issued to 5th Respondent. He never told the Court that he issued any dud cheques. He never made mention that his guarantor also issued a dud cheques. He did not tell the Court that the 5-6 Respondents brought his attention to the dud cheques. But he only told the Court that the 1-4 Respondents are after him based on the loan he took from the 5th Respondent. He did not show the telephone numbers used by 3-4 Respondents in threatening, and intimidating him and how they also embarrassed him on

behalf of the 5-6 Respondents. He did not establish how they threatened to torture him too as he alleged. Whoever alleges must prove same. The Applicant did not do so in this case.

It is not merely mentioning that there was threat to arrest and detain him. The Applicant in this case has the duty to establish how such threats were made and when it was made and who made what threat. He said calls were made with unknown number but he did not state the day and time or month such calls were made. He did not show the telephone numbers too.

The Court believes that the number the applicant referred to as belonging to the 6th Respondent were either the number that was used by the 6th Respondent in the course of the business transaction where the going was good with the 5th & 6th Respondents. He should have been able to establish to the Court with help of caller id the owner of the said phone as every phone has an owner. This Court holds that the applicant did not establish that his right was actually violated or threatened to be violated or that there was actually a threat by the 1-4 Respondents to arrest and detain the applicant at the instance of the 5th -6th Respondents as he alleged. He could not discharge that onus placed on him in this case. So this Court holds.

On the ancillary aspect of the application it is important to point out that parties are bound by the contract they have entered into-Pacta Sunt servanda.

Again issuance of a dud cheque is a criminal offence in that anyone who issues a dud cheque has 90% of chance

of going to jail if the case is proved against him. But allegation of issuance of a single dud cheque is a criminal offence talk less of issuance of several dud cheques by a person who had enjoyed loan facility from a Bank and his guarantor.

The Applicant cunningly did not mention in the length and breadth of his Affidavit in support of this case that he and his guarantor issued several dud cheques. He did not also tell the Court that a Petition was written against him and that he was invited by 1-4 Respondents and given a chance to be heard.

His invitation to the 1-4 Respondents office is in line with a procedure permitted by law. It is within the power of the 1-4 Respondents to so do. The said invitation is to enable the 1-4 Respondents bring to the notice of the Applicant the said Petition from 5-6 Respondents and also to hear the applicant's side of the story. The action of the Respondent by the invitation is Constitutional. There was no evidence to show that he was arrested and or detained afterwards.

A Complaint/Petition on allegation of dud cheques calls for investigation which is a fundamental statutory role/function of the 1-4 Respondent. The 4th Respondent did not beach the fundamental right of the Applicant because the role he played was in his official capacity as the Investigation Police Officer. So also the role played by the 3rd Respondent.

The duo cannot be therefore held responsible for anything they have done in the course of their official duty. More so when such action taken was within the

ambits of the law and the Constitution. This Court hold and strongly too that the 1-4 Respondents did not violate the Applicants right. This Court also holds that the action by 5-6 Respondents by making a complaint/petition to 1-4 Respondents is also legal lawful and constitutional because the issue they complained of is issuance of dud cheques which is a criminal offence by all intent and purpose. It is the duty of the citizen/person to report crimes to the Police for investigation. When that is done, the Police has a right to invite such person and investigate such crime. That's why this Court hold that action of the 4th Respondent is lawful.

It should have been a different thing if the applicant had established with concrete fact and credible evidence that the 5-6 Respondent had wanted to use the 1-4 Respondent as debtor recovery agents or that they had solicited for the 1-4 Respondent to help them recover what the applicant owes them. That was not so in this case.

Strangely, the Applicant did not deny issuing the said Cheques which went dud. He did not state that he was invited by Police because of the dud cheques issued. He mentioned that the 1-6 Respondents also threatened his guarantor but he did join the guarantor as an applicant or tell the Court why the said 1-6 Respondents threatened his guarantors too. No doubt the Applicant has something up his sleeves. He did not deny owing the 5-6 Respondents. He did not deny issuing the dud cheques too.

He had created an impression that the loan was given to Shelter Wings Ltd but he forgot that is the Managing Director, “alpha and Omega” and author and finisher of the said Company- Shelter Wings Ltd. He signed these loans. He operated the company. He enjoyed the facility. He issued and signed those cheques.

But in his claims he wants the Court to order that the Police should not investigate or do anything in respect of the investigation of the complaint/petition of the issuance of the dud cheques. He did not deny issuing same. He seems comfortable if the 5-6 Respondents takes him to Court in order to recover the outstanding balance of the loan facility rather than paying same or working out a way to repay the loan since all his earlier promises could not be fulfilled.

Without further ado it is the humble view of this Court that the Applicant did not establish that his right was actually violated or threatened to be violated by 1-6 Respondents as the Police acted within the ambits of the law and Constitution and that 5-6 Respondents were right in making the report to 1-4 Respondents. The issuance of the Dud Cheques by the Applicant is a criminal offence which the Police has a right under the law to investigate. Such offence can only be charged to Court when investigation is concluded. In as much as the Applicant has a right to be protected under the law and Constitution, he should equally face the law and be held responsible and be investigated where there is an allegation of him committing, or having committed or about to commit a criminal offence.

From the facts and circumstances of this case the Applicant is not entitled to the reliefs sought in this application. So this Court holds.

This Court cannot restrain the Police-1-4 Respondents from performing their statutory duties especially on the investigation of the issuance of Dud Cheques issued allegedly by the Applicant, a fact the applicant did not deny.

The 5-6 Respondents did not illegally set the law in motion against the Applicant as the Applicant tries to portray in this case. The fundamental right of the Applicant was not violated by the Respondent in this case. So this Court finally hold. This application lacks merit. It is therefore dismissed.

This is the Judgment of this Court delivered todayday of2021 by me.

K.N.OGBONNAYA

HON.JUDGE