

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/1976/2021

BETWEEN:

1. AFRICAN NATURAL RESOURCES AND MINES LTD	}APPLICANTS
2. PARTHA GHOSH		
3. BARNABAS RAFI		

AND

1. NIGERIA POLICE FORCE	}RESPONDENTS
2. ASSISTANT INSPECTOR GENERAL OF POLICE (AIG) INCHARGE OF ZONE 7 ZONAL COMMAND		
3. CSP CAROL EMMANUEL		
4. SOLTO GUARDS AND GADGET LIMITED		

JUDGMENT

The applicants herein filed this Motion on Notice and seek for the following reliefs:

- a. An order of injunction restraining the respondents from further threat of arrest, intimidation and or coercing the applicants to pay the 4th respondent any amount consequent upon the agreement for security services which is a civil contract between the 1st applicant and the 4th respondent which is contrary to the applicants right to personal liberty, dignity of human person and fair hearing enshrined in sections 34, 35 and 36 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 4, 5, 6 and 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act

- Cap. A9 LFN 2004, which is a dispute referable to the civil court only, in accordance with the constitution.
- b. An order of perpetual injunction restraining the respondents from criminalizing the transaction between the 1st applicant and the 4th respondent as a result of any issue arising from and or emanating from the agreement for security services, and or further threat of arrest or the arresting of the 2nd and 3rd applicants in respect to the civil contractual transaction between the 1st applicant and the 4th respondent, which is a matter to be referable to a civil court only.
 - c. A declaration that the dispute relating to the agreement for security services dated the 1st October, 2020, between the 1st applicant and the 4th respondent is a civil and not criminal matter.
 - d. An order declaring invasion of the 1st applicant's factory site at kilometer 18, Abuja – Kaduna Express way on the 5th August, 2021 and the warrant of arrest against the 2nd and 3rd applicants issued on 19th July, 2021 by the Magistrate Court Wuse Zone 2, based on a transaction emanating from agreement for security services, despite the 1st applicant being previously represented by Mr. Sunday Pada (Chief Security Officer of the 1st applicant and Mr. Chukwuma (1st applicant PRO) on the 20th May, 2021, 1st of June, 2021 and 23rd of June, 2021, among other days, at the invitation of the 2nd and 3rd respondents, and illegal, null and void and of no effect, as being a violation of the applicant's right to personal liberty, dignity of human person, and freedom to do conduct business.

e. N10,000,000.00 (Ten Million Naira as general damages against the 3rd and 4th respondents for inciting the 1st and 2nd respondents to arrest and intimidate the 2nd and 3rd applicants on a purely civil transaction between the 1st applicant and the 4th respondent?

The grounds upon which the application is filed are contained in pages 5 – 6 of the motion papers, statement of facts, the reliefs sought are contained in pages 3 – 4 of the motion paper.

The application is supported by 32 paragraphed affidavit and attached to the affidavit are five documents and is also supported by a written address of counsel.

The 4th respondent filed a counter affidavit in opposition to the grant of the motion and is of three paragraphs and attached to the affidavit are some documents and is accompanied by a written address of counsel.

The applicants also filed a further affidavit in opposition the counter affidavit of the 4th respondent and is accompanied by a reply on points of law.

It is in the affidavit in support of this application that sometimes in October, 2020, the 1st applicant engaged the 4th respondent as a security company whose responsibility was to provide security guards to the 1st applicant's factory site, and yard at Gujeni Kaduna State, this was sealed by the signing of a contract agreement dated and signed 1st October, 2020 and that after the execution of the contract agreement some industrial electrical cables were discovered to be missing under the guard of the 4th respondent and its guards and a report was filed at Gujeni Area Command Police Station on the 22nd October, 2020, this prompted the 4th respondent to ask the 1st applicant for

an amicable settlement of issue, as it is contained in the contract agreement, that any item missing under the watch of the 4th respondent, the 4th respondent will be liable, and it was consequently agreed that the total sum for the missing items be deducted from the monthly payment due the 4th respondent and that upon the understanding of the 1st applicant and 4th respondent, deductions of the sum of N300,000.00 (Three Hundred Thousand Naira) was made for the month of October, 2020 and subsequently another N300,000.00 (Three Hundred Thousand Naira) for the month of November, 2020 as part of the recovery for the lost of electrical items which translates to about 16% of the total amount due from the 4th respondent.

It is stated that the attitude of the 4th respondent in resolving the grievance of the security guards, prompted the 1st applicant to discontinue the contract agreement with the 4th respondent on the 23rd day of December, 2020 and the 1st applicant equally noticed that the number of security guards that showed up for duty for the month of November and December, 2020 reduced, and the fact was communicated to the 4th respondent.

It is stated that, the 4th respondent wrote to the 1st applicant through its solicitor J.O. Okoro & Co. on the 5th of February, 2021 demanding the sum of N2,401,500.00 (Two Million, Four Hundred and One Thousand, Five Hundred Naira) to which the 1st applicant's solicitor replied in a letter dated 15th February, 2021, and since then several reconciliatory meeting were fixed by both the 1st applicant and 4th respondent which meetings have not yielded any reasonable result and since then, the 4th respondent has been making efforts to distract the 1st applicant's business activities and its staff from going about their daily duties as the 4th respondent has connived with the officers of 1st to

the 3rd respondents, particularly the men at Zone 7 Police Command Zonal CID to criminalize the civil contractual agreement between the 1st applicant and the 4th respondent.

It is deposed to the fact that the 1st applicant who at various invitations by the officers and men of the 2nd respondent have rejected representatives of the 1st applicant, who had reported at their office at Wuse Zone 3, on the following dates 20th May, 2021, 1st June 2021, 23rd June, 2021 and 16th July, 2021 four times in respect of this issue of the agreement for security services, and that all the four visits by the 1st applicant's representatives to the 2nd and 3rd respondents' office, the 2nd and 3rd respondents refused to the 1st applicant's agents a copy of the petition written by the 4th respondent and are rather pressuring the 1st applicant to make payment of whatever claim the 4th respondent makes, and have made further threats to arrest the 2nd and 3rd applicants who are neither signatories to the agreement nor the contracting parties to the agreement for security services, and that on the 5th August, 2021, the duo or CSP Carol and DSP Rueben led some truck load of Police men and officers of Zone 7 CID Police Command into the 1st applicant's factory site at Gujeni, Kaduna State and disrupted the business activities at the factory site and sought to arrest the 1st and 2nd applicants based on the purported arrest warrant that they obtained at Zone 2, Magistrate Court at Wuse Zone 2 on the 19th July, 2021 and that the arrest warrant presumably obtained by the 2nd and 3rd respondents are against the deponent and the 2nd respondent are from Abuja Magisterial Division for which they came all the way to Suleja, Niger State to execute even for contractual agreement, and that the deponent knows that their factory location at Suleja is not within the

area covered by the Magistrate Court Zone 2 that signed the warrant and since the petition of the 4th respondent to the 1st – 3rd respondents, against the 1st applicant, the 1st applicant have never appeared nor have been invited by the 2nd and 3rd respondents.

It is deposed to the fact that the 2nd applicant and the deponent have been living with apprehensions since the 5th August, 2020 and the 3rd respondent has taken it upon herself to ensure an arrest, despite the glaring facts that the transaction is a simple contract and civil transaction between the 1st applicant and the 4th respondent, which the later has refused to go to a court to determine whether he is entitled to the monetary claim he is making or not and that the deponent has been traumatized by the actions of the respondent to the extent that except the court stops them, the deponent said he will continually be living on the fear of arrest and detention by the respondents and their agents.

In his written address accompanying the motion the counsel raised two issues for determination, to wit:

- 1. Whether the applicants are entitled to the protection of their fundamental rights in the circumstances of this case?**
- 2. Whether the applicants are entitled to damages?**

The counsel submitted that it is settled principle of law that where a person's liberty or rights as enshrined under chapter IV of the constitution is being violated or threatened to be violated, the person or body have the right to approach the court of law to have his rights to be protected from infringement or threatened infringement and he cited Order J Rule I of the Fundamental Rights

Enforcement Procedure Rules 2009 and the case of **Atakpa V. Ebetor (2015) 3 NWLR (pt 1447) at 549 para. D.**

The counsel submitted that in contractual relationships, parties are bound by the contents of the agreement they freely entered into and neither the parties can freely back out of the terms, and he cited the case of **Ibrahim V. Garki (2017) 9 NWLR (pt 1571) p. 377 at 392, paras. G-H** to the effect that the question that agitates in the mind of the court is whether EFCC or any other law enforcement agency can act as commercial or contractual enforcer of the agreement between the parties and as a result to their tactics of arresting, detaining and torturing whoever they perceived defaulting side to the agreement.

The counsel submitted that despite the various provisions of statute within our country, derogation from fundamental rights can only be justified if it is carried out in accordance with a procedure permitted by law, and he cited the case of **Nwankwo V. State (1985) 6 NCCR 228** and **Punch Newspaper V. Attorney General of The Federation (1998) 1 NRCRA 488.**

The counsel submitted that the facts and evidence in support of this case are that the 1st applicant is no doubt had contract agreement with the 4th respondent for the provision of security guards to its various sites and the transaction in issue is a civil transaction and no crime was committed in the course of the transaction and the issue in contention between the parties was negligence on the part of the 4th respondent's staff in carrying out their duties, and he submitted further that those enforced with the powers to enforce the law, should not themselves break the law and he cited the cases of **EFCC V. Chidolue (2019) 2 NWLR (pt 1657) p. 442 paras. F-G.**

The counsel submitted that by virtue of section 4 of the Police Act the police did not have the powers to enforce the performance of the terms of a valid contract in the guise of investigation and going as far as getting a purported warrant of arrest against the 2nd and 3rd respondents who are not parties to the contract agreement and he cited the case of **Iheanacho V. NPF (supra)**.

The counsel submitted that the provision of Regulation 340 of the Nigerian Police Regulation clearly amplified the conduct of a police officer towards execution of his duties and the knowledge of the law and the 1st – 3rd respondents abused the process of the law getting themselves involved in a case that is purely civil and contractual in nature.

The counsel submitted that the respondents have violated and further threatened to violate the fundamental rights to personal liberty, dignity of human person and fair hearing as enshrined under sections 33, 34, 35 and 36 of the constitution and there is no justification in attempting to arrest the 2nd and 3rd applicant make payment to the 4th respondent.

On the issue No. 2, the counsel submitted that the intimidation and harassment of the applicants is unlawful, the same having not been done under any clear allegation of crime or reasonable suspicious of the applicants having committed any crime known to law, this, the applicants are entitled to seek for compensation over the breach of their fundamental rights.

The counsel submitted that by virtue of section 35(6) of the Constitution provides for the fact that a person who is unlawfully arrested or detained shall be entitled to compensation, and that the 4th respondent is liable in law for setting on motion an investigation which he knew is not within the preview of police duties, and he cited the case of

Kure V. C.O.P citation not provided. He cited the case of **Okafor V. AIG Police Zone 4 Onikan (2019) LPELR – 46505 P. 326.**

The counsel submitted that the applicants have shown by this affidavit the damages they have suffered as their rights to business and liberty have been infringed upon by the respondents, and the applicants are entitled to compensation, and he cited the case of **Igbokwe V. C.O.P Edo State (2017) LPELR – 42072 (CA) Okonkwo V. Ogbobu (1996) 5 NWLR (pt 499) p. 420** and **Azide & Ors. V. Ewuzie & Ors (2015) LPELR – 24482 (CA)** and urged the court to grant the applicants damages as claimed.

The 4th respondent filed a three paragraphed counter affidavit and stated that the 4th respondent admits paragraph 4 of the applicant's affidavit only to the extent that it was contracted by the applicant to provide its security services at its factory site at Gujeni community, Kaduna State which contract was renewed in October, 2020 based on their previous contract.

It is instructive to note that all the averments in the counter affidavit were in relation to the deduction of the sum of N600,000.00 which was made by the 1st applicant, and the issue before this court is the issue of the infringement of the fundamental right of the applicants and not the contractual obligation that was between the 1st applicant and the 4th respondent, and therefore goes to no issue at the moment.

In his address, the counsel to the 4th respondent submitted that a party who lodges a complaint to the police without more cannot be held liable for the way and manner the police decide to go about their investigation and the subsequent criminal prosecution in court, and he cited the case of **Arab Contractor (O.A.O.) Nig. Ltd V.**

Umanah (2013) All FWLR (pt 683) p. 1990 to the effect that every private citizen has the right to report a suspected crime to the police.

The counsel also cited the case of **Okonkwo V. Ogbogu (1996) 5 NWLR (pt 449) 420** to the effect that to succeed in an action for false imprisonment, the plaintiff must show that it was the defendant who was actively instrumental in setting the law in motion against him.

The counsel cited the case of **Oceanic Securities International Ltd V. Balogun (2013) All FWLR (pt 667) 635** to the effect that every citizen has a right and in fact a duty to report any infraction of the law or commission/suspicion or commissary of a crime to the police.

The counsel also cited the case of **Nwanwuna V. Awaebili (2011) 4 NWLR (pt 1237) p. 293** to the effect that liability does not attach to a private citizen who merely names a suspect.

The counsel concluded that the 1st applicant have woefully failed to establish how the 4th respondent was actively behind the allegations of the alleged breach of their fundamental rights by the 1st – 3rd respondents and the clash against it ought to be dismissed.

The applicants filed a further affidavit and the deponent stated that he was aware of the incident of the 5th August, 2021 when the respondent led a team of policemen to barricade the free movement of workers and customers into the 1st applicant's factory site at Suleja which factory site is a plot almost a hundred hectares, and that on the 5th August, 2021 neither Mr. Olabisi Omotosho nor Mr. James Onoja accompanied the team of policemen led by the 2nd and 3rd respondents and the 4th respondent's manager were personally present during the Kaduna Expressway, Suleja; Niger State.

It is also to note that the averments in the further affidavit is to show that the 4th respondent has the obligation to carry out the inventory of vital items in different locations and that the 4th respondent knowing the civil contractual nature of the transaction with her, petitioned the Assistant Inspector General of Police Wuse Zone 3.

Now, the question for determination is:

Whether the applicants are entitled to the reliefs sought?

Thus, the question of the infringement of fundamental right is largely a question of fact and does not so much depend on the dexterous submission drawn the forensic arsenal of counsel on the law. It is the matter of fact as disclosed on the processes filed that are examined, analysed and evaluated to see if the fundamental rights of a person were eviscerated or otherwise dealt with in a manner that is contrary to the constitution and other provisions on the fundamental rights of an individuals. See the case of **Obla V. EFCC (2019) All FWLR (pt 991) p. 41 at 56, paras. F-H.**

The procedural rules for the enforcement of fundamental rights is that the court before which the matter was brought by way of the procedure for enforcement of fundamental rights, has a duty to examine the record before it, especially in a case where the principal or main claim is the subject of controversy. See the case of **Kurama Traditional Council V. Yani (2021) All FWLR (pt 1086) p. 1044 at pp. 1061 – 1062 paras. H-B** in the instant case, it is a claim of the applicants for an order of injunction restraining the respondents from further threat of arrest, intimidation and/or coercing the applicants to pay the 4th respondent any amount consequent upon the agreement for security service which is civil contract between the 1st applicant and

the 4th respondent which is contrary to the applicant's right to personal liberty, dignity and human person and fair hearing that enshrined in sections 34, 35 and 36 of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 4, 5, 6 and 7 of the African Charter on Human and Peoples Rights (ratification and Enforcement) Act Cap. A9 LFN 2004 which is a dispute referable to the civil court in accordance with the constitution. The above is the main claim of the applicants, and in the affidavit particularly in paragraph 23 of the affidavit, it is stated that the arrest warrant presumably obtained by the 2nd and 3rd respondents are against the deponent and the 2nd respondent are from Abuja Magisterial Division for which they came all the way to Suleja, Niger State to execute even for civil contractual agreement.

Looking at the principal claim, in relief I of the application, it can be inferred that the claim of fundamental right enforcement is not the main claim as the principal relief sought did not point out same, rather was based upon an agreement that was between the 1st applicant and the 4th respondent. More so, the applicants averred in their affidavit that it was the court that issued the warrant of arrest of the applicants. See the case of **W.A.E.C V. Adeyanju (2008) All FWLR (pt 428) p. 209 at 225, paras. C-A**, where the Supreme Court held that a party seeking relief under section 46(1) of the 1999 constitution and Order I Rules II and III (i) of the Fundamental Rights (Enforcement Procedure) Rules must ensure that the main relief and the consequential reliefs point directly to a fundamental right under chapter IV of the 1999 constitution and a clear deprivation of the same by the other party being sued. It is

against this backdrop, I look at sections 34, 35 and 36 of the constitution and which provides:

“Every individual is entitled to respect for the dignity of his person, and accordingly:

- (a) no person shall be subjected to torture or inhuman or degrading treatment;**
- (b) no person shall be held in slavery or servitude, and**
- (c) no person shall be required to perform forced or compulsory labour”.**

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.

(c) for the purpose or 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”

36(2) “without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it contains on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligation of any person if such law:

- (a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes decision affecting that person;...”**

Taking the above quoted provisions of the constitution, coupled with the averments in paragraph 23 of the affidavit, it appears that the court was the issuing authority of the warrant of arrest and whether the Magistrate Court was right in her decisions to issue a warrant against person who reside in Suleja Niger State, the persons to be affected by the warrant have the right to make representation before the Magistrate makes its own decision affecting those persons. From the above consideration it can be inferred that the main claim of the matter the principal/claim is not one pointed at infringement of fundamental right and I therefore so hold.

I am also convinced that the principal claim before the court is for an order of injunction against the respondents to restrain the respondents from further threats and coercing the applicants to pay the respondents any amount consequent upon the agreement for security service, which the applicant said that is a civil contract. Already an order was given for the arrest according to the applicants, by the Magistrate Court, Wuse Zone 2, and whether the order or the warrant of arrest was given appropriately or not, I presume that the issuance of the warrant of arrest by the Magistrate to be correct. See the case of **Fidelity Bank Plc V. M.T. Tabora (2019) All FWLR (pt 975) p. 902, paras. F-H** where the Supreme Court held that by the provisions of section 168(1) of the Evidence Act, 2011, when any judicial act or order is shown to have been made or done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. The burden is on the party aggrieved by the judicial act, who thinks otherwise of the validity, to rebut this presumption and move for its setting aside. In the instant suit, it behooves upon the applicants to appear before the Magistrate and

to make presentations for setting the warrant of arrest aside, if they think it is wrongly issued, and I therefore so hold.

Where therefore, the claim for enforcement of fundamental rights in accordance with the procedural rules was not the main claim but ancillary claim, action brought under the Fundamental Rights (Enforcement Procedure) Rules is not proper, and I so hold that this action is not proper to be brought under the enforcement procedure rules and is hereby dismissed accordingly. See the case of **Kurama Traditional Council V. Yani (supra)**.

Hon. Judge

Signed

27/06/2024

Appearances:

E.P. Offiong Esq appeared with J.N. Okoli Esq for the applicants.

PC-CT: The matter is for judgment and the respondents are not in court.