

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA

ON THE 5TH DAY OF FEBRUARY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/BW/CV/124/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

HAJIA HULERA SULEIMAN SARKI PAWA APPLICANT

AND

1. REAL ADMIRAL NDIDI PATRICK AGHOLOR 2. ISTIFANUS Y. (FORCE NO. S6690) 3. CHIEF OF NAVAL STAFF, NIG. NAVY 4. INSPECTOR-GENERAL OF POLICE	}	RESPONDENTS
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JUDGMENT

The Applicant's Originating Motion against the Respondents is dated 4/04/2023. It is brought pursuant to Section 35 of the 1999 Constitution and Section 6 (1) (B) of the National Human Right Commission Act, 2010 (as amended) and Articles 6 & 7 (1) (D) of the African Charter on Human & Peoples Right.

The Applicant prays the Court for the following Orders:

- (1) An Order of perpetual injunction restraining the Respondents, whether by themselves, agents, servants, privies, through any person or persons from further arresting, detaining, intimidating, harassing and or threatening the Applicant in respect of this matter.
- (2) An Order of Court restraining the Respondents from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of this application.
- (3) The sum of ₦50 Million only as general damages and or compensation to the Applicant for arresting, intimidating, harassing and threatening to arrest and detain the Applicant.
- (4) And any other Orders as this Court may deem fit to make in the circumstance.

In support is a Statement containing the names and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought.

In support of the application is an 11-paragraph Affidavit sworn to by the Applicant herself and relied on by Applicant's Counsel.

She deposes that 1st and 2nd Respondents are staff of the Nigeria Navy. The 3rd Respondent is the head of the Navy.

That sometime in 2023, 1st Respondent trespassed into the Applicant's land at Plot C/14 measuring about 1,800sq metres, situate at Dawaki Layout, Bwari Area Council, Abuja, FCT.

The 1st Respondent engaged the 2nd Respondent, mobilized the men of Nigeria Navy, dehumanised her and staff on the site at Plot C/14 Dawaki. The pictures of 2nd Respondent and his men is Exhibit A.

That on the 3rd of April 2023, the 2nd Respondent mobilized the men of the Nigeria Navy to her land aforementioned, dehumanised her and warned her never to come to the land again.

That it took the intervention of the Nigeria Police before the Applicant and her workers could leave the site.

That she needs the protection of the Court because the 1st and 2nd Respondents have threatened to beat, arrest and detain her. That she is living in a state of fear and psychological trauma.

Learned Counsel to the 1st and 2nd Respondents relied on a Counter Affidavit dated the 5/05/2023 sworn to by Istifanus Yusuf.

He deposes that 1st Respondent is a retired staff of Nigeria Navy. He is the Orderly of the 1st Respondent.

That in 2015, 1st Respondent told him he has a land in Dawaki, which he wants to start developing. That he took him to AGIS and Development Control.

That the same year, 2015, the 1st Respondent started work on the land and he occasionally visits the site to drop money for those working on the land.

That on 15/03/2023, he went to the site which is Plot C/14 Dawaki Layout, Bwari Area Council. That few minutes after he arrived he saw a Police vehicle stopped in front of the land with Policemen armed with AK47 and a woman dressed like a muslim.

That the Police shouted on the workers to stop work and he approached them to find out what the matter was. The Policemen said he was under arrest and three of the officers began to push and drag him into the car they came with.

That one of the officers took a shovel from the workers which he feared would be used against him but he dropped it on the boot of the car.

The photograph of how he was being pushed is Exhibits A1 & A2. That they never had any dealing with the Applicant.

That on getting to Kubwa Police Station, Applicant identified herself as the owner of the Plot C/14 Dawaki shortly before he was dragged into the cell without any explanation of the offence he committed.

That he was brought out when 1st Respondent came and the Police informed them that the Applicant made a Direct Criminal Complaint at Grade 1 Area Court, Arab Road against 1st Respondent pursuant to which she brought the Police to arrest any person seen on the land.

The Criminal Complaint is Exhibit B. The Police released him and the 1st Respondent and Applicant made Statement.

The 1st Respondent brought his title documents to prove ownership of the land but Applicant could not present any document.

The Police wrote a Report to Grade 1 Area Court, Arab Road, Kubwa after investigation on the basis of which the Court terminated the Direct Criminal Complaint and advised the 1st Respondent to take legal action against the Applicant. The Report is Exhibit C.

The 1st Respondent petitioned the Applicant to the Area Commander, Kubwa for destroying the fence. It is Exhibit D. The Police invited the 1st Respondent and the Applicant. She refused to honour the invitation.

That after several investigations, which the Applicant dishonoured, the 1st Respondent was advised by the Police to approached the Court.

That Applicant in reaction to the invitation has filed this suit to prevent the Police from inviting or arresting her. That 1st Respondent did not at any time engage him to mobilise men of the Nigeria Navy for anything.

That neither him nor the 1st Respondent ever approached the Applicant, talk less of dehumanizing her or any person working with her. That Applicant does not have any person working for her on the land.

That owners of adjoining land said Applicant is a well-known land grabber in Dawaki and operates with different names.

They paid ₦1.2 Million to defend this case. The receipt is Exhibit E.

That she is using the Court as a shield from Police investigation. That cost of ₦1.2 Million should be awarded against her.

The 3rd Respondent's Counsel adopted his Counter Affidavit sworn to by Bernard Adindu of BS/301/302 Banex Plaza, Wuse II, Abuja.

He is a Staff Officer 3 of the Nigerian Navy. That 1st Respondent did not trespass into Applicant's land as Applicant does not have any land at Plot No. C/14.

That 1st Respondent did not engage 2nd Respondent to mobilize the men of the Nigerian Navy to dehumanize the Applicant or her staff on the site.

The Respondents did not dehumanize the applicant or her workers. That the Applicant does not need the protection of this Court, neither is she living in a state of fear or psychological trauma.

That Applicant is a gold-digger. That it is in the interest of justice to dismiss the application.

The Applicant adopted her Written Address and posited an issue for determination which is:

Whether the incessant intimidation and threat of arrest and detention of the Applicant by the Nigeria Navy is unconstitutional.

She argues that she is in perpetual fear. That Applicant is entitled to right to personal liberty.

Learned Counsel canvasses that the Court should grant the enforcement of the Applicant's fundamental right.

The 1st and 2nd Respondents' Written Address is dated 5/05/2023. The 1st and 2nd Respondents submit two (2) issues for determination:

- (a) Whether in view of the totality of evidence before the Court, the Applicant has established a case for the breach of her fundamental right.*
- (b) Whether fundamental right can be used as a shield to prevent law enforcement agencies from performing their statutory duties.*

I have read and considered the said Addresses. the 3rd Respondent's Written Address is dated 23/06/2023. The issues raised are substantially the same.

The issue for determination is:

Whether the Applicant has made out a case of a breach of fundamental right so as to entitle her to the reliefs sought.

The evidence of the Applicant is that sometime in 2023, 1st Respondent trespassed into her land situate at Plot C/14 measuring about 1,800sq metres situate at Dawaki.

That 1st Respondent engaged 2nd Respondent to dehumanise her and staff. She relied on Exhibit A.

I have taken a cursory look at Exhibit A. Applicant is not on the said exhibit, rather it is a Naval Officer that was being hounded by the Police.

The second photograph showed a person being pushed into a car while a woman was making a phone call behind the boot of the car.

Learned Counsel relies on Section 35 of the 1999 Constitution (as amended). I do not find as a fact that the liberty of the Applicant is deprived or curtailed. Neither is there evidence to suggest that the Applicant is being threatened to be arrested or detained.

The 1st and 2nd and 3rd Respondents filed a Counter Affidavit. The 1st Respondent said he was arrested by the Police brought by the Applicant. That he was hauled into Police cell.

That his arrest was sequel to a Direct Criminal Complaint initiated by the Applicant. That Police investigated the case and found that the land in question does not belong to the Applicant.

That the criminal complaint was terminated as a result of the Police report exonerating the Respondents.

That Applicant was invited severally to the Area Command at Kubwa but she failed to respond to invitation. The Applicant failed to file a Further Affidavit to rebuff the assertions.

The onus lies on an Applicant who alleges that his fundamental rights have been infringed to place before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the Respondent.

Where that has not been done or where scanty evidence was put in by the Applicant as in this case, the Court can strike out the case for being devoid of merit.

Invitation by the Police for enquiry or investigation is not a threat to arrest or detain. It is the duty of citizens to cooperate with the Police so as to enable them carry out

their statutory functions of detecting and preventing crime.

Rushing to Court as soon as letters of invitation are received, alleging breaching of fundamental right will not aid any person.

The Applicant's application is devoid of merit and it is accordingly dismissed.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

05/02/2024

Parties absent.

Henry Onugwu, Esq. for the Applicant.

Chibuike E. Soronnadi, Esq. for the 1st and 2nd
Respondents.

E. J. Ayinmodi, Esq. for the 3rd Respondent.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
05/02/2024