

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 29<sup>TH</sup> DAY OF APRIL, 2024

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

SUIT NO. FCT/HC/CV/6258/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

MR. KUNDERA MUNKAILU MICHAEL ..... APPLICANT

AND

1. ECONOMIC AND FINANCIAL  
CRIMES COMMISSION

2. ABDULRASHEED BAWA

3. CALISTUS (I.O)

4. FIDELITY BANK PLC

}

... RESPONDENTS

**J U D G M E N T**

The Applicant's Originating Application dated 5/05/2023 but filed on the 26<sup>th</sup> against the Respondents is for:

(1) A declaration that the arrest and detention of the Applicant on the 15<sup>th</sup> and 16<sup>th</sup> May 2023 by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and their agents is unlawful, unconstitutional and a gross violation of the Applicant's Fundamental Rights as guaranteed under Section 35 (4) & (5) and 36 (1) & (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

(2) A declaration that the harassment, intimidation, arrest, detention and continued invitation of the Applicant by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the 15/05/2023 without being charged to Court is a gross violation of

the Applicant's fundamental right as guaranteed under Sections 34, 35 and 36 (1) & (5) of the 1999 Constitution.

(3) A declaration that the subject matter upon which the harassment, intimidation, arrest, detention and continued invitation of the Applicant is a matter already decided by the Court.

(4) An Order restraining the Respondents from the continuous invitation, threat to arrest, and detention of the Applicant.

(5) ~~N~~500 Million being exemplary and or aggravated damages.

(6) ~~N~~10 Million as cost of the application.

The application is supported by a Statement stating the names, address and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought.

The Applicant's Affidavit is sworn to by the Applicant, Kundera Munkailu Michael. He deposed that he is the title-holder of Plot C18/1570 situate at House 2 & 4 Street, M. A. Sanusi Street, Foreign Affairs Quarters, Gwarinpa, Abuja granted by the Honourable Minister.

He was issued with a Certificate of Occupancy with File No. TR/30225P dated 17/12/2009. That he never had any business with 4<sup>th</sup> Respondent or Bitumen Affairs Ltd.

That his right to peaceful possession came under serious threat from one Fatimah Mohammed and Anthony Nwodo both from the 4<sup>th</sup> Respondent (Fidelity Bank), Area 11 Shopping Mall (Efab Mall), Garki.

That immediately his attention was drawn to a purported offer of ₦100 Million LPO/BG Finance Line by Fidelity Bank on the 5/02/2019 after its alleged maturity with Bitumen Affairs Ltd. A copy is Exhibit B debunking such transaction while the said offer is Exhibit A.

That he did not enter into any loan agreement with 4<sup>th</sup> Respondent and never used his property as collateral. Exhibit C is another letter written to 4<sup>th</sup> Respondent. He later wrote to the Commissioner of Police. The letter is Exhibit D.

When there is no positive response, he filed an action in the High Court of the FCT. The Court process is Exhibit E.

That Judgment was entered in his favour and now an appeal is pending. That 4<sup>th</sup> Respondent still wrote a Petition against him.

He received a phone call from 3<sup>rd</sup> Respondent inviting him to appear in the 1<sup>st</sup> Respondent's Zonal Office located at Formella Street, Wuse.

He was detained after being confronted with the allegation made against him by the 4<sup>th</sup> Respondent which is the same already decided by the High Court of the FCT.

The 1<sup>st</sup> and 3<sup>rd</sup> Respondents refused to listen after informing them that the matter had been decided by the High Court. He was detained for two days.

That 3<sup>rd</sup> Respondent boasted he will go to prison if he refused to forfeit his title document to the 4<sup>th</sup> Respondent.

That 3<sup>rd</sup> Respondent boasted he will be transferred to Lagos Zonal Office where he will spend the rest of his life.

That he did not commit any criminal offence. That his arrest, detention, harassment, intimidation and threat by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is a breach of the fundamental right of the Applicant.

That he never received any loan from the 4<sup>th</sup> Respondent.

That he is on a life medical check. That he is 75 years old.

That his life is in imminent danger. That this Court is his last hope.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents filed a Counter Affidavit in reaction to the Originating Motion. It is sworn to by Aliyu Usman Wada on the 20/10/2023.



He is one of the Investigating Police Officers in respect of this matter. He deposes that the Applicant is a Director of Bitumen Affairs Ltd.

A copy of the Letter of Consent is EFCC1.

A copy of the Special Resolution is Exhibit EFCC 2.

That 4<sup>th</sup> Respondent addressed a letter to 1<sup>st</sup> Respondent against Bitumen Affairs Ltd wherein the Applicant is a Director. The Petition is Exhibit EFCC 3.

The Applicant was invited in respect of the matters raised in the Petition. The detention of the Applicant was in accordance with the provisions of the law.

That Applicant's fundamental right was not breached as he was granted administrative bail on 15/05/2023 but could not fulfil his bail condition.

The Applicant was not threatened but was only invited to tell his own side of the story. There was no threat to transfer Applicant to Lagos.

The Respondents were not informed that the matter had been litigated upon neither were they informed it was a subject of appeal.

That Applicant's stay in detention was less than 48 hours due to his inability to secure a reasonable Surety. That the application is in bad faith.

In Applicant's Further Affidavit, he deposed that he was only appointed a Director of Bitumen Affairs Ltd and never participated in any of its transactions with 4<sup>th</sup> Respondent.

That 4<sup>th</sup> Respondent knows the Director of Bitumen who applied and signed the purported loan facility granted Bitumen. Exhibits A – G are the Court documents.

The 3<sup>rd</sup> Respondent informed him that 1<sup>st</sup> – 3<sup>rd</sup> Respondents are not party to the suit. He was released after spending two days in custody.

I have read the Affidavit and considered the Written Addresses of Counsel.

Exhibit EFCC 3 is a letter written by 4<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent to investigate Bitumen Affairs Ltd titled “Obtaining ₦100 Million Invoice Discounting Facility Under False Pretence by Bitumen Affairs Ltd, Thom Wise Nigeria Ltd, DC Engineering Ltd, Refiner General Services Ltd and others.”

The Applicant is a Director of Bitumen Affairs Ltd. his property was allegedly used as collateral.

The 1<sup>st</sup> Respondent by Section 6 of the EFCC Act is empowered to investigate all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, encashment of negotiable instruments, computer credit card fraud, contract scam, etc.

The 1<sup>st</sup> Respondent is therefore duty bound to investigate the Petition.

The question germane for determination is:

**Whether the fundamental right of the Applicant was breached in the process of investigation.**

The Applicant was invited and detained. The Applicant deposes that the High Court of the FCT had delivered a Judgment in respect of the same matter hence the Police ought not to investigate the matter again.

The Applicant relies on a bundle of Court documents attached to the Further Affidavit. It is a civil case by the Claimant against three Defendants seeking some declaratory reliefs.

The Court entered a Default Judgment. The suit was filed by the Applicant herein against one OLDIGS Construction Limited, Bitumen Affairs Ltd and Fidelity Bank PLC which disbursed the said loan of ₦100 Million which the Applicant was alleged to have used his property to secure.

The 2<sup>nd</sup> Defendant in that case is the company that the loan was granted to.

The claim of the Claimant in that case who is the Applicant in this case is for the following reliefs:

(1) A declaration that the Claimant is the true and rightful owner of Plot C118/1570 situate at House 2 & 4 Street, M. A. Sanusi Street, Foreign Affairs Quarters, Gwarinpa, Abuja.

(2) A declaration that the use of the Claimant's title document by late Ladipo Ige without his consent to secure the sum of ~~N~~100 Million only from the 3<sup>rd</sup>

Defendant instead of Jaiz Bank Plc amount to a breach of the Memorandum of Understanding between the Claimant and the 1<sup>st</sup> Defendant.

- (3) A declaration that the Claimant is entitled to his title document in respect of Plot C118/1570 situate at House 2 & 4 Street, M. A. Sanusi Street, Foreign Affairs Quarters, Gwarinpa, Abuja.
- (4) An Order directing the Defendants, their servants, agents, privies to immediately release the title of the aforesaid house in their possession to the Claimant.
- (5) A perpetual injunction restraining the 3<sup>rd</sup> Defendant from putting up the Claimant's property for sale.



The Writ of Summons and all other processes in the aforesaid suit were served on the Defendants including Bitumen Affairs, the beneficiary of the loan and Fidelity Bank, the tender but they refused and or neglected to respond despite the enormity of the reliefs.

The Claimant herein and Applicant in this suit filed a Motion for Default Judgment. Even at that point, the Defendants failed to put up a defence. The Court thereafter entered Judgment.

The matter is said to be on appeal in the Court of Appeal. The 4<sup>th</sup> Defendant who failed to file a defence to the suit ran to 1<sup>st</sup> Respondent.

The Applicant by paragraph 15 of his Affidavit said he informed the 3<sup>rd</sup> Respondent who is an Officer of the 1<sup>st</sup> Respondent that the case has been adjudicated upon by this Court but they ignored him. He spent two days in the 1<sup>st</sup> Respondent's Cell.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents denied that the Applicant brought to their notice the fact that the case has been adjudicated by this Court.

That he also did not inform them that the matter is on appeal. I do not believe the 1<sup>st</sup> – 3<sup>rd</sup> Respondents. The 1<sup>st</sup> – 3<sup>rd</sup> Respondents allowed themselves to be used.

The 4<sup>th</sup> Respondent has not filed any Counter Affidavit. It knows, it ought not to have written the Petition. It knew about the Court processes and Judgment yet wrote to 1<sup>st</sup> Respondent to set the law in Motion against the Applicant.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents have no business arresting and or detaining the Applicant. Once the 1<sup>st</sup> – 3<sup>rd</sup> Respondents are shown that the case has been dealt with and on appeal, the Applicant would have been released.

Detaining the Applicant who is over 75 years old after being aware that the case he was invited for has been adjudicated upon and is now pending in the Court of

Appeal is to say the least, insensitive, unprofessional and grossly irresponsible.

It is glaring and clear that the fundamental rights of the Applicant has been breached. Impunity such as displayed by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents is condemnable.

The case succeeds. Judgment is entered in favour of the Applicant against the Respondents as follows:

1. It is hereby declared that the arrest and detention of the Applicant on the 15<sup>th</sup> and 16<sup>th</sup> of May 2023 by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and their agents for no just cause is unlawful, unconstitutional and a gross violation of the Applicant's fundamental right as

guaranteed under Section 35 (4) & (5) of the 1999 Constitution.

2. That the harassment, intimidation, arrest, detention and continued invitation of the Applicant by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents without being charged to Court is a violation of the Applicant's right under Section 34 and 35 of the 1999 Constitution.
3. That the subject matter upon which the harassment, intimidation, arrest and detention and continued invitation is predicated has been decided and now pending in the Court of Appeal.

4. That the Respondents, 1<sup>st</sup> – 3<sup>rd</sup> Respondents exceeded their boundaries as permitted by law.
5. The Respondents are hereby restrained from inviting, threatening to arrest or re-arresting and detaining the Applicant with respect to the subject matter pending the determination of the appeal in the Court of Appeal.
6. ~~N~~10,000,000.00 (Ten Million Naira) against the Respondents jointly and severally in favour of the Applicant.
7. ~~N~~2,000,000 (Two Million Naira) as cost of this action.

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HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC  
(HON. JUDGE)

29/04/2024

Applicant present.

Respondents absent.

Dr. O. U. Orji with M. R. Tseen, Esq. for the Applicant.

C. Obasi-Okon, Esq. for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.

Uche Ebeh, Esq. for the 4<sup>th</sup> Respondent.

**COURT:** Judgment delivered.

(Signed)

**HON. JUDGE**

29/04/2024