

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 7TH DAY OF NOVEMBER, 2024

SUIT NO.: CV/2910/2024

BETWEEN:

MRS. EUNICE NDIFREKE EKPO APPLICANT

AND

1. MR. NDIFREKE EKPO } RESPONDENTS
2. JELLYSON BASSEY }

JUDGMENT

The Applicant before this Court commenced this suit by way of Originating Motion on 21st June, 2024 against the Respondents for the enforcement of her fundamental rights pursuant to Order 2 Rules 1, 2, 3, 4 & 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Article 6 of the African Charter on Human and Peoples' Rights, Sections 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and under the inherent jurisdiction of the Honourable Court. The following reliefs were sought in the application:

- 1. A DECLARATION that the act of the 1st Respondent seizing/collecting/invading the Applicant's phone and hacking into it and collecting information therefrom without the*

Applicant's consent was a breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

2. *A DECLARATION that the 2nd Respondent's instigation of the 1st Respondent to seize/collect/hack into the Applicant's phone with the purpose of collecting information therefrom without the Applicant's consent constitutes a breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).*
3. *A DECLARATION that the 1st and 2nd Respondents are jointly and severally liable to the Applicant for breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).*
4. *AN ORDER of the Honourable Court directing/compelling the 1st and 2nd Respondents to pay to the Applicant the sum of N50,000,000.00 (Fifty Million Naira) for invasion/breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).*

The grounds upon which the application is sought are as follows:

1. *The Applicant is the wife of the 1st Respondent.*
2. *The Applicant's fundamental human right to privacy as guaranteed by Section 37 of the Constitution of the Federal*

Republic of Nigeria 1999 (as Amended) was infringed/breached by the 1st and 2nd Respondents.

- 3. The 1st Respondent through the instigation of the 2nd Respondent snatched the Applicant's phone and proceeded to a business center to hack/retrieve/printout private text and whatsapp messages and conversations of the Applicant with some of her friends.*
- 4. The 1st Respondent snatched/collected the Applicant's phone and hacked into it and printed out text and whatsapp messages from the Applicant's phone without her consent.*
- 5. The 1st Respondent's act of snatching the Applicant's phone and hacking into same and printing out the Applicant's telegraphic communication without her consent has occasioned an invasion of the Applicant's privacy.*
- 6. The Applicant seeks to commence the enforcement of her right to privacy for the unlawful and unauthorized invasion of the right to her privacy.*
- 7. The Applicant's right to enforce her fundamental right to privacy remains untainted.*

Filed alongside the application is a Twenty-nine (29) Paragraph affidavit deposed to by the Applicant, Eunice Ndifreke Ekpo, Exhibits marked as Exhibits A – C, a Statement of Fact made pursuant to **Order II Rule 3** of the Fundamental Rights (Enforcement Procedure) Rules 2009 and a Written Address.

The 1st Respondent on 23rd August, 2024 filed a 92-paragraph Counter-affidavit deposed to by the 1st Respondent, Ndifreke Ekpo and a Written Address while the 2nd Respondent filed a 21-paragraph Counter-affidavit and a written address on 31st July, 2024 deposed to by the 2nd Respondent

The Claimant, in response, filed two separate Further Affidavits and Replies on Points of Law addressing the 1st and 2nd Respondents. These were filed on 7th October 2024 and 12th September 2024, and were deposed to by Dennis Ageba and the Applicant, respectively.

The case of the Applicant in summary is as follows:

The Applicant asserts that she is legally married to the 1st Respondent and resides with him at Yah Wahab Estate, Abuja. She has filed a petition for dissolution of marriage, pending before the High Court of Justice, Apo.

On 2nd April, 2024, the 1st Respondent tried to use the Estate Chairman and the 2nd Respondent to prevent court officials from accessing the estate to serve legal documents and to help evict the Applicant and her children from the home. The Estate Chairman refused, citing a need to protect her rights. Enraged by her petition, the 1st Respondent returned home, threw her belongings out, and acted aggressively. When the Applicant sought safety in her children's room, the 1st Respondent broke in, forcibly dragged her and their daughter out, and attempted to flog her with a cane. The Estate Chairman and Chief Security Officer intervened, calming the situation until the next day.

At 6 a.m. on April 3, the 1st Respondent entered the Applicant's room, took her phone, and later called the 2nd Respondent, claiming to have begun carrying out their plan. The 1st Respondent brought in a carpenter, under the 2nd Respondent's guidance, to change the house locks, intending to lock the Applicant and her children out. Attempting to retrieve her phone, the Applicant followed him outside, drawing the attention of neighbours, including the 2nd Respondent, who took her to a neighbour's house while the 1st Respondent locked the house and left with her phone.

The Applicant had set her phone to record audio, capturing conversations that revealed the 2nd Respondent's role in arranging a business center visit where the 1st Respondent accessed her private data, copying messages and photos, and discussing a plan to erase her data entirely. The 1st Respondent also allegedly shared her private conversations with friends, using them to harass her social circle through complaints to the police.

Upon her phone's return, the Applicant discovered that the 1st Respondent had deleted evidence, which she later recovered from her phone's recycle bin.

The parties on 30th October, 2024 adopted their written addresses wherein the issue raised by the 1st Respondent is "*Whether having failed to make out a case to warrant the grant of the reliefs sought in this application, same ought not to be dismissed with substantial cost*" and the issue raised by the 2nd Respondent is "*whether the Applicant has made out a case for the grant of the reliefs sought in*

this application.” The Applicant did not raise any issue for determination by the Court.

After carefully reviewing the evidence and submissions of Counsel for all the parties of this case, I will adopt the issue raised by the 2nd Respondent as follows:

Whether the Applicant has made out a case for the grant of the reliefs sought in this application.

Before resolving the substantive application for the enforcement of Fundamental Rights, I shall consider the Preliminary Objection filed by the 2nd Respondent on 31st July, 2024 praying as follows:

1. *An order of this Honourable Court declining jurisdiction in this suit.*
2. *An order of this Honourable Court striking out or dismissing this suit in limine for being incompetent*
3. *And for such further order(s) of this Honourable Court as this Honourable Court may deem fit to make in the circumstances of this case.*

The grounds upon which the application is brought are as follows:

1. *This suit was not commenced by due process of law.*
2. *This suit is wrongly commenced in law, as it is not founded on a breach of Fundamental Rights but on a matrimonial dispute.*
3. *The 2nd Respondent is not a proper party to this suit.*

4. *The Applicant/Respondent lacks the locus standi to maintain this suit and has not disclosed a reasonable cause of action against the 2nd Respondent*
5. *This suit constitutes an abuse of Court process.*
6. *It serves the best interest of justice to grant this Application.*

In support of the Objection is a 6-paragraph affidavit deposed to by the 2nd Respondent and a Written Address.

The Applicant/Respondent in response filed a 17-paragraph counter-affidavit on 12th September, 2024 deposed to by the Applicant and a Written Address.

The 2nd Respondent filed an 11-paragraph Further-affidavit on 19th September, 2024.

The 1st Respondent did not file any response to the Preliminary Objection.

It is settled law, that in order to determine whether a Court has the requisite jurisdiction to entertain a matter before it, the process or document the Court has the duty to look at is the Statement of Claim or content of a petition or the affidavit in support of an Originating Summons or Motion, as the case may be. See M. DAHIRU NA-IBALE v. HARUNA GARBA(2018) LPELR-44126(CA)

It had been settled by a long list of cases that, in an application for the enforcement of fundamental rights, the Court must find out whether the breach of a fundamental right is the main plank or

claim in the application as decided in the case of *OLAITAN V. O.O.U & ORS* (2015) LPELR-41718(CA).

Upon a careful review of the reliefs sought in the Originating Motion, the affidavit evidence, and the exhibits annexed, it is evident that the primary reliefs pursued by the Applicant/Respondent pertain to the alleged infringement of her right to privacy. This violation purportedly occurred when her phone was forcibly taken by the 1st Respondent, allegedly at the instigation of the 2nd Respondent. All other matters raised—particularly the matrimonial issues emphasized by the Objector—serve merely as the context leading to the alleged breach of the Applicant’s fundamental rights and do not constitute the core issue before the Court.

The Objector’s assertion that the Applicant/Respondent lacks a cause of action is without merit, as the Applicant has sufficiently alleged that her fundamental rights were infringed upon at the behest of the 2nd Respondent/Objector. Accordingly, this contention is flawed, as it overlooks the Applicant’s claim of a rights violation instigated by the Objector.

The preliminary objection is without merit and is dismissed.

RESOLUTION OF THE SUBSTANTIVE APPLICATION

Any person who alleges that a provision within Chapter 4 of the 1999 Constitution has been, is being, or is likely to be violated in relation to them within any state is entitled, under Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to seek redress from a High Court in that state. The

said Applicant must in order to succeed in proving that his/her fundamental rights were breached prove to the satisfaction of the Court how it was breached as was decided in the case of OKAM v. UZOMA & ANOR(2023) LPELR-61280(CA).

The Applicant's grievance arises from the alleged violation of her fundamental rights by the 1st Respondent, purportedly acting on the instigation of the 2nd Respondent. She contends that the 1st Respondent forcibly took possession of her phone, accessed her private files, and communicated with individuals on her contact list. In support of these claims, the Applicant has submitted several documents as exhibits, including a flash drive containing two audio recordings purportedly capturing the 1st Respondent seizing her phone and a conversation between the 1st and 2nd Respondents.

Both Respondents have simply denied that the voices heard in the recordings belong to them, asserting that the recordings have been altered or manipulated.

The settled position of the law is that civil cases are decided on the balance of probabilities and on preponderance of evidence [Sections 134 and 136 of the Evidence Act, 2011 and EMEKA v CHUBA-IKPEAZU & ORS (2017) LPELR-41920(SC).

It is essential to bear in mind that Sections 135, 136, and particularly 137 of the Evidence Act provide that in civil cases, the initial burden of proving the existence or non-existence of a fact rests on the party against whom judgment would be given if no evidence were presented by either side, taking into account any

presumptions that may arise from the pleadings. If this party presents evidence that reasonably establishes a prima facie case, the burden shifts to the opposing party, who would bear the consequence if no further evidence is produced. This shifting of burden continues successively until all issues raised in the pleadings are addressed. This principle underpins the standard for deciding civil cases, which is based on the preponderance of evidence or the balance of probabilities. See *IWUANYANWU V. MINISTER OF AGRIC & WATER RESOURCES & ANOR* (2016) LPELR-40208(CA) and *AMALE & ORS V. MUSTAPHA*(2022) LPELR-56897(CA).

In *EZEMBA V. IBENEME & ANOR* (2004) LPELR-1205(SC) the apex Court held thus:

In civil cases, the phrase "burden of proof" has two distinct and frequently confused meanings. Firstly, it may mean the burden of proof as a matter of law and the pleadings usually referred to as the legal burden or the burden of establishing a case, secondly, the burden of proof in the sense of adducing evidence often referred to as the evidential burden. While the burden of proof in the first sense is always stable or static, the burden of proof in the second sense may shift constantly as one scale of evidence to or the other preponderates.

The Respondents have simply denied the authenticity of the recordings, without providing additional evidence for the Court to weigh on the scale of probability. Upon balancing the evidence presented by both parties, the Claimant's evidence carries greater weight, demonstrating her case on the balance of probabilities. In

my view, the Respondents' bare denial is insufficient to effectively challenge the authenticity of the audio recordings.

It was decided in the case of EYOP INDUSTRIES LTD V. EKONG(2021) LPELR-55837(CA) by SHUAIBU,JCA at (P. 25, para. A) that:

"Where in a counter-affidavit a respondent makes some feeble and shallow averments in denial of specific facts in an affidavit such averment are mere general denials which are ineffective as a challenge to serious averments made against him."

The audio recordings provide compelling evidence indicating that the 1st Respondent took possession of the Applicant's phone and accessed her private files with assistance from phone hackers, prompted by the 2nd Respondent. The 1st Respondent's claim in his Counter-affidavit that he purchased the phone for household use, and that the Applicant took it without his permission—is unsupported. Notably, in the audio recordings, particularly in his conversations with the 2nd Respondent, he repeatedly refers to the device as the Applicant's phone. He mentions how he obtained her phone to access her files, gather evidence against her, erase any evidence she holds against him, and identify her financial backers, without ever implying the phone belonged to him. In the audio recording, it was deduced that the 1st Respondent contacted a Lawyer who informed him that although the confiscation of the Applicant's phone was illegal, however desperate times call for desperate measures. The lawyer also advised him as follows "print them directly from her phone, beyond saving it somewhere, it is a cleaner form of evidence...". The 1st Respondent in the recording

also told the 2nd Respondent that “the Court will frown at it ... but we will use the technicality of desperate situation”. This is very unfortunate, as it goes to show that the 1st and 2nd Respondents already knew their actions were illegal and planned their defence ahead of time.

The question now is, has the forceful collection of the Applicant’s phone by the 1st Respondent on the egging on of the 2nd Respondent amounted to a violation of her fundamental rights to privacy.

Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states as follows:

37. The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

This provision underscores the importance the Constitution places on an individual’s right to personal space, free from unauthorized intrusion. Privacy, as enshrined in this section, is not only limited to physical spaces like homes but extends to all forms of personal communication and data. Therefore, any act that involves unauthorized access or interference with a citizen's personal belongings—particularly their digital communications or private files—could potentially infringe upon this right. The kernel of the provision of Section 37 of the Constitution is to my mind, that privacy of a citizen of Nigeria shall not be violated. Privacy to my mind can be said to mean the right to be free from public attention or the right not to have others intrude into one's private space

uninvited or without one's approval. It means to be able to stay away or apart from others without observation or intrusion. It also includes the protection of personal information from others. This right to privacy is not limited to his home but extends to anything that is private and personal to him including communication and personal data. See INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS V. NIMC(2021) LPELR-55623(CA).

In the present case, the 1st Respondent's deliberate act of confiscating the Applicant's phone and accessing her private files, reportedly encouraged by the 2nd Respondent who equally engaged the services of a carpenter to change the locks on the door of the home of the Applicant and the 1st Respondent, raises serious concerns about the erosion of this fundamental right. This act not only breaches the Applicant's entitlement to control her personal communications and data but also reflects a broader disregard for the constitutional protections guaranteed to Nigerian citizens.

On the award of damages, in fundamental rights action, damages automatically accrue once the Respondent is adjudged to have violated the fundamental rights of the Applicant. See SKYE BANK V. NJOKU & ORS (2016) LPELR 40447(CA).

Before concluding, I will address the statements made by the 1st Respondent in his Counter-affidavit, specifically in Paragraphs 22 to 24, as follows:

22. She severally bragged that she is in touch with powerful people within the judiciary including a female Senior Advocate

of Nigeria. She claimed that these people are assisting her in court actions to achieve her aim.

23. The Applicant told me that all her court cases against me will be assigned to female judges who will deal with me severely.

24. The Applicant made good her threats. The present action and the divorce proceeding initiated by her are both before female judges.

The Court questions whether the 1st Respondent, by making these assertions, seeks to insinuate that the judiciary is vulnerable to external influence or personal connections. Such an implication is grave, as it casts a shadow on the judiciary's independence and integrity, suggesting that judicial officers might be swayed by affiliations rather than upholding their duty to impartial justice. The Court notes that the assignment of cases and proceedings is governed by strict administrative protocols intended to ensure fairness, objectivity, and impartiality. The Court views any attempt by the 1st Respondent to undermine the credibility of the judicial process as both unfounded, disrespectful and detrimental to public confidence especially since these assertions are not substantiated with concrete evidence.

On the whole, the Applicant's suit succeeds and judgment is entered in her favour as follows:

1. I hereby declare that the act of the 1st Respondent seizing/collecting/invading the Applicant's phone and hacking into it and collecting information therefrom without the Applicant's consent was a breach of her fundamental right to

privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

2. I hereby declare that the 2nd Respondent's instigation of the 1st Respondent to seize/collect/hack into the Applicant's phone with the purpose of collecting information therefrom without the Applicant's consent constitutes a breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).
3. I hereby declare that the 1st and 2nd Respondents are jointly and severally liable to the Applicant for breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
4. I hereby make an order directing/compelling the 1st and 2nd Respondents to pay to the Applicant the sum of N3,000,000.00 (Three Million Naira) for invasion/breach of her fundamental right to privacy as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

HON. JUSTICE J. ENOBIE OBANOR

Hon. Judge

Appearances:

For the Applicant; Dickson Enema Omaiye, Esq.

For the 1st Respondent; Edidiong O. Usunguru, Esq.

For the 2nd Respondent; Ini-obong Ebiekpi, Esq.