

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 14<sup>TH</sup> DAY OF OCTOBER, 2024

SUIT NO.: CV/032/2023

BETWEEN:

MRS. GLORIA NWAOGU ..... APPLICANT

AND

1. THE NIGERIAN ARMY
2. MR. HUSSAINI (SOLDIER)
3. NIGERIAN ARMY HOUSING ESTATE RESPONDENTS
- RESIDENTS ASSOCIATION
4. POST SERVICE HOUSING DEVELOPMENT LTD

**JUDGMENT**

The Applicant before this Court commenced this suit by way of Motion on Notice filed on 16<sup>th</sup> November, 2023 against the Respondents for the enforcement of her fundamental rights pursuant to Sections 6 (6)(B), 35 (1), (5) & (6), 41 and 46(1)&(2) of the Constitution of the Federal Republic of Nigeria, 1999 as amended; Order 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Articles 6 & 14 of the African Charter On Human and Peoples' Rights (Ratification And Enforcement) Act 1983. The following reliefs were sought in the application:

1. *A declaration that the restriction of the Applicant's movement by the 2<sup>nd</sup> Respondent who doubles as the employee of the 1<sup>st</sup> Respondent and agent of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents on the 4<sup>th</sup> October, 2023 which resulted to the Applicant missing her hospital appointment is a violation of the Applicant's fundamental rights to liberty and freedom of movement as guaranteed by the 1999 Constitution (as amended) and the African Charter on Human and People's Rights.*
2. *A declaration that the detention and restriction of the Applicant's movement by the 2nd Respondent who doubles as the employee of the 1st Respondent and agent of the 3rd and 4th Respondents on the 4th October, 2023 which resulted to the Applicant missing her hospital appointment without the commission of crime or infraction of any provision of the law is unlawful, unconstitutional and false imprisonment.*
3. *A declaration that the purported collection of levy, inspection of payment receipt of service charge and restriction of one's movement within the Post Army Housing Estate by the 2nd to 4th Respondents is illegal and unconstitutional.*
4. *An order restraining all the Respondents especially the 2nd, 3rd and 4th Respondents from further restriction of movement, detention, impulsion of levy and inspection of service charge receipt from the Applicant and her family and the entire occupants of the Post Army Housing Estate.*
5. *An order mandating the Respondents to pay the Applicant the sum of N20,000,000.00 (Twenty Million Naira) as general damages for the unlawful restriction of movement and*

*detention of the Applicant without any just cause that made her missed (sic) her hospital appointment thereby causing the Applicant severe emotional trauma, escalation of the Applicant's health and severe shock.*

6. *And other order or orders as this Honourable Court may deem fit to make in the circumstance of this case.*

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

- i. *Non-presentation of hard copy of receipt(s) of service charge(s) cannot operate as a basis for the restriction of freedom of movement or curtail the Applicant's fundamental rights to liberty as guaranteed by the 1999 Constitution (as amended) and the African Charter on Human and People's Rights nor can it operate to justify the intimidation, restriction of movement and detention of the Applicant by the Respondents.*
- ii. *There is no commission of crime or infraction of any provision of the law by the Applicant to warrant the intimidation, detention and restriction of her movement and liberty by the Respondents.*

Filed alongside the application is a Fifteen (15) Paragraph affidavit deposed to by the Applicant, Gloria Nwaogu, four (4) Exhibits marked as "Exhibits SCR,MR and MR2, LA"respectively,a Statement of Fact made pursuant to **Order II Rule 3** of the Fundamental Rights (Enforcement Procedure) Rulesand a Written Address.

The 1st Respondent on 17<sup>th</sup> January, 2024 filed a 22-paragraph Counter-affidavit deposed to by Captain Ubong N. Nelson and a Written Address.

On 18<sup>th</sup> April, 2024, the 4<sup>th</sup> Respondent filed a 25-paragraph Counter-affidavit deposed to by Captain V.T. Dogonyaro and a Written Address.

Upon receipt of the Counter-affidavits of the 1<sup>st</sup> and 4<sup>th</sup> Respondents, the Applicant deposed to a 12-paragraph Further-affidavit supported by one (1) Exhibit marked as "Exhibit WHAPP" and a Reply on Points of Law on 9<sup>th</sup> July, 2024.

The 4<sup>th</sup> Respondent equally filed a Further and Better Affidavit on 18<sup>th</sup> September, 2024 once again deposed to by Captain V.T. Dogonyaro.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any processes before the Court and did not make an appearance.

Abridged facts of the affidavit and Further-affidavit of the Applicant are as follows:

The Applicant was stopped at the gate of her housing estate, Army Post Service Housing Estate, on October 4<sup>th</sup>, 2023 by the 2<sup>nd</sup> Respondent, who is an employee of the 1<sup>st</sup> Respondent and an agent of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, demanded proof of payment for the service charge from her.

She showed the 2<sup>nd</sup> Respondent an electronic copy of the payment receipt on her phone, but the 2<sup>nd</sup> Respondent insisted on the hardcopy of the receipt. She then explained that the hardcopy of the receipt was in her husband's car, which was inaccessible at the

time.

The Applicant suggested that the electronic copy and her driver's license could be used to verify her identity and allow her to go to her hospital appointment, which was an emergency but the 2<sup>nd</sup> Respondent refused to accept the electronic copy and insisted on the hardcopy, resulting in her being restrained and unable to attend her hospital appointment and therefore had her fundamental rights to freedom of movement infringed upon.

The counter-affidavits of the 1<sup>st</sup> and 4<sup>th</sup> Respondents are similar. Summary of the facts as deposed to by the 1<sup>st</sup> and 4<sup>th</sup> Respondents in their Counter-affidavit is that Mr. Hussaini (the 2<sup>nd</sup> Respondent) is unknown to them, either as employee or agent, and they cannot bear the liability for the alleged actions of the 2<sup>nd</sup> Respondent. The management of the housing estate employs a private security company to handle gate checks and payment status of residents, and service charge collection and enforcement is not their duty. The 1<sup>st</sup> Respondent averred that even if there was an employee of the 1<sup>st</sup> Respondent in the position of the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent cannot be held vicariously liable for their alleged acts or omissions and that routine checks conducted by personnel at the housing estate, including requesting proof of payment, are normal and do not infringe on any fundamental rights.

The 4<sup>th</sup> Respondent added that the estate has two (2) other alternative gates, so the Applicant's freedom of movement and liberty could not have been restricted in the circumstance.

The issue raised by the Applicant for resolution is as follows:

*Whether the Respondents have the powers in law to restrict one's movement or detain someone on the basis of payment of service charge receipt without any commission of crime or infraction of any provision of the law and whether the Applicant is entitled to the reliefs sought?*

The issue raised by the 1<sup>st</sup> Respondent is as follows:

*Whether from the reliefs sought by the Applicant and the facts disclosed in the supporting Affidavit, exhibits and the counter affidavit, and considering the circumstances of this case the Applicant has successfully made out any case and proved same against the 1st Respondent as to entitle her to the reliefs sought against the 1st Respondent.*

The issue raised by the 4<sup>th</sup> Respondent is as follows:

*Whether from reliefs and facts in the supporting Affidavit, the Applicant, has made out case against the 4th Respondent to be entitled to the reliefs sought.*

After carefully reviewing the evidence and submissions of Counsel for all the Applicant, the 1<sup>st</sup> and 4<sup>th</sup> Respondents parties of this case, I will proceed to frame the issue to be determined as follows:

*"Whether from the facts and evidence before the court, the Applicant's rights which are guaranteed under the Constitution have been infringed?"*

Under our legal system, any individual who claims that a provision within this chapter has been, is being, or is likely to be violated in relation to them in any state has the right to seek redress from a

High Court in that state, in accordance with Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

A party alleging that his Fundamental Rights have been breached must be prepared to 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).

In determining the question of whether the Appellants led credible and cogent evidence in support of their allegation of breach of their fundamental right to personal liberty, it is imperative to understand that fundamental rights of a citizen are not absolute. See ISIIYAKU & ANOR v. COP YOBE STATE & ORS(2017) LPELR-43439(CA).

The complaint of the Applicant revolves around the restriction of her movement by the 2nd Respondent a supposed employee of the 1st Respondent and agent of the 3rd and 4th Respondents on 4th October, 2023 at Post Army Housing Estate which resulted in the Applicant missing her hospital appointment is a violation of the Applicant's fundamental rights to liberty and freedom of movement as enshrined in Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

In considering the Applicant's claim that her fundamental right to freedom of movement was infringed upon by the actions of the 2nd Respondent, it is essential to assess whether the Applicant has sufficiently demonstrated the violation of this right, in accordance with established legal principles.

First, it is important to note that the burden of proof in cases alleging the violation of fundamental rights rests with the Applicant. This requires the Applicant to provide clear and credible evidence that the alleged violation occurred and that such a violation cannot be justified within the bounds of law. In this instance, the Applicant claims that she was prevented from leaving her housing estate and attending an emergency hospital appointment because the 2nd Respondent refused to accept an electronic copy of a service charge receipt as proof of payment.

However, the 2nd Respondent's actions in requesting proof of payment before granting access to or allowing movement from the estate is within the reasonable performance of duties relating to the management of the estate. It is not unreasonable for an estate's management to require valid proof of payment in a specific format—such as a hardcopy receipt—particularly where security and administrative protocols are in place to ensure that access is granted to those who have fulfilled their obligations and does not in itself rise to the level of a violation of the fundamental right to freedom of movement.

Moreover, the Applicant has not provided sufficient evidence to demonstrate that the refusal to accept an electronic receipt was unreasonable in the given context. Without such evidence, it is difficult to conclude that the 2nd Respondent's actions were anything other than a legitimate exercise of authority within the estate's administrative framework.

In light of these considerations, the Applicant has not met the burden of proving that her fundamental right to freedom of



movement was violated. The actions of the 2nd Respondent were conducted in line with established procedures, and the inconvenience suffered by the Applicant does not amount to a breach of her rights under the law. Therefore, the Applicant has not successfully demonstrated that her case merits judicial intervention or redress under the provisions of Section 46 of the Constitution.

In addition, the Applicant's claim that her fundamental rights were infringed upon must also be examined in light of the fact that she was able to attend her hospital appointment the following day, on the 5th of October, 2023, as stated in Paragraph 9 of her affidavit. This fact weakens her argument that she suffered any tangible or irreparable harm as a result of the events that transpired on the 4th of October, 2023.

The purpose of fundamental rights protection, particularly the right to freedom of movement, is to safeguard individuals from unjust and unreasonable restrictions that cause lasting harm or prevent them from conducting their lawful affairs. However, in this case, the Applicant has not shown that the refusal to accept an electronic copy of the service charge receipt caused her any lasting deprivation or substantial loss. On the contrary, the evidence indicates that although she was unable to attend her hospital appointment on the day in question, she successfully attended the following day without any mention of a deterioration in her condition or any significant adverse consequences as a result of the one-day delay.

The Applicant's freedom of movement was not unduly restricted, it was only temporarily delayed due to the estate's administrative requirements, which were legitimate and within the bounds of reasonable conduct which reinforces the position that the Applicant's fundamental rights were not violated.

It is my view that the mere inconvenience of being temporarily delayed or asked to provide a specific form of documentation does not equate to a violation of the right to freedom of movement, especially in the absence of any demonstrable harm or loss suffered by the Applicant. The claim, therefore, lacks the necessary elements to succeed.

The sole issue is therefore resolved against the Applicant and I find the application unmeritorious.

I so hold.

HON. JUSTICE J. ENOBIE OBANOR

Hon. Judge

Appearances:

For the Applicant; Edmond C. Ben, Esq.

For the 1<sup>st</sup> Respondent; K.C. Nwobi, Esq.

For the 5<sup>th</sup> Respondents; Oloniduhi Kayode Emmanuel, Esq.