

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 28TH DAY OF APRIL, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/1972/2022

BETWEEN:

OBIORA CHINONSO EZEFOR ----- APPLICANT

AND

NIGERIA POLICE FORCE ----- RESPONDENT

JUDGMENT

On the 15th September, 2022 the Applicant, Obiora Chinonso Ezeofor instituted this action against Nigeria Police Force claiming the following Reliefs:

- 1.** A Declaration that officers of the Respondent forcing the Applicant to enter into an agreement with Nuenic Global Netzeal Limited to supply 10, 300 litres of Diesel or more to Huawei's site and/or raise a waybill for the supply of the said diesel to the site as against the freewill of the Applicant is illegal, unlawful, unconstitutional, null and void because the action of

the officers of the Respondent violates his constitutional Right under Section 35, 36, 38 and 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. An Order of this Honourable Court restraining the said officers of the Respondent from enforcing and giving effect to the said Agreement with the said company and/or raising a waybill for the supply of the said diesel to the said site.
3. The sum of **Fifty Million Naira (₦50, 000,000.00)** as damages against the Respondent because of their action.
4. Such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

The application is predicated on 4 grounds which are:

- 1) The Applicant made a petition to an officer of the Respondent to investigate one Joshua Uzo Osita for offences of trust, cheating and obtaining by false pretence and in the course of the Respondent's investigation, the officers of the Respondent got to find out that shortage of 10, 300 litres of diesel was not supplied by the Applicant's company to Steady Growth Academy Limited (RC 1681005) of No. 8 Onyilofor Street, Umunono-Umuanum, Nibo, Awka South Local Government Area, Anambra State.

- 2)** That instead of officers of the Respondent to investigate the acts of Joshua Uzo and put culpability where culpability belongs, they are busy trying to force the Applicant to pay for the shortage of the said 10, 300 litres of diesel owed to Steady Growth Academy Limited, that is, forcing the Applicant to enter into an agreement with Nuenic Global Netzeal Limited to supply 10, 300 litres of Diesel or more to Huawei's site that is under the management of Steady Growth Academy Limited and/or raising a waybill for the supply of the said diesel to the said site.
- 3)** The Applicant was arrested by the officers of the Respondent on 17th March, 2022 as a result of missing 30, 000 litres of diesel complained by Uche Onuoha of Nuenic Global Netzeal Limited and on the application of the Applicant's sister's husband for his bail, Mr. Paul Uzodinma, the Applicant was granted bail by officers of the Respondent after forcing the Applicant to enter into the said agreement of paying for the shortage of the said 10, 300 litres of diesel owed to Steady Growth Academy Limited.
- 4)** That the Applicant has a free mind to enter into agreement by Section 38 and 39 of the 1999 Constitution of the Federal Republic of Nigeria and not to be coaxed into doing the bidding of anyone which violates his fundamental human Rights.

He supported the application with an Affidavit of 29 paragraphs. He also filed a Written Address in which he raised a sole Issue for determination which is:

“Whether he is entitled to the Reliefs sought.”

He submitted citing extensively **S. 46 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) that he is entitled to the Reliefs going by the said provision. That his Right has been violated by the Respondent as shown in the averment in **Paragraphs 2 – 26** of the Affidavit in support. That the Respondent has no right under the Constitution and Police Act to delve into business of his entering into Agreement with the said company – Neunic Global Netzeal Limited moreso, when the said contract was forcefully entered into against his will. That Police are not Debt Recovery Agent too. That acting as such is not within the calling of the Police constitutionally and legally speaking. He referred to the case of:

**Adewoye V. NPF & Ors
(2018) LPELR – 50016 (CA)**

That Police has no business going into civil dispute. He urged the Court to resolve the Issue in his favour and hold that he is entitled to the 1st & 2nd Reliefs as sought.

On Relief No. 3, the Applicant submitted that by the provision of **S. 35 (6) of the 1999 Constitution of the Federal Republic of Nigeria** he is entitled to

compensation in form of damage against the Respondent for violating his Right having established by his averment in **paragraphs 2 – 27** of his Affidavit that his Fundamental Right has been violated or infringed by officers of the Respondent. That by **S. 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) he is entitled to compensation. He urged the Court to so hold and grant all the Reliefs as sought.

Upon receipt of the application the Respondent filed a Counter Affidavit of 26 paragraphs. They attached 5 documents – Petition written against the Applicant on 15th March, 2022 addressed to Hon. Judge of Upper Area Court. Letter from Upper Area Court to the Deputy Commissioner of Police FIB Section dated 16th May, 2022; Statement of Applicant to the Police made on 17th May, 2022; Statement/Complaint of Onuoha Uchechukwu dated 16th March, 2022; Statement of Okete Augustin made on the 21st March, 2022 and Letter of Undertaking by Uzo Joshua Osita dated 17th May, 2022.

In their Written Address the Respondent raised 3 Issues for determination which are:

- (1) Whether the Applicant has made his case under FREP to be entitled to the Reliefs sought in this application?**

- (2) Whether the invitation and investigation of the Applicant for criminal conspiracy, theft,**

threat to life, criminal breach of trust, criminal intimidation, cheating person whose interest offender is bound to protect and obtaining money by false constitutes a violation of his Fundamental Rights?

(3) Whether this Court can restrain the 1st Respondent from the performance of their statutory duties?

Note: There is only One (1) Respondent in this case.

On Issue No. 1, the Respondent submitted that there is no infraction of the Applicant's Right as alleged in the light of the facts contained in the Counter Affidavit. The placed credence in the case of:

Fajemirokun V. CB (CL) Nigeria Limited

(2002) 10 NWLR (PT. 774) 95 @ 110 Paragraphs F – G

That the Applicant was invited by the Respondent for investigation. That he failed to depose to the fact on how his Right was violated or likely to be breached by the Respondent. That he was invited for criminal conspiracy, threat to life, breach of trust, cheating whose interest the Respondent is bound to protect. That he is under law to submit to investigation. That when Bail was granted he was supposed to report to the Police anytime his attention is needed. That by provisions of **S. 4, 23, 24, 27 & 29 of the Police Act 2020** the Police is empowered

to investigate any person suspected of having committed a criminal offence including the Applicant.

They further submitted that where the Respondent or its officer acted in accordance with the powers conferred on it by law as in the instance case, same cannot amount to violation of a person/Applicant's Fundamental Right. They referred to the cases of:

Mclaren V, Jennings
(2003) NWLR (PT. 808) 470

Jim-Jaja V. Commissioner of Police Rivers State
(2012) 2 NWLR (PT. 1231) 375 @ 390 Paragraphs B – C

That a person's Right as guaranteed under the Constitution is not absolute as it can be temporarily tampered with to prevent the commission of a crime. They referred to the cases of:

Ikem V. Nwogwugwu
(1999) 13 NWLR (PT. 633) 140 @ 149 – 150 Para G – H

Emeka Ekwunugo V. Federal Republic of Nigeria
(2001) 6 NWLR (PT 708) 171 @ 177

Okanu V. Commissioner of Police
(2001) 1 CHR 407 @ 411

That the Applicant's Fundamental Rights were not breached or likely to be breached by the Police. They urged Court to resolve Issue No. 1 in the Respondent's favour and hold that invitation and investigation of the

Applicant in respect of the alleged offence is lawful and not a violation of the Applicant's Fundamental Right.

On Issue No. 2, they submitted that the invitation of the Applicant was based on the receipt of complaint alleging criminal offences against the Applicant. That the action of the Respondent in that regard is proper and in line with the decision of the Court in the case of:

Fajemirokun V. CB (CL) Nigeria Limited Supra @ Pg. 95 @ 100

That the invitation of the Applicant was based on the strength of the complaint made against him and for investigation purposes. They also referred to the case of:

Okanu V. Commissioner of Police (2001) 1 CHR 407 @ 411

That a citizen's Right is not absolute. That under **S. 45 (1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) the Right can be tampered with for security purposes and for public interest and enforcing criminal law in the country and for protecting others. They referred to the case of:

Badejo V. Min. of Education (1996) 8 NWLR (PT. 464) 15 @ 19

Note:

The Respondent quoted cases from Ghana and Tanzania. I believe and very strongly too that the

Nigerian Courts have delivered several land mark cases on FREP matter which be relied on, cited and referred to. There is no point going from Courts of the Giant of Africa to Courts of other nations who are not Giants. Reference to Judgment of our Courts should be paramount and should be cherished especially by Government Security Agencies.

The Respondent further submitted that the liberty of the Applicant was tampered with because of the Complaint made against him. That the Court is enjoined to look at the allegation made against the Applicant to see if his Right was infringed. The referred to the case of:

**Nnamdi Azikiwe University V. Nwafor
(1999) 1 NWLR (PT. 585) 161 @ 136**

They urged Court to look at the document annexed as NPF1 – the Complaint made against the Applicant to which the Respondent conducted the investigation. They urged the Court to resolve the Issue No. 2 in the favour.

On Issue No. 3, they submitted that the Respondent is entitled to receive complaint as they did in this case relating to commission of crime. That where from such complaint there is reasonable ground to believe that a crime has been committed as in the present case, that the Respondent is bound to investigate same. That such action involves invitation of the Applicant, arrest and detention where the circumstance warrants. That a complaint was made against the Applicant and that the

Police was directed to investigate that. That there was reasonable ground that warranted the invitation of the Applicant by the Respondent in this case. That the investigation revealed that the Applicant committed the offence. That by this application the Applicant wants to evade justice. They referred to the cases of:

A-G Anambra V. Uba
(2005) 15 NWLR (PT. 947) 44

Dokubo Asari V. FRN
(2007) 152 LRCN Para F – K

They further submitted that there is no compelling cogent evidence attached by the Applicant to show that his Right was infringed upon. That the Affidavit of the Applicant is misleading and not credible. They referred to the cases of:

Onah V. Okenwa
(2010) 7 NWLR (PT. 1119) 512

A-G Anambra V. A-G Federation
(2005) 9 NWLR (PT. 981) 572

They urged Court to so hold and dismiss the Suit of the Applicant with substantive cost as it is frivolous, baseless, meritless and vexatious. And to also hold that the Respondent carried out its statutory duty in accordance with the law. That they did not infringe on the Right of the Applicant. They also want Court to award cost of **Ten Million Naira (₦10, 000,000.00)** against the Applicant.

Upon receipt of the Counter Affidavit the Applicant filed a Further Affidavit of 19 paragraphs. He attached some documents marked **OCE 1**. The Applicant also filed a Reply on Points of Law to the Written Address of the Respondent. He submitted a sole Issue which is:

“Whether the Respondent’s submission on their Written Address ought to be granted by this Court based on the issues it raised?”

The Applicant replied that Police has power to investigate crime. He submitted that the argument of the Respondent is misconceived in law and fact. That nothing stopped the Respondent from charging the Applicant to Court for alleged crime but they did not. That a criminal matter can go on simultaneously with a civil matter such as FREP matters. They referred to the case of:

**Abaver V. Alaga
(2018) LPELR – 46566 (CA)**

That the Respondent cannot call on the Suit to be dismissed when there is allegation that the Respondent had forced the Applicant to be part of a missing diesel. He wonders why the Respondent did not charge the Applicant to Court when they said that their investigation shows that the Applicant committed the alleged crime. That it is because the Respondent has nothing against the Applicant but rather they want to get him pay a civil dispute into the alleged criminal act of Joshua Ozo. That the Police did not Exhibit the Statement of Joshua Ozo

where he admitted that he is not a staff of the Applicant. They referred Court to the provisions of S. 167 of the Evidence Act 2011 which empowers the Court to presume that evidence which ought to be produced would, if not produced, be against the party who ought to produce it. They relied on the case of:

**Odunlani V. Nigeria Army
(2013) 12 NWLR (PT. 1376) 20**

That **S. 8 (2) ACJA** excludes the Police from civil disputes and arrest of a person merely on a civil wrong. That the Police ought to have arrested Joshua Ozo for posing as staff of the Applicant's company (which is not) all in order to defraud him. That **Police Act 2021** frowns at Police acting or meddling in civil dispute unless ordered by Court. They referred to the case of:

**Nwadiugwu V. IGP & Ors
(2015) LPELR**

That it is not in doubt that Bail was granted to the Applicant the same day but the action of the Respondent is a breach of his Right. They referred to the cases of:

**Pina V. Mai – anyway
(2018) LPELR – 44498 (SC)**

**Gusau & Ors V. Umezuruike
(2012) LPELR – 8000 (CA)**

**Ogbonna V. Ogbonna
(2014) LPELR – 22308 (CA)**

That by the decision in the case of:

Anogwie & Ors V. Odom & Ors
OW/337 of 2014
(2016) NGCA 90 of 23/3/2016

where it was held that undertaking made in Police to repay a debt is a breach of Fundamental Right of the maker of the Undertaking. They referred the Court to **EXH NPF 5** attached by the Respondent in its Counter Affidavit.

That a careful community reading and application of **Order II FREP 2009** and **S. 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) will show that an Applicant can file a civil action in a High Court to seek redress as the Applicant has done in this case. The referred to the case of:

A-G Kebbi State V. Jokolo
(2020) 4 NWLR (PT. 1715) 566 @ 593

That the Counter Affidavit of the Respondent is an abuse of Court Process which is meant to irritate the application. They urged the Court to resolve the sole Issue in Applicant's favour and grant all his Reliefs as sought.

COURT

Having summarized the stand of the Applicant and Respondent in this case, can it be said that the Applicant

is entitled to his Reliefs and has established that the Respondent infringed on his Right as claimed and that the Respondent's Counter Affidavit should be discountenanced and their claim for award of punitive damage not granted?

Or should the Court hold as the Respondent sought, that the Respondent did not violate the Applicant's Right as alleged, that the invitation and investigation by the Respondent is legal, lawful and constitutional in that Court cannot restrain the Respondent from performing their statutory duty?

It is the humble view of this Court that the action of the Respondent violated and infringed on the Right of the Applicant because the Respondent acted as Debt Collector and meddled into a matter/dispute which is civil in nature and borders on contractual relationship between the Applicant and Uchenna by forcing the Applicant to make an undertaking to pay and/or provide 10, 300 litres of diesel. Police is not a Debt Recovery Agency or a Business Management Agency/Consultant. The provision of **ACJA 2015** states that the Police should not meddle into civil matter. So also the provisions of **Police Act 2020 – S. 4, 23** and several others.

It is imperative to state that in as much as the Police has power to arrest and detain anyone suspected to have committed or about to commit or caught committing an offence, but such arrest should not be arbitrarily. It

should be based on solid ground and reason. So where someone is arrested just to please another person and to massage the ego of that person, such arrest is not within the ambit of the law and the Act. This is even more so where the reason for the arrest is based on issue of commercial nature. What the Police should have advised the person who wrote the complaint to do is to seek redress in Court more so when the alleged offence was on commercial transaction between the parties. It is not every complaint made that the Police should arrest and detain. So where such arrest and detention is on commercial issue, the Court will hold that it is illegal and outside the power of Police and if complained of, as in this case, it will be held by Court that it is an infringement on the Right of the party arrested. Allegation of infringement cannot only be based on where there is evidence of a person arrested, beaten purple and blue by the Police. There is the psychological trauma associated with such arrest and detention. Again, it is not only when one has spent days at the Police Station that it can be said that such person's Right has been infringed on. A few hours of torment psychologically can tantamount to torture and infringement on one's liberty and dignity of the human person of the person so arrested and detained and other Rights. Forcing a person to pay for what he did not steal is a violation of the person's Right. Even obtaining such Undertaking comes with forceful persuasion and threat too. That is why this Court holds that the action of the Respondent, forcing the Applicant

to write an Undertaking infringed on his Right. The Applicant was able to show and establish that fact and he is entitled to his Relief in that regard. So this Court holds.

This Court also holds that the Respondent's action in this case is illegal, unlawful and outside the statutory duty of the Respondent both under the Police Act and the Constitution too. The Respondent has no right to meddle into the dispute which is commercial in nature.

Ordinarily, all things been statutorily lawfully and legally equal, the Court has no power to restrain the Respondent, Police or any Law Enforcement Agency from carrying out its statutory duties, but where the Respondent as in this case had stepped outside its statutory duty boundaries, the Court has the powers to restrict and restrain them as well as other Security Agencies from doing so. This is part of the checks and balances in governance. All in order to ensure that there is no abuse of power by the Respondent and the like.

The Law Enforcement Agencies should not hide behind their statutory power to arrest and detain and use it as a guise to meddle into commercial dispute between citizens and act as Debt Recovery Agency or as Business Management Consultancy outfit all in the name of exercising their power to arrest, detain and investigate. Every arrest, detention and/or interrogation and investigation must be based on concrete evidence that

the dispute reported or petitioned about is based purely on criminal allegation not on mere flimsy allegation. Police should avoid being used by citizens who have one commercial dispute or the other with their fellow citizens as a Debt Recovery Agency or an Organ to settle malicious commercial contract which has gone sour. Such report based on such contractual relationship should be directed to the Court. Police should be bold to tell and advise such Complainant and Petition Writers that they should seek redress in Court and not in Police Station.

A closer look at the documents attached by both parties starting from the **OCE 1** attached by the Applicant, it shows that the Applicant, on the 22nd day of February, 2022 filed a Complaint against one Joshua Ozo based on cheating, criminal breach of trust and obtaining goods by false pretence. That Complaint was addressed to Deputy, Inspector General of Police. The content of **EXH OCE 1** is part of the facts in the averment in the Affidavit in support of the application. In it he called on the Respondent to investigate the said Joshua Ozo.

A closer look at the Agreement of 17th May, 2022 written by Joshua Ozo in which he, Joshua Ozo agreed to work for the shortage of the 10, 300 litres of diesel which was witnessed by the Applicant, the Complainant and one Ahmed Ndeji, shows that the Police acted as Business Management Consultancy Agency and meddled into a pure commercial dispute instead of advising the parties

to seek redress in Court or to go home and amicably settle their dispute, instead the Police made them write an Undertaking. They also ensured and gave the parties a return date which is 1st June, 2022 after they had reported back to the Special Tactical Squad Abuja on the 26th May, 2022 the outcome of their meeting. They even gave the parties a timeline within which to supply the shortage of 10, 300 litres of diesel which is on or before 31st May, 2022. After which they reported back to the Police Station. The content of the Undertaking puts no one in doubt. The said Undertaking was done at the Police Station before and in the presence of the Respondent. This document was attached by the Respondent as **EXH NPF 4**.

It is of utmost importance to mention and refer to the statement by the Depot Representative of Huawei, the company where the diesel was supplied and where it is alleged that the 2 missing trucks of diesel ought to be supplied.

In his statement the said Depot Representative of Huawei – Okeke Augustine said that on the given day, 22nd January, 2022 the Complainant – Uchenna Onuoha, the diesel vendor asked him on phone. It is imperative to state it verbatim as contained in the said statement of 21st March, 2022 made by Okeke Augustine – Depot Representative of Huawei. It reads thus:

“... asked me on phone how many trucks did Bossman (the company of the Applicant) have in the depot for him. I told him three (3). He said Mr. Joshua told him five (5) trucks in the depot. On my way out of the depot I met Mr. Joshua and Uche at the depot gate and Mr. Uche (the Complainant) asked me the same question of how many trucks Bossman have (SIC) in the depot for him in the presence of Mr. Joshua. I told him three (3) but Joshua said that he has five (5) trucks, that Mr. Ahmed (one of the Witnesses to the Undertaking) will load two (2) out of the five (5) trucks ...”

The above put clearly who is owing what especially the fact that ab initio Uche knew that Joshua had plans with two (2) trucks which he had stated in the presence of Uche that Ahmed will load. So Uche cannot fame ignorance of the tactic of Joshua when he, Uche met him at the depot and he, Joshua told him and confirmed to Uche that five (5) trucks is from Bossman for the Huawei supply. The Complainant was in the know about the trucks in issue. He should have ensured he secured the supply for the two (2) trucks since he was at the depot. After all, the Applicant’s company had five (5) trucks at the depot that day but the Applicant was not at the depot, the Complainant was. The same Complainant called Augustine to ask about whereabouts of Joshua.

All in all, once a complaint is made alleging infringement of Fundamental Right, what the Court considers is whether by the action complained of, the Respondent has in any way breached the Fundamental Right of the Applicant. Any other claim is ancillary. Once, after due consideration of the fact in support of the allegation, there is element of infringement of the Right as alleged, the Court will hold that such person's Right has been infringed or about to be infringed. Any other Order given is ancillary and consequential.

From all indication the Undertaking latched out of in which the Applicant acted as a Witness glaringly showed that the Police acted as Debt Recovery Agency which they are not. It showed that the sole aim of making the complaint to the Police and the orchestrated arrest and detention of the Applicant for some hours on 17th March, 2022 is to force the Applicant to agree to refund the missing two (2) trucks of diesel of part thereof – 10, 300 litres of diesel. It also shows that Police acted outside the purview of their statutory powers which makes their action an infringement on the Right of the Applicant as the arrest and detention was unlawful and uncalled for. The Respondent knows that their action is illegal that is why they did not charge the Applicant to any Court till date.

It is high time Police and like Government Agencies hands-off commercial disputes otherwise they will be bearing the punitive cost damage consequences that

come with the violation of citizens' Right as enshrined in **CAP 4 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). The action at the Upper Area Court is an afterthought. So this Court holds.

All in all, the Applicant has proved and established that the action of the Respondent violated his extant Right in this case. He is therefore entitled to the Reliefs as sought. He is also entitled to be paid compensation as provided by the Constitution. He is right in instituting this action in a High Court and to seek redress too.

The application is meritorious and the Reliefs are granted to wit:

Reliefs 1 and 2 granted as prayed.

The Respondent is to write a letter of apology to the Applicant and in addition pay the Applicant the sum of Fifty Thousand Naira (₦50, 000.00) only as damages for the infringement on his Fundamental Right.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2023 by me.

K.N. OGBONNAYA
HON. JUDGE