

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 21ST DAY OF JUNE, 2024

MOTION NO.: GAR/MN/1141/2024

BETWEEN:

SHUAIBU MUHAMMED APPLICANT

AND

1. THE COMMISSIONER OF POLICE
FCT POLICE COMMAND
2. O/C ANTI VIOLENCE CRIME SECTION,
STATE CID DS FCT ABUJA RESPONDENTS

JUDGMENT

DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR

By way of a Motion on Notice dated the 22nd of May, 2024 and filed on the 23rd of May, 2024, brought pursuant to Sections 34, 36 of the Constitution of the Federal Republic Of Nigeria 1999 (as amended) and Section 32 (1), (2) and (3) of the Administration of Criminal Justice Act (ACJA) 2015 and under the inherent jurisdiction of the Honourable Court, the Applicant is praying the Court for the following Reliefs:

1. An order of this Honourable Court direct (sic) the Respondents to produce the Applicant in the custody of Anti-Violence crime section state CID FCT Abuja.

2. AND For such order or further orders as this Honourable Court may deem fit to make in this case.

Supporting the application is an affidavit of 21 paragraphs deposed to by Mustapha Liman, the elder brother of the Applicant. He deposed to the fact that the Applicant was arrested on March 26, 2024, at Apo Legislative Quarters, Zone 'D' First Gate, FCT, Abuja, by the Respondents. The arrest was linked to an incident involving Ashiru Bako and his gang, who allegedly robbed Retanary Hotel in Garki, FCT Abuja, and killed one Mallam Hawal.

He further deposed to the fact that Ashiru Bako used Mallam Hawal's mobile phone to transfer ₦3,000,000 into the Applicant's Guaranty Trust Bank (GTB) account. The Applicant, a seller of clothes in Abuja, had sold clothes worth ₦200,000 to AshiruBako, who then transferred ₦3,000,000 using someone else's account number. The Applicant mistakenly believed he received ₦300,000 instead of ₦3,000,000. Upon realizing the error, he transferred ₦2,800,000 back to AshiruBako's account.

He stated that the Applicant has remained in custody due to the transfer made using the deceased's mobile phone. Although the Point of Sale (POS) operator involved was arrested and later granted bail, efforts by the Applicant's family to secure his release have been unsuccessful. The Applicant, currently held by the Anti-Violent Crime Section in Abattoir, FCT Abuja, maintains his innocence, asserting he did not commit any crime or participate in the alleged criminal activities.

In the Written Address aiding the application, the Applicant's Counsel proposed an issue for determination as:

Whether the Respondents have legal right by keeping the Applicant in their custody since 26th day of March 2024 without a formal trial.

In his address, he highlighted that the Applicant has a constitutional right to be taken to court within a reasonable time and that Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 ensures that any determination of a person's civil rights and obligations, including any legal actions against them, must be conducted with fair hearing within a reasonable time by an independent and impartial Court. He added that since the Applicant's arrest on March 26, 2024, by the Respondents and subsequent detention by the Anti-Violence Crime Section at Abattoir, FCT, Abuja, there has been no formal trial, which he deemed unreasonable.

He referenced Section 35(4) of the Constitution, which mandates that any person arrested or detained must be brought before a court within a reasonable time. Specifically, it states that a person in custody must be tried within two months, and a person released on bail must be tried within three months. If these conditions are not met, the detainee should be released either unconditionally or on conditions ensuring their appearance for trial.

He submitted that efforts to secure administrative bail for the Applicant from the Respondents were unsuccessful. He cited the case of ASARI DOKUBO V. FEDERAL REPUBLIC OF NIGERIA (2007)ALL FWLR {PT. 375} and urged the Court to grant the application.

The Respondents failed and/or refused to make an appearance in this case neither did they file a response despite being served with the application.

Having scrutinized the processes filed before this court, I shall present the issue for the determination of the Court as follows:

Whether based on the facts presented before the Court, the Court can grant the reliefs sought by the Applicant.

As previously mentioned, the application is neither contested nor disputed. Nonetheless, this Court will review the evidence provided by the Applicant and determine whether it justifies granting the application.

Every citizen is entitled to the rights of freedom of movement, liberty, and the dignity of their person as enshrined under Chapter 4 of the Constitution. However, these rights are not absolute. They can be curtailed in accordance with legal procedures designed to uphold law and order or to fulfill a Court order. These restrictions must be implemented in a manner that is lawful, necessary, and proportionate to the intended purpose of maintaining public safety, order, and the administration of justice. See Section 35 (1) (a) to (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and EZIEGBO & ANOR v. ASCO INVESTMENT LTD & ANOR(2022) LPELR-56864(SC). Section 35 (1) (c) of the 1999 Constitution stipulates that a person's liberty can be curtailed if there is a reasonable suspicion of his having committed a criminal offence.

It is indisputable that under Section 4 of the Police Act, the police are mandated to prevent and detect crimes, apprehend offenders, maintain law and order, and safeguard life and property. See AKINRUTAN v. MAFIMISEBI & ORS(2023) LPELR-60516(CA).

I shall at this point find support in the case of UBA PLC & ORS v. DURUNNA(2015) LPELR-25625(CA)wherein it was decided by FREDERICK OZIAKPOHO OHO, JCA at (Pp 28 - 29 Paras C - D) that:

"The Police we all know are empowered under Section 4 of the Police Act, Cap 359 LFN 1990 to carry out a number of statutory functions for the benefit of Society including the enforcement of all Laws and regulations with which they are directly charged. But that does not require the Police to make indiscriminate arrests before settling down and conducting investigations into allegations made. This practice of making arrests first before looking for evidence in a manner of speaking is like placing the "cart before the horse" instead of doing it the other way round. The statutory duties of the Police as encapsulated in Section 4 of the Police Act, Cap 359 LFN 1990 can only be meaningfully carried out after proper investigations are carried out, and not before especially when the call of duty is likely to involve the making of arrests. Under proper Police protocols investigations should precede arrests and not the other way round and thus this Court will not hesitate to declare wrong a practice where the Police would arrest first and then commence investigations later. The Supreme Court condemned this practice of getting persons arrested upon flimsy and sometimes none existent reasons as the Police have often done in Nigeria in the case of FAWEHINMI vs. I. G. P. (2002) 7 NWLR (pt. 167) at page 606, where UWAIFO, JSC. (as he then was) had this to say; "...In proper Police investigation procedure, it is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest let alone caution a suspect before the Police look for evidence."

Returning to the matter at hand, the affidavit accompanying the Motion indicates that the Applicant was apprehended by the Respondents on March 26, 2024, under suspicion of committing a crime, and has remained in their custody ever since without being offered administrative bail. Furthermore, the Respondents have declined to bring charges against him in court.

The Applicant has been in the custody of the Respondents for about three (3) months without trial or bail, and this offends the provisions of *Section 35(4) of the 1999 Constitution as amended which states:*

- 4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –*
 - a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or*
 - (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.*

The law does not give the Police unbridled power to deprive citizens of their liberty while the case against them is still being investigated. See EVANGELIST BAYO JOHNSON V. E. A. LUFADÉJU & ANOR (2002) 8 NWLR (PT. 768) PG 192 at 218 B - C. See OKEKE v. IGP & ORS(2022) LPELR-58476(CA).

On the strength of the above provisions of statute and case law and more so as the Respondents did not challenge the evidence of the Applicant, this Court holds that the application is meritorious and orders as follows:

The Respondents are hereby ordered to either conclude their investigations and charge the Defendant to Court within seven (7) days or release him forthwith without conditions.

HON. JUSTICE J. ENOBIE OBANOR
Judge

Appearances:

For the Applicant; Ahmed Muhammed, Esq.

For the Respondents; No representation