

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

THIS TUESDAY THE 24TH DAY OF OCTOBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/130/2024

BETWEEN:

CHIEF MRS.DORCAS ADEYINKA.....PLAINTIFF

AND

NIGERIAN POLICE FORCE & 1 OR.....DEFENDANTS

JUDGMENT

The applicant filed the instant originating motion for the enforcement of her fundamental human right. The originating motion was dated 13/05/2024 and filed on the 14/05/2024 and is brought pursuant to Section 34, 35 (1), 37, 44 and 46 of the 1999 LPN (as amended) order 11 rule 1 of the fundamental rights (enforcement of procedure) rules 2009 and order 1, 2, 4, 5, 6, , 9 (1) (A) (B) (C) (D) of the African charter on human and people right (enforcement and ratification) Act Cap. A9 11, 2004 and under the Inherent Jurisdiction of this Honourable court. The applicant prayed this court for the following reliefs:

1. A DECLARATION of this Honourable Court that the acts of the 1st Respondent under the watch and authority of the 2nd Respondent to wit; declaring the Applicant wanted vide a publication with an attached name, profile and picture of the Applicant on the 12th day of May, 2024 without an express Order of Court of competent jurisdiction and consequently posted and circulated

same on its social media platform to the general public is unlawful, unconstitutional and a flagrant breach of the Applicant's fundamental right as enshrined Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and the relevant provisions of the African Charter on Human and Peoples' Rights as well as the Universal Declaration on Human Rights.

2. A DECLARATION of this Honourable Court that the continuous acts of harassment, intimidation and threatening to re-arrest and detain the Applicant by the officers of the 1st Respondent under the watch and authority of the 2nd Respondent despite having being granted bail and released to a reliable surety by the Respondents, is unlawful, unconstitutional and tantamount to a likelihood of infringement on the Applicant's fundamental right to personal liberty as enshrined in Section 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and the relevant provisions of the African Charter on Human and Peoples Rights as well as the Universal Declaration on Human Rights

3. AN ORDER of this Honourable Court directing, mandating and compelling the Respondents, to immediately and forthwith revoke, delete, remove and bring-down from all their Online social media platforms, the illegal and unlawful posts made by the Respondents by which the Applicant was declared wanted without an Order of Court of competent jurisdiction.

4. AN ORDER of this Honourable Court directing, mandating and compelling the Respondents, to immediately and forthwith lift the restrictions and lien placed on the Applicant bank account to wit; Bank name: GTBANK, Account Number: 0875779318 Account name: DorcasOlukemiAdeyinka.

5. AN ORDER of Perpetual Injunction restraining the Respondents, whether by themselves, agents, privies, allies, and/or anybody acting for and on behalf of them from further arresting, detaining, assaulting, harassing, intimidating and threatening to arrest and detain the Applicant in connection with the subject matter of this suit.

6. AN ORDER of this Honourable Court directing, mandating and compelling the Respondents jointly and severally, to pay the Applicant the sum of N100, 000, 000 (One Hundred Million Naira) as exemplary, aggravated and punitive

damages for the unlawful acts of the Respondents to wit; declaring the Applicant wanted without an express Court Order thereby melting out degrading treatment on the Applicant and consequently tarnishing the image of the Applicant and exposed the Applicant to public ridicule and mockery.

7. AN ORDER of this Honourable Court directing that the Respondents to tender public apology on all their Online Social Media Platforms and at least Two (2) National Dailies to the Applicant for unlawful violation of the Applicant's right.

8. AND SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstance.

And the grounds upon which the application is presented are as follows:

1 – 36. And the statements in support of application and the affidavit upon which the application is brought to by one Rachel Monday of No. 24b GnassingbeEyadima Street, Asokoro – Abuja of 13 paragraphs annexed to the exhibits marked as Exhibit A, B, C and D and a written address of 19 pages.

The learned counsel for the applicant Sunday Adebayo Esq also filed a written address which he adopted as his oral submission.

In their written address, learned applicant's counsel raised two (2) issues for determination as follows:

- 1. Whether the applicant's fundamental rights has been breached by the respondent.***
- 2. Whether the applicant is entitled to all the reliefs sought as claimed in this application.***

Before I proceed to the issues so formulated I will first of all dwell on the issue of none filing of counter affidavit by the respondent as it is clear from the record of the court that the respondent was duly served with the originating motion on notice with hearing notices and the endorsed copies which were filed by the bailiff of this court. However, the respondent elected not to file any response to the originating motion and that the applicant proceeded with hearing.

It is trite law that, failure to file a counter affidavit by a party against whom allegations of facts have been made does not mean that the court will adopt the

stated of facts as contained in the affidavit as established truth and proceed to grant the order sought by the party that has filed the affidavit, such an affidavit notwithstanding that it is evidence must be cogent and compelling and provide unshakable factual support for his application in order to attract a favourable ruling. Ruling in such a situation will not be entered for the applicant as a matter of course. See *United Bank of Africa Plc Vs Lawal Osula* (2003) FWLR (Pt 178) 1080 at 1099 paragraph A – B.

It is also trite that, a deposition in an affidavit in the absence of any counter affidavit challenging same are deemed as true and established. See *Falana Vs Bello* (1995) 9 NWLR (Pt 418) 182, *Buhari Vs Obasanjo* (2005) 2 NWLR (Pt 910) 241.

Thus, the legal implication of failure to counter, contradict or challenge a deposition in an affidavit is that the court will be worthy to act on such unchallenged facts as proven. See *Eye V FRN* (2016) 15 NWLR (Pt 7534) at Page 31 Paragraph F – G.

It is also the law that the presumption that where facts deposed to in an affidavit are unchallenged or uncontradicted, those facts will be deemed proven is merely the general rule. It does not hold true in all situations. It is also the law that for the above general position to hold life, the facts on the affidavit must be true and they must be able to stand up to the scrutiny of the court as regards their integrity. See *N.D.I.C V Ette* (2016) 8 NWLR (Pt 1514) 345 at 367 paragraph A – B.

I hold bold to state that there is no rule stating that it is mandatory to file a counter affidavit in all cases. I say no more.

Now to the substantive issues raised for determination of this application. On the first issue for determination to wit whether the applicant's fundamental rights has been breached and is equally to be breached by the respondent?

On this it is the argument of the applicant's counsel that, the acts and conducts of the 1st Respondent's officers who disgracefully and inhumanly declared the applicant wanted vide a publication dated the 12th day of May, 2024 with an attached name, profile and picture of the applicant and caused same to be published and circulated on social media platforms to the view of the general public is tantamount to an infringement of the applicant's right to dignity.

The counsel went further to refer the court to Article 5 of the African Charter on Human and people's right on the protection of the dignity of every human being. The article provides thus:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel or degrading punishment and treatment shall be prohibited”

On this stated that, the 1st respondent's officers disdainfully humiliated and exposed the applicant to public mockery by virtue of the acts of declaring the applicant wanted on social media in the eyes of the business partners, foreign associates, family and friends as well as the general public and labeled the applicant a criminal despite the fact that the applicant is presumed to be innocent until proved fully of any crime.

The counsel also made reference to the Administration of Criminal Justice Act, 2015 which makes provision for the justice system in a criminal matter. That the combined provision of Section 41, 132 and 133 of the Act is to the effect that only a court of law can declare a person wanted and issue warrant against a suspect. That the respondent flagrant disobedience to the above provision of the law declared the applicant wanted without any court order against the spirit and intention of the law. On this urged the court to declare the acts and conduct of the 1st Respondent under the watch and authority of the 2nd Respondent against the applicant as unlawful, unconstitutional, null and void.

On the issue of the applicant's right to liberty, it is the argument of the applicant's counsel that, it is without doubt that the deprivation of any citizen's rights no matter how short amounts to an infringement of the person's rights as guaranteed under the 1999 LFN (as amended) on this referred the court to Section 35 of the CFN 1999 (as amended) Subsection 4 which provides thus:

“Any person who is arrested or detained in accordance with Subsection (1) (1) of this Section shall be brought before a court of law within a reasonable time, once if he is not tried within a period of “

Also Subsection (5) of Section B5 provides thus:

“In the case of an arrest on detention in any place where there is a court of competent jurisdiction within a radius of forty kilometer a period of one day; and”

On this it is the argument of the applicant’s counsel that the applicant was initially arrested, detained and maliciously prosecuted in Lagos by the respondent. That the applicant was further printed to the respondent’s office at Abuja alongside for associates... where she was further detained for several hours before being released to a reliable surety on bail. That unfortunately, the respondents have connived to make several efforts glaringly aimed at further arresting and detaining the applicant under the guise of investigation. That, the respondents have embarked on this ill mission and that has led them to declaring the applicant wanted thereby subjecting her to public ridicule. On this submitted that, in the instant acts of the respondent is to further arrest and unlawfully detain the applicant and same is tantamount to alikelihood of infringement on the applicant’s right. On this referred the court to the following cases. Jim-Jala V C.O.P where the court held thus:

“A Nigerian citizens is absolutely entitled to his freedom and cannot be deprived of it until and unless due process of law is meticulously observed”

The court further held that:

“Under the rule of law which Nigerian now operates, it is the bounden duty of the poly or the detaining authority to justify their action which infringes on the fundamental rights of law abiding citizens, arbitrary use of power is no longer the norms”

Also the case of OnyiriohaVs I.H.P (2009) 3 NWLR (Pt 1128P where the Court of Appeal held thus:

“A Nigerian citizen is entitled to his god given natural right to be free from incarceration save in accordance with all the land, this is the constitution of the FRN and other relevant legislations which are not inconsistent with the forms”

Based on the above submits that the applicant is absolutely entitled to herright which no person or authority has power to deprive her of, except with one process.

On the right to property, submits that from the facts deposed to in the affidavit in support, the respondent’s bank account has been compulsorily and unlawfully placed under restriction without a valid or subsisting court order since 7th day of

March, 2024 till date and the applicant has been subjected to financial restraint and has been unlawfully denied an access to her money to fund her basic needs and daily routine.

I have carefully read the submission of the learned counsel to the applicant, cases cited and status referred to, on this I wish to state that, generally, human rights are the basic entitlements of all human beings in any society. They pertain to humans by virtue of their humanity. The Apex court in *Rensom-Kuti and Ors Vs A.G Fed* (1985) LPELR – 2940 (SC) held as follows:

“...what is the nature of a fundamental human right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself it is a primary condition to a civilized existence”

Thus, a court called upon to enforce and protect the human right of a person must appreciate that it has a sacred duty to perform not only to the claimant but to all humanity. The correct approach therefore in a claim for the enforcement of fundamental human right is to examine the reliefs sought, the grounds for such rights and the facts relied upon where the facts relied upon discloses a breach of the fundamental rights of the applicant as the basis of the claim, then there is redress through the enforcement of such right under the fundamental right (Enforcement Procedure) rules. See *Sea Trucks (Nig) Ltd Vs Anigboro* (2001) LPELR – 3025 (SC), *Tukur V Gov of Taraba State* (1997) 6 NWLR (Pt 570) 549.

The law is settled that an applicant for the enforcement of his fundamental rights under Chapter iv of the Constitution has the initial onus of showing that that the reliefs he claims comes within the purview of fundamental rights as encompassed by Section 33 – 45 of the Constitution of the federation of Nigeria 1999 (as amended). This is borne out by the principle of Section 46 of the Constitution.

In the instant case, the applicant alleged that in March 2024, that individuals threat against the applicant instigated the officers of the 1st Respondent to place restriction on the applicant’s bank account and maliciously instigated the police to institute a criminal charge against the applicant and her fellows before the Chief Magistrate Court sitting at Yaba Lagos State. That the said charge was struck out for lacking in merit and the applicant was subsequently discharged.

Furthermore that the individuals resorted into cyber stalking and harassment against the applicant and caused the applicant's nude to be posted and circulated at their social media platform. The applicant who instructed her lawyer to write a petition to the office of the 2nd Respondent, the said petition were redirected to the officers of the 1st Respondent in Abuja. The applicant alongside two of her associates were invited to the I.G.P Monitoring Unit FCT Abuja by the respondent and were drilled and detained with several questions regarding the allegation against them and made to write statement and were later released on bail with further instructions that the officers of the respondent in Lagos would call the applicant and other people involved to resolve the matter in Lagos.

That a week after being granted bail, the applicant received a Whatsapp message from one Chinedu one of the officers of the 1st Respondent at the I.G.P Monitoring Unit in Abuja on the 30th day of April, 2024, invited the applicant to report to their Abuja office on the 2nd of May, 2024 that the said invitation came barely some hours after the publication regarding the Applicant's Chieftaincy event scheduled for the 11th day of May, 2024 was posted and circulated in social media.

That the applicant who was under medical observation by her private doctor responded to the Whatsapp chat by replying the said Chinedu of the applicant's medical appointment scheduled for the same 2nd of May, 2024. The said Chinedu upon seeing the applicant's response replied that the applicant's surety might be arrested and detained.

The counsel further stated that, apart from inconclusive Whatsapp chats between the said Mr. Chinedu and the applicant, there was no formal invitation extended to the applicant for her to appear before the respondents.

That the 1st respondent under the watch and authority of the 2nd respondent posted a publication on her social media platforms on the 13th day of May, 2024 wherein the respondent declared the applicant wanted with an attached name, profile and picture of the applicant and that since the publication by the respondent, the applicant has been exposed to mockery, degrading treatment and public ridicule both on and off the cyber and social media space which has equally drawn the attention of the applicant's relatives and business partners.

The learned applicant's counsel further submitted that, the acts of the respondent to wit declaring the applicant wanted without an express order of court of competent

jurisdiction and causing the said publication containing the name, profile and picture of the applicant to be posted and circulated on their social media platforms to the year.....of the whole world is tantamount to degrading treatment and public ridicule and same is unlawful, unconstitutional and amounts to infringement on the applicant's fundamental rights.

The respondent as stated earlier did not file any counter affidavit to deny, challenge or controvert the facts contained in the affidavit. The law is that where an affidavit is not challenged by a counter affidavit, the facts deposed to in the affidavit remain unchallenged. Further, the law is settled that facts in an affidavit not challenged nor controverted and not contradicted by a party are deemed admitted by him unless such facts on the face of them will lead to absurdity of acceptance as being the truth of what they try to establish. See Ade Rivers State V Udel (2006) 7 SC (Pt 11) Pg 81, Zenith Bank PlcVsBankolasThut... Ltd & Anor (2011) LPELR – 9064 – CA

Now the question that begs for an answer is whether the applicant's fundamental right guaranteed under the 1999 LFN (as amended) has been breached?

It is pertinent to state at this juncture that, the fundamental right of a citizen guaranteed under Chapter iv of the 1999 CFN are not absolved. There is no doubt that the respondent and the police have unaltered powers for the arrest, detention and investigation of person(s) suspected to have committed a crime or an offence pursuant to Section 35 (1) (C) of 1999 LFN and Under the Administration of Criminal Justice Act, 2015. The police in the legitimate Discharge of their duties cannot be sued in court for breach of fundamental right. See Alakpa V Ebetor (2015) NWLR (Pt 1447) 549 at 574.

In the instant case, the applicant deposed in the supporting affidavit as a businesswoman, a blogger and a social media influencer and also a founder of DorcasAdeyinka'sEmpowerment foundation, a charitable organization based in UK, that the 1st Respondent under the watch and authority of the 2nd Respondent posted a publication on her social media platforms on the 12th day of May, 2024 wherein the respondent declared the applicant wanted and by the said publication the applicant has been exposed to mockery, degrading treatment and public ridicule both on and off the cyber and social media pace. That the act of the respondent declaring the applicant wanted without an express order of court of competent jurisdiction and causing the said publication containing the name,

profile and picture of the applicant to be posted and circulated on their social media platforms to the view of the whole world is tantamount to degrading treatment and public ridicule and same is unlawful, unconstitutional and amounts to infringement on the applicant's fundamental right.

It should be noted that any person who is afraid that his fundamental right is about to be breached may approach the court for his right to be protected. In fact order 11 rule 1 of the fundamental right (Enforcement Procedure) Rules 2009 provides as follows:

“Any person who alleges that any of the fundamental right provided for I the constitution o African Chartered on Human and Peoples Right (Ratification and Enforcement) Act and to which he is entitled has been, is being or is likely to be infringed may apply to the court in the side where the infringement occurs or is likely to occur for redress”

The question of an infringement of the fundamental rights of an individual is likely a question of facts. It therefore does not depend on the submission of counsel on the law, no matter how brilliant and impressive it is. It is the fact as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to determine whether indeed the fundamental right of a person has been is being or is likely to be eviscerated breached as claimed or otherwise dealt with in a manner that is contrary to the constitutional and other provision of the law. See Okafor V Lagos State Govt (2016) LPELR – 41066 (CA).

The applicant in paragraph 13 of the affidavit in support stated thus:

“...the applicant alongside two of her associates were invited to the I.G.P Monitoring Unit FCT, Abuja by the respondent and were detained and drained with several questions regarding the allegations against them for several hours made to write statements and was later released on bail to a reliable surety with further instructions that the officers of the respondent in Lagos would call the applicant and other people involved to resolve the matter in lagos”

On this I will referred to the case of Eda V C.O.P (1982) 1 NCR 150 where the Court of Appeal held:

“I think it is right to say that the duty of the police in a matter like this ends when they offer bail to a person held in custody in connection for an allegation of a criminal offence...”

Therefore the purpose of granting bail is for a person detained to regain his freedom.

From the above as stated cannot be said that the applicant’s right has been curtailed by the 1st and 2nd Respondents that to be noted that, the security agency are created by law and their powers are spelt out by law, no security agency is allowed to go outside the power and right. Section 4 of the Police Act Chapter D19 states as follows:

“The police shall be employed for the prevention and detection of crime, the apprehension of offender, the preservation of law and anor, the protection of life and property and the due enforcement of all laws and regulation within which they are directly charged and shall perform such multiple duties within or without Nigeria as may be required by them by or under the authority of this or any other Act”

Based on the above and the reliefs 1, 2, 3 can it be said that the applicant’s fundamental rights is breached?

Upon proper consideration, the averments in the applicant’s affidavit taken holistically did not establish a case of a breach of the applicant’s fundamental right to Section 34 (1), 35 (1) of the Constitution of the FRN (as amended) more especially when the respondent gave or admitted the applicant to bail. Hence reliefs 1 and 2 and 3 is not grantable by this court as there is nothing to show that the applicant indeed breached the applicant’s fundamental rights in accordance to Section 34 (1) and 35 (1) of the 1999 C F N (as amended).

On the 4th relief being an order directing, mandating and compelling the respondent to immediately and forthwith lift the restriction that is placed on the applicant’s bank account to wit bank name GT Bank, Account number: 087577931 Account name: DorcasOlukemiAdeyinka.

On this I wish to state that the action of the respondent by posting a post no debit on the applicant’s account no. 98757793 violates the applicant’s fundamental human right, more also that there is no pending proceedings before any court of

law in Nigeria against the applicant that would have warranted the respondent to take action of putting no debit on the applicant's account.

It is trite law that, the bank can freeze a bank account for various reasons ranging from customer's requests for the account to be frozen to prevent fraud and by order of the court served on the bank through a law enforcement agency. These reasons is one of the ethical and popular reasons for a bank account to be frozen, banks are obligated to act as instructed when issuing an instruction to freeze an account under the court order through the police or any of the agencies of the law enforcement. It is also trite that, the law enforcement agencies or banks lack the power to unilaterally freeze a customer's account based on a pending criminal investigation or commission of a crime without a court order, this is the decision of the court in the case of Guaranty Trust Bank PlcVsAdedamola and Ors (2019O) LPELR – 373...(CA).

In the instant since there is no counter affidavit to deny the averment in the applicant's supporting affidavit as the counsel to the applicant in the Chambers of AfeBabalolaand Co dated 27th March, 2024 addressed a letter captioned: request to unfreeze the bank account of DorcasOlukemiTemitoyaAdeyinka with account number: 0750786408 to the head of I.G.P Monitoring Unit, the said letter received dated 28th March, 2024, in the office of the I.G.P Monitoring Unit FHQ Abuja and no action taken to unfreeze the said accounts.

Hold therefore that the order freezing the said accounts was unlawful, null and void. Hence, i will grant the said relief I so hold.

Having intimately read, mediated on and systematically analyzed the undulating facts of this case (and to avoid prolixity. I have no hesitation in holding that there was no breach of the applicant's fundamental right. In this case, no evidence was placed before this court to warrant the return to a contrary verdict. In other words, the first issue submitted by the applicant for the resolution is not availing hence resolved against them in favour of the respondent apart from reliefs no 4.

On the second issue raised for the determination in the court as to whether the applicant is entitled to all the reliefs sought in this application.

On this I wish to state that havingresolved issues 1, 2, 3, 5 and 7 against the applicant and in favour of the respondent holding the only reliefs the applicant is

entitled is relief 4 while reliefs 6 and 10 is equally resolved against the applicant in favour of the respondent I so hold.

In my final judgment, I hold the firm view that the claims of fundamental right breach leveled by the applicant against the respondent were not made out on the state of the evidence presented.

That being the case I adjudge the claims of the applicant against the respondent grossly unmeritorious. The said reliefs 1, 2, 3, 5 and 7 failed woefully and are hereby dismissed by the court.

On relief 4 it is hereby granted with an order to the respondent to immediately and forthwith lift the restrictions and lien placed on the applicant's bank account with GT Bank account number. 0875779318 account name. DorcasOlukemiAdeyinka.

I make no order as to cost.

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Hon Justice A. Y. Shafa

Appearance:

1. Sunday Adebayo for the applicant.
2. Respondent not in court