

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

DATED WEDNESDAY 4TH DAY OF DECEMBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/258/24

BETWEEN:

MR TIMOTHY GWAR.....APPLICANT

AND

- 1. THE NIGERIA POLICE FORCE**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. POLICE SERVICE COMMISSION**
- 4. DANLADI(Investigating Police Officer).....RESPONDENTS**

JUDGMENT

The applicant by a motion on notice dated 14-10-2024 filed on the same date, pursuant to sections 36(4), 35(1), (4) & 46 (1) of the CFN 1999 cause a writ to be issued against the defendants praying this court for the following.

- 1. A DECLARATION that the detention/restriction/confinement of the Applicant since the 6th of September, 2024 till the time of filing this suit by the Respondents was unlawful, unconstitutional and a direct infraction of the rights of the Applicant to freedom of movement as guaranteed by section 41 of the constitution of the Federal Republic of Nigeria 1999.**
- 2. A DECLARATION that the arrest and detention of the Applicant by the Respondents since the 6th day of September, 2024 is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental**

rights Guaranteed by Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria.

- 3. A DECLARATION that the arrest and detention of the Applicant by the Respondents since the 6th of September, 2024 is unlawful, unconstitutional, illegal and a violation of the Applicant's rights to personal liberty as guaranteed by Section 35(1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria.**
- 4. AN ORDER of injunction restraining the Respondent whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from violating or further violating the fundamental rights of the Applicant as guaranteed by section 34 (1) 35, (1) & (4) and 43 of the Constitution of the Federal Republic of Nigeria 1999.**
- 5. THE SUM of One Hundred Million Naira (N100, 000,000.00) only as aggravated damages for the infraction of the Applicant's fundamental rights.**
- 6. ORDER restraining the Respondents whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from violating or further violating the Fundamental Rights of the Applicant or upon such terms as this Honourable Court may deem appropriate in the circumstances, pending the determination of this suit.**
- 7. AND FOR SUCH FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances**

Accompanying the motion are as follows:

- 1. Statement of facts filed and brought pursuant to sections 35(1) & (4) 36(4), 46(1) of the 1999 CFN as amended of one Mr Timothy Gwar.**

The said statement contains 5 grounds and the facts upon which the reliefs are sought as follows:

Grounds: i-v.

The facts which the reliefs are sought are as follows:

- i. That he was arrested since the 6th of September, 2024 and has been in detention since then up until the time of filing this suit.**
- ii. That he was picked up at Adikpo, Benue State by men of the 1st and 2nd defendant IGP-IRT on allegation of theft while he was in Lagos and working as a driver to one MrAdeshinaSalau.**
- iii. That he has been in detention since his arrest on the 6th September without bail or arraignment in court.**

In support of the motion is an affidavit of 11 paragraph deposed to by one Paul Gwar of Apo FCT Abuja and attached to the affidavit is a verifying affidavit of Paul Gwar, affidavit of urgency of 11 paragraph and an annexures being the petition written by I. A. Aliyu & Co dated the 7/10/2024 addressed to the IGP and written address of 7 pages.

In response the 3rd defendant filed a memorandum of appearance dated 30th October, 2024 and the 3rd Respondents counter affidavit in opposition to the Applicant motion on notice dated 14th October, 2024 same deposed to by one AmoduJumoke of Block Hy, Plot 1054 R.I. Uzoma Street Beside finance quarters off IdrisGidado Road Wuye Abuja of 6 paragraph and the 3rd Respondent written address of 21 pages

The 1st, 2nd and 4th Respondents even though served with the Applicant's motion on notice but chose not to file any Response, the proof of service is dated 18/10/2024 and is received by the legal/prosecution section force CID.

The 3rd Respondent upon filing of the memorandum, filed a motion on notice dated the 30/10-2024 and filed the same date seeking this court for leave for an extension of time within which to enter appearance in this suit and to file and serve it's counter affidavit and written address. The motion was argued and the order sought was granted dated the 30-10-2024.

As I earlier stated that the 1st, 2nd & 3rd Respondents were duly served with the motion on notice together with hearing notice, and the endorsed copies were filed by the bailiff of this court.

However, the 1st 2nd & 4th respondent elected not to file any response to the originating motion and thus the applicant proceeded with hearing against the 3rd Respondents.

Generally human rights are the basic entitlement of all human beings in any society. They pertain to humans by virtue of their humanity. The Apex court in *RansomeKuti& ors V A.G. Federation* (1985) LPELR-2940 (SC) held thus:

.... What is the nature of a fundamental human rights? It is a right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself, it is a primary condition to a civilized existence”

Thus a court called upon to enforce protect the human right of a person must appreciated that it has a sacred duty to perform not only to the claimant but to all humanity. The correct approach therefore is a claim for the enforcement of fundamental rights is to examine the reliefs sought, the grounds for such reliefs and the facts relied upon.

Where the facts relied upon discloses a breach of the fundamental right 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. *Tukur V Governor of Taraba State* (1997) 6 NWLR (PT.520)549.

The law is settled that an applicant for the enforcement of his fundamental right under Chapter iv must show that the reliefs he claims comes within the purview of fundamental rights as encompassed by section 33-45 of the constitution of the Federal Republic of Nigeria 1999(as Amended). This is borne out by the principles of section 46 of the constitution.

The Applicant herein alleges that he was arrested since the 6th of September, 2024 and has been in detention since then up till the time of filing this suit. That he was picked up at Adikpo Benue State by men of the 1st and 2nd defendant IGP-IRT on allegation of theft while he was in Lagos and working as a driver to one MrAdeshinaSalau and has been in detention since his arrest on the 6th of September, without bail or arraignment in court.

The 1st, 2nd& 4th Respondent as stated earlier did not file any counter affidavit to deny, challenge or controvert the facts contained in the applicant affidavit. The law is that where an affidavit is not challenge by a counter affidavit, the facts deposed to in the affidavit remain unchallenged. Further, the law is settled that facts contradicted and not controverted by a party are deemed admitted by him unless such facts on the face of being the truth of what they try to establish. See *AG Rivers State V Ude* (2006) 7 SC (pt11) PAGE 81.

It is true that the 3rd respondent that filed a counter affidavit challenged or opposing the originating motion of the applicant.

Now, my question that begs for an answer is whether the Applicant's fundamental right guaranteed under 1999 CFN (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 (as amended) are not absolute. There is no doubt that the police i.e the 1st and 2nd Respondent have untarred powers of arrest, detention and investigation of persons(s) suspects to have committed an offence pursuant section 35(1)(C) of the 1999 CFN and under the ACJA 2015. The police in the legitimate Discharge of their duties cannot be sued in court for breach of fundamental rights see. Atalapa V Ebettor (2015) 5 NWLR (Part 1447) pg. 549 at 574.

In the instant case the Applicant deposed for the for the supporting affidavit paragraph, 8, 9, (a-f) thus.

Paragraph 8 that I visited the Applicant where I met with the 4th Respondent whose full name I do not know.

Paragraph 9 that I was informed by the Applicant when I visited him at the custody of the 1st and 2nd defendant on the 25th September, 2024 at about 2 am of the following facts

- a. That he was picked up by a team of the IGP-IRT at Adikpo Benue State on the 6th September, 2024.**
- b. That when he was brought to their facility at Abuja he was asked question about monies that he allegedly stole from his former boss, one MrAdeshinaSalau with whom he worked as a driver in Lagos State..**
- c. That after Interrogation and investigation by the Police, he was neither granted bail nor charged to court over one month.**
- d. That he has been in captivity despite the very deplorable and inhuman conditions of the facility where he is held.**
- e. That since his arrest he has been in detention and subjected to inhuman treatment and torture.**

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. Infact order 11 rule 1 of the fundamental rules 2009 provides as follows:

“any person who alleges that any of the fundamental rights provided for in the constitution or in the African Charter on

Human and people's Rights (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 state where the infringement occurs or is likely to occur for redress”

Therefore, it was well within the right of the applicant to approach this court for redress. See IGP and ORS VsIkpila&Anor (2015) LPELR-40630 (CA) the court held.

“The essence of the promulgation of the fundamental right enforcement procedure is to protect Nigerians fundamental rights from abuse and violation by authorities and persons”

In this instance, the fundamental right to freedom of movement and right to his personal liberty and right to dignity of human persons are likely to be infringed upon by the actions of the Respondent, if they are not restrained.

Moreso, as the 1st, 2nd, 4th Respondent has not denied any of the assertion made by the Applicant apart from the 3rd Respondent who denied same and filed before this court.

A counter affidavit in opposition to the Applicant's originating motion.

This court have spoken, that the 1st& 2nd& 4th Respondent did not file any counter affidavit in opposition to the Applicant's originating motion hence I shall first of all dwell on the process filed by the 3rd defendant/Respondent in opposition to the originating motion filed by the Applicant to see whether the 3rd Respondent hasindeed breached the Applicant's fundamental right. By this I will now go to the submission of both the Applicant counsel and that of the 3rd Respondent counsel. To see whether based on the 3rdRespondent's submission, he will be held responsible for the action taken by the 1st and 2nd respondent?

The 3rd defendant in it'swritten address formulated three issues distilled for determination to wit as follows:

- 1. Whether by the statutes establishing the 3rd Defendant (Respondent), the 3rd Defendant (Respondent) is statutorily responsible for the operational commands to members of the Nigeria Police Force and can be held liable in law for any wrongful, illegal, unconstitutional and infractions of the**

Respondent and police officers, committed in the discharge of their statutory and constitutional duties.

- 2. Whether from the circumstances of this case, the Applicant has disclosed any cause of action against the 3rd Respondent.**

- 3. Whether noncompliance with Section 20 of the Police Service Commission (Establishment) Act 2001 by the Applicant in commencing this suit, does not rob this honourable court of the jurisdiction to hear and determine this matter against the 3rd prime Respondent.**

On the 1st issue it is the submission of the 3rd Respondent that by virtue of section 214 of the 1999 CFN (as amended) and sections 215 of the same constitution reproduce below:

Section 214.

“(1) There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other Police Force shall be established for the Federation or any part thereof.

(2) subject to the provisions of this Constitution –

(a) The Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly.”

Section 215 (1)

- a. An Inspector General of Police who, subject to Section 216 (2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force.**
- b.**
- c. The Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a State, shall**

subject to the authority of the Inspector-General of Police, be under the command of the commissioner of police of that state,"

On this submits that the 2nd Respondent is the head of the force headquarter of the NPF of the Federation and being the head, he is statutorily responsible for giving operational commands and orders to the NPF from the rank of DIGP to constable of police.

The counsel also referred the court to section 3(1) (2) (b) and 7(1) of the Nigeria police Act 2020 dealing with the establishment of the police force. On this submitted that, it is clear that the full commands and operational control over the NPF is under the IGP. The law is trite that where the provisions of a statute are plain, it should be given it's literal meaning, on this referred the court to the case of Babayo&Anor V Bawa&ors (2011) LPELR-2204 (CA) where the court of apex held thus:

“Another fundamental principle of interpretation of statute is that, where a word is plain on the face of it, the literal meaning should be given on it.

On this submitted that the officers who had statutory control over the operation or activities of a person should be answerable in his official capacity for whatever grievance arises as a result of performance of that duty. That there is only one police force in Nigeria as established under section 3(1) of the NPF Act and the force is under the authority and command of the IGP. Though the relationship between members of the NPF and the IGP is not that of master and servant, the IGP is answerable to the actions and inaction committed by members of the NPF under his command unless it is shown that the action or infraction complained of is outside the statutory duties of the officers. See Nwanna V AG Fed & Anor (2010) lpelr-9047 (CA)

Furthermore submits that the execution of all statutory duties of the police officers all within the mandate and dictates of the 2nd Respondent and the 3rd Respondent cannot be held liable for any infraction committed by any police officers.

Therefore submits that the 3rd Respondent cannot be held vicariously liable for any wrongful or illegal act done by police officers. Submits that both the 2nd and 3rd Respondents are two (2) distinct established statutory bodies each established and has it's constitutional power under section 153(1) (m) & (2) and paragraph 30 part 1 of the third schedule of the 1997 CFN (as amended) and that the 2nd Respondent derives it's statutory power under section 3(1) of the NP Act 2020.

The 3rd Respondent counsel further referred the court to section 6 of the police service Commission (establishment Act 2007 and section 14 of the Police Act 2020 on this submitted that the NP Act 2020 and the Police Service Commission (establishment) Act 2001 that the primary function of the 1st, 2nd, Respondent is mentioned as detention of crime, protection of the right of every person in Nigeria and maintenance of law and order, while on the other hand the primary function of the 3rd Respondent is to appoint, promote, dismiss and discipline Police Officers (other than the office of the IGP) so appointed to the NPF Albeit the 3rd Respondent is responsible for the appointment, promotion and discipline of all Police Officers (other than the office of the IGP) in Nigeria, the 3rd Respondent cannot be held vicariously liable for an infraction committed and by either the 1st, 2nd & 4th Respondent in the discharge of their statutory and constitutional duties, as such the 2nd Respondent and not the 3rd Respondent can be held vicariously liable for the unconstitutional act committed against the Applicant's fundamental right, if it is established that the right were indeed breached and there is in existence a relationship of master and servant between the 1st, 2nd and 4th Respondent." See IfeanyiChukwu (Osundu) Co Ltd V SalehBarehNig Ltd (2000) 5 NWLR (PT 656) 322 at 345 where the SC per Ogundere JSC stated the nature basis of the doctrine of vicarious liability as follows:

“The general principle of law of which has it’s roots in the earliest years of the common law is that a master is liable for any wrong even if it is a criminal offence or a tortuous act committed by his servant while acting in the course of his employment.

Also the case of Young V Edward Boy & Co Ltd (1951) TLR-789, 793 Lord Denning L.A. held that

“In every case where it is sought to make a master liable for the conduct of his servant was liable, if the answer is yes, the second question is to see whether the employer must shoulder the servant liability”

The 3rd Respondent further submits that for a relationship of master and servant to exist and for the action of a servant the following conditions must be established.

- i. The master’s power of selection of his servant.**
- ii. The payment of wages or other remuneration**
- iii. The master’s right to the method of the work**
- iv. The master’s right of supervision or dismissal.**

That the conditions must co-exist to make the 2nd Respondent vicariously liable for the constitutional act of the 1st and 4th Respondents.

On this it is the response of the Applicant counsel that the 3rd Respondent is charged with the responsibility for the employer to dismiss and exercise disciplinary role against all police officers in the FCT, and as such they will be vicariously liable for the action or inaction of their employee.

I have carefully gone through the submission of the learned counsel to the 3rd Respondent, cases cited and reference to the statutes creating the police service commission, i.e section 6 of the Police service Commission (establishment) Act 2001 and section 14 of the Police Act 2020 it is clear that the action or inaction of the 3rd Respondent cannot be held vicariously liable for the action of the 1st, 2nd and 4th Respondents as both have different distinct functions

Hence I shall resolve the first 1st issue in favour of the 3rd Respondent.

On the 2nd issue as to whether from the circumstance of this case, the Applicant has disclosed any cause of action against the 3rd Respondent. Here, it is needless to this court to go into what a cause of action is as I have decided on the first issue, that the 3rd Respondent cannot be held vicariously liable for the action of the 1st, 2nd & 4th Respondent so also there is no cause of action against the 3rd Respondent by the Applicant.

Hence issue No 2 is equally resolved in favour of the 3rd Respondent.

On the third issue distilled for determination as to whether non-compliance with section 20 of the Police Service Commission (establishment act 2001 by the applicant in commencing this suit, does not rob this Hon. Court of the Jurisdiction to hear and determine this matter against the 3rd Respondent?

On this referred to section 20 (3) of the Police Service Commission (establishment) Act 2001 provides thus

“No suit shall be committed against a member of the commission, before the expiration of the period of one month after a written notice of intention, to commence the suit shall have been served upon the commission by the intending Plaintiff or his agent on this submits that notice of intention to sue the 3rd Respondent is required to be served on the 3rd Respondent.

See *Ogung v Duke* (2003) 14 NWLR (prt. 841) 590 where the court held

“Where a statute provides for doing an act in a particular manner, none other shall become lawful if employed”

Also the case of *Fayemi V Local Government Service Commission & Anor* (2005) NWLR (2005) NWLR Part 9216, where it was held that pre-action notice is fundamental and goes to the root of the suit it was held thus.

The place of pre-action notice in our procedure is foundational and the enabling law should not be treated as being merely cosmetic but goes to the root of what will vindicate an action and enable the court to exercise jurisdiction wherever such notice is necessary.

On this submitted that failure of the Applicant to give the 3rd Respondent one month prior notice has robbed this Hon. Court of the necessary Jurisdiction to adjudicate upon this suit. See *Shafiu V Kaduna Native Authority* (1969) NWLR 25, it was held thus:

“The failure to give pre-action notice is a fundamental omission not a mere irregularity. The action is a nullity and the action shall ordinarily be struck out”

Finally urged this court to resolve the 3rd issue infavour of the 3rd Respondent.

On this it is the submission of the Applicant counsel that in respect of pre-action notice, submitted that under the FREP as in the instant case, the service of pre-action notice is not required.

I have carefully gone through the two submissions and the cases cited above, on this I wish to state that, pre-action notice is a condition precedent for the commencement of an action against the 3rd Respondent, and none compliance with the said provision of section 20(3) of the police service commission rules has robbed this court with the jurisdiction to commence action against the 3rd Respondent.

In view of the foregoing I shall resolve all issues in favour of the 3rd Respondent, hence the suit against the 3rd Respondent cannot stand, hence the 3rd Respondent is hereby dismissed in the instant suit. I so hold

As I earlier stated from the beginning of this judgment, that the 1st, 2nd and 4th respondent though served with all the processes in this suit but chose not to respond nor file any counter nor file statement or affidavit to defend this action, in *A. G. Ogun State V Bond Inv.* It was held thus:

“Where a party chooses to file a counter affidavit he is deemed to admit the fact averred in the affidavit of his adversary.....”

In the circumstance of this case, it is my view that in the absence of any counter affidavit from the 1st, 2nd & 4th Respondent, they are deemed to have admitted all the averments deposed to in the affidavit in support of the Applicant's application which was filed dated 14-10-2024.

It is trite law that facts contained in an affidavit forms parts of the documentary evidence before the court. Thus where an affidavit is filed deposing to certain facts and the other party does not file a counter affidavit, the facts deposed to in the affidavit would be deemed unchallenged, and undisputed. In other words, paragraphs of affidavit not denied or controverted are deemed admitted.

It is therefore my view that the failure of the 1st, 2nd & 4th Respondents to file a counter affidavit to the Applicant's motion on notice will be taken by this court as an admission of the facts by the 1st 2nd & 4th Respondents as contained in the Applicant's affidavit.

The 1st 2nd & 4th Respondent, will be taken to have admitted that the affidavit was made in good faith. See Ibrahim V Dangwaram (1997) 1 NWLR (PRT 479) 87 where it was held thus:

“In general however, failure by the Respondent to file a counter affidavit will be taken by the court as an admission of the facts by the Respondent ad contained in the Applicant affidavit. He will as well be taken to have admitted that the affidavit is made in good faith”

In view of my conclusion above, can the 1st, 2nd & 4th Respondent complain of denial of fair hearing when it is clear from the records of proceedings that the 1st & 2nd -4th Respondent were duly served with the processes in this case together with hearing notice? My answer is no. And in the case of Bill Construction Co Ltd V Imani & Sons Ltd (2006) 19 NWLR (prt 1031)1 it was held among others by the Supreme court as follow:

“it is settled law that where a party is given ample opportunity to present his case within the confines of the law but the chooses not to utilize same, he cannot later be heard to complain that his right to fair hearing has thereby been breached”

Also in the case of Akinduro V Alaya (2007) 15 NWLR (prt 1057)312 the Supreme Court held among others that:

“I have said it in the past i will say it again that the duty of the court it to create the environment for fair hearing and it is the decision of a party to take advantage of the environment created.

A party cannot blame the court if he fails to take advantage of the environment created by the court. I see such a situation in this matter. To the Appellant should not blame the court of Appeal. He has himself to blame.

This is what happened in the instant case, it is therefore clear from the analysis of judicial authorities that fair hearing and justice are not for the Respondent alone, it is also for appellant and the court as the court cannot wait indefinitely for the Respondent to file a response to the Applicant’s Application. This is because the 1999 CFN (as amended) creates opportunity for the Respondent to be heard before a decision is taken and the opportunity does not last forever, it is available and enjoyed subject to the rules of court and the dictates of justice.

In view of the foregoing, I hold that the Application in this instant case deserves the reliefs claimed against the 1st, 2nd & 4th Respondents in this case.

Hence judgment is given to the Applicant against the 1st, 2nd & 4th Respondents as follows:

- 1. I hereby declare that the detention/restriction/confinement of the Applicant since the 6th of September, 2024 till the time of filing this suit by the Respondents was unlawful, unconstitutional and is a direct infraction of the rights of the Applicant to freedom of movement as guaranteed by section 41 of the constitution of the Federal Republic of Nigeria 1999.**
- 2. I hereby declare that the arrest and detention of the Applicant by the Respondents since the 6th day of September, 2024 is unlawful, unconstitutional, illegal and a violation of the Applicant's fundamental rights Guaranteed by Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria.**
- 3. I hereby declare that the arrest and detention of the Applicant by the Respondents since the 6th of September, 2024 is unlawful, unconstitutional, illegal and a violation of the Applicant's rights to**

personal liberty as guaranteed by Section 35(1) & (4) of the 1999 Constitution of the Federal Republic of Nigeria.

4. An order of injunction is hereby granted restraining the 1st, 2nd, & 4th Respondents whether by themselves, assigns, privies, agents or whosoever purporting to act on their behalf from violating or further violating the fundamental rights of the Applicant as guaranteed by section 34 (1) 35, (1) & (4) and 43 of the Constitution of the Federal Republic of Nigeria 1999 CFN (as amended).

5. I award the sum of N5, 000,000.00 (Five Million) as aggravated damages for the infraction of the applicant Fundamental Right on 1st, 2nd & 4th Respondents.

This is my Judgment.

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Hon Justice A. Y. Shafa

Appearance:

1. H. O. Mustapha with E. O. Rabiou for the Applicant.
2. Chief TundeFalola for the 3rd Defendant

