

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

8TH DAY OF DECEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/156/2022

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

BARR. JOHN ISHAYA BURKUNGUS APPLICANT

AND

1. THE NIGERIAN ARMY	}	RESPONDENTS
2. COL. PRISCA ANYANWU			
3. LT. PRINCE CHINEDU ANYANWU			
4. LC. ALIYU A.			

JUDGMENT

The Applicant's application brought under the Fundamental Right (Enforcement Procedure) Rules and the African Charter on Human and People's Rights is praying this Court for the following:

- (1) An Order of Court for a declaration that the assault, public humiliation and embarrassment caused the

Applicant by the 3rd and 4th Respondents on the command of the 2nd Respondent who are officers of the 1st Respondent on 22/12/2021 at the Police Divisional Headquarters, Jikwoyi, FCT while representing a client, constitutes a gross violation of Applicant's fundamental right to personal dignity guaranteed by Section 34 (1) (a) of the 1999 Constitution.

(2) That the physical manhandling of the Applicant and the ripping off of his apparel by the 3rd and 4th Respondents on the command of the 2nd Respondent on 22/12/2021 while on his professional duty at the Divisional Police Headquarters, Jikwoyi, caused the Applicant great embarrassment and subjected him to public shame and ridicule and same constitutes a gross violation of Applicant's right to personal dignity.

(3) An Order directing the 1st, 2nd, 3rd and 4th Respondents jointly and severally to forthwith

publish in two National Dailies a public apology for the unlawful and degrading treatment.

- (4) An Order directing the Respondents jointly and severally to pay to the Applicant the sum of ₦5 Million only as compensation for unlawful and degrading treatment.
- (5) ₦250,000 for damages in respect of the apparel.
- (6) ₦5 Million as exemplary damages.
- (7) ₦500,000 as cost of the action.

The application is supported by a Statement containing the name and description of the Applicant, the reliefs sought and the grounds upon which the reliefs are sought.

Succinctly, the Applicant's case is that on the instruction of his employees, he was at the Police Divisional Headquarters, Jikwoyi, Abuja on 22/12/2021 to render

legal services/representation to a client, Miss Patience Maigida.

He was informed by his client that 2nd and 3rd Respondents formed a common intervention to unlawfully dispossess her of her newly born baby girl on the 21/12/2021. They forcefully entered her residence and snatched the baby that was barely 10 days old and took same to the Police Station.

That his client, Patience Maigida was compelled to meet with them at the Station to save her baby from hazardous and unnecessary exposure. She was detained together with her new born baby.

She was granted bail on the ground that she reports back the following day being 22/12/2021 for a deoxyribonucleic acid (DNA) test.

That he met the 1st, 2nd, 3rd and 4th Respondents in company of their Counsel on 22/12/2021 and he introduced himself to the Respondents as a lawyer representing the interest of Patience Maigida (Miss).

The allegation against his client is about the paternity of the newly born baby girl. That his client denied the allegation that the 3rd Respondent was not the father of her baby girl born on the 11th of December, 2021.

That 2nd Respondent was domineering during investigation being an officer in the Nigerian Army. That following the resolution to resort to DNA test to be conducted on the 3rd Respondent and the new born baby to ascertain the paternity or otherwise of the new born baby, the 2nd Respondent used her military might to demand that the expenses of DNA test carried out should be borne by his client, Patience Maigida.

He objected and insisted that since it is the 2nd and 3rd Respondents who are claiming the paternity of the child, it behooves on them to bear the cost of proving the positive.

That his objection provoked the 2nd Respondent to a rage. The 2nd Respondent commanded 3rd and 4th

Respondents to ruthlessly deal with him and remove him from the Station in the full glare of the Police at the Divisional Police Headquarters, Jikwoyi.

The 4th Respondent proceeded and physically manhandled and assaulted him and tore his clothing. He was subjected to degrading treatment, public shame and ridicule. They bundled and threw him out of the Station.

The photographs taken at the Divisional Police Headquarters, Jikwoyi are attached and marked Exhibits J1, J2 and J3. The Police Officers around allowed him to reenter the Station with his torn apparel.

At that point, he was informed by his client that she had been forced to sign an undertaking to foot the expenses of the DNA test. That the conduct of the 3rd and 4th Respondents as officers of the 1st Respondent in subjecting him to degrading treatment, torturing and tearing his apparel is a violation of his fundamental rights.

The 1st Respondent relies on the Counter Affidavit filed in opposition to the Motion on Notice. It is sworn to by Akanji Janet Adeola, the Litigation Secretary of 3rd Floor, Gateway Plaza, Plot 208, Zakariya Maimalari Way, Central Business District, Abuja.

He deposes that the 1st Respondent does not know the Applicant and do not have anything to do with him. That the issue between the Applicant and the 2nd, 3rd and 4th Respondents is an issue of paternity.

That the issue is personal and 1st Respondent cannot interfere. That the 2nd, 3rd and 4th Respondents are not known by the 1st Respondent as their full identity are not disclosed and therefore cannot act under the authority of the 1st Respondent.

That 1st Respondent is wrongly joined. That even if they are officers of 1st Respondent, they acted against their rules of engagement and are personally liable. That the Applicant will not be prejudiced if the suit is dismissed.

The 2nd - 4th Respondents' Counsel relies on their Counter Affidavit sworn to on 24/02/2022 deposed to by the 2nd Respondent.

The 2nd Respondent is in Borno fighting insurgents and cannot therefore depose to an Affidavit.

That she got to know through her son, 3rd Respondent that Miss Patience Maigida was pregnant for him and he has accepted Responsibility of the pregnancy.

A few days after delivery, she got information that the mother, Miss Patience Maigida intends to abscond with her grandchild and that she has planned to give her grandchild to another man.

That she complained about the suspicion to the nearest Police Station. She was invited and she said the baby was not her son's. She opted for a DNA test and we agreed. She agreed to fund it but said she had no money but was

willing to refund her after the DNA test. She was not detained neither was the baby separated from her.

That they returned the following day and the said Patience was about to sign an undertaking on the DNA test when Applicant arrived. He coerced Miss Patience Maigida not to sign. That Miss Patience Maigida was not coerced to sign any undertaking.

That she did not command any of the Respondents to tear, beat or assault the Applicant. That Applicant announced himself as a Legal Practitioner representing Miss Patience Maigida. He was shabbily dressed, unkempt and was on slippers. That he has no means of identification even when they requested for confirmation rather he showed arrant arrogance.

In alcohol, Applicant caused chaos and halted the signing process for over three hours coercing the said Miss Patience not to sign.

When his insistence became unbearable, he was walked out by the Police. That she saw the Applicant tore his clothes and asked Patience Maigida's younger brother to take photo shot of him. That one Jimmy Ocha, a football coach observed the unruly conduct of the Applicant.

His Affidavit is Exhibit A. That she took pictures and video recording of the incidence. The pictures and certificate of compliance are Exhibits B & C.

They never tortured the Applicant, i.e. 2nd, 3rd and 4th Respondents. That they never abused the Applicant's fundamental rights. The Respondents are not liable to pay the Applicant any compensation. That it is the Applicant that should pay.

The 4th Respondent also filed another Affidavit. Learned Counsel also relies on same. He denied the allegations contained in the Applicant's Affidavit.

That Applicant was drunk, uncoordinated and poorly dressed with no means of identification. The Affidavit

evidence is similar and on all foreshadowing with the supposed Affidavit of 2nd Respondent.

There is a Further Affidavit deposed to by one Wisdom Junior Maigida, the younger brother of the Applicant's client.

By Order 11 Rule 7, upon being served with the Respondents' Written Address, what the Applicant ought to file is a Reply on Points of Law and may accompany same with a Further Affidavit.

The Affidavit envisaged under the Fundamental Rights (Enforcement Procedure) Rules shall be made by the Applicant but where the Applicant is in custody or if for any reason he is unable to swear to an Affidavit, the Affidavit may be sworn to by a person who has personal knowledge of the facts or a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the Affidavit.

The Applicant deposed to the Affidavit in support. He is not in detention. There is nothing to suggest that he cannot depose to the Further Affidavit.

The Further Affidavit in support of this application is deposed to by one Wisdom Junior Maigida. The Further Affidavit did not state that the Applicant is unable to depose to same personally. The Further Affidavit therefore is incompetent. It is accordingly discountenanced.

I have read the Final Written Addresses of Counsel. The simple issue for determination is **whether or not the Applicant's right to the dignity of his person was breached by the Respondents.**

Section 34 (1) of the 1999 Constitution of the Federal Republic of Nigeria states:

“Every individual is entitled to respect for the dignity of his person and accordingly

(a) no person shall be subjected to torture or to inhuman or degrading treatment.

- (b) no person shall be held in slavery or servitude,
and*
- (c) no person shall be required to perform forced
or compulsory labour, etc.”*

I have earlier summarized the evidence of the Applicant. He is a lawyer. He went to the Police Station to represent the interest of his client, Miss Patience Maigida who was involved in an issue of the paternity of her newly born baby girl.

The 1st Respondent is the Nigerian Army while the 2nd, 3rd and 4th Respondents are officers and men of the 1st Respondent. The venue of this imbroglio is the Police Divisional Headquarters, Jikwoyi.

The 2nd, 3rd and 4th Respondents are not members of the Nigeria Police. The Applicant introduced himself as a lawyer. The 2nd Respondent was infuriated when he refused and or objected to his client bearing the DNA expenses. The 2nd Respondent therefore ordered the 3rd

and 4th Respondents to assault and tear down the Applicant's apparel.

The 2nd Respondent denied the allegations but went ahead to state thus:

“That the Applicant arrived the Station inebriated. There is nothing to show the prestige of the lawyer.” See paragraph 14 of 2nd - 4th Respondents' Affidavit.

“The Applicant was shabbily dressed, unkempt and his footwear was palm slippers as even appeared on his attached pictures.”

“That Applicant announced himself as a Legal Practitioner representing Miss Patience Maigida.”

“That Applicant has no means of identification when they requested for it, rather the showed arrant arrogance and began to rant.” See paragraph 31 of the 2nd, 3rd and 4th Respondents' Counter Affidavit.

To be inebriated is to be an habitual drunkard. There is no evidence of the Applicant being an habitual drunkard.

The fact that the Applicant was shabbily dressed, unkempt and was wearing slippers is an ethical issue that has nothing to do with the 2nd, 3rd and 4th Respondents.

The office where this interrogation was taking place was not the office of the 2nd - 4th Respondents but from their Counter Affidavit, they took charge of the deliberations.

The Applicant is not answerable professionally to the 2nd - 4th Respondents. The 2nd - 4th Respondents are not headmasters or persons trained to enforce discipline in the Nigerian society or on the Applicant.

The Applicant is free to practice his profession anywhere in Nigeria without any let or hindrance or supervision by the officers of the Nigerian Army.

The 1st Respondent is the Nigerian Army. There is nothing in the Affidavit evidence of the Applicant suggesting that the 1st Respondent sent the 2nd - 4th Respondents to the Police Station on an official assignment.

It is common to all parties as to why they were in the Divisional Police Headquarters, Jikwoyi. To resolve the paternity imbroglio of the Applicant's client's baby. It was the personal matter of the 2nd - 4th Respondents.

It is clear therefore that there is no cause of action against the 1st Respondent. Consequently, it is my view and I so hold that the Applicant has not placed materials before the Court to enable me hold that his fundamental right to the dignity of his person is breached by the 1st Respondent. The case therefore fails against the 1st Respondent.

I believe the evidence of the Applicant as it touches the 2nd - 4th Respondents. I find as a fact from the Affidavit evidence of parties that:

- (1) The Applicant was assaulted.
- (2) That the 2nd Respondent ordered the 3rd and 4th Respondents to throw the Applicant out of the Police Station thereby assaulting him and in the process tearing his clothing.
- (3) That the 2nd Respondent who is an interested party in the case acted beyond her powers and arrogated to herself powers she did not possess by ordering the 3rd and 4th Respondents to assault the Applicant.
- (4) The 2nd - 4th Respondents were infuriated and detested the presence of the Applicant in a matter they felt they were having a headway.

The Applicant's fundamental right to respect for the dignity of his person was debased. The treatment meted to him by the Respondents to say the least is degrading.

I do not believe the evidence of the 2nd - 4th Respondents vide their Counter Affidavit. It is an afterthought and a concoction.

Reviling, holding the Applicant up to public obloquy, lowering him in the estimation of the public, exposing him to disgrace, dishonour and contempt as a lawyer is condemnable.

In the circumstance, it is my respectful view and I so hold that the Applicant's fundamental right, i.e. his entitlement to respect for the dignity of his person was breached by the 2nd - 4th Respondents.

Consequently, Judgment is entered in favour of the Applicant against the 2nd - 4th Respondents as follows:

1. It is hereby declared that the assault, public humiliation and embarrassment caused the Applicant by the 3rd - 4th Respondents on the orders of the 2nd Respondent on the 22/12/2021 at Police Divisional Headquarters, Jikwoyi, FCT, Abuja constitutes a gross violation of the Applicant's fundamental right to personal dignity contrary to Section 34 (1) (a) of the 1999 Constitution (as amended).

2. The 2nd, 3rd and 4th Respondents are jointly and severally ordered forthwith to publish in two National Dailies a public apology to the Applicant for the degrading and inhuman treatment.
3. ₦2,000,000.00 (Two Million Naira) as general damages against the 2nd - 4th Respondents jointly and severally for the shameful and degrading treatment.
4. ₦2,000,000.00 (Two Million Naira) as exemplary damages against the 2nd - 4th Respondents.

Relief 2 is a repetition of Relief (1); it is refused. Relief 5 is part of prayer 2; it is also refused. Relief 7 is not proved; it is also refused.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
08/12/2022

Applicant present.

Respondents absent.

U. A. Dibal, Esq. for the Applicant.

Mohammed Sanni, Esq. with Farau Bello, Esq. for the 1st
Respondent.

Judith A. Okotete, Esq. for the 2nd, 3rd and 4th
Respondents.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

08/12/2022