

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA AS (VACATION COURT) ABUJA

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/CV/2477/2022

BETWEEN:

CHARITY SHARON OMORUYI.....APPLICANT

AND

- | | | |
|---|---|---------------------------|
| <p>1. DIRECTOR GENERAL NAPTIP
2. DANIEL ATOKOLO</p> | } | <p>RESPONDENTS</p> |
|---|---|---------------------------|

JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELOGRE)

The applicant by name Charity Sharon Omoruyi, acting pursuant to **Order 2 Rule 1** of the Fundamental Rights (Enforcement Procedure) Rules 2009, **Sections 35 and 46 of the 1999 Constitution** (as amended) prayed this Court for the orders herein listed.

- i. **A DECLARATION** that the arrest and detention of the Applicant on 5th June, 2022 at Benin City, Edo State and the subsequent transfer of the Applicant from Benin City, Edo State to National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Zone 5, Abuja for detention from 6th of June, 2022 till the filing of this Application is illegal, unconstitutional, null and void as it grossly violates the Applicant's, Fundamental Human Rights as established under **Section 34, 35, 36, and 41** of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

- ii. **A DECLARATION** that the detention and the continued detention of the Applicant by the Respondents at the Cell at National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Zone 5, Abuja without release or being granted Bail or Formally charged in Court is illegal, unconstitutional and a breach of the Applicant's dignity of the human person as enshrined under **Section 34, 35, 36 and 41 of 1999** Constitution of the Federal Republic of Nigeria, as amended.
- iii. **AN ORDER** for the release of the Applicant on bail.
- iv. **AN ORDER** granting Injunction restraining the Respondents and/or their privies from taking further steps in connection with the matter or maintaining status quo or staying all actions pending the determination of the application;
- v. **AN ORDER** compelling the Respondents to pay the sum of **N20,000,000** (Twenty Million Naira) as compensation for the illegal detention, inhuman treatment, loss of resources and restraint of the liberty of the Applicant.

In support of the above prayers are the following:

- (1) A 20 – paragraphs supporting affidavits deposed to by one Kalu Shiphrah, a legal practitioner in the law firm of the applicant's Counsel. The affidavit is dated 25/7/2022 and filed same day. There are six Exhibits attached marked as Exhibit F1 – F6.
- (2) A statement of facts in support. It is also dated 25/7/22
- (3) A written address dated the same 25/7/2022

Contained in (2) above are 3 grounds upon which the applicant feels the confident to approach this Court. They are:

- (1) That the arrest and continued detention of the Applicant at National Agency for the Prohibition of Trafficking of Persons (NAPTIP), Zone 5, Wuse, Abuja from the 8th June, 2022 to the filling of this Application without been released on bail or charged to Court is illegal, unconstitutional and a violation of the Applicant's Fundamental Rights as enshrined in the Constitution of the Federal Republic of Nigeria, Section 34, 35, 36 and 41, it also violates Article 3, Universal Declaration of Human Rights, Article 5 and 6 Africa Charter on Human and Peoples' Rights (1981) Article 3, 4 and 5, European Convention on Human Rights (1950) Article 7, International Covenant on Civil and Political Rights (I.C.C.P.R) (1996).
- (2) That the continued Detention of the Applicant has thrown her health into jeopardy, separated her from her Family life and caused a lot of hardship to herself and family.
- (3) That the Applicant's arrest and continued detention is not in the spirit of the Constitution of the Federal Republic of Nigeria, Universal Declaration of Human Rights, African Chapter on Human and People's Rights, European Convention on Human Rights, (1950) Article 7, International Covenant on Civil and Political Rights (I.C.C.P.R).

Upon service on the 2 Respondents, they filed a 7-paragraphs counter-affidavit and a written address. The counter-affidavit is deposed to by Ismail Kura, an Investigating Officer in the Investigation Department of the 1st Respondent. It is dated 3/8/2022, filed same day and has 7 annexures marked as Exhibit A – G.

I start with the case of the Respondents. It looks to me straightforward and free-flowing. It runs thus vide paragraphs 5 (ii), (iii), (iv), (v), (vi), (vii), (xi), (xii), and (xv) of their counter-affidavit:

“(ii) That the Applicant was convicted in absentia and sentenced to 13 years imprisonment by an Italian Court in Ancona, the division of Rome, for offences relating to the Trafficking of Human Beings, Exploitation of Prostitution and Abetting of Unlawful Migration.”

“(iii) That the Italian authorities have commenced the process of her Extradition to Italy to serve the jail term imposed on her and they have been liaising with the 1st and 2nd Respondents and the Office of the Honourable Attorney General of the Federation and Minister of Justice in this regard. A copy of the Request for the arrest of the Applicant from the Italian Ministry of Justice is hereby attached annexed and marked as Exhibit “C”.

“(iv) That prior to the arrest of the Applicant by the operatives of the Department of State Services, the Applicant had been placed on “Red Notice” by the INTERPOL. A Copy of the Red Notice is attached hereto and marked as Exhibit “D”.

“(v) That the Applicant was eventually arrested by the operatives of the Department of State Services and was transferred to the 1st and 2nd Respondent’s Benin Zonal Command on 4th June, 2022, hence the Applicant is being held as a fugitive by the 1st and 2nd Respondents for the Attorney General of the Federation and Minister of Justice, pending the procurement of the requisite Extradition Order by the Minister of Justice for her extradition to Italy.”

“(vi) That in answer to paragraph 7, the 1st and 2nd Respondents aver that visitation rights was granted to her Legal Attorneys and there is a letter to that effect. (A copy of the letter is attached hereto and marked as Exhibit “F”).

“(vii) That in answer to paragraph 8, the 1st and 2nd Respondents aver that bail conditions for Administrative Bail was issued the Applicant on the 21st of June, 2022. (A copy of the bail conditions for administrative bail is attached hereto and marked as Exhibit “G”).

“(xi) That in answer to paragraph 12, the 1st and 2nd Respondents aver that the Applicant was detained in the holding centre of the 1st and 2nd Respondents and not a “Cell”.

“(xii) That in answer to paragraph 13, the 1st and 2nd Respondents aver that the reason for which the Applicant was detained did not warrant the filing of a Charge not was there need to name the nominal complaint in the case, since the case needed to be treated discreetly.

“(xiii) That in answer to paragraph 14, the 1st and 2nd Respondents aver that Remand Orders were actually sought and obtained when the Applicant could not perfect her bail conditions, More so, it became expedient in view of the pending Extradition Order for the Applicant which is still being awaited from the office of the Honourable Attorney General of the Federation.

“(xv) That in answer to paragraph 16, the 1st and 2nd Respondents aver that no medical examination has shown that the health of the Applicant is deteriorating rapidly as alleged by the Applicant”.

On the other hand, the applicant’s story is found in paragraphs 5, 6, 7, 8, 10, 12 and 16 of the affidavit in support. It runs thus:

“(5) That the Applicant was arrested by instructions of the Respondents on 05/06/2022 at Benin and was transferred to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Zone 5, Abuja on the

06/06/2022 and has since then been in detention.”

“(6) That since the 06/06/2022 the officers of the 1st Respondent and acting on the instructions of the 2nd Respondent have kept the Applicant in their facility without free access to her Attorney and without granting her bail, claiming that they have a Remand Order against the Applicant but they have not shown the Applicant or her Attorney the said Remand Order till date.”

“(7) That the legal Attorneys of the Applicant have made several appeals of the office of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to grant the Applicant’s Attorney visitation rights. (A copy of the letter of Application for visitation is hereby tendered and marked Exhibit F1).

“(8) That on the 8th of June, 2022, the Applicant through her Legal Attorneys applied for an administrative bail from the 1st Respondent but the Respondents failed, refused or neglected to grant bail or even respond to the Applicant (A copy of the Application for Bail is hereby tendered and marked Exhibit F2).”

“(10) That on the 21st of June, 2022, the 1st Respondent issued the Applicant a letter with stringent conditions for bail

that are unreasonable and unattainable. (A copy of the Conditions for bail is hereby tendered and marked Exhibit F4)."

"(12) That the Applicant has been in detention at the cell in the office of the 1st Respondent from 06/06/2022 till filling of this Application."

"(16) That since the incarceration of the Applicant at the cell in the office of the 1st Respondent on 06/06/2022, she has been sick, and being unable to access her medical Doctor as she is a hypertensive patient and also diabetic (A copy of Medical Report and Hospital Card are hereby tendered and marked Exhibit F5a and F5b).

It is pertinent at this juncture for me to state that the applicant did not file a further and better affidavit to at least debunk some potent assertions in the 1st and 2nd Respondents Counter-affidavits that made a seemingly non-sense of her story by virtue of the documents attached to the said counter-affidavit. See Exhibits A, B, C, D, E, F, G. They are:

- Exhibit A:** Court Remand Order
- Exhibit B:** Another Court Remand Order
- Exhibit C:** A copy of Request for the arrest of the applicant from Italian Ministry of Justice.
- Exhibit D:** A copy of "Red Notice" by INTERPOL

- Exhibit E:** A copy of the letter transferring the applicant to the Respondents
- Exhibit F:** A copy of the letter granting visitation rights to the applicant
- Exhibit G:** A copy of the Administrative bail conditions extended to the applicant.

I will come back to this issue of no further and better affidavit by the applicant later in this judgment. On the 1st of August, 2022, this case was argued in Court. Learned Counsel to the Applicant, Mr. Paul Abohulimen, with whom were Dr. Christopher Eichi and Miss Kalu Shifra set the ball rolling. He referred to all the processes filed; relied on all the depositions in their supporting affidavits, the contents of the attached 6 Exhibits and adopted his written address as their argument in this case. He cited the case of **ALEMA VS. FRN (2018) LPELR 43687 (CA)**. Learned Counsel finally urged me to grant this application.

For all his oral and written arguments, Mr. Abolhumen cited *inter alia* the cases of **OSH INAWAYA VS. LASG (2004) 21 WRN 103; FED. MINISTRY OF INTERNAL AFFAIRS VS. SHUGABA (1983) 3 NCLR 965; OKONKWO VS. OGBUJI (1996) 4 SCN5 190.**

In the same vein, Mr. Arinze Mbanefo with whom was Rebecca Enwuso Leeley (Mrs) of Counsel to 1st and 2nd Respondents, referred to the content of their Counter-affidavits; adopted the written address filed as their argument in support and urged me to refuse the application. Learned Counsel further emphasised by way of adumbration that as indicated in paragraphs 5 (I – N) of their counter-affidavit, the applicant has been placed on “red alert” by INTERPOL.

For all his arguments in Court, Mr. Mbanefo cited *inter alia* the cases of **FAJEMIROKUN VS. COMMERCIAL BANK (2009) 2 MSJC (PT. 11) 114; DANGOTE VS. PLATEAU STATE (2001) 4 NWLR (PT. 717) 132; EKWENUGO VS. FRN (2001) 6 NWLR (PT. 708) 171; UDOH VS. ESSIEN (2015) 5 NWLR (PT. 1454) 141.**

ISSUES FOR DETERMINATION

Learned Counsel to the two Respondents, Mr. Mbanefo, submitted 3 issues for determination to wit:

- (1) Whether the Fundamental Rights of the Applicant has been breached by the 1st and 2nd Respondents
- (2) Whether the Applicant is entitled to bail
- (3) Whether the Applicant is entitled to compensation.

For the applicant's Counsel, 2 issues are for determination:

- (1) Whether Fundamental Rights of the Applicant have been breached by the Respondents.
- (2) Whether the Applicant is entitled to compensation

Upon a careful and insightful consideration of the issues distilled by Counsel, (as reproduce above), it manifest clearly that issues 1 by the applicant's Counsel and issue 1 by the Respondents' Counsel; and issue 2 by applicant's Counsel and issue 3 by Respondents' Counsel are one and the same. Only issue 2 by the Respondents' Counsel is standing aloof. I will therefore, permit myself to recast, hone to precision and be categorical by saying the following issues are germane for determination in this case:

- (1) Whether the Fundamental Rights of the Applicant has been breached**
- (2) Whether the Applicant is entitled to Compensation.**
- (3) Whether the Applicant is entitled to bail**

The above can also be conveniently be subsumed into one lone issue thus: Whether this application is meritorious or not.

As started herein before, the parties filed and exchanged written final addresses which were adopted by their respect Counsel. I will refer to their submissions contained therein as I consider relevant or necessary. I will also deal with all the issues in one full swoop or narration as if I am treating a lone issue.

I begin thus: The applicant, Miss Charity Sharon Omoruyi alleged that her arrest and detention on 5th June, 2022 at Benin City, Edo State and subsequent transfer to National Agency for Prohibition of Trafficking in person (NAPTIP), Zone 5, Abuja for detention from 6th June, 2022 till date is illegal, unconstitutional, null and void as it grossly violates her Fundamental Rights as established specifically under Section 35 of the 1999 Constitution (as amended).

Section 35 (1) (c) of the Constitution provides:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law –
(a).....
(b).....
(c) for the purpose of bringing him before a Court in execution of the Order

of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence”

What is the merit of this application? This is the most relevant question now.

In answering this question, I refer to the relief sought, the grounds upon which it is sought, the relevant parts of both parties affidavits, (supporting affidavits and counter-affidavits) and the written addresses of Counsel all of which I had referred to in the earlier part of this judgment.

The law is settled in this area of our jurisprudence that the best or correct approach in a suit for the Enforcement of Fundamental Rights is to examine the reliefs and the fact relied upon. Where the facts relied upon discloses a breach of the Fundamental Rights of the applicant as the basis for the suit, then the Court can proceed to grant the claim through the Fundamental Rights (Enforcement Procedure) Rules, 2009. However, where the alleged breach of right is only ancillary or incidental to the main grievance or complaint, then it is not sustainable to proceed under the Rules of 2009. This is because the right, if any violated, is not synonymous or same with the substantive matter or the underlining subject matter which anchored or give rise to the suit. It is not in doubt that Enforcement of Right *per se* cannot, I repeat, cannot resolve the original matter. See case of **ABDULHAMID VS. AKAR & ANOR. (2006) LPELR-24 (SC)**.

I have, in due fidelity to the desire of the law, consulted the originating Motion by closely examine reliefs, the facts in the affidavits, all the Exhibits put forward by both parties. I perused them all with a fine tooth comb. Admirably, I found no confusion in

them. Nothing misleading or inappropriate. I also examine them with the provisions of Section 35 of the 1999 Constitution (as amended). A resume of the crux of the applicant's case, decipherable from the facts in the affidavits and their annexures thereto is that the applicant is being wrongly detained following a wrongful arrest. She is also complaining of stringent Administrative bail granted to him. She want an order of interim injunction and compensation to the tune of N20 million. Are all these claims not fathom, baseless and not lacking in merit?

Moving forward and in the bid to answer the above questions, it must not be forgotten that I had earlier said the applicant did not file a better and further affidavit. This is fatal to her case. Why did I say so? In the case of **MARYA PLASTICS LTD VS. INLAND BANK (NIG) PLC (2002) 7 NWLR (PT. 765) 109**, the Court of Appeal held that the purpose of a further and better affidavit is to provide additional information not available in the main affidavit. It is to also provide a reply to a counter-affidavit. Now the applicant contended that since her detention, she had no free access to her Attorney; no bail was granted and when granted it was with stringent CONDITIONS; no remand warrant/order was shown her or her Attorney; no visitation rights was extended to her family and relatives; see paragraphs 6, 7, 8, 10, 12 of the supporting affidavit. But all these were controverted or challenged by the Respondents in their own counter-affidavit.

They claimed visitation Rights was granted to her family and they attached Exhibit 'F' (letter of the visitation Right); they said bail was granted with no stringent conditions and they attached Exhibit 'G' (a copy of the Administrative bail); they said she is being detained on the Orders of a Court of law and they exhibited Exhibit A and B (which are Orders/Remand warrant of the Chief Magistrate, sitting at Wuse). So will all these facts in the Respondents' counter-affidavits it behoves the applicant to file a further and better affidavits if she desires to be taken seriously.

I am not unaware that in the face of the conflicts in the two affidavits, the authorities of **IKPAWA VS. R.T.P.C.N (2006) 3 NWLR (PT. 966) 106; EZECHUKWU VS. ONWUKA (2006) 2 NWLR (PT. 963) 151**; have laid down the path to follow. To resolve the conflicts, oral evidence must be called by the parties. But it is not only by calling oral evidence that such a conflict in affidavits can be resolved. Such a conflicting affidavits can be resolved by authentic documentary evidence which supports one of the affidavits in conflict with another.

Where the Court has enough documentary evidence at its disposal, it can *suo motu* resolve the conflicting affidavits by resort to such documentary evidence. See **BAWA VS. PHENIAS (2007) 4 NWLR (PT. 1024) 251**. That exactly is what I have done in this case. Rely on Exhibits 'A', 'B', 'F', and 'G' I believe and hold that the Applicant is being detained on a Court Remand Warrant; she has access to her Attorney, family and relatives; she was granted bail with no stringent conditions. I repeat that perhaps if the applicant had filed a further and better affidavit, my findings and position would have been different.

Now to the nucleus of this suit. Is there any breach of the Applicant's Fundamental Right as to be deserving of compensation?

Everyone has the right to liberty and security of person. No one shall be deprived of his/her liberty save in clearly defined exceptional circumstances. See Section 35 of the 1999 Constitution (as amended); Article 6, of African Charter on Human and Peoples' Right 1981; Article 3, Universal Declaration of Human Rights, 1948; Article 5, European Convention on Human Rights, 1950.

Arrest properly made cannot constitute a breach of Fundamental Rights. This is the purport of the Courts decision in **OKANO VS. COP & ANOR (2001) ICHR 407**. In that case, it was held that a

citizen arrested by the Police in the legitimate exercise of their duty on grounds of reasonable suspicion of having committed an offence cannot sue the Police in Court for breach of his Fundamental Rights.

Why was the applicant arrested in the first place? The answer is found in paragraph 5(ii), (iii), (iv) and (v) of the Respondents' counter affidavit. She was convicted and sentenced to 13 years imprisonment in absentia in ANCON, ITALY. Her offence was trafficking in human being, prostitution and abetment of unlawful migration. The process for her extradition to ITALY has commenced through the office of the Attorney-General of the Federation. Prior to all these, she was put on "RED ALERT" by INTERPOL. See Exhibit C & D. These are the basic reasons for her arrest and detention. Can we then say with any sense of modicum that the arrest is in breach of her Fundamental Right? No! we certainly can't say so.

In my humble view which perfectly align with that of the Respondents' Counsel, Mr. A. Mbanefo, the main or the underlining reasons for her arrest and detention are regular, reasonable, lawful and therefore legal. The rules are that persons or state agents who are called upon to deprive other persons of their personal liberties in the discharge of what they consider to be their duty should strictly observe the forms and rule of law. See **JIMOH VS. A. G. FEDERATION (1998) 1 HRLRA 453**. The burden of proving the legality or constitutionality of the arrest and detention of a person is on the arresting authority. Therefore, it is the Respondent's duty to justify the arrest of the applicant. Where the Respondent has admitted the arrest and detention of the applicant, just as happened in this case, the onus is on them to prove that such arrest and detention is lawful – **IYERE VS. DORU (1988) 5 NWLR (PT. 44) 665 SC**. See the case of **KADA VS. STATE (1991) WLR 2008** as cited by the learned Counsel to the applicant at pg. 10 of his address.

In this case, I found compliance with the above stated rules/principles by the 1st and 2nd Respondents.

For completeness, we must note that there is no absolute right to bail. And it is trite that detention of a person after demand of an excessively large sum of money for bail or difficult bail conditions will be unreasonable and amount to no bail. **BOLAKALE VS. STATE (2006) 1 NWLR (PT. 962) 507**; **OKEAHIALAM VS. NWAMARA (2003) 12 NWLR (PT. 835) 597 (SC)**.

In this case, no excessive bail condition is discernable.

In conclusion, I feel free to conclude in the same way that the learned Counsel to the 1st and 2nd Respondents' has concluded his submission at paragraphs 6.2 and 6.3, page 12 of his written address Mr. Arinze Mbanefo concluded beautifully thus:

“.....the Applicant cannot expect a judicial fiat preventing them from the exercise of their statutory powers, neither can she expect any of the reliefs to be granted in her favour as she can neither use the application as a shield to circumvent justice, nor can she profit monetarily for the 1st and 3rd Respondents (SIC) for carrying out their lawful duties in a lawful way”

“.....the Applicant has woefully failed to show this Honourable Court how his rights have been violated by the 1st and 3rd (SIC) Respondents.....”

I adopt the above as mine and consequently hold that this application is frivolous, baseless, vexatious and lacking not only in substance but also in merit. It is therefore dismissed.

Signed
Suleiman Belgore
(Judge) 15/8/22