

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWALADA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 11TH DAY OF OCTOBER, 2022**

FCT/HC/ CV/823/2021

BETWEEN:

DAVID MARSHAL UMOH _____ APPLICANT

AND

- | | | |
|--|---|--------------------------|
| 1. ECONOMICS AND FINANCIAL CRIMES
COMMISSION (EFCC) | } | _____ RESPONDENTS |
| 2. ATTORNEY GENERAL OF THE FEDERATION | | |

OLATUNDE OJAOMO appearing with BENATEI .T. (MRS)

A. AMEDU for the 1st respondent.

RULING

In an application for the enforcement of fundamental Rights of the applicant brought pursuant to Sections 34, 35, 37, 41 and 46 of the 1999 Constitution as amended, Articles 4, 5 and 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Order 2 Rule 2 of the Fundamental Rights Enforcement Procedure Rules 2009 and under the inherent jurisdiction of this court, the applicant prayed for the following Orders,

- (1)A Declaratory order that the refusal of the 1st Respondent to release the international travel passport of the applicant to the Registrar of High Court No. 2 of the Federal Capital Territory High

Court since the 21st of May, 2019 in violation of the Order of the High Court thereby preventing the registrar from releasing the said Travel Passport to the applicant after the discharge of the applicant by the court is a violation of the applicant's Right to freedom of movement.

- (2) A declaratory Order of this Honourable Court that the refusal of the 1st Respondent to release the International Passport of the applicant with passport number A089676927 since the 19th day of June, 2020 after the applicant has been discharged by the court is a violation of the right of applicant to freedom of movement.
- (3) A declaratory Order of this Honourable Court that the continued publication of the name of the applicant on the wanted list of persons on the website of the 1st respondent during and after he was charged to court and subsequently discharged is a clear violation of the applicant's right to dignity of human person, right to private and family life, freedom from discrimination.
- (4) A declaratory Order that the detention of the applicant by the 1st Respondent for thirty-three (33) days without being charged to court and without a valid court order is a violation of the applicant's right to freedom of movement which is guaranteed under the Nigeria Constitution.
- (5) A declaratory Order that the arraignment of and remand of the applicant at the instance of the 1st Respondent without diligent prosecution of the charge leading to the discharge of the applicant

by the court is a violation for the applicant's rights to fair hearing guaranteed under the Nigeria Constitution.

And upon the determination of the above orders the plaintiff seeks for the following reliefs:

- a. An Order of this Honourable Court directing the 1st Respondent to release the International passport of the applicant with passport number A089676927 to the applicant with immediate effect.
- b. An Order of this Honourable Court directing the 1st Respondent to remove the name of the applicant from the wanted list of persons on the website of the 1st Respondent.
- c. An Order of this Honourable Court directing the 1st Respondent to tender a public apology on its website and widely read newspaper in Nigeria to the applicant.
- d. An Order of this Honourable Court directing the 1st Respondent to compensate the applicant to the tune of **Fifty Million Naira (N50,000,000.00)** for the violation of the applicant's fundamental human rights.
- e. And for such further Order or Orders as this Honourable Court may deem fit to make in the circumstance of this matter.

The summary facts of applicant's case as could be gleaned from the affidavit in support of the application deposed to by one **Ladi Ogwu**, a litigation Secretary of **Ojaomo & Ojaomo Chambers, Temple of law, Abuja** was that she was briefed by one **Tosin Ojaomo Esq.** that the applicant who lives in Lagos and is currently traumatized and

emotionally battered due to continued threat of harassments by security agencies culminating from the facts that led to the commencement of this application.

That the applicant was working in Ghana when his attention was drawn to a publication of his name on list of wanted persons on the website of the 1st Respondent that the applicant who never knew that a matter which involved his Company in Nigeria and its partners relating to an insurance policy is a subject of investigation by the 1st respondent, while the matter was in court for a civil action. The applicant made arrangement to come back to Nigeria to clear his name of the said allegation. The applicant voluntarily reported himself to the head office of the 1st Respondent at Jabi FCT on the 10th of April, 2019 around 10am wherein his International Travel passport was confiscated and applicant was asked to return on 11th of April, 2019 so that they can trace his case file. That when he returned on the 11th April, 2019, he was immediately detained by the 1st respondent until the 13th of May, 2019. And he was detained for 33 days in the detention facility of the 1st Respondent, and was arraigned at the High Court of the Federal Capital Territory before Hon. Justice Salisu Garba for the alleged breach of trust. After the arraignment, the 1st Respondent objected to the said application of the applicant, and was ordered to be detained by the court at Kuje Correctional Centre till 24th of May, 2019 when he was released on bail. Thereafter the case was adjourned for trial. After several adjournments and service of hearing notices on the 1st Respondent to opens its case, the court in a

well considered ruling after one year of arraignment without trial discharged the applicant. The applicant thereafter approached the court for the release of his International Passport which was ordered to be deposited at the registry of the court pending trial. The applicant was shocked when he was informed by the court registrar that the 1st Respondent did not comply with the Order of the court directing that the International Passport of the applicant be deposited with court since 21st May, 2019. The applicant was also shocked when he was arrested by some Police officers in Lagos after he had been discharged by the court on the allegation that his name was on wanted list of the 1st Respondent for which he was charged to court. He was however discharged upon showing the Police officers the Certified True copy of the court ruling discharging him.

The applicant thereafter went to check the website of the 1st Respondent only to find that his name was placed on the wanted list of the 1st Respondent after his arraignment and during the pendency of the matter and after his discharged by the court. The applicant briefed his counsel who wrote to the 1st Respondent requesting that the publication of the name of the applicant in their wanted list be removed immediately and his International Passport released to him. The 1st Respondent has refused to comply with the Order of the court directing it to release the applicant's International Passport and have also failed, refused and or neglected to remove the name of the applicant from its wanted list, after the applicant voluntarily submitted himself to the office of the 1st Respondent on the 10th of April, 2019.

That the action of the 1st Respondent have caused serious humiliation to the applicant as he cannot freely move around due to threat of arrest and detention by the security agencies in Nigeria and abroad as the website of the 1st respondent can be accessed anywhere in the world. The applicant claimed that the continued publication of his name have caused serious damage to his reputation, and has not been able to secure any job in Nigeria, and no person or institution wants to business with him as a wanted person.

Attached to the application are the following documents marked as Exhibits A-E:

- (1) Charge sheet - Exhibit A.
- (2) Ruling of the court on bail of the applicant - Exhibit B1
- (3) Order to produce the applicant from the correctional custody - Exhibit B2
- (4) Ruling discharging the applicant - Exhibit E
- (5) The publication from the website of the 1st Respondent declaring the applicant wanted - Exhibit D
- (6) Letter from the applicant's counsel to the Chairman of the 1st Respondent requesting that the name of the applicant be remove from wanted list and release of his passport - Exhibit E.

Accompanying the application is a statement in support and a written address of learned counsel to the applicant, and also a further and better affidavit in response to the 1st and 2nd Respondents counter affidavit.

The 1st Respondent filed 3 paragraphs counter affidavit of one **Sadiq Kalli**, an investigation officer and a member of the Bank Fraud Section assigned to investigate the petition against the applicant. The deponent claimed that on the 5th of April, 2011, the 1st Respondent received a petition written by **K. D. Musdapher & Co.** on behalf of one **Abba Musa Rimi** against the applicant, **David Marshall Umoh** alleging criminal breach of trust and conversion. The petition is attached and marked as Exhibit EFCC1. That the petition revealed that applicant who was then a Regional Manager of Mutual Alliance and Securities Ltd in Abuja, introduced one **Alhaji Rimi Abba Musa** to buy shares under Mutual Alliance Investment and Securities Ltd. That the applicant instructed **Alhaji Rimi Abba Musa** to pay the said money into a company account known as Dihoen Consult Limited of which the applicant is the Managing Director/Chief Executive officer. That the applicant was alleged to have forwarded forged official receipts of Mutual Alliance Investment and Securities Ltd. Signifying evidence of payment by **Alhaji Rimi Abba Musa**. The receipts are exhibited as EFCC 2a, b & c. that **Alhaji Rimi Abba Musa** through his lawyer wrote Mutual Alliance Investment and Securities Ltd over the discrepancies in the snapshot provided by their office and the content of the bought contract notes and they responded that only the sum of **Four Million naira (N4,000,000.00)** was paid to Mutual Alliance Investment and Securities Ltd by Dihoen Consult as against **Twenty Million Naira (N20,000,000.00)**. The letters are attached as EFCC 3 & 4.

That all effort made to get the applicant to give explanation on the allegation proved abortive, as the applicant went into hiding since 2011.

The 1st Respondent claimed that he got information that the applicant had fled to Ghana, and based on that the applicant was declared wanted and same published in some Nigeria Newspaper and on the EFCC website. That the applicant reported to the 1st Respondent to answer to the allegation levelled against him because he was required to do so by his employer, a school in Ghana who saw his name on the website on the wanted list on EFCC website. That the applicant was granted administrative bail by the 1st respondent but he could not meet the bail terms. That an Eight count charge dated 16th April, 2019 was preferred against the applicant and was assigned to **Honourable Justice Salisu Garba**. That on the date of arraignment the court was indisposed and had to travel for a medical care abroad for about a month. And upon the return of the court, the applicant was arraigned on 13th of May, 2019 and was granted bail. And that the 1st respondent had filed a new charge against the applicant with charge number **CR/372/2021** waiting for a date to arraign the applicant. A copy of the charge is exhibited and marked as EFCC5. That the earlier charge was struck out because the prosecutor handling the case was transferred out of Abuja and there was communication gap as to information to hearing notices served. And that the name of the applicant was placed on the 1st Respondent website because he could not be reached and all effort to track him proved abortive. And that the 1st respondent thereby carrying out its duties to rid Nigeria of corrupt practices and see that justice is done. The court was urged to refuse the application motion.

The 1st Respondent's counsel had the written arguments in support wherein three issues were distilled for determination by the court. They are;

(1) Whether the Respondent have the power to arrest and investigate a suspect reported to have committed or is about to commit an offence.

(2) Whether the applicant was unlawfully detained?

(3) Whether the applicant has placed sufficient material before this Honourable Court to warrant the grant of the reliefs sought.

It is not in doubt that the 1st Respondent has the rights as a statutory body; the power to arrest, investigate and prosecute offenders of Economics and Financial Crimes and other related offences. These powers are exercisable within the confines of the provision of the Constitution that guarantee the fundamental rights of the suspect and the law setting up the 1st Respondent as a prosecuting agency. The learned counsel **Ashibi Amedu** relied on the provision of Section 35(1)(C) of the 1999 Constitution as amended which provides that:

“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; For the purpose of bringing him before a court in execution of the Order of a court of 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.”

I concede to the argument of the learned counsel to the extent that the 1st Respondent was exercising its statutory power of investigation and subsequent prosecution of the applicant. However, I find myself unable to agree with learned counsel that throughout the affidavit evidence of the applicant he has been unable to show or put before this court that his fundamental rights has been breached. I do not have any problem with the procedure for declaring the applicant wanted after the receipt of the petition against him. The deponent on behalf of the applicant in paragraphs 11-14 of his affidavit averred;

“That the applicant voluntarily reported himself at Jabi on 10th of April, 2019 wherein his International passport was confiscated and asked to return on the 11th of April 2019 so that they can trace his case file.”

“That when he returned on the 11th of April, 2019, he was immediately detained by the 1st Respondent till 13th May, 2019.”

“That the applicant spent Thirty Three (33) days in the detention facility of the 1st Respondent.”

*“That on the 13th of May 2019, the applicant was arraigned by the 1st Respondent at the High Court of the Federal Capital Territory Abuja before **Hon. Justice Salisu Garba** for it alleged offence of forgery and criminal breach and trust”*

Now the defence of the 1st Respondent as contained in paragraphs 17-20 of their counter affidavit was:

“That the applicant was granted administrative bail by the 1st Respondent but he could not meet the said terms.”

*“That an eight count charge dated 16th April, 2019 was preferred against the applicant and was assigned to **Honourable Justice Salisu Garba.**”*

“And on the date of arraignment the courts was indisposed and upon return the applicant was arraigned on 13th May, 2019 and was granted bail.”

I am not satisfied with the defence of the 1st Respondent captured above, this is because there is nothing put forward by the 1st Respondent to show that the applicant was granted administrative bail and could not fulfil same, and secondly, there is no record showing that the applicant was ever taken to court before the 13th of May, 2019 when he was eventually arraigned and admitted to bail by the court. The burden of proving the legality or constitutionality of the arrest or detention of a person is on the arresting authority. See **SPDE & ANOR VS. PRESSOR (2014) LPELR 23325 CA.** The 1st Respondent have therefore not effectively challenged the claim of the applicant that he was detained for 33 days before he was arraigned in court on 13th May, 2019. The 1st Respondent have admitted that the applicant was detained, and have not convinced the court that there was any justification for that beyond the limit that is permitted by Section 35 (1)(C), Section 35(4)(5)(a)(b) 1999 Constitution as amended.

The provision of 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) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;***
- (b) By reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;***
- (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;***

Section 35(4)(5)(a)(b)

Any person who is arrested or detained in accordance with subsection (1) (6) of this section shall be brought before a court of law within a reasonable time and if he is not tried within a period of... ..

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail or

(b) Three month from the date of his arrest or detention in the case of a person who has been released on bail he shall (without prejudice to any further proceedings that may be brought against him) be released either

unconditionally or upon such condition as are reasonably necessary to ensure that he appears for trial at a later date.

(5). In subsection (4) of this section, the expression “a reasonable time” means;

(a) In the cases of arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day,

(b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.”

This Court is not unmindful of the antecedents or background of the allegations against the applicant as claimed by the 1st respondent; however the right to personal liberty of the applicant as guaranteed by the above provision ought to have been duly observed by the 1st respondent. Furthermore the presumption of innocence weighs favourably in favour of the applicant. I hold therefore that the detention of the applicant for thirty three (33) days before his arraignment is unjustifiable, illegal and unreasonable.

Having made the above declaration I will turn to considered the applicants claim for compensation in the sum of **₦50,000,000 (Fifty Million Naira)**. This amount I found to be stupendous. In addition to compensation, the applicant in accordance with section 35(6) is also entitled to an apology from the 1st Respondent, which I graciously granted and hereby order as prayed. The apology is to be published in two (2) National Dailies, while the sum of **₦1,000,000.00 (One Million**

Naira) is awarded as compensation to the applicant. The 1st Respondent is also ordered to remove the name of the applicant from its website as a wanted person, having surrendered himself to the 1st Respondent. I will however refrain from giving the order releasing the passport of the applicant. This shall be determined at the conclusion of trial of the application which the 1st Respondent claimed has been initiated by filing of a new charge against the applicant.

SIGN

HON. JUDGE

____/____/2022