

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT NYANYA ON THE 23<sup>RD</sup> DAY OF FEBRUARY, 2021**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
**SUIT NO.FCT/HC/M/8342/19**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**MAC CEPHAS IJIEN.....APPLICANT**

**AND**

- |                                                                                                                                                                                                       |   |                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------|
| <ul style="list-style-type: none"><li><b>1. COMMISSIONER OF POLICE<br/>FEDERAL CAPITAL TERRITORY</b></li><li><b>2. MONITORING UNIT,<br/>FCT POLICE COMMAND</b></li><li><b>3. SANIT TATA</b></li></ul> | } | <b>.....DEFENDANTS</b> |
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**RULING**

The Applicants Motion on Notice is dated 15<sup>th</sup> August 2019 is brought pursuant to Order 2 Rules 1 – 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Section 35 of the 1999 Constitution as amended Article 6 of the African Charter on Human and Peoples Rights (Ratification and

Enforcement) Act, laws of the Federation of Nigeria 2004 and the inherent jurisdiction of this Court.

The Applicant prays the Court for the following relief:

- (1) A declaration that there was no agreement between the Applicant and the 3<sup>rd</sup> Respondent for the payment of USD 60,000.00 or any sum of money into the applicant's account No. 4861510691 operated under the name of AptcareNon Emergency Transport Services at well Fargo Bank, Atlanta, Georgia, United States of America in the year 2016 or at any other time whatsoever.
- (2) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents threat to arrest and detain the Applicant unless and except he pays the 3<sup>rd</sup> Respondent the sum of USD 60,000 is unconstitutional null and void.
- (3) An Order restraining the Respondents from carrying out their threats to arrest and detain the Applicant until the applicant pays the 3<sup>rd</sup> Respondent the sum of USD 60,000.

He deposed essentially that he was one of the owners of a business outfit called AptcareNon Emergency Transport Services which operated a Bank account No. 4861510691 with Wells Fargo Bank Atlanta, Georgia, United States of America. That one Israel Audu approached him to be allowed to pay in money into the said AptcareNon Emergency Transport Services Account aforementioned. That payment made by other persons will not be allowed. That two payment made at the instance of the said Audu by 3<sup>rd</sup> parties for the sum of USD 25,000 and USD 13,000 were returned to the payees on his instructions. That at no time did AlhajiSani Tata pay in any money whether in United State Dollars or any other currency into the said AptcareNon Emergency Transport Service Account.

He was invited by the Respondent to their office opposite Old CBN, GarkiAByja on the 9/0719. He was confronted with allegation that one AlhajiSani Tata paid in USD 60,000 into his AptcareNon Emergency Transport Account. That he never met the said AlhajiSani Tata or received any sum from him that was paid into the account aforesaid. That AlhajiSani Tata has no

time paid into the said AptcareNon Emergency Transport Services account the sum of USD 60,000 or any sum at all. That the Respondent threatened to detain him unless he agreed to pay the said sum of USD 60,000 to avoid being detained, he paid USD 5,000 to the Respondents. That he was allowed 3 weeks to pay up the balance of USD 55,000 or risk being detained. That the sum in issue USD 60,000 was paid into the AptcareNon Emergency Transport Services Bank ofAmerica account in cash and he did not give the account number to Sani Tata. That Israel Audu did not lodge any complaint against him to the Respondents or any other law enforcement agency. That unless restrained, the Respondent will arrest and detain him until he pays the balance of USD 55,000. That it is in the interest of justice to grant this application.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent also rely on their Counter Affidavit deposed to on the 7<sup>th</sup> of February 2018. The Deponent Inspector Philip Tumba deposed that investigation revealed that the Applicant with one Israel Audu and one other conspired amongst themselves and cheated the 3<sup>rd</sup> Respondent by making

him pay money into the bank account No. 481510691 with Well Fargo Bank, Atlanta, United States of America belonging to the Applicant. That investigation also revealed that Applicant and the 3<sup>rd</sup> Respondent knew themselves. That Applicant was only invited by the Police sequel to the criminal allegations against him so as to enable him react to the allegations. He was told to want for the outcome of investigation when this action was filed. That Applicant is a signatory to the account where the money was paid into. That 1<sup>st</sup>& 2<sup>nd</sup> Respondent did not collect any debt. That the case is still under investigation. That the Applicant was never arrested at any time. That at the end of investigation if the Applicant is indicted, he will be charged to Court. That granting the application will be against the interest of justice.

I have read the Affidavit and considered the written address of Counsel. This application is brought pursuant to Section 35 of the 1999 constitution as amended which states. Every person shall be entitled to this personal liberty and no person shall be

deprived of such liberty same as provided under sub section (a) – (f) of the said section.

By Section 46 of the 1999 constitution, any person who alleges that any of the Provisions of this chapter including Section 35 reproduced above has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in that state for redress. The Applicant seeks in relief (9) a declaration that there is no agreement between him and the 3<sup>rd</sup> Respondent for the payment of USD 60,000.00 or any other sum. There is no evidence of what the transaction is about and what the payment was for.

In paragraph 1(IV) same specific amount were paid into the account by 3<sup>rd</sup> parties and was returned. The deposition is also ..... as to why USD was being paid into that account. The facts in the Affidavit in support of the application are .....

In paragraph 3 (IV), he deposed that at no time did AlhajiSani Tata pay any money whether in US Dollars or any other currency into the said AptcareNon Emergency Transport Services account yet in Paragraph 3(XII) the Deponent states that the sum in issue i.e USD 60,000 was paid into the AptcareNon Emergency Transport Services Bank of America account in cash and he did not give the account number to Sani Tata. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not avail the Court a copy of the Petition against the Applicant claiming the Applicant and the 3<sup>rd</sup> Respondent knew their selves but failed to state the nature of the transaction despite investigation and collecting the sum of \$5000 as part payment for the \$60,000.It is clear that the transaction leading to this application is shrouded in secrecy.

In the circumstance, there is no sufficient materials upon which the Court can grant relief I. Relief one therefore refused.

On relief 2, the Deponent stated he was confronted with allegation that one AlhajiSani Tata paid USD 60,000 into his AptcareNon Emergency Transport Service account. He does not

know him and did not give him his number. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents reaction is that applicant and two others deceitfully made 3<sup>rd</sup> Respondent to pay USD 60,000 into the above mentioned account domiciled in Atlanta USA. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are not enforcing a contract neither are they remedying any breach of contract. The Applicant's fear is that he was allowed three weeks to pay up the balance of USD 55,000 or risk being detained.

For the ..... time, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents under Section 4 & 23 of the Police Act are empowered to investigate and detect crime amongst other duties but they are not created to act as middle men in civil cases such as contracts and or commercial transaction. The Police are not bureau de change. If a crime is detected, the Police will do well to charge the matter to Court immediately rather than acting as mercantile arbiters.

I believe the Applicants deposition that he was given three weeks to pay the balance of USD 55,000 or risk detention. The

1<sup>st</sup> and 2<sup>nd</sup> Respondent cannot be a Prosecutor and a Judge in its own cause.

Prayer 2 & 3 succeeds. It is there ordered as follows:

- (1) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents threat to arrest and detain the Applicant unless he pays the 3<sup>rd</sup> Respondent the sum of USD 60,000 is unconstitutional, null and void.
- (2) The 1<sup>st</sup>& 2<sup>nd</sup> Respondents are hereby restrained from arresting and or detaining the Applicant for the purpose of paying the said USD 60,000 but except for the purpose of charging him to Court within 24 hours.

.....

**HON. JUSTICE U.P. KEKEMEKE**

**(HOH. JUDGE)**

**23/02/2021**

