

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 28TH NOVEMBER, 2022

FCT/HC/CV/2864/2022

BETWEEN

MRS. CECILIA M. AGU-----

APPLICANT

AND

MR. UYI OGBEBOR-----

RESPONDENT

JUDGMENT

This Fundamental Right Enforcement Application was filed by the Applicant on 30th August, 2022, seeking for the following relieves:-

1. A Declaration that the actions and treatment to wit: manhandling, beating up, pulling by hair, being dragged on the floor, removal of her wedding ring and throwing away of same in the public and resulting to injuries, which the Respondent and his agents/servants on his instruction/order on 2nd July 2022, inflicted on, meted out to and subjected the Applicant, a married woman and a director of the company to which the Respondent is indebted, when she demanded that the Respondent settle his indebtedness, is a violation of the Applicant's right to respect for the dignity of her person, and constitute torture, inhuman and degrading treatment of the Applicant by the Constitution of the Federal Republic of Nigeria

1999 (as amended) and the African Charter on Human and Peoples Rights (Ratification and Enforcement Act).

2. An Order restraining the Respondent and/or any other person(s) acting on his behalf, instruction or directive, from intimidating and/or subjecting the Applicant to any undignified, inhuman or degrading treatment or torture in any way or manner whatsoever and howsoever.
3. An Order directing the Respondent to tender a written public apology to the Applicant and publish same in three (3) national daily newspapers for violating her constitutional guaranteed fundamental rights as provided in Section 34(1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and in Articles 4 and 5 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act)
4. An Order of this Honourable Court directing the Respondent to pay to the Applicant the sum of N50,000,000.00(Fifty Million Naira) only as general damages for violating and breaching the constitutional guaranteed fundamental rights of the Applicant to respect for the dignity of her person, for torture, inhuman and degrading treatment.
5. An Order of this Honourable Court directing the Respondent to pay to the Applicant the sum of N50,000,000.00 (Fifty Million Naira) only as exemplary damages for his oppressive conduct and action against the Applicant.
6. And for such further order(s) that the Honourable Court may deem fit to make in the circumstances of this case and/or in terms of the relief(s) sought in the statement accompanying the affidavit in support of the application.

The summary of the Applicant's case as can be gleaned from the affidavit deposed to by the Applicant herself, is that the

Respondent purchased on credit from the Applicant's company, a table of ten (10) persons/tickets valued at N2,000,000.00 for the A. Y. Live Show which held on 6th of June, 2022 at Transcorp Hilton Hotel, Abuja.

The Respondent did not pay for the tickets, despite entreaties and appeal by the Applicant. Consequently, the Applicant went to see the Respondent at his night club (Hustle and Bustle Night Club) in the early hours of the 2nd day of July, 2022 over the said outstanding payment issue. That on seeing the Respondent, she approached him and discuss the issue of his outstanding payment, but the Respondent instructed and ordered his bouncers (male) numbering about six (6) to pounce on the Applicant. They pushed her down, and pinned on the floor in a disgraceful and shameful manner in the open and right in the public, removed her wedding ring and threw same away. The Applicant aver that as a result of the above stated actions and treatment by the Respondent, she sustained injuries on her ankles, Achilles heel, with swelling on her mid upper left arm with a linear scratch abrasion and pains on her lower back and waist area, for which she sought urgent medical attention. She also alleged that the fixed acrylic nails on her fingers were broken.

After this incidence, the Respondent paid the sum of N1, 000,000.00 to the Applicant as part payment for the table of 10 persons. In addition to other exhibits, the Applicant attached as exhibit CA1, a medical report from Tabitha Medical Center, signed by one Dr. AkuomaAmaku, stating that the Applicant had a 4cm area of swelling and tenderness at the mid upper left arm with a linear 5cm scratch abrasion, and also had pain in her lower back and waist. The report also stated that the Applicant had

significant swelling around both ankles and with the right ankle being worse than the left.

In her final written address, counsel to the Applicant raised the issue of whether the action and treatment of the applicant by the Respondent on 2nd July 2022, is a violation of the Applicant's right to respect for the dignity of her person, and constitute torture, inhuman and degrading treatment of the Applicant, in contravention of the guaranteed fundamental and human rights of the Applicant, in contravention of the guaranteed fundamental and human rights of the Applicant by the Constitution of the Federal Republic of Nigeria and the African Charter on Human and People's Rights.

Also, whether the Applicants fundamental rights as claimed have been violated, and whether the Applicant is entitled to the remedies claimed against the Respondent before this Honourable Court?

Counsel submitted that the actions and treatment of the Applicant to wit: manhandling, beating up, pulling by hair, being dragged on the floor, removal of her wedding ring and throwing away of same in public and resulting to injuries, by the Respondent through his agents, amounted to a violation of the fundamental and human rights of the Applicant as guaranteed in section 34(1), (1a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 4 and 5 of African Charter on Human and Peoples Rights Act. Counsel argued that the Applicant's exalted societal status in the eyes of right thinking members of the society as a married woman, a director of a company and mother of three (3) children was terribly degraded by the actions of the Respondent and the servants (bouncers) of the

Respondent who pounced on her and manhandled her in a very shameful and disgraceful manner.

Counsel further argued, relying on the case of ***ONAGORUWA V. INSPECTOR GENERAL OF POLICE (1991) 5 NWLR (PART 593) AT 647-648, PARAS F-A, G-H AND B-C***, that the Applicant is entitled to general damages.

The Respondent filed a counter affidavit deposed to by the Respondent himself and a written address both dated 25th October, 2022.

In his response, the Respondent denied purchasing on credit or otherwise any ticket or tickets either for himself or anybody, for the A.Y Life Show which held on 6th June, 2022 at Transcorp Hilton Hotel, Abuja. He stated that he merely transferred the sum of N1, 000,000.00 (One Million Naira) to one Mr. AmannaAgu's personal account as a support for the A.Y Life Show, and never had any agreement or discussions to reserve any table, let alone for an agreed fee whatsoever. The Respondent claimed that he had never met the Applicant before 2nd July 2022, nor had any form of agreement with her concerning any tickets or table reservation, but was surprised to receive incessant calls from the Applicant demanding for payment of the sum of ₦2,000,000.00 for a table that was purportedly reserved for him. The Respondent claimed that it was the Applicant who stormed into his place of business uninvited on 2nd July 2022 at about 2.00am, and upon sighting him, she rushed and grabbed his shirt tightly and began to haul insults at him while demanding for the sum of N2,000,000.00. That it took the intervention of the club security personnel who appealed to the Applicant to leave the Respondent alone, and that at no time was the Applicant beaten up, man

handled or violated in any way within the premises of the club or anywhere else by the Respondent or on his orders.

In his final written address, counsel to the Respondent raised a sole issue to wit:-

"Whether the Applicant has established her case against the Respondent, to be entitled to the grant of the reliefs sought in this suit?"

Arguing on behalf of the Respondent, learned counsel to the Respondent maintained that the Applicant has failed to prove by evidence that he was manhandled by the Applicant. Counsel further challenged the authenticity of the exhibits attached to the Applicant's affidavit, and urged the court not to place any weight on them, as they prove nothing against the Respondent. Counsel argued that the injuries claimed to have been sustained by the Applicant have absolutely nothing to do with the Respondent and if at all they were sustained by her, she inflicted same on herself.

Learned counsel maintained that there is no causal link between the Respondent and the alleged violation of the Applicant. Citing the case of ***BELLO V. EWEKA (1981) 1SC 101@102***, counsel stated that declaration of breach of right is not granted as a matter of routine or course, but only on hard facts presented before the court and the applicable law in the circumstance. He therefore urged the court to dismiss the Application.

Reacting to the Respondent's counter Affidavit, the Applicant filed her Further Affidavit and Reply on Points of Law on 1st November, 2022.

The Applicant in her further affidavit, countered most of the denials made by the Respondent. She stated that the Respondent knows her very well, as they have had business dealings in the past. She further stated that the Respondent indeed reserved a premium table worth N2,000,000.00 at the A.Y Live Show and attended the event as well.

She denied grabbing the Respondent's shirt, being violent nor destroying any facility(ies) of the Club, when she confronted the Respondent on 2nd July, 2022. She maintained that it was the Respondent who ordered the security personnel (bouncers) to inflict bodily injuries on her, right in his presence.

In her reply on points of law, the Applicant through her Counsel, regretted their omission of date on the Applicant's originating Application, but however maintained that such omission does not vitiate the validity of the process before the Court. See ***AIYEDUN V. Registrar Upper Area Court ILLORIN & ORS (2016) LPELR –CA/11/12014.***

Counsel also argued that the most paragraphs in the Counter Affidavit of the Respondent, particularly paragraphs 7 and 14 is a contradiction of his further averments in paragraphs 16 and 20 of his Counter Affidavit.

Counsel argued that by virtue of section 167 of the Evidence Act, the court can presume the existence of any fact which it thinks likely to have happened. Counsel invited the court to presume the violation of fundamental rights of the Applicant by the Respondent, based on circumstances leading to the transfer of N1,000,000 to the Applicant's husband, two days after the alleged incidence of violation took place.

Having carefully considered arguments of both parties, I wish to adopt the issue raised by the Respondent as a sole issue in the final determination of this Application to wit:-

"Whether the Applicant has established her case against the Respondent, to be entitled to the grant of the reliefs sought in this suit?"

For an application alleging infringement of the applicant's fundamental rights to succeed, he must place before the Court all vital evidence regarding the infringement or breach of such rights. It is only thereafter that the burden shifts to the respondent. Where that has not been done or scanty evidence was put in by the applicant, the trial Court can strike out such application for being devoid of merits. ***See FAJEMIROKUN V C.B. (C.L.) (NIG) LTD (2002) 10 NWLR (pt. 724) 95.***

The question of infringement of fundamental rights is largely a question of fact and does not so much depend on the dexterous submission of Counsel on the law. So it is the facts as disclosed by the affidavit evidence that is usually examined, analyzed and evaluated to see if the fundamental rights have been eviscerated as claimed or otherwise dealt with in a manner that is contrary to the Constitutional and other provisions on the fundamental rights of an individual. ***OKAFOR V LAGOS STATE GOVERNMENT & ANOR (2016) LPELR - 41066 (CA)***

I have carefully considered the facts disclosed in the affidavits of parties as well evidences adduced by the Applicant vide the exhibits attached to her affidavit.

I must observe that there has been serious denials of facts by both parties. The law is that conflict in affidavit evidence may be resolved not only by calling oral evidence, but also through

genuine documentary evidence that support one of the conflicting affidavit. The Court can resolve the conflict where there is enough documentary evidence at its disposal. See ***NWOSU V. IMO STATE ENVIRONMENTAL SANITATION AUTHORITY (1990) 2 NWLR (PT. 135) 688; GBILEVE V. ADDINGI (2004) VOL. 1 JSC (PT. 11) 84.***

The only affidavit with documentary evidence is that of the Applicant. All the exhibits in the applicants affidavit, particularly exhibit CA1, points to the fact that the Applicant sustained injuries on her ankles, Achilles heel, with swelling on her mid upper left arm with a linear scratch abrasion and pains on her lower back and waist area, for which she sought urgent medical attention.

Although the exhibits do not expressly mentioned the Respondent as the one who inflicted the injuries on the Applicant or on whose orders the said injuries were inflicted, there are facts clearly indicating that there was an altercation between the Applicant and the Respondent which led to the Applicant sustaining serious injuries.

The standard of proof in fundamental rights action is not proof beyond reasonable doubt. Hence, the Applicant need not prove beyond reasonable doubt that it is the Respondent who inflicted the said injuries on her.

It is not in doubt that, the Fundamental Rights (Enforcement Procedure) Rules have been made as a special procedure for the speedy enforcement of the fundamental rights of the citizens. In other words, an action under the Fundamental Rights (Enforcement Procedure) Rules is a peculiar action. It is a kind of action which may be considered as sui generis i.e. it is a claim in

a class of its own, though with a closer affinity to a civil action than a criminal action. The remedy available by this procedure is to enforce the Constitutional Rights available to citizens which has been contravened by another or others. Indeed, in most cases, the acts or facts giving rise to the contravention of such fundamental rights, may have some criminal connotation, but will not raise the allegations of breach of fundamental rights to the level or pedestal of a criminal allegation.

I am therefore of the view that, to raise the standard of proof in an action for the enforcement of fundamental rights to that required in a criminal allegation, merely because the facts giving rise to the breach or contravention have semblance of criminal acts, will defeat the purpose of Section 46 (1) of the 1999 Constitution of Nigeria, which seeks a simple, easy to attain and thus effective judicial process for the enforcement of fundamental rights available to citizens under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria. See ***COMMISSIONER OF POLICE, EKITI STATE VS. AREGBESOLA (2020) LPELR (50177) 1 AT 29-31***

The court can also consider circumstantial evidence in cases such as this. What is circumstantial evidence? Circumstantial evidence is based on inference and not on personal knowledge or observation. Such evidence must lead cogently, strongly and unequivocally to the conclusion that the respondent committed the offence for which he is accused. Furthermore, such evidence must point to only one conclusion which is that the offence had been committed and that it was the Respondent who committed the offence. See ***ITODO VS. THE STATE (2020) 1 NWLR (PT. 1704) 1.***

Looking at the exhibits tendered by the Applicant and considering the fact that the injuries sustained by the Applicant as explained in exhibit CA1, occurred on 2nd July 2022, the same date that the Applicant confronted the Respondent at his club to demand for the payment of a debt owed the Applicant's company by the Respondent, it can be reasonably inferred that the Respondent had a hand in the violation of the Respondent's fundamental right to the dignity of her person.

Also worthy of note, is the fact that the Respondent transferred the sum of N1, 000,000 to the Applicant's husband two days after the incident of 2nd July 2022. I do not believe the story of the Respondent that said transfer was a mere support for the A. Y Live Show. It is hard to reconcile why a man who claims to have been harassed by the Applicant at his club, and who claims that the Applicant destroyed facilities in the said club, will turn around two days later to send money to the Applicant's husband as a token of support. The unbelievable and contradictory facts in the Respondent's affidavit leaves this court with the impression that the Respondent is indebted to the Applicant and that the Respondent ordered the assault on the Applicant. I so hold!

Fundamental rights are regarded as part of human rights. The trend in every modern society where the rule of law operates is to protect them for the enhancement of human dignity and liberty. Therefore, once there is an issue of deprivation of personal liberty or rather breach of fundamental rights, the Court must look at it with all seriousness

Section 34 (1) (a) of the Constitution provides as an incident of the right to dignity of human person, that no person shall be subjected to inhuman or degrading treatment. By ordering the

manhandling and beating up of the Applicant, the Respondent clearly violated this right.

Accordingly relief 1 and 2 are hereby granted. I also direct the Respondent to pay the Applicant the sum of N1,500,000.00 only as exemplary damage for his oppressive conduct and action against the Applicant all other reliefs are hereby refused.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)

Appearance

John Ikenwe :- We are grateful.

Chukwudi B. Nwuzor:- We are grateful