

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU

SUIT NO. FCT/HC/CV/212/2023

DATE: 13 – 05 -2024

**BETWEEN:**

ABDULRAHMAN BALA UMAR.....APPELLANT/APPLICANT

AND

ECONOMC AND FINANCIAL CRIMES COMMISSION.....RESPONDENT/RESPONDENT

**Appearance:**

*U.L. Asuquo, Esq, for the Appellant/Applicant.*

*S.O. Obila, Esq, for the Defendant/Respondent.*

**JUDGMENT**

By an Originating Motion on Notice, the Applicant herein, Abdulrahman Bala Umar, brought this action for the enforcement of his Fundamental rights pursuant to sections 35, 36, 41 and 46 of the 1999 Constitution of the Federal Republic of Nigeria (as amended); Articles of the African charter on Human and Peoples’ Rights (ratification and enforcement) Act cap A9 laws of the Federation of Nigeria, 2004, Orders II, VI & XI

of Fundamental Rights (enforcement procedure) Rules, 2009 and the inherent jurisdiction of this court praying for the following orders:

- I. **A declaration that the unwarranted calls, invitations and subsequent detention of the Applicant in the Respondent's office to refund the sum of #20,000,000.00 which is part of the contract sum he executed for KYC Inter Project Ltd out of N25,000,000.00 leaving the balance of No2,000,000.00 is unlawful and violation of Applicant's fundamental rights.**
  
- II. **A declaration that the invitation and subsequent detention of the Applicant in the Respondent's office arising from an executed contract (Electrification) for KYC Inter Project Ltd,, a civil transaction is unlawful and a violation of Applicant's fundamental rights.**
  
- III. **A declaration that the Applicant is entitled to enjoy the benefits of the contract which he fully executed for KYC Inter Project Ltd without any form of harassment, intimidation and intrusion from the Respondent and any**

**dispute arising therefrom can only be resolved by a court of competent jurisdiction.**

- IV. A declaration that the interrogation by the Respondent in their office as to the proceeds of the contract sum executed by the Applicant, a civil transaction, is unlawful and a violation of Applicant's fundamental rights.**
  
- V. A declaration that the Respondent can only detain the Applicant for the purposes of bringing him before a court upon any reasonable suspicion of his having committed a criminal offence and not for the purposes of inquiry or to coerce him to make a damning statements of which he knows nothing about.**
  
- VI. A declaration that the detention of the Applicant arising from a contract he executed since last year without any formal charge whatsoever filed against him is a violation of Applicant's fundamental rights.**

- VII. A declaration that the Respondent's command to or coerce of the Applicant to refund the proceeds of the contract sum he personally executed is a violation of the Applicant's fundamental rights.**
  
- VIII. A perpetual injunction restraining the Respondent, their agents, servants and/or officers from further calling, inviting, arresting and detaining the Applicant on a mere allegation that the sum of N20,000,000.00 received for the contract he executed is alleged to be from a proceeds of fraud.**
  
- IX. A perpetual injunction restraining the Respondent their agents, servants and/or officers from further calling, inviting, arresting and detaining the Applicant on any issue arising from already executed contract (electrification) with KYC Inter Project Ltd.**
  
- X. A mandatory Order against the Respondent to immediately release all sureties and bonds it had**

received on the occasion of Administrative bail of the Applicant.

**XI. N500,000,000.00 Exemplary Damages against the Respondent for initiating this frivolous prosecution against the Applicant.**

**XII. Any other order the Court may make in the circumstance.**

The Application is supported by a 19 paragraph affidavit deposed to by Abdulrahman Bala Umar, the Applicant, wherein he stated inter-alia thus:

- 1. That I am the Applicant in this matter and have personal knowledge of the facts leading up to this case.*
- 2. That I have twice been previously contracted by KYC Inter Project Ltd to carry out electrification projects in their Housing estate in Lugbe, Airport Road, Abuja of which no issues as to fraud or any other issues whatsoever have ever arisen.*

3. That sometime early last year in my *personal capacity* I approached Mr. Michael Ayuba Auta, the Managing Director (MD) of KYC Inter Project Ltd for the contract of electrification of Housing Units in the Housing project on-going at Lugbe Airport Road, Abuja.
4. That sometime in June, 2022 KYC Inter Project Ltd and I entered into a verbal contract for the electrification of Housing Units in the Housing project of the company on going at Lugbe Airport of which the contract is worth N25,000,000.00.
5. That KYC Inter Project Ltd through Mr. Michael Ayuba Auta sometime in 2022 on three various times, paid the total sum of N23,000,000.00 into my Guaranty Trust Bank Account for the said electrification of the Housing Units.
6. That I then proceeded to purchase various electrical items needed in order to complete the electrification project.

The copies of the receipts issued for purchasing the items for electrification were attached and marked exhibit 1 & 2.

7. *That the electrification project on the Housing Estate has long been completed and Mr. Michael Ayuba Auta is still yet to pay the balance of N2, 000,000.00.*
8. *That on the 6th day of November, 2023 I received a phone call from one Mr. Opeyemi Joseph who introduced himself as an officer of the EFCC (the respondent) under CTGI PS II and asked me to report to their office the following day being the 7th day of November, 2023 to answer some questions regarding the sum of N20, 000,000.00 received from KYC Inter Project Ltd.*
9. *That on the 7th of November, 2023 I arrived at the office of the EFCC at 10:00 AM with my lawyer Mr. Gabriel Ayegba to honour the invitation and answer any possible questions that they might have regarding the said transaction.*
10. *That upon our arrival we were taken to the office of the team lead who then explained to us that the sum of N20,000,00.00 paid into my said account are proceeds of fraud and as a result, I am to refund the said amount.*

11. *That they then proceeded to take my **statement** under word of caution and **the** statement was taken in an interrogative form.*
12. *That after my statement was taken they issued me Condition for Bail and asked me to produce a surety who will then take me on bail.*

*A copy of the condition for bail was attached and marked exhibit 3.*

13. *That I called my brother and a friend of mine to come and stand as sureties for my bail but the Respondent's officials told me that they both didn't meet up with the requirements they wanted and couldn't stand as surety for my bail.*
14. *That they only released me to my said lawyer who signed an undertaking to bring me back the following day with a reliable surety who meets up with the requirements as contained on the Condition for Bail. We were at the Respondent's **office** from 10:00 AM and was only released at 7:00 PM after the respondent extracted the said undertaking from my lawyer.*

15. *That on the following day being the 8th day of November, 2023 I returned to the Respondent's office with a surety and my lawyer and after being satisfied that the surety had met the requirements released me on bail and told me to return in 2 weeks with details as to when and how I will make the payments.*
16. *That the invitation from the Respondent is disquieting and disturbing to my liberty and my businesses..*
17. *That if the Respondent is not stopped they will continue to impact my business negatively and disturb my personal liberty.*
18. *That unless restrained the Respondent will continue the violation of my fundamental rights over a matter that I was neither a party nor privy.*

In the written address in support of the Application, counsel for the Applicant submitted a sole issue for determination, to wit:

**Whether the rights of the Applicant as protected and guaranteed by Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) particularly as it concerns Rights to dignity, liberty and movement under**

**Sections 33(1), 34(1), 35(1) and 41(1) of the Constitution as well as provided under the African Charter for Human and peoples' Rights, have been infringed upon by the Respondents.**

Learned counsel argued the issue in urging the court to grant the reliefs sought.

In response to the Application, the Respondent filed a Counter affidavit of 15 paragraphs deposed to by one Nnamdi Umeano, a Litigation officer in the EFCC who stated thus:

4. *That I have seen the Originating Motion on Notice, Statement in support of the application for the enforcement of the fundamental rights of the Applicant, the grounds upon which the reliefs are sought, and the affidavit in support of the application dated 14th November, 2023, of which contents thereof are false, misleading and concocted to mislead this Honourable Court.*
5. *The Respondent denies paragraphs 1, 2, 3, 4, 5, 6, & 7 of the Applicant's Motion on Notice as same is within his personal knowledge.*

6. That I was informed by Obila Stanley, a Legal Officer/counsel to the Respondent on the 23rd of January, 2024 in his office at plot 301/302 Institutions and Research District Jabi, Abuja at about 12:15pm of the following facts and I verily believe same to be true:
- (a) That the Respondent herein received a petition dated 1st August, 2023 from Wealthy Partners on behalf of Arodiogbu Enterprises Ltd a company duly registered under the laws of Nigeria alleging the offence of Money Laundering, Financial Fraud and Criminal Breach of Trust to the tune of N200,000,00 (Two hundred million) against KYC Interproject limited and its Director. A copy of the petition is hereby attached and marked as **EXHIBIT EFCC 1**.
  - (b) That upon receipt of the petition, the Investigation team swung into action and found the petition worthy of Investigation.
  - (c) That Investigation torchlight on the petition revealed that the petitioner (Arodiogbu Enterprises Ltd) approached KYC Interproject Limited for the purchase of a piece of land at

*Guzape at the rate of N150,000.00 (one hundred and fifty million).*

- (d) That Investigation also revealed that the petitioner made payment in that regard on instalments and further paid the additional sum of N50, 000.00 (fifty million Naira) to KYC Interproject Limited to carry out change of name but same was never done neither was the land given to the petitioner after repeated demands having made payment.*
- (e) Flowing from the above, letters of Investigation activities was sent to United Bank of Africa requesting for the statement of account of KYC Interproject Limited with account number, 1022590364. A copy of the statement of account of KYC Interproject Limited is hereby annexed and marked as Exhibit **EFCC 2**.*
- (f) That analysis of the statement of account of KYC Interproject Limited revealed that monies were disbursed to various individual accounts domiciled in different banks as seen in Exhibit EFCC 2 above.*
- (g) That on 30th June, 2022, the Applicant received the sum of N10, 000,000 (Ten Million Naira) and another N10, 000,000*

*(Ten Million Naira) on the same day, totaling N20, 000,000 (Twenty Million Naira) from KYC Interproject Limited.*

*(h) That the Applicant was invited to the office of the Respondent to explain the money he received from the account of KYC Interproject Limited.*

*That the Applicant came to the office of the Respondent on 7th November, 2023 and gave his statement under words of caution and was released on bail on that same day. A copy of the bail application and criminal recognizance form is hereby annexed and marked as **EFCC 3a and EFCC 3b**.*

*That contrary to the depositions in paragraphs 8,9,10,11,12,13 14 & 15, the Applicant was invited via telephone call to come and answer to the details of investigation against him. That in further answer to paragraph 7, the Applicant came to the office of the Applicant on the 7th day of November, 2023 and volunteered his statement under caution and was released under that same. This is evident in Exhibit EFCC 3a and 3b above.*

*That the depositions in paragraphs 16, 17, 18 & 19 are frivolous, dishonest, and untrue and calculated to mislead the Honourable Court.*

*I know that the Applicant is seeking to use the instrumentality of this Honourable Court to shield himself from criminal Investigation.*

*I know that the Applicant's Motion on Notice if granted has the effect of restraining the Respondent from carrying out its statutory mandate of Investigation and prosecuting Economic and Financial Crimes.*

*I know that the Applicant's rights have not in any way been infringed or likely to be infringed by the Respondent.*

*I know that the balance of convenience is not in the Applicant's favour to entitle him to the grant of this Application.*

In the written address in support of the counter affidavit, the Respondent's counsel formulated two issues for determination, to wit:

- 1. Whether the Applicant is entitled to the order of perpetual injunction.**
- 2. Whether the Applicant is entitled to the damages claimed.**

Counsel argued the issues in urging the court to refuse the Application.

In response to the counter affidavit and written address of the Respondent, the Applicant filed a reply on points of law dated 1<sup>st</sup> march, 2024 wherein counsel proffered further arguments in support of the Application.

## **COURT**

On the part of the court, I have carefully considered all the processes before the court. It is my considered view that the issue *whether the Applicant has made out a case to entitle him to the reliefs sought* is up for determination.

it must be said, in fundamental right cases, such as the present case, the law is clear as provided in Section 46(1) of the 1999 Constitution (as amended) where it provides the grounds as to what determines whether one's fundamental right is breached. The section states thus:

**“Any person who alleges that any of the provision of this chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a high court in that state for redress.”**

Also, by virtue of Order II, Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the Rule provides thus:

**“any person who alleges that any of the fundamental rights provided for in the constitution and to which he is entitled, has been, is being or is likely to be infringed may, apply to the court in the state where the infringement occurs or is likely to occur for redress.”**

Fundamental rights are generally regarded as those aspects of human rights which have been recognized and entrenched in the constitution. See **E.F.C.C. VS. AKINGBOLA (2015) II NWLR PT 1470 PG. 249 AT PG. 290.**

These rights are amplified further by the Court of Appeal in **FRANCIS V.ASUGHA (2020) LPELR** (among other decided authorities) that the law is trite, what constitutes fundamental rights action is rooted in the infringement of any of the basic rights of a citizen as enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended). See also **AL-HASHIM V. TOM & ORS (2019) LPELR 47651 C.A. RAMSOME-KUTI VS. ATTORNEY GENERAL OF THE FEDERATION (1985) 2 NWLR (PT.6) 21 AT 229 TO 230.**

Enforcement of Fundamental Human Right matters is usually begun vide motion on notice with affidavit and written address. Needless to mention it is fought and won on the paragraphs of affidavit and written address.

It is worthy to note that reliefs (I) - (VII) as prayed for by the Applicant are declaratory in nature thereby predicating the success of the other reliefs on them.

It is trite that where the Court is called upon to make declaration of claiming to be entitled to the said declaration to satisfy the Court by cogent and reliable evidence in support proof of his claim and not the admission or on default of filing a defence. **See AGBAJE V. FASHOLA & ORS (2008) 6 NWLR (PART 1082) & SAMEJI V. IGBE & ORS (2011) LPELR – 4412.**

From the endorsement on the face of the originating motion, Applicant seeks a declaration that, the invitation, arrest, detention and further invitation of the Applicant and demand for refund of N20, 000,000.00 by the Respondent, for being a contractor who was engaged by the person who is the subject of investigation, is unlawful and a violation of the Applicant's Fundamental right guaranteed by the constitution.

For all intents and purposes, Respondents Organization (EFCC) is a reputable commission with mandate to fight and curb financial crimes. It is indeed our collective responsibilities to ensure all hands are on deck for all agencies of government to work well and achieve the desired results.

However, that cannot be done in utter disregard for the constitutionally provided rights, which are well guaranteed.

The question that must be asked at this point is what Fundamental right of the Applicant, if any, was breached or likely to be breached by the actions of the **Respondent**. It is in evidence that the Respondent is investigating an allegation of Fraud, Embezzlement and money laundering against KYC INTERPROJECT LTD and its Director, Mr Michael Audu Auta as seen in the Petition (exhibit EFCC 1). The Respondent, who, as earlier stated, is tasked with the investigation of crimes, particularly one involving financial crimes invited the Applicant in the course of its investigation. It is in evidence that the statement of the Applicant was obtained at the Respondent's office and the Applicant was released on bail when he honoured the first invitation. The Applicant has alleged that he was continuously invited by the Respondent for the purpose of refunding N20, 000,000.00 paid into his

account by the suspects named in the petition. The Applicant contended that having not been privy to the contract and events that led to the offences alleged, he shouldn't be made a suspect. He was only contracted to carry out electrical works, which he has since executed and is been owed a balance payment for the work as seen in exhibits 1 and 2 attached to the affidavit in support of the Application.

**In RIVERS STATE MICROFINANCE AGENCY V. MRS DIALABA S. D. ISOKARIARI & ANOR (2018) LPELR 44863 (CA)**, the court of Appeal held that it will amount to an abuse of the process of law to move the court in the guise of enforcement of right to inhibit any law enforcement agency from performing its statutory duty. An invitation to a person, even a suspect cannot by any stretch of imagination constitute a breach or threat to the fundamental right of such person. Fundamental right action are based on facts connected to an infraction on the right complained and not on flimsy Apprehension.

In relief VIII, it was prayed that the Respondent be restrained perpetually from dealing with the Applicant in respect of the investigation it is conducting. This is unavailing especially, as admitted by the Applicant he was not detain on the first invitation, but released on bail.

The trite position of the law is as in the case of *EWULO V. EFCC & ORS (2015) LPELR-40912 (CA)* where the court held thus:

*“It is no longer in doubt that Agencies vested with statutory powers to investigate crimes cannot be restricted or arm twisted by litigation to prevent them from exercising their statutory powers.....under S. 41 of the EFCC Act, 2004 the commission cannot be held accountable for any invitation, arrest and detention of any person in the process of discharging its statutory duties of investigating and preventing the commission of crimes”*

Having said that the question that begs for an answer is whether it is lawful to demand a suspect to pay money believed to be part of proceed of crime to the Respondent without an order of court. The answer must be in the negative.

The Respondent has no power to compel the Applicant to pay any amount in the course of its investigation without valid order of a court of competent jurisdiction.

Accordingly, It is my considered judgment that the Applicant’s rights have not been breached by Respondent on account of invitation to aid its investigation.

Applicant has no place to stand in law to challenge the Respondents' action. As the Respondent has the right to invite the Applicant to interview him on matters relating to the petition under investigation.

This Court will not clip the wing of Respondent to prevent it from carrying out its investigation; the primary reliefs are declaratory in nature. The affidavit evidence of the Respondents is more superior and legally convincing. I disagree with the Applicant.

I refuse the application.

Finally, it is hereby ordered that the Respondent is restrained from demanding refund of N20, 000,000.00 from the Applicant pending conclusion of investigation and obtaining a court order.

I make no further order.

This is the decision of this court.

Signed  
Hon. Judge  
13/05/2024