

**IN THE HIGH COURT OF 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/7493/2023  
DELIVERED ON THE 14/03/2024**

**BETWEEN:**

**BIALOSE UDO GILBERT..... APPLICANT**

**AND**

- |  |   |                      |
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| <p><b>1. THE CHAIRMAN, ECONOMIC AND FINANCIAL<br/>CRIMES COMMISSION</b></p> <p><b>2. WEMA BANK PLC</b></p> | } | <b>..RESPONDENTS</b> |
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**JUDGMENT**

The Applicant (Bialose Udo Gilbert) alleged that some years ago, one Rakiya Abdullahi, who was a staff of Sterling Bank, assisted him in opening an account in the Bank and since then, they became close.

That about 5 years ago the said Rakiya told him that she was going for an interview in Lagos State with Wema Bank Plc. and sought for his assistance to sign a *Guarantor form* which he did. After some months, Rakiya told him that she acquired the job with the bank and was posted to Wuse 2, FCT, Abuja.

It is the averment of the applicant that he was not told of any criminal misappropriation whatsoever against the said Rakiya since she started working. Only for the 2<sup>nd</sup> respondent to use the

instrumentality of the 1<sup>st</sup> respondent to call him to report at the 1<sup>st</sup> respondent's office to produce the said Rakiya Abdullahi: that she was been investigated for a criminal act she committed. Applicant stated that, it is not only witch-hunting but an attempt to harass, intimidate and infringe on his fundamental right to the liberty and freedom of movement.

The applicant then took out an Originating Summons for the Enforcement of his Fundamental Human Right against the Respondents and sought for the following reliefs, to wit;

*(1) A declaration that the attempted arrest, continuous invitation in an attempt to detain and or incarcerate the applicant by the Respondent upon the complaint/petition of the 2<sup>nd</sup> respondent in their cell/detention facility will constitute likelihood of infringement and a breach of the fundamental rights of the Applicant and that such attempted arrest, invitation or detention should be declared unlawful, arbitrary, unconscionable, barbaric, despicable. Condemnable, unlawful, illegal, unconstitutional as would result to a gross violation of the Applicant's fundamental rights to liberty and freedom of movement, as guaranteed by Sections 35 and 41 of the Constitution of the Federal*

*Republic of Nigeria, 1999 (as amended) as well as Article 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9, Laws of the Federation of Nigeria, 2004.*

- (2) **A declaration** that, the continued invitation, attempt to arrest and detain the applicant after various invitation inclusive of the invitation of the 4<sup>th</sup> day of September, 2023 in an attempt to detain the applicant by the 1<sup>st</sup> respondent in their cell/detention facility on the premise, that the Applicant reference/guaranteed her employment form about Five years ago while the said Rekiyat Abdullahi was seeking for employment in the 2<sup>nd</sup> respondent establishment would constitute an infringement and a breach of the fundamental right of the Applicant and same should be declared unconstitutional and contrary to Section 35(3) of the 1990 Constitution of the Federal Republic of Nigeria (as amended).
- (3) **An order** restraining the respondents from attempting to arrest, invite and detain the Applicant forthwith for an unknown offence that is not linked against the Applicant neither was same disclosed to the Applicant upon lawfully honoring the phone call invitation made by one of the staff

*of the 1<sup>st</sup> Respondent by name Ifeanyi in the AMCON DESK STATION OFFICE of the 1<sup>st</sup> Respondent through phone number: 08063962466.*

- (4) A **declaration** the Applicant is entitled under the law to move freely throughout Nigeria and to reside in any part thereof and not be subjected to any form of invitation and production of a suspect the Applicant never conspired with to commit any crime that discloses the name of the Applicant as such in any written petition either before the 1<sup>st</sup> Respondent but on the basis that the Applicant only merely assisted in referencing or recommending a fellow Nigeria for employment in the 2<sup>nd</sup> Respondent establishment.*
- (5) The sum of N500,000,000.00 (Five Hundred Million Naira Only) against the 2<sup>nd</sup> Respondent for instigating a wrongful malicious petition against the Applicant resulting to damages suffered by the applicant financially, emotionally and psychologically for deprivation of his fundamental rights.*
- (6) An order restraining the 1<sup>st</sup> Respondent from further inviting the applicant through only means or medium of communication for an unknown offence attributable against*

*the Applicant and the sum of N500,000,000.00 (Five Hundred Million Naira Only) resulting to damages suffered by the Applicant financially, emotionally and psychologically for deprivation of his fundamental rights.*

- (7) An order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to apologize to the Applicant in three (3) daily newspapers for wrongful infringement, tarnishing the image and character of the Applicant, wrongful invitation attempted arrest and violation of the fundamental rights of the Applicant.*

The grounds upon which the reliefs are sought are as follows:-

1. The Applicant by the virtue of Section 34, 35 and 41 of the 1999 Constitution of Federal Republic of Nigeria (as amended) as well as Article 5 and 6 of African Charter on Human and People's Right (Ratification and Enforcement) Act Cap 10, Laws of Federation of Nigeria 1990 is entitled to freedom of movement, personal liberty and right to dignity of human person.
2. The Applicant's rights to personal liberty, freedom of movement and right to dignity of human person have been breached and it is likely to be breached as there are constant attempts by the 1<sup>st</sup> Respondent working on the instructions

of the 2<sup>nd</sup> Respondent to arrest, humiliate and subject the Applicant to inhuman treatment at the behest of the 2<sup>nd</sup> Respondent.

3. The actions of the 1<sup>st</sup> Respondent that resulted upon the Applicant been invited is based on *malafide* complaints made by the 2<sup>nd</sup> Respondent and in bad faith.
4. The invitations for investigation, threat to humiliate, attempted arrest and curtailing the freedom of movements of the Applicant without no just cause is not justified by any circumstance stated in the 1999 constitution of Federal Republic of Nigeria or any other written law.
5. That the Applicant has suffered physical distress, financial, emotional and psychological trauma as a result of the continuous invitation, attempt to arrest, detain and humiliate the Applicant by the Respondents.
6. The Nigerian Police cannot be used as a tool for punishing any person for an unknown offence not defined by law.
7. The Applicant has right to enforce his fundamental human right when his rights have been breached, are being breached or likely to be breached.

In line with law and procedure an affidavit of 31 paragraphs was filed and deposed to by the Applicant himself. As stated from

the preceding part of this judgment, the case of the Applicant is simply that he was not informed of any alleged crime committed by the said Rakiya Abdulahi whom he guaranteed and of any offence whatsoever that he conspired with the Rakiya to commit that warrant a demand for him to produce her.

The Applicant avers further that, the guarantee obligation he signed on behalf of the said Rakiya Abdullahi while she was seeking for employment in the 2<sup>nd</sup> Respondent establishment never warrant the 2<sup>nd</sup> Respondent a party to the obligation to be using instrumentality of the 1<sup>st</sup> Respondent to harass, attempting to arrest or detain him.

Upon service, the 1<sup>st</sup> Respondent filed a counter affidavit of 8 paragraphs deposed to by one Samson Oloje. It is the deposition of the 1<sup>st</sup> Respondent that a petition was received by the commission on the 19/7/2013 from the 2<sup>nd</sup> Respondent on alleged case of fraud and stealing of the sum of N16,000,000 against one **Rakiya Abdullahi** who was the staff of the 2<sup>nd</sup> Respondent which investigation revealed that the said Rakiya has defrauded a lot of people.

That based on discoveries in investigation, there was need to invite the Applicant who is mentioned in the petition as one of

the guarantors of Rakiya Abdullahi. And that the applicant made a statement to the commission upon invitation and was released.

It is further the deposition of the 1<sup>st</sup> Respondent that investigation is still ongoing and therefore, the commission should be allow to carry out its constitutional duties.

On its part, the 2<sup>nd</sup> Respondent filed a counter affidavit of 28 paragraph deposed to by one Adedamola Fakoya, a staff of the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> respondent avers that it got a call from one Ahmed Isah of Human Right Radio on the activities of Rakiya Abdullahi who was one of its staff on the allegation of engaging in fraudulently obtaining money from several persons deceitfully, aside the call from Human Right Radio, a letter from one Anyebe Imabeni Esq. on behalf of Mr. Nnameka Kenneth Arue demanding for returns on investment purportedly made by the 2<sup>nd</sup> respondent through Rakiya Abdullahi.

That investigation was carried out internally and it was revealed that the said Rakiya Abdullahi and some customers of the 2<sup>nd</sup> Respondent had set up a bank in the bank by pitching a private investment of the 2<sup>nd</sup> Respondent.

That the bank decided to report the matter to EFCC and the Applicant herein was one of the persons that guaranteed the said Rakiya Abdullahi as conditions precedent for her employment and in line with their constitutional duties the 1<sup>st</sup> respondent invited the Applicant.

It was further averred that by virtue of the guarantor's form signed by the Applicant, the Applicant has voluntarily agreed to be liable for losses and/or fraud committed by the said Rakiya Abdullahi.

The applicant filed a further affidavit in response to the 1<sup>st</sup> respondent counter affidavit wherein the applicant stated that, there is nothing in his statement to the 1<sup>st</sup> Respondent that showed that he admitted the commission of crime.

## **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.**

In the case at hand, the Applicant willingly agreed and stood surety for one Rakiya Abdullahi a staff of the 2<sup>nd</sup> Respondent.

The said Rakiya Abdullahi was alleged to have committed series of criminal activities while in the employment of the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> respondent, after internal investigation, found her wanting and wrote a petition to the 1<sup>st</sup> Respondent (EFCC) for investigation.

The 1<sup>st</sup> Respondent acting on the petition and in consonance with its statutory duty of investigating and preventing financial crimes invited the Applicant for clarification on his involvement or otherwise been the guarantor of the said Rakiya Abdullahi. The Applicant then approached this Honourable Court and sought for various declaratory reliefs as contained in the preceding part of this judgment.

The functions of the **Economic and Financial Crime Commission (EFCC)** are provided for, specifically under section 6 (a-g) of the EFCC Act, as follows:-

- 1. Investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfer, futures market fraud, fraudulent endorsement of negotiable instruments, computer credit card fraud, contract scan etc.**
- 2. The adoption of measures to identify, trace, freeze, confiscate proceeds derived from terrorists activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds;**
- 3. The adoption of measures to eradicate the commission of economic and financial crimes, amongst other functions numerously itemised under the aforementioned section of the Act.**

Enforcement of Fundamental Human Right matters is usually begun vide motion on notice with affidavit and written address.

Needless to mention that it is fought and won on the paragraphs of affidavit and written address.

For all intents and purposes, 1<sup>st</sup> Respondent a reputable commission with mandate to ensure Nigeria becomes free 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, was the fundamental right of the Applicant breached or likely to be breached by the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It is in evidence that the 2<sup>nd</sup> Respondent after an internal investigation and believe that a crime was committed wrote a petition to the 1<sup>st</sup> Respondent who as earlier stated is tasked with the investigation of crimes, particularly one involving financial crimes. The Applicant was invited on the cause of the investigation of Raliya Abdullahi a former staff of the 2<sup>nd</sup> Respondent when he sponsored her as Guarantor for employment. It is in evidence that the statement of the Applicant was obtained at the 1<sup>st</sup> Respondents office and the Applicant

was released. The Applicant has alleged that he was continuously invited by the 1<sup>st</sup> Respondent for the purpose of arresting and detaining him. What led to this undertaking is not stated in the Applicants affidavit evidences. 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 the 1<sup>st</sup> relief it was prayed that the likely detention of the Applicant will constitute likelihood of infringement. This is unavailing especially, as admitted by the Applicant he has had contract with the 1<sup>st</sup> Respondent and not arrested or detained.

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”

It is my considered judgment that the Applicant, being desirous of covering the said Rakiya Abdullahi's tracks hurriedly rushed to court to frustrate the Respondent from investigating the alleged criminal activities of the said Rakiya Abdullahi. Applicant who desperately made efforts to sway this court vide his affidavit deposition, has failed to convince the court legally speaking from his deposition, as there is no place that the applicant has stated that he was arrested and detained.

Applicant has no place to stand in law to challenge the Respondent's action. As the 1<sup>st</sup> respondent has the right to invite the Applicant to know the where about of the said Rakiya Abdullahi.

There is no right of Respondent known to law breached here worthy of any judicial injunction by way of order.

The primary relief is declaratory in nature. The affidavit evidence of the Respondents is more superior and has the support of law.

I shall refuse this application because it is most unmeritorious.

On the whole therefore, suit **No. CV/7493/2023** having failed to meet the requirement of the law is hereby dismissed.

**SIGNED:**  
**HON. JUDGE**  
**14/03/2024.**

**APPEARANCE:**

*Godspower Eroga, Esq, for the Applicant*

*Y.Y. Tarfa, Esq, for the 1<sup>st</sup> Respondent*

*Aderibigbe Olamide, Esq, for the 2<sup>nd</sup> Respondent*