

**IN THE HIGH COURT 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/559/2023

DELIVERED: ON THE 28/03/2024

BETWEEN:

- 1. CHIEF CHINEDU ORJIAKOR
- 2. CHIEF MARCEL OKOLIE
- 3. CHIEF ISRAEL IGBONAJU



.....APPLICANTS

AND

- 1. INSPECTOR GENERAL OF POLICE
- 2. IFEANYI ORJIAKO
- 3. CANICE ORJIAKO
- 4. VICTOR ORJIAKO
- 5. JUSTIN ORJIAKO



.....RESPONDENTS

JUDGMENT

The 1st Applicant and the 2nd to 5th Respondents were having dispute over the ownership of land in Uli, Anambra State which resulted in the demolition of a building erected on the said land. The 1st Applicant after the demolition issued a public warning seeking to dissuade further intrusion on the land.

The 2nd to 5th Respondents on their part, wrote a petition dated 24/7/2023 and addressed to the 1st Respondent which led to the arrest and detention of the Applicants.

Aggrieved by their arrest and detention, the Applicants filed an originating motion for the enforcement of their fundamental right pursuant to Section 6(6) A, 35, 40 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and sought for the following reliefs:-

- 1) **A declaration** of this Honourable Court that the arrest and detention of the Applicants by the 1st Respondent at the instance of the 2nd – 5th Respondents from 21st and 23rd October 2023 up until the 27th October 2023 when they were arraigned before the Magistrate Court of the Federal Capital Territory, Abuja is unlawful, unconstitutional and an infringement of the Applicants' Right to Personal Liberty as enshrined in the 1999 Constitution of Nigeria as (amended).
- 2) **A declaration** of this Honourable Court that the continued detention of the Applicants at the Suleja Correctional Centre from the 27th of October 2023 up till date despite having been arraigned before the Magistrate Court of the Federal Capital Territory, Abuja, is unlawful, unconstitutional and an infringement of the Applicants' Right to Personal Liberty as

enshrined in the 1999 Constitution of Nigeria as (amended).

- 3) **An order** of this Honourable Court restraining the Respondents, whether by themselves, their assigns, privies or agents, from further infringing on the Fundamental Rights of the Applicants upon the facts of this case.
- 4) **An order** of this Honourable Court directing the Respondents jointly and or severally to pay to the Applicants, the sum of **₦50,000,000.00 (Fifty Million Naira) only** as damages for the unlawful arrest and detention of the Applicants by the 1st Respondent upon the instigation of the 2nd – 5th Respondents.

In line with law and procedure, the said originating motion was accompanied by a verifying statement, grounds upon which the application was brought, statement in support, affidavit and written address. The 1st Respondent was served with the originating process on the 9/1/2024 with its stamp clearly affixed to the endorsement and return copy.

Similarly 2nd to 5th Respondent were duly served outside the jurisdiction of this Honourable Court based on the affidavit before me.

On the hearing date, the Respondents were not in court neither were they represented. Learned counsel for the Applicant was asked to proceed with adoption of his

processes after satisfied that hearing notices were served on the Respondents.

The case of the Applicants as distilled from the affidavit in support of the application is that 2nd – 5th Respondents are relatives of the Applicants residing in Uli, Anambra State and following a purely civil land dispute over the ownership of the 1st applicant's land which resulted in the demolition of a building erected on the said land, the 2nd to 5th Respondent wrote a petition to the 1st Respondent which led to the arrest and detention of the applicants.

That the 2nd to 3rd Applicants were merely ardent supporters of the 1st Applicant but were arrested at Uli Town, in Ihiala Local Government of Anambra State on 21/10/2023 and brought to Abuja on the 22/10/2023 and detained till 27/11/2023.

That the 1st Applicant presented himself on the 23/10/2023 and was detained until 27/10/2023. And that the 1st Applicant was taken to magistrate court on the 27/11/2023 and his bail was refused based on the oral application moved by the counsel for the applicant. Again a formal application was moved on the 6/11/2023 same was refused despite the facts that the offences for which they were charged being bailable offence.

It is instructive to state here that this application was brought alongside motion ex parte for interim order of bail to the applicant which same was granted on 14/12/2023.

I have carefully perused the processes before me, the reliefs sought as well as the evidence adduced from all the process filed. It is clear to me that the main issues to be addressed is whether the arrest by the 1st Respondent of the applicant was lawful and whether the arrest and continued detention has resulted in abuse of their fundamental human rights.

By virtue of the provision of section 46(1) of the 1999 Constitution which states that “**Any person who alleges that any of the provision of this chapter has been, or is likely to be contravened in any state in relation to him may apply to a high court in that state for redress**”. This provision gives right to suit as the instant case.

For any action to qualify to be brought under the Fundamental Rights Enforcement Rules, breach of fundamental rights must be the primary claim in the suit. **See INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS V. NIMC (2021) LPELR-55623 (CA).**

In **DR FOLARANMI AKINOSUN V. COMMISSIONER OF POLICE, KWARA STATE & ORS**, The court defined fundamental human rights as those rights provided for in

chapter IV of the constitution and the African Charter on human and Peoples rights. **See also OSONDU V. A.G. ENUGU STATE (2017) LPELR-CA/E/25/2016.**

In the instant case, the Applicant alleged that the allegation against them were purely a civil matter which has to do with the ownership of land in Uli, Anambra State. It was averred that the 1st Respondent arrested and detained them without recourse to their fundamental right. The Applicants further stated that they were arraigned before Magistrate court and his bail was denied despite the offence been aailable offence.

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 emphasized 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.**

However, the law is trite that Respondents in a case for fundamental rights breaches, have the duty of leading evidence to justify their action of arrest detention of the Applicant.

This is in line with the decision in ***ONORUGA & ORS ENIOWA & ORS (2015) LPELR 24273 CA***. “*That the burden of proving legality or constitutionality of the arrest or detention of a person is on the arresting authority.*”

In the case at hand, the Respondents have failed/neglected to deny the allegation made by the Applicants, thereby leaving the affidavit of the applicant uncontroverted.

I have carefully considered the totality of evidence placed before the court. The depositions contained in the Applicants affidavit, statement and the written address.

It is my considered view here that there is nothing to prove that the Applicant was not illegally arrested or unlawfully detained from October 23rd 2023 to 27/10/2023 where the court order was obtained, if the police have any evidence against the suspicion or allegation made on the Applicants they will not continue to keep him in prison without preparing charge to try him for the alleged offences. Thus entitling him to remedy in line with ***MANGAI V. C.P. PLATEAU STATE & ORS 2021 CA***. *it is the law here that.*

It is unlawful to arrest a person until there is sufficient evidence to charge and caution him and that it is unconstitutional to arrest a person pending investigation. In other words, it is unlawful to arrest a person when investigation of the alleged crime is still on and there is no prima facie evidence that the suspects has committed the offence or reasonable suspicion that he has done so. Arrest and detention before investigation is unconstitutional. See NDLEA & ORS V. BWALA (2022) C.A. See also the provision of Section 35, 41 & 46 of the 1999 Constitution.

In *Dawan v. EFCC (2020) 5 NWLR (Pt. 1717) 226 CA*, the Court of Appeal per Ugo, JCA, held at page 242, paras B – D that:

“The Court would not hastily interfere with the statutory powers of law enforcement agencies in the exercise of their statutory right to investigate alleged offences and detain, where necessary, for purposes of that investigation. The attitude of the courts is to deal with each case of arrest and detention on its merits when it occurs and comes before them.”

Therefore having found as above, it is my ruling that the application succeeds and I hereby enter Judgement in favour of the Applicant in the following terms:-

- 1) **The Court hereby declared** that the arrest and detention of the Applicants by the 1st Respondent at the instance of the 2nd – 5th Respondents from 21st and 23rd October 2023 up until the 27th October 2023 when they were arraigned before the Magistrate Court of the Federal Capital Territory, Abuja is unlawful, unconstitutional and an infringement of the Applicants' Right to Personal Liberty as enshrined in the 1999 Constitution of Nigeria as (amended).
- 2) **I hereby** restrained the Respondents, whether by themselves, their assigns, privies or agents, from further infringing on the Fundamental Rights of the Applicants upon the facts of this case.
- 3) **Court hereby award the sum of ₦2,000,000.00 (Two Million Naira)** against the Respondents jointly and severally as damages for the unlawful arrest and detention of the Applicants by the 1st Respondent upon the instigation of the 2nd – 5th Respondents.

SIGNED:
HON. JUDGE
28/03/2024.

APPEARANCE:

Chukwuemeke Achugbu, Esq, with Aniekan Usoh, Esq, for the Applicants
Chinenye. J. Ugwu, Esq, for the Respondents