

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON WEDNESDAY THE 27TH DAY OF MARCH, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/1405/2021

BETWEEN:

DAVID DUBUKUMAH WAZBA ----- APPLICANT

AND

1. THE INSPECTOR GENERAL OF POLICE
2. THE DEPUTY INSPECTOR GENERAL
OF POLICE, FCIID ABUJA
3. I.P.O SULE DANJUMA
4. SUNDAY OYIBO

} **RESPONDENTS**

JUDGMENT

On the 2d July, 2021 the Applicant, David Dubukumah Wazba filed this Suit which is predicated on FREP against the Inspector Geberal of Police, Deputy Inspector General of Police FCIID Abuja, I.P.O Sule Danjuma and Sunday Oyibo claiming that the Respondents infringed his Right under **S. 34 (1), 46 (1) & (6) and 36 (1), 37, 41 and 44 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He prays for the following Reliefs:

1. A Declaration that the transaction between the Applicant and the 4th Respondent is purely civil in nature, devoid of any criminal coloration to warrant the investigation of the 1st, 2nd and 3rd Respondents.
2. A Declaration that the freezing of the Applicant's bank account number: 0065934615 and 0015942376 domiciled at Sterling Bank PLC and any other bank accounts by the 1st, 2nd and 3rd Respondents at the behest of 4th Respondent is unlawful, high handed, malicious, capricious, ultra vires of the power purportedly exercise and same amounts to a violent violation of the Applicant's Fundamental Rights.
3. A Declaration that the 1st, 2nd and 3rd Respondents are not Debt Recovery Agents.
4. An Order of Perpetual Injunction restraining the 1st, 2nd and 3rd Respondents, their agents, servants, privies whether by themselves or by whosoever or howsoever called from further inviting, arresting, threatening and/or detaining the Applicant at the behest of and in connection with the transaction between the 4th Respondent and Applicant.
5. An Order directing that the 1st, 2nd, 3rd and 4th Respondents unfreeze Applicant's bank account number 0065934615 and 0015942376 domiciled at Sterling Bank PLC and any other bank.
6. Award of General Damages in the sum of ₦20, 000,000.00 (Twenty Million Naira) jointly and severally against the Respondents in favour of the Applicant for the abuse of his Fundamental Rights.

7. Award of General Damages in the sum of **₦20, 000,000.00** (Twenty Million Naira) against the 4th Respondent in favour of the Applicant for the abuse of his Fundamental Rights on the 22nd day of July, 2019.
8. Any further or other Orders that the Court may deem fit to make in the circumstance.

The Applicant alleged that he had a business venture/partnership with the 4th Respondent who invested **₦11, 000,000.00 (Eleven Million Naira)** into the business. But because of the down turn there was a hitch and delay in return on investment. The business was for supply of stone flow. Based on the turn of events the 4th Respondent instigated the 1st – 3rd Respondents to arrest him. That on the 22nd July, 2019 he was arrested and detained till 26th July, 2019. At the Police detention facility he was tortured and humiliated by the agents of the 1st – 3rd Respondents who ordered the hardened criminals in the cell to urinate and spit on him. That he was again arrested on the 17th February, 2020 after the initial Admin Bail granted to him.

That the 1st – 3rd Respondents called him all sort of names and dehumanized him and kept him in the underground cell from morning till 7 pm. That the transaction between him and the 4th Respondent is purely commercial and that the 1st – 3rd Respondents are not Debt Recovery Agents.

That the Respondents had frozen his account at Sterling Bank PLC and other banks by placing Post-No-Debit (PND) on his account. He urged Court to grant his Reliefs as he is ready to refund the 4th Respondent his investment in the

stone flow business. He attached documents – LPO, Banker Order and Police Investing Letter freezing his account.

In the Written Address he raised 2 Issues for determination which are:

- (1) Whether his Right has been breached is being breached and likely to be breached by the conduct of the Respondents and as such he is entitled to grant of Reliefs sought in this Suit.**
- (2) Whether the 1st – 3rd Respondents are Debt Recovery Agents.**

Taking the 2 Issues together, he submitted that his Right has been, is being and likely to be breached by the 1st – 4th Respondents and that 1st – 3rd Respondents are not Debt Recovery Agents. And that he is entitled to the Reliefs sought following his arrest and detention by the 1st – 3rd Respondents at the instigation of the 4th Respondent. That they have denied him of freedom of movement; subjected him to mental torture and unlawfully froze his account, hence denying him access to his moveable property.

That the transaction between him and the 4th Respondent is purely commercial and that the 1st – 3rd Respondents are not Debt Recovery Agents. Hence, they violated his extant Right under the Constitution. That the arrest is unlawful and illegal.

He urged Court to so hold and grant his Reliefs as the Respondents' actions are illegal and unlawful. He relied on the cases of:

**Nigercare Development Company Ltd V. Adamawa State
Water Board & Ors
(2008) LPELR – 1997 (SC)**

**Attorney-General and Commissioner of Justice Kebbi
State V. Jokolo
(2015) LPELR – 22349 (CA)**

That there is likelihood that the Respondents will continue the infringement of his Right if not checkmated by the Court. That Court has the inherent power to restrain the Respondents from continuing to infringe on his Right. They referred to the case of:

**Diamond Bank PLC V. H.R.H Eze Peter Opara & Ors
(2018) LPELR – 43907 (SC)**

That by virtue of **Order XI FREP 2009** this Court has right to make Order and give directions as the circumstance warrant, for the purpose of enforcing his Right.

That since his Rights were infringed, he is entitled to compensation in form of Damages based on the principle of **Ubi jus ibi remedium**. That he is entitled to damage payable by the Respondents. He relied on the cases of:

**Min. of Internal Affairs V. Shugaba
(1982) 3 N.C.L.R (PT. 9) 915 @ 951**

**Onagoruwa V. Inspector General of Police
(1993) 5 NWLR (PT 193) 593 @ 630**

He urged Court to so hold and award damages as sought since he has established the infringement of his Fundamental Rights by the Respondents.

Upon receipt of the application the 1st – 3rd Respondents filed a Counter Affidavit of 19 paragraphs. They attached several documents – Statements of the Applicant and 4th Respondent made to the Police, Application for Admin Bail of the Applicant and Bail Bond and Complaint written by the 4th Respondent to Police. All the documents were marked **EXH NPF 1 – NPF 5.**

According to the 1st – 3rd Respondents a case of obtaining the sum of **₦11, 000,000.00 (Eleven Million Naira)** by false pretence written by the Solicitor to the Nominal Complainant – D.D Dagbanya Esq. It accused the Applicant of criminal breach of trust, criminal conspiracy, threat to life. He attached the said petition/complaint as **EXH NPF 1.**

That the 1st – 3rd Respondents invited the Applicant and he honored the invitation and he was arrested, interrogated and released on Bail after making Statement to the Police on 17th February, 2020. They attached the Statement of the Applicant as **EXH NPF 2.** That Applicant agreed that he obtained the said amount and pledged to pay in the office of the 3rd Respondent. That a case of obtaining money by false pretence, breach of trust and threat to life was established. That Applicant was never detained by Police at Lokoja and was never kept in an underground cell as he alleged. That after the 3rd Respondent concluded investigation the file was sent to the Legal Department of the Police for advice. That the 1st – 3rd Respondents have right to investigate crime and arrest. They attached the Bail Application and Form as **EXH NPF 3 & 4** and Statement of the 4th Respondent as **EXH NPF 5.**

In the Written Address the 1st – 3rd Respondents raised 3 Issues for determination which are:

- (1) Whether he has made out a case to be entitled to the Reliefs sought.**
- (2) Whether his invitation and investigation for offences of threat to life, obtaining money by false pretence and criminal breach of trust and cheating constitutes a breach or violation of his Fundamental Rights.**
- (3) Whether Court can restrain the 1st – 3rd Respondents from performance of their statutory duties.**

On Issue No. 1, they submitted that the Applicant has not established and made out case and is NOT entitled to the Reliefs sought.

That he has not placed sufficient materials before the Court to be entitled to the Reliefs sought. That he was invited by the Police for investigation based on the complaint of the 4th Respondent.

That Police has power to investigate any person suspected to have committed an offence. That the Police acted in accordance with their powers under the Constitution and Police Act. They referred to the provisions of **S. 4, 23, 24, 27 & 29 of the Police Act 2020** as well as the cases of:

**Fajemirokun V. CB (CT) Nigeria Ltd
(2002) 10 NWLR (PT. 95) 110**

Mclaren V. Jennings
(2003) NWLR (PT. 808) 470

Jim Jaja V. Commissioner of Police
(2012) 2 NWLR (PT. 1231) 375

That right to freedom of movement and liberty are not absolute as they may be impaired on temporal basis in order to prevent commission of crime. They referred to the cases of:

Emeka Ekwenuo V. Federal Republic of Nigeria
(2001) 16 NWLR (PT. 708) 171 @ 177

Okanu V. State Commissioner of Police
(2001) 1 CHR 407 @ 411

That the 1st – 3rd Respondents did not breach the Applicant's Right. They urged the Court to resolve the Issue in their favour and hold that the invitation and investigation are legitimately done and not a violation of the Applicant's Right.

On Issue No. 2, they submitted that based on the complaint made by the 4th Respondent, the 1st – 3rd Respondents invited the Applicant and that their action is legal and lawful as the invitation was for investigation purpose. They referred to **S. 45 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). They referred to the cases of:

Badejo V. Ministry of Education
(1996) 8 NWLR (PT. 464) 15 @ 19

Nnamdi Azikiwe University V. Nwafor
(1999) 1 NWLR (PT. 585) 135

They also referred to **S. 35 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

That the actions of the 1st – 3rd Respondents were based on the report/complaint as contained in **EXH NPF 1**. They urged Court to resolve Issue No. 2 in their favour.

On Issue No. 3, they submitted that there are reasonable grounds to invite the Applicant as they did in order to conduct the investigation based on the complaint. That this application is a bid to evade justice. They referred and relied on the cases of:

Attorney-General Anambra V. Chris Uba
(2005) 15 NWLR (PT. 947) 44

Dokubo Asari V. Federal Republic of Nigeria
(2007) 152 LRCN Para F – K

That the Applicant has not attached any compelling cogent Exhibit to show that his Rights were breached or infringed. They referred to the cases of:

Onah V. Okenwa
(2010) 7 NWLR (PT. 119) 512

Attorney-General Anambra V. Attorney-General of the Federation
(2005) 9 NWLR (PT. 981) 572

That the facts in the Affidavit in support of this application are not cogent and substantial to justify grant of the Reliefs sought. They urged Court to dismiss the application and hold that the 1st – 3rd Respondents did their statutory duties and that their action did not infringe the Right of the

Applicant. That Court should award cost of **₦10,000,000.00 (Ten Million Naira)** against the Applicant.

The 4th Respondent was served but he did not file any Counter Affidavit to challenge the application.

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From all the above as summarized, can it be said that there is merit in this application and that the Applicant has established that his Right was infringed by the 1st – 3rd Respondents at the instance of the 4th Respondent who never entered appearance or filed any Counter Affidavit in challenge of this application? Can it be said that the 1st – 3rd Respondents did not infringe on the Right of the Applicant and as such this Court should dismiss the application and not grant the Reliefs sought?

It is the humble view of this Court that the Applicant has established that his Right was infringed by the 1st – 3rd Respondents at the instance of the 4th Respondent who did not challenge the application. It is also the view of this Court that the Applicant deserves the Reliefs to be granted as there is merit in this application. Before I go further let me answer the questions raised by the parties.

On whether the Right of the Applicant has been breached by the 1st – 4th Respondents, It is the humble view of this Court that the Respondents breached the Right of the Applicant and he is entitled to the Reliefs sought.

On whether the 1st – 3rd Respondents are Debt Recovery Agents, It is the view of this Court that the 1st – 3rd

Respondents are not Debt Recovery Agents. But they acted as Debt Recovery Agents in this Suit.

On whether the Applicant made out a case to be entitled to the Reliefs sought, It is my view that the Applicant has done so and he is entitled to the Reliefs sought in this application.

On whether the invitation and investigation by the 1st – 3rd Respondents violated the Applicant's Right, It is the view of this Court that the invitation and investigation did not infringe on the Right of the Applicant per se but the 1st – 3rd Respondents forcing the Applicant to make an Undertaking to pay the sum in issue violated the Applicant's Right and by that the 1st – 3rd Respondents overstepped their statutory boundaries. It showed and confirmed that the whole essence of the invitation and investigating the Applicant was solely to help the 4th Respondent recover his money and nothing more. That is why the 1st – 3rd Respondents did not charge the Applicant to Court after their so called investigation. From the Statements they attached allegedly made by the Applicant it shows that 3 out of the 4 Statements were all Undertaking by the Applicant to pay the said **₦11,000,000.00 (Eleven Million Naira)** in issue.

On whether the Court can restrain the 1st – 3rd Respondents from the performance of their statutory duties, It is the view of this Court that it can restrain the 1st – 3rd Respondents where they overstep their boundaries statutorily speaking. If the 1st – 3rd Respondents act as Debt Recovery Agents, the Court is duty-bound to restrain them from performance of their duty in that regard and circumstance. Ordinarily the Court is not empowered to restrain the 1st – 3rd Respondents

from performance of their statutory duty. But once the 1st – 3rd Respondents goes beyond their powers and duty assigned to them under the law – Police Act and the Constitution, the Court will restrain them.

In this case it is not in doubt that there was a commercial contractual relationship and transaction between the Applicant and the 4th Respondent – Sunday Oyibo. It was based on produce business. The Applicant proved that there was the business and that there has been successes recorded earlier in which the Applicant diligently transferred to the 4th Respondent some amount of money as return on his investment when the 4th Respondent invested **₦3,000,000.00 (Three Million Naira)** and subsequently **₦4,000,000.00 (Four Million Naira)**. The Applicant in his Statement to the Police stated that they can confirm that fact from his Statement of Account and the Statement of Account of the 4th Respondent. There is no evidence that the 1st – 3rd Respondents did that. Besides, the 4th Respondent did not challenge/deny that fact. Fact admitted need no further proof.

Again in the **EXH NPF 2** the Applicant listed how the business started and how the 4th Respondent invested in the business and he made sure he returned the profit to the 4th Respondent. That fact was not denied. Even in the complaint the Solicitor of the 4th Respondent acknowledged that fact.

By the 1st – 3rd Respondents forcing the Applicant to undertake to pay the sum in issue, they overstepped their statutory duty boundaries. They acted as Debt Recovery

Agents which they are not. Hence they violated the Applicant's. Hence the invitation and investigation failed to achieve what was legal and lawful.

The Applicant attached document to show that actually what transpired between the Applicant and the 4th Respondent was purely commercial and that there was no element of illegality at all. See the **EXH A – Local Purchase Order.**

The Police did not exhibit the Statement of the 4th Respondent to show and prove that the money was fraudulently taken by the Applicant from the Account of the 4th Respondent without his consent.

Again, it is not in doubt that the Applicant was detained by the 1st – 3rd Respondents based on **EXH NPF 1 – Letter of Complaint.**

A look at the petition of the 4th Respondent attached by the 1st – 3rd Respondents, it is very clear that the whole essence of the complaint by the 4th Respondent was as he stated in the said petition to 1st – 3rd Respondents on 7th February, 2020 wherein it is stated thus:

EXH NPF 5

“kindly use you good offices to help me talk to him (Applicant) to pay me back my hard earned money?”

A look at the Statement of the Applicant attached the first 2 Statements were not dated and they were not complete, they were not signed either or countersigned. The 2 Statements

were not dated too, though signed. That shows that the essence of the arrest was not for any investigation but to commit the Applicant to undertake to pay the 4th Respondent, hence the 1st – 3rd Respondents acting as Debt Recovery Agents which they are not. The fourth Statement equally confirmed the Undertaking to pay which was the aim of the detention by the 1st – 3rd Respondents. It was not dated too.

The Statement No. 4 – “Additional Statement.” That Statement was made on 17th March, 2020 one month after the Applicant’s arrest and detention on 17th February, 2020. In it he stated that he had paid back some amount to the 4th Respondent as at that day the 17th day of March, 2020 and confirmed that he paid some money – **₦2.7 Million** as return on the investment, paid as interest on the business. In the same Statement No. 4 the Applicant stated thus:

“... state of payment can be verified on my Statement of UBA Account No: 2061488289 and in the Sunday Oyibo Account No: 2018101337 in UBA.”

Even in the Statement of 17th March, 2020 it is glaringly clear that the whole essence of inviting the Applicant incessantly was for him to undertake to pay and within the given timeframe given by the 1st – 3rd Respondents.

The last Statement dated 14th July, 2020 made at the peak of Covid-19 shows that and further confirms that the Applicant was severally invited from February 2020 up to July same year by the 1st – 3rd Respondents and each time the 1st – 3rd Respondents ensured that the Applicant makes

a fresh Undertaking. On the said 14th July, 2020 the 1st – 3rd Respondents made the Applicant to undertake to pay the 4th Respondent **₦1, 000,000.00 (One Million Naira)** only every month until the total sum is been paid completely.

Even the Bail Application Form was dated. Even the way the names were written it is as if Richard Adedoyin is the Accused person and the Applicant is the person who was applying to Bail him. A closer look shows that it was dated 14th July, 2020 which means that it was on the said 14th July, 2020 that the Bail was granted to the Applicant. Meanwhile, the Applicant had made Statement since 17th February, 2020.

From all indication it is clear that the 1st – 3rd Respondents infringed the Right of the Applicant and the Applicant has established that fact and has also established that he has a purely commercial relationship with the 4th Respondent and the 1st – 3rd Respondents have no business to interfere as they did. What they should have done was to ask the 4th Respondent to seek redress in Court of law and not at Police Station. By so acting the 1st – 4th Respondents infringed the Right of the Applicant by the long detention in the underground cell for the long hours.

One can imagine how a person (Applicant) who obeyed the invitation to report to the Police saw himself in the underground cell. The 1st – 3rd Respondents putting Applicant in the underground cell definitely has some psychological effect on his life, liberty and freedom. That

was done in order to subjugate and intimidate the Applicant so he can undertake to pay the debt which was the sole aim of the 1st – 3rd Respondents inviting him in the first place.

The alleged threat to life was a camouflage to give bad coloration to the image and reputation of the Applicant. There was no such claim and it was not substantiated. It is even very strange that as at the time this matter was filed on 2nd July, 2021 that the 1st – 3rd Respondents had not charged the Applicant to any Court. If actually the 1st – 3rd Respondents were interested in fighting and curbing crime in this case they should have instituted an action against the Applicant. But as I have stated repeatedly, their sole aim was to help the 4th Respondent recover the money he invested in the business that went bad as a result of Covid-19 pandemic restrictions.

All in all this Court holds that there is merit in this application in that the 1st – 4th Respondents infringed and breached the Right of the Applicant as established. The Applicant has proved his case and he is entitled to his Reliefs to wit:

Reliefs 1 – 5 granted as prayed.

On Reliefs 6 & 7, this Court hereby Order the 1st – 3rd Respondents to pay to the Applicant the sum of N150, 000.00 (One Hundred and Fifty Thousand Naira) as general damages for the infringement of Right of the Applicant.

The 4th Respondent is to pay the sum of ₦100, 000.00 (One Hundred Thousand Naira) to the Applicant for instigating the 1st – 3rd Respondents to violate the Right of the Applicant.

This is the Judgment of this Court.

**Delivered today the ___ day of _____ 2024 by
me.**

K.N. OGBONNAYA
HON. JUDGE