

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 13

CASE NUMBER : SUIT NO: CV/5519/24

DATE: : THURSDAY 30TH JANUARY, 2025

BETWEEN:

DR. FABIAN IHEKWEME APPLICANT

AND

**1. INSPECTOR GENERAL OF POLICE } RESPONDENTS.
2. THE NIGERIAN POLICE FORCE }**

JUDGMENT

The Applicant approached this Honorable Court vide an Originating Motion dated 16th November, 2024, and filed on the 16th December, 2024 for the Enforcement of his Fundamental Human Rights against the Respondents claiming the following reliefs:-

1. A Declaration that the Respondents whilst in the execution of his duties must respect the fundamental rights of citizens and accordingly abide by the provisions of Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria as amended and the provisions of the Africa Charter on Human and Peoples Rights (Ratification and Enforcement) Act.
2. A Declaration that the arrest on the 27th day of November 2024 and continuous detention of the Applicant by the men, operatives and officers under the command/commission of the Respondents, amounts to actions that grossly Violate the Applicant's rights to dignity of human person, personal liberty, fair hearing and freedom of movement as guaranteed under Sections 34, 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

3. A Declaration that the continued and unabated harassment and intimidation of the Applicant in detention by the men, operatives and officers under the command/commission of the Respondents, amounts to torture and refusal to put in writing for the Applicant and his lawyer the reason for the arrest and detention and accordingly a gross violation of the Applicant's rights to dignity of human person under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

4. A Declaration that the continued illegal detention of the Applicant by the men, operatives and officers under the command/commission of the Respondents, from the 27th day of November 2024 to date, without any court arraignment, prosecution or reasonable suspicion of commission of any offence, amounts to actions that grossly violate the Applicant's rights to dignity of human person, personal liberty, fair hearing and freedom of movement as guaranteed under Sections 34, 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

5. An Order of this court for the immediate and unconditional release of the Applicant from the Respondents' custody.
6. An Order of perpetual injunction restraining the Respondents, their authorized agents by whatever name so called, from further disturbing or interfering with the rights of the Applicant to dignity of human person, liberty and freedom of movement by any further arrest without just cause, detention without just cause, intimidation and harassment or in any way infringing on the constitutional rights of the Applicant as guaranteed by law or from making any attempt capable of violating the Applicant's rights as guaranteed under the Constitution.
7. And for such further or other order (s) as the Court may deem fit to make in the circumstances.

The grounds upon which these reliefs are sought are as follows:

- i. The Applicant is a Nigerian citizen who is entitled to the enjoyment of the fundamental rights enshrined in chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria as amended and Article 5 of the African Charter on Human and Peoples Rights (Ratification and enforcement) Act Cap A9 Vol. 1 LFN.

- ii. The 1999 Constitution of the Federal Republic of Nigeria as amended is the supreme law of Nigeria wherefrom government and all its agencies derive their legitimacy.
- iii. The 1st Respondent is the head of the 2nd Respondent which is a security agency under the control of the President of the Federal Republic of Nigeria and in the performance of their duties are to abide by the chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria as amended; which guarantees the fundamental rights of citizen.
- iv. That the arrest of the Applicant on the 27th day of November, 2024 at his home in Imo State when some unidentified armed men forcefully abducted the Applicant from his home without a warrant, due process, or access to his legal counsel, and his phone was confiscated, and was denied necessary medical care and refused communication with his family for more than 24 hours without any just cause or any action that constitute a crime against any law in Nigeria, and the continuous illegal detention of the Applicant by the men, operatives and officers under the command/commission of the Respondent, without any court arraignment, prosecution or reasonable suspicion of

commission of any offence, amounts to actions that grossly violate the Applicants' rights to dignity of human person, personal liberty, fair hearing and freedom of movement as guaranteed under Sections 34, 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

- v. The Applicants' right not to be subjected to inhuman and degrading treatment and torture/humiliation is enshrined in Section 34(1)(a) Constitution of the Federal Republic of Nigeria 1999 as amended and Article 5 of the African Charter on Human and People Rights (Ratification and enforcement) Act Cap A9 Vol. 1 LFN.
- vi. That the Applicant's right not to be subjected to restriction on his liberty and movement without just cause as guaranteed under Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) was violated.
- vii. That the Applicant's right to be given a written reason for his arrest and detention as guaranteed under Sections 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) was violated.

- viii. Order (ii) Rule (i) of the Fundamental Rights (Enforcement Procedure) Rules 2009 empowers any person who alleges that any of the fundamental rights to which he is entitled to is being, has been, or is likely to be infringed upon to apply to the court for a redress.
- ix. The Respondents have no justification to have subjected the Applicants to indignity, humiliation, harassment torture, illegal detention and inhuman and degrading treatment.

In support of the application is a 28 paragraph affidavit duly deposed to by one Excel Ihekwme, the wife to the Applicant in this matter.

It is the averments of the Applicant that on the 27th day of November, 2024, unidentified armed men forcefully abducted the Applicant from their resident at Efab City Estate Life - Camp, Abuja and his wife and members of the family raised alarm thinking that he has been kidnapped.

That after over 24 hours without any knowledge of his whereabouts, the Respondents through their spokesperson issued a statement stating that the Applicant was arrested and detained by them. The wife later confirmed by a police officer that Sen. Hope Uzodinma the Executive Governor of Imo State was the

person who reported her husband to the Police that her husband the Applicant criminally defamed his character by criticizing his Government and Administration.

That the wife and other family members were mentally tortured and frustrated as they could not get across to the Applicant because his phone handset was collected by the officer of the Respondents.

That she quickly got across her sister in-law in Owerri Imo State to see if she can see the Applicant since she could not travel because of her health condition. And the said sister in-law succeeded and saw her husband who was looking hungry, sick and malnourish and she quickly rushed to get him drugs medication and food but the officers of the Respondents refused her access to give the Applicant the food and drugs medication to take.

That her Sister In-law narrated how the officers of the Respondent subjected her Husband the Applicant to inhumane treatment and unjustly fabricated a story and accused him of sponsoring the Eastern Security Network (ESN) which is a baseless allegation aimed at discrediting his integrity and

silencing his voice of criticizing the Sen. Hope Uzodinma led Government of Imo State.

That the ordeal has left her, including his children, traumatized and mentally distressed, as his arrest and detention without recourse to justice or medical attention are not only a violation of his constitutional rights but also a grave affront to the principles of democracy, freedom of expression, and good governance.

That she knows that the Applicant, is only a victim of circumstance and he does not associate in any way with any criminal act and/or acts and that the Applicant is not a member of Eastern Security Network and does not attend or sponsor their activities in any way.

That if the Respondents had any evidence of the Applicants' membership of Eastern Security Network or sponsorship participation as they fabricated, they would have commenced prosecution, but the Applicant was abandoned in the Respondent's custody to languish in torture.

That the actions of the men and operatives of the Respondent are unconstitutional, illegal, wrongful, degrading, oppressive, null and void, and thus constitute infringements of the Applicants' fundamental right to dignity of human person, liberty and

movement as enshrined under sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

That Order (ii) Rule (i) of the Fundamental Rights (Enforcement Procedure) Rules 2009 empowers anyone who alleges that any of the fundamental rights to which he is entitled to is being, has been, or is likely to be infringed upon to apply to the court for a redress.

That she has written to the National Human Rights Commission, Hon. Attorney General and Minister of Justice, The President and the Nigerian Bar Association and call for help. The letters are herein attached as Exhibit "A1", "A2" and "A3".

That the Applicant has suffered emotional and psychological depression on the basis of his unlawful detention by the Respondents.

That the Applicant and his family have been subjected to the scornful and hateful expression from all the members of the community.

That she pleads to this Honourable Court to urgently come to the aid of the Applicant as the Respondents have vowed to keep him in detention indefinitely.

In compliance with law and procedure, learned counsel for the Applicant filed written address wherein sole issue was formulated for determination to-wit:-

Whether by virtue of the facts in the affidavit in support of this application, the Respondent had violated the constitutional Rights of the Applicant to dignity of human person, to personal liberty and to freedom of movement as guaranteed by the constitution, so as to entitle him to all the reliefs sought in the application.

Learned counsel argues, that the sacred liberties of man are the liberty to move freely, unless where legitimate exception is permitted by law, any limitation on a man's liberty to move freely is an infringement on his Fundamental Rights. Detention, no matter how short, is a breach of Fundamental Rights. He cited ***OKONKWO VS. OGBOGU (1996) 5 NWLR (Pt. 499) 420*** and further cited sections 34 (1)a, 35 (1) and (41) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

Learned counsel submits, that it is only on the conditions set out in section 35(1) and 41(2) of the Constitution that a person can be arrested and detained, and if the conditions are not met, or if the circumstances leading to the arrest of a person are not within

the ambits of section 35(1) of the Constitution, such arrest and detention becomes unlawful and a clear violation of the person's constitutional rights to dignity of human person, to personal liberty and to freedom of movement.

It is further the learned counsel's submission, that the fact that there is an allegation that a non-existent crime has been committed is not a sufficient reason to warrant any torture, unlawful arrest and detention of the Applicant. The case of ***DURUAKU VS. NWOKE (2015) 15 NWLR (Pt. 1483) Page 417*** was cited.

Learned counsel submits, that under the circumstances of this case, the Respondent do not have the power to unlawfully or illegally arrest and/or detain the Applicant when there is no case against him, and with the intention to keep him in detention endlessly. He cited ***FAJANA IFEDAYO EDDI VS. COMMISSIONER OF POLICE (2006) LPLER- 9816 (CA)***.

Learned counsel submits on the above, that the continuing detention of the Applicants in this case without arraignment or trial is a gross violation of the Applicants' constitutional right to personal liberty and freedom of movement and the court is urged to so hold.

Learned counsel further submits that the Applicant had been detained beyond 24 and 48 hours respectively, which is contrary to the Constitution of the Federal Republic of Nigeria as amended. The Applicant were arrested and detained on 27th day of November 2024 and has been so detained from that time till date without the Respondent taking him before a competent court of Justice for his trial if he had committed an offence or alternatively without releasing him unconditionally. It has been held that inaction for unlawful arrest and detention in breach of a person's fundamental rights, the onus is on the Respondent to prove that the arrest and detention was justifiable on reasonable grounds. ***SKYPOWER AIRWAYS LIMITED VS. OLIMA (2005) 18 NWLR (Pt. 957) 224 @ 232.*** In the instant case, the burden lies squarely on the Respondent to show legal justification or reasonable grounds for any of their actions in violation of the Applicant's fundamental rights.

Learned counsel submits that from the totality of the argument canvassed above, the Applicant as Nigerian is entitled to approach this court to complain about the several violations of their rights afore stated and this is the reason for this application.

Learned counsel further submits that by the averment in the affidavit in support herein, the court is urged to evaluate same in line with the judicial authorities above and hold that the Applicants' rights were violated and grant all the reliefs sought in this matter.

In conclusion, counsel humbly submits, that the Applicant is entitled to the reliefs set out in the Originating Motion. Once there is any contravention of right enshrined in the Constitution, an Applicant can take the necessary steps to stop such rights from continuing to be contravened. This is the essence of the Applicant's application.

COURT:

It is instructive to note that Respondents i.e Inspector General of Police and the Nigerian Police Force, who were served the originating motions and hearing notices, failed and or ignored to join issues with the Applicant, thereby making the application for Enforcement of Fundamental Human Right which is usually vide originating motion supported by affidavit and written address, a one way matter.

The law on unchallenged averments is settled.

See ***OGUNYADE VS. OSHUNKEYE & ANOR (2007) LPELR (2355) SC.***

Fundamental Human Right matters are usually begun by originating motion supported by affidavit, grounds and written address. A party i.e Respondent so served such originating process, is under an obligation to file counter affidavit and written address stating its own side of the story for a balanced understanding in obedience to section 36 (1) of the 1999 Constitution of FRN which is on fair hearing.

A party afforded such an opportunity cannot turn around and complain of lack of fair hearing once the opportunity is not utilized.

I shall pause here to give a background of the origin of human rights which clearly underscores its importance.

Fundamental Rights have been said to be premodial.. some say it is natural or God given Rights.. Text books writers like the renowned Professor Ben Nwabueze (S.A.N) have opined that these rights are already possessed and enjoyed by individuals and that the "Bills of Rights" as we know them today ***"created no right de novo but declared and preserved already existing rights, which they extended against the legislature"***.

It is instructive to note that magna carta 1215 otherwise called "Great charter" came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke's concept of "due process of law" was also a product of similar conflicts and dissensions between the king and parliament.. nor was the Bill of Rights 1689 handed down on a "platter of Gold".. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by King Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written consitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated.

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American peolpe took the glorian path of effecting certain amendments.. they incorporated into their constitution, a

Bill of rights which is said to be fashioned after the English Bill of Rights..

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

“We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness.”

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not peculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independence was given to us on a “platter of gold.”

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the “tyranny” of the majority ethnic groups in the regions.

The commission that was mandated to investigate their fears went out of its way to recommend the entrenchment of Fundamental Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged “oppressive conduct” by majority ethnic groups.

We have had our Fundamental Human Rights carefully captured and entrenched under chapter IV of the 1999 constitution of the Federal Republic of Nigeria as amended.. as sacrosanct as those rights contained in chapter IV of the Constitution of Federal Republic of Nigeria are, once there is any good reason for any of the rights to be curtailed, they shall so be and remain in abeyance in accordance with the law and constitution.

This is so because Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to court to seek protection on the slightest believe that they are being invited by law enforcement agencies..

The essence of this legal window is to ensure that every action by government or her Agency is done according to law.

As a condition precedent to the exercise of court's jurisdiction, the Enforcement of Fundamental Human Right or the securing of the enforcement thereof should be the main claim and not accessory claim. I rely on ***W.A.E.C VS. ADEYANJU (2008)4 S.C 27.***

Applicant took time to explain in the affidavit in support of the application for enforcement of his right. How the Respondent have violated his Fundamental Human Right. Respondents have failed and or ignored to counter the averments by filing counter affidavit in obedience to the Fundamental Human Right Rules 2009. The averments remain unchallenged and the court is in law permitted to consider same in good and reliable.

See ***UBANI & ORS. VS. STATE (2003) 12 SCNJ III at 130.***

Although the police has a duty pursuant to section 4 Police Act to protect lives and property, same shall be done within the normative principles of the Rule -of law which emphasize on the supremacy of the law and not capriciously done.

Detention, no matter how slight, once done without any lawful cause which is lawfully justifiable, an action can be maintained on grounds of violation of human right.

Respondents, who were afforded opportunity to counter the argument in support of the application, have refused, ignored to so file.

I have no difficulty in believing the story told by the Applicant in his affidavit in support of the application that his rights as stated have been violated by the 1st and 2nd Respondents.

Declaratory reliefs are usually won on the basis of evidence adduced and not on the absence of Defence.

See ***ECHEFU & ORS. VS. EMENIKE & ANOR (2018) LPELR – 43682 (CA)***.

I am more than satisfied that Applicant has been able to establish a case of abuse of his God's given inevitable rights by the very people saddled with the responsibility of protecting such rights.

In summation, the following Orders are hereby made:-

1. That the Respondents whilst in the execution of his duties must respect the fundamental rights of citizens and

accordingly abide by the provisions of Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria as amended and the provisions of the Africa Charter on Human and Peoples Rights (Ratification and Enforcement) Act.

2. That the arrest on the 27th day of November, 2024 and continuous detention of the Applicant by the men, operatives and officers under the command/commission of the Respondents, amounts to actions that grossly Violate the Applicant's rights to dignity of human person, personal liberty, fair hearing and freedom of movement as guaranteed under Sections 34, 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
3. That the continued and unabated harassment and intimidation of the Applicant in detention by the men, operatives and officers under the command/commission of the Respondents, amounts to torture and refusal to put in writing for the Applicant and his lawyer the reason for the arrest and detention and accordingly a gross violation of the Applicant's rights to dignity of human person under Sections

34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

4. That the continued illegal detention of the Applicant by the men, operatives and officers under the command/commission of the Respondents, from the 27th day of November, 2024 to date, without any court arraignment, prosecution or reasonable suspicion of commission of any offence, amounts to actions that grossly violate the Applicant's rights to dignity of human person, personal liberty, fair hearing and freedom of movement as guaranteed under Sections 34, 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
5. An Order of this Court for the immediate and unconditional release of the Applicant from the Respondents' custody is **hereby granted.**
6. An Order of Perpetual Injunction restraining the Respondents, their authorized agents by whatever name so called, from further disturbing or interfering with the rights of the Applicant to dignity of human person, liberty and freedom of movement by any further arrest without just

cause, detention without just cause, intimidation and harassment or in any way infringing on the constitutional rights of the Applicant as guaranteed by law or from making any attempt capable of violating the Applicant's rights as guaranteed under the Constitution is similarly **hereby granted.**

***Justice Y. Halilu
Hon. Judge
30th January, 2025***

APPEARANCES

Chief Maxwell, Esq. for the Applicant.

Respondents not in Court and not represented.