

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**ON TUESDAY THE 16TH DAY OF FEBRUARY 2021.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**

**SUIT NO. M/11852/2020**

BETWEEN

1. HADIZA MEENA MUHAMMED=====APPLICANT

AND

1. THE CHAIRMAN, ECONOMIC

AND FINANCIAL CRIMES COMMISSION

2. MARYAM BUKAR ===== RESPONDENTS

**JUDGMENT**

By a motion on notice filed on the 12<sup>th</sup> of November 2020, brought pursuant to Order 2 Rules (1), (2), (3), (4) and (5) of the fundamental rights (Enforcement Procedure) Rules 2009 and Sections 34, 35, 36, 41 and 46 of the 1999 Constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of this Court, the Applicant is praying the Court for the following reliefs:

1. A DECLARATION that the purported threat of arrest, endless invitation for interrogation and likely detention of the 1st Applicant or any of the Applicants (Directors and staff in MAQUIS CONCIERGE LIMITED) by agents of the Respondents is unconstitutional and a direct infringement of the right of the Applicants' to freedom of movement, personal

liberty and respect of their dignities as guaranteed by Sections 35, (amongst others) of the constitution of the Federal Republic of Nigeria 1999 altered.

2. A DECLARATION that any purported invitation by the Respondents as regards or in connection to any mutual Civil transaction or contract or business dealings freely entered into between the Applicants and any person or persons (for business loan repayment) is unlawful unconstitutional and an infraction of the Applicants right.
3. AN ORDER of this Honourable Court that the Respondents are not debt recovery Establishment Agency or Commission.
4. AN ORDER of perpetual injunction restraining the Respondents either by themselves, officers, agents, servants, privies, assigns and or any person or persons, from the Economic and Financial Crimes Commission acting on their behalf from the endless invitation, questioning, arresting, detaining and or doing anything inimical/interfering with the Applicants Rights/Operations as regards any business loan repayment plan between the Applicants and any person or persons.
5. AN ORDER of interlocutory injunction restraining all the Respondents in this suit from inviting, questioning, arresting, detaining and or doing anything inimical/interfering with the 1<sup>st</sup>and 2<sup>nd</sup> Applicant(s) (Directors or staff in MAQUIS CONCIERGE LIMITED).
6. AN ORDER of this Honourable Court that the grant of this Application of the Applicant for the enforcement of her

fundamental Rights shall operate as a stay of all actions and or proceeding under or by which the Respondents may seek to carry on with their purported threat of arrest and detention of the 1st and 2nd Applicants (Directors or staff in MAQUIS CONCIERGE LIMITED).

7. AN ORDER of this Honourable Court that the Respondents are not debt recovery agencies of any individual person or persons or corporate body or bodies.
8. General and Punitive Damages of 30 million Naira only to be paid to the Applicants should the Respondents forcefully, arrestor detain, the Applicants or their staff/agents.

And for such or further orders as the Honourable court may deem fit to make in the circumstance. The ground upon which the Applicant is seeking these reliefs from this Court are;

- a. That being Nigerian citizens, the rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 as altered cannot be taken away save by due process of law.
- b. That Applicant know as a fact that none of the Respondents in this suit are a debt recovery agency empowered by any law in the land.
- c. That the constitution of the Federal Republic of Nigeria 1999 is the Supreme law and must be obeyed by all persons, institutions, establishment and agencies of the government likewise.

- d. That no person or persons, institutions, establishment and agencies of government should be seen or tolerated to act above the grund norm.
- e. That the Applicants are entitled to the reliefs as provided by Section 46 of the 1999 Constitution of the Federal Republic of Nigeria as altered and Order 2 Rule 1 of the Fundamental Right Enforcement procedure Rules 2009.
- f. That the allegation (if any) against the Applicant is purely contractual and nothing of it savours criminality.

Along with the application is an affidavit of 22 paragraphs, deposed to by Yusuf ShukuratOlaide, a confidential Secretary to the Applicant. From the facts deposed therein, it is the case of the Applicant that the Applicant being the director of Maquis Concierge Limited, took out a loan for the sum of N6,870,000.00 from business financiers; Mr Shettima Mohammed Kashim & Mrs Fatima Kashim to further grow the company. That there was a complaint or petition instigated by the financiers as a result of the inability of the Applicant to pay the agreed interest even after paying the principal sum in excess. That as a result of the complaints by the Financiers, the Respondents in this suit are continuously inviting the Applicant for questioning and threatening to detain Applicant on a purely civil and contractual agreement which emanated as a result of a business loan given to the Applicant by the business financiers. That Applicant has repaid the financiers above the original principal loan sum to the tune of N7,000,000.00.

That the default in payment is as a result of the Applicant being out of business for well over Eight (8) months which the Applicant duly informed the business (loan) financiers verbally and via a written letter that their bank account is presently not funded. That the financiers are bent on maliciously tarnishing the image and credibility of the Applicants as persons who are dubious and fraudulent. That the Applicant is desirous to off-set the outstanding debt which is the (profit) on the said money invested.

That the Respondents have maliciously been inviting the Applicant and are threatening to detain Applicant. That if the Respondents are allowed to arrest and detain the Applicant her fundamental human rights will be grossly violated. That the 1st Respondent's agent MARYAM BUKAR has been calling the Applicant and has further extended a verbal invitation to the Applicant to appear before them on the 12<sup>th</sup> day of November 2020. That it is necessary that the Respondents be restrained, otherwise they will carry out their threat and Applicant's rights will ultimately be violated. That the Applicant has not committed any criminal act.

That Applicant and her staff have been hiding from the E.F.C.C and are no more free citizens due to fear of being arrested. That the financiers had boasted that they have a personal relationship with the chairman of E.F.C.C and would use him to arrest the Applicant to recover the money.

The Applicant attached various printed bank debit alert to the financiers from ZENITH BANK PLC as Exhibit AA1 and letter written to the Financiers pleading for more time as Exhibit AA2.

The Applicant's Counsel filed a written address and raised 2 issues for determination;

1. Whether or not the Applicants have made out a case of breach and likely breach of their fundamental rights to freedom of movement, human dignity, right to privacy, liberty and right to life against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents warranting the grant of the reliefs sought in the application.
2. Whether the extant laws establishing the 1st and 2nd Respondents empowers them to recover debts arising from mutual Civil transaction or contract or business dealing (for business loan repayment) freely entered into between the Applicants and any person or persons .

Arguing the two issues for determination, Applicant's Counsel submitted that the facts of this case have shown the breach and likely breach of the fundamental rights of the Applicant by the agents of the Respondents. Counsel urged the court to grant all the reliefs of the Applicant to discourage its re-occurrence as the EFCC is not a debt recovery agent.

Counsel relied on the following authorities; -

1. RAY EKPU V. AGOF THE FEDERATION (1998) HRLRA PAGE 391RATIO 1&8
2. DIAMOND BANK PLC VS. HRH. EEZE (DR.) PETER OPARA & 2 ORS. Sc. 375/2012.

The Respondents in this case were duly served with the Applicant's application on the 4<sup>th</sup> day of December 2020 but failed to file a counter affidavit in opposition to the claim of the Applicant. The law

is trite that depositions in an affidavit which are unchallenged are deemed admitted. The Respondents only have themselves to blame however the outcome as they were duly served with the application of the Applicant but failed to file a counter affidavit to controvert the facts as stated therein, it is therefore deemed that the Respondents accept the facts. See HOME GLASS LTD V. LINKAGE ASSURANCE PLC (2016) LPELR-41531 (CA).

I have examined the Applicant's motion, the affidavit in support of the motion and the written address. First and foremost, the enforcement of fundamental rights in our society encapsulates a special procedure prescribed by the Fundamental Rights Enforcement Procedure Rules 2009. In commencing an action for the enforcement of fundamental rights, the Applicant must file an Originating Motion and the motion shall be supported by an affidavit setting out the facts upon which the application is made, a statement setting out the name, description of the Applicant, the relief sought and the grounds upon which the application is made and a written address.

In this case, upon examining the processes filed, this Court observed that the Application of the Applicant is substantially flawed with material defects. Firstly, the Applicant on the face of the motion paper is suing as the only Applicant, however, from the orders sought, the Applicant is seeking for reliefs for another party, a company who was not listed as part of the Applicants in this suit. The reliefs claimed is seeking for declaratory reliefs for herself and Directors and staff of Maquis Concierge Limited, who is not a party in this suit. If the applicant wanted the reliefs for her company, she

would have added the company as the 2<sup>nd</sup> Applicant as companies can sue for fundamental human right. See the case of Tell Communication Limited &Ors V. SSS (2000) 2 HRLRA 104. At138-139.

Secondly, the Applicant did not depose to the supporting affidavit personally but was deposed to by one Yusuf ShukuratOlaide a confidential secretary of the Applicant. Order 2 Rule 2 of the Fundamental Rights Enforcement Procedure Rules 2009 provides as follows;

*“The affidavit shall be made by the Applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit.”*

In this instant case, there is no where in the affidavit in support of the motion where the said Yusuf ShukuratOlaide deposed to the fact that the applicant was unable to depose or unavailable to depose to the affidavit personally. In Ukegbu V. NBC (2007) 14 NWLR (pt.1055) 551 at 579-580, Rhodes-Vivour (JCA as he then was) held;

*“.....One finds it strange and rather odd that the appellant who complains of his rights under sections 38 and 39 of the Constitution being infringed, did not think it necessary to depose to the affidavits in support of his case. In situations such as this, the*

*Court views the applicant as not being in the last serious. Ifeanyi Ukebu. If he was serious, ought to have deposed to the affidavits in support of his case, or the deponent to the affidavits ought to have deposed to Ukebu's inability to so depose, his whereabouts, and that the affidavits were filled on behalf of Ifeanyi Ukebu. In view of these grave lapses, I am of the view that the appellant is unserious with this application."*

In this case, the deponent failed to state the whereabouts of the applicant and the reason for her inability to depose to same. It is important for an applicant who is not in custody or indisposed should personally depose to the affidavit in support of the application of fundamental rights. But if the applicant is in custody or is unable to swear to the affidavit personally, a person who has personal knowledge of the facts or who is informed of the facts by the applicant can depose to it stating that the applicant was unable to depose personally, this the deponent in this case has failed to state. It thereby shows the unseriousness of the Applicant in this case.

It is also worthy to note in this application that the Applicant's affidavit in support of the motion did not comply with the provisions of the Oath Act. The essence of swearing in an affidavit is to bring the fact stated therein under oath. A statement or facts extracted under oath is an affirmation by the deponent that facts stated therein is to his knowledge the truth. Section 205 of the Evidence Act 2011 provides;

*“Save as otherwise provided in sections 208 and 209 of this Act, all oral evidence given or any proceeding must be given upon oath or affirmation administered in accordance with the Oaths Act or Law, as the case may be”.*

Section 13 of the Oath Act, Laws of Nigeria 2004 provides as follows;

*“It shall be lawful for any commissioner for oaths, notary public or any other person authorized by this Act to administer an oath to take and receive the declaration of any person voluntarily making the same before him in the form set out in the first schedule to this Act”*

The first schedule to the Oaths Act provides that oaths shall be in the form set out below: -

*“I.....do solemnly and sincerely declare that (set out in numbered paragraphs, if more than one matter) and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act.....”*

The question that arises at this juncture is “Whether the affidavit attached in support of the application complies with the Oath Act, 2004. Section 13 of the Oaths Act, 2004 provides that only the Commissioner for Oaths or any other person authorized to administer an oath can do same in the form set out in the first schedule to the Oath Acts. The affidavit in this application is in contravention of this law, as the Applicant did not declare her oath before the Commissioner for Oaths or like person. The inference therefore to be drawn is that there is no affidavit before this Court

and the Supreme Court in *Keyamo V. Lagos State House of Assembly* (2003) 21 WRN 135 held that without the verification by affidavit evidence of the facts alleged in the originating summons, the summons was incompetent and was rightly struck out by the trial Court.

From processes filed before this court, Applicant's deposition not made under oath is liable to be struck out and the law is trite that every motion must be supported by an affidavit and the applicant's motion being without an affidavit renders same bare and without support. Any decision arrived at, in such a circumstance, would have been rendered in vacuo leading to the inescapable end result of arriving at abstract justice. See the case of *Mobil Producing Nig. Unlimited v. Monokpo* (2003) 18 NWLR (Pt. 852) 346.

In the circumstances, the Applicant's affidavit having been struck out for failure to comply with the provisions of the Oath Act, there are no facts upon which this Court can decide this case, consequently, the case of the Applicant is hereby struck out.

**Parties:** Parties absent.

**Appearances:** No legal representation for parties.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**16<sup>TH</sup> FEBRUARY 2021**

