

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY 8TH JANUARY, 2021

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

JUDGE

SUIT NO.: FCT/HC/CV/11/19

BETWEEN:

JOY RAYMOND

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PLAINTIFF

AND

- 1. NIGERIA POLICE FORCE**
- 2. COMMISSIONER OF POLICE
(FCT POLICE COMMAND)**
- 3. ATIKU ABDULAHI (08092853179, OF CID
DEPARTMENT OF FCT POLICE COMMAND)**
- 4. FATAHI ONIBUDO**

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---RESPONDENTS

JUDGMENT

On the 5th of November, 2019 Joy Raymond instituted this action against the Nigeria Police Force, Commissioner of Police GCT Command, Atiku Abdulahi of CIID FCT Command and Fatahi Onibudo claiming the following Reliefs:

- (1) Declaration that her arrest and detention from 10th to 15th January, 2019 by order of the 2nd Respondent and further detention by them for more than 12 hours at other times that she reported to 2nd & 3rd Respondents office on issue concerning contentious ownership of Applicant rented apartment at Chika village Airport Road, Abuja by Respondents is illegal, unlawful and unconstitutional and a violation of her Fundamental Rights as guaranteed under S. 34 – 36 1999 CFRN as amended.**
- (2) Declaration that the said solitary confinement of the Applicant by Respondent during the said arrest and detention on issue of the said contention of the ownership of the said rented apartment and the gratuitous funds and gifts and other benefits during the love relationship between the Applicant and the 4th Respondent as well as the continuous invitation, harassment and arrest of the Applicant by 1st – 3rd Respondents without filing any criminal charge against her is unconstitutional**

and gross abuse of her Fundamental Right.

- (3) An Order restraining the Respondents, their officers, agents, privies, servants and assigns or by any agency working or acting on their behalf on the said issue concerning the said rented apartment as well as the gifts/love funds and other benefits from the love relationship between the Applicant and the 4th Respondents same as it concerns commission of any other criminal offence or other issue not related to the subject matter before this Court.**

- (4) One Hundred Million Naira (₦100,000,000.00) as General Damages against the Respondents.**

- (5) An Order restraining the 4th Respondent from taking any further action that arises after the conclusion of this Suit.**

She supported that with an Affidavit and Further Affidavit of 15 paragraphs and 37 paragraphs Affidavit respectively. She attached several documents in the Affidavit marked as Annexine

AA. She also attached documents marked as Annex I, J, K.

In the Written Address in support of the Application she raised as Issue for determination which is:

“Whether the Applicant is entitled to the Reliefs sought as prayed before this Court.”

She submitted by further asking another question whether the Respondents’ act of arrest, detention, dehumanizing, torture and threatening to further arrest the Applicant is unlawful in the circumstance of this case.

She submitted that the Respondents have no right to detain her for any contractual obligation and gifts/money spent in love relationship between her and the 4th Respondent. She relied on:

Mathias Nnonegu V. Akinbowale Eniowo & Others

That Police is not a debt recovery agency.

**Afribank V. Onyima
(2004) 2 NWLR (PT. 858) 654 @ 679**

That the 1st – 4th Respondents action in this case is unlawful. That by the provision of S. 46 (1) 1999 Constitution as amended the Applicant is right in

seeking redress in this Court for the infringed Rights. She referred to:

Ogugu V. State

(1994) 9 NWLR (PT. 366) 1 @ 206

S. 36 (1) 1999 CFRN.

S.35 (1) 1999 CFRN

That S. 4 Police Act never included power to intimidate and harass anyone on issue like the one in this case. That the action of the Respondents in this case violates the provision of S. 34 & 35 1999 CFRN.

That their action is only to ridicule the Applicant and deny her right to be fairly heard in the issue between her and the 4th Respondent. That Court is enjoined to safeguard her right. She referred to the case of:

NAWH V. A-G Cross Rivers

(2008) All FWLR (PT. 401) 807 @ 818

That she has established that her vested rights has been violated and that she has suffered irreparable loss because of the action of the Respondents. She referred to the case of:

Ministry of Internal Affairs V. Shugaba

(1982) NCLR 915

S. 41 1999 CFRN

Article 4 African Charter on Human and People Right CAP 10 LFN 2004.

That she has right to liberty and security of her person. That these rights can only be deprived by procedure permitted by law. She urged Court to grant her Reliefs. She relied on S. 35 1999 CFRN.

The 1st – 3rd Respondents filed a Counter Affidavit of 31 paragraphs. They stated that they never arrested and detained the Applicant. That she was only invited based in the course of investigation of a petition by 4th Respondent on allegation of criminal Breach of Trust, Criminal Conversion and Advance Fee Fraud against the Applicant. That they attached the petition as EXH A & B. that the 4th Respondent alleged to have transferred the sum of Twenty One Million Naira (₦21, 000,000.00) to enable the Applicant (who the 1st – 3rd Respondents described as a very good friend to 4th Respondent) to develop a block of flat and rent same out, collect the rent and retain 10% of the Rent as her Agency Fee. But that the Applicant did not release the Rent to the 4th Respondent. That Applicant was appointed the Sole Manager of the said Building. That the matter was never reported to the Dutse/FCDA Police Division for investigation. That they never threatened the Applicant to release the possession of property for the benefit of the 4th Respondent. They attached

EXH A – R in support, some of which were evidence of remittances to the Applicant by the 4th Respondent. That 4th Respondent released the sum of Twenty One Million Naira (N21, 000,000.00) and not Six Hundred and Eighty Thousand Naira (N680, 000.00) as the Applicant claimed. That the Applicant ran to the Court in order to install the police investigation of the matter reported to it.

In the Written Address in support of the Counter Affidavit the 1st – 3rd Respondents raised 3 Issues for Determination which are:

- (1) Whether taking into consideration all the facts in this case the Respondents acted within the law.**
- (2) Whether the Applicant’s Right has been infringed upon or threatened to be infringed upon by the Respondents.**
- (3) Whether the Applicant is entitled to the Ruling sought.**

On Issue No.1, they submitted that the Police is duty bound to protect life and property of citizens. That by virtue of S. 4 Police Act the 1st – 3rd Respondents have the right to investigate complaint of commission of a criminal offence and to prosecute same if necessary. They referred to the case of:

Gani Fawechuim V. IGP

**(2007) 7 NWLR (PT. 655) 481 @ 503 and also
S. 23 Police Act**

**Jimoh V. Jimoh & Ors
(2018) LPELR – 43793 (CA)**

That Police carry out investigation based on the strength or weight of the information at their disposal which determines how they exercise their discretion to investigate a case. They referred to the case of:

**Olatinwo V. State
(2013) 8 NWLR (PT. 1355) 126**

**S. 214 (b) 1999 CFRN
S. 4 Police Act**

That in the instance case the 1st – 3rd Respondents cited on the petition by 4th Respondent invited the Applicant in the cause of their investigation. That she was not detained beyond the statutory period permitted under S. 35 (4) 1999 CFRN.

That since the 1st – 3rd Respondents acted within their statutory power, the allegation of infringement of the Applicant's Right cannot be sustained. That by S. 35 (1) the 1st – 3rd Respondents can arrest and detain any person suspected of having committed or about to commit an offence.

On Issue No.2, the 1st – 3rd Respondent raised 2 questions which are:

- (1) Whether the complaint of infringement falls within the purview of the right under FREP as guaranteed under CAP 4 1999 CFRN.**
- (2) Whether Applicant has established any infringement of her Right.**

On question No.1, they submitted that the complaint does not fall within the purview of the FREP and right under CAP 4. They referred to **S. 35 (1) (c) 1999 CFRN** and paragraph 15 of their Counter Affidavit. They referred also to the case of:

Jimoh V. Jimoh & Ors Supra

That a person's liberty is not absolute by virtue of S. 35 (1) (a) – (f). That the Applicant has failed to lead evidence to show that her invitation was illegal and that the crime complained of upon which the invitation was based was also illegal and not done with a procedure permitted by law. They referred to the following cases:

Fayemirokun V. CB (CL) Ltd.
(2002) 10 NWLR (PT. 774) 95

Madiebo V. Nwankwo
(2002) 1 NWLR (PT. 748) 426 @ 433

**Abiola V. FRN
(1995) 7 NWLR (PT. 405) 1**

On the 2nd question, they submitted that the Applicant has failed to establish infringement of any of her Rights and as such this action must fail.

That she had not pleaded any material fact before the Court to establish that her Right was infringed by the 1st – 3rd Respondents – to show that she was actually detained or tortured. That mere assertion of threat to infringe a Right is not enough. That her Right has not been infringed. They urge the Court to so hold.

That inference of threat to arrest and detention is not sufficient in action for enforcement of fundamental right for the unlawful arrest. They referred to the case of:

**Ezeadika V. Maduka
(1997) 8 NWLR (PT.578) 635 Ratio 7**

That the arrest was properly made in accordance with the requirement of the law and therefore it is not a breach of her Right. They referred to the case of:

**Bello & Ors V. Doris
(2016) LPELR – 4129 (CA)**

**Mainstream Bank & Ors V. Amos & Anor
(2014) LPELR – 23361 Page 11 – 12 Paragraph E – A.**

That citizen have right to report a crime to Police and Police has the right and duty to invite and investigate such complaint. They also have the right to arrest, investigate, search and detain any suspect S. 4 Police Act.

That for the 4th Respondent to have committed a an infringement of the said Rights the Applicant must show that he did more than lodging a formal complaint with the Police. That mere making right to Police and Police taking the person into custody is no arrest or detention by the person who made the complaint. That such person cannot therefore be held liable in an action of unlawful arrest and detention. They referred to the case of:

Afribank V. Onyima

On Issue No.3, they submitted that the Applicant is not entitled to the Reliefs sought having not established that her Right were infringed by the Respondents. That no Court can make an Order restraining Police to carry out its constitutional duties under the law. They urged Court to dismiss the case for lacking in merit and devoid of substance.

In her Reply on Points of Law she submitted that the petition that led to her arrest is based on vindictive malicious and untrue complaint. That power of Respondent to arrest, investigate and detain is not absolute. That any arrest before an investigation is void.

Ugochukwu Duruaka & Anor V. Sir Gilbert Nwoke & 4 Ors

(2015) 15 NWLR (PT. 1483) 417 @ 474 (A-C)

That the case of Jimoh V. Jimoh cited by the Respondent is not appropriate as such case are not stare decision and not related to the present case. That 1st – 3rd Respondent actually arrested and detained the Applicant between January 10th – January 15th, 2019 based on 4th Respondent’s petition. She was also arrested on 29th of October, 2019 and other times he reported to office of the 1st – 3rd Respondents over a love relationship between her and the 4th Respondent.

That the 1st – 3rd Respondents’ action is to recover from Applicant for the 4th Respondent gratuitous funds spent on her during the Love relationship. That the 1st – 3rd Respondents still detained her from 10th – 15th January, 2019 and again on 29th of October, 2019 even after she had tendered credible evidence to show her love relationship with the 4th Respondent. That she had by those

facts established her case in line with S. 135 Evidence Act 2011.

That by paragraph 21 of the Further Affidavit and EXH B of attached by the 1st – 3rd Respondents shows that issue involved is without any criminality and that what the 1st – 3rd Respondents are investigating based on the petition is unlawful and mere instigation by the 4th Respondent. They urged Court to discountenance the Counter and the facts thereon. That Police is not a debt recovery agency and have no right to recover debts for citizens as 4th Respondent want them to do for him. They urged the Court to so hold and grant the Reliefs sought.

COURT:

1999 Constitution provides that an infringement of any of the Rights as listed in CAP 4 of the said Constitution is an actionable wrong. Particularly S. 35 provides that any citizen who is accused of committing, about to commit or have committed a crime, should be charged to Court within 48 hours after being arrested and detained and that anything outside that is illegal detention. It has also been held that investigation can continue while a matter is pending before the Court in that once any report of investigation comes up during the pendency of a Suit the Court can admit such

evidence and the Police or any similar Law Enforcement Agency can still amend a charge to reflect the latest investigation report as the case may be.

Again S. 4 Police Act as well as the extant section of the 1999 Constitution provide and streamlined the functions and statutory powers of the Police as a Law Enforcement Agency. Such functions, duties and statutory powers never include that the Police has a duty to act as debt collectors or get involved in settlement of commercial contractual dispute. Where there is any allegation that the Police acted as Debt Recovery Agency, such allegation once established with facts stands against the Police.

Where there is an allegation of arrest and or detention of anyone more than 48 hours without charge to Court, violates the provision of S. 35 (4) 1999 Constitution as amended. So anyone who so alleges and have established such allegation is entitled to compensation in the form of damages against such violator. Such person is equally entitled to an apology in a daily Newspaper as the case may be. See S. 35 (6) 1999 CFRN.

In any matter where there is allegation of violation of fundamental right of a citizen and other allegation, the issue of fundamental right violation is the main issue. Any other issue is ancillary.

Where that is the case the Court goes through the facts in support of the allegation to then determine if actually there is a violation of such Right. So it is incumbent on an Applicant to discharge the onus on her showing that the action of the Respondents actually violated those rights as alleged. That she does by the facts relied on in the Affidavit and where necessary evidence (document) as the case may be. Once that is done the onus shifts to the Respondent who must show by their own facts in the Counter Affidavit and Reply where necessary with evidence/document and that their action was not or did not violate the Right of the Applicant as alleged.

So the pendulum continues to shift until it stuck to one of the parties. That will determine where the Judgment of the Court will tilt to. If the Claimant discharges the onus and Respondent fails to discharge same as shifted to it, it then means that Applicant has established its case against Respondent. The Court will so hold and enter Judgment in Applicant's favour. Otherwise the case will fail and will be dismissed as unmeritorious. Once there is such allegation the Court wants to know if actually such Rights were violated.

In this case the Applicant Joy Raymond had alleged that her Rights were violated by the long

arrest and detention by the 1st & 2nd Respondents and its agent, the 1st – 3rd Respondent at the instigation of the 4th Respondent. That she was arrested and detained between 10th – 15th January, 2019. That she was further detained for over 12 hours at other times she reported to the 2nd & 3rd Respondents' office. That all these arrest and detention were on issue and in contention of the ownership of the Applicant's rented apartment located at Chika Village Airport Road, Abuja. That the said detention were illegal, unconstitutional, unlawful and violation of her Fundamental Right and that it violated her Right as contained in **S. 35, 35 & 36 of the 1999 CFRN.**

That the said violation of her Right was as a result of the said arrest and detention and her solitary confinement for the said period 10th – 15th January, 2019 the said issue of ownership of the house and gratuitous provision of funds/gifts and other benefits during the love relationship between her and the 4th Respondent – Fatahi Onibudo. That the continuous invitation by 1st – 3rd Respondents is illegal, unlawful and unconstitutional too. That no criminal charge was filed against her by the Respondents. She had urged Court to restrain the 1st – 3rd Respondents from further arrest, detention and further invitation on the issue by 1st – 3rd Respondents on

4th Respondent instigation. She also want the Court to order payment of One Hundred Million Naira (₦100, 000,000.00) against the Respondents and Order of restraint too on the same issue.

The 1st – 3rd Respondents had stated that the arrest and detention was based on a petition against the Applicant by the 4th Respondent on an allegation of cheating, criminal breach of trust, criminal conversion and Advance Fee Fraud. That the Applicant was to contract or supervise construction of the house and act as agent of the 4th Respondent. But rather than act as an agent, she had decided to convert the building as her own and refused to remit the money – Rent collected therefrom to the 4th Respondent. That she is only entitled to 10% of the Rent and nothing more. That their action is based on the said petition written by the 4th Respondent and in accordance with **S. 4 Police Act** as well as the constitutional provision as it pertains to the Police statutory powers too. That their action is legal and never violated the Right of the Applicant as alleged.

The 1st – 3rd Respondents attached some documents chief of which is the petition written by the 4th Respondent's Counsel – Kainan Partners on behalf of the 4th Respondent.

They also attached EXH E which is a Statement of Complaint made by the 4th Respondent – Fatahi Onibudo on the 9th of October, 2019.

The 4th Respondent had claimed that he sent/paid/transferred Twenty One Million Naira (₦21, 000,000.00) to Applicant to build the house and act as his agent and to collect the Rents. That she had remitted only Four Hundred and Forty One Thousand Naira (₦441, 000.00) only to him and that for close to three (3) years preceding the filing of this Suit she had not remitted any money to the 4th Respondent.

But a close look at the document attached particularly the petition written on behalf of the 4th Respondent by Kainan Partners dated 13/12/18 addressed to Economic and Financial Crimes Commission (EFCC) Chairman – EXH B as well as EXH A which triggered the investigation by Police as instructed by the 1st Respondent, the prayers in EXH B shows the main purpose of the petition. For clarity, it is imperative to state it verbatim.

“We humbly urge you to use your good office to aid our client in getting justice; to that end we make the following prayers:

- (1) Immediate release and transfer of the title documents of the Twelve Flats at Chika Airport Road to our client.**

- (2) Immediate seizure of management of the Estate by Mrs. Joy Raymond.**
- (3) Immediate remittance of the sum of One Million, One Hundred and Fifty Thousand Naira (₦1, 150,000.00) being Rent collected from the Tenants in the Estate so far unto our client's Account.”**

From the above, there is no doubt that the Counsel to the 4th Respondent acting on his instruction had wanted the 1st – 3rd Respondents to act as Debt or House Recovery Agent. It is glaringly clear that the issue between the parties – Applicant and 4th Respondent is purely commercial/contractual in nature. It is not in doubt that both knew each other well and were, based on Exhibit – E-mails attached by the applicant, that they were lovers too. There was transfer of money to Applicant and from Applicant to 4th Respondent going by documents attached.

From the E-mails attached, it is very clear that all those E-mails showing the evidence and exchange of love feelings between the Applicant and 4th Respondent all happened between February, 2012 to June 2012. There was no much evidence of transfer of money and gifts as Applicant claims as at the time. There was no evidence of such love exchange between December 2012 to 2018 when the 4th Respondent laid complaint against the

Applicant to the Police and the time his Solicitors wrote the petition on his behalf on the 13th of December, 2018.

They are however several remittances made by the 4th Respondent to the Applicant's Account at Access Bank Account Number: 0035540267 via international money transfer. A total of Four Million, Three Hundred and Forty Four Thousand, Two Hundred and Fifty Four Naira (~~N~~4,344,254.00) was transferred going by the evidence of transfers attached as EXH F – R attached by the 1st – 3rd Respondents. But the 4th Respondent by his Statement of Complaint to the Police said he transferred Twenty One Million Naira (~~N~~21,000,000.00) to the Applicant for the construction of the said house. The Plaintiff did not deny that money was transferred for construction purposes.

It is imperative to state that the 4th Respondent had Counsel representation in Court – Kainan Partners and Gabriel Abbas Akoja entered appearance as Counsel handling the case for the 4th Respondent. He was in Court once. He personally received and acknowledged the receipt of the Originating Process.

The Applicant had attached Receipt of Purchase of the land which was made in the name of the 4th Respondent – Fatahi Onibudo. This shows there

was land transaction and that confirms the issue of construction too.

There is a lot of evidence to show that those monies remitted were done during the period when the construction of the house took place. It is obvious that those monies, given the intervals of the remittance, were meant for the construction of the house and not for or as love gifts/funds as the Plaintiff claims. Since it was for construction of the Building and Nothing more, the Plaintiff did not deny that. By the remittance done by the Plaintiff, it means the house was meant for the 4th Respondent and not as love proceed.

It is not in doubt that the Applicant and the 4th Respondent agreed for the Applicant to remit money back to the 4th Respondent – that is part of the Rent. That was why the Applicant did the remittance. This goes to show that the house is not love gift but investment for the 4th Respondent. The Plaintiff has a duty to account and make remittance to the 4th Respondent as agreed.

On the issue of abuse of the Fundamental Right of the Applicant, it is evidently clear that the 4th Respondent through his instruction and prayers in the petition solely wanted the 1st – 3rd Respondents to help him recover the house from the Applicant since she failed and refused to remit money or

account for Rent as agreed. That is what occasioned the arrest and detention of the Applicant for the said date – 10th till 15th January, 2019. Detaining the Applicant for that long without charging her to Court is a violation of her Right. Asking Police to act as Rent/House Recovery Agency is way out of their statutory responsibility. So this Court holds. But parties are bound by their agreement. Applicant has duty to remit the money.

But it is important to state that looking at the registered Power of Attorney attached by the Applicant as well as the Deed of Assignment were all done in anticipation of the case. This is so because the registration of the Power of Attorney and the Deed of Assignment which was not registered before was done on the 21st of October, 2019 after the 4th Respondent had reported the case to the Police on the 9th of October, 2019. The registration was done long after the 4th Respondent lawyer's Letter of Complaint was lodged with the Police which is in anticipation of the case.

Notwithstanding the date the so called Power of Attorney was purportedly donated and the date the Deed was signed, there is every tendency that there was a backdating of those documents. If not why did the Applicant not attach those documents in her Originating Process? Why wait until after

the complaint of the 4th Respondent before registering the documents? The only reason is because they registered the instrument in anticipation and contemplation of this case.

Again, attaching the several E-mail messages after the receipt of the Counter Affidavit when she should have exhibited them in the original application to prove that the house actually belongs or was built for her by her then lover all is to lay claim to ownership of the Res. But she knows that she is only entitled to 10% of the Rent and nothing more.

It is the view of this Court that the house was never built for her as a love gift. All those action of hers were done or put up to lay claim over the said land and building. Why did she display the receipt of the land she claimed she bought for the 4th Respondent in Ogun State when she could not display the Land Receipt issued to her by Habakkuk who donated the Power of Attorney and who issued the Deed of Assignment to her. The simple answer is that she was raising all those issues to lay claim over the land and the house.

In conclusion, the 1st – 3rd Respondent were wrong to have arrested and detained her for the said period without charging her to Court. By so doing, they violated her Right. So this Court holds.

The Plaintiff has a duty to account for the Rent as the house was not a love gift. She is only entitled to 10% of the Rent since the house is not a love gift. Parties are bound by the agreement they entered into.

The Police may charge the matter to Court if they so wish.

The 4th Respondent can take legal action if he so wish to recover the property.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2021 by me.

**K.N. OGBONNAYA
HON. JUDGE**