

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 15TH DAY OF MARCH, 2024

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

SUIT NO.: FCT/HC/CV/1356/2021

BETWEEN:

MR. OKONKWO AZUKA LIVINUS ----- APPLICANT

AND

MR. PAUL ODILI ----- RESPONDENT

JUDGMENT

In this case premised on FREP the Applicant, Mr. Okonkwo Azuka Livinus sued Mr. Paul Odili claiming the following Reliefs:

1. A Declaration that the dug of, or/and the making of two separate pits/holes, each measured about 4 (four) meters width and 4 (four) meters deep, in the middle of the only existing two access roads at CRD Lugbe 1, Abuja Municipal Area Council, Abuja, that connects and lead to the Applicant's residence/building at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council, Abuja by the Respondent, his servants, agents, privies, or otherwise howsoever, on the 5th June, 2021 making human and

vehicular movements on the roads impossible, constitutes a violation of the Applicant's Fundamental Rights guaranteed under Sections 34(1), 41 and 44 of the Constitution of Federal Republic of Nigeria 1999 (as amended), and Article 12(1), Articles 13 (2 and 3), 19 and Article 24 African Charter on Human and Peoples' Rights.

2. A mandatory Order compelling the Respondent, whether by himself or by his servants, agents, privies or otherwise howsoever to forthwith, sand fill the two separate pits/holes, dug in the middle of the only existing two access roads at CRD Lugbe 1, Abuja Municipal Area Council, Abuja leading to the Applicant's residence/building at Plot 1227 CRD Lugbe 1 Layout. Abuja Municipal Area Council, Abuja.
3. An injunction restraining the Respondent, whether by himself or by his servants, agents, privies or otherwise howsoever from further dig pit/hole or/and block the access roads at CRD Lugbe 1, Abuja Municipal Area Council, Abuja leading to the Applicant's residence/building at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council, Abuja or in any other manner infringing on the Fundamental Rights of the Applicant.
4. ₦500, 000, 000.00 (Five Hundred Million Naira) damages/compensation for the breach of the Applicant's Fundamental Rights.
5. And such further orders as this Honourable Court shall deem fit to make in the circumstances.

GROUND UPON WHICH THE RELIEFS ARE SOUGHT:

1. The Applicant is a Nigerian citizen and a businessman
2. The Applicant reside at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council, Abuja with his wife and children.
3. The three (3) – bedroom bungalow apartment was erected/constructed in the year 2013 by the Applicant.
4. Applicant has been in use and occupation of the three (3) – bedroom bungalow apartment at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council Abuja.
5. Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the Applicant a Fundamental Right to the dignity of his person.
6. Article 24 African Charter on Human and Peoples' Rights all people shall the right to a general satisfactory environment favourable to their development.
7. The Applicant is a Nigerian citizen, resides at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council, Abuja with his wife and children.
8. On the 5th June, 2021 the Respondent, his servants, agents, privies, or otherwise howsoever, dug or/and make two separate pits/holes, each of about 4 (four) meters width (four) meters deep, in the middle of the only existing two access roads at CRD Lugbe 1, Abuja Municipal Area Council, Abuja,

that connects and lead to the Applicant's residence/building at Plot 1227 CRD Lugbe 1 Layout, Abuja Municipal Area Council, Abuja made impossible both human and vehicular movements on the roads.

9. The Applicant have been unable to drive his Honda CRV car with registration No RBC 715 BV AL across the pit- holes dug by the Respondent, his servants, agents, privies, or otherwise howsoever, to park the usual place of packing at the Applicant's residence till date.

10. The Respondent has breached the Applicant's Fundamental Rights.

He supported the application with a 20 paragraphs Affidavit which he attached several documents including vehicle particulars and a Video CD in which he showed the act of the Respondent which violated and infringed on his Fundamental Right to movement, dignity of his person etc.

The Respondent was served with the application by substituted means as per Order of this Court made on 21st March, 2023 after attempts at personal service failed. See the Bailiff's Affidavit on inability to serve the Defendant personally and the Order of the Court made on 21st March, 2023. See also evidence of service of the Order and the Bailiff's Affidavit to that effect. The Respondent did not file any Process. He did not have any Counsel representation too. Hearing Notices were served on him several times but he did not come to Court.

It is the submission of the Applicant that he constructed a house at Plot 1227 CRD Lugbe 1 Layout, Abuja. That on the 5th June, 2021 the Respondent dug a 4 by 4 metre hole/pit at the middle of the only existing two access road to the said Plot 1227. That that action by the Respondent affected his human and vehicular movement and constituted violation of his Right as contained under **S. 31 (1), 41 & 44 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

That all entreaties to make the Respondent to see reason to close the pits and allow him and his family vehicular cross to their house has become impossible. Not knowing what else to do and as a law abiding citizen he decided to seek redress by filing the present Suit and seeking the Reliefs already read out. He attached picture of the pit.

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

- (1) Whether the Respondent breached his Fundamental Right.**
- (2) Whether he is entitled to compensation and damage from the Respondent.**

On Issue No. 1 he submitted referring and citing the provision of **S. 46 (I), S. 34 (I) and S. 41 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He submitted that the Respondent has by digging the 4 by 4 metre pits/holes violated his Fundamental Right as guaranteed by S. 34 (1). That he and his family members have right of freedom of movement to

their residence and right of easement too as provided by **S. 41 (1) & 2 of the 1999 Constitution of the Federal Republic of Nigeria** (as amended).

That due to the action of the Respondent they have not been able to access their residence as the act of the Respondent has tolled a lot of hardship on him and members of his family. He attached pictures and Video CD showing the said 2 pits dug by the Respondent.

That the action of the Respondent violates **Article 24 of African Charter on Human and People's Right**. That the action of the Respondent has violated **S. 34(1) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended) on his human dignity and that of his family members.

That the Respondent had armed guards who keep vigil, watch and guard the place, hence causing fear and psychological torture and trauma to him and his family members. He urged the Court to grant his Reliefs 1 – 3.

On Issue No. 2 – on Damages and Compensation, the Applicant submitted that he is entitled to compensation and payment of damages by the Respondent in accordance with **S. 35 (6) of the 1999 Constitution of the Federal Republic of Nigeria** (as amended). He referred to the case of:

Odogu V. Attorney-General of the Federation
(1996) 6 NWLR (PT. 456) 508 @ 511

He urged Court to so hold and grant the prayer – Relief 4 as the Respondent has no justification violating his Fundamental Right.

COURT

It is the provision of **Order 2 FREP Rules 2009** that where any of the rights of the citizen as enshrined in the Constitution is being, had been or about to be violated that such citizen has a right to seek redress in the High Court of any State of the Federation.

Again, where such a person has been able to establish that such right has been, is being or had been infringed that such a person is entitled to be paid compensation in form of damages. Such is to be paid by the person who has infringed on such Right. It is the Court that has a right to quantify the amount of compensation to be paid to the Applicant depending on the circumstance of the case.

Again, where a person is sued and the person was given all judicial leverages to exercise his right to fair-hearing but refuses to do so, the Court shall hold that such a person has admitted the allegation so raised against that person and deem as admitted such allegation, holding that the person has no defence to the case made against him. Hence, facts admitted need no proof.

In this case, the Respondent was served with the Originating Process and Hearing Notices. He was served the Order of this Court. He did not enter appearance in paper or had any Counsel representation. He never appeared in

person or filed any document challenging the Suit of the Applicant.

This Court holds that the Respondent has admitted all allegations that the Applicant had raised against him.

It is the law that whoever asserts has to prove the assertion. Again, it is the duty of an Applicant in a FREP matter to establish through facts and evidence presented before the Court that the Respondent has infringed his rights as alleged. In this case, the Applicant through the facts in the 20 paragraphs Affidavit has established that the Respondent actually violated his right as sought. He had equally exhibited pictures of the 2 pits allegedly dug by the Respondent around his residence. He had attached 2 video clips showing the pits allegedly dug by the Respondent. Those facts were not challenged or controverted by the Respondent at all. This Court deems that the facts are admitted by the Respondent

The Court holds that the case of the Applicant is not controverted and that the Applicant has established the case that the Respondent violated his Fundamental Right.

Since the Constitution provides that any person who has established that his right has been violated is entitled to compensation in form of payment of damages by the person who has violated his right, this Court holds that the Applicant – Mr. Okonkwo Azuka Livinus is entitled to be paid compensation in form of Damages by the Respondent – Mr. Paul Odili who has violated his Right. So this Court holds.

This Court therefore holds that this application is meritorious and the Court grants the Reliefs to wit:

- (1) Relief No. 1 granted.
- (2) Relief No. 2 granted.
- (3) Relief No. 3 granted.
- (4) The Court hereby Order the Respondent, Peter Odili to pay the sum of ₦500, 000.00 (Five Hundred Thousand Naira) only to the Applicant for violating his Right as established.

This is the Judgment of this Court.

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

K.N. OGBONNAYA
HON. JUDGE