

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 29 GUDU - ABUJA
ON THURSDAY THE 1ST DAY OF APRIL 2021.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO:HC/CV/3013/2019

IN THE MATTER OF FUNDAMENTAL RIGHTS ENFORCEMENT
PROCEDURE RULES 2009

BETWEEN

MRS. CHINWE ONUOHA -----APPLICANT

AND

- | | | |
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| <ol style="list-style-type: none">1. INSPECTOR GENERAL OF POLICE2. MR. FRANKLIN. OKPALLA.3. EL-DABARH LIMITED | } | RESPONDENTS |
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JUDGMENT

The Applicant by a Motion on Notice filed on the 23rd day of September 2020 brought pursuant to Section 33, 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Articles 4, 5, 6 and 7 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act, CAP49 LFN 2004 and under the inherent jurisdiction of the Honourable Court is praying the Court for the following against the Respondents;

1. ADECLARATION that the arrest and detention of the Applicant Chinwe Onuoha by police officers from zone 7 command Abuja who are agents of the 1st Respondent over spurious and unfounded allegations of the 2nd Respondent is

illegal, unconstitutional and a gross violation of her rights to personal liberty and freedom of movement for the period it lasted as guaranteed under Section 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria.

2. A DECLARATION that the continued invitation of the Applicant Chinwe Onuoha by the officers of the 1st Respondent at zone 7 police command to be reporting at their station where they will keep her detained and incommunicado for the whole day is a gross violation of her rights to the personal liberty, freedom of movement and the rights to work.
3. A DECLARATION that the threat by the officers of the 1st Respondent at Zone 7 police command Abuja at the behest of the 2nd Respondent that they will be restraining the Applicant Chinwe Onuoha by repeatedly inviting her to their station and preventing her from going to work until she pays the sum of N1,350,000.00 (One Million Three Hundred Fifty Thousand Naira) to the 2nd Respondent is illegal and unconstitutional as the police are not debt collectors.
4. An ORDER directing the 1st Respondent to henceforth stop his agents and officers at Zone 7 police command from further detaining the Applicant Chinwe Onuoha.
5. An ORDER restraining the 1st Respondent's officers at Zone 7 command Abuja to desist forthwith from further harassing and threatening the Applicant Chinwe Onuoha to pay the sum of N1, 350,000.00 (One Million Three Hundred and Fifty Thousand Naira) through them to the 2nd Respondent as it is only a court of law that can make an order to that affect.

6. An order directing the 1st and 2nd Respondents to jointly and severally pay the Applicant the sum of N5, 000,000.00 (Five Million Naira) only as damages/compensation for the violation/deprivation of her rights as guaranteed her by Section 33 of the Constitution of the Federal Republic of Nigeria 1999(as amended) and Article 4 of the African Charter on Human and People's Rights(Ratification and Enforcement) Act.
7. And for such order or other orders as the Honourable Court may deem fit and proper to make in the circumstances.

In support of the motion is an affidavit of 30 paragraphs deposed to by the Applicant. From the affidavit of the Applicant, the facts which prompted the Applicant to institute this suit is that sometime around 2011, Applicant's colleague informed her that there was an estate Plot for sale to interested subscribers. Applicant attached the photocopies of allocation letter, a copy of the acknowledgment of the regularization issued by Abuja Geographic Information Systems (AGIS) and the receipt of payment marked EXHIBITS A, B & C respectively.

That Applicant informed her friend Barrister Chimezie and Bar.Chimezie in turn informed the 2nd Respondent who indicated his interest to purchase from the 3rd Respondent. That after the introduction of all parties, the 2nd Respondent indicated interest upon being shown the land and decided to buy one and a half plot for the sum of N1, 800,000.00(One Million, Eight Hundred Thousand Naira Only). That the 2nd respondent did not readily have all the money but paid the sum of N1,200,000.00 (One Million, Two Hundred Thousand Naira), to the Applicant for onward transmission to the project

manager of the 3rd Respondent. That the Project Manager of the 3rd respondent later instructed Applicant to pay the sum of N730, 000.00 Naira (Seven Hundred and Thirty Thousand Naira) into the 3rd respondent's account with intercontinental Bank (Now Access Bank) and to give his wife cash of N470,000.00 Naira (Four Hundred and Seventy Thousand Naira) for the processing of building approval at the Development Control Office. Applicant attached the deposit slip as EXHIBIT D. That the 2nd Respondent also paid the the balance of N600, 000.00 Naira (Six Hundred Thousand Naira Only) to Applicant towards the completion of the land and the Project Manager of the 3rd respondent instructed Applicant to pay the sum of N400,000.00 (Four Hundred Thousand Naira Only) into his account with Access Bank and give his wife the balance of N200,000.00 (Two Hundred Thousand Naira Only) which was effected. Applicant attached the deposit slip as EXHIBIT E.

That the 3rd Respondent issued the 1st respondent with an allocation letter to acknowledge that he had fully paid for the Plot and was qualified to build in the estate. That before the 2nd respondent could commence the development of the Plot, the authorities of the Federal Capital Territory Administration revoked the title of the 3rd respondent to the Plot. That the 3rd respondent promised the 2nd respondent and other subscribers that he will get an alternative Plot for them and eventually secured one at Jikwoyi, Abuja but the 2nd respondent did not like the area. That while the matter was pending, the Managing Director of the 3rd respondent died and his death stalled efforts in resolving the issue. That despite the assurance of the wife of the late Managing Director that the

2nd respondent should give her some time to conclude mourning her late husband and resolve the issue, the 2nd respondent did not accept her plea but rather, reported the matter at Zone 7 Police command and Applicant, the Project Manager and his wife were all arrested and taken to the Zone 7 command Abuja.

That at the Police station the Project Manager to the 3rd Respondent and his wife admitted that Applicant transferred and gave them all the money that the 2nd Respondent paid through Applicant to secure the Plot and promised to refund the money.

That despite their admission absolving Applicant of any guilt that the police still detained her for a day and forced her to undertake to refund the money with the project manager of the 3rd Respondent. That the project manager to the 3rd Respondent and his wife have refunded the sum of about N450,000.00 Naira (Four Hundred and Fifty Thousand Naira) to the 2nd Respondent through the police at Zone 7 command and have made further undertaking to the refund the remaining balance. That the project manager to the 3rd Respondent and his wife obtained a United States of America Visa and travelled but gave a strong assurance that they will refund the balance to the 1st Respondent once they settle down and start working. That the 2nd Respondent have been using the Officers of Zone 7 Police command to harass, intimidate, and threaten Applicant to pay the outstanding sum. That the Officers of the 1st Respondent at Zone 7 command have sworn that they will make sure that Applicant is dismissed from service and to achieve their mission, they have been ordering her to report to their office and each time she gets there she is kept till the close of work.

That the action of the Officers of the 1st Respondent in detaining Applicant and preventing her from going to work is adversely affecting her as her superiors are threatening to issue her a query for dereliction of duty and that the Police officers informed her to pay the money to the 2nd Respondent and threatened to write an official letter to her office. That as a result, Applicant now lives in constant fear and apprehension and presently suffers from High blood pressure due to the incessant arrest, detention, harassment, intimidation and constant threat by the officers of the 1st Respondent. That if the Court does not restrain the 1st Respondent from further arresting and detaining her unlawfully, that they will eventually coerce and force her to pay the money to the 2nd Respondent.

In opposing the application, the 2nd Respondent filed a counter affidavit of 43 paragraphs. From the affidavit deposed to by the 2nd Respondent, it is the case of the 2nd Respondent that in 2011, a friend Barr. Chimezie Orji asked if he was aware that the Nigerian Security & Civil Defence Corps was selling land through their cooperative society and that he knows the Civil Defence officer in charge of the sale. That the Applicant being a staff of Nigerian Security & Civil Defence Corps invited 2nd Respondent and Barr. Chimezie Orji to her office somewhere at Gudu. That the Applicant together with her colleague one Chinyere at her office gave further details of the land sale program of the Nigerian Security & Civil Defence Corps cooperative society which was "led" by them. That the Applicant and the said Chinyere assured 2nd Respondent of the genuineness of the Nigerian Security & Civil Defence Corps cooperative society's property sale which he decided to subscribe to

the sale. That Applicant and her friend informed 2nd Respondent that a plot of the land was valued at ₦1,200,000.00 which he paid to the Applicant. That about a month later, he decided to purchase another half plot and paid the Applicant the sum of ₦600,000.00 (Six Hundred Thousand Naira) only.

That several months passed and Applicant never contacted 2nd Respondent nor did she contact Barr. Chimezie neither did Applicant hand over the documents of the land to him. That from the date of payment till now, the Applicant and her cohorts never showed him any land nor did they refund the monies he paid to them. That he reached out to the Applicant severally and she refused to either show him the land he paid for or refund the monies totalling ₦1,800,000.00 (One Million Eight Hundred Thousand Naira) only. That the Applicant always threatened 2nd Respondent that he would not do anything to her as she has the state powers covering her. That he realized that he was being defrauded by the Applicant and her cohorts and immediately reported the case to the Nigerian Police Zone 3 Division who invited the Applicant, the said Chinyere and Mr. Ahans who Applicant claims is in charge of the documentation of the land for questioning. That after interrogation, the Nigerian Police informed him that the Applicant and her cohorts would be arraigned before the Court for fraud. That the Applicant and her cohorts on their own volition apologized and offered to pay him the ₦1,800,000.00 (One Million Eight Hundred Thousand Naira) only, in instalments, being the full and complete payment of the monies he paid to them and pleaded with him to withdraw the case from the police so as not to be charged in order not to lose their jobs

with the Nigerian Security & Civil Defence Corps which was their only source of income.

That the Applicant and her cohorts on their volition undertook to pay ~~N~~200,000.00 (Two Hundred Thousand Naira) only, monthly to him until the full and total sum is paid. That 1st Respondent and its agents never compelled the Applicant or any of her cohorts to pay any money. That the fundamental rights of the Applicant was never abused by the 1st Respondent or its agents at his behest as he only reported a crime done against him by the Applicant and her cohorts and that this suit was instituted out of bad faith.

Also filed is a 20-paragraph affidavit deposed to by Bar.Chimezie Orji reiterating the position of the 2nd Respondent and prayed the Court to refuse the application as same was instituted in bad faith.

The Applicant's Counsel in the written address filed raised three (3) issues for determination, thus;

1. Whether from the surrounding circumstances of this case and totality of the evidence placed before your Lordship, if the 1st Respondent is justified in law to arrest, detain the Applicant and infringe on her rights when she was an agent of the disclosed principal.
2. Whether the agents of the 1st Respondent are not over reaching their assigned duties and usurping the function of the court by forcing the applicant to make an undertaking at their station to pay back the money to the 2nd Respondent when in actual fact they are not debt collectors.
3. Whether the Applicant is entitled to the reliefs sought.

Counsel arguing the issues submitted that the insistence and vehemence by the agents of the 1st Respondent at Zone 7 Command Abuja in forcing the Applicant to enter into an undertaking at their station to pay the 2nd Respondent is illegal. Submitted that the agents of the 1st Respondent are exercising the authority that they lack by forcing the Applicant to pay the 2nd Respondent the money owed to him by the 3rd Respondent, a debt that the 3rd Respondent is already repaying through it's Project Manager.

Counsel submitted that the Applicant is entitled to the reliefs sought as the arrest and detention of the Applicant for the whole day and also the consequent authorization by the agents of the 1st Respondent that the Applicant should constantly report to their office at their whim without charging the applicant to Court, is a gross violation of her rights. Counsel submitted further that the Applicant has from her affidavit evidence, proved that the Respondents violated her fundamental human right and urged the Court to so hold and grant the Applicants reliefs. Counsel relied on the following cases;

1. Carlen (Nig) Limited V. University of Jos & Anor (1994) 2 KLR 96.
2. Niger Progress Limited v. North East Line Corporation (1989) 4SC (pt 11) 164
3. Oceanic Securities International Limited V. Alhaji Bashir Olaide Balogun & 4 Ors. (2012) 38 W.R.N.
4. Jim Jaja V. C.O. Rivers State (2013) 6 NWLR (pt.1350).

The 2nd Respondent's Counsel filed a written address which was adopted as argument in opposition to the Applicant's case and raised

a sole issue for determination, whether the Applicant has proved a case of infringement of her fundamental right.

The Counsel to the 2nd Respondent submitted that from the affidavits before the Court, the 2nd Respondent only reported the fraudulent acts of the Applicant to the Nigerian Police as he is obliged to and ought to be commended rather than pushed around by this mischievous and vexatious action. Counsel urged the Court to dismiss the Applicant's claim with punitive cost as same is vexatious. Counsel relied on the following authorities:

1. Maduka v. Ubah & Ors (2014) LPELR-23966(CA)
2. Fajemirokun v. Commercial Bank (Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt. 1135) 558.
3. Igbo & Ors v. Durueke & Ors (2014) LPELR-22816(CA)

I have examined the Applicant's application, the accompanying affidavit and written address. I have also read the 2nd Respondent's affidavit and written address in opposition to the Applicant's case and the issue to be determined in this case is "**whether the Applicant has proved her case to be entitled to the reliefs as claimed**"

The Constitution of the Federal Republic of Nigeria, 1999 as amended, clearly provides for the right of action in respect of breach or threatened breach of fundamental rights. Section 46(1) of that Constitution provided thus:

"Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress."

Order 2 Rule (1) of the Fundamental Rights (Enforcement Procedure) Rules 2009 contains similar provision as it provides that:

Any person who alleges that any of the Fundamental Rights provided for in the Constitution and to which he is entitled, has been, is being, or is likely to be infringed may, apply to the Court in the State where the infringement occurs or is likely to occur, for redress."

The provisions as stated above are very clear that a person can enforce his fundamental right where he feels that his right is contravened or being or likely to be contravened. See OHANEDUM & ANOR v. C.O.P (IMO STATE) & ORS (2015) LPELR-24318(CA).

By virtue of the provisions of **Section 35(1) and 41(1) of the 1999 Constitution(as amended)**, every citizen of Nigeria is entitled to his personal liberty and freedom of movement and no person shall be deprived of his liberty except as stipulated by the Constitution or statute. **See Adams V. A. G. Federal (2006) Vol. 4 INRN (pg. 46) pp (5) 56.**It also goes to say that every citizen of Nigeria has the right to go about his or her own business unmolested or unhindered by anyone except in a justiciable circumstance. In this instant case, from the facts as stated in the affidavit, the Applicant has come to this Court for the protection of her fundamental right, particularly her right to freedom of movement, personal liberty, and from being arrested or detained based on unfounded allegations arising from a land transaction. That there have been several invitations with threat of arrest from the 1st Respondent at the instigation of the 2nd Respondent.

The 2nd Respondent in opposing, stated in the Counter affidavit that he purchased land through the Applicant and payment was made to her and after several months of not being shown or given the land he realised he had been defrauded and reported the case to the 1st Respondent who then invited the Applicant and her alleged cohorts for questioning. The question to be answered is whether or not the Applicant's right was infringed upon by the Respondents. The question of whether or not the Applicant's right was infringed is a question of fact. It is the facts of the matter as disclosed in the processes filed that are examined, analyzed and evaluated to see if the fundamental rights of the Applicant were indeed breached contrary to the constitutional and other provisions on the fundamental rights of an individual. The law remains that he who asserts must prove, so the Applicant has the onus of proving by credible affidavit evidence that her fundamental rights were indeed breached. See the case of MESSRS LEWIS & PEAT (NRI) LTD VS A. E. AKHIMIEN (1976) 1 ALL NLR (PT.1) PG.460.

Upon a thorough examination of the Applicant's affidavit vis a vis the two counter affidavits filed by the 2nd Respondent, it is my view that the Respondent's affidavit shifted the evidential burden on the Applicant and Applicant has failed to discharge the onus shifted to her. The fact is not disputed that the 2nd Respondent in fact paid monies to the Applicant for the purchase of land from the NSCDC cooperative society upon presenting herself as a staff of the NSCDC Cooperative Society. The Applicant indeed represented herself as one capable of delivering on such transaction by virtue of her position in that office. By not delivering to the 2nd Respondent what he had paid

for, it is not out of place for the Respondent to conclude that he has been defrauded. The act of the 2nd Respondent reporting a case of alleged fraud committed by the Applicant and her co-horts to the 1st Respondent and the agents of the 1st Respondent inviting Applicant for interrogation does not in my view constitute an infringement of Applicant's right. Moreover, as Applicant was only detained for a day, which is within the confines and provision of Chapter 4 of the 1999 Constitution. The law is now settled that, it is the duty of any citizen of this Country to report cases of commission of crime to the police for their investigation and what happens after such report, is entirely the responsibility of the police. The citizen who lodged the complaint with the Police cannot be held culpable for doing his civic responsibility, unless it is shown that it is done mala fides. See the case of **FAJIMEROKUN VS COMMERCIAL BANK (NIG) LTD** (2009) ALL FWLR (PT.457) P.1 AT P.6. The agents of the 1st Respondent being officers of the Nigerian Police Force by virtue of Section 4 of the Police Act have the power to investigate, invite and interview any person suspected to have been involved or connected in the commission of a crime. The Affidavit of the Applicant is bereft of facts to substantiate how her right has been infringed upon by the Respondents and has come to Court in order to be shielded from criminal investigations. That the police detained her for a day is not out of place; that she had been reporting to the police station in the course of investigation (without being detained) does not constitute a violation of Applicant's fundamental human right.

There is no credible evidence before me that Applicant was coerced by the Police into signing an undertaking to refund money, neither is

there any proof before this Court that 2nd Respondent have been using the police to harass, intimidate and threaten Applicant to pay outstanding debt. There is also no iota of proof before me that the police have indeed harassed, intimidated and threatened Applicant. Applicant has also failed to prove that officers of the 1st Respondent at Zone 7 command “swore” that “they will make sure I am dismissed from service”. I am of the view and I so hold that an invitation to the police station in the course of investigation does not amount to unlawful detention. It is not the duty of the Court nor the duty of the Applicant to dictate to the police the method to be used in carrying out their investigation, rather, the duty of the Court is to ascertain that such method applied by the police in carrying out their investigation is within the confines of the law. The police in this case initially detained Applicant for one day at the onset of investigation and subsequently requested Applicant to continue to report at the police station on alternate days while investigation was ongoing. This is not in any way a breach or a purported breach of the Applicant’s fundamental human right. It is my view and I so hold that Applicant cannot and would not be allowed to use the Court as a shield to stall investigation in an alleged case of fraud, hence, this Court will not allow itself to be used as a shield to prevent criminal investigation.

The Court in the case of Attorney General Anambra State v. Chief Chris Uba (2005) 15 NWLR (Pt. 947) 44; where Bulkachuwa JCA held:

"For a person, therefore, to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to

law officers in the control of criminal investigation. The plaintiff has no legally recognizable right to which the court can come to his aid. His claim is not one the court can take cognizance of for it has disclosed no cause of action. The plaintiff cannot expect a judicial fiat preventing a law officer in the exercise of his constitutional power."

Hence, the Applicant cannot rush to Court for the court to exert its authority in her favour by preventing the Police from carrying out its lawful duties of investigating a crime reported to them, nor will the Court allow Applicant to prevent the 2nd Respondent from exercising his fundamental human right by lodging a complaint at the police station against an alleged case of fraud. It is not only a civic duty but his fundamental right to report a crime against his person.

In my humble view, the claim of the Applicant is unfounded, frivolous and lacking in substance and merit as the Applicant has failed to establish how the Respondents infringed on her right to be entitled to the reliefs sought. Consequently, the claim of the Applicant is accordingly dismissed.

Cost of N100,000.00 (OneHundredThousand Naira) only, is hereby awarded in favour of the 2nd Respondent.

Parties: Parties absent.

Appearances: Edwin C. Muokwudo, Esq., for the 2nd Respondent.

Applicant not represented. 1st and 3rd Respondents not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

01/04/2021