

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION**

HOLDEN AT GWAGWALADA- ABUJA

DATED THIS THURSDAY 18TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/7270/2023

BETWEEN:

MRS HALIMAT AUGEY IBRAHIM.....APPLICANT

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. MRS RITA DAUDA NWABIFE.....RESPONDENTS**

JUDGMENT

This Judgment is on an originating motion brought pursuant to Sections 35, 36 & 46 (1&2) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Order 2 Rule 1 and Order 4 (1,2 &3) of the Fundamental Rights (Enforcement Procedure) Rules 2009 and Sections 5 & 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act 2004 and brought under the inherent jurisdiction of this Honourable Court.

The applicant claims the following orders:

- 1. A declaration by the Hon. Court that, the arrest, detention, intimidation and harassment of the Applicant by officers of the 1st Respondent at the instance of the 2nd Respondent are most unlawful, oppressive, unconstitutional, illegal and amounts to a**

breach of the Applicant's fundamental rights to personal liberty and freedom of movement and the right to dignity of the human person guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- 2. A declaration by the Hon. Court that, the continuous invitation, harassment, intimidation and issuance of threats of further arrest, detention and prosecution of the Applicant by the Respondents, particularly by the officers of the 1st Respondent are unlawful, oppressive, unconstitutional and constitute a breach of the Applicant's fundamental rights guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended).**
- 3. A declaration by the Hon. court that, it is not within the statutory duties and powers of the 1st Respondent either by himself, his agents, privies, assigns or however described to middle into recovery of debts and or settlement of disputes arising from purely civil transactions.**
- 4. A declaration by the Hon. Court that, the way and manner the respondents particularly the 1st Respondent through his agents/officers are going about the purported investigation of the civil dispute between the Applicant and the 2nd Respondent is oppressive, discriminatory and unconstitutional.**
- 5. An Order of the Hon. Court granting perpetual injunction restraining/bearing the Respondents, their agents, privies, assign, jointly and severally from further harassment, intimidation, unlawful arrest and detention of the Applicant in respect of the civil transaction entered between the Applicant and the 2nd Respondent.**
- 6. An Order of the Hon. Court directing the 1st Respondent to forth with steer clear of the civil dispute between the Applicant**

and the 2nd Respondent and to immediately lift the Post No Debit on the Guaranty Trust Bank account no: 0040669552 with account name: Obiageli Eunice Osakwe, used by the Applicant to transact business with the 2nd Respondent and which was unlawfully restricted by the 1st Respondent.

- 7. An Order of the Hon. Court mandating the Respondents jointly and/or severally as the court may deem fit to pay damages to the Applicant for the infringement of her fundamental rights and the attendant agencies & financial losses suffered by her.**
- 8. And Such Further Orders as this Hon. Court may deem fit to grant in the circumstances.**

Accompanying the originating motion is an affidavit of 46 paragraphs deposed to by one Mrs. HalimatAugey Ibrahim of Shop No. 9, 1st Avenue Corner Shop, Gwarinpa, Abuja and attached to the Affidavit are annexures marked as Exhibit A, B, C, D & E respectively. The statement pursuant to Order I Rule 3 of the FREP (Rules) 2009 which set out the reliefs sought as listed (1 – 8) and also the grounds upon which these reliefs are sought (a – c).

In compliance with the rules of this court, the Applicant filed a written address of 21 pages where in the written address raised two issues for determination to wit:

- 1. Whether it is within the statutory duties of the Nigerian Police to recover debts or meddle into matters that are purely civil in nature?**
- 2. Whether or not the Applicant is entitled to the grant of the reliefs sought in this application having regards to the law, circumstances & facts of this case?**

Upon filing the suit, the Applicant filed a Motion Exparte with Motion No: M/12682/2023 for an order of interim injunction dated the 18th of August, 2023. The orders sought were as follows:

- a. An Order of interim injunction restraining the 1st Respondent either by himself, his agents, privies, assigns or howsoever described from unlawfully inviting, arresting, detaining and issuing of threats of prosecution of the Applicant in respect of the civil transaction between her and the 2nd Respondent pending the hearing final determination of the Motion on Notice filed in this suit.**
- b. An Order of interim injunction restraining/barring the Respondents either by themselves, their agents, privies, assigns or howsoever described from continuously harassing, intimidating and issuing of threats or further arrest, detention and prosecution of the Applicant pending the hearing and final determination of the Motion on Notice filed in this suit.**
- c. An Order of interim injunction restraining/barring the 1st Respondent either by himself, his agents/ privies, assigns or howsoever referred from further meddling, interfering and/or recovering the purported debts and/or settlement of the civil disputes between the Applicant and the 2nd Respondent pending the hearing and final determination of the Motion on Notice filed in this suit.**
- d. And for Such Further Orders as this Hon. Court may deem fit to grant in this circumstances.**

This Motion Exparte was moved before the vacation court No. 2 and all the orders sought were granted on the 4th day of September, 2023.

The Applicant also filed a Motion on Notice for an order of interlocutory injunction with Motion No: M/12683/2023 seeking for reliefs. This Motion on Notice is also dated the 18th day of August, 2023.

The Applicant on the 22/01/2024, filed a Motion Exparte for an order of substituted service on the 2nd Respondent, the motion was moved and the order sought therein was granted, the matter was then adjourned to the 22nd of April, 2024 for hearing.

The Applicant then filed a further Affidavit in support of the originating motion dated the 25th day of March, 2024. This further affidavit has 10 paragraphs and it was deposed to by HalimatAugey Ibrahim of No. 9 1st Avenue Corner shop, Gwarinpa. Two annexures are attached to the further affidavit and they are annexed as Exhibit “D1” and “D2”.

In compliance with the rules of this court, the Applicant also filed a written address in support of the further affidavit wherein she submitted a sole legal issue for determination which is reproduced below:

1. Whether having regards to all the facts and circumstances the Applicant has made out a case to entitle her to the reliefs sought?

The Applicant then moved the originating motion on the 22nd day of April, 2024, the Applicant also moved the Applicant’s further affidavit and urged this Honourable Court to grant all the reliefs sought in the originating motion and the further affidavit.

I have carefully studied the issues formulated above i.e. in the originating motion and further affidavit filed by the Applicant. I will consider this as my sole issue:

1. Whether having regards to the law, facts and circumstances of this case, the Applicant has made out a case in order to entitle her to the reliefs sought?

On the issue as stated above, I will refer to the affidavit of the Applicant and two of the Exhibits marked, Exhibit “A” and “B” which is found in paragraph 8 and 5 of the Applicant’s Affidavit. I will thus reproduce the relevant portions of the said affidavit and also the argument canvassed to by the Applicant in it’s written address to address this Honourable Court as to whether the Police truly acted as a debt recovery agency upon the invitation of the Applicant at the instance of the 2nd Respondent. The relevant portions of the affidavit are as reproduced below, Paragraph 5, 7, 8, 9, 10, 23, 24, 25, 28, 29 and 30.

The Applicant in her argument in the written address submitted that, the fact and circumstances leading to the arrest and detention of the Applicant by agents of the 1st Respondent at both Zone 7 Police Command, Wuse and Federal Capital Territory, Police Command, Area 10 Garki and the 2nd Respondent is a major basis for this suit, and laid emphasis on Exhibit “B” which is a visa procurement agreement between the Applicant and the 2nd Respondent.

From the relevant paragraphs of the Applicant’s affidavit above and the argument made by the Applicant, can it be said that the police acted as a debt recovery agent in the circumstance?

The position of the law is trite and clear that, the Police have no business using their coercive powers to deal in matters of a contractual nature between parties. The Courts have held severally in this light, represented in the suit before the Court of Appeal in *Anogwie & Ors Vs Odom & Ors* (2016) LPELR – 40214 (CA), where my lords were moved forceful with their judgment that:

“.....the invitation of the Police to intervene in a matter that is purely civil in nature cannot be justified under any circumstances. The duties of the Police as provided under Section 4 of the Police Act, Cap 359 LFN 1990 does not include the settlement of civil disputes or the collection of debts or the Enforcement of Civil Agreements between parties. See the case of MCLARENCE VS JENNINEGS (2003) 3 NWLR (Pt 808) 470. The mere fact that the Police are invited into just about every matter under the sun is no justification to get the Police involved in the resolution of civil dispute. The Police hasrecently held itself out as a responsible law enforcement organization and should be seen to live up to it’s billings in quickly turning down matters not statutorily assigned to it so as to avoid embarrassment of matters of this nature happening. There are usually dire consequences at every turn of event in the event of things of this nature happening. The position is and has always been that the private individual who uses the police to settle a private scare, would himself be liable for the wrongful act of the Police. See the case of NKPA VS NKUME (2001) 6 NWLR (Pt 170) 543, and a host of other decided cases on the subject”

The police derive their powers from Section 4 of the Police Act, Cap 359 LFN 1990. This Section states the jurisdiction of the Police and being used as debt recovery agents, being involved in purely civil matters or being used to resolve civil disputes has no basis in law by so doing, the Police would have acted ultra vires.

A plethora of authorities have stated severally that, the Police institution is not for the recovery of debts. See the cases of MC Lara

VsJenings(2003) FWLR (Pt 154) 537 – 538 and OnagoruwaVs State (1998) 1 ACLR 435 at 483.

However, taking a look at the Affidavit in support of the originating motion deposed to by the Applicant, paragraph 19 showed that, the Applicant filed a petition before the Inspector General of Police against one MikeEneduwaChinedu, the complaint was then assigned to the Zone 7 Police Command, Wuse, Abuja for investigation, the Applicant further attached Exhibit D which is a copy of the petition filed. Having gone through the petition, I have come up with the reasonable conclusion that having narrated the history of the transaction and contract between the Applicant and the 2nd Respondent by virtue of the petition/complaint against the said MykeEneduwaChinedu, the Applicant on her own invited the Police to intervene on the matter, and the Police have duly done their job/duty which is to investigate any allegation of crime or criminal wrong doing hence the invitation of the parties to the Zonal Police Command Wuse.

The Applicant's claim in paragraph 24 of her Affidavit that, the 2nd Respondent claimed to have given her over N10,000,000.00 and the officers of the Police insisted that she must pay and began harassing and threatening herwith prosecution, at this juncture, I will once again state that it is the Applicant who instituted this criminal complaint of "STEALING FRAUDULENT MISREPRESENTATION, OBTAINING BY FALSE PRETENCE & CRIMINAL BREACH OF TRUST" against Mr. EneduwaMykelChinedu, hence the investigation into the transactions that occurred between the parties, it is obvious now that, the action of the Police sprung from the criminal complaint of the Applicant against Mr, EneduwaMykelChinedu. Although, the petition is against another party, however, the 2nd Respondent was mentioned in the petition i.e.Mrs. Rita DauduNwabuife as the personwhose International

Passport and that of her two (2) children was allegedly being detained by the said Mr. MykelChinedu.

The Applicant has not been able to prove how the 2nd Respondent has used the Police to act as a debt collection agent, even though she made mention of making the payment of (One million naira) N1,000,000.00 and N7,000,000.00 (Seven million naira) in paragraph 28 and paragraph 30 of the Affidavit in support of the originating motion, the Applicant has not attached any proof of such payment made, the days they were made as receipt of such payment indicating when payment was made to and showing how the Police has thus acted as a debt recovery agent.

The law is that, the burden of proof lies on the Applicant to establish by credible Affidavit evidence that his fundamental right was breached.

It is pertinent to note at this stage that despite the service of hearing notices on the Respondents including the originating processed, they did not file any response to the instant application. The facts adduced by the Applicant in her Affidavit thus stands unchallenged as the Respondents have failed to file any Counter Affidavit to challenge same. The implication in law of this failure to file a Counter Affidavit to controvert the averments in the Affidavit is that, the facts in the Affidavit are deemed admitted as they are unchallenged and uncontroverted. See the cases of *IwakojuVsAkeleke* (2007) 4 NWLR (Pt 1025) Page 423, the *Governor of Kogi State & Ors Vs Oba S. A. Mohammed* (2008) LPELR – 5013 CA. the facts are deemed admitted.

However, this is not enough as it is pertinent on a party who is claiming a relief, particularly a declaratory relief to adduce credible and relevant evidence in proving his case. See *OlaniyanVsOdeyemi* (1996) 7 NWLR (Pt 459) 205 at P 207. It is trite law that, the burden of proving an infraction on fundamental human rights lies on the applicant and not the

Respondent. See Chief Dr. O. Fajemirokun Vs Commercial Bank Nig Ltd & Anor (2009) 2 – 3 SC (Pt 1) at 29.

It is also trite law that, he who asserts must prove. See Section 135 – 137 of the Evidence Act which laid down the fundamentals of such proofs. The failure of the Applicant to prove that, the 1st Respondent has been used as a debt recovery agent is such that cannot lead to the grant of the relief sought with respect to same.

On the issue of the breach of the fundamental rights of the Applicant's claim that, her fundamental rights has been breached as against the Provision of Sections 35 & 36 of the 1999 (Constitution Federal Republic of Nigeria).

Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 33, 33, 35 & 41 of the Applicant's Affidavit in support of their originating motion.

The Applicant in her Affidavit claimed that she was arrested and detained in the cell of the Zonal Police Command upon the Police inviting Mr. Mykel, the Applicant and the 2nd Respondent while insisting that all the money paid should be refunded and also threatening with prosecution. The Applicant further stated in paragraph 25 that she remained in the 1st Respondent's cell at Zone 7 Police Command, Wuse, even saying that she was put in the same cell with men in very deplorable and dehumanizing condition for three days (from 25th to 28th July, 2022) after which she paid the Police the sum of N300,000.00 (Three hundred thousand naira) to secure her release on bail.

The Applicant stated further in paragraph 27 of the Affidavit that, she was further detained again for another 2 days by officers of the 1st Respondent and further stated that she slumped only to wake up at the Wuse Zone 3 General Hospital where she was hospitalized and given several drips.

In the Applicant's Further Affidavit in support of the originating motion, the Applicant attached Exhibit "D1 & 2" which are patient's personal reference card and medical report given to patient by the Wuse District Hospital, Wuse Zone 3, Federal Capital Territory, Abuja.

The Applicant further stated that, the 2nd Respondent then filed another petition against her at the Federal Capital Territory, Police Command, Area 10, Garki, Abuja and she was arrested and again detained. Further stating that, the Police continued threatening her with detention and prosecution if she doesn't pay the money owed.

The Applicant submitted in the written address that, the Applicant was arrested on the 25th July, 2022 and was realized on the 29th July, 2022 which is cumulatively four days, saying that, she was never charged to court even when there are more than two courts around Zone 7 Police Command i.e. Wuse Zone 2, Magistrate Court, High Court Wuse Zone 6, and Magistrate Court etc. and also stating that, the Applicant was again detained upon arrest on the 4th August, 2022 and she was released on the 5th August, 2022 which then caused her to slump and was rushed to the Wuse District Hospital.

Section 35 (1) of the 1999 Constitution states thus:

“Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following case and in accordance with a procedure permitted by law”

The Cambridge dictionary defines liberty as freedom to live as you wish and go where you want. When the constitution thus says you are entitled to your personal liberty, it means that you are entitled to live as you wish and go where you wish, without restraint, deprivation, confinement or inhabitation. What this means is that, it is wrong, unlawful and

unconstitutional for anybody to detain you or hold you captive against your will.

Section 35 (4) further states that:

“When a person commits an offence or is suspected of having committed an offence, the police may arrest and detain him/her for the purpose of bringing him before the court”

The Applicant stated in paragraph 25 of her Affidavit that she was put in the same cell with men and under very deplorable conditions and dehumanizing conditions for three days (25 – 28th July, 2022) and she was released on the 29th July by the 1st Respondent.

As I have earlier noted hearing notices were served on the 1st Respondent on the 17th of April, 2024 and 20th December, 2023 also hearing notices and court processes were pasted on the gate of the 2nd Respondent indicating they are both aware of the pendency of this suit.

As I have also stated earlier, the law is trite that, uncontroverted evidence is deemed admitted. Now the established fact as per the Affidavit evidence before the court is that, the Applicant was detained from the 25th to the 28th of July, 2022, before her release upon the payment of the sum of N300,000.00 bail sum. As evidenced in the annexures in Exhibit “D”, a petition was submitted by the Applicant and upon investigation and invitation of all parties by the Police the Applicant was detained by the Police for 3 days before her release, this is a breach of the Applicant’s fundamental right to personal liberty particularly as there’s no justifiable reason/cause for the Police to detain without charging the Applicant to court for 3 – 4 days in an environment like Wuse which is in the heart of the city and with a good number of easily accessible court close to the Wuse Zone 7 Police Command. See the case of IsenalumheVsAmadi (2001) 1 CFR Pg 461 where the court

held that where the Police fails to enhance the quality of liberty and dignity of the Federal Republic of Nigeria as guaranteed by the constitution, the failure must not be allowed to work to the detriment of the citizens such that it will lead to a breach of the FHR of the individuals concerned.

On the issue of the breach of the Applicant's right to human dignity of persons.

The Applicant states in her Affidavit that, she was detained under very deplorable and dehumanizing conditions by officers of the 1st Respondent at the Zone 7 Police Command and kept in the same cell where she was exposed to mental torture by the Respondents.

Section 34 (1) of the 1999 Constitution guarantees every citizen the right to dignity of persons and also provides that no one shall be subject to torture or inhuman or degrading treatment.

In the case of UzoukwuVsEzeonu (1991) NWLR (Pt 20) 7088 CA, the court defined cruel, inhuman and degrading treatment to be any barbarous or cruel act or acting without feeling for the suffering of the other.

In the case of First Bank of Nigeria & 4 Ors Vs Attorney General of the Federation &4 Ors (2018) ISC (Pt 1) 94, the Supreme court held that, the detention of the Applicants under dehumanizing conditions at the Lugbe Police station and Airport Police station from 9th September, 2004 to 10th September, 2004 violated the dignity of the Applicant's person and hence awarded damages to the tune of One million naira.

In the instant case, the Applicant has shown in her Affidavit and annexures attached, particularly Exhibit "D", "D1" and "D2" that, she was invited by the Police and illegally detained for three days by officers

of the 1st Respondent, the detention was also under very inhuman conditions as she was kept in the same cell as men for the period within which she was in detention, the Applicant also stated in paragraph 27 that she was detained for a further two (2) days upon another invitation and at the behest of the 2nd Respondent and the 1st Respondent jointly in order to make her refund the money which she allegedly collected from the 2nd Respondent, it was also stated in paragraph 27 that, the Applicant slumped only to find herself being discharged from an Hospital much later as annexed in Exhibit “D1” and “D2”.

The Applicant further stated that another petition was written by the 2nd Respondent on this same issue at the Federal Capital Territory, Police Command, Garki which led to forum shopping and also led to another set of officers harassing and threatening her with further arrest, detention and subsequent prosecution.

It's pertinent to reiterate again that the 2nd Respondent also did not file any response in this suit and did never appear in the matter despite service of hearing notices on her, the facts as stated on the Affidavit on the role of the 2nd Respondent in the illegal detention, inhuman treatment and constant threats of the Applicant by the 1st Respondent are hugely admitted as they have majorly been proven by the Applicant.

The Applicant also stated in her Affidavit that, the Police blocked her friend's Guaranty Trust Bank Account No: 0040669552, with Account Name: Obiageli Eunice Osakwe, which she used to collect money Sometimes from the 2nd Respondent and same has remained blocked for over a year now and counting.

On this, it is the position of the law that due legal process must be followed for the act of freezing on account to be lawfully done. The practice is to direct the bank where the account is domiciled to place the

restriction. See the case of United Bank for Africa Vs Attorney General of Benue State & Ors (2022).

The Court of Appeal held recently that, it is settled and sacrosanct that for a bank to freeze, place a caution or any form of restraint on it's on customer's account, there must be a court order. See the case of Polaris Bank Ltd Vs Yayamu Global Services Ltd & Anor (2022).

The Police is required to seek and obtain an order of court before directing that an account of a bank customer be frozen. When an account is frozen/restrained without a court order first sought and obtained, the fundamental right of the customer is deemed breached and as such both the authorizing authority and bank is liable. See the case of Guaranty Trust Bank Vs Mr. Akinsola Ademola, the customer can in such cases claim damages from the Police. The freezing of the account of Mrs. Obiageli Eunice Osakwe by the 1st Respondent during investigation without a valid court order is deemed to be done improperly by the Police as it has been seen to be in a plethora of authorities, thereby giving the need for remedy in the form of damages to be accruable to the Applicant for this breach of her right.

As a result of the foregoing, it can be gleaned from my position on the arguments submitted that, the Applicant has proven that her fundamental rights to personal liberty and right to dignity of human persons has been breached together with the improper blocking of her account and this will therefore require a remedy of damages for these breaches.

In the case of DIAMOND BANK VS UNAAA & ORS (2019) LPELR – 50350 (CA), the court held thus:

“The law is that, damages automatically accrue once there's a finding of breach of fundamental rights: it is a legal and natural consequence that follows every act of violation of a citizen's right”

It is the right of the Police to investigate a crime upon suspicious or upon a complaint, but this must be done within the confines of law, the Applicant is thus entitled to general damages as a result of the breach of her fundamental rights by both the 1st and 2nd Respondent.

I hereby grant reliefs 1, 2, 4 and relief 7. Relief 6 is also granted in part such that, the 1st Respondent is hereby ordered to immediately lift the Post No Debit on the Guaranty Trust Bank Account No: 0040669552 with Account Name: Obiageli Eunice Osakwe used by the Applicant to transact business with the 2nd Respondent and which was unlawfully restricted by the 1st Respondent.

With respect to Relief 7, I do hereby hold that, the Respondents jointly pay the sum of N1,000,000.00 to the Applicant as damages for the infringement of her fundamental rights and the financial losses she has suffered along the process.

Reliefs 3 and 5 are hereby rejected and dismissed as there is not sufficient proof to grant same. I so hold.

.....

Hon. Justice A. Y. Shafa

APPEARANCE:

- 1.F. A. Ekuahorovwe for the claimant.
2. Defendants not in court.