

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

DATED THIS WEDNESDAY 25TH JANUARY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/1919/2022
MOTION NO: FCT/HC/M/9124/22

BETWEEN:

TOLUWALASE PECULIAR BAMGBOSE-----APPLICANT
(SUIV BY HER GUARDIAN AD LITEM/NEXT FRIEND;
OMOLAYO RASHIDAT OGUNJOBI)

AND

KAZEEM ADENIYI BAMGBOSE----- RESPONDENT

JUDGEMENT

This is an originating motion dated 3rd June,2022 filed dated 3-06-2022 and the particulars of complaint are as stated above:

- 1. An order and declaration that the rights of Toluwase Peculiar Bamgbose as guaranteed under chapter iv sections 33(i), 34(i),(a), 39(i)(2)42(b) and 46(i) of the Constitution of the Federal Republic of Nigeria 1999(as amended), part 1 sections 1&2 part ii section 3(i) and 2,**

4, 8(i), 10(2), 11(a), 12(3), 13(2) 14(i)(2), 15(2), 20 and part v section 52(i)(a)(b), 2(a), 3 of the child's rights Act 2003, and articles 2, 3&5 of African charter on Human and people Right (Ratification and Enforcement) Act chapter A9, LFN 2004 are being breeched by the respondent.

2.An order and declaration that Toluwase Peculiar Bamgbose is entitled to the rights and privileges contained under chapter IV sections 33(1), 34(1), (A), 39(1), (2), 42(2) and 46(1) of the Constitution of The Federal Republic of Nigeria 1999 (as amended), part 1 and 2, part II sections 3(1),& (2), 4, 8(1), 10(2), 11(a), 12(3), 13(2), 14(1), (2), 15(2), 20 and part V sections 52(1) sub, 2(a), 3 of child's right acts 2003 and article 2,3 and 5 of African Charter on Human and People Right Act chapter a of (Ratification and Enforcement) the Constitution of The Federal Republic of Nigeria 2004.

3. An order of court compelling the respondent to take full responsibility of the school fees of Toluwase Peculiar Bamgbose up till the University level.

4. An order of court compelling the respondent to be fully responsible for school uniforms, books, health care, clothing and other basic necessities of Toluwase Peculiar Bamgbose.

5. An order of court compelling the respondent to pay the sum of One Million, Eight Hundred and Seventy-Nine Thousand, Five Hundred and Sixty Naira being refund of all monies spent by Omolayo Rashidat Ogunjobi, the mother of Toluwase Peculiar Bamgbose for the payment of school fees, uniform, books, and hospital bills, in respect of Toluwase Peculiar Bamgbose.

6. Monthly maintenance allowance of One Hundred Thousand Naira for maintenance and upkeep of Toluwase Peculiar Bamgbose.

7. An order of court granting full legal custody of Toluwase Peculiar Bamgbose to Omolayo Rashidat Ogunjobi since the respondent has never shown any emotional attachment, Fatherly love or any Paternal

responsibility towards Toluwase Peculiar Bamgbose.

8. An order that the sum of 30,000:00 Naira be paid by the respondent as general damages for emotional stress, psychological trauma, physical embarrassment and social stigmatization endured by both the applicant and her mother Omolayo Rashidat Ogunjobi.

9. The sum of Five Million Naira being cost of action.

10. And for such further order or others as the court may deem fit to make in the circumstances.

The application was supported by an affidavit of 10 pages of 50 paragraphs deposed to by Omolayo Rashidat Ogunjobi of Plot 7, beside Karu Site Police Station, Karu Site Abuja and attached to the affidavit are exhibits marked A, B, B1, B2, C, C1, D, D1, D2, E, E1, F, G, 1-37, H, J, J1, J2, J3, and a written address in support of application of 15 pages.

This suit was assigned to this court, court 49 dated the 14-06-2022 received by the registrar of this court on the 21-06-2022.

Upon receipt of the said suit, the plaintiff's counsel filed motion exparte for an order substituted service on the defendant, the motion with motion no: M/9124/2022 dated 8th July, 2022 filed same date. The motion was moved and the order sought therein was granted and enrollment was signed dated the 15-6-2022. upon the service of the order via the email of the defendant with no: +447473090900(United Kingdom) proof of service dated 20th September, 2022, the matter was fixed for report of service.

On this date parties were absent while one Barrister Akintunde Ajayi for the plaintiff was in court and he informed the court that the defendant has been served as directed by the order of substituted service and the matter adjourned to 29-09-2022 for hearing. On the 29th September,2022 the court did not sit and the matter was again adjourned to 20-Novemeber, 2022. For Hearing.

On the 20th September 2022 one Akintunde Ajayi was in court for the plaintiff/Applicant and J.I Umar for the respondent. ON this date informed the court that they have not been served with any process and the only thing he was served is only notice of last date. Thus the court ordered service to be effected on the respondent/defendant right in the courtroom which was done and the matter adjourned to 28th November, 2022.

On the 28th November, 2022 Akintunde Ajayi was in court and one D. Ademole and P.O Osimen representing the respondent. Both parties or counsel who told the court that they are ready for today's hearing and the matter went into hearing. Thus the Applicant/Plaintiff moved his application and adopted his written address and upon been served with the counter from the respondent the applicant filed a reply affidavit of 46 paragraphs deposed to by one Omolayo Rashidat Ogunjobi attached to it are exhibit marked A-C and also filed a reply on point of law which he adopted same and urge this court to grant the reliefs sought therein.

The respondent on his part filed their counter affidavits of 8 paragraphs deposed to by one Godwin Umar and attached to the counter affidavits are exhibits marked A-D and a written address where he adopted same and urged this court to dismiss the suit as being a strange suit filed to annoy the respondent and the court.

The respondent in response to the motion on notice filed respondent counter affidavit of 6 pages of 8 paragraphs deposed to one Godwin Umar of NO:12 Obosi street Garki II Abuja FCT and annexed to the affidavit are exhibit A, B1, B2, C1, C2 and D and a written address in support of counter affidavit of 6 pages the applicant in turn filed a reply affidavit of 13 pages of 46 paragraphs and annexed exhibits marked A, B, B1, B2, B3, C and a reply on point of law of 10 pages.

The applicant in its written address formulated a sole issue distilled for determination to wit:

"Considering the circumstance of this case, whether the applicant is entitled to grant of the relief sought."

While the respondent also formulated a sole issue distilled for determination to wit:

"Whether the Applicant has made out any special or exceptional circumstance for the grant of this complaint in her favor"

The issues so formulated by both the applicant and the respondent counsels seems to speak the same language as to whether this court can grant reliefs sought or claimed by the applicant. Hold therefore, I shall consider the merits of this case based on the issue so formulated in order to bring out the entitlement or come to the conclusion as to whether the applicant is entitled to the relief sought therein or not.

On the first relief is to whether the rights of Toluwase Peculiar Bamgbose are guaranteed under chapter IV sections 33(1), 34(1), (A), 39(1), (B), 42(2) and 46(1) of the Constitution of The Federal Republic of Nigeria 1999 (as amended), part 1 sections 1 and 2, part II sections 3(1), & (2), 4, 8(1), 10(2), 11(a), 12(3), 13(2), 14(1),

(2), 15(2), 20 and part V sections 52(1) sub, 2(a), 3 of child's right acts 2003 and article 2,3 and 5 of African Charter on Human and People Right(Ratification and Enforcement) Act chapter A9 of the LFN 2004.

On this and before I proceed to the main issues I will first of all reproduce the position of the law as captured under the chapter as stated therein:

First and foremost an application for the enforcement of fundamental rights is a special procedure and not to be equated with the normal procedure in action tried on pleadings and to which normal rule of pleadings apply. In the procedure under fundamental rights (Enforcement Procedure) Rules, the affidavits constitute the evidence.

The law is well settled that in an application for the enforcement of fundamental rights its determination is premised on the affidavit evidence and which the court must meticulously pursue in order to reach a just determination of the application.

Here in the instant case the claimant/applicant instituted this action under the fundamental rights (Enforcement Procedure) Rules 2009. the application as I stated was brought pursuant to 33(1), 34(1), (A), 39(1), (B), 42(2) and 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The applicant attached a verifying affidavit and a written address, the reliefs sought, the grounds upon which the reliefs are sought. Worthy of note is that the fundamental rights (Enforcement procedure) Rules 2009 has created a special procedure by which citizens of this country could come to court in the enforcement of their Fundamental rights apart from the conventional civil procedure applicable to the high courts. This is sui generic and enjoins parties to file affidavit evidence for the just determination of their application per Elechi JCA, Minister of Defense & ors v Ephraim (2014) LPELR-24245(CA).

Order II rule 1 of the FREP Rules 2009 provides as follows:

“Any person who alleges that any of the fundamental rights provided for in the constitution or African charter on Human and people's rights (Ratification and enforcement) Act 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 "per

Galinje JCA Adefila & Anor V Popoola &ors (2014) LPELR, 22468(CA).

Based on this provision of the law the Applicant under chapter iv of the Constitution of the Federal Republic of Nigeria 1999 (as amended), claim for rights under section 33(1), 34(1), (A), 39(1), (B), 42(2) and 46(1) which said provisions will be reproduce below,

Section 33(I) provides thus:

Every person has a right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has to be found guilty in Nigeria.

Section 34(1)(c) provides thus:

Every individual is entitled to respect for the dignity of his person and accordingly.

a) no person shall be subjected to torture or to inhuman or degrading treatment;

Section 39(1)(2)

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impact ideas and information without interference.

sub (2) without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for dissemination of information, ideas and opinions.

provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president in the fulfillment of conditions laid down by an act of the national assembly shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

Section 42 (2) provides thus

No citizen of Nigeria shall be subjugated to any disability or deprivation merely by reason of the circumstances of his birth.

Section 46 (1)

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

From the above can it be said that the reliefs sought by the applicants and the grounds for such reliefs and the facts re-laid upon in the main plank where the applicant would have sought through the fundamental rights (enforcement proceedings) rules 2019

From the reliefs sought therein and the ground upon which the reliefs were sought are reliefs which are right which are incidental or auxiliary to the main complaint, having come under incidental or auxiliary to the main complaint, the applicant would have come by way of a writ of summons in hold of his claim.

Here the principal complain of the applicant in a whole are for the respondent to take full responsibility for the school fees, books, healthcare, clothing of one Toluwase Peculiar Bamgbose and for the applicant to refund of all monies spent by the applicant the mother of Toluwase Peculiar Bamgbose, monthly maintenance allowance to grant full legal custody of Toluwase Peculiar Bamgbose. Therefore, hold that the proceeding by way of the fundamental rights (enforcement proceedings) rules 2019 are in appropriate in the circumstance, hold therefore that this matter was taken this court on a wrong vehicle or by keke Napep instead of a writ of summons designed for initiating an action it was started with a motion on notice under the fundamental rights procedure under the constitution. The crux of this matter is stated in paragraphs of the affidavit that deals with failed marriage proposal and applicant refusal to take the applicant along with him to the united kingdom as arranged and in the course of the friendship the applicant has a child for the respondent outside the wedlock and having the child the respondent failed to maintain the mother and the child born outside the wedlock then left the applicant to bear the cost of maintaining the child one Toluwase Peculiar Bamgbose

It is trite law, that an applicant who found his cause of action under the provision of the fundamental rights is being contravened or is likely to be contravened in the state for which he seeks redress under section 46 (1) (2) of the constitution of the federal republic of Nigeria 1999 as amended the fundamental rights that the constitution seeks to protect and which a remedy or relief is to be granted are set out in section 33-45 of the constitution of the federal republic of Nigeria 1999 as amended

Therefore, a party cannot by operation of his own whims and caprices expand the frontiers of the constitutional rights beyond the anticipation of the constitution as no person can read into the constitution what is not there.

In *Peterside v IMB NIG LTD* (1993) of NWCR (PT278) of 712 the court opined that the rights that can be enforced under the fundamental Human rights enforcement procedure rules must be those ones that have been specifically mentioned in chapter 4 of the 1999 constitution. Hence, the fundamental human rights enforcement procedure rules cannot be used to institute an action of the right that has not been specifically enlisted in chapter 4 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

Here in this case, all the reliefs sought by the applicant are such that cannot be accommodated under an application for the enforcement of fundamental rights order 14 of the fundamental rights enforcement procedures rules 2009 makes provisions with respect to the effect of non- compliance with the rules it reads:

“Where at any state in the course of or in connection with any proceedings there has, been any reason of anything done or left undone been failure to comply with the requirements as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceeding except as they relate to:

- a. more of commencement of the application.**
- b. The subject matter is not within chapter iv of the Constitution or the African charter on Human and Peoples Rights (Ratification and Enforcement) Act.**

Having regard to the above provisions, the subject matter of this case being issues

regarding maintenance, though couched as a violation of his fundamental rights under chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended ought not to be taken or adjudicated by this court as the applicant's application in its entirety rest on the failure to comply with provision of the applicable rules as the reliefs sought by the applicant do not relate to any of the rights "prescribed and embodied" in chapter iv of the said constitution and therefore the procedure employed by the applicant is totally wrong procedure.

In this present case having carefully looked at the reliefs sought there is an unnecessarily very copious affidavit of 50 paragraphs in support of the applicant application, the prayers are drafted in such a manner that they are drained and dry of any clear affiliation or affinity to the fundamental rights constitutionally guaranteed in chapter iv that is section 38-46 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

The applicants second relief is for declaration under same as relief (1) whole other reliefs sought therein deals with maintenance and refund of monies. It is clear therefore from the IPSISSIMA Verba of those section mentioned in reliefs 1 & 2 are clear and unambiguous and the reliefs which maybe claimed by means of this procedure is limited and confined to any of the provisions of chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended any exercise of jurisdiction in respect of the subject matter outside chapter iv is without jurisdiction, unconstitutional and void. in *Osuagwu v AG Anambra state and ors* (1993)4 NWLR 13CA and *Saude v Abdullahi* (1989) 4NWLR (PT.116) 387S.C. the court held thus:

“Without more, the appellant prayers in his application for the enforcement of his fundamental rights do not disclose that they are confined or limited to any of the provisions of chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended and the procedure adopted by the applicant is wrong as he acted without jurisdiction”

I have carefully examined the claims and the reliefs sought therein, and have this to say "It has now become a fashion or style for parties to push or force the provision of chapter iv into must claims which cannot in law be accommodated by the chapter. parties sometimes take undue advantage of the general and at times nebulous

provisions of the chapter and try to tailor in their actions even when the size of the cloth does not fit into it.

The provisions of chapter iv though appear omnibus and large both in their character and context are chained here and thereby constitutionally gadgets by way of safeguards ----- Counsel by his professional calling and expertise may dexterously frame a claim or relief to have a semblance of bridge of a constitutional right as contained in chapter iv of the constitution. He does this to give the matter a higher status in the litigation process. But where an action does not have a constitutional flavor in the sense that the provisions of the constitution are not breeched or in the process being breeched it cannot be elevated to the status of a constitutional wrong.

I have tried as much as I could to apply the eye of an eagle to scrupulously examine the character and contained of the claim with a view to moving the chaff from the grain and to come to grips with the camouflage or disguise in this action brought before this court on the breech of constitutional but there is nothing this court can do as the applicant did not comply with the laid down rules.

It is easier said and done though the respondent in this case also filed the respondent counter affidavit against the motion on notice of 8 paragraphs where he exhibited alongside with his claim and the written address and throughout the said written address there is no mention as to whether the provisions of chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended has been breached or being breeched, all his argument in support was on matrimonial causes Act which is far from the chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended .

The applicant as well dwell on the Childs right acts clothed with the constitutional provision. No matter the level of intelligence of the counsel it be. Hold on the court being an albite to look critically on the reliefs sought therein to know if it tally with the chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended as to allow this court to be clothed with the desired constitutional provisions to assume that the applicant rights have been breached as provided for in chapter iv of the Constitution of the Federal Republic of Nigeria 1999 as amended

This matter having fall short of the provisions of chapter iv of the constitution hold that the applicants case before this court cannot stand the test of time for

noncompliance with the law as stated in the body of this Judgement see Saude v Abdullahi (SUPRA)

This matter having been brought under wrong law the best this court can do is to dismiss this action.

Hence this action/matter is hereby dismissed

This is my judgement.

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HON. JUSTICE ALIYU Y. SHAFI

APPEARANCE:

1. Akintunde Ajayi for the Applicant.
2. J. I. Umar for the Respondent.