

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 30TH DAY OF SEPTEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/702/2019

BETWEEN:

FRANCIS EKECHI:.....APPLICANT

AND

1. MOSES AYOM

2. GRANITE AND MARBLES LIMITED }...RESPONDENTS

Jerry J. Dabo for the Respondents.
Applicant not represented.

JUDGMENT.

By an Originating Motion dated 10th May, 2019 and filed same day at the Federal High Court, Abuja, from where the suit was transferred to this Court on the 18th January, 2020, the Applicant instituted this suit for the enforcement of his fundamental rights against the Respondents, praying the Court for the following:

1. A declaration that the detention, physical assault, torture and the dehumanizing treatment meted out to the Applicant on Wednesday, 10th of April, 2019, by the Respondents and their employees (at the behest of the Respondents), at the office of the Respondents at Plot 1633, Cadastral Zone B09, Kado, Abuja, are illegal, unlawful, wrongful, unconstitutional, and constitute a violent violation of the Applicant's fundamental rights as enshrined in Sections 33(1)(2)(A) & (B), 34(1)(A) and

35(1) of the Constitution of the Federal Republic of Nigeria, 1999, as altered and articles 5, 6 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004.

2. A declaration that the threat to the life of the Applicant and the inhuman and degrading treatment meted out on the Applicant on Wednesday, 10th of April, 2019 by the Respondents and their employees (at the behest of the Respondents), at their office at plot 1633, Cadastral Zone B09, Kado, Abuja, are illegal, unlawful, wrongful, unconstitutional, and constitute a violent violation of the Applicant's fundamental rights as enshrined in Sections 33(1)(2)(A) & (B), 34(1)(A) and 35(1) of the Constitution of the Federal Republic of Nigeria, 1999, as altered and articles 5, 6 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004.
3. A declaration that the arrest and detention of the Applicant on Wednesday, 10th of April, 2019 by the Respondents and their employees (at the behest of the Respondents, at their office at plot 1633, Cadastral Zone B09, Kado, Abuja, are illegal, unlawful, wrongful, unconstitutional, and constitutes a flagrant violation of the Applicant's fundamental rights to personal liberty and right not to compulsorily acquire the Applicant's principal's property as enshrined in Sections 35(4) and 44(1) of the Constitution of the Federal Republic of Nigeria, as altered (CFRN) and Articles 6 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004.

4. A declaration that the Applicant is entitled to public apology and adequate compensation from the Respondents as provided for in Sections 35(6) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria, as altered; Sections 314(1) and 323(2) of the Administration of Criminal Justice Act, 2015, for the blatant violation of the Applicant's fundamental rights without following the due process of law.
5. An order that the Respondents jointly and severally pay to the Applicant the sum of N500,000,000.00 (Five Hundred Million Naira) only, representing general and exemplary damages for the wanton and grave violation of the Applicant's fundamental rights without following the due process of law.
6. An order directing the Respondents to publish in three notable national newspapers, an unreserved apology to the Applicant for the brazen breach of his fundamental rights without following the due process of law.
7. An order of perpetual injunction restraining the Respondents, whether by themselves, their agents, servants, employees, privies or howsoever and by whatever name called, from further breaching the fundamental rights of the Applicant on the basis of Samuel Ede, or similar facts and circumstances of this matter.
8. And for such further or other orders as this honourable court may deem fit to make in the circumstance.

The case of the Applicant, who is a lawyer and a staff of Zenith Bank PLC, is that on 8th January, 2016, the 1st Respondent, as the Chief Executive officer of the 2nd Respondent applied for a Central Bank of Nigeria (CBN) Real Sector Support Facility through Zenith Bank PLC, for his company.

The Applicant averred that the Respondents' request was processed and an offer in principle for a credit facility was made to them by the Bank, which was subsequently reviewed, the Bank stating all the conditions (in the form of back up security such as title documents, credit bond guarantee) to be met by the Respondents for the facility of One Billion Naira. He stated that the Bank was to send the Respondents' application upon the fulfilment of these conditions to Central Bank of Nigeria (CBN), but the Respondents were unable to fulfil the requirements until they suddenly wrote to the Bank, intimating the Bank of the change of the entire structure and ownership of the 2nd Respondent, which was not in tandem with their initial agreement.

The Applicant averred that this development necessitated the Bank to slow down action on the processing of the documents earlier commenced, resulting in the 1st Respondent proudly and openly boasting and threatening to deal with the Bank, and that he would use his connections with the Economic and Financial Crimes Commission (EFCC) to deal with the Bank and teach them a lesson for not immediately granting the facility.

He stated that on Wednesday, the 10th of April, 2019, he went in company of his colleague, one Samuel Ede, to deliver a letter to the 1st Respondent at his office, notifying him of the Bank's decision to suspend further processing of the documents on the facility as a result of the Respondents' inability to meet up with the agreed conditions for the facility, but the 1st Respondent bluntly refused to receive the letter from them and threatened them that "blood will flow" if they attempt to leave his office.

The Applicant averred that the 1st Respondent, in company of employees of the 2nd Respondent, physically restrained him

and his colleague and detained them for over three hours before calling the officers and operatives of the Economic and Financial Crimes Commission (EFCC) who eventually came and took them away to their office. He stated that the officials of the Economic and Financial Crimes Commission (EFCC) promptly seized their mobile phones and the documents they came with, after which they were roughly manhandled and bundled into their waiting vehicle and taken to the Jabi Headquarters of the Economic and Financial Crimes Commission (EFCC), and later to the Wuse II office of the commission where they were detained until 7pm of the following day, Thursday 11th April, 2019.

He averred that on the instigation of the Respondents, the Economic and Financial Crimes Commission (EFCC) operatives kept him in the Economic and Financial Crimes Commission (EFCC) dungeon from 10th April, to 7pm of 11th April, 2019 without administrative bail in spite of repeated demands to that effect. That whilst in the custody of the Economic and Financial Crimes Commission (EFCC) as instigated by the Respondents, he was physically, emotionally, mentally and psychologically tortured and inhumanly degraded. That whenever he was being taken by the Economic and Financial Crimes Commission (EFCC) operatives from their Wuse II office to their Jabi Headquarters for further interrogation, he was driven half naked like a common criminal in the full glare of members of the public.

The Applicant averred that the transaction for which the Respondents have subjected him to arrest, detention, mental, physical, emotional and psychological torture, as well as inhuman and degrading treatment, is a simple contractual and civil transaction involving banking matters.

The learned Applicant's counsel, Blessing Eyee, Esq., in his written address in support of the Originating Motion, raised a lone issue for determination, namely;

“Whether me’s(sic) fundamental rights have been breached by the conducts of the Respondents such as will entitle the Applicant to the grant of the reliefs sought from this honourable court?”

Proffering arguments on the issue so raised, learned counsel posited that the Applicant is entitled to the grant of the reliefs sought from this Court following the serial breaches of his fundamental rights by the despicable mental torture, physical assault and inhuman and degrading treatment inflicted on him by the Respondents, following detention, threats to his life and torture.

He argued that the conduct of the Respondents, where in a purely civil transaction, they decided to take the law into their hands by detaining the Applicant, threatening his life and subjecting him to inhuman and degrading treatment, amounts to a violation of the fundamental rights of the Applicant as provided for and guaranteed by the constitution of the Federal Republic of Nigeria, 1999, as amended.

He urged the Court to declare the said conducts of the Respondents as oppressive, unconstitutional, unconscionable, arbitrary, illegal, wrongful and cruel and constitute a flagrant abuse of the fundamental rights of the Applicant.

He referred to **Nigercare Development Co. Ltd v. Adamawa State Water Board &Ors (2008)LPELR-1997(SC), A.G. & Commissioner of Justice, Kebbi State v. Jokolo&Ors (2013) LPELR-22349 (CA).**

Relying on **Shugaba v. Minister for Internal Affairs (1981) 3 NCLR 427** and **Mitee v. Attorney General (2003) 2 CHR 463**, he submitted that any arrest or detention which is inconsistent with the letters of our laws, as in this case, amounts to a serious violation of the rights to personal liberty of the individual.

He posited that the detention and torture of the Applicant by the Respondents on Wednesday, 10th April, 2019 and the further arrest and detention by Economic and Financial Crimes Commission (EFCC) on the instigation of the Respondents, amount to a flagrant breach of his fundamental rights.

Learned counsel further referred to **Isenalumev. Amadin (2001)1 1 CHR 458** and **Agbakoba v. Director, SSS (1994) 6 NWLR (Pt.351) 692** on the point that where an arrest is wrongful or unlawful, the arrest and detention, no matter the length of detention (even if for a couple of minutes) would be held to be wrongful and a breach of right to liberty which the court would redress.

He further referred to **Aqua v. Achibong&Ors (2012) LPELR-9293(CA)** and posited that on the authority of the cases cited, and the facts as deposed to by the Applicant in his affidavit in support of the application, that the Respondents violated the fundamental rights to the personal liberty of the Applicant, by the detention and torture of the Applicant and his subjection to inhuman and degrading treatment, and that the Applicant is thus entitled to be adequately compensated.

He urged the Court to so hold and to grant the prayers of the Applicant as he has made out a case of serial and flagrant violation of his fundamental rights by the Respondents.

In response to the Respondents' counter affidavit in opposition to the application, the Applicant, through his counsel, made an oral reply on points of law. He submitted that the Respondents made a general denial in paragraph 6(a)(b)(c)(d) &(e) of their counter affidavit.

He referred to **Zenith Bank PLC v. Chief Godwin Omenka (2016) LPELR-40327 (CA)** and **Danladi v. Dabiri&Ors (2014)LPELR-24020 (CA).**

In opposition to the originating summons, the Respondents filed a 10 paragraphs counter affidavit dated 10th June, 2019 and sworn to by one Jerry Joseph Dabo, counsel in the law firm of solicitors to the Respondents.

He averred that all the allegations of arrest, detention, physical assault, torture, dehumanizing treatment, threat to life by the Applicant against the 1st and 2nd Respondents are completely false and untrue and made to mislead the court into granting the gold digging reliefs.

He stated that the 2nd Respondent was "cited" by the Federal Government of Nigeria for a N1,000,000,000.00 (One Billion Naira) Real Sector support facility from the Central Bank of Nigeria and Zenith Bank PLC was selected as a preferred commercial Bank for the technical procedures required to activate the drawdown. He averred that despite the satisfaction of every condition and requirements stipulated by Zenith Bank, which included provision of title documents as collateral and deductions of sums running into N10,000,000.00 for the perfection of the collaterals, the Bank refused to release the funds. That the 2nd Respondent later realised that the Chief Executive officers of New Prudential Mortgage Bank Ltd and First Investment Development Company Ltd fraudulently forged documents without any board meeting and purportedly

changed signatures to the account of 2nd Respondent, which said forged documents the Applicant seeks to rely on in this suit.

The Respondents averred that consequent upon the forgery of the 2nd Respondent's documents and threat to the life of the 1st Respondent by the Chief Executive Officers of New Prudential Mortgage Bank Ltd and First Investment Development Company Ltd, the 1st Respondent petitioned the Economic and Financial Crimes Commission. That while the investigation was ongoing, the Applicant together with one Samuel Ede traced the 1st Respondent to Plot 1633, Cadastral Zone B09, Kado, Abuja, and the 1st Respondent shared the information with the investigating officer of the Economic and Financial Crimes Commission who was on hand to demand that they accompany her to their office.

He stated that the Respondents' petition to the Economic and Financial Crimes Commission (EFCC) (against New Prudential Mortgage Bank Ltd and First Investment Development Company Ltd) resulted in the invitation and questioning of the Applicant, which was merely a routine of the Commission which the Respondent had no control of.

The learned Respondents' counsel, Julius Ugehe, Esq, in his written submission in support of the counter affidavit, raised a sole issue for determination, to wit;

“Whether having regards to facts contained in the affidavit evidence and reliefs the Applicant are (sic) entitled to the grant of the reliefs sought?”

He argued that the complaints referred to by the Applicant are not grievous warranting the commencement of this action by way of enforcement of fundamental rights against the

Respondents who are natural and private corporate personalities.

He posited that the grievance are either criminal or at best tortuous in nature, that will require oral testimony and proof beyond reasonable doubt or balance of probability. That this suit is therefore, speculative, hypothetical and academic, having not been based on facts and evidence. He referred to **Plateau State v. A.G. Federation (2006) 3 NWLR (Pt.967) 346 at 419.**

He argued that the Respondents, having vehemently denied all the allegations of arrest, detention, physical assault, torture, dehumanizing treatment and threat to life, and also having alleged that the documents exhibited by the Applicant are forged documents, the Applicant's case is therefore, bereft of facts and evidence, and is thus speculative, hypothetical and imaginary.

Relying on **Nyesom v. Peterside (2016) 7 NWLR (Pt.1512) 452,** learned counsel posited that the allegations against the Respondents are criminal in nature or at best intentional torts which must be proved beyond reasonable doubt, and that the burden of proof rests squarely on the Applicant.

Placing further reliance on **Abdullamid v. Akar(2006) 13 NWLR (Pt.996) 127** and **Nwanwuna v. Nwaebili (2011) 4 NWLR (Pt.1237) 290,** he contended that the Court cannot grant the reliefs sought by the Applicant in this application as the grounds and facts upon which the reliefs are sought are either criminal or tortuous in nature. He thus urged the court to dismiss the Applicant's application with substantial cost.

It is settled law that the Fundamental Rights (Enforcement Procedure) Rules, 1979 apply to cases, actions, causes or matters in which the main prayer request or relief sought by the

Applicant shows a breach or likely contravention of the applicant's rights as enshrined and guaranteed in Chapter IV of the Constitution of the Federal Republic of Nigeria. See **Fabunmi v. IGP Abuja & Anor (2011) LPELR-3550(CA)**.

Issue for consideration is whether by the facts before this Court the Applicant's fundamental rights were breached: -

In the instant case, the reliefs sought by the Applicant disclose alleged breach of his fundamental right by the Respondents, both directly and indirectly by the instigation of the Economic and Financial Crimes Commission (EFCC) to breach or violate same.

In **Sea Trucks (Nigeria) Ltd v. Anigboro (2001) LPELR-3025 (SC)**, the Supreme Court, per Karibi-Whytes JSC, held that:

“The correct approach in a claim for the enforcement of fundamental rights is to examine the relief sought, the grounds for such relief, and the facts relied upon. Where the facts relied upon disclose a breach of the fundamental right of the applicant as the basis of the claim, here there is a redress through the enforcement of such rights through the Fundamental Rights (Enforcement Procedure) Rules, 1979.”

The reliefs sought and the facts relied upon in this application disclose that the Applicant was allegedly unlawfully arrested and detained by the 1st Respondent in corroboration with the employees of the 2nd Respondent in their office, thereby subjecting him to inhuman and degrading treatment after which they instigated the further unlawful arrest and detention of the Applicant as well as further violation of his fundamental rights by

the officers of the Economic and Financial Crimes Commission (EFCC).

The Respondents made a general denial of the allegations by the Applicant, but admitted that the Applicant in company with one Samuel Ede “traced” the 1st Respondent to their office at plot 1633, Cadastral Zone B09, Kado, Abuja, (the same location where the Applicant alleged that his fundamental right was violated by the Respondent), and that the 1st Respondent “shared the information” of the Applicant’s presence in his office with an official of the Economic and Financial Crimes Commission (EFCC) who immediately came to his office and purportedly invited the Applicant to their office for questioning.

It is evident from the Applicant’s affidavit and the counter affidavit of the Respondents, that the transaction which took the Applicant to the Respondents’ office, was a civil Banker/Customer transaction between Zenith Bank PLC (not even the Applicant) and the Respondents.

Also, the Respondents’ petition to the Economic and Financial Crimes Commission (EFCC) was neither against Zenith Bank PLC nor against the Applicant, but rather against third parties who were not privy to their transaction, namely, New Prudential Mortgage Bank Ltd and First Investment Development Company Ltd.

It is therefore, beyond comprehension that on a matter involving other parties, the 1st Respondent will “share the information” of the presence of the Applicant in his office with the IPO investigating the matter and the said IPO will immediately lunch into action with the speed of light to “invite” the Applicant to their office for questioning where there was no prior allegation against the Applicant nor an invitation to him to

come to the office of the Economic and Financial Crimes Commission (EFCC) which was ignored.

In the circumstances, I believe the evidence of the Applicant that he was forcefully restrained and detained by the Respondents in their office until the arrival of the officers of the Economic and Financial Crimes Commission (EFCC) on the invitation of the Respondents.

It is the law that when an arrest and detention has been established or admitted, the onus is on the person who effected the arrest and detention to justify such arrest and detention. In **Madiebo & Ors v. Nwankwo (2001) LPELR-6965(CA)**, the Court of Appeal, per Galadima, JCA, held that:

“It is trite law, that where a party to a suit claims to have been arrested and detained by another, the burden of proving the legality or constitutionality of the arrest and detention is on the party who effected the arrest.”

The above facts show that contrary to the contention of the Respondents that the reliefs and facts relied upon by the Applicant disclose an alleged degrading, inhuman treatment meted on the Applicant at the behest of the Respondents. The Applicant's suit indeed discloses an alleged violation of his fundamental rights by the Respondents which is illegal and unconstitutional.

I believe the evidence of the arrest and detention of the Applicant by the Respondents at their office premises. The burden is therefore on the Respondents to prove the legality of the arrest and detention in their office. The Respondents have however, failed to discharge that burden. It is not in doubt that the affidavit evidence before this court shows that the

Respondents arrested and detained the Applicant unlawfully in their office.

Another issue for consideration is **what duty is on a party alleging violation of his personal liberty.**

The importance of protection of constitutionally guaranteed rights of an individual cannot be overemphasised where the alleged violation of personal liberty is established, the Respondent is duty bound to justify the detention of the individual. Further, Abinu JCA held in **Isiyaku&anor v. C.O.P. Yobe State (2017) LPELR 43439 (CA);**

“It must be appreciated that it is not the arrest and detention of a person on a reasonable suspicion of his having committed an offence that constitutes the violation of his fundamental right to personal liberty. It is the unreasonableness of the length of period of detention.”

The Respondents in question in the instant case are not the Police or Government agencies but individual and corporate body.

The position of the law therefore is that victim of violation of fundamental rights have rights to maintain an action against the individual perpetrators of the acts – **Alh. Ibrahim Abdulhamid v. TalalAkar&anor (2006)LPELR 21(SC).**

Thus generally fundamental rights are enforceable against the state, agencies as well as against private individuals. Fundamental rights have always been seen as a prevention of dictatorship and despotism. The Court in **Kelvin Peterside v. IMB (1993) 2 NWLR (Pt 278) 710** held that it is a long settled issue that a company could be liable for infraction of fundamental rights and can also enforce same.

Also Court of Appeal has held in **Onyekuluye v. Benue State Govt (2008) 8 NWLR (Pt 28) 614** that a limited liability company is a persona ficta – a juristic personality which affairs are conducted through its agents therefore, fundamental rights principles apply to them. I am also of the same opinion.

Having perused the gamut of affidavit and counter-affidavit, it is important to note that where it is concluded that the company is liable to abuse of fundamental right, the directors of the company who discharge the function of the company take the responsibility. As the Applicant has named the 1st Defendant as the actor in the infringement, both the company and director will be held liable.

It is my finding that the Applicant's right to personal liberty has been unlawfully violated by the Respondents and the law is trite that where there is a wrong, there must also be a remedy. Accordingly the Applicant's application for the enforcement of his fundamental rights therefore succeeds.

In considering the reliefs sought by the Applicant however, it is observed that the reliefs are needlessly duplicated by the Applicant. In making the proper orders in the grant of the reliefs sought by the Applicant therefore, this court orders as follows:

- a. It is declared that the arrest, detention, physical assault, torture, threat to life and the inhuman and degrading treatment meted on the Applicant on Wednesday, 10th of April, 2019, by the Respondents and their employees (at the behest of the 1st Respondent), at their office at Plot 1633, Cadastral Zone B09, Kado, Abuja, are illegal, unlawful, wrongful, unconstitutional, and constitute a violent violation of the Applicant's fundamental rights as enshrined in Sections 33(1)(2)(a) & (b), 34(1)(a) and 35(1) of the Constitution of the Federal Republic of Nigeria,

1999, as altered and Articles 5, 6 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004.

- b. The Respondents are ordered to publish in three notable national newspapers, an unreserved apology to the Applicant for the brazen breach of his fundamental rights.
- c. It is declared that the Applicant is entitled to adequate compensation from the Respondents, pursuant to Sections 35(6) and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria, as altered; Sections 314(1) and 323(1), (2) of the Administration of Criminal Justice Act, 2015, for the blatant violation of the Applicant's fundamental rights.
- d. The Respondents are ordered, jointly and severally to pay to the Applicant the sum of N10,000,000.00 (Ten Million Naira) only representing general and exemplary damages for the wanton violation of the Applicant's fundamental rights.
- e. An order of perpetual injunction is made restraining the Respondents, whether by themselves, their agents, servants, employees, privies or howsoever and by whatever name called, from further breaching the fundamental rights of the Applicant.
- f. Cost of this action, assessed at N200,000.00 (Two Hundred Thousand Naira).

HON. JUSTICE A. O. OTALUKA
30/9/2021.

