

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

**CLERK: CHARITY ONUZULIKE
COURT NO. 10**

**SUIT NO: FCT/HC/CV/6140/2023
DATE: 26/9/2024**

BETWEEN:

CHERISH AGENA..... APPLICANT

AND

- | | | |
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| <ul style="list-style-type: none">1. FAISAL L. CHRIS2. NIGERIA POLICE FORCE3. INSPECTOR GENERAL OF POLICE4. COMMISSIONER OF POLICE FEDERAL CAPITAL TERRITORY COMMAND5. NUHU SHUAIBU <small>(For Himself and as a Representative of Florence Okoro, Sani Yaro and Anthony Mopkyes)</small>6. ECONOMIC AND FINANCIAL CRIMES COMMISSION | } | RESPONDENTS |
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JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The Applicant in this case is one Mrs. CHERISH AGENA, vide a Motion *Ex-parte* with Motion number M/1195/2023 commenced this case for the enforcement of her fundamental human right allegedly breached by the Respondents.

This file was originally assigned to Court of my retired learned Brother, Hon. Justice M. B. Idris sitting at Nyanya.

Upon his resignation, the Honourable, the Chief Judge of FCT High Court now assigned this file to this Court on the 20th day of March, 2024.

Be the above as it may, the Applicant prayed the Court for the following orders:

- (1) A Declaration of this Honourable Court that the arrest and detention of the applicant with her 8 – month old baby from the 21/2/2023 to the 28/2/2023 when she was granted administrative bail is unlawful and constitutes a breach of the applicant’s fundamental human right guaranteed under section 35 of the Constitution of the FRN 1999 (as amended).
- (2) A Declaration that the harassment, mental and psychological torture and detaining the applicant with her eight-month-old baby and intimidation of the applicant from 21st February 2023 till 28th February 2023 without being charged to Court for any offence till date amounts to infringement of the applicant’s right to personal liberty and dignity of human person.
- (3) A Declaration that the carting away of the applicant’s Samsung fold 3 cell phone, and the applicant’s children laptop constitutes a breach of the applicant’s fundamental right to own property whose right is protected by section 44(1) of the 1999 Constitution (as amended).
- (4) An Order enforcing the applicant’s fundamental rights by ordering immediate and unconditional release of the applicant’s Samsung fold 3 cell phone, and the children laptop.
- (5) An Order restraining the respondents, their servants, agents, employees or privies from further detention,

harassment, intimidation and arrest of the applicant in respect of the facts of this case.

- (6) And such further Order as this Honourable Court may deem fit to make in the circumstances.

This application is supported by a 19-paragraphs affidavit deposed to by the Applicant herself and Statement in support of Application as well as written address.

The five (5) grounds upon which this application premised are as follows:

- (1) Under section 34, 35 and 44(1) of the 1999 Constitution of the FRN (as amended) the Applicant's Fundamental rights to dignity of human person, personal liberty and the right to acquire and own movable property and freedom of movement are guaranteed.
- (2) The applicant has been severally harassed, intimidated, inhumanly treated, arrested and detained since the 16th of February, 2023, and has been constantly invited, detained and later released without being shown the offence committed by the applicant except that her husband opened a bank account and made her a co-signatory which is not a crime in itself. She does not have any joint business with her husband.
- (3) That the respondents have refused with impunity and without any reason, every effort made for the release of the applicant's cell phone and her children's laptop.
- (4) The actions of the respondents violate the rights of the applicant as stated in Paragraph (a) above as the applicant was detained longer than what section 35 of the 1999 Constitution prescribed.

- (5) By the provisions of Section 46 of the 1999 Constitution of the Federal Republic of Nigeria, any Nigerian who alleges that any of his rights as guaranteed in the Constitution is being or likely to be contravened in any state by any person or authority may apply to high Court for redress.

The brief facts of this case is that the applicant as a house wife whose husband Mr. Bemsem Agena opened an account with Zenith Bank Plc and made her a co-signatory to the account without more. Only to enable her withdraw any money her husband may instruct her to withdraw for the use and maintenance of the house.

The applicant never paid money into the said account nor does joint business with her husband. It is only her husband that pays money into the account.

Suddenly, the applicant was arrested on the 16/2/23 and 21/2/23, detained for over one week, released, invited again and again, over the same matter. The applicant and her 8 months – old baby were detained for several days until they became very sick and were only allowed to proceed to a hospital for medical assistance even on their sick bed the applicant was being psychologically harassed as the 2nd - 6th Respondents were still asking her to report for, obviously, arrest and further detention.

This is the only facts before this Court as none of the Respondents filed no counter-affidavit nor any other process is rebuttal of these facts.

This in law amounts to facts admitted that need no further proof. Mr. A. C. Amaechi. The learned Counsel to the applicant while moving the application in Court summarily adopted his written address as his oral arguments in support and relied on the facts

contained therein in the supporting affidavit urged me to grant their application in the absence of any counter-affidavit.

She submitted one issue for determination. The issue is this.

“Whether the applicant’s fundamental right has been breached and therefore entitled to the relief sought.”

Now, what is the merit of this application? The germane question that needs to be answered is whether or not the detention of the applicant and her 8 months old baby was illegal and ultra vires the powers granted the Respondents by their enabling Act and under the provision of section 35 of 1999 Constitution (as amended).

A. C. Amaechi Esq. of Counsel to the applicant argued that the detention of the applicant with her eight months old baby without any medical care when they felt sick amounts to a violation of Applicant’s right to the dignity of her person as guaranteed by section 34 of the 1999 Constitution (as amended). She referred to the supporting affidavit in presenting graphic illustration of how the 2nd – 5th respondents thoroughly dehumanised the applicants.

It must be painted out that the 6th Respondent which is Economic and Financial Crime Commission (EFCC) filed a counter-affidavit dated 20/7/23 saying that they hold nothing against the applicant as they have not interest in the Applicant and as such they should be exonerated from the reliefs of the Applicant against the respondents.

She therefore urged me to hold that the right of the applicant to dignity, liberty and movement under sections 34 and 35 of the 1999 Constitution has been grossly violated by 2nd – 5th Respondents. And that the Applicant is entitled to an Order of this Court for the unconditional release of the seized mobile phone and laptop of applicant’s children seized by the 5th respondent and his

team of Policemen. He cited the case of **OGUGU VS. STATE (1998) H.R.L.R.A. 167.**

It is further submitted that where the applicant shows a prima facie case of infringement of right like we have in the instant case, the burden is shifted to the Respondent's to justify his infringement otherwise the Court will behave and act in favour of the applicant. He cited the case of **PUNCH NIG. LTD VS. A. G. FEDERATION (1998) 1 HRLRA 488.**

We should not forget that the 2nd – 5th Respondents did not deem it fit to file a counter-affidavit jointly or severally to rebut those facts contained in the supporting affidavit as deposed to by the applicant which means admission of those facts as being true which the Court can act upon.

I therefore have no difficulty in agreeing with the learned Counsel to the Applicant that the Respondents I mean 2nd – 5th Respondents were in serious error by incarcerating the Applicant and her 8 months old baby for a period of 5 days or thereabout and seizing her children laptops and her cell phone Samsung fold 3. This was a breach of the Applicant's fundamental rights to personal liberty and property and movement as enshrined in sections 34 and 35(1) of the 1999 Constitution (as amended). The applicant was not a victim of any proved offence, as nobody has been arraigned in Court of any offence. I therefore resolve this sole issue against the 2nd – 5th Respondent and in favour of the applicant.

In essence, all the reliefs of the applicant are hereby granted.

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S. B. Belgore
(Judge) 26/9/2024