

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 9, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

FCT/HC/CV/1178/2021

DATE: 11-11-2024

BETWEEN

- | | | |
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| <ol style="list-style-type: none">1. MR. OLUDARE AKANGBE2. MARIE-THERESE SITUNDE3. HAMAKANG GLOBAL SERVICES LTD. | } | APPLICANTS |
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AND

- | | | |
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| <ol style="list-style-type: none">1. ECONOMIC AND FINANCIAL CRIMES
COMMISSION2. THAMIN MAALAJ3. NORTH AFRICA SERVICES | } | RESPONDENTS |
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J U D G M E N T

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The three Applicants in this case vide an Originating Summons brought pursuant to **Sections 33, 34, 35, 36 and 37 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), Order II Rules 1, 2 3, 4 and 5 of the Fundamental Rights (Enforcement Procedures) Rules 2009. Articles 3, 4, 5 and 6 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap.49, Laws of the Federation of Nigeria, 2004.**

It is dated 16th June, 2021. It is supported by Applicants' Statement, and affidavit of 65 paragraphs, 11 Exhibits attached to the affidavit. Also, attached is a written address dated 16th June, 2021 but filed on 21st June, 2021 wherein two issues were raised for determination.

The Learned Counsel for the Applicants adopted the written address as his oral argument in support of this originating summon. He prayed the Court to grant the reliefs of the Applicants.

He said further that upon receipt of the counter affidavit of the 1st Respondent, he filed a 25 paragraphs of further affidavit and a written address dated 18th January, 2024 but deemed properly filed and served on 14th March, 2024 and adopted same as his further argument.

Likewise, upon receipt the counter affidavit of the 2nd and 3rd Respondents he in addition filed a 22 paragraphs further affidavit and a written address dated 18th January, 2024 and deemed properly filed and served on 14th March, 2024. He adopted it as his argument in this case.

The 1st Respondent was not represented in Court.

On the part of the 2nd and 3rd Respondents' Learned Counsel he submitted in vehement opposition to the case of the Applicant that he had filed a 5 paragraph counter affidavit dated 7th February, 2023 and filed 8th February, 2023. He relied on all

the averments therein and 3 Exhibits attached. He equally filed a written address which he adopted as his oral arguments and urged the Court to dismiss this suit. He referred the Court to the case of **UDOH VS. ESSIEN (2015) N.W.L.R. (PART 145) 103.**

Addressing the court on behalf of the 1st Respondent, he said they filed a counter affidavit of 51 paragraphs and a written address. He urged the Court on to deem their address adopted under **Order 12 of Fundamental Right Enforcement Rules 2009.** The facts that culminated this action are as follows;

In 2016, the 3rd Applicant contracted with the 3rd Respondent for controls and excitation specialist support of O & M activities in NIPP/NDPHC powers stations, namely, Olorunsogo, Calabar, Sapele, Ihovbor, Geregu, Omotosho, Alaoji notably, and to this effect a Service Contract Agreement was executed between the parties detailing the terms of engagement and their respective obligations. Upon execution of various portions of the contract, the 3rd Respondent raised invoices on work done and were paid for by the 3rd Applicant up until September, 2018 when the 3rd Applicant discovered that the 3rd Respondent did not pay any of its taxes on funds

previously paid to it the tax authority in Nigeria (if when there is no tax-treaty with its home country, Tunisia). For this reasons, the 3rd Applicant requested to have the tax information (i.e. tax identification number) of the 3rd Respondent so that taxable sums that need be deducted from source could be deducted and remitted to the tax authority in Nigeria, particularly the Withholding Tax and the value Added Tax.

1. When the 3rd Respondent failed and refused to provide its tax information number to the 3rd Applicant, the 3rd Applicant commissioned a firm of tax consultants, EY Tax Services, to review various transactions both parties have had and advise on the best approach to take with regard to the non-payment of taxes by the 3rd Respondent. The tax consultants thereafter advised that the 3rd Applicant should assess its various contractual exposures with the 3rd Respondent, and deduct from source the Withholding Tax and the Value Added Tax due for payments by the 3rd Respondent since the consummation of the contract till date and remit to the tax authority to avoid stiff penalties and

interest on the 3rd Applicant if the 3rd Respondent fails to pay the taxes.

After series of correspondences to demand for the outstanding contract sum and allegation of breach of contract by the 3rd Applicant against the 3rd Respondent, the 2nd and 3rd Respondents disdainfully proceeded to the 1st Respondent to help them use its “position to recover (their) monies totaling \$206,774.77 (Two Hundred and Six Thousand, Seven Hundred and Seventy-Four Dollars, Seventy-Seven Cents)” from the 1st and 3rd Applicants.

The 1st Respondent on this score has begun interrogation of the Applicants since 23rd March, 2021, and had threatened, intimidated, harassed the Applicants, and has similarly promised to repatriate the 1st Applicant to Nigeria from Saudi Arabia, if the Applicants fail to pay the said sum of \$206,774.77 (Two Hundred and Six Thousand, Seven Hundred and Seventy-Four Dollars, Seventy-Seven Cents) to the 3rd Respondent. More worrisome, the 1st Respondent’s officer said they would not hesitate to detain the Applicants, blacklist their company and also charge them to Court for any trump-up charge that

they could make against them. Similarly, the 1st Respondent has also asked that the Applicants, to be reporting to their office on a weekly basis or fortnightly at worse, and which attempt is a great threat to the lives and safety of the Applicants and their presumption of innocence as guaranteed by the 1999 Constitution of Federal Republic of Nigeria (As Amended), hence the filling of this application before this Honourable Court.

The Applicants have therefore filed this application raising the questions earlier mentioned and seeking the reliefs above reproduced for the enforcement of their fundamental right to life, dignity of human person, presumption of innocence and privacy.

The Applicants' Learned Counsel formulated two issues for determination in this suit namely;

- a) Whether or not the use of self-help/law enforcement agency, i.e. the 1st Respondent, for the recovery of an outstanding sum in a contractual

undertaking of this nature by the 1st and 2nd Respondents against the Applicants does not violate their right to life, dignity of human person, threat to liberty, presumption of innocence and right to privacy of the Applicants as enshrined in Section 33, 34, 35, 36 and 37 of the Constitution of Federal Republic of Nigeria and Articles 3, 4, 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

- b) Whether in the circumstance of this matter, the Respondents, their servants, privies, agents or anybody howsoever described are not liable to be restrained from further infringing on the rights of the Applicants as stipulated by the 1999 Constitution and consequently liable to pay damages to the Applicants for acting in contravention to the provisions of the Constitution.

The 1st Respondent formulated four issues for determination to wit:

1. Whether the 1st Respondent has breached the rights of the Applicants in this matter.
2. Whether the Applicants are entitled to the damages claimed.
3. Whether the Applicants are entitled to the order of perpetual injunction.
4. Whether the application filed by the Applicants in this matter is competent.

While the 2nd and 3rd Respondents formulated two issues for determination of this Court. The issues are;

1. Whether the 2nd and 3rd Respondents are liable for the purported infringement, if any, of the fundamental rights of the Applicants?
2. Whether the Applicants are entitled to any relief against the 2nd and 3rd Respondents.

I have considered all the arguments and submissions of Learned Counsel in this case. With due respect to all of them,

they have proliferated issues in this matters. As far as this case is concerned, the vex issue is whether or not the fundamental rights of the Applicants have been breached or not. No more no less.

From the facts narrated by the Applicants in their supporting affidavit, can we say in all seriousness that the Respondents have breached their rights. I think not. And my answer is in the negative with Capital NO.

Looking at depositions of some paragraphs of the supporting affidavit, I can cite some examples of those paragraphs like paragraphs 7, 13, 35, 37, 39, 41, 49, 51 and 62 without more cannot constitute or ground the claim for breach of fundamental rights.

Why did I say so, the Appellate Court in the case of **MURTALA VS. DG, SSS & ORS (2023) L.P.E.L.R. – 59323** made it abundantly clear that mere arrest by law enforcement agent on reasonable suspicion of commission of an offence cannot ground a breach of fundamental rights. It is couched thus by the Court of Appeal.

“The law is settled that an arrest made by law enforcement agents in the legitimate exercise of their

duty and on ground of reasonable suspicion of commission of an offence as it happened in the instant case on appeal, cannot constitute a breach of fundamental right. See EMONENA & ANOR. v. I.G.P. (2016) L.P.E.L.R. – 41489 (CA)”.

For instance, paragraphs 35 and 37 say:

Paragraph 35 says:

“that officer Ahmed said if the 2nd and 3rd Applicants did not agree to make the said payment, he would not hesitate to initiate a repatriation process against the 1st Applicant who is resident in Saudi Arabia and when he is taken down to Nigeria he would be detained and charged to court for crimes, even beyond the contemplation of the current petition.”

Paragraph 37 says:

“ that I was interrogated for about 7-hours by the Investigation Officer before being asked to write a statement.....”

In the instant case, there is nowhere in the depositions of the 2nd Applicant in the support of affidavit where it is said that any of the Applicant was arrested or detained. All the 1st Respondent did was to invite the 1st Applicant who is the alter ego of the 3rd Applicant on the petition written by the 2nd Respondent and submitted to the 1st Respondent to carry out their official duty.

For any Applicant claiming or coming under the provision of Chapter IV of our constitution, he/she must do based on concrete and convincing evidence that his/her rights are actually violated.

In the case of **AEDC PLC VS. AKALIRO & ORS (2021) L.P.E.L.R. – 54212**, the Appellate Court held thus:

“An action under the Fundamental Rights (Enforcement Procedure) Rules is a peculiar action. It is a kind of action which may be considered as (‘sui Generis’ i.e. it is a claim in a class of its own though with closer affinity to a civil action than a criminal action”

The Court of Appeal said further:

“the settled position of law in cases of allegation of violation of fundamental rights is that a mere allegation or deposition in an affidavit stating that an Applicant was arrested is not sufficient to constitute proof of infringement or infraction on the rights of an Applicant, the specific facts of the alleged detention and that duration must be proved in substantial detailsIndeed, the Applicant has the burden to prove by cogent, convincing and credible evidence, the facts as alleged by him, as constructing the breach or infringement of the fundamental right to freedom from inhuman and degrading treatment or torture as guaranteed him by Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria”

From the above reason, I therefore cannot figure out how the fundamental rights of the Applicants in this case have been violated.

In essence, this case is dismissed for lacking in merit.

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S. B. Belgore

(Judge) 11 – 11 – 2024

APPEARANCE:

Abdulrahmon Abiola Ahmed, Esq. for the Applicants

N. A. Idakwo, Esq. for the 2nd and 3rd Respondents