

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/5517/2019

DATE: 29-10-2024

BETWEEN

SUNDAY MARKUS

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APPLICANT

AND

1. **ADARALEGBE AKINTAYO**
(Doing business in the name and style
of T-PUMPY CONCEPT)

2. **NIGERIAN POLICE FORCE**

3. **SGT. PAUL ANIGBO (IPO)**

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RESPONDENTS

J U D G M E N T

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

Mr. Sunday Markus is the Applicant in this matter brought pursuant to Sections 46, 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Order 2 Rules 1, 2, 3, 4, and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

The originating summons is dated 23rd April, 2019 and filed on 24th April, 2019. It prays for an order enforcing the Applicant's fundamental Rights to respect for the dignity of his human persons) and personal liberty guaranteed him under Sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and right to integrity and dignity of his person, liberty and freedom from arbitrary arrest and detention guaranteed the Applicant under Articles 4, 5 and 6 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

It has the name and description of this Applicant and the reliefs being sought.

It is also supported by a 46 paragraphs affidavit deposed to by the Applicant with 3 Exhibits marked as Exhibits A, B and C attached.

It is further supported by a 43 paragraphs affidavit deposed to by one Mr. Silas Mato and one Exhibit 'AA'.

It is also further supported by another affidavit of 22 paragraphs deposed to by Mr. Nathaniel Abakka.

The Learned Counsel to the Applicant relied on all the depositions contained in the paragraphs of the affidavit in support.

He referred to his written address dated 23rd April, 2019 and filed on 24th April, 2019.

He adopted it as his oral argument and urged me to grant this application.

For the 1st Respondent's Learned Counsel, he submitted that he had filed 18 paragraphs counter-affidavit in opposition to this application. The said counter-affidavit was deposed to by one AdaralegbeAkintayo. Three (3) Exhibits are attached thereto to wit: Exhibits A1, A2, and A3 respectively. He also filed a written address dated and filed 5th June, 2020. He adopted his written address as his oral submission and urged the Court to dismiss this application for lacking in merit.

The 2nd and 3rd Respondents' Learned Counsel took his turn and told the Court that he filed 2 separate counter-affidavit filed on 15th March, 2021, it is a 36 paragraphs deposed to by 3rd Respondent. He attached 8 Exhibits.

The 2nd counter-affidavit was filed on 15th March, 2021. It is a 33 paragraphs of counter affidavit deposed to by 3rd Respondent as well. 8 Exhibits were attached. He placed reliance on all the paragraphs of the two counter-affidavit and all the Exhibits attached. He also filed a written address in support.

He finally urged the Court to dismiss this application for being frivolous.

The Learned Counsel to the Applicant in his written address formulated one issue for determination to wit:

“Whether the Applicant has established any violation of his fundamental rights and is in the circumstances of this case, entitled to the reliefs sought in this application”

As for the 1st Respondent, 3 issues are formulated for determination. They are;

- 1. Whether citizens have the right to report a crime and the police or security agencies are clothed with the right to carry out investigate and prosecute crime.**
- 2. Whether from the facts and circumstance of this case, the Applicant's rights were breached or infringed by the Respondents in anyway whatsoever.**
- 3. Whether from the fact and circumstances of this case, the whole suit is not an abuse of Court process and subject to dismissed with cost.**

Lastly, for the 2nd and 3rd Respondents, 2 issues are distilled for consideration. They are as follows;

- 1. Whether or not the rights of the Applicant have been infringed upon or likely to be infringed upon?**
- 2. Whether or not this Honourable Court can grant the reliefs sought by the Applicant in this suit?**

The Applicant's Learned Counsel argued that by Section 34(1)(a) of the Constitution, the Applicant is guaranteed the right to the respect of the dignity of his person in terms of protection against being subjected, inter alia, to inhuman or degrading treatment including torture of any kind. Articles 4 and 5 of the African

Charter also guarantee him the right to the integrity and dignity of his person including the freedom from all forms of torture, degrading and inhuman treatment.

It is his further submission that the treatment meted out to the Applicant as narrated in his affidavit in support of this application especially, paragraphs 19, 20, 23, 24, 25, 29, 31, 32, 33, 35, 36 and 37 amount to physical, mental and psychological torture; and done in breach of Applicant's rights under section 34 of the Constitution and Articles 4 and 5 of the African Charter. He urged the Court to so hold.

By Section 35(1) of the Constitution, the Applicant is guaranteed the right to his personal liberty and protection against the deprivation of his said liberty except as provided in paragraphs (a) to (f) of the same Section 35(1) of the Constitution. Also the Applicant is by Article 6 of the African Charter guaranteed the right to liberty and freedom from arbitrary arrest and detention as was done to the Applicant by the Respondents herein.

On the part of the 1st Respondent he submitted that citizens are clothed with the right to report or lay complaint over any suspicious commission of crime whether it directly affect them or not for the police to investigate. This is the Supreme Court decision in the case of **CHIEF (DR.) O. FAJEMIROKUN VS. COMMERCIAL BANK NIGERIA LTD. & ANOR. (2009) L.P.E.L.R. – 1231**

“Generally, it is the duty of citizens of this country to report cases of commission of crime to the police for their investigation and what happens after such is entirely the responsibility of the police. The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide”Per Ogebe JSC (pages 9 – 10) paras. F – G.

From the above cited authority, it is therefore safe to vehemently state that the 1st Respondent was discharging its civic responsibility by laying a complaint to the police over commission of a crime and the police and what happens after

such complaint is made, is entirely not the responsibility of the 1st Respondent but the police.

As for the 2nd and 3rd Learned Counsel he contended that based on the foundational facts adduced above, it cannot be safe to state that the Applicant's right was breached just because the 1st Respondent made a complaint at the 2nd Respondent and the 3rd carried out his duty by arresting, investigating and charging the Applicant to Court. See the case of **UBADINEKE & ORS. VS. OBI (2018) L.P.E.L.R. – 44473 (CA)**. The Court of Appeal opined in that case that:

“A person cannot be held liable for breach of one’s fundamental rights, simply because he makes a complaint to the police, or apprehends a criminal or one about to commit offence, and subjects him to questioning/investigation and/or tries to avert break down of the peace in the community and/or takes steps to present him to the Police. See the

case of FAJEMIROKUN v. COMMERCIAL BANK OF NIGERIA LTD. & ANOR. (2209) 5 N.W.L.R. (PART 1135) 558; ONAH v. OKENWA & ORS.(2010) 7 N.W.L.R. (PART 1194) 512 at 535; COMFORT IGBE & ANOR.v. HENRY OKEUGO; CA/OW/383/2014, delivered on 8th February, 2017.

From the foregone, all rights enshrined in the constitution has limitation and the Applicant's right does not extend/include to not being arrested lawfully and charged to Court. I so hold.

All their arguments and submissions are on record. I need not refer to them in details.

I have considered the circumstance of this Fundamental Rights application.

The 2nd and 3rd Respondents received a report or complaints from the 1st Respondent. They carried out an investigation.

Subsequent to the arrest of the Applicant, the Applicant was detained for about 3 days and then charged to Court.

At the Magistrate Court, Lugbe, the case was struck out for lack of diligent prosecution. Since then, the Applicant has been breathing the fresh air of freedom.

His complaint apparently was the fact of his arrest, investigation by the police and subsequent arraignment in Court. And there is a termination order of the Court.

From all these facts, I see nothing wrong to impact on the fundamental rights of the Applicant i.e. whether be the police or the complaint to police in persons of the 1st Respondent.

May that day not come that once a clear report of an apparent crime is reported to police, then the case of fundamental right would always surface.

Authorities are legion that the police have a duty to investigate crime and take necessary legal and reasonable steps.

The affidavit evidence of both parties before me clearly depicted that the 1st – 3rd Respondents acting in unison did the right thing and no Fundamental Rights infringement has been borne out.

In essence this case is lacking in all merit and it is therefore dismissed.

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S. B. Belgore

(Judge) 29-10-2024