

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO.

IN THE ABUJA JUDICIAL DIVISION.
ON THURSDAY THE 16TH DAY OF DECEMBER, 2021.

BEFORE HIS LORDSHIP
HON. JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE)

SUIT NO.: FCT/HC/CV/1706/2021

BETWEEN

ADO HASSAN

APPLICANT

AND:

1. INSPECTOR-GENERAL OF POLICE } RESPONDENTS
2. COMMISSIONER OF POLICE, FCT }

[JUDGMENT.]

The Applicant vide an originating Motion on Notice dated the 23rd day of July 2021 seeks to enforce his Fundamental Human Rights guaranteed under Section 34, 35, 36, 41 and 46 (1) & (2) of the 1999 constitution of the Federal Republic of Nigeria as amended, hereinafter referred to as the 1999 Constitution.

The application is supported by a 31-paragraph affidavit deposed to by one Isiaka Yakubu on the 22/07/2021. Attached to the affidavit is one Annexure marked as exhibit, A.

In the mandatory statement dated 23/07/2021 the following reliefs are being sought by the Applicant Namely: -

- a. A Declaration that the detention of the Applicant at the Respondents' cell from the 27th of October, 2020 till the 17th of December, 2020 (when a remand order was obtained) at the instance of the Respondents was unlawful, illegal, unconstitutional and amounts to a violation of the Applicant's fundamental rights to dignity, liberty and movement.
- b. A Declaration that the prolonged and continued detention of the Applicant beyond the return date of the remand order (i. e. 7th January, 2021) at the Nigerian Correctional Service Centre Suleja, Niger State without arraignment and trial before a court of competent jurisdiction over an unproved allegation of crime is unlawful, illegal, unconstitutional and amounts to a violation of the Applicant's fundamental rights to dignity, liberty and movement.
- c. A Declaration that the continued detention of the Applicant by the Respondents since October 27, 2020 over an unproved allegation of crime is unlawful, illegal, unconstitutional and amounts to a violation of the Applicant's fundamental rights to dignity, liberty and movement.
- d. An Order of this Honourable Court for the release of the Applicant from unlawful detention with immediate effect.
- e. Or in the alternative to Prayer 4(d) thereof, an Order admitting the Applicant to bail pending his trial in a Court of competent jurisdiction.
- f. An Order directing the Respondent to pay the Applicant the sum of ₦10,000,000 Naira as special damages at the rate of ₦10,000 Naira per day from 27th November, 2020 till date.
- g. And general damages in the sum of Two Million Naira for unlawful detention, violation of fundamental human right of the Applicant and inconveniences to the Applicant.
- h. An Order of this Honourable Court for the Respondents to issue a written apology to the Applicant.

Such further order(s) as the Honourable Court may deem fit to make in the circumstances.

The grounds upon which these reliefs are based are outlined in the said mandatory statement to wit: -

- a. That the arrest and continued detention of the Applicant by the Respondents violate his right to dignity of person, personal liberty, and freedom of movement as guaranteed by sections 34, 35 and 41 of the 1999 Constitution and Articles 5, 6 and 12 of the African Charter on Human and Peoples' Rights.
- b. That the arrest and continued detention of the Applicant is neither known to any law nor permitted by any law/procedure and therefore not justified.

Attached to this application is the Applicant's written address dated the 15th day of July 2021 filed in support of the motion on Notice settled by B.O.Akinseye-George(Mrs).

In response to this application, the Respondents filed a 43-paragraph Counter-Affidavit deposed to by one Philip Tumbeon the 15th day of October 2021. Annexed to their counter Affidavit are 14 Exhibits namely exhibit A, B, C, D, E, F, F1, G, G1G2, G3, H, I & J.

The Respondents filed a Written Address dated the 12/10/2021 settled by SP. B.G. Emenike Esq.

In response to the Counter Affidavit, the Applicant filed a 4-paragraph Further Affidavit deposed to, on the 11/11/2021 by one Stanley Ornguze, annexed to the further affidavit are three(3) Annexures marked as exhibits A, B & C, and Reply on Points of Law dated 10/11/2021 and filed 11/11/2021.

At the hearing of this application on the 30/11/2021, Learned Counsel for the Applicant adopted the written address and reply on point of law filed on behalf of the Applicant, while Learned Counsel for the Respondents adopted the written address filed on behalf of the Respondents.

The said written addresses and processes filed are hereby incorporated into this Judgment. I shall refer to the relevant portion/s of the written addresses and other processes as the need arises.

The case of the Applicant as distilled from the statement of the Applicant and the supporting affidavit is that the Applicant was arrested by officers of the Respondents on the 27th of October, 2020 around 11:pm, on his way back from Dawaki, F.C.T where he went to watch football match during the endsars- protest.

It is his evidence that, he was taken to Kubwa police divisional headquarters where he was beaten, injured, his head broken and he was forced to admit being an Armed Robber even though he was not found with any weapon.

It is the Applicant's further evidence, that he informed the officers of the Respondents, that he has been in Dutse Alhaji since 12/10/2020, when the police informed him that he was a suspect in a Robbery that took place on the aforesaid date.

The Applicant described how officers of the Respondents tortured him, and kept him incarcerated from 27/10/2020 till 17/12/2020, when the Respondents procured a remand order as disclosed in Exhibit A.

That after the return date disclosed in exhibit A, to wit 7/01/2021 the Applicant has spent over 5 months in detention without a formal charge.

The Respondents on their part states that the Applicant was arrested sequel to the report of a case of armed robbery against the Applicant and others at large by one Sanusi Abubakar and one Olorunfemi Olusegun.

It was on the strength of the criminal complaint that the Applicant was arrested by the local vigilante and handed over to the Divisional Police Officer in charge of Dutse Alhaji Police Station.

It is the case of the Respondents that the Applicant made confessional statements on the 24th and 27th of October, 2020 and subsequently led the investigating team to Wuse Market where the robbed/stollen items were recovered from the alleged receivers, identified as Godwin Onochie and Ugwoke Emmanuel, arrest were made and At this stage of the investigation, the DPO of the Dutse Alhaji Police Station sent a wireless signal to the 2nd Respondent who, in turn, directed that the case file and the parties should be transferred to the Police Headquarters for further investigation and prosecution.

They added that after investigation, a *prima facie* case of armed robbery and receiving stolen property was made outagainst the Applicant and others at large.

The Respondents averred that the Applicant was not arraigned promptly owing to the Covid-19 pandemic and the nationwide industrial action by the judicial workers. He further averred that the Applicant was remanded at the Nigerian Correctional Service Centre Suleja on the strength an order of Court and added that the Applicant has been arraigned before the High Court of the FCT where he is standing trial.

In the written address in support of the application, Learned Counsel for the Applicant formulated two issues for the determination of this Honourable Court. to wit :

A. Whether the detention of the Applicant at the Respondent's cell from the 27th of October, 2020 to the 17th December, 2020 when a remand order was obtained by the Respondents against the Applicant is not in violation of the Applicant's fundamental rights to dignity of human person, liberty and freedom of movement as

guaranteed by the 1999 Constitution of the Federal Republic of Nigeria ,as amended.

B. Whether the continued detention of the Applicant by the Respondents without arraignment and trial beyond the return date contained in the remand order is not in violation of the Applicant's fundamental rights to dignity of human person, liberty and freedom of movement as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria , as amended.

Learned Counsel for the Applicant referred to section 35, of the 1999 Constitution of the Federal Republic of Nigeria which protects the right to personal liberty. Counsel argued that though the section permits the arrest of a person on reasonable suspicion of having committed an offence, subsections (4) and (5) prohibit the prolonged detention of such person without trial.

Learned Counsel submits that the detention of the Applicant exceeded the constitutional limit beyond which a person should be detained without trial and relied on the case of **ALHAJI TUKUR DANFULANI V. ECONOMIC AND FINANCIAL CRIMES COMMISSION & 2 OTHERS (2016) 1 NWLR (PT. 1493) 223 AT 247 paragraphs P, E – G.**

Learned Counsel submits further that, unlawful detention is a violation of a person's fundamental right, and contends that as long as an Applicant had made out a *prima facie* case of unlawful detention, the burden of proving justification for the detention falls on the detaining authority to prove the legality of the detention. Learned Counsel maintained that the Applicant is entitled to his freedom of movement; adding that both his rights to personal liberty and freedom of movement could only be curtailed in line with a procedure provided by the law.

Learned Counsel for the Applicant reiterated this position in the reply on point of law filed on behalf of the Applicant wherein Learned Counsel pointed out that there was no industrial action by the judiciary workers on the 27th of October 2020, as the said strike began on the 6th of April, 2021 and ended on the 6th of June, 2021 maintaining that the industrial action could not have affected the arraignment of the Applicant who was arrested on the 27th of October, 2020, but charged to Court on the 8th of March, 2021. That the Applicant was not brought before the Court within a reasonable time. Learned Counsel for the Applicant cited the case of **OGBONNA V. EGBULEFU & ORS (2018) LPELR-43810 (CA); OKEKE & ANOR V. IHEAZIE & ORS (2018) LPELR-45017 (CA); EMETO V. STATE (2018) INSPECTOR-GENERAL OF POLICE & 2 OTHERS V. PETER IKPILA & ANOTHER (2016) 9 NWLR (PT. 1517) 236** among others and urge this honourable Court to hold submissions made and therefore grant Applicant's reliefs as prayed.

On his part, Learned Counsel for the Respondents distilled four issues for resolution by this Honourable Court, namely:

1. *Whether the Police have the constitutional rights to investigate crime reported against the Applicant;*
2. *Whether the Police have violated the fundamental rights of the Applicant;*
3. *Whether the Applicant has made out a case under the fundamental rights (enforcement) rules that will entitle him to the reliefs sought in this application; and*
4. *Whether the Applicant herein has established any reasonable cause of action against the 1st – 2nd Respondents.*

In his argument, Learned Counsel for the Respondents submits that, the Police has the Constitutional and statutory responsibility to protect life and property and to detect and prevent crimes among other duties. He submits that the Police has the powers to investigate any allegation of crime made against any person. He relied on section 218 of the 1999 Constitution of the Federal Republic of Nigeria and section 4 of the Police Act. He cited, **FAWEHINMI V. INSPECTOR-GENERAL OF POLICE (2002) 7 NWLR (PT. 767) 606 AT 670**, **FAJEMIROKUN V. COMMERCIAL BANK CREDIT LYONNAIS) NIG. LTD (2002) 10 NWLR (PT. 774) 95 AT 110**. Learned Counsel for Respondents contends that these powers were exercisable by the Police over all persons living within Nigeria.

Learned Counsel relied on the principle in the case of **EKWENUGO V. FRN (2001) 6 NWLR (PT. 708) 185**, that none of the rights of the citizen was absolute, as same can be curtailed as envisaged under the 1999 Constitution.

Hetherefore,submits that the arrest and interrogation of the Applicant was founded on the criminal allegations against him. He added that the Police, in the course of the investigation, established a *prima facie* case against the Applicant and that as a result of this, the arrest and detention of the Applicant could not be described as unlawful.

He argued that the Applicant had the option of applying for bail in Honourable Justice O. A. Musa's Court where the charge was pending.

Adding that a person alleged to have committed an offence should submit themselves to the investigative powers of the Police and not to bring an action for the enforcement of their fundamental rights for the purpose of scuttling the process of criminal interrogation he maintained that the Applicant has not been able to prove that the Respondents violated his fundamental rights in any way.

Learned Counsel for the Respondents argued that the Applicant had not established any reasonable cause of action against the 1st and 2nd Respondents, he therefore urges the Honourable Court to dismiss the case of the Applicant for being speculative, hypocritical, unmeritorious and for being an attempt to shield the Applicant from prosecution.

In resolving the Issues as Formulated by Learned Counsel for the Applicant and Learned Counsel for the Respondents, it is apt to resolve whether the arrest and continued detention of the Applicant from the 27th day of October 2020 to April 6th 2021 by officers of the Respondents is/was unlawful, and if same amounts to a breach of the Applicant's Fundamental Human Rights as enshrined in section 34,35,41 and 46 (1), (2) of the 1999 constitution of the Federal Republic of Nigeria? and the Articles 5,6 and 12 of African Charter on Human and Peoples Right.

This in my view is the bedrock of the issues formulated by both Learned Counsels and forms the base of this Application.

I will commence by stating that Fundamental Human Rights are Rights that are basic to every citizen. They are rights that have been entrenched in chapter IV of the 1999 Constitution as amended.

These rights are sacrosanct and very important to everyone within the borders of Nigeria. These rights are moulded into freedom blocks that fence the citizens from fences of unbridled aggression, repression oppression and authoritarianism. The Court must therefore within reasonable limits do all that is necessary to cause a flourishing of these rights.

While the Applicant avers that he was arrested on his way back from Dawaki, F.C.T where he went to watch football match during the endsars protest.

Respondent puts forth that the Applicant was arrested sequel to the report of a case of armed robbery against the Applicant and others at large, by one Sanusi Abubakar and one Olorunfemi Olusegun.

That it was on the strength of the criminal complaint that the Applicant was arrested by the local vigilante and handed over to the Divisional Police Officer in charge of Dutse Alhaji Police Station.

*The Respondents annexed exhibit J to their counter affidavit which is charge number CR/060/2021 dated **5/3/ 2021**.*

The Applicant avers that upon his arrest, he was beaten, his head broken and bodily injuries inflicted on him during which he was coerced into admitting that he was an armed robber and was involved in a certain robbery which occurred on the 12/10/2021.

While the Respondents puts forth that the Applicant upon his arrest and handover to the police, led officers of the Respondents to recover robbed items and effect arrest of other suspects at Wuse Market. That the Applicant was charged to court on the 5/3/2021 at the conclusion of investigation for the offence of armed robbery and receiving stolen property.

The Respondents states that the Applicant was not immediately charged to court after his arrest because of the investigation, the JUSUN strike and the covid 19 pandemic. That due to the nature of crime, the police had no power to grant administrative bail and the Applicant is already charged to Court.

*It is the contention of the Applicant that his Fundamental right guaranteed by section 35(1) of the 1999 constitution was breached between 27/10/2020 – 17/12/2020 And further his remand beyond 7/1/2021 is unlawful. Learned Counsel for the Applicant relied on the case of **ALHAJI TUKUR DANFULANI V. ECONOMIC AND FINANCIAL CRIMES COMMISSION & 2 OTHERS (2016) 1 NWLR (PT. 1493) 223 AT 247 PARAGRAPHS P, E – G.** amongst others.*

*Learned Counsel to the Respondent propounds that the Applicant is not entitled to the reliefs sought on the premise that the Applicant was arrested on allegation of Criminal Offences that are Capital in nature. He relied on section 35(7) (a) of the 1999 constitution, Learned Counsel to the Respondents cited the case of **FAJEMIROKUN VS COMMERCIAL BANK NIG.LTD (2002) 10 NWLR pt. 774 pages 95 RATIO** and others.*

Section 35(1)(6) of the 1999 constitution indeed guarantees the right to personal liberty. Similarly, Sections 34 protects Right to dignity of Human person, section 41 guarantees the right to freedom of expression and section 46 gives special jurisdiction to the high court where any person alleges contravention.

*The Supreme Court in **DOKUBOASARI VS FRN (2007) 12 NWLR pt. 1048 page 320 .**while interpreting section 35 of the 1999 constitution stated that these rights are guaranteed but are not absolute. In section 35(7) it reads that, “ Nothing in this section shall be construed:*

a. *In relation to subsection four {4} of this section as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence.....”*

Section 35(7)(a) leaves no one in doubt that the provisions of the Section 35 are not absolute. It is a qualified right as in the context of this case, section 35(7)(a) therein permits restriction on an individual’s liberty in the course of judicial inquiry or upon reasonable suspicion of having committed a felony.

*A person’s liberty is also curtailed in order to prevent him from committing further offence I find further support from his lordship Mahammad JSC saying at pages 38-48 para–G.C in the case of **ASARIDOKUBO V. FRN. (SUPRA)**.*

It is trite that the power of the Respondents to arrest and detain, pending investigation in some cases is constitutional and is derived from sections 214 and 216 of the 1999 constitution.

It is my candid view that the exercise of that power cannot by virtue of section 35 (1) of the 1999 constitution amount to a breach of fundamental right of the Applicant even when such exercise result in curtailing the freedom of movement or liberty of a citizen otherwise all persons arrested by the police may flood the Court enforcing their right to freedom of movement.

Section 4 and section 24 of the Police Act gives the Respondents the discretion upon reasonable suspicion of Committing a crime to arrest any person including the Applicant, it is generally not the business of the Court to fetter this discretion.

The Court can only stop the use of this power/discretion when it is improperly used as that will no longer be covered by sections 214 and 216 of the 1999 constitution and other applicable laws,

suffice to add that in the case of **EMONENA& ANOR V IGP &ORS (2016)LPELR-41489 CA.**

The Court of Appeal held that arrest properly made cannot constitute a breach of fundamental rights. A citizen who is arrested by the police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence cannot sue the police in court for breach of his fundamental rights.

Exhibit A-Jattached to RespondentsCounter Affidavitdiscloses that the Respondents acted in line with section 35(7)(a,) of the 1999 Constitution, the report gives details of investigation spanning from arrest, to Wuse Market for recovery and more , while I agree that the period of investigation was long , the Applicant had the option to apply to court for Bail pending arraignment considering the nature of the offence being investigated and in line with the provisions of 296 of theACJA 2015, especially after the Respondents had procured a remand order.

The Applicant will to do more than mere stating as he did in paragraph 13 of his affidavit to prove that his head was brokento succeed under section 34 of the 1999 Constitution.

I hold the view,that for a person with injury of a broken head, there should be evidence of some medical intervention to sustain this fact in line with section 34 of the 1999 Constitution at the very least.

It is for the reasons disclosed in the judgment that this Honourable court finds,that the Respondents had reasonable grounds to wit; investigating the offence of armed robbery for keeping the Applicant beyond 24 hrs, and further that the arrest and detention

of the Applicant on suspicion of committing a felony takes same from the realm of unlawful arrest. I will also quickly add that after procuring a remand order, the administration of criminal justice Act 2015 clearly provides for steps to be taken forthwith, that takes prayers b-f away from the purview of fundamental right proceedings.

*I have no difficulty therefore in resolving issues distilled for determination by the Applicant in the negative that is to say, the arrest and continuous detention of the Applicant from the **27/10/2020 till 17/12/2020 and** further beyond 7/1/2021 do not amount to breach of Applicant's Fundamental human right as guaranteed in section,34,35, and 40 of the 1999 Constitution.*

Section 35(7)(a) of the 1999 Constitution indeed curtails the right of the Applicant,who in the instant case was arrested upon reasonable suspicion of having committed a capital offence, especially as he is currently undergoing trial in the High Court of the FCT to determine his guilt or otherwise.

On the issue one (1.) formulated by Learned Counsel for the Applicant whether the Applicant is entitled to relief sought,

This issue is predicated on where the Court finds that the Applicant was indeed unlawfully arrested.

Compensation and apology as provided for in section 35(6) of the 1999 Constitution is for any person who is unlawfully arrested or detained. Thus, without proof of the two conditions precedent by a person or group of persons arrested or detained by security forces they are not entitled to compensation or public apology.

Furthermore, by the provision of section 35(7)(a) of the 1999 Constitution clearly persons whose rights have be curtained therein cannot enjoy the reliefs contained in section 35(6).

In the instant case having reached a finding that the arrest of Applicant was and is not unlawful, this issue as formulated by Learned Counsel for theApplicant is therefore resolved in the negative

Flowing from the findings made in this judgment, Issues (1) and (2) as formulated by the Learned Counsel for the Applicant which are the same in substance with issues 2 ,3 and4 formulated by the Learned Counsel for the Respondents are resolved in the Negative.while issues 1 formulated by Learned Counsel for the Respondentsis resolved in the Affirmative.

Accordingly, relief a, b and cfail and are hereby refused.Reliefs d and e and overtaken by events ,the Applicant having been charged to Court While relief f, g and h which were hinged on the success of relief a, b and c. accordingly fails and hereby refused.

This application accordingly fails and is hereby dismissed.

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HON. JUSTICE F.E. MESSIRI.

JUDGE

16TH DECEMBER 2021

Appearances: