

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

**ON THURSDAY THE 14TH DAY OF SEPTEMBER
2021**

BEFORE HIS LORDSHIP:

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE.)**

SUIT.NO.HC/M/12228/2020

BETWEEN

AMUCHE DORIS EGBO

}

APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. ASSISTANT INSPECTOR GENERAL OF POLICE RESPONDENTS
(ZONE 6 COMMAND HEADQUARTERS, CALABAR)
3. ASP DIVINE OTU.

}

[JUDGMENT].

This suit was commenced by a Motion on Notice for the enforcement of fundamental rights initiated by one Amuche Doris Egbo.

Her case in a nutshell is that on the 13th of October, 2020 the 3rd Respondent and his team arrested the Applicant and took her to Zone 3 police station and later to Gwarinpa police station where she was kept till 12.30am on the 15th day of October, 2020.

That day after the arrest, the 3rd Respondent informed the Applicant that they came to Abuja from Calabar on the instruction of the 2nd Respondent, thereafter the 3rd Respondent showed the Applicant a writeup where the originator claimed his/her phone was stolen on the 3rd day of October, 2019.

The Applicant at this point informed the 3rd Respondent that she was involved in a motor accident that occurred on the 1st of October, 2019 at Banex expressway, Abuja which was reported at the Mabushi police station.

The Applicant volunteered her statement which includes content in exhibits d2 and d3. The Applicant was thereafter granted police administrative bail, but asked to report at Gwarinpa police station later the same day at 8am.

The Applicant averred that on her return to the police station later that day at 8:00am, the 3rd Respondent insisted that the Applicant will have to report at Calabar and also ensure that the cost of the stolen phone is donated by the Applicant. The applicant is saying that she was embarrassed, humiliated and restrained like a hardened criminal in the presence of her gateman and

neighbours, she alleges that she was unlawfully detained and further, that she was subjected to inhuman treatment, humiliation and assault by the Respondents.

Being therefore aggrieved by the alleged violation of her fundamental rights, the Applicant herein has now approached this honorable court praying for declaratory and other reliefs.

Attached to this application is the Applicants statement made pursuant to order 11 rule 3 of the FREP, RULES 2009, wherein the Applicant now seeks the following reliefs against the 1st ,2nd and 3rd Respondents;

1. An order enforcing the Fundamental Human Rights of AMUCHE DORIS EGBO by making the following orders:
2. A declaration that the unnecessary restraint of the Applicant by the 3rd Respondent and his team, by handcuffing the Applicant like a condemned criminal, and the failure to notify the Applicant of the cause of her arrest and the right to consult a legal practitioner before making any statement constitute a flagrant breach and violation of the Applicant's rights as provided under section 34 and 35 of the Nigeria police Act, 2020 and section 34,35,36 and 41 of the 1999 constitution of the Federal Republic of Nigeria (as amended).

3. A declaration that the arrest, detention, assault, humiliation, embarrassment, insult, harassment and restriction of movement of the Applicant from the 13th of October, 2020 to the 15th October 2020 and constant threat to re-arrest and re-detain the Applicant by the 3rd Respondent on the instruction of the 2nd Respondent constitute a flagrant breach and violation of the Applicant's fundamental rights as enshrined under section 34, 35 and 41 of the 1999 constitution of the Federal Republic of Nigeria (as amended); Articles 4, 5 and 6 of the African charter on Human and people`s Rights(Ratification and Enforcement) Acts, Cap A9. Laws of the Federation of Nigeria, 1990 and therefore illegal, unlawful and unconstitutional.
4. A declaration that the incessant invitation of the Applicant to report in zone 6 command headquarters of the Nigerian Police, Calabar and the constant threat of re-arrest and re-detention of the Applicant by the 3rd Respondent, under the guise of further investigation when all facts that requires investigation and verification as stated by the Applicant can only be verified in Abuja, constitute a flagrant breach and violation of the Applicant`s fundamental rights enshrined under section 34, 35 and 41 of the 1999 Constitution of the Federal Republic of Nigeria and Articles 4 and 6 of the African Charter on Human and People`s Rights(Ratification and Enforcement) Act, Cap A9.

Laws of the Federation of Nigeria, 1990 and is therefore illegal, unlawful and unconstitutional.

5. A Declaration that the proposition made by the 3rd Respondent for the Applicant to foot/pay the alleged cost of their (3rd Respondent and his team) traveling down to Abuja to effect arrest on the Applicant and other alleged suspects which they calculated as ₦900,000 (Nine Hundred thousand naira) only is illegal, unconstitutional and outside the statutory power of the Nigeria police as enshrined under the 1999 constitution.
6. An order of this honourable court directing the Respondents jointly and severally to render an unreserved public Apology to the Applicant and to publish same in two (2) National dailies.
7. An order of injunction restraining the Respondents whether by themselves, their agents, servants, privies, officers or otherwise from further inviting the Applicant to come over to Calabar, threatening to re-arrest, re-detain or further arresting, detaining, assaulting, humiliating, embarrassing, insulting, harassing or in manner infringing on the fundamental Rights of the Applicant.

8. An order of this honourable court directing the Respondent jointly and severally to pay the Applicant the sum of ₦10,000,000.00 (Ten Million Naira) only as compensation for the illegal, unlawful and unconstitutional arrest, detention, assault, humiliation, embarrassment, insult, harassment and unlawful violation of the Applicant's fundamental human rights.
9. And for such further order(s) as this Honourable court may deem fit to make in the circumstance.

The grounds upon which these reliefs are based are outlined in the mandatory statement attached to this application.

In support of this Application are a 43-paragraph affidavit deposed to by the Applicant on the 23/11/2020 and a further Affidavit of 22 paragraphs deposed to by the Applicant on the 23rd of June 2021. Attached to the affidavits are 7 exhibits namely exhibits D1, D2, D3, D4 and exhibits 1, 2 and 3.

Also Attached to this application is Applicant's written address settled by O.O. Aweda Esq. dated the 23/11/2020 wherein a sole issue was formulated for determination by this honourable court which is :

“ Whether from the circumstance of the case,the conduct of the Respondents and their agents,the Applicant’s rights have not been breached to entitle her to the reliefs sought before this honourable Court”.

From the records of this honourable court, the Respondents herein were duly served with the originating processes and hearing notices with respect to this application,but nobody appeared for the Respondents neither was any process filed in opposition on their behalf.

While the right to fair hearing is obviously critical and fundamental in any well conducted judicial proceeding, it is a right that must necessarily be circumscribed within proper limits and not allowed to run wild. **SEE LONDON BOROUGH OF HOUNSLOW V. TWICKENHAM GARDEN DEVELOPMENT LTD (1970)3 ER 326 AT 347.**

The 1st ,2nd and 3rd Respondents herein have been given every opportunity to respond to the Applicant’s allegations and they have exercised their right not to respond. Nobody begrudges this election. It is only imperative to state that nobody or institution has till eternity to defend or respond to any allegation against it, especially where such institution is within jurisdiction and has a legal department with legal officers in its employment

It is my candid view that fundamentally the main issue begging for determination in this application is, whether

the infringement of any of the rights contained in chapter iv of the 1999 constitutional has been established by the Applicant, it follows therefore that the question which this honourable Court must resolve is whether or not the Applicant has established that her fundamental right to the dignity of person and personal liberty were indeed infringed upon by the 1st, 2nd and 3rd Respondents, putting it differently whether the infringement of any of the rights contained in chapter iv of the 1999 constitutional has been established?

It is not every right of an Applicant which is involved here, but only the rights which fall within the provision of chapter IV of the 1999 constitution.

Clear, unambiguous, and serious as the right may be, if in fact it cannot be spelt out as falling within the content of chapter IV of the 1999 constitution or the African Charter on Human and Peoples' Rights, this court cannot protect the Applicant under the fundamental right enforcement procedure Rule. [FREP] The Applicant must in that case look for his rights elsewhere, under common law, tort or statute law but certainly not under the FREP. **SEEUZOUKWU VS EZEONUII (1991) 6 NWLR PART 200 page 708 AT 762.**

It is settled law that an Applicant seeking redress under violation of fundamental human right must additionally pinpoint the relevant section of the constitution wherein the violation of right is expressly or impliedly guaranteed.

Otherwise, the alleged act of violation cannot be sustained nor protected constitutionally.

The Applicant herein has pinpointed sections 34,35 41 and 46 of the 1999 constitution and Article 4,5 and 6 of the African Charter on Human and Peoples' Rights(ratification and enforcement Act,) cap A9wherein the violation of his right is expressly or impliedly guaranteed.

Now by its nature the provision of the constitution must always be construed in such a way that it protects what it sets out to protect or guide what it sets out to guide.

The constitution therefore must by necessity be interpreted broadly so as not to defeat the clear intention of its framers.**SEE AQUA LIMITED VS ONDO STATE SPORTS COUNCIL (1998) 4 NWLR (PT 91)622 AT 639. UKAEGBU VS AG IMO STATE (1983) SCNLR.**

Application for enforcement of fundamental rights is granted once the rights of the applicant as provided in chapter iv of the 1999 constitution is shown to have been breached, threatened to or even likely to be breached.

The law remains trite that he who asserts must prove. Suffice it to put in perspective that the duty of the court whilst entertaining application under fundamental rights enforcement procedure is certainly not to conduct a criminal investigation, inquiry or trial neither is it to establish the guilt or innocence of any party to the

Application relating to any allegation of crime, its essence is also not to establish the liability or otherwise of a party with respect to whatever transaction that they may have been involved in.

The focal essence of fundamental right enforcement procedure is simply and strictly for the Court to enforce the protection of citizens fundamental rights guaranteed by chapter iv of the 1999 Constitution and other applicable human right instrument where an infringement or contravention is established or perceived.

The law is trite as rightly submitted by Learned Counsel to the Applicant that every person is entitled to his human dignity as guaranteed under section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria

Learned Counsel for the Applicant in his written address contends that the Applicant opened her door for the 3rd Respondent and his team, upon so doing she was handcuffed and bundled away like a common criminal in the presence of her gateman and neighbours and that this act constitutes a breach of section 34 of the 1999 constitution and 34,35, and 37 of the Police Act 2020

I have carefully read the originating court processes filed by the Applicant together with the argument contained in the written address of learned Counsel for the Applicant

This honourable court holds the view of learned Counsel to the Applicant to the extent that the Respondents having failed to/or neglected to file a counter affidavit, the said affidavit in support of this application ordinarily stands uncontroverted and unchallenged, based on the principle of general application that where averments in an affidavit are neither challenged nor controverted, the court is under a duty to take and even act on the facts deposed therein as established, where such facts are cogent and credible.

See the cases of **OLAKUNLE V STATE 2018 ALL [FWLR PART] 947P.1270 AND JALINGO V. NYAME & ORS [1992]LPELR-12761(CA)**

While in law, the above position on failure to file a counter affidavit cannot be faulted, it is equally important to state here that the mere fact that an affidavit is unchallenged does not mean that the court will simply accept the contents of the affidavit hook line and sinker, the court still has a duty to look at the unchallenged affidavit to see if it is sufficient to determine the claim made by Applicant. **SEE MARTCHEM INDUSTRIES NIG. LTD. VS. MF KENT WEST AFRICA LTD. (2005) 10 NWLR PART 934P.645**

section 34 police Act 2020, law provides that,

“a suspect or defendant may not be handcuffed, bound or be subjected to restraint except:

“(a) there is reasonable apprehension of violence or an attempt to escape.

“(b) the restraint is considered necessary for the safety of the suspect or defendant, or

“(c) by order of a court.”

This implies that it is unlawful for police or other lawenforcement officers to use handcuffs or any other restraining devices/methods on a suspect if he or she voluntarily submits for arrest without resorting to any form of violence or resistance

Also when the safety of the suspect or the accused cannot be guaranteed, the police officer can subject the individual to handcuffs.

The Police Act 2020, empowers the police to investigate any criminal offence, it is therefore in line with the statutory duty of the police to arrest detain and even prosecute a suspect.

The court of Appeal,lagos division in the case of **EMONENA & ANOR V. IGP & ORS (2016)LPELR-23361 (CA)** had this to say with respect to the duties of the police, that;

"The Police under the Police Act 1943 in Section 4 provides that the Police duties are to: (a) prevent crimes (b) detect crime (c) apprehend offenders (d) preserve law and order (e) protect life and property and (f) enforce all laws and regulations with which they are directly charged. **CHUKWUMA V. COMMISSIONER OF POLICE (2005) 8 NWLR (PT. 927) PG. 278; GUDA V. KITTA (1999) 12 NWLR (PT. 629) PG. 21."** **PER NDUKWE-ANYANWU ,J.C.A (PP. 12-13 PARAS. E)**

Section 35 (1) of the 1999 constitution provides that Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law

sub section (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

Again section 41 of the 1999 constitution provides;

41. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria.

The Applicant on her own showing in paragraph 6 to 11 of her affidavit in support of this application gave details of how and why she resisted or refused the arrest by the 3rd Respondent and his team and further gave details of how her neighbours intervened and convinced her and she had to succumb to the intervention of her neighbours. Again by the Applicant's own showing in paragraph 14, and 15, the Applicant deposed to the fact that the 3rd respondent informed her that he is from Calabar and further showed her a write up [petition] alleging theft of phone against her.

The Applicant's supporting Affidavit did not disclose the very act or details that constitute or translates to the alleged assault, humiliation, harassment. These are conclusions, the Applicant failed to disclose and substantiate the action that constitute assault and more again insult and verbal abuse simpliciter do not and cannot translate to breach of fundamental rights as envisaged in sections 34, 35 and 41 of the 1999 constitution.

The right to dignity of person is indeed guaranteed as contended by Learned Counsel to the Applicant, however a person's dignity cannot be said to be infringed upon

where the law gives power to the law enforcement agency to so exercise and same is exercised.

The facts before this Honourable Court shows that the 3rd defendant and his team arrived at the residence of the Applicant where so much transpired, on the Applicant's own showing in paragraph 10 of her supporting affidavit she stated that the 3rd defendant ordered his team member to have the Applicant handcuffed saying that she had stressed the 3rd defendant and his team by failing to open the door when they requested.

That being the case and seeing that the police do have the powers and the discretion to handcuff a suspect, where the restraint is considered necessary for the safety of the suspect or defendant, in the face of all that happened that evening this honorable court cannot hold that the handcuffing of the Applicant in the circumstance it was done translates to or comes under the purview of section 34[1][a] of the 1999 constitution especially as there is no evidence of torture or degrading treatment on the Applicant neither held in slavery or servitude as contemplated by the framers of the 1999 constitution. The exhibits D1 is overtaken by the facts disclosed in paragraph 14 and 15 of Applicant's Affidavit and seeing that the Applicant indeed responded to the allegation therein and defended same as shown in paragraph 16 through 22. section 35(3) of the 1999 constitution provides that " Any person who is arrested or detained shall be informed in writing within

twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

Police officers are empowered to investigate any criminal allegation or complaint made. They may arrest, detain and even prosecute by virtue of Section 4 of the Police Act. In the legitimate discharge of their duties they cannot be sued in Court for breach of fundamental rights. Such breach does not cover cases where a Respondent has made a legitimate complaint to the Police or cases where the Police investigate and act on complaints made to them. See **ATAKPA VS EBETOR (2015) 3 NWLR (PT. 1447) 549 AT 558, SEE ALSO SECTION 35(1)(C) OF THE 1999**

Learned counsel to the applicant further submits that section 35 [1][6] of the 1999 constitution which guarantees applicant right to personal liberty was breached and therefore the applicant is entitled to the relief in sub section 6. He relied on the case of **PHILIP IGALI V.ZEPHANIAHIBAMA.(2005)ALL FWLR(PT 262) 563 AT 571 AND THE CASE RASAK OSAYIANDE ISENALUMHE V. JOYCE AMADIN (2001)1CHR@45**

From the Applicants affidavitin support of thisapplication, the facts dislosed therein is that the arrest of the Applicant took place on 13th day of october 2020 and she was releasedat 12.30 am on the 15th of october,2020.The facts disclosed therein did not state

the time of arrest. All that is disclosed in paragraph 5 of Applicants Affidavit is the time the 3rd respondent and his team knocked at the door of the Applicant. There is therefore insufficient facts for this Honorable Court to reach a finding that the Applicant spent more than 24 hours that is one day in detention. The facts disclosed in paragraph 15 through 24 shows an allegation of theft which the applicant clearly had a defence to. The foregoing takes the arrest of the applicant herein away from an unlawful arrest since by the provisions of section 4, 31 and 32 of the Police Act 2020, the police has the statutory powers to arrest a suspect on allegation of crime.

The authorities cited by Learned Counsel for the Applicant in his written Address cannot therefore apply in this case seeing that the facts in those cases are not in all fours with the instant case. The Applicant was arrested to the police station to answer to petition. The fact that the arrest was based on a petition takes the arrest from the realm of unlawful arrest. On the issue of detention, She did not disclose that she was detained for longer than a day as provided in section 35 of the constitution. The Respondents did not show any reason for the continued invitation of the Applicant to the police station or to Calabar.

The Applicant herein failed to furnish sufficient facts to warrant the declarative reliefs being sought. Relief

1,2,3,4,5,6,8 and 9 are therefore refused and hereby dismissed.

With regards to relief 7 this honourable court makes the following order to meet the justice of this case.

The 2nd and 3rd Respondents are hereby restrained by themselves and through their agents from inviting the Applicant Doris Amuche Egbo to Calabar ONLY in respect to the allegation in this suit but shall give 48 hours notice in writing inviting the Applicant to Gwarimpa Police station to answer any further question with respect to this suit.

I make no award as to cost.

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Hon. Justice F. E. Messiri

[JUDGE]

Appearances:

O.O. Aweda, Esq. for the Applicant.

S.I Imokhe with L.C Onyekwere and Omokhojie Ehiede.

