

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

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS
COURT NUMBER: HIGH COURT NO. 24
CASE NUMBER: SUIT NO. FCT/HC/CV/2526/2023
DATE: 12TH JULY, 2023

BETWEEN:

JOHN ETIM ARCHIBONG.....APPLICANT

AND

1. MRS. MUSTAPHA SHEIKH
 2. MR. MUSTAPHA SHEIKH
 3. THE STATE SECURITY SERVICE (S.S.S.)
 4. DIRECTOR GENERAL S.S.S.
 5. MASKED OFFICIALS OF THE S.S.S.
 6. THE NIGERIA POLICE FORCE
 7. INSPECTOR GENERAL OF POLICE (I.G.P)
-RESPONDENTS

JUDGMENT

APPEARANCES:

O. C. Adama Esq Esq for the Applicant.

The Applicant through their Counsel O. C. Adama Esq approached this Honourable Court by way of Motion on Notice for enforcement of fundamental rights.

the motion was brought pursuant to Order 2 Rules 1, 2, 3, 4 and 5 of the Fundamental Rights Enforcement Procedure Rules 2009, Sections 34, 35, 36(5) and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004 and under the inherent jurisdiction of the Honourable Court.

The Applicant herein prayed the Court for the following reliefs:-

- “(i). A DECLARATION that the invasion of the Applicant’s place of work (Arewa Specialist Hospital and Diagnostic Center, Jabi, Abuja) on the invitation of the 1st and 2nd Respondents, the assault, arrest and detention of the Applicant is unlawful, a violation of the Applicant’s fundamental rights as enshrined in Sections 34, 35, 36(5), 41 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended), and under the provisions of Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.***
- (ii). A DECLARATION that the detention, investigation and home search of the Applicant by the 6th Respondent is an affront on the dignity of his person and a breach of his fundamental right as enshrined in Sections 34, 35, 36(5), 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended); and under the provisions of Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.***
- (iii). AN ORDER restraining the Respondents from further threatening, harassing or intimidating the Applicant upon false, misleading and frivolous allegation.***
- (iv). AN ORDER of injunction restraining the Respondents from taking further steps in connection with the matter.***

- (v). ***AN ORDER for payment of Fifty Million Naira (N50, 000, 000.00) compensation in favour of the Applicant and against the Respondents jointly and severally.***
- (vi). ***A written public apology by each of the Respondents.***
- (vii). ***AND SUCH FURTHER ORDER OR ORDERS that the Honourable Court may deem fit to make in the circumstance of this case.”***

In support of the application is a 30 paragraph affidavit deposed to by the Applicant himself in person of John Etim Archibong, attached to the affidavit are annexures marked Exhibits A, A1, A2, A3, B, B1, B2, B3, B4, B5, C, C1, C2, C3, C4 and C5 respectively.

In line with the Rules and Procedures, a Statement in Support of the application, grounds for the application were equally filed. Also filed in support is a Written Address dated 9th March, 2023.

In the said Written Address, learned Counsel to the Applicant, O.C. Adama formulated a lone issue for determination thus:-

“Whether from the facts available in this case, the Applicant’s fundamental rights has been breached by the acts and conditions of the Respondents such that entitles the Applicant to the granting of the reliefs sought from this Honourable Court.”

In arguing the issue Counsel stated that the acts of the Respondents are a clear violation of the Applicant’s rights under Sections 34, 35, 36(5) and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples’ Rights. He stated that the Applicant was detained and not taken to a Court of law for four days and was made to suffer all forms of inhuman treatments.

Consequently, learned Counsel to the Applicant placed reliance on the provision of Section 35 of the 1999 Constitution of Nigeria (as amended) and stated further that the Applicant had not been tried and found guilty for any criminal offence. Further, Counsel stated that in the event of any reasonable suspicion to have committed any criminal offence at most, he

should have been taken before the Court of law within 48 hours (two days). Counsel placed further reliance on the provisions of Section 35(5)(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the case of **SAIDU V THE STATE (1982) 1 N.C.R 41 at 69 -70**.

In another submission, learned Counsel to the Applicant stated that from the averments in the Supporting Affidavit to this application, the act of the Respondents was an obvious case of torture, unlawful arrests and detention of the Applicant for four days. He also stated that the Applicant had lost his reputation and goodwill as he is the bread winner of his family and still has aged parents to look after. Counsel stated that the Applicant's deprivations and loss cannot be quantified having suffered so much in his unlawful arrest and detention. Reliance was placed on Section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria.

In a further submission, Counsel to the Applicant stated that if the Respondents (especially the 1st, 3rd to 7th) are left unrestrained, they may be encouraged to do worse things to the Applicant or some other persons who may become their victims. Counsel therefore urged this Honourable Court to restrain the Respondents for unprofessional conducts and submitted that the Applicant's right under Sections 34, 35, 36(5) and 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples' Rights have been violated, therefore entitled him to all the reliefs sought.

In arguing the issue, Counsel to the Applicant placed reliance on Sections 46(1), 34, 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Order 2 Rule 1 of the Fundamental Rights Enforcement Procedure Rules 2009 and the case of **IKHAZU AGBE V C.O.P (2005) ALL FWLR (Pt.266) 1323 at 1340-1341** among others. He stated that due to the sufferings of the Applicant, the Applicant is entitled to proper compensation and public apology. Further reliance was placed on Sections 35(5) and (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

In his final submission, Counsel to the Applicant stated that he relied on the depositions in the Supporting Affidavit to this motion. He urged this Honourable Court to declare the actions of the Respondents ultra vires and grant the Applicant the reliefs sought.

The Respondents on the other hand were absent and unrepresented throughout the course of proceedings. Hence, they did not challenge this application in any manner whatsoever.

I have carefully considered the originating motion brought for the enforcement of the Applicant's fundamental rights, the reliefs sought therein, the grounds upon which same was predicated and the supporting affidavit as well as annexures attached therewith.

I have equally studied the Written Address of the Applicant filed in support.

Therefore, it is my humble view that the issue for determination is:-

“Whether from the facts and affidavit adduced, before the Court, the Applicant herein made out a case for the grant of this application.”

As such, I will begin by saying that proceedings for fundamental rights are governed by the Fundamental Rights Enforcement Procedure Rules 2009 (as amended).

Having stated this, it is the Applicant's case as distilled from the depositions in the supporting affidavit that sometime around 7.00pm – 8.00pm on the night of 31st October, 2022, the 1st and 2nd Respondents who had earlier brought in a patient (their daughter) claimed that their vehicles had been broken into within the hospital premises where the Applicant works as a security personnel.

That the 1st Respondent who first raised the alarm, claimed that her car, a red Toyota Camry had been smashed and her baby bag and purse had been stolen.

That the alarm she raised attracted the attention of other staff of the hospital.

That no pieces of glass were seen anywhere, although the small glass on the right hand side of the passenger seat was actually broken. That her purse was found lying in the car, and was subsequently, handed over to her by the person who saw it.

That the 2nd Respondent who had previously left the hospital premises was called by the 1st Respondent, who then arrived a few minutes later. That

on his arrival, he also claimed that his laptop was stolen from his vehicle, but neither was his car glass broken, no key hole spoilt.

That both the 1st and 2nd Respondents requested to view the CCTV footage since the hospital had CCTV cameras installed. That the Applicant informed them that he had no access to it, but the Respondents insisted on seeing the footage or else they would deal with the Applicant. That the 1st Respondent made some calls and shortly after, seven masked men (later discovered to be officers and men of the 3rd Respondent) invaded the hospital with three power bikes, guns and a Hilux Van, shooting in the air and scaring everyone around. That the men started beating the Applicant and his colleague with big sticks and handcuffed them.

That the men went into the security changing room and destroyed all the lockers and wardrobes in a bid to find the missing baby bag and laptop, but found nothing.

That this infuriated the men making them descend heavily on the Applicant and his colleague again. That after sometime, the Applicant and his colleague were thrown into the 3rd Respondent's Hilux Van and were driven out of the premises. That on their way, they stopped at Kado and beat the Applicant and his colleagues once again, before taking off again and stopped at around Aso Drive.

That the men discussed among themselves for about thirty minutes and afterwards pleaded with the Applicant and his colleague to forgive them as they knew they were innocent, but were acting on the instructions of their boss and couldn't do otherwise.

That the 1st Respondent is a "big woman" with the Respondents. That after apologizing, the men handed the Applicant and his colleague over to the Police at Life Camp Police Station and informed the Police that they were arrested on patrol.

That the Applicant and his colleague were detained, beaten and tortured until the 2nd of November, 2022 when they were each taken to their respective houses and a thorough search was conducted. That nothing incriminating was found.

That they were arraigned by the 6th Respondent at the Upper Area Court Kado, Abuja on the 3rd of November, 2022 where they were granted bail.

That the bearings and torture the Applicant received from the 5th and 6th Respondents had a serious toll on his mind and body and have affected him negatively.

To this extent, I refer to Section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides thus:-

“Any person who alleges that any of the provisions of this Chapter has been is being or likely to be contravened in relation to him may apply to a High Court in that State for redress.”

It is trite law that where an Applicant alleges breach of his fundamental rights, he must place all relevant facts before the Court in proof of his case. In support of this, I refer to the case of ***FAJEMIROKUN V C.B. (C.L) NIG LTD (2002) 10 NWLR (Pt.774) per Sanusi JCA PP. 110-112, Paras F –G.***

For an Applicant alleging infringement of his fundamental rights to succeed, he must place before the Court all vital evidence regarding the infringement and breach of such rights. It only thereafter that the burden shifts to Respondents where that has not been done or where scanty evidence was put in by the Applicant. The trial Court can strike out such application for being devoid of merits.

In line with the above, the Applicant had in addition to his sworn affidavit attached Exhibits A, A1-A3, B, B1-B5 and C, C1 – C5 respectively as evidence supporting his claims.

Also in the case of ***IROAGBARA V UFOMADU (2009) LPELR – 1538 (SC)***, the court held;

“In civil cases, the likes of one under consideration, on the burden of proof on the pleadings, the rule is that the burden of proof rests on the party (whether plaintiff or defendant) who substantially asserts the affirmative of the issue. When it is said that onus of proof shifts from plaintiff to defendant and vice versa from time to time as the case progresses, it means no more than the burden of proof may shift depending on how the scale of evidence preponderates. However, subject to the scale of evidence preponderating, the burden of proof rests squarely on the party who would fail if no evidence at all, or no more evidence as the case may be, were given on either side.”

It is an established principle of law as provided in Section 131 of the Evidence Act that he who asserts must prove. Section 131 of the Evidence Act 2011 states:-

“Whoever desires any Court to give judgment as to any legal right or liability depended on the existence of facts which he asserts must prove that those facts exists.”

Therefore, having satisfactorily offset the burden of proof upon him, I will rightly say that the Applicant is entitled to the reliefs sought. I so hold.

On the failure of the Respondents to enter defence, I place reliance on the case of ***CBN & ORS V OKOJIE (2015) LPELR-24740 (SC) per RHODES-VIVOUR JSC*** where the Supreme Court held thus:-

“My Lords, a litigant who fails to file a Statement of Defence and further fails to cross-examine the adverse party, in this case the Respondent, has by his own hands shot himself out from the proceedings in which the Plaintiff, claims against him. The Defendant has abandoned any defence. He might have and the Court is expected to accept the Plaintiff’s unchallenged evidence to establish the facts the Plaintiff seems to establish.”

Similarly, the Court of Appeal in the case of ***EMODI & ORS V EMODE & ORS (2013) LPELR-21221 (CA) per Akeju JCA (Pt. 23), Paras B –D*** held thus:-

“...Where thereof a Plaintiff files his Statement of Claim raising an allegation of fact against the Defendant(s) who do/does not admit the truth of the allegations must file a defence to contradict, controvert, challenge or deny the allegations. Where no defence is filed, the Defendant is deemed to have admitted the assertion and the Court may pre-emptorily enter judgment against the Defendant.”

In the instant case, none of the Respondents were present in Court, nor were they represented throughout the proceedings. Hence, the Court is left with no other option than to decide this case based on the evidence before it.

Considering the facts and circumstances of this case, it is the humble opinion of this Honourable Court that the mode of arrest and subsequent beating and detention of the Applicant is unlawful. It amounts to inhuman and degrading treatment, as well as a breach of the Applicant's fundamental right to dignity of his person.

The Administration of Criminal Justice Act 2015 has prescribed the mode of arrest of a suspect, which puts into consideration the fundamental rights of citizens as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended), and also serves as check on the excesses of law enforcement agencies in the exercise of their powers. For ease of reference I shall reproduce the relevant provisions below:-

“Section 5 of the Administration of Criminal Justice Act 2015 states, A suspect or Defendant may not be handcuffed, bound or 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.”***

In the instant case, none of the above exceptions applied to the circumstances as to warrant the handcuffing of the Applicant and his colleague.

Furthermore, Section 8(1) of the Administration of Criminal Justice Act 2015 states:-

“(1). A suspect shall:

- (a). Be accorded humane treatment, having regard to his right to the dignity of his person and;***
- (b). Not be subjected to any form of torture. cruel, inhuman or degrading treatment.”***

See also Sections 34 and 37 of the Police Act, (2020); ***NIGERIA CUSTOMS SERVICE BOARD V MOHAMMED (2015) LPELR-25938 (CA)***.

The above provision goes in line with Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The several beaten received by the Applicant amounts to torture, cruel, inhuman and degrading treatment and a breach of their fundamental rights.

With respect to the detention of the Applicant for four days before his arraignment and subsequent bail, Section 35 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) describes “reasonable time” between an arrest and arraignment to be;

- “(a). In the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometers, a period of one day, and***
- (b). In any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable.”***

See also the case of ***LANDMARK UNIVERSITY V ANWULI & ANOR (2014) LPELR-24340 (CA)***.

The failure of the 6th and 7th Respondents to arraign the suspects before a Court of competent jurisdiction within the prescribed time frame as provided in Section 35(5) of the Constitution amounts to another breach of the Applicant’s fundamental rights. I so hold.

The fundamental rights of a citizen are sacred and therefore caution must be taken by law enforcement agents in the course of carrying out their duties so as not to cross the limits set by the law and infringe upon the rights of a citizen.

Therefore the Applicant having satisfied the Court on these grounds, it is the humble opinion of this Honourable Court that the acts of the Respondents are illegal, reckless and a gross infringement on the fundamental rights of the Applicant as well as an abuse of their statutory powers and functions. I so hold.

On the issue of search conducted at the Applicant's home of residence, the Applicant claims it is an affront on the dignity of his person and a breach of his fundamental rights as enshrined in Sections 34, 35, 36(5) , 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004.

The Police Act 2020 empowers the Police to conduct search of premises as part of the process of investigation. The law is that search of premises cannot be conducted without a warrant.

I rely on the case of **HASSAN & ORS V EFCC & ORS (2013) LPELR-22595 (CA)** where it was held thus:-

“As a general rule, where the premises of a person who is alleged to have committed an offence is to be searched, such an exercise can only be conducted upon the said premises sequel to obtaining a valid search warrant. for any search conducted on a premises without a warrant is unlawful and unconstitutional because the said act would amount to an infraction of the constitutional right to privacy as provided by Section 37 of the Constitution.”

See also the case of **OJOMA V STATE (2014) LPELR 22942 (CA)**.

Based on the evidence provided by the Applicant and in the absence of a defence by the Respondents, the absence of a search warrant authorizing the search of the premises of the Applicant is unlawful, unconstitutional and breach of his fundamental right to privacy as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended). I so hold.

Consequently, and without further ado, I hereby resolve the issue for determination in favour of the Applicant.

It is hereby ordered as follows:-

- (1). The invasion of the Applicant's place of work (Arewa Specialist Hospital and Diagnostic Centre, Jabi, Abuja) on the invitation of the 1st and 2nd Respondents, the assault, arrest and detention of the Applicant is hereby declared unlawful, a violation of the Applicant's fundamental rights as enshrined in Sections 34, 35, 36(5), 41 of the

1999 Constitution of the Federal Republic of Nigeria (as amended) and under the provisions of Articles 4, 5,6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.

- (2). The detention, invasion and home search of the Applicant by the 6th Respondent is hereby declared a breach of his fundamental right enshrined in Section 34, 35, 36(5), 41 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the provisions of Articles 4, 5,6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
- (3). The Respondents are hereby restrained from further threatening, harassing, or intimidating the Applicant upon any false, misleading or frivolous allegations.
- (4). The Respondents are hereby restrained from taking further steps in connection with this matter.
- (5). The Respondents are hereby ordered to pay the sum of **₦20, 000, 000.00 (Twenty Million Naira)** compensation in favour of the Applicant.
- (6). The Respondents are hereby ordered to write a public apology to the Applicant with immediate effect.

Signed:

Hon. Justice S. U. Bature
12/7/2023.