

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO.
IN THE ABUJA JUDICIAL DIVISION.
ON WEDNESDAY THE 31ST DAY OF MARCH ,2021
BEFORE HIS LORDSHIP
HON.JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE)**

SUIT NO. FCT /HC/CV/3450/2020

BETWEEN

- 1.MARIAM OBIAGELI NUHU
2. ABUDULKHADIR SAGIR
3. MUAZU SAGIR
- 4.ADAMA SAGIR

{Suing through their next
friend, Mariam Obiageli Nuhu}

AND

MOHAMMED HAMIDU SAGIR

[JUDGMENT].

The Applicants Mariam Obiageli Nuhu, Abudulkhadi Sagir, Muazu Sagir and Adama Sagir are before this honorable court to enforce their fundamental human rights as guaranteed under section 33 and section 41 of the 1999 constitution of the Federal Republic of

Nigeria as amended being contravened by the Respondent Mohammed Hamidu Sagir

The Applicants application is dated the 15/12/2020 and filed on the 16/12/2020. In support of the application is a 21-paragraph affidavit deposed to on the 16/12/2021 by the 1st Applicant, Mariam Obiageli Nuhu.

The Applicants filed their Statement made Pursuant to Order 11 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009 and written address dated 15/12/2020 on the 02/03/2021.

On his part, the Respondent filed a 23-paragraph counter affidavit deposed to on the 12/02/2021 by the Respondent. Annexed to the counter affidavit are 4 exhibits namely exhibits 1, 2, 3 & 4 and written Address Filed on the 12/2/2021.

In response to the counter affidavit the Applicant Filed a 45 paragraph further affidavit deposed to on the 02/03/2021 by the 1st applicant with applicants address on point of law dated 01/03/2021. Annexed thereto are exhibits 2, 3, 4, 5, 6, 7 and 8.

The processes aforementioned are hereby adopted into this judgment, reference shall be made to the relevant portions as the need arises.

From the facts contained in the affidavits in support of this application, the applicant's case in a nutshell is that the marriage between the 1st Applicant and the Respondent was dissolved by the Customary Court of the Federal Capital Territory, Area 8. Garki Abuja on the 5/12/2017[sic] whereby the customary court

directed that the 1st Applicant is to remain[sic]at no 45 Iya Abubakar street,Jabi, Abuja[(hereinafter referred to as the house)] until the 2nd 3rd and 4th Applicants, (who are the children of the marriage) attain the age of maturity. That the Court directed that the Respondent shall visit the property only for the purpose of seeing his children,

On the 11/12/2020, at about 12 noon,the 1st Applicant informed Kelvin Nnamdi Mba Esq to rush to their House at no. 45 Iya Abubakar street, [sic]Jabi.Abuja to see why the Respondent locked up the 2nd, 3rd and 4th Applicantswithout allowing them step out from the House or allowing any of the domestic servants and security personnel enter or move out fromNO.45 Iya Abubakarstreet, [sic] Jabi Abuja.

That kelvin Nnamdi Mba Esq indeed went to the house but the Respondent did not allow him access to the house or to the2nd, 3rdand 4th Applicants and thereby deprived theApplicants' access to their lawyer. The 1st applicant states that she works and lives in Abuja and that she has appealed against the Judgment of the High Court of the FCT attached to Respondent's counter affidavit marked as Exhibit 2, the said notice of appeal is annexed to Applicants' further affidavit as Exhibit 2

That all the policemen attached to the house to guide the Applicants have been withdrawn at the prompting of the Respondent, that the entire gate is surrounded by armed thugs procured by the Respondent to unleash mayhem on the Applicants who have not had access to the house since the 11/12/2020 Until when this suit was filed, the 1st Applicant wrote a petition to the officeof the Inspector General of policereporting

these facts herein.annexed to this application as exhibit 3 is the said petition

The 1stApplicant has therefore moved this honorable court for herself and as the next friend of the 2nd 3rd and 4thApplicants praying this honorable court for following orders: -

1. An Order of this Honorable stating that the Applicants Have the Right to Live at No.45 Iya Abubakar Street[sic] Jabi, Abuja and also Have the right to Live therein with their domestic wards and Servants Since No 45 Iya Abubakar Street Jabi Abuja Is their Matrimonial Home, and Home Of the 2nd 3rd And 4th Applicants as directed by the Judgment Of the Customary Court Delivered On the 5/12/2017[sic] and that the Respondent does not have the right to stop the Applicants from living freely therein without any form of disturbance or restrictions whatsoever from the Respondents or his privies or agents how so ever whom so ever .

2.An order of this honorable court stating that the actions of Respondent by forcefully locking the 2nd ,3rd and 4th applicants inside their matrimonial home[sic]at No.45 Iya Abubakar street Jabi Abuja, and not allowing the applicants, their wards,[sic] visitors and security men have access to them including their counsel kelvin Nnamdi Mba Okoro after a distress call was placed to him on the 11/ 12/2020 when he came for their rescue therein is illegal and unconstitutional and a breach of their fundamental rights provided under section 33 and 41 of the 1999 constitution of the federal republic as amended.

3. An order directing and compelling the respondent by himself or his agents to forthwith allow the Applicants, their wards servants and privies to have the liberty to freely to move freely as they so please, and for unrestricted access to be given to them to live at no. 45 Iya Abubakar street Jabi Abuja in accordance with the provisions of the law as enshrined in section 41 of the 1999 constitution of the federal republic of Nigeria as amended.

4. An order for the sum of ₦10 million naira only to be paid to the applicants as punitive, aggravated and exemplary damages by respondent for the wanton disregard and violation of the Constitutionally guaranteed right of the applicants

5. The sum of ₦1 million Naira only as cost of this action.

On the other hand, the Respondent is contending that indeed on the 12/12/2017, the marriage between the Respondent and the 1st Applicant was dissolved by the customary court of the FCT that among other things the custody of the 2nd, 3rd and 4th applicants were awarded to the 1st Applicant with unfettered access to visit the 2nd, 3rd and 4th Applicants at any time granted to the Respondent, that the 1st Applicant would be allowed to be in occupation of the Respondent's property situate at No.45 Iya Abubakar crescent Jabi ,Abuja, solely for the purpose of taking care of the children till they attain the age of maturity after which she will vacate his property[sic]

The Respondent contends that without his knowledge the 1st Applicant moved out of Nigeria with the 2nd, 3rd and 4th Applicants and only comes to the said property from time to time when it pleases her

That upon taking the 2nd, 3rd and 4th out of the country, they are hardly in the property as such the 1st Applicant has no business in his property. That the 2nd Applicant came to Nigeria to see him in 2020 and stayed in his house at no 45 Iya Abubakar crescent Jabi Abuja that the House is his property and the 1st Applicant can only live in the property with his children (2nd, 3rd and 4th applicants) that the 1st Applicant has claimed joint ownership on the property which claim was struck out as it lacked merit as evidenced by exhibit 2 attached to Respondent's counter affidavit

The Respondent further contends that while the 2nd and 3rd Applicants visited he procured the services of security men as guards for their safety that they have gone back to school and are with the 1st Applicant overseas thus he instructed the security men not to let the 1st Applicant into the house unless she has the 4th Applicant with her, this he states is due to the fact that the 4th Applicant is the youngest even though he doesn't know her whereabouts and hasn't seen her in a long time because the 1st Applicant does not want him to see her

The Respondent denies prompting the withdrawal of police men from the house and states that the withdrawal of the policemen made him get security men to guard the house for the sake of his children, that the 2nd and 3rd Applicants had access to domestic staff and security and were allowed to move freely within and outside the premises and that the 1st Applicant was overseas with the 4th Applicant he has no business with Kelvin Mba-Okoro hence he refused Kelvin Mba Okoro and the thugs he came with access into his property and to his children.

Issues for determination

Kelvin Nnamdi Mba-Okoro Esq Learned Counsel for Applicants in his written address posed a lone issue for determination to wit: -

Whether the Applicants has made out a case of infringement of their fundamental rights by the Respondent pursuant to the provisions of chapter iv of the 1999 constitution of the federal republic of Nigeria as amended and further formulated two issues for determination in his address on point of law in support of applicants' further affidavit to wit: -

[1] Whether the Applicants Have Made Out A Case of Infringement of Fundamental Human Right by The Respondent Pursuant to The Provisions of Chapter Iv of the 1999 Constitution of The Federal Republic of Nigeria as amended

[2] whether or not a fundamental right enforcement action can be instituted against an individual

Learned counsel for the Applicants submits that the Applicants has conclusively detailed the arbitrary breach of fundamental right and the burden is thus on the Respondent to justify why a law-abiding citizen will be restricted from moving freely from his or her residence without any legal authority empowering the Respondent to act in such a manner, learned counsel relied on the case of **CHIEF GANI FAWEHINMI V. GENERAL SANI ABACHA & 3 ORS, (1998) 1HRLRA 564,**

Where the court of appeal stated that

“where the freedom of an individual is curtailed or abridged it must be shown that such act is brought within the law”

And the case of **SHUGABAV. MINISTER OF INTERNAL AFFAIRS (1983) 3 NCLR 915**.among other cases

And further that any violation of a citizen’s guaranteed fundamental rights attracts penalty and public apology from the respondent’s thus having conclusively established that the applicants’ fundamental rights have been violated and is being violated the applicants are entitled to compensation ,Counsel stated further that the respondents’ action is in breach of section 34(1) of the 1999 constitution of the federal republic of Nigeria and article 3,4,5,6,7,and 12 of the African charter on human and peoples (rectificationand enforcement)Act Cap A9laws of the federation of Nigeria

on issue two, learned counsel for applicants referred court to the case of **UZOCHUKWU &ORS V. EZEONU 11 (1991)6 NWLR PT 2000 708 and paras 3[e] of the preamble to 2009 rules, section6(6) and section 46** that both government or its agencies as well as private individuals can be proceeded against for enforcement of fundamental rights

Counsel therefore urged this court to grant reliefs sought and hold that fundamental rights of Applicants have violated by the reprehensive act of the Respondent.

On his part learned Counsel for theRespondent Dorcas Auta formulated one issue for determination towit: -

“Whether the application for enforcement of fundamental rights filed by the Applicants discloses a reasonable cause of action against the respondent?”

Learned counsel for respondent argued that the case of the Applicants is can only succeed where they show that indeed their Rights have been infringed upon

Counsel contends that Applicants are in breach of section 131 and 132 of the evidence act 2011 and further that in an application for enforcement of fundamental rights the onus is on the Applicant to show that his right was violated...

Counsel relied on the case **JIM-JAGA V.C.O.P. RIVERS STATE (2013)6 NWLR (PT 1350)253 for this principle of law.**

Counsel stated further that even though this suit is an application for fundamental right enforcement it is tainted with elements of crime as can be gleaned from paragraphs 7 and 12 of Applicants’ affidavit in support of originating motion making the standard of proof required from the applicants’ to be beyond reasonable doubt due to the allegation of crime, learned Counsel for respondent referred court to the case of **VENN V ACCESS BANK PLC & ORS (2014) LPELR ...**

Still submitting Counsel stated that the depositions in paragraph 16 and 17 are in contravention of section 38 of the evidence 2011 as being hearsay Evidence and that the Applicants’ failed to disclose the source of information and reasonable particulars as required by section 115(4) of the Evidence act 2011 ,Counsel referred court to the case of **S.O. ADEYEFA&2 ORS V.BELLO GBAMGBOYE (2013)2SCNJ 201&202 ALSO citing the case of**

SENATOR NKECHI JUSTINA NWAOGU V. HONORABLE EMEKA ATUMA & ORS(2013) 5SCNJ 123.

Counsel contends that the acknowledged copy of the petition written to the inspector general of police is inadmissible as the said exhibit attached to the Application is not certified and therefore inadmissible and of no effect, he therefore puts the 1st Applicant to the strictest proof to the alleged infringement on the 2nd to 4th Applicant, and that the 4th Applicant has not been in the country.

learned Counsel for Respondent urged this honorable Court to discountenance the Applicants claims and line of argument and award damages in favour of the Respondent as he is entitled to compensation for damage to his name and reputation

[RESOLUTION].

Starting with issue two as formulated by learned counsel for the Applicants “the position of the law is that where fundamental rights are invaded not by government agencies but by ordinary individuals, such victims have right against the individual perpetrators of the acts as they would have done against state actions.....it follows therefore ... a victim of such invasion can also maintain a similar action in a court of law against another individual.....”

See **ABDUHAMID V.AKAR ANOR (2006),SC**

From the principle above issue two is resolved in affirmative, taking issues one of both learned Counsels together, I will commence by stating that

Chapter 33 of the 1999 constitution guarantee's every person the right to life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria, Chapter 34 provides for right to dignity of human person while section 41 provides for right to freedom of movement.

Chapter IV of the constitution of the federal republic of Nigeria, 1999 describes rights set out from section 33-35 as fundamental rights.

The learned authors of Black's law dictionary ,9TH Edition, page 744 describes the term:

“fundamental rights as “1. Right derived from natural or fundamental law. 2. Constitutional law. A significant component of liberty, encroachment of which are rigorously tested by courts to ascertain the soundness of purported governmental” This definition is reaffirmed by the court of appeal in the case of **AYODELE V. IGP (2016) LPELR -42937[CA]**to mean “the right one holds by virtue; solely; of being human person that is naturally inhering in the human being”

The supreme court in the case of **RANSOME -KUTI & ORS V. AG FED &ORS (1985) SC asked**“..... what is fundamental right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself.it is a primary condition to a civilized existence and what has been done by our constitution since independence, starting with the independence constitution that”

Fundamental right is thus a right guaranteed in the Nigerian constitution .it is a right which every citizen is entitled to by

reason of being a human being unless if a person suffers any of the disability set out in the constitution .there are therefore constitutional provisions and rules of procedure's contrived for the enforcement of those rights specifically entrenched in the constitution these rights are so jealously guarded that it is only when a party's right that has been so breached are such that are well clearly protected by the constitution that the constitutional provision can be exploited to remedy whatever wrong the party would have suffered see **EJEFOR V. OKEKE (2000) NWLR(PT 665)363**

Now for a court to be competent to assume jurisdiction to entertain an application for enforcement of fundamental rights under the fundamental right procedure rules, it is settled that the fundamental right should be the main claim and not an accessory claim in *Nwachukwu v. Nwachukwu & Anor (2018) SC THE HON JUSTICE KEKERE-EKUN JSC* upholding this principle stated

“... I agree entirely with the court below that a careful perusal of the reliefs sought and the averments in the verifying affidavits in support of the application reveals that the main claim is for the respondent to be restored to her matrimonial home and for a restoration of her rights in the property and business jointly owned with her husband, the appropriate procedure to ventilate her grievances is a petition under the matrimonial causes act or any other appropriate procedure. I agree that the suit as constituted under the fundamental rights enforcement procedure ... was incompetent the trial court lacks jurisdiction to entertain same...”

Looking at the Application before this court the 1st Applicant who states that she was away at the time of the alleged infringement of the rights of 2nd 3rd and 4th applicants [her children with the Respondent] is praying this court for an order stating that the Applicants have a right to live at No. 45 Iya Abubakar street jabi being her matrimonial home of the Applicants. This claim is hinged the judgment of customary court which allows the 1st Applicant to reside in the premises for the sole purpose of taking care of the 2nd 3rd and 4th applicant

From the paragraph 8 of Applicants affidavit in support of this Application, the facts disclosed therein is that while the 1st Applicant was away, she contends that the Respondent prevented the 2nd and 4th Respondents' who are 18 and 20 old years respectively from coming out of no. 45 Iya Abubakar street Jabi Abuja. And further prevented their counsel from having access to them, on the other hand the Respondent states that the 1st and 4th Applicant were not in the country that the 2nd Applicant visited him and resided in 45 Iya Abubakar street jabi Abuja

He went on to state why he denied learned for the Counsel access to his home and children who are adults, that only the 4th Applicant is 16 and with the 1st Applicant. The 1st Applicant argued that she is joint owner of the property and has appealed the judgment stating otherwise.

Perusing the facts contained in the entire processes filed with this application especially that the 1st and 4th Applicants were not in the house on the day the alleged breach is said to have

occurred and seeing that the 2nd and 3rd Applicants are 18 and 20 years respectively.

This court holds the firm view that there is no proof that the fundamental rights of the 1st and 4th Applicant was, is or likely to be infringed upon seeing from their supporting affidavits they were not at No. 45 Iya Abubakar street Jabi, Abuja on the 11th of December 2020 when the contravention or breach is said to have occurred, similarly the 1st Applicant cannot sue as next friend of the 2nd and 3rd Applicants who are both adults and did not complain that their rights were infringed upon by the Respondent .

What is presented in this suit is the 1st Applicant seeking an order declaring rights derived from Judgement of customary court of the FCT on the 5/12/2017[sic] which is not in contention having found that the said right was not breached by the Respondent. it will be in contempt of the customary court of the FCT if the 1st Applicant showed or proved that the Respondent deprived her of the order as contained in the said Judgment

The main claim in this suit is therefore not a relief that comes under the fundamental right enforcement procedure, the principle in Nwachukwu v. Nwachukwu [supra] is in all fours with the instant case and must therefore apply

HONORABLE JUSTICE KEKERE-EKUN JSC IN THE CASE OF EMEKA V. OKOROAFOR AND ORS (2017) 2-3 SC [PT IV] P1 REFERRED TO THE CASE OF PETERSIDE V. I.M.B (1993) 2 NWLR PT .278 P 712@718-719 WHERE HIS LORDSHIP NIKI TOBI JCA [AS HE THEN WAS] had this to say

“It has become the fashion and style for parties to push or force the provisions of chapter IV into most claims which cannot in law be accommodated by the chapter. Parties at times take undue advantage of the general and at times Nebulous provision of the chapter and try to tailor it to their actions even when the size of the cloths does not fit into it. The provisions of chapter iv though appear omnibus and large both in character and context are chained here and there by constitutional gadgets by way of safeguards counsel by his professional calling might and expertise may dexterously frame a claim or relief to have the semblance of breach of constitutional right as contained in chapter iv of the constitution. he does this to give the matter a higher status in the litigation process But where an action does not have a constitutional flavor in the sense that the provisions of the constitution are not breached or in the process of being breached it cannot be elevated to the status of constitutional wrong a trial judge should in such circumstances ,be able to apply the eye of an eagle to scrupulously examine the character and context of the claim with a view of removing the chaff from the grain and come to grips with camouflage or disguise in the action he has to unveil the pretentious legal phraseology of the action and take appropriate decision”

This application as it stands especially relief 1. and relief 2. Sought are clearly seeking to enforce rights that came into being from the marriage of the 1st Applicant to the Respondent as ordered by the customary court of the federal capital territory, as against the rights contemplated in chapter iv of the 1999 constitution of the FRN. the relief sought do not seek those rights attach to the individual which he is entitled to same just

for the simple reason that he is a human being or that it is or are God given rights which an individual is entitled to. the affidavit of the 1st Respondents' wards/domestic servants did not disclose that they were subjected to any form of torture, inhuman or degrading treatment by the Respondent to bring this action under the fundamental human rights proceedings, to support the finding of this court are the annexures exhibits 2 and exhibits 8 attached to the Applicants affidavits

Conclusion

The reliefs sought by the Applicants hereinto not disclose fundamental right as the main plank in this application but rather seeks a declaration to right to the property described as 45 Iya Abubakar Street Jabi, Abuja.

It is therefore improper to constitute this action as one for enforcement of fundamental rights as contained in chapter iv of the 1999 constitution. the suit fails and it is hereby dismissed. The parties shall bear their cost.

