

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO ABUJA
ON THURSDAY THE 25TH DAY OF FEBRUARY 2021
BEFORE HIS LORDSHIP: THE HON. JUSTICE FRANCES ERHUVWU
MESSIRI(JUDGE)**

SUIT NO: FCT/HC/CV/056/2021

BETWEEN

MUHAMMAD MUHAMMAD

}

PLAINTIFF

AND

INSPECTOR GENERAL OF POLICE

}

DEFENDANT

JUDGMENT

*The Applicant vide an originating motion on Notice dated the **6th day of December 2019** seeks to enforce his Fundamental Human Rights guaranteed under Section 34, 35,36, and 40 of the 1999 constitution of the Federal Republic of Nigeria as amended, hereinafter referred to as the 1999 Constitution.*

The application is supported by a10paragraphaffidavit deposed to by one Nuruddeen Musa Umaron the 9/12/2019.

Attached to this application is applicants mandatory statementdated 6/12/2019 as required by the Fundamental Right Enforcement procedure rules 2009 wherein the following reliefs are being sought by the applicant Namely: -

- (a) A **DECLARATION** that the arrest and continued detention of the Applicant from the **22nd July, 2019 to 27th November, 2019** by the Respondent, its privies, agents, officers or representatives is illegal, unlawful, null and void and

amounts to gross violation of his Fundamental Rights as enshrined in Section 34, 35, 36, and 40 of the 1999 constitution of Federal Republic of Nigeria (as amended).

- (b) **AN ORDER** of this Honourable Court directing the Respondent to pay the Applicant the Sum of **₦1,000,000.00 (One Million Naira)** for unlawful detention.*
- (c) **AN ORDER** of this Honourable Court directing the Respondent to tender a formal apology to the Applicant by publishing same in two National daily Newspapers.*
- (d) **AN ORDER OF PERPETUAL INJUNCTION** restraining the Respondent its privies, agents, officers or representative from further arresting and/or harassing the Applicant based on the facts leading to this application.*
- (e) **SUCH FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstance of this case.*

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

- a. That the Applicant was arrested on the **22nd Day of July 2019** by agents of the Respondent on his way to Federal Secretariat, Abuja to protest against the continued detention of Sheikh Ibraheem Zakzaky.*
- b. That the Applicant could not deposite this affidavit himself because he is currently detained by the Respondent at Special Anti-Robbery Squad (SARS) office of the Respondent at Abattoir, FCT, Abuja.*

- c. That the Applicant was arrested by agents of the Respondent and taken to Special Anti-Robbery Squad (SARS) office.
- d. That the Applicant was not charged to any court until **27th November, 2019.**
- e. That the Applicant does not have criminal record.
- f. That the Applicant took ill while in detention but was not taken to hospital.

Attached to this application is the Applicants written address dated the **6th day of December 2019** filed in support of the motion on Notice.

In response to this application, the Respondent filed a 5-paragraph affidavit deposed to by one Chidimma Nnorom on the **1st day of June 2020.** Annexed to the counter Affidavit are 4 exhibits namely exhibit **EC1, EC2, EC3 and EC4** to wit charge sheet Number **CR/32/19,** Terrorism prevention Act 2019, statement of **MOHAMMAD MOHAMMAD** dated **5/8/2019** and motion for bail application with motion Number **M/4222/2020** dated **13/01/2020.**

The Respondent filled a written Address dated the **27/5/2020** in response to the originating motion filed by the Applicant. Learned counselsto the parties in this suit adopted their respective written addresses on the **09/2/2021.**

The said written addresses and processes filed are hereby incorporated into this Judgment. I shall refer to the relevant portion of the written addresses or 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 on the **22/7/2019** on his way to the Federal Secretariat, Abuja to protest against the continued detention of Shaikh Ibraheem Zakzaky by Agents of the Respondent, the Applicant avers that no reason was given for his arrest until the **22nd day of November 2019** when he {the Applicant} was Arraigned before the High Court of the FCT.

That while in detention with gunshot injury he was denied medical attention and was kept in dehumanizing condition in an open roof cell.

The Respondent on his part states that the Applicant was arrested along with 59 others for attacking and brutally killing one D.C.P, Usman K Umar of the FCT police command Abuja, Mr Precious Owolabi a member of National Youth Service Corps attached to channels Television and wounding of several other people at Eagle square Abuja on the **22nd July 2019**. The Respondent further states that the Applicant along with 59 others were charged to court on **28th day of October 2019** at the conclusion of investigation as evidenced from exhibit EC1, the Respondent states that the Applicant made confessional statement admitting being member of the proscribed Islamic Movement of Nigeria popularly known as Shi'ites and further admitted participating in the violent protest that led to the death of many including one Deputy Commissioner of Police.

That it was the action involving the Applicant that led to the proscription of the organisation as evidenced by Exhibit EC3. The Respondent averred that the Applicant was taken to the High Court of the FCT and from there the Applicant was remanded in kuje correctional service centre by the order of the FCT High Court.

That the Applicant was promptly informed in the language he understands of the allegation against him before he volunteered his statement(Exhibit EC2) to the unit.

Learned counsel to the Applicant in his written address distilled two issues for determination namely: -

- 1. Whether the arrest and continued detention of)he Applicant from the **22nd July 2019 to the 27th of November 2019** by the Respondent its privies, agents, officers or representatives etc does not amount to a breach of the Applicant Human Rights as enshrined in section 34,35,36 and 40 of the 1999 constitution.*
- 2. Whether the Applicant is entitled to the reliefs sought.*

On his part, learned counsel for the respondent formulated three (3) issues for determination by this Honourable Court namely: -

- 1. Whether the Applicant`s right to personal liberty, dignity of human person, fair hearing and peaceful assembly as guaranteed by the 1999 constitution has been breached or threatened by the action of the Respondent.*
- 2. Whether taking in to consideration the facts of this case the Respondent acted within the law.*
- 3. Whether the Applicant is entitled to relief sought.*

*In resolving Issue 1 as Formulated by the learned counsel to the Applicant which is whether the arrest and continued detention of the Applicant from the **22nd day of July 2019 to 27th day of November 2019** by the Respondent, his Agent, officers e.t.c does not amount to a breach of the Applicant Fundamental Human Rights as enshrined in section 34,35,36 and 40 of the 1999 constitution of the Federal Republic of Nigeria?*

I will commence by stating that Fundamental Human Rights are Rights that are basic to the citizens. 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 to a protest at the Federal Secretariat the Respondent puts forth that the Applicant was arrested along with 59 others at Eagle Square, the Respondent annexed exhibit EC1 to his counter affidavit which is charge number CR/32/2019 dated **28th October 2019**.*

*The Applicant avers that upon his arrest no reason was given for the said arrest until the 27th day of November 2019 and that he had a gunshot injury that was left untreated while in detention, thus he was denied medical attention and also that he was kept in dehumanizing condition in an open roof cell again, the Respondent puts forth that the Applicant and 59 others were charged to court on the **28/10/2019** at*

the conclusion of investigation for the offences of criminal conspiracy, culpable homicide punishable with death etc.

The Respondent states that the Applicant and 59 others were not immediately charged to court after their arrest because of the nature of the offences involved which carry a death sentence and also due to the large number of Defendants involved in the case hence investigation could not be completed within a short time, that the trial of the Applicant has commenced at the High Court number 16 Apo where six witnesses have already testified.

*It is the contention of the Applicant that his Fundamental right guaranteed by section 35(1) of the 1999 constitution was breached between **22/7/2019 – 27/11/2019** and that no reason was given for his arrest until the **27/11/2019**. The learned counsel to the Applicant Relied on the case of **NKPA VS NKUME (2001) 6 NWLR pt. 70 543** and also **IBORI VS FRN (2009) 3 NWLR pt. 1127 94 at 106 para-C-D**.*

*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 Respondent cited the case of **FAJEMIROKUN VS COMMERCIAL BANK NIG.LTD (2002) 10 NWLR pt. 774 pages 95 RATIO 4** and the case of **ONAH V OKENWA (2010) 7 NWLR pt. 1194 512 at 536 paras H-A** “stating that He who asserts must prove.*

That the burden of proof lies on the Applicant who applied for enforcement of his Fundamental right to establish by credible affidavit evidence that their/his Fundamental right was breached and cited section 135-137 of the evidence Act 2011 which lays down the

*Fundamentals of such proof. Learned counsel to Respondent cited **EZEADUKWA VS MADUKA (1997) 8 NWLR pt.578-page 635 ratio 7***

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 36 guarantees the right to fair hearing and section 40 protects the right to peaceful Assembly.

*The Supreme Court in **DOKUBO ASARI VS FRN (2007) 12 NWLR pt. 1048 page 320** while interpreting section 35 of the 1999 constitution stated that these rights are guaranteed but 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 support herein from his lordship Mahammad JSC saying at pages 38-48 para–G.C in the case of **ASARI DOKUBO VS FRN (SUPRA)**.*

It is trite that the power of the respondent 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 respondent 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 section 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.

*Looking at exhibit EC1, EC2, EC3 and EC4 attached to respondent counter affidavit, it is observed that even though the Applicant avers that he was not informed of reason for his arrest till **27th November 2019** when he was charged before the high court of the FCT, in paragraph 7 of the affidavit in support of this application, the Applicant statement attached to the counter affidavit as Exhibit EC2 is dated **5/8/2019** wherein the Applicant denied killing the DCP and stated that he was shot on his leg by persons unknown. This Court wonders if indeed the Applicant actually got to know the reason for his arrest on the **27/11/2019** or **5/8/2019**, the Respondent*

attached Exhibits EC1, EC2, EC3, and EC4 to show that the respondent acted in line with section 35(7)(a,) of the 1999 Constitution, the applicant will need to do more than mere stating as he did in paragraph 8(c) that he was denied medical attention to inure the benefits therein

*I have no difficulty therefore in resolving issue 1 distilled for determination by the applicant in the negative that is to say, the Arrest and continuous detention of the Applicant from the **22/7/2019 till 27/11/2019** do not amount to breach of Applicant Fundamental human right as guaranteed in sections 34,35,36, and 40 of the 1999 Constitution.*

Section 35(7)(a) of the 1999 Constitution indeed curtails the right of the Applicant. Who 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 of the offence charged.

On issue two (2) as formulated by learned counsel to the applicant whether the applicant is entitled to relief sought,

” section 35(6) of the 1999 constitution reads thus:

Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, the “appropriate authority or person” means an authority or person specified by law. To begin with, the law has not specified the amount of compensation to be given to a person who has been unlawfully arrested and detained. From my understanding of this section of

the 1999 constitution, the trial court has the discretion to determine the amount of compensation to be given to an aggrieved party.” This is however 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 constitution clearly person whose rights have be curtailed therein cannot enjoy the reliefs contained in section 35(6).In the instant case having reached a finding that the arrest of Applicant was not unlawful, issue 2 as formulated by the applicant is therefore resolved in the negative. Issues one and two formulated by the respondent which are same as issue 1 of the applicant are therefore resolved accordingly

Flowing from the findings made in this judgment Issue two (2) as formulated by the Applicant is the same in substance with issue three (3) formulated by the Respondent issue three (3) is therefore resolved in the Negative that is to say the Applicant is not entitled to the relief sought.

This suit therefore fails and is accordingly dismissed.

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HON. JUSTICE FRANCES.E MESSIRI
JUDGE
25TH FEBRUARY 2021

Appearances:

- 1. Aderemi Blessing for the Applicant*
- 2. Ikeji Esq. with kelechi Animba Esq. For the Respondent*