

**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. FCT/  
HC/CV/3157/2020**

**BETWEEN**

SUNDAY CHINEDUM OKAFOR

} APPLICANT

AND

1.INSPECTOR GENERAL OF POLICE

2.COMMISSIONER  
POLICE,FCTCOMMANDRESPONDENTS

} OF

3.IPO IBRAHIM

4.ADAORAEZEANI

**JUDGMENT.**

By way of an originating summons brought under the Fundamental Rights Enforcement Procedure Rules, dated and filed on the 12/11/2020 by the Applicant, against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents the Applicant seeks the following reliefs from this Honourable Court.

1. A Declaration that the arrest and detention of the Applicant at the FCT command from 8am- 7pm on the 4<sup>th</sup> of November, 2020 without charging the Applicant to court or court order, on account of contest of ownership of land, is a gross violation of the Applicant's fundamental rights to life, freedom of movement, dignity of human person, freedom of association etc, contrary to sections 37 and 43 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and Article 14 of the African Charter on Human and Peoples' Right (Ratification & Enforcement) Act 2004.

2. A Declaration that the arrest of the Applicant without warrant of arrest or Court order and detention from 8am- 7pm on the 4<sup>th</sup> of November, 2020 on an account of contest of ownership of land, is a flagrant violation of his rights to privacy guaranteed under Sections 35(1)(4)(6) of the Constitution of the Federal Republic of Nigeria, 1999 as amended and Article 6 of the African Charter on Human and Peoples' Right (Ratification & Enforcement) Act 2004.

3. A Declaration that the illegal detention of the Applicant from 8am to 7pm at the FCT Command Abuja, without access to his family, friends, Lawyers is illegal, unlawful and unconstitutional and violates his rights to personal liberty contrary to section 35 and 40 respectively of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 6 & 11 respectively of the African

Charter on Human and Peoples' Right (Ratification & Enforcement) Act 2004.

4. A Declaration that the continued restriction of his movement by constantly demanding him to come to the police every now and then without charging him to a properly constituted court is wrongful, unlawful, unconstitutional and violates his right to fair hearing contrary to section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as Amended and Article 7 of the African Charter on Human and Peoples' Right (Ratification & Enforcement) Act 2004.

5. AN ORDER of the court restraining the Respondents from further arresting, harassing and/or detaining the Applicant in any manner whatsoever or however on an account of land matter which is civil except by a court order first sought and obtained.

6. An ORDER awarding the Applicant **₦50,000,000.00** damages for the gross violation of the rights of the Applicant, pursuant to Section 36 of the Constitution of the Federal Republic of Nigeria as amended and Article 7 of the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act 2004.

7. An official apology from the Respondents published in three National dailies.

8. And for such order(s) as the court may deem fit to make in the circumstance of this case.

The grounds upon which this application is predicated are;

1. The Applicant is a citizen of Nigeria and entitled to the rights enshrined in the constitution.

2. The Applicant was detained by the respondents from 8am-7pm on account of

land disputes and rival claim of ownership of land on the 4<sup>th</sup> November, 2020 without court order or being charged before a court of competent jurisdiction. The Applicant is in possession of title documents.

3. The arrest and detention of the Applicant is in connection of land matter of which the applicant is the owner.

4. The Applicant's fundamental rights as guaranteed under the constitution has been violated by the Respondents;

5. The Application is in accordance with the Constitution section 46[sic] as well as the Fundamental Rights (Enforcement Procedure) Rules 2009 made pursuant thereto.

In support of the application, the applicants filed the usual processes, namely; (i) a statement pursuant to Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, ("FREP Rules") 2009; (ii) an

affidavit of 21 paragraphs deposed to by the Applicant, with 4 exhibits attached and marked as Exhibits; A, A1, B and C and (iii) a written address by the Applicant's Learned Counsel. The Applicant also filed a verifying affidavit deposed to on the 12/11/2020.

From the written address filed in compliance with the FREP Rules, the following issues were raised as arising for determination

“Whether the Applicant is entitled to the reliefs sought? ”and whether in view of the enabling powers of the 1<sup>st</sup> to the 4<sup>th</sup> Respondents, whether the Respondents are empowered to settle disputes and granting declaration of ownership to land with power to detain ,arrest, and inflict torture as a means of settling land disputes purely civil matter under any disguise?”

It was submitted, that on the facts as presented by the Applicant, his fundamental rights have been violated without any lawful

basis and accordingly he is entitled to the reliefs sought from this Honourable Court.

From the records, the Respondents were duly served with the originating court processes and hearing notices but nobody appeared for the Respondents and nothing was 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.

The Respondents here have been given every opportunity to respond to the Applicant 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.

I have carefully read the originating Court processes filed by the Applicant together with the written address of learned Counsel for the Applicant and it seems to me that the issue to be resolved from the materials before this Honourable Court falls within a very narrow legal compass and that is whether on the facts and materials before the Court, the Applicant have established that his Fundamental Human Rights was violated by Respondents to entitle him to the reliefs sought.

I will now proceed to consider the evidence and submissions of Counsel.

Now it is correct that the Respondents having failed and/or neglected to file a counter affidavit, the said affidavit ordinarily stands uncontroverted and unchallenged. It is now trite principle of general application that where averments in an affidavit are neither challenged nor controverted, the court is

under a duty to take the facts deposed therein, where cogent and credible, as established.

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 that the fact that an affidavit is unchallenged does not mean that the court will simply accept the contents of the affidavit; the Court 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**

The point therefore which the authorities above appear to emphasize is that the Court will not in any given situation declare Applicant's right(s) to be infringed upon

simply because the other party to the application has neither filed a counter-affidavit nor appeared in Court.

The materials supplied by the Applicant in such circumstances must not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed or is likely to be infringed.

**SEE NEKAB.B.B MANUFACTURING CO. LTD V. AFRICAN CONTINENTAL BANK LTD (2004)2 N.W.L.R (PT.858)521 AT 550-551.**

Now it is settled principle of general application that an Applicant for the enforcement of his fundamental rights under Chapter IV of the Constitution has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of Section

46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009.

**IN UZOUKWU V. EZEONU II (1991)6 N.W.L.R (PT.200)708** at 751, the Court of Appeal in construing Section 42 of the 1979 Constitution which is in parimateria with Section 46 of the 1999 Constitution stated as follows:

“The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

- a. Must allege that any provision of the fundamental rights under chapter IV has been contravened, or
- b. Is likely to be contravened, and
- c. The contravention is in relation to him”.

The reliefs which therefore an applicant may seek under the FREP rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the

Constitution. See **RAYMOND S. DONGTOE V. CIVIL SERVICE COMMISSION, PLATEAU STATE & ORS (2001) FWLR PT 50 P 1639.**

Now I had spelt out the reliefs of the Applicant in his statement accompanying this application and they clearly come within the purview of the Fundamental Rights under Chapter IV of the 1999 Constitution. The burden therefore is now on the Applicant alleging the infringement of his fundamental rights to place before this court cogent and credible facts or evidence showing the breach or infringement to put the court in a clear position to grant the reliefs sought. **SEE FAJEMIROKUN V. C.B.C.I (NIG) LTD (1999)10 N.W.L.R (PT.774)95.**

The unchallenged facts of this case as contained in the affidavit deposed to by the Applicant is that on the 4th of November, 2020, he was in his house at No B 57 Sani Abacha Road, Saburi Abuja when the

Respondents(see paragraph 5) invaded his house and were banging furiously at the gate,this prompted him to go and see who and what was banging the gate.

That the Respondents told him that he was under arrest without telling him his offence or showing any warrant of arrest even when he demanded to see one.

That he was also denied an opportunity to contact his lawyer, but was whisked into his car and forced to drive to Command with other police officers following.

That he discovered upon getting to the Police station that there was a petition written by one ADAORAEZEANI claiming ownership of the property where he has lived for 5 years and for which he possesses title documents.

That he was detained on the 4<sup>th</sup> of November from 8:00 am to 7:00pm,Stating that he suffered severe mental and psychological trauma in the hands of the Respondents. That on the same day of the arrest, while still

in custody of the police, his phone was seized and he was denied any opportunity to contact his family and lawyer even when he demanded to reach his lawyer before making any statement. That he was intimidated, harassed, verbally insulted and abused by the 1<sup>st</sup> to 4<sup>th</sup> Respondents in a bid to recover land for the 5<sup>th</sup> Respondent. That he was only allowed to use his phone around 6:00pm to reach his lawyer who then came and got him released on bail.

That on the 10<sup>th</sup> of November, 2020, he was at the FCT Police Command between 11:30am to 4:50pm and was further harassed and intimidated by the Police.

He then engaged the services of **EZRA OGE ENWERE & CO** Solicitors to whom he paid the sum of **₦500,000.00** to enforce his rights and to apply for a copy of the petition for land theft and land grabbing made against him at the Police Station, but the 1<sup>st</sup> to 4<sup>th</sup>

Respondents refused to avail him with a copy of the petition.

This now leads me to the crux of the Application which is whether the Respondent's action falls within the purview of the constitutionality and applicable laws. The Applicant as stated earlier canvassed the point that the actions of Respondents were wholly unconstitutional.

Now it is not in doubt that the provisions of Section 34(1) and 35(1) of the 1999 Constitution provides for the right to dignity of the human person and the right to personal liberty.

The Sections provides as follows:

“34(1) Every individual is entitled to respect for the dignity of his person, and accordingly:

- a. No person shall be subjected to torture or to inhuman or degrading treatment;
- b. No person shall be held in slavery or servitude; and

c. No person shall be required to perform forced or compulsory labour.”

“35(1) 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...”

The above sections appear to me clear and unambiguous such that the task of interpretation can even hardly be said to arise.

Section 35(1) places premium on the personal liberty of every person and any deprivation of same must be consistent with the procedure permitted by law. The court obviously serves as a necessary bulwark in the protection of these fundamental rights and any transgression or proved violation of these constitutional provisions are met with necessary legal consequences.

The task before me now is to apply the above clear provisions in relation to the alleged

infractions or contravention and determine whether these infractions were proved.

The Respondent may have not filed any process but from the facts in support of the application, it is obvious that clearly there exists a serious land dispute between the Applicant and the 5<sup>th</sup> Respondent especially where it would appear that some elements of the police were been used by the 5<sup>th</sup> Respondent to resolve the land dispute then this brings into focus the precise ambit of the powers of the law enforcement agencies. The Nigerian Police has a plenitude of powers and duties which are clearly summarised in Section 4 of the Police Act, (Cap 359)

LFN (1990) as follows:

“The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly

charged, and shall perform such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

In succinct terms and flowing from above, the duties of the police include to:

1. Prevent crime;
2. Detect crime;
3. Apprehend offenders;
4. Preserve law and order
5. Protect life and property and;
6. Enforce all laws and regulations with which they are directly charged.

See **CHUKWUMA V. C.O.P (2005)8 N.W.L.R (PT.927)278.**

The various legislations or statutes on the general duties and or functions of the police and their powers to arrest with or without warrant and the necessary concomitant duty to inquire or carry out necessary investigations are statutory

The provisions of the legislations referred to above are clear and unambiguous. I have referred to the provisions to show the undoubted powers of the police to among others protect life and property, prevent and detect crime and

the apprehension of offenders. A logical and necessary implication of this duty to prevent and detect crimes must involve the processing of the complaint or information and this must necessarily require the basic step of investigation which is the examination of the facts of the situation. There may or may not be the need to call in people for questioning in the process. The process may take a period of time and the invitation for questioning may also be repeated. There is no formula on how the process will play out. These are issues largely dictated by the facts uncovered in the process of investigation. The only point to add here is that the process must be conducted with civility and decorum. Where

investigation reveals a prima-facie crime has been committed, it is now for the police to prosecute same or forward the results of their investigations to the necessary prosecutorial agencies. Where no crime or criminality is disclosed after such investigations, that puts an effective end to the matter.

The police certainly do not determine questions of ownership of land or contractual obligations or liability.

In ***Adebo V. Omisore(2005)2 N.W.L.R(Pt.909)149 At 175F-G***, the Court of Appeal made the following instructive observations:

“The police are not vested with any jurisdiction to decide the rights of parties to land, but where the complaint as to ownership of land touches on threat to life, a law-abiding citizen who has nothing to hide and whose acts or deeds accords with the law would heed an invitation by the police.”

The right to personal liberty is therefore not infringed when such invitations or arrests are made to allow for the Respondents to carry out thorough investigation within the purview of Section 35(1)(c) of the 1999 Constitution.

Another point to address here is that from the affidavit, the Applicant was said to have been detained from 8am-7pm on 4<sup>th</sup> of November, 2020.

The police have powers to investigate allegations of criminality but it is fundamental to stress that these powers are not at large, neither are they powers to be exercised arbitrarily. Any exercise of powers must be such as provided by the constitution or any applicable law.

The constitution itself has in clear terms defined what constitutes a reasonable time within which a person may be arrested and detained before he is taken to court.

Section 35(4) and (5) of the 1999 Constitution provides as follows:

(4) Any person who is arrested or detained in accordance with subsection (1)

(c) of this section shall be brought before a court of law within a reasonable time.

(5) In subsection (4) of this section, the expression “a reasonable time” means:

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.”

In subsection 5(a), the reasonable time contemplated by the constitution is stated to be a “period of one day” and there is no discretion under this ambit of subsection.

Now in resolving issue one and two as formulated by learned counsel for the applicant there exist Instances where detention will not be regarded as unconstitutional and or unlawful, the requirement that a suspect shall be charged to Court within a reasonable time, such as one day, is clearly circumscribed to cases in which an arrest or detention is made in any place where there is a Court of competent jurisdiction within a radius of 40 Kilometres.

On the Applicants own showing in his supporting affidavit as disclosed in paragraph 10 , he deposed to the fact that he was held by the Respondent from 8am-7pm on the 4<sup>th</sup> of November 2020, a period less than one day. Similarly, the Applicant deposed in paragraph 18 of his Affidavit that on the 10<sup>th</sup> of November 2020 he was invited by the Respondents and was with the Respondents from 11:30 to 4:50 and termed this “economic time wasted”.

In my firmview, leaning support from the provisions of chapter iv of the 1999 constitution.

The point to underscore here is that the court in carrying out its invaluable judicial oversight functions must be circumspect in this very delicate balancing act between protection of the fundamental rights of citizens from unnecessary attack on one hand and on the other hand providing sufficient space to the law Enforcement Agencies to carry out their statutory duties in what we must concede are challenging times or circumstances. On the Applicant's own showing, he was arrested and taken to the police station to answer to petition and was released on the same day.

The fact that the arrest was based on a petition takes the arrest from the realm of unlawful arrest. On the issue of detention, he was not detained longer than is provided in section 35 of the 1999 Constitution. On the whole, the detention of the Applicant was

not beyond the constitutionally allowed period, neither can the arrest be said to be unlawful. However, the Respondents did not show any reason for the continued invitation of the Applicant to the police station. There is clearly no basis to continually invite the Applicant. Relief 5 accordingly succeeds and is hereby granted.

In the circumstance, an order is hereby granted restraining the Respondents from further arresting, harassing and/or detaining the Applicant on account of the land in this suit except by a Court order first sought and obtained. Other claims or reliefs of Applicant are however not availing. The claims in reliefs 1, 2, 3, 4, 6, fails and hereby dismissed.

I make No order as to cost.

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Hon. Justice F.E.Messiri

[JUDGE]

Appearances:

1. Ezra Enwere, Esq., for the Applicant.