

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU**

**SUIT NO: FCT/HC/CV/511/2024**

**MOTION NO: FCT/HC/M/15886/2024**

**DELIVERED ON THE 15/01/2025**

**BETWEEN:**

**ABUBAKAR ABDULLAHI.....APPLICANT**

**AND**

**STATE SECURITY SERVICE OF FCT.....RESPONDENT**

**RULING/JUDGMENT**

This is a Fundamental Right Enforcement suit brought pursuant to sections 35 and 46 of the 1999 Constitution of the Federal Republic of Nigeria. The Applicant Abubakar Abdullahi has alleged that he was arrested by the Respondent (The State Security Service Asokoro) on the 19/10/2024 when he was invited alongside his Counsel to collect his car which was abandoned by his friend.

The Applicant alleged that he is a driver of a commercial car and that he was arrested for an offence of one chance which was allegedly committed by his friend that abandoned the said car. Aggrieved by the act of the Respondent, the Applicant filed this case for the enforcement of his Fundamental Right and sought for the following reliefs:

- (1) *A declaration of the Hon. Court that the arrest and detention of the Applicant on the 19/10/2024 to date is unlawful, illegal and contrary to section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 2, 3, 4, 5 and 6 of African Charter on human and peoples right (Ratification and Enforcement Act).*
- (2) *An Order enforcing of the Applicant's fundamental right from further arrest and detention of the Applicant by the Respondents.*
- (3) *An Order directing the Respondent to immediately release the Applicant on administrative bail or in the alternative charge him to Court.*
- (4) *An Order compelling the Respondents to tender an unreserved public apology to the Applicant for the infringement on his fundamental rights.*
- (5) *An Order mandating the Respondents jointly and severally to pay to the Applicant General damages of **₦20,000,000** (Twenty Million Naira) only for harassment, intimidation, torture, arrest and unlawful detention of the Applicant.*

The grounds upon which the application is brought are as follows:

- (a) **Under sections 35 of the 1999 Constitution of the Federal Republic of Nigeria as amended, the Applicant's Fundamental Rights to personal liberty and freedom of movement are guaranteed.**

- (b) **The Applicant has been harassed, intimidated, inhumanly treated, arrested and detained by the Respondent.**
- (c) **The action of the Respondent violated the rights of the Applicant as stated in paragraph (a) above.**
- (d) **By the provision of section 46 of the 1999 Constitution of the Federal Republic of Nigeria, any Nigerian who alleges that any of his rights as guaranteed in the constitution is being or likely to be contravened in any state by any person or authority may apply to High Court for redress.**

The Applicant equally filed a written address in line with law and procedure in support of the application wherein a sole issue was formulated for determination to wit; **Whether or not the Applicant's fundamental right has been breached and therefore entitled to the Relief's sought.**

Learned Counsel argued the above issue succinctly in urging the Court to grant the Applicant's application in the interest of justice.

Reacting to the application, the Respondent filed a Notice of Preliminary objection to the application and a counter affidavit in opposition to the main application.

In it Notice of Preliminary Objection, the Respondent sought for the following reliefs to wit;

- (1) *An Order of this Court striking out the suit for lack of jurisdiction, or in the alternative.*
- (2) *An Order striking out the name of the Respondent/Applicant from this suit.*

The grounds upon which the Notice of Preliminary objection is predicated is as thus;

- (1) That the Respondent/Applicant in this suit is a non-juristic person unknown to any law viz (i) State Security Service of FCT.**
- (2) That the Court lacks jurisdiction to entertain any action or proceedings against such unknown person.**

In support of the Notice of Preliminary Objection is an affidavit of 7 paragraph deposed to by one Pat Atua, an operative of the Respondent/Applicant.

Also, a written address was filed wherein three (3) issues were formulated for determination to wit;

- (1) Whether the Respondent /Applicant in this suit is a juristic person and whether the name of a competent party to a suit must be the real name by which he is known in the case of a natural person, and its corporate name in the case of a non-natural legal personality person capable of suing or being sued.**
- (2) Whether failure to have the proper party before the Court will rob the Court of its jurisdiction.**

**(3) Whether a defect in the competence of an action has a negative effect on the jurisdiction of the Court and snuffs out the life of adjudication from the Court.**

Learned Counsel argued the above issues citing relevant laws in urging the Court to strike out this suit.

In opposition to the main application, the Respondent filed a 16-paragraph counter affidavit deposed to by one Miracle Ero, an operative of the Respondent.

It is the deposition of the Respondent that the Applicant was arrested on the 19/10/2024, after an identification parade with the rescued victim of a kidnap case within the FCT, Abuja. And that his detention is lawful and necessary to facilitate his prosecution of the offence committed in line with the provisions of the law.

That the Applicant was invited for interview with investigators, after a commercial car was recovered by the Respondent after being abandoned by suspected kidnappers/one-chance and investigation conducted so far revealed that the Applicant is the main operator of the one-chance operation alongside his supposed friend. The Respondent further stated that it has obtained several orders for detentions from a competent Court and same were annexed as Exhibits **SS1** and **SS2**.

In line with law and procedure, a written address was filed wherein, the Respondent formulated four (4) issues for determination to wit:

- (1) Whether the Applicant have disclosed any reasonable cause of action.**
- (2) Whether the Fundamental Right of a citizen as contained in the constitution of the Federal Republic of Nigeria out weights threat to the National Security of the State.**
- (3) Whether the Applicant's application has given reasonable grounds for his bail and whether same is deserving of the Court's gracious discretion in granting bail to the Applicant in the circumstance.**
- (4) Whether the Fundamental Human Rights as provided for under the constitution of the Federal Republic of Nigeria (1999) as amended are absolute and cannot be derogated?**

Learned Counsel argued the above issues citing relevant cases in urging the Court to dismiss the Applicant's application.

The Applicant in reacting to the Notice of Preliminary Objection filed by the Respondent, filed a 6-paragraph counter affidavit. In the said counter affidavit, the Applicant maintained that, the Respondent is a juristic person contrary to the contention of the Respondent.

Generally, the law is trite that the infringement of a Fundamental Right is largely a question of fact and an Applicant

alleging that his fundamental right has been, is being or is to likely to be contravened must present facts disclosing same. That is to say an Applicant who approaches the Court for enforcement of his Fundamental Right is obliged to demonstrate the infringement of his fundamental rights. ***COMMISSIONER OF POLICE KADUNA STATE COMMAND & ANOR VS. LADAN(2009) LPELR 49456 (CA).***

Before delving into the main case, it is important to resolve the issue of the jurisdiction of this Hon. Court as challenged in the Notice of Preliminary Objection filed by the Respondent.

The law is that for a suit to be competent for adjudication by a Court of law, there must be at least a competent Plaintiff and a competent Defendant, in the sense that both are juristic persons who can sue and be sued. Where the existing plaintiff or Defendant lacks competence, it will render the action incompetent thereby robbing the Court of the requisite jurisdiction to entertain the action. See ***AWOYE VS. OBASANJO (2006) ALL FWLR (PT. 334) 1967.***

Indeed, the law is trite that the name of a competent party to a suit must be the real name by which he is known in the case of a natural person, and its corporate name in the case of a non-natural legal personality. See ***SHELL PETROLEUM DEV. COMPANY & ANOR VS. DANIEL PESSU (2014) LPELR 23325.***

I must observe here that a misnomer occurs where the appropriate party is brought to Court but the processes reflects a wrong name of the appropriate party. A misnomer can be said to be a mistake in name that is giving an incorrect name to a person in the writ of summons. It occurs when a mistake is made as to the name of a person who sues or is sued or when an action is brought by or against the wrong name of a person. A misnomer occurs when the correct person is brought to Court but in a wrong name.

A misnomer occurs where a person clothed with juristic personality sue or is sued but there is a mistake in stating the correct name of the party. See ***JUMAL RUBBER PRODUCING CO. LTD VS. GOVT. OF CROSS RIVER STATE & ANOR (2024) LPELR 61972 (CA)***.

It is not in doubt that in the present suit, a competent and identified party is before me but in an incorrect name by way of mis-description or mistake in the description of its name in the initiating processes of the case. I shall therefore, treat same as misnomer and dismiss the notice of Preliminary Objection filed by the Respondent. Consequently, same is hereby dismissed.

I shall now consider the main application having dismissed the Notice of Preliminary Objection.

It is important to further set out the provisions relied on by the Applicant. Section 34(1) (a) provides

**“Every individual is entitled to respect for the dignity of his person, and accordingly, (a) no person shall be subject to torture or to inhuman or degrading treatment.**

Whereas section 35(1) (a) provides:

**“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. (a) in execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty.**

**Section 46(1) states “any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.”**

I must state here, that the Applicant’s main contention has to do with his arrest and detention by the Respondent without bail. On whether same is legal or not, I shall resolve same shortly considering the fact that every Nigerian citizen is entitled to his God’s given natural right, free from incarceration, save in accordance with all the fundamental laws of the land, that is, the constitution of the Federal Republic of Nigeria and other relevant legislation which are not inconsistent with the former.

***ADAMS VS. A. G. FEDERATION (2006) 44 WRN 46@ 56.***

However, recourse must be made also to the relevant laws empowering the Respondent to carry out their functions, so as to ensure the safety of the society. The Respondent been a secret state Police are also empowered under section 4 of the Police Act Cap. 359 LFN (1990) to make an arrest. For avoidance of doubt, the section provides

**“the Police shall be employed for the prevention and detection of crime, the apprehension of offender, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this Act.**

Further, section 24(1) of the same Act empowers them to arrest without a warrant any person whom, they find committing any felony, misdemeanor or simple offence or whom they reasonably suspect of having committed or being about to commit any breach of the peace.

Thus, the law is trite and clear through plethora of cases and authorities that the Respondent have the powers to arrest any citizen in line with their Responsibilities as law enforcement officer, however the arrest and detention must be subject to the provision of the law regulating arrest and detention.

It is the contention of the Applicant that, he was arrested since the 19/10/2024 when he was invited alongside his Counsel to collect his car which was abandoned by his friend. And that he

was arrested for the offence of one chance which was allegedly committed by his friend that abandoned the said car.

Whereas the Respondent counter the said narration by the Applicant and stated the Applicant was arrested at the office of the Respondent after an identification parade with the rescued victim of a kidnap case within the FCT, Abuja.

That the Respondent conducted an identification parade at its facility in accordance with established legal protocols, the victim of the kidnapping who had been previously held hostage identified the Applicant as one of her attackers.

The Respondent further stated that the detention of the Applicant is lawful as the Respondent had already obtained an order of the Court to detain the Applicant.

However, this grave allegation by the Respondent were not controverted by the Applicant by filing further affidavit. The law is where facts deposed to in an affidavit have not been controverted such fact must be taken as true except they are moonshine. ***ELIZABETH MABAMIJE VS. HANS WOLFGANG OTTO (2016) LPELR 26058 (SC).***

Going by the laid down authorities and upon the position earlier canvassed herein, the Court is duty bound to accept such uncontroverted evidence as the correct version of events and act upon it.

The question is, what is the name of the Applicant's friend who abandoned the car? Where does the Applicant's friend that abandoned the car resides? Why did the Applicant who claim he is a commercial driver gave his car to his unnamed friend?

The action of the Applicant calls for concern. The procedure for the enforcement of fundamental human right certainly is not an outlet for a suspect to claim innocence and seek protection after committing crime. It is a procedure opened to frank and upright people whose inalienable right would have been or about to be infringed upon by the very people who have the power to protect such right or other person who wield other unauthorized powers.

It is instructive to state here that, the fundamental right as provided in the constitution is qualified and not absolute. Section 35(4) of the 1999 Constitution indeed, inference of arrest and detention is not sufficient in action for enforcement of fundamental rights. See *EZEADUKWA VS. MADUKA (1997) 8 NWLR PT. 578 Pg. 635 Ratio 7*.

A closer look at and consideration of the Respondent's counter affidavit says a lot. The Court shall not grant protection to people to shield them from persecution, even though such investigation shall be done within the ambit of the law as I stated earlier. Now that the Respondent have exhibited Court order from Magistrate Court Zone 6 before the Court empowering them to detain the Applicant in compliance with law. I shall refuse relief 1, 2, 4, 5 and 6 sought by the Applicant in this case.

However, with respect to relief 3, I hereby make an order directing the Respondent to charge the Applicant to Court within one week of this Order granted and/or grant him an administrative bail to a reasonable surety who shall produce him whenever needed.

**SIGNED:**  
**HON. JUDGE**  
**15/01/2025.**

**APPEARANCE:**

*M . S. Dukas, Esq, with Esther Linus, Esq, for the Applicant*

*Suwaid Ododo, Esq, with A. A. Akoma, Esq, for the Respondent*