

**IN THE HIGH COURT OF THE 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/5110/2024
DELIVERED ON THE 02/12/2025**

BETWEEN:

1. AKUMBA BARNABAS TERHEMEN }APPLICANTS
2. SAMUEL UHENDAN }

AND

1. DANIEL DENEN ORACHIHI }
2. NIGERIAN POLICE FORCE }RESPONDENTS
3. THE DIVISIONAL POLICE OFFICER KUJE }
4. THE ASSISTANT COMMISSIONER OF POLICE CID FCT }

JUDGMENT

The Applicants herein allege that the 1st and 2nd Applicants are family friends and that the 2nd Applicant in this application served as agent to the 1st Applicant and the representative due to the nature of his work. That he purchased a Plot of land in Kuje Area Council, fenced the land but the 1st Respondent mounted a gate on the fence he already built with the help of the 1st Applicant.

That base on the above, a case of criminal trespass was filed at the police station in Kuje, and a man came and identified himself as the person who mounted the gate and under took in writing to remove the already

mounted gate but should be given two weeks to remove same. But the man fail to do so at the expiration of the two weeks and that he returned to the police station since he cannot take laws into his hands and the 2nd Respondent through the DCO, Kuje police station directed that the 2nd Applicant who was representing him should go and remove the gate and bring to the police station and same was done.

That the 1st Respondent filed a petition at the FCT Command of the Nigeria Police for the offence of criminal trespass, mischief, intimidation, theft and criminal conspiracy against the Applicants. That without investigation the Nigerian Police locked him up for two days before he was granted bail.

The Applicants brought this action for the enforcement of their fundamental right against the Respondents and sought for the following reliefs:

1. *A **declaration** that the detention of the 2nd Applicant by men and officers of the 2nd Respondent on the 4th day of November 2024 purely on the facts as contained in the petition filed by the 1st Respondent without first hearing from both the 2nd Applicant and the 1st Respondent (Daniel Denen Orachihi) is illegal and unconstitutional as it violates the Applicant's rights to personal liberty, fair hearing and freedom of movement as enshrined in Section 35, 36, and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*
2. *A **Declaration** that, the act of the 2nd Respondent in the process of deciding the act of criminal trespass, directing and insisting that the Applicants must first restore the gate to the plot in issue without first deciding title is unconstitutional and it violates the Applicants right to fair hearing as contained in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

3. *An order of this Honourable Court Declaring that, the offence of trespass to land when title of such land is in contention between the parties is a civil matter and be treated as such. The act of the 2nd Respondent refusing to let go the matter even the 1st Applicant filed an action in the High Court for declaration of title, amounts to the infringement of the right of the Applicants to personal liberty and fair hearing.*
4. *An order awarding the Applicants the sum of ₦20,000,000.00 (Twenty Million Naira) only as general damages for the continual harassment of the Applicants and the unlawful detention of the 2nd Applicant.*
5. *An order restraining the Respondent from further harassing and detaining the Applicants on the offence which is a pure civil matter.*
6. *Such further orders or other orders as this Honourable Court may deem fit to make in the circumstances.*

The application is supported by grounds upon which it was brought, statement in support and affidavit in support of the said application deposed to by both the 1st and 2nd Applicants separately.

As introduced in the preceding part of this judgment, the subject matter of this case was that after the purchased of the plot by the Applicant, it was fenced but the 1st Respondent mounted gate on the fence. That a petition was filed before the 2nd & 3rd Respondents.

That while the case was pending before the 2nd and 3rd Respondents, a man came and told the 2nd and 3rd Respondents that, he was the one that mounted the gate and undertakes to remove same within two weeks. The said undertaken was annexed as **Exhibit 'A'**.

That when the man refused to honoured his undertaken, the Applicant approached the 2nd and 3rd Respondents who ask the Applicant to

remove the gate and same was done and taken to the police station. That it was after all these that the 1st Respondent appeared and wrote a petition to FCT Command of Nigeria Police and the Applicant was detained for two days before granting him bail.

That to the Applicant surprised, the 2nd and 3rd Respondents alleged that they acted on their own. And that he filed a suit before the FCT High Court for declaration of title since the 2nd Respondent is more interested in giving title to the 1st Respondent before commencing investigation in the main petition. And that it will be in the interest of justice to grant this application.

Similarly, the 2nd Applicant deposed to affidavit wherein the 2nd Applicant corroborated the affidavit of the 1st Applicant.

A written address was filed wherein; a sole issue was formulated for determination to wit:

“whether the arrest and detention of the Applicant for 3 days the mental torture for the offence as alleged by the 1st and 2nd Respondent is legal and compliance with the Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Administration of Criminal Justice Act 2015”

Learned counsel argued the above issue succinctly citing relevant authority and case laws on urging the court to grant this application.

Reacting to the application, the 1st Respondent filed a counter affidavit of 31 paragraphs deposed to by 1st Respondent himself.

It is the deposition of the Applicant that he made complain of malicious damage of property against the 1st Applicant at the office of the 3rd Respondent and he was invited and that the Applicant were never detained as alleged.

That he has been in exclusive possession of the subject matter for over six years. And that the 2nd and 3rd Respondents denied ever asking the Applicant to remove the gate. And that he is not aware of any agreement entered with the Applicant to remove the gate and that he does not have any relationship with the said person.

A written address was filed, wherein two issues were formulated for determination to wit;

- (1) Whether from the facts deposed to in the statement of facts and the affidavits in support of the Applicant application, the 1st Respondent could be held liable for merely reporting informing to the 2nd, 3rd and 4th Respondents to investigate the alleged act of malicious damages committed on his landed property.**
- (2) Whether the Applicants are entitled to the reliefs sought in that application against the 1st Respondent.**

Learned counsel argued the above issues succinctly in urging the court to dismiss this suit in the interest of justice.

On the part of the 2nd, 3rd and 4th Respondents, a counter affidavit of 28 paragraphs was filed, deposed to by one Philip Tumba, a serving police officer attached to legal section of the FCT Police Command.

It is the deposition of the 2nd, 3rd and 4th Respondents that the 1st Respondent filed a complaint against the Applicant for criminal trespass, mischief, intimidation, theft and criminal conspiracy and the officers of the 2nd Respondent swung into action and the 2nd Applicant was invited for interview and was not detained.

That 3rd Respondent is not aware of any of the report of trespass and the purported undertaking allegedly made at the office of the 3rd Respondent.

That both the 1st and 2nd Applicants were only invited and were never detained.

A written address was filed wherein, the issue *whether upon a proper consideration and evaluation of the depositions in the affidavit in support and the counter affidavit, the Applicant is entitled to the reliefs sought* was formulated for determination.

Learned counsel argued the above issue citing relevant case laws and statute in urging the court to the dismiss this suit.

Generally, the law is trite that 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 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 rights. See **COMMISSIONER OF POLICE KADUNA STATE COMMAND & ANOR (2009) LPELR 49456 (CA)**.

It is important to further set out the provisions relied upon 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 36(1)

in the determination of his civil rights and obligations, including any question or determination by or against any government or authority a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence or impartiality.

Whilst Section 41(6) 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.”

The Applicants grouse before me has to do with the alleged arrest and detention for two days by the 2nd, 3rd and 4th Respondents on the report made by the 1st Respondent.

Generally, it is the duty of all citizens of this country, to report cases of commission of criminal to the police for their investigation and what happens after such report is entirely the responsibility of the police, the citizen cannot be held liable for doing their civil duty unless it is shown to be done *malafide*. See *FAJEMIROKUN VS. COMMERCIAL BANK (Credit Lyonnais) NIG. LTD & ANOR (2009) 5 NWLR (Pt. 1135) Pg. 558 at 600.*

It suffices here to look at the provision of section 4 of the Police Act, Cap 359 LFN 1990 which provides thus;

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 outside Nigeria as may be required of them by or under the authority of this Act.

Further Section 24 (1)(a) 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 he reasonably suspects of having committed or being about to commit any breach of peace. Thus, the law is trite and clear through plethora of cases and authorities that the 2nd, 3rd and 4th Respondents have the powers to arrest any citizen in line with their responsibilities as law enforcement officers. However, the arrest and detention must be subject to the provision of the law regulating arrest and detention.

It is instructive to state here that the requirements for proof of infringements of fundamental rights are predicated on issues of facts, it is therefore, the facts of a case as deposed to in the processes filed that are scrutinized and evaluated to ascertain if the fundamental rights of the Applicant were infringed or not. See *KUMO & ANOR VS. EFCC & ANOR (2023) LPELR 60496 (CA)*.

The law remains that whoever asserts the existence of a facts bears the burden of proving the existence. Sections 131, 132, 133 and 138 of the Evidence Act, 2011 is instructive here.

The Applicants alleged their wrongful arrest and detention by the 2nd, 3rd and 4th Respondents, the allegation the Respondents vehemently denied. Apart from the paragraph of the affidavit, which the Respondents denied, there is no scintilla of evidence placed before this Hon. Court showing any form of breach of the Applicant's right as alleged or any evidence of the infringement of the right under Chapter IV of the Constitution. The Applicants merely asserted that he was

detained without more, there is no further facts to substantiate his claim as to who took him on bail, the bail bond and the name of the surety.

It is trite that it is unlawful to arrest a person until there is sufficient evidence to charge and caution him and that it is unconstitutional to arrest a person pending investigation. In other words, it is unlawful to arrest a person when investigation of the alleged crime is still on and that there is no prima facie evidence that the suspect has committed the offence or reasonable suspicion that he has done so. Arrest and detention before investigation is unconstitutional. See *MANGAI VS. CP LATEAU STATE & ORS (2021)*.

The court would not hastily interfere with the statutory powers of law enforcement agencies in the exercise of their statutory right to investigate alleged offences and detain, where necessary, for purposes of that investigation. The attitude of the court is to deal with each case of arrest and detention on its merit when it occurs and comes before the court. See *DAWAN VS. EFCC (2020) 5 NWLR (Pt. 1717) 226 CA*.

The subject matter of this case was that the 1st Applicant after he purchased the plot of land, fenced the land and the 1st Respondent mounted gate on the fence already built by the Applicants. The Applicant alleged that it filed a report before the Kuje Police Station and a man came and identified himself as the person who mounted the gate and undertook to remove same in two weeks. That the failure of the said person to stick to his undertaken, he was asked by the D.C.O of Kuje Police Station to remove the gate. This permission granted by the D.C.O to the Applicant was never tendered by the Applicants among the Exhibits.

Similarly, the undertaken written by the said man, Sunday Oganyi was not done on the police statement form.

The law is trite that he who alleges must prove and the onus of proof is on the person who would lose if no evidence is adduced. See *AZOR & ANOR VS. OKILE & ANOR (2020) LPELR 50626*.

From the evidence before me, this action falls short of matter under the fundamental right enforcement procedure Rules, 2009. Consequently, same is hereby dismissed.

SIGNED:
HON.JUDGE
02/12/2025

APPEARANCE:

I. B. Jimin, Esq, for the Applicants

Godspower Eroga, Esq, for the 1st Respondent

Mimi Ayua, Esq, for the 2nd to 4th Respondents