IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 57 KUJE ABUJA
THIS 9TH DAY OF JULY 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni

SUIT NO. FCT/HC/M/4942/2025

BETWEEN

MRS. ESTHER EGBOM……APPLICANT

AND

1. FEDERAL REPUBLIC OF NIGERIA)
2. STATE SECURITY SERVICES)……..RESPONDENTS

REPRESENTATION
K. C. Obi Esq, for the Applicant.

JUDGMENT

INTRODUCTION

The Applicant by Motion on Notice dated and filed on the 10th of June 2025, and brought pursuant to Order 44 Rules 1, 2, 3, 4, 6 and 7 of the FCT High Court (Civil Procedure) Rules, 2025, Section 59 (1) of the Administration of Criminal Justice Act 2015, and Order IV Rule 4 of the Fundamental Rights Enforcement Procedure Rules 2009, and the inherent jurisdiction of the Court, seeks the following reliefs:

1. An order of the Honourable Court directing the Respondents to produce the Applicant in Court for the purpose of her release from detention or in the alternative an order directing she be charged to (sic) Court immediately.
2. An order of Court declaring the arrest and continue (sic) detention of the applicant since 12th day of February 2025 to date by Respondents at the 2nd Respondent (sic) head office in Abuja without a valid Court order and or reasonable suspicious (sic) of having committed any crime, illegal, unconstitutional and violation of her right to personal liberty and freedom of movement guaranteed under Section 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 as

amended, as well as Article 5, 6, and 7 of the African Charter on Human and Peoples' Right and the universal declaration of human rights respectively.

3. An order of Court directing the Respondents to release the Applicant forthwith.
4. An order of Court awarding the Applicant the sum of N100,000,000.00 (One Hundred Million Naira) as damages for the breach of her fundamental human rights.
5. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances of the case.

The Applicant also filed an accompanying Statement stating the grounds for the application; a 7-paragraph affidavit deposed to by the Applicant's daughter; and a Written Address.

The 1st and 2nd Respondents were served with the Motion on Notice on the 17th of June 2025. The 1st Respondent did not file any processes, while the 2nd Respondent filed a counter affidavit with a written address on the 23rd of June 2025.

CASE OF THE PARTIES

The Applicant's case is that the Applicant runs a prayer ministry at her compound at No. 8 Bonny Street, Aba, Abia State. On the 12th of February 2025 at about 1:30am while the Applicant and the deponent were sleeping, men of the State Security Service and the Nigeria Army forced their door open, ordered them to lie down, collected their phones including two that belonged to a man who had come for prayers and had run away at the noise of the commotion. The Applicant and another woman that came with the man who ran away were arrested and taken to the State Security Service's office in Abuja where she has remained detained since 12th of February 2025. The Applicant was beaten and she bled profusely from her mouth. The Applicant was not taken before any court, was refused bail and refused access to her relatives and her lawyer who had written a letter to the 2nd Respondent for access to the Applicant.

The case of the 2nd Respondent, on the other hand, is that the Applicant and another person were arrested on 12th February 2025 by the Tactical Team of Abia State Command of the 2nd Respondent on reasonable suspicion of

involvement in the activities of the Indigenous People of Biafra (IPOB) and Eastern Security Network (ESN) terrorist group. The 2nd Respondent promptly approached the Magistrate's Court of Abia State for a detention order issued on the 12th of February 2025. That the Applicant who operates a clandestine herbalist network disguised as a church, is a member of IPOB/ESN terrorist group and provides spiritual fortification for the group. That the Applicant was harbouring and concealing information to law enforcement agency of a notorious IPOB/ESN commander, Osonwa Ifeanyi, the man who got away. That the 2nd Respondent did not beat the Applicant. The Applicant was transferred from Abia State Command to the National Headquarters of the 2nd Respondent in Abuja for detailed investigation. The 2nd Respondent obtained on the 20th of March 2025 an order from the chief magistrate's court of the Federal Capital Territory to detain the Applicant for fourteen days pending conclusion of investigation. Investigation assumed wider dimension that required time and expertise, the 2nd Respondent obtained another order from the Federal High Court, Abuja Division on the 11th of April 2025 to detain the Applicant for sixty days. Upon conclusion of investigation, the 2nd Respondent complied with the directive of the National Security Adviser (NSA) on terrorism related cases and on the 28th May 2025 transferred the Applicant to the Military Detention Facility, Wawa, and the case file forwarded to the office of the Attorney General of the Federation for prosecution. The letter from the Applicant's lawyer for access was never received by the 2nd Respondent, so request for access from the Applicant's relatives or lawyer was never received. That the Applicant is no longer in the custody of the 2nd Respondent. That the activities of the Applicant constitute potent threat to national security and corporate existence of Nigeria.

SUBMISSION OF PARTIES

The Applicant raised three issues for determination, namely:

1. Whether the arrest and continue (sic) detention of the Applicant by (sic) Respondents from 12th day of February 2025 till date does not violate her fundamental right as enshrine (sic) in the Constitution.
2. Whether this Honourable Court can order immediate release of the Applicant or grant bail to the Applicant.
3. Whether the Applicants are (sic) entitle (sic) to an award of damages for unlawful continue (sic) detention of the Applicants (sic).

P.A.N Ejiofor Esq. orally raised a preliminary objection to the counter affidavit of the 2nd Respondent on the ground that it was filed outside the prescribed period without leave of Court. He therefore asks that the same be struck out.

Mr. Danlami for the 2nd Respondent tersely responded that the 2nd Respondent's counter affidavit was filed on the 23rd day of June 2025.

I shall determine this preliminary issue in due course.

For now, on the first issue, learned counsel to the Applicant submits that the rights to personal liberty, freedom of movement, freedom from inhuman and degrading treatment, and right to fair hearing are guaranteed under Ss.34, 35 and 36 of the 1999 Constitution, and Articles 1, 3, 5 and 9 of the Universal Declaration of Human and People's Rights, and Articles 5, 6, and 7(b) of the African Charter on Human Peoples Rights (sic).

That pursuant to S.36 of the 1999 Constitution, the Applicants rights have been breached and is being breached by her arrest and continued detention by the Respondents. That the onus to justify the lawfulness of the arrest and detention rests on the Respondents, citing in support EKPU v. AG FED (1998) 1 HRLRA, 311, at 418-419 B-A; IYERE v. DURU (1986) 5 NWLR Pt.44, 665; JIMOH v. AG FED (1998) 1 HRLRA, 513, at 528 A.

Learned counsel further submits that the provisions of law earlier mentioned provide that no person shall be subjected to torture or inhuman and degrading treatment, which automatically occurs when a person's liberty is denied. Counsel cites in support EKPO v. AG FED, supra, at p.421 A; GUSAN & ORS v. UMEZURUIKE (2012) LPELR-8000 (CA); EJIOFOR v. OKEKE (2000) 7 NWLR Pt.665; and AGBAKOBA v. SSS (1994) 6 NWLR Pt.351, 45.

On the second issue, learned counsel submits that this court has the authority to release the applicant or grant her bail pursuant to Order 44 rules 1 to 7 of the FCT High Court Rules, and also as held in DR. TUNJI ABAYOMI v. STATE SECURITY SERVICE (1998) 1 HRLRA 640; and DR. BEKO RANSOME KUTI v. STATE SECURITY SERVICE (1998) 1 HRLRA 626. That the detention of the Applicant since the 12th of February 2025 exceeds the maximum period of 48 hours permitted by law.

Learned counsel further submits, and I quote ***"My Lord, from the facts as deposed, it seems that one can safely come to the conclusion that the applicants are in this precarious condition because she are (sic) of Igbo extraction."***

On the third issue, learned counsel submits that by virtue of S.36 (6) of the 1999 Constitution, any person unlawfully arrested or detained is entitled to compensation and public apology from the appropriate authority or person. Counsel cites JIM-JAJA v. COP RIVERS STATE (2013) 22 WRN 39, at p.56; OZIDE & ORS v. EWUZIE & ORS (2015) LPELR-24482 (CA); GUSAN & ORS v. UMEZURUIKE, supra; JIMOH v. AG FED (1998) 1 HRLRA, 5; EKPU v. AG FED, supra; ABIOLA v. ABACHA (1998) 1 HRLRA, p.447; and AGU v. OKPOKO (2009) LPELR.

The 2nd Respondent on their part formulated two issues, namely:

1. Whether from the circumstances of this case the fundamental human rights of the Applicant was breached by the 2nd Respondent.
2. Whether the Applicant's originating processes disclosed any cause of action against the 2nd Respondent.

A.M Danlami Esq. submits on issue number one that fundamental human rights are not absolute as it permits of several exceptions under S.35 (1) of the 1999 Constitution, with judicial support by the case of DOKUBO ASARI v. FRN (2009) NSC QLR Pt.II Vol.37, 1146 at 1158. That the 2nd Respondent was established by the National Security Agencies (NSA) Act, Cap. N74 Laws of the Federation of Nigeria 2004; S.6 of which Instrument SSS 1 of 1999 was made, gives authority to the SSS for the prevention and detection of any crime against the internal security of Nigeria. That on the basis of these laws the 2nd Respondent arrested the Applicant upon reasonable suspicions of involvement in terrorism and obtained court orders to detain the Applicant pending conclusion of investigation. The case of ONAH v. OKENWA & ORS (2010) LPELR-4781 (CA) was cited to the effect that once an allegation is made against a person, it is the duty of security and law enforcement agencies to investigate such allegations.

On issue number two, learned counsel submits that from the facts and circumstances of this case, the Applicant has not disclosed a cause of action against the 2nd Respondent citing UBN v. UMEODUAGU (2004) LPELR-3395

(SC); FRED EGBE v. THE HON JUSTICE J.A ADEFARASIN (1987) LPELR 1032 (SC).

Learned counsel submits further that existence of a cause of action is indispensable to the competence of any suit, and cited ONUEKWUSI & ORS v. THE REGISTERED TRUSTEES OF THE CHRIST METHODIST ZION CHURCH (2011) LPELR-2702 (SC). Counsel submits finally that as the Applicant has failed to establish a cause of action against the 2nd Respondent, the proper order to make by the court is a striking out of the matter, on the authority of VERAIAM HOLDINGS LTD v. GALBA KTS & ANOR (2014) LPELR 22671 (CA) p.13 C-D; and DURU v. NWAGWU (2006) ALL FWLR Pt.334, 1830.

DECISION

Dealing first with the preliminary objection regarding late filing of the 2nd respondent's counter affidavit, I refer to Order II rule 6 of the Fundamental Rights (Enforcement Procedure) Rules 2009, and S.15 of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990, in aid of determining the issue.

Order II rule 6 FREPR provides that: "***Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit***."

Section 15 (4) and (5) provide that:

"(4) Where by an enactment any act is authorised or required to be done within a particular period which does not exceed six days, holidays shall be left out of account in computing the period.

(5) In this section "holiday" means a day which is a Sunday or a public holiday."

Furthermore S.15 (2) (a) provides that ***"A reference in an enactment to a period of days shall be construed – (a) where the period is reckoned from a particular event, as excluding the day on which the event occurs."***

The 1st and 2nd Respondents were served with the Motion on Notice on the 17th of June 2025. The 2nd Respondent filed a counter affidavit with a written address on the 23rd of June 2025.

Between the 17th of June and 23rd June 2025, there was a Sunday on the 22nd of June. Therefore, if the time was computed from the 18th of June to the 23rd of June 2025, that would be five days.

I therefore find and hold that the 2nd Respondent's counter affidavit was filed within time.

Now, to the determination of the main issues. To cut to the chase, there are two distinct but inexorably linked acts of the Respondents challenged by the Applicant. These are that on the one hand the arrest of the Applicant is unlawful, and on the other that the continued detention since 12th February 2025 till the present moment is equally unlawful. For purposes of clarity and ease of reference I shall consider these one after the other.

The Applicant was arrested on the 12th of February 2025 by the 2nd Respondent on the allegation of involvement in the unlawful activities of the Indegenous People of Biafra (IPOB) and the Eastern Security Network (ESN) terrorist group.

S.35 (1) of the 1999 Constitution provides that: ***"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;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of a person suffering from infections or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence."

A person can therefore only be arrested under any of the circumstances stated above. However, of all the exceptions stated, what seems applicable to the present case from the facts established is paragraph (c) of S.35 (1).

The 2nd Respondent has averred and submitted that the Applicant was arrested on the reasonable suspicion of involvement in terrorism and was therefore lawfully arrested.

It is trite that when an applicant proves that he was arrested, the onus of proving lawfulness of the arrest rests on the party effecting the arrest.

It would seem clear from the facts of this case, particularly the presumption of regularity in the previous court proceedings as contained in exhibits "SS1," "SS2," and "SS3" that the lawfulness of the Applicant's arrest has been established, and I so hold.

To the question whether the continued detention of the Applicant since the 12th of February 2025 is lawful, I refer to the qualifying provisions of S.35 (4) and (5) of the 1999 Constitution which provide that:

"(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, and if he is not tried within a period of –

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail, or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(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."

As it is not in contention that the Applicant is in custody, S.35 (4) (a) would therefore appear applicable to the circumstances of this case.

I refer furthermore to S.66 (1) of the Terrorism (Prevention and Prohibition) Act 2022 which provides that ***"Notwithstanding provisions in any other law, the Court may, pursuant to an ex-parte application, grant an order for the detention of a suspect under this Act for a period not more than 60 days, subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with provided that in the case of renewal, the relevant agency shall involve the Attorney-General."***

Interpreting the effect or legal status of this provision, the Supreme Court in the case of **AMINU SADIQ OGWUCHE v. FEDERAL REPUBLIC OF NIGERIA (2021) 6 NWLR Pt.1773, 540** at p.560 G-H held that ***"... the provision in section 27 (1) of the Terrorism (Prevention Amendment) Act 2013, which empowers the trial court to remand a person reasonably suspected of committing terrorist offences pending conclusion of prosecution or trial of the case, cannot be said to be contrary to section 35 (4) of the Constitution of the Federal Republic of Nigeria..."***

Now, applying the above provisions to the instant case, on the 12th of February 2025 men of the State Security Service arrested the Applicant and another person at her home in Aba on reasonable suspicion of involvement in the activities of the Indegenous People of Biafra (IPOB) and Eastern Security Network (ESN) terrorist group. On the same date the 2nd Respondent procured a detention order for an indeterminable number of days by the Chief Magistrate J.O Rex Chikezie (Mrs) of the magistrate's court of Abia State. The 2nd respondent thereafter took the Applicant to the State Security Service's office in Abuja where another remand order was obtained from the Chief Magistrate's Court, FCT on the 20th of March 2025 for an additional 14 days at the expiration of which the Applicant was to be

arraigned before a court of competent jurisdiction. Eight days after on the 28th of March 2025 the 2nd Respondent filed another request for remand at the Federal High Court, Abuja, which was heard and granted on the 11th day of April 2025. The remand order was to lapse at the expiration of 60 days from the date of the order, that is 10th of June 2025, pending the conclusion of investigation.

On the 28th of May 2025, the 2nd Respondent complied with the directive of the National Security Adviser (NSA) on terrorism related cases by transferring the Applicant to the Military Detention Facility, Wawa. The case file was also forwarded to the office of the Attorney General of the Federation for prosecution. The rationale for the detention of the Applicant is that her involvement in terrorism activities constitutes potent threat to national security and corporate existence of Nigeria.

One fact that is apparent is that from the 10th of June 2025, the 2nd Respondent lacked any legal authority to keep the Applicant in continued detention. It would seem therefore that the purpose for the remand order and the conditions under which it was obtained are now disregarded by the Respondents. It is unconscionable to rely on the powers of the law to arrest and detain another and then jettison that same law in flagrant disobedience of the extent to which the power can be lawfully applied. Such conduct should not be condoned or encouraged in any society governed by the rule of law.

As much as terrorism activates primeval fear and spurs in every rational human being the instinctive need to protect the society from harm by rendering impotent the source of threat, it remains unarguable that allegation, no matter how strong, without more remains an allegation. This is because every suspect is presumed innocent until proven guilty. Invariably, the gravity of allegation of any offence committed does not correspondingly determine the degree of presumption of innocence under our laws; presumption of innocence is absolute.

Regardless of the rationale that the Applicant's involvement in terrorism activities constitutes potent threat to national security and corporate existence of Nigeria, genuineness of intention can never and should not be an excuse for arbitrary exercise of power, particularly one clearly delineated by law. Such exercise is susceptible to abuse regardless of the genuineness of

belief that same is exercised in the interest and for the protection of the society. Any power exercised outside the rule of law is unconstitutional.

Furthermore, the tardiness of conducting investigation that is within the control of the Respondents should not be exploited as a measure of keeping the Applicant in perpetual custody.

However, the compelling decision of the Supreme Court in OGWUCHE v. FRN, supra, held thus at p.559-560 H-F that ***"Having agreed with the court below that the appellant was being charged with a capital offence at the trial court, it follows that by the provision of section 35(7) of the Constitution of the Federal Republic of Nigeria (1999) (as amended), section 35(4) of the same cannot apply to the case of the appellant who was arrested and detained upon reasonable suspicion of having committed an act of terrorism, a capital offence. For the avoidance of doubt, section 35(4) and of the Constitution provides:***

"35(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 and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him), be released either unconditionally or upon such conditions that are reasonably necessary to ensure that he appears for trial at a later date.

(7)Nothing in this section shall be construed-

(a) in relation to subsection of this section (4), as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b)..."

From the above provisions, it is crystal clear that although section 35(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the period to which a person suspected of having committed an offence may be detained and produced in court; that provision is however not applicable to persons suspected of having committed a capital offence by virtue of section 35 (7) (a) thereof."

Although the above decision emanated from the facts of persons already charged with offences of terrorism, the above decision extends to person

detained on suspicion of having committed a capital offence. This would seem to create a situation of unresolvable quandary.

In the case of **ABDULAZIZ MUHAMMADU NAMODA v. THE COMMISSIONER OF POLICE ZAMFARA STATE COMMAND, GUSAU & ORS. (2023) LPELR-60271 (CA)**, the Court of Appeal had the occasion of expressing at pp.9-10 G-A that ***"The vex question is, does a person arrested and detained for having committed a capital offence not entitled to be released within reasonable time under whatever circumstances? Put differently, does such a person continue to be detained in perpetuity notwithstanding the unwillingness of the detaining authority to charge him to (sic) Court of competent jurisdiction?"***

It is important to clarify that in that case, the Court observed that the Appellant therein was yet to be charged and he was not suspected of committing offences that threatened national security. While considering the effect of the Supreme Court decision in OGWUCHE v. FRN, supra, the Court of Appeal at p.10 D-G held thus ***"The rationale behind that position taken by the apex Court is found on page 556 of the report that where national security is threatened or there is a real likelihood of it being threatened, the Courts must be circumspect in handling issues of human rights of persons standing trial in such cases. It is to be borne in mind that the appellant in the instant case is yet to be charged before any Court of competent jurisdiction and the offence(s) he is being suspected of committing are not such that is threatening the national security."***

Reconciling all the foregoing, the power granted to keep the Applicant in custody in the circumstances of this case would seem to me to be amenable to two categorizations.

The first is when investigation is not concluded, S.66 (1) of the Terrorism (Prevention and Prohibition) Act 2022 (already reproduced earlier) will apply. This is however subject to the Court granting an order for the detention of a suspect for a period not more than 60 days, or renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with.

On the other hand, when formally charged before a court of competent jurisdiction the discretion to admit the suspect to bail is that of the court with guidance from the above stated positions of the law.

In the instant case, from the 10th of June 2025, the Respondents lacked any legal authority, without a valid court order, to keep the Applicant in continued detention. Similarly, the Applicant has not been formally charged before any court of competent jurisdiction.

I need to make an important observation before I close this judgment. In the course of address, learned counsel for the Applicant, P.A.N Ejiofor submitted, and I quote ***"My Lord, from the facts as deposed, it seems that one can safely come to the conclusion that the applicants are in this precarious condition because she are (sic) of Igbo extraction."***

For one, this is not supported by the facts established in this case, so there is no basis for learned counsel's supposition.

What is however more important is that counsel should be guided by propriety and decent conduct to exercise the prudence of refraining from making inflammatory statements in the prosecution of his clients' cases. Established facts supported with law and brilliant advocacy prove cases, and not provocative sentiments or psychological blackmail capable of causing, as in this case, discord among the citizens of the country. I need say no more.

In the final analysis, it is clear that the Respondents no longer have any legal authority to hold on to the Applicant, and equally could not keep her at their pleasure. In these circumstances therefore, I hereby order as follows:

1. That the Respondents shall charge the Applicant in a Court of competent jurisdiction within 42 hours of receipt of this order.

2. Otherwise, the Respondents are ordered to release the Applicant forthwith.

With respect to the Applicant's prayer for an order awarding N100,000,000 as damages, I shall refrain from making any order for award of damages for the following reasons.

It has been established that the Applicant was arrested on the reasonable suspicion of involvement in terrorism activities, and this therefore does not constitute breach of her fundamental rights.

Although it is equally established that the Applicant is being detained in clear breach of extant provisions of law, on the authority of OGWUCHE v. FRN, supra, I am not persuaded that the circumstances of this case permit of a grant of damages. The same is therefore refused.

This is the Judgment of the Court.

HON. JUSTICE O. O. BAMODU, mni
(Presiding Judge)