

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 29TH DAY OF SEPTEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO.:-FCT/HC/CV/3010/2021

BETWEEN:

HAMZA FAGU (BRUNO):.....APPLICANT

AND

- 1. INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE, FCT**
- 3. INSP. JUBRIL OLOBO OF IRT DEPT. GUZAPE**
- 4. DANJUMA USMAN :..RESPONDENTS**

Ossai Richard for the Applicant.
Ojuekwe with C.O. Elechi for the Respondents.

JUDGMENT.

The Applicant instituted this action against the Respondents for the enforcement of his fundamental rights, praying the Court for the following:

1. A declaration that the Applicant is entitled to the enjoyment of his Fundamental Right to dignity of human person, personal liberty, right to freedom of movement, right to privacy and right to acquire and own property as respectively guaranteed under Sections 33, 34, 41 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
2. A declaration that nothing whatsoever under the 1999 Constitution or the enabling Police Act empowers the Police to harass citizens or act as agent of any person or group of persons for the purpose of interfering, meddling

or obstructing civil rights and obligations of citizens and that of the Applicant.

3. A declaration that the continuous harassment, intimidation and threat to arrest the Applicant by the 3rd Respondent under the complaint of the 4th Respondent remains unlawful, ultra vires, unconstitutional and threat to enjoyment of the Applicant's fundamental rights respectively guaranteed under the 1999 Constitution (as amended).
4. An order restraining the Respondents, either by themselves, their agent, servants, privies or any other persons acting on their behalf, from harassing, arresting and detaining the Applicant in connection with the subject matter of the application.
5. An order restraining the 1st, 2nd and 3rd Respondents from handling this case between the Applicant and the 4th Respondent as they have no jurisdiction to do so.
6. And for such further order or other orders as the honourable Court may deem fit to make in this circumstances.

The case of the Applicant is that he entered into a contract with the 4th Respondent to fix kitchens, wardrobes and doors for the 4th Respondent in six flats at Guzape, Abuja, for which they agreed for the sum of N13m. The Applicant stated that the 4th Respondent, by their agreement, was required to pay him 90% of the contract sum or 100% thereof in advance in order to enable him buy the required materials to execute the job. That instead of paying the 90% lump sum, the 4th Respondent resorted to instalmental payment of various sums at various times, amounting to a total sum of N10,200,000.00. He averred that he was buying materials for the job based on the sum of money made available by the 4th Respondent and that the 4th Respondent later varied the contract by increasing the number

of doors to be installed from 58 doors to 66 doors, without any additional money. That rather than renegotiating the contract and giving the Applicant an additional N5m which he promised to give the Applicant to enable him complete the work, the 4th Respondent reported the Applicant to the Police at IRT departments, Guzape, Abuja and the Police are now threatening to arrest and detain the Applicant.

Following the filing of a counter affidavit to the application by the 4th Respondent, the Applicant filed a further affidavit wherein he averred that the 4th Respondent has been using men of the Nigerian Police and unknown men to come to his house to harass and intimidate him. That upon filing of this matter, the 4th Respondent went to the office of AIG Zone 7 and got Police men who came to the Applicant's house and arrested his brother, demanding that he produce the Applicant.

In his written address in support of the application, learned Applicant's counsel, R.N. Ossai, Esq, raised two issues for determination, namely;

1. Whether or not the Applicant's fundamental right has been violated by the Respondents?
2. Whether or not Applicant's fundamental right is worthy of being protected by this honourable Court?

Proffering arguments on issue one, learned counsel relied on Section 35 of the 1999 Constitution of the Federal Republic of Nigeria, to submit that the right to personal liberty is one of the Fundamental Rights protected under the Constitution of the Federal Republic of Nigeria, and that a citizen whose right has been breached, has unfettered access to the Courts.

He argued that the threat of arrest, constant harassment through the instrumentality of the 1st, 2nd and 3rd Respondents

at the behest of the 4th Respondent is tantamount to a breach and/or threatened breach of the Applicant's fundamental right.

Relying in Section 46(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) he submitted that where there is likelihood that the rights guaranteed by the Constitution are being threatened by any person or authority, the applicant is entitled to the protection of the Court.

He urged the Court to answer issue one in the affirmative and hold that the Applicant's fundamental right has been violated by the Respondents.

On issue two, learned counsel referred to **Chief (Mrs) Olufunmilayo Ransom-Kuti&Ors v. AGF (1985) 2 NWLR (Pt.6) 211 at 229-230** on the nature of Fundamental Rights, and reiterated his submission that where there is likelihood that the fundamental rights are being threatened by any person or authority, the applicant is entitled to the protection of the Court.

He argued that the right of the Applicant is under serious threat as his right to life is no longer guaranteed due to the action of the 1st to 3rd Respondents at the instance of the 4th Respondent.

He urged the Court to answer issue two in the affirmative and to grant all the reliefs as endorsed on the motion paper.

In opposition to the application the 4th Respondent filed a 40 paragraphs counter affidavit wherein he averred that sometimes in January, 2020, the Applicant made a representation/offer to him, that he will construct/install furniture for him in a project the 4th Respondent was working on, and that the Applicant promised to deliver timeously on his work.

The 4th Respondent averred that he agreed with the Applicant for the sum of N11,950,000.00 as full, complete and final

contract sum, out of which he advanced the sum of N10,700,000.00 to the Applicant for the purpose of starting and completing the work.

The 4th Respondent stated that despite the money advanced to the Applicant, the Applicant failed to move to site and to execute the work for which he was paid till date. That rather than heed the 4th Respondent's entreaties to have the job done or refund him his money, the Applicant resorted to threatening the life of the 4th Respondent, and that when it became clear to the 4th Respondent that both his money and his life is under serious threat of going into extinct at the instance of the Applicant, he quickly reported the matter to the police.

He stated that after he made the complaint to the officers of the 1st Respondent, the police invited the Applicant to come and give statement, and nothing more, but instead of going to the police to state his own side of the story, the next thing that the 4th Respondent saw, was that the institution of this action by the Applicant.

The 4th Respondent averred that the primary responsibility of the police is the protection of life and properties, and that no fundamental right of the Applicant is threatened in any way, as the police have not even arrested the Applicant pursuant to the 4th Respondent's complaint.

Learned 4th Respondent's counsel, U.D. Oguekwe, Esq, in his written address in support of the counter affidavit, raised 4 issues for determination, namely;

- i) Whether the 1st to 3rd Respondents have a duty to carry out investigation acted (sic) outside their statutory powers?

- ii) Whether the 4th Respondent has the right in law to make the complaint about fraud/cheating and threat to life against the Applicant?
- iii) Whether the Applicant can use the instrumentality of the state or the Court of law as an engine of fraud?
- iv) Whether the Applicant is entitled to the reliefs sought based on the facts and circumstances of this case?

Arguing issues 1-3 jointly, learned counsel relied on Sections 4 and 24 of the Police Act, to posit that the 1st, 2nd and 3rd Respondents, as police officers, are empowered by law, to carry out and perform duties, amongst which, is causing investigation to be conducted as to whether any person has committed an offence under the law.

He referred to **Fawehinmi v. IGP (2000)7 NWLR (PT.665) 481 at 528** and argued that it was in furtherance of the 1st, 2nd and 3rd Respondents' investigation of an allegation of crime that the Applicant was invited.

Learned counsel contended that the constitution of the Federal Republic of Nigeria, places a civic duty and responsibility on every citizen to render assistance to appropriate and lawful agencies in the maintenance of law and order. He posited that the basic mode of rendering assistance by citizens is by complaint or report by whatever means possible, of suspicion or actual commission of offence.

He argued that the 4th Respondent was acting within the ambit of the law in making a report to the relevant law enforcement agencies of offences committed against him and his property, and that he was thus, discharging the civic responsibility placed on him by the Nigerian State.

He referred to **Oceanic Securities International Limited v. Alh. Bashir Olaide Balogun & Ors (2013) All FWLR, P.63.**

Placing further reliance on **Basseyv. Afia (2010) All FWLR (Pt.5310) 1477**, learned counsel submitted that a person on whose report or complaint, the police proceed to arrest another, cannot be held liable for the breach of the fundamental rights of the person arrested, where the complaint discloses prima facie case.

He urged the Court to hold that the 1st – 3rd Respondents have lawfully and constitutionally acted within their statutory powers and in line with the provisions of the constitution.

Proffering arguments on issue 4, learned counsel posited that where a party's claim is for an equitable relief, he must show that he deserves the equitable relief, as he who comes to equity must come with clean hands. He argued that the Applicant's claims are not true and thus, that he does not deserve an equitable relief from this Court.

Learned counsel urged the Court to uphold the position of the law in **EFCC v. Yanaty Petrochemical (2017) 3 NWLR (Pt.1552) 171 at 204-205** on the discretionary powers of the 1st – 3rd Respondents to conduct investigations and to dismiss this application with substantial cost.

While conceding that the constitutional right to personal liberty is sacrosanct, learned counsel relied on **Ekwenugo v. Federal Republic of Nigeria (2001) 6 NWLR (Pt.708) 171 at 185**, to submit that no citizen's right is absolute.

He posited that the State, through the 1st to 3rd Respondent can temporarily restrain the liberty of a person and investigate, upon suspicion that a person has committed an offence or is about to commit an offence. He argued however, that in this instance, the Applicant has not even honoured the police invitation, where he would have the right to make his statement, and that the Applicant was never arrested, neither was he

detained, but that he rather chose to run to this Court to seek protection and cover from answering to his crimes.

He urged the Court, in conclusion, to hold that the Respondents in carrying out their statutory responsibilities, did not violate the fundamental human right of the Applicant, and to dismiss the Applicant's claims in its entirety with substantial cost.

The 1st – 3rd Respondents failed to file any counter affidavit to the Applicant's application despite service of the originating processes as well as hearing notices on them.

The question for consideration in the determination of this application is **whether the Applicant has made out a case warranting the intervention of this Court in the enforcement of his fundamental right?**

By the combined effect of Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, an action can be maintained in Court by any person on allegation that any of his fundamental rights has been, is being, or is likely to be infringed, for the enforcement of such rights. Where, from the facts relied upon in such action, a breach of the fundamental right of the Applicant is disclosed, redress is provided by the Court through the enforcement of such rights. See **Sea Trucks (Nigeria) Ltd v. PanyaAnigboro (2001) LPELR-3025 (SC).**

From the facts disclosed in the Applicant's affidavit in support of this application, it is evident that the Applicant brought this application based on the apprehension of the likelihood of the infringement of his fundamental right to personal liberty, stemming from the alleged continuous harassment and threat of arrest from the 1st to 3rd Respondents at the instance of the 4th Respondent.

It is a settled position of the law, that the fundamental human rights guaranteed by the constitution, are not absolute. They are subject to any law that is reasonably justifiable in a democratic society. See **Osawe&Ors v. Registrar of Trade Unions (1985) LPELR-2792(SC).**

In this regard, the law has given powers to the police and other law enforcement agencies to 'curtail' the citizens' right where necessary or appropriate, and such 'curtailment' cannot amount to an infringement on the rights of the citizen. See **Salihu v. Gana&Ors (2014) LPELR-23069(CA).**

It is also trite, that no Court has the power to stop the police from investigating a crime. See **A.G. Anambra State v. Chief Chris Uba (2005)15 NWLR (Pt. 947)44.**

Having stated thus, I will however, hasten to emphasize that the powers given to the police by law to investigate and prevent crime, do not constitute the police as debt recovery agency. It is an abuse of the powers of the police for the police to place their coercive powers at the disposal of the highest bidder who wishes to use such powers to settle contractual or civil disputes.

The law affords full and adequate protection to contracting parties in situations of breach of contract. A party who feels wronged in a contractual transaction, has the right to seek redress but only through the proper channel afforded by law, for where there is a wrong, the law do also afford a remedy – ubi jus, ibiremedium.

The obnoxious practice by parties to a contract to resort to a supposed short cut of using (or indeed abusing) the powers of the police to armtwist their opponents under the guise of criminal allegation of fraud and cheating, is highly reprehensible and has been deprecated by the Courts in a plethora of cases.

From the facts deposed to in the Applicant's affidavit as well as the 4th Respondent's counter affidavit, it is crystal clear that the basis of the 4th Respondent's complaint to the Police which necessitated the Police invitation to the Applicant, is an alleged breach of contract between the 4th Respondent and the Applicant herein. Rather than seeking a proper redress under a civil suit, the 4th Respondent chose to cloth his grievance in the garb of criminal complaint.

The Police clearly has no business in the dispute between the Applicant and the 4th Respondent, same being a civil/contractual transaction.

Nevertheless, in the circumstances of this case, the 1st – 3rd Respondents have not done anything other than extend invitation to the Applicant to present himself and provide answer to the allegation made against him. To this extent, no right of the Applicant has been breached by the Respondents and a mere Police invitation cannot be construed as a threatened breach of the Applicant's right. There is no such right as right against Police invitation.

From the totality of the foregoing, this Court finds that the Applicant has not entirely made out a case against the Respondents.

However, in considering the reliefs sought by the Applicant, reliefs 1, 2, 4 & 5 succeed. In respect of relief 3, the Applicant has not established by credible evidence, the incidence of "continuous harassment, intimidation and threat of arrest". Accordingly, relief 3 fails.

It is however, to be reemphasised that the police must not act ultra vires of their duties, and are barred from performing the duties of a debt collector.

Thus, judgment is entered in part for the Applicant as follows:

1. It is declared that the Applicant is entitled to the enjoyment of his Fundamental Right to dignity of human person, personal liberty, right to freedom of movement, right to privacy and right to acquire and own property as respectively guaranteed under Section 33, 34, 41 and 44 of the Constitution of Federal Republic of Nigeria, 1999 (as amended).
2. It is declared that nothing whatsoever under the 1999 Constitution or the enabling Police Act, empowers the Police to harass citizens or act as agent of any person or group of persons for the purpose of interfering, meddling or obstructing civil rights and obligations of citizens and that of the Applicant.
3. Relief 3 is dismissed, the Applicant having failed to prove incessant harassment, intimidation and threat of arrest.
4. In respect reliefs 4 and 5, order is made restraining the Respondents, their agents, servants and privies, or any other person acting on their behalves, from harassing the Applicant in connection with the subject matter of this suit which bothers on contract between the Applicant and the 4th Respondent.

HON. JUSTICE A.O. OTALUKA
29/09/2022