

**IN THE HIGH COURT OF JUSTICE**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,**

**ON FRIDAY THE**

**15<sup>TH</sup> DAY OF MARCH, 2024.**

**IN THE MATTER OF APPLICATION BY ALIYU YAKUBU FOR THE**

**ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS**

**AND**

**IN THE MATTER OF FUNDAMENTAL RIGHTS ENFORCEMENT**

**PROCEDURE RULES MADE BY THE CHIEF JUSTICE OF NIGERIA**

**PURSUANT TO SECTION 46(3) OF THE CONSTITUTION OF THE**

**FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED), ARTICLES**

**4,5,6, 12 & 14 OF THE AFRICAN CHARTER ON HUMAN & PEOPLES**

**RIGHTS (RATIFICATION AND ENFORCEMENT) ACT CAP 10 LAWS**

**OF THE FEDERATION, 2004.**

**BETWEEN:**

**SUIT NO. B/13M/2024**

**ALIYU YAKUBU ----- APPLICANT**

**AND**

**ECONOMIC AND FINANCIAL**

**CRIMES COMMISSION -----RESPONDENT**

## **JUDGMENT**

This is a judgment in respect of an application for the enforcement of Fundamental Rights brought pursuant to the provisions of *sections 35, 41 & 46 (1) & (2) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, Order 11 Rules 1, 2 & 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Articles 5, 6, 12 and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10, Laws of the Federation 2004 and under the inherent jurisdiction of the Honourable Court.*

In this application, the Applicant is seeking the following reliefs:

*(a) A Declaration that the arrest and continued detention of the Applicant by the Respondent since 17<sup>th</sup> October, 2023 without arraignment and /or trial is irregular, unlawful and unconstitutional as same brazenly offends the applicant's right to personal liberty as guaranteed by section 35 of the Constitution of the Federal Republic of Nigeria, 1999, amended;*

*(b) An Order directing the Respondent to release the Applicant from unlawful detention forthwith;*

*In the alternative to prayer (b), the Applicant is praying the Court for:*

*(c) An Order admitting the Applicant to bail unconditionally or upon such conditions as may be imposed by this Honourable Court pending his arraignment and/ or trial in a Court of competent jurisdiction; and*

*(d) N500, 000,000.00 (Five Hundred Million Naira) only as general damages for the unlawful detention of the applicant;*

*(e) Written apology by the Respondent to the Applicant; and*

*(f) Such further order (s) as this Honourable Court may deem fit to make in the circumstances.*

The application is supported by an affidavit of eighteen (18) paragraphs, and a written address of the learned counsel for the Applicant.

Succinctly put, the facts of this case are that on the 17<sup>th</sup> of October, 2023, the Respondent raided the hostel where the Applicant is residing at Ekosodin Quarters in Ugbowo, Benin City in a sting operation which led to the arrest and detention of the Applicant and about 16 others for cybercrimes and other fraud related offences.

The Applicant alleged that sequel to the arrests, the Respondent has since released the other suspects on administrative bail after obtaining their statements but they have refused to release the Applicant on bail or charge him to Court three months after his arrest. Hence the Applicant has brought this application to enforce his fundamental right to personal liberty.

Upon receipt of the Applicant's processes, the Respondent filed their Counter-Affidavit and written address of their counsel.

From their Counter-Affidavit, the Respondent's case is that in the course of carrying out their statutory duties to investigate economic and financial crimes, they received an intelligence report about the suspicious activities of some internet fraudsters operating within Ekosodin Community behind the University of Benin.

They acted upon the intelligence report and some preliminary investigations led to the arrest of the Applicant and others suspects. They alleged that the Applicant was granted bail on the same day he was arrested upon conclusion of investigation but he did not perfect the conditions of bail.

They alleged that from their investigations, a prima facie case was established against the Applicant and on the 25<sup>th</sup> day of January 2024, a 7-Count Charge was filed against the Applicant in CHARGE NO: FHC/B/7C/2024 at the Federal High Court, Benin Judicial Division. They attached the charge sheet to their Counter-Affidavit as Exhibit "EFCC 1".

They denied any violation of the Applicant's fundamental rights.

Upon receipt of the Respondent's Counter-Affidavit, the Applicant filed a Further and Better Affidavit in support of the motion and a Reply on Points of law.

In his Further and Better Affidavit, the Applicant tried to counter most of the salient facts contained in the Respondent's Counter-affidavit. They maintained that the Applicant was never granted bail by the Respondent and that it was only after the Applicant filed this application that the Respondent rushed to the Federal High Court to file the charges against him.

In his written address in support of this application, the learned counsel for the Applicant, *Augustine Tega Thompson Esq.*, formulated a sole issue for determination as follows:

***“Whether the continued detention of the Applicant by the Respondent is not a violation of his fundamental rights.”***

Arguing the sole issue for determination, the learned counsel for the Applicant submitted that the law governing the detention of persons whether for the purpose of investigation or for possible arraignment is as contained in *section 35 (1) and (5) of the 1999 Constitution of the Federal Republic of Nigeria, as amended*. He said that the summary of the provisions is that an accused person or suspect shall not be detained beyond two days or forty-eight (48) hours. He cited the case of *Akila v. Director-General, SSS (2014) 2 NWLR (Pt. 1392) 443 at 466 Paras D-F* in support of his submission.

Counsel posited that in the instant case, it is doubtless that the Applicant has been detained for well over forty –eight hours, beyond the constitutional threshold and there is no end in sight thereto. He pointed out that the Applicant has been detained for a period of three months as at the date of filing of this application for an offence that is not capital and ordinarily bailable.

He maintained that it is conclusive that the detention of the Applicant beyond the period stipulated by law and even his continued detention is a brazen infraction of the provision of the constitution and same is obviously illegal, unconstitutional, null and void. He said that this is particularly so because by the provision of *section 36(5) of the Constitution*, the Applicant is presumed innocent until proven guilty beyond reasonable doubt.

Counsel submitted that it is trite law that where a statute has prescribed or laid down the mode, method or procedure for doing any act or thing only that prescribed mode, method or procedure can be used or adopted otherwise such act or thing shall be invalid. He submitted that the same applies to the continued detention of the Applicant without regard to the provisions of the Constitution

relating to the specific period such detention can last and he cited the following cases: *Ameachi V. INEC (2008) 5 NWLR (Pt. 1080) 227 at 318 Paras C-D*; and *Chinemelu v. Commissioner of Police (1995) 4 NWLR (Pt. 390) 467*.

He submitted that by reason of the presumption of innocence in favour of the Applicant, he is entitled to his right of personal liberty pending trial or arraignment in any court of competent jurisdiction and he referred the Court to the provisions of *section 35(1), (4) & (5) and 35 (6) of the Constitution* and the case of *Ikumonihan v. State (2014) 2 NWLR (Pt. 1392) 564 at 589, paras. E-F*.

Learned counsel submitted that the Applicant is also entitled to freedom of movement within Nigeria as guaranteed by *section 41 (1) of the Constitution* and that the Respondent's conduct in detaining the Applicant indefinitely constitutes an infraction of his constitutionally guaranteed right to freedom of movement.

Counsel also referred the Court to the provisions of the *Administration of Criminal Justice Act (ACJA), 2015* (which has been domesticated by many States in the Federation with necessary modifications) as far as bail of a suspect is concerned. He said that *section 32 (1) & (2) of the Act* provides that an application for the bail of the suspect should be brought before a court by the detaining authority or agency where the offence is a non-capital offence. He maintained that the court is empowered to grant bail to the suspect in detention as in the instant case. He reproduced the provisions of *section 32 (1) & (2)* of the Act which state as follows:

*“Section 32 (1) “Where a suspect taken into custody in respect of a non-capital offence is not released on bail after 24 hours, a court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect.*

*(2)The court shall order the production of the suspect detained and inquire into the circumstances constituting the grounds of the detention and where it deems fit, admit the suspect detained to bail.”*

Furthermore, learned counsel referred the Court to the provisions of *section 158 of the same Act (ACJA)* which also provides that a suspect in the category of the Applicant shall be entitled to bail. He posited that in granting bail, which is one of the reliefs sought by the applicant, the Court should grant

the Applicant bail on very liberal terms and conditions. He said that this prayer is reinforced by *section 165 (1) of ACJA* which states that the condition for bail should not be excessive and he cited the case of *Onyirioha v. IGP (2009) 3 NWR (Pt. 1128) 342*.

He submitted that having regards to the Applicant's endless unlawful detention by the Respondent and the arguments canvassed thereon, the Applicant is entitled to compensation in the form of general damages and an apology from the Respondent. He referred to the provision of *Section 35 (6) of the Constitution*, which provides thus:

*“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person and in this subsection, “the appropriate authority or person” means an authority or person specified by law”.*

He urged the Court to hold that the Applicant has made out a case of unlawful detention against the Respondent and therefore entitled to all the reliefs sought. Finally, he cited the case of *Akpan v. FRN (2012) 1 NWLR (Pt. 1281) 403 at 421-422 paras. F-H; A-B*.

In his written address in opposition to the application, the learned counsel for the Respondent *Al-amin A. Ibrahim Esq.* formulated a sole issue for determination as follows:

*“Whether the Applicant has made out a case of infringement on his fundamental rights against the Respondent that will move this court to grant his reliefs?”*

Arguing the sole issue for determination, the learned counsel for the Respondent submitted that by virtue of *Sections 6, 7, 8(5) and 13 of the Economic and Financial Crimes Commission (Establishment) Act, 2004*, the Commission is empowered to investigate all cases of economic and financial crimes either reported to it for investigation or suspected by it to have been committed and possible prosecution where a prima facie case is established. He also referred to *Section 4 of the Police Act, Laws of the Federation of Nigeria, 2004* which he said is *in pari materia* with *Sections 6, 7, 8(5) and 13 of the Economic and Financial Crimes Commission (Establishment) Act, 2004*.

The learned counsel submitted that under the above provisions of the *EFCC Act, 2004*, the Respondent has the duty to detect crime and implicit in

that duty is the right to investigate complaints received from any person and can even commence investigation on its own. See *Ken Nwafor v EFCC (2021) LPELR (CA) 31150*.

Counsel contended that in the instant case, the Respondent has shown by their *Exhibits EFCC 1 and 2* that a prima facie case has been established against the Applicant and that the Applicant was given administrative bail the same day he was arrested.

He posited that for anybody to challenge the above statutory duties of the Respondent, the person must place before the Court all the details of the alleged infractions complained of and a mere investigation does not amount to any infraction.

He submitted that any Applicant who sets out to enforce his fundamental rights, must place before the Court all material facts to enable the court determine all the issues in controversy one way or the other. That failure of an Applicant to put forward all material facts before the Court remains fatal to the entire application as in the instant case and he relied on the following cases: *Fajemirokun v C.B Nig. Ltd (2009) 10 NWLR (pt. 1135) 588*; *OYEWOLE, SUNDAY V. ADAMU SHEHU (1995)8 N.W.L.R (Pt. 414) 484*; and *DANGTOE V. CSC PLATEAU STATE (2001)9 N.W.L.R (Pt. 717) 132*.

Counsel posited that the grouse of the Applicant is that he was arrested and was not given bail or taken to court to answer to the allegations against him. He maintained that the Applicant was granted bail on the same day he was arrested and was also charged before a court of competent Jurisdiction.

He further submitted that once there is a reasonable suspicion that a person has committed an offence, his liberty may be impaired temporarily, for the purpose of the investigation and he cited *Section 35(1)(c) CFRN 1999* and the case of *EKWENUGO V. F.R.N (2001) 6 N.W.L.R (Pt. 708) 171 at 185*.

He submitted that the Applicant's fundamental right has not been breached as alleged and he urged the Court not to grant the reliefs as prayed by the Applicant. He therefore urged the Court to dismiss this application.

Upon receipt of the Respondent's Counter-Affidavit, the Applicant filed a Further Affidavit and a Reply on Points of law.

In his Reply on Points of law, the learned counsel for the Applicant submitted that in exercising the powers vested on them by the enabling statutes, the Respondent is bound to observe due process of law and to conform with the provision of *section 35 (4) (A) and (5) of the constitution of FRN 1999* which is superior to the *EFCC and Police Acts* and which provision allows for detention of suspects for a maximum period of two days, 48 hours in order to safeguard the fundamental rights that inure to all citizens. He referred to the case of *SARAKI v. FRN (2016) LPELR-40013 (SC)* on the supremacy of the Constitution over any other law.

He submitted that where there is evidence of arrest and detention of an applicant by the Respondent, it is for the Respondent to show that the arrest and detention were lawful and he relied on the cases of *Fajemirokun v. CBCCL, (Nig) Ltd (2002) 10 NWLR (Pt. 774) 95 at 111;* and *GRONER & ANOR V. EFCC & ANOR (2014) LPELR-24466 (CA)*,

Furthermore, counsel submitted that assuming without conceding that the Respondent granted administrative bail to the Applicant on the date of arrest which he could not perfect, the fact that the suspect could not provide a surety is not a ground to keep him in detention more than the time stipulated by law. See the case of *EFCC V. ENEM UBOH (2022) LPELR 57968 (CA)*.

Learned counsel maintained that the reasons given by the Respondent for the continuous detention of the Applicant are not tenable because the Applicant was not charged with any capital offence which could have rendered the provisions of *sections 35 (4)(5) and (6) of the Constitution* applicable. He therefore reiterated that the Applicant is entitled to bail.

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the parties. The issues formulated by all the counsel are quite germane to the just determination of this application.

In the event I have condensed the issues into a sole issue for determination as follows:

***Whether the Applicant is entitled to the Reliefs claimed in this Application for the alleged breach of his fundamental rights.***

I will proceed to resolve the sole issue for determination.

Essentially, the fulcrum of this application is on the arrest and detention of the Applicant by the Respondent. Like in all civil matters, the rule is that he who alleges must prove. See: *Section 131 (1) and (2) of the Evidence Act, 2011*.

It is clear that the burden of proof lies on the Applicant in a fundamental right enforcement proceedings and it is only after the Applicant has successfully proved the existence of the facts which he allege that the burden will shift to the Respondent. See the case of *GROUP CAPTAIN BENJAMIN BATON SABIYI (RTD) v. ATTORNEY GENERAL & COMMISSIONER FOR JUSTICE, KADUNA STATE & ANOR (2022) LPELR-57019(CA)*.

When a person approaches the Court on the basis of the alleged threat or breach of his fundamental rights, he must produce reasonably sufficient and credible evidence to establish a factual breach or contravention of the alleged rights. See the case of *ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC & ORS v. LT. COL. C. AKALIRO & ORS (2021) LPELR-54212(CA)*.

In the instant case, in his supporting affidavit, the Applicant narrated how on the 17<sup>th</sup> of October, 2023, the Respondent raided the hostel where he was residing at Ekosodin Quarters in Ugbowo, Benin City in a sting operation which led to the arrest and detention of the Applicant and about 16 others for cybercrimes and other fraud related offences.

The Applicant alleged that sequel to the arrests, the Respondent has since released the other suspects on administrative bail after obtaining their statements but they have refused to release him on bail or charge him to Court three months after his arrest.

However, in their Counter-Affidavit, the Respondent denied the allegations of violations of the fundamental rights of the Applicant. The Respondent maintain that they were carrying out their statutory duties to investigate economic and financial crimes when they received intelligence report of the suspicious activities of some internet fraudsters operating within Ekosodin Community behind the University of Benin.

They acted upon the intelligence report and some preliminary investigations led to the arrest of the Applicant and others suspects. They alleged that the Applicant was granted bail on the same day he was arrested upon conclusion of investigation but he did not perfect the conditions of bail.

The Respondent alleged that from their investigations, a prima facie case was established against the Applicant and on the 25<sup>th</sup> day of January 2024, a 7-Count Charge was filed against the Applicant in CHARGE NO: FHC/B/7C/2024 at the Federal High Court, Benin Judicial Division. They attached the charge sheet to their Counter-Affidavit as Exhibit "EFCC 1".

It is settled law that the police and by extension the EFCC have a wide range of powers with regards to arrest, with the intent that such powers should be used to prevent crime and prosecute its commission.

This is why the *Economic and Financial Crimes Commission (Establishment) Act 2014*, particularly *Sections 5; 6 and 12* contains copious provisions granting the Commission powers to investigate and make arrest in certain circumstances.

In the case of *AIZEBOJE v. EFCC (2017) LPELR-42894(CA)* the Court of Appeal held thus:

***"The Respondent has the undisputable power to investigate arrest and detain any person who is suspected of the commission of any offence under the EFCC Act. Generally, the commission has all the powers of the police as bestowed by Section 41 of the EFCC Act, which provides thus: "41. Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case under this Act, shall have all the powers and immunities of a Police Officer under the Police Act and any other law conferring power on the police, or empowering and protecting law enforcement agencies."***

It is common knowledge that the police have general powers of arrest and when properly exercised on a reasonable suspicion of one having committed an offence, it cannot ground a complaint, see the following cases: *MAINSTREET BANK & ORS v. MR. OLUGBENGA STEPHEN AMOS & ANOR (2014) LPELR- 23361 (CA)*; *OKARO v. COMMISSIONER OF POLICE & ANOR (2001) 1 CHR page 407* and *MRS NGOZI CHILE OPARAOCHA & ANOR v. BARR. EMEKA A. OBICHERE & ORS (2016) LPELR-40615*.

The power of arrest is also constitutional, see *Section 35(1) (c) of the 1999 Constitution*. The right to personal liberty is not absolute but circumscribed by the same Constitution. Under the Constitution, the EFCC is empowered to arrest any person who is suspected to have committed a crime that comes under the operational area of the EFCC.

It is the law that such arrest must be exercised in good faith in the light of the fundamental nature of the rights of the Nigerian citizen. This is what is at stake here. The Court therefore has a duty to ensure that the power was exercised according to law, see **FIRST BANK OF NIGERIA PLC & ORS v. ATTORNEY GENERAL OF THE FEDERATION & ORS (2013) LPELR-20152**.

However, the burden is on the Applicant to establish that the Respondent acted unreasonably and when proved the Court would stop such arbitrary exercise of power. See the case of **OZAH v. EFCC & ORS (2017) LPELR-43386(CA)**.

Since it is settled law that the EFCC is empowered to investigate any criminal allegation of financial crime, they may take any action they deem fit to take upon investigation. They may arrest, detain and prosecute an alleged offender. In the legitimate discharge of their duties, they cannot be sued in Court for breach of Fundamental Rights. See **ATAKPA V. EBEBFOR (2015) 3 NWLR (Pt. 1447) Page 549 at 574 paragraphs F-H**.

In the instant case, the Respondent has adduced sufficient evidence to show that upon the conclusion of their investigation, they granted the Applicant bail but the Applicant is yet to fulfill the conditions for his release. The document stipulating the Conditions for Bail of the Applicant was exhibited in the Respondent's Counter-Affidavit as Exhibit "EFCC 2".

Furthermore, the Respondent has shown that upon their investigations they found that the Applicant has a prima facie case to answer and they have accordingly arraigned him before the Federal High Court on a seven count charge which they also exhibited as Exhibit "EFCC 1".

It is pertinent to note that the Applicant did not deny the fact that he has being arraigned before the Federal High Court for the offences relating to his arrest and detention.

It is settled law that where the law enforcement agents were acting within their statutory powers of arrest they cannot be said to have breached the fundamental right of a suspect who was granted bail but was unable to fulfill the conditions of bail, See the case of **HARRY ERIN & ANOR v. SALISSOU DIABAKTE (2023) LPELR-60473(CA)**.

In the instant case, I hold that the Respondent was acting within its statutory powers when they arrested and detained the Applicant. Furthermore, the Respondent cannot be said to have breached the fundamental right of the Applicant as he was granted bail upon the conclusion of their investigation. His inability to fulfill the bail conditions granted in Exhibit “EFCC 2” cannot be said to be the fault of the Respondent. See *HARRY ERIN & ANOR v. SALISSOU DIABAKTE (2023) supra*.

From the facts before me, it is apparent that the Applicant is to face his trial on a seven counts charge at the Federal High Court. In view of this salient development I think this Court lacks the jurisdiction to grant bail to the Applicant while his trial is pending before the Federal High Court in the charge which was exhibited as Exhibit “EFCC 1”. The Applicant is at liberty to apply for bail at the Federal High Court where he is facing his trial. It will be highly prejudicial for me to admit the Applicant to bail when he has been arraigned before the Court that is siesed with the jurisdiction to entertain the alleged offences.

From the foregoing, I hold that *the Applicant has failed to prove that he is entitled to the reliefs which he seeks in this application. The sole issue for determination is therefore resolved against the Applicant.*

*Consequently, this application is dismissed with N100, 000.00 (One Hundred Thousand Naira) costs in favour of the Respondent.*

*Hon. Justice P.A. Akhiero*

*JUDGE*

*15/03/2024*

**COUNSEL:**

*1. Augustine Tega Thompson Esq.....Applicant*

*2. Al-amin A.Ibrahim Esq.....Respondent*