

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
26TH DAY OF JANUARY, 2023.

BETWEEN:

SUIT NO. B/12^M/2022

***IN THE MATTER OF AN APPLICATION BY ELUWOLE PRINCE DAVID
FOR AN ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHT***

***ELUWOLE PRINCE DAVID----- APPLICANT
AND***

- | | | |
|---|---|---------------------------|
| <i>1. COMMISSIONER OF POLICE, EDO STATE</i> | } | <i>RESPONDENTS</i> |
| <i>2. O/C ANTI-PIRACY STATE CID, BENIN</i> | | |
| <i>3. DANIEL (I.P.O. ANTI-PIRACY STATE CID, BENIN)</i> | | |
| <i>4. MR. BONIFACE</i> | | |

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order 2 Rules 1 & 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009; section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria and under the inherent jurisdiction of this Honourable Court.

The Reliefs sought from this Honourable court are as contained in the motion papers.

In support of the application, the Applicant filed a 26 paragraphs affidavit and a written address of his counsel.

In the Applicant's affidavit in support of this application, the Applicant narrated the events that culminated in the filing of this application.

According to the Applicant, one of his friends by name Mr. Oghodomwangbe Jeremiah Mech who resides outside Nigeria requested him to help him purchase a duplex in Benin City.

Sometime in April, 2021 the Applicant contacted a female lawyer named A. Tanno Esq. who informed him that she had a duplex for sale in Benin. She took the Applicant to inspect the property at Urora Community where she showed him an uncompleted duplex in a plot of land measuring 94ft x 100ft.

The Applicant informed his friend overseas and he instructed him to negotiate the purchase price the said A. Tanno Esq. and they concluded the purchase price for N9,000,000.00 (Nine Million Naira) and an additional sum of Eight Hundred Thousand Naira which A. Tanno Esq demanded as her agency fee.

According to the Applicant, at the point of payment, his friend invited some of his family members like his sister, Oghodomwangbe Iyobosa Bridget and her husband, the 4th respondent to monitor the transaction. The family members allegedly visited the property to inspect it and thereafter, they proceeded to the chambers of A. Tanno Esq. where the purchase price was paid into a bank account provided by A Tanno Esq.

The said lawyer allegedly prepared a ``DEED OF TRANSFER`` on behalf of her client, the Transferor, one Mr. John Ikhide Aigbirio (who she alleged was living outside Nigeria). The Deed of Transfer was executed by the representatives of the parties in the lawyer's office.

Subsequently, when the 4th respondent and his wife applied for a Certificate of Occupancy on behalf of the owner, the status report from the EDOGIS office revealed that there is an encumbrance on the land because the area where the duplex was built fell within an area acquired by the Edo State Government for the construction of an Olympic stadium.

Arising from this discovery, in the month of October, 202, the 4th respondent, his wife and the Applicant's friend requested for a refund of their money. The Applicant made frantic efforts to get the lawyer to refund the money but all his efforts were in vain. He alleged that the lawyer is presently at large.

The Applicant requested his friend, the 4th respondent and his wife to give him up till January, 2022 to enable the lawyer to take up the issue with the EDOGIS which they agreed but he was arrested on the 10th of December, 2021 and detained

for two days and one night in the detention cell of the 1st – 3rd respondent at the instance of a petition written against him by the 4th respondent on the allegation that he conspired with A. Tanno Esq. to defraud his friend.

The Applicant denied committing any fraud or obtaining money by false pretence. He said that he never also acted as an agent for A Tanno Esq. and that since he came out from detention he made several attempts to reach the lawyer but she has been at large. He said that the Respondents have refused carry out any meaningful investigation to trace the funds from the account of A. Tanno Esq. to the alleged owner of the property. He alleges that the respondents have breached his fundamental rights by their actions.

In support of this application, the learned counsel for the Applicant, *Ejemi Etinbowei Esq.* filed a written address which he adopted as his arguments in support of the application.

In his written address, the learned counsel formulated seven issues for determination as follows:

- 1. Whether or not the arrest and detention of the applicant by the 1st – 3rd respondent without an order of court on the 10th day of December, 2021 until the 11th day of December, 2021 at the instance of the 4th respondent who alleges that he wrote the petition leading to the arrest of the applicant on behalf of MR. OGHADOMWANGBE JEREMIAH MECH (who at the material time lives outside Nigeria) which petition alleges civil breach of contract in a land transaction which the 1st – 4th respondents knew before arresting and detaining applicant as the 1st -3rd respondent ought to distinguish criminal liability from civil liability constitutes an infringement of the applicant`s fundamental rights guaranteed and protected by sec. 35(1),(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria;*
- 2. Whether or not the 1st – 3rd respondent`s arrest of the applicant on the 10th day of December, 2021 until the 11th day of December, 2021 (at the instance of the 4th respondent who alleges that he wrote the petition leading to the arrest of the applicant on behalf of MR. OGHADOMWANGBE JEREMIAH MECH (who at the material time lives outside Nigeria) which petition alleges civil breach of contract in a land transaction)in lieu of A. TANNO (a lawyer, who acted as an agent for the transferor in the land transaction mentioned in the affidavit in support of this application upon the discovery of encumbrance (a civil issue)) constitutes an infringement of the applicant`s fundamental rights guaranteed*

and protected by sec. 35(1),(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria;

- 3. Whether or not the manner the 4th respondent used the instrumentality of the 1st – 3rd respondent to seek recovery of the purchase price of the landed property upon the discovery of the encumbrance from the applicant amounts to emotional torture of the applicant and constitutes an infringement of the applicant`s fundamental rights guaranteed and protected by sec. 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria;*
- 4. Whether or not it is unlawful to use the machinery of the respondents for the purpose of harassment, intimidation and torture of innocent citizens to cover up their ills;*
- 5. Whether or not the conduct of the respondents is unwarranted, unjustifiable, of bad faith, unfounded, arbitrary, tortuous, reprehensible, unknown and not supportive of any known human right limitation factor;*
- 6. Whether or not the applicant is entitled to public apology by the respondents in the manner his constitutionally guaranteed rights were violated by them; and*
- 7. Whether or not the applicant is entitled to compensation in law for violations of his fundamental rights by the respondents.*

Thereafter, learned counsel argued issues one to five together.

Opening his arguments, he submitted that the combined effect of section 46 of the 1999 Constitution of the Federal Republic of Nigeria and ORDER II RULE 1 of the Fundamental Right (Enforcement Procedure) Rules, 2009 is that:

“Any person who alleges that any of the Fundamental Rights provided for in the constitution or African Charter on Human and People`s Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur, for redress.”

He said that judicial interpretation to the statutory provision was given by *TOBI JSC* in the case of *FEDERAL REPUBLIC OF NIGERIA v IFEGWU (2003)15 NWLR PT 482 PG. 113 AT 133-134.*

He posited that in the instant case the Applicant is invoking the first limb against the respondents for his unwarranted arrest and unlawful detention by the 1st - 3rd respondents on 10/12/2021 at the instance of the 4th respondent purportedly

acting under the instruction of the Applicant's friend who was at the material time living outside Nigeria.

He posited that the Applicant suffered because they transferred the liability of A. Tanno Esq. to him. He referred the Court to the case of *ACB v OKONKWO [1997] NWLR PT 480 PG. 194 AT 196 RATIO 2*, where the Court of Appeal, per *Niki Tobi (JCA)* held thus:

"...Criminal responsibility is personal and cannot be transferred. While I am aware of vicarious liability in criminal law, the instant case is certainly not one. A police officer who arrests A for the offence committed by B should realize that he has acted against the law. Such a police officer should in addition to liability in civil action, be punished by the police authority...That is a most uncivilized conduct and one that any person with a democratic mind should thoroughly detest and condemn. I detest and condemn the uncouth practice."

Again, learned counsel referred to *Article 7(2) of the African Charter on Human and People's Right* which provides that: *"...Punishment is personal and can be imposed only on the offender."*

He posited that the applicant did not commit any crime apart from the fact that he connected his friend, the 4th respondent and the 4th respondent's wife with A. Tanno Esq. He said that the issue of encumbrance which arose via EXHIBIT B and B1 is a purely civil matter which the 1st – 4th respondent are aware of.

He referred to the case of *KURE V C.O.P (2020) 9 NWLR (PT. 1729) 296 AT 326, paras. B-F* where the Supreme Court held thus:

"When a person reports a purely civil matter to the police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of police duties. It is a report made mala fide and he will be equally liable for the action taken by the police irrespective of whether he actually instigated them or not, since he had no business involving the police in a purely civil matter in the first place. Such conduct which portrays a disregard of the law and is aimed at using the coercive powers of the state to punish a party in purely civil matter ought to be mulcted in exemplary damages. The conduct of Mrs. Sokari Davies, an enlightened person who reported such a matter to the police instead of going to court to seek for enforcement of the contract or damages for breach of same amounted to wickedness, and was mala fide. ..infact he deserved an unreserved apology from Mrs. Sokari Davies who set unjustly and malafide the

criminal process against the appellant-Okafor v A.I.G. Police Zone II Onikan (2019) LPELR-46505 per ABBA AJI, JSC”

Counsel submitted that the 4th respondent ought to have gone to the courts on behalf of Mr. Oghadomwangbe Jeremiah Mech to pursue a civil suit against A. Tanno Esq. and possibly add the Applicant if he sees any good reason to do so since the Applicant connected the parties to the contract instead of using the 1st – 3rd respondents as money recovery agents against the applicant.

He said that the subjection of the applicant by the 4th respondent to emotional torture arising from his arrest and detention amounts to a dehumanizing treatment meted out to the applicant which is a clear contravention of the applicants rights as provided in *section 34(1) (a) of the 1999 Constitution of the Federal Republic of Nigeria* for which the applicant is entitled to relief.

Arguing issues 6 & 7 together, learned counsel submitted that the tenor of section 35(6) of the 1999 Constitution is to the effect that when a person is arrested unlawfully he shall be entitled to compensation and public apology from the appropriate authority or person. He said that in this case the respondents having violated the fundamental rights of the applicant, the respondents are liable to pay compensation in reliefs d – e of EXHIBIT A. He said that the 1st – 3rd respondents being enlightened public officers ought to draw a distinction between a criminal and civil liability as it relates to land transaction as they had the document for the land transaction in their possession and had knowledge of the encumbrance before arresting and detaining the applicant when they ought to have advised the 4th respondent to explore civil channels to the issue.

He submitted that it is trite law that once an applicant succeeds in his application for wrong done to him, injunction to restrain the respondent from further acts of wrong to the applicant will lie. He urged the court to grant the application for injunction as set out in reliefs F of his application.

At this stage, it is pertinent to note that although this application was served on all the Respondents, none of them filed any response to the application. In essence, the application is uncontested. However; the failure of the Respondents to file any response cannot prevent the Court from proceeding with the substantive application. Once there is proof that the respondents have been given opportunity to react to the application, the Court is at liberty to proceed. See: *Nice v. Attorney General of the Federation(2007) CHR 218*. Furthermore, it is now settled law that a Respondent who fails to file a written address is deemed to have admitted the issues

raised in the Applicant's written address. See the case of: *Omowunmi v. Ogunsiji (2008) 3 WRN 115*.

In the case of: *Olisa Agbakoba v. Director, State Security Service (1994) 7 NWLR (Pt.351) 353 at 500*, the Court of Appeal opined thus:

“It will work injustice and defeat the whole purpose of enforcement of fundamental rights were a complainant to be deprived of a declaration of infringement of his right merely by reason of the fact that the other parties to the proceedings failed, despite all opportunities given them, to offer either affidavit or any evidence or appear to be heard on the application.”

However, the Applicant still has the burden to prove that the Respondent breached his fundamental rights. In: *Agbakoba v. Director, State Security Service (1994), supra*, the Court reiterated thus:

“...the court will not declare a right to be infringed merely because the other party to the application has neither filed an affidavit nor come forward to be heard on the application if the affidavit and materials placed before him in support of the application show that the right claimed does not exist or, if it exists, has not been infringed.”

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the Applicant. The issues formulated by learned counsel are quite germane to the just determination of this application. However, 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 breach of his fundamental rights.

I will proceed to resolve the sole issue for determination. The facts put forward by the Applicant in this application are uncontroverted. It is settled law that when a Respondent fails to file a counter affidavit, he is deemed to have admitted the facts contained in the affidavit in support of the application. See: *Nwosu V Imo State Environmental Protection Agency 1990 2 NWLR (Pt.135), 688; and Egbuna V Egbuna 1989 2 NWLR (Pt. 106) 773, 777*.

On the above authorities, the Respondents are deemed to have admitted all the facts as contained in the Applicant's affidavit in support of the application. The facts reveal very clearly that the Applicant was involved in a purely civil contract to assist his friend, the Transferee (Mr. Oghadomwangbe Jeremiah Mech) to purchase a house. Unfortunately, the house which he secured for him had a fundamental defect

in title because a search at the land registry later revealed that the house was built on a land which had been acquired by the Edo State Government. This discovery was made after the purchaser had paid for the property. In common parlance, there appears to have been a breach of contract by the alleged Transferor (Mr. John Ikhide Aigbirio) and his counsel/agent A. Tanno Esq. In such a situation, the cause of action available to the aggrieved party is a civil action for money had and received for a consideration which has failed.

The transaction in this case is on all fours with an action for money had and received. The Transferee paid the total sum of N9, 800,000.00 (Nine Million, Eight Hundred Thousand Naira) to the Transferor for a consideration that has failed. This principle was resonated by the Court of Appeal in the case *Sheshe vs. Ibrahim (2013) LPELR - 22604 CA* where they held thus: "***The law is that where a party pays money to another under an ineffective contract, the party who pays is entitled to recover in quasi contract as money had and received for a consideration that has failed and the objective is to eliminate the concept of unjust enrichment - Ukota Vs. Alliance International (Nig.) Ltd. 1992 8 NWLR (Pt. 259) 374. I do not see the rationale for the withholding of the money by the Appellant to the detriment of the Respondent.***" See also the cases of *OKPOGA MICROFINANCE BANK LIMITED v. PRINCE JERRY OBEYA (2022) LPELR-57109(CA)*; and *GRANT PROPERTIES LTD & ANOR V. OSASANYA & ANOR (2019) LPELR-49526(CA) (PP. 18-20 PARAS. A-A)*.

Unfortunately, instead of enforcing his rights through a civil suit, the 4th Respondent acting on behalf of the Transferor, used the instrumentality of the Nigerian Police Force to attempt to recover the purchase price from the Applicant by arresting and detaining him. I agree entirely with the learned counsel for the Applicant that the Police cannot play the role of debt collectors.

In the case of *THEOPHILUS KURE v. COMMISSIONER OF POLICE (2020) LPELR-49378(SC)* the apex Court expounded thus:

"As I went through the facts of this case, I was wondering how a purely civil matter could easily metamorphose and transubstantiate into a purely criminal case. The end result now is that the Appellant has suffered irreparable damage, disgrace, shame, odiousness and untold hardship in the hand of the Police that is constitutionally and legally saddled with prosecution of criminal offences. The police have muzzled the rights and freedom of Nigerians even where cases are clearly outside their jurisdiction, power or corridor. If this is not curbed, everybody

including the judicial officers will suffer always from floodgates of civil matters being hijacked by the police and transmuted into crimes. If this is not tackled, everybody would have suffered in the merciless hand of the police who has become a law unto itself in this country. The primary duty of the Police by Section 4 of the police Act is the prevention of crime, investigation and detection of crime and the prosecution of offenders. See IBIYEYE V. GOLD (2012) ALL FWLR (PT 659) 1074. Tghe Police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions. See MCLAREN V. JENNINGS (2003) FWLR (PT 154) 528. When, as in the circumstances of this action, a purely civil matter is reported to the Police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of Police duties. It is a report made malafide and he will be equally liable for the action taken by the Police irrespective of whether he actively instigated them or not, since he had no business involving the Police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party in a purely civil matter ought to be mulcted in exemplary damages. See OKAFOR & ANOR V. AIG POLICE ZONE II ONIKAN & ORS (2019) LPELR-46505."

In the instant case, the Applicant has maintained that his fundamental rights to personal liberty and dignity of his person as guaranteed by sections 35 and 34 of the Constitution of the Federal Republic of Nigeria 1999 were violated by the Respondents.

Section 34(1) of the 1999 Nigerian Constitution guarantees the Applicant's right to the dignity of his person. The facts revealed that the Respondents and their agents arrested the Applicant and detained him in the police cell for a civil transaction. This is a clear violation of his right to the dignity of the human person as guaranteed by section 34 of the Constitution.

Furthermore, *Section 35 of the 1999 Nigerian Constitution* guarantees the right to personal liberty. It is an undisputed fact that the Applicant was detained by the 1st to 3rd Respondents based on the report of the 4th Respondent. Unfortunately, the police have not supplied any facts to justify their arrest. This is a clear violation of the Applicant's right to personal liberty as guaranteed by section 35 of the 1999 Constitution.

I think the Respondents exceeded their powers when they used the instrumentality of the police to resolve a civil dispute. Private persons must not use the police to enforce civil contracts. Furthermore, law enforcement agents must operate within the ambits of the law they cannot use the instrumentality of the law to intimidate or harass citizens. The Courts must curtail such misuse of power. This is what the fundamental rights enshrined in the Constitution are meant to protect.

I am satisfied that the Applicant has led sufficient evidence to prove that his rights to personal liberty and the dignity of the human person have been infringed by the Respondents.

On the whole I am of the view that the Applicant has discharged the onus to prove that his fundamental human rights have been contravened by the Respondents.

Consequently, the Applicant is granted the following reliefs:

- a. A declaration that the arrest and detention of the applicant by the 1st – 3rd respondents without an order of court on the 10th day of December, 2021 until the 11th day of December, 2021 at the instance of the 4th respondent constitutes an infringement of the applicant's fundamental rights guaranteed and protected by sec. 35(1),(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria;***
- b. A declaration that the 1st – 3rd respondent's arrest of the applicant on the 10th day of December, 2021 until the 11th day of December, 2021 (at the instance of the 4th respondent constitutes an infringement of the applicant's fundamental rights guaranteed and protected by sec. 35(1),(4) and (5) of the 1999 Constitution of the Federal Republic of Nigeria;***
- c. A declaration that the manner the 4th respondent used the instrumentality of the 1st – 3rd respondent to seek recovery of the purchase price of the landed property upon the discovery of the encumbrance from the applicant amounts to emotional torture of the applicant and constitutes an infringement of the applicant's fundamental rights guaranteed and protected by sec. 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria;***
- d. Two Million Naira (₦2, 000,000.00) only against the 1st – 3rd respondents as exemplary damages for the unwarranted infringement of the applicants fundamental right following the arrest and detention of the applicant by the 1st – 3rd respondent without an order of court on the 10th day of December, 2021 until the 11th day of December, 2021 at the instance of the 4th respondent;***
- e. An order of perpetual injunction restraining the respondents, their servants, privies or anybody acting on their behalf and anybody on whose behalf they***

act from further detaining, arresting or inhibiting the freedom of movement of the applicant and his sureties in any manner whatsoever, fettering or seeking to fetter the applicant`s freedom of movement, dignity and personal liberty; and

- f. A mandatory order commanding the respondents jointly or severally to deliver an apology in writing to the applicant for the unwarranted infringement of his fundamental right.*

I award the sum of N200, 000.00 (Two Hundred Thousand Naira) as costs in favour of the Applicant against the Respondents.

*Hon. Justice P.A.Akhihero
JUDGE
26/01/2023*

COUNSEL:

- 1. Ejemi Etinbowei Esq.....Applicant*
2. Unrepresented.....Respondents