

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
16TH DAY OF DECEMBER, 2021

Suit No.B/246^M/2021

IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR THE
ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

MR. OROBOSA EBAREKPEN APPLICANT

AND

EDO STATE COMMISSIONER OF POLICE
AREA COMMANDER METRO (Benin) } RESPONDENTS

RULING

This a Ruling on an application for the enforcement of Fundamental Rights brought pursuant to ORDER 2 RULES 1, 2, 3 AND 4 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AND SECTIONS 34, 35, 36 AND 41 OF THE 1999 CONSTITUTION (AS AMENDED) AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT. The Applicant is praying the Court for the following orders:

1. An Order of this Honourable Court declaring that the arrest of the Applicant on the 10th of November, 2021 before the commencement of investigation was without cause and a violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;

2. An Order of this Honourable Court declaring the Detention of the Applicant from 2pm on Wednesday the 10th day of November, 2021 to about 12 noon on Saturday the 13th day of November, 2021 without arraignment in court as a violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;
3. An Order of this Honourable Court declaring the Detention of the Applicant on the 15th day of November, 2021 between the hours of 12 noon to 7pm as without cause and a breach of the Applicant's FUNDAMENTAL HUMAN RIGHT;
4. An Order of this Honourable Court declaring the re-detention of the Applicant, who was on bail, on the 22nd day of November, 2021 as an overreach, abuse of established process and a breach of the Applicant's FUNDAMENTAL HUMAN RIGHT;
5. An Order of this Honourable Court declaring that the Applicant is entitle to unsupervised and confidential consultation with his legal representative while in Police Custody;
6. An Order of this Honourable Court on the 1st Respondent to release the Applicant on his earlier bail pending the conclusion of investigation;
7. An Order of this Honourable Court restraining the Respondents and their agents from any further harassment, intimidation and arrest of the Applicant over this matter or related matters pending conclusion of investigation;
8. An Order of this Honourable Court on the Respondents to pay general damages of the sum of N1, 000,000.00 (One Million Naira) only to the Applicant for the detention of the Applicant for three days without arraignment in court in violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;
9. An Order of this Honourable Court on the 1st Respondent to pay general damage of the sum of N200, 000.00 (Two Hundred Thousand Naira) for re-detaining the Applicant on the 22nd day of November, 2021 and the sum of N100, 000.00 (One Hundred Thousand Naira) for every day the Applicant remains in detention at the pleasure of the 1st Respondent in violation of the Applicant's Fundamental Human Rights; and
10. For such further order or other orders this Honourable Court may deem fit to make in the circumstances.

The facts of this case as stated in the affidavit in support of this Application is that the Applicant's right to dignity of the human person, right to personal liberty and freedom of movement were violated by the Respondents who detained the Applicant from the 10th of November, 2021 until the 13th of November, 2021 when the Applicant was released on bail. The Applicant was also detained on the 15th of November, 2021 from 12 noon to 7pm. The Applicant, who was on bail, was detained again on the 22nd day of November, 2021 when the case was transferred from the Area Command, Sapele Road, Benin City, to the Edo State Police Headquarters, Central Road, Benin City and the police has refused to release him on bail ever since.

The learned counsel for the Applicant also filed a Written Address in support of the application which he adopted as his arguments in support of the motion.

In his written address, the learned counsel for the Applicant, ***I.H.Ohwojeheri Esq.*** submitted that a person accused of a crime is entitled to be confronted with the offence alleged and be brought face to face with his accusers in a court of law so that the veracity of their allegation can be tested during trial. He said that this must be done within a reasonable time and before a court or tribunal constituted in such a way as to ensure its fairness and impartiality. For this view, he relied on the following cases: ***Akulegba v. Benue State Civil Service Commission & Anor (2001) 12 NWLR (728) 528 r3 @ 532; Federal Civil Service Commission v. Laoye (1989) 2 NWLR (106) 652 R10 @ 657.***

Learned counsel submitted that the constitution, which is the organic law of the country, declares the rights, liberties, powers and responsibilities of the people, both the government and the governed and it is the duty of the authorities to ensure its observance. He posited that the position of the courts is quite crucial in this regard for the purpose of safeguarding the constitutional rights of persons through effective intervention whenever, in an appropriate case, it is shown that such rights have been violated.

He submitted that Fundamental rights are regarded as part of human rights and the rule of law operates to protect them for the enhancement of human dignity and liberty. See the case of the ***Federal Republic of Nigeria & Anor v. Ifegwe (2003) 15 NWLR (842) 113 r6 and 7 @ 131-132.***

Counsel submitted that ***Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)*** provides for the right to dignity of the human person. He said that the constitution guarantees the dignity of every human

being, which in essence forbids the subjection of a citizen to torture or inhuman and degrading treatment. He said that the Courts have repeatedly heard that to detain somebody beyond the limit set by the constitution amounts to torture. He said that **Section 35** of the constitution also provides for the right to personal liberty.

Again, he submitted that Section 36 of the constitution provides for the right to fair hearing. He said that Section 36 (6) provides that a person arrested on allegation of commission of a criminal offence has the right to seek legal counsel from a lawyer and also the right to be defended by a legal practitioner of his or her choice. He posited that denying the Applicant access to consult with his legal representatives unsupervised and confidential (i.e. in private) essentially robs him of his constitutionally guaranteed right to legal counsel.

Finally, he submitted that Section 41 of the constitution provides for the right to freedom of movement and he urged the Court to hold that the above mentioned rights which enures to the benefit of the Applicant as a citizen of the Federal Republic of Nigeria have been violated by the Respondents. He referred to the case of *Isenalumhe v. Joyce Amadin (2001) CHR pg 458 at 568* where the court held as follows:

“The arrest and detention of the Applicant for three hours on the 29th February 2000 is a violation of his right to personal liberty.”

He also cited the case of *JIM-JAJA V. COP (2011) 2 NWLR (PT. 1231) 375 @ 393 A-B*, where the Court of Appeal held that in a situation where there is a petition alleging commission of crime, the police ought to do preliminary investigation before arresting the suspect. He said that in the present case, no preliminary investigation was done before the arrest of the Applicant on the 10th day of November, 2021. He said that the mere fact that the Applicant authorized the transactions is not prima facie evidence that he knew the transaction was fraudulent.

He said that the Police power to arrest a suspect is subject to Section 35 of the Constitution, which provides as follows:- **35. 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 compliance with a procedure permitted by law:**

(a)

(b). By reason of his failure to comply with the order of a Court or in order to secure the fulfillment of any obligation imposed on him by law;

(c). For the purpose of bringing him before 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.

He said that *Article 6 of the African Charter on Human Rights* on its part, provides that: *Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law...*

In conclusion, he posited that for the country to progress, officers of the Nigeria Police Force must act at all times within the framework of the 1999 Constitution as amended. He said that the police in the discharge of their statutory duties of investigation must ensure that a citizen's fundamental rights are not breached in any form. He urged the Court to grant the reliefs of the Applicant in this Application.

The Respondents were served with the motion papers but they failed to appear in Court, neither did they file any response to the application. In effect, the application was unopposed.

It is settled law that where facts contained in an affidavit are not countered, they are deemed to have been admitted. See the cases of: *NWOSU V IMO STATE ENVIRONMENTAL PROTECTION AGENCY 1990 2 NWLR Pt. 135, 688; and EGBUNA V EGBUNA 1989 2 NWLR Pt. 106 773, 777.*

Thus, the Respondents are deemed to have admitted all the facts contained in the Applicant's affidavit in support of this application.

However, the mere fact that the application is not opposed does not guarantee the success of same. The Applicant still has the burden to convince the Court to exercise its discretion in his favour.

I have carefully examined all the processes filed in this application together with the arguments of counsel on the matter.

In a civil suit, the person who asserts has the primary burden of proving the assertion. See the cases of *Arum Vs Nwobodo (2004) 9 NWLR (Pt. 878) 411; and Olaleye Vs Trustees of ECWA (2011) 2 NWLR (Pt. 1230) 1*. This principle also holds true in allegations of breach of fundamental rights. See: *Fajemirokun Vs Commercial Bank (Credit Lyonnais) Nig. Ltd (2009) 5 NWLR (Pt. 1135) 588, Onah Vs Okenwa (2010) 7 NWLR (Pt. 1194) 512.*

In the instant application, the Applicant has alleged that the Respondents have breached his right to dignity of the human person, right to personal liberty and freedom of movement by the Respondents' unlawful detention of the

Applicant at various times and places as enumerated in the affidavit in support of this application.

An applicant who approaches the Court for enforcement of his fundamental rights must prove the existence of those rights and its infringement. Therefore, what this Court must determine is whether the Applicant was able to establish the existence of those rights and infringement of same. To do that the affidavit in support of the Applicants application for enforcement of his fundamental rights and the Respondents reaction to those averments as contained in the counter affidavit are the ready raw materials. See the case of ***BELLO ADAMU v. THE COMMISSIONER OF POLICE KADUNA STATE COMMAND & ANOR (2019) LPELR-49456(CA)***.

As earlier stated, the Respondents are deemed to have admitted all the facts contained in the Applicant's affidavit in support of this application because they failed to file any counter affidavit to disprove same. See the cases of: ***NWOSU V IMO STATE ENVIRONMENTAL PROTECTION AGENCY 1990 2 NWLR Pt. 135, 688; and EGBUNA V EGBUNA 1989 2 NWLR Pt. 106 773, 777.***

In the absence of any denial from the Respondents, I hold that they are deemed to have admitted all the facts put forward by the Applicant relating to his detention from the 10th of November, 2021 until the 13th of November, 2021; also his detention on the 15th of November, 2021 from 12 noon to 7pm; and his further detention on the 22nd of November, 2021 when the case was transferred from the Area Command, Sapele Road, Benin City, to the Edo State Police Headquarters, Central Road, Benin City and the police has refused to release him on bail ever since.

In the absence of any justification or explanation from the Respondents, I am of the view that the series of detention of the Applicant by the Respondents amount to a violation of the Applicant's rights to dignity of the human person, to personal liberty and freedom of movement as guaranteed by the Nigerian Constitution.

On the issue of general damages, Section 35(6) of the 1999 Constitution provides that any person who is unlawfully arrested or detained is entitled to compensation and a public apology from the appropriate authority. There are several cases where damages have been awarded in fundamental rights actions. See ***OZIDE & ORS V. EWUZIE & ORS (2015) LPELR - 24482, IGBOKWE V C.O.P EDO STATE & ORS (2017) L.P.E.L.R-42072 (C.A.), OKONKWO V OGBOGU (1996) 5 NWLR (PT. 499) P. 420.***

Clearly in the instant case, the Applicant is entitled to some compensation for his unlawful detention during the period mentioned up till now. For a citizen to be incarcerated in a police cell contrary to the provisions of the Constitution is an act deserving of compensation.

The principle guiding the award of damages is that damages will flow from the wrong suffered to a complainant. Any grant of general damages is intended to assuage the natural loss and painful mental feelings suffered by the claimant and caused by the Defendant. The relief claimed in such situations has no mathematical exactitude. However, since there is no parameter or yardstick for the Court to use in the award of general damages, such a discretion ought to be exercised judicially and judiciously and also to be considered as what the reasonable man would see as adequate loss or inconvenience flowing naturally from the act of the Defendant. See **UNIPETROL NIG. PLC VS. ADIREYE WEST AFRICA LTD. (2005) 14 NWLR (PT.946) 563**; and **ROCKONOH PROPERTIES CO. LTD. VS. NIGERIAN TELECOMMUNICATION PLC (2001) 14 NWLR (PT.733) 468**.

I will exercise my discretion judicially and judiciously to award something reasonable as general damages.

On the whole, I hold that this application succeeds and the following reliefs are granted:

- 1. An Order of this Honourable Court declaring that the arrest of the Applicant on the 10th of November, 2021 before the commencement of investigation was without cause and a violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;***
- 2. An Order of this Honourable Court declaring the Detention of the Applicant from 2pm on Wednesday the 10th day of November, 2021 to about 12 noon on Saturday the 13th day of November, 2021 without arraignment in court as a violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;***
- 3. An Order of this Honourable Court declaring the Detention of the Applicant on the 15th day of November, 2021 between the hours of 12 noon to 7pm as without cause and a breach of the Applicant's FUNDAMENTAL HUMAN RIGHT;***
- 4. An Order of this Honourable Court declaring the re-detention of the Applicant, who was on bail, on the 22nd day of November, 2021 as an overreach, abuse of established process and a breach of the Applicant's FUNDAMENTAL HUMAN RIGHT;***

5. An Order of this Honourable Court declaring that the Applicant is entitled to unsupervised and confidential consultation with his legal representative while in Police Custody;

6. An Order of this Honourable Court on the 1st Respondent to release the Applicant on his earlier bail pending the conclusion of investigation;

7. An Order of this Honourable Court restraining the Respondents and their agents from any further harassment, intimidation and arrest of the Applicant over this matter or related matters pending conclusion of investigation;

8. An Order of this Honourable Court on the Respondents to pay general damages of the sum of N1, 000,000.00 (One Million Naira) only to the Applicant for the detention of the Applicant for three days without arraignment in court in violation of the Applicant's FUNDAMENTAL HUMAN RIGHTS;

9. An Order of this Honourable Court on the 1st Respondent to pay general damages of the sum of N100, 000.00 (One Hundred Thousand Naira) for re-detaining the Applicant on the 22nd day of November, 2021 and the sum of N50, 000.00 (Fifty Thousand Naira) for every day the Applicant remains in detention at the pleasure of the 1st Respondent in violation of the Applicant's Fundamental Human Rights.

I award the sum of N100, 000.00 (One Hundred Thousand Naira) as costs in favour of the Applicant.

P.A.AKHIHIERO
JUDGE
16/12/2021

COUNSEL:

I.H.Ohwojeheri ESQ.....APPLICANT
Unrepresented.....RESPONDENTS