

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON MONDAY THE 7TH DAY OF DECEMBER, 2015
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE M. A. ONYETENU
JUDGE

SUIT NO. FHC/AI/CS/20/2014

BETWEEN:

1. MR. ANAYO OROKE
2. MR. FELIC OROKE
3. MR. EJIAGBA OROKE

AND

1. COMMISSIONER OF POLICE
EBONYI STATE
MR. PAUL UNAH

RULING

By a Motion on Notice filed on 15/7/14, the Applicants sought to enforce their fundamental rights against the Respondents by seeking the following reliefs:

1. A DECLARATION that the arrest, detention and hostage taking of the 1st applicant between the eve of Easter 2014, on 19th day of May 2014 and on 8th day of July 2014 till 10th day of July 2014 by

M.A. Onyetenu

the 1st Respondent at the behest of the 2nd Respondent is unwarranted, unprovoked, unlawful, unjustifiable, unconstitutional and thus a gross violation of the Applicant's fundamental rights to personal liberty as encapsulated in section 35 (1) of the constitution of the Federal Republic of Nigeria, 1999 (As amended).

2. A DECLARATION that the merciless beating, slapping, kicking, assaulting, intimidation, harassments and torture of the person of the 1st Applicant by the men of the 1st Respondent at the behest of the 2nd Respondent on the eve of Easter 2014, on 9th day of May 2014 and on 8th day of July 2014 till 10th day of July 2014 by the 1st Respondent at the behest of the 2nd Respondent is unwarranted, unprovoked, unlawful, unjustifiable, unconstitutional and thus a gross violation of the Applicant's fundamental rights to freedom from torture, in human and degrading treatment as enshrined in section 34 (1)0 of the constitution of Federal Republic of Nigeria 1999 (As Amended).

3. A DECLARATION that the continuous harassment and intimidation of the 1st, 2nd and 3rd Applicants by the agents of the 1st Respondent on at the behest of the 2nd Respondent on the 8th day of July 2014 is violation of **S. 35 (1)** of CFRN 1999 as amended and article 6 of the African Charter on Human and Peoples right (Ratification and Enforcement) Act cap 10 laws of the Federation of Nigeria 1990.
4. AN ORDER OF PERPETUAL INJUNCTION restraining the 1st-2nd Respondents, their agents, servants or privies from further acts of harassment, intimidation, arrest or inhuman treatment, torture and/or any other form of degrading treatment from the agents of the Respondents to the Applicants.
5. AN ORDER directing the 1st – 2nd Respondents to tender unreserved public apology to be published in the National Daily and Ebonyi Local tabloid in favour of the Applicants.
6. GENERAL DAMAGES of N1, 000, 000 (One Million Naira) only as general damages for the unlawful arrest and detention, tortures, harassment and all the litany of inhuman and degrading treatments

M.A. Oyeleke

suffered by the Applicants in the cruel hands of the 1st – 2nd Respondents.

The Motion is supported by a Statement which contains the grounds for this application and a 12 Paragraphs Affidavit which the Respondents relied on.

Briefly stated the case for the Applicants is that the 3rd applicant owned about 19 plots of land which the 2nd Respondent shared among his friends. The 3rd Applicant then filed a suit against 2nd Respondent at the High Court Abakaliki whereupon the 2nd Respondent mobilized men of the 1st Respondent to the dwelling house of the 1st and 2nd Respondents where they harassed and tortured the Applicants and detained the 1st Applicant in the police cell.

In his written address, Counsel to the Applicants gave 2 issues for determination to wit:

1. Whether by virtue of the Respondents' act the fundamental rights of the applicants have not been breached.
2. Whether the Applicants are entitled to any remedy by way of damages.

M-A Oyetem

On issue one, Applicant Counsel referred to **Order 11 Rule 1 of the Fundamental Right (Enforcement Procedure) Rules 2009** and submitted that anyone whose right has been or is likely to be breached may apply to the courts.

He further submitted that **S. 34 of the 1999 Constitution of the Federal Republic of Nigeria** provides that every individual is entitled to respect for the dignity of his person and that no one shall be subjected to torture or inhuman and degrading treatment. That **S. 35 (1) of the 1999 Constitution** guarantees right of liberty of persons citing **JAJA vs C.O.P.** 2011 2 NWLR pt 1231 at 375 which defined torture and inhuman and degrading treatment.

Counsel then submitted that from paragraphs 6 – 12 of the Applicants Affidavit in support of this application. It is clear that the Applicants were subjected to terrible pains and agonies by the Respondents for no just cause citing **D. G. SSS vs OJUKWU** 2006 13 NWLR pt 998 at 575 hence their fundamental rights have been infringed.

M. A. Oyejide

On issue 2 Applicant Counsel submitted that where a wrong exists there must be a remedy citing

ODOGWU vs I.G.P. 1996 6 NWLR pt 455 at 508;

DAMION SHUGABA vs MINISTER OF INTERIOR (Supra).

Counsel urged this court to hold that the Applicants rights having been breached, they are entitled to damages.

On criteria for the award of damages Counsel submitted that the court in **ODOGWU vs I.G.P. (Supra)**; and

ABDULATEFU AKANBI vs I.G.P. & ORS

NIGERIA PUBLIC INTEREST LITIGATION Vol. page 255 laid down factors to be considered in granting such awards such as

- a. Continuous depreciation of the naira.
- b. Status of the Applicant.
- c. Level of undeserved embarrassment and torture meted out to the Applicants and that in this suit all they have prayed for is N1, 000, 000 (One Million Naira) as general damages.

He therefore urged this court to grant the reliefs prayed for by the Applicants.

M.A. Ouyetan

The 1st Respondent filed a 31 paragraph counter affidavit which they relied on and 3 exhibits to wit:

Exhibit A- The 2nd Respondent's petition.

Exhibit B- Statement of the 1st Respondent to the Police.

Exhibit C- Statement of the 1st Applicant to the Police.

Briefly stated the case of the 1st Respondent is that the 2nd Respondent reported a case of conspiracy to kill, cultism and threat to life against the Applicants per Exhibit A.

Whereupon the 1st Respondent asked the 2nd Respondent to produce his witness and invited the Applicants to their office. That only the 1st Applicant honoured their invitation hence they also asked him to produce his witness, that they also asked the 1st Applicant to make a statement. The 1st Respondent denied breaching the fundamental rights of the Applicants.

In his written address Counsel to the 1st Respondent gave 2 issues for determination to wit:

1. Whether the Police are statutorily empowered to investigate the criminal acts of the Applicants.

M-A Ouyetuna

2. Who are the necessary parties to this case?
3. Whether the Applicants are entitled to the reliefs being claimed by them.

On issue one Counsel to the 1st Respondent submitted that the police have statutory powers to investigate any allegation of crime referring to **S. 4 and S. 24 of the Police act; S. 261 – 281 of the Criminal Code**, and citing the cases of **FAWEHINMI vs IGP** 2002 7 NWLR pt 267 at 606; **CHUKWUMA vs C.O.P.** 2005 8 NWLR pt 927 at 279, and that in the present case, the 1st Respondent received a criminal complaint from the 2nd Respondent hence they had to investigate that complaint referring to **S. 59 (1) of the Criminal Procedure Act cap 80 laws of the Federation 1990.**

Counsel moreover submitted that they have since charged this matter to court and that the courts are enjoined not to interfere with the police if the investigation and authenticity of an offence is established citing

M.A. Oyetunji

CHIEF DR. FAJEMIROKUN vs COMMERCIAL BANK OF NIG.

LTD 2002 10 NWLR pt 779;

FAWEHINMI vs IGP (Supra);

C.O.P. ONDO STATE vs OBOLLO 1989 5 NWLR pt 120 at 130.

On issue 2 Counsel to the 1st Respondent cited the case of **CHUKWUDI NWANNA vs A.G. OF THE FEDERATION & ANOR** 2010 15 WRN 178 submitting that any person or authority directly involved in the violation of fundamental rights will be a necessary party to a suit instituted for that purpose and that in this case the Commissioner of Police was sued as the 1st Respondent and the Affidavit in support of this application did not introduce him but paragraphs 8 and 11 described the persons involved and no name was stated.

Counsel submitted that the redress for such matters is not transferred or vicariously placed on innocent parties citing **A.C.B. vs OKONKWO** 1997 1 NWLR pt 48 at 194 and that in this case the 1st Respondent cannot suffer for the alleged violation by unnamed officers.

M. A. Oyejoko

On issue 3 Counsel to the 1st Respondent submitted that the Applicants have not been able to prove their claim hence they are not entitled to any award citing

NWANGWU vs DURU 2002 2 NWLR pt 751 at 265;

OKANU vs C.O.P. IMO STATE 2011 1 CLR 407.

He urged this court to dismiss this claim with costs.

The 2nd Respondent filed a 28 paragraph counter affidavit which they relied on together with an exhibit to wit:

Exhibit B- Certified True Copy of charge sheet at Magistrate Court Abakaliki.

Briefly stated the case of the 2nd Respondent is that he is the village head of the Applicant's village and that the 1st Applicant was involved in a case of stealing of motor cycle and when he was arrested by the police the 1st Respondent, the 2nd Respondent went to find out the reason and the 1st Respondent asked him to accompany him to the house of the 1st Applicant which he did. Thereafter the 1st Applicant accosted him, threatening to kill him for not rescuing him from the 1st Respondent. Subsequently the 1st Applicant was charged to court as

M-A Oyedun

shown in Exhibit B. The 1st Applicant with 2 others at large again accosted him, threatening to kill him hence he reported to the 1st Respondent and the Applicant was arrested. That that case is still pending at the office of the 1st Respondent.

In his written address, Counsel to the 2nd Respondent gave 2 issues for determination:

1. Whether in the circumstances of this case the 2nd Respondent have infringed the Applicant's fundamental rights.
2. Whether in the circumstances of this case the Applicants are entitled to the reliefs they seek.

On issue one Counsel to the 2nd Respondent submitted that the life of the 2nd Respondent was threatened by the 1st Applicant and his cohorts hence the 2nd Respondent made a report to the 1st Respondent whose job it is to maintain law and order and this is not infringement of Applicant's rights.

Counsel submitted that no one is allowed to hide under **S. 34 and S. 35 of the 1999 Constitution** to escape lawful arrest and detention citing **DOKUBO ASARI vs FRN 2007 30 WRN SC 14**.

M. A. Oyejide

Counsel submitted that the date mentioned in paragraph 8 of the Applicant's affidavit does not exist hence nothing took place on that day.

On issue 2 Counsel to the 2nd Respondent submitted that damages are awarded on sound and settled legal principles but in this case the Applicants have failed to prove that their rights have been infringed or that they suffered any torture or harassment hence they are not entitled to any damages citing

MAJA vs SAMONS 2002 8 MJSC 103 at 104.

He urged this court to dismiss this application with cost.

The Applicants filed a 7 paragraph further and better affidavit.

In his reply on point of law, Counsel to the Applicants submitted that paragraph 8 of the 2nd Respondent's counter affidavit conflicts with paragraph 20 of the 1st Respondent's counter affidavit and that there is a material contradiction which this court cannot ignore citing

ASONYE vs REGISTERED TRUSTEES CAEN 19995 2 NWLR pt 376 at 623.

M-A Oyetey

Counsel submitted that the 2nd Respondent Counter Affidavit is not sworn before a judge or officer designated to do so and by virtue of **S. 80 of the Evidence Act** is therefore invalid.

Furthermore Counsel to the Applicants submitted that the 1st Applicant was never charged to court for the offence of cultism as in Exhibit A which indicated that he was arrested for the said offence but charged to court for alleged offence of attempted robbery committed on 7/5/14 and that paragraph 16 of the 2nd Respondent's counter affidavit contradicts Exhibit B in the 2nd Respondent's counter affidavit. He urged this court to dismiss the Respondent's processes.

I have carefully considered the application sought by the Applicants in this case. I have also considered the replies of the Respondents as well as the addresses of all counsel in this case.

Let me first of all clear the issue of the counter affidavit of the 2nd Respondent not being sworn to before the appropriate official. I have studied the said affidavit and it is properly sworn before the Commissioner of Oaths. I will thus accept it in evidence.

M-A Dyetany

In my humble view, a sole issue calls for determination by this court to wit:

Whether the Applicants have proved breach of their fundamental rights to entitle them to the reliefs being sought by them.

Now the evidence of the 1st to 3rd Applicants is that the Respondents violated their fundamental rights.

The allegation against the 1st Respondent is that they kicked, beat up, tortured and whisked away the 1st Applicant to State C.I.D. where he was detained without cause. That the 2nd and 3rd Respondents have both been in comas as a result of the activities of the Respondents.

But then no particulars of any act has been alleged against the 1st Respondent. What did they do to the 2nd and 3rd Respondents to put them in coma? Where is the evidence that 2nd and 3rd Respondents were or are in coma? The Applicants never stated this throughout their evidence. No particulars as to the kicking, beating or torture was given by the 1st Applicants. Where was he kicked? Where was he beaten? What kind of torture did he go through?

M-A Oyekan

The allegation itself is that of assault which is a criminal offence under our laws and criminal offences have to be proved beyond reasonable doubt even in civil cases **see S. 135 of the Evidence Act.**

This the Applicants have not done.

The Applicants stated that 1st Applicant was detained without any cause.

But then from Exhibit B, the petition written by the 2nd Respondent, it is alleged that the 1st Applicant threatened the life of the 2nd Respondent.

There were also allegations of cultism and conspiracy to kill against him.

Now by **S. 4 and 24 of the Police Act** the police have powers to investigate any allegation of crime made against any person and such an investigation or even detention is not a breach of fundamental rights as **S. 35 of the 1999 Constitution** makes it clear that right to liberty is not absolute as a person can be deprived of his liberty on reasonable suspicion of his having committed an offence which is the situation in this case.

M-A Ouyeturu

As for the 2nd and 3rd Applicants there is nothing averred to have been done against them by the 1st Respondent so that there is no evidence of any breach of their fundamental rights.

Counsel to the Applicants have stated that paragraph 8 of the 2nd Respondent's counter affidavit contradicts paragraph 20 of the 1st Respondent Affidavit. I have studied those paragraphs. The 2nd Respondent in his own counter affidavit averred that he did not report any matter to the 1st Respondent on 8/7/14.

What the 1st Respondent stated in their counter affidavit is that a petition dated 1/7/14 was received by them from the 2nd Respondent so that there was no report by the 2nd Respondent to 1st Respondent on 8/7/14 and thus no contradiction between the 2 counter affidavits. On 8/7/14 according to 1st Respondent, they invited the Applicants to their office. there is no contradiction at all in their paragraphs. Rather the paragraphs are consistent with the averments of 1st and 2nd Respondents in the respective counter affidavit.

For the 2nd Respondent, he averred that the 1st Applicant came to harass him in his home.



In Exhibit C the 1st Applicant admitted that he went to the home of the 2nd Respondent with the other Applicants to explain to them that it was the 2nd Respondents that took police to their home.

It is thus clear from the above that the Applicants actually set out to harass the 2nd Respondent.

Now the 2nd Respondent has a right to report the commission of an offence especially one against him to the police. I do not therefore see any wrongful act of the 2nd Respondent.

The 1st Applicant averred in his affidavit that the 2nd Respondent shared his land and he filed an action in the State High Court hence the inversion of his house by the men of 1st Respondent through the 2nd Respondent.

The Applicant did not exhibit any process in respect of this case to show that it is true.

The 2nd Respondent averred that the 1st Applicant was involved in a robbery case and tendered the charge so that his evidence is more believable from that of the Applicant as it is straight forward and reliable.

M-A Onyiah

Counsel to the Applicants have submitted that the 1st Applicant was not charged to court for the alleged offence of cultism but attempted robbery but then the Respondent have explained that this case is still pending with the police.

I am therefore satisfied that the Applicants have not been able to prove their claim of breach of their fundamental rights by the Respondents and I so hold.

This suit is therefore dismissed.


M. A. ONYETENU
JUDGE
7/12/12

Parties absent except for the 2nd Respondent.

N. E. Nwode for the 2nd Respondent.

T. K. Igwe for the Applicants absent.

B. G. Emenike for the 1st Respondent. Absent.

