

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE OSOGBO JUDICIAL DIVISION
HOLDEN AT OSOGBO
ON WEDNESDAY THE 15TH DAY OF JUNE 2016
BEFORE HIS LORDSHIP
HON. JUSTICE MAUREEN ADAOBI ONYETENU
JUDGE

SUIT NO: FHC/OS/CS/67/2014

IN THE MATTER OF AN APPLICATION BY

- 1) DR. UMOH BASSEY UMOH
 - 2) MRS. ENOUNUIGBE
 - 3) MRS. HANNAH UMOH
 - 4) MRS. ENO ADEBAYO
- FOR AN ORDER FOR ENFORCEMENT
OF A FUNDAMENTAL RIGHT**

A N D

IN THE MATTER OF

- 1) DR. UMOH BASSEY UMOH
- 2) MRS. ENO UNUIGBE
- 3) MRS. HANNAH UMOH
- 4) MRS. ENO ADEBAYO

APPLICANTS

A N D

- 1) THE ASSISTANT INSPECTOR GENERAL
OF POLICE ZONE XI
- 2) THE COMMISSIONER OF POLICE
OSUN STATE
- 3) SUPOL WILLIAMS
- 4) ASP EMMANUEL ISIAH
- 5) CHIEF ALBERT EFIONG
- 6) MRS. EDIONGO UDOH
- 7) MR. CHRISTOPHER AMOS
- 8) MR.OKON EDUNAM

RESPONDENTS

M.A. Oyetenu

JUDGEMENT

By a motion on Notice filed on 28/11/14 the applicants sought to enforce their fundamental rights against the respondents by seeking the following orders:-

1. Declaration that the arrest and detention of the applicants by the 1st – 3rd respondents on the 4th of August, 2014 at the instigation of the 4th – 8th respondents is unconstitutional, null and void.
2. Declaration that the order by the 1st – 3rd respondents for the applicants to report at Nigeria Police Zone XI, Osogbo, Osun State every fortnight for an indefinite period since 4th of August, 2014 is unconstitutional, null and void.
3. An order restraining the 1st – 3rd respondents, their agents, servants, howsoever described from further arresting and detaining the applicants in connection with the subject matter of this application.
4. N50,000,000.00 damages for unlawful arrest and detention.

The motion is supported by a 13 paragraph affidavit which the Applicants relied on and an exhibit to wit:-

Copy of Judgment of Osogbo High Court.

Briefly stated the case for the Applicants is that the 4th Respondent was the president of Sabo Road (Osogbo) Akwa Ibom Indigenes Multipurpose Cooperative Society Ltd. between April 2013 and March 2014.

That on 4/8/14 the Applicants were invited by the 1st to 3rd respondents to their office upon the complaint and instigation of the 4th to 8th respondents for conniving with fraudulent staff of the 1st City

M-A Oyetem

Monument Bank to withdraw N1.6 million from the account of their Cooperative Society. That they honoured the invitation and were detained but later released on bail. That they were then ordered to be reporting fortnightly to the 1st to 3rd Respondents and this they have been doing. That prior to this the 1st to 4th Respondents had instituted a suit against the Applicants at the Osogbo High Court which was struck out as per the exhibit attached on 4/6/14. It was after this Judgement that made this report against the applicants and right now the 4th to 8th Respondents are no longer members of the Sabo (Osogbo) Akwa Ibom Indigenes Multipurpose Co-operative Society Ltd and that they belong to another Association known as Akwa Ibom State Welfare Association.

In his written address counsel to the Applicants gave 3 issues for determination to wit:-

- 1) Whether the arrest and detention of the applicants by the 1st to 3rd respondents on the 4th day of August 2014 at the instigation of the 4th to 8th respondents not unconstitutional, null and void and constitutes a breach of the applicants right to life, dignity of human persons, personal liberty, private and family life, peaceful arisen by an association and freedom of averment as provided under S. 33, 34, 35, 37, 40 and 41 of the 1999 Constitution.
- 2) Whether the order by the 1st to 3rd respondents for the applicants to report at Nigeria Police Zone XI Osogbo every fortnight for an indefinite period since 4/8/14 is not unconstitutional, null and void and constitutes a breach of the Applicants rights to life, personal liberty, dignity of human persons, personal liberty, private and family life,

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peaceful assembly an association and freedom of movement contrary to S. 33, 34, 35, 37, 40 & 41 of the 1999 Constitution.

3) Whether the applicants are entitled to damages and other reliefs sought by them

On 1st and 2nd issue counsel to the Applicants submitted that taken into consideration Exhibit 1 which is affidavit in a civil suit filed by the 4th to 8th respondents against the Applicants in which Judgment was in favour of the applicants. On the 4th to 8th respondents bid to gain control of the affairs and bank accounts of Sabo Road (Osogbo) Akwa Ibom Indigenes Multipurpose Co-operative Society Ltd the fundamental right of the Applicants was breached as subsequent to that judgment the 1st to 3rd respondents arrested the applicants without any legal justification.

Counsel referred to *S. 33, 34, 35, 37, 40 and 41 of the 1999 Constitution* and cited the case of

Agbakoba v. The Director S.S.S.
1994 6 NWLR Pt 351.

Submitting that the suit is a pointer that the real dispute at hand between the applicants and the 4th to 8th respondents is the control of the affairs and bank accounts of Sabo Road (Osogbo) Akwa Ibom Indigenes Multipurpose Cooperative Society Ltd which the 4th to 8th Respondents have been denied.

On the 3rd issue counsel to the applicants referred to the paragraphs of the supporting affidavit and *S. 33, 34, 35, 37, 40 and 41 of the 1999 Constitution* submitting that the Applicants are entitled to an award of compensatory damages for their unlawful

M-A Ouyetemi

arrest, detention and order on the applicant's to report at Nigeria Police Zone 11 for an indefinite period citing

Alabel v. Boyes

1982 3 NCLR 834.

Counsel then urged this court to award the sum of N50 million as damages against the respondents.

The 2nd Respondent filed a 9 paragraph counter affidavit in which he denied having anything to do with either the Applicants or the rest respondents.

In his written address counsel to the 2nd Respondent gave a sole issue for determination to wit:-

Whether the 2nd respondent who did not arrest the applicants in connection with the alleged withdrawal of N1.6 million, six thousand naira in connivance with bank staff can be said to have breached the applicants rights.

Counsel answered this question in the negative submitting that the applicants did not adduce sufficient proof of the alleged breach as the 2nd respondent did not arrest the applicants on the said date.

The 2nd respondent also filed a Notice of Preliminary Objection in which his counsel submitted that this court lacks jurisdiction to entertain this suit as there is non disclosure of cause of action against the 2nd respondent, submitting that from the process filed by the applicant there is nowhere it disclosed that the applicants was arrested by the Commissioner of Police or their agents and there is no evidence adduced to show that the 3rd respondent was the one who asked the applicants to be reporting to the offices of the 1st, 2nd and 3rd respondents citing-

Hon. Sunday Akefule & Ors vs. Delta State Government & 1 or.

M. A. Oyejola

2009 2 FWLR Pt 465 at 2843

Ikenne Local Govt vs. West African Portland Cement Plc

2012 All FWLR Pt 642 at 1757

Counsel submitted that a cause of action arises on a date or time when there is breach of duty which warrants the person who is injured or adversely affected by the breach to take action in a court of law in assertion or protection of the legal right that has been trampled upon by another person or authority citing

Nigeria Stored Product Research Institute & 1 or vs.

Matthis and Ugwu & Ors

2013 15 WRN 49 at 60.

Counsel submitted that there is nowhere the 2nd respondent is stated to be the agent or principal of the 5th to 8th respondents and is therefore not a proper party to this suit as he will not be affected by the outcome of this suit citing

Green v. Green

1987 3 NWLR Pt 66 at 480.

Counsel to the 2nd respondent thus urged this court to strike out the name of the 2nd respondent with costs against the applicants.

The Applicants did not respond to his Notice of Preliminary Objection neither did any of the other parties.

The 2nd too did not appear in court to move their notice of preliminary objection and it is hereby struck out.

Now the 1st and 3rd respondents filed an 11 paragraph counter affidavit which they relied on together with 3 exhibits to wit:-

Exhibit A - Certified True Copy of petition against the Applicants

Exhibit B - Application for bail

M. A. Oyetunji

Exhibit C - letters to the 1st City Monument Bank Nig Plc by the 1st & 3rd respondents.

In his written address counsel to the 1st and 3rd respondent gave 2 issues for determination by this court to wit:-

(1) Whether in the circumstances of complaint of a defined criminal offence the 1st to 3rd respondents have breached the applicants' rights.

(2) Whether on the affidavit evidence before this court the applicants are entitled to the reliefs sought.

On issue one counsel answered this in the negative submitting that for the 1st and 3rd respondents to have breached the rights of the Applicants they must have acted contrary to their statutory powers which they did not referring to S. 4 of the Police Act LFN 2004 citing

Mr. Cosmos Orah v. Mr. Desmond Okenna & 2 ors

2010 7 NWLR Pt 1194 at 512

Aroyewun v. C.O.P

2004 16 NWLR Pt 899 at 414

Fawehinmi v. IGP

2002 NWLR Pt 767 at 606 and referring to

S. 35 (1) (c) of the 1999 Constitution.

Counsel further submitted that investigation of a criminal case is not a day's job and that their exhibit C showed the investigation activities carried out by the 1st and 3rd respondents to the knowledge of the applicants and that the present suit is a delay tactics or attempt to strangulate the police in the process of carrying out their lawful duties citing

Anambra State v. UBA

2008 15 NWLR Pt 947 at 414

M. A. Onyiah

On issue 2 counsel to the 1st and 3rd respondents submitted that the applicants who alleged that their rights have been breached should unequivocally show in cogent terms breach of such right citing

Fajemirokun v. CB (CI) Nig Ltd

2002 10 NWLR Pt 774 at 951.

That in this case even if the applicants were detained their invitation to the office of the 1st to 3rd respondents on allegation of forgery and illegal withdrawal of money from an association account and their immediate release on bail is justifiable referring to paragraphs 1 and 5 (a) (b) and (d) of their affidavit and exhibit B and citing the case of

Inakoju v. Adeleke

2009 3 LC 131

Counsel submitted that there was a petition written against the applicants and that the applicants were arrested and released within 24 hours as required by *S. 35 (4) and (5) of the 1999 Constitution*. And this was even admitted by the applicants hence there is no breach of the Applicants rights.

Moreover that it is a requirement of law that bail if granted is to enable the appearance of the suspects whenever such is needed until the case against them is finally disposed of and that is the situation in this case as per Exhibit B the bail bond stated in paragraph 5 (d) of the counter affidavit of the 1st and 3rd respondents.

Counsel then submitted that the applicants have failed to show any breach of their fundamental rights and are thus not entitled to damages citing

Jim jaja v. C.O.P

M. A. Oyejemi

2011 2 NWLR Pt 1237 at 375

University of Jos vs. M C Ikegwuoha

2013 9 NWLR at 1360 at 478.

He urged this court to dismiss this case as it is frivolous and malicious.

The 4th to 8th respondents filed a counter affidavit of 47 paragraphs together with exhibits to wit:-

Exhibit R1 Certificate of Registration of Akwa Ibom State Welfare Association

Exhibit R2 Copy of Constitution of Akwa Ibom State Welfare Association

Exhibit R3 Byelaw of the Sabo Road (Osogbo) Akwa Ibom Indigenes Multipurpose Cooperative Society Ltd.

Exhibit R4 letter to First City Monument Bank dated 24/9/12

Exhibit R5 Copy of Cheque

Exhibit R6 Copy of document titled vote of no confidence

Exhibit R7 Copy of petition by the Respondents.

In his written address counsel to the 4th to 8th respondents gave 2 issues for determination by the court to wit:-

1) Whether the Applicants rights as provided under the 1999 Constitution have been breached

2) Whether the Applicants are entitled to an order of injunction

On issue one counsel to the 4th to 8th respondents submitted that the Applicants case is not that they were detained beyond the constitutional limits citing

Augustine Ede v C.O.P Bendel State

1982 3 NCL 216

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but that there was no reasonable cause for their arrest as no cause worthy of investigation was made out by the respondents.

Counsel submitted that the Applicants are hiding under paragraphs 9 and 11 of their affidavit in support of this motion. That paragraph 9 concerns the ruling of the State High Court striking out suit No. HOS/164/2013 which the court struck out because the action was taken out in the name of a party foreign to the bank and it was not a final order citing

Dike Ogun v. Amadi

2008 All FWLR Pt 438 251

P.W.T Nig. Ltd vs. Jubo International

2011 All FWLR Pt 554 21.

And is thus not helpful to the Applicants.

Counsel further submitted that the applicants were not parties to that suit. That there was no counter claim and the court did not pronounce on the rights of the parties.

On paragraphs 11 of the applicants affidavit counsel submitted that Sabo road (Osogbo) Akwa Ibom Indigenes Multipurpose Cooperative Society Ltd is not a parallel association to Akwa Ibom State Welfare association and that the averment raises some presumption in favour of the respondents that (a) The applicants and Respondents are members of the same association

(b) The 4th respondent was the president

(c) A cooperative society is made up of members who make contributions in order to access loans even at low interest.

(d) The applicants are non signatories to the co-operative account and have no right to withdraw any money from the account and convert it to their own use.

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Counsel submitted that the Applicants were arrested and are being questioned on the allegation of forgery of signatures on Exhibit R6 and unlawful withdrawal of the sum of one million, two hundred and fifty thousand naira from a cooperative account without being signatories to that account as provided by S. 27 of the Cooperative bylaws Exhibit R3 and this is unlawful and deserves criminal investigation citing

Offodile v. Onejome

2012 All FWLR (Pt 608) 946 at 974

Daniel Osiehor v. Williams Feyisara

1962 All NLR P 110

Counsel further submitted that the right to freedom of liberty provided under S. 38 of the 1999 Constitution is not absolute and is curtailed by s. 35 (1) (a) of the same constitution. He also referred to S. 4 of the Police Act, Stating that there is no law forbidding an aggrieved citizen from making complaints to the police against another person citing

Onyebuchi v. FRN

2009 FWLR (Pt 458) 341

Fajemirokun v. CB Ltd

2009 All FWLR Pt 487 at 1

According to counsel to the 4th to 8th respondents the applicants are not denying that they collected innocent depositors savings without cause and that they naively believe that because suit No. HOS/154/2013 was struck out the 4th to 8th respondents have no remedy which is not the position of the law citing

Esi v. CNPC/BGP Int

2014 All FWLR Pt 742 at 1665

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On the issue that the 4th to 8th respondents made a report to the police because their suit was struck out counsel to the 4th to 8th respondents stated that the rights of the respondents to complain to the police accrued on 17/7/14 when the debit alert was sent to the 4th respondent on his phone after the suit was struck out and the 1st to 3rd respondents are empowered under *S. 4 of the police Act to investigate criminal complaints* .

Again counsel pointed out that the Applicants also lodged a report to the 1st respondent against the 4th to 8th respondents and both complaints are being investigated by the 1st respondent and that they resorted to court to forestall investigation against them for a criminal offence which the police are to investigate that is unlawful withdrawal and conversion which is stealing and forgery citing

Action Congress of Nigeria v. Lamido

2012 All FWLR Pt 630 1316

On the 2nd issue counsel submitted that it is consequential to the primary declaratory relief and he adopted his submissions on issue one for it and urged this court not to grant the reliefs sought by the Applicants.

Now I have carefully considered the application sought by the applicants in this case. I have also considered the reply of the respondents as well as addresses of all counsel in this matter.

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

M. A. Oryema

Whether the applicants' fundamental rights have been breached by the respondents so as to entitle them to reliefs sought by them.

First the 1st and 3rd respondents, the applicants alleged that the 1st and 3rd respondents arrested and detained them for no just cause.

Let me quickly point out that the issue here is not that the applicants were detained beyond commitment limits by the 1st and 3rd respondents but that they were unlawfully arrested and detained.

The 1st and 3rd respondents however replied that the applicants were invited and detained based on a petition of alleged commission of criminal offences by them. They tendered the said petition Exhibit A.

I have studied the said Exhibit |A and the complaint therein is that of forgery and unlawful withdrawals of people's money from cooperative account which are criminal offences under our laws.

Now *S. 4, 24 and S. 29 of the Police Act* empowers the Police to arrest any person whom they suspect of having committed an offence or any person whom another alleges to have committed an offence. The Police also have powers of investigation and detention of any such person.

See S. 29 of the Police Act.

In the present case the 4th to 8th respondents wrote a petition alleging commission of crimes by the Applicants thus the 1st to 3rd respondents are within their rights to arrest them.

Also by the provisions of S. 35 (1) (c) of the 1999 Constitution (as amended) right to liberty is not absolute as a person may be deprived of his liberty on reasonable suspicion of his have

M. A. Oryetere

committed an offence so that the police here acted within their rights in this case.

The applicants also alleged that the 1st and 2nd respondents directed them to be reporting indefinitely to them.

The 1st and 3rd respondent defence is that investigation of this kind of offence takes time and that other parties involved like the First City Monument Bank delayed replies to their letters. They tendered their letters to the bank and the bank replies Exhibit C.

I have studied the various documents under Exhibit C. Their 1st letter to the bank is dated 31/10/14.

The bank replied the 1st letter on 10/11/14. The 2nd letter was written on 10/11/14, another letter on 28/11/14 and the bank replied on 9/12/14.

I thus agree with the counsel to the 4th to 8th respondents that the investigation had to take time and that the bank involved First City Monument Bank were not prompt in replying so that the 1st to 2nd respondents cannot be faulted for the long period of investigation. And while the investigation was going on there is nothing wrong with asking the applicants to be reporting to the 4th and 8th respondents fortnightly which is quite reasonable. The 4th to 8th respondents were also prompt in granting the applicants bail so I see no reason for their complaint.

In my humble view the 4th to 8th respondents acted promptly and within the ambit of law in all their actions.

I rather see the action of the applicants as a desperate ploy to prevent the 4th to 8th respondents from further investigation of their matter.

M. A. Oyejeren

For a person to go to court to be shielded against criminal investigation and prosecution is an interference of powers given by the constitution to police officers in control of criminal investigation. See A.G. Anambra State v. Uba

2005 18 NWLR Pt 947 at 44.

The action of the Applicants against the 4th to 8th respondents is utterly condemned by this court. This court will not allow itself to be used as a tool to prevent the police from carrying out their lawful duties.

Moreover in the case of the 2nd respondent they averred that they were not involved in this matter at all an averment which the applicants did not refute.

The law is clear that averments in an affidavit not contravened by the other party remains unchallenged and are deemed admitted and the court can rely on them.

See WAEC V. Oshinelo

2007 All FWLR Pt 370 at 1516

Adefarasin v. Dayekh

2007 All FWLR Pt 348 at 911

This action must therefore fail also against the 2nd respondent.

For the 4th to 8th respondents their reply is that the Applicants made away with monies belonging to their co-operative. They allege that 1st applicant is not even a signatory to this co-operative.

Again the applicants have not denied any of the averments of the 4th to 8th respondents thus this court will admit them as true.

See *Adefarasin v. Dayekh (supra)*

The story of the applicants is that before their arrest and detention the 4th respondents had instituted a suit against them at

M. A. Oryafere

ie State High Court Osogbo Exhibit Akwa I which was struck out by the court.

I have studied the said judgment.

First it is a striking out not a dismissal. It is trite law that when a suit is struck out it is not a final judgment.

Secondly that suit is concerned with the issue of change of signatories by Akwa Ibom State Indigenes welfare Association and Cooperative Society Osogbo chapter against First City Monument Bank Plc and the court held that the plaintiff was not a juristic person who can sue and be sued and that plaintiff is also not a party to the contract between the bank and Sabo Road (Osogbo) Akwa Ibom Indigenes Multipurpose Co-operative Society Ltd and thus cannot ask the bank to effect change of signatories.

That is quite different from the present scenario being played out here in court. The Applicants seems to be under an illusions that the judgment of the court is final in respect of this case. That is not true.

Moreover the 4th to 8th respondents had in their counter affidavit which the Applicants did not contravene averred that it was after the court judgment that the applicants went and illegally withdrew money belonging to them and the association with means of forged signatories.

In other words their cause of action arose after the judgment when there was forgery and conversion of monies belonging to them and thus it is then they complained. So that the cause of action arose after that judgement.

The law is quite clear too that every citizen of this country has not only a right but also a duty to report a suspected criminal

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offence to the police for investigation and doing so is not a violation of anyone's fundamental rights where a person is arrested and detained on the basis of that report.

See Afribank of Nigeria Plc v. Onime

2004 NWLR Pt 858 P. 659

Nwosu v. State

2004 All FWLR Part 218 at 916

I therefore see no wrong doing, no breach of any fundamental rights by the 4th to 8th respondents.

In paragraph 41 of their counter affidavit the 4th to 8th respondents alleged that the applicants have written a counter petition to the 1st respondent against the 5th to 8th respondents which the applicants did not deny and which this court will deem true,


Now is that their report also not a breach of fundamental rights of the 4th to 8th respondents?

It seems to me that the applicants are very economical with the truth in this action. They seemed bent on preventing any police inquiry and investigation into their activities and think that they can use this court as a means of doing so.

I find their action reprehensible. They should go and cooperate with the 1st to 3rd respondents in their investigation of this matter. This suit is frivolous, malicious and has no merit at all. It is rather to be condemned.

I therefore have no difficulty in dismissing it.

N20,000 cost to the 2nd Respondent.


M.A. ONYETENU
JUDGE

