

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/50/2014

IN THE MATTER OF AN APPLICATION BY OGUNSINA LEYE, LASISI MUIDEEN, RAIFU AFEEZ, OYEWUMI TAIWO, AMUSA ADENIRAN, AMOO MAO, MUKAILA BALOGUN, SURAJU BALOGUN, ABUDULA MUKAILA, ALH. ABIOLA GASALIU FOR AN ORDER FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF

- 1. OGUNSINA LEYE**
- 2. LASISI MUIDEEN**
- 3. RAIFU AFEEZ**
- 4. OYEWUMI TAIWO**
- 5. AMUSA ADENIRAN**
- 6. AMOO MAO**
- 7. MUKAILA BALOGUN**
- 8. SURAJU BALOGUN**
- 9. ABDULA MUKAILA**
- 10. ALH. ABIOLA GASALIU**

APPLICANTS

AND

STATE SECURITY SERVICE	1ST RESPONDENT
NIGERIAN ARMY	2ND RESPONDENT
NIGERIA POLICE FORCE	3RD RESPONDENT

M.A. Oyetenu

JUDGEMENT

By an originating motion filed on 25/8/14 the Applicants sought to enforce their fundamental rights against the respondents by seeking the following:-

1. A declaration that the arrest and detention of the Applicants by officers of the Respondents on the 8th and 9th days of August 2014 is unconstitutional, illegal, null and void and in violation of the Applicants fundamental right to personal liberty as guaranteed by sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 and Articles 5 and 6 of the African Charter on Human and People's Rights, Cap A9, LFN, 2004.
2. A declaration that the arrest and manhandling of the Applicants by officers of the Respondents on the 8th and 9th days of August 2014 constitute a violation of the Applicants freedom from torture, inhuman and degrading treatment as guaranteed by section 34 of the Constitution of the Federal Republic of Nigeria, 1999.
3. A declaration that the prevention of the Applicants from participating in the governorship election that took place on Saturday the 9th day of August, 2014 and voting for the candidate(s) of their choice is illegal and unconstitutional as it violates Articles 13(1) and 20 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

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4. An order directing the Respondents to pay aggravated damages/compensation in the sum of N100,000,000.00 (One Hundred Million Naira) and tender public apology to each of the Applicants for the foresaid illegal and unconstitutional violations of the Applicants fundamental rights.

The motion is supported by a 13 paragraph affidavit which the applicants relied on and exhibits to wit:

Exhibit A Interim Order of the High Court of Osun State Ile-Ife

Exhibit B Proof of Service

Exhibit C Report of Service

Briefly stated the applicants case is that they were all picked up randomly on 10/8/14 at Isokan their home town by armed officers of the respondents without being told what offences they had committed. They were taken to the office of the 3rd respondent where they were detained, stripped naked and ordered to lie down for several hours in the open. They were tortured and humiliated for supporting the candidature of Ogbeni Rauf Aregbesola. They were starved of food and water and restrained from movement till 14/8/14, when they were released and asked to come back and when they did they were charged to court. Earlier on 7/8/14 an interim injunction was obtained by the All progressive congress party against the 1st and 3rd respondents restraining them from arbitrary arrests of All Progressive congress members and the said order was duly served on the 1st and 3rd respondents but 1st respondent rejected service. The 1st applicant who deposed to the affidavit stated he was a member of the All progressive congress party.

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The Applicant filed an 8 paragraph counter affidavit in respect of the following objection raised by counsel to the 1st Respondent.

I have carefully considered the Notice of preliminary objection filed by counsel to the 1st respondent. I have also considered the reply of counsel to the applicants.

Let me start with the last issue raised by counsel to the 1st respondent to wit:

Whether an affidavit not sworn with the consent and authority of an applicant and who did not sign a jurat can establish any case for the applicant.

I have examined the affidavit in support of this application and it is clear that the 1st applicant only deposed to that affidavit. The 2nd to 10th applicants did not. This is a fundamental right matter and a clear reading of *S. 46 of the 1999 Constitution* shows that it is breach of an individual right that action can be filed. By the provisions of *Order 2 Rule 4 of the fundamental rights enforcement procedure rule* a person can depose to an affidavit on behalf of another but he must be given the power and authority to do so. I also agree with counsel to the 1st respondent that if it is a joint affidavit under *S. 119 (4) of the Evidence Act* one of the deponents can sign but there must be a format where the other applicant will also sign in the present case the 2nd to 10th Applicants did not sign any format. The 1st applicant who deposed to this affidavit did not state whether the authority had court is the other applicants to depose to this affidavit. The resultant effort is that the affidavit supports only the action of the 1st applicant.

The 2nd to 10th applicants thus have no affidavit in support of their case and this is fatal to their case. An action for enforcement of

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fundamental human rights cannot be sustained without an affidavit in support of it so that this action against the 1st respondent but the 2nd and 3rd respondents also fails.

On the 4th issue whether Femi Falana, Dr. Sunkanmi Anuo A.W Saliman, Abiodun Olamide, Kunle Adegoke, T.S. Adegboyega, Abdulrasak Adeoye is a person who can sign a court process. I agree with the the submission of counsel to the Applicant that where a process is prepared by several counsel the signing counsel shall tick his name as the one signing.

See *SLB Consortium v. n.N.P.C (supra)*

In the present case it is clear that the name of Kunle Adegoke was ticked as the signing counsel hence I resolve this issue in favour of the Applicant.

The 3rd issue is failure to join the particular officer that allegedly arrested, harassed or tortured the applicant I agree with counsel to the Applicant that non joinder of all necessary parties will not grounda dismissal of a suit where the parties before the court are competent parties.

See *Diapialong v. Lalong (supra)*

and *Order 9 Rule 4 of the Federal high Court Civil Procedure Rules.*

hence I resolve this issue in favour of the Applicant.

On the issue that the 1st respondent is not a juristic person and that the name of the 1st respondent is not State Security Services, I have had recourse to *S. 7 of National Securities Agencies Act Cap N74 Laws of Federation of Nigeria 2004* which established the National Security Agencies. The State Security Service is included under it so that the State Security

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Service is definitely a juristic person. I resolve this name in favour of the Applicant.

On the issue that the Applicant did not disclose a cause of action against the 1st respondent and to the Applicant referring this court to the reliefs sought by the applicant and paragraph 3 and 4 of the Affidavit in support of this action. First the relief sought is based on cause of action not the other way round.

I have studied the entire affidavit in support of this motion and I find that the name of the 1st respondent is not mentioned at all. It merely stated officers of the respondents. The affidavit did not disclose how the 1st respondent infringed on the right of the applicant. It is not enough to make sweepings statements. The applicant ought to have made specific averments against the 1st respondent. His failure to do so is fatal to his action against the 1st respondent hence his case against the 1st respondent is hereby dismissed.

For the 2nd respondent they filed a 31 paragraph counter affidavit in which they deemed the averments contained in the affidavit in support of this application.

In his written address counsel to the 2nd respondent had submitted that the applicant had not shown that the 2nd respondent participated, instituted, authorized or commenced the alleged violation citing the case of

Dongtee v. CSC Plateau State
2001 NWLR Pt 50 1639 S.C

I have studied the said affidavit in support of this application. I agree with the counsel to the 2nd respondent that the applicant ought to present material facts before this court in proof of breach of this

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fundamental rights which the applicant has failed to do. He only mentioned paragraph 4 that officers of the respondents arrested the applicant. Even in his further affidavit he was not specific. He did not give evidence that the applicant was detained by the 2nd respondent.

As for the court order there is nothing to show that it was served on the 2nd respondent.

In my humble view therefore I find that the Applicant has not established a reasonable cause of action against the 2nd respondent.

For the 3rd respondent, they filed a 12 paragraph counter affidavit together with Exhibits to wit:

Exhibit NPF 1 NPF 2 NPF 3 and NPF 4 (which are statements of complainants) to them

Exhibit NPF 5 Entry in case diary

Exhibit NPF 6 Copy of charge sheet

Exhibit NPF 7 Photograph of one Olarinde Lukman one of the complainants

Exhibit NPF 8 to ten Scenes of crime.

The gist of the Applicant's case was that he was unlawfully arrested, detained and subjected to inhuman treatment by officers of the Respondents.

The reply of the 3rd respondent is that a case of assault occasioning harm was made against the applicant and that matter is now pending at Chief Magistrate Court II Osogbo. They exhibited the statements of the complainants Exhibit NPF 1 to 4 as well as the charge pending at the Magistrate Court Exhibit NPF 5.

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Counsel to the 3rd respondent submitted that the Police the 3rd respondent has the constitutional responsibility to instigate allegation of crime and prosecute offenders.

I have read the statements of the complainants of alleged unlawful assault namely Faniyi Taiwo, (2) Sabitu Aina (3) Rasheed Ropo (4) Olarinde Lukman and indeed they alleged that they were assaulted. In the extract from the crime diary NPF 5 the name of the applicant was mentioned specifically as one of the offenders. I have also studied Exhibit NPF photograph of one of the complainants with their client and all this shows that there was at least a complaint of unlawful assault.

It is trite law that the 3rd respondent has not only the right but duty to investigate crime and prosecute offenders. See *S.4 of the Police Act* and indeed here the power to arrest of anyone reasonably suspected of having committed a crime. See *S. 35 (1) (c) of the 1999 Constitution*.

In the present circumstances giving all that the 3rd respondent had shown above there is reasonable suspicion that the applicant committed a crime and the police were acting in their lawful duties when they arrested him.

On the detention the applicant alleged he was detained for 4 days. The 3rd respondent reply is that the applicant was granted bail but could not get any sureties.

The applicant averred that they were not granted administrative bail but in paragraph 9 of the affidavit the applicant averred that they were asked to come back the day after their release for further investigation. Does that mean that they were

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simply released without being granted bail and asked to come back the day after.

I do not believe the story of the applicant that he was not granted administrative bail. The applicant did not file particulars of the beating and tortured. He alleged that he was stripped naked and ordered to lie down for several hours but omitted to state who did that.

I am of the humble view that the avernments of the applicant in paragraph 3 to 8 is not specific but in general terms which ought not to be.

On the issue of the detention robbing the applicant of the opportunity to vote even though he stated he is a registered voter he did not give evidence of this. He ought to have at least tendered his voter's card.

Also on the issue of the court order of injunction issued against the 3rd respondent restraining them from engaging in arbitrary arrest of All Progressive Congress members before and after the election.

First the applicant has not proffered proof that he is a member of the All Progressive Congress in Osun State

As he is not specifically mentioned in the order of court as a party he ought to produce evidence showing that he is a member of the All Progressive Congress and that the order of court also applies to him which he failed to do.

Finally I wish to comment on the alleged contradictions deposed to by the Applicant in the police crime diary NPF 5 and the statement of the alleged complaints Exhibits NPF 1 to NPF 4. All these Exhibits are allegedly what they said complainants told the 3rd respondent. They are not statements of the 3rd respondent in which

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case it will be said that he 3rd respondent contradicted itself but in the present circumstances all that can be deduced from it is that the complainants allegedly made a report in the crime diary contradicting to their statement to the 3rd respondent.

I therefore find the applicant has not been able to profer sufficient proof of breach of his fundamental rights by the 3rd respondent.

In conclusion therefore the case of the applicants fails against all the respondents and it is hereby dismissed.


M.A. ONYETENU
JUDGE

