

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE OSOGBO JUDICIAL DIVISION
HOLDEN AT OSOGBO
ON 26TH DAY OF MAY 2016
BEFORE THE HON. JUSTICE M.A. ONYETENU
JUDGE

SUIT NO: FHC/OS/CS/65/2015

BETWEEN:

MR. OLAYINKA SOKOYA

.....

APPLICANT

AND

1. INSPECTOR GEN. OF POLICE
2. COMMISSIONER OF POLICE,
OSUN STATE
3. SUPOL JOEL BODE
4. OSOBU OLUWASEUN

RESPONDENTS

JUDGMENT

By a Motion on Notice filed on 14/10/15 the Applicant sought to enforce his fundamental rights against the Respondents by seeking the following reliefs:

1. A Declaration that the aggravated assault, violent harassment, intimidating degradation and infraction on the right to Dignity of the Applicant by the 3rd and 4th Respondents on the 13th of October, 2015 while Applicant was performing his lawful duty is unconstitutional, unlawful and a violation of the Applicant's Fundamental Right to dignity of human person.
2. An Order directing the Respondents jointly or severally to pay special damages of N250,000.00k as cost of the medical bills

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incurred by the Applicant and general damages in the sum of N500,000,000.00k for the aggravated assault, violent harassment, intimidating degradation, infraction on the right dignity of the Applicant and psychological, emotional and mental torture of the Applicant by the 3rd and 4th Respondents on the 13th of October, 2015 while the Applicant was performing his lawful duty.

3. An Order directing the Respondents to release to the Applicant his gold wedding ring forthwith unconditionally from their custody or in the alternative an order directing the Respondents to pay the sum of N100,000.00k for the wedding gold ring.

The Motion is supported by a 29 paragraph affidavit and Exhibits which the Applicant relied on to wit:-

Exhibit YSA medical report on the Applicant

Exhibit YSB pictures of the Applicant with wounds.

Briefly stated the case of the Applicant is that on 13/10/15 he answered a call by his client who told him he was detained at 'B' Division of the Nigeria Police Force Ijemo Ilesa.

On getting there he asked the 4th respondent the offence of his client and he told him his client employed a fake driver who drove his company's vehicle and had an accident with it. He told the 4th respondent that the driver had a licence and that there is no offence known as employing a fake driver whereupon the 4th respondent became furious and asked whether he wanted to teach him his job and for him to leave his office but he asked for access to his client

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and the 4th respondent became angrier and called the 3rd respondent asking him who is the stupid lawyer telling me my job. He directed that the applicant's client be locked up in the cell. The applicant then submitted a letter to the Divisional Police Officer (DPO) of the station calling on him to ensure immediate release of the said client and this further angered the 3rd and 4th Respondents.

The applicant further instructed his client not to say anything until he is charged to court whereupon the 3rd respondent held the Applicant by the neck and slapped him repeatedly and asked the 4th respondent and other policemen to deal with him and chase him out of the station and they obeyed him beating up the Applicant in the process. That the Applicant was rushed to hospital for treatment and Exhibit YSA issued to him and he took photographs Exh. YSB.

That it was at the hospital that he discovered his wedding ring got missing.

That he suffered severe and acute pains as well as public ridicule as a result of that incident hence this action.

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

Whether the violent attack on Applicant by the 3rd and 4th Respondents which resulted in injuries is not illegal and unconstitutional.

Counsel referred to S. 34(a) of the 1999 Constitution and Article 5 of the African charter on Human and People's Rights and submitted that any inhuman and degrading treatment meted out on any citizen

M A Oyelami

of the country is a violation of his constitutional right to dignity of human persons citing

New Patriotic Party v. IGP Accra 2002 2HRLRA 2 1 at 28.

Counsel referred to paragraphs 15 to 23 of the affidavit in support of this application submitting that the unjustified treatment meted out to the Applicant constitutes breach of his rights to dignity of his human person citing the case of

Uzoukwu & Ors v. Ezeonu & Ors.

1991 6 NWLR Pt 200 708

Olga Tellis and 2 Ors v. Bombay Municipal Corp & Ors

2007 CHR 236.

He urged this court to resolve the lone issue in favour of the Applicant.

The Respondents filed a 21 paragraph counter affidavit which they relied on and 3 exhibits to wit:-

Exhibit A1 Statement of the Manager(Applicant's client)

Exhibit A2 Petition by the Applicant, Exhibit A3 Photograph of the accident vehicles.

In their own defence the respondents answered that there was an accident on the said day and that the drivers involved were taken to their station for investigation and the Applicant's clients driver called the said client who called the Applicant. That the applicant embarrassed the 4th respondent while the 4th respondent was performing his lawful duties by shouting on him on the top of his voice that there is no offence known as employing a fake driver and

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that he came to the station with a copy of petition against the D.P.O. and his men.

They denied beating the Applicant or subjecting him to any public ridicule or odium.

In his written address counsel to the respondents gave 2 issues for determination to wit:

Whether the Respondents have infringed upon the Applicant's rights and whether the applicant is entitled to damages from the Respondents.

Counsel on the 1st issue submitted that the respondents did not breach the rights of the Applicant. That the 1st respondent is at Abuja and did not have any contact with the applicant neither did the 2nd respondent. That the 3rd respondent merely ordered the investigation of a crime of dangerous driving against the driver of a truck in this case and did not talk to the Applicant who is not a party to the case.

Counsel submitted that in order to carry out their statutory duties they asked the driver of the truck to produce his driver's licence and that the police should not be hampered or dragged down in the performance of their duties by threats of fundamental rights enforcement proceeding.

Counsel further submitted that the allegation of the applicant is not true and that the police is known to protect life and property and not torture or embarrass of members of the public referring to S. 4 of the Police Act. He urged this court to hold that the Respondents did not infringe the rights of the applicant.

M.A. Oyejuru

On issue 2 whether the applicant is entitled to damages from the Respondents counsel submitted that the Applicant has not adduced sufficient evidence to show that his fundamental rights has been infringed upon and he who asserts must prove citing the case of

Ezenneh v. Attah

2004 7 NWLR Pt 873 at 4, 8

And this the Applicant has failed to do hence he is not entitled to any relief.

Furthermore counsel to the Respondents submitted that the court is enjoined not to interfere with the investigation powers of the police citing

Hassan v. EFCC page 616 Ratio 13.

He urged the court to decline the reliefs sought by the Applicant and submitted that for the Applicant to come to the office of the Respondents and embarrass them when they are performing their lawful duties does not portray good conduct under the legal profession Act.

More over counsel to the Respondents submitted that damages followed a wrong and that since the applicant has not shown that his rights have been infringed the court should not award damages against them citing

Moses v. Onu

2003 All FWLR Pt 674 at 153.

He urged this court to dismiss this application.

The Applicant filed a further affidavit of 14 paragraphs and tendered Exhibits to wit:-

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Exhibit YSC Punch Newspaper of 19th October 2015

Exhibit YSD Photographs showing injuries sustained by the Applicant.

Exhibit YSE Affidavit of facts deposed to by the Applicant's client.

In his reply on point of law counsel to the Applicant submitted that the Applicant has placed sufficient materials before this court referring to paragraphs 6(a) (b) and (c) of the further affidavit and also the provision of Article I of the United Nations Convention against torture and other cruel inhuman or degrading treatment which defined the word torture and citing the case of

Uzoukwu v. Ezeonu II

1991 6 NWLR Pt 200 P. 708

which also defined the word torture.

The Respondents filed a further and better counter affidavit of 10 paragraphs denying the further affidavit.

I have carefully considered the application sought by the Applicant in this case. I have also considered the reply of the Respondents as well as the written addresses of both counsel in this case.

First let me comment on the submission of counsel to the Respondent that the Inspector General of Police and the Commissioner of Police had nothing avarred against them in this case and that their names should be struck out.

The Inspector General of Police is the head of the Nigeria Police force while the Commissioner of Police is the head of Police Force in Osun State.

M. A. Oyejide

I agree with counsel to the Respondents that there is nothing remotely connecting the Inspector General of Police in this matter more so when the Commissioner of Police is also a party.

This is an event took place at Ilesa in Osun State and the 3rd and 4th respondents are officers directly under the Commissioner of Police and he is thus responsible for any of their action or inaction so he is properly sued in this action. The name of the 1st Respondent is hereby struck out.

Having said that in my humble view a sole issue calls for determination by this court to wit:-

Whether the applicant is entitled to the reliefs sought by him in this application.

The applicant has averred that he was beaten up by the Respondents when he went to answer his client's call that his client was detained by the 4th Respondent. He averred that he reason he was assaulted was that he told the 3rd and 4th Respondents that there is no offence known as employing a fake driver and they got angry that he was teaching them their job.

The respondents in paragraph 1 of their counter affidavit countered by averring that he embarrassed the 4th respondent in his office while he was performing his lawful duties by insulting him in the presence of the drivers and his client.

First let me state categorically that there is no offence known in the laws of this country as employing a fake driver and I do not see any wrong with a counsel saying so to the police. I do not see any

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embarrassment that this will cause any police officer unless the police officer was acting unlawfully in his penchant to extort money.

The Respondents alleged that the Applicant assaulted him while he was doing his lawful duties. The question that comes to my mind is what lawful duty?

Detaining a person for the offence of employing a fake driver?

Counsel to the Respondents in his written address while giving the facts of this case stated that the driver in question when detained told them that his licence was held by his manager and the policemen called upon the manager.

I have read the counter affidavit of the respondents and nowhere in that counter affidavit was it averred that the driver told the 4th respondent that his licence was with the manager and this the 4th Respondent called upon the manager. And his counter affidavit was deposed to by 4th respondent himself.

One then wonders where Respondent counsel got this information.

As it is it is counsel giving evidence in his address which is contrary to the law.

The Respondents denied detaining the applicant's client. But then there is Exhibit YSE affidavit of facts deposed to by the manager the client of the Applicant in which he averred that he was detained by the Respondents.

This the Respondents has averred as an after thought in their counter affidavit.

M.A. Ouyefeny

But then if the applicant client was not arrested and detained why then will the Applicant state that there is no offence known as employing a fake driver which both parties agreed that he said.

I simply do not believe that the 3rd and 4th respondents did not arrest and detain the applicant client and if they did the Applicant has every right to be in that station on that day. He also has a right to tell the 3rd and 4th respondents that there is no such law as employing a fake driver.

I believe that the 3rd and 4th respondents were on a pathway to extort money from the Applicant's client hence their embarrassment at their ploy being exposed by the Applicant when he stated there was no law known as employing a fake driver. This of course angered the 3rd and 4th respondents as stated by the applicant in the affidavit in support of this suit hence their violent reaction to the applicant.

The Respondents have stated that the Applicant was not beaten up and did not have any injury but the medical report Exhibit YSA, the photographs Exhibit YSB and YSD the affidavit of Applicant's client Exhibit YSE all belie this piece of evidence.

In their further and better counter affidavit the respondents averred that he applicant had armed himself with a copy of petition against the DPO and his men before arriving at the Police station and tendered Exhibit A2.

I have studied that Exhibit A2.

First it is addressed to the DPO of Nigeria Police Force Ijemo street Ilesa and is a complaint to the DPO not against the DPO.

M. A. Ouyebu

Secondly if the Applicant goes to the police station with a petition is there anything wrong with that?

I see the action of the 3rd and 4th respondents as that of semi illiterates. I see them as having no business being employed by the Nigerian Police Force. These are the bad eggs that give the Nigerian Police Force a bad name. They are uncivilized and uncultured. They are not fit and proper persons to be in the Nigeria Police Force.

I therefore find that inhuman and degrading treatment and torture has been established by the Applicant in this case against the Respondents.

That being the case in line with in S. 46 of the 1999 Constitution the Applicant is entitled to enforce his fundamental rights against the respondents.

Having viewed the extent of the Applicant's injuries as per Exhibit YSA and having regard to the fact that the Applicant was at that material time not only a lawyer but secretary to the NBA and also having regard to the fact that the 3rd and 4th respondents are to protect the society and maintain law and order and not beat up members of the public, I will award compensatory damage to the Applicant.

In conclusion therefore, I find that the applicant has adduced sufficient evidence in proof of breach of his fundamental rights by the respondents and I so hold.


I therefore make the following declaration

(1) That the aggravated assault violent harassment, intimidating degradation and infraction of the Applicant's rights by the 3rd

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and 4th Respondents on the 13th day of October 2015 is unconstitutional and a violation of the applicants fundamental right to dignity of his person.

- (2) That the 3rd and 4th Respondents jointly or severally are to pay special damages of N250,000 as cost of medical bills incurred by the Applicant.
- (3) That the respondents are to release to the Applicant his gold ring or in the alternative pay him the sum of N100,000
- (4) That the Respondents are to pay general damages of N10 million to the Applicant.


M.A. ONYETENU
JUDGE
26/5/2016

