

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE OSOGBO JUDICIAL DIVISION**  
**HOLDEN AT OSOGBO**  
**ON WEDNESDAY THE 27<sup>TH</sup> DAY OF APRIL, 2016**  
**BEFORE THE HON. JUSTICE M. A. ONYETENU**  
**JUDGE**

**SUIT NO. FHC/OS/CS/37/2015**

**BETWEEN:-**

1. MR. AMUDA AGUNTASOLO  
2. MR. BABATUNDE AGUNTASOLO } - APPLICANTS

**AND**

1. MR. ENIOLA AJAYI  
2. MRS. FLORENCE AJAYI  
3. MR. SAKA AMUSA  
4. CONSTABLE OLAREWAJU IBRAHIM  
5. ACP OSHO MICHAEL (THE POLICE  
AREA COMMANDER, IJESA AREA  
COMMAND, ILESA)  
6. THE COMMISSIONER OF POLICE,  
OSUN STATE COMMAND } - RESPONDENTS

**JUDGMENT**

By a motion on notice filed on 12/5/15 the applicants sought to enforce their fundamental rights by seeking the following reliefs.

*M. A. Onyetenu*

- (a) **DECLARATION** that during the pendency of suit No: HIL/54/2014: Madam Florence Ajayi & Anor. V. Amuda Aguntasolo & 6 Ors. Instituted by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents at the High Court of Justice, Ilesa Judicial Division Osun State, and without any order of injunction by the said court restraining the 1<sup>st</sup> Applicant and his family members who are Defendants in the said case, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents herein cannot lawfully arrest, detain and or intimidate the applicants and their workmen, servants or privies on the piece or parcel of land situate, lying and being at Agun village, via Alaba, in Atakunmosa West Local Government Area, the subject matter of suit No. HIL/54/2014: Madam Florence Ajayi & Anor v. Amuda Aguntasolo & 6 Ors.
- (b) **DECLARATION** that the arrest and detention of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants on Thursday the 23<sup>rd</sup> April, 2015 between 10am and 5pm at Ayeso Police Station, Ilesa by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents at the instance and instigation of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is illegal, unconstitutional and an infraction and or violation of the Applicants' rights to personal liberty provided for under S. 35 of the Constitution of the Federal Republic

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of Nigeria 1999 as amended and Articles 4, 5, 6, 12 and 14 of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, Cap A9, Laws of the Federation, 2004.

- (c) **AN ORDER** of perpetual injunction restraining the 4<sup>th</sup> – 6<sup>th</sup> Respondents whether by themselves, their agents, servants and or privies from arresting, detaining, holding in custody, harassing, intimidating or doing anything to infringe or further infringe the fundamental Rights of the Applicants in any manner whatsoever.
- (d) **AN ORDER** of this honourable court directing the Respondents jointly and severally to pay to the Applicants the sum of ₦5million naira as general damages for the loss or losses suffered by the Applicants by reason of their unwarranted, unjustified and unlawful arrest and detention by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents at the instance and instigation of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents between 10am and 5pm at Ayeso Police Station, Ilesa on Thursday 23<sup>rd</sup> April, 2015.

M. A. Oyeben



relied on and a written address by counsel to the applicants.

Briefly stated the case for the applicants is that they and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are from the same family and owned together 25 acres of farmland. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents instituted a suit against them and other members of the family at the High Court of Justice Osun State Ilesa Division claiming declarations and injunctions after the said land. That the suit has not been heard whereupon the 3<sup>rd</sup> respondent claimed that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have granted him a lease of a portion of the land. When the applicants family farmland went to work.

On the said farmland a policeman from Area Commander's Office Ijesa Ara Ilesa at the instigation of the 1<sup>st</sup> and 2<sup>nd</sup> respondents came to arrest them and not being successful seized their working implements and tools. That the 4<sup>th</sup> respondent at the instigation of 1<sup>st</sup> to 3<sup>rd</sup> respondents arrested the 1<sup>st</sup> applicant and detained him and when the 2<sup>nd</sup> applicant came to visit him arrested and detained also him. That due to that arrest and unlawful detention he suffered physical, mental and emotional torture and was hospitalized hence this action.

*M. A. Oyejemi*

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

Whether it is proper for the 4<sup>th</sup> to 6<sup>th</sup> respondents at the instance of the 1<sup>st</sup> – 3<sup>rd</sup> respondents to arrest and detain the applicants and their farmlands in respect of a farmland in dispute which is the subject of a civil action pending before the High Court without the said Court issuing an order of injunction.

Whether it is the duty of the Police to intervene in land issues

Whether the applicants are not entitled to damages for the unlawful arrest and detention.

On issue one counsel to the applicants answered this in the affirmative submitting that since parties have submitted their dispute before a competent court of law they cannot resort to self help as done by 1<sup>st</sup> to 3<sup>rd</sup> respondents in this case citing

Governor of Lagos State V. Chief Emeka Ojukwu  
1986 1 NWLR Pt 18 621 S.C.

and thus the action of 4<sup>th</sup> to 6<sup>th</sup> respondents of arresting and detaining the applicants is illegal and violates S.43 and 44 (1) of the 1999 constitution citing

Abdulsamad V. Akar

M.A. Oyetunji

2006 13 NWLR Pt 996 at 127 S.C.

On issue 2 counsel to the applicants submitted that it is not the duty of the Police to adjudicate on land matters and that the 4<sup>th</sup> to 6<sup>th</sup> respondents have acted outside the powers granted them in the Police Act citing

Eshugbayi Eleko V. Government of Nigeria 1931 A. C 663.

On issue 3 counsel to the applicant submitted that the arrest and detention of the applicants having been unlawful that they are entitled damages referring to S. 35 (6) of the 1999 Constitution and citing the case of

Alaboh v. Boyes

1984 5 NCLR 830

Jimoh v. A. G. Federation

1998 1 HRLLR 513

Mrs. Obisi v. Nigerian Navy

1999 1 FHCLR 609

Mrs. Florence Tingloda v. The Nigerian Armed Force

1997 2 FHCLR 648

Budem v. National Union of Textile Government Workers

1998 2 FHCLR 367

Ebun Adegborura v. A. G. Federation

*M. A. - Oyetun*



1998 1 FHCLR 171

Counsel on the quantum of damages submitted that the court is to look at the surrounding of circumstances of each case to especially the depreciating value of the naira to enable it arrive at a reasonable sum citing

Dr. Olu Onagoruruwa v. Inspector General of Police

1993 5 NWLR Pt 193 at 593

Abdulrahman Derman v. Minister of Internal

1981 2 NCLR 459

He urged this court to grant the prayers of the applicants. The 1<sup>st</sup> to 3<sup>rd</sup> respondents filed a 27 paragraph counter affidavit with 3 Exhibits to wit:-

Exhibit OCA Affidavit of Service of court summons on the 1<sup>st</sup> applicant

Exhibit OCB petition to the Area Commander written by one Emmanuel Emi

Exhibit OCB photographs taken at alleged scene of crime

The story of the 1<sup>st</sup> to 3<sup>rd</sup> respondents is that the 1<sup>st</sup> applicant is not the head of their family being the head of only a branch of their family and that the suit in the said High Court was instituted by them to protect and preserve

M. A. Oyeleke

their rights over the said farmland. That the originating process have been served on the 1<sup>st</sup> applicant.

That the 1<sup>st</sup> applicant and other members of their family have not filed statement of defence.

That the 1<sup>st</sup> applicant and their own branch of family have had their land partitioned to them different from this case. Thus when they received a report that some people have invaded the farmland destroying cocoa, kolanut, banana plantation hence he made an official report of conduct likely to cause breach of peace and malicious damage to the 4<sup>th</sup> respondent and thereafter led the Police to the said farmland where they discovered a large burrow hole. That the workers on seeing them ran away as they are not farmhands but illegal miners mining for gold and that the said Malam Umaru and others admitted committing crimes levied against them. That the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are not aware of the report he made to the Police or the invitation by the Police to the applicants.

That the applicants were not arrested nor detained neither were they tortured and that they made confessional statements admitting bringing in miners to mine gold on the said land.

M. A. Oyekan



In his written address counsel to the 1<sup>st</sup> to 3<sup>rd</sup> respondents gave a sole issue for determination by this court to wit:-

Whether from the documentary evidence before the Court the applicants' rights have been breached to warrant the award of monetary damages.

Counsel stated that 1<sup>st</sup> to 3<sup>rd</sup> respondents submitted that the applicants' rights have not been breached that the applicants were invited by the Police on the issue of Commission of criminal offence, that they made statements under caution and were then released on bail.

Counsel submitted that every citizen of this country has a duty to bring before the Police a complaint against any person who has committed a crime as in this case citing

FCMB v. EHL

2008 22 WRN at 61

Obafor v. Ogunburegui

1961 1 ANLR 833

Basseyy v. Afia

2010 All FWLR Pt 531 at 1500

Fajemirokun v. Commercial Bank (Nig) Ltd

2009 Pt 487 at 1

Counsel then submitted that the applicants are not entitled to the reliefs being sought by them.

The applicants filed a further affidavit of 23 paragraphs. In his reply on point of law counsel to the 1<sup>st</sup> to 3<sup>rd</sup> respondents gave 2 issues for determination to wit:-

- (1) Whether the writing of a petition by 1<sup>st</sup> respondent against the applicants in respect of the said portion of land subject to litigation which is pending before the Court can constitute a license for the respondents to violate the fundamental rights of the applicants.
- (2) Whether the fundamental rights of the applicants have been breached by the respondents.

The 1<sup>st</sup> issue counsel answered in the negative and submitted that the subject matter of the arrest and detention of the applicants is the disputed 25 acres portion of farmland and that the issue whether this land has been partitioned has been submitted by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for adjudication and thus they cannot drag the 4<sup>th</sup> to 6<sup>th</sup> respondents into it as they did in this case and this constitutes violation of the rights of the applicant.

On the issue of whether the applicants were detained counsel to the applicants referred to paragraphs 21 of the counter affidavit of the 1<sup>st</sup> to 3<sup>rd</sup> respondents and

*M. A. Ouytem*

submitted that the counsel to the 1<sup>st</sup> to 3<sup>rd</sup> respondents admitted this in paragraph 3.3 of his written address and this is binding on the respondents citing

Enigbokan v. Baruwa

1989 8 NWLR Pt 560 at 96 180 v eno

1999 2 NWLR Pt 500 at 206

Okigbe v. Chikere

2007 SC Pt 1 106

Ebosele v. Atomesin

1997 5 NWLR Pt 506 at 45

And that such detention is unlawful citing

Alaboh v. Boyes

1984 5 NCLR 830

Ejiofor v. Okeke

2000 7 NWLR Pt 665 at 363

Agbakogba v. SSC

1994 6 NWLR Pt 351 at 47 Oceanic Securities International Ltd. V. Alhaji Bashir Balogun & 4 Ors.

2012 38 WRN 143 at 174

On the issue that a citizen has a right to report any commission of a crime counsel submitted that where the subject matter is before a court there is no basis for inviting the Police. Counsel then submitted that the cases



cited by counsel to the 1<sup>st</sup> to 3<sup>rd</sup> respondents on this issue are not applicable for present case.

On the issue that the 1<sup>st</sup> to 3<sup>rd</sup> respondents counsel in his written address submitted that the applicants are not under any fear of arrest and detention as they would have fled from Osun State and would not have appeared before the Commissioner of Oaths, he submitted that they are.

He urged this court to resolve all the issues in favour of the applicants citing

FRN v. Ifegwu

2003 15 NWLR Pt 842 at 179 (c)

The 4<sup>th</sup> to 6<sup>th</sup> respondents filed a 24 paragraph counter affidavit together with exhibits to wit:-

Exhibit A certified true copy of petition written to the Police

Exhibit B1 to B3 certified true copies of photographs showing destroyed cash crop and pit dug on the land

Exhibit C1 and C2 certified true copies of statement to the Police by Umaru Mustapha and Abdulahi Abeebe respectively

Exhibit D certified true copy of statement of the 1<sup>st</sup> applicant

M. A. Ouyetenu

In his written address counsel to the 4<sup>th</sup> and 6<sup>th</sup> respondents gave 2 issues for determination to wit:-

- (1) Whether the Police have power to investigate criminal complaints
- (2) Whether in the absence of genuine cause of action applicants are entitled to grant of reliefs sought.

On issue one counsel to the 4<sup>th</sup> to 6<sup>th</sup> respondents submitted that the Police have constitutional right of apprehension of offenders referring to S. 214 (1) (2) (a) & (b) S. 215 (1) & (2) of the Constitution of Nigeria (as amended) and S. 4 of the Police Act

and that a complaint of conduct likely to cause breach of peace was reported to them hence the 4<sup>th</sup> to 6<sup>th</sup> Respondents had to investigate the matter citing

Fawehinmi v. I.G.P.

2002 23 WRN 1 at 25

On issue 2 counsel to the 4<sup>th</sup> to 6<sup>th</sup> Respondents submitted that the Applicants have to show reasonable cause of action to entitle them to reliefs sought citing

Military Governor v. Kolawole & Ors.

2008 35 NSCQR 506

Capital Bancorp Ltd. V. Shelter Savings & Loans Ltd.

2007 All FWLR Pt 352 at 1695

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Rinco Construction Company v. Veepee Industry Ltd.

2008 9 NWLR Pt 929 85

Inakoju v. Adeleke

2009 3 LC 131

And this they failed to do referring to

S. 135 – 137 of the Evidence Act and citing

Mr. Cosmos Onah (Alias Confidence) v. Mr. Desmond Okenwa & 2 Ors.

2010 7 NWLR Pt. 1194 at 512

Adebo v. Omisola

2005 2 NWLR Pt 909 at 147

He therefore urged this court to dismiss the Applicants' application as lacking in merit.

The Applicants filed a further affidavit of 17 paragraphs which they relied on.

In his reply on point of law counsel to the Applicants gave 2 issues for determination to wit:-

- (1) Whether the writing of a petition (Exhibit) (OCB) by the 1<sup>st</sup> Respondents against the applicants in respect of the disputed land which is subject of litigation at the High Court of Justice constitute a license for the Respondents to violate the fundamental right of the Applicants.

*M.A. Oyejide*



(2) Whether on the totality of the evidence before the court the applicant's rights have not been violated

On issue one counsel submitted that the mere writing of a petition Exhibit A by the 1<sup>st</sup> Respondent against The applicants does not mean that they can violate the fundamental rights of the Applicants.

That the fact that the farmland is utilized for mining purposes will not make any difference.

Counsel submitted that the subject matter of the arrest and detention of the Applicants is the disputed 25 acres of farmland and that the issue whether the farmland was partitioned or not had been submitted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for adjudication and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are bound to await the outcome of the suit.

Counsel submitted that the 4<sup>th</sup> to 6<sup>th</sup> Respondents have admitted the filing of the case, the facts of the farmland and arrest and detention of the applicants and these should be taken as truth citing

Lewis & Peat (NRI) Ltd v. Akhimen

1976 FSC 157

Oseni v. Dawodu

1994 4SCNJ 197

Osafire v. Odi

*M. A. Oyefer*

1994 2SCNJ 1

and this court is left without difficulty in granting the application prayed for.

As to the arrest and detention of the Applicants counsel to Applicants submitted that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents admitted this in paragraph 21 of the counter affidavit and paragraph 3.3 of their counsels address and that Exhibit C1, C2 and D showed that the statements were obtained under caution the implication is that the Applicants were detained and later released on bail and all the admissions are binding on the Applicants citing

Eniogbokan v. Baruwa

1989 8 NWLR Pt 560 96

Iso v. Eno

1999 2NWLR Pt 590 204

Okegbe v. Chikere

2007 SC Pt 1 106

Eboade v. Atmesan

1997 5 NWLR Pt 506 490

Counsel also cited the earlier cases cited by him

Alaboh v. Boyes (Supra)

Ejiofor v. Okeke (Supra)

As well as the cases of

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Agbakoba v. S.S.S.

1994 6 NWLR Pt 351 475

Oceanic Securities International Ltd. V. Alhaji Bashir  
Balogun & 4 Ors.

2012 35 WRN 143

to show that the arrest and detention of the Applicants  
was unlawful.

On the reply by counsel to the 4<sup>th</sup> & 6<sup>th</sup> Respondent  
that a citizen has a right to report commission of an offence  
and the Police have a right to arrest and detain in course of  
their investigation counsel to the Applicants submitted that  
this does not apply where the subject matter is before a  
competent court and that this cases cited by counsel on  
this issue are not applicable.

He urged this court to resolve all the issues in favour  
of the Applicants as per the Supreme Court decision in

F. R. N. v. Ifegwu (Supra)

2003 13 NWLR Pt 842 at 133

I have carefully considered the application sought by  
the Applicants in this suit. I have also considered the  
replies of the Respondents as well as the addressed of all  
the counsel on this issue.



In my humble view 2 issues call for determination by this court to wit:-

- (1) Whether the Applicants have shown that their fundamental rights have been violated by the Respondents
- (2) Whether the Applicants are entitled to the reliefs being sought by them in this suit

First of all let me comment on the reply on point of law made by counsel to the Applicants in this case. A reply on point of law is just that it is not at that point that issues to be determined are yet again formulated which is what the applicants' counsel have done in this suit so I will discountenance that part of his reply. In the latter part of that address counsel re echoed him again his written address on unlawful arrest and detention and this also I will discountenance.

Having said that on the 1<sup>st</sup> issue the sum of Applicants story that they were unlawfully arrested and detained by the 4<sup>th</sup> to 6<sup>th</sup> Respondents at the instigation of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents on a land matter which the 4<sup>th</sup> to 6<sup>th</sup> Respondents have no business with and also for a case that is ready pending before a competent High Court.

M. A. Dyer

That the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have averred that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were never involved in this matter and that it was the 1<sup>st</sup> Respondent that reported the applicants to the Police on a criminal allegation of conduct likely to cause breach of peace in that the Applicants leased out his farmlands to illegal miners amongst whom are one Umar Mustapha and Abulabi Abeed. That these miners started to mine for Gold in their farmland and destroyed their cash crops hence they wrote a petition to the Police Exhibit A alleging conduct likely to cause breach of peace and malicious damage which they have a right to do.

Now in their affidavit in support of this application the Applicants aver that one Mallam Umaru was their farmhand and made it seem that they were cultivating on their farmland when the respondents came and arrested them. But then the statements of the said Umaru and another was Exhibited. Exhibit C and C1 clearly shows that the said Umaru and others were miners mining for Gold on the said farmland.

Counsel to the Applicants had stated that this makes no difference but in my humble view it does as it shows clearly that the applicants are economical with the truth.

M A Oryetere

1<sup>st</sup> to 3<sup>rd</sup> Respondents reply is that the said miners destroyed their cash crops and hence they had to make a report to the Police.

From Exhibit OCC1 to 3 it is clear that there are large burrows on the said farmland. It bears out the 1<sup>st</sup> to 3<sup>rd</sup> Respondents story that the miners hired by the Applicants are the ones that destroyed their cash crops on the farmland.

No doubt the ownership of the said farmland is in dispute but when miners go on the disputed land to destroy crops on that land it will likely lead to conduct likely to cause breach of peace which is a criminal offence hence the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have every right to make a report to the Police.

See Afribank of Nigeria Plc v. Omima  
2004 NWLR Part 858 at 659

The fact that there is a civil suit on a particular issue in court does not prevent anyone from making reports of criminal offences arising from that issue.

I therefore see no wrong doing on the part of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents with regards to breach of the Applicants rights

M. A. Oyetemi



For the 4<sup>th</sup> to 6<sup>th</sup> Respondents they have averred that a petition was written to them and that they swung into investigation. They did not deny detaining the applicants between the hours of 12 to 4 pm

First the Police have a right to investigate any criminal matter even when the civil dispute is before a competent court which is the situation in this case. In the exercise of that right they can arrest and detain any person reasonably suspected of having committed a criminal offence see S. 35 1 (c) of the 1999 constitution which is also the position in this case.

Thirdly it is not in dispute that the applicants were detained between the hours of 12 noon and 4pm which is within the constitutional limit as set out by the 1999 constitution

See S. 35 (4) and (5) (a) of the 1999 constitution.

I see no wrong doing on the part of the 4<sup>th</sup> to 6<sup>th</sup> Respondents either

I am of the humble opinion that the 4<sup>th</sup> to 6<sup>th</sup> Respondents acted within the powers conferred on them by S. 4 and S. 24 of the Police Act and this cannot be said to have violated the fundamental rights of the Respondents.

M. A. Oryetere

From the above then it is clear that issue 2 can only be answered in the negative.

It is therefore clear that this action must fail against the Respondents and I so hold. This matter is hereby dismissed.

*M. A. Onyetenu*  
**M. A. Onyetenu**  
Judge  
27-04-2016

*M. A. Onyetenu*