

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE OSOGBO JUDICIAL DIVISION**  
**HOLDEN AT OSOGBO**  
**ON THURSDAY THE 16<sup>TH</sup> DAY OF JUNE, 2016**  
**BEFORE THE HON. JUSTICE M. A. ONYETENU**  
**JUDGE**

**SUIT NO. FHC/OS/CS/7/2016**

**BETWEEN:-**

1. ALLEN YEMI TOKUNBO	}	- APPLICANTS
2. WUYI ODEJOBI		
3. OLA OMIYEFA		

**AND**

NIGERIA SECURITY AND CIVIL DEFENCE CORPS	- RESPONDENTS
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## **JUDGMENT**

By a motion on notice filed on 22/2/16 the applicants sought to enforce their fundamental rights against the respondent by seeking the following reliefs.

1. Declaration that the respondents has no legal authority, power or competence howsoever to threaten to arrest, incarcerate, imprison, harass, confine the Applicants without any cause whatsoever.

*M. A. Onyetenu*

2. Declaration that the detention and/or incarceration of the Applicants between 12noon on 8<sup>th</sup> February 2016 and 4pm on 10<sup>th</sup> February 2016 (a period of about 52 hours) at the office of the Respondent at Lagere, Ile-Ife and their State Headquarters at Oke D. O. Area Osogbo and their further transfer by the Respondent to the office of the Department of Security Services at Osogbo within the same period and the arrest, torture, detention and incarceration of the Applicants without the sanction of a court of law and/or pending charge against them is a reckless violation of the Applicants' constitutionally guaranteed rights to the dignity of their persons, personal liberty and/or freedom of movement; moreso same being extremely capricious, wanton and malicious coming with the purpose and intention to incriminate the Applicants.
3. Declaration that the invasion of the private residence of the 1<sup>st</sup> Applicant on the 8<sup>th</sup> February 2016 by the Respondents with the 1<sup>st</sup> Applicant and other Applicants in handcuffs without due authorization or sanction/order of competent court of law and the searching of his private residence on that same day by the Respondent without a Search Warrant,

M. A. Oyelewa

authorization and wanton breach of the Applicants' Constitutional guaranteed rights to their privacy, lives, movement, the dignity of their persons and rights to property.

4. An order compelling the Respondent to make a public apology to the Applicants for the violent, unwarranted, capricious, unlawful and illegal detention of the Applicants between 12noon on 8<sup>th</sup> February 2016 and 4pm on 10<sup>th</sup> February 2016 without being charged to court or any court order authorizing same but only doing same at the whims and caprices of the Respondent and for the humiliation, harassment, public odium and ridicule suffered by the Applicants around places such as the 1<sup>st</sup> Applicant's residence at Parakin Area, Ile-Ife down to Lagere Area, Ile-Ife and later to its office at Osogbo and to the office of the Department of Security Services in Osogbo in handcuffs culminating in the lowering of the status of the Applicants in the minds of the people in their neighbourhood at Parakin Community, Ile-Ife and all other witnesses in Ile-Ife and Osogbo.
5. An order compelling the Respondent to pay restitution for the unwarranted breach of the Applicants'

M. A. Oyelemy

constitutionally guaranteed right to the dignity of their persons jointly and severally, freedom of movement, personal liberty, privacy and the right to life, the sum of One Hundred Million Naira (₦100,000,000) as general damages.

The motion is supported by a 7 paragraph affidavit which the applicants relied on.

Briefly stated, the case for the Applicants is that the 1<sup>st</sup> Applicant was having a house warming party on 8/2/16 when about 30 members of Nigeria Security and Civil Defence descended on his property and after identifying him as the owner of the house proceeded to beat him mercilessly. They also arrested the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants who are uncle and cousin to the 1<sup>st</sup> Applicant handcuffed all of them pushed them into their van and paraded them round the town of Ile-Ife. Before then they proceeded to search the house of the 1<sup>st</sup> Applicant without warrant. They requested to know their offence but the Respondent did not reply rather they took them to the office of Department of State Security at Osogbo where they were detained from 7<sup>th</sup> February 2016 to 10<sup>th</sup> February 2016. As a result of this action the applicants suffered psychological trauma, body

M. A. Oyelewa

aches and pains and were treated by a medical doctor hence they filed this action.

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

- (a) Whether from the combined effects of the provisions of section 35 (1), (4) and (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the detention, incarceration and humiliation of the Applicants can be legally justified.
- (b) Whether from the combined effects of the provisions of section 35 (1), (4) and (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the detention, incarceration and humiliation of the Applicants, forceful invasion of the 1<sup>st</sup> Applicant's home and arrest and detention of the Applicants did not infringe the Applicants' right to the dignity of their persons, persons liberty, freedom to own private property and freedom of movement, right protected by Sections 34 (1) 36 and 44 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- (c) Whether the invasion of the Applicants' home on 8<sup>th</sup> February 2016 by the Respondent and its men and agents fully armed to the teeth and forceful arrest in

handcuffs did not or does not breach the Applicants' rights to the dignity of their persons, right to privacy, personal liberty, right to own and enjoy private property and threats to their life.

- (d) Whether the Applicants are entitled to the award of One Hundred Million Naira (₦100,000,000) or any substantial sum of money this honourable court may deem fit, as exemplary damages against the Respondents for the unlawful and unconstitutional act of arrest and detention of the Applicants, breach of the rights of dignity to human persons, liberty, freedom of movement, the infringement to their right to privacy and right to own private property.
- (e) Whether having regard to the circumstance of this case, the Applicants are entitled to the grant of the reliefs sought in this application.

Counsel took issues 1 to 3 together and submitted that it is trite law that he who asserts must prove with the applicants having the burden of proving that their fundamental rights were breached by the Respondents citing

Mr. Cosmos Orah (Alices Confidence) v. Mr. Desmond Ekenwa & 2 Ors 2010 7 NWLR Pt 1194 at 535.

M. A. Oyeleku

Counsel then referred to the affidavit in support of their application submitting that the arrest and detention of the Applicants was not based on any of the conditions stipulated in S. 35 (1) (a-d) 35 (3) & (4) of the 1999 Constitution (as amended) and that the Respondent even though are subsequently arraigned as that will not cause any illegality citing

*Abiola v. Abacha*

1998 1 HR LRA 45 at 553

He urged this court to resolve all the issues raised in favour of the Applicants.

The Respondent filed a notice of preliminary objection on the ground that this application offend Order II Rule 4 of the Fundamental Rights (Enforcement procedure) Rule 2009 in that the Applicants as a matter of law must depose to separate affidavit particularly stating their personal knowledge as it is only on applicant who is in custody or indisposed that another can swear an affidavit on his behalf citing

*Ukegbu v. N.B.C. & Ors.*

2007 14 NWLR Pt 1055 at 581

In his reply counsel to the Applicants' submitted that Order II Rule 4 of the Fundamental Rights Enforcement

M.A. Oyelewa

Procedure which provides that persons who can depose to an affidavit include the applicant or a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant.

Counsel then submitted that the affidavit in support of this motion was deposed to by one Dele Adegbite who is the litigation clerk in the law firm of counsel to the Applicants by which position he is conversant with the facts of this case and that there is no known provision in law which prohibits a litigation clerk from deposing to an affidavit. That rules of civil procedure allows an attorney to file affidavit. On behalf his clients citing

Doll v. Mundiane

1892 84 TEX 375, 315 SW 394 395

He also submitted that this matter is within the jurisdiction of this court and urged this court to dismiss the notice of preliminary objection.

I will go into notice of preliminary objection before delving into the substantive suit.

I have carefully studied the authority cited by counsel to the Respondent

Ukegbu v. NBC (Supra)

M. A. Oyetun

a decision of the Court of Appeal where in the Court stated "It is necessary for a party who complains that his rights under S. 38 and 39 of the Constitution have been or are being infringed to depose to an affidavit in support of this case or for the deponent to the affidavit to depose to the party's inability to so depose, the party's whereabouts and that the affidavit is filled on behalf of the party. Where any of them is not done the party will be held unserious.

It is quite clear from the above court decision that an affidavit in support of allegation of breach of fundamental rights should be deposed to by another person other than the person complaining of such breach (including litigation clerk in the chambers of counsel to the Applicant) but if he does a deponent (other than the applicant himself) must

- (a) depose that the affidavit is filed on behalf of a party
- (b) state the inability of the party to so depose
- (c) state the whereabouts of the party

The court held this as essential. In the present case I have studied the affidavit in support of this application and fulfills only the 1<sup>st</sup> condition. It did not state the inability of the applicants to depose to this application and their whereabouts. Thus the Applicants in this case must be

M. A. Deyten

treated as unserious. That being the case this matter is hereby struck out.

*M. A. Onyetenu*  
**M. A. Onyetenu**  
Judge  
16/06/2016

*M. A. Onyetenu*