

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENINJUDICIAL DIVISION,
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, THE HON. JUSTICE V.O. EBOREIME, JUDGE
SITTING IN HIGH COURT NO. 12, BENIN CITY
ON WEDNESDAY, THE 20TH DAY OF JULY, 2016.

SUIT NO. B/26^M/2013

BETWEEN:

- | | | | |
|----|---|---|--------------------------|
| 1. | INTERTECH RESOURCES LIMITED | } | APPLICANTS/RESPONDENTS |
| 2. | CHARLES APILOKO JAMES | | |
| 3. | MR. MUDI IBRAHIM | | |
| 4. | MR. UYI ASEMOTA | | |
| | AND | | |
| 1. | ROAD TRANSPORT EMPLOYERS | } | RESPONDENT/
APPLICANT |
| | ASSOCIATION OF NIGERIA, EDO STATE | | |
| 2. | OLUFEMI AJEWOLE, THE NATIONAL
PRESIDENT, ROAD TRANSPORT
EMPLOYERS ASSOCIATION OF NIGERIA,
ABUJA, NIGERIA | } | RESPONDENT |
| 3. | MR. MONDAY ORHUE | } | RESPONDENTS/APPLICANTS |
| 4. | PAUL OSHOTSE | | |

JUDGMENT

The Applicants filed a Motion on Notice on the 22nd day of March, 2013,

brought pursuant to:

- õ1. ORDER 2 AND 4 OF THE FUNDAMENTAL RIGHTS
(ENFORCEMENT PROCEDURE) RULES, 2009 AS PRESERVED
BY SECTION 315 OF THE 1999 CONSTITUTION OF NIGERIA;

2. ARTICLE 5 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS (RATIFICATION AND ENFORCEMENT), ACT; 1983
3. SECTIONS 34 AND 46(1) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED); AND
4. UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

The prayers on the motion paper are as follows:-

AN ORDER of this Honourable Court for the enforcement of their FUNDAMENTAL RIGHTS under the constitution of the Federal Republic of Nigeria in terms of the reliefs sought in the statement in support of this application.

AND for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The application was supported by a 26-+9Paragraph affidavit deposed to by the 2nd Applicant, Statement in support of application for order wherein the ten(10) orders/reliefs sought were couched as follows:-

1. AN ORDER of this Honorable Court for the enforcement of their FUNDAMENTAL RIGHTS under the constitution of the Federal

Republic of Nigeria in terms of the reliefs sought in the statement in support of this application.

2. A DECLARATION that the acts of the Respondents in torturing, striping of the 2nd, 3rd and the 4th Applicants naked and ruthlessly brutalizing them without any justifiable reason is unlawful, unconstitutional and a violation of the applicants' rights to human dignity under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the African Charter on Human and Peoples' Right and the various relevant international instruments on Human Rights.
3. A DECLARATION that the action of the Respondents, and especially the 3rd and the 4th Respondents in putting the 2nd to the 4th Applicants in apprehension of extra judicial loss of their lives for Two Hours without any justifiable reason is unlawful, unconstitutional and a violation of the applicants' rights to human dignity under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the African Charter on Human and Peoples' Right and the various relevant international instruments on Human Rights.
4. A DECLARATION that the Respondents have no right to control or operate by way of collection of dues, levies, taxes and fees outside Motor Parks in Nigeria.

5. A DECLARATION that the act of the Respondents that culminated in this suit amounts to recklessness and abuse of power and is without a just cause, unconstitutional, unlawful and actionable.
6. A DECLARATION that every Nigerian has a right to associate freely, join or refuse to join any association or union and no one shall be compelled to join any union or association.
7. AN ORDER compelling the Respondents to issue unreserved apologies (the contents of which must be first acceptable to the applicants before publication) to the applicants for violation of their fundamental rights in at least four print and electronic media respectively with intense national coverage (including the Guardian, This Day, the Nation, Ray Power, Cool FM, African Independent Television and Nigeria Television Authority Networks) within one month of the judgment of this Hon. Court.
8. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondents whether by themselves, agents, servants and or privies or such other persons from further putting applicants in apprehension of their lives through torturing or further unlawfully harassing the applicants whatsoever.
9. AN ORDER for General, Aggravated and Exemplary damages in favour of the Applicants for the sum of N500, 000,000.00 (Five

Hundred Million Naira) against Respondents, jointly and severally as reparation for the assault, torture and harassment committed against the Applicants in the course of the Respondents' unlawful acts which culminated in this action.

10. AN AWARD of N500, 000.000, being the costs of this action.

The three (3) Grounds on which the reliefs were sought are as follows:

1. By virtue of Section 34(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

34(1) Every individual is entitled to respect for the dignity of his person, and accordingly,

(a) No person shall be subjected to torture or to inhuman or degrading treatment.

2. In violation of Section 34(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Respondents brutally dehumanized the applicants.

3. By virtue of Article 10(2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act; 1983 (cap. 10, Law of the Federation of Nigeria., 1990); Article 5, 17(1) and 20(2) of the Universal Declaration of Human Rights as preserved by sections 34, 40 and 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) no one shall be subjected to torture or to cruel,

inhuman or degrading treatment or punishment and nobody shall be compelled(sic) to join an association without his will.ö

The learned counsel to the Applicants, B.A. Iluobe, Esq. filed a Written Address pursuant to Order 2, Rule 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 (hereinafter referred to as the FREP Rules) wherein the learned counsel canvassed four(4) issues for determination as follows:-

- ö1. Whether the beating and torture of the 2nd to the 3rd Applicant (sic) by the Respondents is not unconstitutional and therefore actionable.
2. Whether Taxes and Levies can be collected at Nigerian road blocks by tax collector/authorities.
3. Whether a person can be compelled to join a union or an association.
4. Whether torture is supported by any law.ö

The learned counsel to the Applicants argued the above issues, cited authorities and finally urged this Honourable Court to grant the reliefs sought.

By a Motion on Notice filed before this Court on the 14th day of October, 2014, the learned counsel to the Respondents, Evbayiro Usunobun, Esq., prayed this Court for an order extending time for the Respondents to file their Notice of Preliminary Objection/Counter Affidavit together with the Written Address. This

application was granted by this Honourable on Monday, the 4th day of November, 2013.

On the 11th day of November, 2013, the learned counsel to the Applicants, B.A. Iluobe, Esq. filed both the Applicants' Written Address on Points of Law in response to the Counter Affidavit of the Respondents and a Written Address on Points of Law in response to the Preliminary Objection of the Respondent.

On the 18th day of November, 2013, the Respondents filed a Further Affidavit with a Written Address in response to the Applicants' Further Affidavit/Written Address dated 11th November, 2013. To this Further Affidavit, the learned counsel to the Applicants, on Thursday, the 21st day of April, 2016, when the various applications were moved, argued that it was incompetent since the Rules do not provide for same. I shall address this point later in this Ruling.

First, the Preliminary Objection of the Respondents has to be decided on by this Court one way or the other as the success of same would render the entire application of the Applicants invalid.

I have however, seen that at page 135 of the case file, the learned counsel to the Applicants, B.A. Iluobe, Esq. filed a Motion on Notice before this Court on the 15th day of January, 2014 seeking an order for stay of this present judgment. This Motion was never moved. It cannot be allowed to therefore lie in the Court file. It is therefore struck out for want of prosecution.

Now, to the Notice of Preliminary Objection. The five (5) grounds of the Preliminary Objection without their particulars have earlier been reproduced by me. Ground One is that the 1st Respondent as constituted in this suit is not a juristic person known to law that can sue or be sued. The particulars of the objection is stated by the Respondents/Applicants to be as follows:

- õ1. The 1st Respondent's Corporate/Registered name is õRoad Transport Employers Association of Nigeriaö, a body distinct from Road Transport Employers Association of Nigeria, õEdo State.ö

The Respondents/Applicants filed Exhibit õAö which is the Certificate of Registration of the 1st Applicant/Respondent issued by the relevant authority on the 11th day of June, 2009. It has the corporate name as:

õRoad Transport Employers Association of Nigeria.ö

The learned counsel to the Respondents/Applicants therefore argued that the name of the 1st Applicant/Respondent on record is not a juristic person. The learned counsel to the Respondents in response argued that the addition of õEdo Stateö to the corporate name of the 1st Respondent/Applicant does not change the name of the business as it only shows that the 1st Respondent/Applicant is domiciled in Edo State; that the objection of the Applicants/Respondents was technical which should not be allowed to defeat the cause of justice.

I am most convinced that the addition of the word õEdo Stateö to the 1st Respondent, õRoad Transport Employers Association of Nigeriaö as shown in

Exhibit "A" does not make the 1st Respondent a non juristic person. The Supreme Court has even held that the omission of "PLC" to a Registered Company does not deny it the status of legal personality. See WAHABI ADEJOBI & ANOR V. THE STATE (2011) NSCQR VOL. 46 PAGE 737 where S.M. Galadima, JSC held at 763 thus:

"The fact that the Respondent did not add the word "PLC" to Trans International Bank will not diminish the fact that the Bank is a Public Liability Company and indeed a juristic personality. Its property was stolen by the Appellants."

I therefore hold that the Ground One of the objection of the Respondents is unmeritorious. It is accordingly discountenanced by me.

Ground Two is that the 3rd and 4th Respondents are agents of a disclosed principal (1st Respondent) who cannot be sued along with their principal. The alleged acts of the 3rd and 4th Respondents, no doubt, were done in the name of the 1st Respondent.

This thus make the 1st Respondent a necessary party. Failure to make the 1st Respondent a party would have been fatal to the claims of the Applicants. See CHIEF (DR.) O. FAJEMIROKUN V. COMMERCIAL BANK NIG. LTD. & ANOR (2009) NSCQR VOL. 37 PAGE 1 where I.T. Muhammad, JSC at page 41 inter alia.

“the police is a necessary party in this case. They ought to have been made co-defendants in the first instance or be joined as a necessary party in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the case especially those relating to the police. Failure to make the police a party is fatal to the claims of the appellant/applicant.”

Ground Two of the Preliminary Objection is therefore unsustainable as same is discountenanced by me.

Ground Three of the Preliminary Objection is that the dispute between the parties is a trade dispute/labour matter. The learned counsel to the Respondents argued that the dispute is between members of the 1st Respondent and a Registered Trade Union and a dispute between persons who are in the transport industry which only the National Industrial Court has exclusive jurisdiction. It is the Applicants in this Preliminary Objection who are alleging that the Respondents herein are members of the 1st Applicant. The Respondents in their written address on points of law in response to the Preliminary Objection argued that the Respondents denied at paragraph 7 of their supporting affidavit that they are members of the 1st Respondent (Applicant herein). What is a trade dispute? Section 47 of the Trade Dispute Act Cap 432 defines it thus:

“Trade dispute means any dispute between employers and workers or between workers and workers, which is

connected with employment or non-employment, or the terms of employment and physical conditions of work of any person.ö

The above definition was reproduced by C.M. Chukwuma-Eneh, JSC at pages 377 ó 378 in NATIONAL UNION OF ELECTRICITY EMPLOYEES & ANOR V. BUREAU OF PUBLIC ENTERPRISES (2012) NSCQR VOL. 52 PAGE 345.

Applying the above definition to the issue at hand, I cannot hold, based on the denials of the Respondents without more, that the Respondents are members of the Applicants. I therefore discountenance the Third Ground of the Preliminary Objection. The dispute between the parties is one not covered under the Trade Dispute Act.

Ground Four of the Preliminary Objection is the lumping up of Applicants in the same Suit/Joinder of Applicants. The learned counsel to the Applicants herein argued that it is improper for two or more Applicants to file one application for the enforcement of their fundamental rights. He referred to Section 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999 and Order II of the FREP Rules, 2009. The learned counsel to the Respondents herein submitted that there is nothing in the FREP Rules 2009 that forbids more than one applicant from bringing a single application in situation where the breach arose from one and the same transaction.

The provisions of Section 46 (1) of the 1999 Constitution and Order II (1) (without its proviso) are reproduced as follows:

õ46. (1) Any person who alleges that any of the Provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

õII. 1 Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and People Rights (Ratification and Enforcement) Act and to which he is entitled has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.õ

Emphasis on the above statutory provisions is on õany personõ making it seem to be personal and not jointly. It is quite elementary principle of interpretation of statutes that where the words used there are clear and unambiguous, the Court should give them their ordinary meaning. See ISAAC OBIUWEUBI V. CENTRAL BANK OF NIGERIA (2011) NSCQR VOL. 45 PAGE 51 where B. Rhodes Vivour, JSC held at page 76 thus:

õIt is well settled that where the words of a statute are clear, the Court should accord it its ordinary and plain meaning.õ

From the above, it is my view that both the provisions of the Constitution of the 1999 Constitution (as amended) and the FREP Rules, 2009 as reproduced above envisage the filing of an action of this nature individually by the use of any person.

The Respondents' learned counsel has however submitted that Applicants can file such action where the breach of the fundamental rights arose from the same transaction. Because of this very sound argument, I have perused the affidavit in support of the application to see if the four affidavits of the four Applicants collectively support such argument. I saw that only the 2nd Applicant, Charles Apiloko James, deposed to an affidavit in support of the application. He did not depose to any fact that he had the consent of other Applicants to depose to the facts which he claims did not only affect him but others. Paragraph 2 of the affidavit that attempted to depose to the consent of others is incurably defective. It says:

2. That I have the consent and the authority of the 2nd applicant in this application to depose to the facts of this affidavit.

The above affidavit only shows that the 2nd Applicant has the consent and authority of himself as the 2nd Applicant to depose to the affidavit. This cannot bind the other Applicants who did not depose to the separate affidavits.

I am therefore inclined to agree with the learned counsel to the Applicants herein, Evbayiro Usunobun, Esq. that the joint filing of an action under Section 46

(1) of the 1999 Constitution and Order II of the FREP Rule, 2009 is incompetent in the absence of any affidavit evidence from the other applicants or a deposition to the authority given to the 2nd applicant to depose to the facts that the breach of the fundamental rights arose from the same transaction. Ground Four of the Preliminary Objection is therefore sustained and upheld by me.

In the light of the foregoing, the substantive Motion on Notice in the matter of an application by the Applicants for an Order for the Enforcement of their Fundamental Rights is therefore incompetent and accordingly struck out by me.

HON. JUSTICE V.O. EBOREIME
JUDGE
20th July, 2016.

COUNSEL:

U. L. Evbayiro, Esq. for Respondents.

J. N. Chukwu (Miss) for Applicants.

