

IN THE HIGH COURT OF JUSTICE, EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION, HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E. F. IKPONMWEN - JUDGE

16TH DAY, DECEMBER, 2015

BETWEEN:

SUIT NO. B/429/13

ESOSA OMORODION
FLORENCE OMORODION
UWAILA IGBE
EMMANUEL OMORODION
FELIX OMORODION
JULIE OGIEMWONYI

CLAIMANTS

AND

GODFREY OMORODION
MOSES OMORODION

DEFENDANTS

J U D G M E N T

The Claimants instituted this action vide a writ of summons filed on the 6th day of August 2013 along with the statement of claim and other front loaded documents. By paragraph 21 of the statement of claim, the claimants claim against the Defendants jointly and severally as follows:-

- a) A Declaration that the act(s) of the Defendants giving false and malicious information to the police, using the police to harass, intimidate and arrest the claimants is unlawful and unconstitutional.
- b) An Order of perpetual injunction restraining the Defendants, their agents, servants and privies from further giving false and malicious information to the police, using the police to harass, intimidate and arrest the claimants.
- c) The sum of N5,000,000.00 (Five million naira) only as general and exemplary damages.

The Claimants opened their case on 7/7/14 with 2nd Claimant Mrs. Florence Omorodion adopting her written statement on oath filed on 6/8/2013 wherein she stated that the claimants and defendant are members of the same family i.e the children of the late Mr. Osarenkhoe Omorodion who died on the 11th of June 2012. She is the mother of the other claimants in this suit and the wife of the late Mr. Osarenkhoe Omorodion. The 1st Defendant is the Senior/Eldest male child of her late husband. Her late husband died testate. The 1st Defendant was dissatisfied with the gift bequeathed to him by her late husband and as a result instituted suit N0.B/159/13 in the High Court N0. 7 Benin City. The 2nd Defendant who acted as Okaegbe (Head of the family) during the burial ceremony of her late husband took sides with the 1st Defendant. She further stated that the 2nd Defendant who was also the 12th Defendant in the said suit filed witness deposition in favour of the 1st Defendant who was the claimant in the said suit. Having sued her children in the said case, they sought the services of lawyers and filed appearance in the said suit to contend with the 1st Defendant. The 1st Defendant having realized that the claimants are willing and ready to contest the other suit with him in court started resorting to other means of intimidating and harassing them out of the property. The 2nd claimant stated that out of malice the 1st Defendant wrote a petition against them accusing them of threatening his life. As a result of the petition, 2nd claimant and the other claimants were arrested and detained on the 26th day of July 2013 but were later granted bail and told to report at the police station on the 29th of July 2013. It was on this same day that the police discovered that the accusations were false and baseless and they were allowed to go. She stated that they suffered great emotional trauma as a result of the arrest and allegations by the Defendants.

Under cross examination 2nd claimant testified that the next day after her release she saw a letter at her door step in which she was asked to pay N300,000 or she will join her husband. The letter was written from òbad boysò. She took the letter to the police at Area Command and told them that she suspected the defendants and the police arrested them. She did not see the persons who dropped the letter. According to her it is not true that she suspected the defendants because they are contesting the WILL. She did not file this case to frustrate the case of the defendants.

1st Claimant Esosa Omorodion on 7/7/14 adopted his witness statement on oath filed on 6/8/13 wherein he stated that the Claimants and Defendants are members of the same family i.e himself, the 3rd, 4th, 5th and 6th claimants and the 1st Defendant are children of the late Mr. Osarenkhoe Omorodion who died testate on the 11th of June 2012. The 2nd claimant is his mother and the mother of the other claimants in this suit. The 1st Defendant is the eldest male child of his late father. He further stated that the 1st Defendant was dissatisfied with the gift bequeathed to him in their late father's WILL and as a result instituted suit N0. B/159/13 in High Court 7 Benin City. According to 1st Claimant the 2nd Defendant who acted as Okaegbe (Head of the Family) in the burial ceremony of their late father is taking sides with the 1st Defendant. That the 2nd Defendant who is also the 12th Defendant in the said suit filed a witness deposition in favour of the 1st Defendant who was the claimant in the said suit. The 1st Defendant realizing that they are willing and ready to contest the other suit with him in court started resorting to other means of intimidating and harassing them out of the property. That out of malice the 1st Defendant wrote a petition against them accusing them of threatening his life.

As result of the petition, himself and the other claimants were arrested and detained on the 26th day of July 2013 but were later granted bail and told to report at the police station on the 29th of July 2013. On that same day the police discovered that the accusations were false and baseless and they were allowed to go. He stated that they suffered great emotional trauma as a result of the arrest and allegations by the Defendants.

At the close of the Claimants' case, the Defendant opened their case on 9/10/2014. The 1st Defendant Godfrey Omorodion adopting his statement on Oath filed on 24/1/14 as his evidence stated that the 2nd Defendant is the head of their late father's family (Okaegbe) who conducted his father's burial ceremony. His late father, Mr. Osarenkhoe Omorodion did not die testate neither did he leave any WILL. The purported WILL that is being paraded by the claimants is a manipulation by the claimants to deceive members of Osarenkhoe Omorodion family. His late father was not an illiterate in his lifetime as represented in the purported WILL. He stated further that at the time the purported WILL was alleged to have been made and executed by his father, the deceased had been sick and even bedridden. He also lacked testamentary capacity to make a WILL. The purported WILL devised the house at N0. 29, Siluko Road, Benin City, which is the house where his father lived, died and was buried (Igiogbe) and shared same among himself and three (3) of his siblings namesly; Andrew Ikponmwonsa Omorodion, Aironmwanbor Omorodion and Enoma Omorodion. The 1st Defendant stated that the deceased who was vast in the Bini native law and custom during his lifetime could not have devised the house at N0. 29, Siluko Road, Benin City to no other than himself who is the eldest surviving son. When they discovered the forgery in the purported WILL which was read by the Probate

Registry, Edo State High Court, Benin City on the 14th January, 2013, he instructed his lawyer to file a suit in the High Court suit N0. B/159/13 to challenge the authenticity of the purported Will which is still pending in the High Court N0. 7. Upon the service of court processes in respect of the above named suit on the claimants they started threatening to deal with him. That due to the incessant and continuous threat to their lives by the claimants and in addition to continuous visit to his house by some hoodlums sponsored by the claimants who were frequently coming to ask questions about him from his tenants. He instructed his solicitor R.O. Isenalumhe & Co. to make a complainant to the Commissioner of Police. That based on the Petition/Complainant the claimants were invited to the SIB Division of the office of the Commissioner of Police. After interrogation, another meeting was scheduled between them and the claimants for 26/7/2013. On the same day, the claimants in a bid to frustrate the investigation by the officers of SIB went to Area Commander's Office to make a false report of threat of kidnap against the Defendants, wherein the claimants gave to officers of the Area Command a letter purported written by the kidnapers to them (Claimants) asking for the sum of N300,000.00 (Three Hundred Thousand Naira) from the claimants. The claimants told the officers that the Defendants are the suspected kidnapers. That based on the claimants' complaint to the officers of the Area Command, they were arrested and detained for twelve (12) hours before they were released on bail. Both complaints were being investigated by the police when this suit was commenced. He stated that he never made any false report against the claimants instead they are the ones threatening his life because he challenged the purported WILL. The 2nd Defendant who is the Okaegbe of his

family refused to go along with them and since then, they have been trying to do all things to cause him pain.

The 2nd Defendant Moses Omorodion adopting his statement on oath filed on 24/1/14 states that he is the younger brother of the deceased and the Okaegbe of the family. He was appointed as the Okaegbe of the burial ceremony of his late brother. The deceased is survived by eleven (11) children, the 1st Defendant being the eldest surviving son. He stated that his late brother did not die testate neither did he leave any WILL. The purported Will that is being paraded by the claimants is a manipulation by the claimants to deceive members of the Osarenkhoe Omorodion family. 2nd Defendant stated that his late brother was not an illiterate in his lifetime. At the time the purported WILL was alleged to have been made and executed his late brother was seriously sick and bedridden. He lacked testamentary capacity to make a WILL. 2nd Defendant stated further that the purported WILL devised the house at N0. 29, Siluko Road, Benin City, which is the house where deceased lived, died and was buried (Igiogbe) and shared same among the 1st Defendant and three (3) of his siblings namely: Andrew Ikponmwonsa Omorodion, Aiomwanbor Omorodion and Enoma Omorodion. The deceased who was vast in the Benin native law and custom during his lifetime could not have devised N0. 29 Siluko Road, Benin City to no other person than the 1st Defendant who is the eldest surviving son. He stated that upon the discovery of the forgery in the purported WILL which was read by the Probate Registry, Edo State High Court, Benin City on the 14th January, 2013, the 1st Defendant informed him of his intention to challenged the WILL which he (2nd Defendant) agreed to defend the 1st Defendant when the need arises. The 1st Defendant filed a suit in the High Court challenging the authenticity of the purported WILL, which suit is still

pending in the High Court N0. 7 in suit N0. B/159/13. He stated that upon the service of court processes in respect of the above named suit on the claimants they started threatening to deal with him. Due to the incessant and continuous threat to their lives by the claimants and in addition to the continuous visit to the 1st Defendant's house by some hoodlums sponsored by the claimants who were frequently coming to ask questions about him from his tenants, he instructed his solicitor R.O. Isenalumhe & Co to file a petition/complaint to the commissioner of police. Based on the 1st Defendant's petition the claimants were invited to the SIB Division of the office of the Commissioner of Police. After the interrogation, another meeting was scheduled between them and the claimants for 26/7/2013. On the same day, the claimants in a bid to frustrate the investigation by the officers of the SIB, went to Area Commander's Office to make a false report of threat of kidnap against the 1st and 2nd Defendants wherein the claimants gave to the officers a letter purportedly written by the kidnappers to the claimants asking for the sum of N300,000.00 (Three Hundred Thousand Naira) from the claimants. The claimants told the officers that they suspected the 1st and 2nd Defendants as the kidnappers. He stated that based on the claimants' complaint to the officers the Defendants were arrested and detained for twelve (12) hours before they were released on bail. Both complaints were still being investigated by the police when this suit was commenced by the claimants. He stated that he refused to go along with the claimants and since then the claimants have been trying to do all things to cause him pain.

At the close of evidence, both learned counsel adopted their written addresses on 17/11/15. Learned Counsel for the Defendants R. O. Isenalumhe Esq., in his written address filed on 27/11/14 raised three issues for determination wit:-

- a) Whether the complaints made by the Defendants to the Police as regards threat to their lives by the claimants amount to giving false and malicious information to the Police and using the police to harass, intimidate and arrest the claimants.
- b) Whether this court can restrain the Defendants from making complaints to the Police whenever the need arises.
- c) Whether from the circumstances of this case, the claimants are entitled to the general damages claimed.

Learned Counsel submitted on issue one that from the evidence led by both the claimants and the Defendants, the complaint made by the 1st Defendant to the Police as regard threat to their lives by the claimants was being investigated by the police before the claimants made a counter complaint against the 1st and 2nd Defendant at the Area Command wherein they alleged that the 1st and 2nd Defendants were planning to kidnap them. Both complaints were still being investigated at the time the claimants filed this action. He submitted that without police investigation report to the effect that the complaint made by the Defendants against the claimants is false. This Honourable Court cannot hold that the complaint made is false. The falsity or otherwise of the complaint made by the

Defendants against the claimants has not been determined and it is not the duty of the court to carry out that investigation. He maintained that it has always been the duty of whoever asserts to prove. He relied on **Jomu V. Ikorodu Local Government (2007) All FWLR (Pt. 394) Pg. 251**. He urged the court to resolve this issue in favour of the Defendants and dismiss the claimants' claim.

Mr. Isenalumhe submitted on issue two that this Honourable Court has no power to restrain the Defendants from making complaints to the Police whenever the need arises. The police have a constitutional duty to receive complaints from citizens and investigate them. According to Mr. Isenalumhe the Defendants as citizens of this country have a right to make complaint against anybody including the claimants when the need arises. Whether complaints are fictitious or malicious will be determined, after the police has duly investigated same and if the police find the complaints to be false it becomes a criminal offence and whoever makes such complaints to the police can be charged for giving false information under S. 125(4) of the criminal code. He submitted that for a person to come to court to be shielded against criminal investigation and prosecution is an interference of power given by the constitution to a law officer in the control of criminal investigation. He cited **Attorney General of Anambra State V. Uba (2005) 33 WLRN page 191 at page 213**.

Learned Counsel submitted on issue three that the claimants are not entitled to damages in the circumstances of this case, as the award of damages is principally for the purpose of compensation. He cited **UBA Plc V. Uwa Printers Nig. Ltd (2011) All FWLR (Pt.596) page 578 at 592**.

In conclusion, Mr. Isenalumhe contended that in the instant case, the claimants have not made out a case that is deserving of any compensation. The Claimants' case is frivolous, vexatious and an abuse of court process. He urged the court to resolve the issues against the claimants and dismiss the claimants' case with substantial cost.

Learned Counsel for the Claimants Jefferson Uwoghiren Esq., in his written address filed on 13/11/15 raised two issues:-

- i) Whether the act(s) of the Defendant using the police to harass intimidate and arrest the claimants over an inheritance or Probate matter pending in court is lawful?
- ii) Whether the Claimants are not entitled to compensation by way of award of damages.

Learned Counsel submitted on issue one that this is a case of the defendant using the security services in this case the police to settle private scores. He relied on section 35(1) of the 1999 constitution as amended. This constitutional provision is a fundamental right for all citizens of this country preventing the arrest and deprivation of any person's right of liberty without reasonable cause. He submitted that section 35(1)(c) of the constitution 1999 (as amended) provides circumstances in which this right of liberty can be deprived a citizen. Section 35(4) of the same constitution provides what should be done by police when a citizen's right to liberty is deprived. He posited that when the claimants appeared on the 29th of July, 2013 after they were granted bail on 26th July, 2013, they were unconditionally released because it was clear to the police that they had done nothing wrong or did not commit any crime. He relied on **NKPA V. NKUME**

(2001) 6 NWLR (Pt. 710) 543 at 561; Ajao V. Ashiru (1973) 11 S.C. 23. He submitted that the act of the defendants using the police against the claimants was wrong in law and therefore urge this court to hold the acts of the Defendant as wrong.

Mr. Jefferson Uwoghiren submitted on issue two that the relevant provisions in this issue is section 35 section (6) of the Constitution of the Federal Republic of Nigeria 1999 as amended which must be obeyed. He maintained that what the Defendant has done is a serious constitutional breach which relates to the fundamental human right to personal liberty. He relied on **F.G.N. V. Ifegwu (2003) 15 NWLR (Pt.842), 113 at 1709.** He submitted that by virtue of the above stated section 35(6) of the Nigerian Constitution, the Claimants are entitled to compensation of an award of damages.

In conclusion, learned counsel urged the court to resolve the issues in favour of the claimant in that the award of compensation is a constitutional provision.

I have carefully read the evidence and legal submissions of both learned counsel. I have read the legal authorities cited. In this case both parties are agreed on the following:-

1. They are members of the same family.
2. There was a WILL in which the house N0 29 Siluko Road, was bequeathed to the 1st Defendant and three of his siblings.
3. Being dissatisfied the 1st Defendant instituted an action to contest the WILL which is still pending in High Court 7.
4. The Defendants filed/lodged a complaint/petition against the claimants with the police accusing the claimants of threatening his life.

5. The claimants filed/lodged a counter compliant/counter petition against the Defendants with the police accusing the Defendants of threatening to kidnap the claimants.
6. Both complaints are being investigated as at the time of instituting this action.

Generally, Section 4 of the Police Act gives powers to the police to investigate any allegation of crime. Section 53(1) and (2) of the Criminal Procedure Act empowers the police to prevent offences from being committed. Section 54 and 55 of the aforementioned Act empowers the police to arrest in order to prevent such offences. See **Fawehimi V. Akilu and Togun (1987) 4 NWLR 797; Chief Gani Fawehinmi V. I.G.P. & 2 ORS (2003) INCC Pg. 414 at 416.** In the instant case, the invitation of the claimants to the police station was in furtherance of the investigation by the police based on the complaint/petition of the Defendants. From the evidence of the claimants they were granted bail on the 26th day of July, 2013 the same day they were arrested and detained, although they were told to report at the police station on the 29th of July, 2013. The submission of learned counsel to the claimant that when the claimants appeared on the 29th of July, 2013, after they were granted bail on the 26th of July. They were unconditionally released because it was clear to the police that they had done nothing wrong or did not commit any crime cannot in my respectful view be the correct position as there is no evidence before court to that effect. It is common Police practice to write the findings of their investigation in an investigation report, after the investigation have been concluded or if the investigation is still on going, the Investigation Police Officer may write an interim investigation report. It is for

the Police to state whether or not the Defendants gave false or malicious information and if it is shown that the information was indeed false, to take the necessary action in line with section 125 of the criminal code. Both parties were arrested based on their respective complaints against themselves which the police was investigating. Both parties did not spend more than 24 hours or 48 hours in detention from the evidence before court, therefore I find that the fundamental right of none of the parties in section 35(4) of the 1999 Constitution (as amended) was not infringed upon. In addition, section 214 ó 217 of the 1999 Constitution (as amended) establishes the Nigeria Police Force with its powers, functions, duties and composition e.t.c. Some of the duties of the Police are to maintain internal security, to conduct investigation and carry out arrest where necessary. See section 4 of the Police Act LFN 2004. In the instant case, I find that the police acted within the purview of the law and in exercise of their investigative powers. They were not used to harass intimidate and arrest the claimants. The fundamental human rights of individuals as enshrined in the Constitution are not absolute and from the evidence led by both parties, the police took due cognizance of the fundamental human rights of the claimants while conducting their investigation. **See A. G. Anambra state V. UBA (2005) Vol. 33 WRN Pg. 191 at 196** where it was held that the court cannot grant judicial fiat preventing a law officer in the exercise of his constitutional power.

With regards to the issue of general and exemplary damages, section 35(6) of the 1999 Constitution (as amended) provides thus:-

“Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, “the appropriate authority or person” means an authority or person specified by law.”

The evidence before court did not prove the arrest or detention of the claimants was unlawful, rather, I find it was in furtherance of the investigation of a complaint/petition. The provisions of section 35 (6) of the 1999 Constitution will not therefore avail the claimants. Also the claimants have been unable to prove their entitlement to general or exemplary damages and indeed the other reliefs sought on a balance of probability or upon a preponderance of evidence. As he who asserts must prove. See Section 131 of the Evidence Act 2011.

In the circumstance of this case all the reliefs sought by the claimants are not made out. The case of the claimants is therefore dismissed in its entirety

Hon. Justice E. F. Ikponmwen
JUDGE

COUNSEL

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CLAIMANTS

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FOR

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