

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

BEFORE

LORDSHIP, HON. JUSTICE N.A. IMOUKHUEDE JUDGE ON MONDAY THE 29TH DAY OF JULY, 2013

B E T W E E N:

SUIT NO.: B/61M/2013

1. MR. MONDAY AMANYAVEBO

(for himself and on behalf of his family)

2. MISS MABEL AMANYAVEBO

(Suing through Her next friend

.....

APPLICANTS

Mr. Monday Amanyavebo)

A N D

1. THE DIRECTOR, STATE SECURITY SERVICE,
EDO STATE

2. THE DIRECTOR GENERAL, STATE SECURITY SERVICE, ABUJA

.....

RESPONDENTS

3. THE OFFICER IN CHARGE (NAME UNKNOWN)
OF THE SSS

RULING

This is an application brought pursuant to Orders 1 and 11 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Sections 34, 35, 37, 44 and 46 of the Constitution of the Federal Republic of Nigeria 1999 and under the inherent jurisdiction of this Honourable Court.

The application is supported by a Statement of the Applicant and a 31 paragraph affidavit deposed to by the Applicant. The Applicant seeks from this Honourable Court the following orders:

(a) A Declaration that the maltreatment, arrest and unlawful detention of 2nd Applicant for 3 weeks and 5 days by Respondents and their Agents, without even informing her of her offence was illegal and unconstitutional, as it violates her fundamental rights to the dignity of her person.

(b) A Declaration that the nine handsets seized from 1st Applicant and his household (who were not even suspects in the matter) violates their fundamental rights to own property and freely associate/communicate; (Sections 37, 44 of the Constitution of the Federal Republic of Nigeria).

(c) An Order directing the Respondents to pay the sum of N10,000,000.00 (Ten Million Naira) to the Applicants collectively for the infringement of their fundamental rights.

(d) An order directing and compelling the Respondents to release the nine handsets they unlawfully seized from the Applicants and his family (as enumerated in the exhibited letter).

(e) An order of perpetual injunction restraining the Respondents from further arresting and molesting Applicant and his household.

The Applicant filed the following issues for determination:

(a) Whether the seizure of Applicant's mobile phones as well as those of his Family members for about 6 months by Respondents is lawful and constitutional.

(b) Whether the conduct of Respondents when they asked the Applicant and his entire family to sit on the floor (including his aged mother), as well as the handcuffing and detention of Applicant's under aged daughter (Mabel Amanyavebo), for about 3 weeks by Respondents is lawful and constitutional

(c) Whether the Applicant is not entitled to damages.

Counsel for the Applicants relied on the Statement and its supporting Affidavit and also adopted his written address dated 27th May 2013.

The Respondent did not file any processes in this suit in spite of their being served all the processes by the Court Bailiff on the 18th of June 2013 .

The written address filed by Counsel for Applicants are in the Court's file and part of the Court's records.

The Applicant, Mr. Monday Amanyavebo is a Trader and a Farmer who is representing his family, while the 2nd Applicant, Miss Mabel Amanyavebo is under age, a student and daughter of 1st Applicant, who was detained by the Respondents. 2nd Applicant seeks redress through her next friend being her father, Mr. Monday Amanyavebo.

The 1st Applicant swore to a 30 paragraph affidavit which is uncontradicted and unchallenged by the Respondents. In the case of NIGERCHIN INDUSTRIES LTD V. OLADEHIN & ANOR (2006) 13 NWLR Pt. 998 Pg.53, the Court held that the effect of the failure to challenge averments deposed to in an affidavit by filing a counter affidavit, it is deemed that the Respondent has admitted all the averments deposed to in the supporting affidavit of the motion.

The facts of the case, as garnered from the 1st Applicant's affidavit, is that on the 17th day of December 2012, at about 3am, his house was broken into by 3rd Respondent and his team. That the 1st Applicant, his aged mother and all the inhabitants in the house were asked to sit on the floor, while the house was thoroughly searched, but nothing incriminating was found. That the 3rd Respondent and his team arrested 2nd Applicant, a teenager, seized nine handsets belonging to his family. 1st Applicant deposed that he was never told the reason for his arrest, which looked like an insurgency to him. 1st Applicant further deposed that the 3rd Respondent and his team took 2nd Applicant to the house of her senior sister, Mrs Josephine Osazuwa, in that same early morning and

also searched her house. 1st Applicant deposed that nothing incriminating was also found in the Osazuwa's household, but that his son in-law, Mr Osazuwa was arrested.

The Applicant deposed that he was never told the reasons for the search and arrest, furthermore that 2nd Applicant was detained for about 3 weeks, while his son in law, Mr Osazuwa, stayed in Respondents' custody for over a month before he was released. The 1st Applicant stated that when his daughter, Mrs Osazuwa, who was heavily pregnant, went to the Respondents' office to demand the release of her husband, she was rough handled by 3rd Respondent's team members and detained from that morning to the evening of that day. 1st Applicant stated that as a result of the stress experienced by his pregnant daughter, she eventually lost her twins during delivery.

1st Applicant deposed that he later learnt that the reason for their ordeal was that the handset belonging to Mrs Josephine Osazuwa, but was registered by 2nd Applicant and which was stolen from her long ago, was used to threaten somebody. The 1st Applicant deposed that throughout this period, his lawyer was not allowed access to 2nd Applicant and he attached as Exhibits, A, A1 and B, which are his Lawyer's letters to the Respondents. 1st Applicant deposed that the nine seized handsets are still with the Respondents till date.

I will now go to consider Applicant's issues for determination.

(i) Whether the seizure of Applicant's Mobile phones as well as those of his family members for about 6 months by Respondents, is lawful and constitutional.

Applicant's Counsel in his written address submitted that the right to own movable property as well as communicate and associate freely is guaranteed by sections 37 and 44 of the Constitution of the Federal Republic of Nigeria 1999, as amended.

Section 44 of the Constitution prohibits the compulsory acquisition of property, whether moveable or immovable. The section guarantees that no movable or immovable property or any right or interest in same, shall be acquired compulsorily by the Government without adequate and commensurate payment, by way of compensation being made by the acquiring authority.

The action of the Respondents by seizing 1st Applicant's family's nine phones till date is an act of seizure, which is the essence of taking of a thing from a person by a public authority without that person's consent, and I so hold. The seizure is a violation of Applicant's rights guaranteed by sections 37 and 44 of the Constitution of the Federal Republic of Nigeria 1999, as amended.

The Respondents by seizing the nine phones belonging to the Applicant and his family, violated their right to communicate freely with family, friends and disrupted their business activities.

The second issue for determination is:

(i) Whether the conduct of Respondent, when they asked the Applicant and his entire family to sit on the floor (including his aged mother), as well as the handcuffing and detention of Applicant's under aged daughter (Mabel Amanyavebo) for about 3 weeks by Respondents, is lawful and constitutional. The 1st Applicant's description of his arrest by the Respondents, is that it was an insurgency and

from his account it cannot be said to be an exaggeration. The arrest took place at 3am, when he and his entire family members were asleep. His house was broken into and all the inhabitants of the house were rounded up. Exhibit A, a letter from the Law firm of M. D. Odu and Co, stated that Respondents came armed to the teeth, with eleven Police Patrol Vehicles. 2nd Applicant and 1st Applicant's son in law were arrested and detained that same early morning. In all that, the Applicant and his family did not even know why they were being arrested. 1st Applicant's daughter, Mrs Osazuwa was heavily pregnant, when her home was broken into and her husband arrested. When she went to ask for her husband's release, she was also detained for a whole day. Meanwhile 2nd Applicant, a child in the eyes of the law, was arrested and detained for 3 weeks, while his son in law, Mr Osazuwa, stayed in custody for over a month, before they were both exonerated and released. 2nd Applicant's schooling was disrupted for that period.

As a result of the trauma experienced by Mrs Osazuwa, she lost her twin pregnancy.

I agree with Counsel for the Applicants, that the 1st Applicant went through a very traumatic experience, after which they were exonerated. Worse still, their nine phones are still seized by the Respondents.

While the Respondents are charged with ensuring the security of the nation, all their actions must be done within the ambit of legality.

Section 35(1) of the Constitution provides that:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

Subsection (4) states that Any person who is arrested and detained in accordance with (1) (c) of this section shall be brought before a court of law within a reasonable time...

Subsection (5) defines a reasonable time as:

(a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day and

(b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

The Constitution of Nigeria provides that no person shall be detained without charge for 48 hours. This constitutional guaranty is to protect the liberty of citizens. A situation were a teenage school girl was arrested at 3 am, handcuffed and exposed to detention in police cell for three weeks, subjected to degrading treatment and kept incommunicado from her family, and was refused access to her lawyers, after which she was exonerated, leaves little to be desired. The action of the Respondents has traumatised such a young girl and no one can tell how the experience will affect her.

Since the Respondents did not counter the evidence of the Applicants, I believe the entire evidence of 1st Applicant as a true account of what happened to him and his family on the 17th day of December 2012. I agree with A.O Ehitamah, learned Counsel to the Applicants that the conduct of the 3rd

Defendants was unlawful and a violation of their constitutional rights.

I will then go on to consider the third issue for determination which is

(i) Whether the Applicant is not entitled to damages. Section 35(6) of the Constitution provides that : Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority.

I find that from the unlawful acts of Respondents, the Applicants are entitled to compensation and a public apology as guaranteed by section 35(6) of the Constitution.

The Applicants are asking for N10 million as compensation. What have the Applicants suffered as a result of Respondents' action: pain and suffering, loss of liberty of 2nd Applicant and Mr Osazuwa for three weeks and one month respectively, loss of property by the seizure of nine phones till date.

In assessing the compensation payable to the Applicants, I take into consideration the pain, suffering and deprivation of personal liberty resulting from the interference with the person of the 2nd Applicant by the Respondents, as well as the indignity, emotional stress, disgrace and humiliation arising from the incarceration or remand in Respondents' Custody. It seems to me that a sum of N1,000,000.00 (One million Naira only) would be a fair and reasonable compensation to the Applicants.

I therefore award them damages assessed at one million naira as well as a public apology from the Respondents.

In conclusion I grant the following reliefs sought by the Applicants:

(a) A Declaration that the maltreatment, arrest and unlawful detention of 2nd Applicant for 3 weeks and 5 days by Respondents and his Agents without even informing her of her offence was illegal and unconstitutional as it violates her fundamental rights to the dignity of her person.

(b) A Declaration that the nine handsets seized from 1st Applicant and his household (who were not even suspects in the matter) violates their fundamental rights to own property and freely associate and communicate (Section 37, 44 of the Constitution of the Federal Republic of Nigeria).

(c) An Order directing the Respondents to pay the sum of N1,000,000.00 (One Million Naira) to the Applicants collectively for the infringement of their fundamental rights.

(d) An order directing and compelling the Respondents to release the nine handsets they unlawfully seized from the Applicants and his family (as enumerated in the exhibited letter).

I am unable to grant the order of perpetual injunction restraining Respondents from further arresting and molesting Applicant and his household because this would make Applicants and his family above the law and give them permanent immunity from lawful arrest.

HON JUSTICE NOGI IMOUKHUEDE
JUDGE
29/7/13

A. O. Ehitamah
FOR THE APPLICANT