

IN THE HIGH COURT OF JUSTICE EDO STATE  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY.  
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIRO,  
JUDGE, ON TUESDAY, THE  
19<sup>TH</sup> OF JULY, 2016.

SUIT NO. B/64M/16

BETWEEN

IN THE MATTER OF APPLICATION BY THE APPLICANT FOR THE  
ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT  
PROCEDURE) RULES 2009, MADE BY THE CHIEF JUSTICE OF NIGERIA

EDDY OBASUYI           ...   ...   ...   ...   ...   ...   ...    APPLICANT

AND

1.    COMMISSIONER OF POLICE EDO STATE
2.    THE OFFICER IN CHARGE OF ANTI-  
      CULTISM UNIT   ...   ...   ...   ...   ...   .....   RESPONDENTS

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order I1 Rules 1, 2, 3, 4 &5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 5 & 6 of The African Charter On Human and Peoples Right and Sections 5(1) (A & B), 35, 41 (1) And 46 (1) of The Constitution of the Federal Republic of Nigeria 1999 (as amended)

1. A DECLARATION that the continuous arrest and detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without any probable cause is unjustified and a violation of the Applicant's right to personal liberty and freedom of movement guaranteed by section 35(1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as Article 6 of the African Charter of Human and people's Rights (Ratification and Enforcement) Act. Cap A9 laws of the Federation of Nigeria, 2004.
2. A DECLARATION that the physical and mental torture and degradation of the Applicant by the respondents and continued detention of the 15 year old applicant is cruel punishment prohibited under section 34(a) of the 1999 Constitution (as amended) as well as Article 6 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
3. The sum of N25, 000,000.00 (twenty-five million naira) only, payable by the respondents jointly and severally to the Applicant as general damages against the respondent for the violation of the Applicant's constitutional rights.
4. The sum of N30, 000,000.00(thirty million naira) only, as exemplary damages against the respondents for the violation of the Applicants constitutionally protected rights.
5. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which the reliefs are sought are as follows:

- a) The applicant has fundamental rights to freedom of movement, liberty and dignity under sections 35 (4) (b) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Article 6 of the African Charter on Human and People Rights respectively which are being violated by the applicant's arrest and continuous detention by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
- b) The Applicant's right to dignity of the human persons guaranteed by section 34 (1) of 1999 constitution was violated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent by the applicant who is only 15 years old and a secondary school student being put in a stinky and dingy cell at the State C.I.D cell inhabited by adults hardened criminal suspects and even paraded before press men with other adult suspects.
- c) That the applicant is a 15 year old secondary school student preparing for his exams.
- d) The arrest and detention of the applicant constitutes a breach of his fundamental right to freedom of movement, liberty and dignity of the human person under sections 34(1) and 35 (4) (b) of the constitution of the Federal Republic of Nigeria and the Articles of the African Charter on Human and Peoples Rights.
- e) That as a result of the constitutional breach of the Applicant's Fundamental Right, the applicant is entitled to compensation as per his claim or such other sum as the court may deem just and fair to award in the circumstance of this application.

The learned Counsel to the Applicant also filed a supporting affidavit of 12 paragraphs together with a Written Address. At the hearing, he relied on the supporting Affidavit and adopted his written address dated 31<sup>st</sup>, May, 2016.

The Respondents were duly served with all the Court processes but they did not come to Court to contest the application. Neither did they file any response.

The facts of the case, as garnered from the Applicant's affidavit, is that on or about the 15<sup>th</sup> of May, 2016, the applicant was arrested at Iguelaba Village in Orhionmwon Local government Council Area of Edo State after he returned from the farm and he was detained in the Police Station until 20<sup>th</sup> May 2016 when the matter was transferred to Benin City.

The family members of the applicant made frantic efforts to know his offence and his where about and they were informed that the matter had been transferred to the State headquarters. That there was no petition or complaint from anybody to the police before his arrest.

That when the Applicant's lawyers accosted the Officer in charge of the anti cultism unit about granting him bail, the officer informed them that bail will be considered the next day, being 25<sup>th</sup> May, 2016.

When the family members and their lawyers came to the state headquarters at G.R.A. Benin City the I.P.O. informed them that there was a

directive from the Commissioner of police that the matter be charged to court in Abudu.

That instead of charging the matter to court, the I.P.O. locked the applicant in the state C.I.D. in a cell where hardened criminals are kept and he has been there ever since.

The applicant who is just 15 years old was detained at the Iguelaba Division for more than five days. He was not admitted to bail by the Divisional Police Officer who demanded for the sum of N200, 000.00 for his release. That when the family refused to accede to the demand, the DPO ordered the transfer of the applicant and some other boys to Benin City.

That, when the case file was transferred to Benin, the investigating police officers attached to the anti-cultism units demanded for the sum of N500, 000.00 before the applicant can be released on bail. The applicant has spent more than 7 days without being allowed access to his lawyers and no formal charge has been filed before any court. All efforts made so far to secure his release has proved abortive. The applicant was paraded before press men to be aired on a popular TV program tagged as crime watch on EBS TV.

In his arguments as contained in his Written Address, the learned counsel for the Applicant, Dennis Osaretin Esq., relied on all the paragraphs of the supporting affidavit.

He identified a single issue for determination, to wit: *“Whether by the facts presented before this Honourable Court the Applicant herein is entitled to the reliefs sought by him by this application.”*

Arguing the issue, learned counsel submitted that upon the facts presented, the applicant is entitled to judgment as per the reliefs sought in this application.

He maintained that personal liberty is one of the rights guaranteed by the Constitution of Federal republic of Nigeria. He referred the Court to section 35 (1) of the 1999 Constitution (as amended) and submitted that this fundamental right is subject only to the limitations as stipulated in the constitution. For this proposition, he cited the case of: *ODOGU VS. AG. FEDERATION (2002) 2 HRLRA 82-06 AT 102 PARAS B – C.*

He submitted that the arrest and continuous detention of the Applicant does not fall within any of the permissible grounds listed in the constitution. Counsel argued that the applicant who is a minor was only arrested on the suspicion of being a cultist. He maintained that the respondents have breached the rights of the applicant having kept him in detention for more than two weeks up till now.

According to him, all the boys arrested with him have been granted bail after paying huge sums of money.

He submitted that the respondents who are the arresting authority have the onus of showing that the arrest of the applicant was lawful. For this view, he relied on the case of: *Abiola vs. Abacha (1998)1 HRLRA 447-452 at ratio 4, at 480-481 para. A-B.*

He further submitted that a trial court has a duty to ensure respect for and the observance of human rights. He stated that the court can only do this by refusing to give an interpretation which seeks to temper in any way with the fundamental Human Rights but rather to see that they are respected and enforced see: *Patriotic Party Vs. IGP Accra (2000 2 HRLRA at 27 R. 25 page 75 paras. D-H Also See Ushae vs. Cop (2005)11 NWLR Pt 937 at 505 ratio 1.*

He referred the Court to the case of: *Agbakoba vs. Director S.S.S. (1998) 1 HRLRA 256 paras, E-G* where the arrest and detention of an applicant in a similar case was held illegal, unlawful and unconstitutional.

He posited that the refusal to bring the applicant to a court of competent jurisdiction within a reasonable time amounts to a violation of the applicant's rights.

Counsel submitted that when a right is shown to have been breached, the applicant is entitled to compensation and public apology. See: *Odogwu vs. A.G. Fed supra*; also see: *Fawehimi vs. Babangida (2000) HRLRA 144 at p. 126 pp. 155 para. E.*

He submitted that where the arrest and detention or threat to arrest or detain a citizen is held to be illegal, unlawful and unconstitutional, he is entitled to an award of compensatory damages for the infringement of his constitutional rights guaranteed under the constitution and the African Charter. He further submitted that the applicant is entitled to claim damages for the infringement and the violation of his other rights such as wrongs done to his personal rights, rights not to be assaulted, rights not to be imprisoned right to go where ever he may wish and rights not to be tortured see: *Ekpu Vs. A.G. Federation (1998) 1 HLRA 391-399.*

Counsel maintained that the court has a sacred duty to prevent the debasement of citizens and the violation of their rights. He stated that the law presumes that damages flow naturally from injuries suffered by an applicant in fundamental rights procedures see: *Abiola vs. Abacha supra.*

He submitted that the factors to be considered in awarding damages for infringement of fundamental human rights are:

1. The frequency of the type of violation in recent times.
2. The continually depreciating values of naira.
3. The motivation for the violation.
4. The status of the Applicant.
5. The underserved embarrassment meted to the applicant including pecuniary loss.
6. The conduct of the parties generally.

He referred the Court to the case of *Ajayi vs. A.G. Fed (1998) 1 HRLR at 373-378* See also: *Gabriel Olusoga Onagoruwa vs. I.G.P. supra at 650-651 paras. F-A.*

Finally Counsel submitted that the conduct of the respondents is reprehensible and is deserving of the award of exemplary damages to serve as a deterrent to other law enforcement agents and to dissuade impunity. For this he relied on the cases of *Ezeaka vs. Nwankwo (2000) 2 HRLRA pg 165 At 167 Ratio 2 & 3; and Odogwu Vs. A.G. Fed supra*

He urged the Court to grant all the reliefs sought in this application with substantial costs against the respondents.

As, I stated earlier in this ruling, this application is not being contested. The Respondents were duly served with all the Court processes but strangely, they did not come to Court to contest the application. More so, they did not file any counter affidavit or written address in response.

The failure of the respondents to file any response cannot prevent the Court from proceeding with the substantive application. Once there is proof that the respondent has been given opportunity to react to the application, the Court is at liberty to proceed. See: *Nice v. Attorney General of the Federation(2007) CHR 218*. Furthermore, it is now settled law that a respondent who fails to file a written address is deemed to have admitted the issues raised in the Applicant's written address. See the case of: *Omowunmi v. Ogunsiji (2008) 3 WRN 115*.

In the case of: *Olisa Agbakoba v. Director, State Security Service (1994) 7 NWLR (Pt.351) 353 at 500*, the Court of Appeal opined thus:

*"It will work injustice and defeat the whole purpose of enforcement of fundamental rights were a complainant to be deprived of a declaration of infringement of his right merely by reason of the fact that the other parties to the proceedings failed, despite all opportunities given them,*



*to offer either affidavit or any evidence or appear to be heard on the application.”*

Notwithstanding, the Applicant still has the burden to prove that the Respondents breached his fundamental rights. In: *Agbakoba v. Director, State Security Service (1994), supra*, the Court reiterated thus:

*“...the court will not declare a right to be infringed merely because the other party to the application has neither filed an affidavit nor come forward to be heard on the application if the affidavit and materials placed before him in support of the application show that the right claimed does not exist or, if it exists, has not been infringed.”*

I have carefully considered the facts contained in the supporting affidavit together with the submissions of learned counsel for the applicant. The facts are uncontroverted. It is settled law that when a respondent fails to file a counter affidavit, he is deemed to have admitted the facts contained in the affidavit in support of the application. See: *Nwosu V Imo State Environmental Protection Agency 1990 2 NWLR (Pt.135), 688; and Egbuna V Egbuna 1989 2 NWLR (Pt. 106) 773, 777.*

On the above authorities, the respondents are deemed to have admitted all the facts as contained in the applicant’s affidavit in support of the application. The facts reveal very clearly that the respondents arrested and detained the 15 years old applicant in a cell with other hardened adult criminals since the 15<sup>th</sup> of May, 2016 without any explanation from them.

The applicant has maintained that his fundamental rights to freedom of movement, liberty and dignity as guaranteed by sections 35 (4) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and

Article 6 of the African Charter on Human and People's Right respectively is being violated by the Respondents.

Section 35 of the 1999 Nigerian Constitution guarantees the right to personal liberty. Section 35. (1) Provides thus:

“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 -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence”.

Furthermore, Section 35(4) provides that:

“Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of:

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.”

The implication of the foregoing provisions is that where a person is arrested upon reasonable suspicion of his having committed a criminal offence, he should be charged to court within two months or he should be

released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

This is the situation of the applicant. On the 15<sup>th</sup> of May, 2016, he was arrested by the officers from the anti-cultism unit of the Nigerian Police Force ostensibly on the suspicion that he is a cultist. Unfortunately, the police have not supplied any fact to support their arrest. Over, two months after his arrest; they have neither granted him bail nor charged him to court. I agree with the submission of the learned counsel for the applicant that the respondents who are the arresting authority have the onus of showing that the arrest of the applicant was lawful. See the case of: *Abiola vs. Abacha (1998) supra*. This is a clear violation of his right to personal liberty as guaranteed by section 35 of the 1999 Constitution.

Furthermore, the applicant has alleged that his right to human dignity as guaranteed by section 34 (1) of 1999 constitution was violated by the Respondents because he being a 15 year old secondary school student, was kept in a stinky and dingy cell at the State C.I.D cell inhabited by adult hardened criminal suspects and paraded before press men with other adult suspects.

Section 34(1) of the 1999 Nigerian Constitution provides as follows:  
“34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -  
(a) no person shall be subject to torture or to inhuman or degrading treatment;  
(b) no person shall he held in slavery or servitude; and  
(c) no person shall be required to perform forced or compulsory labour.”

To keep a 15 year old in a stinky and dingy cell at the State C.I.D cell inhabited by adult hardened criminals under the circumstances of this case is a clear violation of his right to the dignity of the human person as guaranteed by section 34 of the Constitution.

The applicant is claiming the sum of N25,000,000.00 (twenty-five million naira) as general damages and N30,000,000.00(thirty million naira) only as exemplary damages against the respondents for the violation his rights.

General damages refers to such damages that the law presumes to flow naturally from the nature of the wrong complained of. It need not be

specifically claimed or proved. See: *Ozigbu Engineering Co.Ltd. v Iwuamadi* (2009) 16 NWLR (Pt.1166) 44; *Ighreriniovo v S.C.C (Nig) Ltd.* (2013) 10 NWLR (Pt.1361) 138.

On the other hand exemplary damages cannot simply be inferred from the nature of the wrong. In the case of: *G.K.F.I (Nig) Ltd. v NITEL Plc.* (2009)15 NWLR (Pt.1164) 344, *Ogbuagu JSC* opined that:

*“Exemplary, punitive, vindictive or aggravated damages where claimed, are usually awarded, whenever the defendant or defendants' conduct, is sufficiently, outrageous to merit punishment as where for instance, it discloses malice, fraud, cruelty, insolence, or flagrant disregard of the law and the like”.*

See also the cases of: *Shugaba Abdulrahman Darman v The Federal Minister of Internal Affairs* (1981) 2 NCLR 915; and *Odogwu v Attorney General of the Federation & Gors* (1996) 6 NWLR (Pt.456) 508.

Coming to this application, the applicant is clearly entitled to general damages for the infringement of his rights to personal liberty and the dignity of his person. However, on the issue of exemplary damages, I do not think the conduct of the respondents can be classified as: *“sufficiently, outrageous to merit punishment”*. The claim for exemplary damages cannot succeed.

Going through the reliefs sought by the Applicant, I observed that there is no specific relief seeking his release from custody, whether conditionally or unconditionally. There are 4 reliefs in all. The first two reliefs are declarations on the infringements of his fundamental rights and the remaining two are claims for general and exemplary damages respectively. It is settled law that the Court cannot grant a relief which a party did not seek. The Court is not a Father Christmas. In the case of: *Badmus v Abegunde* (1999) 11NWLR (Pt.627)493 at 507-508, *Onu JSC* explained the position thus:

*“A court of law may award less, and not more than what the parties have claimed. A fortiori, the court should never award that which was not claimed or pleaded by either party. It should always be borne in*

*mind that a court of law is not a charitable institution, its duty in civil cases is to render unto every one according to his proven claim”.*

See also: *Emirate Airline v Aforka (2015) 9 NWLR (1463) 80 at 89; and Lamindu v Maidagu (2015) 7NWLR (Pt.1485) 289 at 300.*

On the whole, this application succeeds and I hereby order as follows:

1. The continuous arrest and detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without any probable cause is unjustified and a violation of the Applicant’s right to personal liberty and freedom of movement guaranteed by section 35(1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as Article 6 of the African Charter of Human and People’s Rights (Ratification and Enforcement) Act. Cap A9 Laws of the Federation of Nigeria, 2004;
2. The physical and mental torture and degradation of the Applicant by the respondents and the continued detention of the 15 year old applicant amounts to cruel punishment which is prohibited under section 34(1) (a) of the 1999 Nigerian Constitution (as amended) as well as Article 5 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.
3. I award the sum of ~~N~~500, 000.00(five hundred thousand naira) as general damages in favour of the Applicant against the Respondents and the sum of N10, 000.00 as costs in this suit.

P.A.AKHIHIERO  
JUDGE  
19/07/16

COUNSEL:

DENNIS.I.OSARETIN ESQ.....APPLICANT

