

IN THE HIGH COURT OF JUSTICE EDO STATE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY.
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON MONDAY, THE
17TH OF OCTOBER, 2016.

SUIT NO. B/158M/16

IN THE MATTER OF APPLICATION BY: MR.BIGGY ELVIS AGBOGHIDI FOR
THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS

BETWEEN:

MR.BIGGY ELVIS AGBOGHIDI APPLICANT

AND

COMMISSIONER OF POLICE, EDO STATE RESPONDENT

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order 2 Rules (1) & (2) of the Fundamental Rights (Enforcement Procedure) Rules 2009, Sections 34, 35 (1), (2), (3) & (4) and 46 (1) & (2) of the Constitution of the Federal Republic Of Nigeria 1999 and under the inherent jurisdiction of this Court.

The Applicant is seeking the following reliefs:

1. **A DECLARATION that the torture** of the Applicant by the Respondent and their agents since the 6th day of August, 2016 till date by the Respondent (sic) without any reasonable

offence established against him is illegal and unconstitutional as it offends the Applicant's right to the dignity of the human person as guaranteed by section 34 of the Constitution of the Federal Republic of Nigeria 1999 as Amended.

2. **A DECLARATION** that the **INDEFINITE DETENTION** of the Applicant by the Respondent and their agents since the 6th day of August, 2016 on mere suspicion of having committed an offence is illegal and unconstitutional as it offends the Applicant's right to personal liberty as guaranteed by section 35 of the Constitution of the Federal Republic of Nigeria.
3. **AN ORDER** directing the Respondent to **PRODUCE THE APPLICANT BEFORE THIS HONOURABLE COURT** for the purpose of this Court seeing how de-humanized and brutalized the Applicant has become.
4. **AN ORDER** directing the Respondent to forthwith release the Applicant from detention conditionally or unconditionally in line with Constitutional provisions.

Any other Order or further Orders that this Honourable court may deem fit to make in the circumstances of this case.

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

- a. The Applicant was detained and tortured by the Respondent since the 6th day of August, 2016 on mere suspicion of having committed an offence;
- b. The Respondent inflicted various degrees of injuries on him and has refused to either release him or charge him to Court in a worst case scenario;
- c. The Respondent has no right to detain the Applicant indefinitely contrary to the clear provision of the Constitution;

- d. The Respondent has no right to continue to torture the Applicant; and
- e. The Applicant has been confined to a Police cell to rot away.

The learned Counsel for the Applicant also filed a supporting affidavit of 8 paragraphs together with a Written Address. At the hearing, he relied on the supporting Affidavit and adopted his written address dated 6th, September, 2016.

The Respondent was duly served with all the Court processes but he did not come to Court to contest the application. Neither did he file any response.

The facts of the case, as garnered from the Applicant's affidavit, are that he was arrested on the 6th day of August, 2016 by some policemen on an allegation of armed robbery while he was in his community at Uteh, off Upper Mission Road, Benin City. Before his arrest, he was the factional secretary of Uteh Community Development Association (CDA) and also a businessman.

That shortly after his arrest, he informed the police officers that the information they received about him was false, malicious and aimed at keeping him out of circulation.

Before now, some members of the breakaway faction in the community have been writing frivolous petitions to different police formations to ensure that the Applicant was arrested and incarcerated.

After his arrest, the Respondent and their agents tortured him in order to extract a confessional statement from him. They tied his hands and legs

all night long leaving him in pains all through. That he suffered from internal body pains and sustained injuries on his legs which make it very difficult for him to walk.

That the Respondent has declared that they will never release the Applicant on bail or charge him to Court until he admits the malicious allegations against him.

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

He identified two issues for determination, to wit:

- (A) Whether the Respondent has the right to torture the Applicant; and
- (B) Whether the Applicant is not entitled to the reliefs sought.

The learned Counsel argued the two issues together.

He submitted that Section 34 of the 1999 Nigerian Constitution (as amended) guarantees every citizen the right to the dignity of the human person and no person should be tortured for any reason.

Furthermore, he submitted that Section 35 of the same Constitution guarantees the right to personal liberty.

He maintained that the Applicant was detained by the Respondent from the 6th day of August, 2016 till date while under torture. He submitted that there is no law which supports the torture and detention of a person in police cell indefinitely. He argued that the Respondent has not shown any justifiable reason why the applicant is being tortured and detained indefinitely.

He submitted that if the Court makes an order for his production, the Court will be in a position to determine the condition of the Applicant and make appropriate orders. He submitted that the case of the Applicant does not fall within any of the exceptions for which the Respondent can be justified for their actions and referred the Court to the case of: *SHUGABA V. MINISTER FOR INTERNAL AFFAIRS (2003) 2, CHR 463.*

Counsel posited that the issue of liberty and the enforcement of the rights of Nigerian citizens is a constitutional matter which affects the Fundamental Rights of the Applicant. He referred the Court to section 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended and quoted some parts of the section as follows:

“Section 35 (4) ... 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 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 any 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.....”

Counsel argued that the Applicant’s case falls squarely within the purview of Section 35 (4) (a) & (b) of the 1999 Constitution as amended. He submitted that since the Respondent is reluctant and/or has neglected to prefer a formal charge against the Applicant, he is entitled to be released from prison custody unconditionally or upon such conditions as the Court may deem fit in the circumstance. He relied on the case of: *OSHINAYA V. C.O.P (2005) 4 A.C.L.R. 342 AT 346 RATIO 8*, where the learned Justices of the Court of Appeal upheld the above cited Constitutional provision in the interest of justice.

He also referred to the case of: *OLAWOYE V. COMMISSIONER OF POLICE (2006) ALL FWLR (PT 309) 1483 AT 1485 Ratio 4*.

He urged the Court to exercise its discretion in favour of the Applicant because the Applicant has a reliable surety to take him on bail.

He further submitted that it is trite Law that the court has the inherent power to grant monetary compensation in cases of violation of fundamental rights.

As earlier stated, this application is uncontested. However; the failure of the respondent 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."

However, the Applicant still has the burden to prove that the Respondent 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 Respondent is 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 Respondent arrested, detained and tortured the Applicant since the 6th day of August, 2016 on mere suspicion of having committed an offence. The Respondent also inflicted various degrees of injuries on him and has refused to either release him or charge him to Court.

The Applicant has maintained that his fundamental rights to personal liberty and dignity of his person as guaranteed by sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 is being violated by the Respondent.

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.”

The facts revealed that the Respondent and their agents tortured the Applicant in order to extract a confessional statement from him. They tied his hands and legs all night long and subjected him to internal body pains and injuries. The injuries on his legs now make it very difficult for him to walk.

This is a clear violation of his right to the dignity of the human person as guaranteed by section 34 of the Constitution.

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

“(1) 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 with the applicant who has been detained since the 6th day of August, 2016 on the suspicion of having committed a crime. 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. This is a clear violation of his right to personal liberty as guaranteed by section 35 of the 1999 Constitution.

Going through the reliefs sought by the Applicant, I observed that there is no specific relief for damages. There are 4 reliefs in all. The first two reliefs are for declarations on the infringements of his fundamental rights and the remaining two are orders to produce the Applicant before this Court and for his release. However in his written address, the learned counsel for the Applicant urged the Court to grant monetary compensation for the violation of his rights. Even at that, Counsel did not claim any specific sum.

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 Laminu v Maidagu (2015) 7NWLR (Pt.1485) 289 at 300.*

In the event, I do not think the Applicant is entitled to any monetary compensation.

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

- 1. A DECLARATION that the torture of the Applicant by the Respondent and their agents since the 6th day of August, 2016 till date without any reasonable offence being established against him is illegal and unconstitutional as it offends the Applicant's right to the Dignity of the human person as guaranteed by section 34 of the Constitution of the Federal Republic of Nigeria 1999 as Amended;**
- 2. A DECLARATION that the INDEFINITE DETENTION of the applicant by the Respondent and their agents since the 6th day of August, 2016 on mere suspicion of having committed an offence is illegal and unconstitutional as it offends the Applicant's right to personal liberty as guaranteed by section 35 of the Constitution of the Federal Republic of Nigeria; and**
- 3. The Respondent is directed to forthwith release the Applicant from detention conditionally or unconditionally in line with the Constitutional provisions.**

P.A.AKHIHIRO
JUDGE
17/10/16

COUNSEL:

S.O.OMOBUDE ESQAPPLICANT