

IN THE HIGH COURT OF JUSTICE EDO STATE OF NIGERIA
IN THE FUGAR JUDICIAL DIVISION
HOLDEN AT FUGAR
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON TUESDAY, THE
24TH OF OCTOBER, 2017

SUIT NO. HFU/01^F/2017

IN THE MATTER OF AN INFRINGEMENT OF FUNDAMENTAL RIGHTS
AND
IN THE MATTER OF THE ENFORCEMENT OF THE FUNDAMENTAL
RIGHTS OF THE APPLICANT

IN THE MATTER OF:

1. MR. THOMAS UGHEOKE } APPLICANTS
2. MR. ALEX UGHEOKE } }

AND

1. ALHAJI WAZIRI OSHOMA }
2. THE COMMISSIONER OF POLICE, EDO STATE } RESPONDENTS
3. AREA COMMANDER, AUCHI } }

RULING

This is a Ruling in respect of an application for the enforcement of Fundamental Rights brought pursuant to Order 2 Rule 1(1) of the Fundamental Rights (Enforcement Procedures) Rules; and section 35(1) and 43 of the Constitution of the Federal Republic Of Nigeria, 1999 as amended.

And for such order or other orders as the Court may deem fit to make in the circumstances.

The Applicants are seeking the following reliefs:

- a. *A declaration that the continued harassment, molestation, intimidation and threat of arrest and detention of the Applicants by the 1st Respondent through the 2nd and 3rd Respondents and the actual arrest of the Applicants*

from their residence at Azukhala – Ekperi in Etsako Central Local Government Area sometime in April all through May 2017 and the refusal to allow the Applicants enjoy their freedom and liberty there after constitute a serious infringement on the fundamental rights of the Applicants as enshrined under S.35 (1) of the 1999 Constitution of the Federal of Nigeria as amended.

- b. A declaration that the forceful encroachment into the property been developed by the Applicants on behalf of their brother is a gross violation of their right to own property.*
- c. An Order directing the Respondents jointly and severally to pay to the Applicants the sum of N 10,000,000 (Ten Million Naira) as damages for unlawful arrest and illegal detention of the Applicants on the prompting of the 1st Respondent.*
- d. A perpetual injunction restraining the Respondents by themselves, agents and privies from howsoever from molesting, harassing, arresting and or from further detaining the Applicants in any part of Edo State without compliance with the due process of law.*
- e. An Order that the Applicants being law abiding citizens of Nigeria without any criminal record are entitled to enjoy their fundamental rights to freedom and liberty enshrined in the Constitution of the Federal Republic of Nigeria 1999.*
- f. An Order restraining the 1st Respondent from dislodging, selling or doing anything to the Applicants immovable property at Azukhala – Ekperi contrary to S.43 of the 1999 constitution (as Amended).*

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

1. The 1st Respondent caused the arrest and detention of both the 1st and 2nd Applicants at the Fugar Division and Area Command, Auchu without lawful justification.
2. The Applicants who are in both actual and real possession of a plot of land were developing same for their brother when the 1st Respondent invaded the site with thugs and camera man.
3. The 1st Respondent claim to own a plot of land which is not known to the Applicants, and did file an action at the Area Customary Court, Fugar.

4. That the 1st Respondent has severally boasted that he has issues with the Applicants family and is ready to actualize his dreams.
5. That in the course of actualizing the dream, 1st Respondent has resorted to the use of both the 2nd and 3rd Respondents to perpetuate his illegal aims and objectives.

At the hearing of this application, the learned Counsel for the Applicants relied on two supporting affidavits of 31 and 6 paragraphs deposed to by the 1st and 2nd Applicants respectively, a Reply to the respondents counter affidavit dated 02/06/17, a Written Address of counsel and a Written Address on points of law. He urged the Court not to rely on the Further Counter Affidavit of the Respondents filed on the 6th of June, 2017 because such a process is not known to law.

The Respondents were duly served with all the Court processes and were represented by a Counsel Ojo Esemokhai (Jnr.), who opposed the application and relied on his counter affidavit of 35 paragraphs, a Written Address and a further counter affidavit of 6 paragraphs.

The Respondents also filed a Notice of Preliminary Objection to the jurisdiction of this court to entertain this application which is attached to the Counter-Affidavit and marked as Exhibit "I".

The facts of the case, as garnered from the Applicants' affidavit, are that sometime in the year 2017, one Dr. Johnson A. Ugheoke, the brother of the 1st applicant, acquired a plot land measuring 100ft by 250ft from the Azukhala Community for the purpose of building his living house.

That the 1st applicant was assigned to clear and uproot the stumps in preparation for the building and he brought 3,500 concrete blocks to the site and commenced work along with the 2nd Applicant as the builder.

While the construction of the building was going on, the 1st Respondent filed a suit for declaration at Area Customary Court.

On the 19th day of April 2017, while they were on site, the 1st Respondent allegedly invaded the place with suspected thugs and a photographer, molested the workmen and destroyed part of the building which was at the DPC level.

The applicants tried to resist the 1st respondent because he failed show them any court order authorizing him to enter the land to take pictures.

The 1st respondent left the site and proceeded to the 2nd and 3rd Respondents' office at Fugar. The 2nd Respondent invited the applicants to their office and detained them.

According to the applicants, the matter pending in Court filed by the 1st Respondent is in respect of a parcel land which is different from the one where they were working.

That upon investigation, the Police at the Fugar Division found no merit in the complaint and advised the 1st Respondent to make peace since the photographer purportedly denied being beaten or his camera damaged.

Dissatisfied with the police at Fugar, the 1st Respondent petitioned and the matter was transferred to the office of the 3rd respondent.

The applicants were invited to the office of the 3rd respondents where they were detained for 3 days from 29th April to 1st May 2017. They were not charged to Court.

In his Written Address, the learned counsel for the applicants, P.A. Ugheoke Esq. formulated a sole issue for determination as follows:

Whether the arrest and subsequent detention of the Applicants beyond 48 hours is lawful considering the provisions of S.35 (1c) (2) (4) S.5 (a) of the Nigeria Constitution 1999.

Arguing the sole issue for determination, learned counsel submitted that the Applicants fundamental rights to liberty and to own property are inalienable rights guaranteed by the constitution of the Federal Republic of Nigeria vide Ss.35, and 43 thereof and by the provisions of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation, 2004.

He submitted that the liberty of the Applicants has been denied them by the action of the Respondents as initiated by the 1st Respondent without regard to the due process permitted by law.

He maintained that the Applicants can only be deprived of their right to liberty under the following conditions as contained in S.35 (1) a – f of the Constitution of the Federal Republic of Nigeria:

- 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;*
- d. In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;*
- e. In the case of persons suffering from infections or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or*

f. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceeding relating thereto.

He maintained that these conditions were never met by the Respondents in the detention of the Applicants.

Furthermore, learned counsel submitted that the Respondents flagrantly flouted the provision of section 35(4) of the Constitution by not bringing the Applicants before a Court of law within a reasonable time. On the meaning of the phrase: *reasonable time*, he referred to section 35(5) of the Constitution which states as follows:

“(5) In subsection (4) of this section, the expression a reasonable time means:- in the case of an arrest or detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometers, a period of one day”

Pursuant to the above provision of the 1999 Constitution he contended that the Applicants were detained first on the 19th day of April, 2017 and again on the 29th April all through to the 1st day of May, 2017 (both days inclusive) without being charged to Court, beyond the period permitted by the Constitution.

Furthermore, he posited that the Applicants were detained in the Auchu Area Command of the Nigeria Police where the radius to the Court is less than 1 kilometer, yet they were not arraigned in Court neither were they granted bail when it was practically impossible to arraign them in Court.

Counsel contended that there was no valid Order of Court permitting or allowing the Respondents to detain the Applicants beyond the stipulated time frame of one day.

Learned counsel referred to paragraphs 3,4,5,6 and 7 of the supporting affidavit of the 1st Applicant where he stated that his brother, one Dr. Johnson A. Ugheoke acquired a plot of land measuring 100ft by 250ft and put same under his care and control and submitted that the 1st Applicant is an agent of the said Dr. Johnson A. Ugheoke who acquired the said immovable property in line with the provision of S.43 of the 1999 constitution. According to him, by this provision, no one can be deprived of his right to acquire such property except by the provision of S.44 (1) (a) to (m) of the Constitution.

Counsel submitted that the actions of the Respondents were *ultra vires* their powers, unlawful, illegal null and void.

He finally urged the Court to grant the application.

At the hearing of the application, the learned counsel for the Respondents Ojo Esemokhai (Jnr.), adopted his Written Address as his arguments in opposition.

In the said address, he formulated three Issues for Determination as follows:

- a) Whether the arrest and subsequent detention of the Applicants, in the circumstances of this case, was lawful;
- b) Whether this application is not liable to be struck out for want of jurisdiction in that the claim for enforcement of the Applicants' fundamental human right is ancillary or incidental to the main claim for trespass, possession/or title to land; and
- c) Whether this Honourable Court has jurisdiction to grant Relief C in the Applicants' Originating Motion considering the fact that the 2nd and 3rd Respondents are agents of the Federal Government of Nigeria.

ISSUE (a):

Arguing this Issue, learned counsel submitted that the arrest and detention of the Applicants in the circumstances of this case was lawful and did not amount to harassment, intimidation and molestation of the Applicants.

Counsel maintained that it is not in dispute that a suit was instituted at the Etsako Central Area Customary Court, Fugar by the 1st Respondent against the 1st Applicant and Dr. Johnson Ugheoke on 20/2/2017 for declaration of title, injunction and general damages for trespass to the parcel of land in dispute coupled with a Motion on Notice for Interlocutory Injunction to restrain the defendants their agents, servants and privies from howsoever developing the land in dispute pending the hearing and determination of the substantive suit. For this view, he referred the Court to paragraph 12 of the Counter-Affidavit and Exhibit "B" en bloc.

He stated that having reacted to the said motion on notice for interlocutory injunction *vide* a Counter-Affidavit filed on 23rd February, 2017, the Applicants who are the agents or servants of Dr. Johnson Ugheoke, proceeded in April, to commence development of the land before argument of the motion.

He contended that to give his action some form of legality, the 1st Applicant and Dr. Johnson Ugheoke filed a Notice of Preliminary Objection to the

jurisdiction of the Etsako Central Area Customary Court to entertain the suit and proceeded with the development of the land.

Learned counsel maintained that the applicants had no regard for legal process and refused to stop developing the land in dispute in spite of a pending motion on notice for interlocutory injunction.

He stated that the Applicants were not detained at Fugar Police Station when they were arrested for assaulting the 1st Respondent and his photographer and maliciously damaging the photographer's camera on 23/4/2017. To buttress this point, he referred to paragraph 24 of the Counter-Affidavit and Exhibit "F".

He submitted that paragraph 5 of the affidavit in support of the Originating Motion and paragraphs 26 to 29 of the Counter-Affidavit gives the reason why the case was transferred to the Area Commander's Office. Furthermore, he referred to paragraph 30 of the Counter-Affidavit which clearly shows that the Applicants were transferred from the Divisional Police Station, Fugar to the Area Commander's Office at Auchi on Saturday 29th April, 2017.

Again, he referred to paragraph 31 and 32 of the Counter-Affidavit which explains that the Applicants were not released on bail on the 29th April, 2017 because they could not provide a new surety until Monday 1st March, 2017 which was a public holiday.

Counsel posited that this application amounts to abuse of process aimed at shielding the applicants from criminal investigation and prosecution for the assault of the 1st Respondent. He submitted that for a person to go to court to be shielded against criminal investigation and prosecution is an interference with the powers given by the Constitution of the Federal Republic of Nigeria to law officers in control of criminal investigation. See: *A.G Anambra State v. Chief Uba&Ors. (2005) All FWLR (pt. 277) 909 @ 925.*

Again, he submitted that were an applicant, as in this case, has no legally recognizable right to which the court can come to his aid, such an applicant cannot expect a judicial fiat to prevent a law officer from exercising his constitutional powers.

He therefore urged the court to resolve issue (a) in favour of the Respondents and refuse the application.

ISSUE (b):

On this second issue, learned counsel submitted this Court lacks the jurisdiction to entertain this suit in that the main claim of the Applicants is rooted in tort i.e. declaration of title, possession and trespass to land. See paragraphs 3 to 15 of the Affidavit in Support of the Applicants' Originating Motion and paragraphs 4 to 18 of the Counter-Affidavit and Exhibits A, B, C, D and E attached to the Counter-Affidavit.

According to him, the jurisdiction of the court in enforcement of fundamental human rights would be determined by the claim of the Applicants. See *AlhajiAbdulhamid v. Akar&Anor. (2006) All FWLR (pt. 321) 1191 @ 1203-6, 1209.*

He submitted that in fundamental human rights proceedings, the statement of the Applicants represents their pleadings. He said that going by the Relief sought from the court contained in the Applicants' Statement and Grounds 2 and 3 on which the reliefs are sought, paragraphs 3 to 15 of the Affidavit in Support of the Applicants' Originating Motion, Exhibits A,B,C,D and E attached to the Counter-Affidavit it is crystal clear that the main claim of the Applicants is related or connected with a claim for trespass, possession and/or title to land and the alleged breach of their fundamental human rights is ancillary or incidental to the main claim.

Counsel referred the Court to the case of: *NDIC &Ors. V. Koleosho (2006) All FWLR (pt. 312) 2099 @ 2115-6, 2118-9*, where the Court of Appeal restated that an action relating or connected with a claim for possession and/or title to land cannot be brought under the Fundamental Human Rights (Enforcement Procedure) Rules.

He submitted that where it is impossible, as in this case, to determine the invasion of the fundamental right to the privacy of the Applicants' property without first determining the proprietary right of the parties to the property the jurisdiction of the court would be ousted. See *Turkur v. Government of Gongola State (1989) 4 NWLR (pt. 117) 517 @ 549.*

Counsel contended that since there is a pending litigation over the land in dispute to determine the proprietary right of the parties to the landed property in question (see Exhibit "B"), it is therefore wrong and incompetent of the Applicants to seek to enforce their fundamental human right to Reliefs b and f in the Applicants' Originating Summons which are the main reliefs of the Applicants.

He submitted that where fundamental human rights question is incidental or ancillary to the main relief of trespass, possession and/or title to land it is incompetent to proceed under the fundamental human rights (Enforcement Procedure) Rules. See *Trucks Nigeria Ltd V. PanyaAnigboro (2001) FWLR (pt. 37) 1000 @ 1025*, *Jack v. University of Agriculture, Makurdi (2004) All FWLR (pt. 200) 1506 @ 1522-3*.

He therefore urged the court to decline jurisdiction to entertain this application and resolve issue (b) against the Applicants.

ISSUE (c):

Under this issue, learned counsel submitted that by virtue of Order II Rule 1 of the Fundamental Human Rights (Enforcement Procedure) Rules, 2009 both the State High Court and the Federal High Court in a State have concurrent jurisdiction over fundamental human rights matters. However, he maintained that when it concerns the issue of awarding monetary damages against a Federal Government Agency for infringement of the fundamental human rights of a subject(s) by its agents, it is mandatory that such an Application be filed at the Federal High Court of that State by virtue of Section 251 (1) (p) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. See *Jack v. University of Agriculture, Makurdi (2004) All FWLR (pt. 200) 1506*.

He maintained that since the 2nd and 3rd Respondents are agents of the Federal Government, this Court being a High Court of a State has no jurisdiction to make the award. He therefore urged the court to hold that it lacks the jurisdiction to entertain this suit and resolve issue (c) in favour of the Respondents.

Before I go into the merits of this application, it is expedient for me to first determine the validity of some of the objections raised by the learned counsel for the Respondents against this application.

The first objection is that the claim for enforcement of the Applicants' fundamental human right is ancillary or incidental to the main claim for trespass, possession/or title to land.

It is settled law that where the alleged breach of a fundamental right is ancillary or incidental to the substantive claim, it is incompetent to institute an action for the enforcement of fundamental human rights. See the cases of: ***Federal Republic Nigeria vs. Ifegwu (2003) 15 NWLR (Pt. 842) 113 at 180; and University of Ilorin vs. Oluwadare (2006) 6-7 S.C. 154.***

The Respondent's counsel has seriously contended that the main claim of the Applicants is for trespass, possession and/or title to land and that the alleged breach of their fundamental human rights is ancillary or incidental to the main claim.

The factors to assist the Court to determine the principal claim in a fundamental rights application include: the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit. See the following cases: ***Olawoyin vs. Obafemi Awolowo University (2004) 2 FHCLR 166; Chukwuogor vs. Chukwuogor (2006) 49 WRN 183; and Raymond Dongtoe vs. Civil Service Commission of Plateau State (2001) 19 WRN 125 at 147.***

Upon a careful examination of the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit, I observed that the main complaints of the Applicants border on their alleged arrests and detention by the Respondents. The issues of possession and title to land are quite ancillary. More so, the alleged owner of the land (Dr. Johnson Ugheoke) is not a party to this application. Essentially, the Applicants are challenging the validity of their arrests and detention by the Respondents.

Flowing from the foregoing, I am of the view that the preliminary objection cannot be upheld and it is accordingly overruled.

The Respondents' counsel also challenged the jurisdiction of this Court to entertain this application because some of the Respondents are agents of the Federal Government. The issue of forum for seeking enforcement of fundamental rights against the Federal Government and its agencies has been the subject of much judicial controversy. In the early case of: ***Minister of Internal Affairs vs. Shugaba Abdurrahman Darman (1982) 3 NCLR 915 at 920***, it was stated that:

“There is no need to seek to preserve an exclusive jurisdiction to the Federal High Court. Nor is there any justification why a citizen whose fundamental human right has been infringed by the Federal Government must be forced to file his action in a Federal High Court. He might prefer

to go to the State High Court and justifiably prefer the Federal High Court when he is a victim of State tyranny”.

While objecting to the jurisdiction of this Court, the learned counsel for the Respondents relied on the case of: *Jack v. University of Agriculture, Makurdi (2004) All FWLR (pt. 200) 1506.*

Incidentally in the case of: *Jack v. University of Agriculture, Makurdi (supra)*, the Supreme Court interpreted the provisions of sections 42 and 230(1) of the 1979 Nigerian Constitution (now sections 46 and 251(1) of the 1999 Constitution and held that ***both the Federal High Court and the State High Court have concurrent jurisdiction to adjudicate on cases of enforcement of fundamental rights against the Federal Government and its agencies.***

The decision in the case of: *Jack v. University of Agriculture, Makurdi (supra)* has been followed in a line of cases such as: *Muse vs. E.F.C.C (2015) 2 NWLR (Pt. 1443) 237 at 241-242; and Agbaso vs. Iwunze (2015) 11 NWLR (Pt.1471) 527 at 534-536.*

In the *Agbaso vs. Iwunze case (supra)*, the Court reiterated thus:

“there is no basis whatsoever for a State High Court to decline jurisdiction in fundamental rights enforcement matters simply because the Commissioner of Police, as agency of the Federal Government, is a party”.

On the basis of the foregoing authorities, the objection to the jurisdiction of this Court to entertain this application is overruled.

Having disposed of the preliminary objections, I will now consider the application on its merits. I have examined the issues for determination as formulated by both learned counsel. Upon a careful examination of the issues formulated, I am of the view that the sole issue for determination formulated by the learned counsel for the Applicant is germane enough to resolve the matter. I adopt the said issue as follows:

Whether the arrest and subsequent detention of the Applicants beyond 48 hours is lawful considering the provisions of S.35 (1c) (2) (4) S.5 (a) of the Nigeria Constitution 1999.

I have carefully gone through the affidavits and counter affidavit in this application together with the documentary exhibits attached and I have observed that there is a civil suit pending at the Etsako Central Area Customary Court over a disputed parcel of land. From the facts disclosed in this application, the alleged violation of the Applicants' fundamental rights occurred when the 1st Respondent took a photographer to the disputed parcel of land to take some photographs of some on going developments on the land in dispute. The Applicants resisted the 1st Respondent on the land and the 1st Respondent made a report to the police culminating in the arrest and detention of the Applicants by the police.

The Applicants are now challenging their arrest and detention on the ground that it amounts to a breach of the fundamental rights, more so since they were detained beyond 48 hours as guaranteed by the Constitution.

It is settled law that every citizen has a right to make a report to the police when he reasonably believes that an offence has been committed. Thereafter, it is the duty of the police to investigate the complaint. See the cases of: *Owomero vs. Flour Mills Nig, Ltd. (1995) 9 NWLR (Pt.421) 622; and Ezeadukwa vs. Maduka (1997) 8 NWLR (Pt. 518) 635.*

Furthermore, in the case of: *Atakpa vs. Ebetor (2015) 3 NWLR (Pt. 1447) 549 at 558*, the Court of Appeal stated thus:

“Police officers are empowered to investigate any criminal allegation or complaint. They may take any action they deem fit to take upon investigation. They may arrest, detain and prosecute an alleged offender by virtue of section 4 of the Police Act, sections 17 to 20 of the Criminal Procedure Act and 35(1) (C) of the 1999 Constitution. In the legitimate discharge of their duties, they cannot be sued for breach of fundamental rights”.

Again, in the very recent case of: *Eze vs. I.G.P (2017) 4 NWLR (Pt.1554) 44 at pp.50-51, the Court of Appeal, Lagos Division* held as follows:

“Where the police properly acts in the exercise of its power under section 4 of the Police Act, an arrest made therein cannot constitute a breach of fundamental rights. Consequently, where a citizen is arrested by the police in the legitimate exercise of their duty and on grounds of reasonable suspicion of having committed an offence, he cannot succeed in an action for a breach of his fundamental rights.”

Coming to the instant case, I am of the view that the 1st Respondent acted within his rights when he made his complaints to the police, which was not shown to be frivolous or without foundation. There are documentary exhibits to show that

there is a subsisting litigation which necessitated entering the land to take some photographs. The 1st Applicant in paragraph 14 of his affidavit in support of the application admitted that he “*resisted the 1st Respondent*”. This was the genesis of the fracas.

On the basis of my above findings, I am of the view that the Applicants’ fundamental human rights were not breached by any of the Respondents.

Consequently, *I resolve the sole issue for determination in favour of the Respondents. This application is accordingly dismissed with N10, 000.00 (ten thousand naira) costs in favour of each of the Respondents.*

P.A.AKHIHIERO
JUDGE
24/10/17

COUNSEL:

P.A. UGHEOKE ESQ.....APPLICANT

OJO ESEMOKHAI (JNR,).....1ST, 2ND & 3RD RESPONDENTS