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

SUIT NO. B/45M/15

WEDNESDAY 27, JANUARY 2016

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF THE FUNDAMENTAL HUMAN RIGHTS OF THE APPLICANT

BETWEEN;

PA. PULLEN OBAYUWANA … **APPLICANT**
(For himself and on behalf of his Wife and Children)

AND

JOSHUA EDO … **RESPONDENT**

J U D G M E N T

The applicant filed a motion on notice on 12/11/15 pursuant to sections 36, 40 and 41 of the Constitution of the Federal Republic of Nigeria (1999) (as amended), Articles 5, 7, 10, 12 (1) and (2) of the African Charter on Human and People's Rights Cap A9, LFN 2004 and Order 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009 praying this Honourable Court for the following orders:-

1) A DECLARATION that the sanctions imposed on the applicant from 8th November, 2015 by the Respondent as Chairman of the Obazagbon Youth Association, is ultra vires his powers and a breach of the fundamental rights of the applicant as guaranteed by sections 36, 40 , 41 and 34 (1) (a) of the Constitution of the Federal Republic of Nigeria (1999) as amended, as well as Articles 5,7,10, 12 (1) and (2) of the African charter on Human and people's Rights (Ratification and Enforcement) Act Cap. A9, LFN 2004.

2) A DECLARATION that the forcible disconnection of electricity power supply to the applicant's house by the respondent on 10th November, 2015 without any reasonable or just cause, violates the applicant's constitutional right to the privacy and Sanctity of his home as guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria (1999) as amended

3) The sum of N10,000,000.00 (Ten Million Naira) as general damages against the Respondent for the violation of the applicant's constitutional rights.

4) The sum of N50,000,000.00 (fifty million Naira) as exemplary damages against the Respondent for his reprehensible violation of the applicant's constitutionally protected rights.

5) AN ORDER of perpetual injunction restraining the respondent his agents servants or accomplices from continuing to give effect to or enforcement of the sanctions to which the applicant, his wife and children have been subjected to since the 8th of November, 2015, or engaging in any other conduct in further violation of the applicant's constitutionally protected rights.

In support of the application, is an affidavit of 24 paragraphs deposed to by the applicant and a statement of particulars.

Dr. Osagie Obayuwana of Counsel to the applicant in his written address raised one issue for determination to wit:

Whether or not the fundamental right of the applicant has not been breached by the respondent. I note that this issue is not properly worded) Learned Counsel submitted that the right to fair hearing is provided for in section 36 (1) of the constitution of the Federal Republic of Nigeria and was given judicial pronouncement in the case of Audu V FRN (2013) 5 NWLR (Pt 1348) 397 at 410.

He submitted that the sanctions imposed by the respondent as Chairman of the Obazagbon Youth Association on the applicant, entails the determination of the civil rights and obligations of the applicant and the respondent in doing so was acting under a claim of authority. According to Learned Counsel the unilateral imposition of sanctions on the applicant by the respondent who is ostensibly aggrieved that the applicant's son filed an action against him in Court, does not accord with the requirement of neutrality by the tribunal or authority in the determination of the civil rights and obligations of the applicant. The assumption by the respondent of jurisdiction to impose sanctions on the applicant made the respondent the accuser, prosecutor and judge, in violation of the maxim that a man cannot be a judge in his own cause. He posited that before the sanctions were imposed, the applicant was not formally confronted with any allegation of wrong doing. He was not given an opportunity to defend himself. It was his further submission that the right to associate freely is also a fundamental right as provided in section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), he relied on the case of Eronimi V Eronimi (2013) 14 NWLR (Pt. 1373) 32 at 53. According to learned counsel, man is a social animal who derives significance from being a part of a group or community. This right of association is founded on voluntariness, once the willingness to associate is acknowledged, exclusion or ostracism becomes a form of sanction that can only be imposed by a competent authority at the end of a process in which there is a charge of wrong doing and an opportunity to be heard.

He submitted that beyond being a venue for transacting the business of buying and selling, community market represents a forum for social interaction that a community member cannot be barred from arbitrarily or for vendetta purpose. He submitted that for the respondent to use force of arms to prevent the applicant and members of his family from associating with other members of Obazagbon Community is indeed a violation of the applicant's fundamental rights. He relied on paragraphs 9 (a) and 9 (d) of the affidavit in support.

Learned Counsel submitted on freedom of movement that the applicant is entitled to move freely throughout Nigeria without fear of molestation by virtue of the provision of section 4 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He relied on the case of Agbakoba V The Director of SSS (1998) 1 HRLRA 252. He submitted that the respondent violated the fundamental right to movement of the applicant when he used death threats to prevent him from going to his farm, the market, stream or using public transport within the Obazagbon Community. He relied on paragraphs 9 (b), (c), (e), 11, 12 and 13 of the affidavit in support.

Learned Counsel submitted that section 34 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999 provides for the right to dignity also Article 5 of the African Charter on Human and People's Rights cap A9, LFN 2004. He submitted that the sanctions imposed on the applicant not only visits physical hardship on the applicant but is calculated to and does infact subject him to untold strain, psychological trauma and severe emotional distress, which is contrary to the provisions of section 34 (1) (a) of the aforementioned Constitution.

According to the Learned Counsel for the applicant, this Honourable Court has the sacred duty to protect the fundamental rights of the applicant. He relied on the following cases Taiwo V Adegboro (2011) 11 NWLR (Pt. 1259) 562; FRN V Ifegwu (2003) 15 NWLR (Pt. 842) 113 at 185; paragraph 3 (d) of the Fundamental Rights (Enforcement Procedure) Rules 2009. He submitted that the law presumes general damages to flow naturally from the breach of fundamental rights. He relied on Abiola V Abacha (1998) 1 H.R.L.R.A. 447 at 486. He submitted that the stress and strain that the applicant, his wife and children have been subjected to, are such that substantial general damages can be presumed to have flowed from. He submitted that exemplary damages are awarded where the respondent's conduct is reprehensible as in the instant case. He relied on the case of Ezeaka V Nwakwo (2000) 2 H.R.L.R.A. 165 at 174.

Finally he contended that this court has the authority to provide redress for the applicant as stipulated in section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and urged the court to grant the reliefs prayed for in the application.

On 9/12/15, the respondent filed a counter affidavit of 20 paragraphs wherein he claimed to be the Chairman of their Community Youth Association. He denied issuing threats to the life of the applicant or imposing any sanctions on the applicant. M.O. Ighekpe Esq. of Counsel to the respondent in his written address raised a lone issue for determination viz:-

Whether the reliefs sought by the applicant are grantable having regard to the circumstances of this case.

Learned Counsel argued that from the reliefs sought and the applicant's supporting affidavit particularly paragraph 9, it is observed that the applicant has not shown that any sanction was imposed or that such sanctions have been or are being executed by the respondent. According to Learned Counsel, the fundamental right sought to be enforced by the applicant is hanging in the air in view of paragraph 13 of the counter-affidavit. He submitted that the order been sought is academic because the order being sought is an order in vain. He relied on Nwangwu V Duru (2002) 2 NWLR Pt. 751 Pg. 265 at 271.

Mr. Ighekpe, posited that the issue before this Honourable Court bothers on an allegation of criminal breach of the rights of the applicant, an allegation against the respondent which the Nigeria Police has the constitutional duty to investigate, an avenue which the applicant has failed to explore before coming to court. He submitted that this suit as constituted is defective, incompetent and an abuse of court process as the suit does not fall under matters that can be brought under the fundamental rights enforcement procedure rules. He submitted that the breach of a fundamental right alleged by an applicant must be the main plank in the application for enforcement. Where the violation of a fundamental right is merely incidental or ancillary to the principal claim or relief, it is improper to constitute the action as one for the enforcement of a fundamental right. He relied on the case of Governor, Kwara State V Lawal (2002) All FWLR Pt. 336, Pg. 313 at 315 and submitted that the factors that can assist the court to discover the principal claim in a fundamental rights application include the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit. Learned Counsel

relied on the cases of Olawoyin V Obafemi Awolowo University (2004) 2 EHCLR 166; Chukwuogor V Chukwuogor (2006) 49 WRN 183. He submitted that this Court lacks the jurisdiction to entertain this suit as constituted. Mr. Igheke relied on the case of Raymond Dongtoe V Civil Service Commission of Plateau State (2007)19 WRN 125 at 147. Learned Counsel submitted that the act of the alleged infringement of the applicant's fundamental right has not been proved by cogent and verifiable affidavit evidence. The declaratory reliefs being sought by the applicant is unenforceable under the fundamental rights enforcement procedure rules. He relied on the case of Olisa Agbakoba V Director, State Security Service (1994) 6 NWLR (Pt. 351) Pg. 475.

In conclusion, learned counsel submitted that the reliefs sought by the applicant are not grantable. He urged the court to dismiss this application as it lacks merit and it is an abuse of court process.

On 14/12/15, the applicant by leave of this court filed a further affidavit of 11 paragraphs deposed to by the Applicant. Along with applicant's further affidavit was also filed further affidavits of Mrs. Vero Obayuwana, Pa. David Osarobo Ohangbon and Chief E.u. Uzamere. On 15/12/15, Akhigbe Oserogho Esq. filed a further affidavit of 6 paragraphs deposed to by him. Attached to his affidavit are Exhibits 1 and 2. On the same day, Dr Osagie Obayuwana of Counsel to the applicant filed his reply on point of law and submitted that a bare denial is no denial in law citing on N.N.P.C V Famfa Oil Ltd (2012) 17 NWLR (Pt. 1328) Page 148 at Page 189.

Dr. Obayuwana submitted that criminal actions and civil claims can be pursued side by side. That the Police is looking into the criminal allegations in the matter does not prevent the court from pronouncing on the issues before it on the basis of the affidavit evidence adduced. He relied on the case of Ogboru V Ibori (2004) 7 NWLR Part 871 Page 192 at 220 – 221.

In further reply, it is submitted that the High Court has jurisdiction to make a declaratory judgment in a case relating to fundamental right. He relied on the cases of Olawoyin V A.G. Northern Region (1961) 1 All NLR 269, Director, State Security Services V Olisa Agbakoba (1999) 3 NWLR (Part 595) 314 at 354. Learned Counsel submitted that the contravention by private individuals may be enforced against them. He relied on the case of Abdulhamid V Akar (2006) 13 NWLR (Pt.996) 127. He submitted that section 6 (6) of the Constitution extends judicial powers to all matters between persons… all action and proceedings, relating thereto for the determination of any question as to the civil rights and obligations of that person.

He relied on the case of Denton-West V Jack (2013) 15 NWLR Part 1377 Pg. 205 at 222 – 232; Ainabebholo V E.S.U (2007) 2 NWLR (Pt. 1017) Pg. 33 at Page 50. On the issue of damages, Learned Counsel relied on the cases of Punch (Nig) Ltd V A.G. Federation (1998) 1 HRLRA 488; CBN V Okojie (2015) 14 NWLR Part 1479 Pg. 231 at 263. The argument on damages in his reply will not be entertained.

In conclusion, Dr. Obayuwana submitted that the law looks up to the judges for protection of the fundamental rights of the people. He relied on the cases of Ikonn V C.O.P. (1986) 4 NWLR (Pt. 36) 413 at 495; Lafia Local Government V. Government of Nasarawa State (2012) 17 NWLR Part 1328 Pg. 94 at 128.

I have perused thoroughly the affidavits and counter-affidavit of the applicant and Respondent. The legal submissions of both Learned Counsel are quite helpful but I find it difficult to understand and appreciate the submission by the Learned Counsel for the Respondent that "it is noted that the fundamental right being urged to be enforced by the applicant is hanging in the air". However if the meaning is that the allegation of the breach of the fundamental rights of the applicant is not supported by evidence then the question for determination is whether the applicant has proved the breach of his fundamental rights by the Respondent. The applicant by paragraph 9 (a) – (f) of the supporting affidavit to the motion on notice stated the sanctions imposed on him and his family members by emissaries of the Respondent. The applicant by paragraph 19 of his supporting affidavit shows the threat.

Section 46 (1) of the Constitution of the Federal Republic of Nigeria 1999 makes it very clear that "any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to the High Court in that State for redress." In my respectful view the application by the applicant brought pursuant to sections 36, 40 and 41 of the Constitution of the Federal Republic of Nigeria cannot therefore be held to be hanging "in the air" as by virtue of section 46 (1) of the said Constitution which

makes any person who alleges that any of the provisions of chapter iv which deals with fundamental rights is being or likely to be contravened can seek redress in the High Court. By this application brought on behalf of himself and wife and children, the applicant in his affidavit especially paragraph 9 a – f therein listed sanctions imposed on them by emissaries of the Respondent which from the construction infringed on their fundamental rights.

By paragraph 13 of the Respondent's counter-affidavit the Respondent seem to be of the opinion that before an application of this nature can be brought a report has first to be lodged with the Police or the applicant must show that they were actually stopped from the acts or deprived of the fundamental rights. This in my view is not a proper appreciation of Section 46 (1) of the Constitution as any apprehension or perceived threat to a breach of the person's fundamental rights is enforceable.

I find in disagreement with Learned Counsel for the Respondent in his written address that the main plank of this case is the breach of the applicant's fundamental right and they are not ancillary reliefs. Also it is my finding that this Court has jurisdiction to entertain same being a fundamental rights issue. I am satisfied from the affidavit evidence placed before me that the applicant and his wife and children were sanctioned by the Respondent and others in their community in Obazagbon Village by decreeing that they should not buy and sell in their village, they were banned from fetching water from the stream; from entering the farm, other Villagers are banned from visiting or having dealings with them and they are not to use public transportation, their electricity supply was

also cut. All these acts in my respectful view, except the cutting of electricity supply infringe the fundamental rights of the applicant as enshrined in section 40 and 41 (1) of the 1999 Constitution of Nigeria as amended. Fundamental human rights are rights which by their very nature have become fundamental to existence. In the case of Saude V Abdullahi (1989) 4 NWLR Pt. 116) 387 at 418 – 419, the Supreme Court declared thus:- "Fundamental Rights are important and they are not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for the manner they are to be sought". In the same vein M.A. Ajomo author of "The development of fundamental rights in Nigeria constitutionary History" stated thus:- "simply put, human rights are inherent in man, they rise from the very nature of man as a social animal. They are those rights, which all human beings enjoy by virtue of their humanity, whether black, white, yellow, malay or red. The deprivation of which would constitute a grave affront to one's natural sence of justice".

The applicant sought and got the court's leave by virtue of order Xiii of the Fundamental Rights (Enforcement) Rules 2009 to file further affidavits which all confirm the breach of the fundamental rights of the applicant and members of his family by the acts of the Respondent and others in the community. In the circumstance, I find that the declaratory relief sought for in Relief 1 can be made with some modifications contrary to the submission of Mr. M.O. Igheke relying on Olisa Agbakogba's case as it is evident he did not read the judgment. In that

case, Ayoola JCA (as he then was) stated inter alia that it i.e the principle

established in Waltersteiner V Egeihehie (1974) 3 Alter 29 and Ozowala V Ezeine Shie (1991) 1 NWLR (Pt. 170) 699 was in applicable to an application for the enforcement of fundamental right. This was upheld by the Supreme Court when Uwais CJN held in the said case reported in 1999 3 NWLR Pt. 595) 314 at 354 that "I therefore come to the conclusion that the Court of Appeal was right in rejecting the application of the principle laid down in Waltersteiner's case. I hold that the application of the principle is limited to cases initiated by a writ of summons which call for pleadings and the calling of witnesses to testify or admission by way of arguments in the pleadings."

By OR X1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 the court is given the power to make orders it considers appropriate for the enforcement of any fundament right.

Consequently, I declare that the sanctions imposed on the applicant and his family members on the 8th November 2015 by the Respondent as Chairman of the Obazagbon Youth Association barring the applicant, wife and children indefinitely from fetching water from the community stream, farming, visiting or being visited

by members of the community transacting any business in the community market and entering any public transport in or out of Obazagbon community is a violation of the applicant's right to freedom of movement and association guaranteed by sections 40 and 41 of the 1999 Constitution of the Federal Republic of Nigeria.

The disconnection of electricity supply to the applicant's house is not

considered by me as a breach of the fundamental right of the applicant but a tortious wrong which is ancillary to the claim and general damages would suffice or assuage.

Accordingly, the applicants are awarded N1.5 million as general damages for the breach of their fundamental rights to freedom of movement and association and N500,000 as general damages for the cutting of electricity supply to their house.

It is further ordered that the Respondent ,his agents, servants, privies are restrained perpetually from giving effect to any sanctions to which the applicant, his wife and children were subjected to from 8th November 2015 adjudged a breach of their fundamental rights to movement and association or any other conduct in further violation of the applicants constitutionally protected rights.

The claim for exemplary damages is not made out and it is ordered dismissed.

E.F. IKPONMWEN
JUDGE
27/1/16.

Counsel:-

Dr. O.O. Obayuwana with A.A. Obayuwana Esq. for
the Applicant.

M.O. Ighekpe Esq. with C.I. Afamefune – Agbakor (Mrs.)
For the Respondent.