

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON FRIDAY THE
26TH DAY OF MAY, 2023.

SUIT NO. B/82M/2022

**IN THE MATTER OF APPLICATION BY
MR. VINCENT EDO FOR THE ENFORCEMENT
OF THEIR FUNDAMENTAL RIGHTS**

BETWEEN

**MR. VINCENT EDO
(SUING FOR HIMSELF AND THE PEOPLE
OF OBAGAGBOB COMMUNITY)**

APPLICANT

AND

**1. MR. NOSAKHARE OHANGBON
2. ASSISTANT INSPECTOR GENERAL
OF POLICE (AIG), ZONE 5**

RESPONDENTS

JUDGMENT

This is a judgment in respect of an application for the enforcement of Fundamental Rights brought pursuant to *Order 2 Rules 1 and 2; Order 4 Rule 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009; Sections 34, 35(1) & 46(1) & (2) of the Constitution of the Federal Republic of Nigeria 1999* and under the inherent jurisdiction of this Honourable Court for the enforcement of the Applicant's fundamental rights.

By his motion on notice dated and filed on the 6th of May 2022, the Applicant is seeking some declaratory, injunctive and compensatory reliefs as follows:

- 1. A DECLARATION that the ARREST and DETENTION of Mr. Vincent Edo, Mr. Christopher Omoregbe and Mr. Omozuai Ogbidi by Officers attached to the Anti-Human Trafficking Section" on account of a dispute over ownership of an "UNCOMPLETED BUILDING" situate at Obazagon Community is illegal and unconstitutional as it offends the applicant's right to personal liberty as guaranteed by Section 35 (1) of the federal Republic of Nigeria, 1999.**

2. *A DECLARATION that the Nigeria Police Force being the institution the 2nd Respondent and his officers work for as public servants lacks the jurisdictional power to decide on disputes that bothers on ownership of an real properties like “UNCOMPLETED BUILDING” which is the subject matter of this case and thus cannot give title or ownership to any individual in Nigeria.*
3. *A DECLARATION that it is only the Nigeria judiciary and in the instant case the High Court of Justice, Edo State that possess the jurisdictional power to decide dispute that bothers on title and/or ownership of the UNCOMPLETED BUILDING which is the subject matter of this case to the exclusion of any other agencies in Nigeria.*
4. *An order restraining the Respondents, their privies, agents, representative, officer, assigns and /or whoever is acting for them or on their behalf from further harassing, arresting, detaining the applicant and the elders of Obazagbon Community in relation to this case pending the hearing and determination of the issues raised in this suit.*
5. *AN ORDER mandating the Respondents jointly and severally to pay N 3, 000,000:0 (Three Million Naira) as damages for the arrest and detention of the Applicant and two elders of Obazagbon Community who only regained their freedom after they paid varying sums of money which the police called “Bail Money”.*

This application is supported by a 26 paragraphs affidavit deposed to by the Applicant and a written address of his counsel.

Succinctly put, the Applicant who is the current Odionwere of Obazagbon community filed this application on behalf of himself and some members of the community. He alleged that the 1st Respondent wrote a frivolous petition to the Police against the Applicant and the elders of Obazagbon Community, for which they were arrested, detained and made to pay various sums of money for bail.

In the said petition, the 1st Respondent alleged that he is the owner of a parcel of land measuring 200ft by 600ft located at Obazagbon community and the uncompleted building (a bungalow) thereon.

According to the Applicant, the construction of the uncompleted building started sometime in 2013 and it was built to roofing stage through the communal efforts and contributions of the members of Obazagbon community without any contribution by the 1st Respondent.

He maintained that the uncompleted building was originally built by the Obazagbon community to be used as a Maternity or Health Center but when they discovered that the space was too small for the project, they decided to sell it and used the money to renovate the town hall. He said that the 1st Respondent lied to the police in his petition when he stated that his late father had a plot of land measuring 200ft by 600ft in the location. He said that there is no land measuring 200ft by 600ft in that location.

He said that they requested the police to come to the community to carry out a proper investigation and they provided the funds for the Police to visit the community but they failed to honour their invitation. He alleged that instead of reprimanding or even charging the 1st Respondent to court for giving false information to the Police, they continue to harass and intimidate them.

Upon receipt of the Applicant’s processes, the Respondents filed their Counter-Affidavits and written addresses of their counsel.

From his Counter-Affidavit, the 1st Respondent’s case is that his late father was the Odionwere of Obazagbon Community till death. He alleged that he wrote a petition to the

office of the 2nd Respondent upon which certain persons including the Applicants were invited for interrogation.

He alleged that the uncompleted building which is the subject matter of the dispute was built for his late father by some of his father's family, friends and well-wishers who felt that he needed a befitting house better than where he was living at that time as the Odionwere of Obazagbon Community.

He maintained that his father had some houses and a vast expanse of land at Obazabon Community and that the uncompleted building was for residential purposes for his late father and not for maternity or Health Center as alleged by the Applicants. He denied any infringement of the Applicants' rights.

In his response, the 2nd Respondent filed a Counter-Affidavit of 43 paragraphs and a written address of their counsel.

According to the 2nd Respondent, on the 29th of March 2022, the office of the 2nd Respondent received a written petition from one Pastor Osarobo Roland Nosa captioned: ***“An Urgent Need to Investigate a Case of Conspiracy, Forceful Takeover of Landed Property, Intimidation and Conduct Likely to Cause Brach of Peace in Obazagbon Community, A cry For Justice”***.

The complaint of the Petitioner was that on the 22nd day of March, 2022, he paid a visit to Obazagbon Community and on getting there he discovered that the Applicants and some unknown persons had entered his land and fenced the building he erected a long time ago. The Petitioner alleged that the Applicants were trying to forcefully takeover the landed property of the 1st Respondent.

Sequel to the Petition, the 2nd Respondent allegedly invited the 1st Respondent and the Applicants. They obtained a voluntary a statement from the Applicant under caution and released him on bail on the same day he was invited. They said that upon his release, the Applicant went to Court to file this application for the alleged infringement of his fundamental rights.

The 2nd Respondent maintained that they were carrying out their constitutional duties to investigate allegations of crime and they denied any infringement of the fundamental rights of the Applicants. In their Counter-Affidavit, the 2nd Respondent exhibited some documents from their Police case file as follows: a copy of the 1st Respondent's Petition (Exhibit “A”); Extract from the Crime Diary (Exhibit “B”); the Petitioner's Statement (Exhibit “C”); Applicant's Statement (Exhibit “D”); and the Bail Bond (Exhibit “E”).

Upon receipt of the 2nd Respondent's Counter-Affidavit, the Applicant filed a Further Affidavit and a Reply to the said Counter-Affidavit. In the Further Affidavit the Applicant emphasized that the 2nd Respondent arrested and detained them from morning till evening and only released them on bail after collecting money from them. Furthermore, he queried why the Police failed to file their Investigation Report to disclose their findings from their investigation. In their written addresses, the learned counsel for the parties articulated their arguments in support of their respective positions.

In his written address which he adopted as his arguments in support of the application, the learned counsel for the Applicants, ***S.O. Omobude Esq.*** formulated a sole issue for determination as follows:

“WHETHER IN THE CIRCUMSTANCE OF THE FACTS DEPOSED TO, THE APPLICANT IS ENTITLED TO THE RELIEFS SOUGHT.”

Arguing the sole issue for determination, counsel submitted that this Application was filed to forestall the plan of the Respondents to further violate the fundamental rights of the Applicant and the elders of Obazagbon Community. He referred to ***Section 46 (1) & (2) of the Constitution of Nigeria, 1999 (as amended)*** which provides thus:

“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 a High Court in the State for redress”.

He submitted that the fundamental rights of the Applicant and those arrested and detained were violated and the Police have threatened to further violate their rights over the false allegation of the 1st Respondent. He submitted that there are no provisions in the Police Act or any other law which permits any person to influence or pressurize the Nigerian Police to harass Nigerian citizens on account of a dispute over title or ownership of a house. He maintained that the duties of the Nigerian Police are clearly captured in ***Section 4 of the Police Act*** and the Applicants have not committed any crime.

He posited that the Police have a duty to carry out an unbiased investigation to ascertain the allegations in the petition in line with ***Section 4 of the Police Act***. He posited that instead of investigating the petition, they are threatening to re-arrest the Applicants if they fail to come to their office.

He referred the Court to the case of ***OSIL V. BALOGUN (2012) W.R.N 38 (P.P 173-174)*** and submitted that the Police have no power to arrest and detain persons unless they have committed an offence. He also referred to the following decisions on the point: ***MCLAREN V. JENNINGS (2003) FWLR (PT. 154) 528***; and ***ANOGWIE & ORS V. ODOM & ORS (2016) LPELR-40214 (CA)***. He submitted that ***Section 35 (1) of the Constitution of Nigeria, 1999 (as amended)*** guarantees the right of every person to personal liberty. He maintained that the Applicants were arrested and detained by the Respondents as a result of the prompting of the 1st Respondent which resulted in the violation of their fundamental rights.

In his written address, the learned counsel for the 1st Respondent, ***S.O. Nwoke Esq.*** formulated a sole issue for determination as follows:

“Whether the 1st Respondent can be held liable for the breach of fundamental rights of the Applicant in law.”

Arguing the sole issue for determination, learned counsel submitted that the 1st Respondent cannot in law be held liable for the breach of the fundamental rights of the Applicant because he wrote a petition to the 2nd Respondent against the Applicant.

He contended that there is no ground for this application against the 1st Respondent as conspicuously shown in the Applicant’s grounds for seeking reliefs attached to his application before the Court and he referred the Court to paragraph 10 of the 1st Respondent’s Counter Affidavit.

Counsel submitted that a complainant who came to the Police simply to make a report cannot be held liable for breach of fundamental rights and he cited the case of ***FAJEMIROKUN V. CBN 37 NSQR (2009) 1 at 3 ratio 3***. He maintained that in the Applicant’s affidavit in support of the application, there is nothing to show that the 1st Respondent has breached the Applicant’s fundamental Right to entitle him to damages.

Finally, he urged the Court to dismiss the Application with punitive costs of the sum of N10,000,000 (Ten Million Naira) only in favour of the 1st Respondent whose image and integrity as a respected and popular clergy man in Edo State has allegedly been damaged by the Applicant.

In his written address, the learned counsel for the 2nd Respondent ***N.A. Ukpebor Esq.*** formulated five issues for determination as follows:

- 1) Whether 2nd Respondent can investigate any allegation of crime / offence as in this case involving the applicants by virtue of power conferred on them by the 1999 Constitution?***
- 2) Whether the invitation and investigation in the case reported to the police is a violation of the Applicants’ fundamental human rights?***

- 3) *Whether in the circumstances of this case, applicants have any right to be protected under FREP Rules 2009?*
 - 4) *Whether the offence under investigation against the Applicant is known to Nigeria Law? and*
 - 5) *Whether the 3rd Respondent is non-juristic persons that cannot sue or be sued?*
- Thereafter, the learned counsel argued the issues seriatim.

ISSUE ONE:

Whether 2nd Respondent can investigate any allegation of crime / offence as in this case involving the applicants by virtue of power conferred on them by the 1999 Constitution?

On issue, one learned counsel submitted that the ACJL of Edo State, 2015 empowers the police to prevent offences and injury to public property and to arrest suspects by virtue of **sections 54 and 55 of the ACJL; section 4 of the Police Act** and all other laws in that behalf.

He posited that in the case of **FAWEHIMI V. AKILU AND TOGUN (1987) 4 NWLR 797**, the Supreme court emphasized that a citizen has a personal and private right under the constitution to see to it that a crime is not committed and if committed to lay a criminal charge against the offender or the person whom he reasonable suspects to have committed the offence.

He submitted that the 2nd Respondent is under an obligation to investigate an allegation of crime by virtue of **section 4 of the Police** and he relied on the case of **CHIEF GANI FAWEHIMI V. IGP & 2 ORS (2003) 1 NCC PG. 414 AT 416 RATIOS 1, 2 AND 4**.

Counsel maintained that the arrest, investigation and detention of the Applicants is not a wild goose chase by the Respondent but was done within the constitutional powers vested in them by law and he relied on **section 35(1) (c) CFRN 1999**. He pointed out that the right of the Applicants is not absolute.

He maintained that a person can be arrested 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 an offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

ISSUE TWO:

Arguing issue two, learned counsel submitted that the invitation and investigation of the Applicant by the 2nd Respondent is not in any way unlawful or a violation of his fundamental human right because the 2nd Respondent is conferred with the power of arrest and detention by the **Constitution of the Federal Republic of Nigeria 1999**. He said that the Applicant was only given an invitation letter to report with others to the police and has not been arrested.

He referred to the case of **FAJEMIROKUN V.C.B. (C.L) NIG. LTD (2002) 10 NWLR PG 95 AT 99 RATIO 4** on the duty of an Applicant alleging the breach of his fundamental rights to place sufficient evidence before the court.

He submitted that **Section 35(1) (c) of 1999 Constitution of Nigeria** empowers the police to investigate a person, upon reasonable suspicion of having committed a criminal offence.

He further submitted that the Applicant has no right to be protected by the **FREP Rules**, that he was invited by an invitation letter but he refused to report. He said that this application is merely to seek the court's protection to shield themselves from investigation and prosecution. On this he relied on the court of Appeal decision in the case of **AIG Anambra State v. UBA (2005) 15 NWLR (pt. 94) 44**.

Again, he submitted that the rights guaranteed in **Order 2, Rules 3 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Sections 34, 35 (1) 46 (1) and**

(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended and under the inherent jurisdiction of this Honourable Court are not absolute for the Applicants. That a mere invitation by the police or security Agency does not in any way constitute an abuse / or infringement of the Applicants rights in this suit and he relied on the case of **EFCC V DIAMOND BANK PLC (2018) VOL. 279 LRCN SC. 48 AT PG 49.**

ISSUE THREE:

Whether in the circumstances of this suit Applicant has any right left to be protected under the FREP Rules 2009?

Arguing this issue, counsel referred the Court to the case of **DR. CHIEF OLADELE FAJEMIROKUN V. C.B. (C.L) (NIG.) LTD & ORS (2002) 10 NWLR (PT.774) PG 95 AT 98 – 99** and quoted extensively on the onus on an Applicant who alleges that he was unlawfully arrested and detained.

ISSUE FOUR:

Whether the offence against the Applicants is known to law?

Counsel submitted that the offences of Conspiracy, Forcible entry and conduct likely to cause a breach of the peace are all known to our Nigerian law and he referred to **Sections 517, 81 and 249 (d) of the Criminal Code Act or Laws of the defunct Bendel State as applicable in Edo State.**

Furthermore, he submitted that the offences are offences for which the Applicants can be arraigned in court after investigation, within a reasonable time and he cited **Section 35(1) (7) of CFRN.** He also relied on the English case of **WITSHIRE V BARRET (1965) ALL E/R PAGE 271.**

Furthermore, counsel submitted that even after an arrest, without warrant the conduct of the police officers is further protected with regard to anything done in their effort to investigate the alleged offence. That a police officer cannot be held liable for false imprisonment if he detained the suspect in order to confirm his alibi or to investigate the case.

ISSUE FIVE:

Whether the 2nd Respondent is a non-juristic person that cannot sue or be sued?

Counsel submitted that the 2nd Respondent in this suit (Assistant Inspector General of Police, (AIG) Zone '5' Benin) is a non-juristic person who cannot sue or be sued and he relied on the case of **Agbonmagbe Bank Ltd vs. General Manager, G.B; Olivant Ltd (1961) 1 All NLR 116.**

He submitted that by **Section 215 of The 1999 Constitution,** it's only the Inspector General of police and Commissioner of Police of a State that can be sued or any person by his name.

He said that in the instant case, the Applicant has not been able to establish how his fundamental rights were breached so the 2nd Respondent is still within the ambit of the law.

Counsel posited that the fundamental rights of the Applicant were not breached by the 2nd Respondent. That the Applicant failed to provide sufficient facts in his supporting affidavit to establish that his fundamental right was infringed and that the offences against the Applicants are offences known to the law. He relied heavily on the case of **Agbonmagbe Bank Ltd Vs G.B Olivant Ltd & Anor (1961).**

In conclusion, he urged the Court to resolve this last issue in favour of the 2nd Respondent and to dismiss the entire application for lacking in merit with substantial costs.

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the parties. The issues formulated by all the counsel are quite germane to the just determination of this application.

In the event I have condensed the issues into a sole issue for determination as follows: ***Whether the Applicant is entitled to the Reliefs claimed in this Application for the alleged breach of their fundamental rights.***

I will proceed to resolve the sole issue for determination.

Essentially, the fulcrum of this application is on the alleged arrest and detention of the Applicants by the Respondents. Like in all civil matters, the rule is that he who alleges must prove. See: ***Section 131 (1) and (2) of the Evidence Act, 2011.***

It is clear that the burden of proof lies on the Applicants in a fundamental right enforcement proceedings and it is only after the Applicants have successfully proved the existence of the facts which they allege that the burden will shift to the Respondents. See ***GROUP CAPTAIN BENJAMIN BATON SABIYI (RTD) v. ATTORNEY GENERAL & COMMISSIONER FOR JUSTICE, KADUNA STATE & ANOR (2022) LPELR-57019(CA).***

When a person approaches the Court on the basis of the alleged threat or breach of his fundamental rights, he must produce reasonably sufficient and credible evidence to establish a factual breach or contravention of the alleged rights. See ***ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC & ORS v. LT. COL. C. AKALIRO & ORS (2021) LPELR-54212(CA).***

In the instant case, in their supporting affidavit, the Applicants narrated how they were allegedly arrested and detained by the 2nd Respondent ostensibly upon the instigations of the 1st Respondent.

However, in their Counter-Affidavits, the Respondents vehemently denied the allegations of violations of the fundamental rights of the Applicants.

According to the 2nd Respondent, they invited the Applicant and some members of the Obazagbon community based on a petition written petition by one Pastor Osarobo Roland Nosa captioned: ***“An Urgent Need to Investigate a Case of Conspiracy, Forceful Takeover of Landed Property, Intimidation and Conduct Likely to Cause Brach of Peace in Obazagbon Community, A cry For Justice”.***

The complaint of the Petitioner was that on the 22nd day of March, 2022, he paid a visit to Obazagbon Community and on getting there the he discovered that the Applicants and some unknown persons had entered his land and fenced the building he erected a long time ago. The Petitioner alleged that the Applicants were trying to forcefully takeover the landed property of the 1st Respondent.

In respect of the 1st Respondent, it is evident that he actually made a report to the police vide the Petition requesting them to investigate some offences allegedly committed by the Applicant and some members of the Obazagbon Community.

It is settled law that a citizen who believes that a crime has been committed or in the process of being committed or that there is likelihood of an offence being committed, such a citizen is under a duty to report the matter to the Police or other security apparatus or agency. The report could be made via a petition or personally and the Police have no right to ignore such a report.

In the case of ***CHIEF (DR) FAJEMIROKUN VS COMMERCIAL BANK (CREDIT LYONNAS LTD) & ORS (2009) 5 NWLR (PART 1135) 588 AT 600, OGEBE JSC*** observed as follows: ***“Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizen cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide. However, the person who***

report a matter or draws the attention of the police or security agency to commission of crime or its imminent commission has no control over the method or manner of investigation, invitation or even the prosecution of the person suspected to have committed or planning to commit such an offence.”

See also the case of ***CHIEF PETER OGUEBE V FBN PLC & ANOR (2020) 4 SCM 119 AT 134H TO 135A-B.***

Sequel to the foregoing, I am of the view that the 1st Respondent has a civic duty to report any suspected offender to the law enforcement agents. It is in exercise of this civic duty that he made the report against the Applicants and the other members of the community. What happened after he made his report is entirely the responsibility of the Police. The 1st Respondent cannot be held responsible for the method or manner of investigation adopted by the police after the report. Moreover, there is nothing to show that the 1st Respondent was frivolous, reckless or acted in bad faith in reporting the Applicant to the police. In the event the 1st Respondent cannot be liable for any breach of the fundamental rights of the Applicant.

On the part of the 2nd Respondent they have maintained that they were carrying out their constitutional duties to investigate allegations of crime and they denied any infringement of the fundamental rights of the Applicants. In their Counter-Affidavit, the 2nd Respondent exhibited some documents from their Police case file as follows: a copy of the 1st Respondent's Petition (Exhibit "A"); Extract from the Crime Diary (Exhibit "B"); the Petitioner's Statement (Exhibit "C"); Applicant's Statement (Exhibit "D"); and the Bail Bond (Exhibit "E").

It is settled law that by virtue of ***Section 4 of the Police Act***, the 2nd Respondent has extensive powers of maintaining law and order. By that Section, the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the Preservation of law and order, the Protection of life and property and the due enforcement of all laws and regulations with which they are directly charged. See ***Fawehinmi V. Inspector General of Police (2002) 7 NWLR (Pt 767) 606; Ozah V. Economic and Financial Crimes Commission & Ors (2017) LPELR 43386 and Azuka V. Inspector General of Police (2007) CHR 69.***

Furthermore, it must be noted that a mere invitation of a person by the police without more, is within their powers; except where it can be shown that the police misused their powers. Thus, the exercise of the powers of the police to invite and investigate crimes simpliciter cannot amount to a breach of fundamental rights. See ***Kalio & Ors V. Dawari & Ors (2018) LPELR 44628; Akanbi & Ors V. Commissioner of Police Kwara State & Ors (2018) LPELR 44049; and Tsanyawa V. Economic and Financial Crimes Commission & Anor (2018) LPELR 45099.***

The point must be made that the duties of the police are both statutory and constitutional. By seeking some protective reliefs from the Courts, the Applicant is by implication trying to stop the police from performing their lawful and constitutional duties. It is not right and it is not healthy for the Courts to afford a shelter to people being investigated by the police for crimes.

Where the Courts accede to these types of requests, then investigating crimes in this country would become difficult because the simple way to frustrate police investigation is for every suspect to rush to the Court to obtain protective and prohibitive orders. The Courts cannot and should not stop the police from performing their lawful and constitutional duties. See ***Ogwejiofor & Ors V. Ibeabuchi (2017) LPELR 43590 and Attorney General Anambra State V. Uba (2005) 33 WRN 191.***

In the instant case, it is clear that the police were investigating the Applicant and some other suspects in respect of the allegations of crimes leveled against them in the petition which was ostensibly written by the 1st Respondent. I do not think it would be fair and just to

grant the reliefs in this application which are directed at frustrating the police investigation and possible prosecution of the Applicant and his cohorts.

From the foregoing, I hold that *the Applicant has failed to prove that he is entitled to the reliefs which he seeks in this application. The sole issue for determination is resolved against the Applicant.*

Consequently, this application is dismissed with N100, 000.00 (One Hundred Thousand Naira) in favour of the Respondents.

Hon. Justice P.A. Akhiero
JUDGE
26/05/2023

COUNSEL:

- 1. S.O. Omobude Esq.....Applicant*
- 2. S.O. Nwoke Esq.....1st Respondents*
- 3. N.A. Ukpebor Esq.....2nd Respondent*

