

(16)

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON MONDAY THE 28TH DAY OF NOVEMBER 2016
BEFORE HIS LORDSHIP HON. JUSTICE AKINTAYO ALUKO

SUIT NO. FHC/A1/CS/43/2016

IN THE MATTER OF AN APPLICATION FOR THE
ENFORCEMENT OF THE APPLICANT'S
FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT
PROCEDURE) RULES, 2009

BETWEEN:

PASTOR BENIGNUS OROGWU ... APPLICANT

AND

- | | |
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| <ol style="list-style-type: none">1. SGT MICHAEL (a.k.a Yoko)
(IPO Anti Kidn. State C.I.D, Abakaliki)2. ASP DANIEL ETUK
(O/C. Anti Kidn. State C.I.D, Abakaliki)3. AC AUGUSTINA OGBODO
(AC, State CID, Abakaliki)4. COMMISSIONER OF POLICE
(Ebonyi state Command) | } RESPONDENTS |
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RULING

This is a ruling over contempt proceedings initiated by the Applicant against all the Respondents vide his forms 48 and 49 dated 6th and 20th October 2016 respectively.

The matter came up for contempt proceedings before this Court on the 8th day of November 2016.

The matter came up in court on the 5th day of October, 2016 with Respondents and Applicant conspicuously absent in court meaning that the order of this court of 30th September 2016 was not complied with (even though the records did not show that the

This Court had on the 30th day of September 2016 on the application of the Applicant through his counsel ordered the Respondents amongst others to grant administrative bail to the Applicant subject to and without jeopardizing their investigation and to produce him in court on the date fixed for hearing which was the 5th day of October 2016.

By the affidavit evidence before the Court such as the respective affidavit, counter affidavit, further affidavit of parties and the numerous proofs of service deposed to by bailiff of the court, the summary of fact of the case leading to the initiation of contempt proceedings against the Respondents is as follows:

By the method adopted by the Applicant, he filed Notice to show cause why an order for committal should not be made against the Respondents to which he attached an affidavit of 12 paragraphs and a further affidavit of 15 paragraphs deposed to by Applicant's wife and the applicant himself respectively. In response, the Respondents filed a 15 paragraph counter affidavit deposed to by the 2nd Respondent on behalf of other Respondents.

Respondents were served with the said order and other court processes) because affidavit of bailiff of court evidencing service was not yet found in the court file at the time. Because the matter involved the liberty of a citizen of Nigeria, the matter was adjourned to the 6th day of October 2016 after the order of this court made on the 30th September 2016 was injected with further and longer life.

The matter came up on the 6th day of October 2016 (even though the record of court showed that the affidavit of service of the bailiff of court showing that the Respondents were served with order of 30th September 2016 had been filed in the court file) but since there was no evidence that what transpired in court on the 5th day of September was brought to the knowledge of the Respondents, the matter was again adjourned to the 10th day of October 2016.

However since the court found that the order of 30th September 2016 was actually served on the Respondents whilst they failed to comply with same, the court in its proceedings of 6th day of October 2016 insisted that the Respondents must comply with its order and ordered that form 48 should be issued against the Respondents and the matter was adjourned to 10th day of October 2016.

On the 10th day of October 2016, learned counsel for the Respondents, A. D. Elumaro Esq. appeared in court with a complaint that he was not aware of the application.

Since the records of court showed that the Originating application and order of this court of 30th September 2016 and that of 6th October 2016 with form 48 were served on the Respondents on the 30th September and 7th October 2016 respectively, and that notwithstanding the Respondents failed to produce the Applicant in court, this court directed the Applicant's counsel to commence contempt proceedings against the Respondents.

The issue before me in this case at this stage is to determine "whether in the circumstance of this case and going by the evidence before me, the Respondents can be said to have committed contempt of court justifying an order of sanction against them".

The position of the law is that contempt of court being an offence of a criminal character must be proved beyond reasonable doubt. See Agbachom vs. The State (1970) LPELR - 223 (SC); Idowu vs. Olorunfemi (2013) LPELR - 20720 (SC).

The onus is regularly and customarily on the Applicant who is the initiator of contempt proceedings to prove beyond reasonable doubt that there was a contempt of court and that the Respondents

actually committed same deliberately and with guilty mind. See

Ogele vs. Dare (2008) LPCLR - 3727 (CA); AG Anambra State vs.

Okeke (2002) 12 NWLR (pt 782) 575.



The law prescribes certain mandatory requirements and conditions which must be fulfilled and established before a court can make an order for committal, these conditions and requirements which must be cumulatively fulfilled and established are:

(1) There must be a subsisting and valid order of court prohibiting an alleged contemnor from doing a certain thing;

(2) That the alleged contemnor actually did that which the said order of court prohibit him from doing;


(3) That the act was done by the alleged contemnor deliberately and with guilty mind;

(4) That the Applicant must ensure that form 48 endorsed with the order of court is formally served on the Respondents personally by the bailiff of court who must file a copy of proof of service in the court file;

(5) Personal service of form 48 after 2 days of service of form 48 on the Respondents.

(6) After the above, the Applicant shall file motion for committal supported by affidavit spelling and detailing facts leading

to the alleged conduct of the Respondents constituting contempt of court. See Nwosu & Ors vs. Nzeadibe (2010) LPELR - 4897 (CA) Ogele vs. Dare (2008) LPELR - 3727 (CA).



Applying the above requirements of the law to the case at hand, will necessitate going back into the peculiar facts of this case. The pertinent question therefore is whether by the facts of this case the Applicant has satisfied the above laid down procedural requirements and ingredients.

Going by the records of this court with respect to service of the order of the court and other relevant processes on the Respondents, the originating application of the Applicant and copy of the order of this court made on 30th September 2016 was served on the 1st, 2nd and 3rd Respondents through one Cecilia Ugwu on the 30th day of September 2016. The same application and order were also served on the 4th Respondent through a mail receiver whose name was not disclosed in the affidavit of service.

A further check into the record of court show that 1st, 2nd, and 3rd Respondents were served with form 18 through the same person called Cecilia Ugwu on the 7th day of October 2016 while copy of same was said to have been served on the office of Commissioner of

The 1st - 3rd Respondents were sued in their natural and biological identities and as such personal service of the processes relating to contempt proceedings must be served on them personally. See Nwosu & Ors vs. Nzeadibe (supra): Ogele vs. Dare (supra). While the law seems to exempt public office holders like the 4th Respondent from personal service being public office the same cannot be the case for 1st - 3rd Respondents who were sued in their personal capacity bearing their natural and biological

requirements laid down to be followed in contempt proceedings. law and fall short of the satisfaction of fulfillment of conditions and on one Cpl Cecilia Ugwu. This is contrary to the provision of the 49 were not personally served on 1st, 2nd and 3rd Respondents but this court made on the 30th day of September, 2016, forms 48 and relating to contempt proceedings in this case such as the order of From the above indications, all the relevant processes of court

Abakaliki.
from the legal department, State CID, of the police Command, was served on the 4th Respondent through one Sunday Asungbo Ijeoma Timothy on the 20th October 2016 while a copy of the form 1st, 2nd and 3rd Respondents were served with form 49 through one police on the same date. The records of court similarly indicate that

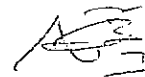
identities. See Egbebu vs. Inspector General of police & Ors (2016)

LPELR - 40224 (CA).

Furthermore, the Respondents have maintained in their counter affidavit that the Applicant was released on bail on the 7th day of October 2016, see paragraphs 5 and 8 of their counter affidavit; while the applicant in his further affidavit in paragraph 13(e) stated that the Respondents granted him bail after they were served with form 48. If this deposition were to be taken serious, it means that the Respondents actually acted in consonant with the content of form 48. It is on record that the said form 48 was served on the Respondents on the 7th day of October 2016 as shown by affidavit deposed to by the bailiff of this court.

The combination of depositions contained in paragraphs 5, 6, 7, 9, 11, and 12 of Respondents' further affidavit with the mode of serving the processes relating to contempt proceedings in this case on the Respondents create some doubts as to whether the Respondents deliberately or wilfully breached the order of this court. Same creates a doubt on whether the Respondents actually committed act of contempt against the order of this court with guilty mind. See Nwosu & Ors vs. Nzeadibe (supra), Ogele vs. Dare (supra).

The law is that contempt of court is an offence sui generis. An application for committal for any disobedience of an order of court is a very serious matter as it involves in most cases an exceptional interference with the liberty of a subject and therefore when any antecedent process has to be put in motion, every prescribed step and rule however technical should be carefully taken, observed and insisted upon. Any irregularity in the procedure for committal is a fundamental vice which vitiates the entire application, see FCDA & Anor vs. Koripamo Agary (2010) LPELR- 4148 (CA).



I am therefore of the considered view that while the Applicant satisfied some of the laid down procedural requirements in this proceedings, he has not been able to fulfil some such as personal service of the relevant order and processes on the Respondents, particularly the 1st – 3rd Respondents who are natural and biological persons sued in their personal names. See Nwosu & Ors vs. Nzeadibe (supra); Ogele vs Dare (supra).

A glance at paragraphs 3, 13 of the Respondents' counter affidavit and the general conduct of the Respondents' counsel in court has greatly weakened the court from enervating its venom and anger against the Respondents. This is because the Respondents by those paragraphs seem to be displaying and exhibiting adequate submissiveness, respect and obedience to the court.

From all the above, this court is not able to make a finding that the Respondents have deliberately and willfully breached the order of this court with guilty mind.

The law of contempt does not exist for the sake of the personal aggrandizement of a Judge nor is it there to protect the private rights of parties or litigants. See Inland Bank (Nig) Plc vs. Ruhant

(Nig) Ent. Ltd & Ors (2010) LPELR-4324 (CA).



The law and principles enshrined in the law of contempt are

there to uphold and ensure the effective administration of justice.

Contempt of court proceedings leading to the exercise of coercive

power of court is set to achieve enthrone the rule of law, re-

establishment of the dignity of court in the overall interest of the

general public who see the court as avenue of hope for the common

man. Anything short of this is a clear and dangerous degeneration

to anarchy and naked lawlessness. See FEDA & Anor vs. Korpama

(supra); Fame Publications Ltd vs. Enconium Ventures Ltd (2000) 8

NWLR (pt 667) 105 at 111.

Having said the above, since the applicant has the onus of

proving that the above requirements have been satisfied

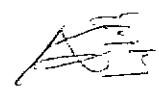
cumulatively which he has not been able to discharge or satisfy in

this case, such failure is therefore fatal to the success of his

contempt proceedings as the alleged offence of contempt being

quasi - criminal in nature and which require a proof beyond reasonable doubt, has not been proved.

However before concluding this ruling, I have to carry out an important assignment, important in the sense that it touches on an alleged attack, vituperations and insult on the person and reputation of one of the counsel appearing in this matter, let me state it very clearly that this court frowns at any attitude or behaviour aimed at ridiculing the reputation and integrity of lawyers, it is more heinous like a crime when it is engaged by one lawyer against his fellow professional colleague.



I have gone through the depositions in paragraphs 4, 10 and 14 of the Respondents' counter affidavit, the said depositions cannot by any means be described as statement of fact with respect to issues and subject matter in this case. They are conclusions on matters that are extraneous to the issues in controversy in the case. They are not relevant and are of no assistance to the court with regards to the just determination and resolution of the issues before the court in this case. The said paragraphs offend the provision of section 115(2) of the Evidence Act 2011.

Furthermore, a second glance at the said paragraphs show that the depositions therein constitute an attack on the person of the Applicant's counsel which is unwarranted and without basis.

Such conclusions are without foundation and should be discouraged by Counsel.

The court is not unaware that the said counter affidavit was deposed to by one of the Respondents and not their counsel. There was no way such damaging depositions and conclusions would have been done without the knowledge of the Respondents' Counsel.



The said counter affidavit could not have been filed by the 2nd Respondent at the registry of this court without the efforts of the Respondents' Counsel. What is more, Respondents' Counsel relied on and used the said process during hearing in this case. Counsel are advised to dutifully and religiously observe the rules of professional conduct in their handling of cases. The Respondents' Counsel is a very senior member of the bar with an established record of decency and good behaviour. Counsel should strive not to be drawn into the status of litigants at the expense of their professional reputation and career.

Legal practitioners are always and consistently addressed as learned menas, the test of that friendship must be seen in cordiality, respect and candour, demonstrated towards each other and the court, in the handling of clients causes and matters in court. Counsel should be honest and forth-right in their approach

of matters in court, seeking to unravel the truth and facts needed to attain justice in a given case, instead of resorting to a hide and seek game, or cat and mouse stance to ambush and devour each other. That noble tradition must be maintained and upheld by counsel in their legal representations and advocacy and they must refuse to impress clients by taking up fighting stance against each other. See the dictum of the court of Appeal, per Mbaba, JCA at pp 8 – 9, paragraphs E – C in Onuegbu & Ors vs. Governor of Imo State & Ors (2015) LPELR – 25968 (CA).



Therefore the words and adjectives such as “deliberate and mischievous attempt”, “in his characteristic manner to cause confusion”, “promote animosity between the Respondents and the court”, “devilish agenda”, and other damaging words used in paragraphs 4, 10 and 14 of the Respondents’ counter affidavit are hereby discountenanced and literally expunged from the records of the court.

Consequently, the 1st, 2nd, 3rd and 4th Respondents are hereby discharged of any act of contempt in this case. Contempt proceedings in this case is hereby dismissed.



AKINTAYO ALUKO J.
PRESIDING JUDGE
28-11-2016

ENDORSEMENT:

Contempt proceedings argued by:

- (1) D. J. Anyim Esq. with
S. O. Onwe Esq for the Applicant.
- (2) A. D. Elumaro Esq. with
A. I. Onuogha Esq. for the Respondents.