

**IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE MAKURDI JUDICIAL DIVISION  
HOLDEN AT MAKURDI  
ON WEDNESDAY THE 21<sup>st</sup> DAY OF OCTOBER 2015  
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE  
BINTA F.M. NYAKO  
JUDGE**

**SUIT NO.FHC/MKD/CS/90/2015**

**BETWEEN:**

- |    |  |   |                         |
|----|--|---|-------------------------|
| 1. | YANGE MAIKYO                                   | } | PLAINTIFFS/APPLICANTS   |
| 2. | AUGUSTINE MAIKYO                               |   |                         |
|    | AND  |   |                         |
| 1. | BONIFACE ORTESE                                | } | DEFENDANTS/ RESPONDENTS |
| 2. | COMMISSIONER OF POLICE,<br>BENUE STATE COMMAND |   |                         |

Parties: 1<sup>st</sup> applicant in court.

Counsel: J.K. Ishember for applicants

D.Y. Dennis for 2<sup>nd</sup> respondent

**RULING**

The two (2) applicants have applied to enforce their fundamental rights in the following:-

- a. A DECLARATION that the arrest and detention of the Applicants from the 20<sup>th</sup> day of May 2015 till the 22<sup>nd</sup> day of May 2015 by the officers of the 2<sup>nd</sup> Respondent upon the malicious instigation of the 1<sup>st</sup> Respondent without just cause constitutes a violation of the Applicants fundamental rights guaranteed under Section 35 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 and Articles 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 2004.

- b. A DECLARATION that the continued harassment of the Applicants is a violation of their right to personal liberty and Dignity of their person as preserved in Sections 34 and 35 CFRN 1999.
- c. An injunction restraining the 2<sup>nd</sup> Respondent has officers, agents or privies from further arresting or detaining the Applicants in a manner not permitted by law.
- d. Five Million Naira (N5,000,000.00) only being general and exemplary damages specifically against the 1<sup>st</sup> Respondent for the unlawful and unwarranted violation of the Applicants Fundamental Human Rights.

The application is supported by a statement, two Affidavits with a written address.

The case of each of the applicants is the same. That they were called on the telephone to attend the police station which they each did the next day. That they were reported over a death that occurred in their home village to which they all denied culpability. That they were detained from the 20<sup>th</sup> – 22<sup>nd</sup> of May, that they were still being called to the police station periodically. They urged the court to grant their reliefs as prayed.

Learned counsel filed a written address and formulated two (2) issues for determination to wit:-

- Whether there is any legal justification for the arrest, detention, torture and harassment of the Applicants by the Respondents.

- Whether in the circumstances of the case applicants are not entitled to the relief sought and to recover substantial damages from the 1<sup>st</sup> respondent for their breach of applicants' fundamental rights.

On issue 1 learned counsel submitted that there is no legal justification for the arrest of the applicants or a forceful suspicion by a baseless complaint. That by virtue of Sections 34 and 35 of the Constitution, the treatment meted out on the applicants violated their fundamental rights. He referred to the case of **OGWUCHE ON COMPENDIUM OF HUMAN RIGHTS LAW**.

On issue 2, learned counsel submitted once relief 1 is found in favour of the applicants then they are entitled to damages. He referred to the case of **BONIFACE MTSOR VS. JONATHAN ADEKE (2005) ALL FWLR (PART 287) 872**.

He urged the court to grant the applicants reliefs as prayed.

The 2<sup>nd</sup> Respondent filed a Counter Affidavit and averred that a case of culpable homicide and screening of an offence was reported by the 1<sup>st</sup> Respondent to the police as evidenced by the crime diary.

That in the course of investigation, the two (2) applicants along with others were invited on the 21<sup>st</sup> of May to the police station where they made statements which are exhibited that they were granted bail the next day. That investigation had been concluded in the case and it has

been charged to court. He urged the court to accept this version of the event.

Learned counsel filed a written address and formulated a lone issue for determination to wit:-

- Whether or not the 2<sup>nd</sup> Respondent in acting within the confines of the law in discharging his Constitutional duties can be sued for so doing?

Referring to Section 4 of the Police Act, learned counsel submitted that the 2<sup>nd</sup> Respondent cannot be stopped from performing his Constitutional duties. That the arrest of the applicants emanated from a report of criminal conspiracy and culpable homicide and screening of offenders thus predicated on reasonable grounds. He referred to Section 35 (1) of the Constitution and Sections 26 and 27 of CPC.

That the applicants have not proved how their fundamental rights were breached and that the applicants were granted bail. He urged the court to dismiss the applicants' claim.

This is the position of the parties before the court.

Certain facts stand out and appear agreed upon. There was a complaint of a criminal nature made to the police in the course of investigation; the applicants along with others were invited for investigation/interrogation. They reported at the police station and either a day or two later were released on bail. Upon the conclusion of

investigation, those found culpable have been arraigned before the court.

The question to ask here is what has amounted to the infraction of the applicants' fundamental rights from all that the respondents have done?

The police have the powers donated by the Constitution and the police act to investigation suspicion commission of a crime and further empowered to arrest and detain in the course of investigation.

From the entire case of both parties, I fail to see the infraction being complaint about. The Respondents have only acted within their Constitutional responsibilities. This should put to rest this case and the applicants should not be invited to the police station again over this allegation as according to the Respondents investigation have been concluded.

The applicants claims then fail and are hereby refused.

Ruling delivered in open Court this 21<sup>st</sup> day of October 2015.



**Hon. Justice Binta F.M. Nyako**  
**Judge**  
**21/10/2015**