

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON THURSDAY 1ST DAY OF DECEMBER, 2016
BEFORE HIS LORDSHIP
HON JUSTICE M. L. ABUBAKAR
(JUDGE)

SUIT NO. FHC/AI/CS/23/2016

BETWEEN:
INYA UWAKWE ::: ::: ::: APPLICANT
AND

1. FEDERAL TEACHING HOSPITAL ABAKALIKI
2. DR. ONWE OGAH
3. DR. ONOH ROBINSON
4. DR. EZE ANOSIKE } RESPONDENTS

APPEARANCES

Applicant Present

C. N. Ugada - Applicant
V. C. Okechukwu - Respondents

RULING ON FUNDAMENTAL RIGHT APPLICATION

This Ruling relates to an application under the Fundamental Right Enforcement Procedure Rule filed on 13/4/2016 by the Applicant's counsel seeking for the following reliefs:-

- (a) A DECLARATION of the honourable Court that the act of the 2nd and 3rd Respondents' against the applicant by pushing the applicant out of the office of the former and subsequent seizure and dragging out of the applicant by the three security men of the 1st Respondent on the order of the

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2nd respondent on the 26th October, 2015 is tantamount to gross violation of the Applicants right to dignity of human person as guaranteed by section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 5 of the African Charter on Human and People's Rights 1981.

(b) A DECLARATION of the Honourable Court that the act of refusal to avail the applicant his medical report and Certified True Copy of his folder, RE: 061311 to enable him access medical care elsewhere having refused and neglected to give him further treatment by the respondents is unlawful and tantamount to gross violation of the applicant's Right to receive information as guaranteed by section 39 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 9 of the African Charter on Human and People's Rights 1981.

(c) A DECELARTION of the Hourable Court that the act of abandonment and defiant refusal of the respondents to continue the treatment of the applicant having admitted him in the hospital and operated on his right eye is unlawful. Unconstitutional and tantamount to gross violation of the Applicants right to life as guaranteed by section 33 of the 1999 constitution of the Federal Republic of Nigeria (as amended) and Article 4 of African Charter on Human and People's Right 1981.

(d) A DECLARATION that the action of the respondents by refusing to continue the treatment of the applicant tantamount to gross violation of the applicant's right to health as guaranteed under Article 16 of the African Charter on Human and People's Rights 1981.

(e) **AN ORDER** of the Honourable Court awarding the sum of **Eight Hundred Million Naira Only (N800,000,000.00)** jointly and severally against the respondents as general and aggravated damages occasioned to the applicant by the actions of the respondents.

(f) **AN ORDER** of the Honourable Court compelling the respondents to forthwith release to the applicant his medical report and Certified True Copy of his folder: re folder no: 061311 to enable the applicant access medical care elsewhere since the respondents have refused and neglected to give him further treatment.

(g) **AB ORDER** of the Honourable court compelling the respondents jointly and severally to immediately tender and unreserved apology to be published in at least one National Daily Newspaper to the applicant.

(h) **AN ORDER** of the Honourable court directing the respondents to jointly and severally pay the sum of **Two Million Naira (N2,000,000.00) only** being the cost of this suit.

In Support of the application is 28 paragraphs Affidavit deposed to by the Applicant himself and Annexed are Exhibit s A-E respectively.

There is also a written address where the counsel raised two issues for determination to wit:-

- (1) Whether the Rights of the Applicant has been violated.
- (2) Whether the Applicant is entitled to the reliefs sought.

On issue No 1 – The counsel cited sections 33, 34 (1) (a) and 39 of the Constitution relating to Right to Dignity of Human person, Right to Freedom of Expression, and Rights to life, and Right to Health. He also cited Article 4 of the African Charter on Human and Peoples Rights and Exhibits A-E to buttress his point.

He submit that the refusal and neglect to issue the Applicant his medical report to enable him access medical care elsewhere when the Respondents have defiantly neglected and refused to continue the treatment of the Applicant despite the fact that he does not owe them a kobo tantamount to violation of his right to health.

On the second issue for determination. i.e. whether the Applicant is entitled to the Relief sought. The counsel cited section 46 of the constitution and order XI of the Fundamental Right Enforcement Procedure Rules. He further submits that unlawful violation of Fundamental Rights is usually redressed by the award of general and exemplary damages and the Respondents are liable in damages to the Applicant. He added that the Applicant has suffered loss and is still suffering same and is therefore entitled to adequate remedies. He cited the case of *OTUMBA FASHAWE V A.G. OF THE FEDERATION (2007) 8 WRN 125, AND ANAMBRA STATE ENVIROMENTAL SANITATION AUTHORITY V EKWUENEM (2009) 45 WRNI.*

The Counsel further submitted that in response to the Counter-Affidavit filed by the Respondent's Counsel, he filed a Further-Affidavit of 40 paragraphs on 29/9/2016 and a reply on point of law filed on the same date. Attached is Exhibit "F". He added that in reply to the preliminary objection filed by the Respondents, they have filed a reply dated and filed on 29/9/2016. He urged the Court to grant their application.

The Respondent's Counsel in response filed a 9 paragraphs Counter –Affidavit on 23/6/2016 and annexed Exhibits VC 1 and V 2 respectively. There is also a written address where 3 issues were raised for determination. The first issue for determination borders on jurisdiction of this court to hear and determine this suit as the claim of the Applicant is outside the provisions of chapter IV of the constitution and the African Charters on Human and People's rights. It is trite knowledge that where issue of jurisdiction of a court is raised by a party, it is pertinent to determine it first, before going into the merit or other wise of the main suit itself. As any decision reach by a court without jurisdiction will amount to a nullity. See the case of *NANA OPIA v. INEC (2014) 57 NSCQR per K.M.O KEKERE- EKUN JSC* at page 1276.

In line with the above-mentioned authority, I will like to first determine whether this court has jurisdiction or not.

In their preliminary objection, the Respondent's Counsel argued that the court can only be competent to hear and determine this suit if the alleged breach of right are within the provisions of the chapter IV of the Constitution. He submitted that the claim of the Applicant does not fall within the ambit of chapter IV of the Constitution or any law related thereto. He added that application for the enforcement of Fundamental Human Right is not merely granted for the asking or as a matter of routine, any such application must meet the standard as set out in chapter IV of the Constitution and the Fundamental Rights Enforcement Procedure Rules. He cited sections. 33(1), 34(1) and 46 (1) and (2) of the constitution and Article 4,5,9 and 16 of the African Charter on Human and People's Right 1981 and argued that none of the Applicant's reliefs find support in any of the above provisions.

He urged the court to uphold his preliminary objection.

In reaction, the Applicant's counsel filed a reply on 29/9/2016 and submitted that their Application/claims are within the four walls of the constitution and the African charter on Human and People's Rights. He refer to order 11 Rule 1 of the Fundamental rights Enforcement Procedure Rules, Article 9 of the African Charter on Human and people Rights, Sections 3 and 4 of the Freedom of information Act, 2011 and Section 33 of the Constitution to buttress his point. He also refer to paragraphs 9-26 and Exhibit A-C of their Supporting Affidavit which he claimed are uncontroverted.

He further submitted that the Respondents have violated the Applicant's Right to Health when after admitting him in their Hospital and operated on his right Eye, abandoned him along the way. He referred to the case of *ODAFE v. A.G. OF THE FEDERATION (2004) AHRCR 205 AT 211* and the case of *UBANI v. DR. S.S.S. (1999) II NWLR (pt 129)*.

He urged the court to dismiss the preliminary objection and hold that this court has jurisdiction to hear and determine this suit.

Those are the submissions of both Counsels on the preliminary objection. The issue for determination is whether this court has jurisdiction or not. There are plethora of Supreme Court authorities which states that in determining whether a court has jurisdiction on a matter or not, it has to take a look at the claims or reliefs of the plaintiff or Applicant and not the defence of the Defendant or Respondent.

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It should be noted that the claim of the Applicant filed on 13/4/2016 against the Respondents are as follows:-

- (1) On 7th September 2014, the Applicant was brought and admitted at the 1st Respondent i.e. Federal Teaching Hospital Abakaliki for treatment as a result of injury he sustained on his right Eye and parts of his body following an attack by some assailants.
- (2) The said Eye was removed by the 4th Respondent and her team. The Applicant was discharged and told to be coming for treatment pending the time an artificial Eye will be attach or fix.
- (3) The Applicant has been going back for treatment and on 11/11/2014 requested for medical report through his counsel. But the 4th Respondent refused to give him as the folder cannot be traced.
- (4) The Applicant complained to the 2nd and 3rd Respondents relating to the negligent conduct of the 4th Respondent in treating him and the fact that the Eye is giving him sleepless night due to constant pain.
- (5) The 2nd and 3rd Respondent could not do anything as the Applicant's folder couldn't be traced. At the end they ordered their security men to take him out of the Hospital.
- (6) The security men obeyed and forcefully dragged the Applicant out of the Hospital premises. He was beaten up in dehumanizing manner.

- (7) That without his folder and medical report, the Applicant cannot get further treatment from any other Hospital and the Respondents has refused to treat him anymore. In fact they are even threatening to sue him to court see Exhibit "E" attached to the supporting Affidavit which is a letter from the Respondents Counsel to the Applicant.

In view of the above allegation against the Respondents, am of the humble opinion that this suit falls within the ambit of chapter IV of the Constitution relating to Fundamental Rights. I hold that this court has jurisdiction to hear and determine the matter. The preliminary objection is hereby dismissed.

I so hold.

This led us back to the main suit. As mentioned earlier, the Applicant filed this Application on 13/4/2016 seeking for some reliefs as per his application and under the Fundamental Right Enforcement Procedure Rules. In support is a 28 paragraphs Affidavit and annexed are Exhibits A-E respectively.

In response, the Respondents Counsel filed a 9 paragraphs Counter Affidavit on 23/6/2016 and attached Exhibits VC I and VC 2 respectively. There is also a written address where three issues were raised for determination.

Those are the submissions of Counsel to both parties; the issue for determination is whether the Applicant is entitled to the reliefs sought.

I have carefully considered the Application, the counter Affidavit and all other processes filed. Am of the humble opinion that the Applicant has successfully prove his case beyond any shadow of doubt as enshrined under section 133 (1) and (2) of the Evidence Act 2011. The Respondents has

grossly abused and violated the Rights of the Applicant. Consequently all the reliefs sought by the Applicant are hereby granted as prayed except relief "E" relating to an award of **Eight Hundred Million Naira (N800,000,000)** as the Applicant did not satisfactorily explained to the court as to how he arrived at the said figure. However the sum of **Thirty Million Naira (N30,000,000)** is hereby awarded to the Applicant.

This is my decision.



M. L. ABUBAKAR
JUDGE
1/12/16

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