

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABAKALIKI JUDICIAL DIVISION

HOLDEN AT ABAKALIKI

ON WEDNESDAY THE 1ST DAY OF FEBRUARY, 2017

BEFORE HIS LORDSHIP

HON JUSTICE M. L. ABUBAKAR

JUDGE

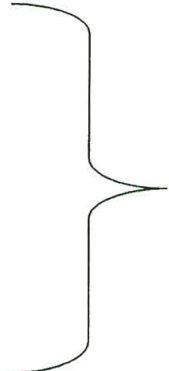
SUIT NO.FHC/AI/CS/16/2016

BETWEEN:

HON. JOSEPH ONWE :: :: APPLICANT

AND

1. **MR. MATHEW AGALA**
2. **MR. PATRICK INAH**
3. **HON. AMECHI ODA**
4. **C. S.P BABANGIDA JOHN**
5. **COMMISSIONER OF POLICE**
6. **DEPUTY INSPECTOR GEN. OF POLICE**
7. **INSPECTOR GENERAL OF POLICE**



RESPONDENTS

APPEARANCE

Applicants are present, 2nd and 3rd Defendant present

C. C. Onwe - Applicant

With G.C. Otubo Esq.

Ben O. Onwe - 1st and 2nd Respondent

J. N. Nwankwo - 3rd Respondent

B. C. Amadi Miss and
Uchenna Nwidagu

Rilwan Dutse - 4th -7th Respondent

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RULING ON FUNDAMENTAL RIGHTS APPLICATION

The applicant's counsel filed the application on 29/3/2016 under the Fundamental Rights Enforcement Procedure Rules seeking for the following relief:-

1. **A DECLARATION** that the arrest and detention of the Applicant by the 3rd to the 7th Respondents, from the 10th day of July, 2014 to the 11th day of July, 2014 at the State C.I.D. Ebonyi State Police Headquarters, Abakaliki, on the malicious instigation of the 1st and 2nd Respondents for an offence allegedly committed by some other persons, is unconstitutional and it constitute a gross violation of the Applicant's Fundamental Right to personal Liberty guaranteed under section 35 of the 1999 constitution of the Federal Republic of Nigeria (as amended).
2. **A DECELARATION** that the subsequent detention of the Applicant by the 4th 6th and 7th Respondents from 11th day of July, 2014 to the 12th day of July, 2014 at the Force C.I.D., Area 10, Garki, Abuja, on a malicious instigation of the 1st and 2nd Respondent for an offence allegedly committed by some other persons, is unconstitutional and a gross violation of the Applicant's Fundamental Right to dignity of his person and Right to personal Liberty, guaranteed under Sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
3. **AN ORDER** of this Honourable Court awarding damages to the Applicant against the Respondents, jointly and severally in the sum of N50,000,000,00 (Fifty Million Naira) only, for the violation of the Applicant's Fundamental Rights.
4. **AN ORDER** of this Honourable Court restraining the Respondents by themselves, their Agents, subordinates or Servants from further infringing the Applicant's Fundamental Rights in the matter connected with offence allegedly committed by some other persons.
5. **AND** for such further order or orders as the Honourable Court may deem fit to make in the circumstances of this case.

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However, it has been noted that two separate preliminary objections were filed by the counsels to the 3rd Respondent on 26/5/16 and the counsel the 4th to 7th Respondents on 16/11/2016. It is common knowledge that once an issue of jurisdiction is raised by any of the parties to a suit or by the court itself, that issue has to be determined first by the court as any decision reached without jurisdiction will amount to a nullity. See the case of *TIMIPRE SYLVA V INEC (2015) 61 NSCQLR per NGWUTA JSS at page 955 and the case of APGA V ANYANWU (2014) 57 NSCQR per J.A. FABIYI JSC AT 195.*

In order to do justice to this suit, this court will look at the two preliminary objections, one after the other, and see whether it has jurisdiction to hear and determine this suit or not. I will start with the one filed on 26/5/16 by the counsel to the 3rd Respondent. The counsel submitted that the suit is not competent because the facts that led to the alleged breach of Applicant's rights do not fall within the provisions of section 251 of the constitution which vested this court with jurisdiction. He referred to the Affidavit and Exhibit "A" attached to the Application of the Applicant. Exhibit 'A' is a petition against the 1st and 2nd Respondents and others addressed to the Deputy Inspector General of Police Louis Edet House, Abuja and is titled "Conspiracy, Fraudulent Representation, illegal collection of market toll, impersonation touting and conducts likely to cause breach of peace". The counsel submitted that crimes mentioned in the said petition are outside the jurisdiction of the Federal High Court but can be tried at the Ebonyi State High Court or even a magistrate court. He cited the case of *TUKUR V GOVT OF GONGOLA STATE (1989) 4 NWLR PT. 117) 517 AND THE CASE OF ADETONA V. I.G. ENT LTD (2011) 7 NWLR (Pt.1247) 535 PAGE 564 RATIO 9.* He urged the court to dismiss this suit.

In response the Applicant's counsel filed a written address on point of law on 10/10/2016 and cited order 11 Rule 1 of the Fundamental Rights Enforcement Procedure Rules which provide that any person who alleges that any of his rights under the constitution or Africa Charter on Human and Peoples Rights, has been, is being or is likely to be infringed may apply to the court for redress. He added that "Court" means this court or High Court of a State or that of the Federal Capital

Territory Abuja. He also cited section 251(1) of the Constitution which vested this court with jurisdiction and the case of *N.N.P.C. V. OKWOR* (1998) 7 NWLR (pt 559) 637. He urged the court to dismiss the preliminary objection.

Those are the submission of Counsels to both parties relating to the preliminary objection raised by the counsel to the 3rd Respondent. I have carefully consider the claim of the Applicant and the said preliminary objection. It is trite law that jurisdiction of a trial court is determined by the plaintiff's claim as endorse in the writ of summons and the statement of claim. See the case of *SUN INSURANCE NIG. LTD V. UME ENG. CONS. COMPANY LTD* (2015) 62 NSCQR per M. Mohammed CJN (as he then was) at page 505.

Having the relief of the Applicant, his supporting Affidavit and Exhibit 'A' in mind, the question is whether this court has jurisdiction to hear and determine this case or not. I agreed with the submissions of the counsel to the Applicant that order 11 Rules 1 of the Fundamental Rights Enforcement Procedure Rules quoted above and section 251 (1) of the Constitution which vested this court with jurisdiction on issue of breath of Fundamental Right of a citizen. See the Reliefs of the Applicant in his Application. This application is hereby refused I so hold.

This led us to the second preliminary objection filed by the counsel to the 4th to 7th Respondents on 16/11/2016. He argued that his court lacks jurisdiction to entertain this suit as it discloses no cause of action against the 4th -7th Respondent.

The counsel submitted that a look at the claim of the Applicant and his Affidavit will show that the application relates to dispute over the position of community head and nothing more, which does not fall within the ambit of section 251 (1) of the constitution which vested this court with jurisdiction. He cited the case of ***ELELU HABEEB & ANOR V. A.G. OF THE FED & 2 ROS*** (2012) 2 MJSC (PT.III) 1 and the case of ***N.N.PC & ANOR V. FAMFA OIL LTD*** (2012 5-7 MJSC (pt 1) pg 1.

The counsel further submitted that from the Affidavit in Support of the Applicant's Application, there is no reasonable cause of action against the 4th to 7th Respondents and therefore this court should strike out these names as they ought not to be joined as parties in this suit. He urged the court to strike out this suit.

In reaction, the Applicant's counsel filed a reply on point of law on 29/11/16 and submitted that the claim of the Applicant is wrongful arrest and detention of the Applicant by the Respondents over offences allegedly committed by some other persons mentioned in the 1st and 2nd Respondents' petition and not the position of community Head. He also cited order II Rules I of the Fundamental Rights Enforcement Procedure Rules and the case of **TUKUR V. GOVT OF GONGOLA STATE (1989) 4 NWLR (PT.II7) 617 AND SECTION 251(1)(P)** of the constitution which vested this court with jurisdiction. The counsel further submitted that from their supporting Affidavit, the Applicant has disclosed reasonable cause of action against the Respondents and added that 4th to 7th Respondent are agents of the Federal Government. He urged the court to discountenance the objection of the counsel and hold that this court has jurisdiction to hear and determine this suit.

Those are the submissions of counsels to both 4th to 7th Respondents and the Applicant.

I have carefully considered the preliminary objection, the reply on point of law and all the processes filed in this suit. The issue for determination is whether the preliminary objection has merit or not.

It is trite law that a cause of action is determined by reference to the plaintiff's statement of claim. The immediate materials a court should look at are the writ of summons and averments in the statement of claim- See the case of *NANA OPIA V INEC (2014) 57 NSCQR PER S.GALADIMA JSC at page 1266.*

In this suit, being under the Fundamental Rights Enforcement Procedure Rules, what the court should look at are the Reliefs in the Application and the averments in the Affidavit in Support of the Application.

A careful perusal of the above mentioned processes will reveal that the case against the Respondents is wrongful arrest and detention of the Applicant as earlier submitted by their counsel. This suit is not about the position of the community Head. For this reason, I hold that this court has jurisdiction to hear and determine this suit. The preliminary objection is hereby rejected. I so hold.

Finally this leads us to the main application itself. As state earlier, the application was filed on 29/3/16. Under the Fundamental Rights Enforcement Procedure Rules seeking for some reliefs. In support is a 25 paragraphs Affidavit and attached are Exhibits A to C respectively. There is also a written address where the counsel raised 4 issues for determination. He added orally that on receipt of the 1st and 2nd Defendants counter-Affidavit, he filed a 23 paragraphs Further Affidavit on 10/10/16 and annexed Exhibit 'D'. There is also a written address. On receipt of the 3rd Defendant's Counter-Affidavit he filed another 23 paragraphs Further Affidavit on 10/10/2016 together with Exhibit 'E' and a written address.

On 17/10/16 the 3rd Defendant filed another further Counter-Affidavit and again he filed a Further and Better Counters-Affidavit of 15 paragraphs on 16/11/2016 together with written addresses. He further submitted that on 18/10/16 the counsel to the 4th to 7th Defendants put up appearance and filed a Counter-Affidavit on 16/11/16 and he filed a 28 paragraphs Further-Affidavit on 29/11/16 and annexed Exhibit "H" together with a written address and an address on point of law. He further submitted that they issued the 4th Respondent, CSP Babangida John with a Notice to produce the Extra Judicial statement of the Applicant but he refused to produce same. He urged the court to hold that such document if produced will work against him that is the reason why he refused to produce it. The counsel urged the court to grant his application.

In opposition, the counsel to the 1st and 2nd Respondents filed a 23 paragraphs counter-Affidavit on 27/5/2016 together with a written address and urged the court to dismiss the application with cost.

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Similarly the counsel to the 3rd Respondent filed a 21 paragraphs Counter-Affidavit and annexed Exhibit M.O.I. There is also a written address. He urged the court to dismiss the application with cost.

In response the counsel to the 4th to 7th Respondents also filed a 27 paragraphs Counter-Affidavit on 16/11/2016 with 4 annexures.

He added that they relied on paragraphs 9 to 11, 13 to 16, 18, 21 22 and 24 of their counter-Affidavit. There is also a written address which he adopted and urged the court to dismiss the application.

Those are the submissions of counsels to both Applicant and the Respondents. The issue for determination is whether the Applicant has proved his case beyond any shadow of doubt. Least I forget, the 3rd Respondent's counsel on the last adjourned date i.e 30/11/2016, moved an application filed on 17/10/2016 seeking for an order granting leave to the 3rd Respondent to file a Further Counter-Affidavit and further written address and for an order deeming the processes already filed and served as proper. In support is a 17 paragraph Affidavit and annexed is Exhibit am I which is the proposed Further Counter Affidavit.

There is also a written address, which the counsel adopted and urged the court to grant the application. The counsel to the 1st and 2nd Respondents did not oppose the application but the counsel to the Applicant opposed it and submitted that for a leave to bring in further counter-Affidavit and written address, they must show new issues raised by the Applicant necessitating the need to bring in further Counter Affidavit before such leave can be granted. He referred to the case *of BERTHRAND NWONYE V D.N. ANYICHIE SUNDAY (2000) S. C. 265*. He urged the court to reject the application.

In reaction, both counsels to the 1st-2nd and 4th -7th Respondents did not oppose the application and on point of law, the counsel cited paragraphs 4,5c,7c,9-12A-B, 14, 15, 16,17,17A -C and 18 of the Applications Further Affidavit and submitted that they raised new issues. He urged the court to grant their application. Those are the submissions of both counsels to the said application. I have carefully considered the submission of counsel and Further Affidavit of the Applicant's and have to agreed that there are new issues raised there in. In view of that the

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application of the 3rd Respondent's counsel is hereby granted as prayed. I so hold. Coming back to the main application itself, the case for the applicant is that:-

1. That is 17/6/2015, the 1st and 2nd Respondents wrote a petition i.e Exhibit 'A' attached to his supporting Affidavit, against some other persons to the police alleging some criminal offences.
2. That even though the name of the Applicant was not mentioned in the said petition, the 1st and 2nd Respondents Procured the 3rd and 4th Respondents and invited him to the office of the 6th Respondent at police 'D' Department, Garki Abuja.
3. That he couldn't honour the invitation as he became indispose at his village, Ntezi Ebonyi State and requested for extension of time though his solicitor one Ojo Ijelekhai Esq. who wrote to the 6th Respondent.
4. That his application for extension of time was rejected and the 1st to 3rd Respondents brought the 4th Respondent to his village on 10/7/16 and forcefully arrested him. He was handcuffed in front of his family and pushed into a vehicle and drove him to the office of the 5th Respondent i.e. commissioner of Police, Ebonyi State.
5. That following day i.e. 11/7/2016, he and 2 other persons i.e. Chief Christian Eze and Agu Chigozie were taken to Force C.I.D office, Garki Abuja, where he was informed of the petition and asked whether he know the people mentioned therein.
6. He admitted knowing them as they are from the same local Government Area in Ebonyi State. He was made to make an extra judicial statement and was only released on bail on 12/7/16 upon intervention of his counsel.
7. That he has incurred lot of expenses going from Abakaliki to Abuja since then and on each occasion, the 4th Respondent will always tell him to go and come back.

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8. That the 1st -3rd Respondents are instigating the police because of local politics in their local government Area.
9. That unless this court intervenes, the Respondents will continue to violate his fundamental rights as they are threatening to have him arrested.

But the Respondents have denied all the allegations in their Counter-Affidavits. They claimed that there was a petition written by the 1st to 3rd Respondent against some other persons as per Exhibit 'A' and in the course of investigation the Applicant was implicated as a conspirator and sponsor of the persons mentioned in the petition. He was invited by the police and after taking his statement, he was granted bail. He jump bail and decided to file this suit to prevent the police from doing their job.

They added that there is a civil suit pending at the High Court of Ebonyi State, Ohaukwu Division No HKW/17/2016 which the 1st – 3rd Respondents instituted against the Applicant and 6 others. i.e. Exhibit M.O.I. attached to their counter-Affidavit. They urged the court to refuse this application in the interest of justice.

Those are the submissions of counsels to both Applicant and the Respondents. The issue for determination is whether the Applicant has proved his case beyond any shadow of doubt.

It is trite law that he whoever assert must prove. See section 131-133 of the Evidence Act 2011 relating to burden and standard of proof. From the available evidence before this court it is clear that the 1st to 3rd Respondents wrote a petition i.e. Exhibit 'A' attached to the Applicant's supporting Affidavit against some other persons. In the course of investigations, the Applicant was mentioned and he was invited by the police for investigation. He was subsequently granted bail and told to be reporting for further investigations.

I have carefully considered the Application and other processes filed and found that the Respondents acted within the law. The 1st to 3rd Respondents have the right to write complaint to the police i.e. 4th to 7th Respondents. And the police under sections 4,23,and 24 of the police Act and sections 3,4,18, and 19 of the Administration of criminal justice Act 2015 has the powers to arrest and investigate any person upon reasonable suspicion that he has committed a criminal offence. See the case of *FAWEHINMI V I.G.P (2002) NWLR PT 767,606* and the case of *EJIOFOR V OKEKE (2002) 7 NWLR (PT 665) 368 AT 384* where courts are enjoined to take judicial Notice of the powers of the police as adumbrated in section 4 of the police Act, that is to say courts should recognize the facts of existence of that power without proof. In view of the above authorities, all the reliefs of the Applicant are hereby refused. I award no cost. This is my decisions.



M. L. ABUBAKAR
JUDGE
1/2/17

