

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON MONDAY THE 6TH DAY OF MARCH, 2017
BEFORE HIS LORDSHIP
HON JUSTICE M. L. ABUBAKAR
JUDGE

SUIT NO. FHC/AI/CS/12/2016

BETWEEN

MR UZUKA ANSLEM ONYEBUCHI :::

APPLICANT

AND

1. MR. MAURICE NKWUDA NNANNA
2. MR CLEMENT OKEMINI OTOZI
3. MR. EMMANUEL NWEDU
4. MR. ANDREW OGBONNA NDUGO
5. HON. NKWUDA DAVID
6. MR. CHUKWUMA AZIH
7. MR. ONYEBUCHI NDUGO
8. MR. NDUBUISI UKPA
9. MR. VINCENT ODOH
10. MR. SUNDAY NWANKWO
11. MR. EZAKA MOSES
12. MR. BENJAMIN OGEH
13. MR. EMEKA OTOZI
14. MR. ISHIAL OGEH
15. INSPECTOR GENERAL OF POLICE
16. ASSISTANT INSPECTOR GENERAL OF POLICE
17. COMMISSIONER OF POLICE EBONYI STATE
18. DIVISIONAL POLICE OFFICER (D.P.O) IBOKO
19. SIMON NWAUGBO (IPO)

RESPONDENTS

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

M. L. Abubakar

APPEARANCE

2nd 10th and 11th Respondent present

D. O. Omenyi - Applicant

Henry Uguru - 1st -15th Respondent

R. M. Dutse - 16th -20th Respondent

RULING ON PRELIMINARY OBJECTION AND FUNDAMENTAL RIGHTS

This is a sister case to suit No FHC/AI/11/2016 which was determined on 1st March 2017 by this court. The two cases have the same parties, facts and circumstances. The Applicant counsel should have consolidated the two but he didn't.

The counsel filed this application under the Fundamental Rights Enforcement Procedure Rule on 29/2/2016 seeking for the following reliefs:-

1. **A DECLARATION** of the Honourable Court that the arrest, detention, torture, threat and attempt to kill the applicant on the 17th day of February, 2016 by the 1st -15th Respondents and their cohorts using the instrumentality of the 16th – 20th Respondents are unlawful, unconstitutional, unwarranted and a flagrant violation of the applicant's Fundamental Human Rights as guaranteed under Sections 33, 34 and 35 of the Constitution of the Federal Republic of Nigeria , 1999 (as amended) and Articles 4,5, and 6 of the African Charter on Human and Peoples' Rights, 1981.

2. **AN ORDER** restraining the 16th -20th Respondents, their agents, servants, workmen or privies from further arresting, detaining and torturing the Applicant.
3. **AN ORDER** awarding the sum of ₦50,000,000.00 (Fifty Million Naira) only as general damages against the 1st -15th Respondents for the unlawful arrest, detention, chaining, torture, threat and attempt to kill the Applicant on the 17th day of February, 2016.
4. **AN ORDER** awarding the sum of ₦2,000,000.00 (Two Million Naira) only as an exemplary and aggravated damages against the 16th- 20th Respondents for the unlawful arrest, detention, torture, threat and attempt to kill the Applicant on the 17th day of February, 2016.
5. **AN ORDER** restraining the 16th -20th Respondents, their agents and privies from further arresting, detaining, torturing, threatening and attempting to kill the Applicant as such is a violation of the Fundamental Human Rights of the applicant as guaranteed under **Sections 33, 34 and 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 4, 5, and 6 of the African Charter on Human and Peoples' Rights, 1981.**
6. **AN ORDER OF PERPETUAL INJUNCTION** restraining the 16th – 20th Respondents whether by themselves, their officers, agents,

delegates, servants and/or intimidate the Applicant in connection with the subject matter of this suit.

7. **And for such further Order(s)** as this Honourable Court may deem fit to make in the circumstances of this case.

However, the counsel to the 16th -20th Respondents filed a Notice of Preliminary objection on 6/5/2016 challenging the jurisdiction of this court to hear and determine this suit on the ground that there is no cause of action against the 16th to 20th Respondents. It is elementary knowledge that once an issue of jurisdiction is raised by any of the parties, the court is under an obligation to determine it first before going into the main suit because where a court lacks jurisdiction, any proceeding conducted is in breach and rendered a nullity. *SEE THE CASE OF NANA OPIA V INEC (2014) 57 N.S.C.Q.L.R PER K.M.O. KEKERE EKUN JSC AT PAGE 1276.*

As mentioned earlier, the said counsel filed the preliminary objection together with a written address where he submitted that for a suit to disclose a cause of action against a Respondent, there must be a specific allegation against him and that the alleged act of the Respondent cause a legal injury to the applicant. He argued that in the instant case, there is no specific allegation against the 16th to 20th Respondents. The allegation that the Applicant was arrested alone does not establish any cause of action unless the Applicant can prove that he has immunity against arrest. He cited the case of *EMEKA V. OKADIGBO (2012) 5-7 pt I MJSC 137 and urged the court to strike out this suit.*

In reaction, the Applicant's counsel filed a written reply to the preliminary objection on 24/5/2016 where he submitted that the objection is belated as it was not filed within 5 days as required by the Rules. He cited order 2 Rule 6 of the Fundamental Rights Enforcement Procedure Rules. He further argued that in determining jurisdiction, the court will consider only the writ of summons, statement of claim and the totality of the Applicant's application as in the instant case. *He cited the case of KOTOYE v SARAKI (1994) 7 NWLR (pt. 317) 414 and to F.G.N V. OSHIOMOLE (2004) 3 NWLR (pt 860) 305.* Finally the counsel submitted that this suit discloses reasonable cause of action against all the Respondents and urged the court to strike out the preliminary objection.

Those are the submissions of counsel to both Applicant and the Respondents in this preliminary objection. The issue for determination is whether there is merit in the said objection or not.

Firstly I have to disagree with the contention of the Applicants counsel that the preliminary objection is belated as it was not filed within 5 days as required by the rules. The Supreme Court in a long line of authorities has held that jurisdiction is a corner stone and bedrock of adjudication. It is constitutional and very fundamental, hence the reason why it can be raised at any stage of proceeding. See the case *of NANA OPIA V INEC (SUPRA), YAR'ADUA V. YANDOMA (2015) 61 NSCQLR per M.A. MOHAMMED JSC at pages 51.*

On the preliminary objection itself, 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 (Supra) per S. Galadima JSC at page 1260*. In the present case which is a Fundamental Right issue, what the court should look at are the Reliefs and the supporting Affidavit of the Applicant. A careful perusal of the Applicant's Application and the supporting Affidavits shows that the allegations against the 16th to 20th Respondents are that they connived with the 1st – 15th Respondents and arrested, tortured and attempted to kill the Applicant on 17/2/2016 in violation of his Fundamental Rights. The Applicant is also seeking a restraining order and an award of N2, 000, 000. 00 (Two Million Naira) against them. See reliefs 1, 2, 4 and 5 of the Applicant's Application. Consequently it will be safe to agree with the Applicant's counsel that there is reasonable cause of action against the 16th to 20th Respondents. The said preliminary objection is hereby struck out for lack of merit.

This brings us back to the main application. As mentioned earlier it was filed on 29/2/2016 and is supported by a 18 paragraphs Affidavit together with a written address. Attached are Exhibits A – D respectively. The counsel added that in response to the 1st -15th Respondent's counter Affidavit they filed a Further Affidavit of 22 paragraphs on 31/5/16 and another further Affidavit in response to the 16th to 20th Respondent's counter-Affidavit. He added that they also filed a Further-Further Affidavit in response to the 1st to 15th Respondent's Further Counter-Affidavit where new issues were raised.

Finally the counsel submitted that it is the duty of this court to safeguard the rights and liberty of individuals and protect them from abuse. *He cited the case of NAWA V A G OF CROSS RIVERS (2008) ALL FWLR pt 401 at page 840.* He urged the court to grant the application.

In response, the counsel to the 1st to 15th Respondents filed a counter-Affidavit on 11/5/2016 and attached Exhibits A-H together with a written address. He added that in response to the new issue raised by the Applicants in his supporting Affidavit, they filed a 56 Paragraphs further counter Affidavit by the order of this court made on 14/11/16 and attached Exhibit H.I.U I to H.I.U 5 respectively. Finally the counsel urged the court to strike out the Further-Further Affidavit of the Applicant as it is an abuse of court process. He cited order 2 Rule 7 of the Fundamental Rights Enforcement procedure Rules. He urged the court to refuse the Application.

The counsel to the 16th to 20th Respondents in response also filed a 24 paragraphs counter-Affidavit on 6/5/2016 and attached Exhibit RES 01 to 05 which are a petition/complaint, Bail Bond, and written statements by the suspect and witnesses. There is also a written address. The counsel urged the court to refused the application.

These are the submissions of counsels to both Applicant and the Respondents. The issue for determination is whether the Applicant is entitle to the reliefs sought. The case for the Applicant is that:-

- (1) On 17/2/2016, at Amuzu village in Izzi Local Government Area of Ebonyi State, the Applicant was at a community meeting summoned by their village head when the 1st -15th Respondents storm the venue with thugs and started beating and torturing him.
- (2) They inflicted serious wounds on his head and other parts of the body.
- (3) Some plastic chairs and motorcycles valued over one million naira were destroyed.
- (4) That the Applicant was taken to Iboko Police station where he was tortured and beaten by the 18th Respondent and the 20th Respondents was heavily paid by the 1st-15th Respondents for the job.
- (5) That the 19th Respondent refused to grant the Applicant bail when requested by his counsel.
- (6) That he was detained for two days at the said police station without any just cause before he was subsequently released on bail.
- (7) That the 16th -20th Respondents are threatening to re-arrest him and other members of his village, at the behest of the 1st -15th Respondents who are very wealthy and influential.
- (8) That there is real threat to his life from the Respondents.

Above represent the case for the Applicant. However, the Respondents denied all these allegations in their counter-Affidavit and claimed as follow:-

- (1) That Exhibit 'A' i.e photograph attached to the Applicant's application is not a picture of the Applicant but that of one Mr. Anthony Nwite who is not part of this suit.
- (2) That there was breach of peace in their village following leadership tussle between two groups.
- (3) The second Respondent lodged a complaint at the police station that there was breach of peace in the village and the police went and made arrest at the scene.
- (4) That the Applicant and some other disgruntled elements were amongst those arrested.
- (5) That after preliminary investigation, the Applicant and others were released on bail.
- (6) That the case was transferred to Area Commander's office Abakaliki as a result of a complaint by the Applicant and others.

I have carefully considered the Application and all the other processes filed. It is trite law that proof is the means of process of establishing the truth of what is asserted by one side and denied by the other side of a dispute. The primary onus of proving his case lies on the plaintiff or Applicant. See the case of *SAKATI V BAKO (2015) 62 NSCQLR PT I PER W.S. NWUTA JSC AT PG 582 AND SECTION 131 AND 132 OF THE EVIDENCE ACT 2011.*

From the available evidence before this court, the Applicant has failed to discharge the burden of proof placed on him by the law. The Applicant has alleged that Motorcycles and plastic chairs worth over a million naira were destroyed by the Respondents but Exhibits A, B and C which are photographs attached to his Affidavit showed only few broken plastic chairs and one motorcycle with broken front mudguard, which does not amount to over one Million Naira. To make matters worse, Exhibit 'A' which is supposed to be a photograph of the Applicant showing his wounds on the head was challenged or disputed by the 1st-15th Respondent as being a photograph of another person by name Mr. Anthony Nwite. The Applicant did not do anything to dispel their allegation.

Secondly, evidence has shown that the Applicant and others were arrested by the police for breach of peace as a result of leadership tussel in their community. Under Section 4, 23 and 24 of the police Act and section 3, 4, 18 and 19 of the Administration of criminal justice Act 2015, the police has the powers to arrest and Investigate any person upon reasonable suspicion that he has committed a criminal offence. See the case of Ejiofor v. Okeke (2002) 7 NWLR (pt. 665) at 384 where the counts are enjoined to take judicial Notice of the powers of the police as mentioned in section 4 of the police Act.

Least I forget, the counsel to the 1st to 15th Respondents opposed the Further-Further Affidavit filed by the applicant's counsel and urged the court to strike it out. By the ruling of this court delivered on 30/9/2016 his court found that the Applicant counsel have filed a 90 paragraphs further Affidavit which

intentionally brought up many fresh issues and allegations and consequently the Respondents counsel was allowed to file a response in their defence.

This court is of the view that the idea of filing another Further-Further Affidavits by the Applicant's counsel is alien to this type of proceedings which is a special one. I agreed with the submission of counsel to the 1st to 15th Respondents that it an abuse of court process and is hereby struck out.

In view of the above, I hold that this application lacks merit and is hereby refused. This is my decision.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI



M. L. ABUBAKAR
JUDGE
6/3/17