

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON THURSDAY THE 23RD DAY OF MARCH, 2017
BEFORE HIS LORDSHIP HON. JUSTICE AKINTAYO ALUKO
JUDGE

SUIT NO: FHC/AI/CS/38/2016

IN THE MATTER OF AN APPLICANT BY
AKPU OKECHUKWU FOR AN ORDER FOR
THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

IN THE MATTER OF FUNDAMENTAL
RIGHTS ENFORCEMENT PROCEDURE RULES, 2009.

BETWEEN:

AKPU OKECHUKWU } APPLICANT


AND

1. COMMISSIONER OF POLICE EBONYI STATE 2. DIVISIONAL POLICE OFFICER, OHAUKWU DIVISIONAL POLICE HEADQUARTERS, EBONYI STATE	}	RESPONDENTS/ CONTEMNORS
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ATTENDANCE AND APPEARANCES:


1. S.P. Paul Timbuchi
represents 1st Respondent/Contemnor.
2. 2nd Respondent/Contemnor present.
3. C.I. Chiwuzie Esq with
F.J. Asogwa Esq with the brief of
A.O. Mogboh Jnr for the Applicant.
4. R.M. Dutse for the Respondents/
Contemnors.

RULING

This is a ruling on contempt proceedings initiated by the Applicant
against the Respondents/Contemnors vide their originating Motion on
Notice dated and filed on the 27th day of February 2017. 

By way of recap, following fundamental rights suit filed by the Applicant against the Contemnors on the 28th day of July 2016, which was well fought by both parties, Judgment was entered against the contemnors in favour of the Applicant on the 17th day of January 2017.

In the judgment, this court made the following declarations and orders against the Respondents/Contemnors:

1. A declaration that the taking into custody of the Applicant's Toyota Sienna Bus with Registration No: GWA 150 YE; Engine No: 8226898 and Chasis No: 4T3ZF13C42U430176 by the Respondents on the 9th day of June, 2016 till date is unreasonable, oppressive and amounts to an infringement of the Applicant's fundamental right to freedom to acquire and own property in Nigeria as guaranteed under Section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended is hereby granted.
2. A declaration that the continued detention of the Applicant's Toyota Sienna Bus with Registration No: GWA 150 YE; Engine No: 8226898 and Chasis No: 4T3ZF13C42U430176 by the Respondents from the 9th day of June, 2016 till date is unreasonable, unconstitutional, oppressive and amounts to an infringement of the Applicant's fundamental right to freedom to acquire and own property in Nigeria as guaranteed under Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended is hereby granted. 
3. An order directing the Respondents jointly and severally to release the Toyota Sienna Bus with Registration No: GWA 150 YE; Engine No: 8226898 and Chasis No: 4T3ZF13C42U430176 owned by the Applicant to the Applicant is hereby granted.

4. *An order awarding the sum of Two Million Naira (N2, 000,000.00) only against the Respondents jointly and severally as damages for the infringement of the Applicant's fundamental rights is hereby granted.*
5.
6. *Cost in the sum of N50, 000.00 (Fifty Thousand Naira) only is awarded in favour of the Applicant against the Respondents.*

The Respondents/Contemnors were well represented by their Counsel when the said Judgment was delivered by this court on the 17th day of January 2017 meaning that they had constructive notice of the terms of the Judgment. Refer exhibits **J** and **J1** attached to the application for committal, which is the Certified True Copy of Judgment and order of this court.

Despite the contemnors' knowledge of the aforementioned Judgment and order of this court, they did not take any steps to comply with same. That notwithstanding, Certified True Copy of the Judgment and order of this court were caused to be served on the Respondents/Contemnors on the 20th January 2017 and 23rd January 2017 respectively. Refer to exhibits **J2, J3, J4** and **J5** attached to the application for committal.




Due to the respondents/contemnors' refusal and neglect to comply with the Judgment and order of this court, the registrar of the court on the application of the Applicant issued form 48 (a notice of consequence of disobedience to the order of court) endorsed with the orders of the court and same was served on the respondents/contemnors on the 8th

day of February, 2017 refer to exhibits **J6, J7** and **J8** attached to application for committal.

Upon the persistent failure of the respondents/contemnors to obey the order of this court despite the service of form 48 on them, the registrar of this court issued form 49 (notice to show cause why order of committal should not be made against the respondents/contemnors) on the 27th day of February 2017, which the respondents/contemnors in paragraph 3 of their affidavit to show cause and paragraph 4 of their affidavit of compliance admitted was served on them on the same date i.e 27th day of February, 2017. It is against the background of the above development in this case that the Applicant was compelled to initiate


Committal Proceedings against the respondents/contemnors vide their application dated 27th February 2017.

It is of note that the respondents/contemnors were by form 49, duly served on them directed to appear in court on the 14th day of March, 2017 to show cause why an order of committal should not be made against them for disobeying the orders of this court. 

The matter came up on the 14th day of March 2017, while the respondents/contemnors though represented by their Counsel were conspicuously absent in court. The failure of the respondents/contemnors to appear in court on the 14th day of March 2017 despite service of forms 48 and 49 on them necessitated this court making an order on the said date directing the respondents/contemnors again to appear personally before this court

today. The order of this court made on the 14th day of March 2017 was served on the respondents/contemnors on the 16th day of March, 2017.

By the said order, lead Counsel to the respondents/contemnors, barrister R. M. Dutse was in clear terms directed to communicate the order of this court to the respondents/contemnors. The above steps were followed in order to fulfill the provisions of the law and to ensure due conformity with laid down procedure relating to contempt proceedings which by its nature is quasi-criminal proceedings and which has the effect of touching on the liberty of the respondents/contemnors concerned.

The above were aimed at affording the respondents/contemnors the ample opportunity to offer explanations on why they choose to disobey the order of court. See Obeya vs. FBN Plc (2010) LPELR - 4666 (CA); Chukwu & Ors vs Chukwu & Ors (2016) LPELR - 40553 (CA); FCDA & Anor vs Koripamo-Agary (2010) LPELR - 4148 (CA). 


Under the law, contempt of court is viewed as a crime and it is trite law that it is sui generis. An application for committal for disobedience of an order of court is a very serious matter leading to interference with the liberty of contemnors in unique and exceptional circumstances when it becomes necessary and expedient to uphold and ensure an effective administration of justice. There is no gain saying the fact that committal proceedings are means by which the law vindicate the public interest in due administration of

justice see Inland Bank (Nig) Plc vs. Ruhanti (Nig) Ent. Ltd & Ors (2010) LPELR – 4324 (CA).

Having said the above, the pertinent question to ask in this case is,

“whether the respondents/contemnors have willfully disobeyed the order of this court made on the 17th day of January 2017 justifying an order committing them to prison as natural consequence of their act of flagrant disobedience”.

For emphasis, the relevant part of the Judgment and order of this court made on the 17th day of January 2017, to which committal proceedings relate is thus reproduced as follows:


“(4) That an order directing the respondents jointly and severally to release the Toyota sienna bus with Registration No. GWA150YE; Engine No. 8226898 and Chasis No. 4T3ZF13C42U430176 owned by the applicant to the applicant is hereby granted”. 

It must be said that while the respondents/contemnors are under the obligation to obey and duly comply with every term and letter of the Judgment and order of this court, the above reproduced part of the order is only relevant for the purpose of this committal proceedings. It is by no means a reason for the respondents/contemnors to abandon, neglect or jettison their obligations under the said Judgment.

I have gone through the 13 paragraph affidavit to show cause filed by the respondents/contemnors, the long and short of the story of the


respondents as shown in the affidavit show that they have no valid or justifiable reason to have continued to disobey the order of this court with reckless abandon as done by them in the instant case.

The summary of the respondents/contemnors' explanation in paragraphs 4, 5, 6, 7, 8, 10, 11, and 12 of their affidavit to show cause is that they would require approval or consent of the officers of the Force CID Alagbon, Lagos to comply with the order of this court.

To say the least, the above stated reason is severely frivolous, unfounded and most unfortunate. It is the more and very reason why this court should condemn the reprehensible act and conduct of the 2nd respondent/contemnor in particular. 


It is an attempt so calculated to ridicule and trample upon the authority of the court. It is most absurd, cockeyed, derisory, ludicrous and preposterous and above all painfully laughable for the 2nd respondent/contemnor to choose to seek approval, consent or clearance from the Force CID Annex Alagbon Close, Lagos, before complying with or obeying the order of this court directed against him and against which no appeal is pending. Only God knows how long it would take the 2nd respondent/contemnor to seek the approval of Alagbon, Lagos Force CID before complying with the order of this court made over 65 days ago. Conditioning obedience to court orders on approval of security agents is inimical to the rule of law and the result is to embrace

anarchy, God forbid! Doing so is to continue to expose our judicial system and rule of law to ridicule which is tantamount to celebrating the enthronement and the dominion of the whimsical, capricious and freakish employ of the will and arbitrariness of the law enforcement agents over the rule of law.

I have dealt with the issue at pages 8 through 19 of the Judgment of this court of 17th January 2017 to the effect that the vehicle was found to be in custody and possession of the 2nd respondent/contemnor, that should be enough and it should end matter there. 

While there seem to be no justification for the 2nd respondent/contemnor to have willfully disobeyed the order of this court, the same may not be for the 1st respondent/contemnor. As shown in paragraphs 1, 4 and 12 of their affidavit to show cause, the 1st respondent/contemnor was newly posted to the State Command and it was stated that the matter was only brought to his notice by service of form 49; therefore benefit of doubt will apply and work in his favour. The 1st respondent/contemnor by his high office is a stakeholder in the observance of the rule of law and by that he is obliged to enforce or seek the enforcement of all court orders not only in cases involving them. It is believed that he will not be part of any deliberate and calculated machinery in conspiracy geared towards disobedience of court orders.

By the combined provisions of sections 66(f), 68, 69, 70 and 72 of the Sheriff and Civil Process Act Cap. S6, Laws of the Federation of Nigeria, Vol 14, this court has powers to convict to prison any person who refuses or neglects to comply with an order of court made against him and detain him in custody until he has purged himself of the contempt. Refer to Nnybiz (Nig) Ltd vs. commercial Bank (Credit Lyonnais (Nig) Ltd) (2005) LPELR-3381 (SC); Ofem & Ors vs. Presbyterian Church of Nig (2011) LPELR – 4436 (CA); Oko vs. Aganyi (2012) LPELR – 19704 (CA); Sunday Ape vs. Disu Olomo (2010) LPELR – 4988 (CA).

Furthermore, by the provisions of order IX rule 13(1)(2) and (3) of the Judgment (Enforcement) Rules, Order 35 rules 1, 2 and 3 of the Rules of this court, 2009 and order XIV of the Fundamental Rights (Enforcement Procedure) Rules, 2009, this court reserves, possesses and has powers to punish any person or persons by committing such persons to prison for flouting or disobeying its orders. 

I have gone through all the processes relating to committal proceedings in this case. I have also gone through the relevant provisions of the appropriate laws relating to contempt proceedings. The Applicant has followed and observed strict compliance with the provisions of the relevant laws over contempt proceedings. He has followed all the laid down steps and procedure. He has justification and


he is covered by the law to have initiated the contempt proceedings against the respondents/contemnors especially and particularly against the 2nd respondent/contemnor. See Nnybiz (Nig) Ltd vs. Commercial Bank (credit Lyonnais (Nig) Ltd) (supra); Ofem & Ors vs. Presbyterian Church of Nig (supra); Oko vs. Aganyi (supra); Sunday Ape vs Disu Olomo (supra).

I have equally reminded myself that contempt proceedings is criminal or quasi criminal proceedings in nature which require strict compliance, ensuring that all the laid down steps and procedures are well and strictly followed and complied with.

I am satisfied that the said steps and procedures were followed and complied with in this case. Here there is an order of court made on the 17th day of January 2017, the respondents/contemnors were duly represented in the case from hearing up to Judgment, Certified True Copy of the Judgment and orders of this court were served on the contemnors, they failed and neglected to comply with the said Judgment and order of court, forms 48 and 49 duly issued and on which the said orders were endorsed were served on the contemnors, yet they failed and neglected to comply with the Judgment and order of this court


The position of the law is that this court, a superior court of law for that matter created by the fountain of all laws of the land would and should not and would never make an order in vain or just for mere

formality to be ignored by any party no matter how highly placed, to whom it was directed or not even the court itself. It is more damaging and embarrassing to say the least that the police, law enforcement agency, one of the authorities established by the constitution to enforce Judgments, order and decisions of court under section 287(3) of the Constitution to be seen as the one breaking, violating, disobeying and disregarding same.

While the reason of being new in the Command adduced for the 1st respondent may be countenanced and the fact that he may not have been well acquainted with the situation on ground including the fact of the Judgment and order of this court in this case, the 1st respondent can be excused on that ground. 


However, the 2nd respondent/contemnor who actively took part in the acts and transaction leading to the Judgment and order of court and who has been on ground and on whom all the processes in this case have been served has no justification to have willfully disobeyed the order of court. He has no justification under the law to seek for the approval or consent of anyone, including the men and officers of force CID Annex Alagbon Lagos before complying with the order of this court made against him. The order was not made against Officers of the Force CID Alagbon. It is a direct coercive order directing the 2nd respondent/contemnor to release the said vehicle in his possession to

the Applicant. His position and the act of waiting for the approval and consent of men of Force CID, Annex Alagbon, Lagos before complying with the order of this court is an affront to the authority of this court and it is sheer ridiculous, reprehensible and condemnable.

The 2nd respondent/contemnor failed to brief the 1st respondent about the pending and subsisting Judgment and order of this court. He has no excuse to have carelessly and willfully disobeyed the court's order. His failure to brief the 1st respondent of the court's Judgment and order as shown in paragraph 4 of their affidavit to show cause is in itself condemnable and punishable. 

From the established evidence before the court, having not been acquainted with and well seized of the Judgment and order of this court of 17th January 2017 by the reason of his recent and new posting to the State Command, the 1st respondent/contemnor cannot be said to have willfully or deliberately disobeyed the order of this court, I so hold.

Conversely, the 2nd respondent/contemnor, having been well acquainted with the Judgment and order of this court made on the 17th January, 2017 duly served on him with forms 48 and 49 and nevertheless neglected and refused to comply with the said Judgment and order has acted in contempt of court without any justification cognizable under the law, I so hold.


The law is that contempt of court is seriously frowned at because it is a conduct which tends to bring into disrepute, scorn or disrespect the authority of court and administration of the law. See Chukwu & Ors vs Chukwu & Ors (supra). 

While frowning at willful disobedience to court orders, the appellate court in Awosanya vs. Board of Customs (1975) 1 ALL NLR p. 100 has held as follows:

"It does not enure to the benefit of any society that is governed by the rule of law to allow the authority and dignity of the court to be eroded by unbecoming acts or behavior, hence the power to punish for contempt is inherent in courts of superior jurisdiction and it is quite independent of statutes. Such powers are considered necessary for the proper administration of justice..... such inherent powers to punish for contempt are created, maintained and retained for the purpose of preserving the honour and the dignity of the court. It follows therefore that the Judge exercising such powers must always realize that he holds same on behalf of the court for the advancement of justice and the good of the public..."

If the courts are to do justice, they need power to administer it without interference or affront and also to enforce their orders and to punish those who insult or obstruct them directly or indirectly in the performance of their duty or misbehave in such a manner as to weaken or lower the authority of a court of law. However, it must be remembered that the usefulness of the

powers depends on the wisdom and restraint with which such powers are exercised”.


See Ebhodaghe vs. Okoye (2004) LPELR – 987 (SC), AG of Edo State & Anor vs. Churchgate Industries Ltd & Anor (2016) LPELR – 41439 (CA); Sode vs L.S.D.P.C (2000) 7 NWLR pt 663 P. 152 per Bada JCA pp. 24-27 paragraphs C-B. 

It is of note that while perusing the records of the court in this case, I stumbled on a filed copy of affidavit of compliance deposed to on the 20th March 2017 on behalf of the respondents/contemnors stating that the Applicant's vehicle has been released to him by the 2nd respondent/contemnor. Counsel to the Applicant has also confirmed this development.

It must however be said that it does not portray the Nigeria Police Force or any of its officers well to wait for the applicant to commence contempt proceedings against its officers before a valid order of court is complied with. This is a law enforcement agency that is charged under the constitution to enforce Judgments and orders of courts made against others.

Be that as it may, I am compelled to abide by the spirit in the decisions of the appellate court above quoted even though, it has been proved beyond reasonable doubt that the 2nd respondent/contemnor is guilty of contempt of court in this case, I choose to exercise some

restraint and wisdom in this case since they have released the vehicle to the applicant. The respondents/contemnors realized the enormity of the wrath of the law awaiting their act of contempt, they knew that it was good step for them to follow!

Since the essence of committal proceedings is meant to call a contemnor who is flourishing in disobedience of court Judgment to order and to protect the integrity of the court and to ensure effective administration of justice and since the respondents have released the vehicle to the applicant in compliance with the order of court, order for committal will not be issued against the respondents. See Egbebu vs. IGP & Ors (2016) LPELR - 40224 (CA). 

While concluding this ruling, the court note with great displeasure that by exhibit A dated 17th March 2017 attached to the affidavit of compliance of the respondents/contemnors, the 2nd respondent only released the said vehicle on bail and bond to the applicant.

This court hereby warns the 2nd respondent and any other person or persons in that regard for the umpteenth time that the judgment and order of this court of 17th January 2017 did not order the release of applicant's vehicle on bail or on bond. The order of this court is unambiguous, it directs outright release of the vehicle to the applicant without any condition.

Therefore the act of the 2nd respondent/contemnor as contained in his correspondence of 17th March, 2017 is nevertheless an action in contempt of court and reprehensible. The said bond and bail conditions on which the applicant's vehicle was released contrary to the judgment and order of this court are hereby rendered invalid, nullified, null and void and of no effect.

Consequently, on ground of the respondents' act of subsequent compliance with the judgment and order of this court, the duo of the 1st and 2nd respondents are hereby discharged.

The above is hereby declared the ruling of this court over the committal proceedings.



HON. JUSTICE AKINTAYO ALUKO
PRESIDING JUDGE
23 - 03 - 2017

ENDORSEMENT:

Contempt Proceedings had with:

1. C. I. Chiwuzie Esq holding
the brief of A.O. Mogboh Jnr for
the applicant.
2. R.M. Dutse Esq with E.E. Ojemu Esq
For the Respondents/Contemnors.