

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON WEDNESDAY THE 19TH DAY OF OCTOBER, 2016
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE M. L. ABUBAKAR
JUDGE**

SUIT NO.FHC/AI/CS/25/2016

BETWEEN:

1. MONDAY ONEH
2. HON. EKUMA ONYEBUCHI
3. FRIDAY ONEH

} APPLICANTS

AND

1. OGBONNIA DANIEL NWANCHO
2. MR. JOHN NWECHI
3. MR. JOE NWEKE
4. COMMISSIONER OF POLICE
EBONYI STATE COMMAND

} RESPONDENTS

APPEARANCES:

H. N. Ikeoha - - 4th Respondent.

**RULING ON PRELIMINARY OBJECTION AND
JUDGEMENT ON FUNDAMENTAL RIGHT APPLICATION**

The Applicants Counsel filed this application on 15/4/2016 under Section 35(1), 36(1), (4), (5) and 44(1) of the Constitution and African Charter on Human and Peoples Rights Act praying for the following reliefs:

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

- a. A Declaration that the Applicants being a Nigerian Citizens of Ikwo extraction, are entitled to the enjoyment and protection of all the Fundamental Rights as enshrined in chapter iv of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.
- b. A Declaration that the treat of arrest and detention torture of the Applicants by the Respondents because the Applicants defended themselves against armed robbers and invaders from Oleputara Village constitutes a gross infringement of the Applicants Fundamental Rights under Section 35 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.
- c. A Declaration that destruction of Houses, Setting of Houses ablaze and Looting of the Household Property of the 2nd Applicant without any Order of Court or Tribunal in Nigeria and without hearing or trying the Applicants in any Court or Tribunal is a

breach of the Applicants' right to own movable and immovable property and not be deprived of such property under Section 44 (1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and to be tried in a Court or Tribunal whenever any allegation of a criminal offence or whenever they are charged with such offence.

- d. A Declaration that the Applicants, as Nigerian Citizens have the Right to defend themselves and their property against attackers and armed robbers such as the 1st – 3rd Respondents who attacked the village.
- e. A Declaration that the siege on the Applicants' Village of Isiofia Igbudu Ikwo by the Respondents leading to the Applicants deserting the village and going into hiding when in-fact they are the victims of a Night Inversion of their village by the 1st – 3rd Respondents and their lured thugs, constitute a violation of the Applicants' right to reside anywhere in Nigeria, right to move freely in Nigeria and right not to be discriminated upon.

- f. An Order awarding to the Applicants the sum of N500, 000.00 (Five Hundred Thousand Naira) being exemplary damages and compensation for the numerous violations of the Applicants Fundamental Rights by the Respondents herein complained of.
- g. An Order of Perpetual Injunction restraining the Respondents in whatever capacity from infringing or causing to be infringed upon the Fundamental Rights of the Applicants in the nature herein complained of or at all.

However, on the 4/10/2016 when this matter came up for adoption, the Respondents' Counsel informed the court that it should go ahead and deem the processes of the parties to be adopted under Order 12 Rule 3 of the Fundamental Rights Enforcement Procedure Rules.

As requested by the Counsel, a perusal of the records of this court shows that the Applicants Counsel is aware of the hearing date but failed or neglected to attend court. This court has no option other than to deem the processes filed as duly adopted.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

Upon further perusal of the records before the court shows that the Counsel to the 4th Respondent i.e. the Commissioner of Police Ebonyi State Command had filed a Notice of Preliminary Objection on 14/6/2016 on the ground that this suit discloses no cause of action against the 4th Respondent. He argued in his written address that there is no specific allegation against the 4th Respondent. The allegation that the Applicants who are being looked for by the police in a murder case does not establish any cause of action. The Counsel cited the case of **EMEKA vs OKADIGBO** (2012) VOL 5 – 7 (Pt 1) MJSC 139,

LAFIA LOCAL GOVERNMENT vs EXECUTIVE GOVERNOR OF NASARAWA STATE (2002) VOL 5 – 7 (Pt 111) MJSC 167.

He urged the court to strike out the Applicant's application for lack of jurisdiction.

These are the submissions of Counsel to the 4th Respondent. It should be noted that the Applicant's Counsel did not file any reaction to this Preliminary Objection but nevertheless, this court has a duty to take a

look at the said objection and the application of the Applicant to determine whether the objection has merit or not.

I agreed with the Counsel that any decision taken by a court in a matter where it has no jurisdiction amount to a nullity. In fact there are plethora of Supreme Court authorizes to that effect. See the case of **YAR'ADUA vs YANDOMA** (2015) 61 NSCQRI per M. D. MUHAMMED JSC at PAGE 51; and the case of

KAYILI vs YILBUK (2015) 61 NSCQR 359 per C. B. OGUNBIYI JSC at PAGE 400.

Generally, a cause of action is determined by reference to the Plaintiffs 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 vs INEC** (2014) 57 Part II Per S. Galadima, JSC at Page 1260.

In the present case before this court, which is a Fundamental Right issue, I believe what the court should look at is to determine whether there is cause of action or not against the 4th Respondent is the Reliefs of

the Applicants and the Supporting Affidavit attached to the application itself.

I have carefully considered the Applicant's Application, Reliefs, Affidavits and the Counter-Affidavits of all the Respondents and found that the Applicant's allegations are:

1. The Police from Noyo Ikwo Police Post who are agents of the 4th Respondent connived with the 1st, 2nd and 3rd Respondents and arrested over 35 villagers, making the other villagers to run into hiding.
2. While the Police were busy arresting the villagers, other Respondents looted and burnt the house of the 1st Respondent.
3. That the Police who are the agents of the 4th Respondent are still threatening to arrest the other absconding villagers.
4. That the Police are still aiding the 1st Respondent to trample on the rights of the Applicants and other villagers.

It should be noted that the above-mentioned allegations are contained in paragraphs 12, 13, 14, 15, 18 and 19 of the Supporting

Affidavit of the Applicants and the Counsel to the 4th Respondent even mentioned the said allegations in his written address to the main suit filed on 14/6/2016.

Based on the above findings, I am of the humble opinion that there is cause of action against the 4th Respondent but I can't say whether they have merit or not until after the determination of the main suit.

Consequently, I hold that this court has jurisdiction to hear and determine this suit. I so hold.

With the disposal of the Preliminary Objection of the Respondents, we are now left with the main suit. As I mentioned earlier, it was filed on 15/4/16 by the Applicant's Counsel under the Fundamental Rights Rules and the African Charter on Human and People as per his reliefs.

In support is a 26 paragraphs affidavit deposed to by the 2nd Applicant himself. There is also a written address where the Counsel submitted that the Applicants and the villagers' right to reside anywhere in Nigeria without being molested is being violated by the Respondents.

JUDGE
FEDERAL HIGH COURT
ABAKALIKI

He added that their right to defend themselves and their properties has been violated and their liberty restricted. He cited the case of

WAPPA vs MOURA (2006) 18 NWLR (pt.1010) 18 at 21 Ratio 1, 2 and 3, which deals with fair hearing. He urged the court to grant their application.

In reaction, the Counsel to the 1st – 3rd Respondents filed a 27 paragraphs Counter-Affidavit on 4/5/16 deposed to by the 1st Respondent. Attached is Exhibit I which is a Charge No. MAB/66C/2015 filed at the Magistrate Court, Abakaliki. There is also a written address where the Counsel cited Section 33(1), 35(2) and 36 of the Constitution and submitted that as per Exhibit I, the Applicants who are at large and the Accused Persons are suspected of killing one Sunday Nwali. He added that they should submit themselves for investigation to the 4th Respondent and urged the court to refuse the application.

In the same vein, the 4th Respondent also filed an 18 paragraphs Counter-Affidavit deposed to by one Sergeant Obinna Umuanyi and attached are Exhibits RES 1 – 7 which are statements of

Witness/Accused. There is also a written address where the Counsel raised a sole issue for determination. He submitted that as per paragraphs 10 – 14 of their Counter-Affidavit and Exhibits Res 02 – 06 attached, the Applicants are suspected to have masterminded the killing of one Sunday Nwali and subsequently ran into hiding therefore preventing the police from investigating them. He cited Section 4 of the Police Act, the case of **GANI FANEHINMI vs IGP** (2002) 7 NWLR (pt 767) at 606; and

FAJEMIROKUN vs COMMERCIAL BANK (CREDIT LYONNALS) NIG. LTD. (2002) 10 NWLR (pt. 774) 95. He urged the court to reject the application and hold that they have failed to prove their case.

Those are the submissions of Counsels to the Applicants and Respondents. The issue for determination is whether the Applicants are entitled to the reliefs sought.

I have carefully considered the application and the other processes filed. The case for the Applicant is that:

1. The 1st – 3rd Respondents hired some thugs and attacked the Applicant's village on 2/2/2016. The aim of the attack is to kill and rob the properties of the prominent people in the village including the Applicants.
2. The following day, it was discovered that one the hired thug, one Sunday Nwali was killed in the process of the said attack. The deceased was killed by the 1st Respondent who hit him on the head with a machet for preventing him from snatching the village gong.
3. The Respondents connived with the police from Noyo Ikwo police post and arrested 35 villagers, making the rest of the villagers to run into hiding.
4. The Respondents aided by the police set the House of the 1st Applicant on fire and looted the Applicants properties.

Above represent the case for the Applicants. However, the Respondents denied all these allegations in their Counter-Affidavits and claimed that:

1. The police received a complaint of the murder of one Sunday Nwali in Oleputara Community in Ikwo Local Government Area of Ebonyi State. The complainant is the 1st Respondent (See Exhibit RES 01).
2. In the course of investigation, 4 suspects and the Applicants were suspected of committing the crime. Many witnesses mentioned their names and before they could be arrested for further investigations, they ran into hiding.
3. The four suspects and others at large have been charged at the Magistrate Court, Abakaliki for offences of conspiracy and murder of Sunday Nwali. See Exhibit I attached to the Counter-Affidavit of the 1st to 3rd Respondents and paragraph 15 of the 4th Respondent.

Those are the submissions of Counsel to both Applicants and the Respondents. The issue for determination is whether the Applicant has proved their case or not.

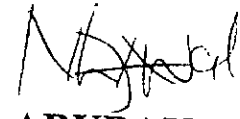
It is trite that proof is the means of process of establishing the truth of what is asserted by one side and denied by the other side of a dispute. The primary onus of proving his case lies on the Plaintiff or Applicant. See the case of **SAKATI vs BAKO VOL 62 NSCQR Part 1, Per W. S. Nwuta JSC at Page 582.**

I have carefully considered the application and all the other processes filed and found that from the available evidence, the Applicants have failed to prove their case against the Respondents. He who ever assert must prove. See Section 131 and 132 of the Evidence Act and the case of **SAKATI vs BAKO (Supra).**

Secondly the Applicants are suspected to have murdered one Sunday Nwali and Section 4, 23 and 24 of the Police Act and Sections 3, 4, 18, and 19 of the A. C. J. A. (Administration of Criminal Justice Act) allows the police to arrest and investigate any person upon reasonable suspicion that he has committed a criminal offence. See also the case **FAWEHINMI vs IGP (2002) NWLR pt 767; and**

EJIOFOR vs OKEKE (2002) 7 NWLR (pt. 665) 368 at 384 where the courts are enjoined to take judicial notice of the powers of the police as mentioned in Section 4 of the Police Act.

In view of the above, all the reliefs of the Applicants are hereby refused. This is my decision.



M. L. ABUBAKAR
JUDGE
19/10/16

