

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ILORIN JUDICIAL DIVISION**  
**HOLDEN AT ILORIN**  
**ON FRIDAY THE 13<sup>TH</sup> DAY OF NOVEMBER, 2015**  
**BEFORE THE HONOURABLE JUSTICE A.O. FAJI**  
**JUDGE.**

SUIT NO: FHC/IL/CS/28/2015

BETWEEN:

1. MALLAM BABATUNDE MAHMUD } APPLICANTS  
2. ALHAJI ADISA AIYEDUN }

AND

ALHAJI MUYIDEEN OSHODI ..... RESPONDENT

**JUDGMENT**

This application for the enforcement of the Fundamental Rights of the two Applicants was filed on 28<sup>th</sup> May 2015. It seeks two reliefs to wit.

1. A **DECLARATION** that the threat of arrest and detention of the Applicants by the Respondent using the instrumentality of the Nigeria Police or any agency or means whatsoever is bizarre, illegal, unlawful, baseless and constitutes a gross violation of and an infringement upon the Applicant's right to personal liberty and

freedom of movement as guaranteed under and by virtue of Sections 34, 35 and 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Articles 4,5,6 and 12 of the Africa Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9 Laws of Federation of Nigeria 2004.

2. **AN ORDER** of injunction restraining the Respondent either by himself, his agents, servants privies and/or any person, body, authority or any Police Officer or other similar agency from arresting and detaining or causing the arrest or detention of the Applicants by whatsoever means in an illegal and unconstitutional manner.
3. **AND** for such further order(s) as the Honourable Court may deem fit to make in the circumstance of this case.

The grounds of the Application are:

- i. The 1<sup>st</sup> Applicant and the respondent have been friends since 1983.
- ii. The Respondent has been threatening to unlawful (sic) and illegally arrest and detain the Applicants using the instrumentality of the Nigeria Police and any other security agency.

- iii. The threat of arrest and detention of the Applicants in an unlawful and illegal manner by the Respondent using the men of the Nigeria police or any other agency is a gross violation of and / or a likely infringement upon the Applicants Fundamental Rights.
- iv. The Respondent has been secretly making serious arrangement to cause the Applicants to be arrested and detained in an illegal and unlawful manner.
- v. The Applicants nor ((sic) live in perpetual fear of unlawful arrest and detention in the hands of the Respondent.
- vi. The threat of arrest and detention of the Applicants by the respondent in an unlawful and illegal manner using the instrumentally of men of the Nigeria Police and or any other means is unconstitutional and without any reasonable cause.
- vii. The Applicants have been, is being and is likely to be arrested and detained in an unconstitutional and illegal manner by the Respondent.
- viii. It will be in the interest of justice to grant this Application.



The 2 Applicants swore to separate affidavits in support.

Counsel identified 3 limbs in Fundamental Rights Enforcement to wit:

- The Completed breach
- When the breach is on going and.
- The likelihood of a breach.

The instant case involves the 3<sup>rd</sup> limb. The threat of arrest and detention as in this case is thus an infringement of the right to personal liberty and freedom of movement.

Counsel submitted that the threat is unjustifiable in law. Applicants have been subjected to mental agony. There is no allegation of crime against them and no reasonable belief that they have committed offences known to Law. The threat to arrest and detain is therefore illegal and unconstitutional.

The Respondent swore to two Counter-affidavits in response to each Applicant's affidavit in support. It is Respondent's position that the Applicants defrauded him in respect of a building transaction. There was a settlement meeting at which Respondent was prevailed upon not to report the matter to the Police after 1<sup>st</sup> Applicant promised to refund the money within 5 days. Before this period ended, Applicants approached the Court.

Counsel submitted that Respondent did not violate Applicants' rights as the Applicants are fraudsters seeking to use the Court to oppress him. There is no breach since Respondent has not put the machinery of the Police in motion. The Respondent promised not to report to the Police because of Applicants promise of a refund. Counsel urged the Court not to shield the Applicants from prosecution.

An order is also being sought in relief 2 against the Police - a none-party. The Police is also not Respondent's agent. The Court was urged to strike out the claim for lack of evidence. There is no proof that the Police visited Applicants because if it did, information would have been left behind for Applicant to report to the Police. It is also a matter of conjecture as to what the Police would do when the matter is reported to them. The Police must not be hindered in its function of investigating crime. The Applicant seeks the Court's order to prevent Respondent from reporting a perceived criminal act against him. That is the civic right of the respondent.

The application is thus not only premature and incompetent. It lacks merit. Threatening to make a report of a crime to the Police is not an infringement of fundamental

Rights. Counsel referred to AG ANAMBRA – V – CHRIS UBA (2005) 33 WRN 191.

The Court was urged not to prevent Respondent from making a report of a crime to the Police as the Court would not prevent the Police from investigating a crime. There is no proof of infringement of the Applicants' rights.

Counsel urged the Court to dismiss the application.

Applicants swore to further affidavits on 19<sup>th</sup> June 2015.

Counsel submitted that Applicants seek protection from being unlawfully arrested and detained by the Respondent using the instrumentality of the Police. The Police has power of arrest but Respondents and some other individuals claiming to be Policemen acting on his behalf have been threatening to arrest and detain Applicants for a long time without trial. This has not been controverted. Counsel urged the Court to protect a citizen whose right is likely to be infringed by being illegally arrested and detained without trial.

In oral address respondent's Counsel referred to the challenge to the competence of the suit in his address.

Those were the submissions of Counsel.

I think the last point should be considered first. It relates to the none-joinder of the Police. The contention is that relief



2 relates to the Police. Furthermore, the Police is not an agent of the Respondent and can not fall within the preview of agents and /or privies. Applicants' Counsel did not respond and is deemed to have conceded the point.

What is more, a relief is being claimed against the Police – a non – party. If granted that order cannot bind the Police. Furthermore, the Police is a constitutional body created by the constitution and is not an agent of any one. I think relief 2 cannot serve any purpose since the Court lacks jurisdiction over a non- party. Furthermore, the issue of fair hearing looms large. No person should be condemned unheard. I think for this reason relief 2 must be and is hereby struck out.

Even if it is contended that only the name of the Police should be struck out, relief 2 serves no purpose. No one should arrest and/or detain anyone in an illegal and unconstitutional manner.

That would however depend on if the main relief shows any illegal or unconstitutional intention.

On relief I, it is contended that the threat of arrest and detention is a likelihood of breach of constitutional rights. I would have thought that such a threat by a private person would have been reported to the Police. If anyone threatens to

use the Police, until the Police acts in line with that threat, there is no likelihood of a breach.

Paragraphs 14 and 15 to my mind appear vague. The men in plain clothes who 'locked' 1<sup>st</sup> Applicant's house did not say they were Policemen.

Paragraph 14 of 2<sup>nd</sup> Applicant's affidavit also states that some men in plain clothes came to his own house and threatened to detain him. He was however not at home. The message was left with his wife. Again, no mention was made of the men being Policemen. No letter of invitation was left and no information as to where Applicants were to report to the Police was made available.

Applicants also referred to various threatening telephone calls from the Respondent.

Even if it is assumed that those who called at Applicants' house were Policemen the Police is not a party so as to have the opportunity of accepting or denying these allegations.

This issue was raised orally by Respondents' Counsel with no response by Applicants' Counsel. Again as I said in relation to relief 2, this relief cannot be granted in the absence of the Police.



In any event, in so far as the men who allegedly visited Applicants' house did not identify themselves as Policemen, there is no link between the threats allegedly made by Respondent on phone and their visits.

In any event, if anyone threatens arrest and detention, that is not something that should be swept under the carpet. Indeed, such a matter should be reported to the Police especially when strange men visit without disclosing their identities. If indeed they were Policemen, they would have disclosed their identities. Not having so disclosed, I think the appropriate thing would have been to report to the Police.

I think this suit is a wild –goose chase. It seeks to prevent the Police from being told about an allegation of crime. It seeks to make it impossible for a report to be made to the Police. It actually seeks to infringe on the civic duties of a citizen. It seeks to prevent a citizen from resorting to the due process of law.

To my mind also, it seeks to put the Court as an obstacle in the way of due process. It is premature as it seems to penalise by injunction, an infringement that has not taken place. From the circumstances there is no likelihood of a

likelihood of breach a fortiori a likelihood of breach as contemplated by the constitution.

This suit clearly lacks merit and is accordingly hereby dismissed.

  
**A. O. FAJI**  
**JUDGE**  
**13/11/15**

**A. Ishola Esq. for the Applicants.**  
**Goke Akande Esq. with A. O.**  
**Mahmud Esq. for the Respondent.**