

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ILORIN JUDICIAL DIVISION**  
**HOLDEN AT ILORIN**  
**ON FRIDAY 9<sup>TH</sup> OCTOBER, 2015**  
**BEFORE THE HONOURABLE JUSTICE A.O. FAJI**  
**JUDGE**

**SUIT NO:FHC/IL/CS/21/2015**

**BETWEEN**

**SEYI OYINLOLA ..... APPLICANT**

**AND**

- |  |   |                    |
|--|---|--------------------|
| <ol style="list-style-type: none"><li>1. NIGERIA NAVY SCHOOL OF HEALTH SCIENCE OFFA</li><li>2. COMMANDANT, NIGERIA NAVY SCHOOL OF HEALTH SCIENCE OFFA (Captain J.A. Ajayi)</li><li>3. ABUBAKAR SHEHU</li><li>4. EME ABANG</li><li>5. MARKUS SUNDAY</li></ol> | } | <b>RESPONDENTS</b> |
|--|---|--------------------|

**JUDGMENT**

By motion on notice filed on 29/4/15, the Applicant seeks an order for the enforcement of his Fundamental Rights in the following terms:

1. A declaration that the unlawful molestation and violent attack of the Applicant by the agents of the 1<sup>st</sup> Respondent when they came to purchase curtain materials from his shop constitutes a flagrant violation of the Applicant's right to personal liberty.
2. A declaration that the gross assault, harassment and intimidation meted out to the Applicant by the 1<sup>st</sup> Respondent constitutes a grave violation of the Applicant's right to dignity of human person.
3. A declaration that the unjustified seizure of the phones of the Applicant, apple Ipad, and the daily sales (including his personal documents) by the agents of the 1<sup>st</sup> Respondent constitutes a violation of the Applicants right to private and family life.

4. An order of mandatory injunction, compelling 3<sup>rd</sup> -5<sup>th</sup> Respondents to return all the daily sales, items i.e. phones, Ipad (including personal documents belonging to the Applicants) which are in the custody of the 3<sup>rd</sup>-5<sup>th</sup> Respondents.
5. An order of mandatory injunction compelling the Respondents, jointly and severally to write an unalloyed and unmitigated letter of apology to the Applicant as required under the 1999 constitution of the Federal Republic of Nigeria and a publication of same in one of the national dailies.
6. An order of perpetual injunction restraining the 1<sup>st</sup> to 5<sup>th</sup> Respondents by themselves, agents, privies or whomsoever acting through them or for them from further molesting, assaulting, intimidating or harassing the Applicant herein.

7. A sum of Ten Million Naira only, jointly and severally against the 1<sup>st</sup> – 5<sup>th</sup> Respondents as general exemplary and aggravated damages to assuage the feelings of the Applicant for the physical mental undignifying treatment and psychological damage done to his person by the respondents.

The ground for seeking the reliefs is that the gross assault, mental and psychological torture, harassment, intimidation, undignifying treatment and brutal attack of the Applicant by the Respondents herein is unlawful and amounts to a violation of the applicant's fundamental rights to personal liberty, dignity of human person and the right to private and family life. Applicant swore to a 28 paragraph affidavit to which was exhibited

exhibits S001 to S007. A verifying affidavit was also filed.

It is Applicant's position that his rights were violated by the Respondents when they came to his shop to purchase curtain materials, consequently, he suffered psychological and emotional pain and unless checked, Respondents might do so again.

The applicant's rights to personal liberty and dignity of human person were violated even though Applicant was carrying out his legitimate business. He did nothing Criminal and there was no basis for attacking him as he only tried to make peace between 3-5<sup>th</sup> Respondents, Applicant's mother and a pregnant woman. No reason was given in flagrant disregard of the rule of law. Applicant was stripped half naked and subjected to in human treatment.

This is degrading treatment in contravention of Section 34 (1) (a) of the 1999 constitution and Article 5 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 LFN 2004.

The seizure of applicant's phones, I pad and documents is also unconstitutional. Reference was made to paragraph 13 of the affidavit in support to support the assertion that Applicant's photograph in a half-nude state was taken in violation of his right to private and family life. Paragraph 13, to my mind, only shows that Applicants' photograph was taken. Who took it was not stated. The context however seems to suggest that the photograph was taken by or with consent of the Applicant. This seems to me to have knocked of the claim based on section 37 of the 1999.

Having established a breach of his fundamental Rights, damages flow automatically pursuant to Article 5 of the African Charter. Applicant is also entitled to a public apology published in one of the national dailies. Damages lie no matter how minute the trespass. In view of the degrading treatment meted out to Applicant who is a degree holder, exemplary damages should be awarded. This will put some caution in the future activities of the Respondents. The behavior of the Respondent is punishable, the means of the Respondents and the frequency of the act should be considered. The 1<sup>st</sup> Respondent is a Federal Institution of higher learning and can afford to pay.

The unrepentant posture and brazen disregard of the Respondents for the rule of law has earned them the reputation of being one of the most oppressive

and repressive institutions in the country. Counsel relied on:

UZOMA OKERE – & 1 OR –V- REAR ADMIRAL AROGUNDADE & NIGERIA NAVY (unreported).

Counsel urged the Court to grant the reliefs as claimed.

3<sup>rd</sup> Respondent swore to a 14 paragraph counter-affidavit to which was attached an exhibit.

The Respondents' position is that they were attacked by the applicant and his gang. It was the police who rescued 3<sup>rd</sup> and 4<sup>th</sup> Respondents from Applicant, took them to the Area 'A' Police Station investigated the incident and produced a Police Report **Exhibit NNI**.

Counsel submitted that Applicant who was the aggressor cannot file for enforcement of his



Fundamental Rights. The claim therefore falls outside the purview of chapter 4 of the constitution. The Court thus lacks jurisdiction. The claim for damages must also fail in the face of Exhibit NNI – a report issued by the Police pursuant to its powers under Section 4 of the Police Act. Counsel also relied on *OLUSINA AJAYI –V- THE STATE* (2013) 9 NWLR (Part 1360) 589 at 605 – 606. Counsel urged the Court to rely on exhibit NNI and find that Applicant has merely come to Court to divert attention from his conduct. Having deposed that it was 3<sup>rd</sup> & 4<sup>th</sup> Respondents that were arrested and taken to the police station, and not Applicant, there is no basis for Applicant's action.

The affidavit evidence does not also bear out Counsel's submission that he was robbed of the stated items and by whom. Counsel did not also

supply certified true copies of the unreported judgments cited.

Counsel referred to order XV rule 4 Fundamental Rights Enforcement Procedure Rules and order 13 Federal High Court Civil Procedure Rules and submitted that they show that 3<sup>rd</sup> & 4<sup>th</sup> Respondents can make a counter-claim. Relying on paragraphs 6-12 of 3<sup>rd</sup> Respondent's counter-affidavit and exhibit NNI, Counsel submitted that 3<sup>rd</sup> and 4<sup>th</sup> Respondents should be compensated for the attack on them upon instigation of the Applicant. The Court can make the order pursuant to order XI Fundamental Rights Enforcement Procedure Rules.

Counsel rounded up by submitting that there was no infraction of the Fundamental Rights of the Applicant.

The Applicant swore to a further and better affidavit and filed a written address along with it on 2<sup>nd</sup> June, 2015.

Counsel challenged the competence of the counter-affidavit which was filed out of time without leave. In the course of oral arguments, Respondents' Counsel was granted leave to regularize his position.

Counsel submitted that Applicant was assaulted which is a variant of torture. He has chosen to enforce his Fundamental Rights and not go by way or a civil action. The contents of paragraphs 7 (a) (b) and (c), 10 and 11 (a) (b) and (c) are not within the knowledge of the deponent.

He could not know he was taken to the Police Station if he was in a coma. He did not however disclose the source of his information.

The defect goes to substance, not form. They should be struck out or at best disregarded as they have inherent contradictions. The assertions that Applicant was never tortured molested or dehumanized cannot stand in the face of exhibit S001, S003, S004 and S006 which show that he was assaulted and molested by 3<sup>rd</sup> and 4<sup>th</sup> Respondents and their colleague. In one breath respondents say in paragraph 6 (b) that they were on their way home from work but exhibit S006 states that they acted in their individual capacity. There is no evidence of how they were attacked as to justify the molestation of the applicant. Otherwise, criminal charges ought to have been pressed against Applicant.

The Police report exhibited was not certified There is no medical report. The Counter-Affidavit should therefore be discountenanced. The receipt of

exhibits S001, S003, S004-S007 was not denied and the contents of the said documents are thus deemed admitted. The counter-affidavit also contains blanket denials. Paragraph 6(e) is contradictory of exhibit NNI. Paragraph 7 (c) of the Counter-Affidavit suffers the same Fate. Paragraphs 7 (c), 8 (b) & (d), 11(b), and 12 (c) are argumentative. Exhibit NNI though uncertified is also suspect as it was written on 15/4/15—a day after Applicants' letter of reminder was sent. The issues raised by the applicant have not been addressed and are deemed admitted. By saying Applicant cannot apply to enforce his Fundamental Rights because he was in breach of the law, Respondents constituted themselves into a Court of law. It is also erroneous to equate a police report – Exhibit NNI – with a

Counsel's attempt at distinguishing authorities cited by him.

By impliedly admitting receipt of exhibit S005, Respondents admitted its contents to the effect that Respondents (3<sup>rd</sup> & 4<sup>th</sup>) violated Applicants' Fundamental Rights. They also failed to show how this was done in a personal capacity by 3<sup>rd</sup> & 4<sup>th</sup> Respondents. Counsel urged the Court to find that there was an unlawful assault and dehumanizing treatment of the Applicant by the Respondents.

The Respondents are not in the least remorseful and should be visited by an award of exemplary damages. Counsel relied on ODOGU -V- A-G. FEDERATION (1996)7 SCNJ 132 at 139-140. The Respondents conduct is sufficiently outrageous

it discloses malice, cruelty, insolence and flagrant disregard of the law.

In view of the difficulty in serving 5<sup>th</sup> Respondent, Counsel discontinued against him and his name was struck out on 9<sup>th</sup> June, 2015. The written addresses were also adopted by counsel on 9<sup>th</sup> June 2015.

Respondents Counsel urged the Court to discountenance the document exhibited by the Applicant as it is a mere referral form. It also states that the Applicant was jumped upon from a car when everything in this matter took place in Applicant's mother's shop. The Police report was also not challenged. A reply is not an opportunity to re-argue the case. Counsel urged the Court to disregard the

further and better affidavit and reply on points of law.

Counsel urged the court to award the counter-claim based on order 11 Fundamental Rights Enforcement Procedure Rules.

Applicant's case is also inconsistent since he did not state who robbed him, when and where. From exhibit NNI 3<sup>rd</sup> Respondent was taken comatose to the hospital. 4<sup>th</sup> Respondent has not been to work since then. There is no contrary deposition by the Applicant.

Responding, Applicants' Counsel submitted that there is no medical report or picture to show that 3<sup>rd</sup> and 4<sup>th</sup> Respondents were given a permanent mark. To allege that there was an investigation cannot be



true since Applicant was never invited after the day of the incident.

The counter-claim is incompetent as it discloses no special circumstances or reason. It is also not in accordance with order 13 of the Federal High Court Rules. Counsel urged the Court to dismiss the Counter-Claim.

Those were the submissions of Counsel.

I will first dispose of a preliminary matter. Respondents have contended that Applicant has no locus to apply for the enforcement of his Fundamental Rights because he was the aggressor. The counter-affidavit is replete with allegations that Applicant and his gang attacked 3<sup>rd</sup> & 4<sup>th</sup> Respondents because they came to the rescue of a soldier who was being beaten by Applicant and his

gang. The Police report – exhibit NNI was also exhibited.

Applicant contends that exhibit NNI was not certified and should not be relied upon. Respondents did not respond to this point. The issue of locus standi is a matter of jurisdiction.

The Applicants processes however to my mind show locus. That is what is to be considered in determining locus standi.

Even if Exhibit NNI is the linch-pin for this contention, it was not certified being a public document. The facts as put forward by Respondents on this point appear to be contradictory and in fact what would have cleared vagueness is not admissible before this Court. Accordingly, I must find that Respondents have not made out an issue of

jurisdiction. I will therefore discountenance the submission on lack of locus standi.

Prayer I refers to 'agents' of 1<sup>st</sup> Respondent. Applicant's exhibit S005 did not describe 3<sup>rd</sup> and 4<sup>th</sup> Respondents as agents of 1<sup>st</sup> Respondent. 1<sup>st</sup> Respondent's letter-exhibit 5006 - stated categorically that the Nigerian Navy did not send any of its personnel to violate Applicant's rights and that they acted in their individual capacity. I do not see any basis for the conclusion that the agents of the 1<sup>st</sup> Respondent violated Applicant's rights. The word 'agent' is a legal word. It is for someone who alleges agency to prove same. That a person is an employee does not turn him to the agent of his employer as to attract vicarious liability. It must be shown that the act in question was carried out by the employee in the course of his employment. There is

no deposition that 3<sup>rd</sup> & 4<sup>th</sup> Respondents went to Applicant's shop to purchase curtain material on the instructions of or with the knowledge and consent of 1<sup>st</sup> Respondent. 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not also hold themselves out as such. 1<sup>st</sup> Respondent did not hold 3<sup>rd</sup> and 4<sup>th</sup> Respondents out as such neither. This submission affects reliefs 1-3 which are hereby struck out.

I cannot also make any finding of personal liability since the reliefs were not claimed against 3<sup>rd</sup> and 4<sup>th</sup> Respondents personally, in the alternative. Furthermore, relief 3 says some items were seized whilst paragraph 15 of the affidavit in support states that Applicant was 'robbed'. Robbery is a crime which must be proved beyond reasonable doubt. That has not been done. There is also no claim for the destruction of the Applicant's shop.

As regards relief 4, there is no evidence that the items listed therein are in the custody of 3<sup>rd</sup> to 4<sup>th</sup> Respondents. I cannot therefore order 3<sup>rd</sup>-4<sup>th</sup> Respondents to return them. Indeed, relief 2 states that it was the 1<sup>st</sup> Respondent who meted out the gross assault, mental and psychological torture on the Applicant. There is no claim that it was done by 1<sup>st</sup> Respondent's agent and who those agents are. Since reliefs 1-3 did not mention 3<sup>rd</sup> -4<sup>th</sup> Respondents there can be no basis for making an order of mandatory injunction against them. Since it was not established that the named agents of 1<sup>st</sup> Respondent carried out the wrongful act, 1<sup>st</sup> Respondent cannot be visited with an order of injunction since it is not a human being and it was not alleged that the act was done by its agents.

Reliefs 5 and 6 must therefore fail. Reliefs 1-6 having failed therefore, they are hereby dismissed.


Relief 7 has no leg to stand on and is accordingly hereby dismissed. It is pertinent to note that reliefs 1-3 are declaratory in nature and the Plaintiff must succeed on the strength of his own case and not on the weakness of the defence.

The Applicant's claim must therefore be and is hereby dismissed.

As regards the counter-claim, having found that the Counter-Affidavit is contradictory and that exhibit NNI not being certified cannot be relied upon by the Court, there are no facts in support of the counter-claim that is if one assumes that the counter-affidavit as couched deposed to facts which would ground the counter-claim.

Even then paragraph 13 of the counter-affidavit which introduced the notion of a counter claim does not specify what the damages claimed represent. It is therefore a vague claim and must be and is hereby also dismissed.

Both the instant application for enforcement of Fundamental Right and the counter-claim therefore fail and are accordingly hereby dismissed respectively.

  
**A.O. FAJI**  
**Judge**  
**9/10/15**

**Counsel:**

**A. Bello Esq. for the Applicant.**

**Anthony Ebeh Esq.**

**for Respondents.**