

(17)

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON THURSDAY THE 15TH DAY OF SEPTEMBER, 2016
BEFORE THE HONOURABLE JUSTICE N.I. AFOLABI
JUDGE

SUIT NO: FHC/IL/CS/11/16

BETWEEN:

MR. DAVID OROGEAPPLICANT

AND

- 1. PASTOR CHRISTOPHER IFECHUKWU**
 - 2. INCORPORATED TRUSTEES OF THE LORD'S CHOSEN CHARISMATIC REVIVAL MINISTRY**
 - 3. INSPECTOR GENERAL OF POLICE**
 - 4. CORPORAL JOHN OMALE
(E DIVISION, CRIME DEPT. KULENDE ILORIN)**
- } ..RESPONDENTS

JUDGMENT

This is an Originating Motion brought pursuant to Order II Rules 1 – 4 of the Fundamental Rights Enforcement Procedure Rules 2009 and Section 34, 35 and 46 of the Constitution, Federal Republic of Nigeria (1999) as amended, Articles 2, 3, 4, 5 and 6 of the African Charter on Human and Peoples Right Ratification and Enforcement Act and under the inherent jurisdiction of this Honourable Court. Seeking the following reliefs:

1. A DECLARATION that the harassment, intimidation, assault, arrest and detention of the Applicant, at the instance of the 1st and 2nd Respondents and harassment, intimidation, assault, arrest and detention by the 3rd and 4th Respondents is illegal, Unconstitutional and in contravention of the provisions of the 1999 constitution of the Federal Republic of Nigeria.
2. The sum of ₦20,000,000.00 (Twenty Million Naira) only as general damages against the Respondents jointly and/or severally for making false claims and allegation against the applicants.
3. The sum of ₦20,000,000.00 (Twenty Million Naira) only as exemplary damages against the Respondents jointly and/or severally for making false claims and allegations against the applicants.
4. AN ORDER of perpetual injunction restraining the respondents or any person acting under their instruction, from arresting, detaining or requesting the applicant to continually attend their office for the purpose of an investigation pursuant to the claims and allegations made by the 1st and 2nd respondents.
5. AND FOR such Order or further Orders as this Honourable Court may deem fit to make in the circumstance of this case.

The said application is supported by a 22 paragraph affidavit deposed to by one David Oroge, Male of Lawal Street, Kulende, Ilorin Kwara State, the applicant herein. Sworn to on the 3rd day of March, 2016 as well as a written address dated the 3rd day of March, 2016 and filed on the same day.

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The 3rd and 4th Respondents in opposition filed a joint Counter-affidavit sworn to by one Fajobi Abdulganiyu, a Police Officer attached to the Nigerian Police Divisional Headquarters "E" Division Kulende, Ilorin, Kwara State. Sworn to on the 19th day of April, 2016 and deemed properly filed by this Honourable Court on the 19th day of April, 2016 with Exhibit attached. A Written Address was also filed by the 3rd and 4th Respondents. The 3rd and 4th Respondents in opposition also filed a joint further Counter affidavit deposed to by one Fajobi Abdulganiyu, a Police Officer attached to the Nigeria Police Divisional Headquarters "E" Division Kulende, Ilorin of Kwara State. Sworn to on the 3rd day of May, 2016 and deemed properly filed by this Honourable Court on the 3rd day of May 2016.

The 1st and 2nd Respondents on their part, filed a joint Counter-Affidavit deposed to by one Christopher Ifechukwu, a clergy of Sango, opposite ECWA Church near Olutoye junction, Ilorin, Kwara State. Sworn to on the 6th day of May, 2016 and deemed properly filed by this Honourable Court on the 6th day of May 2016. A Written Address was also filed by the 1st and 2nd Respondents jointly.

In moving the application O. A. Adewole Esq Counsel to the Applicant, stated that from all the affidavit evidence, it is clear that the advertisement for the Church Vigil was made public and it should be expected that all those who saw the advert would attend and that the 3rd and 4th Respondents acted on the instruction and/or instance of the 1st and 2nd Respondents in wrongfully and unconstitutionally

assaulting, arresting and detaining the applicant and urged the Honourable Court to grant the application as prayed.

In response, Counsel to the 1st and 2nd Respondents A. C. Ofojiuba Esq in their Counter Affidavit, argued that the applicant is not entitled to any of the reliefs sought against the 1st and 2nd respondents, having woefully failed to prove by affidavit evidence that they acted malafide in reporting the matter to the police and that he suffered any Police brutality. He further stated that the actions of the 1st and 2nd respondents was within the law as all they did was report a crime of an allegation of theft, in exercise of their legal rights and that the Police are at liberty to investigate any allegation of commission of crime by any person reported to them, that the police may in the course of such investigation, exercise their discretion to invite, arrest and/or keep the suspect in lawful custody within a reasonable time, within 24 hours in the instant case. He urged the Court to dismiss the application as it is a mere gold digging exercise.

The Counsel to the 3rd and 4th respondent Mrs. K. U. Abimbola on their part responded in their Counter affidavit and argued that from the totality of the affidavit evidence before the Honourable Court, the applicant have failed to give direct, cogent and compelling evidence that the 3rd and 4th Respondents violated any of his fundamental rights. Counsel also admitted that from the affidavit evidence, the applicant was arrested on the complaint and/or

allegation of crime made against him by the 1st and 2nd respondent but that the arrest and release was however within a reasonable time less than 24 hours. She urged the Court to hold that the claims before the Court are not granted as a matter of course as the Onus is on the Applicant to prove his case through credible evidence which the applicant has failed to do. She finally prayed the Court to dismiss the application in its entirety.

The 3rd and 4th respondent also filed a joint Further Counter-affidavit deposed to by one Fajobi Abdulganiyu, a Police Officer attached to the Nigerian Police Divisional Headquarters 'E' Division Kulende, Ilorin, Kwara State. Sworn on the 3rd of May 2016 and deemed properly filed by this Honourable Court on the 3rd day of May, 2016.

The Applicant in response to the 3rd and 4th Respondents' Counter affidavit and written address, filed a reply on points of law and further affidavit deposed to by one David Oroge, (the applicant herein), Male of Lawal Street, Kulende, Ilorin, Kwara State. Sworn to on the 5th day of May 2016 and deemed properly filed by this Honourable Court on the 5th day of May 2016.

The Applicant also in response filed a further and better affidavit in response to the 3rd and 4th Respondents Further Counter Affidavit deposed to by one David Oroge, Male of Lawal Street, Kulende, Ilorin, Kwara State, the applicant herein. Sworn to on the

9th day of May 2016 and deemed properly filed by this Honourable Court on the 9th day of May, 2016.

The Applicant also in response to the 1st and 2nd Respondents' Counter Affidavit and Written Address filed a Reply on points of law and a Further affidavit deposed by one David Oroge, Male, of Lawal Street, Kulende, Ilorin, Kwara State, the applicant herein . Sworn to on the 18th day of May 2016 and deemed properly filed by this Honourable Court on the 18th day of May, 2016 with exhibit attached.

The 1st and 2nd Respondents' in response filed a Further Counter Affidavit in response to the Applicant's Further Affidavit. Deposed to by one Christopher Ifechukwu, Male, Clergy of Sango, opposite ECWA Church near old Olutoye Junction Ilorin Kwara State. Sworn to on the 15th day of June 2016 and deemed properly filed by this Honourable Court on the 15th day of June 2016 with Exhibits attached.

I have carefully considered the arguments of Counsel made in the course of adumbrating as well as the processes filed in support and opposition of this application respectively and not just the abridged version read out above.

From all of the above, the main issue distilled is whether or not the actions of the respondents amounted to a breach of the applicant's fundamental Human Rights and whether Applicant and the Respondents have placed before this Court enough material

evidence to enable this Court exercise its discretion judicially and judiciously on behalf of either of the parties.

However, before I delve into that, I would like to state that parties in this Suit were filing processes as they pleased without regards to the clear terms and wordings of the Fundamental Rights Enforcement Procedure rules.

The 1st and 2nd Respondents in flagrant breach of Order II Rule 6 filed a Further Counter affidavit in response to the Applicant Further Affidavit.

In Resurrection Power Investment Company Limited v. Union Bank of Nigeria Plc (2013) LPELR – 21262 (CA) the Court of Appeal per AGIM J.C.A. (pages 18 – 19) paragraph A – C held that

“The court in exercising its power must bear in mind the fundamental principle that it is in the public interest that there should be an end to litigation which is often expressed in the popular latin maxim, republicae ut sit finis litium. This is to ensure that access to justice is not frustrated and administration of justice is not brought to disrepute.....”

I therefore find that the 1st and 2nd respondents further Counter affidavit in response to the applicants’ further affidavit dated 18th day of May 2016 has no basis in law as same was filed in breach of the express provisions of the Fundamental Right Enforcement Procedure rules and same is subsequently struck out.

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In the same vein, I also find that the 3rd and 4th Respondents further Counter affidavit against the Originating application filed on the 3rd day of May 2016 was also filed in flagrant breach of the Fundamental Right (Enforcement Procedure) Rules and without the leave of Court and same having no basis in law is also struck out.

Applicants' further and better affidavit in response to the 3rd and 4th Respondents further Counter affidavit dated 3rd May 2016 is also subsequently struck out.

I will now attend to the query earlier posed, which is has the applicant placed before this Honourable Court enough material evidence to enable this Court exercise its discretion in his favour For the purposes of clarity, the definition of some key words is necessary in order to enable the Court come to a fair and just decision.

The Merriam Webster Learner's Dictionary defined a "Church" as *"a building for public and especially Christian Worship"* and the Merriam Webster Learner's Dictionary also defined the term "public" as meaning *"exposed to general view."*

A public place can generally therefore be said to be an indoor or outdoor area, whether privately or publicly owned to which the public have access by right or by invitation, expressed or implied whether by payment of money or not, but not a place when used

exclusively by one or more individuals for a private gathering or other personal purposes.

The 1st and 2nd Respondents by the very act of Exhibit DOI, that is, the placing of the Church sign board in a public place, made the Church a public place and thereby invited the public at large to worship with them which invitation was honoured by the Applicant on account of his presence within the Church premises on the 20th day November 2015 from where he was subsequently arrested by the 3rd and 4th Respondents.

In more clearer words the invitation to worship with the 1st and 2nd Respondents in this case (extended to the Applicant by reason of Exhibit DOI) was at no point from the evidence before the Court withdrawn from the Applicant. Neither the 1st nor 2nd Respondent or a person in authority of the 2nd Respondent, told the Applicant in simple and clear language that the gathering of some persons on that fateful day was not a Friday night vigil as advertised on their public signboard.

The Advertisement was made publicly and it should be expected that all those who saw the Advertisement would attend unless and except the invitation was withdrawn by the 1st and 2nd Respondent or person(s) in their authority.

The Court finds that had the invitation extended by reason of Exhibit DOI been withdrawn on the ground that, that particular Friday vigil was a private gathering of members of the 2nd

Respondent or any reason at all, and the Applicant refused to exit the premises of the 2nd respondent, the Applicant would then have become an intruder and/or trespasser liable under the law.

See Partridge v. Crittenden (1968) 1 WLR 1204 an old English case well known for establishing the legal precedent in Contract that advertisements are invitations to treat. Advertisements are not offers but invitations to treat so the person or body advertising is not compelled to hold the purpose of the advertisement.

Also in Mr. Peter Yuseful Onuminya v. Access Bank Plc (2014) LPELR – 22461 (CA), the Court of Appeal per AUGIE J.C.A (P.28, Paragraphs E – F) held

“An offer is usually defined as a definite undertaking or promise made by one party with the intention that it shall become binding on the party making it as soon as it is accepted by the party to whom it addressed”

The Court of Appeal in Amana Suits Hotels Ltd v. Peoples Democratic Party (2006) LPELR – 11675 (CA) per ABOKI J.C.A. (p. 29, Paragraphs E – F) held that *“an invitation to treat is not capable of an acceptance..... Acceptance is ineffective unless there is complete agreement on all material terms”*

The cases above cited points to the conclusion that had the Invitation been withdrawn, the applicant would have been liable if he refused to exit the premises of the 2nd Respondent.

How the 1st and 2nd Respondents arrived at the conclusion that the Applicant, who was in the Church, in a public place is suspected to be a Criminal, without even inquiring from the Applicant himself his reason for being in the Church, on Friday night, as to know whether or not he is a suspected Criminal, before going to lodge a complaint with the 3rd and 4th respondents still beats the imagination.

The 1st and 2nd respondents acted in haste as there was no reasonable ground to be suspicious of the Applicant and that he would commit a criminal offence.

The Applicant from the evidence before the Court was not caught or reported to have committed a crime and as such his Fundamental Rights guaranteed under the Constitution of the Federal Republic of Nigeria (1999) as amended was encroached upon and I so hold.

However, did the 3rd and 4th Respondents also act in haste without proper investigation? This is because there is a presumption howbeit rebuttable that the purpose of the Applicant's presence in the premises of the 2nd respondent was to attend the Church Service. Moreso as nothing belonging to the Church was reported to have been stolen and/or destroyed.

The 3rd and 4th Respondents are statutorily empowered to receive complaints from members of the public upon reasonable suspicion of a crime.

The suspicion that a crime maybe committed was based on the fact that the 1st respondent had reported that there was a theft at the Church premises of the 2nd respondent not long before the Applicant was found in the premises of the Church.

This matter was reported by the 1st respondent acting for the 2nd respondent to the 3rd and 4th respondents. The 3rd and 4th respondents are statutory empowered to investigate this report. From the available evidence, before this Court, it was based on this report that the applicant was removed from the premises of the 2nd respondent to the police station where he was detained for less than 24 Hours and released to the 1st respondent. This set of facts that he was detained for less than 24 Hours remained uncontroverted and the Court is enjoined to deem it as the true position of things. The time was said to have been used to investigate and ascertain who the applicant is.

The applicant has also failed to provide credible evidence as to the alleged acts of brutalization meted out on him by the 3rd and 4th respondent especially in the face of the denial of same by the 3rd and 4th respondent as well as the 1st respondent. The applicant also failed to show how the 3rd and 4th respondent used their constitutionally guaranteed powers inappropriately.

It is trite that he who would fail if evidence is not adduced to prove a point in issue has the burden to produce such evidence. See the case of Buhari & Anor v. Obasanjo & Ors (2005) LPELR – 815 (S.C).

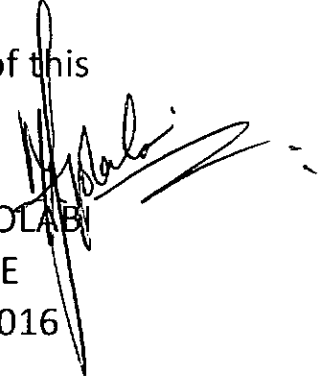
In the circumstance I therefore find that the 3rd and 4th respondent acted within the ambit of the law and did not encroach on the Applicant's Fundamental Human Rights.

However, I find that the 1st and 2nd Respondents acts were in breach of the applicants fundamental rights as the information given to the 3rd and 4th Respondent had no basis in facts and in law.

I therefore find the 1st and 2nd Respondents liable to the applicant for the sum of ₦500,000.00 (Five Hundred Thousand Naira) only as general damages for making false claims and allegations against the Applicant to the 3rd and 4th Respondent.

I also Order that An Order of Perpetual Injunction restraining the Respondents or any person acting under their instruction from arresting, detaining or requesting the Applicant to continually attend their offices for the purpose of an investigation pursuant to the claims and allegations made by the 1st and 2nd Respondents.

Finally, I Order against the 1st and 2nd respondent the sum of ₦50,000.00 (Fifty Thousand Naira) only assessed as Cost of this action.


N. I. AFOLABI
JUDGE
15/9/2016

- P. A. Aidonojie for the applicant.
- A .C. Ojojuibe for the 1st and 2nd Respondent.
- H. A. Gegele (D.C.L.) with Mrs. K. U. Abimbola, (P.S.C.), Mrs. N. T. Abdul (S.C.I.)
- Mrs. D. O. Adesina (S.C.I) for the 3rd and 4th Respondent.