

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON FRIDAY, THE 27TH DAY OF NOVEMBER 2015
BEFORE THE HONOURABLE JUSTICE A.O. FAJI
JUDGE

SUIT NO: FHC/IL/CS/48/2015

BETWEEN
TUNDE ABOLAJI

..... APPLICANT

AND

1. INSPECTOR GENERAL OF POLICE
2. COMMISSIONER OF POLICE,
KWARA STATE } **..... RESPONDENTS**

JUDGMENT

This application for enforcement of fundamental rights was filed on 7/7/15. There are 7 sister-cases with similar facts and circumstances. This judgment therefore applies to suit numbers FHC/IL/CS/42-49/2015. The applicant seeks the following reliefs:

1. A DECLARATION that the arrest, detention, molestation, harassment and torture/inhuman

treatment of the Applicant by men and officers of the Respondents while acting under their (Respondents') instruction from Thursday 23rd April, 2015 till Thursday 30th April, 2015 (eight (8) days in all) is bizarre, unlawful, baseless, illegal, cruel and unconstitutional and thereby constitutes a gross violation of and an infringement upon the fundamental rights to respect for integrity and dignity of human person, personal liberty and freedom of movement as enshrined and guaranteed under and by virtue of **Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and Articles 4,5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and

Enforcement) Act CAP A9, Laws of the Federation of Nigeria, 2004.

2.A DECLARATION that the purported bail granted to the Applicant by men and officers of the Respondents while acting under their (Respondents') authority and/or instruction from the night of Thursday 30th April, 2015 to Monday 1st June, 2015 particularly from Tuesday 26th May, 2015 till Monday 1st June, 2015 (both dates inclusive) (seven(7) days in all) wherein the Applicant's phone was seized and he (Applicant) was made to report by 7.00am and then released by 10.00pm (15 hours) on each of these dates without food, water and other basic amenities is tantamount to no bail. It is wicked, cruel, malicious, illegal, unjustifiable, unconstitutional and

thereby constitute a gross violation of and an infringement upon the fundamental rights to respect for integrity and dignity of human person liberty and freedom of movement as enshrined and guaranteed under and by virtue of **Sections 34, 35 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** and Articles 4,5,6 and 12 of the African Charter on Human and Peoples' (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004.

3.A DECLARATION that the arrest, detention, molestation, harassment and torture/inhuman treatment of the Applicant by men and officers of the Respondents while acting under their (Respondents') authority/instruction from Tuesday 2nd June, 2015 till date i.e. (the time

of filing this application) (Thirty Three (33) days so far) is bizarre, unlawful, baseless, illegal, cruel and unconstitutional and thereby constitutes a gross violation of and an infringement upon the fundamental rights to respect integrity and dignity of human person, personal liberty and freedom of movement as enshrined and guaranteed under and by virtue of **Sections 34,35, and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and Articles 4,5,6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004.

4. AN ORDER OF INJUNCTION directing the Respondents either by themselves, their agents, servants, privies and/or any person,

body or authority deriving powers or authority through them to release the Applicant with immediate effect and unconditionally.

5. AN ORDER OF INJUNCTION restraining the Respondents either by themselves, their agents, servants, privies and/or any person, body or authority deriving powers or authority through them from further arresting, detaining, molesting, harassing and/or torturing or otherwise disturbing the Applicant's enjoyment of his fundamental rights to personal liberty, dignity of human person and freedom of movement as guaranteed under Sections 34,35,41 and 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 4,5,6 and 12 of the African Charter on Human and Peoples'

Rights (Ratification and Enforcement) Act,
Cap A9 Laws of the Federation of Nigeria,
2004.

6. A LETTER of apology by the Respondents to be published in two widely circulated national dailies within two(2) weeks of the judgment of this Honourable Court.
7. Damages in the sum of N5 Million only from the Respondents for violating, infringing upon and/or tampering with the Applicant's fundamental rights to personal liberty, respect for integrity and dignity of human person and freedom of movement.
8. Such further order(s) as the Honourable Court may deem fit to make in the circumstances of this application.

The grounds for the application are:

1. The Applicant was arrested, detained, molested, harassed, tortured, whisked away to Abuja while blindfolded and handcuffed on Thursday, 23rd April, 2015 till Thursday 30th April, 2015 when he was granted bail for no justifiable reason.
2. The Applicant while purportedly on bail was forced by men and officers of the Respondents to report by 7.00am till 10.00pm from Tuesday 26th May, 2015 till Monday 1st June 2015 (both dates inclusive) (seven (7) days in all). He was denied access to food, water and other basic amenities during this period and his phone was seized.
3. The Applicant was again arrested, detained, molested, harassed and tortured by men and officers of the Respondents on Tuesday 2nd

June, 2015. This situation remains the same till date i.e. (the time of filing this application) (Thirty Three (33) days) for no justifiable reason.

4. Till date, the Applicant has not been shown any copy of the allegation (if any) made against him by anyone.
5. The arrest, detention, molestation, harassment and torture among others of the Applicant by men and officers of the Respondents has grossly violated and/or infringed upon his fundamental rights to freedom of movement, liberty and dignity of human person under **Sections 34,35,41 and 46 of the Constitution of the Federal Republic of Nigeria 1999(as amended)**; Articles 4,5,6 and 12 of the African Charter on Human and Peoples'

Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria, 2004.

6. There is no justifiable reason and legal basis for the Applicant's arrest, detention, molestation, harassment and torture at the first instance and till date.

On 9/7/15, the Court ordered the Respondents to release the Applicant pending the determination of this matter. That order was not complied with.

The matter was fixed for hearing on 7/10/15. Learned Senior State Counsel Kwara State Ministry of Justice, S.M.H. Kosemani Esq appeared for the Respondents. Counsel informed the Court that Respondents were served with the ex-parte order of 9/7/15 as

well as the originating processes herein on 14/7/15. Counsel was however briefed on 28/9/15. The Police case-file was forwarded to Counsel on 2/10/15. Counsel therefore asked for and was granted an adjournment in the absence of objection from Applicant's Counsel. The matter was adjourned to 20/10/15 for hearing.

On 20/10/15, Kosemani Esq informed the Court that Respondents had made arrangement to comply with the provisions on payment of penalty for late-filing. An adjournment was granted on terms and the matter fixed for 2/11/15 for hearing.

On 2/11/15, Kosemani Esq applied to withdraw appearance for Respondents who were yet to pay the penalty for late-filing. The

matter was adjourned to 5/11/15 for mention to enable Respondents brief Counsel. On 5/11/15, 2nd Respondent to wit: The Commissioner of Police Kwara State wrote personally to Court for an adjournment. 2nd Respondent indicated that the defence was ready but Respondents were having challenges paying prescribed penalty. The Federal Attorney-General was also being briefed to take over the matter from the Kwara State Ministry of Justice which had withdrawn its appearance for Respondents.

The matter was adjourned till 13/11/15 for hearing. 4 adjournments had been granted at the instance of the Respondents.

On 13/11/15, the Respondents were absent and were not represented by Counsel even

though hearing notices and letters had been sent to them.

Applicant's Counsel therefore proceeded. Counsel informed the Court that Applicants were arrested and taken to Abuja on 23/4/15. They were released on 30/4/15 and were asked to report at the Police Station on 15/5/15 which they did. Applicant was asked to report again on 26/5/15 and he was reporting everyday till 1/6/15 from 7am to ¹⁰7pm each day. His bail was revoked on 2/6/15 and he was permanently detained till 7/7/15 when the instant suit was filed. He was in detention for 33 days. The instant suit was filed on 7/7/15. The Court made an order for the release of the Applicant on 9/7/15. That order was not complied with. The Applicant was brought

overnight into Ilorin the following week-end and was arraigned before a Magistrate Court on Monday next. He is now on remand at Madala Medium Security Prison. There is a pending application to prefer a charge which has been fixed for 11/1/16.

Counsel moved in terms of the Motion on Notice filed on 7/7/15.

The matter was adjourned till 20/11/15 for the Respondents' reaction. Hearing notices and a letter were served. Respondents did not however attend Court and were not represented by Counsel.

The matter was therefore adjourned for Judgment.

It would appear that relief 4 has been overtaken by events with the remand of the

Applicants by the Magistrate Court. That order is not being challenged herein. There is no indication that it has been challenged even at the Magistrate's Court. Relief 4 is therefore hereby struck out.

Since relief 5 is predicated on the grant of relief 4, relief 5 itself has no leg to stand on. Respondents can only be restrained from further arresting the Applicants if there is an order for their release. That order cannot be granted in view of the failure of relief 4. Reliefs 4 and 5 are therefore hereby dismissed.

I declare the arrest, detention molestation, harassment and torture/inhuman treatment of the Applicant by the men of the Respondents for 8 days from 23rd to 30th April 2015 illegal and unconstitutional. Relief 1 succeeds.

I also declare the purported bail granted from 30th April 2015 to 1st June 2015 as no bail. I so find because it is an undue restriction of fundamental rights for a person to be required to report at the Police Station, not just everyday consecutively but to do so from 7am to 10pm on such days. That to me is an undue restriction of personal liberty. Relief 2 also therefore succeeds.

The detention of Applicants from 2nd June 2015 till date is also declared unconstitutional, illegal, null and void. It is even more so, in the face of a Court order for their release made on 9th July 2015. That order has not been obeyed till date.

Relief 6 succeeds. I order the Respondents to publish apologies to each Applicant in one

newspaper circulating within Kwara State as well as one newspaper with national circulation.

As regards damages, once there has been an unlawful restraint, no matter for how long, damages shall lie. The instant case is even more serious in the light of the order of Court which was not obeyed by the Respondents. The mode of the breach; blindfolded, in handcuffs, denied access to food, water, and basic amenities, phone seized all without being told the allegations against him. These have further been compounded by the length of the detention.

In the circumstances therefore, I award N500,000 damages in favour of each

Applicant in each of the sister-case herein, to
be paid by the Respondents.


A.O. Faji
Judge
27/11/15

Counsel:

T.Oniyide Esq; A. Owoeye Esq
And T.Omole (Miss) with him.