

IN THE HIGH COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION

HOLDEN AT PORT HARCOURT

BEFORE HON. JUSTICE A.M. ORIYE (JUDGE)

SITTING AT THE HIGH COURT NO.24, PORT HARCOURT ON

MONDAY THE 15TH DAY OF APRIL, 2024

PHC/3529/2023

SUSAN EGBONYI

---- APPLICANT

V.

1. POLICE SERVICE COMMISSION
2. COMMISSIONER OF POLICE, RIVERS STATE
3. ACP SHINKAFI ADAMU LAWAL,
COMMANDER MINI OKORO,
AREA COMMAND
4. SP SULEIMAN ABDULLAH
5. INSPECTOR MARTINA OBU
6. MULTIPRO CONSUMER PRODUCTS
LIMITED
7. ITAKPE FUSTIANS
8. DOMINIC ORUKPE
9. BRAHAT JALAN

RESPONDENTS

JUDGEMENT

The Applicant commenced this suit by an Originating Motion dated the 10/12/2023 and filed on the 11/12/2023 seeking for an order for the enforcement of the Applicant's fundamental right to freedom of movement, personal liberty and dignity of her human person amongst others. The application is supported by an affidavit of 21 paragraphs and written address of counsel. Upon service, the 1st to 5th Respondents filed a counter affidavit of 12 paragraphs with 2 exhibits tagged, COP 1 and COP 2. Also filed is a written address of counsel. The 6th to 9th Respondents filed a counter affidavit of 23 paragraphs to which is attached 3 exhibits and a written address of counsel.

The case of the Applicant was that she was employed by and worked for the 6th – 9th Respondents since the 10/12/2012 till March 2023. She was promoted as a Sales Partner in August 2021. That sometime in March 2023, she discovered

some unexplained shortage of goods from 3 of their distributors and reported her findings to the 6th to 9th Respondents. The 9th Respondent responded by seizing her phone for a week and demanded that she produce her statements of account from her banks. The 6th to 9th Respondents then invited the 1st to 5th Respondents to arrest and detain her from the 28/03/2023 to the 31/03/2023 alleging that she misappropriated the sum of ₦4,400,000 (Four Million, Four Hundred Thousand Naira) only. She was detained for four days and they refused to give her food or allow any of her family members or friends have access to her. That on the 29/03/2023, while she was still in custody, the 3rd to 5th Respondents went to her apartment at No. 1 Great Avenue by Seaside Elelenwo in Obio/Akpor Local Government Area, Rivers State, ransacked her properties and confiscated all her properties including her clothes and took them to their office at the Area Command Mini-Okoro Police Station where the properties were left out under the weather for over six months. That the Respondents through the 4th to 5th Respondents still call her and threaten her daily to arrest and detain her. That she suffered shock and brutality at the hands of the Respondents for the 4 days she was detained at the 3rd Respondent's office at the Area Command, Mini Okoro in Obio-Akpor Local Government Area of Rivers State from the 28/03/2023 to the 31/03/2023.

The 1st to 5th Respondents in their counter-affidavit, denied the facts deposed to by the Applicant. The said Respondents stated that they received a complaint from the 8th Respondent alleging stealing of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) only against the Applicant through a petition attached as exhibit COP 1. That the Applicant was invited to the Police Station to state her side of the story as part of their investigation and was granted bail within 24 hours but the Applicant failed to provide any surety. In proof of their evidence was attached, exhibit COP 2.

The 6th to 9th Respondents denied the facts deposed to by the Applicant and stated in paragraph 6 of their counter affidavit that the employment of the Applicant was terminated on the 01/04/2023 owing to her conversion of the sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) only belonging to the distributors of the 6th Defendant following which they wrote a petition dated the 28/03/2023 to the 3rd Respondent for investigation and prosecution. Attached as exhibit A and B is the termination letter dated 01/04/2023 and the petition to the 3rd Respondent dated 28/03/2023 respectively. A letter dated 22/03/2023 from the Applicant admitting to have diverted the goods of the affected distributors was referred to in paragraph 8 of the counter affidavit and attached as exhibit C.

The Applicant submitted the 2 (two) issues for determination:

1. Whether given the facts of this case, the treatment meted on the Applicant is not a breach of the Applicant's fundamental right to the dignity of her human person, freedom from degrading treatment and torture as enshrined under section 34 (1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 5 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004?.
2. Whether given the facts of this case, the arrest of the Applicant on 28/3/2023 and her detention for 4 (four) days from 28/3/2023 to 31/3/2023 at the cell of the Area Command, Obio/Akpo Rivers State and the seizure and confiscation of her house living properties is not an infringement of the Applicant fundamental human right to personal liberty and freedom of movement as enshrined under section 35 (1) and 41 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and article 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 L.F.N. 2004?

The 1st to 5th Respondents submitted the following issue for determination of the Court, namely:

“Whether the 1st to 5th Respondents' receiving petition or complaint from a member of the public constitutes violation of fundamental rights?”

The 6th to 9th Respondents submitted the following issue for determination:

“Whether the Applicant is entitled to any of the reliefs sought before this Honourable Court?”

Having reviewed the facts presented as evidence in this suit, the issue for consideration is whether from the facts and circumstances of this case, the Applicant's fundamental rights have been, are being, or are likely to be violated by the Respondents contrary to Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended)?

The intendment of the Fundamental Rights (Enforcement Procedure) Rules 2009 is to provide for an urgent remedy for human rights abuses or imminent abuses of human rights as the case may be. Thus, any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled has been, is being, or is likely to be infringed may apply to the High Court for redress. See *OJU v. A.G FEDERATION & ORS.* (2016) LPELR - 41250 CA.

Section 46 (1) of the 1999 Constitution provides:

"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress."

In line with Section 131 of the Evidence Act 2011, it is fundamentally important that an Applicant in a suit for the enforcement of fundamental rights contrary to section 35 of the 1999 Constitution (as amended) must establish the facts that he was indeed arrested and detained by the Respondent. This the Applicant has done as shown in paragraphs 8, 11, 12, 13, 14 and 15 of her affidavit in support of this action where she alleged that the 1st to 5th Respondents were invited by the 6th to 9th Respondents to arrest her. That she was detained at the Police station without food or water or access by her friends or family members for 4 (four) days. That the 3rd to 5th Respondents went to her home while she was kept in detention and confiscated all her properties and took them to the Police Station on the 29/03/2023 leaving them under the weather for 6 months.

Upon proof that there was an arrest and detention, the burden rest squarely on the arresting authority to justify the arrest. See NIGERIAN ARMY & ORS V. OYEWOLE (2021) LPELR-55113(CA). The law is very clear that, where as in this case, a party challenges the lawfulness of his arrest, the burden of proving that he acted within the law and the

Constitution in effecting the arrest and detaining the party is on the party who effected the arrest. The burden now shifts to the 1st to 5th Respondents to prove that the arrest and detention was lawful. See C.O.P, ONDO STATE V OBOLO (1989) 5 NWLR, PT. 120, 130 AT 137-8 AND EZEIGBO V ASC INV LTD (2022) 8 NWLR, PT. 1832, 367 AT 390, PARA H, where the Supreme Court, per Garba, JSC, restated the position of the law thus: "...the law is that once facts deposed to by a person shows prima breach or contravention of the right to personal liberty, the burden of proving that the arrest and detention of the person is lawful and justified under the constitutional provisions, is on the party making the arrest".

The 1st to 5th Respondents in paragraph 8 of their counter affidavit alleged that they received a complaint (Exhibit COP1) from the 8th Respondent alleging stealing against the Applicant on the 28/03/2023 and that the Applicant was invited to their office on the same day, granted administrative bail but could not provide any surety. Exhibit COP 2 relied upon by the 1st to 5th Respondents showed that the Applicant was released on bail on the 31/03/2023. The 6th to 9th Respondent in paragraph 6(ii) of their counter affidavit admitted writing the petition dated 28/03/2023 attached as Exhibit B which is same as Exhibit COP 1. The said complaint/petition sent by the 8th Respondent chronicled that the Applicant had worked under his supervision as a sales partner and has carried

out her tasks as an employee of the 6th Respondent for not less than 10 years. She was being accused of criminal/fraudulent conversion of the sum of ₦4,500,000.00 (Four Million Five Hundred Thousand Naira) only belonging to three different distributors and causing economic damage to her employers.

Conversion is defined as an act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it. See CLERK AND LINDSELL ON TORTS 14th EDITION PAGE 671 ARTICLE 1077, cited with approval in OLAM (NIG) LTD V. INTERCONTINENTAL BANK (2009) LPELR-8275(CA).

Conversion is an action in tort, a civil wrong and results in a judgment for pecuniary damage if proved on the preponderance of evidence. See EMIRATES AIRLINES V. IKEM (2023) LPELR-59968, OJINI V. OGO OLUWA MOTORS NIGERIA LTD (1998) LPELR-2376(SC)

The complaint of the 6th to 9th Respondents in Exhibit B or COP 1 is not an allegation of a criminal offence as could be gleaned from the said complaint dated 28/03/2023 and paragraph 9 of the counter affidavit of the 6th to 9th Respondents but an accusation of conversion of goods or money as alleged by the said Respondents, a civil wrong based in torts.

An arrest by its nature is a collateral attack on the fundamental right of personal liberty and freedom of movement. An arrest is lawful if it is executed in accordance with the law, otherwise it would constitute an infraction of the arrested person's constitutionally guaranteed rights. Whilst the power of the Police to arrest any person upon reasonable suspicion of having committed an offence is preserved, an arrest should only follow the outcome of an investigation, especially where the arrest is in furtherance of a report or complain by a third party. In OGOR V. ROLAND & COP (1983) 1 NCR, 343 at 353, it was held that an arrest pending investigation is unconstitutional.

The 1st to 5th Respondents stated in paragraphs 8(j) of their counter affidavit that the petition /complaint, Exhibit COP 1, by the 8th Respondent is being investigated. The law presupposes that while the Police has a duty to infract a citizen's right based on allegation of crime, it must first investigate such allegation and establish a prima facie evidence that will tantamount to either the Commission of same or reasonable suspicion of the Commission of Crime as this is the universally accepted practices among Policemen. See Fawehinmi V IGP (2002) 7 NWLR, Pt. 767, 606 at 680, Paras G – H. Arrest and detention before investigation as in this instance is unconstitutional. See DURUAKU VS. NWOKE (2015)

15 NWLR (PT. 1483) 417 and NDLEA & ORS V. BWALA (2022) LPELR56566(CA)

It is beyond doubt that by Section 35(1)(c) of the 1999 Constitution investigative agencies which are statutorily conferred with powers of arrest may arrest and detain any person upon reasonable suspicion of his committing a crime. See *FAWEHINMI v IGP* (2002) 7 NWLR (Pt. 767) 606 at 670, *ONAGORUWA v THE STATE* (1993) 7 NWLR (Pt. 303) 28, *OKAWU v IMO STATE COMMISSIONER OF POLICE* (2001) 1 CHR 407 AND *ASCO INVESTMENTS LTD & ANOR v EZEIGBO & ANOR.* (2015) LPELR-24460(CA) per Tur, JCA at pages 43-44 paragraphs F - A. However, the power of arrest and detention of persons upon reasonable suspicion expressly conferred under Section 35(1)(c) is not absolute, as it is limited by the procedure outlined in Subsections (4) and (5) of Section 35 of the 1999 Constitution.

By Section 35(4) of the 1999 Constitution, any person so arrested shall be brought to a Court of law within reasonable time. Subsection (5) of the same Section then defines 'reasonable time' to mean, "in the case of an arrest and detention in any place where there is a Court of competent jurisdiction within a radius of forty kilometres, a period of one day, and in any other case, a period of two days or such longer period as in the circumstances may be considered by the Court to be reasonable." By the procedure under Subsection (4) and (5) of Section 35 of the Constitution, the power of the investigative agencies to arrest and detain upon reasonable suspicion is therefore, limited to a period of one day where there is a Court of competent jurisdiction within forty kilometres, or in any other case, two days or such longer period considered reasonable by the Court. The 1st – 5th Respondents made no efforts to take the Applicant before a court of competent jurisdiction within the time allowed by the constitution which is one day in this instance.

The 1st – 5th Respondents admitted the fact that the Applicant was detained by them from the 28/3/2023 to the 31/3/2023 as shown in their Exhibit COP 2. There is nothing on the said Exhibit COP 2 to show that the Applicant was granted bail on the 28/3/2023. However, that the Applicant was granted administrative bail but could not provide a surety as alleged in paragraph 8(d) of their counter affidavit is not a legal justification for detaining the Applicant beyond the constitutionally allowed period and blatant contravention of the Respondent's rights to dignity of human person, personal liberty and freedom of movement guaranteed under Sections 35 and 41 of the 1999 Constitution.

In the instant case, the Respondents have not provided any legal justification for detaining the Applicant beyond the constitutionally allowed period. By Section 35(6) of the 1999 Constitution, the Applicant is entitled to compensation and for public apology from the Respondents. See *FAJEMIROKUN v C.B. (C. I.) NIG. LTD.* (2002) 10 NWLR (Pt. 744) 94.

The Police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions. See

MCLAREN V. JENNINGS (2003) FWLR (PT. 154) 528. When, as in the circumstances of this action, a civil matter is reported to the Police, such a person cannot go scot-free as the report ought not to have been made at all since it is not within the purview of Police duties. It is a report made malafide and he will be equally liable for the action taken by the Police irrespective of whether he actively instigated them or not, since he had no business involving the Police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the State to punish a contracting party, an employee in this instance, in a civil matter, ought to be mulcted in exemplary damages. See OKAFOR & ANOR V. AIG POLICE ZONE II ONIKAN & ORS (2019) LPELR- 46505 and KURE V. COP (2020) LPELR49378(SC).

The Court in GUSAU & ORS. V. UMEZURIKE (2012) ALL FWLR (Pt. 655) 291 held that:

"It is usually in the nature of offended persons to feign criminal wrong doing against their opponents, in order to attract sympathy and/or co-operation of the Police to arrest and detain their victims. This practice must be condemned as the Police's power of arrest does not extend to enforcement of private contracts."

I hold that Exhibit COP 1 is one of such instance.

The Court, in the case of SKYE BANK PLC VS. NJOKU & ORS. (2016) LPELR-40447 stated thus:

"...a party that employs the Police or any law enforcement agency to violate the fundamental right of a citizen should be ready to face the consequences, either alone or with the misguided agency... The Police have no business helping parties to settle or recover debt..." See also OMUMA MICROFINANCE BANK NIG. LTD V. OJINNAKA (2018) LPELR-43988.

I find merit in this application and hold as follows:

1. That the arrest of the Applicant on 28th of March, 2023 and her detention for four (4) days from 28/03/2023 –31/03/2023, at the Area Command Mini-Okoro Police Division by the 1st to 5th Respondents at the instigation of the 6th to 9th Respondents is wrongful, unlawful, unconstitutional and constitutes an infringement on the Applicant's fundamental right to personal liberty and freedom of movement as enshrined in sections 35 (1)

and 41 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and articles 6 and 12 (1) of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004.

2. AN ORDER of perpetual injunction is hereby granted restraining the 1st to 9th Respondents whether by themselves, their agents, privies, servants, hirelings or any person acting for or on their behalf from further infringement on or from further taking steps in whatsoever manner to infringe on the Applicant's fundamental right to personal liberty, freedom of movement, freedom from torture and dignity of her person, as guaranteed under Sections 35 (1), 41 (1) and 34 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 6, 12 (1) and 5 of the Africa Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9 LFN 2004 on the subject matter of conversion of the sum of ₦4,500,000.00 (Four Million, Five Hundred Thousand Naira) only as contained in Exhibit COP 1 except in accordance with the law.
3. The sum of ₦3,000,000.00 (Three Million Naira) only as general damage/compensation jointly and severally against the 1st to 9th Respondents in favour of the Applicant for the violation of her fundamental rights to liberty, freedom of movement and dignity of her human person.
4. The sum of ₦300,000.00 (Three Hundred Thousand Naira) only as cost against the Respondents jointly and severally in favour of the Applicant.
5. 10% (Ten percent) post judgment annual interest on the judgment sum(s) until same is liquidated.




Hon. Justice A. M. Oriye
Judge

15/04/2024

Parties: Parties are absent.

Appearances: C. M. Dickson (ASP) for the 1st to 5th Respondents.
P. C. Ndupu for the 6th to 9th Respondents.

Checked by me

Hamilton Peterside
S.R. II HC. 24