

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 22ND DAY OF SEPTEMBER, 2021
BEFORE HIS LORDSHIP:
HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/FHR/27/2020

BETWEEN:

HALIRU ABDULLAHI-----APPLICANT

AND

- | | | |
|--|---|--------------------|
| <p>1. THE E.F.C.C
2. ZONAL HEAD EFCC SOKOTO
3. INVESTIGATING OFFICER
MR. COKER OYEGUNLE AFF SECTION
EFCC ZONAL OFFICE, SOKOTO.</p> | } | <p>RESPONDENTS</p> |
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Appearances:

A.M. Dambuwa Esq: For the Applicant.

The case is for Judgment but Respondents' Counsel not in court.

Respondent's Counsel absent.

JUDGMENT

Court: The Applicant by an originating Motion on Notice dated 5th December, 2020 and filed on the 8/12/2020 with Suit No. SS/FHR/27/2020, commenced this action for the enforcement of his fundamental rights wherein he prayed this court for the following orders:-

1. A declaration of this Honourable Court that the arrest and the detention of the Applicant from 27th November, 2020

by the 1st, 2nd, and 3rd Respondents is illegal, unlawful, unjustified, unreasonable and unconstitutional.

2. A declaration of this Honourable Court that the arrest of the Applicant in place of a suspect as a misconduct of Public Officer/Public Office, unconstitutional, unknown to the law and prohibited.
3. An order directing the Respondents to pay to the Applicant jointly and severally the sum of ₦10,000,000.00 (Ten Million Naira Only) being special and general damages for the illegal, unlawful and unconstitutional arrest and detention of the Applicant on 27th day of November, 2020.
4. An order directing the Respondents to unconditionally release the Applicant from the unlawful detention in their custody.
5. An order directing the Respondents to tender a public apology to the Applicant and to publish same in two National Daily Newspapers circulating within the jurisdiction of the Applicant.

The originating Motion was supported by a statement setting out the name and description of the Applicant, the reliefs sought by the Applicant and the grounds upon which the reliefs were predicated. Also in support of the originating Motion is a 9 paragraphs supporting affidavit with paragraph 6 being subdivided into subparagraphs (a) – (pp) deposed to by one Zainab

Mahmoud Yabo, a Litigation Secretary in the Law Firm of M.M. Yabo & Co, Al-huda Chambers, No. 11, Kaduna Road, Sokoto.

Annexed to the supporting affidavit, are 7 exhibits marked as **Exhibits 'A', 'A1', 'B', 'B1', 'C', 'D', and 'D1'** respectively.

In opposing the grant of this application, the Respondents filed a 21 paragraphs counter affidavit deposed to by one Coker Oyegunle one of the Investigation Officers attached to Advance Fee Fraud Section of the 1st Respondent's Sokoto Zonal Office. Annexed to the counter affidavit of the Respondents, are 4 exhibits marked as **Exhibit EFCC1, EFCC2, EFCC3 and EFCC4** respectively.

Upon being served with the Respondents' counter affidavit, the Applicant filed a further and better affidavit of 20 paragraphs vide Motion seeking extension of time within which to file a further and better affidavit among others and granted on the 23/2/2021.

After the filing of all the foregoing processes by parties, counsel to both Applicant and Respondents adopted their respective written addresses on 23/2/2021 as their respective legal submissions in respect of this application. While counsel to the Applicant urge the court to grant all the reliefs sought in this application, counsel to the Respondents on the other hand urge the court to dismiss the application for lack of merit.

The matter was thereafter adjourned for Judgment which could not delivered within time due to the nationwide strike embarked upon by JUSUN.

In summary, the Applicant's case is anchored on the fact that the Respondents arrested and detained the Applicant on the 27/10/2020 without any justification and in lieu of another suspect, nor was he informed of the reason(s) for his arrest in violation of his fundamental right to personal liberty as guaranteed by the United Nations Declaration of Human Rights and the Constitutional of the Federal Republic of Nigeria, 1999 as amended.

In arguing the application, Applicant's Counsel formulated two (2) issues for determination and are hereby reproduced as follows:-

1. ***“Whether the Applicant is entitled to the reliefs sought in the circumstances of this case.”***
2. ***“Whether the Applicant arrest in place of another suspect is within the contemplation of the law and justify.”***

Respondents' Counsel on the other hand, formulated only one (1) issue for determination and is hereby reproduced below as follows:-

“Whether the mere invitation of the Applicant by the Respondents for an interview, amount to or a likelihood of infringement of the Applicant's fundamental right under Sections 35 of the 1999 Constitution so as to warrant this court to grant him the orders/reliefs sought.”

Upon consideration of the processes filed and the issues formulated by the parties in this originating Motion, this court for the purpose of this

Judgment adopted the 1st issue as formulated by the Applicant with same paraphrasing, that is:-

“Whether the Applicant is entitled to the reliefs sought in the circumstances of this application.”

The application of the Applicant is brought pursuant to Articles 2, 3, 7, 8, 9, 10, 11 and 13 of the Universal Declaration of Human Rights, Order 2 Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, Section 46 (1) and (2) of the CFRN 1999 as amended and under the inherent jurisdiction of this court.

By paragraphs 1-6 of the grounds upon which this application is brought and the averments contained in paragraphs 6 (cc), (ff), (hh), (ii) of the Applicant’s supporting affidavit, and paragraphs 3-19 of the Applicant’s further affidavit, the Applicant alleged that the Respondents on 27/10/2020 arrested him in lieu of another suspect and subsequently detained him without any justification and in violation of his constitutional right to personal liberty guaranteed under Section 35 of the CFRN 1999 as amended, and upon which acts of the Respondents, the Applicant approached this court seeking for the reliefs sought in this Judgment.

Arguing the application, counsel to the Applicant submitted by the action of the Respondents, the Applicant by the provisions of Sections 35 and 46 (1) of the CFRN 1999 as amended and the provision of Order 2 Rule 1 of the Fundamental Rights (Enforcement Procedure) rules 2009, the Applicant’s right to personal liberty having being infringed by the Respondents, is entitled to the reliefs sought.

- **Jim-jaja V. COP Rivers State (2013) 6 NWLR pt. 1350 p. 225.**
- **Alata V. Director SSS 2014 2 NWLR pt. 13 p. 443.**

It was his submission that the Rules were designed to advance the course of protecting human rights, and that once the issue of human right violation is raised, a solution which project the essence of the rights be preferred.

- **FRN V. Ifegwu (2003) 15 NWLR pt. 842 p. 113 at 184.**
- **Paragraph 3 (c) of the Preamble to FREP Rules 2009.**

He submitted that Section 35 of the CFRN 1999 as amended, guaranteed right to personal liberty and that the wrongful detention of the Applicant by the Respondents, is an invasion of that right and the courts are enjoined to grant reliefs where wrongful detention is proved.

- **Mwiiniyivia V. COP (2005) 11 NWLR pt. 936 p. 225 at 261.**
- **Onyirioha V. IGP (2009) 3 NWLR pt. 1128 p. 342.**
- **Shagari V. COP (2007) 5 NWLR pt. 1027 p. 275.**
- **Folasade V. AG Lagos State (1981) NCLR 771.**

He contended further that the arrest of the Applicant in lieu of another suspect, is a violation of Section 8 of the Sokoto State Administration of Criminal Justice Law, 2019 and Section 36 of the Police Act.

He finally urge the court to grant all the reliefs sought in this application.

Opposing the grant of the reliefs sought by the Applicant, the Respondents by paragraphs 7, 8, 9, 12, 13 of the counter affidavit and **Exhibit EFCC4**, submitted that the Applicant was not arrested in lieu of any suspect, but invited by the Respondents for clarifications upon a petition received by

the Respondents against the Applicant in which the Applicant featured prominently.

It was the submission of the Respondents that the Applicant was duly informed of the reason for his invitation relating to allegations made against him, and has accordingly made statement in response which was attached to the counter affidavit as **Exhibit EFCC1**.

They further submitted that the Applicant after he made statement, was later granted administrative bail on the date he was invited which is 27/10/2020.

The Respondents submitted that by the provision of Section 35(1)(c) CFRN 1999 as amended, the right to personal liberty of the Applicant, is not absolute as it can be deprived temporarily where the Applicant is reasonably suspected to have committed a crime.

- **Hassan V. EFCC (2014) 1 NWLR pt. 1389 p. 633.**

They submitted that FREP Rules 2009 were not designed to be used as a shield against criminal investigation and prosecution.

- **Hassan V. EFCC (Supra)**
- **Ajoku V. EFCC (2018) LPELR 46692.**
- **AG Anambra State V. UBA (2005) 15 NWLR pt. 947.**
- **Section 6(b) EFCC Establishment Act, 2004.**

Respondents' Counsel finally urge the court to dismiss the application.

It is trite law that any person who alleges that any of his rights under Chapter 4 of the CFRN 1999 as amended has been, or is being, or is likely to be breached, may apply to the High Court for redress.

- **Fajemirokun V. Commercial Bank (Nig) Ltd (2009) 5 NWLR 588.**
- **Ransom Kuti V. AGF (1985) NWLR pt. 6 p. 211.**
- **Hassan V. EFCC (2014) 1 NWLR pt. 1389 p. 607.**
- **Order 2 Rule 1 FREP 2009.**
- **Section 46(1) CFRN 1999 as amended.**

The Applicant in this application allege that the Respondents on 27/10/2020, arrested him and subsequently detain him in lieu of another suspect and without informing him the reason for his arrest. On the contrary, the Respondents argued that the Applicant was only invited to their office for clarifications in connection with a petition in which he featured prominently.

The genesis of this action can be seen in paragraphs 6(a)-(pp) of the Applicant's supporting affidavit and the annexures annexed there under.

Exhibit 'A' and **'A1'** annexed to the Applicant's supporting affidavit are Hausa and English translated versions of an agreement for the sale of Allocation letter in respect of House No. 14D situated at Gidan Salanke Area, Sokoto between the Applicant and one Lieutenant Abdulrahman Abdullahi.

Exhibit 'B' and **'B1'** are the Hausa and English translated versions of an undertaking dated 20/3/2020 made by one Hajiya Balkisu in which she promised to pay back the sum of ₦800,000 to one Zaki belonging to one Dr. Hassan Bodinga.

Exhibit 'C' is a provisional bail conditions issued by the 1st Respondent to the Applicant dated 27/10/2020.

Exhibit ‘D’ is a Cash Receipt No. 1971 issued to one Inno Alhaji Haruna by Bf Suma Pharmaceuticals Company in the sum of ₦1,000 or general body check-up dated 8/11/2020.

Exhibit ‘D1’ is the test description conducted on Inno Alhaji Haruna dated 8/11/2020 issued by Sokoto Bf Suma Pharmaceutical.

By paragraphs 6 (a) - (pp) of the Applicant’s supporting affidavit, the Applicant is the owner of a house which he offered to sale through the agency of one Alhaji Zaki who in turn approached Hajiya Balkisu a local speculator to advertise the house for sale. In the process, one Dr. Hassan Bodinga offered to buy the house and subsequently concluded the transaction of selling the house to him at ₦2,200,000 and thereafter deposited ₦800,000. As a result of the failure to pay the outstanding balance, the Applicant sold his house and return the deposited ₦800,000 which sum was left in the hands of Hajiya Balkisu by Dr. Hassan Bodinga in trust. Subsequently and precisely, on 27/10/2020 the Applicant was invited by the Respondents sequel to a Petition lodged before them against the Applicant by one Dr. Hassan A. Bodinga in connection with the offence of *Criminal Breach of Trust*.

The Respondents annexed 4 Exhibits to their counter affidavit and marked as **Exhibit EFCC 1 – 4** respectively.

Exhibit ECC1 is the statement of the Applicant dated 27/10/2020.

Exhibit EFCC2 is the bail application made by one Abdulkadir Abdullahi for the bail of the Applicant.

Exhibit EFCC3 is the visitor's register of the Respondents Sokoto Zonal Office showing the name of the Applicant as No. 59 who entered the Zonal Office at 12:56 and left at about 1:15pm.

Exhibit EFCC4 is the Petition written by one Dr. Hassan A. Bodinga of the Department of Veterinary Surgery, Usman Danfodiyo University Sokoto captioned "***Petition against Haliru Abdullahi.***"

In **Exhibit EFCC4**, the Complainant alleged that his complaint against the Applicant, was in connection with the commission of ***Criminal Breach of Trust.***

It is trite law that every person has the right to make a complaint against any person whom he believed to have committed an offence before the EFCC, and the EFCC has a corresponding obligation to receive complaints.

- **Onah V. Okenwa (2010) 7 NWLR pt. 1194 p. 512 at 536.**
- **Section 38(1) of the EFCC Establishment Act, 2004.**

By the provisions of Sections 6(b), 7(1)(a) and 41 of the EFCC Establishment Act, 2004, the Commission has been empowered to handle all financial crimes offences as well as invite any person including the power to cause an investigation to be conducted as to whether any person has committed an offence under law relating to financial crimes. The Respondents having received the petition against the Applicant for the offence of ***Criminal Breach of Trust***, has no option than to take the necessary steps as permitted by law.

As rightly submitted by the Respondents' Counsel although REP Rules were designed to advance the essence of human rights as guaranteed by the constitution, they were not intended to be used as a shield to any person from criminal investigation and possible prosecution.

- **Hassan V. EFCC (Supra)**
- **AG. Anambra State V. UBA (Supra).**
- **Ajoku V. EFCC (2018) LPELR 46692.**

In the case of **UZOR KALU V. FRN (2016) LPELR 40108**, the Supreme Court held that a court order which is capable of preventing law enforcement agency from conducting criminal investigation against a suspect, is a creeping order. One can therefore see reason why in a plethora of cases, it has been held that the right to personal liberty guaranteed by the constitution under Section 35 of the CFRN 1999 as amended is not absolute as it can be deprived temporarily where a person is reasonably suspected to have committed a crime.

- **Ekwenugo V. FRN (2007) 3 NWLR pt. 1021 p. 209.**
- **Dakubo Asari V. FRN (2007) 12 NWLR pt. 1048 p. 320.**
- **Hassan V. EFCC (Supra)**
- **Sambo V. Nig. Army Council (2017) 7 NWLR pt. 1565 p. 400.**

By paragraph 12 of the Respondents' counter affidavit and the contents of **Exhibit EFCC4**, it is very clear that the Applicant was invited by the Respondents as a result of the petition against him lodged by one Dr. Hassan A. Bodinga in connection with the offence of ***Criminal Breach of Trust*** in respect of which the Respondents have no option than to discharge their legal obligations.

In view of all that has been said in this Judgment as inspired by the evidence as contained in the averments and annexures annexed there under by both parties in the affidavit and counter affidavit evidence, it is the humble view of this court that the Applicant was not arrested in lieu of another suspect nor without any justification, but because one Dr. Hassan A. Bodinga lodged a complaint against him in connection with the offence of *Criminal Breach of Trust*. I so hold.

The Applicant having failed to present enough material evidence showing how his constitution right to personal liberty was infringed without any legal justification, the application has no merit and consequently the Applicant is not entitled to the reliefs sought in this application. I therefore resolve the sole issue against the Applicant in favour of the Respondents.

Accordingly, this suit is hereby dismissed for lack of merit. I make no order as to cost.

Signed

**Hon. Justice Mohammed Mohammed
(Judge)
22/09/2021**

CERTIFIED TRUE COPY:

**FATIMA SAIDU MOH'D
Ag. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.**