

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 25TH DAY OF JUNE, 2020
BEFORE HIS LORDSHIP

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/FHR/M.11/2020

BETWEEN:

Ahmed Abdullahi-----Applicant

VS

- | | | |
|--|---|--------------------|
| <ul style="list-style-type: none">1. Economic And Financial Crime Commission2. Zonal Head, EFCC, Sokoto Mr. Abdullahi Lawal CSP3. Investigating Officer, Mr. Afanda Bashir Emmanuel
EFCC Sokoto Zonal Office |  | Respondents |
|--|---|--------------------|

Appearances:

A.M. Dambuwa Esq: For the applicant

Habila Jonathan Esq: For the Respondents

A.M. Dambuwa Esq: We have an originating motion on notice for the enforcement of fundamental rights filed on behalf of the applicant. We are as the matter has been fixed for today for hearing.

Habila Jonathan Esq: We are also ready

Court: Proceed

A.M. Dambuwa Esq: The application prays for the orders as contained on the face of the motion papers which was filed on 4/6/2020. The application was accompanied with a statement describing the particulars of the applicant and reliefs sought. There are also grounds upon which the application is brought and a 10 paragraphs supporting affidavit in compliance with the Rules of this court with 2 annextures marked as exhibits "A" and "B" respectively.

We rely on all the grounds upon which the application is brought, the supporting affidavit and the annexture annexed thereunder. There is also a written address which we have by adopt as our legal argument to grant our application.

We were served with a counter affidavit, but we don't intend to file any further affidavit and also hold on to our written address earlier filed and provisions of sections 35 and 36 of CFRN 1999 as amended. We urge the court to grant our application.

Habila Jonathan Esq: We are opposing the grant of this application and all the reliefs sought therein. In opposition thereof we have filed a 20 paragraphs counter affidavit with 3 annextures marked as exhibits EFCC 1-3 respectively.

We also rely on all the averments contained in the said paragraphs and the annexures annexed thereunder.

We accompanied our counter affidavit with a written address, and we adopt the said written address as legal argument in urging the court to dismiss the application.

We urge this court to dismiss the application for lack of merit.

Court: This matter is hereby adjourned to 6/7/2020 for judgment.

Judge

25/06/2020

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 27TH DAY OF AUGUST, 2020
BEFORE HIS LORDSHIP

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/FHR/M.11/2020

BETWEEN:

Ahmed Abdullahi-----Applicant

VS

- | | |
|---|--|
| <p>4. Economic And Financial Crime Commission</p> <p>5. Zonal Head, EFCC, Sokoto Mr. Abdullahi Lawal CSP</p> <p>6. Investigating Officer, Mr. Afanda Bashir Emmanuel
EFCC Sokoto Zonal Office</p> | <p style="font-size: 3em;">}</p> <p>Respondents</p> |
|---|--|

Appearances:

A.M. Dambuwa Esq: For the applicant

B.M Balarabe Esq with M.M. Gwani for the Respondents

Judgment

Court: The applicant by an originating motion No. SS/FHR/M.11/2020 dated 2/6/2020 and filed on the same date, commenced this application through his counsel Mr. A.M. Dambuwa Esq for the enforcement of his fundamental rights wherein he prays this Honourable Court for the following orders:-

1. A declaration of this Honourable Court that the arrest and detention of the applicant from 9th March, 2020 to 20th

March 2020 by the 1st 2nd and 3rd Respondents is illegal, unlawful, unreasonable, unjustified and unconstitutional.

2. An order directing the Respondents to pay to the applicant jointly and severally the sum of N10,000,000 {ten million naira only} being special and general damages for the illegal, unlawful and unconstitutional arrest and detention of the applicant from 9th - 20th March, 2020.
3. An order directing the Respondents to unconditionally release the applicant from the unlawful detention in their custody.
4. An order directing the Respondents' to tender a public apology to the applicant and to publish same in two National Daily Newspapers.

The originating motion is supported by a statement setting out the name and description of the applicant, the grounds upon which the reliefs are sought and the reliefs sought therein.

Also in support of the originating motion, is a 6 paragraphs grounds upon which the application is brought as well as a 10 paragraphs supporting affidavit deposed to by one Sa'adatu Mahmud Yabo a litigation secretary in the Law firm of M.M. Yabo E.Co. Al-huda Law Chambers because the applicant was in detention at the detention facility of the Respondents.

In compliance with the Rules of this Court, the applicant accompanied his originating process with a written address which the applicant's counsel adopted as their legal argument and urges the court to grant the application after relying on all the averments contained in the 10 paragraphs supporting affidavit.

Annexed to the supporting affidavit, are 2 annextures marked as exhibits "A" and "B".

Exhibit "A" is an application seeking for the bail of the applicant dated 10/3/2020/complaint against the unlawful detention signed by the applicant counsel Mr. A.M. Dambuwa Esq.

Exhibit "B" is the provisional Bail conditions issued by the Respondents to the applicant. Applicant's counsel also inform the court that they also rely on the exhibits.

In opposition to the grant of this application, the Respondents filed a 20 paragraphs counter affidavit and 3 annextures marked as exhibits EFCC 1, 2 and 3 respectively.

Exhibit EFCC 1 is the provisional Bail conditions.

Exhibit EFCC 2 is an application for the relax of provisional Bail Conditions in liberal terms written by the applicant's counsel.

Exhibit EFCC 3 is an application for the Bail of the applicant signed by Engr. Yusuf Jibrin on behalf of the applicant.

The Respondents' Counsel submitted that they rely on all the averments contained in the counter affidavit and the annextures annexed thereunder.

In compliance with the Rules of this Court, the Respondents' Counsel also filed a written address which they adopted as their legal argument and urge the Court to dismiss the application for lack of merit.

In summary, the applicant's Case is anchored on the facts that the Respondents detain him from 9th - 20th of March, 2020 after he voluntarily submitted to the invitation of the Respondents made through a phone call upon framed offences that derived their inspiration from a civil contract for the supply of motorcycles between the applicant's Company and Ministry of Local Government and Chieftaincy Affairs of an undisclosed state in violation of his Constitutional rights to personal liberty and freedom of movement guaranteed by the constitution of the Federal Republic of Nigeria 1999 {as amended}.

Upon consideration of the all the processes filed by the parties pursuant to this application for enforcement of fundamental rights, I have formulated one issue for determination. That is:-

"Whether from the facts and circumstances of the Case of the applicant as presented before this Court, the Respondents have violated the Constitutional rights of the applicant to personal liberty and freedom of movement."

The application is brought pursuant to sections 35, 36 and 46 of the constitution of the Federal Republic of Nigeria and Order 2 Rule 1 of the Fundamental Rights {enforcement procedure} Rules 2009, any person who alleges that any of his rights guaranteed under chapter 4 of the Constitution of the Federal Republic of Nigeria 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 P 588
- Ransome Kuti V. AGF {1985} NWLR pt 6 p 211

The applicant in paragraph 4 (d), (e), and (h) and paragraph 6 of the applicant's supporting affidavit, alleged that the respondents detained him from 9th of March, 2020 to 20th of March, 2020 without any lawful justification, nor did they arraign him before the Court for his trial neither did they obtain any order from a Court of competent jurisdiction for his continue detention. That he has suffered a great loss in business during his stay under the custody of the respondents which acts according to the applicant, Constitute a violation of his constitutional right to personal liberty and freedom of movement.

The foregoing facts are the basis upon which this application is brought and the reasons why the reliefs therein are being sought before this Court.

However, the Respondents in justifying the invitation of the applicant and his subsequent detention, averred in paragraph 5 of their Counter affidavit that the applicant was arrested sequel to an intelligence report received by their office bordering on allegations of conspiracy, embezzlement, stealing of public funds, money laundering and contract scam among others against AMBASAM Nigeria Ltd owned by the applicant in connection with a contract of supply of motorcycles awarded to the applicant's company by the Ministry of Local Government and Chieftaincy Affairs of an undisclosed state to the time of ₦227,375,000.

By paragraphs 9 and 11 of the Counter affidavit, the Respondents though denied the detention of the applicant from 9th - 20th March, 2020, did not disputed the fact that the applicant was in their detention from 9th - 16th March, 2020.

By paragraph 4 (i) of the applicant's supporting affidavit, it was averred that all efforts to get the administrative bail of the applicant proved abortive, and so applied formally through the use of Exhibit "A" annexed to the applicant's supporting affidavit which is the formal administrative bail application which application according to the applicant's Counsel, met with stringent conditions calculated to frustrate the grant of the application.

These facts as alleged by the applicant are substantially corroborated by the averments contained in paragraphs 10 - 11 of the Respondents Counter affidavit wherein it is stated that though the applicant was granted bail on the 10th of March, 2020, he was unable to fulfill the conditions until on the 16th of March, 2020 when he applied for review of the bail conditions through Exhibit EFCC3 series annexed to the counter affidavit of the Respondents.

Furthermore, in paragraphs of the applicant's supporting affidavit, the applicant alleged that he has suffered a great loss in his business during his stay under the custody of the Respondents.

This claim of the applicant was however disputed by the Respondents in paragraph 16 of their Counter affidavit averring that no loss in applicant's business was occasioned during the applicant's stay in detention with the Respondents

at Sokoto Zonal office of the 1st Respondent and to this, the applicant did not file any further affidavit.

With all the foregoing facts before the Court, the applicant's Counsel Mr. A.M. Dambuwa Esq then submitted that the constitutional and legal rights of the public authorities to deprived a citizen of his fundamental right to personal liberty, has been protected by the constitution to prevent abuse, and where a detention of a citizen is done not in compliance with the law, then such detention is illegal and un constitution.

- Section 35 (4), (5) (a) of the 1999 Constitution of the Federal Republic of Nigeria {as amended}

He further submitted that those whose rights have been violated have the right to approach Court for redress

- Section 46 (i) of the constitution of the FRN 1999 as amended.
- Jimjaya V. COP Rivers State {2013} 6 NWLR pt 1392 p 443
- Order 2 Rules 1-3 of the fundamental Rights {enforcement procedure} Rules, 2009.

It was his submission that the respondents having breached the constitutional right of the applicant to personal liberty and freedom of movement guaranteed by the Constitution, the applicant is entitled to the grant of the reliefs sought.

In his response, the respondents' counsel Mr. Habila Jonathan Esq submitted that the Respondents did not in any way breached the constitutional rights of the applicant as alleged, but were discharging their statutory duty of receiving a complaint and investigating the Crimes alleged to have been

committed as contained in the complaint, which acts according to the Respondents' Counsel, are guaranteed by law.

- Onah V. Okenwa {2010} 7 NWLR pt 1194 p 512
- Section 42 of the EFCC {establishment} Act, 2004

They submitted that where bail is guaranteed and the applicant cannot provide a surety, his subsequent continued detention because of failure to provide a surety cannot constitute a breach of the applicant's constitutional right.

- Ene V. Bassey {2014} LPELR 23524

They submitted that by exhibits EFCC 1-3 annexed to the counter affidavit, the applicant's long stay in their custody, was due to the applicant's failure to satisfy the bail conditions as contained in the provisional bail conditions document marked as exhibit EFFCC 1 annexed to the Respondents' counter affidavit.

They finally urge the court to dismiss the application for lack of merit.

At this juncture, it is very important to note that from the averments in the applicant's supporting affidavit and the annextures annexed thereunder, the averments in the Respondents counter affidavit and annextures annexed thereunder as well as submissions of both applicant's counsel and that of the respondents, the fact that the applicant was detained by the Respondents is not in dispute.

The only dispute between the parties regarding the detention of the applicant, is that while the applicant alleged that he was detained by the Respondents from 9th - 20th March, 2020,

the Respondents are saying the applicant was detained only from 9th - 16th March, 2020.

The question are will therefore ask, is the detention of the applicant by the Respondents within the period admitted by the respondents in compliance with the law?

By paragraph 5 of the Respondents' counter affidavit, the respondents averred that the detention of the applicant was necessitated by a complaint received by the office in connection with the offences of conspiracy, embezzlement, stealing of public funds, money laundering, contract scam among others associated with a contract of supply of motorcycles between the applicant's company AMBASAM and Ministry of Local Government and Chieftaincy Affairs of an undisclosed state.

It therefore follows that the offences of conspiracy, embezzlement, stealing of public funds, money laundering were all frame from the supply of motorcycle Contract between the applicant's company mentioned above and the Ministry of Local Government and Chieftaincy Affairs of an undisclosed state.

In the case of EFCC V. Diamond Bank PLC {2018} LPELR 44217, Sidi Dauda Bage JSC {as he then was}, held that:-

"---- The powers conferred on the applicant I.e the EFCC to receive complaints and prevent and/ or fight the Commission of Financial Crimes in Nigeria pursuant to section 6 (b) of the EFCC Act, does not extend to the investigation ----- of disputes arising or resulting from simple contracts or civil transactions as in this case.

The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainant to seek appropriate/lawful means to resolve their disputes.

Alas! The EFCC is not a debt recovery agency and should refrain from being used as such --- by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans, or purely civil transactions".

Furthermore, both sections 8 (2) of the administration of Criminal Justice Act, 2015 and 9 (2) of the administration of Criminal Justice Law No. 8 of 2019 of Sokoto State, prohibited the arrest of any suspect merely on a civil wrong or breach of contract.

It is also trite law that although the rights of personal liberty and freedom of a citizen of this country can be deprived temporarily in appropriate circumstances, the ending phrase of section 35 (1) of the 1999 CFRN {as amended} contained that the deprivation, if must be done, shall be in accordance with a procedure permitted by law.

The cumulative effect of section 35 (4) and (5) (a) of the 1999 CFRN {as amended}, is to the effect that any person who is arrested or detained in accordance with subsection (1) (c) of the same section 35 of the CFRN, must be taken to Court within one day of his detention if there is a Court of competent jurisdiction within a radius of 40 kilometers.

By the combine effect of the provisions of sections 292 (1) read together with 295 (1), (2) and (5) a of the ACJL No. 8 of Sokoto State 2019, where an arresting agency seeks to detain a suspecting custody pending investigation of the commission of a crime beyond the one day permitted by the constitution, then the agency must of necessity do so in compliance with the procedure provided in the foregoing sections of the ACJL of Sokoto State by approaching the Court within one day after the suspect's detention for leave to so keep him in custody for a certain period of time as regulated by those provisions.

Any act to the contrary, must be viewed and declared clearly as a breach of the suspect's fundamental right to personal liberty and freedom of movement guaranteed by the constitution of the FRN.

In the instant case, there is no any evidence before this Court to show that the respondents did obtained the order of any court to continue to keep the applicant under their custody from 9th - 16th March, 2020 after the expiration of the one day period permitted by the constitution apart from the fact that the applicant was unable to fulfill the bail conditions.

The case of Ene V. Bassey {supra} Cited by the Respondents, only apply where an applicant for bail cannot get a surety but not where stringent conditions of bail are imposed as in this case.

It is trite law that it is against the spirit of the law to impose excessive and stringent conditions for bail as that amount to refusal of the bail. Because conditions of bail must not be

unreasonable or oppressive as to amount in effect to punishment.

- Shuaibu V. FRN {2014} LPELR 22986
- Obioma V. FRN {2005} 13 WRN 131

Having held earlier in this judgment that there is no evidence before this Court to show that the respondents obtained a court order to detain the applicant from 9th - 16th March, 2020, in violation of the provisions of sections 292 (1) read together with the provisions of section 295 (1), (2) and (5) (a) of the ACJL of Sokoto State, the provisions having been clothed with the constitutional flavor of section 35 (1) of the 1999 CFRN, the detention is therefore illegal. I so hold.

This Court having declared the detention illegal having been done in contravention of the law and the provisions of section 35 (1), (4) and (5) (a) of the 1999 CFRN, is therefore unconstitutional.

In the case of FRN V. Ifegwu {2003} 15 NWLR pt 842 p 113at 184, the Supreme Court held that whenever an aspect of personal liberty is properly raised in any proceeding, the focus on the constitutional question is intense and intensive, and a solution which projects the essence of the constitutional guaranteed should be proffered. On the whole, it is the view of this Court that this application has merit.

Consequently, reliefs 1, and 3 are hereby granted while reliefs 2 and 4, are hereby refused.

Accordingly, it is hereby declared that the detention of the applicant by Respondents is illegal, unlawful, unreasonable, unjustified and unconstitutional and the respondents, are

hereby directed to unconditionally release the applicant from the unlawful detention in their custody.

That is the judgment of this court.

Judge

27/08/2020