

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE WUSE JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 24,  
APO, ABUJA.**

BEFORE HIS LORDSHIP: HON. JUSTICE OTHMAN .A. MUSA.

DELIVERED ON THE 19<sup>TH</sup> DAY OF MAY, 2011

Suit No. /M/1080/2009

                  /M/1081/2009

**BETWEEN:**

1. *HUSSAINI HARUNA COOMASSIE* ..... *PLAINTIFF*

**AND**

1. *INSEPECTOR GENER AL OF POLICE*
2. *COMMISSIONER OF POLICE, FCT.*
3. *MR. VICTOR MDEGBE.*
4. *ATTORNEY GENERAL OF FEDERATION.*



DEFENDANTS

**JUDGMENT**

By a Motion on Notice dated the 16<sup>th</sup> day of April, 2010 and filed on the 19<sup>th</sup> day of April, 2010. The motion was brought pursuant to Section 46(1) & (2), Order 11, Rule 1 of the Fundamental right Enforcement Procedure Rules, 2009, and under the inherent jurisdiction of this Honourable court as preserved by Section 6(6) of the 1999 constitution.

The Application is supported by a 45 paragraphs affidavit deposed to by Mallam Hussaini Commasie, the Applicant in this suit. It is also supported by a Statement of setting out the name, and description of the applicant, the reliefs sought and the ground upon which reliefs are sought in line with Order 11 Rules 3 of the Fundamental Rights Enforcement Procedural rules, 2009. Attached to the affidavit are anextures marked as Exhibits A1, A2, B1, - B8, & C.

In the Motion, the Applicant's counsel prayed the court for the following reliefs:-

1. A Declaration that the shooting of the Applicant on the arm by the men and officers of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents is unlawful, unwarranted, illegal, callous and contravenes Section 33(1) and Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.
2. A Declaration that the shooting of the Applicant's vehicle severally and subsequent infliction of injury on his arm amounts to inhuman and degrading treatment contrary to Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria and article 6 of African Charter on Human and peoples Right;
3. A Declaration that the detention of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the national Hospital from the 6<sup>th</sup> day of November, 2009 to the 26<sup>th</sup> day of November, 2009 is unwarranted; illegal and contravenes Section 35(1) of the 1999 constitution and Article 6 of African Charter on Human and Peoples Rights;
4. A Declaration that, the frequent Order, directing the Applicant to report at Asokoro police Station by the 1<sup>st</sup> - 3<sup>rd</sup> Respondents without just cause even when they are aware of his being treated at the Orthopaedic Hospital, Kano and the prevention of the Applicant from travelling overseas to seek medical treatment for the injury they inflict on him is unwarranted, unlawful, and contravenes Section 34(1) and Section 41(1) of the 1999 Constitution of the Federal Republic of Nigeria and Article four (4) of African Charter on Human and Peoples Right;
5. An Order of court compelling the Respondents, their officers, agents and privies to refrain from further harassing, arresting, or declaring the Applicant wanted or any way preventing the Applicant from taking steps to seek medical expertise abroad;
6. An order of court compelling the Respondents either jointly and or severally to pay the applicant the sum of ₦100, 000,000.00 (One Hundred Million Naira) only, being exemplary and aggravated damages for wilfully and recklessly shooting and inflicting grievous harm

on the Applicant for torture, degrading and inhuman treatment and the illegal detention of the Applicant at the National Hospital, Abuja.

Equally, filed alongside the Motion on Notice, is a Written Address in support of same. In the said Written Address, learned counsel to the Applicant, V. L. Williams (Mrs.) Esq., raised two (2) issues for determination, as follows;

1. Whether the Applicant's Fundamental Right to life, Rights to dignity of human person, Right to personal liberty, right to fair hearing, and Right to freedom of movement as enshrined in sections 33(1), 34(1), 36(1) & (5), and 41(1) of the 1999 Constitution of the Federal republic of Nigeria, Articles 6, 12, 4, and 5 of the African charter on Human and Peoples Right has been infringed upon by the Respondents in this suit.
2. If the first is answered in the affirmative, then, whether the Applicant is entitled to the reliefs sought, particularly to compensation and public apology.

In arguing the issue, counsel submitted on Issue One that, it is of common knowledge that the duty of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is to protect lives and properties of the citizens. He stated further that, it is trite that, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents when confronted with suspicious situation or where crime is being committed or alleged to have been committed in order to effect arrest and subsequently prosecute, when necessary, must exhibit caution and only use arms when necessary and only for the purpose of bringing the situation under control.

More so, the learned counsel to the Applicant, referred the court to the affidavit in support of the Motion and stated that, the several shots on the Applicant's vehicle is a clear case of total disregard for human life and so a violation of the constitution, African Charter on Human and Peoples Rights and the universal declaration on Human and peoples Rights.

In this respect, counsel cited Section 34(1) of the 1999 Constitution and the case of *FAJEMIROKUN Vs. COMMERCIAL BANK (2009) 2 – 3, SUPREME COURT Pg. 26 at 29 para 5 – 15.*

In another submission, counsel stated that, the Applicant was denied his personal liberty as he was unlawfully detained in the national Hospital for over three (3) weeks and placed under arrest and labelled a criminal by the posted squads on the instruction of the DPO Asokoro Police Station, Mr. Ahmed Musa and his DCO, Shola. Counsel referred the court to Section 35(5) of 1999 Constitution and the case of *NEW PATRIOTIC PARTY Vs. IGP (2000) 2 HRLRA R. 23 – 24, Pg. 27.*

Finally on Issue One, counsel submitted that, the Respondents' act of placing the Applicant under detention while in the hospital was not done within the confines of law. To this end, counsel relied on the cases of *EKPU Vs. A. G. FEDERATION (1998) HRLRA Pg. 39, R. 3, and 4.*

On Issue Two, counsel submitted that, it is trite law that, where the arrest and detention of a citizen is held to be illegal, unlawful, and unconstitutional, he shall be entitled to an award of compensation in form of damages for the violation.

He referred the court to Section 35(6) of the 1999 Constitution, and the following cases; *JIMOH Vs. A. G. FEDERATION (SUPRA), EKPU Vs. A. G. FEDERATION (SUPRA) R. 8., EZANI Vs. EJIDIKE (1964) 1 ALL NLR 402., COMPLETE COMMUNICATION LTD Vs. ONOH (1998) 5 NWLR (Pt. 549) 197., MINISTER OF INTERNAL AFFAIRS Vs. SHUGABA (1982) 3 NCLR 915 at 953., ABIOLA Vs. ABACHA (1998) 1 HRLRA Pg. 447, R. 7., and ENWERE Vs. C. O. P. (1993) NWLR Pg. 229 at 333.*

Finally, counsel stated that, the N100, 000, 000.00 (One Hundred Million Naira) only damages claimed by the Applicant is just good to assist in the treatment of the Applicant and mitigate his pain and suffering. Consequently, counsel urged the court to grant all the reliefs sought by the Applicant.

In opposing the application, the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents filed a fifty – six (56) paragraphs counter affidavit deposed to by one CPL, Nicholas Bamaiya, the Investigating Police Officer, in this case. Filed alongside the counter affidavit was a written Address and an annexures marked as Exhibits 'A1', 'A2', 'B1', 'B2', 'B3', 'C1', 'D1', 'D2', 'E', 'F', and 'G'.

In the said Written Address, the learned counsel to the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Respondents, Vera N. Opaluwa (Mrs.) formulated one issue for determination, which is, "Whether from the facts of this case, the Applicant has established the violation of his Fundamental Human right to life, dignity, personal liberty, fair hearing, and freedom of movement?"

In arguing the issue, counsel submitted that, the applicant has not established the violation of his Fundamental Human Rights to life, dignity, personal liberty, fair hearing and freedom of movement. Counsel stated further that, it is trite law that, a fact which has been admitted requires no further proof. In this respect, he cited the case of IBWA Vs. MNAKA LAMBA (1998) 9 NWLR (Pt. 565) 245 at 264 para G., Section 75 of the Evidence Act.

Counsel relied on Section 4 and 25 of the Police Act and stated that, the 1<sup>st</sup> Respondents were justified to apprehend the Applicant on the circumstances of this case.

The learned counsel, contended that, the Applicant from the facts, which he deposed to in his affidavit has caught up himself in suspicious circumstances, that he has by that fact circumscribed his liberty and mortgaged his freedom. In support of this, counsel referred the court to the case of ODO Vs. C. O. P. (2004) 8 NWLR (Pt. 874) 46 at 63, para A.

Again, counsel stated that, the Applicant after causing or aggravating the circumstances that led to his injuries cannot be allowed in law to turn around to ask for damages for his own wrong. He referred the court to Section 35(1) (a) – (f) and the case of GREEN Vs. GREEN (2001) 45 WRN 90 at 138 lines 25 – 40.

In another dimension, counsel submitted that, the Applicant can not complain of the violation of his rights to life as he is not dead. That Section 33 of the 1999 Constitution can only be enforced where the claimant has died or deprived of his life.

More so, that, the Applicant can not complain of the deprivation of his right to fair hearing as his case has not been charged before any court of law or tribunal.

The learned counsel submitted that, anyone who wants the court to exercise its discretion in his favour must disclose all relevant facts to enable the court exercise its discretion. He cited the cases of *OLATUNJI Vs. FRN (2003) 3 NWLR (Pt. 807) 406 at 427.*

In conclusion, counsel submitted that, the Applicant has not shown how his right had been breached and the claim for damages cannot stand in a vacuum in the absence of actual breach to his right. Consequently, he urged the court to dismiss this application as it lacks merit.

On the other hand, the 3<sup>rd</sup> Respondent in opposing the application also, filed a twelve (12) paragraphs counter affidavit deposed to by one Victor Udege, the 3<sup>rd</sup> Respondent in this case. Equally, filed in support of the counter affidavit in a Written Address, dated the 7<sup>th</sup> day of December, 2010.

In the said Written Address, counsel to the 3<sup>rd</sup> Respondent, Sam T. Ologunrisa Esq., formulated one issue for determination, which is,

“Whether there is evidence that the 3<sup>rd</sup> Respondent shot the Applicant to enable the Applicant entitled to any damages against him?”

In arguing this issue, counsel submitted that, the Applicant has not established the contravention of any of his Fundamental Right to life, dignity of human person, personal liberty, fair hearing, and freedom of movement.

That, the procedure provided for under the Fundamental Rights (Enforcement Procedure) Rules can be invoked only when there is a breach of or threat to Fundamental Rights of a citizen. He relied on the case of *SOKOTO LOCAL COURT & 2 ORS Vs. ALHAJI TSOHO AMALE (2001) 8 NWLR (Pt. 714) 224 at 240.*

The learned counsel to the 3<sup>rd</sup> Respondent submitted that, the enforcement of fundamental right is not absolute. It can only be enjoyed subject to where the right of other members of society stands. In this respect, he cited the case of *UDE Vs. FEDERAL REPUBLIC OF NIGERIA (2001) FRWL (Pt. 61) 1734 at 1736.*

Furthermore, counsel submitted that, from the affidavit evidence of the applicant himself, there is no where the Applicant said the 3<sup>rd</sup> Respondent shot him. That, the Applicant is bound by his deposition in the affidavit.

Counsel referred the court to paragraphs 9, 10, 11, 12, 13, 14, 15, 16, and 17 of the Applicant's affidavit. Reliance was equally placed on the following cases; *DAPIALONG Vs. DARIYE (No. 1) 2007 ALL FWLR (Pt. 373) 1at 8, ODI Vs. IYALLA (2004) 8 NWLR (Pt. 87) 383 at 288 – 289.*

Finally, counsel contended that sufficient facts have been placed before the court about the recklessness of the applicant and he should not be allowed to profit from his own wrong. Consequently, counsel urged the court to dismiss this case.

In his reply on point of law, learned counsel to the Applicant submitted that documents speak for themselves. He referred the court to all the Exhibits attached to the Respondents Counter affidavit and stated that, it clearly shown the reason why the Applicant was shot at by the agents and men of the Respondent. He cited the cases of *GREEN Vs. GREEN (2002) 45 WRN 90 at 138 lines 25 – 40, KISH Vs. TAYLOR (1911) 1 KB 625 at 634.*

Finally, he urged the court to grant the Applicant's prayers and award the Applicant ₦100, 000, 000. As claimed in the Motion.

I have painstakingly gone through the Motion for the Enforcement of Fundamental Right of the Applicant together with the affidavit in support and the annexures therein. I equally perused carefully the Counter Affidavit of the Respondents and the Exhibits attached therein. I also, studied extensively, the various Written Addresses of the parties and the reply on points of law.

Having done all these, and before I proceed, let me say at this early stage that, this case has again brought to the fore the activities of the men and officers of the Nigerian Police to scrutiny. That will be done later.

Now to the Motion paper, it is trite law that, the breach of a fundamental right alleged by an Applicant must be the main plank or claim in the application for enforcement. However, where the violation of a fundamental right is merely incidental or auxiliary to the principal claim or relief, it is improper to constitute the action as one for the enforcement of a Fundamental Right.

This is the position of the Supreme Court in *WAEC Vs. AKINKUMI (2008) 9 NWLR (Pt. 1091) 151 at 169, per TABAI, JSC* held thus;

“Only action founded on a breach of any of the fundamental rights guaranteed in the constitution can be enforced under the Fundamental Right (Enforcement Procedure) Rules, 1979. It is also, a condition precedent to the exercise of the court’s jurisdiction, that the enforcement of fundamental right or the securing of the enforcement thereof should be the main claim and not an accessory claim.”

See also the case of *TUKUR Vs. GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (Pt. 117) 517*.

Therefore, coming to the instant case, an X – ray of the reliefs sought, the grounds for seeking the reliefs and the supporting affidavit, will reveal clearly that, the principal or main claims or reliefs are those which can be brought within the provision of Chapter IV of the 1999 constitution of the Federal Republic of Nigeria.



Therefore, the issue for determination in my humble view is,

'Whether the Applicant has established violation of his Fundamental Rights to be entitled to the reliefs sought?'

It is common knowledge that, Fundamental Rights are old as man. In fact, they are the species of rights, which can be said to live in every human being. As such, they are regarded as inalienable and immutable, such rights can not be taken away from any person without affront of justice.

The 1999 constitution of the Federal Republic of Nigeria encapsulate these rights under Chapter IV.

The Supreme Court has this to say in the case of *FEDERAL REPUBLIC OF NIGERIA Vs. IFEGWU (2003) FWLR (Pt. 167) 703 Per TOBI, JSC at 776*, thus,

"Fundamental Rights are inherent in man because they are part of man. If a hierarchical order of our laws is drawn, fundamental right will not only take a pride of place but the first place. Accordingly, neither the court of law nor tribunals have the right to encroach on the rights of the individual in the judicial process. This is exactly what the tribunal did. Such power is not available to them"

From the fact of the instant case, the Applicant has alleged that his Right to life, Right to dignity of human person, Right to personal liberty, and Right to freedom of movement guaranteed under Sections 33(1), 34(1), 35(1) & (5), and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria, has been violated by the Respondents.

The Applicant's learned counsel submitted that, the several shooting of the Applicant on his right arm and the vehicle as well as his detention in the National Hospital, from the 6<sup>th</sup> day of November, 2009 to the 26<sup>th</sup> day of November, 2009, amounts to contravention of the Applicant's Fundamental Rights as guaranteed in the constitution.

Counsel referred the court to copies of snap shots, which shows the injury sustained by the Applicant and the evidence of payment of hospital bills, that is Exhibits 'A1', 'A2', 'B1', and 'B2'.

I have taken my time and gone through the entire exhibits placed before the court and the depositions in both the affidavit in support of the Motion and the counter affidavit, I found out that, the Applicant was indeed shot on his arm by the agents of the 1<sup>st</sup> Respondent as well as his vehicle. Thereafter, he was taken to the National Hospital for treatment where he was placed under guard and later released on bail.

At this point, the question is why was the Applicant and his vehicle shot at by the agents of the 1<sup>st</sup> Respondent?

A carefully perusal of Exhibits 'C1', 'C2', and 'C3', attached to the counter affidavit of the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Respondents shows that the main reason adduced for the shooting was to stop the Applicant from entering force headquarter.

If I may ask, when was entering force headquarter becomes an offence that police must prevent to the extent of shooting with life bullets regardless of the consequences?

The learned counsel to the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Respondents tried to justify the shooting by citing Section 4 and 24 of the Police Act.

With due respect to the learned counsel, these Sections can not exonerate the Respondents, because a community reading of the Sections will show that police were empowered by the Sections to arrest person they found committing an offence or about to commit an offence, apprehension of offenders etc. I can not find in the sections where the police were permitted or allowed to shoot at an unarmed person simply because he was driving trying to enter the force headquarter. Does the Force Headquarter not belong to Nigerian Citizens? The answer is left for any right thinking person to answer.

Further more, the learned counsel to the 3<sup>rd</sup> Respondent submitted that the Applicant can not claim that his right to life has been violated because is still alive not dead.

Again, with due respect to the learned counsel, I find it difficult to reason the same way with the learned counsel, because if the Applicant is dead, violation of right to life will no longer be an issue rather it will be a case of murder. As such, I am not with that submission.

At this juncture, let me briefly focus on the issue of detention of the Applicant in the National Hospital while receiving treatment for the injuries sustained as a result of the gun shots. I must say very strongly that there is no evidence placed before the court to justify that detention.

It is not enough for the Respondent to say that the Applicant was placed under guard because is a suspect and to prevent him from being attacked. If I must also ask here, suspect of what? And attack by who? All these were left unanswered.

Consequently, it is trite law that court of law do not speculate but act with evidence placed before it. In this respect, see the case of OMIDIORA VS FCSC (2007) 4 NWLR (Pt. 1053) 17 at 35 paragraph D – E where it was thus:-

“ .... in Odubeko Vs. Fowler, the Supreme Court held – The court is precluded from speculating or making a case for either party to the proceedings by suo motu formulating the weakness in the case, if any, and resolving same in favour of one of the parties.....”

See also the case of SHALLA VS STATE (2007) 18 NWLR (pt. 1066) 240.

On the other hand, learned counsel to the 3<sup>rd</sup> Respondent submitted again that from the depositions in the affidavit evidence of the Applicant, there is no where; the Applicant said the 3<sup>rd</sup> Respondent shot at him. As such, the 3<sup>rd</sup> Respondent can not be held liable for what he did not do. In this respect, I have no difficulty in aligning myself with the submission of the 3<sup>rd</sup> Respondent's counsel vis-a-vis the depositions in paragraphs 15 and 16 of the supporting affidavit that the 3<sup>rd</sup> Respondent was not the one who shot at the Applicant and his vehicle. Consequently, he can not be held vicariously liable for the act or offence which he knows nothing about.

As I have stated earlier in this judgment, this case has brought to fore the activities of Nigerian Police to scrutiny.

Officers and men of Nigerian Police must be reminded that the guns and other ammunitions they are carrying were bought by the tax payer's money, as such, they must only use them where it is very, very necessary not any how.

In a similar vein, the Authority charged with responsibility of training police officers must wake up to its challenge of giving them adequate training on how to handle the weapons in order to avoid the frequent cases of shooting off target which is evident of inadequate training. I will say nothing more on this.

Before I conclude this judgment, let me say that I was surprised when I found in the case file another processes filed by the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Respondents and that same were filed pursuant to an order of this court dated 7<sup>th</sup> of December, 2010.

Well, I took my time and went through the proceedings of the said day carefully and I can not find where such order was made. Therefore, the said processes are hereby discountenanced.

Consequently, it is settled law that a person whose fundamental right has been infringed can vividly sue for damages in monetary forms. It is equally the law that what gives rise to the cause of action is not the damages claimed but the injury complained of.

To this end, see the case of *AMAO VS ONIRO* (1064) NWLR 130, where it was held thus:-

“ .... An action for false imprisonment being an action for injuria sine damno. A Plaintiff need not give evidence of damages to establish cause of action.”

See also *MINISTER OF INTERNAL AFFAIRS VS SHUGABA ABDULRAHAMAN DARMAN* (1982) 3 NWLR. See also Section 35(6) of the 1999 Constitution.

In the final analysis, I hereby resolved the issue in favour of the Applicant and enter judgment for the Applicant and declared as follows:-

- (1) That the shooting of the Applicant on the arm by the men and officers of the 1<sup>st</sup> & 2<sup>nd</sup> Respondents is unlawful, unwarranted, illegal, callous and contravenes Section 33(1) and section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.
- (2) That the shooting of the Applicant's vehicle severally and the subsequent infliction of injuries on his arm amounts to inhuman and degrading treatment contrary to Section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria and Article 6 of African Chapter on Human and Peoples Rights.
- (3) That the detention of the Applicant by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents at the National Hospital from 6<sup>th</sup> of November, 2009 to 26<sup>th</sup> of November, 2009 is unwarranted, illegal and contravenes Section 35(1) of the 1999 Constitution and Article 6 of the African Charter on Human and Peoples Rights.
- (4) That the frequent order directing the Applicant to report at the Asokoro Police Station by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents without Just Course even when they are aware of his being treated at the Orthopaedic Hospital Kano and the prevention of the Applicant from travelling Overseas to seek medical treatment for the injury they inflicted on him is unwarranted, unlawfully and contravenes Section 41(1) of the 1999 Constitution of the Federal Republic of Nigeria and Article 4 of the African Charter on Human and Peoples Rights.
- (5) That the Respondents, their officers' agents and privies are hereby ordered to refrain from further harassing, arresting or declaring the Applicant wanted or any way preventing the Applicant from taking steps to seek medical expertise abroad.
- (6) That the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Respondents are hereby order to jointly and severally pay to the Applicant ~~₦~~4, 000, 000:00 (Four Million Naira) as damages for wilfully ...and recklessly shooting the Applicant and his illegal detention at the National Hospital.