

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION (GENERAL CIVIL)
HOLDEN AT HIGH COURT NO. 23, LAGOS
BEFORE HON. JUSTICE S. A. ONIGBANJO – JUDGE
TODAY THURSDAY THE 4TH DAY OF JULY, 2019

SUIT NO. LD/7559MFHR/2018

IN THE MATTER OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009, MADE BY THE CHIEF JUSTICE OF NIGERIA PURSUANT TO SECTION 46 (3) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED)

IN THE MATTER OF AN APPLICATION BY MR. OLAKUNLE KARIMU FOR AN ORDER FOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS

BETWEEN:

OLAKUNLE KARIMU --- --- ---- ----- --- APPLICANT

AND

OLUYOMI OLAWORE --- --- --- ----- --- RESPONDENT

JUDGMENT

The Applicant by application dated 2/11/18 Brought Pursuant to Paragraph 3 (c) Preamble and Order II Rules 1-5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, etc and the inherent jurisdiction of the Court prayed the Court for reliefs set out in the Statement in support of this application against the Respondent for breach of the Applicant's Fundamental Rights.

The reliefs sought by the Applicant are:

- a. A declaration that the Respondent violated the Applicant's Fundamental Right to life by maliciously subjecting the Applicant to circumstances which constituted a threat to his life, contrary to the guarantee provided by Section 33 of the Constitution of the Federal



Republic of Nigeria 1999 (as amended), and Article 4 of the African Charter on Human and People's Rights (as ratified and domesticated).

- b. A declaration that the Respondent violated the Applicant's Fundamental Right to dignity of the human person by falsely instigating men of the Nigerian Police Force to subject the Applicant to inhuman and degrading treatment, and to physical torture contrary to the guarantee provided by Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and Article 5 of the African Charter on Human and People's Rights (as ratified and domesticated).
- c. An order compelling the Respondent to issue a formal apology for the violation of the Applicant's Fundamental Rights, this apology to be published in 2 (two) National daily Newspapers.
- d. An order awarding to the Applicant the sum of N3,000,000.00 (Three Million Naira) only, payable by the Respondent as general damages for the violation of the Applicant's Fundamental Rights.
- e. An order awarding to the Applicant the sum of N50,000.00 (Fifty Thousand Naira) only, payable by the Respondent as special damages for the violation of the Applicant's Fundamental Rights.
- f. An order awarding to the Applicant the sum of N10,000,000.00 (Ten Million Naira) only, payable by the Respondent as exemplary damages for the violation of the Applicant's Fundamental Rights.
- g. Cost of this action on a full indemnity basis.



The application is supported by affidavit with exhibits attached one of which is VCD containing the said events of 29/6/18, Statement as well as written address of the same date.

The Respondent being the Applicant's former employer in opposing this application filed Counter-affidavit with exhibits attached some of which are copies of sworn declarations of Ezeadi Chizoba, Olayinka Abimbola and Nwamaka Nwaduche all of whom are Applicant's former colleagues at work and eye witnesses of the incidents of 29/6/18.

Written address dated 23/11/18 was also filed in support of Respondent's Counter-Affidavit whereupon Further-affidavit with exhibits attached alongside Reply on Points of Law were filed for the Applicant on 17/12/18.

Counsel thereafter proffered brief oral argument in support of their respective positions.

Upon a careful appraisal of the affidavit evidence adduced to the Court by parties vis-à-vis argument of Counsel it is clear to me therefrom that the reliefs sought from the court by the Applicant against the Respondent are basically predicated upon the Applicant's allegations that the Respondent was primarily or vicariously responsible for the alleged inhuman and degrading treatment he was subjected to while within the Respondent's premises on the day in question.

The foregoing being the case and notwithstanding that these are Fundamental Rights Enforcement proceedings, because the Applicant's Reliefs 1 & 2 upon which other reliefs are predicated are declaratory in nature, unless the Applicant adduces cogent and convincing proof of his entitlement to those two (2) declaratory reliefs against the Respondent, the Applicant's entire case must fail since it is now trite law that declaratory reliefs are never granted as of course but only granted by the Court pursuant to the Applicant for such reliefs proffering cogent and convincing evidence of his entitlement to same. See the Court of Appeal decision in the case of **UDENSI & ANOR v. KALAGBOR (2018) LPELR-**

45945(CA) wherein that Court held as follows on the burden/onus of proof regarding declaratory reliefs "it is trite law that he who asserts must prove by virtue of the Evidence Act. To discharge the burden a party must adduce cogent and credible evidence that has direct relevance to the matter in controversy, and it is only when she does that she discharges the burden. The burden of proving a particular fact lies on the party who substantially asserts the affirmative of an issue in dispute or contention; and (ii) that the onus placed on a party claiming a declaratory relief whether of title to land or not, is a heavy one as the entitlement of the party to the relief is not established by an admission by the Defendant. This is because the Plaintiff must satisfy the Court by cogent and credible evidence called by him to prove that as a claimant, he is entitled to the declaratory relief. It is the law that a Court does not grant declaration on admission of parties because the court must be satisfied that the Plaintiff on his own evidence, is entitled to the relief claimed."

In the light of the foregoing and having carefully scrutinized the affidavit evidence made available to the Court by parties, it is clear to me from the eye witness accounts of the incidence as contained in affidavits deposed to by the Applicant, the Respondent and the above mentioned former colleagues of the Applicant that although abundant proof exists that the Applicant was without doubt subjected to inhuman and degrading treatment in breach of his fundamental rights while on the Respondent's premises on the day in question against the Respondent's specific instructions never to do so, the Applicant's employment with the Respondent having been earlier terminated, the Applicant has not been able to adduce a single shred of evidence in proof of his allegation that the Respondent was primarily or vicariously responsible for the action of the two (2) Policemen against him on the day in question as claimed.

In coming to this conclusion much reliance is placed on Applicant's own admission of unauthorized presence on the Respondent's premises and his unauthorized entrance into the Respondent's personal office space while the Respondent was on seat in the full glare of some of the Respondent's

employees without the Respondent's permission see paragraphs 15-19 of the affidavit in support of this application.

Now, to me from Applicant's averments in those paragraphs of the affidavit in support, the Applicant appears to be saying that because the Respondent asked one of his employees to report the Applicant's unauthorized presence in the Respondent's office to the Police and request the Police to remove him from the Respondent's office the Respondent must be held responsible for the actions of the Policemen despatched to remove him from the Respondent's premises on the day in question.

I have to say with due respect to the Applicant and his counsel that in law, the Applicant being the party alleging the infringement of his fundamental rights by the Respondent bore the onus of proving on the preponderance of evidence his allegation that the Respondent specifically instructed and condoned Applicant's brutalization by the policemen as claimed in the affidavits filed in support of this application. See the case of **ALHAJI N. ISIYAKU & ANOR v. C.O.P, YOBE STATE COMMAND & ORS. (2017) LPELR-43439 (CA).**

Perhaps I should also add here that because the Applicant by his own account was not the sole eye witness of the incidence of the day in question, notwithstanding the Applicant's stringent say so that he heard the Respondent giving specific instructions to the Police to brutalize him and that the Respondent was aware of the Police brutalization of his person within the Applicant's premises on the day in question, I have also examined the affidavit averments of the Respondent and those of the Applicant's former colleagues exhibited alongside the Counter-affidavit especially those of Ezeadi Chizoba and Nwamaka Nwaduche who were also eye witnesses to the incidents and which I find corroborative of the Respondent's admission of requesting for Police intervention pursuant to the Applicant's unauthorized presence on his premises and denial of responsibility for the actions of the Policemen amounting to breaches of the Applicant's fundamental rights as claimed in this suit.


Consequently, I find no merit in Applicant's claims against the Respondent for alleged breach of Applicant's fundamental rights in the manner complained about in this suit since the Respondent having reported the Applicant's unauthorized presence on his premises and personal office on the day in question cannot be held vicariously liable for actions of the Policemen without any cogent and convincing proof that the Respondent either knew, instigated or approved of the Applicant's brutalization by the police. See the case of **SUNNY UBOCHI v. CHIEF GODWIN EKPO & ORS (2014) LPELR-23523 (CA)** wherein the Court of Appeal quoted the Supreme Court decision in **FAJEMIROKUN v. COMMERCIAL BANK NIG. LTD** as follows "Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their civic duty unless it is shown that it is done mala fide."

It is for the foregoing reasons that I find Applicant's suit against the Respondent misconceived in law and I order the same dismissed due to Applicant's failure to adduce cogent and convincing proof of his entitlement to the declarations of Court that the Respondent violated his fundamental rights as claimed in this suit.

Parties absent.

Y. Fajuyitan for Applicant.

C. Ikefuna for Respondent.


HON. JUSTICE S. A. ONIGBANJO,
JUDGE,
4/7/2019.



CERTIFIED TRUE COPY

30 Revers at N/A per Rln

ADJO-T. OLABISI
Commissioner For Oaths
Lagos High Court
Pgbo-ere Lagos

200
251019