

SUIT NO: FCT/HC/CV/230/2014 BETWEEN EZRA ENWERE AND FRSC & J OKUWOGA

The applicant in this suit, Ezra Enwere instituted an action against FRSC at the FCT High Court claiming that his fundamental rights were infringed upon and he is seeking the following declarations:

- a. That the brutal beatings, booking, torturing, restraint, assault and insults on him by the respondents at Benue Plaza junction, on the 5th of September, 2014 without lawful course, provocation or information as to the offence (if any) infringes the Applicant's constitutional Rights.
- b. An order of restraint against the respondents by themselves or agents from further harassment, beatings, assault and battery or threat of arrest of the applicant on account of the subject matter.
- c. An official apology from the respondents either written or published in a national daily.
- d. An Order for the award of thirty million naira (=N=30,000,000.00) made jointly and severally against the respondents in favour of the applicant for the unwarranted and illegal infringement of the Applicant's Fundamental Rights and degrading treatment without court Order or trial in competent Court if there is any offence.

2. **BRIEF FACTS:**

The applicant claimed he hired a taxi to convey him to Corporate Affairs Commission, Abuja for transaction. He alleged that when they got to Benue Plaza Junction, they were stopped by a patrol team of RS7.14 and a member of the patrol team entered the taxi and asked the driver to park in the middle of the road and when the applicant demanded to know what the offence was, he was kicked, beaten and insulted by the patrol team.

The Respondents (FRSC) did not file a counter affidavit within 5 days as required by law but filed a motion seeking an Order of Court for extension of time within which to file the Counter Affidavit and written address in the matter and deeming the counter Affidavit and written Address as properly filed and served on the Applicant.

3. **ISSUES FOR DETERMINATION**

- a. Whether it is lawful for the respondents to arrest any person reasonably suspected of having committed a traffic offence.
- b. Whether from the process filed by the applicant, he has made out a case against the respondents for violation of his fundamental human rights to entitle him to the declaratory reliefs and Orders sought.
- c. Whether a claim for damages can be granted where infringement or breach of fundamental human rights cannot be attributed to the respondents or where claim is not proved.

4. ARGUMENT

ISSUE ONE:

The learned defence counsel argued that the applicant's allegation of being arrested, detained and tortured, without adducing any evidence thereof, was denied by the respondents. The position of the law is that " an applicant's right is likely to be infringed where there are enough acts on the part of the respondent aimed essentially and unequivocally towards the contravention of the applicant's right. There is nothing on the face of the applicant's process that substantiates his claim". See *Ezeadukwa Vs. Maduka* (1997)8NWLR (pt 518) C.A.635.

Also, there is no averment in the evidence of the applicant near or close to showing an infringement of his right. Freedom of movement, just like any other right, is not absolute but subject to permissible restriction. See *Williams Majekodumi* (1962) 2 NSCC 268. In order to succeed in an action for unlawful arrest, the person arrested must prove to the smallest details that the arrest was unlawful in the sense that the laid down procedure was not followed by the person effecting the arrest. See *Ikonne Vs Commissioner of Police* (1986) 4 NWLR (pt.36) 473 referred to (p.663, paragraphs C-D). FRSC in the exercise of its functions are empowered to use their discretion, to caution and educate motorist and members of the public on the importance of discipline on the highway. Section 10(2)(c) FRSC (Establishment) Act, 2007.

Furthermore, FRSC is empowered to arrest any person suspected of committing or having committed traffic offences. Section 10(5)(a)(b)(e) and

(h). The extent and limit of the right to personal liberty needs to be kept in perspective, as the Supreme Court cautioned in the case of Dokubo-Asari Vs FRN (2008)3 CCLR (S.C.) 450 where Muhammed, JSC, held that the provisions of section 35 of the 1999 Constitution leaves no one in doubt that the Section is not absolute.

5. ISSUE TWO:

A party who is claiming a relief, particularly declarative relief must adduce credible and relevant evidence in proving his case. See Olaniyan Vs Odeyemi (1996) 7 NWLR (pt.459)205 at p.207. It is a trite law that the burden of proving infraction on fundamental human rights lies on the applicant and not the respondent. See Chief Dr. O Fajemirokun Vs Commercial Bank Nig. Ltd. & Another. (2009) 2-3 S.C (pt.1) at 29. It is trite law that he who asserts must prove. See section 135-137 of the evidence Act, which laid down the fundamentals of such proof.

In addition, the applicant alleged that he was arrested, detained, brutally beaten and tortured without any lawful authority. He did not produce any evidence to support the allegation. The respondents deposed in their affidavit that the applicant was not the owner of the taxi that was lawfully stopped neither was he the driver of the taxi that committed the traffic offence.

The Fundamental Rights (Enforcement Procedure) Rule 2009 grants the applicant some latitudes in the enforcement of his Right. Nonetheless, it does not remove the general burden of proof imposed by law or sacrifice the need to do justice to all concerned. Where an applicant fails to discharge the burden imposed by law, the application will be dismissed irrespective of the emotion evoked. Where the burden is placed on an applicant to produce a relevant document in proof of his case, that burden, no matter how onerous it may be, must be discharged. See Fajemirokun Vs Commercial Bank Nig. Ltd & Anor (Supra, pp 54 -55).

The Applicant therefore, failed to tender documents required to prove his arrest, detention and torture. The respondents have no burden to discharge. The applicant failed to establish his case with concrete and relevant evidence.

6. **ISSUE THREE**

Damages or compensation for violation of fundamental rights flows from successful proof of the Applicants case. If from the foregoing argument in issues 1 and 2, it is held that the Applicants case lacks merit, no damages can be awarded.

The respondents respectfully, urged the honourable court to dismiss the application for lack of merit.

COURT JUDGMENT

7. At the close of the case, the learned trial Judge agreed with the arguments of the respondents' (FRSC) counsel and dismissed the applicant's case in its entirety.