

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS NIGERIA
ON MONDAY THE 23RD DAY OF SEPTEMBER, 2019.
BEFORE THE HONOURABLE
JUSTICE I.N OWEIBO
JUDGE

SUIT NO: FHC/L/CS/175/2019

BETWEEN:

CHARLES AIYEYI APPLICANT

AND

ECONOMIC AND FINANCIAL CRIMES
COMMISSION RESPONDENT

JUDGMENT


This is an Application for the enforcement of Fundamental Rights dated 5th January, 2019 and filed same date. The Applicant is seeking the intervention of the Court for the enforcement of his Fundamental Rights said to have been contravened in the following terms:

- (i) A DECLARATION that the arrest and detention of the Applicant for 12 days between 11th December, 2018 and 22nd December, 2018 and the subsequent invitations and detention of the Applicant for the non-appearance of Chief Jerome Itepu is illegal, unlawful, unconstitutional, null and void as it violates the Applicant's Fundamental Rights as guaranteed under Sections 34, 35, and 41 of the Federal Republic of Nigeria 1999 (as Amended) and Articles 2, 5, 6 and 12 of the Africa Charter on

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Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federal Republic of Nigeria, 2004.

- (ii) A DECLARATION that the several invitation of the Applicant by the Respondent numbering over 10 times between July, 2018 and January, 2019 with threat of further detention for failure to produce Chief Jerome Itepu is illegal, unlawful, unconstitutional, null and void as they constitute a gross violation of the Applicant's Fundamental Rights as guaranteed under Sections 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).
- (iii) A DECLARATION that the freezing of the Applicant's Bank Account No: 3001383877 with the First Bank of Nigeria Plc. By the Respondent since 2nd December, 2018 is illegal, unlawful, unconstitutional, null and void as it constitutes a gross violation of the Applicant's Fundamental Rights as guaranteed under Section 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).
- (iv) AN ORDER directing the Respondent, its officers, agents, servants, privies or otherwise howsoever to forthwith cease from harassing, intimidating and threatening the Applicant with arrest, detention on the subject matter of non-production of Chief Jerome Itepu.
- (v) AN ORDER directing the Respondent to pay the sum of N500,000,000.00 (Five Hundred Million Naira) to the Applicant as exemplary and aggravated damages for illegal and unlawful arrest and detention and the illegal, unlawful and unconstitutional freezing of the Applicant's Bank Account No: 3001383877 with First Bank of Nigeria Plc.
- (vi) AN ORDER of perpetual injunction restraining the Respondent, its officers, agents, servants, privies


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or otherwise howsoever from further arresting and detaining the Applicant with respect to the issue of standing as a Surety to Chief Jerome Itepu.

(vii) **AND FOR SUCH** further Order or orders as this Honourable Court may deem fit to make in the circumstance of this case.

The Application is accompanied by a statement setting out the above reliefs and the grounds for the relief. The facts relied upon by the Applicant are contained in a 24 paragraph affidavit deposed to by the Applicant.

Applicant said he stood as Surety for a friend of his who was in the custody of the Defendant. The said friend, Chief Jerome Itepu, was released to him on 4th February, 2018. There were negotiation between chief Itepu and rest on an out amicable settlement. The negotiations broke down.

On 10th December, 2018 applicant went to his Bank, First Bank plc. to withdraw some money from his Account No: 3001383877 but he could not because restriction has been placed on the account by the Respondent. When he went to the Respondent's office to enquire why, he was told that Chief Itepu has refused to honour further invitations hence the action. The Applicant was arrested and detained at the Respondent's office and thrown into one of their Cells on 11th December, 2018. He was kept there incommunicado for 24 hours. All efforts for his release on administrative bail fail. He was released on bail on 22nd December, 2018 after twelve (12) days of detention.

The Applicant said that even after his release on bail his Bank Account remains frozen till date; that the Respondent told him they will not defreeze the account until he produced the said Jerome Itepu; that his family is going through hardship.

Adm 11/10/18
A. O. ADEYEHUN

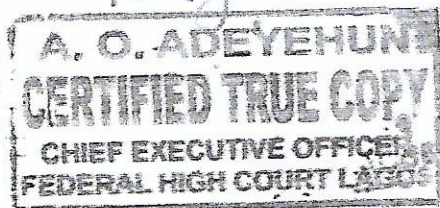
The Respondent in opposition filed a 34 paragraph counter affidavit deposed to by Callistus Egwuonwu on 27th March, 2019 exhibiting some documents marked Exhibits EFCC1 – EFCC7.

The Respondent agreed that the Applicant took one Jerome Itepu on bail. They however alleged that the Applicant had after the release of the said Jerome Itepu, disappeared with the suspect; that all invitation by the Respondent for Applicant to produce the suspect were dishonoured; that they got information that part of the moneys the suspect was alleged to have obtained fraudulently were traced to the Applicant, so an investigation was commenced; that based on that the Respondent wrote a letter to First Bank of Nigeria Plc. in order to conclude the investigations; that when the Applicant heard of the investigations at the Bank he reported himself to the Respondent; that he was charged with obstructing the cause of justice for his failure to produce the suspect and the Applicant volunteered a statement, and was granted administrative bail.

Legal Arguments.

Two issues were raised by James A.K. Akhigbe Esq., of Counsel for the Applicant:

1. Whether the arrest and detention of the Applicant and the freezing of his account by the Respondent do not violate Applicant's right to personal liberty, dignity of human, person and the right to own property.
2. Whether the Applicant is not entitled to compensation and damages for the infringement of his fundamental rights by the Respondents.



Learned Counsel took the issues one after the other. Counsel contended that the actions of the Respondent violated Applicant's rights to personal liberty, respect to the dignity of his person and to own

property. Counsel relied on Benson Vs. C.O.P (2016) 5 NWLR (Pt.1483) 417 and other authorities in urging the Court to hold that the Applicant's right aforesaid were violated.

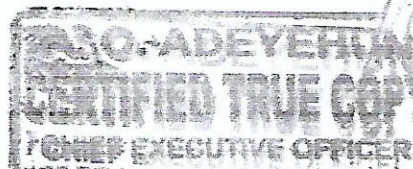
On the second issue; Counsel submitted that the essence of Fundamental Rights Law is to protect a Citizen against abuse, oppression and authorities and persons; that if the Court finds that the Applicants right were violated, it goes without saying the Application for compensation will be granted. Counsel relied on Jim Jaja Vs. C.O.P, Rivers State (2013) 6 NWLR (Pt. 1350) 255, 254; Attah Vs. I.G.P (2015) ALL FWLR (Pt. 805) 108.

Counsel contended that the Applicant is entitled to the compensation of N500 Million. Counsel urged the Court to grant the Application.

Learned Counsel for the Respondent, A.B.C. Ozioko Esq., identified two issues for determination:

1. Whether having regards to the circumstances of this case, the EFCC, have powers to investigate Economic and Financial Crimes reported to its?
2. If issue 1 above is affirmative, whether the Commission in the course of investigation has powers to grant administrative bail to persons arrested in the process thereof?

Learned Counsel argued the two issued together. Counsel referred to Section 6 (b) and (h) of the EFFC Act on the duties and functions of the Economic and Financial Crimes Commission (EFCC), relating to investigation of cases of economic and financial crimes reported to it. Counsel referred to Fawehinmi Vs. I.G.P (2002) 7 NWLR (Pt. 767) 606; Hassan Vs. EFCC (2014), 1 NWLR (Pt. 1389) 607; A.G.



There are two parts to this issue. The arrest of the Applicant and the freezing of his account by the Respondents.

In paragraphs 5, 6, 10, 12, 13, 14 and 15 of the affidavit in support, the Applicant stated that he was arrested by the Respondent and detained for twelve (12) days on account of his inability to produce Jerome Itepu for whom he has stood as Surety in the administrative bail granted by the Respondent to the said Jerome Itepu. Paragraphs 26, 27, 28 and 29 of the counter affidavit and Exhibits EFCC6 and EFCC7 show that there was no allegation of crime made against the Applicant; that he stood as Surety for the said Jerome Itepu; that when Applicant could not produce the said Jerome Itepu, Applicant was arrested and detained, and later granted bail. Exhibit EFCC6 is the statement of the Applicant promising to produce the said Jerome. Exhibit EFCC7 is the conditions of bail granted to the Applicant. The offence for which he was arrested or which was being investigated is not stated. There is evidence which is admitted by the Respondent that the Applicant was indeed arrested and detained.

Section 35(1) of the Constitution of Federal Republic of Nigeria 1999(CFRN), guarantees the right of the Applicant to personal liberty. This right can only be infringed upon where the law allows same.

From the counter affidavit, it can be deduced that the Applicant was arrested, detained and granted bail because he could not produce the suspect, which in my view is not a crime known to law. Let me quickly add that in paragraph 29, of the counter affidavit, the Respondent said the Applicant was charged with obstructing the cause of justice for his failure to produce Jerome Itepu. That is not made out from the exhibits attached. The only liability of the Applicant for failure to produce the suspect was to forfeit the sum of N18 Million.


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On the above, I hold that the arrest and detention of the Applicant was not justified and therefore unlawful.

In paragraph 10 of the affidavit in support, the Applicant said that on 10th December, 2018, he went to his Bank, First Bank Plc. to withdraw some money but he was told that restriction has been placed on his account since 2nd December, 2018. In paragraphs 16, 17, 18, 19 and 20 of the affidavit in support, the Applicant said the Respondents have failed or refused to defreeze his bank account unless he produced the said Jerome Itepu. The Respondent said in paragraph 28 of the counter affidavit that it wrote a letter of investigation activate to First Bank in order to conclude investigations into an allegation that some of the money alleged to have been fraudulently obtained by Jerome Itepu were traceable to the Applicant. Apart from saying that the claim of the Applicant as to the freezing of his account are half-truth, the Respondent made no definite denial. That claim not being controverted, it is deemed to be the truth. See *Anah Vs. Anah* (2008) 9 NWLR (Pt. 1091) 75, 83; *Nweke Vs. I.G.P* (2013) LPELR – 21173 (CA). I find as a fact that the Respondent placed restriction on the Bank Account No: 3001383877 belonging to the Applicant domiciled with the First bank of Nigeria Plc.

Section 30 EFCC A which empowers the Respondent to freeze the accounts of suspects requires the prior obtaining of an order of Court, to do so.

The Respondent did not produce any order of Court authorizing it to request First Bank to place restrictions on the Bank Account of the Applicant. I accordingly hold that the freezing of the account of the Applicant is unlawful and unconstitutional.

On the above the 1st issue for determination is answered in the affirmative.


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Issue 2:

"Whether the Applicant is entitled to compensation and damages".

Having found that the arrest and detention of the Applicant and the placing of restriction on his Bank Account were unlawful, the Applicant is entitled to compensation by virtue of Section 35(6) CFRN 1999 (As amended). See *Jim-Jaja Vs. C.O.P Rivers State (Supra)*; *Igwe Okolo Vs. Akpoyibo (2017) LPELR – 41882 (CA)*.

On the whole, judgment is entered in favour of the Applicant. The declaratory reliefs sought in prayers 1 and (iii) are granted as prayed. The injunctive orders sought in prayers iv and vi are hereby granted as prayed.

In respect of the compensation, I have considered the acts of the Respondent, the time it has taken the Applicant to prosecute this case and the status of the Applicant in the Public Service including the effect, the freezing of his account had had on his family. I believe that the sum of N5 Million will be adequate compensation in this case. I therefore award same in favour of the Applicant against the Respondent.

I also award cost of N30, 000.00 (Thirty Thousand naira), in favour of the Applicant against the Respondent.

A. O. Adeyemi
A. O. ADEYEMI
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FEDERAL HIGH COURT LAGOS

Subject to the sum of 270,000.00 for cost
A. O. Adeyemi
4/10/19

I. N. Oweibo

I. N. OWEIBO
JUDGE
23/9/2019

2603-4101-6416

APPEARANCES:

PARTIES: Not in Court.
J.A.K. Akhigbe Esq., for the Applicant.

11/10/19