IN THE SUPREME COURT OF NIGERIA

Suit No: SC255/2001

Petitioner: Barrister John Duru , Master Chizoba Ogaraku
And
Respondent: Patrick Nwangwu Nonyelum Nwangwu

Date Delivered: 2006-05-26

Judge(s): Idris Legbo Kutigi , Aloysius Iyorgyer Katsina , Ignatius Chukwudipats-Acholonu , Sunday Akinola Akinta , Mariam A

Judgment Delivered

The Appellants herein had on 14 December 1995 filed at the Federal High Court, Lagos a motion ex parte under the Fundamental Human Rights (Enforcement Procedure) Rules 1979 seeking:

(a) Leave to apply to the court for the enforcement of their Fundamental Rights as guaranteed by the 1979 Constitution of the Federal Republic of Nigeria (as amended).

(b) That the granting of this leave shall operate as a stay of all actions or matters relating to or connected with this complaint until determina'tion of the application.

(c) That the motion paper and all the processes in this suit shall be served on all the Respondents within 14 days.

The motion was heard and granted by Bioshogun J. on 18 January 1996.

Following the leave granted by Bioshogun J. the appellants on 31 January 1996 filed a motion at the Federal High Court, Lagos praying the court for:

(a) A Declaration that the arrest and detention of the Applications at the Barracks Police Station, Surulere, Lagos and the deten'tion of the 1st Applicant at Bode Thomas Police Station, Surulere, Lagos and Ikoyi Prisons for periods ranging from 2 days to 10 days without justification and the threat of detention or further detention of the Applicants is unconstitutional unlawful, illegal, null and void.

(b) An Order restraining the Respondents, their Agents or privies from arresting, re-arresting or detaining the Applicants.

(c) An Order directing the Respondents jointly and/or severally to pay to the Applicants damages in the sum of N50, 000.000 (Fifty million Naira).

Upon being served with the processes, the 8th and 9th Respondents (the respondents herein) filed a motion on Notice dated 1st day of April 1996 for an order dismissing or striking out the action as against the 8th and 9th respondents or in the alternative for an order striking out the names of the 8th and 9th Respondents upon the following grounds:

1. The Federal High Court has no jurisdiction to entertain the applicants\' action as constituted against the 8th and 9th Respondents/Applicants.

2. The 8th and 9th Respondents are not proper parties to this suit and the court has no jurisdiction to entertain the action as constituted which joins the 8th and 9th Respondents with the 1st to 7th Respondents.

3. The claim discloses no cause of action against the 8th and 9th Respondents and constitutes an abuse of court process.

On 19 December 1996 the trial Judge delivered a ruling whereby he dismissed the Respondents\' application. He held that:

1. The Federal High Court had jurisdiction to entertain the matter.

2. The 8th and 9th Respondents are proper parties in that there is a nexus between the 8th and 9th Respondents and the 1st - 7th Respondents particularly as the melancholy of the Applicants was planked on the petition of the 8th and 9th Respondents.

3. The averments in the affidavit in support seem to point to the fact that the Appellants have made a case against the 8th and 9th Respondents.

The Respondents\' appeal to the Court of Appeal was allowed. That court held that S.32 of the 1979 Constitution upon which the court could grant remedy to the Appellants had been suspended by Decree 107 of 1993 and therefore the jurisdiction Conferred by Section 42 of the 1979 Constitution and the Fundamental Rights Enforcement Rules could not be invoked. The Court of Appeal further held that the Respondents could not be held liable for the arrest and detention of the Appellants and consequently struck off the names of the 8th and 9th Respondents.

The Appellants have appealed to this court upon a number of grounds.

The Appellants, in their joint brief of argument, have submitted two issues for determination. These are:

1. Whether appellants\' claim in toto is only cognizable under S.32 of the 1979 Constitution and whether the said section had been suspended by Act No. 107 of 1993' (Otherwise known as Constitution (Suspension and Modification) Decree 1993).

2. If the answers to the question above are in the negative, whether it was proper for the lower court to have made definitive pronouncements on the substantive case upon a hearing of an interlocutory application.

For their part, the Respondents also raised two issues for determination which read as follows:

'1. Whether the learned Justices of the Court of Appeal were right in holding that the Applicants\' claim as constituted against the Respondents are (sic) not cognizable under Section 32 of the Constitution of the Federal Republic of Nigeria 1979, the section having been suspended by the Constitution (Suspension and Modification) Decree No. 107 of 1993.

2. Whether the learned Justices of the Court of Appeal erred in law whereby the judgment should be set aside by pronouncing on the substantive case by holding at page 12 of the Judgment/ruling that \"I am prepared to agree with the Appellants (the Respondents herein) that the Respondents cannot seek to enforce their fundamental Rights against them this is so on the further ground that the Respondents\' arrests and detention have been the work of the Police Officers and Prison Officers and have nothing to do with the appellants. All that the 2nd appellant has done was to petition the Police who in their judgment have carried out the arrests and detention of the Respondents.\"

The main issue in this appeal is whether Section 32 of the 1979 Constitution was suspended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. The Court of Appeal held that Section 32 of the 1979 Constitution was suspended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. That Court per Chukwuma-Eneh JCA reasoned thus:

'I now go on to deliberate upon the effect of the suspension of Section 32 of the Constitution and how it has impacted on this matter. This action would definitely come to nought if the fundamental right being contested in this case has been effectively and effectually deferred. The remedy being claimed by the Respondent is predicated on Section 32 of the Constitution being extant. If otherwise the action collapses. There is no dispute the currency of the Constitution (Suspension and Modification) Decree No. 107 of 1993. What is in dispute is its applicability to this matter. In spite of the

printer\'s devil in the provision which has put the Section as 32(23-7), the provision as lifted from Constitution (Suspension & Modification) Act Cap.64 Laws of the Federation 1990 has been set forth as Section 32(3-7). The argument that the section is non existent must therefore have been made inadvertently.'

It is not open to disputation therefore that the said section having been deferred, again in the midst of other provisions of the Constitution, has been rendered inoperative and totally ineffectual. That is to say, that the jurisdiction clearly conferred by Section 42 of the Constitution as regards enforcement of the entrenched rights under Chapter IV of the Constitution with particular reference to section 32 becomes unavailing. The language of Decree 107 of 1993 suspending the said Section amongst other sections is clear and explicit, and must be given effect irrespective that the consequences may be unfair and inconvenient.

The Appellants contend that Section 32 of the 1979 Constitution was not suspended by Decree No. 107 of 1993.

I think the answer to the contentious is very simple. Section 1(2) of the Consti'tution (Suspension and Modification) Decree No. 107 states as follows:

\"(2) the provisions of the Constitution of the Federal Republic of Nigeria 1979 mentioned in the First Schedule to this Decree are hereby suspended.\"

Section 32 (23) to (7) has been listed as No. 7 in the First Schedule. In spite of the printer\'s devil in the provision which put the section as 32(23) to (7), the provision as lifted from the Constitution (Suspension and Modification) Act Cap. 64 Laws of the Federation 1990 has been set forth as section 32(3-7). Surely, it can be seen clearly that sub-section 1 of section 32 was not suspended. The said sub-section 1 provides as follows:

\"1. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the .fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare:

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.\"

Section 32(1) which guarantees every person a right to personal liberty has not been suspended by any written law, Decree or Act of Parliament. In view of this, I hold that the Court of Appeal was in error when it held that section 32 was suspended. I resolve issue No. 1 in favour of the Appellants.

I now come to issue No. 2. In the course of its judgment the Court of Appeal held that:

\".... I am prepared to agree with the appellants that the respondents cannot seek to enforce their fundamental rights

against them. That is so on the further ground that the respondents' arrests and detention have been the work of the police officers and prison officers and has nothing to do with the appellants. All that the 2nd appellant has done was to petition the police who in their judgment have carried out the arrests and detention of the respondents. It is settled law that where an individual has lodged the facts of his complaint to the-police as in this case by way of petition, and the police have thereupon on their own proceeded to carry out arrests and detention, then the act of imprisonment is that of the police ..... This matter is therefore not properly constituted against the appellants. They have not arrested and detained the respondents.\"

This decision has been attacked not on its correctness but on the ground that it made definitive pronouncements ON the substantive case in an interlocutory application. The case of the respondents at the trial court and the Court of Appeal was that their names should be struck off the suit on the ground that they are not proper parties and also that the claim of the appellants did not disclose any cause of action against them. In plain language it was their case that they did not arrest and detain the appellants and they cannot therefore be held responsible for the actions of the police.

First, the Court of Appeal, by its decision complained about was only trying to resolve and indeed rightly resolved the issue placed before it. It must be remembered that this appeal concerns only the 8th and 9th defendants.

In the second place, the reliefs sought by the Appellants in their Motion at the Federal High Court relate to the unconstitutionality unlawfulness, illegality and nullity of the Appellants\' arrest and detention by the defendants/respondents, including the 1st - 7th defendants. The resolution of the matter of the Respondents herein did not touch on the substantive issues before the Federal High Court. The case of the Appellants is yet to commence against the 1st - 7th defendants at the Federal High Court. I therefore resolve the second issue against the Appellants.

In the result this appeal lacks merit and I accordingly dismiss it and affirm the decision of the Court of Appeal striking out the names of the appellants (8th and 9th Defendants) from the suit. There shall be costs of N 10,000.00 in favour of the Respondents.

Judgment delivered by
Idris Legbo Kutigi,J.S.C.

I have had the privilege of reading in advance the judgment just delivered by my learned brother Katsina-Alu, JSC. I agree with his reasoning and conclusions. The appeal is without merit. It is dismissed with N10, 000.00 costs in favour of the Respondents against the Appellants.

Pronouncement by
Idris Legbo Kutigi, J.S.C.
(Presiding)

Pursuant to Section 294(2) of the Constitution of the Federal Republic of Nigeria

Honourable Justice I.C. Pats-Acholonu who participated with us in this appeal agreed at our conference to dismiss the appeal.

Judgment delivered by
Sunday Akinola Akintan. J.S.C.

I had the privilege of reading the leading judgment just delivered by my learned brother, Katsina-Alu JSC. The issues

raised in the appeal have adequately been treated. I entirely agree with his reasoning and conclusion that there is totally no merit in the appeal. I adopt his said conclusion and I accordingly dismiss the appeal with costs as assessed in the leading judgment.

Judgment delivered by
Mariam Aloma Mukhtar. J.S.C.

I have read in advance the lead judgment delivered by my brother Katsina-Alu, JSC. I agree that the appeal lacks merit and deserves to be dismissed. In this respect, I also dismissed the appeal; I abide by the consequential orders made in the lead judgment.