

*Action for breach of fundamental human rights
Subject matter resulting in the alleged breach
Effect on the jurisdiction of court*

IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON FRIDAY, THE 31ST DAY OF MAY, 2013

BEFORE THEIR LORDSHIPS:

HONOURABLE JUSTICE CHIMA CENTUS NWEZE
HONOURABLE JUSTICE RITA NOSAKHARE PEMU: LEAD JUDGMENT
HONOURABLE JUSTICE FATIMA OMORO AKINBAMI

SC.221/2012

BETWEEN

NATIONAL DRUG LAW ENFORCEMENT AGENCY ... APPELLANT

AND

MR. BABATUNDE Omidina RESPONDENT

I agree with the submission of the Appellant that it is the Federal High Court which should have entertained the application for breach of fundamental human rights and not the High Court as in the instant circumstance, particularly as it relates to the "subject matter" of drug trafficking. The "subject matter" is what has to be put into consideration in determining whether the Court has jurisdiction or not. Moreso, Section 26 of the National Drug Law Enforcement Agency Act Cap 30 LFN stipulates that "The Federal High Court shall have exclusive jurisdiction to try offenders under this Act" Per Pemu, JCA

On the 12th of October 2011, the Respondent (Mr. Babatunde Omidina) was arrested at the Murtala Mohammed Airport, Ikeja, Lagos en route Paris, by officials of the Appellant, having proved positive to a body scan which indicated he had swallowed some substance suspected to be hard drugs (cocaine, heroin or any similar drug). Based

on the foregoing, as it is customary with the Appellant, the Respondent was put under observation to see if he would excrete any of these drugs. When on the 15th of October 2011, the Respondent was yet to defecate such substance, he was taken to BT Health and Diagnostic Centre of the Lagos State University Teaching Hospital in Ikeja for a CT scan. The CT scan and another body test conducted in the Appellant's office on 17th November, 2011 were positive. Accordingly, the Appellant applied *ex-parte* to the Federal High Court for an order for extension of time to detain the Respondent for an additional 15 days from the 21st October 2011, to further investigate and observe the Respondent.

Meanwhile, on the 19th October 2011, the Respondent filed an application at the High Court of Lagos State for the enforcement of his fundamental human rights, allegedly violated by the Appellant. On the 24th November 2011, the trial Judge found for the Respondent, awarding the sum of ₦25,000,000.00 (Twenty-Five Million Naira) as damages against the Appellant.

Dissatisfied with the decision of the trial Court, the Appellant appealed. Brief of argument was filed wherein four (4) issues were distilled for determination as follows: (i) whether having regard to the affidavit evidence and issues canvassed before the trial court, the court was right in deciding that the detention of the Respondent was a flagrant abuse and infringement of his fundamental human rights? (ii) whether the findings of the trial court on the orders of the Federal High Court granted the Appellant on the 21st October 2011 was not prejudicial to the Appellant, occasioning miscarriage of justice? (iii) whether the award of ₦25,000,000.00 damages and order for public apology were not arbitrary? and (iv) whether the trial High Court of Lagos State had jurisdiction to entertain the fundamental rights suit of the Respondent?

My Lord, Pemu JCA opted to determine the fourth issue first since it touches on the issue of jurisdiction.

Submitting on the issue of jurisdiction, the Appellant's Counsel relied on the authority of *TUKUR v. GOVERNMENT OF GONGOLA STATE* (1989) 4 NWLR (Pt. 117) 577 at 521, to argue that a Court cannot adjudicate over ancillary claims if it has no jurisdiction to entertain the main claim and if the ancillary claims will inevitably involve the discussion of the main claims. The Appellant argued that by Section 251(1) of the 1999

Constitution, the Federal High Court is imbued with exclusive jurisdiction in matters relating to drug and poison.

In his judgment, His Lordship held that based on the authorities cited by the Appellant, it is apparent that the trial Court, in determining the issue of breach of the fundamental rights of the Respondent, would inevitably look into the basis for the arrest of the Respondent for drug trafficking. In doing so, evidence would be placed before it to show if there was a basis for the arrest and by this, the High Court would have delved into the issue of "drugs and poison" which is the exclusive preserve of the Federal High Court under Section 251(1)(m) of the 1999 Constitution. The Court held further thus: *"I agree with the submission of the Appellant that it is the Federal High Court which should have entertained the application for breach of fundamental human rights and not the High Court as in the instant circumstance, particularly as it relates to the "subject matter" of drug trafficking. The "subject matter" is what has to be put into consideration in determining whether the Court has jurisdiction or not. Moreso, Section 26 of the National Drug Law Enforcement Agency Act Cap 30 LFN stipulates that "The Federal High Court shall have exclusive jurisdiction to try offenders under this Act"*.

Having decided the issue of jurisdiction in favour of the Appellant, the appeal should have been brought to an end; the Court however, proceeded to consider other issues on the merit.

On the first issue which questions the decision of the trial Court holding that the detention of the Respondent by the Appellant was a flagrant abuse and infringement of his fundamental rights, the appellate Court quoted the provisions of Section 35(1), 35(1)(4) and 35(1)(5)(a) and (b) of the 1999 Constitution. Interpreting the Sections, the Court held that the Respondent was arrested as a suspect involved in drug trafficking. Investigation commenced and in line with the routine of the Appellant, the Respondent was placed under observation to see if he excretes the substance. The Appellant, to be sure of its suspicion, took the Respondent to another health diagnostic centre for a CT scan and conducted another body test on the Respondent, which results proved positive. This strengthened the Appellant's suspicion and the Respondent was placed under further observation following an Order of the Federal High Court. Since Section 4(1)(a) of the National Drug Law Enforcement Agency Act Cap N30 LFN 2004

empowers the agency to arrest any person whom it has reason to believe has committed an offence, then it was wrong for the trial Court to hold that the detention infringed on the Respondent's fundamental rights. Moreso, the Respondent did not complain about any ill treatment or abuse to his person. The issue was thus, resolved in favour of the Appellant.

Deciding the issue of damages, the appellate Court held that having found that the Appellant was not guilty of any infraction of the Respondent's fundamental rights, the issue of damages cannot arise. Assuming that the Appellant was culpable, damages awarded must be based on law though the exercise of discretion of the trial judge comes to play. The award of ₦25,000,000.00 damages in this case, was based on wrong and erroneous principles. There was no basis to attract such punitive penalty.

The appeal succeeds; Judgment of 24th November, 2011 was set aside.

Counsel:

Femi Oloruntoba (DPLS NDLEA) with P.N. Gande, L.N. Nov and U.D. Eke for the Appellant

Bamidele Aturu Esq. with U. Adindi Esq., Jame Ode Esq. and John Nwokwu for the Respondent.