

Propriety of Filing Joint Application for Enforcement of Fundamental Rights

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 14th Day of June, 2024

Before Their Lordships
Tijjani Abubakar
Jummai Hannatu Sankey
Moore Aseimo Abraham Adumein
Habees Adewale Olumuyiwa Abiru
Mohammed Baba Idris
Justices, Supreme Court

SC/CV/26/2015

BETWEEN
TOTAL EXPLORATION & PRODUCTION NIGERIA LTD **APPELLANT**
AND

1.MR. AZUBUIKE OKWU

2.MR. NNAMDI FELIX OKWU

3.MR. GOODLUCK ALETE

4.MR. CHIKERE OPUTA

5.MR. KUTI JOHN

6.MR. CHISA KUTI

7.MR. SURAY ALBADRI

8.DARCET INTERNATIONAL LIMITED

9.MR. KENNETH NJOKU

10.THE G.O.C. NIGERIA ARMY, BORI CAMP

RESPONDENTS

(Lead judgement delivered by Honourable Habees Adewale Olumuyiwa Abiru, JSC)

Facts

The 1st to 6th Respondent, as Applicants, commenced an action under the Fundamental Rights (Enforcement Procedure) Rules, 2009 against the 7th to 9th Respondent, the Appellant, and the 10th Respondent, at the High Court of Rivers State. The Appellant was sued as the 4th Respondent at the trial court.

The 1st to 6th Respondent sought a declaration of breach of their rights to personal liberty and freedom from inhuman/degrading treatment; and an order for, *inter alia*, the release of the 2nd Respondent and damages against the Appellant and the 7th to 10th Respondent jointly and severally in the sum of ₦250 million.

The case of the 1st to 6th Respondent on the application was that 7th Respondent, a Lebanese, was the Project Manager of the 8th Respondent, who was a registered contractor of the Appellant handling all the civil engineering works at the Obagi Base Camp, while the 9th Respondent was an officer of the Nigerian Army detailed by the 10th Respondent to provide private security to the 7th Respondent. On 21st January 2012, soldiers led by the 9th Respondent, in the course of their providing security for the 7th Respondent, beat up staff of a company called Pontecelli Nigeria Ltd for overtaking their military convoy. The 1st Respondent got involved in resolving the incident in his capacity as the General Time-Keeper of Pontecelli Nigeria Ltd and Task Force Chairman of Saipem, Pontecelli and Decidom. It was their case that there was an exchange of harsh words with racist slur between the 7th Respondent and the 1st Respondent in the course of the resolution of the incident and that the matter was eventually settled amicably. However, on 29th January 2012, the 1st to 6th Respondent, while in a Toyota Hiace Bus, were accosted and halted near the premises of the 8th Respondent by the 9th Respondent, accompanied by two military escorts who were also involved in the earlier incident. They were ordered to alight from their vehicle. The 9th Respondent recognised the 1st Respondent and berated him for the altercation he had with the 7th Respondent during the earlier incident. Subsequently, the soldiers took them and their vehicle into the premises of the 8th Respondent where the 9th Respondent told them that the 7th Respondent had given instructions that the 1st Respondent should be dealt with whenever he was found. The 1st to 6th Respondent alleged that the 9th Respondent and his military escorts beat them severely, shot at them, and the 2nd and 3rd Respondents sustained bullet wounds in their stomach and hand respectively. Thereafter, the 9th Respondent and his co-soldiers impounded their motor vehicle and detained the 2nd Respondent.

The Appellant filed a counter affidavit in which it denied the entire case of the 1st to 6th Respondent, maintaining that it did not in any way infringe or breach their fundamental rights. The Appellant deposed clearly in its counter affidavit that it did not own the Obagi Base Camp where the 1st Respondent's bus was allegedly being detained as other companies including the 8th Respondent also made use of the Obagi Base Camp. The Appellant contended that the 1st to 6th Respondent did not disclose a reasonable cause of action against it and prayed that the claim against it be dismissed. By a further affidavit, the 1st to 6th Respondent contended that a principal-agent relationship should be inferred between the Appellant and the 8th Respondent from the fact that the 8th Respondent was a registered contractor of the Appellant who should be vicariously held responsible for the actions of the 7th and 8th Respondents. The 7th and 8th Respondents filed responses to the case of the 1st to 6th Respondent who also filed a further affidavit in reply to that counter affidavit. The 9th and 10th Respondents did not file any response and did not attend the trial court to contest the case.

The trial court heard the matter on the merits and entered judgement in favour of the 1st to 6th Respondent, awarding them damages in the sum of ₦230 Million. The appeal to the Court of Appeal was unsuccessful. Dissatisfied, the Appellant appealed to the Supreme Court. The 10th Respondent filed a Preliminary Objection seeking an order dismissing or striking out the name of the 10th Respondent from the appeal for not being a juristic person; and an order setting aside all the proceedings and decisions of the trial court as well as those of the Court of Appeal in relation to the 10th Respondent.

Issue for Determination

The Supreme Court considered the following issues for determination of the appeal:

- i. Whether the Court of Appeal was wrong when it affirmed the decision of the trial Court as the 1st to 6th Respondent's action was incompetent *ab initio* as a result of a lack of jurisdiction?
- ii. Whether the learned Justices of the Court of Appeal were wrong when they affirmed the decision of the trial court which held the Appellant liable when the 1st to 6th Respondent failed to discharge the onus of proof under the Evidence Act?
- iii. Whether the learned Justices were wrong when they affirmed the award of damages in the sum of ₦230 Million?

- iv. Whether the learned Justices were wrong when they held that the Appellant did not deny that the 8th to 10th Respondent were its agents?

Arguments

Arguing the first issue, counsel for the Appellant submitted that in fundamental rights matters, jurisdictional issues are resolved by reference to only the application of the applicant, and without reference to the counter affidavit and other subsequent processes. Counsel noted that the six applicants, who sought to enforce their individual fundamental rights in one action, had different causes of action, no common grievance, sought peculiar reliefs and that the main relief was not for the enforcement of fundamental rights but for tortuous claims. He argued that the action as commenced was not in accordance with the law. Relying on the provisions of Section 46(1) of the Constitution of the Federal Republic of Nigeria and Order 1 Rule 2 and Order 2 Rules 2 and 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 he posited that the words used therein - 'any person', 'applicant' and 'application' were in the singular form. Thus, a literal interpretation of these provisions show that fundamental right applications must be filed by individual applicants and that one fundamental right application cannot be filed by joint applicants. He relied on **OPARA v SPDC (2015) 4 NWLR (PT. 1479) 307**, amongst others.

In response, counsel for the 1st to 6th Respondent argued that this issue was being raised by the Appellant for the first time on appeal and the Appellant did so without first seeking and obtaining the leave of the Supreme Court. Furthermore, fundamental rights are of a special nature and inalienable. The 2009 Fundamental Rules expanded the categories of people that can file applications for protection of fundamental rights beyond the particular individual concerned to other persons, groups and bodies. He referred to judicial authorities on the point that a joint application by multiple applicants for enforcement of fundamental rights was proper. Finally, counsel submitted that tortuous acts of assault, battery and detinue, have been held to constitute breach of the fundamental rights in **MOGAJI v BOARD OF CUSTOMS AND Excise (1982) 3 NCLR 552**.

On issues two and four, it was submitted for the Appellant that the affidavit filed at the trial court by the 1st to 6th Respondent was devoid of any deposition showing the existence of a master/servant, employer/employee or principal/agent relationship between the Appellant and the 7th to 10th Respondent. Counsel, thus, submitted that the findings of the trial court, and affirmed by the lower court that the Appellant was vicariously liable, was not supported by any evidence on record. Responding, counsel for the Respondents

referred to the averment in paragraph 3 of the affidavit in support of their claims wherein they deposed that the 7th Respondent, a Lebanese National, was the Project Manager of the 8th Respondent who was a registered contractor of the Appellant handling all its civil works at the Obagi Base Camp. Counsel stated that the Appellant did not directly or indirectly deny these averments in its counter affidavit and that they constituted sufficient evidence upon which the lower courts found the Appellant vicariously liable for the actions of the 7th to 10th Respondent.

Regarding the third issue, counsel for the Appellants urged the court to hold that based on the facts of the case, the lower courts were wrong when they affirmed the award of damages in the sum of ₦230 Million. The 1st to 6th Respondent argued contrariwise, urging the apex court to uphold the award of damages made by the lower courts.

Court's Judgement and Rationale

On the Preliminary Objection, the Supreme Court regarded the objection as legally absurd and procedurally irregular. The court held, *inter alia*, that the 10th Respondent having not appealed against and contested its juristic personality in the name and title in which it was sued and judgement entered against it at the lower courts, cannot be heard in the appeal of the Appellant against those judgements to contest its juristic personality in that name and title. Its failure to appeal against those judgements was a concession of the fact that it was properly sued in its right name and designation.

Deciding the first issue, Their Lordships held that *it is matters of substantive jurisdiction that can be raised at any time and which if resolved against a party that renders the entire proceedings a nullity, not matters of procedural irregularity. Matters of procedural irregularity must be raised by a party at the earliest opportunity, before taking any other step in the matter, otherwise he will be deemed to have waived the irregularity and will be foreclosed from raising it again* – **ODU'A INVESTMENTS CO. v TALABI (1997) 10 NWLR (PT. 523) 1; HABIBU v STATE (2023) LPELR- 60351SC**. Further, there is no provision in the Fundamental Rights (Enforcement Procedure) Rules, 2009 that prevents more than one applicant from bringing a joint action for the enforcement of fundamental human rights. *A court is at liberty to allow more than one applicant to be joined together in the same application to enforce their rights once a common cause of action can be established. Once it can be shown from the affidavit filed in support of an application that the issues submitted by the applicants for the determination of a court are on the same subject matter and on the same grounds, a joint application for the enforcement of fundamental rights should be allowed* – **ABDULRAHEEM v ODULEYE (2019) LPELR-48892SC**. The same should apply where the interests of the applicants in the cause or matter are the same, the

grievance common, and the reliefs sought in the action are by their features beneficial to all of the applicants. It is only wrong and incompetent for different individuals to join in one action to enforce different causes of action under the Fundamental Rights (Enforcement Procedure) Rules, 2009.

On the contention that the complaints of the 1st to 6th Respondent relate to tortious acts and not a breach of their fundamental rights, the apex court held that their complaints before the trial court came within the definition of the words “torture or inhuman or degrading treatment” as used in Section 34(a) of the Constitution, and were thus, properly brought under the Fundamental Rights Procedure Rules. The first issue was consequently resolved against the Appellant.

On the second and fourth issues which the court took together, the Supreme Court noted that, from the records and the affidavit evidence of the 1st to 6th Respondents, nowhere was it stated that the military officers of the 10th Respondent led by the 9th Respondent had any connection with the Appellant and it was not part of their case that the military officers were posted at the request of the Appellant and/or to protect the oil installations of the Appellant. The court held that assuming that the 1st to 6th Respondent did lead evidence of facts and circumstances to establish the existence of such a principal/agent relationship, the law further stipulates that a principal will only be vicariously liable for the acts of the agent where they were done in fulfillment of the terms and conditions of the agency and this was not shown by the 1st to 6th Respondent. Hence, the findings of the lower courts on issues two and four against the Appellant were adjudged to be perverse and set aside by the Supreme Court.

On the third issue relating to the award of damages made against the Appellant by the trial court and affirmed by the lower court, their Lordships noted that the judgement of the lower court on the affirmation of the award of damages against the Appellant was consequent upon the findings made by the trial court on the vicarious liability of the Appellant, along with the 7th and 8th Respondents, for the actions of the military officers of the 10th Respondent led by the 9th Respondent. Upon its earlier finding that the lower courts erred in holding the Appellant vicariously liable, the award of damages made against the Appellant was set aside.

Appeal allowed.

Representation

M.A. Essien, SAN with O.U. Ulasi, Esq. for the Appellant.

N. Meshach Nwoloko, Esq. for the 1st to 6th Respondent.

F.T. Uwa, Esq. for the 9th Respondent.

Isah Shuaibu, Esq. for the 10th Respondent.

7th and 8th Respondents not represented by counsel.

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