

COMMUNITY COURT OF JUSTICE, ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE, CEDEAO



No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

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IN THE COMMUNITY COURT OF JUSTICE
OF ECONOMIC COMMUNITY OF WEST AFRICAN STATES
HOLDEN AT ABUJA, NIGERIA

WEDNESDAY, OCTOBER 12, 2016

SUIT NO: EWC/CCJ/APP/17/15

JUDGMENT NO. ECW/CCJ/JUD/26/16

BETWEEN

MR. GODSWILL TOMMY UDOH PLAINTIFF

AND

FEDERAL REPUBLIC OF NIGERIA DEFENDANT

COURTS FINAL JUDGMENT

1. COMPOSITION OF THE COURT

Hon. Justice Friday Chijioke NWOKE - Presiding

Hon. Justice Micah Wilkins WRIGHT - Member

Hon. Justice Alioune SALL - Member

Assisted by Mr. AboubakarDjibou DIAKITE - Registrar

2. COUNSEL FOR THE PARTIES AND ADDRESSES FOR SERVICE

For the Applicant/Plaintiff

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For Service on the Defendant:

Federal Republic of Nigeria
C/o The Hon. Attorney General of the Federation & Minister for Justice
Federal Ministry of Justice
Opp. Bayelsa House (Izon Wari)
Off. Shehu Shagari Way, Maitama District
Garki, Abuja.

3. SUBJECT MATTER OF THE PROCEEDINGS

A. Violation of the Applicant's right to personal liberty and freedom of movement as enshrined in Articles 6 & 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter IV Laws of the Federation of Nigeria, 1990.

B. Violation of the Applicant's right to the respect of the integrity and dignity of his human person, as enshrined in Articles 4 & 5 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter IV Laws of the Federation of Nigeria, 1990.

4. SUMMARY OF PLEAS IN LAW:

A. The African Charter on Human and Peoples' Rights (ratification and enforcement) Act Chapter IV Laws of the Federation of Nigeria, 1990.

B. The Revised Treaty of The ECOWAS, 1993; Article 4 of the Revised Treaty of ECOWAS, 1993, provides for the applicability of the Terms of the African Charter on Human and Peoples' Rights to Member State of ECOWAS as follows:

THE HIGH CONTRACTING PARTIES, in pursuit of the objectives stated in Article 3 of the Treaty, solemnly affirm and declare their adherence to the following principles:

4(g) Recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter or Human and Peoples' Right.

Whereas the Federal Republic of Nigeria has ratified and adopted the provision of the African Charter on Human and Peoples' Rights (ratification and enforcement) Act Chapter IV Laws of the Federation of Nigeria 1990, Article 1 of the African Charter on Human and Peoples' Rights (ratification and enforcement) Act Chapter IV Laws of the Federation of Nigeria 1990 provides that:

“The member states of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedom enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them”

Article 2 provides:

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, birth or other status.”

It is provided under Article 12 (1) and (2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter IV Laws of the Federation of Nigeria 1990 that:

“Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law”

It is humbly submitted that the arrest and detention of the Plaintiff was without any legal basis or justification. Accordingly, the said arrest and detention of the Plaintiff was unwarranted, illegal, unconstitutional and a gross violation of his rights to personal liberty and freedom of movement as guaranteed under Articles 6 and 12 of the African Charter on Human & People's Rights (Ratification and Enforcement) Act, Cap. IV Laws of Federation of Nigeria 1990.

It is provided under Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter IV Laws of the Federation of Nigeria 1990 that:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may arbitrarily deprive of this right.”

Article 5 further provides:

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All form of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”

We submit further that the arrest, detention and inhuman treatment of the Plaintiff under the above circumstances are infringement on the fundamental rights of the Plaintiff under Articles 4 & 5 of the African Charter on Human & people’s Rights (Ratification and Enforcement) Act, Cap. IV Laws of Federation of Nigeria 1990.

Article 14 provides:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of the appropriate laws.”

We submit that the seizure and detention of the Plaintiff’s Telephone handset, wristwatch, belt and shoes under the above circumstances amount to torture and inhuman treatments contrary to the fundamental rights of the Plaintiff under Articles 4 & 5 of the African Charter on Human & people’s Rights (Ratification and Enforcement) Act, cap. IV Laws of Federation of Nigeria 1990.

5.0. FACTS AND PROCEDURE

5.1 NARRATION OF THE FACTS BY THE PLAINTIFF:

- I. The Plaintiff avers that he is a community citizen and a businessman.
- II. The Plaintiff avers that on the 24th of January, 2015, he was in a guest house at 22 Gana Street, Maitama with a business partner Otumba Taiwo where they were to have a meeting with one Dr. Ben who was coming from Makurdi to meet with them in Abuja.
- III. The Plaintiff avers that after waiting for Dr. Ben for a while, Otumba Taiwo left briefly to see a friend within Maitama while the Plaintiff kept waiting for Dr. Ben.

- IV. The Plaintiff avers that as he was waiting, he got a call from a friend, Noel Mian Dallo who asked him where he was and that he wanted to see him.
- V. The Plaintiff avers that he requested Noel to tell him why he wanted to see him and he responded by saying that he just wanted to see him.
- VI. The Plaintiff avers that Noel told him where he was and he said he was coming soon.
- VII. The Plaintiff avers that after some time Noel called to say that he was at the gate of 22 Gana Street, Maitama.
- VIII. The Plaintiff avers that he told him to come inside the compound but he refused and instead requested the Plaintiff to come outside.
- IX. The Plaintiff avers that he went outside to meet him but to his surprise he met a blue highlander jeep with two other vehicles loaded with armed men. His friend, Noel was sitting inside and two men came outside, one with a gun telling him he was under arrest.
- X. The Plaintiff avers that he was scared and surprised because he was not shown any arrest warrant and the men did not identify themselves. They asked the Plaintiff to enter the car and that he should not move.
- XI. The Plaintiff avers that he entered the car and they immediately put a veil on his eyes to blindfold him with a warning that he should not say anything. The Plaintiff wanted to ask his friend Noel what the problem was and they shouted that both of them should not say anything.
- XII. The Plaintiff avers that when they drove off, he noticed that some other cars were coming behind them and the men were communicating with the people in those cars on phone. They were driven to Aso Drive, Maitama office of the State Security Services.
- XIII. The Plaintiff states that he got to know because they raised the veil a little for him to know where he was. They asked him if he knew where he was and the Plaintiff answered them; yes.

- XIV. The Plaintiff avers that he was a little bit relieved to know that he was arrested by the DSS personnel even though he didn't know the offence he was arrested for. They took the Plaintiff into one of the rooms within the DSS Office Complex, seized his phone and asked him if he knows a man called Shola or if he knows anybody ever called Shola.
- XV. The Plaintiff avers that after thinking for a while, the Plaintiff told them that he knows one Shola whom he met in 2009 in the course of a business transaction with the Emir of Daddare, Musa Balarabe, a long time ago. They asked if he knows Shola's house and he told them that the last time he went to Shola's house was 3 or 4 years ago. And that the last time he saw Shola briefly was when a friend, Best Mbang, invited him to Harmonia Hotel and when he entered the Hotel, he saw Shola passively sitting in the Restaurant. He greeted him and went ahead to discuss with Mbang.
- XVI. The Plaintiff says that he told the security operatives that he does not have dealings with Shola and does not even know why he was arrested. At that point they chained the Plaintiff's hands and legs with handcuff and blindfolded him again. The Plaintiff was made to sit on the floor while the DSS officials left with a warning that they are coming back around 11Pm to take him to lead them to Shola's residence.
- XVII. The Plaintiff avers that they came back around 2am in the morning and picked the Plaintiff to Abacha Road in Mararaba, Nasarawa State where Shola was staying. As they were going late in the night the DSS officials threatened the Plaintiff seriously that if he does not show them Shola's residence, they will shoot his leg and leave him by the road side
- XVIII. The Plaintiff avers that he was scared and had to tell them that they should inquire about him from the Chief Security Detail to the Director General, DSS, that he is a friend and an in-law because he married from the Plaintiff's place. That they should ask the Chief Detail if he is of a questionable character.
- XIX. The Plaintiff avers that in the car that night, one of the men asked the Plaintiff why he was impersonating the DSS. The Plaintiff told them he can't do such a thing and has never done such and will never do so. The Plaintiff told them that he has a profession and that he loves what he is doing. That if he is interested in becoming a security personnel, he will do so but that he loves what he is doing.

- XX. The Plaintiff complains that they took him to Abacha road and he tried to trace Shola's house but a lot of building had sprung up in the area and some of the areas that were covered with bushes were cleared coupled with the fact that it was already too late at night, so it was hard to trace the building.
- XXI. The Plaintiff alleged that he told them that the Shola he knows is very popular and has been living for up to eight years and that they can locate him by coming during the day.
- XXII. The Plaintiff states that when they could not find him, they took the Plaintiff back to the DSS building, placed him in the same building, covered his eyes and handcuffed his hands and feet.
- XXIII. The Plaintiff avers that he went through the travails without knowing or being told of his offence. That it was much later that his friend, Noel explained to him the situation and the reason for the arrest.
- XXIV. The Plaintiff states that his friend Noel said he was driving from Mararaba to Abuja. Along the way, he, Noel, picked three persons (passengers) to enable him augment his fuel money. As they were going, Federal Road Safety Officers waived him to stop and he stopped for them.
- XXV. The Plaintiff avers that one of them (Road Safety Officials) went to the car behind Noel's car and asked the man seating in front of that car to put on his seat belt. The man showed his Identity Card and the Road Safety Officer allowed the vehicle to go without any penalty.
- XXVI. It was then that one of the passengers in Noel's car commented that if you are not somebody in Nigeria, you are in trouble. Noel then narrated to them how he went for a function with some people in a car. He said they were stopped by a policeman. He said the owner of the car named Shola brought out an Identity Card and showed to them, which made the policeman to allow them pass.
- XXVII. The Plaintiff avers that while Noel was narrating the story, he didn't know that one of the passengers in the car was a DSS personnel. It was then the DSS personnel requested Noel to take him to DSS headquarters after dropping the other passengers.

- XXVIII. The Plaintiff avers that on getting to the DSS headquarters, the man went up and informed other personnel that came down to arrest Noel. He said they asked him to take them to Shola that showed a fake Identity Card. Noel replied them that he didn't say the identity card was fake and that the incident took place a long time ago.
- XXIX. The Plaintiff avers that they asked Noel to take them to Shola's place but he said he doesn't know the place. They asked him to mention any other friend that knows the place and that was how he mentioned the Plaintiff's name.
- XXX. The Plaintiff avers that that was how he had to pay the price for a matter he knew nothing about.
- XXXI. The Plaintiff complains that the next day being Sunday, the Plaintiff was not allowed to go to church and nobody attended to him. He was left alone with handcuff on his hands and feet and was sleeping on the bare and very hard floor in the cell which led to an injury on his head (back of his head).
- XXXII. The Plaintiff avers that on Monday morning, the personnel came and asked him and Noel to write their statements. After writing their statements, they asked them to call people to take them on bail.
- XXXIII. The Plaintiff avers that at that point, they came to tell the Plaintiff that they could not find his handset (i.e. phone) which they seized from him. They said they have been searching for the phone for hours.
- XXXIV. The Plaintiff avers that the DSS personnel that asked him and Noel to write the statements gave him Three Thousand Naira only in place of his phone that got lost.
- XXXV. The Plaintiff and his friend, Noel, left the premises of the DSS around 6.00pm of January, 26th, 2015.
- XXXVI. The Plaintiff avers that he later got to know the name and phone number of the personnel that took their statements to be Paul.
- XXXVII. The Plaintiff states that apart from Paul who gave his name and phone number 08035791686, to Noel to call him when he gets in touch with Shola, all the other security operatives including the one that took Noel to

DSS office did not disclose their identity. All efforts to get them to disclose their identities eg. names and ranks, proved abortive.

- XXXVIII. The Plaintiff states that Noel didn't know Shola through him and that he only met Shola once together with Noel. The second meeting was very brief at the hotel. Noel got to know Shola through one Mr. Gbenga.
- XXXIX. The Plaintiff avers that he was maltreated unjustly for what he knew nothing about. It is a pity and very unfortunate that the Plaintiff who used to believe that, the DSS is a highly specialized security service capable of investigating matters diligently and professionally before drawing conclusions and effecting arrest, was a victim of unprofessional and unethical conduct by the DSS.
- XL. The Plaintiff avers that he was bundled into a vehicle blind folded like a notorious criminal and subjected to dehumanizing treatment of being handcuffed (hands and legs) simply because the very organization that is funded with tax payers money needed him to help in tracing a person who may, after all, be one of the its employees.
- XLI. The Plaintiff states that even if Mr. Shola is not an employee of the DSS, due diligence and common sense dictate that Mr. Noel and the Plaintiff ought to have been treated in a most civilized and friendly manner that would have enabled them to willingly assist in fishing out Shola.
- XLII. The Plaintiff states that this is a case of gross violation of his fundamental human rights and he is accordingly seeking redress in this Honourable Court.
- XLIII. The Plaintiff avers that he regained his freedom at exactly 6pm on Monday, 26th January, 2015 after spending two nights and three days in SSS cell and he and Noel were requested to report back to DSS on Tuesday, 27th Jan, 2015 which they did. But before going there, Noel called Mr. Paul on his phone and he said they should come.
- XLIV. The Plaintiff avers that on getting to DSS office, Mr. Paul asked them whether they were able to establish contact with Shola and the Plaintiff and Noel answered in the negative.
- XLV. The Plaintiff avers that they were allowed to go, but asked to report back after one week, which they did, but unfortunately Mr. Paul did not answer

Noel's phone calls and the Plaintiff and Noel were not allowed entry at the gate of the DSS Office when they arrived there.

- XLVI. The Plaintiff states that after reporting at DSS office on the 27th Jan, 2015, he caused his Solicitors (Jimmy & Jimmy Associates) to write to the Director General of DSS complaining about the unlawful arrest, detention and inhuman treatment mete out to him.
- XLVII. The Plaintiff avers that the Solicitor's letter was dated 11th February, 2015 was ignored by DSS and even the second letter dated 10th March, 2015 was equally ignored.
- XLVIII. The following is a graphic detail of what transpired between the Plaintiff and Agents of the Defendants, viz:
- a) Plaintiff was arrested without warrant.
 - b) Plaintiff was bundled into a waiting car without any disclosure of the offence against him.
 - c) He was whistled away against the midnight to a lonely area in Abacha Road, Mararaba in search of Shola.
 - d) He was stripped of his belt, wristwatch, shoes and telephone handset
 - e) He was left bear footed.
 - f) He was lumped together with other detainees
 - g) He was blindfolded for many hours
 - h) He was detained from Saturday 6PM to Monday 6PM
 - i) He was refused access to his family and starved of food for three days
 - j) He was blindfolded, handcuffed and made to sleep on hard floor for two nights.
 - k) Insults, harassments, intimidations and abuses were constantly hurled at him.

ORDERS SOUGHT BY THE APPLICANT:

- 1) A DECLARATION that the arrest and detention of the Plaintiff at Office of State Security Service, Aso Drive, Asokoro, Abuja from 24th to 26th January, 2015 by the Defendant is arbitrary, illegal, unlawful and constitutes a gross violation of the Plaintiff's fundamental rights to personal liberty and freedom of movement guaranteed under *Articles 6 and 12 of the African Charter on Human & People's Rights (Ratification and Enforcement) Act, Cap. IV Laws of the Federation of Nigeria, 1990.*

- 2) A DECLARATION that the physical assault, torture, harassments, intimidations, abuses and insults on the Plaintiff at Office of the State Security Service, Aso Drive, Maitama, Abuja from 24th to 26th January, 2015 by the Defendant constitute a violation of the right to respect of human dignity of the Plaintiff as guaranteed under *Articles 4 and 5 of the African Charter on Human & People's Rights (Ratification and Enforcement) Act, Cap. IV Laws of the Federation of Nigeria, 1990.*
- 3) A DECLARATION that the seizure and detention of the Plaintiff's wristwatch, belt, shoes and Telephone handset for three days by the Defendant is unlawful and a violation of the right to property of the Plaintiff as guaranteed under *Article 14 of the African Charter on Human & People's Rights (Ratification and Enforcement) Act, Cap. IV Laws of the Federation of Nigeria, 1990.*
- 4) AN ORDER of injunction restraining the Defendant and its agents from further arresting, detaining or in any way whatsoever violating the human rights of the Plaintiff as guaranteed under *Articles 4, 5, 6, 12 and 14 of the African Charter on Human & People's Rights (Ratification and Enforcement) Act, Cap. IV Laws of the Federation of Nigeria, 1990.*
- 5) AN ORDER that the Defendant shall pay the sum of ₦150, 000, 000 (One Hundred and Fifty Million Naira) only as compensation for violation of the Plaintiff's Human Rights to the dignity of his person, right to personal liberty and right to property.

5.2 PROCEDURE

5.2.1 The initiating Application (**Document number 1**) was filed in this Court on May 14, 2015 and duly served on the Defendant on the same day, May 14th.

5.2.2 By June 15, 2015, the Defendant had not yet filed a defense or made any other form of appearance, and the Registry of this Court issued a Certificate of Non-Lodgment on June 19, 2015 confirming that up to that date, the Defendant had not filed its defense.

5.2.3 The case was called for hearing on October 13, 2015 and during that sitting, only the Plaintiff and his counsel were in court while the Defendant was absent without excuse. The Plaintiff applied to be permitted to present evidence and prove his case; the court decided to adjourn the case to a later date and by that time if the Defendant still had not filed its defense then the Plaintiff would be permitted to prove his case.

5.2.4 Accordingly, the case was thus suspended until November 26, 2015. The hearing did not take place on the assigned date and the case was reassigned for January 20, 2016.

5.2.5. Finally, at the call of the case on March 14, 2016, all parties and their respective counsel were present and the Defendant brought to the Court's attention that it did not oppose the application for adjournment to file its processes; the Plaintiff did not oppose the application for adjournment, and the Court granted the request and adjourned the case to May 11, 2016 for hearing.

5.2.6. Later on that very same day after the convening of the court, the Defendant filed a Motion for Extension of Time (**Document number 2**) along with its Statement of Defense (**Document number 3**). Both of these documents were served on the Plaintiff on April 04, 2016.

5.2.7. These are all the pleadings in the case; in other words, the Plaintiff did not file a Reply to the Defendant's Defense.

5.3. DEFENDANT'S STATEMENT OF DEFENSE

SAVE AND EXCEPT AS HEREINAFTER SPECIALLY ADMITTED, the Defendant denies each and every material allegation of fact contained in the Statement of claim as if same were herein set out and traversed seriatim:

1. The defendant denies paragraphs 1, ii, iii, iv, v, vii and viii of the Plaintiff/applicants claim.
2. In specific answer to the Plaintiff's averment, the Defendant states that one Noel, who was arrested in connection with this case of impersonation of being a staff of DSS mentioned the names of the Plaintiff/Applicant together with that of one Shola, whom the DSS were long before trying to arrest for the same offence of impersonation.
3. That during the course of the interrogation the said NOEL, the name of the Plaintiff was mentioned, wherein he was alleged to have known one SHOLA (suspect) in person and his contact address which thus necessitated the arrest of the Applicant.
4. The Plaintiff/Applicant was arrested on lawful grounds; as his arrest was made in furtherance of investigation by the DSS to ascertain his level of involvement in the impersonation case and to enable the DSS arrest one SHOLA (who is still at large).

5. The Defendant denies paragraphs xi, xiii, xiv, xvi and xix of the Plaintiff's claim and therefore put the Plaintiff to the strictest proof of same.

6. The Defendant further states that it was the Plaintiff/Applicant who took the DSS to an area in Abacha Road of Karu L.G.A, Nasarawa State and located the house of SHOLA (the prime suspect)

7. The Defendant also denied paragraphs xxii, xxiii, xxiv, xxv, xxvi and xxviii of the Plaintiff/Applicant's Statement of Facts and thus put the Plaintiff/Applicant to the strictest proof of same.

8. The Defendant in specific answer to paragraph xviii of the Plaintiff/Applicant's claim states that it was he Applicant who unveiled the identity of one SHOLA to the DSS.

9. That the said SHOLA was still at large at the time of the arrest of the Plaintiff/Applicant, hence the risk of releasing the Applicant will enable the Plaintiff to connive with the SHOLA and thereby temper with the ongoing investigation in the matter.

10. The Defendant states that, at no time did it receive any money from the Plaintiff during or after his arrest and in the course of investigation of the alleged offense of impersonation.

11. The Defendant further states that, the Plaintiff/Applicant's handset was not taken away by the DSS.

12. The Defendant further states that after thorough investigation of the Plaintiff and one NOEL, their statements were recorded and they were released pending further investigation of the matter.

13. The Defendant equally denied paragraphs xxiv, xxxvi, xxxvii, xxxiii, xxxix and xi of the Plaintiff's claim and thus put the Plaintiff to the strictest proof of same.

14. In a specific answer to paragraph xlii and xlii, the defendant states that SHOLA is not an employee of the DSS and the Plaintiff's arrest and detention were on reasonable suspicion that the Plaintiff is impersonating himself as one of the staff of DSS.

15. The Defendant admits paragraph xiv of the Plaintiff's claim only to the extent that the Plaintiff and one NOEL were allowed to go after thorough investigation but denies every allegation of facts contained therein.

16. In response to paragraph xlvi and xlvi of the Plaintiff's claim, the Defendant states that he never at any time ignored a letter written by the Plaintiff or any other person and puts the Plaintiff to the strictest proof of the allegation of facts contained in the said paragraph.

17. In further response to paragraph xlviii of the Plaintiff's claim, the Defendant states as follows:

- a) The Plaintiff's arrest was made lawfully in furtherance of an investigation to enable the DSS carry out proper investigation on allegation of impersonation of DSS officials by the Plaintiff and one SHOLA.
- b) The Plaintiff was at no time maltreated during and after the investigation. The offence for which he was arrested was disclosed to him instantly at the point of arrest by the Defendant.
- c) The Plaintiff was not arrested at mid night and taken away to any lonely area at all.
- d) The Defendant never blind-folded the Plaintiff/Applicant or any other person in the course of investigation carried out by it.
- e) The Plaintiff was never disallowed access to his lawyers, family or to any other person that came to see him.

6.0. ISSUES FOR DETERMINATION

6.1. The three areas of disagreement between the parties are:

- (A.) Whether or not the Plaintiff's arrest and detention by the Defendant were lawful and justifiable?
- (B.) Whether the plaintiff was subjected to inhuman and degrading treatment by the defendant?
- (C.) Whether or not the defendant unlawfully deprived the plaintiff of his personal belongings.

7.0. ANALYSES OF THE COURT

7.1. We observe the following: That,

- (a.) there has not been any challenge to the competence of this Court to entertain this suit;
- (b.) further, we observe that the Defendant did not file any Preliminary Objection against the suit as constituted;
- (c.) the Plaintiff did not file a reply to the defense of the Defendant; and,
- (d.) we also observe that it is not in contention or dispute that the Plaintiff was indeed arrested and detained by the Defendant by and through its agents of the DSS.

7.2. The plaintiff filed this application against the defendant for gross violation of his human rights occasioned by his being unlawfully arrested and detained as a means of arresting a prime suspect of impersonation and on unfounded allegation of impersonation as a DSS Staff. He further alleges that he was maltreated and deprived of his personal belongings while in detention.

7.3. The Defendant, while denying Plaintiff's allegations, starts out by saying that the Plaintiff was lawfully arrested firstly, as the only means of getting to one Mr. Shola, who was the prime suspect in a case they were investigating (**See paragraph 3 on page 1 of the defense**), and that it was risky for them to have released the Plaintiff since Mr. Shola was still at large because the Plaintiff could have connived with Shola and thereby tamper with on-going investigation they were conducting (**See paragraph 9 on page 2 of the defense**). Thirdly, the Defendant claims that the Plaintiff was arrested because he was impersonating himself as a staff of the DSS (**See paragraph 14 on page 2 of the defense**), thus his arrest was lawful and once they had taken his recorded statement and those of the other suspect, Mr. Noel, they were released pending further investigation (**See paragraph 12 on page 2 of the defense**). Finally, the Defendant denied any form of maltreatment meted out to the Plaintiff or denying him access to his lawyer, etc. (**See paragraph 17 on page of the defense**).

7.4. To fully address the issues raised here there is need to bring out the relevant International and National provisions.

Article 6 of the African Charter on Human and Peoples Rights provides:

“Every individual shall have the right to liberty. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”.

Article 9 of the International Covenant on Civil and Political Rights provides as follows:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of its liberty except on such grounds and in accordance with such procedure as are established by law.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) also protects this right. **Section 35** of the Constitution protects the liberty of persons, and states that such liberty can only be deprived in accordance with a procedure permitted by law.

Section 24 of the Nigerian Police Act provides for the powers to arrest without warrant as follows:

(1) In addition to the powers of arrest without warrant conferred upon a police officer by **Section 10 of the Criminal Procedure Act**, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases

(a) any person whom he finds committing any felony, misdemeanor or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanor or breach of the peace;

(b) any person whom any other person charges with having committed a felony or misdemeanor;

(c) any person whom any other person

(i) suspects of having committed a felony or misdemeanor; or

(2) The provisions of this section shall not apply to any offence with respect to which it is provided that any offender may not be arrested without warrant.

Section 10 of the Nigerian Criminal Procedure Act provides: (1). Any police officer may, without an order from a Magistrate and without warrant, arrest:

(a). any person whom he suspects upon reasonable grounds of having committed an indictable offence against a federal law or of any other state, unless the written law creating the offence provided that the offender cannot be arrested without a warrant.

(b). any person who committed any offence in his presence.

Section 7 of the Administration of Criminal Justice Act (2015) is clear and provides that:

“A person shall not be arrested in place of a suspect.”

7.5. As can be deduced from the above provisions, the watch words for the validity of any arrest are “lawfulness and reasonableness”.

It follows therefore that powers of arrest must not only be provided for under the law but the grounds upon which it is exercised must be reasonable, otherwise it becomes arbitrary.

The word **arbitrary** has been defined by Bryan Garner in the Black’s Law Dictionary Ninth Edition as: “(1) depending on individual discretion; determined by a judge rather than by fixed rules, procedures or law (2) of a judicial discretion founded on prejudice or preference rather than on reason or fact.

Arbitrary arrest and detention therefore are the arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or which was done without regard to due process of law.

7.6. As a general rule, the burden of establishing the existence of any facts lies on he who alleges. However, where the facts are admitted, they need no further proof.

Ordinarily, the Plaintiff in this case has the burden of presenting evidence to prove the allegations he has made in his Originating Application. However, the Defendant has not denied the arrest and detention of the Plaintiff but sets up a defense of justification. The burden thus shifts from the Plaintiff to the Defendant to establish the justification of the lawfulness of the arrest and detention of the Plaintiff.

The defendant contends that the plaintiff’s arrest was necessitated by the information they gathered that the plaintiff had knowledge of the whereabouts of the suspect they were looking for. That is their sole justification for the arrest.

The justification given by the defendant for the arrest and detention of the plaintiff runs contrary to the express provisions of **Section 7 of the Administration of Criminal Justice Act, of Nigeria.**

From the totality of facts before this court, there is no factual evidence of reasonable grounds or legal provision upon which the arrest and detention are based.

7.7. The defendant has not therefore satisfied this Court nor has it put forward any lawful basis upon which the plaintiff was arrested and detained. Having failed to do so, we hold that the arrest was unlawful and arbitrary.

This court has held in a plethora of cases that an arrest must be reasonable and also be premised on legal ground to be justified. See the case of **MAMADOU TANDJA V. REPUBLIC OF NIGER & 1 OR (2010), CCJELR.**

In the case of **A. W. Mukong v. Cameroon (Views adopted on 21 July 1994), in UN doc.GA OR, A/49/40 (vol. II), p. 181 para. 9.8,** the applicant alleged that he had been arbitrarily arrested and detained for several months, an allegation rejected by the State party on the basis that the arrest and detention had been carried out in accordance with the domestic law of Cameroon. The Committee concluded that article 9(1) had been violated, since the author's detention "was neither reasonable nor necessary in the circumstances of the case".

See also the decision of the Inter-American Court of Human Rights in **Castillo-Páez V. Peru, judgment of November 3, 1997 Annual Report Inter-American Court of Human Rights 1997, p. 263, para. 56.**

7.8 The next issue for consideration is the Plaintiffs allegation of inhuman and degrading treatment meted to him by the Defendant.

The Plaintiff's allegation is that the armed agents of the defendant blind folded him, chained his hands and legs and carried him away; that they also threatened to shoot his leg and leave him by the road side if he fails to show them the house of the suspect they were looking for; that he was made to sleep on a bare and very hard floor which made him sustain an injury at the back of his head without, his being informed of the offense he had committed.

7.9. **Article 5 of the African Charter on Human and Peoples Rights** provides:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

Section 5 of the Administration of Criminal Justice Act (2015) provides that:

“A suspect or defendant may not be handcuffed or otherwise bound or be subjected to restraint except:

- (a) There is reasonable apprehension of violence or an attempt to escape;
- (b) The restraint is considered necessary for the safety of the suspect or defendant; or
- (c) By order of a court.

Applying the above provisions of the **Administration of Criminal Justice Act (2015)**, it is apparent that a suspect may be validly handcuffed if the circumstance warrants it without falling foul of **Article 5 of the African Charter** or other similar international instruments.

7.10. The Plaintiff is urging this court to hold that the defendants are in violation of his right to human dignity by handcuffing him, threatening to shoot him and making him sleep on bare floor. These assertions are facts within the Plaintiffs knowledge.

7.11. As stated herein above, it is the general rule of evidence that the burden of proof of facts rests on him who alleges the existence of those facts and who will fail if no evidence is led in proof.

7.12. The rule that proof rests on he who asserts the affirmative and not on he who denies is an ancient rule founded on the consideration of common sense and should not be departed from without strong reasons. The burden of proof and persuasion is therefore placed on the plaintiff. Mere saying that he was subjected to such treatment does not suffice. There has to be some form of evidence either oral or documentary (eg. photographs, eye witness reports, expert evidence, medical certificate, etc.) to substantiate his claim, notwithstanding the fact that the arrest is undisputed.

7.13. As we found supra, the Plaintiff did not file a Reply controverting the allegations and specifically the denials contained in the defense. Thus, the denials by the defendant stand unrebutted and unrefuted.

According to the Plaintiff, he was arrested and taken to the detention center together with his friend, and he did not bother to call that friend to corroborate any of his allegations; neither did he lead any evidence in support of these allegations which were denied by the defendant. The Plaintiff also did not offer any scintilla of evidence to prove the injury he allegedly suffered to his head

after spending a night on the floor; there is nothing concerning the security officer whose name is Paul (**see page 6 of the Application**); no proof that the alleged attempts to obtain the names and grades of the other officers actually took place (**see page 6 of the Application**); there is nothing to serve as proof for the said report of January 27, 2015 supposedly addressed to the security services department (**see page 7 of the Application**); there is no proof of the complaint he claims to have lodged the same day (**see page 7 of the Application**); finally, there is no evidence of the letters of February 11, 2015 and March 10, 2015 which his lawyer is alleged to have addressed to the headquarters of the State Security agencies (**see page 8 of the Application**).

In **PETROSTAR (NIGERIA) LIMITED V. BLACKBERRY NIGERIA LIMITED & 1 OR CCJELR (2011)**, the court in its consideration reiterated the cardinal principle of law that “he who alleges must prove”. Therefore, where a party asserts a fact, he must produce evidence to substantiate the claim.

In **RANGAMMAL V. KUPPUSWAMI AND ORS, CIVIL APPEAL NO. 562 OF 2003**, the court held that the burden of proof lies on the person who asserts the fact and not on the person who denies the fact to be true. The responsibility of the defendant to prove a fact to be true would start only when the authenticity of the fact is proved by the plaintiff.

7.14. The plaintiff having failed to persuade the court with credible evidence as to the alleged inhuman and degrading treatment meted out on him by agents of the defendant, his contentions on this ground lack proof and thus fails.

7. 14. The last issue to be considered is whether or not the Defendant is in violation of the Plaintiff’s right to property.

The plaintiff contends that the defendant is in violation of his right to property when they seized his handset, shoes, belt, and wrist watch.

7.15. **Article 14 of the African Charter on Human and Peoples’ Rights** provides: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of the appropriate laws”.

Section 10 of the Administration of Criminal Justice Act provides:

(1) A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all items or properties recovered from the suspect.

(2) An inventory recorded under subsection (1) of this section shall be duly signed by the police officer and the arrested suspect, provided that the failure of the arrested suspect to sign the inventory shall not invalidate it.

(7) Where any property has been taken from a suspect under this section, and the suspect is not charged before a court but is released on the ground that there is no sufficient reason to believe that he has committed an offence, any property so taken from the suspect shall be returned to him, provided the property is neither connected to nor a proceed of offence.

7.16. A reading of the above provision shows that personal belongings of suspects heading for detention are temporarily seized to be returned on their release in accordance with laid down provisions.

The defendant has not satisfied this Court that the procedures were complied with in this case by failing to show an inventory of the suspects property which they seized and later returned.

The plaintiff however averred that the property were seized for 3 days with the exception of his phone in lieu of which he was given three thousand naira. This averment is an admission that at some point in time his properties were returned to him, except for the wrist watch. The defendant however exhibited an unprofessional attitude with regards to the plaintiff's phone which it allegedly misplaced and gave him the sum of N3000 in lieu.

Therefore the declaration sought by the plaintiff in this regard fails.

7.0. DECISION

The Court, adjudicating in public sitting, after hearing both parties, in last resort, after deliberating in accordance with the law;

AS TO THE MERITS OF THE CASE

7.1. The Court determines that the Plaintiff has made out a cause of action against the Defendant and, considering that there is no denial by the Defendant of the acts of arrest and detention but sought to offer justification, the Court declares that no further proof is required of the Plaintiff.

7.2. The Court therefore, declares that the conduct of the Defendant in arresting and detaining the Plaintiff were arbitrary, unwarranted, unjustifiable and illegal, and in violation of the Plaintiff's Fundamental Rights to freedom of movement and freedom against arbitrary arrest.

7.3 The court, on the other hand, declares as unsubstantiated the plaintiff's allegation of inhuman and degrading treatment by the defendant.

AS TO DAMAGES

7.4. The Court, having determined that the arrest and detention of the Plaintiff were unlawful, hereby awards the Plaintiff damages in the amount of N5,000,000 (Five Million Naira only) for all the pain and suffering, humiliation, embarrassment and inconvenience he suffered because of his arrest and detention.

AS TO COST

7.5. In accordance with Article 66 of the Rules of this Court, the Court rules that costs shall be and are hereby awarded to the Plaintiff/Applicant against the Defendant, in an amount to be assessed by the Registry of this Court.

7.6. Thus made, adjudged and pronounced in a public hearing at Abuja, this 12th day of October A.D. 2016 by the Community Court of Justice of the Economic Community of West African States.

THE FOLLOWING JUDGES HAVE SIGNED THIS JUDGMENT

Hon. Justice Friday Chijioke NWOKE-	Presiding
Hon. Justice Micah Wilkins WRIGHT-	Member
Hon. Justice Alioune SALL-	Member

Assisted by: Mr. Aboubakar Djibo Diakite, Esq.–Registrar

SEAL OF COURT