

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION (GENERAL CIVIL)
HOLDEN AT HIGH COURT NO. 27, LAGOS
BEFORE HON. JUSTICE S. A. ONIGBANJO-JUDGE
TODAY WEDNESDAY THE 12TH DAY OF APRIL, 2017

SUIT NO. LD/4232MFHR/2016

IN THE MATTER OF AN APPLICATION BY AKAKPO AGEMO AND OTHERS FOR AN ORDER FOR
THE ENFORCEMENT OF THEIR FUNDAMENTAL RIGHTS
AND

IN THE MATTER OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009
MADE BY THE CHIEF JUSTICE OF NIGERIA PURSUANT TO SECTION 46 (3) OF THE
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999.

BETWEEN:

1. AKAKPO AGEMO
2. AJEGUN FRANCIS
3. PROPHET MOSES OYINBO
(Suing for themselves and on behalf of other occupiers and
residents of the area known as Ago Egun (Bariga) Community)
4. IWALOKUN JIDE
5. OLADIPUPO ARAMIDE
6. IKUESAN CECILIA
(Suing for themselves and on behalf of other occupiers and
residents of the area known as Ebute-Ilaje (Bariga) Community)
7. CLEMENT AVLESSI
8. SYLVANUS ANTHONY
(Suing for themselves and on behalf of other occupiers and
residents of the area known as (Sogunro) Community.
9. BALOGUN ISIAIH
10. MEHENTO APU
11. MEHENTO NICODEM
(Suing for themselves and on behalf of other occupiers and
residents of the area known as Ofin (Ikorodu) Community)
12. EDAMISAN IPINSOKAN
13. ALEX ASOGBON
14. BABATUNDE JOSEPH
(Suing for themselves and on behalf of other occupiers and
residents of the area known as (Itun Agan) Community)

APPLICANTS

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- 15. KOJA KAMIN**
(Suing for themselves and on behalf of other occupiers and residents of the area known as Mosafejo (Oworonsoki) Community)
- 16. IBOJO SINMIDELE**
- 17. OMOTAYO IWAENI**
- 18. AKINMULEYA ADEWALE**
(Suing for themselves and on behalf of other occupiers and residents of the area known as Olufunke Iwaeni Majidun (IKorodu) Community)
- 19. OLUSUYI SEUN**
- 20. OYEDERE RONKE OMOWUMI**
- 21. ADELEKE OLUWASEUN**
(Suing for themselves and on behalf of other occupiers and residents of the area known as (Tomaro) Community)
- 22. PETER ADOGUN**
- 23. MAROT TAIWO**
- 24. JAMIU WAHEED**
(Suing for themselves and on behalf of other occupiers and residents of the area known as Bayeku (Ikorodu) Community)
- 25. HUNKPE JACK**
- 26. HUNGE AGNES**
(Suing for themselves and on behalf of other occupiers and residents of the area known as (Oko Agbon) Community)
- 27. O. B. AGBEDE**
- 28. OJU JUDE**
- 29. PATIENCE IBOJO**
(Suing for themselves and on behalf of other occupiers and residents of the area known as (Otumara) Community)
- 30. DANSU HUNKPE**
- 31. AHISU CELESTINE**
- 32. PA WAHEED PONOR**
(Suing for themselves and on behalf of other occupiers and residents of the area known as (Otodo Gbame) Community)
- 33. PRINCE KEHINDE MICHAEL**
- 34. AKINDE COMFORT**
- 35. KEHINDE MUSTAPHA**
(Suing for himself and on behalf of other occupiers and residents of the area known as (Orisunmibare) Community)
- 36. INCORPORAED TRUSTEES OF COMMUNITY
LEGAL SUPPORT INITIATIVE**
(Suing on behalf of other occupiers and residents of other Area failing under the current threat of eviction)

APPLICANTS

APPLICANTS



37. CHRISTOPER OKE

38. IFE OKE

39. MOSES SALAKO

(Suing for themselves and on behalf of other occupiers and residents of the area known as Oke-Ira Nla Community)
(Joined by Order of Court Dated 16th November 2016)

APPLICANTS

AND

1. THE ATTORNEY GENERAL OF LAGOS STATE

2. THE COMMISSIONER OF PHYSICAL PLANNING & URBAN DEVELOPMENT, LAGOS STATE

3. THE GOVERNOR OF LAGOS STATE

4. THE COMMISSIONER OF POLICE, LAGOS STATE

RESPONDENTS

RULING

Pursuant to the filing and service of forms 48 Notice of Consequences of Disobedience to Order of Court and 49 Notice to Show Cause why Order of Attachment Should not be Made dated 18/11/16 and 21/3/17 respectively on all Respondents in view of their alleged disobedience of the orders of this court made on the 7/11/16 as follows "the Respondents are restrained in the interim whether by themselves and or their privies from demolishing any of the Applicants' homes, business premises, properties, or Applicants' community facilities in waterfront communities across Lagos State inhabited by the Applicants or evicting the Applicants therefrom or otherwise giving effect to the seven (7) days' Notice to the Applicants' communities broadcast on 9/10/16 pending the hearing of the Applicant' Motion on Notice for injunction dated 19/10/16" and for having disobeyed the court's further order at each subsequent hearing of this case, most recently on the 26th day of January 2016 (sic) that "parties shall maintain the status quo....pending the final resolution of issues between them either upon conclusion of mediation as directed by the court or the final determination of this suit" Learned Counsel prayed the court to commit all the Respondents to prison for being in contempt of court following their alleged disobedience of the aforesaid orders of court on several occasions from October 2016 to date.

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Learned Counsel for the Applicants relied upon the affidavit in support of this application with exhibits attached as well as written address filed alongside the application in urging the court to order the committal of the Respondents to prison for being in contempt of court as alleged.

The Respondents despite service of relevant forms and this application refused responding to same in any manner as at the time of hearing same.

In considering this application based on the affidavit evidence proffered in support of same and which I am entitled to rely on as true and correct in view of Respondents' failure to deny same, much as the court empathizes with the Applicants' plight and would ordinarily take all steps within the ambits of the law to protect the sanctity of judicial authority and the rule of law as argued on behalf of the Applicants, the facts and circumstances of this case in my opinion regrettably raise a constitutional barrier to any such exercise of judicial powers.

I say this because I think that in as much as it is now a settled position of law that committal proceedings of this nature are criminal/quasi criminal proceedings with the resultant effect of likely imprisonment of the alleged contemnor if found guilty, under those circumstances I think that not only must the facts alleged in proof of the allegation of contempt of court be proven beyond reasonable doubt, in this particular instance because the Respondents' actions complained about were allegedly carried out with the direct instruction and supervision of the 3rd Respondent who happens to be the current Executive Governor of the State, Section 308 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) unequivocally forbids courts from entertaining this manner of application or any other criminal proceedings against the occupant of that office so long as he remains in office.

Now, because it is clear from the affidavit evidence adduced by the Applicants that the 3rd Respondent ordered the actions complained about in flagrant disobedience of the above stated directives of this court, then it must follow that the other Respondents to this suit cannot rightly be said to be in contempt of this court or to have caused the actions complained about as being contemptuous in this application.

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For avoidance of doubts, the 3rd Respondent's sole responsibility for Respondents' alleged contemptuous actions are clearly stated in paragraphs 10-13 of the affidavit in support as follows;

"10. That on 17 (sic) March 2017, without any prior warning, the Lagos State Task Force accompanied by other security forces appeared in our community around 8am with three excavators. Together with the Lagos State Task Force were members of the Nigerian Army's Military Police, the Nigerian Security and Civil Defense Corps, and the Nigerian Police Force. Photos of all the security forces are attached and marked Exhibit B.

11. That immediately on seeing the Lagos State Task Force and other security forces enter into Otodo Gbame, fellow community members and, later, our legal counsel, Barrister Chioma Ngoka of Justice & Empowerment Initiatives-Nigeria, met the Lagos State Task Force and other security forces on ground and provided them with copies of this Honourable Court's interim ruling of 26 (sic) January 2017 and explained that parties were ordered to maintain the status quo pending the outcome of mediation and/or the suit pending before this Honourable Court.

12. That the officials of the Lagos State Task Force and other security officials refused to take notice of this Honourable Court's interim ruling of 26 (sic) January 2017, proclaiming "This is Lagos State. We don't care about court orders; take it to the Governor."

13. That the Lagos State Task Force officials specifically said they were acting on orders from the Governor of Lagos State and even pointed to an (sic) Nigerian Police Force Rapid Response Squad (RRS) helicopter flying overhead during the eviction, saying that the Governor was the one monitoring the operation."

From the foregoing averments therefore, I have no doubt that reprehensible as the actions complained about in this application are, the court lacks the jurisdiction to entertain these committal proceedings against the 3rd Respondent and by implication the other respondents by virtue of the immunity afforded the 3rd Respondent by Section 308 of the 1999 Constitution (as amended) which provides as follows; "Section 308 (1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section-

- (a) No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

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- (b) A person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and
- (c) No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:

(3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor...."

At this point and bearing in mind the aforesaid constitutional immunity against prosecution and arrest enjoyed by the 3rd Respondent I have to clearly state my concern about the negative implication of the 3rd Respondent's alleged authorization and supervision of actions in brazen disregard of the positive and clear directions of this court on the much touted constitutional democracy operating under the rule of law we claim to operate in this country.

I must point out to the 3rd Respondent that if truly he directed the state Task Force and other Agencies to blatantly disregard the positive directive of this court that parties maintain the status quo pending between them as at the time those orders were made by the court pending the outcome of mediation or resolution of this suit by the court, then the 3rd Respondent by giving those directives and personally supervising the said actions undermines the principles of the Rule of Law and is unwittingly eroding the very foundation of the democratic system which put him in office in the first place.

I therefore hope for the sake of all of us and the survival of constitutional democracy in this country that the 3rd Respondent, contrary to the aforesaid averments in the affidavit in support of this application never gave those instructions to blatantly disregard the orders of this court as averred in the affidavit in support of this application.

The foregoing being the case and notwithstanding the above observation, because the courts derive their authority and legitimacy from the same 1999 constitution of the Federal Republic of Nigeria (as amended) which affords the 3rd Respondent immunity as stated in Section 308 above, I have no option in the circumstances than to dismiss this application to commit the Respondents to prison for Contempt of court as being incompetent and unconstitutional in view

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of the provisions of the said Section 308 which clearly forbids the court from entertaining such suits against occupants of the offices stated therein.

This application is consequently dismissed for reasons stated in this ruling.

2nd, 7th, 8th, 25th, 31st, 34th, 36th, Applicants Present

F. O. Oteikwu with C. Ngoka (Mrs.), O. Enujiugha (Mrs.) for Applicants

S. A. Quadri with A. Ladega (Mrs.) and A. Popoola (Mrs.) for Respondents.



HON. JUSTICE S. A. ONIGBANJO
JUDGE
12/04/2017

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35 files at #10 per file
#1,400

1010-1. OLABI
Commissioner For Ombudsman
Lagos High Court
Ikosere, Lagos

19-4-17

