

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL HEADQUARTER
HOLDEN AT ABUJA
ON MONDAY THE 4TH DAY OF MAY 2020
BEFORE HIS LORDSHIP HONOURABLE JUSTICE IJEOMA L. OJUKWU
JUDGE
SUIT NO: FHC/ABJ/CS/267/2019

BETWEEN

DR. ISSAH PERRY BRIMAH - PLAINTIFF

AND

THE NIGERIAN ARMY - DEFENDANT

PARTIES:

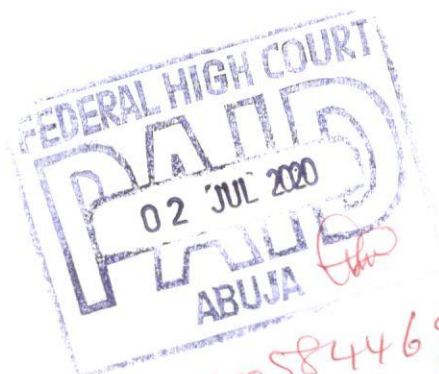
Plaintiff absent

Defendant absent.

APPEARANCES:

Wale Balogun for the Plaintiff.

Defendant unrepresented.



170405844694

JUDGMENT

By an Amended Originating Summons dated and filed the 10th day of October 2019 and 11th day of October 2019 respectively, the plaintiff posed the following questions for the determination of this court namely: -

1. Whether by the combined reading of the section 1(1) and (3) of the Armed Forces Act, CAP A20, LFN 2004 (as

- amended), Section 4 of the Police Act, LFN 2004 and Section 217 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the defendant can lawfully declare the Plaintiff, a person not subject to Service law wanted?
2. Whether the declaration of the Plaintiff or the attempt to declare the Plaintiff, a person not subject to Service law wanted by the Defendant and or labeling him a "criminal" and "international fraudster" in the Defendant's press release of 2nd January, 2019 and subsequently published and circulated in many Newspapers in both Print and Online Edition, without resorting or recourse to the Nigerian Police Force and or following the due process of law to wit obtaining a court order, is not ultra vires, unlawful, illegal and therefore null and void, being in clear violation of the Armed Forces Act, the Police Act and the Constitution of the Federal Republic of Nigeria 1999 as amended?
 3. Whether the Defendant's Press Release of 2nd January, 2019 and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title "BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS" wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International fraudster" do not amount to a blatant usurpation of the Powers of the Nigerian Police Force and or that of a court of law, within the meaning and purport of Section 4 of the Police Act, LFN, 2004 and

Section 6 of the Constitution of the Federal Republic of Nigeria 1999 as amended;

4. Whether the Powers of the Defendant to; defend Nigeria from external aggression; maintain Nigerian territorial integrity and securing its borders from violation on land; suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of the National Assembly, as charged under Section 1(3) of the Armed Forces Act, CAP A20, LFN, 2004 and Section 217 (2) of the Constitution of the Federal Republic of Nigeria, extend to carrying out functions of a judicial or quasi-judicial nature such as declaring or attempting to declare a person not subject to Service Law wanted, which only a Court of competent jurisdiction or the Nigerian Police Force is empowered to so act?
5. Whether the Defendant's Press Release of 2nd January, 2019 and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title "BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS" wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International fraudster", is not suggestive of the fact that the goal of the intended plan to arrest the Plaintiff by declaring him wanted, is already pre-determined and biased, or likely to be biased against the Plaintiff, having regard to the conclusions already reached in the

said Press Release calling the Plaintiff "criminal" and "International Fraudster"?

6. Whether having regard to the conclusions already drawn up and reached by the Defendant in its Press Release of 2nd January, 2019 and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title "BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS" wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International Fraudster", the Plaintiff's right to fair hearing as guaranteed by Section 36 of the Constitution of the FEDERAL Republic of Nigeria 1999 (as amended) and the principal of natural justice has not been violently breached?

WHEREOF THE PLAINTIFF SEEKS THE FOLLOWING RELIEFS:

- I. **A DECLARATION** that the Defendant lacks the power to declare the Plaintiff, a person not subjected to Service Law wanted under the Armed Forces Act or any other law whatsoever and therefore the declaration of the Plaintiff or the attempt to declare the Plaintiff wanted is a blatant usurpation of the powers of the Nigerian Police Force per Section 4 of the Police Act and or court of competent jurisdiction per Section 6 of the Constitution of the Federal Republic of Nigeria 1999 as amended;
- II. **A DECLARATION** that the Powers of the Defendant to; defend Nigeria from external aggression; maintain Nigerian territorial integrity and securing its borders from

violation on land; suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of the National Assembly, as charged under Section 1(3) of the Armed forces Act, CAP A20, LFN, 2004 and Section 217 (2) of the Constitution of the Federal Republic of Nigeria, DOES NOT extend to carrying out functions of a judicial or quasi-judicial nature such as declaring the Plaintiff or attempting to declare the Plaintiff or any person not subject to Service Law, wanted;

III. **A DECLARATION** that having regard to the conclusions already drawn up and reached by the Defendant in its Press Release of 2nd January, 2019 and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title "BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS" wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International fraudster", the Plaintiff's right to fair hearing as guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended and the principle of Natural Justice have been violently breached.

IV. **A DECLARATION** that the declaration of the Plaintiff wanted or the attempt to declare him wanted, labeling him criminal and International fraudster by the Defendant having being made in contravention of the law is ultra vires, null and void;

 2/7/2020

- V. **A DECLARATION** that is only the Nigerian Police Force and or a Court of Competent Jurisdiction that can declare any Nigerian Citizen not subject to Service law, including the Plaintiff wanted or convict a Nigerian for commission of a crime, after due process of law has been followed.
- VI. **AN ORDER** quashing and setting aside wholly and its entirety, the Defendant's **Press Release of 2nd January, 2019** and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title **"BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS"** wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International fraudster";
- VII. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendant, whether by itself, its agents, servants, officers, employees, privies, operatives and any agent or organization acting on its instruction or anyone acting in any manner howsoever, from enforcing, executing or carrying into effect the directive and or instruction in the Defendant's **Press Release of 2nd January, 2019** and subsequently published and circulated in many Newspapers in both Print and Online Edition with the title **"BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS"** wherein the Plaintiff was declared wanted or was to be declared wanted, and labeled "criminal" and "International fraudster".

VIII. And for such orders or further orders as this Honourable Court may deem fit to make in the circumstances.

This Originating Summons was accompanied by 22 paragraph affidavit deposed to by one Abdullah Omoloye, a legal practitioner in the firm of plaintiff's solicitor, exhibits and written address of Wale Balogun of counsel to the plaintiff.

By the facts deposed in the affidavit, the cassum bellum of this suit is the declaration or attempt by the defendant to declare the plaintiff wanted and the publication of that in various Newspapers and online publications outfits which are still in the websites at the time of filling this suit. It was averred that plaintiff is a Medical Doctor and a College Professor abroad with a wide range of publications in his field of practice. Apart from that, plaintiff is also a human rights activist and a co-founder of an Non Governmental Organization with the core value of promoting peace especially to the insurgency in the North-East and other humanitarian crises. It was stated that his contributions in the area which he solely funded has earned him some form of recognition and appreciation by some associations and government. To this end, sometime in December, 2018, the plaintiff in his good intentions solicited for assistance from well-wishers to donate to the Nigerian Troops fighting insurgency in the North-East since the soldiers are not being adequately taken care of. He noted that the fact that soldiers are not taken care of is in the public domain and have been published in various news media.

It was further averred that he could only raise USD25, out of which was his personal USD20 he donated to the course and that moreover, the fund raising has been discontinued on the complaint of the defendant. It was averred on behalf of the plaintiff that he was surprised to read a publication titled 'BE WARY OF FRAUDULENT FUND RAISING BY DOCTOR PERRY BRIMAH TO FEED NIGERIAN ARMY TROOPS', where he was described as a criminal and an international fraudster and was declared wanted. He noted that the defendant does not have the power nor did they obtain a court order to declare him wanted or issue a warrant for his arrest. He averred that defendant is not to service law and was not heard before these actions which amount to usurpation of judicial powers were taken by the defendants.

Exhibits were attached.

In the written address of learned counsel Wale Balogun, it was argued that the powers of the defendant under section 217 of the Constitution of the Federal Republic of Nigeria 1999 does not extend to arresting civilians as such powers are within the scope of the Police powers and other civil authorities. He posited that beyond the powers of the defendant as encapsulated in the constitution and Armed Forces Act, the defendant cannot extent its statutory duties to include the actions taken against the plaintiff. He called in aid the cases of **ADRA V GOVT. NASARAWA STATE (2015) ALL FWLR (PT.764) 70, 95 AHMED V NIG. ARMY (2017) ALL FWLR (PT.869) 813,839** and **ADEWUNMI V AG. EKITI STATE (2002) 2NWL (PT.751) 474** to press home his arguments.

He submitted that even the powers donated to the Police under section 4 of the Police Act in regard to arrest, preservation of law and order must be exercised in accordance with the rule of law.

He further contended that sections 41 and 42 of the Administration of the Criminal Justice Act 2015 only permits a publication of a public summons where a warrant of arrest is issued only where the court has reasons to believe that the suspect has absconded and or concealing himself and emphasized that the power to declare a person wanted only inures to the court. He noted that even where the defendant has such powers, it must not be exercised at the whims and caprices of the defendant and such a person must have been invited but declined.

Learned counsel submitted that the defendant acted outside its powers and without fair hearing in declaring the defendant wanted and urged the court to curtail such powers and declare it illegal. He relied on **MILITARY GOVERNOR OF LAGOS STATE V OJUKWU (1986) LPELR -3186 SC, IPADEOLA V OSHOWOLE (1987) 3 NWLR (PT.59) 18** in urging the court to so hold.

He further argued that only a competent court has the judicial or quasi judicial powers to declare the plaintiff wanted and that non adherence to constitutional safeguards which inures to a citizen is an invitation to illegality. He called in aid the case of **RIDGE V BALDWIN (1964) AC 40, 76** to buttress the need to adhere to rules of natural justice. Learned counsel noted that Plaintiff has become a fugitive and no longer has access to his family, freedom of

movement and urged for a judicial intervention of this court to discourage arbitrariness. He further relied on **SPACKMAN V PLUMSTEAD BOARD OF WORKS (1895) 10 AC 229** in persuading the Court apply substantial requirements of justice even in the absence of special provision on how to proceed in the circumstances, especially for the reason that there is no legislation backing the actions of the defendant. The court was urged to grant the reliefs of the Plaintiff.

Reacting to this matter, the Defendant filed a broad 5 paragraph affidavit in opposition where it was averred by one Enoch M. Dodo, a legal practitioner in the law firm of defendant's counsel that plaintiff admitted that he embarked on the mission to raise funds for the Nigerian Army but without the knowledge and approval of the Army. He stated that the activities of the Plaintiff are embarrassing to the Nigerian Army and the Federal Government of Nigeria which have been portrayed as incapable of taking care of the welfare of the military. He averred that in order to alert the members of the public that the defendant was acting without authority, the Nigerian Army issued the statement of 2nd day of January 2019 which was not akin to a judicial or quasi judicial function as alleged by plaintiff. He stated that they had not declared him wanted, that they stated that they were working with Interpol in the process of declaring him wanted which is within the precinct of their powers.

In the written address of learned counsel E.M. Dodo for the Defendant, the four issues distilled by the Plaintiff for determination were adopted with an additional issue which questions the propriety of some paragraphs of the affidavit in

support as being a contravention of section 115 of the Evidence Act.

It was the submission of learned counsel that paragraphs 9, 10 to 20 of the affidavit in support contain legal arguments and conclusions relating to powers of the defendant. He urged the Court to jettison those paragraphs as enunciated in **EDU V C.A.W.R.R.D (2001) FWLR PT.55 433** and **N.P.A.S.E. V FASEL SERVICES LTD (2002) FWLR (PT.97) 719, 741.**

Further in his argument, it was submitted that plaintiff based his argument on the presumption that they had declared the plaintiff wanted but that plaintiff not being resident in Nigeria and being a Nigerian citizen is an international citizen subject to the jurisdiction of Interpol. He argued that the plaintiff is still at large and that his whereabouts is unknown, therefore plaintiff cannot rely on Section 272 of the Armed Forces Act since the defendant has not dealt with him as subject to Service law but only sought the intervention of the Interpol.

He argued that the functions of the defendant do not stop them from seeking assistance from relevant authorized agencies to protect its interests and reputation. He placed reliance on paragraph 4 of their counter affidavit and urged the court to hold that they are entitled to be protected. He further argued that the use of the 'offending' words complained against is to show or highlight the activities of the plaintiff and does not amount to arbitrariness or a breach of the rights of the plaintiff.

Learned counsel Dodo contended also that the submissions of the Plaintiff are preemptive and speculative since he has not been declared wanted. He posited that his cause of

action has not crystallized to warrant the instant action. He called in aid that cases of **AMEDE V UBA (2009) ALL FWLR PT.469, 479,507 and TUKUR V GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (PT.117) 577, 549** in urging the court to hold that there is no cause of action established against the Plaintiff especially for the reason that the substantive or principal claim has failed. The court was moved to dismiss the action.

Plaintiff in a further affidavit contended that the effort of the Plaintiff to assist the defendant was not to subvert the war efforts or ridicule the image of the Defendant or the government and cannot amount to a criminal action.

In his reply on points of law, learned counsel Wale Balogun maintained that the averments are not conclusions or extraneous but tend to show the fear and apprehension of the plaintiff. He urged the court to view them as statements of facts as shown in the case of **BUSARI V OSENI (1992) 4 NWLR (PT.135) 688, 715** among others. He argued that from their Exhibit C, it is obvious that plaintiff was declared wanted when the publication was made and that his cause of action materialized at that point, therefore the said action cannot be viewed as speculative or preemptive.

The Court was urged to accede to the reliefs of the plaintiff.

RESOLUTION OF ISSUES.

Now, a cursory look at the substantive issues distilled by the parties indicate that the real issue in controversy is whether the defendant has the vires to declare the plaintiff wanted

as a criminal or international fraudster in view of the facts and circumstances of this case and the law. Before I answer that, I must first state that the parties in their affidavits went outside accepted scope of facts which should be contained in an affidavit and introduced legal arguments and conclusions contrary to Section 115 of the Evidence Act. For the Plaintiff, these are gleaned from paragraphs 10, 11, 12, 16, and 20 of the affidavit in support and for the defendant, these are seen in paragraph 4a to 4g of the counter affidavit. Legal practitioners who depose to affidavit of their clients tend to import their knowledge of the law into the facts of the case. This should be avoided as in this case. The saving grace here is that the remaining paragraphs of the affidavits could still sustain the case of the parties when these paragraphs are jettisoned.

Now on the substantive issues, it is not in dispute that the fulcrum of the plaintiff's complaint are some on line publications to the effect that the Nigerian Army is working with the Interpol to declare the plaintiff wanted for alleged fund raising to feed troops. From the documents exhibited by the plaintiff, these publications were made by the Vanguard Newspaper, Sahara Reporters and Punch Newspaper. Basically, the reports stated that the Nigerian Army is working with Interpol to declare the plaintiff wanted over a fraudulent global fund raising to provide food for troops in the North-East. In the publication ascribed to one Sani Kukasheka Usman, Brigadier General and Director Army Public Relations, he urged the public to be wary of fraudulent fund raising by Doctor Perry Brimah to feed Nigeria Army troops as it is meant to defraud the public and portray the Army and government

in a bad light. He allegedly called the fund raising a scam and the perpetrator a criminal, allegedly in the sense that the statement was an unsigned statement.

The Plaintiff had stated that his action was motivated by publications in the media which showed that the troops were starved of food, salaries and other equipment to combat insurgency. This is also evident in the documents exhibited in this matter which alluded to rampage over unpaid salaries and short changed allowances. Granted that the plaintiff may have had good intentions but the procedure he adopted was wrong. Such matters concerning the Army are not matters that can be taken over arbitrarily by an individual or an NGO without the knowledge or approval of the relevant authorities no matter how concerned or sympathetic the cause may be. It is no wonder that the act of raising funds in that perfunctory manner by the plaintiff attracted the ire of the defendant.

Moreover, it is my view that Plaintiff should have first enquired from the publishers of the offending publication in the social media in order to ascertain the authenticity of the facts deposed since the defendant has denied declaring the plaintiff wanted, though they admitted taking steps to make the declaration. Again the contemplation of the defendant to declare the plaintiff wanted is not dependent on whether the plaintiff is subject to service law or not in so far as the proper procedure is followed. The alleged conduct of the plaintiff and the admission of the fund-raising without authority gave the defendant impetus to seek the intervention of the relevant or appropriate authority. The law

is settled that every person is entitled to report any commission of crime to a law enforcement agency, as custodians of law and order for their intervention. **See CHIEF FAJEMIROKUN V CC.B NIG. LTD (2009) VOL 37, NSCQR 1, 22.** It is only when the intervention is given in accordance with laid down procedure by the appropriate authority and the plaintiff refuses to answer such summons that he may be considered a fugitive.

However, it must be stated here without equivocation that the defendant has no right to declare the plaintiff wanted without following the appropriate procedure. The defendant cannot arrest the plaintiff arbitrarily without making a formal report to law enforcement agency with the mandate to enforce law and order, otherwise it would transmute to self-help. The duty of the defendant is to make a formal report to the appropriate authority like the police and await the outcome.

The duty of the Plaintiff now is to respond to any invitation when issued or react to the publication made by the media by asking for a retraction if the contents are false. But where the allegations contained in the publications are true, then the law must follow its course. Asking the court to penalize the defendant at this stage or quash the press release is not one of the options. The plaintiff acted arbitrarily by calling for fund raising on behalf of the Army without the knowledge or approval of the Army. In this day and age when scamming is the order of the day, the defendant cannot be penalized for quarrying the actions of the plaintiff or for taking steps to acquaint the public of the matter to prevent further

[Handwritten signature]
2/7/2020

breaches. The fact of being concerned as an NGO is of no moment.

If the Court grants the reliefs sought, it may send a wrong signal and open a floodgate of fundraising by NGOs and individuals on behalf of everyone and no one in the pretence of addressing some perceived wrong or rendering assistance. That is not acceptable. The 'noble' intentions of the Plaintiff could have been best carried out transparently and in conjunction with the defendant.

In sum, I have found no reason to accede to all the entreaties of the Plaintiff except as has been stated above.

Where the Army/Defendant feels aggrieved by the conduct or action of the Plaintiff, they should report the matter to the appropriate authority for their intervention and necessary action.

It is hereby declared that:

The Army or the Defendant has no vires to declare the Plaintiff wanted without due process of law.

This case fails in part and succeeds in part to the extent of the above declaration.




HON. JUSTICE IJEOMA L. OJUKWU

Judge

04/05/2020

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

 27/2020
Abu 80
(Heoaw)

