JOINT APPLICATION IN THE ENFORCEMENT OF FUNDAMENTAL RIGHTS: A NEW PERSPECTIVE

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Abstract

Fundamental Rights have been held to be sacrosanct, as they go to the very root of our humanity, because it is the respect for the aggregate of these rights that would make for the enjoyment of our freedoms under the Constitution of the Federal Republic of Nigeria[1]. However, certain bottlenecks militate against the smooth enforcement of these fundamental rights. This work found out that cardinal among these bottlenecks, is the concept that the enforcement of these rights must be individualistic, in that where there exists a perceived breach against a group of persons, the enforcement of their fundamental rights can only be achieved by instituting personal actions in favour of each applicant against the offending authority or person(s), and not by a joint action. It is the thrust of this work to examine the rationale behind that concept of individual enforcement against international best practices and recent authorities in this regard. It is the findings of this work that maintaining a joint action in Fundamental rights proceedings is in keeping with the spirit and intendment of the Fundamental Rights Enforcement Procedure. A doctrinal method of research was adopted in this study. It is the recommendation of this work that both the maintenance of individual and joint actions in fundamental rights enforcement can very well go unhindered under the law.

Keywords: Case law, Enforcement, Fundamental rights.

1. Introduction

Historically, the prevalence of fundamental rights has witnessed a systematic progression in its enforcement. Right from the enactment of the Fundamental Rights Enforcement Procedure Rules of 1979 to the current Rules of 2009, there has been a significant shift from grey areas which had constituted a clog to the smooth enforcement of fundamental rights. This work shall examine the rule as it then stood, with respect to enforcement of Fundamental Rights and what the present position of the law is. It was then rounded up with recommendations, which are geared towards the removal of any clog that bugs down justice administration in the field of enforcement of fundamental rights. For ease of refence herein, the Fundamental Rights Enforcement Rules shall be simply referred to as FREP Rules.

2. Enforcement of Fundamental Rights under the FREP Rules, 1979

Under the old rules, it was a requirement that leave of court must first and foremost be had and obtained exparte, before the institution of the action for the enforcement of fundamental rights. To this end, it was provided thus;

> (2) No application for an order enforcing or securing the enforcement within that rule. State of any such Rights shall.be made unless leave therefor has been granted in accordance with this rule

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1 1999(as Amended)

> (3) An application for such leave must be made exparte to the appropriate Court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by an affidavit verifying the facts relied on.[2]

This provision of the Rules, no doubt, constituted a clog in the due enforcement of fundamental rights, in that by the time leave exparte, was first had and obtained, the infringement upon the rights, which could have been nipped at the earliest opportunity, was now allowed to fester, thereby exacerbating the said infringement. At that time, due enforcement of fundamental rights suffered a lot of setbacks, in that after filing the motion exparte, the applicant had to await a date to be fixed for hearing the motion exparte, and there was no guarantee that the motion exparte would be granted. At other times, the business of the day, in court, may not accommodate the motion exparte. Meanwhile, the Applicant, where held in police custody, continued to languish in the police cell, without any repercussion. In other instances, the infringement of the fundamental rights continued unhindered, because leave was being awaited. This led to legal pundits asking to know of what use, it was to obtain leave to file a fundamental rights application, before filing the application proper. There seemed to be no purpose served by that requirement to obtain leave of court before the enforcement of fundamental rights.

By its tenure, being a leave which was to be sought for and obtained from the court, that provision left it at the discretion of the court to either grant or refuse to grant the leave sought for. This eventually led to the amendment of the then Fundamental Rights Enforcement Procedure Rules, wherein that provision for obtaining leave of court first, was expunged.

Secondly, the FREP Rules of 1979 made the enforcement of fundamental rules time-bound. It was provided thus;

> 3. (1) Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter, or act complained of, or such other period as maybe prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the- Court or judge to whom the application for leave is made[3]

By the clear provision of this Order, once a period of one year had elapsed from the alleged infringement of the fundamental rights to the filing for its enforcement, the right of redress becomes extinguished, leaving the applicant with no other remedy. This provision, in no small measure, whittled down the enforcement of fundamental rights.

3. Enforcement of Fundamental Rights under the Extant FREP Rules, 2009.

It is this subtitle that shall constitute the focal point of this Article. Following the amendment of the 1979 Rules, the provision for obtaining an exparte order before the enforcement of fundamental rights was discarded in the Fundamental Rights Enforcement Procedure Rules of 2009, thereby removing the clog to the smooth enforcement of fundamental rights. The effect of this, is that applications for the enforcement of fundamental rights can now be made directly to the court at the first instance, without the need to obtain an order before such right

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2 *Order 1, Rules 2 & 3,* Fundamental Rights Enforcement Procedure Rules, 1979

3 *Order 1, Rule 3*, Fundamental Rights Enforcement Procedure Rules, 1979

can be enforced. By this amendment, courts were now obliged to hear and determine fundamental rights cases. It was no longer discretionary.

Again, the time limit provided under the old rules was removed under the new rule, which made enforcement of fundamental rights free of any time bar or limitation. Thus, it is provided that: "an application for enforcement of fundamental right shall not be affected by any limitation statute whatsoever".[4] With the presence of this provision in the FREP Rules, the time limit within which an applicant can seek the enforcement of his fundamental rights is no longer circumscribed by any time frame. As such, breaches that occurred beyond a one-year period, are still enforceable. The provision is akin to what obtains under our criminal jurisprudence, wherein time does not run against crime. Likewise, time does not run against a breach of fundamental rights.

4. Joint Application for the Enforcement of Fundamental Rights: A New Norm.

At present, the judicial enforcement of fundamental rights is faced with the challenge of whether a joint application can be maintained where the applicants suffered the same infringement in the same transaction against the same person(s). This poser had been the subject of several litigations, as to the interpretation of the word "any", as it appears in *S. 46* of the Constitution of the Federal Republic of Nigeria. The phrase "any person" in *S. 46* had always been interpreted in the singular as referring to an individual; hence, the stance of maintaining such actions for the enforcement of fundamental rights as an individual action, and not a joint action. However, currently, there is a departure from that position of the law. The courts have held that a joint application does not detract from the spirit of the enforcement procedure. This innovation was amply discussed by the Apex Court in the most recent case of *Total Exploration & Production Nigeria Limited v Okwu & Ors*[5] where the Supreme Court stated that:

> it is, however, necessary and important to make the point that it is not correct law that two or more persons cannot jointly file one application for the enforcement of their respective fundamental rights alleged to have been breached or violated by a common act of one or more respondents. It is true that Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 say that "any person" who alleges that any of the Fundamental Rights provided for in the Constitution to which he is entitled has been, is being or likely to be infringed, may apply to Court for redress. It is also correct that the word 'person' is in the singular. However, it is an elementary universal rule of statutory construction that where the singular is used in a statute, it includes the plural and vice versa, except it is expressly stated otherwise.

To arrive at a correct interpretation of the term "any person" as contained in *Section 46* of the Constitution of the Federal Republic of Nigeria,[6] and *Order II Rule 1* of the Fundamental Rights (Enforcement Procedure Rules) 2009, adequate reliance was placed on the Interpretation Act[7], This principle is captured in *Section 14(b)* of the Interpretation Act which reads that "in an enactment, words in the singular include the plural and words in the plural include the singular." By *Section 315* of the 1999 Constitution, the Interpretation Act is an Act of the

4 *Order 3, Rule 1*, Fundamental Rights Enforcement Procedure Rules, 2009
5 (2024-06) Legalpedia 24384 (SC)
6 1999 (as Amended)
7 1964

National Assembly which has been incorporated by reference into the Constitution and *Section 318(4)* of Constitution provides explicitly that the "Interpretation Act shall apply for the purpose of interpreting the provisions of this Constitution."

These positions were confirmed by this Court in the case of *Saraki v Federal Republic of Nigeria* (2016) 3 NWLR (Pt 1500) 5371. What these translate to is that the word "person" used in *Section 46* of the Constitution of the Federal Republic of Nigeria and *Order II Rule 1* of the Fundamental Rights (Enforcement Procedure Rules) 2009 admits the plural and can be interpreted as referring to more than one person.

Enforcement of fundamental rights is purely a constitutional issue, and provision of the Constitution in relation thereto, must be interpreted broadly in order not to defeat its purpose, which is to foster justice and equality. The Supreme Court in Total's case reiterated the judicial interpretation approach to constitutional provisions by further holding that: "the law is settled that in interpreting the Constitution, mere technical rules on the interpretation of statutes are, to some extent, inadmissible in order to avoid defeating the principles of government enshrined in the Constitution. Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, whenever possible, and in response to the demands of justice, lean to the broader interpretation unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purpose of the Constitution[8]. The Court made reference to *All Progressives Congress v Enugu State Independent Electoral Commission*[9] where the Supreme Court put the point thus:

> "The Supreme Court's approach to construction and interpretation of the Constitution of the Federal Republic of Nigeria is one of liberalism. This is so because anything contrary thereto would be tantamount to defeating the very end which the Constitution was enacted. It is the duty of the Supreme Court, which has the ultimate responsibility of declaring and interpreting provisions of the Constitution, always to bear in mind that the Constitution itself is a mechanism under which laws are to be made by the legislature and not merely an Act which declares what the law is. Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should always lean where the justice of the case so demands to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose." In other words, the Court should always adopt a broad and liberal approach in interpreting the provisions of the Constitution. Thus, where an expression used in the Constitution is capable of a wider or narrow interpretation, the broader interpretation is to be preferred".[10]

The Apex Court in Total's case, without a modicum of equivocation, settled the controversy of whether or not a joint application is proper in a fundamental rights action. In their words:

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8 *Rabiu v State* (1980) 8-11 SC 130, *Skye Bank Plc v Iwu* (2017) 16 NWLR (Pt 1590) 24, *Abubakar v Independent National Electoral Commission* (2020) 12 NWLR (Pt 1737) 37 *National Unity Party v Independent National Electoral Commission* (2021) 17 NWLR (Pt 1805) 305.

9 (2021) 16 NWLR (Pt 1801) 1 at 67-68H-D

10 *In Re Maduike* (2019) 7 NWLR (Pt 1671) 255, *Central Bank of Nigeria v Rahamaniyya Global Resources Ltd* (2020) 8 NWLR (Pt 1726) 314, *Crestar Integrated Natural Resources Ltd v Shell Petroleum Development Co Ltd* (2021) 16 NWLR (Pt 1800) 453.

> It follows therefore that the phrase "any person" used in Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 cannot, and should not, be given a constricted, narrow and limiting interpretation that it refers to only one person. It should be given the wider interpretation to include more than one person or individual. This approach to the interpretation of the phrase "any person" used in Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure Rules) 2009 accords with the overriding objectives of the Fundamental Rights (Enforcement Procedure Rules) 2009 as provided in its preamble. The Preamble to the Rules enjoins the Court to constantly and conscientiously seek to give effect to the overriding objectives of the Rules at every stage of human rights action, especially whenever it exercises any power given it by the Rules or any other law and whenever it applies or interprets any rule. And the first overriding objective says that Constitution as well as the African Charter shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedom contained in them and affording the protection intended by them. (underlining for emphasis)

These statements enjoin the Courts not to allow a conservative approach to interpretation of the Constitution and of the Rules and peripheral technical rules to defeat and/or impede a person seeking the enforcement of his fundamental rights.[11] The truth and reality is that there is no express provision in the Fundamental Rights (Enforcement Procedure) Rules, 2009 that forbids two applicants from filing a joint petition for the enforcement of their fundamental rights.

In drawing the curtain in their summation, the Supreme Court in this *Total's case*[12], finally held that: "the decisions in the cases of *Udo v Robson*[13], *Kporharor v Yedi*[14], *Finamedia Global Services Ltd v Onwero Nigeria Limited*[15], *Chief of Naval Staff & Ors v Archibong & Ors*[16] *and Abuja Electricity Distribution Company Plc & Ors v Akaliro & Ors*[17]... do not represent good law.[18]"

By this, the Supreme Court successfully laid the matter of joint application to rest. By holding that the authorities stated above do not represent good law, it then follows that these authorities and all similar authorities, which represent the old order that "any person" refers only to an individual, and as such barring plurality of action in fundamental rights enforcement, are by this recent decision of the apex court, no longer good law.

Prior to the Total's case, the Court of Appeal had in the previous year offered a detailed judgment on this issue in of *Nuwawan v IGP, Abuja*[19]**.** The Court relied on both the preamble to the Rules and the Interpretation Act adopted in its entirety, the position of the Supreme

11 *Federal Republic of Nigeria v Ifegwu* (2003) 15 NWLR (Pt 842) 113, *Enukeme v Mazi* (2014) LPELR-23540(CA)
12 (Supra)
13 (2018) LPELR 45183
14 (2017) LPELR 42418
15 (2020) LPELR 51149
16 (2020) LPELR 51845(CA)
17 (2021) LPELR 54212(CA)
18 (2024) LPELR – 62623 @ 42
19 (2023) LPELR – 61580 @ 34 - 38

Court in Total's case, although the Court of Appeal case was decided first. The Court held that:

> This intendment of the legislature that the word "any" therein is employed in both its singular and pluralistic forms is manifest from the preamble at paragraph 3 (e) which states;
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> "(e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:
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> (i) Anyone acting in his own interest;
> (ii) Anyone acting on behalf of another person;
> (iii) Anyone acting as a member of, or in the interest of a group or class of persons;
> (iv) Anyone acting in the public interest; and
> (v) Association acting in the interest of its members or other individuals or groups".

It should also be noted that there is no express and unequivocal provision in the Rules that prohibits persons with a common interest or the same cause of action from instituting a joint action to enforce their fundamental rights. Indeed, such an application is encouraged by virtue of *Order XV Rule 4* of the said 2009 FREP Rules which provides: "where in the course of any Human Right proceeding, any situation arises for which there appears to be no adequate provision in the said Rules, the civil procedure rules of the Court for the time being in force still apply"… In the instant case, the Rules of the lower Court, *Order 10 Rule 2* of the Federal High Court (Civil Procedure) Rules 2009 allows a joint application by multiple applicants whose cause of action is the same. Order 10 Rule 2 (which is in *pari materia* with Order 14, rule 4 of the High Court of Imo State Rules) provides: Claims by plaintiffs jointly, may be joined with claims by them or any of them separately against the same defendant.[20]

One major reason for validating joint applications is to avoid multiplicity of applications over the same cause of action. This position seems to have been accepted or endorsed by the Supreme Court in the case of *Diamond Bank Plc v Opara*[21]. In the case of *F.B.N. PLC & Ors v A.G.F.*[22] the apex Court upheld a joint application by 5 applicants for the enforcement of their fundamental rights and even proceeded to award compensation to the 5th applicant who was omitted in the compensation by this Court.

> In the case at hand, the cause of action by the 16 Appellants in their joint application by their application and affidavit is the arrest and detention of the 1st Appellant from 15/1/2018 to 19/1/2018 and the threats by the Respondents for the further arrest and detention of the 1st Appellant and the threat to also harass, intimidate, humiliate, arrest and detain the 2nd to 16th Applicants without the 2nd to 16th Applicants committing any offence known to law but for a purely civil matter over the tussle to community leadership.

[20] *Nuwawan v IGP, Abuja (Supra)*
[21] (2018) 7 NWLR (Pt 1617) 92
[22] (2019)7 NWLR (PT 1617) 121

> Ex facie, the processes filed by the applicants' prima facie disclose a common cause of action sufficient to entitle the applicants apply for the enforcement of their fundamental rights which on the strength of the relevant authorities, they may apply jointly to enforce. On the whole therefore, on the strength of the relevant authorities, a joint application by several applicants with common cause of action for the enforcement of their fundamental rights is competent.[23]

The reasoning of their Lordships in the aforementioned cases was quite sound and well-thought out. It accords with sound judgment that applicants in a fundamental rights application can bring a joint or class action against the same respondent(s), provided that the alleged breach was executed in the same transaction. Against the background of the foregoing authorities, one can't but agree with the learned Justices of our appellate and apex courts on the propriety of maintaining a joint application for the enforcement of fundamental rights. This departure from individual application is in the interest of justice. It has been held in the case of *IHS Nig. Ltd Vs Ladan*[24] that, **"**where a lower Court is faced with two or more decisions of a higher Court on the same issue, then such a lower Court has only one option open to it, namely, to be bound by the latter decision of the higher Court. It cannot… rather jettison the latter decision for the earlier decision and bound itself with the earlier decision[25]**".**

Flowing from this position of the law, applications for fundamental rights are now being filed by multiple applicants without the action being struck out for plurality of applicants. Instances of such very recent cases include the case of *Adewumi & Ors v C.O.P. Lagos State*[26]; *Zenith Bank v Nelken & Ors*[27]; and a host of other authorities.

In amplification of the law, clause 1 of the preamble to the FREP Rules states that, **"**the court shall constantly and conscientiously, seek to give effect to the *overriding objectives* of these rules at every stage of human rights action, especially whenever it exercises any power given it by these rules, or any other law and whenever it applies or interprets any rule."

By certain far-reaching provisions of the FREP Rules, it was stated that, **"**the overriding objectives of these rules are as follows:

a) The constitution, especially chapter 4, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them, and affording the protections intended by them
b) For the purpose of advancing, but never for the purpose of restricting the applicant's rights and freedoms, the court may make consequential orders as may be just and expedient.
c) The court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented.
d) The court shall encourage and welcome public interest litigations in the human rights field, and no human rights case may be dismissed or struck out for want of *locus standi*; in particular, human rights activists, advocates or groups, as well as any Non-

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23 See also, *Oghenegueke v IGP*(2023) LPELR – 60233 @ 24 – 25, *Ejeh v Ali* (2022) LPELR – 57593 @ 48 – 52 and *Enaharhere v Oduduru* (2022) LPELR – 58310 @ 12.

24 (2024) LPELR – 61637 @ 41

25 See also: *Central Bank Of Nigeria v Okojie* (2015) 14 NWLR (pt.147) 231 @ 263.

26 (2024) LPELR – 62024

27 (2024) LPELR – 61744

Governmental Organizations, may institute human rights application on behalf of any potential applicant…

e) The court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realization of human rights.[28]

From these provisions of the law, it is my considered view that fundamental rights application can be brought under a joint application, provided it emanated from the same transaction. As clearly provided in the FREP Rules afore stated, the primary consideration is the advancement of fundamental rights enforcement, and not resort to some technicality to stall it. What difference, if I may ask, does it make to file separate applications, only to consolidate the applications, at the hearing of the originating motion?

The FREP Rules provides that: "the Judge may, on application of the Applicant, consolidate several applications relating to the infringement of a particular fundamental right pending against several parties, in respect of the same matter, and on the same grounds.[29]". By the clear provision of this rule, once the infringement was carried out in the same transaction against the applicants, then their applications can be consolidated and taken as one. This, in the estimation of the court, still has the same impact as where the application is brought by a plurality of applicants. The tenuous point to note is that the breach must have occurred in the same transaction, against the several applicants.

By filing the application jointly, resources are saved and the process fast-tracked, as one process covering the applicants, is filed. Above all, and most importantly, there is no miscarriage of justice occasioned by the filing of a joint application.

5. Conclusion/Recommendation

In concluding, the Writer has been able to show that the overriding interest of justice and its speedy dispensation is a sine qua non in the effective enforcement and preservation of the fundamental rights of all and sundry, in line with the provisions of the Constitution.

Further to the foregoing, it is my considered view that that both the filing of individual and the filing of joint applications can co-exist side by side, without doing violence to the other. By giving a liberal interpretation to the Fundamental Rights Enforcement Procedure Rules, the ends of justice are served in all deserving cases. We recommend that counsel should have the liberty to choose the mode of filing he deems fit in the circumstance, that is, either maintaining a joint action on behalf of the applicants, where the applicants are victims of the same breach of their fundamental rights, or maintaining separate actions for each applicant. Whatever shall meet the justice of the matter should govern the thoughts of counsel, as he decides which route to follow.

[28] Clause 3 of the preamble to the FREP Rules, 2009

[29] Order 7, Rule 1