

COMMUNITY COURT OF JUSTICE,  
ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTÉ,  
CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,  
CEDEAO



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IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC  
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)  
HOLDEN AT LOME, TOGO  
ON THURSDAY, THE 13<sup>TH</sup> DAY OF FEBRUARY, 2014

BEFORE THEIR LORDSHIPS

HON. JUSTICE BENFEITO M. RAMOS	-	PRESIDING
HON. JUSTICE ANTHONY A. BENIN	-	MEMBER
HON. JUSTICE ELIAM M. POTEY	-	MEMBER

SUIT NO: ECW/CCJ/APP/09/11

RULING NO: ECW/CCJ/RUL/03/14

BETWEEN

THE REGISTERED TRUSTEES OF THE  
SOCIO-ECONOMIC RIGHTS &  
ACCOUNTABILITY PROJECT (SERAP)

PLAINTIFF/RESPONDENT

AND

1. FEDERAL REPUBLIC OF NIGERIA  
2. ATTORNEY GENERAL OF THE  
FEDERATION & MINISTER OF JUSTICE

DEFENDANTS/APPLICANTS

REPRESENTATION:

1. Shola Egbeyinka Esq. for the Plaintiff
2. Mathew Echo & Justina Fatuhide for the Defendant

## RULING

1. The Plaintiff herein, The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) filed an Application initiating action, at the Registry of the Court on the 17<sup>th</sup> day of May 2011, against the Federal Republic of Nigeria and the Attorney General and Minister of Justice.
2. The Plaintiff's application is brought pursuant to Articles 1, 2, 3, 4 and 5 of the African Charter on Human and Peoples' Rights, Articles 2, 3, 8, 12 and 25 of the Universal Declaration of Human Rights (1948), Articles 2, 3, 6, and 26 of the International Covenant on Civil and Political Rights, Article 33 of the Rules of this Court, Article 10 of the Supplementary Protocol A/SP.1/01/05 and Articles 2, 3, 5, 10, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.
3. The Plaintiff's action is premised on the alleged violation of the human rights of members of the National Youth Service Corps (NYSC), to life; to sanctity and integrity of human person; to equal protection of the law; and violation of their families' right to basic enjoyment of economic and social rights.

### Defendants' Preliminary Objection

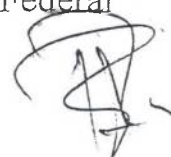
4. Upon receipt of the Plaintiff's Application, the Defendants, through their Counsel, filed a Preliminary Objection dated 20<sup>th</sup> January, 2012 at the Registry of the Court praying for an order of this Court dismissing the Plaintiff's application and for such further orders as this Court may deem fit to make in the circumstance.
5. The Defendants' Preliminary objection is based on the following grounds:
  - a. That the Plaintiff lacks the *locus standi* to bring the Application since it has not suffered any harm as a result of the act or omission of the Defendant.



- b. That the Plaintiff's Application does not disclose any cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; and
- c. That the Plaintiff did not first appeal against the alleged grievance it may have against the NYSC to the President of the Federal Republic of Nigeria as required by the NYSC Act and the suit is premature.

**Plaintiff's Reply on the issues formulated by the Defendants**

6. Counsel to the Plaintiff filed a response dated 18<sup>th</sup> January 2013, in opposition to the Defendants' Preliminary Objection addressing the issues for determination raised by the Defendants.
7. On the Defendants' contention that the Plaintiff lacks the *locus standi* to institute this action, Counsel to the Plaintiff argued that Article 27 (2) and 29 (2) of the African Charter is rather in support of the Plaintiff's *locus standi* to institute this action. He submitted that the Plaintiff, a non-governmental organization which is human rights driven has professionals who are progressively minded to champion noble cause on human, social and economic rights. He stated that they are bringing to bear, their intellectual capacity in this direction to fight the cause of the masses and down trodden and submitted therefore, that there is justiciable cause of action in this case and as such, the Plaintiff has the *locus standi* to institute this action.
8. On whether the Defendants are in breach of International Conventions and law. Plaintiff's Counsel argued that Article 23 of the African Charter on Human and Peoples' Rights guarantees the right to national and international peace and security, while Article 9 of the International Covenant on Economic, Social and Cultural Rights stipulates that "the State Parties to the present Covenant recognize the right of everyone to social security, including social insurance". He therefore contended that every citizen of the Federal



Republic of Nigeria, regardless of status, has an inalienable fundamental right to national security from the government of Nigeria.

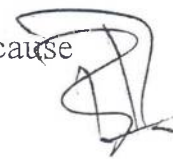
9. On the Defendants' contention that there is no cause of action, Counsel to the Plaintiff argued that their cause of action is predicated on Articles 1, 2, 3, 4 and 5 of the African Charter on Human and Peoples' Rights, Articles 2, 3, 8, 12 and 25 of the Universal Declaration of Human Rights 1948, Articles 2, 3, 6 and 26 of the International Covenant on Civil and Political Rights, Articles 2, 3, 5, 10, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. He therefore submitted that the rights of the victims of the electoral crisis is being invoked by the Plaintiff. He further submitted that, that alone constitutes sufficient cause of action against the Defendants in this case.

10. Plaintiff's Counsel, whilst referring the Court to Section 42 (2) (b) of the 1999 Constitution of Nigeria, contended further that the government of Nigeria has a constitutional duty to provide security and welfare to the people. He also referred this Court to its judgment in ECW/CCJ/APP/12/07 SERAP v. The Federal Republic of Nigeria & UBEC and submitted that in so far as the subject matter of this suit is predicated on the fundamental human rights to life, dignity of human persons as well as other fundamental rights cognizable under the African Charter, the Court should assume jurisdiction.

### CONSIDERATION OF THE ARGUMENTS

#### Whether the Plaintiff has the *Locus Standi* to initiate or maintain this action

11. At the Court session of 7<sup>th</sup> November, 2013, this Court raised some questions with respect to *locus standi* of the Plaintiff to institute this action on behalf of the selected youths who were killed. Why SERAP as an NGO thinks it can bring a case on their behalf? The Defendants herein, referring this Court to Articles 27 (2) and 29 (2) of the African Charter, contends that the Plaintiff lacks the requisite *locus standi* to initiate the present proceedings because



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plaintiff has failed to show that he has suffered any damage, loss or personal injury in respect of the acts alleged in this suit. Plaintiff, however, contended that, on the issue of *locus standi*, there is no need to show consanguinity or affinity relationship with the deceased youths before bringing an action on their behalf, as any body, any association, any group or individual can bring an action for enforcement of fundamental rights in any Court of law.

12. It is true that this Court has jurisdiction to entertain cases of human rights violations occurring in any of the ECOWAS Member States. This clearly results from the terms of Article 9 (4) of Supplementary Protocol A/SP.1/01/05. The text is reproduced hereafter:

*“The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State”*

13. There is also no doubt that people who have been victims of acts of human rights violations, have the right to access the Community Court, to submit a complaint against the perpetrators of such violations and obtain the necessary redress. Indeed, Article 10 (d) of the said Protocol provides that access to the Court is open to:

*“Individuals on application for relief for violation of their human rights...”*

14. In view of the jurisdiction of the Court and eligibility of litigants to access this Court in cases of human rights violation, the question, which needs to be addressed, is whether a non-governmental organization (NGO) which suffered no human right violation, can access the Court on behalf of alleged victims, without any authorization from the victims or their close relatives. The answer can only be a negative one.

15. This Court is quite aware that in some cases, particularly when it is the collective interest of the community that is being violated, an NGO can have

access to this Court with respect to public interest litigation. It is in view of this reason that ECOWAS Community Court has allowed, in some cases, the NGOs to institute actions on behalf of collective interests, as in the case of ECW/CCJ/APP/08/09 SERAP v. Federal Republic of Nigeria and UBEC and ECW/CCJ/APP/12/07 SERAP v. Federal Republic of Nigeria & 4 Ors.

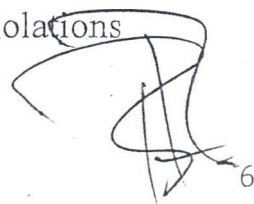
16. But when the alleged victims are well determined, as in this case, they are expected to access the Court by themselves, in defence of their interests. If for any reason, the direct victim of the violation cannot exercise his/her rights, in particular, for being irreversibly incapacitated or having died as a result of the violation, the closest family members can do so, while assuming the status of indirect victims. In this regard, a more comprehensive concept of victim laid down in Article 10 (d) of the Protocol on the Court is required to facilitate access to justice and prevent impunity and unaccountability of States for more serious cases of human rights violation.

17. In any event, in spite of the flexibility that can be given to the concept of a victim under Article 10 (d) of the Protocol as amended, it can never reach the point of allowing an NGO to present itself to the Court, outside the framework of the public interests mentioned above, to litigate as a complainant, without the NGO itself having been the victim of a violation of its rights or having previously obtained any authorization from the person who is presented as a direct or indirect victim of the alleged violation.

18. Since the Plaintiff has no *locus standi* to bring the case to this Court on behalf of the youths whose rights were allegedly violated, there is no need to go further in analysing other issues raised in the preliminary objection.

## DECISION

19. Whereas the Court has jurisdiction to hear cases of human rights violations that occur in ECOWAS Member States;



20. Whereas concerning violations of human rights, only the victims may have access to the Court;
21. Whereas, aside from cases of collective interests, NGOs cannot substitute the victims;
22. Whereas in this case, the complainant SERAP is not the victim of any violation and has not received any prior authorization to act on behalf of the victims or their closest relatives.
23. The Court decides to uphold the preliminary objection of the Defendants, on the lack of locus standi of the plaintiff and therefore dismisses the case accordingly.

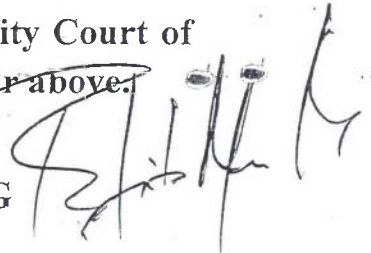
### **COST**

Since the Applicant failed to equip itself with prior authorization from the alleged victims, it shall bear the cost of these proceedings in line with Article 66 (5) of the Rules of this Court.

**Thus made, adjudged and pronounced publicly by the Community Court of Justice, ECOWAS, at Lome, Togo, on the day, month and year above.**

**HON. JUSTICE BENFEITO M. RAMOS**

- PRESIDING



**HON. JUSTICE ANTHONY A. BENIN**

- MEMBER



**HON. JUSTICE ELIAM M. POTEY**

- MEMBER



**Tony Anene-Maidoh**

- Chief Registrar

