

COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



No. 10 DAR ES SALAAM
CRESCENT OFF AMINU KANO
CRESCENT, WUSE II, ABUJA-
NIGERIA. PMB 567 GARKI, ABUJA
TEL: 234-9-78 22 801
Website: www.courtecowas.org

JUDGMENT No. ECW/CCJ/JUD/12/19

**COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN
STATES (ECOWAS)**

HOLDEN AT ABUJA, NIGERIA

ON WEDNESDAY, THE 28TH DAY OF FEBRUARY 2019

IN THE CASE BETWEEN

NANCY BOHN-DOE, a citizen of Liberia and former First Lady of Liberia, resident at 9th Street Sinkor, Montserrado County, Republic of Liberia: Administratrix of the intestate estate of her husband the late Dr. Samuel Kanyon Doe Sr., former President of the Republic of Liberia, whose counsel is constituted by **Cllr. Milton D. Taylor** of Law Offices of Taylor & Associates Inc., Front Street, Monrovia, Liberia.

APPLICANT

AND

THE REPUBLIC OF LIBERIA, represented by the Solicitor-General of the Republic of Liberia, **Cllr. Betty Lamin-Blamo**, in association with **Cllr. Emmanuel B. James** and **Cllr. Rosemarie B. James**, both Counsellors-at-Law with the International Group of Legal Advocates and Consultants, 4 Clay Street, Crown Hills Monrovia, Liberia.

FIRST DEFENDANT

The Second and Third Defendants, being, respectively: **The Central Bank of Liberia** and **The Attorney General of the Republic of Liberia**, whose joint address is at 9th Street Sinkor, Montserrado County, Republic of Liberia.

Suit registered and heard under No. ECW/CCJ/APP/41/16 on the General List.

BEFORE THEIR LORDSHIPS

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| 1. Hon. Justice Edward Amoako Asante | Presiding |
| 2. Hon. Justice Gberi-Be Ouattara | Judge Rapporteur |
| 3. Hon. Justice Dupe Atoki | Member |

Assisted by Barrister Tony Anene-Maidoh **Chief Registrar**

Hereby delivers Judgment No. ECW/CCJ/JUD/12/19 as follows:

THE COURT,

- Having regard to the Revised Treaty of 24 July 1993 establishing the Economic Community of West African States (ECOWAS);
- Having regard to the 6 July 1991 Protocol on the Community Court Justice, ECOWAS and the 19 January 2005 Protocol on the Community Court Justice, ECOWAS;
- Having regard to the 3 June 2002 Rules of Procedure of the Community Court Justice, ECOWAS;
- Having regard to the 10 December 1948 Universal Declaration of Human Rights;

- Having regard to the 27 June 1981 African Charter on Human and Peoples' Rights;
- Having regard to the above-mentioned Initiating Application received at the Court Registry on 7 December 2016;
- Having regard to the Defence by the Republic of Liberia received at the Court Registry on 15 February 2017;
- Having heard each Party through their respective Counsel; and
- Upon deliberation in accordance with the law;

II. FACTS AND PROCEDURE

By Application dated 17 November 2016, received at the Court Registry on 7 December 2016, Mrs. Nancy Bohn-Doe pleads as follows:

That she is the administratrix of the intestate estate of her late husband the late President Samuel Kanyon Doe, who was captured and killed on 10 September 1990 in the course of the Liberian civil war.

That while he was alive, the late President Samuel Kanyon Doe was the owner of several bank accounts opened at banks in Liberia and outside Liberia, including the local branch of Bank of Credit and Commerce International (BCCI).

That before the events which cost the late President Samuel Kanyon Doe his life, she and the other members of his family fled into exile; during the exile period, the Applicant went to the Cayman Island, with the hope of retrieving the funds her late husband had lodged in the accounts of the BCCI branch in Liberia. Since she had no documents to prove that she was the administratrix of the intestate

estate of her late husband, she could not return to the Cayman Island to pursue the procedure further.

That in 1993, the National Bank of Liberia, which had become the Central Bank Liberia, wrote to the Monthly and Probate Court of Montserrado County in respect of Account Number 02016498 opened by her late husband at a local bank (LUBI), that the sum of **148,196.50 US Dollars** had been illegally withdrawn with the complicity of the agents of the Defendant State.

That on 1 December 1994, the Central Bank of Liberia wrote to her late husband, although the Central Bank perfectly knew that he had died 4 years before then, to inform him of the winding up of BCCI, calling on him to report to the bank within 30 days to identify himself and confirm the accounts and deposits at the BCCI, deposits evaluated at **4,173,154.99 US Dollars**. From the time that mail was sent, more than 23 years have elapsed.

That the sole motive of the Defendant in addressing the said letter to the owner of the account, whereas it was widely known that the said owner had died several years before then, was to deprive her (the Applicant) and the other legitimate intestate successors, of the bank deposits, in flagrant violation of their right to property, as guaranteed under Article 14 of the African Charter on Human and Peoples' Rights.

That the late President had equally made deposits in US Dollars in other banks which had wound up under the instructions and supervision of the Central Bank of Liberia; with the result that the total amount of deposits would rise to **5,521,945.53 US Dollars**, to be re-evaluated at 6% interest, so as to arrive at a total amount the Applicant is claiming from the Defendant, in the sum of **18,130,778.09 US Dollars**, plus 2% successful attorney's fees (342,625.57 US Dollars).

That on 30 June 2001, the Attorney General and Minister of Justice of Liberia signed an attestation in the terms of which the Defendant State acknowledged that it had no claim or grievance against the late President Samuel Kanyon Doe, and thus reaffirmed the right of his family to enjoy all the intestate assets of the deceased.

That in violation of the said commitment and the assurance derived therein for the family of the deceased, the Government of Liberia undertook negotiations and concluded a final bank-accounts settlement with the bank at the Cayman Island in respect of the bank deposits of the deceased Samuel Kanyon Doe and his wife. That consequently, the Plaintiff Counsel produced before the Defendant, in July 2011, a mail of the bank announcing the closure of the matter regarding the said commitment.

That the BCCI funds belonging to the deceased Samuel Kanyon Doe was thus transferred to the Central Bank of Liberia, and the latter took possession of the funds; that these are funds belonging to the deceased and his family. The Central Bank of Liberia effected the measure of possession of the funds through various procedures of winding up the local banks, in total violation of the right to property and the intestate rights of the heirs to the deceased Samuel Kanyon Doe.

That despite the numerous efforts and steps taken by the Applicant to seek information from the Governor of the Central Bank of the Defendant State, regarding the bank accounts and deposits made by the late President in financial institutions in Liberia and outside Liberia, the Defendant stubbornly refused to grant the Applicant access to any of the pieces of information she requested, thus violating her right to information as enshrined in Article 9 of the African Charter on Human and Peoples' Rights.

That to terminate those violations, she sued the Central Bank of Liberia on 30 November 2011. After 4 long years of legal battle, characterised by ploys aimed at blocking the trial proceedings or delaying the procedure, the Commercial Court finally delivered judgment in favour of the Applicant and her family on 14

November 2015. The Central Bank of Liberia was thus asked to pay **10,482,299.99 US Dollars** plus interest, in addition to successful attorney's fees.

That to frustrate that decision, the Central Bank of Liberia filed an application before the Supreme Court, and the Supreme Court was equally seized by an application from the Attorney General and Minister of Justice of the Defendant State, requesting the intervention of the State in the procedure, accompanied by a writ of prohibition requesting suspension of proceedings on the application lodged by the Central Bank of Liberia.

That by these manoeuvres, the Defendant and its agents succeeded in blocking the flow of the trial procedure, which continued to remain pending before the Supreme Court, with no court trial having been conducted since March 2016, despite the vehemence of the Applicant for her cause to be listed and heard.

That exasperated by the long wait to retrieve the funds left by her late husband for the family, the Applicant filed her case before this Honourable Court for violation of her human rights, notably for violation of Articles 1, 2, 3, 9, 14 and 19 of the African Charter on Human and Peoples' Rights, and Articles 6, 7, 17 and 25 of the Universal Declaration of Human Rights.

Consequently, the Applicant asks that it may please the Court to make the following declarations:

- A declaration that denying the Applicant access to the lawful monies deposited by the late Dr. Samuel K. Doe, Sr. in other commercial banks in Liberia, including BCCI, is a violation of her human rights;
- A declaration that the refusal of the Defendants to provide information or documents that could help the Applicant to discover other deposits that might have been made by the deceased in those banks, including information or documents on the deceased's account in Rovia Bank, amounts to a violation of human rights;

- A declaration that Defendants pay the Applicant the amount of **US\$5, 521, 945.53** deposited in accounts herein above mentioned that have presently been made known to the Applicant, plus 6% interest per annum as per local law, the total amount, including the principal herein mentioned, standing at **US\$18, 130, 778.09**;
- A declaration that the Defendants pay the Applicant **US\$ US\$ 148, 196.50** illegally withdrawn under their authority to the then Bank Examiner of the 3rd Defendant, plus 6% interests per annum;
- A declaration that the Defendants provide the ledger of depositors with other liquidated commercial banks to help the Applicant in the search of other deposits that might have been made in those banks by the deceased;
- A declaration that the Defendants pay the sum of **USD\$9,000,000.00** (Nine Million United States Dollars) as compensation for violation of the rights of the Applicant, subjecting the Applicant and the heirs to the absence of basic needs and a decent living standard, as well as quality education and better health care for the children and grandchildren of the deceased.

By its Memorial in Defence deposited on 28 January 2017, received at the Registry on 28 February 2017, the Republic of Liberia raised the following Preliminary Objections and maintained on its own part:

That the Application is inadmissible before this Honourable Court as it fails to state or demonstrate any act or conduct on the part of the Defendants that are indicative of a characteristic violation of a fundamental human right of the Applicant.

That the amounts claimed, in the Applicant's own words, may be in the possession of the Central Bank of Liberia, which explains why the Applicant sued the Central Bank of Liberia before the Commercial Court. That neither the State

nor the Attorney General and Minister of Justice were party to the domestic procedure. According to the defendant, that is the proof that the Applicant has no charge against the State and as such it will be inadmissible to drag it before the ECOWAS Court for failure to implement a decision delivered against a third party.

That it is therefore obvious that the against the State, the Court may legitimately exercise its jurisdiction but no blame has been laid against the State apart from the application it lodged before the Supreme Court for stay of proceedings, an act the Defendant deems totally justified in the light of the rules of procedure in force in the country.

The Defendant claims that the Central Bank of Liberia, the target of the essential complaints filed, has no capacity to plead a case before the instant Court, no more than the Attorney General and Minister of Justice. That these two persons have thus been erroneously sued before the instant Court and concludes thereby that the action brought against the Central Bank of Liberia and the Attorney General and Minister of Justice is inadmissible.

The Defendant State equally blames the Applicant for not invoking even once before the domestic courts, human rights violation, and for bringing her case before the ECOWAS Court at a time when the action for retrieving her assets and credits is still pending before the Supreme Court of Liberia. The Defendant State maintains that if the national procedure was not progressing at a rate that meets her satisfaction, she was free to file an action before the Supreme Court itself, rather than to blame the Defendant State, whereas the latter has no control over the scheduling of the hearings before the national courts.

Besides, the Defendant State maintains that the action brought by is statute barred pursuant to the provisions of Article 9(3) of the Supplementary Protocol on the Court. That indeed, 27 years had passed since the assassination of her husband, and that she is unforgivably to be blamed for negligence because she

had been aware of her status as the intestate heir to her deceased husband since 18 February 2004.

Consequently, the Defendant asked for the following remedies from the Court:

- Sanction the Applicant's negligence or failure to use the channels of redress available to her under the Constitution of Liberia and the national laws of Liberia, by declaring her Application purely and simply inadmissible;
- Find that the Applicant has not demonstrated any violation that may be attributable to the Defendant or likely to render it liable for any offence;
- Ask the Applicant to pay to the Defendant the sum of 150,000 US Dollars as costs it had incurred due to the trial;
- Impose a fine on the Plaintiff Counsel or impose an exemplary sanction on him for abuse of the court process.

III. ANALYSIS OF THE COURT

AS TO JURISDICTION OF THE COURT

The Republic of Liberia, Defendant in the instant proceedings, raised a Preliminary Objection regarding the competence of the Court. That the Applicant's action is inadmissible before this Honourable Court, as it fails to state or demonstrate any act or conduct on the part of the Defendants that are indicative of a characteristic violation of a fundamental human right of the Applicant, apart from the application it lodged before the Supreme Court for stay of proceedings, an act which the Defendant deems totally justified in the light of the rules of procedure in force in the country.

In the instant case, the widow Mrs. Nancy Bohn-Doe, intestate successor of the late Samuel Kanyon Doe, former President of Liberia, based her claims on Articles 1,2,3,9, 14 and 19 of the African Charter on Human and Peoples Rights and on Articles 6, 7, 17 and 258 of the Universal Declaration of Human Rights, international instruments subscribed to by the Republic of Liberia.

Therefore, it is erroneous for the Defendant to attempt to contest the jurisdiction of the Court, whereas the consistently held case law of the Court has always been that it suffices for an applicant to make reference to the international instruments on human rights, for the provisions of Articles 9(4) and 10 of Supplementary Protocol A/P1/01/05 on the ECOWAS Court to apply, in regard to human rights violation.

The Court recalled this principle in Judgment No. ECW/CCJ/JUD/09/11 of 7 October 2014 in *Ameganvi Manavi Isabelle and Others v. Republic of Togo*.

Consequently, the Court dismisses the objection regarding lack of jurisdiction, as raised by the Defendant, and declares that the Court is competent to adjudicate on the case brought before it.

AS TO THE PRELIMINARY OBJECTION REGARDING FORECLOSURE

The Republic of Liberia maintained that the Applicant's case is foreclosed in the sense that more than 27 years had passed since the death of her husband, invoking in that regard, the provisions of Article 9, paragraph 3 of Supplementary Protocol A1/01/05 on the Court.

The Court recalls that the said Article 9(3) is worded as follows: "**Any action by or against a Community Institution or against any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.**"

Quite clearly, the said provision of Article 9 of the Supplementary Protocol concerns matters bordering on commission of offences and they are solely applicable to offences committed by the Economic Community of West African States (ECOWAS) as defined under Article 2 of the 24 July 1993 Revised Treaty, and also applies to third parties and agents of ECOWAS, as an entity, but not to the Member States.

Since the legal basis of the objection regarding foreclosure is erroneous, it shall be appropriate to dismiss it and pursue the procedure further.

AS TO ADMISSIBILITY OF THE APPLICATION

By Application dated 7 December 2016, the widow Mrs. Nancy Bohn-Doe filed a suit before this Honourable Court, respectively, against the Republic of Liberia, the Attorney General and Minister of Justice of the Republic of Liberia and the Central Bank of Liberia.

In matters concerning human rights violation, the jurisprudence of the Court is well established regarding the fact that only States shall be Defendants, as the principal subjects of international law, and not individuals.

In Judgment No. ECW/CCJ/RUL/04/10 of 11 June 2010 on the *Peter David* case, and in Judgment No. ECW/CCJ/JUD/05/10 of 8 November 2010 on *Mamadou Tandja v. Republic of Niger and General Sabou Djibo*, and ECW/CCJ/APP/20/16, ECW/CCJ/JUD/05/18, Judgment on *Case Concerning Baba Boubie and 10 Others v. Republic of Cote d'Ivoire and BCEAO*, this Honourable Court recalled the general principle recognised in international law according to which actions for human rights violation are brought against States and not individuals, in that the rights in contention are derived from international conventions which have been accepted and assented to by the States which have committed themselves to adhere to them and safeguard them.

It follows thus that since the Central Bank of Liberia and the Attorney General and Minister of Justice of Liberia are not signatories to the African Charter on Human and Peoples' Rights nor to the Universal Declaration of Human Rights, they cannot be sued before this Court, and the action cannot be admitted as nominally filed against them.

AS TO THE MERITS OF THE CASE

Regarding violation of right to property

The Applicant requested that the Republic of Liberia be made to pay: the sum of **5,521,945.53 US Dollars**, re-evaluated at 6% interest per annum in accordance with the domestic law, thus amounting to **18,130,778.09 US Dollars**; plus the sum of **US\$ US\$ 148, 196.50 Dollars**, with an interest of 6% interest per annum; and an additional **US\$ 148, 196.50 Dollars**; all representing, respectively, the amounts of bank deposits made by the deceased, the sum illegally withdrawn from the account domiciled at Rovia Bank, and reparation for all the violations suffered by her and all the other intestate successors, pursuant to Articles 1,2,3,9, 14 and 19 of the African Charter on Human and Peoples Rights and on Articles 6, 7, 17 and 258 of the Universal Declaration of Human Rights.

As to any form of response which may have been formulated against this request, apart from the objection regarding foreclosure, which has already been dismissed, the Republic of Liberia maintains that apart from the application for stay of proceedings which it had lodged before the Supreme Court of Liberia, no grievance has been made against the Republic of Liberia, and the Republic of Liberia, at any rate, blames Mrs. Nancy Bohn-Doe for not invoking violation of her human rights before the domestic courts, and for bringing her case directly before the ECOWAS Court of Justice at a time when her action for the retrieval of her assets and credits was pending before the Supreme Court of Liberia. The Defendant State avers that the Applicant was free to bring an action against the Supreme Court of Liberia, and not against the Republic of Liberia, in so far as the Republic of Liberia has no control over the management of cases pending before the national courts.

The Court recalls that it has consistently held that direct access before the Community Court of Justice, ECOWAS without exhaustion of local remedies is a possibility for litigants, all the more so when non-exhaustion of local remedies prior to accessing the Court does not affect the admissibility of the action. The Republic of Liberia therefore advances such weak argument in vain.

In terms of the merits of the case, the Republic of Liberia seems to have forgotten that as a Member State of ECOWAS, it is signatory to the African Charter on Human and Peoples' Rights and other international instruments of human rights protection, and in that capacity, the obligation rests solely on the Republic of Liberia to protect and defend the rights deriving from those international instruments. It shall be inappropriate indeed in the instant case for the Defendant State to maintain that it has no control over the activities of the domestic courts of the Republic of Liberia whereas it is incumbent upon the Republic of Liberia to ensure the effective functioning of the all the State organs, ministries, departments and agencies, including the State judicial system. Besides, the Court finds that the Republic of Liberia did not file among the court pleadings any evidence of the court proceedings by virtue of which it seized the assets of the late Samuel Kanyon Doe, to the detriment of his family, thus denying all his intestate successors of their property. Incidentally, without considering the situation of the family, in terms of having to restore the funds to them, the Defendant State, having acknowledged its responsibility of protector and defender of human rights, did put forth however certain irrelevant arguments like foreclosure, non-exhaustion of local remedies and absence of control over the domestic courts, without challenging the fact that it did block the said funds while expecting the deceased to come forth and justify the source of those funds, nor did the Defendant State contest the amounts of the said funds, without stating whether it had any reason whatsoever to suspect the legality otherwise of the source of those funds.

In the light of the foregoing, it cannot be contested that the Republic of Liberia violated the Applicant's right to property and the right to property of the other intestate successors of the late Samuel Kanyon Doe, as established and enshrined in the African Charter on Human and Peoples' Rights and the Universal Declaration of Human Rights.

As regards the amounts requested, it shall be appropriate to point out that the Applicant does not bring any evidence of withdrawal of the sum of **148,196.50 US Dollars** by the Liberian authorities from the alleged account of his late husband, and also, she does not provide any justification for the nature and quantum of the harm she claims to have suffered such as may serve as a basis for the damages evaluated at **USD\$9,000,000.00**.

The Court cannot therefore favourably accept these two ill-founded requests.

Concerning restoration of the sum of **18,130,778.09 US Dollars** which should correspond to the bank account balance of the deceased, i.e. **5,521,945.53 US Dollars** plus 6% annual interest, in accordance with domestic law, it is appropriate to emphasise that the Republic of Liberia did not contest the said amount. As a defence, the Republic of Liberia did put forth an argument on foreclosure and on non-exhaustion of local remedies.

Whereas it shall be appropriate here to grant the request of the Applicant.

Regarding violation of right to information

The Applicant averred that she contacted the Central Bank (BCCI) for documents and information on other accounts which were owned by her late husband, but in vain, that such refusal constitutes violation of her right to information as provided for and enshrined in Article 9 of the African Charter on Human and Peoples' Rights.

Article 9(1) of the said Charter provides that: ***“Every individual shall have the right to receive information”***.

It was recalled above that only States, in their capacity as the principal subjects of international law, and signatories to international instruments establishing human rights, are liable to accusations of the human rights violation in question, but not natural or legal persons. In the instant case, BCCI, which has in its

possession, and is required to provide the information on the bank accounts of the deceased, is not a party to the proceedings, and is not a State. Moreover, the information at stake under Article 21 of the African Charter on Human and Peoples' Rights concerns the duty imposed on States to provide indispensable information regarding life, health, security, education, culture and others, and not ordinary banking information which is governed by a private relationship between a legal person (i.e. a banking institution) and its client.

Very obviously, the facts alleged do not constitute in any way whatsoever violation of the right to information. The request thus made by the Applicant in that respect is ill-founded and is hereby dismissed.

Regarding Defendant's requests as counter claims

Concerning legal fees

The Republic of Liberia requests that the Court ask the Applicant to pay to it **150,000 US Dollars** to cover legal costs;

In the terms of Article 66 of the Rules of Procedure of the Community Court of Justice, ECOWAS the unsuccessful party shall bear costs;

The Court finds that the Applicant is not totally unsuccessful in the instant procedure;

This request is thus dismissed as ill-founded.

Concerning imposing a fine on Plaintiff Counsel

In the terms of Article 28 of the Rules of Procedure of the Community Court of Justice, ECOWAS: "***Agents, advisers and lawyers appearing before the Court or before any judicial authority to which the Court has addressed letters rogatory, shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.***"

The Republic of Liberia requests that a fine be imposed on Plaintiff Counsel for abuse of court process.

The Court finds that Plaintiff Counsel is not a party to the trial between the Republic of Liberia and the Applicant; he acts for and on behalf of his client, and in that respect, enjoys immunity.

Moreover, a fine is a sanction of a criminal nature which may not be imposed on the Applicant.

The Court therefore dismisses that request.

As to costs

The Republic of Liberia, being unsuccessful, shall, in compliance with the provisions of Article 66 of the Rules of Procedure of the Community Court of Justice, ECOWAS, bear the costs.

FOR THESE REASONS

The Court,

Adjudicating in a public hearing, after hearing both Parties, in a matter on human rights violation, in first and last resort;

Dismisses the objection regarding lack of jurisdiction as raised by the Republic of Liberia;

Adjudges that the Court is competent to adjudicate on the case;

Dismisses the objection regarding foreclosure as invoked by the Defendant;

Declares that Mrs. Nancy Bohn-Doe's action against the Republic of Liberia is admissible;

Adjudges that the cause of Mrs. Nancy Bohn-Doe is partly well-founded;

Adjudges that Mrs. Nancy Bohn-Doe's right to property was violated by the Republic of Liberia;

Finds, on the other hand, that there is no violation of the right to information;

Orders the Republic of Liberia to pay the sum of **18,130,778.09 US Dollars** to the administratrix of the intestate succession of the late Samuel Kanyon Doe;

Dismisses the requests concerning the sum of **148,196.50 US Dollars** and the sum of **USD\$9,000,000.00** as claimed in damages;

Dismisses the counter claims made by the Republic of Liberia;

Asks the Republic of Liberia to bear the costs.

AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES:

1. Hon. Justice Amoako Asante

Presiding

2. Hon. Justice Gberi-Be Ouattara

Judge Rapporteur

3. Hon. Justice Dupe Atoki

Member

Assisted by: Barrister Tony Anene-Maidoh

Chief Registrar