

COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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

HOLDEN AT ABUJA, NIGERIA

ON JANUARY, 23, 2019

SUIT N° ECW/CCJ/APP/17/2018

JUDGMENT N.° ECW/CCJ/APP/01/19

LIEUTENANT COLONEL SILAS JOCK SANTOI

PLAINTIFF

AND

FEDERAL REPUBLIC OF NIGERIA, ECOWAS MEMBER STATE

DEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATARA- Presiding

Hon. Justice Keikura BANGURA - Member

Hon. Justice Januária Tavares Silva Moreira COSTA - Member

Assisted by: Tony ANENE – MAIDOY-Chief Registrar

Representation of the Plaintiff:

- a) Elela Stephen, lawyer.
- b) James Bello Yakubu, lawyer.

Representation of the Applicant:

- a) Elela Stephen, lawyer.
- b) James Bello Yakubu, lawyer.

I. Procedure:

1. By an initial application registered at the Registry of ECOWAS Court of Justice on 11th April 2018, the applicant, **Lieutenant Colonel Silas Jock Santoi**, sued:

2. The Federal Republic of Nigeria, a Member State of ECOWAS, for the violation of:

- a. Sections 117 and 178 of Armed Forces Act;
- b. Federal High Court (Civil Procedure) Rules of Practice Direction 2013;
- c. The Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, Rule 1(1) (2), Rule 2 A (1) (2), (3),(4), 5 (i) (ii) (6) (7) 2B (3) (4);
- d. The Constitution of the Federal Republic of Nigeria 1999, as amended. In support of this claim, Applicant invokes the violation of Section 14(10, 2(b & c) and Section 34(1a) & 36(1).
- e. This Application is brought pursuant to Article 9(4) of the Supplementary Protocol and Article 32(I), of the Rules of the Community Court of Justice ECOWAS
- f. Under the inherent Jurisdiction of the Hon. ECOWAS Court
- g. The African Charter on Human and Peoples' Rights, Article 4, Article 7(1) and 7(1) (d) Article 7(g) and Article 16(1&2).
- h. United Nations Universal declaration of Human Rights, Article 5, Article 10, Article 23 (1) and (2) and Article 26 of the Declaration of Human Rights.

3.The initial application was duly served on the Defendant on 13th April 2018. The Defendant did not reply within the deadline provided for by Article 35 of the Rules of the Court.

4.Then, and in accordance with article 90 of the Rules of the Court, the Applicant lodged at the Registry of the Court an application dated 17th May 2018 and registered on 18th May 2018, asking for default judgment.

5.The application for default judgment was duly served on the Federal Republic of Nigeria (the Defendant) on 30th May 2018. The Defendant did not reply.

6. According to the date for the hearing, on October 30, 2018, it was held without the Defendant being represented by an agent, lawyer or council.

7. Still, on November 9, 2018, by request, the Defendant solicited an extension of the deadline to present his defense.

8. At the hearing held on November 22, 2018, the decision on the application filed by the Defendant was adjourned to January 23, 2019.

9. However, considering that the deadline for the defense has long been exhausted, the petition filed by the defendant is out of time and therefore rejected.

FACTS AS PRESENTED BY THE APPLICANT:

10.That the Applicant in this case is Lieutenant Colonel Silas Jock Santoi (N/6788) of the Nigerian Army, who has since 2001, applied to seek for redress in accordance with Section 178 of the Armed Forces Act, due to some wrong doings against him by the Nigerian Military but is still being denied justice, even having referred his complaints to a Court of Law in Nigeria (Justice delayed is justice denied).

11.That the Applicant started his military career in July 1978, as a Regular Combatant Cadet in the Nigerian Defence Academy and on completion of training, he was granted the Presidential Commission into the Nigerian Army as a Regular Combatant Officer in 1981, in the rank of Second Lieutenant.

12.That the Applicant in April 1997 rose to the rank of a Lieutenant Colonel and was determined to progress to the rank of a General, hence he officially applied to further

his education at the University of Maiduguri in 1999 and same was approved by the then Chief of Army Staff.

13. That simply because the Applicant was granted sponsorship to study in the University, which he successfully completed, however he was subjected to ill-treatment and still being frustrated in the rank of a Lieutenant Colonel, while some of his mates progressed to the rank of a General.

14. That this present Suit by the Applicant to seek for redress in ECOWAS Court is because of the gross violations of his Fundamental Human Rights, by both the Military and the Court in Nigeria who are agents of the Defendant.

15. These violations include false accusations on sponsorship to the University of Maiduguri, jeopardy of his career prospect, the defamation of his character by the Military, who also denied him Medical treatment but instead accused him, that he has a Psychiatric problem.

16. The Federal High Court of Nigeria, also, an Agent of the Defendant, is deliberately denying him justice due to conspiracy on his matter. The National Assembly and the Presidency in Nigeria have also failed to intervene and redress his complaints, despite all his petitions and several appeals done on his behalf by some organisations in Nigeria.

17. That the background report of the Applicant's travail reveals that his letter of appreciation, forwarded by the Armoured Corps Centre and School on 8th December 2000 to the Chief of Army Staff, which reported his successful completion of the University Course was the main reason behind his travail. Attached as ANNEX 1.

18. That the following evidence confirms that the Chief of Army Staff duly approved his sponsorship, which led to his official posting and release to study in the University of Maiduguri in 1999:

- a. A copy of an Army message, titled NA Sponsorship into Local Civil Institution, DTG 190850A Aug 99 as ANNEX 2a.
- b. An evidence of agreement on sponsorship by the Nigerian Army into local civil institution, as ANNEX 2b.

- c. A letter to the University of Maiduguri by the Army in respect of sponsorship, titled Local Courses Students Admission for 1999/2000 Academic Session, dated 17th August 1999 as ANNEX 2c.
 - d. A letter of release by the Army, which authorised the Applicant to proceed for studies in the University, as ANNEX 2d.
 - e. The University letter of completion of Postgraduate Diploma in Nigeria Strategic Studies (PGDS) course as ANNEX 2e.
 - f. A letter of appreciation forwarded on behalf of the applicant to the Chief of Army Staff on Applicant's resumption of duty after the course, as ANNEX 2f.
19. That in spite of the above evidence, a false letter from Army Headquarters, dated 31st January 2001, still accused the Applicant, that his release to the University was illegal, that the course was not approved and therefore recommended that disciplinary action be taken against him. Attached as ANNEX 3a.
20. That the Army thereafter deliberately avoided correct trial procedure, which violates Section 117 of the Armed Forces Act, that provides the right for an Officer to elect to be tried by Court Martial or by Summary Trial. Attached as ANNEX 3b.
21. That after this action by the Army, late Colonel Yohanna Madaki (Rtd), a former Director of Army Legal Service, intervened and advised the Army in 2001, to take advantage of Section 178 of the Armed Forces Act of 1993, to avoid this matter from being escalated. Attached as ANNEX 3c.
22. The Applicant being a patriotic officer, applied correct necessary administrative procedure in compliance with Section 178 of the Armed Forces Act of 1993 to seek redress but surprisingly the Army in a letter, dated 6th February 2002, warned him to stop further communication on the matter. Attached as ANNEX 3d.
23. That as a loyal and patriotic officer, who has respect for the Rule of Law, he resorted by applying for the Chief of Army Staff interview to avoid his career to be jeopardise. Attached as ANNEX 4a.

24. That the Applicant's then Commandant in 2003, Major General C.I Obiako was accordingly directed by the Chief of Army Staff on behalf of the Appropriate Superior Authority to investigate and interview the Applicant. He recommended that the Chief of Army Staff should redress the Applicant's complaints immediately to avoid his career from being jeopardized. Attached as ANNEX 4b.
25. That ridiculously, Major General Obiako's recommendation was disregarded and the Applicant was instead, subjected to a more cruel treatment on an issue supposedly concluded.
26. However when he sensed that his career and destiny were being dangerously threatened, he sought redress at the National Assembly, who referred the matter to the Chairman Defence Committee in the House of Representatives for necessary action. Attached as ANNEX 5.
27. That the Applicant was equally faced with his left eye injury problem, which he had sustained, while on military course in Pakistan in 1991, the National Eye Centre Kaduna had re-examined and recommended him to report to his previous Doctor in the UK for further medical treatment, since they did not have the necessary facilities to treat him here in Nigeria. The National Eye Centre report is ANNEX 6a.
28. That the Army surprisingly, deviated from the National Eye Centre's recommendation and falsified an unprofessional medical report by an Ophthalmologist (An eye specialist and not a psychiatrist) Col. PA Falola, that he believed the Applicant has a psychiatric problem. This is in ANNEX 6b.
29. That the Chief of Army Staff, based on the fictitious medical report by the Ophthalmologist directed that the Applicant should be sent to the 68 Nigerian Army Reference Hospital to further humiliate him, despite the fact that legal action was already filed on the matter. This is ANNEX 6c.
30. That to further frustrate the Applicant the Army authority stopped his salary, benefits and all entitlement since April 2005, without giving any

reason, hence his Counsel protested, that his salary be reinstated. This is ANNEX 7A.

31. That surprisingly, the Army replied that they had even retired him from service in 2006, while the matter had been pending in the Court since 2004 without determination. This is ANNEX 7b.
32. That his then Counsel immediately drew the attention of the Army to the position of the law in accordance with Section 178 of the Army Forces Act and pointed out that such action was illegal and tantamount to contempt of Court. This is ANNEX 7c.
33. That the Applicant immediately filed a Motion on Notice, which was neither replied nor defended by the Military, however the trial Judge sitting in Abuja division wrote a letter to inform the Military on the development, despite the fact that Hearing Notices were always properly served on the party. The Applicant was surprised that a trial Judge will be communicating to the other party, when the Hearing Notices were always duly served. A copy of the Trial Judge letter is attached as ANNEX 8a.
34. That to prove conspiracy on the Motion on Notice, the Military in their reply to the trial Judge apologised for such (OPPORTUNITY) and further requested His Lordship, Hon. Justice B O kuwuemi for the certified true copy of Plaintiff's argument in respect of the Motion on Notice, dated 19th October, 2006. At this point the Applicant lost confidence in the Abuja Division of the Court based on the conspiracy against justice via the communication of the trial judge and the other party on the matter. The reply of the Military, is attached as ANNEX 8b
35. That to further demonstrate unethical conduct on the matter, the Court ridiculously dismissed the Motion on Notice, even when the Military did not defend the motion, hence the Applicant applied for a copy of the said ruling to enable him prepare for an appeal in a higher Court but he was denied. Attached as ANNEX 8c.

36. That because of this conspiracy against justice by both the Court and the Defendant, the Applicant reported this misconduct to the National Judicial Council (NJC) and same was copied to the Chief Judge of the Federal High Court. The then Chief Judge immediately issued a query on that to the Trial Judge. Attached as ANNEX 8d.
37. That the Applicant personally requested for the transfer of the matter from Abuja division to the Kaduna division due to the manipulation against justice on the matter since 2004 when the matter commenced as stated above, However the Transfer Authority specifically, directed that the matter be tried and determined at the Kaduna division. Attached as ANNEX 8e.
38. That due to the conspiracy against justice on the matter, the Applicant also reported his travail to the Public Complaints Commission in Kaduna, who carefully studied his document and requested late Chief Gani Fawehinme of blessed memory to handle his matter based on their confidence in his integrity as one of the lawyers that could stand against any manipulation or compromise. Attached as ANNEX 9a.
39. The late Chief Gani accepted and promised to do all necessary things possible to redress the wrongs done to the Applicant by the Military and the Court. Attached as ANNEX 9b.
40. That the matter was progressing very well in the Kaduna division, until Chief Gani became very ill and was evacuated to the United Kingdom (UK) for treatment, therefore the Counsel handling the Applicant's matter, Barrister Clement Onwuewunor boycotted Court on 20th March and 11th April 2008, respectively, without any reason for doing so, hence the Applicant requested the Chamber to officially withdraw from the matter. Attached as ANNEX 9c.
41. That the Applicant, based on that development, applied to discuss the way forward with the Presiding Judge and the Defendant so as to avoid the matter of being struck out due to lack of diligent prosecution, but

surprisingly the Judge did not approve his application. Attached as ANNEX 9d.

42. That the Applicant immediately filed a motion for a Change of Counsel for the matter to progress and be determined in Kaduna Division. Attached as ANNEX 9e.
43. The trial judge failed to listen to the said motion and no opportunity was given to the Applicant to move his motion, instead the trial judge reacted very bitterly against the applicant for applying for the change of Counsel and even threatened the Applicant in open Court on 6th May 2008, thereafter the matter was sent back to the Chief Judge for reassignment, when neither the Applicant nor the Defendant applied for that. Attached is ANNEX 9f.
44. That since both parties did not apply for the reassignment, which the applicant strongly suspected another manipulation done to frustrate him, further protested the action of the trial Judge to the NJC, who intervened immediately, vide their letter Reference No. NJC/A.7/S.2/X11/116, dated 16th July 2008, of which the directive of the NJC was not complied with by the Chief Judge. Attached as ANNEX 9g.
45. The Applicant's matter suffered undue delay for the past 14 years because of conspiracy against justice on the matter by three (3) different Hon. Judges, from 2004 to 2008, who deliberately denied him justice and the further failure to comply with the directives of the NJC since 2008 by all the Chief Judges of the Federal High Court, which clearly violates the provision of *the Code of Conduct of Judicial Officers of the Federal Republic of Nigeria* in Suit No. FHC/ABJ/CS/290/2004. The evidence is attached as ANNEX 10a-f.
46. That based on the NJC's advice, the Applicant further requested the registrar of the Federal High Court Kaduna Division to release his case file and issue Hearing Notice to the Defendants for the continuation of the

matter but the Federal High Court turned down the Applicant's request. Attached as ANNEX 11a.

47. That a letter to the Applicant from NJC dated 21st February, 2017, of which the Chief Judge deceived the NJC that the matter stood adjourned SINE DIE for non-appearance of the parties, despite the above evidence of the Federal High Court's failure since 2008 to comply with several NJC directives on the Applicant's matter in Suit No. FHC/ABJ/CS/290/2004. Attached as Annex 11b.
48. That to further confirm on the above is a reminder by the Applicant, dated 3rd April, 2017, in compliance to the NJC action but as usual, the Federal High Court, Kaduna Division, ignored to reply the Applicant till date. Attached as Annex 11c.
49. The Applicant also reporting the same matter to the Hon. Minister of Justice, who had earlier requested him to furnish his office with the necessary document on the matter but surprisingly, the Hon. Attorney General of the Federation and Minister of Justice, recently informed the Applicant in a letter, dated 8th February 2018, that the office is not in a position to accommodate the Applicant's request in respect of his application for redress on ill-treatment. Attached as ANNEX 12a-b.
50. That, the Applicant had also petitioned the National Security Adviser, after he had tried every administrative and legal channel in Nigeria on his matter without success, but who referred him to the Chief of Army Staff for necessary action. Attached as ANNEX 13.
51. That the Applicant again in 2017 reminded the National Assembly to redress his complaints, which the Senate President had earlier, on two occasions, assured him on it, but up till now, nothing had been done to redress his complaints. Attached as ANNEX 14a-d.
52. That the same matter was also reported to the former Presidents and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria, President Olusegun Obasanjo, and subsequently to late President

Umoru Musa Yar'adua, former President Goodluck Jonathan and also the incumbent, President Muhammadu Buhari, but there was never any response received from them. Attached as ANNEX 15a-c.

53. That the Applicant having exhausted all his efforts in Nigeria to have his complaints redressed, approached the Christian Association of Nigeria in January 2018 for any possible assistance on his travail, which they introduced him to another legal firm who strongly recommended that the matter be referred to the ECOWAS Court of justice as a last resort for him to get justice on violation of his Fundamental Human Rights. Attached as ANNEX16.
54. That consequently, the Defendant has deliberately failed to act accordingly for the Applicant's complaint to be redressed. This is because several appeals by the Applicant and other concerned organisations, such as the Public Complaints Commission, the National Human Rights Commission, the Campaign for Democracy, the Nigeria Union of Journalists, including several media publications that have reported the truth of the matter in their Newspapers, considering the fact that Nigeria is in a democracy dispensation and more so, this present administration is determined to fight corruption in Nigeria. Attached as ANNEX 17 a-f
55. That as a matter of fact, based on the fight against corruption in Nigeria, President Muhammadu Buhari was reported to have expressed his concern that the Judiciary has failed in Nigeria. This was reported in the Leadership Newspaper of 19th July, 2016, Attached as Annex 18.
56. That based on all the facts as mentioned above, the violation of the Human Rights of the applicant has subjected him into both emotional and psychological trauma.

ORDERS SOUGHT BY THE APPLICANT

57.The applicant asked the Court for the following orders:

- a) A Declaration that the Fundamental Human Rights of the Applicant should be protected by the Defendant in accordance with the Rule of Law.
- b) A Declaration that the Sponsorship of the Applicant to Study Postgraduate Diploma in Strategic Study in the University of Maiduguri was duly approved by the Agent of the Defendant, which is the Nigerian Army.
- c) A Declaration that the stoppage of the Applicant's salary, benefits and entitlements, also the purported retirement while his matter is still pending in a competent Court of law for determination is an affront to justice and a breach of his Fundamental Human Rights.
- d) A Declaration that the failure of the Defendant to grant the Applicant's request to be tried by Court Martial instead of Summary Trial, in line with Section 117 of the Armed Forces Act, constitutes a gross violation of the Applicant's right to Fair Hearing.
- e) An Order that all the Applicant's salary, benefits and entitlements with effect from 2005 till date be reinstated, while his record of service be corrected hence the immediate reversal of the retirement done in 2006 by the Nigerian Army, pending the determination of the matter which has been before a competent Court since 2004.
- f) An Order directing the Defendant to declare the Applicant physically and mentally fit and to withdraw all earlier defamatory publication as to his Health status.
- g) An Order for the Defendant to pay the Applicant the Sum of Ten Billion Naira only (~~₦~~10,000,000,000) as general damages and compensation due to the breach of the Applicant's fundamental Human Rights by the Defendant.

Question to decide:

58. It is appropriate to rule, first, on the admissibility of the application and on the completion of the formalities required. Secondly, if the facts as alleged by the applicant constitute an infringement by the defendant of the fundamental human rights relied on.

ANALYSIS OF THE COURT

59.The instant case was lodged on 11th April 2018, for the exercise of fundamental human rights and particularly for the violation of the right to fair hearing, the right to work, the right to physical integrity of human beings, the right to have one's cause heard by a Court, the right to enjoy the best privilege of good health, the right to education and the right to not be subjected to inhuman and degrading treatments as guaranteed by relevant articles of the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights and the Constitution of the Federal Republic of Nigeria, 1999.

60.In accordance with Article 34 of the Rules of Procedure of the Court, the application instituting proceedings was duly served on the Defendant.

61.Article 35 of the Rules of the Court provides: *"Within one month after service on him of the application, the Defendant shall lodge a defense stating:*

- (a) The name and address of the Defendant;*
- (b) The arguments of fact and law relied on;*
- (c) The form of order sought by the Defendant;*
- (d) The nature of any evidence offered by him;*

Paragraph 2 of the same article provides: *«The time limit laid down in paragraph 1 of this article may be extended by the President on a reasoned application by the Defendant.»*

62.The Defendant in this case did not lodge his defense.

63.And as the time limit provided for by article 35 (1) of the Rules of the Court expired, the applicant brought an application dated 18th May 2018, for default judgment to be given in his favour because the Defendant did not lodge his Defense in accordance with article 90 of the Rules of the Court.

64.The application for default judgment was duly served on the Defendant who did not reply again.

65. During the hearing on 30th October 2018, the Defendant neither appeared before the Court, nor was represented.

66. And, on November 9, 2018, by application, the defendant came to request the extension of time to present his defense, which was rejected.

67. Article 90 of the Rules of the Court provides for default judgment if a Defendant who has been duly served with an application initiating proceedings fails to lodge his defense within the time prescribed.

The said article provides:

1. *“If a Defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.*
2. *The application shall be served on the Defendant.*
3. *The Court may decide to open the oral procedure on the application.*
4. *Before giving judgment by default the Court shall, after considering the circumstances of the case, consider:*
 - (a) Whether the application initiating proceedings is admissible*
 - (b) Whether the appropriate formalities have been complied with, and*
 - (c) Whether the application appears well founded.*
5. *The Court may order a preparatory enquiry.*

68. In accordance with the above mentioned article 90, before giving judgment by default, the Court shall consider, first of all, whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with and whether the application appears well founded.

Therefore, the Court will consider the following requirements:

- (1) On the admissibility of the initial application and compliance with appropriate formalities.**

69.To verify the admissibility of an application, the Court shall make sure that it has jurisdiction to entertain the subject matter of the dispute, that the parties have locus standi and can bring the case before the Court.

On the jurisdiction of the Court:

70.It is trite that jurisdiction depends on the nature of the matter brought before the Court by the applicant, based on the facts alleged.

71.The Applicant's case is based on allegations of a set of actions attributable to the agents and institutions of the Defendant that are considered as violating his fundamental human rights particularly the right to fair hearing, the right to work, the right to physical integrity of human beings, the right to have one's cause heard by a Court, the right to enjoy the best privilege of good health, the right to education and the right not to be subjected to inhuman and degrading treatments as guaranteed by articles 4, 7(1), 7(1) (d), 7(g) and 16 (1 and 2) of the African Charter on Human and Peoples' Rights, articles 5, 10, 23 (1 & 2) and 26 of the Universal Declaration of Human Rights and articles 14 (10,2 (b &c), 34 (1) and 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.

72.By virtue of article 9 (4) of the supplementary protocol that provides: *"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State"*; and article 10 (d) of the same protocol provides: *"Access to the Court is open to: ... individuals on application for relief for violation of their human rights"*, this Court has jurisdiction to entertain cases of human rights violation that occur in Member States.

73.In this regard, in its judgment N^o ECW/CCJ/RUL/05/11 delivered in the case of Private *Alimu AKeem*, against Federal Republic of Nigeria, the Court highlighted that its jurisdiction cannot be challenged when the facts invoked are related to human rights like in the instant case as indicated by its own jurisprudence in Judgments N^o ECW/CCJ/RUL/02/2010 of 14th May 2010 delivered in the case (see suits N0. ECW/CCJ/APP/07/08 Hissène Habré against the Republic of Senegal, N^o ECW/CCJ/JUD/05/10 of 8th November 2010 and ECW/CCJ/APP/05/09 in the case of Mamadou Tandja against Republic of Niger).

74. *The instant case is based on the violation of legal instruments ratified by ECOWAS Member States. They are binding on them and impose on them the duty to respect and protect the rights therein proclaimed. See judgment N^o ECW/CCJ/APP/01/09 in the case of Amoussou Henri against the Republic of Côte D'Ivoire.*

75. The facts as invoked by the Applicant in the initial application, that have not been challenged by the Defendant, were considered as violation of the fundamentals rights guaranteed by the legal instruments to which the Defendant is party, namely the African Charter on Human and Peoples' Rights.

76. Article 9 (4) of the Protocol on the Court, amended by the 2005 Supplementary Protocol, provides that the Court has jurisdiction to determine cases of violation of human rights that occur in the Member States of the Community.

77. Article 10 of the same Protocol specifies in turn, that access to the Court is open to individuals on application for relief for violation of their human right; the submission of application for which shall not be anonymous nor be made whilst the same matter has been instituted before another international Court for adjudication.

78. In the instant case, the above mentioned requirements seem to have been fulfilled because the application is not anonymous and there is no evidence that the case is pending before another international Court for adjudication.

79. Thus, considering that the facts invoked by the Applicant violate his rights, the application appears admissible.

(2) Now, there is a need to analyse if, in the face of the facts invoked by the Applicant, the Court can conclude that there are grounds on the basis of which the claims of the Applicant can be granted.

80. Firstly, it should be noted that it is a general principle that the burden of proof lies on the person making allegations. Of course, this rule is reversed when there is a legal presumption, a waiver or release of the burden of proof, situations in which the same burden of proof lies on the other party.

81. Thus, if the party on whom lies the burden of proof complies, he enjoys the benefit of the presumption and as such, the opposing party will have to contradict the proof adduced.

82. In the instant case, there is no doubt that the burden of proof lies on the Applicant who should prove the facts alleged to constitute violations of the rights invoked.

83. As provided for by article 32 (4) of the Rules of the Court, the Defendant who was duly served with the initial application lodged by the applicant, did not submit his defense, therefore he did not challenge the facts alleged by the Applicant. However, there is no threat for the Defendant as a result of that lack of challenge. Therefore, the burden of proof lies on the Applicant who has to prove the facts invoked.

84. To sustain his claims, the Applicant can use all legal means and provide full supporting evidence. However, between the evidence and the facts alleged there should be a link that makes them convincing.

85. It is trite that facts can be proved by presenting documents.

86. In the instant case, the Applicant annexed to the processes a set of documents in support of his allegations.

The Court is going to consider the specific allegations made by the Applicant and ascertain whether, in the face of the documentary evidence adduced, such allegations can be considered as proved.

a) On the alleged violation of the right to fair hearing

87. Article 10 of the Universal Declaration of Human Rights provides: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

88. Furthermore, article 7 (1) of the African Charter on Human and Peoples' Rights provides: "(a) Every individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and

customs in force; (d) Every individual has the right to have his cause heard. This right includes (...) the right to be tried within a reasonable time by an impartial court or tribunal.”

89. Furthermore, article 1(h) of ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance, provides: “The rights set out in the African Charter on Human and Peoples' Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organization shall be free to have recourse to the common or civil law courts, a court of special jurisdiction, or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his/her rights. In the absence of a court of special jurisdiction, the present Supplementary Protocol shall be regarded as giving the necessary powers to common or civil law judicial bodies.”

90. First and foremost, it should be emphasised that the Applicant distinguished between the right to fair hearing and the right to have one's cause heard by a Court.

91. However, from the analysis of the above mentioned article 7, we can conclude that the right to have one's cause heard by a Court provided for in paragraph (d) of the same article is included in the right to fair hearing.

92. The notion of fair hearing is a fundamental principle of any democratic society that is deeply embedded in the rule of law, since there is no ground for any restrictive interpretation. While defending the interests of the parties and those of the administration of justice, its aim is, above all, to enable litigants to effectively bring their case before the Court.

93. It means basically that the parties to the suit have the right to make all comments that they find relevant for the consideration of the case and the comments should be appropriately analysed by the Court that has the duty to thoroughly and diligently examine the claims, the arguments and proofs submitted by the parties; and that the fairness of the administration of justice, besides being substantive, must be apparent. (Justice must not only be done, it must also be seen to be done).

94. It is worth noting that there is a need to concretely consider the reasonable duration of a trial, by addressing particularly the complexity of the proceedings, the comportment of the parties, the actions of the relevant authorities in the proceedings and the nature of the dispute [issues for determination, type of consequences on the private or professional life of the people or subjects involved, particularly the significance of the decision for the parties].

To prove the violation of his right to fair hearing, the Applicant merely alleges that:

“since 2001, he applied to seek for redress in accordance with Section 178 of the Armed Forces Act, due to some wrong doings against him by the Nigerian Military but is still being denied justice, even having referred his complaints to a Court of Law in Nigeria. He stated that “The Federal High Court of Nigeria, also (An Agent) of the Defendant, is deliberately denying him justice due to conspiracy on his matter”.

95. The applicant neither alleges nor proves in what way he applied since 2001 to seek for redress in accordance with Section 178 of the Armed Forces Act; nor did he spell out “the wrong doings against him by the Nigerian Army”; nor how did the “denial of justice” happen nor what does the “conspiracy” consist in.

96. The Applicant does not explain in what way his right has been violated, therefore he does not tell which of his claims has not been considered by the Court.

97. In the instant case, the Applicant, by referring to the suit registered under n0. FHC/ABJ/CS/290/2004, that he filed against the Chief of Army Staff Nigerian Army & ANOR, we can say that from the combined analysis of the documents marked as exhibits 7 c), 8 a), 8 d) and 8 e), attached to the processes, it appears that the case was considered by Nigerian Courts particularly the Federal High Court that delivered a judgment on 2nd February 2007 (exhibit 8c); the same processes having been forwarded to the Kaduna Division (exhibit 8 d) and e) on 2nd August 2007; the same documents reveal that the proceedings on 21st February 2017 were adjourned “*sine die*” because *the parties did not appear* (annex 8a and annex 11b). Moreover, the document marked as exhibit 11b) reads: “... Further, the Hon. Chief Judge of the Federal High Court expressed the readiness of the Federal High Court Kaduna Division to hear the matter, whenever you decide to prosecute your case, please.”

98. This means that the Applicant did not succeed in proving that the delay in the delivery of the decision in this case was caused by the agents and services of the Defendant. On the contrary, the combined analysis of these documents enables to conclude that the said case has been filed by the applicant (see Exhibit 10 d) and f).

So, in this case, the applicant did not prove that he was denied justice.

99. On the other hand, the applicant's allegations appear to be generic, vague, conclusive and opinionative. He does not specify the elements of facts necessary to prove that his right to fair hearing has been violated.

b) On the alleged violation of the right to work

100. Article 23 of the Universal Declaration of Human Rights provides: "1- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (...) - 3 Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

101. Article 15 of the African Charter on Human and Peoples' Rights provides: "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

102. The Applicant alleges that his salary, benefits and all entitlements were stopped since April 2005 without any reason; that his Counsel protested, that his salary be reinstated; that the Army replied that they had even retired him from service in 2006, while the matter had been pending in the Court since 2004 without determination.

103. From the allegations of the Applicant, we do not know what is "the matter that had been pending in the Court since 2004".

104. In his pleadings, the Applicant indicates that disciplinary action was taken against him. Also the document (exhibit 3a) is the evidence that disciplinary action was recommended against him.

105.However, the Applicant does not give any information on this administrative procedure or its outcome for one to be able to assess whether it is fair or unfair.

106.The Applicant still alleges that they retired him since 2006.

107.Therefore, the Applicant does not make allegations so as to specify the salaries due to him nor did he say whether he was on duty or not.

108.Consequently, in this respect too, the allegations of the Applicant are not sufficient to enable to conclude that his right to work has been violated.

c) On the alleged violation of the right to physical integrity of human beings

109.Article 4 of the African Charter on Human and Peoples' Rights provides: "*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*"

110.In this regard, the Applicant does not invoke any fact that can support such a violation. Furthermore, his pleadings are completely silent on this issue.

d) On the alleged violation of the right to enjoy the best privilege of good health

111.Article 25(1) of the Universal Declaration of Human Rights provides: "(1) *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*"

112.Article 16 (1) of the African Charter on Human and Peoples' Rights provides: "*Every individual shall have the right to enjoy the best attainable state of physical and mental health*".

113.In this regard too, the facts invoked by the Applicant do not prove at all the violation of this right.

114.The Applicant alleges that he was faced with left eye injury and that the Kaduna National Eye Centre had re-examined him and recommended him to report to his

previous Doctor in the UK for further medical treatment, since the Centre did not have the necessary facilities to treat him here in Nigeria.

115. Furthermore, he alleges that the Army deviated from the National Eye Centre's recommendation and falsified an unprofessional medical report by an Ophthalmologist, (An eye specialist and not a psychiatrist) Col. PA Falola, that he believed the Applicant has a psychiatric problem. (ANNEX 6b).

116. He added that the Chief of Army Staff, based on the fictitious medical report by the Ophthalmologist directed that he should be sent to the Nigerian Army Reference Hospital.

117. On the basis of these arguments and the documents relied upon by the Applicant, one cannot conclude that the right invoked has been violated.

118. Besides, it was concluded from the facts invoked and the documents that the National Eye Centre made a simple recommendation regarding the follow-up of the clinical situation of the Applicant. (Exhibit 6 a).

119. In turn, the Applicant does not explain how this recommendation is binding on the Defendant.

120. Furthermore, the Applicant was consulted by an eye specialist (according to exhibit 6b). Therefore, it is up to the Applicant to explain how the report that is marked as exhibit 6b is a "forged" document

121. Consequently, it was up to the Applicant to articulate the facts that enable to conclude that he was denied medical assistance and that the denial caused harm to his health, which he did not do.

e) On the alleged violation of the right to Education

122. Article 26 of the Universal Declaration of Human Rights provides: " 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. 2. Education shall be directed to the full

development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

123. Article 17(1) of the African Charter on Human and Peoples’ Rights provides: “ *Every individual shall have the right to education.*”

124. Also, the facts invoked do not enable to conclude that this human right of the Applicant has been violated and no claim was made.

f) On the alleged violation of the right not to be subjected to inhuman and degrading treatments

125. Article 5 of the Universal Declaration of Human Rights provides: “ *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

126. Article 5 of the African Charter on Human and Peoples’ Rights provides: “ *Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*”

127. Also, in this regard, the facts alleged seem to be excessively generic, conclusive and opinionated to substantiate the alleged human right violation.

DECISION:

For these reasons, the Court

Declares that the initial application brought by the Applicant, Lt. Col. Silas Jock Santoi is admissible;

Declares that the allegations of human rights violations made by the Applicant are unproved;

Holds that the application for damages made by the Applicant is ungrounded;

The Applicant shall bear his own costs.

This judgment has been delivered in public hearing in Abuja by ECOWAS Court of Justice on this 23th day of January 2018

And the following Judges have signed:

Hon. Justice Gberi-BE Ouatara -Presiding -----

Hon. Justice Keikura BANGURA - Member -----

Hon. Justice Januária Tavares Silva Moreira COSTA - Member -----

Assisted by: Tony ANENE – MAIDOY -Chief Registrar-----