



COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO

No. 10 DAR ES SALAAM
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**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

**HOLDEN AT ABUJA, IN NIGERIA
ON THE 1ST DAY OF JULY, 2020**

**SUIT No: ECW/CCJ/APP/09/17
JUDGMENT No: ECW/CCJ/JUD/11/20**

BETWEEN:

LA SOCIETE BEDIR SARL

- APPLICANT

AND

REPUBLIC OF NIGER

-RESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Dupe Atoki - Presiding/ Judge Rapporteur
Hon. Justice Keikura Bangura - Member
Hon. Justice Januària Tavares Silva Moreira Costa - Member

ASSISTED BY:

Tony Anene-Maidoh - Chief Registrar

REPRESENTATION TO PARTIES

Mr. Moussa Ismaril Tambo - For Applicant
Secretary General to the Government of Niger - For Respondent State

JUDGMENT OF THE COURT

Parties

1. The Applicant is a limited liability Company incorporated under the Laws of the Republic of Niger and registered with Niamey Corporate and Trade Registry under the number RCCM-NI-NIM-2003-B 768 dated 29th July 2003, with its head office in Foulani Kora, Riyad District. Niamey
2. The Respondent is the Republic of Niger (hereinafter referred to as “the Respondent”) a signatory to the ECOWAS Treaty thus a Member State of the ECOWAS.

Subject Matter of the Proceedings

3. These proceedings arise from allegations of the Applicant that the Respondent violated its right to property, when it expropriated its property without any prior notice or compensation, contrary to Article 14 of the African Charter on Human and Peoples’ Rights (the African Charter) and Article 17 of the Universal Declaration of Human Rights (UDHR). The Applicant therefore prays the Court to find the Respondent State liable for the violation and award compensation for the expropriation of its property.

Summary of the Facts by the Applicant

4. The Applicant states that the aim of the company is to create, administer, and manage schools such as kindergartens, primary and secondary schools for boys and girls with or without boarding house with attendant facilities like laboratories, canteen and more. In August 2003 it applied to the Commission responsible for authorisations to set up and open private schools, for licenses to open a general educational establishment in Niamey. The application was approved and was informed of same on the 21 October 2003 and by Order No. 006/MESS/R/T/DGE/DEPRI/DECBII/M of 5th January 2004, it was authorised to establish a private school complex of general education within the city of Niamey.
5. In view of the significant investment the Applicant made which include the construction and equipment of air-conditioned classrooms, boarding

houses and laboratories, the Commission for the verification of school standards and facilities in private establishments also approved two other authorisations of a similar nature between January 2004 to 2007, to establish private primary and secondary schools via Orders; 00000/29/MEB1/A/DGEB/DPS of 17th February 2007 and 00153/MESS/R/T/DGE/DEPRI of 29th October 2007. Furthermore in December 2011, the Respondent granted it a land of about 4.10 hectares in the city of Niamey to erect infrastructures for a Franco-Arabic school for which authorisation was granted by another order in February 2014. In all the Applicant was granted authorisation to open and operate five different schools in Niamey see Annexure 3.

6. The schools recorded remarkable achievements in terms of quality education, modern training facilities, multi-language learning, effective teaching strategies and excellent results. This is evident from the several medals it won in many regional and international competitions from its inception in 2003 till date. This feat led to its selection as the best school in Niger by the magazine *Grandes Ecoles* of UEMOA. The Applicant further claimed that it supported various charitable endeavors within the country and offered scholarships to some of its enrolled students. Indeed it prides itself as a charitable organization which has supported the Respondent in the fight against poverty through a variety of multifaceted actions for vulnerable groups.

7. The Applicant alleged it became the subject of several threats of closure or expropriation for an alleged link with one Imam Fethullah Gulen. This it says is evident from the several attempts to confiscate the company property orchestrated by the Turkish Government. In furtherance of which the Nigerien Authorities attempted to interfere in its financial management by sponsoring a property evaluation exercise in September 2016.

8. Despite these obvious achievements and the huge investment already made, on the 28th December 2016 in the middle of the school's calendar, the Applicant it received a notification through a Bailiff of five (05) orders withdrawing authorizations to set up and open all the establishment granted and the final closure of Bedir School Complex.

9. The said closure was premised on the fact that after an inspection was carried out on the schools a number of irregularities were discovered especially transactions occurred without authorization. In addition the Applicant was alleged to have put up resistance against the inspection mission. In all the Applicant was alleged to have violated Articles 4,6,8,9,15,17,18,19,21,22,23 and 28 of Decree No. 96-201/PCSN/MEN of June 1996

10. On the 30th December 2016, the Applicant having filed a hierarchical Appeal to the office of the Prime Minister for the annulment of the said Orders closed its premises pending the outcome of its appeal. Curiously, on the 31st December 2016, it observed the presence of the National Guard near the headquarters of the school and on 1st January 2017 to its consternation, a delegation from the Ministries in charge of Education with members of one Maarif Foundation of Turkey entered the premises, broke the doors and gained access into the building. After changing the keys, they took possession of all movable properties in the school and thereafter hoisted the Turkish Flag in place of that of CSP BEDIR. (EXH 30-35) Finally on the 2nd January 2017, The Foundation took over the classes within its premises and renamed the School complex as “*Ecole de l’amitie Nigero-Turque*” of The Foundation. All these actions were carried out without notice or compensation

11. Being dissatisfied with the turnout of events, the Applicant sued the Respondent before the Court of Appeal of Niamey. The Court after hearing the case decided on the 4th of January 2017 that there was no prior legal proceeding against the Applicant for expropriation of its property in the interest of the public and made an order in favor of the Applicant, declaring the occupation of the Applicants property by the Respondent as manifestly unlawful and directing an immediate cessation of the act amongst others. However, the Respondent appealed this decision and before the appeal was decided, in defiance to the existing order of the Court, ordered the resumption of painting on the front walls of the property and the removal of all the distinctive signs, logos and trademarks belonging to the Applicant. The foundation thereafter continued to occupy and enjoy the use of all the movable property belonging to the Applicant.

12. Concluding its narration, the Applicant revealed that in between all these actions orchestrated by the Respondent, they transmitted to it a

memorandum of understanding which the Respondent signed on 14th December, 2016 with the Maarif Foundation of Turkey and a special representative of the President of Turkey which contained amongst others the following clauses;

- *‘At the end of the negotiation an agreement was reached on these points. The Turkey party undertakes, in accordance with the provisions of Law No. 67-21 of 17 June 2016 (voted at the Grand National Assembly of Turkey) for the MAARIF Foundation of Turkey to take over the Bedir and Mehriban Establishments located in Niamey in Niger’.*

Emphasis ours

- *‘The Nigerien party undertakes, first to withdraw or cancel the authorisations, licenses, certificates, rights and prerogatives recognized by means of the law and regulations or conventions in force (Order 96-035 PCSN of 19 June 1996 and its application Decree 201/PCSN/MEN 19 of 19 June 1996)’ to Mr. Hayri AVAR acting on behalf of the Bedir Company.’ **annexure 12***

Alleged Violation

13. The Applicant alleges that the Respondent State violated its right to property, contrary to Article 14 of the African Charter and Article 17 of the UDHR.

Reliefs Sought by the Applicant

14. The Applicant prays the Court to:

a) Find that under the terms of a memorandum of understanding signed on 14th December 2016 in Niamey between representatives of a foundation called Maarif and the Republic of Niger, it is committed to “... remove or cancel the permit, licenses, certificates, rights and prerogatives recognized by the law and regulations or conventions in force (...)” to Mr. Hayri Avar on behalf of Bedir Company.

b) Find that following 5 Decrees of 21st December 2016, the Republic of Niger has withdrawn authorizations for the creation and opening of the establishment and permanent closure of the Bedir School belonging to the Company, BEDIR SARL.

- c) **Find** that there has been no prior legal proceedings against the Applicant for expropriation in the public interest;
- d) **Adjudge and Declare** that the expropriation, confiscation and use of property belonging to the Applicant without a fair and prior compensation, constitutes manifest violations of its fundamental rights to property;
- e) **Adjudge and Declare** that the Respondent State violated Articles 14 of the African Charter and Article 17 of the UDHR;
- f) **Order** the Respondent State to pay the sum of twenty four billion, three hundred and five million, thirty-three thousand, nine hundred and eighty-two CFA Francs (24, 304,033,982 CFA F), to the Applicant as compensation for all damages caused;
- g. **Order** the Respondent State to pay the sum of two hundred and fifty million CFA Francs (250,000,000 CFA F), to the Applicant as irrecoverable expenses not included in the costs.
- h. **Order** the Respondent State to bear the costs of the proceedings before the Court.

The Respondent State's Objection on locus standi

15. Ahead of their defense, the Respondent raised a preliminary objection challenging the locus standi of the Applicant to initiate this action. In adumbration, they argue that the Applicant being a body corporate is not entitled to the benefits of human rights which is only applicable to human persons. As such the Applicant cannot be heard under Article 10 (d) of the Supplementary Protocol.

16. The Respondent also challenged the applicability of the legal instruments relied upon by the Applicants to wit; the Universal Declaration of Human Rights and the African Charter on Human and Peoples Rights. They argued that being a corporate entity, it is not entitled to the protection as provided under these instruments and as such the said provisions were wrongly invoked. The respondent therefore urged the Court to declare the application inadmissible.

The Applicant's Response to the Objection on locus standi

17. The Applicant in response to the objection that it lacks locus standi to institute this case argued that this is a narrow and erroneous interpretation of the treaty provisions. The Applicant relied on the case of *Les Établissements VAMO and Paschal Kuekia v Republic of Benin*, Judgment No ECW/CCJ/JUD/12/15 of 20 April 2015, where the Court held that one of the Applicants in that case, which was a legal entity, had personal interests in bringing the action before the Court and dismissed the objection of the Respondent States claiming that it was not a victim. The Applicant reiterated the fact that the instant case relates to the violation of its rights to property; a right which avails a legal entity. It therefore prays the Court to assume jurisdiction on the Application, reject the Respondent's preliminary objection and declare the application admissible.

Respondent State's Defence on the merits

18. On the 14th March 2017, the Respondent filed its defence to the Applicant's application wherein they asserted that sometime in 2016, an inspection tour was carried out by the Ministry of Education on the use of licenses granted for the establishment and opening of the Applicant's schools. That the investigation carried out revealed a number of instances of misuse of the license. That the Applicant's company which was a one-share holder company became subject of two ownership transfers without prior authorization by the Government. They further argued that the managers of the schools were appointed by a notarized deed in addition, and finally that the Applicant did not co-operate with the inspectors during the said inspection.

19. They concluded that the inspection revealed that the Applicant violated Articles 4,6,8,9,15,17,18,19,21,22,23 and 28 of Decree No. 96-201/PCSN/MEN of June 1996 establishing the application modalities of the Order governing private education in Niamey and that the grant of license was preconditioned on compliance with the listed articles in the said Decree. In view of the above and with reference to the orders upon which the authorization was granted, the Respondent by a letter dated 28th December

2016 notified the Applicant of the withdrawal of the said licenses and consequently the final closure of the said establishment.

20. In its further arguments, the Respondent stated that the State granted private developers of schools and other lands on provisional basis and that provisional tenure on a property cannot give rise to ownership of property. Consequently, the withdrawal of the licenses led to the immediate revocation of the provisional tenure on the lands and outright extinction of any proprietary right of the Applicant over the property.

21. The Respondent however confirmed that the Applicant filed an appeal before the prime Minister for the annulment of the said Orders of withdrawal as well as an application for interim suspension of the Orders before the President of the litigation Chamber of the Council of State. Further that sequel to the said applications, a suspension order No 05/17 was rendered on the 4th of January against which the Respondent has appealed.

22. The Respondent concluded that it has an oversight mission to offer every citizen the right to education and is therefore obliged to ensure the continuity of the public service provided partly by the Applicant through teaching and instruction activities to the students. Consequently, the Respondent urged the Court to find that there was an overriding public need and interest, which informed its action and the Applicant's action should therefore be dismissed.

Orders sought by the Respondent State

23. The Respondent prayed the Court to,
- a. Declare inadmissible the Application of the Applicant for lack of locus standi;
 - b. Declare inapplicable the African Charter and UDHR in the instant case;
 - c. Declare as unfounded the violation of the rights invoked;
 - d. Reject the application for compensation filed, in alternative award a lump sum to the Applicant;
 - e. Make an order on the amount of recoverable costs;
 - f. Order the Applicant to bear its own costs.

Applicant's Response to Respondent's Defence

24. The Applicant, in responding to the Respondent defence that it does not have ownership of the property expropriated, submits that ‘property’ is not limited to land but includes other immovable fixtures thereupon as well as other moveable assets. That it made significant developments over the land in question which includes amongst others construction of air-conditioned classrooms, boarding houses, laboratories, and it has proprietary rights over them until they are extinguish through a lawful procedure.

25. The Applicant further claimed that these additional upgrades on the land has been professionally valued at five billion, seven hundred and eighty seven million, four hundred and fifty-six thousand, four hundred and eighty-two CFA Francs (5, 787, 456,482) to which it is entitled to as compensation.

26. It denies violating the obligations under the grant and reiterates its prayer for the Court to declare that the appropriation and transfer of the property without fair and prior compensation constitutes a violation of its right to property for which compensation for the damages ought to be awarded against the Respondent.

The Applicant’s Objection that the defence was filed out of time.

27. In its reply to the Respondent’s defence, the Applicant raised an objection that the Respondent’s defence was filed out of time prescribed by the Rules of Court under Article 35 of the Rules, which provides thus;

“Within one month after service on him of the application, the defendant shall lodge a defense...”

Article 35(2) provides as follows: *“The time limit laid down in paragraph 1 of this Article may be extended by the President on a reasoned application by the defendant”*

The Applicant argued that the Respondent was served with the Initiating Application on 10 February 2017 and their defence was filed on 14 March 2017 which is more than one month as prescribed. The Respondent having not sought the discretion of the Court for an enlargement of time, is therefore out of time to file its defence. Consequently, the Applicant prays the Court to declare same inadmissible being in contravention of Article 35 of the Rules.

The Reply of the Respondent on filing out of time limit

28. The Respondent replied that their statement of defence dated 9 March 2017 was sent electronically to the Chief Registrar of the Court, who acknowledged receipt on 10 March 2017 and that a copy of the printout of the email evidencing above averment was submitted to the Court, while the hard copy of the statement was dispatched to the Registry of the Court through DHL- a courier service on 14 March 2017. The Respondent further maintained that the date of dispatch is the relevant date of submission even though the Registry of the Court registered it on 14 March 2017. It therefore prayed to dismiss the Applicant's objection declared the defence admissible.

Issues for Determination

29. Based on the submissions of the Parties, the Court formulated the following issues for the determination:

- i) Whether the Court has jurisdiction to hear the Application.
- ii) Whether the Objection of the Respondent State regarding the *locus standi* of the Applicant is valid;
- iii) Whether the Applicant's objection that the Respondent State filed its defence out of time is valid;
- iv) Whether the Charter and the UHDR are applicable to the Applicant;
- v) if the answer re (iv) above is in the affirmative, Whether the Applicant's right to property was violated by the Respondent State contrary to Article 14 of the Charter and Art 17 of the UHDR;
- vi) Whether the expropriation, confiscation and use of the Applicant's properties without a fair and prior compensation violates the Applicant's right to property.

- vii) If the answer re above is in the affirmative, Whether the Applicant is entitled to the reparations claimed.

Issue 1 - Whether the Court has jurisdiction to hear the Application.

30. While this is not in contention in line with its practice the Court will first consider whether it is clothed with jurisdiction to consider this Application. Article 9 (4) of the Supplementary Protocol provides as follows.

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

As a general rule, jurisdiction is inferred from the Applicant’s claim and in deciding whether or not this court has jurisdiction to entertain the present action, reliance has to be placed on the facts as presented by the Applicant. See **Chude Mba Vs Republic of Ghana** ECW/CCJ/RUL/14/13.

31. The Applicant alleged that the Respondent granted it authorization to establish 5 different schools in Niamey subject to certain conditions but unlawfully confiscated the said schools based on an inspection which allegedly found it in contravention of the grant condition without availing him the report to allow a response or defence. The Applicant filed the instant case alleging the violation of its right to property contrary to Articles 14 of The Charter & 17 of the UDHR.

32. In this instant, the Court has established in its jurisprudence on jurisdiction that an applicant needs only to invoke the violation of his/her human rights, as provided by regional and international human rights treaties, and the Court will assume jurisdiction over the application. This was held in several decisions of the Court including, **Bakare Sarre v Mali** (2011) CCJELR pg. 57; **Serap v.FRN & 4 Others** ECW/CCJ/JUD/16/14; and **Dr. George S. Boley v The Republic of Liberia & 3 Ors.** ECW/CCJ/JUD/24/19. In **Kareem Meissa Wade v. Republic Of Senegal**, ECW/CCJ/JUD/19/13, at pg. 259 Para. 95 (3) this Court held that,

“Simply invoking a human rights violation in a case suffices to establish the jurisdiction of the Court over that case.”

33. Having invoked the violation of the right to property, contrary to Articles 14 and 17 of the UDHR, the Court holds that it has jurisdiction to hear the matter in accordance with Article 9 (4) of the Supplementary Protocol.

Issue 2 - Whether the objection of the Respondent on *locus standi* of the Applicant is valid.

34. The Respondent in its objection argued that the Applicant does not have *locus standi* to access the Court because of its status as a corporate entity and not an individual as envisaged by Article 10 (d) of the Supplementary Protocol.

35. The Applicant on the other hand argued that this is a narrow and erroneous interpretation of the treaty provisions and cites the case of *Les Établissements VAMO and Paschal Kuekia v Republic of Benin*, Judgment No ECW/CCJ/JUD/12/15 of 20 April 2015, where the Court held that one of the Applicants who was a legal entity can be a victim clothed with the right to bring an action before the Court thus dismissing the objection of the Respondent States claiming that it was not a victim.

Analysis of the Court

36. The Court in considering whether the Applicant has *locus standi*, that is, whether it is a proper party to access the Court, it must be guided by the Article 10(d) of the Supplementary Protocol, which provides thus,

“Access to the Court is open to individuals on application for relief for violation of their human rights.....the submission of application for which shall (emphasis ours):

- i. not be anonymous; nor***
- ii. be made whilst the same matter has been instituted before another international Court for adjudication.”***

37. From the abovementioned provisions of Article 10(d), it is clear that three conditions must be met before an application can be declared admissible before the Court. These are: a) the applicants must be victims of human rights violations, in other words, it must have the *locus standi* to bring the action, b) the applicants must not be anonymous, and c) the application must not have

been instituted before another international Court for adjudication. The Court will only address the first condition which is relevant to the Respondent's objection that is; the Applicant lacks locus standi because being a corporate entity it cannot be a victim of human right violation which only human person can lay claim to.

38. With regards to "Locus Standi" it has been defined by the Court as the interest to institute proceedings in a Court of law or to be heard in a given cause. In other words, the strict application of locus standi denotes that a Plaintiff wishing to sue must have sufficient interest in the subject matter in order to have a standing to litigate same. *See FEDERATION OF AFRICAN JOURNALISTS & 4 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 @ pg.17*

39. The Court has also expressed its opinion that the law of locus standi to sue relates to the propriety of a litigant to institute an action. The standing focuses on the right of the party in the matter, either in terms of injury suffered or special interest possessed which is worthy of protection. *See THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS ECW/CCJ/JUD/16/14 @ page 17.*

40. In the instant case the Applicant averred that it was granted authority to establish 5 different schools on land provided by the Respondent pursuant to which it made huge investment in the construction of many amenities to bring the school to international standard. Without notice or compensation, the schools were confiscated by the Respondent. These claims remain uncontroverted by the Respondent. The Applicant has obviously established a sufficient interest in the said property worthy of protection and thus has the standing to bring this application.

41. The objection of the Respondent that the Applicant lacks locus standi is premised on the fact that it is a legal person which is not contemplated within the ambit of Article 10 (d) of the supplementary Protocol. In essence only natural persons can access the Court for violation of their human rights. The Court has put to rest the argument proffered by the Respondent and established that corporate bodies such as the Applicant in the instant case has

fundamental rights to which they are entitled to enjoy and be protected. Such rights include the right to property. In the case of **DEXTER OIL V. REPUBLIC OF LIBERIA ECW/CCJ/JUD/03/19**, it held that

“... human rights are the rights that belong to all human beings irrespective of their nationality, race, caste, creed and gender amongst others; (...) on the other hand, right of a corporate body are rights that are fundamental and necessary for the existence of a corporate body which a legal entity can enjoy and be deprived of; for example, right to freedom of speech as the corporation is entitled to speak about matters that affect it ; right to property as the corporation owns property, generates profit in shares and or cash and is entitled to the quiet enjoyment of same. The established exceptions under which corporate bodies can ground an action are; rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression.”

42. With specific reference to the right of property of a legal person, the court further held in **CHUDE MBA Vs. REPUBLIC OF GHANA ECW/CCJ/JUD/10/13** @ pg. 21 that

‘.....Article 14 of the African Charter does not specify whether or not the right to property is only guaranteed to individuals or people. It has therefore not excluded legal persons, which include corporations. Therefore, corporations may also benefit from the right to property as guaranteed by Article 14 and as recognized by the national laws of Member States and by the Council of Europe through Protocol 1 of the European Convention of Human Rights.’

43. Based on the analysis above and the jurisprudence of the Court on this issue, the Court holds that the Applicant has *locus standi* to bring this application before the Court under Article 10(d) of the Supplementary Protocol consequently the Respondent’s Preliminary Objection is dismissed and the Court so holds.

Issue 3 - Whether the Applicant’s objection that the Respondent State filed its Defence out of time is valid.

44. The Applicant raised an objection to the effect that the Respondent State filed its Statement of Defence out of time, contrary to Article 35 (1) of the Rules of Court, which provides a time limit of one month after service of an application for a defence to be filed. The Applicant submitted that the Respondent State was served with the initiating Application on 10 February 2017, but filed its Defence on 14 March 2017, by which time the time limit of one month provided by the Rules of Court had elapsed. He then requested that the Court should reject the Defence of the Respondent State.

45. The Respondent on its part asserted that the defence was filed within the time limits prescribed by the Rules of Court same having been sent electronically to the Registry on 10 March 2017 and acknowledged same day by the Registry. Furthermore a copy was sent via a courier service –DHL to the Registrar.

Analysis of the Court

46. The relevant Rule of the Court on which this Preliminary Objection is premised is Article 35(1) of the Rules of Court provides,

“Within one month after service on him of the application, the defendant shall lodge a defense....”

Article 35(2) provides as follows:

“The time limit laid down in paragraph 1 of this Article may be extended by the President on a reasoned application by the defendant”

The Court notes that the Rules of Court is an essential guide to the conduct of its proceedings and they should be treated as sacrosanct. The time limit provided by the Rules for parties to make their submissions enables the Court to deal with cases before it expeditiously in order for justice to be served, as justice delayed is justice denied. Based on the provisions of the Rules of this Court, a defendant is expected to file a defence at the Registry of the Court, within one month after service on him/her. The only exception to this Rule is when the President of the Court extends the time limit, after considering an application for extension by the defendant.

47. The guiding Rules on this matter is of Article 32 (6) of the Rules of Court which stipulates thus;

“Without prejudice to the provisions of paragraphs 1 to 5, the date on which a copy of the signed original of a pleading, including the schedule of documents referred to in paragraph 4, is received at the Registry by telefax or other technical means of communication available to the Court shall be deemed to be the date of lodgment for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in the second subparagraph of paragraph 1 above, is lodged at the Registry no later than ten days thereafter.”

48. From the above provisions, it is undisputable that pleadings can be submitted to the Registry by telex and other technical means, including emails and it will be deemed as validly filed at the Registry of the Court. Furthermore, for the purposes of compliance with the time limits set by the Rules of Court, the relevant date is that which indicates when the email containing the pleadings was sent. The only other requirement is that for the email process to be valid, the signed hard copies of the pleadings must be received at the Registry within ten days after the email was sent.

49. In the instant case, the Respondent received the Initiating Application on the 10th of February 2017 and sent their defence via email on the 10th of March 2017. The hard copies were received at the Registry on the 14th of March 2017, six (6) days before the due date. From all indications, not only did the Respondent file its Defence within the one-month time limit via email, it also complied with the provision of the Rules requiring hard copies to be submitted to the Registry within ten (10) days of sending the email.

50. In light of these considerations, the Court rules that the Respondent filed its defence within the time limits stipulated by Article 35 of the Rules, and therefore the objection of the Applicant to that effect is dismissed.

Issue 4- Whether the African Charter on Human and Peoples Rights (The Charter) and the Universal Declaration of Human Right (UDHR) are applicable to the Application;

51. The Applicant alleged that the interference in its possession of the schools by the Respondent violates its right to property under Articles 14 of the Charter and 17 of the UDHR. The Respondent raised an objection to the application of The Charter and the UDHR to the instant case on the basis that they are both aimed at individuals and since the Applicant is a legal person, these provisions were wrongly invoked. They referred to the preamble of each of the instrument to buttress their contention. For ease of analysis, the relevant preambles are hereunder reproduced;

52. The Charter ; *Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of people's rights should necessarily guarantee human rights;* The UHDR; *whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

53. This issue has a nexus with issue no 3 on locus standi. To the extent that the Court has held in several of its jurisprudence that human rights, human being/person, individual or any other nomenclature so referred includes legal

person under the exceptions earlier identified, the Court will not proceed to elaborate further on this issue save to find that the Charter and the UDHR are applicable to the instant case and it so holds. The objection of the Respondent is hereby dismissed.

Issue 5 - Whether the Respondent violated the right of property of the Applicant under Article 14 of the Charter and 17 of the UDHR.

54. Article 14 of the Charter provides as follows;

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

Art 17 of UHDR provides as follows:

- 1. Everyone has the right to own property alone as well as in association with others.*
- 2. No one shall be arbitrarily deprived of his property*

Analysis of the Court.

In determining whether the Respondent violated this right, the facts must establish the following:

- a) That the Applicant has proved a property right or possession of the said land.
- b) That there was an interference with the possession by the Respondent.
- c) That the interference was for public purpose.
- d) That the interferences was in accordance with the appropriate laws.

a) Proof of property right or possession of the said land by the Applicant.

55. The hallmark of a violation of property is proof of ownership. Every applicant whether a natural or legal person must be able to demonstrate the existence of a proprietary right over the property at stake in order to qualify as a victim under the Charter. The Applicant averred that between 2003 and 2011 he was granted series of authorization to set up a general education establishment and was allocated parcels of land in Niamey to that effect. In

all it was granted authorisation to build 5 schools. Consequent upon which it made substantial investment in the construction and equipment of the air-conditioned classrooms, the administrative blocks, boarding schools, refectories, modern laboratories etc. which consists of:

- 65 classrooms all air-conditioned;
- A floor R+2 serving as General Management office;
- 5 science laboratories;
- 5 computer rooms equipped with 20 computers each;
- 6 language classrooms;
- Two boarding schools (boys and girls) (Two floors R+2);
- Guard houses, sheds, refreshment booth, handball area, basketball court, garden etc.

56. In addition, the Applicant maintained that the said buildings were equipped with necessary furniture for their operation including modern bench tables, meeting tables, desks, cabinets, armchairs, chairs, beds, refrigerators, televisions, printers, computers, photocopiers and other household appliances (washing machines, water heater, vacuum cleaner and more), others include generators and transformers. Five (5) generators with varying capacities from 250KVA, 50 KVA, 40 KVA while the (3) transformers had capacities between 400 KW and 150 KW. Others include motorized land vehicles, mini Buses and other devices.

57. The Respondent did not deny that these investments were made by the Applicant. They however contend that the Applicant is not vested with the ownership of the land. That the state granted private developers of school and others land on the basis of provisional tenure in order to provide the necessary infrastructure for the operational activity envisaged. Therefore, the provisional tenure on a property cannot confer ownership to the grantee.

58. In order to put in clear perspective the arguments of both parties, it is necessary at this point to define Property. The European Court on Human Right held that:

“In considering the provisions of Article 1 of Protocol No. 1 of the European Court of Human Rights which is pari-material with Article 14 of the Charter, the concept of property or possession is very broadly

interpreted. It covers a range of economic interests which include: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to pension, the right to exercise a profession, a landlord's entitlement to rent, the economic interests connected with the running of a business.” See CENTRO EUROPA 7 S.R.L. AND DI STEFANO v. ITALY (Application no. 38433/09) JUDGMENT STRASBOURG 7 June 2012.

This definition was also adopted in the case of *REGISTERED TRUSTEES OF ASSOCIATION OF FORMER TELECOM EMPLOYEES OF NIGERIA Vs FEDERAL REPUBLIC OF NIGERIA & Ors ECW/CCJ/JUD/20/19 UNREPORTED*

59. The Court notes that both Parties admitted in their pleadings that the Respondent State granted land to the Applicant to carry out its business activities, which includes the creation, management and development of private primary and secondary schools. Further that it made significant developments on the land. So the crux of the matter at hand is hung on moveable and immoveable effects. There is no doubt that the Respondent as the Government which has a long life ownership on land within its territory, granted a provisional right of occupancy to the Applicant, which legally conferred proprietary interests in the land and all fixtures thereupon on the Applicant for the duration of the grant. No matter how provisional the tenure of a grant of lease over a property is, the lease interest which is intangible and all upgrades on that land which is tangible confer a proprietary right and remain active so long as the grant of lease subsist.

60. The Court therefore rejects the argument of the Respondent that provisional tenure on a property cannot confer ownership. At the time of the encroachment, the Applicant's proprietary interest was still active and will remain so until the grant of lease is effectively revoked in compliance with the proviso in Article 14 of the Charter. The Respondent having not denied the claim of ownership of the investments and upgrade enumerated by Applicant, obviates the Applicant from further proof thereof. See *DOROTHY CHIOMA NJEMANZE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/08/17 @ page 31.*

61. The Court finds that the Applicant has established the right of ownership over various listed buildings constructed upon the land and all other

immoveable fixtures thereof. The Court therefore holds that the Applicant has demonstrated the existence of a right over the said listed properties both moveable and immoveable.

b) Proof that there was an interference with property by the Respondent.

62. While the Court is satisfied that the Applicant has established its proprietary interest in the alleged property, it must also prove that the Respondent interfered with the peaceful enjoyment of its right denying its lawful possession and use. It is the case of the Applicant that sometime in 2016, the Respondent withdrew the Applicants license, changed the keys to the premises and after that took possession of all its movable and closed down the schools. Furthermore, the Respondent also transferred the company to a Turkish company known as Maarif foundation vide a Memorandum of understanding dated 14th December 2016, thereafter changed the name to *Ecole de l'amitie Nigero-Turque* and finally hoisted the Turkish flag in place of that of the CSP BEDIR

63. The Respondent did not deny this alleged dispossession of the Applicant and occupation by the Maarif foundation. They only sought to justify their actions by the Applicant's violation of the terms of the grant. In addressing this point, the court aligns with the opinion below;

“The essence of deprivation of property is the extinction of the legal right of the owner, however, the Court will not only take into account whether there has been a formal expropriation or transfer of ownership but will investigate to see whether there has been a de facto expropriation.” (Right to Property under the European Convention on Human Rights- Human Rights Handbook no 10.

64. Obviously the notice of withdrawal of the license, the forceful entry and possession of the property by changing the locks, the eventual transfer of the enterprise to the Maarif Foundation, the removal of the Bedir flag, the replacement with that of the Maarif Foundation and the eventual change of the name of the school is nothing short of a *de facto* interference. In essence,

the Applicant was dispossessed of its properties both moveable and immovable and prevented from operating its business.

65. Since these allegations of interference is uncontroverted by the Respondent, the Court holds the Applicant has proved that the Respondent interfered with the quiet enjoyment of the possession of the said property.

c) *That the interference was in accordance with the appropriate laws.*

66. In addressing whether the Respondent acted in accordance with the Law when it confiscated the Applicants property, it is necessary to recall the provision of Article 14 of the Charter and 17 of the UDHR upon which this application is premised.

Article 14 of the Charter provides:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

Emphasis ours

67. The European Court of Human Rights has held that ***“An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 (which is in pari-material to Article 14 of the ACHPR) is that, it should be lawful: the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Furthermore, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest.”*** See *GOGITIDZE AND OTHERS v. GEORGIA* (Application no. 36862/05) *STRASBOURG* 12 May 2015,

68. The Court aligns itself with the above findings and state that the import of this Article 14 is three fold: 1) it places obligation on State Parties to respect and protect the right to property of all and ensure a peaceful enjoyment of this right. 2) However the right is not absolute, it accommodates the interference by the State of the peaceful enjoyment of property based on recognised law - domestic or international. 3) The right to interfere is equally not absolute as it provides two safeguards in its exercise as follows: a) The interference must

be in the interest of the public or general interest of the community that is; the legitimacy of purpose and b) the interference must be *in accordance with the law*; that is the legality of the law. The application of the safeguards of legitimacy of purpose and legality of the law is cumulative, in other words the non-compliance of any, and amounts to the violation of Article 14.

69. Even though the requirement for legality is stated as the last condition under the Article, it is imperative that interference with the right of property must first satisfy the requirement of legality. The principle of legality is inherent in the Charter as a whole and must be complied with whichever of the other conditions of the Article 14 applies. This is more so that no action can survive on illegality which is capture in the Latin phrase: *Ex turpi causa non oritur actio*.

70. The court will now proceed to first address the requirement of legality of the law that is to say the interference must to in accordance with the law. The purpose of the phrase “in accordance with the law” is to ensure that the scope for arbitrary tampering with rights by the executive is limited by domestic legislative or judicial authority. In *FESTUS A.O. OGWUCHE V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/18* @ pg. 23, the Court held that ‘.....*the principle of legality is a fundamental aspect of all international human rights instruments and indeed the rule of law in general. It is a basic guarantee against the state’s arbitrary exercise of its powers. For this reason, any restriction on human rights must be “provided” or “prescribed” by law*’.

71. The concept of “law” in this context is not confined to domestic legal processes but admits compliance with international human rights laws that impose international legal obligations on the state in question based on their signatory to such instrument. The Law must be accessible, sufficiently precise as well as provide for fair process that require State not act arbitrarily with safeguards against misuse of power by the State. *JUSTICE PAUL UUTER DERY& ORS Vs THE REPUBLIC OF LIBERIA ECW/CCJ/JUD/17/19 Pages 24-25*

72. It is not sufficient for an act on the basis of which a state limited the enjoyment of possession to be a formal legal source within the meaning of domestic laws, but it must furthermore contain certain qualitative characteristics and afford appropriate procedural safeguards as to ensure protection against arbitrary action and conformity with the rule of law.

In *JAMES Vs UNITED KINGDOM* [1981] ECHR 4 the ECHR held

“It has consistently held that the term ‘law’ or ‘lawful’ in the Convention [do] not merely refer back to the domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law.”

73. The rule of law requires fairness in the application of the law, the avoidance of arbitrariness and procedural and legal transparency. The proviso in the second portion of Article 14 of the Charter that is, legality of the law, and the legitimacy of purpose are both intended to prevent the arbitrary interference in the peaceful possession guaranteed in the first portion of the Article. It is a basic guarantee against the state’s arbitrary exercise of its powers. See *FESTUS A.O. OGWUCHE V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/18* @ pg. 23 *Supra*

74. In considering whether the alleged interference is in accordance with the Law, the Court must first identify the law under which the Respondent acted before subjecting it to the legality test. The documents before the Court disclose that each of the five letters granting authorization to open the various schools end with the following clause;

Article 2: The authorization referred to in Article 1 of this Order may be suspended or withdrawn at any time if it is proved that the promoter concerned does not comply with the opening conditions set by the regulation in force.

Article 3: The Secretary General of the Ministry of Secondary Education is responsible for the application of this decree which shall be published in the Official Journal of the Republic of Niger.

Furthermore the conditions for opening referred to in Article 2 supra is recited in the preamble of each grant which says: **having regards to Decree no 96-210/PCN/MEN of 19 June 1996 fixing the methods of application of the**

Order regulating Private Education in Niger, hereinafter referred to as (The 1996 Decree). The letters withdrawing the grant of authorization (annexure 7) quoted Articles 4, 6, 8, 9, 15,17, 18, 19, 21, 22, 23,and 28 of The Decree 1996 as the basis for the revocation of the grant same having been violated by the Applicant. Thus Article 2 above referred and the articles listed in The 1996 Decree are therefore the ‘law’ to be subjected to the test of legality.

75. Having identified The 1996 Decree and Article 2 above referred as the ‘law’ under which the Respondent acted to dispossess the Applicant of its rights over the school, the next step is for the Court to examine the acts of the Applicant that allegedly contravened the referred Articles in The Decree 1966 to enable a proper determination as to whether the Applicant violated same to justify that the interference was in accordance with the Law. In examining these law, the Court notes that the details/provisions of the Articles allegedly violated in the 1996 Decree are not pleaded. The Court noted that the Applicant only stated that following an inspection of the school on the use of the license, it discovered the following misuse of the license by the Applicant:

- a) That the Societe Bedir Ltd once a one-shareholder company became subject of two ownership transfer without prior authorization.
- b) The Managers of the school were appointed by a notorised deed.
- c) The applicant did not cooperate with the inspectors during the inspection.
- d) Furthermore the inspectors found violation of Articles 4, 6, 8, 9, 15,17, 18, 19, 21, 22, 23,and 28 of Decree no 96-210/PCN/MEN of 19 June 1996 fixing the methods of application of the Order regulating Private Education in Niger.

76. Having alleged that the Respondent violated the above listed Laws, the Respondent is obliged to show explicit proof of the same. It is trite law that he who alleges must provide convincing evidence to support the allegation. In **DAOUDA GARBA V. REPUBLIC OF BENIN (2010) CCJELR** Page 12.Para 34 & 35, the court held that:

“cases of violation of human rights must be backed by indications of evidence which will enable the Court to find that

such violation has occurred in order for it to prefer sanctions if need be.”

77. For the action of the Respondent to be deemed *in accordance with the law*, it is imperative that they place before the court the Law in question together with its provisions and evidence of violation of same. It is expected that the Respondent will pinpoint each Article alleged to have been violated, recite its provision and match it with the corresponding violation of the Applicant. For example, the allegation that the Applicant transformed from a single shareholder to a multiple one, requires the evidence of the law prohibiting such transformation, the original certificate of a single shareholding of the Applicant presented at the grant of authorization and the current one evidencing a change in ownership. Consequently, the Court concludes that the Respondent has failed to prove that the Applicant violated any of the conditions contained in The Decree 1996.

78. In this wise the Court finds that the Respondent has not established that it acted in accordance with the law, the Court therefore holds that the Respondent is in violation of Article 14 of the Charter.

79. While the Respondent failed to establish that their interference was in accordance with the Law, The Applicant on the other hand was able to place before the Court evidence to support its claim that the interference of the Respondent was not in accordance with the law. The Applicant averred that after the inspection of the schools which the Respondent alleged revealed several violations of the conditions attached to the grants and which formed the basis of their revocation, the report of the said inspection was never transmitted to it for response contrary to the provision of Article 28 of The 1996 Decree. Interestingly this Article was listed by the Respondent as one of the conditions violated by the Applicant. The Applicant pleaded Article 28 of Decree 1966 which provides thus:

*‘.....At the end of their visit, those responsible for the inspection will address a report to the supervisory Ministry , copy of this report will be forwarded to the head of the establishment...’ **Emphasis Ours.***

80. This allegation has not been controverted by the Respondent, therefore it is taken as established. One of the basic principles of justice is Audi alteram partem, a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. Even if there was non-compliance as alleged by the Respondent, fair hearing requires that the party involved be given the opportunity to be heard and to defend himself or actions. *In MOHAMMED EL TAYYIBAH V. REPUBLIC OF SIERRA LEONE, ECW/CCJ/JUD/11/15*@pg.11, the Court held that:

“An individual should not be penalized by decisions affecting his rights or legitimate expectations without being given prior notice of the case, a fair opportunity to answer and/or the opportunity to present their own case. The fact that a decision affects rights or interests of a person is sufficient to subject the decision to procedures required by natural justice”.

81. Clearly the action of the Respondent is not only arbitrary but in breach of the right to fair hearing which is a right under the Charter to which the Respondent is a signatory. This action is clothed with arbitrariness which falls short of due process. The court therefore finds that the failure of the Respondent to transmit the report of the inspection which is the basis of the withdrawal of the Applicant’s license being in violation of Article 28 of Decree 1996 is not in *accordance with the Law*. The Court therefore holds that the Respondent violated the right to property of the Applicant contrary to Articles 14 of the Charter and 17 of the UDHR.

82. On another note, the Applicant annexed to its pleadings exhibit 12 - a Memorandum of Understanding (MOU) signed on the 14th of December 2016 between the Maarif Foundation of Turkey (hereinafter referred to as The Foundation) and the Respondent wherein the Respondent undertook to yield all the Applicant’s schools in Niamey to The Foundation.

A careful reading of the MOU disclose the fact that prior to the signing of the Memorandum, the Government of Turkey in anticipation of the taking over the said schools, had long signed a national law towards that purpose. The

relevant extract of the MOU signed on the 14th of December 2016 reads following:

83. *“At the end of the negotiation an agreement was reached on these points. The Turkey party undertakes, in accordance with the provisions of Law No. 67-21 of 17 June 2016 (voted at the Grand National Assembly of Turkey) for the MAARIF Foundation of Turkey to take over the Bedir and Mehriban Establishments located in Niamey in Niger....”. **Emphasis ours***

84. *“The Nigerien party undertakes, first to withdraw or cancel the authorisations, licenses, certificates, rights and prerogatives recognized by means of the law and regulations or conventions in force (Order 96-035 PCSN of 19 June 1996 and its application Decree 201/PCSN/MEN 19 of 19 June 1996)” to Mr. Hayri AVAR acting on behalf of the Bedir Company.”*

85. From the above excerpts, it is obvious that even though the MOU was signed in December 14th 2016, there was an express intention by the Respondent and The Foundation to take-over the Applicants school as far back as 17 June 2016, when the grants were still active and months before the Respondent carried out any inspection based upon which the grants were withdrawn. The MOU signifying the agreement to take over the school was concluded more than 6 months before the Applicant was issued a withdrawal letter. Though the withdrawal orders were written on the 21st of December 2016 it was not until the 28th December 2016, that the Applicant was served.

86. The act of the Respondent is nothing short of conspiracy to dispossess the Applicant of the school at all cost. This action of the Respondent in colluding with a foreign Government to confiscate the Applicant’s schools months before the inspections which allegedly disclose a misuse of the grant leading to their revocation was carried out and 6 months before the Applicant was notified of the withdraw of the grant is nothing short of gross abuse of power, exhibit of undue influence, impunity, lack of due process, travesty of justice and outright display of arbitrariness.

87. In view of the totality of the above analysis, the court finds that failure of the Respondent to prove that the Applicant contravened any condition of the grant, as well as failure to comply with Article 28 of The Decree 1996 and the decision by Respondent in collaboration with a foreign entity to take over

the Applicant's school under condition that manifestly lacks due process is an interference that is not in accordance with the Law. The Court therefore holds that the Respondent is in violation of the right to property of the Applicant as guaranteed in Article 14 of the Charter.

c) Proof that the encroachment was for public purpose or general interest of the community.

88. Even though the requirement for legality is stated as the last condition under the Article 14, the Court has earlier stated that the application of the 2 provisos in the Article is cumulative. That is, a violation of one is a violation of the entire provision. In this regard, the Court aligns itself with the opinion below which prioritises legality of the law over the other condition:

“Should the Court establish that the interference with the property right was not in accordance with the Law, it does not need to consider legitimacy of the state objectives or the issue of proportionality. In this case, there will automatically be a violation of Article 1 of Protocol 1 of the Convention which is (pari material with Article 14 of the Charter) and it will be unnecessary for the Court to even consider whether such unlawful interferences pursued a legitimate purpose” (Right to Property under the European Convention on Human Rights- Human Rights Handbook no 10 page 15)

89 Based on the above, and having held that the interference by the Respondent is unlawful and thus not in accordance with the Law, the Court will accordingly not proceed to examine whether it meets the requirement of public purpose.

90. Issue 6- Whether the expropriation of the Applicant's properties without a fair and prior compensation violates the Applicant's right to property.

The case of the Applicant is that following the expropriation of its properties no compensation was paid prior to and thereafter the act, consequently it claimed that its right to property was violated by the Respondent who did not controvert this allegation.

Analysis of the Court

91. The requirement of payment of compensation in cases of violation of the right to property when confiscation has been established is a catch 22 for the Respondent because whichever it swings, compensation is obligatory. In the situation where the intervention is lawful that is to say it meets the legality of the law and legitimacy of purpose, the Applicant is still entitled to compensation where development on the land can be established and ownership of same credited to the Applicant. Conversely where the interference is unlawful, it goes without saying that compensation is imperative to remedy the loss on the developments carried out on the property and other cost associated with the action of the Respondent.

Furthermore, such compensation must be paid prior to the encroachment failure of which amounts to violation of the right to property.

92. Having found that no compensation was paid to the Applicant prior to or after the encroachment of its property, the Court holds that failure of the Respondent to compensate the Applicant is a violation of the right to property of the Applicant.

Issue 6- Whether the Applicant is entitled to compensation as claimed

93. Having outlined the violations by the Respondent, the Applicant sought compensation in the sum of Twenty-Four Billion, Three Hundred and Five Million, Thirty-Three Thousand, Nine Hundred and Eighty-Two CFA Francs (CFA 24, 305, 033,982) CFA F for all the damages caused by the Respondent made up as followings:

- Eighteen Billion CFA F (18,000,000,000.00 CFA Francs) for moral damages and loss of earnings;
- Five Hundred and Seventeen Million, Five Hundred and Seventy-Seven Thousand Five Hundred CFA francs (517,577,500 CFA Francs) for furniture;

- Five Billion, Seven Hundred and Eighty-Seven Million, Four Hundred and Fifty-Six Thousand, Four Hundred and Eighty-Two CFA francs (5, 787,456,482 CFA F) for construction and upgrade carried out;
- 250,000,000 CFA F as irrecoverable expenses;

94. The Respondent on the other hand refuted the allegation that they caused loss to the Applicant. In relation to the construction estimates it is their opinion that if they were indeed subjected to an expert opinion, other claims by the Applicant are not founded on any concrete evidence. In this regard, the Respondent urged the Court to engage an independent Estate valuator to evaluate the property as same was done solely by the Applicant. The Respondent also urged the Court to dismiss the application or in the alternative award a lump sum award in the event it finds compensation appropriate.

Analysis of the Court.

95. Compensation is awarded for the loss and hardship suffered by a victim resulting from a violation of his/her human right. In determining the quantum of compensation to be awarded, the Court must be satisfied by reliable evidence that the Applicant has suffered loss and is thus entitled to compensation. This Court in *CHIEF EBRIMAH MANNEH V THE REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/03/08 @ pg. 19-20* held

‘that the object of human rights instrument is the termination of human rights abuses and in cases where the abuse has already taken place, restoration of the rights in question. Compensation is awarded to ensure just satisfaction and no more.’

96. Furthermore in *KARIM MEISSA WADE V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/19/13 @ pg.28*, The Court held

‘that reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cause and effect between the offence committed and the harm caused’.

97. It is a well-established principle of international law that a breach of an international obligation entails the duty to make adequate reparation. This reparation may take different forms: *restitutio in integrum*, specific orders,

compensation or damages, just satisfaction and declaratory judgment. The first level of reparation is *restitution in integrum* which attempts to put the injured party back to the pre-violation status. Where however this form of reparation is impossible or undesirable, compensation can be awarded for special damages and or general damages. The Applicant has claimed both special and general damages as compensation for the expropriation of its properties. The Court will now proceed to address these claims.

98. Special damages is awarded as compensation for losses that can easily be quantified or proved. Where the amount claimed cannot be backed by a justification, a request for special damages cannot succeed. *In CHIEF EBRIMAH MANNEH V THE REPUBLIC OF THE GAMBIA* (Supra) @ pg. 15 the Court held

‘.....it trite that special damages must be specifically pleaded and proved in order for them to be awarded.’

99. General damages on the other hand are usually awarded amongst others for pain and suffering, future problems and crippling effect of an injury, loss of ability to perform various acts, shortening of lifespan, mental anguish, loss of companionship, loss of reputation, loss of anticipated business and many more. It is always awarded at the discretion of the Court having regard to the peculiar circumstances of each case. See *PETROSTAR NIGERIA LIMITED V. BLACKBERRY NIG LIMITED & ANOR ECW/CCJ/JUD/05/11 @ pg. 13*. However, in the absence of factors which will enable the Court to make an accurate assessment of the harms suffered by the Applicant, the Court may adjudge and fix a lump sum as reparation for the prejudice caused the Applicant. See *AMINATA DIANTOU DIANE v. REPUBLIC OF MALI ECW/CCJ/JUD/14/18 @ pg 15*

100. From the facts before the Court, the Applicant has successfully established a violation of its right to property arising from the unlawful withdrawal of its license which entitles it to compensation. The claim of the applicant is premised on the fact that it has made substantial investments on the land in the construction and installation of 65 air conditioned classrooms, a floor of offices, 5 laboratories, 5 computer rooms equipped with 20 computers each, 6 language classrooms, two floors of boarding schools for

boys and girls, guard houses, sheds, refreshment booths, sporting areas, gardens, electrical installations and more.

101. The Court notes that the Applicant supported its claim with an expert valuation report prepared by one Boukari Amirou, a sworn approved real estate expert in the tribunals and courts of the Respondent. The Report details the current market value of the land based on certain parameters including the added value of the land, geographical indicators, real estate market trends, communication access networks on various roads, amongst other information. The value of the listed constructions was assessed by the valuator as Five Billion, Seven Hundred and Eighty-Seven Million, Four Hundred and Fifty-Six Thousand, Four Hundred and Eighty-Two CFA francs (5, 787,456,482 CFA F)

102. The Applicant therefore claims for compensation for all construction and upgrade carried in the sum Five Billion, Seven Hundred and Eighty-Seven Million, Four Hundred and Fifty-Six Thousand, Four Hundred and Eighty-Two CFA francs (5, 787,456,482 CFA F). The Respondent rejected this claim for compensation on the basis that it's the singular effort of the Applicant and the veracity is not assured.

103. The Respondent had every opportunity to equally engage an estate valuator to counter the Applicant's evaluation but failed, refused and or neglected to do so. This is more so that the Respondent has free access to the property having been in occupation of same following the dispossession of the Applicant. To this end, the plea of the Respondent for the Court to engage an independent expert to value the property goes to no issue, the Court therefore admits the valuation submitted by the Applicant as proof of the value of the constructions and upgrade carried out on the said land.

104. The Court therefore holds that the Applicant is entitled to the sum of Five Billion, Seven Hundred and Eighty-Seven Million, Four Hundred and Fifty-Six Thousand, Four Hundred and Eighty-Two CFA francs (5, 787,456,482 CFA) being compensation for all upgrades on the land granted by the Respondent

105. With regards to the claim for furniture amounting to the sum of five hundred and seventeen million, five hundred and seventy-seven thousand five hundred CFA Francs (517,577,500 CFA F), the Applicant pleaded that the said buildings were equipped with necessary furniture for their operation to which the Respondent did not dispute either the claimed ownership or their existence. They include modern bench tables, meeting tables, desks, cabinets, armchairs, chairs, beds, refrigerators, televisions, printers, computers, photocopiers and other household appliances (washing machines, water heater, vacuum cleaner and more), others include generators and transformers. Five (5) generators with varying capacities from 250KVA, 50 KVA, 40 KVA while the (3) transformers had capacities between 400 KW to 150 KW. Others fixtures include motorized land vehicles, mini Buses and other devices.

106. The Respondent objected to the grant of the compensation claimed contending that the Applicant did not produce any valuation report in that regard. While this assertion is true, the Court is also not unmindful that upon entry into the school premises without notice, the Respondent immediately changed all the locks of the buildings therein. This effectively precludes the possibility of entry into the premises for purposes of valuation of the furniture. In the light of the total loss of physical possession and control of the school premises, the court is conscious of how difficult it is for the Applicant to substantiate this claim and the burden effectively shift to the Respondent to prove otherwise. The court relies on its previous decision wherein it held thus; *“In the instant case, The Court is of the view that the rule governing the burden of proof must be relaxed, a burden which lies, in principle, on the Applicant. Considering however, that the Applicant finds himself in a near-impossible situation of being able to produce any evidence whatsoever, the Court holds that it is only the Respondent which is a position to furnish the materials of evidence needed by the Court.”*

See STELLA IFEOMA NNALUE & 20 Ors Vs FEDERAL REPUBLICS of Nigeria ECW/CCJ/JUD/24/15

107. In the light of the above, the Applicant is within their right to submit the amount which in their opinion reflects the value of the furniture in question which are in respect of the 5 schools to which the Respondent granted

authorisation. The Court therefore holds that the Applicant is entitled to the amount claim in the sum of five hundred and seventeen million, five hundred and seventy-seven thousand five hundred CFA Francs (517,577,500 CFA F) as compensation for the furniture installed in the schools.

108. With regards to the claim for all damages caused by the Respondent, in the sum of Twenty Four Billion, Three Hundred and Five Million, Thirty Three Thousand, Nine Hundred and Eighty Two CFA Francs (CFA 24, 305, 033,982) CFA F same been unsubstantiated with any particulars is hereby dismissed.

109. With regards to the claim of 250,000,000 CFA Franc for irrecoverable expenses not included in the cost, the Applicant has not explained the basis and justification of this cost and the Court is unable to determine what this head of claim entails to make an informed award. Same been unsubstantiated is hereby dismissed

110. With regards to the claim of eighteen billion CFA Francs (18,000,000,000 CFA F), the Applicant alleged that it suffered pain and suffering and urged the Court to award moral damages and loss of earnings as a result of the closure of the schools in the middle of the academic year.

111. The Court notes that the Applicant is a person recognised by law by virtue of which it is endowed with certain rights enjoyed also by a human person and for which it can claim damages for their violation. These are rights that are fundamental and necessary for the existence of a legal person and include the right to property, right to fair trial, right to freedom of expression whose protection is guaranteed by several international human rights instruments.

112. Moral damages represent compensation awarded for the anguish, pain and suffering caused to direct and indirect victims of human rights violations. However a claim for moral damages by an Applicant, anticipates that the infringement of the right has an impact on the emotions of the holder of such right. Pain and suffering are emotions precipitated by actions that cause distress and anguish; emotions that are clearly uncharacteristic of a legal

person. The Applicant is clearly not a human person capable of experiencing feelings associated with and exhibited by a human being such as pain and suffering. In that wise, the Court holds that the Applicant's claim is misconceived and is therefore not entitled to compensation for moral damages. The claim for moral damages is dismissed and the Court so holds.

113. On the loss of earnings claimed by the Applicant, the Court observes that no evidence in form of audited account of the school or any other proof of earning to assist the Court in determining any loss of earning was provided. The Court will therefore not speculate in that wise. The Claim is therefore dismissed.

On Costs

114. Article 66 (2) of the Rules provides thus:

“The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party’s pleading”.

The Applicant urged the Court to order the Respondent to bear the cost without specifying any amount. In that wise the Court orders the Chief Registrar to assess appropriate cost.

DECISION

115. The Court, after hearing all parties and reviewed all documents submitted decides as follows;

- i. **Declares** that it has jurisdiction to hear this Application;
- ii. **Dismisses** the Respondent’s Preliminary Objection on *locus standi*;
- iii. **Dismisses** the Preliminary Objection of the Applicant on non-conformity of the Respondent to file their defence within time.
- iv. **Declares** that the Application is admissible;

