



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

In the Matter of

**LAWRENCE H. JOTHAN AND 13 OTHERS V. FEDERAL REPUBLIC  
OF NIGERIA**

*Application No: ECW/CCJ/APP/11/19 Judgment No. ECW/CCJ/JUD/33/21*

***JUDGMENT***

IVORY COAST

OCTOBER 2021

***JUDGMENT NO. ECW/CCJ/JUD/33/21***

**LAWRENCE H. JOCTHAN**

**RICHARD MAGOMYA**

**TONY A. MABULTI**

**SIMON EDAN**

**AMORI FARAH**

**ELIAS JERIMONTH**

**JACKSON E. GASHITUFO**

**REGORY HUNKA**

**AUGUSTINE ELKANAHA**

**ISAAC KULA**

**HOMNETAKA SABO**

**HOLY ANIYA**

**JOHN TIMOTHY**

**HUMPHREY DAVID**

....

**APPLICANTS**

**V.**

**FEDERAL REPUBLIC OF NIGERIA**

....

**RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Dupe ATOKI

- Member

Hon. Justice Keikura BANGURA

- Member/Rapporteur

**ASSISTED BY:**

Maître Aboubacar DIAKITE - Registrar

**REPRESENTATION OF PARTIES:**

Chief L. D. NZADON, Esq.

K. B. LAORI, Esq.

ABUBAKARR SA'AD, Esq.

HASSAINI G. MAIDAWA, Esq.

V. G. ABASIODIONG, Esq.

TOLUWANI J. OJO Esq.

Counsel for the Applicants

MAIMUNA LAMI SHIRU (MRS.)

O. A. OLORUNTOGBE (MS.)

Counsel for the Respondent

## **I. JUDGMENT:**

1. This is the judgment of the Court.

## **II. DESCRIPTION OF THE PARTIES:**

2. The Applicants are community citizens that reside in of the Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS.

## **III. INTRODUCTION**

4. The application was filed pursuant to Article 33 of the Rules of the Community Court of Justice, Article 4 (g) of the Revised Treaty of the Economic Community of West African States (ECOWAS) and Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05 amending Protocol A/P1/7/91) of the Community Court of Justice claiming violations of human rights. The Applicants claim that the Respondent has caused, or failed to act and/or reneged on its obligation by allowing or failing to prevent certain violations of human rights.

## **IV. PROCEDURE BEFORE THE COURT**

5. The Applicants filed an Initiating Application on the 14<sup>th</sup> March, 2019 in the Registry of the Court.
6. A Motion on Notice was filed by the Respondent on the 24<sup>th</sup> April, 2019 praying the Court for an extension of time within which to file their defense.
7. The Statement of Facts was filed by the Respondent on the 24<sup>th</sup> April, 2019 in the Registry of the Court.
8. The Applicant's Reply to the Respondent's Statements of Facts was filed on the 6<sup>th</sup> June, 2019 in the Registry of the Court.
9. The Court adjourned for judgment.

## **V. Applicant's Case**

### a) Summary of facts

10. The claim before the Court was filed by fourteen Applicants as victims and on behalf of the people of Dong, Lawuru, Shaforon, Kodomoti, Nzorue, Pulum, Baya of Numan, and Demsa Local Government Areas (LGAs), Adamawa State in the Federal Republic of Nigeria, and is premised on the alleged attacks in the aforementioned geographic areas perpetrated by Fulani Herdsmen and Nigerian Forces.
11. The claim contained allegations of brutal killings, serious injury and destruction of properties all reported to have happened on the 4<sup>th</sup> December, 2017. The

Applicants stated that they are occupational farmers and fishermen working and dwelling on their land, in the Respondent State, who had suffered from violations arising from clashes with Fulani herdsmen who had settled on their lands. That these clashes had resulted in the death of some members of the Applicants' communities, injury and destruction of property.

12. The claim of the Applicants is that during the course of inhabiting their communities, the number of Fulani herdsmen swelled following clashes from neighboring states in West Africa which led to a village near Bolon in the Demsa LGA Adamawa State being over-run with Fulani herdsmen. It is the belief of the Applicants that the influx was in readiness of an attack.
13. The Applicants further claims that the Nigerian Police Force reacted by maintaining three hundred (300) Mobile Policemen in the area but that this did not stop the Fulani herdsmen from allegedly killing six (6) Policemen and one (1) civilian near Bolon. That after the killing, the police and army personnel who had been deployed, withdrew from the area. However, that the Airforce maintained air surveillance throughout 2<sup>nd</sup> & 3<sup>rd</sup> December 2017 and that there were allegedly fully armed and combat ready herdsmen in the area even at that time.
14. It is submitted by the Applicants that the Respondent did not take adequate steps in dispersing the herdsmen after the killing of the policemen. That this resulted in further attacks by herdsmen on the 4<sup>th</sup> December, 2017 in the villages of Dong, Lawaru, Shaforon, Baya, Kodomti, Nzoruwe, Pullum, Baya of Numan, and Demsa LGAs of Adamawa State in the Federal Republic of Nigeria.

15. The Applicants submit that the Fulani herdsmen initially struck at Lawaru and Dong villages killing a lot of people, destroying homes and stealing livestock whilst setting ablaze vehicles and other machinery. They (Applicants) stated further that they tried to regroup and defend Shafaron, Kodomti, and other villages but that the Nigerian Airforce jets flew overhead and dropped bombs on the Applicants' people killing them and destroying houses.
16. That later the same day, 4<sup>th</sup> December, 2017 a Nigerian helicopter gunship opened fire on small groups of people thereby adding to the number of casualties; the aftermath of the incidence resulted in an unexploded bomb being discovered in Shafaron Village in the house of Mr. Joekim Badeson and some six (6) more discovered on the outskirts of Shafaron village. That the unexploded bombs were later detonated by the Respondent and the Applicants have submitted evidence in support of this.
17. Further, the Applicants claim that in Dong village sixty-one (61) persons were killed from bombs dropped by the Nigerian Armed forces and a further twenty-four (24) persons were seriously wounded. Whilst forty-eight (houses/buildings) belonging to the Applicants were destroyed, foodstuff and cattle were destroyed and/or rustled respectively, and that a further ten thousand three hundred and twenty-two (10,322) persons were displaced.
18. It is further submitted, within the claim, that in Lawaru village twenty-two (22) persons were killed and five (5) sustained serious injuries, whilst three hundred and fifty-seven (357) buildings were destroyed along with animals and foodstuffs.

19. That in Shafaron village six (6) people lost their lives whilst eight (8) people were seriously injured, that eight hundred and ninety-six (896) buildings were destroyed along with animals and foodstuffs.
20. That in Kodomti village six (6) people were killed and five seriously injured, with five hundred and seventy-five (575) buildings along with livestock and foodstuffs destroyed.
21. That in Pullum village two (2) people were killed and three (3) seriously injured, with five hundred and ten (510) buildings destroyed and livestock and foodstuffs rustled.
22. That in Baya village an unspecified number of buildings, animals and grain were destroyed, rustled or looted.
23. That in Nzoruwa village three (3) people lost their lives and seven (7) were injured whilst one thousand one hundred and twenty-two (1122) buildings were destroyed along with animals and foodstuffs.
24. The Applicants submit that the victims had to be given mass graves in a number of places which has prompted a claim for compensation from the Respondent for violation of their right to life and property.
25. That their claim is supported by the International Human Rights Monitor, Amnesty International that produced a report of the incidence and the Applicant relies on the same.



26. The Applicants submit that the Respondent has not taken any steps since the incidence to repair the damage but denies the truth of the attacks.

b) Pleas in law

27. The Applicants submit the following pleas in law in support of their claim:

- i. Article 33 of the Rules of the Community Court of Justice;
- ii. Article 4 (g) of the Revised Treaty of the Economic Community of West African States (ECOWAS)
- iii. Articles 1, 2, 4 & 14 of the African Charter on Human and People's Rights;
- iv. Articles 2(1), 6(1) and 9(1) of the International Covenant on Civil and Political Rights; and
- v. Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05) amending the Protocol (A/P1/7/91) on the Community Court of Justice.

c) Reliefs sought

28. The Applicants are therefore praying the Court for the following reliefs:

- i. A declaration that the Respondent is obligated to protect and secure the right to life of members of the Applicants' communities who were gruesomely slaughtered by armed Fulani herdsmen who attacked their villages of DONG, Lawaru, Shaforon, Kodomti, Baya, Nzoruwe on 4<sup>th</sup> December, 2017.

- ii. A declaration that the Respondent was guilty of gross dereliction of its obligation to protect the right to life of the members of the Applicants' communities when in the face of attacks on Nigerian Policemen and attacks on the Applicants' communities, it failed to use force to disperse the Fulani marauders for over one week until they fully mobilized and attacked and killed members of the Applicants' communities of Dong, Lawru, Shaforon, Kodomti, Baya, Nzoruwe etc.
- iii. A declaration that the Respondent was guilty of violating the right to life of the members of the Applicants' communities who were killed when Nigeria Air Force jets and a gunship were used to kill members of the Applicants' communities on the 4<sup>th</sup> day of December, 2017.
- iv. A declaration that the Respondent was in violation of its obligation to preserve the fundamental human rights of the Applicants to property when they refused, neglected and/or failed to stop the Fulani marauders from attacking and destroying the homes, animals, grains and other valuables on the 4<sup>th</sup> December, 2017.
- v. A declaration that the Defendant was in breach of its obligation to protect the rights of the Plaintiffs to property when Nigeria Airforce Jets bombed the Plaintiffs' communities and destroyed the Plaintiffs' homes, animals, grains and other valuables on 04/12/2017.

- vi. The Applicants claim N5, 000,000,000.00 (Five Billion Naira) as damages for the violation of the Applicants rights to life and property. Particulars:
  - a) 105 dead – N4, 976,290,765.00;
  - b) 80 injured – (Part of claim under (a)); and
  - c) N1, 023,709,235.00 – (One Billion, twenty three million, seven hundred and nine thousand, two hundred and thirty-five Naira) value of properties destroyed.

In the alternative to 6 above,

- vii. The Applicants claim the sum of N5, 000,000,000.00 (Five Billion Naira) as compensation for the violation of the fundamental rights of the Applicants’ members to life and property as guaranteed by Articles 4 and 14 of the African Charter on Human and People’s Rights but which were extinguished by the Respondent’s negligence or failure to fulfill its constitutional responsibilities to the Applicants’ deceases members.

## **VI. RESPONDENT’S CASE**

- a) Summary of facts

29. The Respondent denies the claims of the Applicants and makes some submissions in rebuttal.

30. The Respondent claims that both the Applicants and the Fulani herdsmen had co-habited in the community for a number of years and in that time there had emerged a history of vendetta between the two groups. The resulting crisis between the two groups started before the 4<sup>th</sup> December 2017 with the massacre of fifty-six (56) Fulani settlers including women and children, in the community which was allegedly done in retaliation by the local militia for the alleged killing of a farmer. That this incidence was widely reported by media outlets and agents of the Respondent were deployed in response to keeping the peace and preventing a face off.
31. The Respondent claims that on the 1<sup>st</sup> December, 2017 four (4) of its agents (Policemen) were killed in a gruesome manner in the community by armed invaders who were being repelled by the police. That its agents found it difficult to repel the armed attackers immediately as they had difficulty in navigating the terrain and that due to the security situation in the country, they found it difficult to mobilize adequate men.
32. That in a bid to restore stability in the area the Nigerian Police had to solicit help from the Nigerian Army as the former was overwhelmed by attackers who seemed to have appeared from the forest surrounding the Applicants' community.
33. That whilst it is true that the Nigerian Army fighter jets shot at the villagers the shooting had been done based on intelligence that the villagers had fled the community and that the villages were occupied by the attackers.

34. The Respondent denies any intentional killing of members of the Applicants' community as claimed and that their intervention resulted in the relatively low death toll.

35. The Respondent denies the allegation that it withdrew prior to the attack but avers that it could not launch an attack without cause as the rules of engagement did not permit launching an attack without cause. That it did use force necessary to repel the attackers but not to sanction killing of innocent villagers.

36. That notwithstanding the allegations made by the Applicants, it has been investigating and arresting suspects in relation to the incident. Further, that it is doing all it can to rehabilitate and resettle the members of the Applicants' community.

37. It also submits that the Applicants failed to support their claims with evidence and relied on the following cases as precedent for dismissing the claims proffered against it.

b) Pleas in law

38. The Respondent is relying on the following jurisprudence of the Court in support of its claim:

- i. Dexter Oil Ltd v Republic of Liberia (2019) JUDGMENT NO. ECW/CCJ/JUD/03/19 Unreported;
- ii. SERAP v The President of the Federal Republic of Nigeria (2010) CCJELR;
- iii. Daouda Garba v Republic of Benin (2010) CCJELR.

c) Reliefs sought

39. The Respondent is therefore seeking the following relief:

- i. An order dismissing the Applicants' suit for lack of evidence to substantiate their claims against the Respondent.

## **VII. The Applicants' Reply**

40. The Applicants admit that the Fulanis usually migrate to their community during the dry season and return to their home during the rainy season and that the relationship between the two groups has been relatively good with minor cases of encroachment and destruction of crops over time.

41. However, they deny that the killing of the fifty-six Fulani herdsmen sparked the incident. That their community does not maintain a militia and the alleged killing took place near Kikon village which was not among the villages attacked by the Fulani herdsmen and bombed by Nigerian forces.

42. The Applicants further contend that the six policemen reported to have been killed were not deployed for peacekeeping as alleged by the Respondent but were in fact part of the police patrol team in Numan Division and that the said killing was on the 1<sup>st</sup> December, 2017 and not the 4<sup>th</sup> December, 2017 as alleged.

43. The Applicants submit that it is untrue that the Respondent lacked adequate personnel to quell the incidence as there were allegedly 400 Mobile police officers deployed but were withdrawn on the 2<sup>nd</sup> December, 2017. The Applicants

submit further that the Police was pulled back to allow the military to intervene was untrue as neither was present in the area on the day of the attack by Fulani herdsmen.

44. It is the submission of the Applicants that the state of security in the country and the terrain cannot be used as an excuse for the late response or failure to protect the communities. That the security forces had done previous aerial surveillance over the area and had intelligence of the preparation of the attack. That the intelligence, as put forward by the Respondent, indicating that members of the Applicants' communities had fled their homes was false as the bodies found after the attack were those of the Applicants' communities as members of the Applicants' communities did not flee their homes as claimed.

45. The Applicants contend that the human casualty was not reduced by the Respondent but was in fact increased by its intervention with human beings and buildings not spared in the onslaught. That the claim by the Respondent that investigations are being done through its security agencies are false.

46. Further that Amnesty International, since the release of its 30<sup>th</sup> December 2018 report has:

- i. requested that Nigerian Armed Forces handover footage of 4<sup>th</sup> December 2017 for investigations;
- ii. That notwithstanding the call for investigation and prosecution of perpetrators the Respondent has failed to do so.

47. That the Respondent has only responded through its National Emergency Management Agency by providing two truck load of food and non-food items and the averment that it has made efforts with the Adamawa State Government to resettle and rehabilitate the Applicants is false. That there has been no effort to resettle and rehabilitate the communities since the incident. The Applicants reiterated their claims and urged the Court to grant the prayers in the initial application.

## VIII. JURISDICTION

48. The legal mandate, which is the Supplementary Protocol of the Court (A/SP.1/01/05), enables applications on claims of violation of human rights to be brought before the Court pursuant to Article 9 (4) (*supra*). This provision grants unfettered powers to the Court to hear and determine human rights violation occurring in a MEMBER State as in the case of *MOUSSA LEO KEITA V. REPUBLIC OF MALI* (2007), where the Court held that it had the required competence to adjudicate matters involving the violation of human rights within its Member States. (See also *SERAP V. FEDERAL REPUBLIC OF NIGERIA & 4 ORS* (2014) ECW/CCJ/JUD/16/14.)

49. The Court therefore, guided by the doctrine of *stare decisis*, has held on to the decision in *KEITA* (*supra*) and has continued to automatically exercise its jurisdiction over similar claims of human rights violation. Not surprisingly therefore, it affirmed this position in its decision in *CDD v. MAMADOU TANDJA* (2010) CCJELR at page 109 and further held *in BAKARE SARRE & 28 ORS V. MALI* (2011) (CCJELR) at page 57 it held that:



*“Once a human rights violation which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case.”*

50. In the instant application, which is premised on several allegations of human rights violations which includes the violation of the right to life and property pursuant to Article 9 (4) supra, Articles 1, 2, 4 and 14 of the African Charter on Human and People’s Rights, Articles 2 (1), 6(1) and 9 (1) of the International Covenant on Civil and Political Rights, the Court must firstly determine whether it has competence to hear the claims.

51. The Applicants claim that whilst living and dwelling in a particular locality in the Respondent State, they suffered indiscriminate killing of persons in their communities and alleged wanton destruction of their properties in the same localities due to the failure on the part of the Respondent to guarantee their security. These acts or omissions, according to the Applicants, constitute several breaches of international treaties of which the Respondent is a party to and should therefore be held liable.

52. Whilst, the Court concerns itself with the arguments and pieces of evidence in support of the claim it will also consider any objection/s put forward especially concerning its jurisdiction. In so doing, the Court has recorded no such objection as to jurisdiction and noting that the claims are within its mandate pursuant to Article 9 (4) supra, the Court considers that it possesses the requisite jurisdiction to hear and determine this application.

## IX. ADMISSIBILITY

53. The Applicants have filed this claim as victims and representatives of victims who died or having lived through and endured the violations perpetrated by the Respondent through its acts or its omission.

54. The victims herein are from of Dong, Lawuru, Shaforon, Kodomti. Pulum, Baya of Numan and Demsa Local Government Area (LGA) Adamawa State in the Federal Republic of Nigeria.

55. It goes without saying that all claims before the Court must pass a three prong standard pursuant Article 10 (d) of the Supplementary Protocol to wit:

*“Article 10: Access to the Court. Access to the Court is open to the following: ... d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: i. Not be anonymous; nor ii. Be made whilst the same matter has been instituted before another International Court for adjudication;”*

56. However, it is the considered opinion of this Court that the Applicants having brought the claim as victims in the first instance and as representatives of other victims in the second, will be admitted on the principle that all allegations of human rights are admissible without more. (See MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA RULING NO. ECW/CCJ/RUL/04/09 Reported in 2010 CCJELR at page 156).

57. The question as to whether the Applicants qualify as victims and in a representational capacity will be analyzed on the merits by this Court.

## **X. MERITS**

58. At this juncture the Court will consider a single issue for determination:

a. Whether from the totality of evidence the Applicants can claim as victims by themselves and in a representational capacity.

- **ISSUE:** *Whether from the totality of evidence the Applicants can claim as victims by themselves and in a representational capacity.*

### ***Applicant's Case***

59. The Applicants have brought their claims as victims and on behalf of the people of Dong, Lawuru, Shaforon, Kodomti, Pulum, Baya of Numan, and Demsa Local Government Area (LGA) Adamawa State in the Federal Republic of Nigeria.

60. The Applicants records names of victims and properties destroyed by the act of the Respondent and exhibits proof of bombs which were detonated by the Respondent is evidence of their participation in the carnage.

61. The Applicants therefore submits that the Respondents breached its obligations pursuant to Articles 1, 2, 4 and 14 of the African Charter on Human and People's Rights (hereinafter ACHPR); Articles 2 (1), 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights (hereinafter ICCPR); and Article 4 (g) of the Revised Treaty of the Economic Community of West African States.

62. The Applicants are praying from the Court, several declaratory reliefs pointing to a breach of duty on the part of the Respondent and are further seeking monetary compensation.

63. For this reason the Applicants are claiming several reliefs detailed in paragraph 28 above.

### *Respondent's Case*

64. The Respondent denies the claims of the Applicants and states that the Applicants and other victims have co-habited with the Fulani herdsmen until local militia killed fifty-six (56) Fulani in retaliation for the alleged killing of a local farmer.

65. The Respondent submits that the suit is premised on misplaced grievance. That it has supported the Applicant's State Government with funds and security to help re-settle the members of the community.

66. It is submitted by the Respondent that it had deployed security personnel in an effort to quell the situation having received information that there was an imminent face off. However, due to the death of four (4) police men on the 4<sup>th</sup> December 2017 whilst trying to repel invaders and the state of insecurity in the whole country it was difficult to mobilize more men.

67. That in a bid to contain the situation the police sort aerial assistance from the army who obliged with fighter jets that did not shoot at villagers but on persons

believed to be attackers based on the intelligence. The Respondent denies the claims that it shot at civilians and their property but states that its intervention reduced the casualty and its use of force was proportionate and necessary. It is the contention of the Respondent that they are not solely responsible for the attack on the Applicants.

68. That since the attack it had instituted investigations, rehabilitate and resettle victims of the incidence through the State Government. For these reasons, the Respondent prays the Court to dismiss the application for lack of evidence submitted by the Applicants to substantiate their claims.

### ***Analysis of the Court***

69. A victim of a human rights violation, pursuant to the fundamental treaties, is considered by this Court as someone who suffers individual or collective harm (or pain) such as physical or mental injury, emotional suffering, economic loss or generally any impairment of human rights as a result of acts or omissions that constitutes gross violation of human rights or serious violation of humanitarian law norms. However, the onus of establishing the victim status rests on the shoulders of the Applicant who must succeed if he successfully and satisfactorily establishes his victim status and who will equally fail if he fails to establish his victim status.

70. Therefore proof of victim status which is in tandem with “*locus standi*” is key to a successful claim pursuant to Article 10 (d) of the Supplementary Protocol 2005 (supra).

### ***Locus standi of the Applicants***

71. From the endorsement on the Initiating Application, the Court notes that the application was filed by the Applicants in two different capacities:

- i. Suing for themselves
- ii. Suing for and on behalf of the people of Dong, Lawuru, Shaforon, Kodomti. Pulum, Baya of Numan, and Demsa Local Government Area (LGA) Adamawa State in the Federal Republic of Nigeria.

#### **i. On the Applicants suing for themselves**

72. To determine whether the Applicants have the capacity to initiate the application for themselves, due regard must be had to the provisions of Article 10 (d) supra. The first condition precedent for Article 10 (d) is that the Applicant(s) must be a victim and this requirement must be established by the Applicant to the satisfaction of the Court.

73. The Court has considered the facts and evidence before it in support of the claims filed by the Applicants with aim of determining if the Applicants have the necessary '*locus standi*'. This Court has held previously in THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS ECW/CCJ/JUD/16/1(2014) CCJELR at page 17 that "*The law of locus standi 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.”*

74. Therefore, a person who possess *locus standi* is a victim either directly or indirectly. A victim has been defined by the European Court of Human Rights, in *GROPPERA RADIO AG AND OTHERS V SWITZERLAND* (Application no. 10890/84 judgment Strasbourg 28 March 1990, Groppera Radio AG), as a person who is directly affected by the act or omission in issue. International law has articulated the definition of victims in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Survivors of Violations of International Human Rights and Humanitarian Law, GA Res 60/147, Preamble, Sec IX, UN Doc A/RES/60/147 (March 21, 2006), to wit:

*“A victim is anyone who suffers individual or collective harm (or pain) such as physical or mental injury, emotional suffering, economic loss, or generally any impairment of human rights as a result of acts or omissions that constitute gross violations of human rights, or serious violations of humanitarian law norms.”*

75. This Court has kept with the definition of victims in its jurisprudence as in *CENTRE FOR DEMOCRACY AND DEVELOPMENT V. MAMADOU TANDJA & REPUBLIC OF NIGER* (2011) CCJELR at page 27, where it held that:

*“Cases shall be brought before the Court by natural or legal person[s] endowed, within the framework of their national laws, with the required legal capacity, and who, in addition, shall*

*justify their condition of being victim[s]...the Court recalls that when an application on human rights violation is brought before it, it is necessarily done so by a person who is a victim of the said violation against one or several Member States.”*

76. The Court continued to maintain the necessity of determination of capacity as a victim in the case of *AZIAGBEDE KOKOU & 68 ORS V. REPUBLIC OF TOGO*(2013) CCJELR at page 175, where it held that:

*“To claim to be a victim, there must exist a sufficient direct link between an applicant and the prejudice he deems to have suffered as a result of the alleged violation.”*

77. Also, in the case of *ODAFE OSERADA V. ECOWAS COUNCIL OF MINISTERS, ECOWAS PARLIAMENT & ECOWAS COMMISSION* (2008) CCJELR at page 27, this Court held that:

*“Generally, and from a legal standpoint, the necessity for an Applicant to provide justification of interest in a case is attested to by the adage that where there is no interest, there is no action, and also an interest is the measuring rod for an action. In other words, an application is admissible only when the applicant justifies that he brings a case before a Judge for the purposes of protecting an interest or defending an infringement of such. Such an interest must be direct, personal and certain.”*



78. The combined effect of the jurisprudence and statute is that an Applicant/s must establish a direct, utilitarian or instructive interest in any claim. The claim before the Court is brought by Applicants who are claiming violation of the right to life and property and upon whom the onus lies in adducing evidence establishing their loss. The Court considers that the Applicants have failed to establish any direct, utilitarian or instructive link with the violations and they have shown (by way of evidence) any personal loss or prejudice they have suffered as a result of the Respondent's act or omission.

79. The facts before the Court are bereft of evidence supporting the loss of life and property by the Applicants either as direct victims or indirect victims. Whilst the Court has taken notice of the all the evidence before it, the Applicants have not made a link with the evidence submitted to their claim as victims. The standard of this Court pursuant to its jurisprudence is that "*The Court will not act on mere allegations of violation, but each allegation must be substantiated with some concrete facts as the case may require.*" (See DOROTHY CHIOMA NJEMANZE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA (2008) CCJELR at page 38.)

80. For these reasons, the Court therefore holds that the Applicants do not possess the necessary capacity to qualify them as victims in accordance with the provisions of Article 10 (d) (i) of the Supplementary Protocol (supra). Consequently, the Court declares the Applicants are devoid of locus standi to act as victims and dismisses their claims.

**ii. On the Applicants suing in a representative capacity**

81. It is settled law in this Court that any action by an individual in a representative capacity must be supported by proof of mandate from the victims. The relevancy of mandate in a situation where an individual is not a victim or a close relative of the victim and is acting on behalf of the victim was emphatically laid out in *NOSA EHANIRE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA* (2017) JUDGMENT NO. ECW/CCJ/JUD/03/17 where the Court held that:

*“The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.”*

82. In the instant case, the Applicants also sought to initiate this action in a representative capacity. They sued for and on behalf of the People of Dong, Lawuru, Shaforon, Kodomti, Nzorue, Pulum, Baya of Numan, and Demsa Local Government Areas (LGAs) Adamawa State in the Federal Republic of Nigeria. The Applicants sought to rely on Exhibit C which is exhibited as a mandate granting the Applicants to act on behalf of victims of Dong, Lawuru, Shafoton, Kodomti, Nzorue, Pulum, Baya of Numan, and Demsa local Government Area.

83. The Court notes that this mandate, which is signed by a Secretary and Chairman does not contain the names of the persons endorsing the same. Furthermore, the Court considers that the mandate has not been taken under any form of judicial/legal oath which will enable this Court to rely on it as sufficiently adequate. The Court is not swayed with facts but rather by persuasive evidence that shifts the burden of proof. The evidence here exhibited lacks persuasive effect, therefore it cannot serve as a mandate in this instance that will vest authority in the Applicants to represent other victims.

84. It is trite law that the usual practice with the grant of a mandate/authority is that the grantor must be identified with reasonable certainty as the person having the competence and the capacity to grant the power it purports to have been granted. Generally, in such circumstances, it would have been credible and acceptable as valid if the mandate/authority would have been granted by the village or community head as people in authority over their communities or in the alternative, the surviving victims and/or the personal representatives of the deceased victim done under oath; as these are considered the most appropriate and competent persons to grant the mandate/authority in the instant case.

85. In the circumstances therefore, the Court holds that mandate/authority exhibited as Exhibit C and relied upon by the Applicants, lacks persuasive influence and cannot therefore be relied by this Court. The claim of the Applicants that they are acting in a representative capacity is therefore dismissed for lack of locus standi.

86. Consequently, whilst the Applicants allege the violation of Articles 1, 2, 4 & 14 of the ACHPR and Articles 2 (1), 6 (1) of the ICCPR, the Court will not indulge them in analyzing same as they have no locus standi therein. For the reasons stated above the Court therefore, dismisses all claims pursuant to the aforementioned provisions.

## **XI. OPERATIVE CLAUSE**

For the reasons stated above the court sitting in public after hearing both parties:

As to jurisdiction:

- i. Declares that it has jurisdiction to hear and determine the application.

As to admissibility

- ii. Declares the application admissible.

As to merits of the case:

- iii. Declares that the Applicants have no locus standi to to initiate this application as individual victims.
- iv. Declares that the Applicants have no locus standi to act in a representative capacity.
- v. Dismisses this application and all the claims of the Applicants.

**XII. COSTS**

- i. Orders the parties to bear their own costs.

Hon. Justice Gberi-Be OUATTARA .....

Hon. Justice Dupe ATOKI .....

Hon, Justice Keikura BANGURA .....

Maître Aboubacar DIAKITE - Registrar .....

Done in Ivory Coast, this 21<sup>st</sup> day of October, 2021 in English and translated into French and Portuguese.