

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTÉ,
CEDEAO
TRIBUNAL DE JUSTIÇA DA COMUNIDADE,
CEDEAO



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

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

In the Matter of

HAMMA HIYA & ANOR V REPUBLIC OF MALI

Application No: ECW/CCJ/APP/09/18 Judgment NO. ECW/CCJ/JUD/05/21

JUDGMENT

ABUJA

9 March 2021

HAMMA HIYA &

MADAM BINTOU ALASSANE MAIGA

-

APPLICANTS

V.

REPUBLIC OF MALI

-

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Dupe ATOKI

- Member/Judge Rapporteur

Hon. Justice Januaria T. Silva Moreira COSTA

- Member

ASSISTED BY:

Mr. Tony ANENE- MAIDOH

- Chief Registrar

REPRESENTATION OF PARTIES:

Maitre Moussa Maiga

Magatte A. Seye

Balla Seye



Counsel for Applicants

Mr Youssouf Diarra, Director General,

State Litigations Department



- Counsel for the Respondent



Heure

I. JUDGMENT:

1. This is the judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES:

2. The Applicants, **Mr Hamma Hiya** and **Madam Bintou Alassane Maiga** (hereinafter referred to as the “First Applicant” and the “Second Applicant” respectively and jointly as “the Applicants”), are Malian nationals domiciled in Gao Mali.
3. The Application is brought against the **Republic of Mali** (hereinafter referred to as “the Respondent”), a member State of the ECOWAS and signatory to the ECOWAS Treaty.

III. INTRODUCTION

4. The subject matter of the Application arose from the Applicants’ allegation that the Respondent violated their rights to property, by compulsorily acquiring their land without informing them prior to the acquisition or paying them any compensation.

  3


IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed on 22 January 2018 and served on the Respondent on 7 February 2018.
6. Having failed to file a response within the set time limit, the Respondent filed an Application for extension of time on 7 March 2018. On 14 May 2019, the Court gave the Respondent two weeks to file its defence during its hearing of the Application.
7. The Respondent's response to the Application was filed on 31 May 2019 and served on the Applicants, who then filed their reply on 24 June 2019. The reply was served on the Respondent on 28 June 2019.
8. The Court held hearings on the case on 28 June 2019 and 9 December 2019. On the latter date, the Court relying on Article 58 of the Rules of Court, on measures on inquiry, proceeded under Article 45 of its Rules. It ordered the Registry of the Court to appoint an expert in the field of estate valuation to carry out a valuation of the property in contention and submit a report of same to the Court in two months.
9. The Real Estate Valuation Expert was appointed on 10 January 2020, and his valuation report was submitted to the Registry of the Court on 29 January 2021.

   4

V. APPLICANT'S CASE

a) Summary of facts

10. In their submission filed on the 5th of February 2018, the first Applicant averred that he owns a plot of land under Land Title No 1788 of Cercle de Gao, measuring 1 ha 2a 76ca. The second Applicant owns a plot of land registered under Land Title No 1787 of Cercle de Gao measuring 1 ha 2a 76ca. These two plots of land are adjacent to each other and are located at Quartier Chateau EST in the town of Gao.

11. The Applicants, who are traders, state that they have designed development projects to be implemented on the two plots. They allege that as they were preparing to develop the said plots, they noticed that the United Nations Mission in Mali, that is, the United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), was carrying out construction works on the plots of land.

12. They immediately informed the Government Department, the Court Bailiff at Gao, to take official notice of the occupation of the two plots of land. The Bailiff accompanied by an officer of l'insitut Geographique du Mali, officially visited the land and noticed that the development being carried out by MINUSMA had encroached on a surface area of 39a 22ca of land belonging to the first Applicant.

 5

13. The first Applicant also reported the matter to MINUSMA to complain about the encroachment on his land, requesting that they quit the location. In response, MINUSMA handed over a letter No 0223/MDEAFP-SG dated 19 May 2014, from the Honourable Minister of Foreign Affairs, authorising the handing over of the plots of land to MINUSMA.
14. The Applicants argued that the approval of allocation of the undeveloped land belonging to the Applicants, to the Ministry of Foreign Affairs for the needs of MINUSMA in GAO, is illegal and detrimental to the ownership of private property.
15. They further claim that in June 2016, the construction works of MINUSMA had covered the entire plots of land belonging to the Applicants and despite their protests, they have continued to occupy the plots of land.
16. The Applicants further stated that since then, they have made several efforts to inform the Minister of Foreign Affairs of this illegal occupation and requested reparation for the loss and prejudice they suffered. They also requested for compensatory remittance on their land in the form of rent. Despite undertakings made by the Minister of Foreign Affairs to take measures to ensure that something was done on the issue, two years after, no step has been taken by the Respondent to compensate the Applicants.
17. The Applicants express their powerlessness as they realise that they have lost their land to the Government. They state that they have suffered moral, psychological, physical and financial torment, as well as true and serious

6


prejudice, having been denied every form of compensation by the Respondent.

b) Pleas in law

18. The Applicants relied on the following laws:

- i. Article 17 of the Universal Declaration of Human Rights (UDHR) and Article 14 of the African Charter on Human and Peoples' Rights (the Charter), on the right to property.
- ii. Article 13 of the Constitution of Mali.
- iii. Article 293 of the Malian Code Concerning State Owned and Privately Owned Lands.
- iv. Article 295 of the Malian Code Concerning State Owned and Privately Owned Lands.

c) Reliefs sought

19. The Applicants' prayers are as follows:

- i. A Finding of the Court that the Respondent is in violation of their right to property;



- ii. An Order of Court for the Respondent to pay a compensation of three hundred and fifty CFA Francs (CFA 350,000,000 FCFA) to the first Applicant;
- iii. An Order of Court for the Respondent to pay compensation of three hundred and fifty CFA Francs (CFA 350,000,000 FCFA) to the second Applicant;
- iv. An Order of Court that the Respondent bears the costs of the proceedings.

VI. RESPONDENT'S CASE

a) Summary of facts

20. The Respondent submits that on 1 July 2013, the Government of the Republic of Mali concluded an agreement with the United Nations regarding the status of its mission in Mali, that is, MINUSMA. In furtherance of this agreement, the Government of Mali through its Ministry of Foreign Affairs allocated two plots of land to MINUSMA at GAO, for the purposes of building its headquarters and other premises required for conducting its operational and administrative activities.

21. The Respondent did not deny the fact that the land allocated to the Ministry of Foreign Affairs for the purposes of MINUSMA belongs to the Applicants and that they are the title owners of the land titles No. 1788 and 1789.



22. The Respondent confirmed that they are aware that on 6 September 2016, the 1st Applicant wrote a complaint letter to the Ministry of Foreign Affairs, asking for compensation for the expropriation of his land.

23. However they state that the issue originated from an error of demarcation of the land and not a willful occupation of privately owned property belonging to the Applicants, which can be resolved by a reconnaissance of the plots of land at stake.

24. The Respondent contends that in any case, the matter is a dispute between State and individual citizens, which is not characteristic of a human rights violation and urges the Court to dismiss the case.

25. Regarding the claim for compensation made by the Applicants, the Respondent argues that their claim of three hundred and fifty million FCFA as compensation is not objective or reasonable. They state that when the Applicants purchased the plots of land in 2011, they were sold for one million, three hundred and eighty seven thousand, two hundred and sixty FCFA (FCFA 1, 387,260) per plot of land. They further state that the plots of land are undeveloped and were not evaluated by the Applicants.

26. The Respondent concludes by praying the Court to dismiss the claims of the Applicants as unsubstantiated.

 CA ⁹
Hew

VII. JURISDICTION

27. The Respondent raised an objection on the jurisdiction of the Court on the ground that the case is not characteristic of a human rights violation, as it concerns a dispute between the State and individual citizens. The Applicant on its part did not make any submission in regard to this objection.

28. The competence of the Court is derived from Article 9(4) of the Supplementary Protocol, which deals with the jurisdiction of the Court. It provides, "*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*"

29. The Court notes that the subject matter of the Application is an allegation of expropriation of the lands of the Applicants, which is within the remit of Article 14 of the African Charter.

30. The Court notes the assertion of the Respondent in its submission, wherein it states that the dispute is between individual citizens and the State and should not be characterised as a human rights violation. In regard to this assertion, the Court recalls its jurisprudence in which it has established that a mere invocation of the violation of human rights by an Applicant is sufficient to empower the Court to assume jurisdiction over the case. In *KAREEM MEISSA WADE V. REPUBLIC OF SENEGAL*, (2013) CCJELR PAGE. 259 PARAGRAPH 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.*" See *SERAP V. FRN & 4 OTHERS ECW/CCJ/JUD/16/14*. See

10


also BAKARE SARRE V MALI, (2011) CCJELR PAGE 57 AND DR. GEORGE S. BOLEY V THE REPUBLIC OF LIBERIA & 3 ORS. ECW/CCJ/JUD/24/19.

31. In the instant case, the Applicants alleged that the Respondent violated their rights to property. Based on the provisions of Article 9(4) of the Supplementary Protocol, these allegations being of human rights character sufficiently clothes the Court with jurisdiction to hear the Application.

32. In view of the above, the Court holds that it has jurisdiction to consider the Application and accordingly dismisses the objection of the Respondent to that effect.

VIII. ADMISSIBILITY

33. The Court holds that the Application is admissible.

IX. MERITS

On the alleged violation of the right to property

Analysis of the Court

34. Article 14 of the Charter which regulates the right to property states 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.”

35. In order to put in clear perspective the arguments of both parties, it is necessary at this point to define “Property”. The European Court of Human Right (ECHR) 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 V FEDERAL REPUBLIC OF NIGERIA & ORS, ECW/CCJ/JUD/20/19 UNREPORTED.

36. In the instant case, the first Applicant pleaded that a land measuring 1 ha 2a 76ca was allocated to him and registered in the Lands Registry as Title No 1788 of Cercle de GAO. The second Applicant also pleaded an allocation of land equally measuring 1 ha 2a 76ca and registered under Land Title No

12


1787 of Cercle de GAO. These two plots of land are adjacent to each other and are located at Quartier Chateau EST in the town of GAO. By the definition above, the subject matter being immoveable assets are within the contemplation of the meaning of property and are thus so classified.

37. Having established that the subject matter of the Applicants' claim is property, it is now necessary to analyse the provision and content of Article 14 of the Charter viz a viz the facts presented by both parties. The import of Article 14 is three fold; 1) It places obligation on State Parties to respect and protect the right to property of all and therefore ensure a peaceful enjoyment of this right. 2) However the right is not absolute, it accommodates 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 amounts to the violation of Article 14.

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

- a) That the Applicant has a proprietary interest or right over the said property.
- b) That there was an interference with the possession by the Respondent.



- c) That the interference was for public purpose.
- d) That the interference was in accordance with the appropriate laws.

a) Proof of Applicants' proprietary interest over the said property.

39. 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.

40. The pleadings of the Applicants clearly established with documentary evidence their proprietary interests and right over the disputed property derived from the authority of the Respondent and confirmed by their registration in the Land Registry of the Respondent. Indeed, the Respondent did not deny the fact that the Applicants are the legal holders of the lands with titles No 1788 and 1789. Since the proprietary rights of the Applicants is not disputed by the Respondent, the Court hastens to hold that same has been established in favour of the two Applicants who have demonstrated the existence of a right over the listed immoveable properties.

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

41. While the Court is satisfied that the Applicants have established their proprietary interests in the said property, they must also prove that the Respondent interfered with the peaceful enjoyment of their rights denying



them the use of the said lands. It is the case of the Applicants that they suddenly noticed the presence of MINUSMA on their property and when they were confronted, a letter from the Foreign Affairs Ministry was produced showing the lands have been allocated to them (MINUSMA). It is instructive that the Respondent did not deny this fact. Rather, they ascribed the act to an error, which a re-demarcation will correct. The intrusion on the land by MINUSMA is a clear de facto deprivation of the Applicants' peaceful enjoyment of their property.

42. In addressing this point, the Court aligns with the opinion of the ECHR 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).

43. The fact that construction work by another party was in progress on the Applicants' lands is evidence of an effective takeover of the property of the Applicants and is nothing short of a *de facto* interference which hindered their quiet enjoyment of the lands. In essence, the Applicant was dispossessed of their immovable property and prevented from putting up any construction of their choice.

44. Since this allegation of interference is uncontroverted by the Respondent, the Court holds that the Applicants have proved that the Respondent interfered

GA
15
Heur

with the quiet enjoyment of the possession of the said property and is therefore in violation of Article 14 of the Charter.

c) Proof that the interference was in accordance with the appropriate laws.

45. 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.

46. In addressing whether the Respondent acted in accordance with the Law when it confiscated the Applicants' property, it is necessary to reproduce again the provision of Article 14 of the Charter, which is pari-material with Article 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***

47. The principle of legality is inherent in the Charter as a whole and must be complied with, whichever of the other conditions of Article 14 applies. This is more so that no action can survive on illegality, which is captured in the Latin phrase: *Ex turpi causa non-oritur actio.*

48. The Court will now proceed to address the requirement of legality of the law, which is whether the interference was in accordance with the law. The purpose of the phrase "in accordance with the law" is to ensure that domestic



legislative or judicial authority limits the scope for arbitrary tampering with rights by the executive. In *FESTUS A.O. OGWUCHE V. FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/02/18, PAGE 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.”

49. In considering whether the alleged interference is in accordance with the Law, the Court must first identify the law under which the Respondent acted. In this wise the Court notes that the Applicants placed before the Court three laws governing the expropriation of land in the Respondents State. 1) Article 13 of the Constitution of Mali, which provides, *“The right to property shall be guaranteed. Expropriation shall only take place for public utility purposes and against a just and prior compensation.”* 2) Article 293 of the Malian Code Concerning State-Owned and Privately-Owned Lands, which states that, *“Expropriation for public utility purposes shall be carried out upon the dictates of the law. No one shall suffer expropriation save for public utility purposes and upon payment of a just and prior compensation.”* 3) Article 295 of the same code, provides that, *“Expropriation shall not be pronounced until the public utility purpose is declared and taken note of in forms described in the following articles...”*

50. Indeed the combined effect of these Articles are as follows; expropriation shall only take place when; 1) it is carried out upon the dictates of the law;



- 2) it is for public utility; 3) upon payment of just and prior compensation;
- 4) a declaration in the prescribed form of the intended public use.

51. It is the contention of the Applicants that none of these conditions precedent was observed before the expropriation. They stated that Respondent did not inform them before entry upon their land. Indeed it was their confrontation of MINUMSA that elicited a letter No 0223/MDEAFP-SG dated 19 May 2014 written by the Foreign Affairs Ministry granting them right to build their headquarters. Furthermore, the Applicants insist that no public purpose was declared in the prescribed forms and no compensation was paid prior to the expropriation.

52. The Respondent did not deny that prior notice was not given to the Applicants nor that compensation was not paid, rather they queried the quantum of compensation claimed since no valuation of the property was carried out by the Applicants.

53. In view of the above, the Court finds that the Respondent has not established that it acted in accordance with the law, and therefore holds that the Respondent is in violation of Article 14 of the Charter.

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

54. Even though the requirement for legality is stated as the last condition under Article 14, the Court has earlier stated that the application of the last two provisos in the Article is cumulative. That is, a violation of one is a violation

18


of the entire provision. In this regard, the Court aligns itself with the opinion of the ECHR below which prioritises legality of the law over the other conditions,

“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).

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

Whether the expropriation of the Applicants’ property without a fair and prior compensation violates the Applicants’ right to property.

56. The case of the Applicants is that following the expropriation of their property no compensation was paid prior to and thereafter the act; consequently they claimed that the Respondent violated their right to property. The Respondent did not controvert this claim.



Analysis of the Court

57. 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 way it swings, compensation is obligatory. In a 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 *restitutio in integrum* is not possible. 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.

58. In addition, when the State has found it necessary to compulsorily acquire a property belonging to an individual or group, it is expected to give prior notice and offer compensation to such individual or group in a prompt manner. See African Court on Human and Peoples' Rights' (AfCHPR) decision in AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS V KENYA, APPLICATION NO. 006/2012, JUDGMENT OF 26 MAY 2017, wherein it stated "*The Court holds that by expelling the Ogieks from their ancestral lands against their will, without prior consultation and without respecting the conditions of expulsion in the interest of public need, the Respondent violated their rights to land as defined above and as guaranteed by Article 14 of the Charter.*"

59. The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights

captures the whole essence of both the obligation of State and right of an applicant as it relates to ownership of a property and supports all the analysis proffered above by the Court. The principles assert that State Parties shall;

- a. *Ensure peaceful enjoyment of property and protection from forced eviction. This obligation implies that the State shall protect the enjoyment in all its forms, from interference by third parties as well as its own agents.*
- b. *Define by law the terms and conditions for the acquisition, nationalisation or expropriation of property based on acting in the public interest at all times.*
- c. *Ensure that "public need or in the general interest of the community" as expressed under the Charter serves legitimate public interest objectives such as economic reform or measures designed to achieve greater social justice.*
- d. *Ensure effective public participation and transparency in any acquisition process.*
- e. *Ensure that compensation for public acquisition of property fairly balances the rights of the individual and the wider interests of society. In general, compensation should be reasonably related to the market value of the acquired property. However, in certain circumstances public interest may require less than market value compensation or, exceptionally, none at all"*

60. 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 Applicants violates their right to property contrary to Article 14 of the Charter.

X. REPARATIONS

61. The Applicants claim that following the denial of their right to property, they have suffered moral prejudice, that is, psychological, physical and financial torment. They then prayed the Court to award three hundred and fifty million CFA Francs (CFA350, 000,000) each, for the harms they have suffered. On the other hand the Respondent argued that the compensation claimed is neither objective nor reasonable.

Analysis of the Court

62. It is an established principle of international law and the jurisprudence of this Court, that when a State has been found in violation of the rights of an individual(s), it shall take measures to give effective remedies to the victim(s), these includes restitution and compensation. See *DJOT BAYI TALBIA & ORS V FEDERAL REPUBLIC OF NIGERIA & 3 ORS*, SUIT NO ECW/CCJ/APP/10/06 (2004-2009) CCJELR, 267; and AFCHPR decision in *REVEREND CHRISTOPHER R. MTIKILA V UNITED REPUBLIC OF TANZANIA (REPARATIONS)*(2014) 1 AFCHPR 72, PARAGRAPH 29.

63. In light of its finding that the Respondent State violated the rights of the Applicants to property, contrary to the Charter and UDHR, the Court holds that the Applicants are entitled to compensation.



64. Reparation for violation of the right of an applicant includes restitution and compensation amongst others. Restitution in this instance implies restoring the Applicants as far as possible to their status quo. In view of the fact that the properties in question are already occupied by MINUSMA, such order has become otiose. The Court will instead seek to award compensation in value of the current market price of the property and a sum appropriate for moral prejudice suffered due to lack of use of the property.

65. In computing the compensation payable, the Court noted that the Respondent argued that the compensation claimed is neither objective nor reasonable. Additionally, that the Applicants did not provide a valuation report in support of the amount of three hundred and fifty million FCFA (350, 000,000 FCFA) claimed. In view of this lapse and in the interest of justice, the Court in exercising its power under Article 45 of the Rules of Court ordered the Registry on the 9th of December 2019 to appoint an expert to conduct a professional appraisal of the market value of the properties in question.

66. An Expert (El Hadj Mamdou Drame) to which both parties submitted having carried out the Order of the Court, submitted a report wherein the current value of each property is put at two hundred and eighty-eight million, four hundred and eleven thousand, two hundred FCFA (FCFA288 411 200). This is so because the sizes of both lands are the same, they therefore each attract the same value.

67. The Court hereby adopts the valuation report of the expert and accordingly orders the Respondent to pay each Applicant the sum of two hundred and



eighty-eight million, four hundred and eleven thousand, two hundred FCFA (FCFA288 411 200), commensurate to the current market value of the lands compulsorily acquired.

68. The Court equally awards the sum of ten million FCFA (10,000,000 FCFA) to each Applicant, as compensation for the moral prejudice they suffered as a result of loss of use of their property compulsorily acquired by the Respondent.

XI. COSTS

69. Article 66 (1) of the Rules provides, *"A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings..."*

70. Article 66 (2) of the Rules of Court provides, *"The unsuccessful party shall be ordered to pay costs if they have been applied for in the successful party's pleadings."*

71. The Applicants prayed the Court to order the Respondent to bear the costs of the proceedings. The Respondent on its part made no submission as to costs.

72. Pursuant to the provision of Article 66 (2) of the Rules, the Applicants ought to make an application regarding costs with full details of expenses incurred for the proceedings before the Court. In the instant case, the Applicants did not provide such details. However, the Court orders the Chief Registrar to assess cost payable.



XII. 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.

As to admissibility:

- ii. **Declares** the application admissible

As to merits:

- iii. **Finds** the violation of the Applicants' rights to property by the Respondent contrary to Article to Article 14 of the Charter;

As to reparation:

Orders

- iv. The Respondent to pay the first Applicant the sum of two hundred and eighty-eight million, four hundred and eleven thousand, two hundred FCFA (FCFA 288 411 200), as compensation for violation of his right to property;
- v. The Respondent to pay the second Applicant the sum of two hundred and eighty-eight million, four hundred and eleven thousand, two hundred FCFA (FCFA 288 411 200), as compensation for violation of her right to property;



- vi. The Respondent to pay the first Applicant, ten million FCFA (FCFA 10,000,000), as compensation for moral prejudice caused to him;
- vii. The Respondent State to pay the second Applicant ten million FCFA (FCFA 10,000,000), as compensation for moral prejudice caused to her.

As to compliance and reporting

- viii. **Orders** the Respondent State to submit to the Court within three (3) months of the date of the notification of this judgment a report on the measures taken to implement the orders set-forth herein.
- ix. The Court hereby orders the Chief Registrar to assess cost payable.

Hon. Justice Gberi-Be **OUATTARA**



Hon, Justice Dupe **ATOKI**



Hon. Justice Januaria T. Silva Moreira **COSTA**



Mr. Tony **ANENE- MAIDOH**



Done in Abuja, this 9th Day of March 2021 in English and translated into French and Portuguese.

