



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

In the Matter of

**THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS &
ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/15/16: Judgment no. ECW/CCJ/JUD/08/21

JUDGMENT

ABUJA

26 April 2021

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

SUIT NO: ECW/CCJ/APP/15/16

JUDGMENT NO. ECW/CCJ/JUD/08/21

BETWEEN:

**THE REGISTERED TRUSTEES OF THE
SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY
PROJECT (SERAP)**

---- APPLICANT

AND

FEDERAL REPUBLIC OF NIGERIA

---- DEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE	- Presiding
Hon. Justice Gberi-Be OUATTARA	- Member
Hon. Justice Januaria T. Silva Moreira COSTA	- Member

ASSISTED BY:

Mr. Athanase **ATANNON** - Deputy Chief Registrar

REPRESENTATION OF PARTIES:

Applicant's Solicitor

Olufunmilola **FALANA**, (Mrs.) Esq.

Olusola **EGBEYINKA**, Esq. LL. M

FALANA & FALANA'S CHAMBERS

Respondant's Solicitors

T. A. GAZALI, SAN

Adedayo **OGUNDELE** (Ms.)

Office of the Attorney General of the Federation

Federal Ministry of Justice, Abuja

JUDGMENT

1. The judgment was read virtually pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

DESCRIPTION OF PARTIES

2. The Applicant is the Socio-Economic Rights & Accountability Project (SERAP), a human rights Non-Governmental Organization registered under the laws of the Federal Government of Nigeria, and whose mandates include the promotion of respect for socio-economic rights of Nigerians and promoting transparency and accountability of government and its institutions, through litigation, research and publications, advocacy and monitoring.
3. The Defendant is the government of the Federal Republic of Nigeria, a member State of ECOWAS and a signatory of the African Charter on Human and Peoples' Rights (hereinafter referred to as the "African Charter").

INTRODUCTION

Subject Matter of Proceedings

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4. Violations of the human rights of Nigerians and other individuals to life, to security of the human person, to the respect of the dignity inherent in a human being, and right to property, guaranteed by Articles 1, 2, 3, 4, 5, 6, and 14 of the African Charter; Articles 1, 2, 3, 7, 8, and 17 of the Universal Declaration of Human Rights; Articles 2 and 6(1) of the International Covenant on Civil and Political Rights.

PROCEDURE BEFORE THE COURT

5. The Applicant's Initiating Application was filed at the registry of the Court on the 4/05/16 and served on the Respondent on the 10/05/16.
6. The first Court session was held on the 9/03/17 where all the parties were represented by their counsel in Court. However, the case was adjourned because of the absence of one member of the panel of judges. The case was again adjourned on the second and third Court sessions on the 18/10/17 and 12/02/18 respectively for translation of Court processes.
7. The Applicant filed a motion for default judgment on the 5/02/18 which was served on the Respondent on the 8/02/18.
8. The case was adjourned for hearing at the fourth court session held on the 3/03/20 where the Applicant's counsel was present but the Respondent was absent and not represented.
9. The Respondent filed a motion for extension of time to file its defence together with the substantive defence on the 1/02/21 and were all served on the Applicant on the 2/02/21.
10. The last court session was held on the 5/02/21 wherein all parties were represented by counsel. The motion for extension of time was moved by the Respondent's Counsel and granted by the Court to regularize the defence of the

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Respondent. The case was then heard on the merits whereby counsel for the parties adopted their pleadings as their legal arguments in the matter and the case was adjourned for judgment.

APPLICANT'S CASE:

a. Summary of facts:

11. The Applicant is alleging that according to reports and available evidence, military, police, herdsmen and other unknown perpetrators have for many years unlawfully killed, raped, and maimed hundreds of innocent people and destroyed property in many parts of the country. Cases of unlawful killings by government agents, private actors and other unknown perpetrators continue to be reported. Extra-judicial execution of criminal suspects by the police and the unlawful killing of unarmed civilians including women and children by the armed forces have continued unabated.
12. The Applicant again states that scores of people have been killed in political clashes in several parts of the country citing the instance of February 22, 2016, where a platoon of soldiers allegedly invaded Ogoniland in Rivers state and killed three unarmed youth without any investigations and prosecution of the culprits despite persistent demand by the Movement for the Survival of Ogoni People.
13. The Applicant also alleges that Army officers and soldiers who engage in the unlawful killing of innocent people in the north east region and police, herdsmen and other unknown perpetrators continue to enjoy immunity from prosecution.

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14. The Applicant is further alleging that the Police Commands across the federation put forth various pretexts to justify extrajudicial executions by convening press conferences where hundreds of detained armed robbery and kidnap suspects are paraded before the media. Upon the conclusion of such media briefing majority of the suspects are extra-judicially executed by the anti-robbery squads of the Police and their dead bodies taken out at night and secretly buried in unmarked graves by the illegal executioners.

15. According to the Applicant, there are reports and complaints by family members of a number of criminal suspects who have been unlawfully killed by the Police under the pretext that they were trying to escape from custody. When a victim is killed in custody, an attempted escape may be cited. When the victim is killed before being taken into custody, his status as an armed robber may be cited. The Applicant states that resort to these pretexts is facilitated by a persistent culture of impunity of perpetrators.

16. It is the case of the Applicants that the unlawful killing of unarmed citizens have continued for many years under successive governments, including the military invasions of Odi in Bayelsa state (1999), Zaki Biam in Benue State (2001) and Gbaramotu in Delta state (2009). These serious violations of human rights are fueled by a persistent culture of impunity of perpetrators which has resulted in the following alleged reported cases:

- i. On December 12, 2015 the armed troops from the 1st Division of the Nigerian Army was ordered to shoot the worshipers at a religious convention held in Zaria, Kaduna by the Islamic Movement in Nigeria

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and in the process, hundreds of people were reportedly killed in cold blood.

- ii. Two days later, the leader of the Movement, Sheik Ibraheem Zakzaky and members of his family including his wife and children who were not at the venue of the convention were attacked in their private house by the soldiers killing three of his children in his presence while other houses were set ablaze by the soldiers.
- iii. That the army secretly buried three hundred and forty seven (347) dead bodies of the slain members of the Movement in a mass grave in the State and those suspected of having committed such crimes against Nigerian citizens are walking free.
- iv. There are also reports of scores of young people killed in the eastern part of the country by the combined team of the army and police for agitating for the state of Biafra.
- v. In several parts of the country, violent clashes between herdsmen and farmers have resulted in mass killings, particularly in Benue and Taraba States, not less than 500 farmers were recently killed by armed herdsmen due to negligence on the part of security forces. Herdsmen and other unknown perpetrators have also killed several people in attacks in Nimbo community in Uzo Uwani Local Government of Enugu State; and many injured victims have now become Internally Displaced Persons (IDPs). Suspected perpetrators have yet to be brought to justice.

17. The Applicant is saying that some unknown perpetrators have taken advantage of the growing culture of official impunity to engage in savage killings, abductions and other primitive brutalization of unarmed people. Some of the victims of kidnapping are brutally killed while the hapless families of others pay huge ransom to secure their release. In 2013 over a hundred and fifty (150) policemen and State Security Service (SSS) operatives in Nasarawa State were abducted and killed.

18. The Applicant contends that the continuing attacks, killings, and destruction of property by military, police, herdsmen and other unknown perpetrators across the country amount to serious violations of human rights of the rights to life, to the security and dignity of the human person, and to property.

19. The Applicant further contends that the above highlighted human rights are recognized and guaranteed by the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and other relevant human rights treaties to which Nigeria is a state party.

b. Summary of Pleas in law:

20. The Applicant pleaded Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS), 1993; Article 1, 2, 3, 4, 5 and 14 of the African Charter.

c. Reliefs sought:

21. The Applicant therefore is asking the Court for the following reliefs:

- i. *A DECLARATION that the attacks, killings, raping and maiming of citizens and other residents and destruction of property and other serious human rights violations and abuses across the country by the military, police, herdsmen and other unknown perpetrators amount to failure by the Respondent to exercise due diligence to prevent the attacks and killings and cannot be justified under any circumstances, and therefore constitutes a serious breach of Nigeria's international human rights obligations and commitments to ensure and secure the rights to life, to dignity and security of the human person, and to property, guaranteed under the African Charter on Human and Peoples' Rights, and the UN International Covenant on Civil and Political Rights to which Nigeria is a state party.*

- ii. *A DECLARATION that the failure of the Respondent to exercise due diligence and to take steps to prevent attacks, killings, raping, and maiming of hundreds of Nigerians and other residents and destruction of property and other serious human rights violations and abuses by the military, police, herdsmen and other unknown perpetrators, and to conduct prompt, impartial, thorough and transparent investigations and to hold those responsible to account, is unlawful as it amounts to breaches of obligations to respect, protect, promote and fulfil the human rights guaranteed under the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights to which Nigeria is a state party.*

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- iii. *A **DECLARATION** that the failure of the Respondent to provide for an effective remedy and reparation for the victims, is unlawful as it amounts to breaches of obligations to respect, protect, promote and fulfil the human rights guaranteed under the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights to which Nigeria is a state party.*
- iv. *A **DECLARATION** that the failure of the Respondent to provide an environment necessary for securing and promoting the enjoyment of the human rights to life, dignity and security of the person, and to property, is unlawful as it amounts to breaches of obligations to promote and fulfil the human rights guaranteed under the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights to which Nigeria is a state party.*
- v. ***AN ORDER** directing the Respondent and/or its agents individually and/or collectively to respect, protect, promote, and fulfil the human rights of Nigerians and residents and communities across the country that have suffered attacks and human rights violations abuses by the military, police, herdsmen and other unknown perpetrators.*
- vi. ***AN ORDER** directing the Respondent to investigate all cases of unlawful killings noted herein and pay adequate money compensation of N50 million to each of the dependents.*

- vii. *AN ORDER directing the Respondent and/or its agents individually and/or collectively to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honourable Court may deem fit to grant to the victims of attacks by the military, police, herdsmen and other unknown perpetrators.*

RESPONDENT'S CASE:

a. Summary of facts:

22. The Respondent denies the capacity and the mandate of the Applicant and demands a strict proof of same.
23. In relation to the alleged violations committed against members of the Islamic Movement of Nigeria, the Respondent states that the Movement was proscribed as a terrorist organisation by an order of the Federal High Court on the 26th of July 2019 and its leader IMN Shiek Ibrahim El Zakzaky is currently facing trial at the Kaduna State High Court on an eight (8) count charge on culpable homicide.
24. Furthermore, the Respondent states that the alleged victims of the incident that occurred on the 12th December 2015 (particularly Shiek El Zakzaky and his wife) instituted suits for the enforcement of their fundamental rights before the Federal High Court sitting at Abuja and Kaduna in FHC/ABJ/CS/247/2016, Sheikh Ibraheem El Zakzaky v. Nigerian Army & 4ors, FHC/ABJ/CS/246/2016, Mallama Zeenah Ibraheem v. Nigerian Army & 4ors, FHC/ABJ/281/16 Sheikh Ibraheem El Zakzaky v. State Security Service & 2 ors

and FHC/KD/CS/28/16 Sheikh Ibraheem El Zakzaky v. Nigerian Army & 4 ors, respectively.

25. The Respondent states it appealed the decision of the Federal High Court in FHC/ABJ/281/16 Sheikh Ibraheem El Zakzaky v. State Security Service & 2 Ors., which is still pending on the grounds that the Federal High Court, Abuja lacked territorial jurisdiction and that the supporting Affidavit to the originating summons was defective.

26. The Respondent also denies any violation against the group of persons agitating for the State of Biafra in the eastern part of Nigeria and states that the Federal High Court on the 20th September, 2017 proscribed the Indigenous People of Biafra as a terrorist group and its leader who was facing trial has jumped bail. The Respondent is therefore contending that the Applicant cannot enforce the rights of a group already proscribed as a terrorist group in Nigeria.

27. The Respondent denies any violations committed by armed herdsmen in Benue and Taraba States and states that they are wild allegations, as the Applicant is unable to prove the existence and death of five hundred (500) people by the hands of the armed herdsmen.

28. In respect of the alleged violation of human rights in the Odi Community, the Respondent denies same and states that the people of the Odi community instituted a suit before the Federal High Court, Port-Harcourt and were awarded a sum of N37.6 billion and all affected persons have been duly compensated.

29. Concerning the alleged violations in the Zaki Biam community, a suit was initiated FHC/MKD/CS/4/01, ALAXANDER GAADI & 13 ORS v. COMMANDER IN CHIEF & 3 ORS and judgment rendered in favour of the Plaintiffs therein. Although the Federal Government of Nigeria initially appealed the judgment of the Federal High Court but later entered into consent judgment with the parties.
30. The Respondent states in response to the alleged violations of human rights of the people of the Gbaramotu Kingdom that the affected people initiated several suits at the Federal High Court for the enforcement of their fundamental rights and upon a judgment of the court, the Federal Government paid them a sum of N192 million.
31. The Respondent contends that the Applicant has instituted this suit to embarrass the Federal Government being that most of the issues raised in this suit have either been settled or are at the Appeal courts for further interpretation and final resolution.
32. The Respondent further contends that the various suits relating to this matter constitute *res judicata* against the present suit since the Applicant cannot institute an action on behalf of people that have sought solace at the Federal High Court of Nigeria by themselves on the same facts and issues.

b. Summary of Pleas in Law

33. The Respondent pleaded *res judicata* on the strength of this Court decision in the case of *Aliyu Tasheku v. Federal Republic of Nigeria ECW/CCJ/RUL/12/12*.

c. Reliefs sought by the Respondent

34. The Respondent prays that this Honourable court dismiss this suit for lacking merit.

JURISDICTION

35. Article 9 (4) of the Protocol on the Community Court of Justice, ECOWAS, as amended grants the Court mandate to adjudicate on matters of human rights violations. It provides "*The Court has jurisdiction to determine cases of violation of human rights that occur in any member state.*" In the instant case, the allegations of the Applicant are based on the subject matter of violation of the human rights contrary to the relevant provisions of the Charter relied upon, therefore the suit falls within the human rights jurisdiction of the Court.

ADMISSIBILITY

36. In terms of the provisions of Article 10 (d) of the Supplementary Protocol on the Court as amended, even where the jurisdiction of the Court is established, an application whose subject matter concerns human rights violation, shall only be admissible when three criteria are met: the Applicant's status as "victim" must be established, the non-anonymity of the application, and the absence of *litis pende*nce before another international Court or Tribunal. This provision was further confirmed in the case of *AZIAGBEDE KOKOU & 33 ORS; ATSOU KOMLAVI & 4 ORS; TOMEPKE A. LANOU & 29 ORS v. REPUBLIC OF TOGO* (2013) CCJELR 167 @ pg. 174.

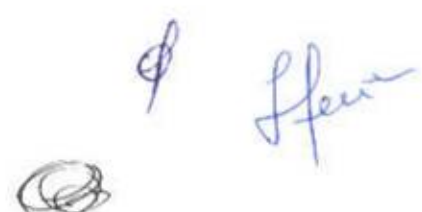
***The Non-Anonymity and Litis Pende*nce of the Application**

37. There is no evidence to the effect that the present action is pending before any international court or tribunal other than this Court. Again, though the Respondent challenged the capacity and mandate of the Applicant, this Court from its jurisprudence takes judicial notice of the juristic personality and the mandate of the Applicant under the laws of the Respondent and holds that the Applicant suffers no defect of anonymity since it has the requisite legal capacity as an NGO to institute this action. This position is anchored on the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF NIGERIA & 8 ORS RULING NO. ECW/CCJ/RUL/07/10* wherein it was ruled that:

“Taking into account the need to reinforce the access to justice for the protection of human and peoples’ rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State, and enjoying observer status before ECOWAS institutions, can file complaints against Human Rights violations in cases that the victim is not just a single individual, but a large group of individuals or even entire communities.”

The Victim Status of the Applicant

38. This leaves the Court with the determination of the last criterion of admissibility being the establishment of the Applicant’s status as a “victim”. By virtue of Article 10(d) of the Supplementary Protocol, for every action relating to human rights protection, cases before the Court must be filed by an individual or a

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corporate body who fulfils the requirement of being a victim. As far as the texts of the Court are concerned, it is the essential criterion which enables the Court to declare whether an application for human rights violation is admissible, even though not an exclusive criterion. See the case of *ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR, GOMBE STATE & FEDERAL GOVERNMENT OF NIGERIA (2012) CCJELR 81*.

39. This Court in the case of *REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS (2019) ECW/CCJ/JUD/06/19 @ pg. 15 (Unreported)* after an extensive analysis of who a victim is, came to the conclusion that:

"... a victim can be a person who suffers directly or indirectly any harm or pain (physical or mental injury), emotional suffering (through loss of a close family member or relation), economic loss (loss of Properties) or any impairment that can be categorized as human rights violation. Additionally, other than the loss, harm or damage, an Applicant must prove an interest in the matter which must be direct and personal".

40. This Court has held in many cases that, to admit a case founded on violation of human rights, the Applicant must justify its legal capacity as a victim. This was succinctly stated in the case of *CENTER FOR DEMOCRACY AND DEVELOPMENT (C.D.D) AND ANOR. v. MAMADOU TANJA AND ANOR. (2011) CCJELR 103 @ 115* where the Court held that:

"Cases shall be brought before the court by natural or legal person endowed, within the framework of their national laws, with the required legal capacity, and who, in addition, shall justify their condition of being victim...the Court

recalls that when an application on human rights violation is brought before it, it is so done necessarily by a person who is a victim of the said violation against one or several Member states."


41. The case of the Applicant is that according to reports and available evidence, military, police, herdsmen and other unknown perpetrators have for many years unlawfully killed, raped, and maimed hundreds of innocent people and destroyed property in many parts of Nigeria. The Applicant in instituting this suit apparently in the protection of the public interest (*actio popularis*), contends that the continuing attacks, killings, and destruction of property by military, police, herdsmen and other unknown perpetrators across the country amount to serious violations of human rights to life, to the security and dignity of the human person, and to property.

Principle of Actio Popularis

42. The principle of *actio popularis* and its rationale were stated in the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF NIGERIA AND ANOR.* (2010) CCJELR 183 @ 196-197 as follows:

"The doctrine of actio popularis was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court."

43. The Court, in line with the above stated principle, stated in the case of *REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS*

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(Supra) @ pg. 25 that: “the law recognizes the right of individuals and corporate bodies who are not victims to bring an action in a representative capacity under the principle of actio popularis”.

44. A close study of the Court’s jurisprudence of the principle of *actio popularis* depicts two situations under which such an action may be initiated. Firstly, a situation where there is a public right unrelated to any ascertained group or individuals but which is worthy of protection and has been allegedly breached and the matter is justiciable. In the *SERAP v. NIGERIA* (supra), the Plaintiff’s action was against the Defendants alleging the violation of the various rights guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter in general public interest without particularizing any ascertained group of victims at the time of the suit and the Court held that:

“A close look at the reasons above and public international law in general, which is by and large in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest litigation, the Plaintiff needs not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and the matter in question is justiciable”.

45. The second situation of *actio popularis* is where action is initiated in a representative capacity on behalf of an ascertained group of victims based on common public interest which has been allegedly breached to claim for the violation of their rights. In *REV. FR. SOLOMON MFA’s* case (supra), the Court

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commenting on the propriety of registered organization suing on behalf victims of abuse, held that:

"The Court under this situation will allow NGO and public spirited individuals to institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest".

46. Also instructive on *actio popularis* on behalf of ascertained victims is the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) & 10 ORS. v. FEDERAL REPUBLIC OF NIGERIA & 4 ORS* where the Defendant challenged the standing of the 1st Plaintiff on grounds that it has not been affected in any way by the acts attributed to the Defendant and that there is no public interest to legitimize the claim, the Court held in para 58 that:

".....a strict legal interpretation of the concept of victim, for the purpose of human rights protection, has evolved into a more flexible approach in order to allow other persons, not directly affected by the alleged violation, to have access to Court, and seek justice, on behalf of the actual victim and to hold accountable the perpetrators."

47. In both situations of *actio popularis*, the action must be premised on public interest and the Applicant is precluded from claiming personal reliefs or for its own benefit. The instant case seems to fall under both situations in which *actio popularis* may be commenced but tilts largely towards the second situation where the Applicant, a registered entity seeks to remedy a violation allegedly committed



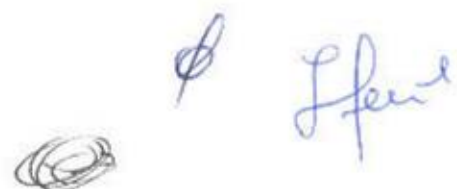
against certain group of people or better still a section of Nigerian populace. This is clearly discernible from the tenor of pleadings which purportedly named certain identifiable communities and groups and the reliefs being sought; particularly reliefs 6 and 7 which read:

“AN ORDER directing the Defendant to investigate all cases of unlawful killings noted herein and pay adequate money compensation of N50 million to each of the dependents.

AN ORDER directing the Defendant and/or its agents individually and/or collectively to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honourable Court may deem fit to grant to the victims of attacks by the military, police, herdsmen and other unknown perpetrators”.

48. It is not in doubt that when an action is commenced under the second category of *actio popularis* on behalf of a community or group of people whose rights are alleged to have been violated, that community or group must be properly identified, and the alleged violations properly particularised with precision. This among other things, will enable the Court to determine whether the Applicant's standing is sustainable and the case is admissible.

49. It must be further observe that the Applicant NGO has not been directly affected by the alleged violations, therefore it does not fulfill the requirement of being a victim on its own right. The only ground to admit the case is on proof of the action being *actio popularis*. However, the principles of public interest litigation and *actio popularis* appear to be non-applicable to this case since the rights

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complained of, such as the right to life, to property, etc. which primarily belongs to the victims and may only be claimed by them or their next-of-kins where necessary, have not been succinctly linked to the general public interest contemplated in the context of an *actio popularis*.

50. Most of the alleged victims are not properly identified, and where they are vaguely identified, the Applicant has not been able to controvert the case of the Respondent that those groups and individuals have resorted to the domestic court of the Respondent in redressing their alleged violations and to that extent, the application fails the test of admissibility on grounds of anonymity of the purported victims on whose behalf the application is brought.

51. Again, in respect of some alleged individual victims alluded to, such as Sheik Ibraheem Zakzaky and his Movement, there is no evidence that the Applicant is acting on their behalf. The Court must be certain in its mind that, where an entity seeks justice on behalf of named or identified victims, being it a personal representative action or *actio popularis* in protection of some public interest of the named or identified victims, there exist a proven nexus between the Applicant and the victims whose interest is being pursued in the case based on an unequivocal consent given to the latter by the former.

52. Because it is often difficult and sometimes impossible to discover the truth about the existence of such nexus and consent between the Applicant and the real victims, the law insists on a cardinal safeguard in all such cases to prove some sort of authorization, in the absence of which the case becomes inadmissible for lack of proper standing of the Applicant. Such requirement, though may be exempted in certain public interest litigation where there are no ascertained

victims, but cannot be treated as a mere technicality to be waived in cases like the instant one where there are named victims on whose behalf the action is being pursued.

53. In the judgment of the Court in the case brought by COLLECTIF DES ASSOCIATIONS CONTRE L'IMPUNITÉ AU TOGO (CACIT) on behalf of Mr. AGBETOGNON KOFFI against the REPUBLIC OF TOGO ECW/CCJ/JUD/12/18 (Unreported), a Group of Human Rights Associations fighting against impunity in Togo instituted the action to vindicate the interest of the victim, but the Court declared the case inadmissible on the grounds of lack of proper standing wherein it delivered itself as follows:

“that the Collectif des Associations contre l'Impunité au Togo, which represented Mr. AGBETOGNON Koffi, does not have any mandate to represent him; consequently declares as inadmissible the Application filed by the Collectif des Associations contre l'Impunité au Togo, for, and on behalf of Mr. AGBETOGNON Koffi on the violation of his rights, for lack of quality to act”

54. To the extent that the instant application falls largely in the second category of *actio popularis*, the case suffers a fatal consequence of admissibility for lack of clarity in identification of the alleged community or group of victims on whose behalf the action is lodged. This is more so when there is copious incontrovertible evidence to the effect that the purported communities or individuals vaguely alluded to as victims of the alleged violations have all in one way or the other taken legal actions meant to redress any violations they claimed to have suffered at the domestic courts of the Respondent.

55. It must be reiterated that the import of the *actio popularis*, particularly if it is initiated in a representative capacity on behalf of an ascertained group of victims based on common public interest, is to offer either a solicited or unsolicited assistance where the affected community or group suffer from some sort of impediment which could be lack of financial resources to take action themselves, lack of knowledge on the subject matter, incapacity as a result of any known restrictions. The Court has held, as already stated in this judgment that under this situation, "*NGO and public spirited individuals to institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest*". See REV. FR. SOLOMON MFA's case (supra).

56. In the instant case, all the communities or groups on whose behalf the action is purportedly initiated to vindicate any alleged violations of their rights have themselves already taken various legal steps to remedy any wrongs if any. The Applicant's case fails to clearly establish any community or group whose public interest is allegedly breached and needs vindication as claimed.

57. The Applicant having purportedly initiated the instant action on behalf of a community or group which lacks proper identification, Applicant's locus standing in the matter cannot be sustained to admit the case for determination. Consequently, the action cannot be admitted under such a fatal capacity of the Applicant and same is dismissed in its entirety.

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OPERATIVE CLAUSE:

151. For the reasons stated above, the Court, adjudicating in a public hearing, after hearing both parties, and their submissions duly considered in the light of the African Charter on Human and Peoples' Rights and other international human rights instruments, and also the Protocol on the Court as amended and the Rules of Court, hereby declares as follows:

As to jurisdiction:

a. Declares that it has jurisdiction.

As to Admissibility:

b. Declares the application inadmissible.

ON COST:

No order as to costs.

Signed:

Hon. Justice Edward Amoako **ASANTE**

- Presiding/Judge Rapporteur

Hon. Justice Gberi-Be **OUATTARA**

- Member

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

- Member

Assisted by:

Mr. Athanase **ATANNON** - Deputy Chief Registrar

Done in Abuja, this 26th Day of April 2021 in English and translated into French and Portuguese

