

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

In the Matter of

**CHIEF AMBROSE ALBERT OWURU & ANOR. v. THE FEDERAL REPUBLIC OF  
NIGERIA**

*Application No: ECW/CCJ/APP/45/19; Judgment No. ECW/CCJ/JUD/01/22*

***JUDGMENT***

**ABUJA**

**2<sup>nd</sup> FEBRUARY 2022**

**THE COMMUNITY COURT OF JUSTICE OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)  
HOLDEN AT ABIDJAN, CÔTE D'IVOIRE**

*Application No: ECW/CCJ/APP/45/19; Judgment No. ECW/CCJ/JUD/01/22*

**BETWEEN:**

**1. CHIEF AMBROSE ALBERT OWURU**

**2. HOPE DEMOCRATIC PARTY - APPLICANTS**

**AND**

**THE FEDERAL REPUBLIC OF NIGERIA - RESPONDENT**

***COMPOSITION OF THE COURT***

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

**ASSISTED BY:**

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

***REPRESENTATION OF PARTIES***

Odion Peter **EBHOAYE**, Esq.

C. E. C. **NJOKU**, Esq.

Yusuf **IBRAHIM**, Esq. Counsel for Applicants

Anne C. **AKWIWU**, Esq.

R. S. **EL-USMAN**, Esq.

O. S. **KARA**, Esq. Counsel for Respondent



## ***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 1<sup>st</sup> Applicant is a Legal Practitioner, a notable political figure who was the Presidential Candidate of the 2<sup>nd</sup> Applicant, a registered Political Party in Nigeria at the 2019 Presidential Election.
3. The 2<sup>nd</sup> Applicant, Hope Democratic Party is a registered political party in Nigeria and the sponsor of the 1<sup>st</sup> Applicant at the February 2019 Presidential Election.
4. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States, ECOWAS.

## ***III. INTRODUCTION***

### ***Subject matter of the proceedings***

5. The Applicants complained of having been deprived of their right to be heard on appeal, due to a decision of the Chief Justice of the Respondent to issue a hearing date, which was outside the sixty-day constitutional time limit for hearing and determining appeals in electoral matters.
6. On the hearing date, that is on October 28<sup>th</sup>, 2019, the panel ordered that the matter be struck out, having been brought outside the sixty-day time frame prescribed in Section 285 (7) of the 1999 Nigerian Constitution as amended. The Applicants alleged the violation of Articles 1, 2, 3, 7, 13 and

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26 of the African Charter due to the Respondent's failure to establish and promote an independent and non-partisan Court system.

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

7. The Originating Application dated 4 December 2019 was filed at the registry of the Court on the same date and served on 17 December 2019 on the Respondent.
8. The Respondent, on the 21 February 2020 filed a Motion for Extension of time to file Defence and Preliminary Objection, Notice of Preliminary Objection and Statement of Defence all dated 21 February 2020 which were served on the Applicants on the 17 March 2020.
9. The Applicants filed a Reply/Argument in opposition to the Preliminary Objection and Reply to the Defence of the Applicants on 26 March 2020 and same were served the Respondent on 4 June 2020.
10. In a Virtual Court Session held on 28 April 2021, the Applicant was represented in Court but the Respondent was absent and not represented. However, due to poor network of the Applicant's counsel, the case was adjourned to 8 July 2021.
11. On the 8 July 2021, the parties were represented in court. Both the preliminary objection and the substantive matter were argued whereby the pleadings and written submissions were adopted by the parties and the matter was adjourned for judgment.

#### ***V. APPLICANT'S CASE***

##### **a. Summary of facts**

12. The 1<sup>st</sup> Applicant was sponsored by the 2<sup>nd</sup> Applicant as a candidate in the Respondent's 2019 Presidential election which was originally scheduled

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on February 16<sup>th</sup> 2019 but was rescheduled and took place on the 23<sup>rd</sup> of February 2019.

13. In an election petition brought before the Respondent's Presidential Election Tribunal, the 1<sup>st</sup> Applicant claimed to have won unopposed the originally scheduled February 16<sup>th</sup> 2019 Presidential Election and sought to be so declared and sworn in while questioning the validity of the substituted Presidential election later undertaken without due postponement of the originally scheduled presidential election.
14. The Applicants alleged that during the hearing of the petition at the Presidential Election Tribunal, their application to stop Muhammed Buhari the presidential candidate of the All Progress Congress (APC) from being sworn in while the petition was still being heard was met with refusal.
15. According to the Applicants, after the due hearing of their election petition, the Court of Appeal sitting as Presidential Election Tribunal delivered its judgment on 22/08/2019 against them, and being dissatisfied with the judgment, they approached the Respondent's national apex court, Supreme Court of Nigeria with duly filed notices of Appeal dated 28/08/2019 and 03/09/2019.
16. The Applicants alleged that at the Supreme Court, their enshrined and protected human rights to have their cause heard was severely stifled and violated, when the initial panel set up to hear the case hurriedly proceeded on 03/10/2019 while the issue of President Muhammadu Buhari's refusal and evading of services of court processes and preventing of court chief Bailiffs with armed guards was yet to be resolved.
17. The Applicants further alleged that on the said 03/10/2019, the said first panel of the Supreme Court without ascertaining the due service of processes on the Respondent, did smuggle into the records of appeal a purported "*Additional record of Appeal*" which had not been served on

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them, and the panel surprisingly used and relied on same to peremptorily order the dismissal of their presidential election appeal apparently without jurisdiction.

18. The Applicants submitted protest letters and petitions to the office of the Chief Justice of Nigeria over use of unserved court processes and the Chief Justice convinced of the merit of the Applicants' complaints and protest as contained in the said letters and following the Applicants' filed Motion to formally hear the appeal on its merit, did constitute a new panel to review the first panel's ruling of 03/10/2019.
19. The case of the Applicant in the instant suit is that the Supreme Court, despite knowledge of the stipulated sixty (60) days' constitutional time limit to hear the presidential election appeal, proceeded nonetheless to deliberately and recklessly give a false 28/10/2019 date outside the said prescribed constitutional time limit, allegedly designed to affect and render the appeal statute barred.
20. On the said 28/10/2019, in accordance with stipulated constitutional time limit and caught up under S. 285 (7) of the 1999 Constitution, the Supreme Court refused to hear the appeal on merits and pronounced same statute barred demanding its withdrawal which the Applicants did in the open court.
21. The Applicants case is that the deliberate fixture of a false date by the national apex court outside the stipulated 60 days' time limit to hear the Applicants appeal, was a calculated willful partisan act by the Respondent's apex court and is unlawful and amounted to a violation of their human rights to have their cause heard.
22. According to the Applicants, the Respondent was fully aware of the legal implication, resultant effect and consequences of the refusal, denial and aborting the timely hearing of the appeal of the Applicants, the political huge losses and violation of their human rights, when the decision to fix

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the hearing of the appeal outside the 60 days period was hatched to prevent the hearing of the Applicants appeal and reliefs sought therein.

23. The Applicants alleged that their lawyers realizing the legal implication of the said date of 28/10/2019 barely six (6) days outside the stipulated constitutional time limit to hear their presidential election appeal, *confronted the office of the Chief Justice of Nigeria who through his Registrar assured the Applicants' counsel*, that the court knew what to do even if a case is fixed outside the stipulated sixty (60) days period and that the date fixed was okay.

***b. Pleas in Law***

24. The Applicants rely on the following laws:
- i. Article 10 and 11 of the Universal Declaration of Human Rights;
  - ii. Article 3, 14, 25 and 26 of the International Covenant on Civil and Political Rights;
  - iii. Articles 1, 2, 3, 7, 13 and 26 of the African Charter of the African Charter on Human and Peoples Rights otherwise known as the Beijing Declaration;
  - iv. ECOWAS Protocol on Democracy and Good Governance

***c. Reliefs Sought by the Applicant***

25. For the reasons above, the Applicants are praying the Court to:
- i. ***A DECLARATION*** that the Respondent orchestrated and deliberate fixture of a 28/10/2019 date for the Applicants' appeal outside the 60 days constitutional period to hear the presidential election appeal from Tribunal Judgment of 22/08/2019 on the Applicants' acclaimed unopposed

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*winner of the duly scheduled February 16<sup>th</sup> 2019 Presidential Election, calculated and designed to prevent the Applicants to have their cause heard within constitutionally stipulated 60 days time limit constitute a violation of the Applicants Human Rights and is illegal as it contravenes Articles 2 and 7 of the African Charter on Human and Peoples' Rights.*

*ii. A **DECLARATION** that the failure and refusal of the Respondent to institute, establish and promote an independent court system to ensure and guarantee the protection of the Applicants rights to equality before the law as an obligatory duty placed on all member state signatories to the enshrined provisions of the African Charter, treaties and protocols, resulted into the violation of Applicants rights to have their cause heard, is illegal, constitutes a breach and contravenes Articles, 1, 2, 3, 7, 13 and 26 of the African Charter on Human and Peoples' Rights.*

*iii. A **DECLARATION** that the Respondent acts of interference with the heads of courts and surreptitious arrest of judges and dramatic removal of Hon. Justice Walter Onnoghen as the Chief Justice of Nigeria in January 2019, a few weeks to the scheduled February 2019 Presidential Election and hand picking of the new Chief Justice of Nigeria to subvert and affect the courts independence and nonpartisanship constituted a violation of the Applicants right of equality before the law is illegal, unconstitutional and constitute a breach of the Respondent's duty to guarantee the independence of the Courts and violating the fundamental human rights of the Applicants of equality and equal protection before the law and the rights to have their cause heard and which contravenes Articles 1, 2, 3, 7, 13 and 26 of the African Charter on Human and Peoples' Rights*

*iv. AN **ORDER** directing the Respondent to pay ₦800 Billion (Eight Hundred Billion Naira) or the Dollar equivalent, as damages to the Applicants for the violation of the Applicants fundamental human rights, dereliction of duty/obligation and restitution for the costly Presidential Election and*

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*liability in the violation of the Applicants rights to have their cause heard, equality before the law, vote and be voted for and participate in government of their country under the sovereign mandate as freely expressed and given by the majority popular votes citizens at the said February 2019 Presidential Election.*

- v. **AN ORDER** directing the Respondent to reform and establish a truly independent and non-partisan Court system to diligently hear election petition and appeals to guarantee the protection of the rights of the Applicants community citizens as provided under the African charter to Election and participate in government of their choice and hold government accountable and or,

**IN THE ALTERNATIVE,**

**DIRECT THE RECOGNITION OF THE RIGHTS OF THE APPLICANTS IN THE CIRCUMSTANCES TO PARTICIPATE IN A CONSTITUTED GOVERNMENT OF NATIONAL UNITY BY THE RESPONDENT UNITY GOVERNMENT.**

**VI. RESPONDENT'S CASE**

**a. Summary of facts**

26. The Respondent while denying all the averments by the Applicants contends that the Court lacks competence to either sit on appeal or review the judgment of national courts.
27. Further, the Respondent states that the motion filed by the Applicants before the Supreme Court was properly and voluntarily withdrawn by the Applicants' counsel and the Supreme Court consequently struck out the application and there was no evidence of coercion whatsoever on the Applicants or anyone at all prior to the withdrawal of the said application.



***b. Pleas in Law***

28. By way of pleas in law, the Respondent pleaded and relied on:
- i. Articles 1, 2, 3, 7, 13 and 26 of the African Charter on Human and Peoples' Rights
  - ii. Article 14, 15 and 26 of the International Covenant on Civil and Political Rights.
  - iii. Section 233 (1), (2) (b), (c), (e) (i), and Section 285 (7) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

***c. Reliefs sought***

29. The Respondent urged the court to refuse all the claims of the Applicants as same are frivolous, speculative, baseless, and an abuse of court process.

***VII. REPLY BY THE APPLICANTS***

30. The Applicants, by way of reply deny that any part of the stated facts or reliefs in support of their Application seek any review or appeal of any decision of the Supreme court of Nigeria sitting as a constituted court of law. They averred that the facts and cause of actions relate purely to the reckless administrative acts or in action of the officials of the Respondent against the Applicants in spite of protest in the violation of their human rights to have their cause heard and equality before the law.
31. They alleged that their case is not about election petition matters or result of the presidential election. The case is squarely based on the violation of the their human right to have their cause heard and equality before the law as guaranteed under the provisions of the African Charter by the Respondent Member State.

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32. Contrary to the assertion of the Respondent that this Court is not constituted nor has jurisdiction to hear election petition, the Applicants submitted that no election matter is brought before this court neither is their application seeking for any review of the decision of the Respondent's apex court.

**VIII. PRELIMINARY OBJECTION TO JURISDICTION**

33. The Respondent on the 21 February 2020 filed a Notice of Preliminary Objection wherein it raised objection to the jurisdiction of the Court in entertaining the present suit and premised same on the following grounds:

- a. That the application before the Court is not an enforcement of fundamental right but a suit appealing the final decision of the Supreme Court of Nigeria on an electoral matter;*
- b. The Community Court of Justice, (ECOWAS) lacks the requisite Jurisdiction to hear this matter;*
- c. The Applicants' claims are not within the adjudicatory powers of this Honourable Court;*
- d. That this Court does not have the jurisdiction to sit on matters already decided by the Supreme Court or domestic Court of a member state; and*
- e. That this Court does not have the jurisdiction to hear and determine electoral matters.*

34. The Court notes from the above grounds of the objection that there are two main issues i.e. lack of jurisdiction and the incompetence of the Court to review the decision of the courts of Member States begging for consideration by the Court which shall be set out and determined in seriatim.

**a. Lack of jurisdiction**

35. On the issue of jurisdiction, the Respondent submitted that the subject matter of the instant suit does not fall within the purview of Article 9 of the

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Supplementary Protocol (A/SP.1/01/05) as amended relating to the Community Court of Justice. According to the Respondent, the subject matter concerns electoral matters and this Court lacks the capacity to operate as an appellate court over decisions of national courts of Member States.

36. The Applicants, on the other hand stated in their pleadings that the instant action is anchored on the violation of their right to have their cause heard and equality before the law in pursuant to fair hearing guaranteed under Article 7 of the African Charter.

***Analysis by the Court***

37. It is provided for under Article 9(4) of the Supplementary Protocol on the Court as amended as follows:

*“The court has jurisdiction to try cases of violation of human right that occur in any member state”;*

38. The jurisdiction of the Court to entertain cases brought before it as clearly spelt out in Article 9 (4) which is relevant to this case vests the Court with the competence to determine cases relating to the violation of human rights that occur in any Member State. When the issue came up in the case of *MOUSSA LEO KEITA v. THE REPUBLIC OF MALI (2004-2009) CCJELR 63*, it was held that:

*“The court reaffirmed its competence to adjudicate on cases of human rights violation in accordance with Article 9 (4) and (d) of its 2005 Supplementary Protocol. Also the specific human right that is violated must be clearly stated in his initiating application”.*

39. The Court notes that the subject matter of this case borders on allegations of violation of the Applicants right as enshrined under Articles 1, 2, 3, 7, 13 and 26 of the African Charter. In the case of *OBINNA UMEH & 6 ORS v.*

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*FEDERAL REPUBLIC OF NIGERIA JUDGMENT No. ECW/CCJ/JUD/10/20 @ pg. 9 (2020) (Unreported), "the Court recalled its numerous jurisdictions to the effect that once an allegation of human rights violation is made, it will assume jurisdiction simpliciter over the matter as a separate subject from the determination of the veracity of the claims being sought as amounting to violation of human rights".*

40. Again, in the case of *BAKARE SARRE v. MALI (2011) CCJELR pg. 57*, the Court stressed that *"Once human rights violations which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case"*. It is not in doubt that the Applicants' alleged violations against the Respondent are founded on the African Charter to which the Respondent is a signatory.
41. It is on the strength of the above analysis based on the pleadings and submissions by the parties before it that the Court holds that the contention by the Respondent that the present application does not fall within the purview of Article 9 of the Supplementary Protocol on the Court carries no weight. The reason being that the provisions of Article 9 (4) (*supra*) speak specifically to human rights violation that may occur in a Member State. Consequently, the Respondent's objection under this heading is not sustainable and same is dismissed.
42. The Respondent again contends in its Preliminary Objection to the jurisdiction of this Court to entertain the action on ground that the action is founded on electoral matters and same being an appeal against the final decision of the Supreme Court does not fall within its adjudicatory competence.
43. Indeed, the jurisprudence of the Court incontrovertibly asserts that while the Court is vested with the competence to hear and determine cases of violation

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of human right, it has held in a plethora of cases that it does not act as an appellate court over decisions of domestic court of Member States. In *THE HEIRS OF LATE AISSATA CISSEC v. REPUBLIC OF MALI*, ECW/CCJ/JUD/13/16 @ page 10, the Court in its consideration held that “it is not a Court over the legality of the decision of a national court in broad sense, nor Court of Appeal or Cassation Court”.

44. Similarly, in *BAKARY SARRE & 28 ORS v. REPUBLIC OF MALI (2011)* CCJELR pg. 69 para 30 this Court held that: “The Community Court of Justice has no jurisdiction to make any declarations on the judgments of National Courts. The Court can only intervene when such Courts or the parties in dispute before the national Courts of law expressly ask the Community Court to do so within the strict context of interpretation of the Community law”. See also *JUSTICE JOSEPH WOWO v. THE REPUBLIC OF GAMBIA JUDGMENT NO. ECW/CCJ/JUD/09/19 @ Pg.15*; *PTE ALIMU AKEEM v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/01/14 @page 10*.
45. However, it must be emphasised that there are instances where human right applications that come before the Court in one way or the other strike cords with decisions/judgments rendered by a national court of the Member State involved in the case. In such cases, whereas the Court is, by its own jurisprudence proscribed from examining the propriety or otherwise of such judgments of Member States in *abstracto*, it however has an unfettered jurisdiction to examine the said judgment with the view to ascertaining whether any human right violation has occurred.
46. The Court in adhering to its jurisprudential reasoning not to serve as an appellate Court over the decisions of national courts of Member States, has nonetheless not reneged on its mandate to determine cases of human rights

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violations that occur in Member States. To this end, where in a given application before it, there exist complaints about any human rights violation relating or implicated in the judgment of a national court, to the extent of such alleged violation, this Court will examine the judgment in the context and pursuit of protection of the human rights concerned. In other words, this Court shall, in a case brought before it, where applicable examines any impugned judgments with the view to ascertaining whether or not any violation of human rights has occurred.

47. In the light of the foregoing, the Court reiterates that though it lacks the competence to sit as an appellate court over the legality of the decision of a national court in broad sense, or serve as an appellate Court, it however restates that it is vested with the requisite capacity to entertain matters that embody human rights violations.
48. Consequently, the objection to the jurisdiction of the Court by the Respondent on the ground that the subject matter concerns electoral matters and same being an appeal against the final decision of the Supreme Court of the Respondent is also not sustainable and same is dismissed on the authority of the jurisprudence analysed supra.

#### ***IX. ADMISSIBILITY***

49. It is the statutory position of this Court that even where jurisdiction has been established, a case of violation of human right is only admissible under certain defined strictures which every Applicant must satisfy before his or her case is admitted. To this end, Article 10(d) provides that “*Access to the court is open to individuals on application for relief for violation of their human rights, the submission of application for which shall; i) Not be anonymous; nor ii) Be made whilst the same matter has been instituted before another international court for adjudication*”.

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50. Considering the facts of the present case, the Applicants have satisfied the requirements set out in Article 10 of the 2005 Protocol. In *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS (SERAP) & 7 ORS. v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/23/19 pg. 19 UNREPORTED*, the Court held that: “to examine the admissibility of the Application, the Court must ascertain whether it has jurisdiction to determine the matter in dispute, whether the parties have locus standi before the Court, and whether the parties have capacity to bring the dispute before the Court”.
51. In *THE ESTATE OF MBAKPENU ZAMBER & 6 ORS v. THE FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO ECW/CCJ/JUD/28/19 pg. 9 UNREPORTED*, the court held that: “the issue of admissibility of an application before this Court primarily concerns three basic considerations; firstly the determination of whether the subject matter is within the competence of the court, secondly if access is permissible to the parties before it and lastly the requisite standing of the parties to institute the action”. See also, *SAWADOGO PAUL & 3 ORS v. REPUBLIC OF BURKINA FASO ECW/CCJ/JUD/07/20 @ pg. 9*.
52. In light of the foregoing, the Court holds that this application is admissible for hearing on the merit.

#### **X. MERIT**

##### ***Alleged violation of the Applicants’ right to fair hearing***

53. The crux of the Applicants’ case is premised on the alleged issuance of a false hearing date by the Supreme Court of Nigeria which led to the striking out of their Presidential Election Appeal. According to the Applicants, the act of the apex court in issuing a false date six (6) days outside the sixty days

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constitutional time limit prescribed for hearing electoral matters was a deliberate attempt to sabotage and prevent the hearing of their appeal thereby violating their right to fair-hearing under its various elements; to have their cause heard, equality before the law and equal protection before the law.

54. The Respondent on the other hand, states that the case filed by the Applicants before the Supreme Court was properly and voluntarily withdrawn by the Applicants' counsel and the Supreme Court consequently struck out the application and there was no evidence of coercion whatsoever on the Applicants or anyone at all prior to the withdrawal of the said application.
55. Article 7 of the African Charter which deals with fair hearing provides: *"Every individual shall have the right to have his cause heard. This comprises a) the right to an appeal to competent national organs against acts of violating his fundamental right as recognized and guaranteed by conventions, laws, regulations and customs in force; (...) d) The right to be tried within a reasonable time by an impartial court or tribunal"*.
56. The principle of fair hearing connotes that everyone has the right to have their cause heard by a competent tribunal and within a reasonable time. In *MOHAMMED EL TAYYIB BAH v. REPUBLIC OF SIERRA LEONE (2015) CCJELR 193*, the Court in its consideration relied on the case of *UGOKWE v. OKEKE (2008), CCJELR pg 149@ 146*, and reiterated the principle that parties must be given an opportunity to be heard in any matter affecting their interest in the following words:

*"The right to fair hearing is a human right derived from the concept of fair hearing, in this regard, a fair trial is not only seen as an additional instrument for protection of the rights of defence largo sensu..."*

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57. The Court in that case also stressed that the minimum standards required of all institutions exercising powers that may affect the legitimate interest of the parties or one or more of them is to act fairly.
58. Also in *CHEIHK GUEYE v. REPUBLIC OF SENEGAL*. ECW/CCJ/JUD/21/20 @pg. 36 UNREPORTED, the Court held that: *“the cardinal principles of fair hearing requires that a person whose interests are to be affected by a decision (whether adjudicative or administrative) shall receive a fair and unbiased hearing before the decision is made...Failure to comply with the requirements of procedural fairness risk having the decision declared invalid by a court or tribunal, not because the decision itself was wrong, but because the decision-making process was wrong”*.
59. The Applicants argued that the presidential election appeal before the Supreme Court of the Respondent was unduly prejudiced by the acts of Chief Justice of Nigeria in issuing a false hearing date thus rendering their appeal statute barred.
60. The Respondent on the other hand denied the allegation and maintained that the Applicants are not entitled to the reliefs they are seeking as the alleged violation of their rights is based on their action or inaction of conceding to the registrar’s date in total disregard for the Constitutional provisions of Section 285 (7) of the Constitution of the Federal republic of Nigeria 1999 (as amended) which limits the hearing of appeal from Election tribunal to the Court of Appeal and Supreme to sixty days.
61. In considering the facts of the present application, it is imperative to examine the overall fairness of the proceedings before the courts of the Respondent with a view to ascertaining whether or not the manner in which

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the appeal was conducted is prejudicial to the guaranteed rights of the Applicants.

62. In the instant case, it is observed that the Applicants being dissatisfied with the decision of the Appeal Court in their election petition, approached the Supreme Court of the Respondent with two notices of appeal one of 28/08/2019 and 2/9/2019. During the hearing, the Applicants were duly represented by counsel and served with the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents' objection to which they filed a reply.
63. The Applicants' contention is that the 1<sup>st</sup> Panel set up to hear their appeal allowed itself to be misled and hastily relied on an unserved court process and technicalities to prevent the hearing of their presidential election appeal.
64. The Court notes that the 1<sup>st</sup> panel sitting on the matter having heard all the parties to the suit gave its ruling upholding the preliminary objection of the Respondents in the case and consequently struck out the appeal. For ease of clarity the reasoning of the 1<sup>st</sup> Panel of the apex Court of the Respondent is reproduced hereunder:

*"Again, as pointed out by the learned silk for the Respondents, the Appellants have not appealed against the ruling of the Court of Appeal delivered on 28/08/19 which struck out the petition holding that the petition is an abuse of the Court process on ground of multiplicity of actions with the primary intention to annoy, irritate and oppress the opponents and so the court below proceeded to struck out the petition based on lack of jurisdiction. This decision of the court of appeal was not appealed rather, the appellants have come here to tackle the decision on the merit which the court below handled out of the abundance of caution. The bottom line therefore is that the preliminary objections of counsel for the respondents*

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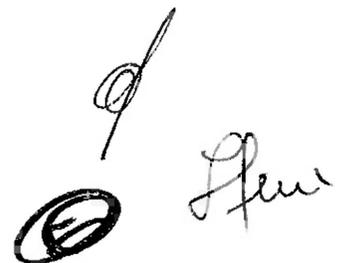
*on the striking out of the petition for the lack of jurisdiction of the Court below is what this court is faced with, to which our decision is clearly cut out of use, that the petition was properly struck out on reasons given by the Court below and there is no appeal”.*

65. Again, in the same vein the Applicants on 18/10/2019 wrote to the Chief Justice of Nigeria contesting the use of unserved court process and sought a review of the 1<sup>st</sup> panel’s ruling of 03/10/19. The Chief Justice upon the request of the Applicants set up another panel and assigned a new date for the appeal to be heard.
66. The Court upon examining the annexures in support of this application finds that the Applicants duly exercised their right of appeal against the decision of the Court of Appeal which sat as court of first instance in the election petition brought before it by the Applicants. Again, when they complained about some procedural irregularities by the 1<sup>st</sup> Panel of the Supreme Court, they were afforded the opportunity of review before a new panel.
67. On the 28/10/19 the 2<sup>nd</sup> Panel drew the attention of the Applicants to some constitutional anomaly in the hearing of their application before it and according to the Applicants they were compelled to withdraw the suit and the court ordered that the matter be struck out having been brought outside the prescribed sixty days’ time frame pursuant to Section 285 (7) of the 1999 Constitution as amended.
68. Against the foregoing, the duty of this Court in the instant case, to a larger extent is to evaluate the conduct of the apex court of the Respondent with the view to establishing whether in discharging both its administrative function of fixing a hearing date and its judicial function of hearing the case of the Applicants, there were concrete evidence of acts attributable to

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the court done ostensibly to deny the Applicants their right of been fairly heard in their cause before the court.

69. In other words, the justice of this case demands establishing whether or not the Applicants' right to fair hearing as presented in their pleadings before the Court was violated either through the fixing of the hearing date or in the conduct of the hearing of the case.
70. In respect of the hearing of the case, having painstakingly evaluated the decisions of the Supreme Court annexed to this application which this Court finds as well reasoned, and in the absence of any evidence to the contrary, the said decisions cannot be construed as arbitrary or a denial of justice to amount to a violation of Article 7 of the Charter which guarantees the Applicants right to fair hearing.
71. With regards to the fixing of hearing date and its ramifications on the Applicants' right to fair hearing, it is trite that where a party alleges that his right has been infringed, the alleging party must provide plausible proof that the violation caused such prejudice.
72. In *SAHABI MOUSSA v. NIGER, JUDGMENT NO: ECW/CCJ/JUD/28/16 PAGE 8 UNREPORTED*, the Court held that: "*as a general rule, it is up to the applicant to provide proof of his allegations and that, in application of this principle, the Court consistently holds ... that all cases of human rights violations that are invoked before it must be specifically supported by sufficiently convincing and unequivocal evidence*".
73. In *KODJOVI AGBELENGO DJELOU, (A NOTARY) &ORS v. THE REPUBLIC OF TOGO (2015) CCJELR 315 @ 327 para. 32 & 33*, the Court held that "*the onus is on an applicant to provide evidence for his allegations; ... in applying this principle, the ECOWAS Court of Justice has consistently held ... that all cases of human rights violation brought*

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*before it by an applicant must be described in specific terms, with sufficiently convincing and unequivocal evidence”.*

74. Similarly, the Court in considering the threshold of persuasion in adducing evidence for a favourable verdict, held in the case of *JUSTICE JOSEPH WOWO v. THE REPUBLIC OF GAMBIA JUDGMENT NO ECW/CCJ/JUD/09/19 @ Pg. 19*, that it is trite that an allegation “*must be satisfactorily proved on the balance of probabilities by the person alleging same and any flimsiest pretext should fail*”.
75. In the instant case, there is nothing suggestive that the date assigned by the Chief Justice of Nigeria to hear the Applicants’ presidential election appeal was a deliberate attempt to frustrate or prevent the Applicants from fairly accessing their right to justice.
76. The Court has carefully considered but unmoved by the copious submissions of the Applicants to the effect that their lawyer having realized the legal implication of the issued date outside the sixty days constitutional time limit to hear their appeal, confronted the office of the Chief Justice of the Respondent who through his Registrar verbally assured the Applicants’ counsel that the Court knows what to do even if a date is fixed outside the said period.
77. The Court further notes that the Supreme Court of the Respondent is a court of record. Court processes and activities in the court are all placed on record. Judicial notice is taken of the fact that all activities, especially complaints in courts or to courts registries are evidenced by documents. To say that the issue of the wrong date was discussed with the court/registrar orally in such an important matter leaves much to be desired. Upon its denial by the Respondent, and in the absence of any documentary proof,

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this Court is unable to accept the Applicants' unsubstantiated allegation as the true state of what transpired before the apex court of the Respondent.

78. The Court observes that, if the facts contained in the allegations indeed took place, then the Applicants were, to say the least, indolent in their dealings with the registry in so far as this matter is concerned.
79. Section 285 (7) of the Constitution of the Republic of Nigeria as amended provides: "*An appeal from a decision of an election tribunal or court shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal*".
80. The above provision of the Constitution is unquestionably clear to the point that any appeal from a decision of an Election Tribunal must be heard and concluded within 60 days from the date of delivery of judgment. The word "*shall*" in the said provision makes it mandatory.
81. The Applicants admitted that their counsel had the knowledge of the 60 days constitutional time limit and still went ahead to accept a date outside the stipulated time. The Court finds it perplexing that a lawyer having full knowledge of the effect of hearing an application outside the constitutional time limit and had the opportunity to object the adjourned date, yet negligently waived that right and stood on the strength of an alleged verbal communication he had with the Registrar, who allegedly assured him that, "*the court knows what to do*".
82. It is trite that in the practice of the law, fixing of court dates for submission of pleadings and appearance before court to dispense with a case, particularly courts of record are regulated by rules and regulations. Assuming without conceding that there was a verbal communication from the administrative section of the court to ignore the wrong date issued, it was a dereliction of duty on the part of the Applicants' counsel to have

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accepted that without any formal proof from the court. In judicial proceedings, parties are bound by their actions either in their personal or representative capacity where they voluntarily give up their right expressly or impliedly.

83. The Court therefore is unable to accept the submissions of the Applicants that they were assured by the court that the fixing of the wrong date will have no adverse consequence on their appeal before the Supreme Court. Again, the records before this Court indicate clearly that the Applicants' appeal was voluntarily withdrawn by their Counsel when the implication of the applicable rules were made known to them at the hearing before the court struck out the appeal.

84. In the light of the foregoing and in the absence of concrete evidence that there were acts perpetrated by the actors of the Respondent's apex court, which adversely affected the right of the Applicants guaranteed under Article 7 of the African Charter to have their cause heard without any discrimination, the Court concludes that it cannot act on mere speculations to ground a violation as prayed for in this suit.

85. Also on the Applicants allegation of the Respondent's failure to establish an independent court, it is the considered view of the Court that there is nothing in the facts put forward by the Applicants to substantiate that allegation. The Applicants' claims under this heading therefore fails for being baseless having been abandoned in their submissions.

## ***XI. REPARATIONS***

86. The Applicants sought various reliefs captured under paragraph 25 of this judgment. The Court notes that all the reliefs sought by the Applicants were

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hinged on the alleged violation of the right to have their cause heard which has been unsuccessful as held in this judgment.

87. In international law, the obligation to afford reparation arises as a consequence of the breach of a primary obligation causing injury. The right to reparation under international law obliges States to ensure that victims are able to obtain such reparation in law and in practice when the State is found culpable.
88. The Respondent has not been found in violation of the Applicants' right as claimed and therefore, is not liable to offer any reparations.

### ***XII. COSTS***

89. Both parties did not ask for costs. Article 66 (1) of the Rules of Court provides, "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*" In addition, Article 66(2) of the Rules of Court provide, "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"
90. In light of the provisions of the Rules, since the Respondent did not pray for costs, the Court orders that the parties bear their respective costs.

### ***XIII. OPERATIVE CLAUSE***

#### **DECISION**

91. 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:

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**On jurisdiction**

- i. Dismisses the Preliminary Objection of the Respondent in its entirety and declares that it has jurisdiction to adjudicate on the Application;

**On admissibility**

- ii. Declares that the Application is admissible;

**On merits**

- iii. **Declares** that the Respondent is not in violation of the right to fair hearing in any form under Article 7 of the African Charter country to the claims by the Applicants;
- iv. **Dismisses** all the claims by the Applicants.

**On Costs:**

- v. **Orders** the parties to bear their respective costs

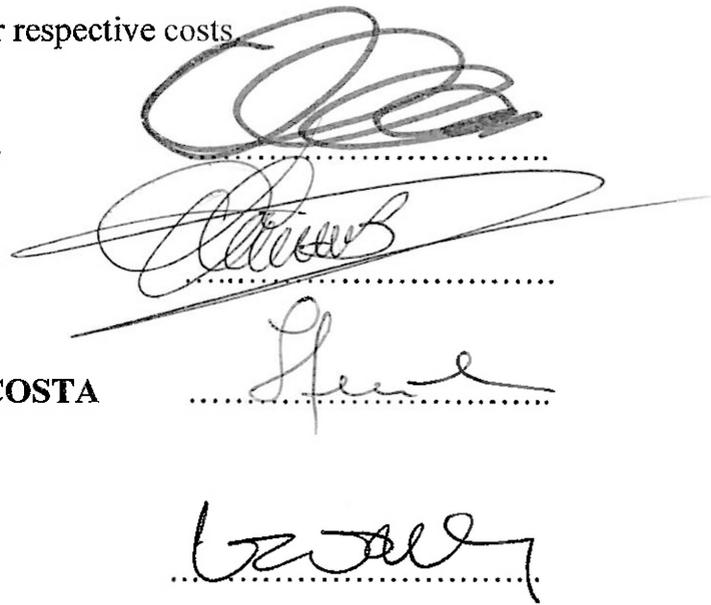
Hon. Justice Edward Amoako **ASANTE**

Hon. Justice Gberi-Be **OUATTARA**

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

**ASSISTED BY:**

Dr. Athanase **ATANNON**



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Done in Abuja this 2<sup>nd</sup> Day of February, 2022 in English and translated into French and Portuguese.

