



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

In the Matter of

**INCORPORATED TRUSTEES OF CENTER FOR PEACE AND  
CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA  
FOUNDATION & 7 ORS (CONSOLIDATED) V THE FEDERAL  
REPUBLIC OF NIGERIA**

*Application No: ECW/CCJ/APP/44/18; 46/18; 47/18; 05/19; 06/19;  
08/19(Consolidated) Judgment No: ECW/CCJ/JUD/17/22*

***JUDGMENT***

ABUJA

29 March 2022

**INCORPORATED TRUSTEES OF CENTER  
FOR PEACE AND CONFLICT MANAGEMENT  
IN AFRICA AND RETHINK AFRICA  
FOUNDATION & 7 ORS (CONSOLIDATED) - APPLICANTS**

**V.**

**FEDERAL REPUBLIC OF NIGERIA - RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon. Justice Edward Amoako ASANTE - 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:**

Noah AJARE Esq. - Counsel for Applicant

Maimuna Lami SHIRU (Mrs.)  
D.O TARFA (Mrs.)  
Ekwere-Bello IKEMHE (Mrs.)



Counsel for the Respondent

## ***I. JUDGMENT***

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as “the Court”) delivered 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 are as follows:
  - i. The first Applicant Incorporated Trustees of Centre for Peace and Conflict Management and Rethink Africa Foundation are Nigerian registered Non-Governmental Organizations with registration numbers 41552 and 114864 respectively with the sole aim of assisting the less privileged.
  - ii. The second Applicant is Ifeanyi Chikwu Akoibi, a Nigerian currently on death row in Suleja Prison Niger State managed by the Government of the Federal Republic of Nigeria.
  - iii. The third Applicant is Celestine Egbunuche, a Nigerian currently on death row in Enugu Maximum Prison in South-East Nigeria Enugu State managed by the Government of the Federal Republic of Nigeria.
  - iv. The fourth Applicant is Paul Egbunuche, a Nigerian currently on death row in Enugu Maximum Prison in South-East Nigeria Enugu State managed by the Government of the Federal Republic of Nigeria.

- v. The fifth Applicant is Olanrewaju Akogwu, a Nigerian currently on death row in Warri Prison managed by the Government of the Federal Republic of Nigeria.
  - vi. The sixth Applicant is Ibrahim Fari Shafiu, a Nigerian currently on death row in Suleja Prison Niger State managed by the Government of the Federal Republic of Nigeria.
  - vii. The seventh Applicant is Daniel Akaka, a Nigerian currently on death row in Warri Prison managed by the Government of the Federal Republic of Nigeria.
  - viii. The eighth Applicant is Ozioma Aoryeme, a Nigerian currently on death row in Suleja Prison Niger State managed by the Government of the Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS), signatory to the ECOWAS Treaty and to the African Charter on Human and Peoples' Rights and other international human rights instruments (hereinafter referred to as the "Respondent").

### ***III. INTRODUCTION***

4. This Application is premised upon the alleged violation of the Applicants' rights to a fair hearing, rights to appeal and to effective remedy and the rights to freedom from torture, cruel, inhuman and degrading treatment or punishment owing to the conditions of prison and the threat of execution by the Respondent.

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

5. The Initiating Application was filed on 25 January 2019 and served on the Respondent on 31 January 2019.
6. The Respondent filed a Motion for Extension of Time within which to file a Notice of Preliminary Objection and Statement of Defence, dated 13 March, 2019, same was served on the Applicants on 19 March 2019.
7. The Respondent filed its Notice of Preliminary Objection and Statement of Defence on 13 March 2019 and both were served on the Applicants on 19 March 2019.
8. The Applicants filed their response to the Preliminary Objection and Statement of Defence of the Respondent on 12 April 2019 and same was served on the Respondents on 18 April 2019.
9. During the Court hearing on 7 February 2020, both Parties represented by Counsel in Court. The Court observed that there were about six Applications alleging similar violations instituted by the same Applicants against the same Respondent praying the same reliefs. The Court therefore considered a consolidation of all the cases. No objection was recorded from the parties. Consequently, in line with Article 38 of the Rules, the Court ordered a consolidation of the affected Applications and directed the Parties to file consolidated pleadings and briefs. The Court then adjourned the case to 20 May 2020 for hearing. Parties were directed to file and serve their consolidated pleadings before the next adjourned date.

10. The Applicants filed their written address and consolidated Application on 17 and 18 March 2020 respectively and same were served on the Respondent on 17 and 18 March 2020.

11. On 8 October 2021, the Respondent filed an Application for extension of time to file a Notice of Preliminary Objection and their Defence to the Applicants' consolidated Application and also filed their Notice of Preliminary Objection and Defence on the same day 8 October 2021. The Respondent's Preliminary Objection and Statement of Defence were served on the Applicants on 11 October 2021.

12. During the Court hearing on 26 October 2021, both Parties were represented in Court, the Court granted all Motions for extension presented by the Respondent. The Court heard the Parties' submissions on the Preliminary Objection and the substantive suit, after which the case was adjourned for Judgment.

## ***V. APPLICANTS' CASE***

### **a) Summary of facts**

13. The second to eighth Applicants whose current ages range from 24 years old to 101 years old, were allegedly convicted separately, at different times and years by different national courts of the Respondent for crimes of murder and armed robbery for which they were sentenced to death. They are currently on death row at Suleja Prisons, Enugu and Warri Prisons and have spent between 8 to 18 years on death row.

14. The case of the Applicant is that the Respondent failed to adhere to international standards by denying them the time and facility to appeal even when subsequent investigations disclosed facts contrary to those which were used to secure their conviction. They therefore allege that their rights to a fair trial were violated as the Respondent did not follow the procedural guarantees for a fair hearing during their trials, as required by the African Charter on Human and People's rights.

15. They further allege that they were convicted based on mere confessional statements without corroboration, neither was any identification parade conducted by the police, additionally the confession made was elicited through torture. They therefore submitted that the Respondent violated their rights to a fair trial guaranteed by the Constitution of Nigeria, the African Charter and other international human rights instruments that the Respondent is party to.

16. It is their claim that in the various years spent on death row, they have endured torture and inhumane conditions in the prisons and live in daily fear of not knowing when they will be executed. The Applicants state that the conditions of the prison resulted in serious medical conditions for them including high blood pressure and depression. A claim they say is supported by the report of the Honourable Attorney General of the Federation, wherein he acknowledged the lack of medical facilities in Nigerian Prisons. They state that their condition is very critical and their sense of humanity greatly diminished due the substandard conditions of the prisons. These conditions they state is as bad as the death penalty itself,

and constitute torture, inhuman and degrading treatment and punishment. They therefore prayed the Court to release them on medical grounds.

17. The Applicants further aver that they are traumatized and daily live in fear of imminent execution, particularly with the recent pronouncements by the Vice President during the National Economic Council Meeting in February 2018 and the Attorney General of the Federation and Minister of Justice in April 2018, urging State Governors to sign the death warrants to enable a decongestion of the Nigerian Prisons.

18. The Applicants' case is also supported by a 22 paragraph affidavit sworn to by Mr. Jude Arthur Angel, a member of staff of the first Applicant.

**b) Pleas in law**

19. The Applicants rely on the following laws:

- i. Articles 2, 5 and 7 of the African Charter on Human and Peoples' Rights;
- ii. African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. 1\Cap A9, Vol 1 Laws of the Federation of Nigeria 2004;
- iii. Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS).

**c) Reliefs sought**

20. The reliefs sought by the Applicants are as follows:

- i. A Declaration that the Applicants have suffered extreme mental torture, inhuman and degrading condition having been kept on death row for more than 28 years and without access to adequate medical treatment.



- ii. A Declaration that the Applicants by virtue of age and long stay on death row and presently suffering from chronic medical condition is entitled to be released forthwith from detention.
- iii. An Order for immediate release of the Applicants from detention forthwith.
- iv. A Declaration that the consistent and continued denial of the right to adequate medical attention and the detention of the Applicants in prison under dehumanizing and harsh conditions is in violation of the Constitution of the Federal Republic of Nigeria and Articles 1,2,3,4,5,7 and 26 of the African Charter on Human and People's Rights;
- v. An Order directing the Defendant to pay a monetary compensation of 20,000,000 (Twenty Million naira) each to the Applicants for damages suffered as a result of long years they have been kept in prison under cruel degrading and inhuman condition.
- vi. An Order for reparations, including physical, psychological, social and economic rehabilitation in respect of the violation of the Applicant's human rights. And the cost of this suit which is accessed at N5, 000,000.00 (Five Million Naira).
- vii. An Order directing the Defendant to faithfully and fully implement its obligations under its own constitution and African Charter on Human and Peoples' Right as well as resolutions on Moratorium on executions adopted recently by both the African Commission on human and People's Rights and the Third Committee of the UN General Assembly.

## ***VI. RESPONDENT'S CASE***

### **a) Summary of facts**

21. The Respondent denies each and every allegation of facts contained in the Applicants' narration of facts, asserting that they did not violate the Applicants' rights to a fair hearing as that at no point were the Applicants denied their right to file an appeal as alleged.
  
22. They state that under the Nigerian laws, individuals have the right to appeal the decision of the court at any time even when the statutory period for appeal has elapsed. This is because the rules of courts provide for application for extension time to accommodate parties seeking appeal even where the time stipulated has elapsed.
  
23. It is also their submission that the use of confession under the Nigerian Law is a valid ground for conviction of an accused person, and this validates any conviction based on confessional statements thus the Applicants conviction and sentenced accordingly lawful.
  
24. They assert that the Applicants have the right to counsel of their choice and can at any time decline the service of any lawyer representing them where they are not satisfied with the representation. That the Applicants never at any time during trial complained of any unsatisfactory legal representation.
  
25. The Respondent puts the Applicants to the strictest proof of the facts contained in the Applicants' narration of facts and state that the Applicants have neither attached the said judgments nor court processes to prove their

allegations neither have they attached any medical documents to show claims made regarding their health.

26. That the prisons where the Applicants are incarcerated have medical facilities to address medical issues with regards to inmates, and in cases where the medical condition of an inmate is beyond the capacity of the prisons' medical facilities, the prison authorities usually make referrals and seek the aid from other medical institutions. The Respondent states that the Applicants have no medical condition that could not be attended to at the medical facility available in the prison where they are detained.

27. The Respondent in specific response to paragraph 4 of the Applicants' narration of facts regarding the 4<sup>th</sup> Applicant, contends that releasing him to the society will not be in the interest of the society at large considering the gravity of crimes he has been tried and convicted for.

28. The Respondent also denies the allegation that the Applicants' rights under Section 36 (6) of the 1999 Constitution of the Federal Republic of Nigeria was violated and they were denied a right to appeal when the Applicants have specifically mentioned in their narration of facts that they were in fact out of time and did not seek for an extension of time as provided in the rules of the Court.

29. The Respondent in response to paragraphs 11-16 of the Applicants' narration of facts maintains that the facts contained therein are personal opinions and reservations of the Plaintiffs about the state of the prisons and they have not successfully established how their rights were infringed.

30. They contend that the Applicants have not disclosed any actionable wrong by the Respondent that justifies the orders sought by the Applicants. They state further that the assessment of reliefs sought by the Applicants should be based on facts placed before this Honourable Court for which they have put the Applicants to the strictest proof thereof.

31. In concluding the Respondent urges the Honourable Court to dismiss the Applicants' claim as same are frivolous, vexatious, baseless, incompetent and an abuse of court process

**b) Pleas in law**

32. The Respondent relies on the following laws:

- i. Section 33 of the Constitution of the Federal Republic of Nigeria;
- ii. Article 32(4) of the Rules of the ECOWAS Court.

**c) Reliefs sought**

33. The Respondent respectfully urges the Court to consider their argument in opposition to the Applicants' Application and consequently dismiss this suit for lacking in merit.

***VII. JURISDICTION***

*Respondent's Preliminary Objection on Jurisdiction*

34. The Respondent filed a Preliminary Objection in accordance with Article 87 of the Rules of Court, contending that the Court lacks jurisdiction to entertain the Application by raising two issues for the determination of the Court:

- i. The subject matter does not fall within the purview of Article 9 of the Supplementary Protocol [A/SP.1/01/05] amending the Protocol [A/P1/7/91] relating to the Community Court of Justice;
- ii. The Applicants' suit is statute barred having not been commenced within 3 years from the date the cause of action arose as required by the ECOWAS Supplementary Protocol [A/SP.1/01/05] amending the protocol [ A/P1/7/91].

### *ISSUE 1*

#### *Respondent's objection on subject matter jurisdiction*

35. The Court notes that under this objection, two issues were raised by the Respondent, these are: 1) jurisdiction of the Court in accordance with Article 9 of the Protocol (as amended by the Supplementary Protocol), 2) Objection on the Court reviewing the decisions of national Courts. The Court will deal with each issue separately.

#### *On jurisdiction in accordance with Article 9 of the Protocol*

36. In its argument on the jurisdiction of the Court to entertain this suit, the Respondent states that the subject matter of this suit relates to the validity of the decision sentencing the Applicants to death on a mere confessional statement and an alleged unsatisfactory legal representation.

37. That the Applicants' claims do not fall within the confines of Article 9 of the Protocol on the Court (As amended by the Supplementary Protocol), as the action is not predicated on the interpretation or application of any treaty or convention and protocol of the Community state, nor is it an action

concerning interpretation and application of the regulation, directives, decisions and other subsidiary instruments adopted by ECOWAS.

38. They also argue that the action does not seek to checkmate the legality of any regulations, directives, decision and other subsidiary legal instruments adopted by ECOWAS and does not envisage any failure by a Member State to honour their obligation under any treaty, conventions and protocols, regulations, directives or decision of ECOWAS. Nor is it an action against any Community institution; as such the action of the plaintiff is not one that enjoys jurisprudential cognizance by virtue of Article 9[1]-[8].

39. They contend that none of the appropriate powers of the Court enumerated above is implicated in the Application, rather the Applicants are seeking this Honourable Court to sit on appeal against the decision of the Nigerian domestic courts, a relief that the Court in a plethora of its cases has declined. In essence the Applicants are seeking an order of the Court to set aside the decision of the Nigerian domestic court wherein they were sentenced to death.

40. They further argue that the statutes of this Honourable Court have not provided for any of the reliefs sought by the Applicants, as such this Honourable Court is bereft of jurisdiction to hear and entertain same. Citing the Court in *PETER DAVID V. AMBASSADOR RALP UWECHUE* (2010) CCJELER 213. They conclude that the Court is an international court established by a treaty and by its own nature; it should primarily deal with disputes of international character.

41. Furthermore, the Respondent argued that Applicants have expressly stated in their narration of facts that they did not lodge an appeal within the stipulated time, their claims that their right to appeal to in Article 7 of the African Charter was violated is rather misleading and untrue as they were not at any point prevented from filing an appeal. In the instant suit, the all the Applicant did was to approach the Board of the Prerogative of Mercy for clemency. There was no attempt to appeal and till date no attempt has been made to appeal the sentence neither did the Applicant approach the legal aid to help their appeal process.

42. They further state that the domestic law has provisions where parties seeking to appeal a decision can apply for extension of time. This, the Applicants have not done but chose to approach this Court about 16 years after the judgment alleging unsatisfactory legal representation.

43. In conclusion the Respondent urge the Court to decline jurisdiction over this suit as this Court cannot be used as a mechanism to appeal decision of municipal courts.

#### *Applicants' response*

44. The Applicants in their response submit that the Court has jurisdiction to hear the Application. Their case is that they have been on death row for more than 16 years, where they have continued to undergo daily mental and psychological torture by not knowing when death would come knocking. In addition they have serious medical conditions which the Respondents cannot cater to, thus the claim for their immediate release.

45. The Applicants also recalled several cases where the Court ordered the immediate release of inmates on death row in Nigeria for violation of their rights. Some of which were personally handled by the first Applicant and includes: Gabriel Inyang v. Federal Republic of Nigeria (ECW/CCJ/APP03/18; Maimuna Abdulmumimi v. Federal Republic of Nigeria (ECW/CCJ/APP/15/13.

46. On the allegation that they are seeking the Court to sit on an appeal over their case, they argue that the reliefs claimed is not to invoke an appellate jurisdiction of the Court.

47. In the circumstances, the Applicants submit that this Court ought to exercise its jurisdiction over the Application.

#### *Analysis of the Court*

48. The jurisdiction of this Court is founded on Article 9(4) of the Protocol A/P1/7/91 on the Community Court of Justice (as amended by the Supplementary Protocol), which provides, “*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*”

49. In that wise, the Court has held in a plethora of cases that it will exercise its powers to hear any application, where there has been an allegation of human rights violation and where the allegation occurred within the territory of a Member State.” MR. AMOS BROSIUS v. REPUBLIC OF LIBERIA ECW/CCJ/JUD/06/20 PAGE 16; See also SAWADOGO PAUL & 3 ORS V. REPUBLIC OF BURKINA FASO ECW/CCJ/JUD/07/20 PAGE 7.



50. In the instant case, the Applicants have specifically alleged that their rights as provided for by Articles 2, 5 and 7 of the African Charter were violated by the Respondent. On the other hand, the Respondent argues that the Applicants' claims do not fall within the jurisdiction of the Court as provided by Article 9 of the Protocol (as amended by the Supplementary Protocol).

51. The Court will proceed to determine whether the allegations in the Application merits the exercise of jurisdiction of the Court. The Court notes that the Respondent relied solely on Article 9(1) of the Protocol which enumerated the jurisdiction of the Court to adjudicate on disputes relating to the interpretation, application and legality of the ECOWAS Treaty, Conventions, Protocols, directives, decisions and other subsidiary legislation of the Community.

52. It equally notes that the subject matter of the Application is premised on allegation of the violation of Articles of the African Charter including Article 7 on right to fair hearing. The failure of the Applicant to cite the appropriate Article of the Protocol that confers jurisdiction on the Court to hear cases of human right violation which is (Article 9(4)) does not negate the validity of the Application. Indeed, mere allegation of human rights violation suffices to invoke the jurisdiction of the Court. HON. JUSTICE S. E. ALADETOYINBO V. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/20 PAGE 8.

53. Having found that the Application is premised on an allegation of violation of human rights, the Court dismisses the objection of the Respondent in this wise and holds that it has jurisdiction to adjudicate over the Application

*On the Court sitting on appeal over decisions of national courts*

54. The Respondent also objects to the jurisdiction of the Court on the basis that the Applicants are seeking the Court to sit on appeal over the decisions of the national courts of the Respondent, which convicted them.

55. In their response, the Applicants state that they do not intend that the Court sits on appeal over the decisions of the domestic courts. They submit that it is clear from the reliefs claimed in their Application that they have not invoked an appellate jurisdiction of the Court and consequently, the Respondent's submissions in that regard are totally irrelevant and should be dismissed.

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56. The Court recalls that it has in its plethora of cases affirmed that it has no jurisdiction to examine or sit on appeal on the decisions of national courts and cannot reverse the decision of a national Court. So where the subject-matter of the dispute essentially has to do with re-examining of judgments already delivered by domestic courts, the matter will be dismissed. See MADAM ISABELLA MANAVI AMEGANVI & ORS V. THE REPUBLIC OF TOGO JUDGMENT NO ECW/CCJ/JUG/06/12 PAGE 6. AND PTE ALIMU AKEEM V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/01/14 PAGE 10.

57. However, the Court is quick to caution that this is not an absolute position, as it has equally accepted certain situations where it will examine the decisions of national Courts if human rights violation were alleged in the course of the proceedings before the national courts. See HIS LORDSHIP JUSTICE PAUL UUTER DERRY & 2 ORS V. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 PAGE 28. See also PTE ALIMU AKEEM V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/01/14 PAGE 10.

58. In the instant case, the claim of the Applicants being the allegation of human rights violation in the course of the proceedings of their case before the national courts, this Court is competent to examine the said decision to determine its merit. Therefore, the Court holds that it has jurisdiction to entertain the instant Application. Consequently, the Respondent's preliminary objection on this issue is hereby dismissed.

ISSUE 2:

*Objection that the Application is statute barred*

59. The Respondent averred that assuming but not conceding that the subject matter of this suit falls within the jurisdiction of this Honourable Court, they strongly contend that the purported cause of action of the Applicants arose sixteen (16) years ago, which makes this Application statute barred in accordance with Article 9(3) of the Supplementary Protocol [A/SP.1/01/05] amending the Protocol [A/P1/7/91] relating to the Community Court of Justice.

60. They refer the Court to paragraph 2 of the Applicants' narration of facts wherein it is stated that the Applicants have been on death row for sixteen

years now. The Respondent states that this Application was filed and registered by the Registry of the Court on 25 January 2019, which is more than the mandatory three years within which to initiate an action against the Respondent as required by the provision of Article 9(3) as referred above.

61. Consequently, they content that the above referred Article mandates an action for violation of human rights to be commenced within three years of the alleged cause of action. They submit that the issue of statute bar is a jurisdictional matter and where a Court lacks jurisdiction it lacks requisite powers to entertain same. They therefore urge the Honourable Court to resolve this issue in their favour and so hold.

*Applicant's response*

62. The Applicants in their response to the objection of the Respondent that the Application is statute barred submitted that the violations of their rights are continuous in nature. That the conditions of inmates on death row in Nigerian Prisons is below standard and the living condition of death row inmates have diminished inmates' sense of humanity which depreciates daily while waiting to be executed.

63. Secondly, the Applicants submit that they have continued to suffer continuous violations of their rights, and undergo torture and extremely inhuman conditions on a daily basis. They have lived daily in fear not knowing when and at what time they would be executed. This has made them to develop high blood pressure and other serious medical conditions.

64.Thirdly, the Applicants have suffered enormous mental and physical torture and have had to undergo extreme inhumane conditions, having to constantly live with the fear of death every single day for the last 16 years.

65. Fourthly, the Applicants submit that even if they were to be held technically out of time to bring this Application, then this Court ought to exercise its discretion to extend, in the interest of justice, the period within which the Applicant is allowed to bring this claim, given the particular circumstances of this case.

66.Finally, they submit that the delay in bringing the present Application has been as a result of a range of significant factors, including: (a) complications arising from their being in detention and being required to spend time in Solitary; (b) indebtedness the Applicants have suffered as a direct result of having been held and deprived of their livelihood, which has made organizing their life and bringing formal complaint particularly difficult; and (c) the emotional and psychological trauma, which has significantly affected the Applicants' ability to manage and bring the present Application.

67.They conclude by stating that even if the Applicants were technically outside the three-year limitation period, this Court ought to exercise its inherent discretion to adjudge this Application admissible in the interest of Justice between the parties.

### *Analysis of the Court*

68. The Court notes that the relevant provision on limitation of time to file a complaint of human rights violation is three years as enshrined in the English version of Article 9(3) of the Protocol (as amended by the Supplementary Protocol A/SP/01/05). However, the Court recalls that having observed a discrepancy between the wordings of this Article in the English and French versions, it resolved to adopt the French version which is the original text of the Protocol and in which actions against Member State being statute barred after three (3) years is missing.

69. Consequently, the current position of the Court is that its previous decisions which declared inadmissible actions brought against Member States for violation of human rights after three years were decided per incuriam. Accordingly, actions alleging violation of human rights against Member States is not subject to time limitation. See *FEDERATION OF AFRICAN JOURNALISTS & 4 ORS V. THE REPUBLIC OF THE GAMBIA* ECW/CCJ/JUD/04/18(UNREPORTED) PG. 19-22.

70. The Court has thereafter upheld above decision finding no reason to depart from its earlier judgment that an applicant cannot be barred from instituting an action on violation of human right based on the effluxion of time. *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA* RULING NO. ECW/CCJ/RUL/01/21, PAGE 23-25.

71. Therefore, in the instant case, the Court equally adopts its earlier decisions and holds that the Application being one that alleges the violation of human rights, is not statute barred.

72. In light of this, the Court holds that the Respondent's Preliminary Objection that the Application is statute barred cannot stand and is hereby dismissed.

### **VIII. ADMISSIBILITY**

73. The admissibility of applications in this Court is provided for in Article 10(d) (i) and (ii) of the Supplementary Protocol 2005: "*Access to the Court is open to...d) individuals on application for relief for violation of their human rights; the submission of application for which shall: i) not be anonymous; nor ii) be made whilst the same matter has been instituted before another International Court for adjudication.*"

74. The Court holds that the Application is in compliance with Article 10 (d) (i) and (ii) of the Protocol, having found that it is neither anonymous nor made whilst the same matter has been instituted before another international court for adjudication.

75. It is imperative to state at this point that while Article 10(d) (i) and (ii) are statutory provisions enshrined in the Protocol for the determination of the admissibility of an Application therein, they are not exhaustive as certain facts of the Application may present a need for further examination of its admissibility outside the enshrined provision. One of such requirements relates to the authorization or mandate to act in a representative action lack of which renders the Application inadmissible.

76. Thus while the Application has been declared to be in compliance with the provision of Article 10(d) (i) and (ii) of the Supplementary Protocol, it is

still necessary to determine the competence of the Application as it concerns authorization or mandate to act.

77. The cardinal rule on access to the Court is that only direct victims of human rights violations can access the Court for relief for the violation of their human rights. See Article 10(d) (i) and (ii) of the Supplementary Protocol 2005: “*Access to the Court is open to...d) individuals on application for relief for violation of their human rights...*” In essence, direct victims alleging violation of their rights with interest that is direct, personal and certain are the only parties inherently qualified to seek remedy for such violation which ordinarily cannot be transferable to another individual or organisations. ODAFE OSERADA V. ECOWAS COUNCIL OF MINISTERS, ECOWAS PARLIAMENT & ECOWAS COMMISSION, ECW/CCJ/JUD/01/08 @ 27.

78. It follows from the above that since the direct victim is the one personally affected, the requirement for mandate to act is obviously of no essence in an application under this circumstance.

79. While the direct victim is the party that is inherently qualified to bring action for the violation of his/her human rights, the door is however not shut against victims who are not able for recognised reasons to act for themselves as a representative action is admissible.

80. This waiver is premised on the fact that the Court recognises that Human rights are human centered, and the admissibility of an application is linked among other criteria to the status of the victim. This condition necessarily entails the applicant, acting on personal grounds as a result of a legally



protected injured interest, or in a representative capacity. NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 PAGE 18.

81. While it is established that an action can be maintained in a representative capacity by a party that is not a direct victim, an authorization or mandate to act is mandatory. In this wise the Court has held that in a representative action on behalf of a group that *“The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.....for the Plaintiffs to access the court for and on behalf of the people of Niger Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent.”* NOSA EHANIRE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA, (2017) CCJELR

82. Whilst the issue of mandate cannot be dispensed with in a representative capacity, an exception is made where due to irreversible incapacitation or death as a result of the violation, the closest family members can do so, while assuming the status of indirect victims. In other words, *“When it becomes impossible for him whose right is violated to insist on that right or to seek redress, either because he is deceased or prevented in one way or the other from doing so, it is perfectly normal that the right to bring his case before the law courts should fall on other persons close to him...”* STELLA IFEOMANNALUE & 20 ORS V FEDERAL REPUBLIC OF NIGERIA (2015) CCJELR, PAGE 463. See also VELASQUEZ RODRIGUEZ V HONDURAS, Judgment of 29 July 1988 of the Inter-American Court of Human Rights. AND THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/APP/09/11 & ECW/CCJ/RUL/03/14.

83. It is obvious that a mandate in respect of a representative action arising from the death of the direct victim is not only impracticable but impossible. Therefore such authorization is waived but the close family members who represent the victim must establish the alleged relationship.

84. Other than situations occasioned by death, the Court also recognises the possibility of a representative action in a public interest litigation which emanated from the doctrine of *actio popularis*. This doctrine was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. It was also 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. See the case of SERAP V. FRN (2010) CCJELR, PG. 196, PARAGRAPH 32, & 34.

85. The Court under this situation will allow NGOs, volunteers like Lawyers, Citizen Petitioners 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. This is premised on the ground that this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest.

86. While NGOs and other public spirited persons can legitimately act on behalf of direct victims, the requirement for mandate to act has also been waived in their favour. While speaking to the requirement of mandate in public interest litigation, the Court held as follows; “.....*However, exceptions to this rule exist. These include but not limited to cases of collective interest*

*(usually referred to as public interest litigations) and the non-victims receiving authority to act on behalf of the victims or their close relations...”*

THE INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHT ENLIGHTENMENT FOUNDATION V. FRN (2016) ECW/CCJ/JUD18/16 & 2 ORS.

87. The Court equally cited the above referred decision in making a finding in a preliminary objection raised for lack of mandate in below referenced case, and held that the first Applicant being an NGO and acting in public interest, needs no authorization and possess the *locus standi* to approach this Court in a representative capacity. REV FR SOLOMON MFA & ORS VS NIGERIA JUDGMENT NO: ECW/CCJ/JUD/06/19 PARAGRAPH 60.

88. It must be emphasized that the fundamentals of a waiver of mandate to act in a representative action by an NGO is premised on the fact that same is instituted for public interest. In other words the overriding interest of the NGO must be the welfare of the general public which it seeks to protect. A quest for personal gain by the representing party therefore negates any such action.

89. Accordingly, whilst NGOs can sue in a representative capacity for the violation of human rights of others it cannot maintain an action as a victim of Human Rights violation. The Court has reiterated that “...*there is a clear distinction between these two classes of cases, one in which the corporate body sues as the victim and the other in which it sues on behalf of the victim, the victim here being identified as a human being. In the former situation the corporate body has no locus or capacity to sue, but in the latter situation, it has.*” THE INCORPORATED TRUSTEES OF THE MIYETTI ALLAH KAUTAL

90. The summary of the preceding analysis is that a direct victim who has suffered personal and direct loss can bring an action for the violation of his/her human rights obviously without a mandate. On the other hand, an indirect victim who has not suffered directly is equally recognized to bring an action in a representative capacity on behalf of the direct victim. A mandate is waived where as in the case of death of the direct victim it is impossible or impracticable to obtain a mandate but a proof of affiliation to the victim must be established. Similarly, a legally recognized organization such as an NGO bringing an action in representative capacity on behalf of direct victims for public interest need no mandate to act.

91. Considering that a mandate to act is pivotal to the admission of an application under this circumstance, it is now appropriate to situate the instant Application within these perimeters to determine whether it is competent with regards to the requirement of mandate to act. This Application was filed by the Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation on behalf of 7 death row inmates allegedly convicted for murder in various courts in Nigeria and thereafter sentenced to death. They are further alleged to be between the ages of 24 and 101 and have been on death row for a period ranging from 8 to 28.

92. The instant Application though brought by an NGO in a representative capacity for 7 individuals, same not being on behalf of deceased victims or

in pursuance of public interest, requires a mandate to act. The Court however has no record of any authorization by these alleged inmates to the said NGO.

93. The Court at this stage must reaffirm as earlier stated that human right is victim-centered - *NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA*- Supra. Therefore, victims of human right violations are the core object of protection of the ECOWAS Court of Justice as well as other similar international human rights Courts. This is achieved by holding Members States accountable to the treaty obligations signed and providing redress to victims of violations occasioned by them.

94. Consequently, in protecting such redress and ensuring that their vulnerability is not exploited, a safeguard is put in place to ensure that individuals or organisations that represent them do so in the best interest of the said victims. Therefore in a representative Application, it is imperative that the Court is convinced that the victims willingly and knowingly delegated to such individuals or organization their inherent rights to seek redress by themselves. Therein lies the import of the requirement for mandate to act and the mischief it seeks to cure.

95. As earlier stated, the Court has no record of any mandate from the said inmates, the importance of which as highlighted supra is not only imperative but equally mandatory. Lack of such mandate in the instant case is therefore grave as it renders the Application incompetent. This consequence has been affirmed in a plethora of decisions by the Court as in the case below where in further confirmation of a mandate as a legal document that gives full power to act, it held thus: “...*in the absence of such mandate, the Collectif*

*des Association Contre l'impunité au Togo which claims to represent Mr. AGBETOGNON in the instant procedure cannot validly intervene in the case in such quality. Consequently, there is need to declare the Application as inadmissible*". COLLECTIF DES ASSOCIATION CONTRE L'IMPUNITE AU TOGO VS TOGO ECW/CCJ/JUD/12/18 PARAGRAPH 12&13. See also MME AZIABLEVI YOVO & 31 ORS V TOGO TELECOM & REPUBLIC OF TOGO ECW/CCJ/JUD/04/12, PARAGRAPH 38.

96. In view of the above analysis, the Application filed by Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation on behalf of the 7 named inmates without a mandate from them is declared incompetent. Indeed the bottom has fallen out of the entire Application and it can hold no water. The Court therefore holds that the Application is inadmissible.

## **IX. COSTS**

97. 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.*"

98. In line with Article 66(4) of the Rules which provides that "*Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional; the Court may order that the costs be shared or that the parties bear their own costs*", the Court holds that each Party shall bear their own costs.

## **X. OPERATIVE CLAUSE**

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

**As to jurisdiction:**

- i. **Declares** that it has jurisdiction to hear the Application;
- ii. **Dismisses** the Respondent’s Preliminary Objection on jurisdiction;

**As to admissibility:**

- iii. **Declares** that the Application is inadmissible for lack of capacity to act;

**As to costs**

- iv. **Orders** each Party to bear their own costs.

Hon. Justice Edward Amoako **ASANTE** - Presiding .....

Hon. Justice Dupe **ATOKI** – Judge Rapporteur .....

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

Mr. Tony ANENE- MAIDOH - Chief Registrar .....

Done in Accra, this 29<sup>th</sup> Day of March 2022 in English and translated into French and Portuguese.