



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

In the Matter of

EKUNDAYO IDRIS v. THE FEDERAL REPUBLIC OF NIGERIA
Application No: ECW/CCJ/APP/30/19; Judgment No. ECW/CCJ/JUD/09/22

JUDGMENT

ABUJA

23 MARCH 2022

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

EKUNDAYO IDRIS

APPLICANT

v.

FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE**

- Presiding/ Judge Rapporteur

Hon. Justice Dupe **ATOKI**

- Member

Hon. Justice Januaria M. Tavares **COSTA**

- Member

ASSISTED BY:

Dr. Athanase ATONNON

- Deputy Chief Registrar

REPRESENTATION OF PARTIES:

Nihinlola **ALUKO-OLOKUN** (Mrs.)

Oludayo **FAGBEMI**, Esq.

Counsel for Applicant

Anne C. **AKWIWU** (Mrs.)

Simon **ENOCK**, 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 Applicant is Miss Ekundayo Idris, female Community citizen of the Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria and a Member State of the Economic Community of West African States (ECOWAS). It is a party to the Revised Treaty of ECOWAS, the Protocol creating the ECOWAS Court and the Supplementary Protocol thereof, which confer jurisdiction on this Court to hear and determine cases of human rights violations brought before it by individuals.

III. INTRODUCTION

Subject matter of proceedings

4. The Applicant alleged that, at the age of seventeen years, she was violently raped by one Peter Okoro in Lagos State Nigeria. She claimed that a Medical examination confirmed that she was indeed raped and a report was subsequently made to the Nigeria Police in Lagos State. After police investigations, the suspected rape perpetrator was charged with the offences of rape and unlawful assault and arraigned before the Lagos State Magistrate Court, Ajah Division. The Applicant stated that though she has orally testified in the case, at the time of filing this suit, other witnesses of the prosecution have not been called and the Accused has since not open his defence for close to seven years .

5. The Applicant contends that by virtue of the failure to conduct a speedy and effective trial against the perpetrator of the sexual violence she suffered, the Respondent is legally responsible for violation of her right to dignity, to a fair hearing, to remedy, freedom from cruel, inhuman or degrading treatment, freedom from discrimination as guaranteed under the relevant human right instruments, particularly the African Charter on Human and Peoples' Rights (African Charter).

IV. PROCEDURE BEFORE THE COURT

6. The Initiating Application dated and filed on 26 June 2019, was served on the Respondent on 10 July 2019.
7. Together with the Initiating Application, the Applicant filed a Motion Exparte praying the Court to withhold the identity of the Applicant from the public.
8. On the 26 September 2019, the Applicant filed a Motion on Notice for Default Judgment and was served on the Respondent on the 8 October 2019.
9. On 8th October 2019, the Applicant filed a Counter Affidavit to the Respondents' Notice of Preliminary Objection and was served on the same day on the Respondent,
10. On the 4 December 2019, a Motion on Notice seeking for leave to intervene as an amicus curiae was filed by an NGO, The Initiative for Strategic Litigation in Africa (ISLA) and served on the 17 December 2019.
11. On the 23 April 2021, Amicus Curiae's Brief was filed and served on the same day.
12. In a virtual court session held on the 23 September 2021, all parties were represented by Counsel in Court including prospective Amicus Curiae (ISLA). Respondent's Counsel's application to regularize its Defence was granted.

Amicus Curiae moved his Application. Applicant had no objection to the application of the Amicus Curiae. Respondent opposed the Application of the Amicus to intervene. In the Court's ruling, the Application for Amicus was rejected.

13. The Applicant's application to conceal her identity granted by the Court. The Case was heard on the merit wherein the Applicant and the Respondent adopted their pleadings and made oral submissions before the case was adjourned for Judgment.

V. *APPLICANT'S CASE:*

a. Summary of facts

14. The Applicant claims that she was violently raped by one Peter Okoro on 20th August 2011 at Olokonla Area of Lagos State, Nigeria at the age of 17 years. According to her, on that day, she had gone to see Okoro to collect some money for her elder sister. While discussing with him at a road side, Peter Okoro and eight other accomplices dragged her forcefully to a wooden building where she was forcefully and violently raped by Okoro, after tearing her entire clothes. She stated that after the rape, he warned her not to tell anyone else he would send kidnappers to kidnap her.
15. The Applicant added that after the rape, she was in severe pain and was taken to the Lagos State General Hospital, Ibeju Lekki where she was admitted for four days while undergoing treatment. The Medical Report by the hospital showed that her vaginal canal was free and open, her hymen broken into and disappeared, and there was mild bleeding.

16. It is the case of the Applicant that she eventually reported the rape at the Ajiwe Police Station in Ajah, Lagos State, Nigeria. After police investigations, the suspected rape perpetrator was charged with the offences of rape and unlawful assault and arraigned before the Lagos State Magistrate Court, Ajah Division on 8 September, 2011 where he pleaded “not guilty” to the charges on the same day.
17. The Applicant states that she finished her oral testimony in the case by 29 March 2012. However, the trial has suffered various adjournments till date. The Accused person was last present at the Court on 7th January 2013 and has not been produced in court even though he is in prison custody.
18. The Applicant states that the Prosecution has not called the other witnesses to enable the Accused open his defence, and the trial is stalled, leaving the Applicant without a remedy, more than seven years after she suffered the rape.
19. The Applicant further claims that the case was filed before a Court lacking jurisdiction in respect of the offence of rape. The case was filed before a Magistrate Court rather than a High Court which has the exclusive jurisdiction to try the offence of rape.

b. Pleas in law

20. The Applicant relies on the following laws:
 - i. Articles 1, 2, 5, and 7 of the African Charter on Human and Peoples’ Rights (African Charter);
 - ii. Articles 2 (1), 3, 4 and 25 of the Protocol to the African Charter on Human and Peoples’ on the Rights of Women in Africa (Maputo Protocol);
 - iii. Articles 2(1), 2(3), 7 and 14 of the International Covenant on Economic, Social and Cultural Rights; and

- iv. Articles 1(1) and 27 of the African Charter on the Rights and Welfare of the Child.
- v. Articles 1 and 2 of the Convention on the Elimination of all forms of Discrimination Against Women;
- vi. Articles 2 (1), 2 (3), 7 and 14 of the International Convention on Civil and Political Rights; and
- vii. Articles 1(1) and 27 of the African Charter on the Rights and Welfare of the Child.

c. *Reliefs Sought*

21. The Applicant seeks the following reliefs from the Court:

- i. A **DECLARATION** that the Federal Republic of Nigeria has violated the right of Ekundayo Idris to a fair hearing pursuant to article 7(1)(a) of the African Charter on Human and Peoples' Rights, article 25 of the Maputo Protocol, and article 14 (1) of the International Covenant on Civil and Political Rights*
- ii. A **DECLARATION** that the Federal Republic of Nigeria has violated the right of Ekundayo Idris to a remedy pursuant to articles 1 and 7(1)(a) of the African Charter on Human and Peoples' Rights, article 2(3) of the International Covenant on Civil and Political Rights, and article 25 of the Maputo Protocol.*
- iii. A **DECLARATION** that the Federal Republic of Nigeria is responsible for a violation of the right of Ekundayo Idris to freedom from discrimination*

pursuant to article 2 of the African Charter on Human and Peoples' Rights, articles 2, 3(4) and 4(2) of the Maputo Protocol, article 2(1) of the International Covenant on Civil and Political Rights and articles 1 and 2 of the Convention on the Elimination of all Forms of Discrimination against Women.

- iv. ***A DECLARATION** that the Federal Republic of Nigeria is responsible for violation of her rights to dignity, and to freedom from cruel, inhuman or degrading treatment pursuant to article 5 of the African Charter on Human and Peoples Rights, article 3 of the Maputo Protocol and article 7 of the International Covenant on Civil and Political Rights.*
- v. ***AN ORDER OF DAMAGES** in the sum of Twenty-five Million Naira to compensate Ekundayo Idris for the physical and psychological pain, emotional distress and post- traumatic stress.*
- vi. ***AN ORDER** directing the Federal Republic of Nigeria to carry out an effective prosecution and punishment of the perpetrator of the sexual abuse suffered by Ekundayo Idris.*
- vii. ***ANY SUCH FURTHER ORDER** or orders as the Court deems fit in the circumstances.*

VI. RESPONDENTS' CASE

a. Summary of facts

22. In its defence, the Respondent states that none of the officials or personnel/ staff of any of its institutions or agencies had prior knowledge of the incident of rape of the Applicant until when she was brought to and immediately admitted and treated at Lagos State General Hospital, Ijebu, Lekki, Lagos
23. The Respondent admitted the averment of the Applicant to the extent that she was admitted in the Lagos State General Hospital first and subsequently reported a case of allegation of rape against her by one Peter Okoro at a police station in Lagos and upon investigations, the suspect was arrested and arraigned before a court of law.
24. The Respondent contends that the Police promptly charged the accused with the offence of rape and arraigned him before a trial magistrate court of the Lagos State where the case is still pending.
25. The Respondent further states that once a case is filed before its courts, the discretion of the court in the conduct of its proceedings is not usually disturbed by any other institution/organ of the Respondent until at the conclusion of the case whereby an aggrieved or dissatisfied party may exercise his/her right to appeal.
26. Again, cases before the Respondent's court whether criminal or civil are sometimes affected by either the transfer, retirement, elevation, removal or death of a trial judge of the particular case involved with the attendant consequences of commencing the case afresh.

27. According to the Respondent Peter Okoro is being prosecuted and there was the need to await the outcome of the prosecution at the court aforementioned and upon being found guilty, the court will surely convict and sentence the Accused person in accordance with the law and assuage or propitiate the Applicant.
28. It is the case of the Respondent that the State cannot be accused of deliberate violation of the right of the Applicant to fair trial on account of the non-conclusion of the pending case against the alleged perpetrator of the crime.
29. The Respondent contends that it has not violated any of the fundamental human rights of the Applicant known to law and it will be in the interest of justice to reject the case as inadmissible, having regard to the pendency of the criminal case against the perpetrator of the crime against the Applicant.

b. Pleas in law

30. The Respondent pleads Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

c. Reliefs sought by the Respondents

31. The Respondent urges the Court to dismiss the application in its entirety for lacking in merit and inadmissible.

VII. JURISDICTION

32. The case was filed in compliance with the relevant provisions of the texts on the Court and it is hinged on alleged violation of the Applicant's human rights

by the Respondent guaranteed under the African Charter and other international human rights instruments the Respondent is a signatory. This Court, therefore, under Article 9(4) of the Supplementary Protocol on the Court as amended has jurisdiction to hear and determine this matter.

VIII. ADMISSIBILITY

33. The Court holds that this matter is admissible under Article 10(d) of the Supplementary Protocol on the Court as amended which 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*”.

IX. MERITS

34. The present application is instituted by the Applicant to seek redress for alleged violation of the applicant’s fundamental human rights on account of a rape she allegedly suffered. The crux of her case is the alleged failure to conduct a speedy and effective trial by the Respondent’s court against the perpetrator of the offence she suffered. The summary of pleas in law in her application upon which various reliefs are sought can conveniently be condensed into the following areas that the Court needs to determined:

- a. violation of right of freedom from cruel, inhuman or degrading treatment;
- b. violation of right of freedom from discrimination;

- c. violation of right to remedy; and
- d. violation of right to fair trial.

35. At this stage, the burden is on the Applicant to prove the alleged violation of her rights as enumerated above. This is pursuant to the established principle of the burden of proof as held in the case of *PETROSTAR (NIGERIA) LIMITED v. BLACKBERRY NIGERIA LIMITED & ANOR*, (2011) CCJELR 99, para. 33 where the Court held that “*After all, it is a cardinal principle of law that he who alleges must prove*”.

36. One of the *locus classicus* on the issue of onus of proof in the jurisprudence of this Court is the case of *FEMI FALANA & ANOR v. THE REPUBLIC OF BENIN & 2 ORS* (2012) CCJELR 1 in which the Court held that;

“the onus of proof is on the party who asserts a fact and who will fail if that fact failed to attain the standard of proof that would persuade the Court to believe the statement of the claim.”

37. The Court had the opportunity to further comment on the standard of proof required by this Court in contrast with National Courts in civil cases by holding that:

“...there is a slight difference but that the combined effect is higher in standard (before this Court) than preponderance of evidence which is the standard in the National Court in civil cases”.

38. The Court concluded in that case at p. 15 by quoting from International Courts and Tribunals OUP, London, (853) 328, where Cheng, noted thus:

“the burden of proof, however closely related to the duty to produce evidence, implies something more. It means that a party having the

burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, of sufficiency, or proof.”

39. It is in the light of the above espoused principle of proof that the Court will determine the allegations of the Applicant against the Respondent with the view to establishing their veracity.
 - a. ***On the allegation of violation of right of freedom from cruel, inhuman or degrading treatment under Article 5 of the African Charter.***
40. The Applicant in her submission sought a declaration from the Court after advancing her argument under this head to pronounce that the Respondent is responsible for the violation of her rights of freedom from cruel, inhuman or degrading treatment as enshrined under Article 5 of the African Charter.
41. The Respondent argued in response that the act of rape occasioning this alleged violation of the Applicant’s right was done by one Peter Okoro who was arrested promptly and still remains in detention facing trial at a Lagos State Magistrate court till date.
42. The jurisprudence of this Court has clearly established when a State shall be responsible for acts of violation of human rights depending on whether the acts were perpetrated by its agents. The dichotomy between perpetrators of human rights violation as State agents, and the ensuing responsibility of the State as compare to individuals who are non-State actors was succinctly espoused in the case of *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. THE FEDERAL REPUBLIC OF NIGERIA RULING NO. ECW/CCJ/RUL/01/21* where the Court held that:

“In view of the facts that a Member State as an abstract entity must necessarily act through organs made of human beings, its responsibility when questioned must a fortiori encompass the organs acting on its behalf ... the State will be responsible for the acts and omissions of their agents, institutions or organs acting in their official capacity, even if such acts were committed outside of the scope of their official authority or in violation of domestic laws. Thus, where agents of a state violate the rights of an individual(s) these violations will be imputable to the State whether it was sanctioned by it or not, thereby establishing its international responsibility for the acts or omissions.”

43. The ratio in the above-cited Ruling of the Court affirms the time tested general conditions in international law under which States may be considered responsible for wrongful actions or omissions, and the legal consequences that flow therefrom.
44. In international law, there is liability for failure to observe obligation imposed by Treaties on States. From a different standpoint, liability is based upon intentional or negligent conducts attributable to States. The theory of the law of State Responsibility was well developed with the adoption by the International Law Commission in 2001, of *ARTICLES ON RESPONSIBILITIES OF STATES FOR INTERNATIONAL WRONGFUL ACTS*. See *CASES AND MATERIALS OF INTERNATIONAL LAW*, D.J Harris, Sixth Edition (Sweet & Maxwell, 2004) pp.

Article 1: *every internationally wrongful act of the State entails the international responsibility of that State;*

Article 2: there is an internationally wrongful act of the state where conduct consist of an action or omission;

a) is attributable to a State under international law;

b) constitutes a breach of an international obligation of the State.

45. In the instant case, from the available record of the facts before the Court, there is no evidence of direct nexus that Peter Okoro who committed the crime of rape against the Applicant is one and the same as the Respondent in this case. Indeed, the parties are agreeable that the said perpetrator is neither an agent nor was acting in any capacity for the Respondent State when the alleged crime was perpetrated on the Applicant. To that extent, clearly the Respondent's responsibility for the alleged violation does not arise.
46. The Court, in coming to the above conclusion, is not oblivious to the fact that conduct attributable to the State can consist of actions or omissions. Having established that the Respondent is not liable for the acts of the Applicant's perpetrator of crime of rape, the question that begs for attention in the instant case is, whether the Respondent could equally be held responsible for any conduct of omission.
47. Cases in which international responsibility of a State have been invoked on the basis of the omission of that State abound in the international law jurisprudence. For example, the *CORFU CHANNEL CASE, MERIT, I.C.J REPORT 1949 p.4 at pp. 22-23* case, the ICJ held "*that it was a sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of mines in its territorial waters and did nothing to warn third parties of their presence*". Again, in *DIPLOMATIC AND CONSULAR STAFF CASE, I.C.J REPORT 1980, p.3 at pp.31-33 paras 63, 67*, the Court concluded

that the responsibility of Iran was entailed by the “*inaction*” of its authorities which “*failed to take appropriate steps*” in circumstances where such steps were evidently called for.

48. In the European Court of Human Rights case of *TAGAYEVA AND OTHERS v. RUSSIA Nos. 26562/07 AND 6 OTHERS, 13 April 2017*, the Court considered the obligations of the State, as regards a large-scale hostage-taking by terrorists which took place in a school. There were hundreds of dead and injured and the Applicants were next-of-kin and survivors. In its judgment on merits, the Court found that there had been a violation of Article 2:

“a failure to protect against a known and foreseeable threat to life from terrorist act”

49. The combined ratio of the above authorities is to the effect that, to entail the responsibility of a State by its inaction or omission, there must be a known and foreseeable threat for which the State failed to take appropriate steps to avert. In the case at hand, the Respondent, not being directly responsible for the rape against the Applicant, its responsibility could only be invoked by the inaction and/or failure to apprehend the perpetrator, investigate and prosecute him. This the Respondent has done by arraigning the perpetrator before court. There is no way the Respondent could anticipate that the Applicant was susceptible to rape at the instance of her alleged perpetrator.

50. It is therefore not in doubt that the grievances of the Applicant fall within the realm of national courts where individual perpetrators of crime can be held accountable in their individual capacities. If it is established that the Respondent’s courts have failed to conduct a speedy and effective trial against the perpetrator of the rape, (as claimed for in the instant suit) the former would

be liable for violation of the Applicant's right to fair trial and not right of freedom from cruel, inhuman or degrading treatment for acts of a non-state actor.

51. For this reasons, the Court holds that the allegation of violation of right of freedom from cruel, inhuman or degrading treatment of the Applicant by the Respondent has not been substantiated and same fails and hereby dismissed.

b. *On the allegation of violation of right to freedom from discrimination under Article 2 of the African Charter.*

52. It is the claim of the Applicant that the failure of the Respondent's government to conduct effective and speedy trial against her perpetrator violates her right of freedom from discrimination contrary to Article 2 of the African Charter.

53. The Article 2 of the African Charter 2 States:

“Every individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the present charter without distinction of any kind such as race, ethic group, colour, sex, language, religion, political or any other opinion, national, social origin, fortune, birth or other status.”

54. It has been held in plethora of judicial authorities that to ground an action on Article 2 of the African Charter on discrimination, it must be proved that the Applicant has been treated differently in the same analogous situation with another person in similar circumstances or same situation.

55. In the case *THE NATIONAL CO-ORDINATING GROUP OF DEPARTMENTAL REPRESENTATIVES OF THE COCOA-COFFEE*

SECTOR (CNDD) v. REPUBLIC OF COTE D'IVOIRE (2004-2009) CCJELR 31, the Association of Cocoa Producers put up a case of discrimination or differential treatment with respect to the high taxes they are levied compare to their neighboring producers in Nigeria and Ghana. They relied on and argued that such inequality violates Article 7 of the Universal Declarations of Human Rights (UDHR) (which is *pari-materia* Article 2 of the African Charter).

56. The Court in the CNDD case found that the Cocoa farmer's case of discrimination or differential treatment cannot be substantiated and held that:

“On this point, the Court finds that the equality in question presupposes that equal treatment be reserved for individuals finding themselves in the same situation; but from the example given, of states like Ghana and Nigeria, the court considers that one is dealing with States different from Cote D’Ivoire.”

57. Also in its judgement in the case of *PROFESSOR ETIM MOSES ESSIEN v. REPUBLIC OF GAMBIA & ANOR. (2004-2009) CCJELR 113*, where the Applicant complained of not receiving just and favourable remuneration when compared to what his colleagues in other institution receive and therefore tantamount to differential treatment, this Court held that:

“Equality presupposes same treatment for persons placed in same situation, and that in salary matters, the principle of equality may not be invoked when the source of remuneration is not the same.”

58. Clearly, the above stated jurisprudence reiterates that an action grounded on the basis of discrimination can only succeed where it can be established that in the same circumstances, one person is treated differently from another

person to his or her disadvantage. Indeed Articles 2 and 3 of the African Charter are better taken together and interpreted when dealing with cases of discrimination, and this gives a better understanding.

59. In the case of *HIS LORDSHIP JUSTICE PAUL UUTER DERY & 2 ORS. v. THE REPUBLIC OF GHANA*, Judgment No. ECW/CCJ/JUD/17/19 (Unreported), in which the Applicants complained that they were discriminated against by the Supreme Court of Ghana in the handling of their case compared to a supposedly similar situation in a decision given in a previous judgement of the Court contrary to Articles 2 & 3 of the African Charter, this Court held that:

“For an action of discrimination to succeed under the articles listed above, there must be established a difference of treatment in an identical or similar case”

60. This Court further held in the *JUSTICE PAUL UUTER DERY’s case (supra)* that:

“Having not been able to establish that the two situations are identical in all ramifications, a difference in treatment is not justified and a claim of discrimination fails. This Court therefore holds that the right to equality before the law and freedom from discrimination of the Applicants has not been violated.”

61. The position of the Court as espoused above resonates with other international courts on human rights particularly the European Court of Human Rights where it was held in the case of *RATZENBÖCK AND SEYDL v. AUSTRIA* (Application no. 28475/12), in an action of discrimination for refusal to register a same sex marriage in Austria as follows:

“In order for an issue to arise under Article 14 of the European Convention on Human Rights (which is in pari-materia with Article 14

of the ICCPR and Article 2 of the African Charter) there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently. However, not every difference in treatment will amount to a violation of Article 14. “

62. In a similar vein, following from all the above stated authorities, the Applicant has not been able to substantiate that the alleged delay in the handling of her case speedily is peculiar to only her compared to other litigants of the same predicament of rape and similar sexual violence cases in the Respondent’s courts to justify the allegation of discrimination on any ground. Consequently, the Court holds that the claim of the Applicant for the violation of her right from freedom of discrimination also fails on the basis that it has not been substantiated in view of all the available evidence on records.

c. *On the allegation of violation of right to remedy- obligation to investigate and arrest (Article 1 of the African Charter)*

63. The Applicant relying on Article 1 of the African Charter, submits that the failure of the Respondent to conduct speedy trial against her perpetrator denies her a remedy. Indeed, the effect of Article 1 of the African Charter, to which the Respondent is a signatory is that, the Respondent is under the obligation to recognize the rights enshrined in the Charter and adopt legislative or other measures to give effect to them. In other words, the Respondent is obliged to

protect the human rights of its citizens and prevent their violation and where they are violated, to provide prompt and effective remedy.

64. The issue to be resolved here is to determine if the Respondent fulfilled her obligation as a State in terms of effective investigation, arrest and arraigning the perpetrator before court with the view to providing the Applicant remedy in this case. The Applicant dwelt so much in her submission about effective investigation and remedy which will be a pointer to examine this issue under this head.
65. At the virtual hearing, the Applicant's counsel made the following submission as contained in the Verbatim Report of 23 June 2021:

“My Lord, this case concerns an incident that happened on the 20th of August, 2011. The Plaintiff was violently raped by one Peter Okoro in Lagos State Nigeria, which is the Respondent's State. She reported at the government hospital for medical checkup. The Medical examination confirmed that she was indeed raped. Subsequent to that, she reported to the Nigeria Police in Lagos State... the Police commenced investigation on the accused person, and he was arraigned before a Magistrate Court on 8th September, 2011.”

66. The Defendant on her part made this submission to substantiate that a remedy has been provided through the Court system as quoted directly from the Verbatim Report of the virtual hearing as follows:

“My Lord, the Applicant in her own processes, had stated that this matter is ongoing, she was invited as a Witness, she testified in the trial, and she was even cross-examined”.

67. Undoubtedly, the obligations of State to protect human rights of citizens in cases of violations includes and encompasses effective investigation, timeous arrest and provision of effective remedy. The Court held in the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (2014) CCJELR 249* that:

“the obligation of the State to prevent imposes the duty to carry out an effective investigation into acts amounting to human rights violations, intending to prosecute the perpetrators and redress the victims”.

68. In the case of *ESTATE OF MBAPKENU ZAMBER & 6 ORS v. THE FEDERAL REPUBLIC OF NIGERIA JUD. NO. ECW/CCJ/JUD/28/19, (Unreported)*, the Court held that:

“It is equally apposite that the procedural obligation to investigate and its attendant requirement of resorting to other effective domestic remedies against any known perpetrators of crime, as well as redressing victims are considered as indispensable obligations of any State”.

69. This Court’s jurisprudence on effective investigations is in line with that of the Inter American Court, where it has been held in the case of *VELASQUEZ RODRIGUEZ v. HONDURAS, JUDGMENT JULY 29, 1988, INTER-AM. CT.H.R (SER. C) NO. 4 (1988)* that:

“The obligation to investigate must be fulfilled in a serious manner and not as a mere formality pre-ordained to be ineffective. An investigation must have an objective and be assumed by the state as its own legal duty not as a step taken by private interest that depends upon

the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. Obligation to investigate is an obligation means rather than result.”

70. Further, in the same case the court held as follows:

“Once State authorities are aware of an incident, they should without delay institute an impartial and effective means to unravel the truth.”

71. The combined ratio of the above cited authorities is that whenever crime is alleged, a prompt, effective, impartial investigation must be conducted in fulfilment of a State’s obligation under the African Charter and other international human rights instruments to which it is a signatory with the view to redressing any wrongdoing.

72. In the instant case, the allegation of the Applicant is that the slow pace of trial denies her a remedy under Article 2 of the African Charter. After a careful analysis and a juxtaposition of the time of the alleged commission of the crime on 20th August 2011 as against the arrest and arraignment of the perpetrator *“before a Magistrate Court on 8th September, 2011”*, reveals that the investigation, arrest and arraignment of the perpetrator before court all took place within a period of two to three weeks. It is the considered view of this Court that the promptness of action on the part of the Respondent in the case meets the criteria of effective investigation intended to bring the culprit to book with the intent to provide the requisite remedy.

73. The Respondent’s extant laws provide a remedy for the crime of rape which involves both the procedural and substantive law. Procedurally, the accused must be prosecuted to prove his guilty before he can be sentenced. However,

considering the graveness of the crime, he has been denied bail and is in custody while the prosecution proves his guilt. The Respondent, in its quest to provide the needed remedy, promptly investigated, arrest and arraigned the accused before court.

74. The alleged delay in the trial must not be construed to mean denial of remedy, because, if the guilty of the accused is proven, the sanctions for the offence would be meted out. The allegation of lack of speedy trial, if proven, obviously would amount to violation of the Applicant's right to fair trial but not denial of remedy.
75. It would have amounted to denial of remedy if the Applicant has proven the allegation of arraigning the accused before the wrong court, but she woefully failed to prove same. As held in the case of *FEMI FALANA & ANOR (supra)* "*the burden of proof, however closely related to the duty to produce evidence, implies something more. It means that a party having the burden of proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, of sufficiency, or proof.*" The Applicant failed to "*bring evidence in support of (her) allegations.*" (*Emphasis mine*).
76. Flowing from the analysis in the immediate preceding paragraphs, this Court cannot find a reason convincing enough from the totality of the evidence on record in substantiation of the Applicant's claim that she has been denied a remedy. Indeed the accused who allegedly committed the offence of rape on her is still in the custody of the Respondent facing prosecution at a Lagos Magistrate Court. Consequently, the claim of the Applicant that the

Respondent is in breach of its obligation to effectively investigate and arrest the perpetrator of the alleged crime of rape against her to provide a remedy in her case has not been proved and same is accordingly dismissed.

d. On the allegation of violation of the Applicant's right to fair hearing under Article 7(1)(a) of the African Charter

77. It is the submission of the Applicant that the failure of the Respondent to conduct speedy and effective trial has denied her the right to a fair hearing under Article 7(1) (a) of the African Charter. The Applicant's counsel made the following submission during the virtual hearing (as captured in the Verbatim Report of 23 June 2021) thus:

“Subsequent to her report to the Police, the Police commenced investigation on the accused person, and he was arraigned before a Magistrate Court on 8th September, 2011. My Lord we brought this current Application before the Court in June, 2019 which was more than seven years after the accused person had been arraigned in Court. My Lord today's date is 23rd September of 2021 more than ten years later. The case against the accused person in the Lagos State Magistrate Court... is yet to be concluded...”

78. In a counter submission by the Respondent's counsel in elaboration of its pleadings, it was submitted as follows:

“My Lord, the Applicant in her own processes, had stated that this matter is ongoing, she was invited as a Witness, she testified in the trial, and she was even cross-examined. So where is the delay My Lord?”

Assuming there was a delay My Lord, how the Court system works in this Country is that Judges come and Judges go. Sometimes Judges get elevated to higher Courts, and at such they have to move up, and another Magistrate come in to take the matter de novo. It is on record My Lord, about seven Magistrates have sat on this matter, and they get elevated. So when another Magistrate is coming, he has to start de novo. That is how it is being done in criminal matters My Lord. So the Respondent is not in any way liable for breach of any Fundamental Rights, particularly Fundamental Rights to fair hearing of the Applicant, What other fair hearing, when Judgment will be delivered in some couple of months from now?"

79. The Article 7 (1) (a) of the African Charter heavily relied on by the Applicant provides;

"[e]very individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

80. The Applicant, in her pleas in law in support of the above Article 7(1) (a) of the African Charter, cited the decision of the African Commission in *KENNETH GOOD v. REPUBLIC OF BOTSWANA*, 2010 at para. 169 where it held that;

"the right to be heard requires that the Complainant has unfettered access to a tribunal of competent jurisdiction to hear his case. It also requires that the matter be brought before a tribunal with the competent jurisdiction to hear the case".

81. The African Commission has also reiterated in its decision of 2006, para 213 in the case of *ZIMBABWE HUMAN RIGHTS NGO FORUM v. ZIMBABWE* that;

“the protection afforded by Article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the right of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief.”

82. The above decisions of the African Commission is in tandem with Article 2(3) of *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)* which provides that State Parties to the Covenant undertake to ensure that any person whose rights or freedoms are violated shall have an effective remedy and they shall also ensure under Article 2(3) (b) that;

“any person claiming such a remedy shall have his/her right thereto determined by competent judicial, administrative or legislative authorities”

83. The Applicant also sought reliance on Article 25 of the *PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL)* provides that States Parties shall undertake:

a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

84. The tenets of fair hearing include consideration of the length of trial and the reasonableness of the length to determine if justice has been delayed beyond measure to occasion the violation of the right to fair trial. In the instant suit, both parties are agreeable that the perpetrator of the alleged rape is before court. However, the question that begs to be answered is about the reasonableness of the time of the trial as justice delayed could be justice denied with the resultant effect of violation of the right to fair trial, particularly relative to the crime of rape.
85. The Article 6 of the European Convention on Human Rights deals with fair trial. When the issue of reasonableness of length of proceedings came up for determination, the Strasbourg based European Court of Human Rights in the case of **CASE OF FRYDLENDER v. FRANCE** 30979/96 | Judgment (Merits and Just Satisfaction) | Court (Grand Chamber) | 27/06/2000 | enumerated three factors necessary to consider in assessing the reasonableness of length of trial which are; the *complexity of the case, the conduct of the Applicant and the Conduct of the Respondent*". The court held as follows:

“The applicant submitted that the length of the proceedings had been excessive. The Government left assessment of this point to the Court's discretion.

The Court notes that the length of the proceedings complained of, which began on 28 February 1986 with the first application to the Paris Administrative Court and ended on 26 October 1995 when the Conseil d'Etat's judgment was served on the applicant, was nearly nine years and eight months.

It reiterates that the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute.”

86. The court further held in the above cited case that in view of the anxiety and uncertainty the delay in the dispensation of the case caused the victim, it is just and reasonable to award compensation where it held as follows:

“The Court considered that in the present case the prolongation of the proceedings beyond a reasonable time had undoubtedly caused the applicant considerable difficulties and a lengthy period of uncertainty which justified the award of compensation.”

87. The Court notes with a pinch of salt the argument of the Respondent trying to explain its peculiar circumstances in respect of administration of justice where counsel of the Respondent submitted that:

“Cases before the Respondent’s courts whether criminal or civil are sometimes affected by either the transfer, retirement, elevation, removal or death of a trial judge of the particular case involved with the attendant consequences of commencing the case afresh.”

88. This Court strongly bemoans the above stated position where Member States delay speedy dispensation of justice for years which runs foul and contrary to the obligations of States under the African Charter and other international human rights instruments which expect them to prioritise speedy dispensation of justice, and in a timeous manner to avoid encroaching on all the rights provided for in the Charter.

89. The practice of delaying dispensation of justice for many years by national courts of Member States on flimsy excuses fall short of acceptable international standard in the dispensation of justice and it is condemned and rejected as unacceptable by this Court. Indeed to hold a case in perpetuity before a competent court of law without recourse to giving the victim a quick closure poses unnecessary anxiety on the victim as to whether they will get a fair trial and just remedy at the lengthy end of the trial.
90. Also of relevance to this instant case is the import of the provision of *Article 27 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES* which reads as follows:
- “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation”*
91. The crux of the instant case is that the failure to conduct a speedy and effective trial by the Respondent’s Court, against the perpetrator of the sexual violence suffered by the Applicant, is a violation of her right to a fair hearing.
92. It is in consonance with all the human rights authorities cited above, that this Court, after a careful consideration of the issue under determination comes to an irresistible conclusion that, over ten years of prosecution in which the Respondent State is yet to deliver judgment is unreasonable and violates the principle of fair trial and fortiori the right of the Applicant to the right to have her cause heard and the Court so holds.

X. REPARATIONS

93. It is trite law that once liability is established, any resultant harm attracts reparation to repair the harm. The jurisprudence of the Court is replete with cases where reparations have been ordered in favour of the injured parties. In the case of *MRS MODUPE DORCAS AFOLALU v. REPUBLIC OF NIGERIA (2014) CCJELR 229 @ 245, para. 69*, the Court held that:

“The principle of reparation constitutes one of the fundamental principles of law regarding liability. It is sufficient that the harm to be repaired must exist in reality, must be directly linked to the victim, and shall be true and capable of being evaluated.”

94. In the instant case, the Court having found the failure of the Respondent to conduct speedy and effective trial in violation of the Applicant’s right to fair trial, holds that the Respondent is liable to make reparations to restore the confidence of the Applicant and other persons in similar predicament, in the administration of justice in the Respondent’s State.

95. To this extent the material part of the reliefs sought by the Applicant are as follows:

i. AN ORDER OF DAMAGES in the sum of Twenty- Five Million Naira to compensate her for the physical and psychological pain, emotional distress and post- traumatic stress.

ii. AN ORDER directing the Respondent to carry out an effective prosecution and punishment of the perpetrator of the sexual abuse suffered by the Applicant.

96. It is pertinent to note that if the Applicant had received speedy and effective trial, her perpetrator upon conviction, would have been sentenced to prison because rape is an offence which attracts capital punishment. Obviously, there would not have been any damages for the compensation of any alleged physical and psychological pain, emotional distress and post- traumatic stress,

rather the Applicant would have been assuaged and propitiated. Again, there is no guarantee that the accused shall be convicted at all cost.

97. Throughout her case, the Applicant has also not shown any special damages she suffered as a result of the delay in prosecuting her alleged perpetrator. Perhaps, it is needless to reiterate that this Court did not seek to establish the truth of the allegation of rape but only considered the right of the Applicant to fair trial.
98. Flowing from the above, and in the absence of any particulars under this head, the Court notes that this claim is in regard to the pain and suffering arising from the alleged rape. The court having dismissed the said allegation, a claim for compensation for damages thereof cannot be entertained. Consequently, Court declines the Applicant's prayer to award her compensation for the physical and psychological pain, emotional distress and post- traumatic stress and same is dismissed.
99. In respect of the Applicant's prayer for an order "*directing the Respondents to carry out an effective prosecution and punishment of the perpetrator of the sexual abuse she suffered*, the Court deems the prayer of the Applicant appropriate in the circumstances of this case. Indeed, the Applicant has the right to fair trial of her perpetrator, and if found guilty punished for the crime committed against her. Since the Court has already found the Respondent in breach of the Applicant's right to fair trial on the account of lack of speedy and effective prosecution of her perpetrator, it is appropriate for the Court to grant her prayer as contained in her relief 7.6 in the Initiating Application.
100. Consequently, the Respondent is hereby ordered to carry out an effective prosecution of the perpetrator of the sexual abuse on the Applicant who is

standing trial at the Lagos Magistrate Court, and if found guilty mete out the appropriate punishment to him in compliance with the extant laws of the Respondent.

XI. COSTS

101. The parties did not pray for costs of the proceedings.
102. 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.*”
103. In light of the provisions of the Rules, the Court holds that since the parties failed to pray for costs, the Court orders each party to bear their respective costs.

XII. OPERATIVE CLAUSE

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

On jurisdiction

- i. **Declares** that it has competence 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 Applicant's rights to dignity, and to freedom from cruel, inhuman or degrading treatment under Article 5 of the African Charter;
- iv. **Declares** that the Respondent's failure to conduct a speedy and effective trial against the perpetrator of the sexual violence suffered by Applicant did not legally violate her rights to freedom from discrimination under Article 2 of the African Charter;
- v. **Declares** that the Respondent's failure to conduct a speedy and effective trial against the perpetrator of the sexual violence suffered by Applicant did not legally violate her rights to remedy - obligation to investigate and arrest under Article 1 of the African Charter;
- vii. **Declares** that the Respondent is in violation of the Applicant's right to fair trial under Article 7(1) (a) of the African Charter by virtue of its failure to conduct a speedy and effective trial against the perpetrator of the sexual violence suffered by the Applicant
- viii. **Dismisses** the Applicant's prayer for damages.
- ix. **Orders** the Respondent to carry out an effective prosecution and, if found guilty punishment of the perpetrator of the sexual abuse on the Applicant.

On Costs:

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

As to compliance and reporting

- ix. **Orders** the Respondents to submit to the Court within six (6) months of the date of the notification of this Judgment, a report on the measures taken to implement the orders set-forth herein.

Hon. Justice Edward Amoako **ASANTE**

Hon. Justice Dupe **ATOKI**

Hon, Justice Januaria T.S Moreira **COSTA**

Assisted By:

Dr. Athanase ATONNON Deputy Chief Registrar

Done in Accra, this 23rd Day of March 2022 in English and translated into French and Portuguese.