



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

In the Matter of

MS. ROSE BREIVOGEL & ANOR. v. FEDERAL REPUBLIC OF NIGERIA  
***Application No: ECW/CCJ/APP/12/19; Judgment No. ECW/CCJ/JUD/05/22***

***JUDGMENT***

ABUJA

21 MARCH 2022

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

1. MS. ROSE BREIVIGEL

2. MS. EIZABETH BAUMERICH

APPLICANTS

AND

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:***

Oludayo **FAGBEMI**, Esq.

Holger **HERMBACH**

Counsel for Applicants

Maimuna L. **SHIRU**, 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 Applicants are Nigerians and as such, citizens of the Economic Community of West African States (ECOWAS) and currently reside in Germany.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS and a signatory to its Protocols and Conventions.

## ***III. INTRODUCTION***

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

4. The Applicants' case is anchored on the contention that their brother was taken into custody by operatives of the Economic and Financial Crimes Commission (EFCC) in Abuja, Nigeria where he died shortly thereafter under unclear circumstances. They claimed that no effective investigation was conducted while his body remained in a mortuary for more than eighteen (18) months, and the authorities issued statements to the effect that their brother had been guilty of a crime, although he had never even been charged with a criminal offence.
5. The Applicants contend that these facts reveal several breaches of the African Charter on Human and Peoples' Rights (hereinafter referred to as "African Charter"). They invoke in particular the right to life, prohibition from torture, the presumption of innocence and the right to human dignity variously protected under Articles 4, 5 and 7(1) (b) of the African Charter.

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

6. The Initiating Application dated 20<sup>th</sup> February 2019 and filed on the 14<sup>th</sup> March 2019, was served on the Respondent on 15<sup>th</sup> March 2019.
7. On the 6<sup>th</sup> July 2020, the Respondent filed Motion for Extension of Time within which to file its Defence together with the substantive Defence and were served on the Applicants on the 7<sup>th</sup> July 2020.
8. In a virtual court session held on the 20<sup>th</sup> September 2021, The Applicants were represented by Counsel and Agent in Court but the Respondent was absent and not represented. Applicants' Counsel made an oral application for the name of the 1<sup>st</sup> Applicant to be struck out of the case on grounds that she has passed on. The Court urged the Applicants' Counsel to file death certificate before the date of judgment to authenticate his claim. Case was heard on merit and adjourned for judgment.

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

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

9. The Applicants brought the present application on behalf of their brother Mr. Desmond Nunugwo who died after he was taken into the custody of agents of the Respondent. They executed Power of Attorney for their lawyer who lodged this application on their behalf.
10. According to the Applicants, on 9 June 2016, the deceased Mr. Desmond Nunugwo went to the law office of his attorney to obtain legal advice in a private matter, the operatives of the EFCC entered the law office, took and

detained him in their premises in Abuja. About six hours later, the deceased was taken to an undisclosed hospital where he was declared dead.

11. The Applicants averred that after the death of Mr. Nunugwo, the EFCC issued a press release alleging that the deceased fraudulently obtained Ninety One Million Naira (N 91 000 000.00) from an acquaintance by false pretense, claiming that he could invest the funds in a profitable way in Dubai. The press release also stated that the deceased confessed to have received the money from his acquaintance of which he transferred Thirty Million Naira (N30 000 000.00) into an account in Norway.
12. The Applicants further averred that several media outlets reported the death of their brother and the general problem of extrajudicial killings in Nigeria by the Directorate of State Security (DSS) at their detention facility. Also, another Article by the “*News Accelerator*” revealed that the matter had been formally reported to the Nigerian police as the relevant agency to investigate the matter. Copies of the said newspaper publications were annexed.
13. The Applicants and some members of the deceased family contended that they wrote to the relevant security authorities and drew their attention to the fact that the deceased had died under unclear circumstances and therefore urged them to investigate it. They claimed that the said letters were not answered.
14. According to the Applicants, on 11 August 2016, they sent a letter to the chairman of the EFCC and subsequently, to the Nigerian Embassy in Germany informing them about their brother’s death. The Embassy informed the Applicants that the information would be passed on to the appropriate authorities.

15. From the record, on 15 August 2016, another letter was sent to the Minister of Justice and Attorney General of the Respondent state with a formal complaint regarding the death of Mr. Nunugwo. Copies of the said letters were annexed.
16. Again, on 26 August 2016, Applicants are saying that their attorney, sent another letter to the Minister of Justice requesting that a post-mortem be carried out by a renowned independent expert and the cause of death be established as a matter of urgency. Despite their demands, the authorities still failed to carry out an investigation in the matter.
17. On 24 February 2017, the Applicants lodged a complaint with the African Commission on Human and Peoples' Rights. The African Commission found a prima facie violation of the African Charter and invited the parties to submit evidence and arguments. In compliance with that deadline, the Applicants submitted their arguments on 11 August 2017, but the Respondent did not react. The African Commission extended the deadline on its own motion which expired on 28 January 2018, but since the Respondent state failed to respond, the African Commission deferred the work on that complaint.
18. The Applicants alleged that sometime in April 2018, an autopsy was carried out without the knowledge of Mr. Nunugwo's family. The doctor who conducted the autopsy issued a Medical Certificate indicating 'hypertension' as the cause of death. The said certificate provided no additional explanation on the cause of death and no information on the condition of Mr. Nunugwo's body.

19. Finally, the Applicants maintained that the deceased did not suffer from hypertension. That the details of the events leading to his death have not been ascertained, the persons responsible for his death have not been identified and held accountable, no charges have been filed, no report has been issued, no apology to the family or any compensation paid.

***b. Pleas in Law***

20. The Applicants rely on Articles 4, 5 and 7(1) (b) of the African Charter.

***c. Reliefs Sought***

21. The Applicants seek the following reliefs from the Court:

- a) AN ORDER that the Respondent pay an appropriate sum (in the discretion of the Court) as compensation for damages.*
- b) A DECLARATION that the killing of Desmond Nunugwo amounts to a violation of the African Charter.*
- c) A DECLARATION that the Respondent's authorities' failure to identify and punish those responsible for Mr. Nunugwo's death was in breach of the African Charter.*
- d) A DECLARATION that the announcements made by representative of the Nigerian authorities following Mr. Nunugwo's demise infringed on the presumption of innocence and to order that the statement be retracted and that Nigeria publicly apologize in adequate form.*

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

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

22. The Respondent denied the Applicants' narration of facts and states that, the late Mr. Desmond Nunugwo was taken into custody by the Economic and Financial Crimes Commission (EFCC) for the purpose of investigation and interrogation on a criminal petition filed by one Mr. Ole Nnana Kalu on 6<sup>th</sup> of June 2016. The petitioner alleged that he transferred the sum of Ninety-One Million, Five Hundred Thousand Naira (N91, 500,000.00) to the deceased for the purpose of doing business with him. This narrative was corroborated by one Uloma Kalu who was also privy to the agreement between the petitioner and the deceased. The Certified True Copies of their written statements were annexed.
23. According to the Respondent, following the petition the deceased was arrested and taken into custody of the Commission. Upon interrogation, he voluntarily made a written statement wherein he admitted receiving a bank transfer of N 91, 000,000.00 from Mr. Ole Kalu. The Certified True Copy of the deceased statement was annexed.
24. Contrary to the Applicants' claim as to the cause of death of the deceased, the Respondent argued that in less than 24 hours after Mr. Desmond Nunugwo was taken into custody by EFCC, he collapsed and was immediately rushed to Sami Wadata Hospital where he was pronounced dead.
25. On the 16 of June 2016, the Commission through their Director wrote to the Chief Medical Director, National Hospital requesting that a detailed post mortem examination and toxicology analysis be conducted on the deceased to establish the cause of his death. The certified true copy was annexed.
26. The Commission contended that further to it's request for a post mortem report, it wrote to the Nigerian Police Force directing that an independent



investigation be carried out on the matter, the Respondent claimed that the Nigerian Police Force Criminal Investigation Department (FCID) appropriately conducted an independent investigation into the incident that led to the death of Mr. Desmond Nunugwo.

27. According to the Respondent, on 18<sup>th</sup> April 2018, an autopsy was conducted on the deceased at the National Hospital, in the presence of the Applicants' representatives and the Commission by an agreed Pathologist. The autopsy report revealed that the deceased died as a result of malignant hypertension and severe hypertension cardiovascular disease and the forensic toxicology analysis also revealed no poisoning. The certified true copies of the autopsy and forensic report were annexed.
28. The Respondent therefore urged the Court to dismiss the application as the Applicants are not entitled to the reliefs sought and there is no evidence of a violation of the Applicants' human rights by any community officials.

***b. Pleas in law***

29. The Respondent seeks to rely on Article 1, 4, 5 and 7 of the African Charter.

***c. Reliefs sought by the Respondent***

30. The Respondent prayed the Court for the following reliefs:
  - a) ***A DECLARATION*** that the Respondent has not violated the provisions of the African Charter on Human and Peoples' Rights and any International human rights Treaties.
  - b) ***A DECLARATION*** that the Applicants' application is frivolous and lacking in merit.
  - c) ***AN ORDER*** dismissing the Applicants' suit in its entirety.

## ***VII. JURISDICTION***

31. The facts constituting the present application substantially relate to several allegations of violations of the rights of the deceased by the agents of the Respondent. The Applicants claim that these facts reveal several breaches of the African Charter particularly, the right to life, prohibition of torture, presumption of innocence and the right to human dignity.
32. The competence of the Court to entertain cases bordering on human rights violation is provided under Article 9 of the 2005 Supplementary Protocol on the Court. Article 9 (4) gives the Court the jurisdiction to determine cases of violation of human rights that occur in any Member State.
33. Considering the circumstances of the instant case, we hold the view that this application is centered on human rights violation and thus falls within the ambit of this Court's jurisdiction.

## ***VIII. ADMISSIBILITY***

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

35. The above provision raises two conditions precedent; the non-anonymity of the application and the absence of *lis pendens* before another international court. The identity of the Applicants is clearly established by the Power of Attorney executed in favour of their Attorney who filed the instant suit on their behalf.
36. In other words, one of the prerequisite to maintain an action before this Court is that such action must not be pending before another international court. In the case of *MRS. NAZARE GOMES DE PINA v. THE REPUBLIC OF GUINEE BISSAU ECW/CCJ/JUD/15/18* unreported, the Court in its consideration held that:
- “Admissibility of a human rights violation case is to meet two cumulative conditions, which are: the said case should neither be anonymous nor be taken before another international Court of competent jurisdiction”.*
37. The Court reiterated this fact in the case of *SAWADOGO PAUL & 3 ORS v. REPUBLIC OF BURKINA FASO ECW/CCJ/JUD/07/20* unreported, where it held that:
- “from the provisions of Article 10(d), it is clear that three conditions must be met before an application can be declared admissible before the Court. These are a) the applicants must be victims of human rights violations, b) the applicants must not be anonymous, and c) the application must have been instituted before another international Court for adjudication”.*
38. The import of the sub-section (ii) of Article 10 (d) is to avoid a situation where several international bodies would be simultaneously dealing with applications which are substantially the same.
39. An examination of the facts of the present application reveals that the Applicants prior to the filing this case, lodged a complaint before the African

Commission on Human and Peoples' Rights on this same subject matter. The African Commission found a *prima facie* violation of the African Charter and thus, urged the parties to submit their arguments. While the Applicants in the present case filed their arguments before the Commission, the Federal Republic of Nigeria failed to react. The matter has since been deferred on the decision of admissibility.

40. It is worthy of note that the African Commission on Human and Peoples' Rights (ACHPR) is not an international Court or Tribunal as referred to in Article 10 (d) of the 2005 Supplementary Protocol. It is a quasi-judicial and Investigative body tasked with promoting and protecting human rights as well as interpreting the African Charter on Human and Peoples' Rights. The Commission only issues recommendations and therefore does not have the powers to issue binding decisions.
41. Flowing from the above, the Court finds that the pendency of this action before the African Commission on Human and Peoples' Rights does not render the present application inadmissible. Consequently, the Court declares the action admissible.

## ***IX. MERITS***

### ***a. Alleged violation of right to life (Article 4)***

42. The Applicants based their claim on the violation of their brother's right to life under Article 4 of the African Charter which provides thus:

*“Human beings are inviolable. Every human being shall be entitled to respect of his life and the integrity of his person. No one may be arbitrarily deprived of this right.”*

43. The import of the above-mentioned provision is that State agents are prohibited from arbitrarily taking life in any form or manner. According to Article 1 of the African Charter, States have the obligations to respect and guarantee the human rights recognized therein. The obligation to guarantee the right to life presupposes the duty of States to protect, preserve and ensure that potential violation of this right is effectively considered as an unlawful act which should result in the punishment of the person(s) found culpable as well as the obligation to compensate the victims.
44. The crux of the present application is the alleged violation of the Applicants brother's right to life by agents of the Respondent. The Applicants claim that the late Mr. Desmond Nunugwo was arrested by the EFCC on an alleged crime he was never charged with. Shortly after he was detained, he died whilst in custody of the EFCC. Despite several demands made to the officials of the EFCC to give an account of the events leading to his demise, their demands have remained unanswered.
45. The Applicants maintained that it was incumbent on the Respondent to ensure the safety of Mr. Nunugwo whilst in custody and failure to do so, amounts to a breach of its obligation under Article 4 of the African Charter.
46. The Respondent on the other hand contests this claim and denies the involvement of its agents in the death of late Mr. Nunugwo. According to the Respondent, the autopsy conducted on the deceased revealed that he died as a result of malignant hypertension and severe hypertension cardiovascular disease and thus puts the Applicants to the strictest of proof.
47. The fundamental rule of evidence regarding burden of proof is that, the party alleging the existence of facts must lead evidence in affirmation of those facts. The Court held this position in the case *GABRIEL INYANG & ANOR v. THE FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/20/18 unreported that:

*“it is trite that he who alleges must prove. The burden of proof in civil cases rests on the party that will lose if no evidence is led. Proof of facts alleged is either by production of documents, oral testimony or production of material for examination by the Court. The court has stressed that merely stating allegations without more does not discharge the burden placed on the Applicants to prove their case”.*

48. Similarly, in *FESTUS A.O OGWUCHE v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/18* unreported, the Court held that:

*“as a general rule, the burden of proof lies on the Plaintiff. If that burden is met, the burden then shifts to the Defendant, who now has to plead and prove any defense, by a preponderance of evidence”.*

49. Based on the evidence presented by both parties in the present case, it is not in dispute that Mr. Desmond Nunugwo died whilst in custody of the EFCC after he was interrogated and detained as a suspect based on a petition made against him by a complainant. The question the Court is faced with is the extent of involvement of EFCC officials in the death of Mr. Desmond Nunugwo and the State’s responsibility to give an account of his death and identify those responsible if any.
50. The Court having critically analyzed the circumstances of this case, observes that apart from the autopsy report dated 18<sup>th</sup> of April 2018, the Respondent failed to produce any other document that would give a reasonable account of what led to Mr. Nunugwo’s death. More importantly, is the fact that the EFCC officials had the exclusive knowledge of the events leading to his demise.
51. As it stands, there is no preliminary report from the police department giving detailed information of the officers that arrested and interrogated the deceased, his condition after the interrogation and the exact time he was taken to the hospital before he was confirmed dead. This report is critical to the case

as it would elucidate and establish the truth of what actually happened to Mr. Nunugwo in detention and absolve the officials of the Respondent of liability with regard to his death. Meanwhile, it is part of the defence of the Respondent that it reported the death to the Police which has carried out its own investigations, so where is the report?

52. The Respondent also admitted that late Mr. Nunugwo “walked into the Commission” (EFCC) in good health. Thus, this goes to show that at the time of his arrest, he was in good health and showed no signs of any ailment. Having established these facts, it therefore behoves the Respondent to give a plausible explanation of Mr. Nunugwo’s cause of death. In this wise, the Court aligns itself with the position of the European Court wherein it held that:

*“Where an individual is taken into custody in good health and dies at the hands of the security forces, the obligation on the authorities to account for the treatment of that individual is particularly stringent. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant interferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide satisfactory and convincing explanation”. See SHAVADZE v. GEORGIA (application no. 72080/12) JUDGMENT 19 November 2020 para 31.*

53. This opinion was reiterated in the case of *SALMAN v. TURKEY* (application no. 21986/93) *JUDGMENT 27 June 2000*, where the European Court held that:

*“in the light of the importance of the protection afforded by Article 2 (which is in pari materia with Article 4 of the African Charter), the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody particularly stringent where that individual dies.”*

54. It follows from the above decisions that State officials are under a duty to protect persons within their control in detention, where such persons die whilst in custody, it is incumbent on the State to provide a plausible explanation of the cause of death.
55. The Respondent has failed to provide further evidence with regard to this case to substantiate its claims. Even though the autopsy report annexed is of critical importance, the report alone which was conducted two years after the death of the deceased is not enough to ascertain the facts leading to his death.
56. Flowing from the foregoing, the Court holds that the Respondent has not accounted for the circumstances leading to the death of the Applicants’ brother. Consequently, the Court finds a violation the deceased’s right to life,



in contravention of Article 4 of the African Charter on Human and Peoples' Rights.

***b. Alleged breach of duty to investigate (Articles 1 & 4)***

57. The Applicants argued that no prompt or thorough investigation was carried out into the death of Mr. Nunugwo and that the officials involved in the arrest and subsequent questioning of the deceased were neither identified nor arrested in connection with his death. The Applicants further maintained that the mere fact that a post-mortem was not performed immediately after Mr. Nunugwo's death violated the requirement for an expeditious investigation and thus constitutes a failure on the part of the Respondent to conduct a prompt, effective, efficient and impartial investigation into the circumstances culminating into the death of the deceased.
58. In addressing the Applicants claim, it is pertinent to review the relevant facts surrounding this case before the Court can come to its finding. To this extent, the Court notes that Mr. Desmond Nunugwo was arrested on the 9<sup>th</sup> of June 2016 at about 5 pm. Shortly after his arrest and subsequent detention, he collapsed and was rushed to the hospital where he was pronounced dead. The Applicants, through their lawyer, drew the attention of the authorities on the unclear circumstances leading to their brother's death and insisted that an investigation be carried out to ascertain the cause of his death. Despite their demands, no investigation was carried out by any State officials. On the 18<sup>th</sup> of April 2018, approximately (2) years after the death of Mr. Nunugwo, an autopsy was conducted, and the report revealed that the deceased died as a

result of malignant hypertension and severe hypertensive cardiovascular disease.

59. In addition to the above, the Court notes that by a letter dated 20 September 2016, the Chief Medical Director of National Hospital notified the Chairman of EFCC on the need to expeditiously conduct an autopsy on the deceased as any further delay may affect the result of the examination. The Court notes the following excerpts contained in the letter:

*“In the cause of the meetings, the NHA Pathologist discussed the likely consequences of extending the period for autopsy/forensic analysis. The NHA pathologist advised the family that efforts should be made to conclude arrangements for the autopsy and toxicology analysis since further delay may affect the result of the toxicology”.*

60. The Respondent having been informed of the implication of delaying the autopsy examination, took two (2) years to order the conduct of an autopsy on the deceased who died in its custody. The post mortem examination should have been conducted immediately after his death or within a reasonable time thereafter followed by a diligent preliminary investigation. Anything falling short of this standard for any reason whatsoever, flaws the entire process. More to this is the fact that the human life is involved. The inviolability of the right to life cannot be overstated.
61. The Respondent argued that when the incident occurred, the matter was immediately reported to the Nigerian Police Force Homicide Section for investigation and the Police Force Criminal Investigation Department (FCID) conducted an independent and effective investigation into the matter. This assertion was not substantiated with any evidence.

62. As stated earlier, the burden of proof lies on he who asserts a claim. However, where the burden placed on the Applicant has been discharged, the onus then shifts to the Respondent. This principle was enunciated in the case of *CHIEF DAMIAN ONWUHAM & 22 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/22/18 @ pg.18* where the Court held that:

*“The initial burden of proof thus rests on the Applicant who is to establish through evidence, all the requisite elements to succeed in his case. If that burden is met, the burden of proof then shifts to the Respondent who now has to lead evidence in rebuttal of the Applicants’ assertions by preponderance of evidence”.*

63. The Respondent failed to attach any investigation report in connection with the incident nor produce any conclusive finding by the Police Force Criminal Investigation Department (FCID) who purportedly carried out the said investigation. It is not enough to just mention that an investigation was carried out without more. Such assertion must be supported with credible evidence capable of drawing a reasonable conclusion on the actual cause of death.

64. This Court has established that in order to ensure effectiveness in an investigation of a human rights violation, such an *“investigation should be carried out promptly by an impartial and duly authorized person and must consist of a comprehensive report of all the submissions of the parties involved in the case which must be deduced separately. The conduct/manner, place and time the investigation was carried out must equally be put into consideration”*. See *HEMBADOON CHIA & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/21/18 @ pg. 32* unreported.

65. Similarly, in the case of *AMINATA DIANTOU DIANE v. REPUBLIC OF MALI* ECW/CCJ/JUD/14/18 @ pg. 14 unreported, the Court held that:

*“Where a State fails to conduct inquiry into specific violations, with the expected outcome of ensuring that the perpetrators are brought to book, it constitutes a proof of lack of commitment on the part of such State, for taking appropriate measures to address the violations at stake; that the absence of inquiry in such an instance makes the State blamable for default on its international responsibility”.*

66. The Court equally aligns itself with the position of the European Court in *SHAVADZE v. GEORGIA* (supra), where it held that:

*“The obligation to carry out an effective investigation into unlawful or suspicious deaths is well established in the Court’s case-law. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital for maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. In order to comply with the requirements of Article 2 of the Convention, the investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and to the identification and, if appropriate, punishment of those responsible. This is an obligation which concerns the means to be employed and not the results to be achieved. The authorities must take reasonable steps available to them to secure the evidence concerning an incident, including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of*

*clinical findings, including the cause of death. The requirements of promptness and reasonable expedition are implicit in this context”.*

67. The conduct of the Respondent relative to the treatment of the circumstances surrounding the suspicious death of the Applicants’ brother as evidenced in the present case exhibits a sheer lack of commitment to its responsibilities under the African Charter.
68. In view of the above analysis, it is difficult to discern the reason why the State protracted investigation into the death of the Applicants’ brother even when its officials had exclusive knowledge of the facts surrounding his death. In this wise, the Court notes that the totality of lack of due diligence which looks like a deliberate delay, depicts the involvement of the State officials in this case. The prolonged delay casts a doubt in the mind of the Court as to whether the deceased died of malignant hypertension and severe hypertension cardiovascular disease or the acts of the State officials during interrogation exacerbated his hypertension thereby leading to his death.
69. The obligation to protect the right to life under Article 4, read in conjunction with the Member State's general duty under Article 1 to *‘recognise the rights, duties and freedoms enshrined in this Charter’*, requires by implication that there should be some form of effective official investigation when individuals in the custody of State agents die in unclear circumstances especially where formal complaints are made to rule out the involvement of its officials and identify those responsible. This obligation is not confined to cases where it has been established that the death was caused by an overt act of an agent of the State, but in all circumstances bereft of natural causes of death.

70. The court finds that the Respondent failed to carry out any investigations into the suspicious death of the deceased. This failure to carry out an effective investigation into the death of Mr. Desmond Nunugwo, is in breach of Articles 1 and 4 of the African Charter, which when read together, require a prompt, proper and adequate official investigation into deaths resulting from the actions of State agents. Consequently, the Court finds a violation in this regard.

*c. Allegation of torture (Article 5)*

71. The contention of the Applicants under this heading is that the circumstances of Mr. Nunugwo's death give rise to the suspicion that he was tortured, and he died as a result of injuries inflicted on him during his arrest, detention and interrogation. Article 5 of the African Charter provides:

*“Every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”*

72. The Respondent contends that the Applicants have not placed substantial evidence before the Court to prove that the deceased was subjected to any form of torture or inhuman treatment. That the post-mortem investigation carried out on the deceased also did not reveal any element of torture on the body of the deceased.

73. Torture can be described as the infliction of severe bodily pain, psychological and moral suffering on a person as a means of punishment or to extract information. The Court in establishing the elements of torture found that:

*“acts complained of, need not be physical with accompanying visible signs, it admits of other acts with the capacity to affect mental faculties of the victim by causing amongst others severe mental delusion coupled mostly with, fear, anguish and suffering. Additionally, such act must be inflicted by a Public officer acting in an official capacity and carrying on same with the required intention. The situ of the act is of no consequence”*. See *HON. JUSTICE S. E. ALADETOYINBO v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/20 @ pg. 21*

74. The Inter-American Court in *LOAYZA TAMAYO v. PERU* judgment of September 17, 1997. Series C No. 33, para 57, held that:

*“the violation of the right to physical and psychological integrity of persons is a category of violation that has several gradation and embraces treatment ranging from torture to other types of humiliating or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation. The European Court of Human right has declared that, even in the absence of physical injuries, psychological and moral suffering, accompanied by psychic disturbance during questioning, may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical moral resistance”*.

75. The Court notes that the Respondent alluded to the fact that the deceased got into their custody in good health and from the autopsy report annexed, no physical injury was seen on the body of the deceased. It must be pointed out

in line with the above principle that torture is not only limited to bodily injury but extends to mental suffering subjected to the person in the course of interrogation and is likely to trigger fear leading to other underlying health complications. In this wise however, it is Applicants who are alleging the torture who must adduce cogent evidence to establish the occurrence of torture in the course of the detention and investigations.

76. Considering the available evidence on record, the Applicants failed woefully to give any indication of the fact that the deceased was tortured by the Respondent's agents when he was in their custody.
77. In view of the foregoing, the Court finds that the Respondent is not in violation of Article 5 of the African Charter as alleged, consequently, the Applicants' claim for torture fails.

***d. Allegation of violation of right to presumption of innocence***

78. According to the *General Comment 13 para 7 of the United Nations Human Rights Committee*, the presumption of innocence is breached where public officials prejudge the outcome of a trial. Public officers include judges, prosecutors, police and government officials, all of whom must avoid making public statements of the guilt of an individual prior to a conviction or after an acquittal.
79. The Applicants maintained that the EFCC issued a press release which portrayed their late brother as a criminal thus causing substantial damage to his reputation and that of his family. In support of this averment, the Applicants relied on a press release by the EFCC Chairman after the death of Mr. Nunugwo. The statement had this to say:



*“Nunugwo was picked up by officers of the intelligence and special operation section (ISOS) of the EFCC following a complaint that he had allegedly defrauded one Ole Nnana Kalu to the tune of N63, 600, 00.00.”*

80. In another print media of the Vanguard, the statement was again reported as follows:

*“The late Nunugwo allegedly fraudulently obtained N91m from an acquaintance after he tricked her into believing that he had high net worth business associates in Dubai United Arab Emirates...”*

81. The Court notes that from the excerpts of the media print reproduced above, late Mr. Nunugwo was not publicly declared guilty of the charges levied against him. The statement merely averred that the deceased was arrested in connection with an “*alleged*” criminal act of defraud, and he confessed to committing the said crime. The right to presumption of innocence prevents State authorities from considering or treating a person as guilty until he has been declared guilty by a competent Court. However, it is permissible for the authorities to inform the public of the name of a person who has been arrested or made a confession to committing a crime. After all, confession statement has to be proved in court to establish its validity.

82. In *MR. OUSMANE GUIRO v. BURKINA FASO ECW/CCJ/JUD/15/17 @ page 8*, unreported, the Court in its consideration held that:

*“the mere statements, even made by politicians, do not suffice to constitute violation of presumption of innocence. Such violation shall be deduced from concrete facts and real harms suffered, notably as found within the course the proceedings, and not from mere statements”.*

83. It follows from the above consideration that the statement made by the Chairman of EFCC alleging that the deceased defrauded one Ole Nnana Kalu does not constitute a violation of presumption of innocence. Consequently, the Court holds that the Applicants claim in this regard fails.

#### ***X. REPARATIONS***

84. Reparation or compensation is given for violation of human rights that is concrete and real. Where there is no violation there will be no reparation. In *MRS MODUPE DORCAS AFOLALU v. REPUBLIC OF NIGERIA (2014) CCJELR 229 @ 245 para 69* the Court stated 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*”

85. Also in *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL (2013) CCJELR 231 @ 257 para 93* the Court held that: “*Reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cause and effect between the offence committed and the harm caused*”

86. The Court, having made findings in respect of Applicants’ reliefs ‘b’, ‘c’ and ‘d’, it remains their relief ‘a’ which prays for “*An order that the Respondent pay an appropriate sum (in the discretion of the Court) as compensation for damages*”.

87. This Court having found the violation herein, holds that the Applicants are entitled to compensation which the Applicants have entrusted to the discretion of the Court.

88. The records of the case show that the deceased passed on at the age of fifty (50) years and was survived by a wife and a four year old child who is schooling. There is no record of any contribution from the State to the family of the deceased in the organization of the funeral of the deceased and no compensation has been paid to the family.
89. In exercise of its discretion in awarding appropriate compensation, the Court takes into consideration all the above mentioned factors, particularly the financial obligations towards the four year child in school, the surviving spouse and the external family from which two members gallantly fought this matter before this Court. The Court orders payment of lump sum compensation in the sum of Twenty Million Naira (N20, 000.000.00) by the Respondent for the death of Mr. Nunugwo in violation of his rights as adjudged.

#### ***XI. COSTS***

90. The parties did not pray for costs of the proceedings.
91. 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.*”
92. In light of the provisions of the Rules, the Court holds that since the Applicants as successful 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 Mr. Nunugwo's right to life under Article 4 of the African Charter was violated by the Respondent;
- iv. **Declares** that the Respondent violated its duty to investigate under Article 4 of the African Charter;
- v. **Dismisses** the allegation of violation of Mr. Nunugwo's right to freedom from torture under Article 5 of the African Charter.
- vi. **Dismisses** the allegation of the Applicants that Mr. Nunugwo's right to presumption of innocence under Article 7 of the Charter was violated by the Respondent;
- vii. **Orders** the Respondent to pay the lump sum of Twenty Million Naira (N20, 000.000.00) to the family of Mr. Nunugwo as compensation for all the prejudice and damages suffered as a result of his death in violation of Articles 4 of the African Charter.
- viii. **Dismisses** all reliefs sought by the Respondent;

**As to costs**

- ix. **Orders** the parties to bear their respective costs of the proceedings.

**As to compliance and reporting**

- x. **Orders** the Respondent to submit to the Court within three (3) months of the date of the notification of this Judgment, a report on the measures taken to implement the orders set-forth herein.

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 21<sup>st</sup> Day of March 2022 in English and translated into French and Portuguese.