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

In the Matter of

DR. JACOB ABDULAHI & 5 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 2 ORS

Applica*tion No: ECW/CCJ/APP/30/19; Judgment No. ECW/CCJ/JUD/18/22*

JUDGMENT

ABUJA

29 MARCH 2022

THE COMMUNITY COURT OF JUSTICE OF THE

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Applica*tion No: ECW/CCJ/APP/30/19; Judgment No. ECW/CCJ/JUD/18/22*

BETWEEN:

1. DR. JACOB ABDULLAHI
2. DR. DANIEL D. MAKOLO
3. DR. MATTHEW OGUCHE
4. SAM EGWU
5. BELLA GUSHEN
6. SUNDAY OMACHI — APPLICANTS

v.

1. FEDERAL REPUBLIC OF NIGERIA
2. PRESIDENT, SENATE OF THE FEDERAL REPUBLIC OF NIGERIA
3. SPEAKER, HOUSE OF REPRESENTATIVES OF THE FEDERAL REPUBLIC OF NIGERIA — RESPONDENTS

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE** - Presiding/ Judge Rapporteur

Hon. Justice Keikura **BANGURA** - Member

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

ASSISTED BY:

Dr. Athanase ATANNON - Deputy Chief Registrar

REPRESENTATION OF PARTIES:

F.A. **OGUCHE,** Esq. Counsel for Applicants

Maimuna Lami **SHIRU** (Mrs.) Counsel for Respondents

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 citizens of the Federal Republic of Nigeria, and the 1st Applicant constitutes the Chairman, Board of Trustees of Indigenes Equity Forum with office located at Winner Plaza Suite 22, No. 31 Okemesi Crescent Garki 2, Abuja. They are engaged in public advocacy and activism for the entrenchment of the right and proper democratic values in the country.
3. The 1st Respondent is the government of the Federal Republic of Nigeria constituted as the Federal Republic of Nigeria.
4. The 2nd and 3rd Respondents are the elected leaders of the National Assembly of the 1st Respondent.
5. The Applicants state that the 2nd and 3rd Respondents are not necessarily proper parties before this Honorable Court, but being therefore nominal parties, they are herein joined as being the authority engaged in the business of bringing the *Hate Speech Bill* into law, and are currently in the course and business of doing so, the said bill having passed the second reading in the parliamentary procedure.

III. INTRODUCTION

Subject matter of proceedings

6. The Applicants' case is that, pending before the National Assembly of the 1st Respondent comprising the Senate and the House of Representatives, is a Bill

on Hate Speech, which if passed into law, would suppress, cow and sanction free speech by a law, to be used as instrument to shut every critique and criticism of government and its officials, against public interest and a violation of their right to freedom of expression in all its ramifications.

7. The Applicants contend that the proposed law, when it comes into effect would be a violation of their right to freedom of expression in all its ramifications since it would drastically capsize the entrenched and guaranteed right contained in Article 9 of the African Charter on Human and Peoples' Rights (African Charter), Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) respectively. They claim the said law if passed, would be completely disproportionate to the goals and objectives of the African Charter, and the other mentioned international instruments and being not permitted under them and of which the 1st Respondent is signatory.

IV. PROCEDURE BEFORE THE COURT

8. The Initiating Application dated and filed on 29 November 2019, was served on the Respondents on 3 December 2019.
9. The 2nd Respondent filed a Motion for Enlargement of Time to file Preliminary Objection and Statement of Defense together with the substantive Notice of Preliminary Objection and the Statement of Defense on the 29 September 2019 and were served on the same date.
10. On the 7 October 2019, the 1st Respondent also filed Motion for Extension of time to file Preliminary Objection and Statement of Defense together with the substantive Notice of Preliminary Objection and the Statement of Defense which were served on the 8 October 2019.

11. On 8 September 2021, the Applicants filed a Notice of Discontinuance against the 1st & 2nd Respondents and was served on the same date.
12. On the 9 September 2021Applicants filed their Reply on points of law and their Rejoinder to the Statement of Defence and were served on the same date.
13. In a virtual court session held on the 22 September 2021, the Applicants and the 1st Respondent were represented by Counsel in Court. The Court noted that the Applicants have discontinued the action against the 1st and 2nd Respondents and they were disjoined from the case leaving the 1st Respondent as the sole Respondent. The Respondent's Counsel's moved the Preliminary Objection but same was dismissed by the Court in a delivered ruling. 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 case of the Applicants is that the National Assembly of the Respondent is currently debating the Bill on Hate Speech with the view to passing same into law and to establish a Commission, which essentially is meant to criminally penalize persons that make speeches that incite or defame.
15. According to the Applicants, the action of the Respondent in this regard is essentially meant to suppress, cow and sanction free speech by a law, to be used as instrument to shut every critique and criticism of government and its officials, and nothing more.

16. The Applicants state that the initial draft of the Bill styled as 'Hate Speeches Establishment Bill 2019' meant to criminalize hate speech with a penalty of a death sentence attached to it.
17. They claim that due to national and global outcry over the purport of the Bill, particularly the penalty attached to it, the Respondent's Legislature dropped the proposed death sentence penalty attached thereto, and reverted to other lesser sentences, without dropping in any manner the criminal elements proposed in the evolving law.
18. The Bill, according to the Applicants, has gone through the entire hog of the legislative procedure, having been adopted in its first and second readings, and now sailing through the final stages of adoption for it to be enacted into law.
19. They state that the Bill, if passed into law, would serve as a means to cow, curb, shortchange and circumvent free speech within the polity to censor the press, and create barriers or obstacles to free exercise of the right to speech, including the right to receive information, and the right to express opinion as established by law.
20. They claim that the Bill, if passed into law, has the potency to drastically denigrate the guaranteed right to receive information, to express and disseminate opinion as enshrined in Article 9 of the African Charter, Article 19 of the ICCPR, and the UDHR respectively, as the said law would be completely disproportionate to the goals and objectives of the African Charter, and the other mentioned international instruments.
21. They submit that the Respondent cannot shy from its obligations under the African Charter and have its Legislature enact laws that will frustrate the rights guaranteed therein in its articles and render useless the goals and objectives of the instrument of which it voluntarily entered into and of which is it bound.

22. The Applicants are claiming that, once enacted into law, journalists and the media profession would be susceptible to arrests, intimidations, harassments and detentions for making critical comments or remarks about government.
23. According to the Applicants, the Respondent equally has provisions in its criminal code and law criminalizing defamation of character and incitement which said laws by their purports are disproportionate to the right of freedom of expression as guaranteed.
24. They state that the existence of these laws in themselves run counter to the goals and objectives of the charter, as the restrictions created by the said laws are not within the limits contemplated by the charter as it attaches grave criminality as penalty for such speeches or communications that are defamatory or inciting.
25. The Applicants conclude that their right, and indeed that of the citizenry of the Respondent State to freedom of speech, even though not absolute, and subject to restrictions under the law, cannot be wholly criminalized and subjected to sanctions such as the death penalty or any other criminal penalty as proposed under the said Bill.

b. Pleas in law

26. The Applicants rely on the following laws:
    i. Articles 1, 2, 3, 6, and 9 of the African Charter on Human and Peoples' Rights (African Charter);
    ii. Articles 1, 2, 9 and 19 of the Universal Declaration of Human Rights (UDHR);
    iii. Articles 1, 2, 6 and 19 of the International Convention on Civil and Political Rights (ICCPR); and

iv. Section 39 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

c. Reliefs Sought

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

i. ***A DECLARATION*** *that the Applicants, and indeed the citizens of the Federal Republic of Nigeria are entitled to protection and guarantee of the fundamental freedoms enshrined and guaranteed under the Articles of the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and International Covenant on Civil and Political Rights pertaining to their rights to freedom of speech and expression.*

ii. ***A DECLARATION*** *that the Respondent is bound to observe and respect the Applicants' rights to freedom of speech and expression as enshrined and guaranteed under the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights, and under its Constitution.*

iii. ***A DECLARATION*** *that the initiatives by the Respondent to legislate into law, the 'Hate Speeches' Bill which by its purport criminalizes speech, is contrary to Article 9 of the African Charter, Article 19 of the Universal Declaration of Human Rights and Covenant on Civil and Political Rights, and a violation of the Applicants' fundamental rights.*

iv. ***A DECLARATION,*** *that the Hate Speech Bill, which is evolving into a substantive law by the Respondent is not within the permitted restrictions under Article 27(2) of the African Charter, not being proportionate to the aim of the international instrument, and is an infringement on the Applicants' rights to freedom of speech and expression.*

v. ***AN ORDER*** *of Court restraining the Respondent from further doing anything or taking any action including legislative sessions, proceedings and debates towards actualizing the enactment of the law on 'Hate Speech' either by themselves, their agents, servants and privies.*

vi. ***AN ORDER*** *compelling the Respondent to bring the legislation on criminal defamation, incitement and any other provision related with and pertaining to the freedom of speech and expression proportionately with the obligations under the African Charter on Human and Peoples' Rights, Covenant on Civil and Political Rights, and Universal Declaration on Human Rights.*

vii. ***AN ORDER*** *suspending and/or setting aside all the proceedings, sessions, debates, and all other procedures initiated and embarked on towards the actualization of the enactment of the 'Hate Speeches' Bill before the National Assembly of the Respondent.*

viii. ***PERPETUAL INJUNCTION,*** *restraining the Respondent from further acts and/or omissions towards creating restrictions, barriers and limitations against the exercise and enjoyment of the Applicants' fundamental rights to freedom of speech and expression through a legislation criminalizing any aspect of free speech as guaranteed under international human rights instruments and the Respondent's Constitution.*

ix. *The sum of* ***$25,000.00 (Twenty-five Thousand Dollars)*** *being damages.*

x. ***AN ORDER*** *compelling the Respondent to pay the cost of this litigation.*

xi. ***AND FOR ANY OTHER ORDER(S)*** *as the Honorable Court may deem fit to make in the circumstance.*

VI. RESPONDENTS' CASE

a. Summary of facts

28. In its defense, the Respondent reiterated its commitment to the protection of the rights of all citizens of Nigeria within the framework of democratic principles subscribed to by the Respondent State and enshrined in the Federal Constitution.

29. The Respondent elaborated the relevant provisions of its 1999 Federal Constitution (as amended) and stated that the protection of freedom of expression and the press have been entrenched by Section 39 of the Constitution with noted exceptions under Section 45(1) (a) & (b).

30. The Respondent further states that members of its National Assembly comprising the Senate and the House of Representatives of the Federal Republic of Nigeria were elected from all parts of the country to ensure the smooth administration of the country with constitutional mandate to make laws for the betterment of the citizenry. The Legislature, according to the Respondent, has a laid down statutory procedures for enacting laws.

31. It is the contention of the Respondent that in respect of the subject matter of the instant suit, the Draft Bill was presented to the National Assembly by a member in pursuance of the exercise of his statutory duty and the Bill was deliberated upon by the House but has not reached the stage of public hearing.

32. The Respondent added that it is at the public hearing stage of the Bill that memoranda are solicited from the public to capture their grievance and contends that the Applicants ought to have waited to approach the House with their grievances or observations when the Bill reaches that stage.

33. The Respondent stated that the Applicants have not placed any sufficient evidence before the Court to substantiate their claims. They failed to submit a certified copy of the Bill or attached and adduced any evidence as to what stage the Bill is before the National Assembly, i.e. 1st reading, 2nd reading or committee stage and in which of the house or whether the Bill has died a natural death at public hearing like many other Bills.

b. Pleas in law

34. The Respondent pleads Section 39 & 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

c. Reliefs sought by the Respondents

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

VII. JURISDICTION

36. The jurisdiction of the Court to examine cases of human rights violations that occur in the territory of any Member State as provided for under new Article 9 (4) of the Protocol on the Court as amended by the Supplementary Protocol A/SP.1/01/05 of 19 January 2005, is applicable once an Applicant alleges that actions or omissions of a Member State has occasioned violation of his/her human rights.

37. The instant case was filed by the Applicants contending that contrary to the relevant provisions of human rights instruments the Respondent is a signatory, the process of enacting into law the Bill on Hate Speech, currently pending

before its National Assembly would violate the Applicants' human rights of freedom of speech and press if passed into law.

38. To this end, since the Applicants have raised some complaints about the activities of the Respondent's National Assembly in violation of their human rights, this Court has jurisdiction to examine the impugned process of the Assembly with the view to ascertaining whether or not any violation of human rights has occurred and the Court so holds.

VIII. ADMISSIBILITY

39. This matter falls 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".*

40. In a Preliminary Objection raised by the Respondent in the early stage of the proceedings against the admissibility of this case, the Court dismissed the objection as premature and admitted the case in order to examine the substance of the Application. The Court's decision was influenced by the fact that the violation alleged by the Applicants is an anticipatory one which needs to be examined together with the merits of the case.

IX. MERITS

41. The present application is instituted by the Applicants impugning the Draft Bill on Hate Speech which they alleged is before the National Assembly of the Respondent, where it is being considered. They contend that by initiating such a Bill, the Respondent aims to censure the press, to put a wedge to the exercise of the right to freedom of expression, to threaten, to limit, to muzzle, to suppress and to weaken the freedom of expression in Nigeria.

42. The Applicants further state that by acting in such manner, the Respondent is planning to limit, through legislations, the exercise of the right to freedoms and liberties as enshrined under Article 9 of the African Charter, Article 19 of the UDHR ICCPR respectively, as well as international norms on freedom of expression and the press.

43. A careful analysis of the instant Application reveals that it seeks from the Court an examination of an ongoing legislative process that has not yet crystalized into law. The Application requests the Court to examine a proposed bill in its incubation stage, which the Applicants fear, if passed into law would lead to restraining the exercise of the right to freedom of expression and opinion.

44. In alleging past, present and future human rights violations as an offshoot of the impugned legislative process, the Applicants in support of their claims, invoke anticipatory violation of Articles 9 of the African Charter and 19 the ICCPR and UDHR respectively as well as the violation of the principle of proportionality in the legislation of the restrictions on the rights as enshrined under Article 27(2) of the African Charter.

45. As a general principle of law in cases of human rights violation, it is the duty of the Court to examine thoroughly the Application with the view to

establishing the existence of evidence of actual and concrete violations of the rights, and for which a Member State is liable for the Application to succeed.

46. However, guided by the utmost need to do justice in certain peculiar cases, the general principle of establishing an actual or concrete violations to succeed, has been widened in scope. The Court has established an exceptional principle that, the application will succeed in cases where the Court is strongly convinced that imminent violations *could occur* or where there is the risk of future violations, especially when there are reasonable and convincing indices for the probability of the realization of actions that are likely to violate human rights.

47. The Court has held this position in several of its judgments, for which three shall be recalled for the purpose of the instant case. In the case of *HISSEIN HABRE v. REPUBLIC OF SENEGAL (2010) CCJELR 71 @ §§ 45-47* the Court dealing with anticipatory breaches of human rights held as follows:

> "*Indeed, the Applicant himself does not link the violation of his human rights to any concrete act, but to the demonstrated wish of the State of Senegal to try him afresh, and to apply the newly introduced offences in its penal law, so much so that, viewed from this angle, the Court can only deduce that the alleged violation is tied to a hypothesis, that is an abstract violation.*
>
> *To this effect, the Court, recalling its jurisprudence, in its judgment in the case of Hadijatou Mani Koraou v. The State of Niger, wherein it stated that its jurisdiction is not to determine cases of abstract violations, rather, real and concrete violations. The Court also relies on the jurisprudence of the European Court of Human Rights (...), wherein it is stated that Article 34 of the European Convention of Human Rights does not allow*

an individual ''to complain, in abstraction, of a law, by the simple fact that this law seems to violate the Convention''. Viewed from this angle, the Court agrees with the European Court that: ''it does not suffice for an individual Applicant to claim that the simple fact of the existence of a law violates the right that he has been enjoying, under the Convention. The law must have been applied against his person'' (...). Thus, in principle, the violation of human right is examined, a posteriori, with proof that the violation has already taken place.

*However, this jurisprudence has undergone little toning down, sequel to the evocation of ''**some exceptional circumstances**'', which allow the admittance of the fact that, there is a risk of future violation, which confers on an Applicant, the state of a victim of a violation of the Convention (...), which admits that, before the Applicant can claim to be a victim, in such circumstances, ''he must produce convincing and reasonable indices showing the probable realization of a violation that would affect his person''. This means that the mere suspicion or conjecture does not suffice.''*

48. Also in *CONGRÈS POUR LA DÉMOCRATIE ET LE PROGRÈS (CDP) & ORS. v. BURKINA FASO (2015) CCJELR 295*, the Court had opportunity to consider the non-concrete nature of a claim, it held that:

"*As regards the allegation by Burkina Faso that the Court lacks jurisdiction to adjudicate on the case before it, as a result of the non-concrete nature of the claims of violation brought by Burkina Faso, the Court has always held that it only makes rulings, in principle, on cases of human rights violation which are concrete, real and proven, and not on violations claimed to be possible, contingent or potential. One may thus*

be tempted, in the instant case, to question whether or not the matter before the Court is indeed well grounded, because as at the time the Court was seized with the case, no violation had as yet been committed, nor had any case of actual rejection of candidature been brought before the Court, and no individual candidature had been set aside in accordance with the new provisions; that, in a word, there is no real prejudice caused.

It would amount to consigning its own time-held case law to oblivion if the Court should rule that it may legitimately entertain violations which have not yet occurred, but are imminent.(…)

At any rate, this position of the Court, regarding the nature of harms it entertains, was clearly stated in its judgment on Hissène Habré v. Republic of Senegal, delivered on 18 November 2010. The Court recalls therein its case law in Case Concerning Hadidjatou Mani Koraou v. Republic of Niger, where it ruled that it has no jurisdiction to examine cases of violation in abstracto, but concrete cases of human rights violation. Therefore, in principle, a human rights violation is found à posteriori, by way of the evidence that the violation in question has already occurred (§48). The Court has further ruled however that it may occur that in specific circumstances, the risk of a future violation confers on an applicant the status of a victim (§49). Thus, there may be reasonable and convincing indications of the probability of the occurrence of certain actions (§53). Given such specific circumstances, which the Court considers akin to the conditions surrounding the instant case, the Court can perfectly adjudicate on the case."

49. Lastly, in the case of *L'UNION SOCIALE LIBÉRALE (USL) v. REPUBLIC OF SENEGAL (2021) Judgment no. ECW/CCJ/JUD/10/21 of 28 April 2021*,

(Unreported) §§52 & 54), the issue concerned imminent violation of the rights of the Applicants and the Court held that :

> "*(…) The Court has always considered that if, in principle, it should only concern itself with sanctioning violence leading to effective, real, and proven violations, and not possible, potential or probable violations, it can validly concern itself with the yet – to – be committed, but highly imminent violations too.*
>
> *The Court has thus declared in the case of CDP and others against the State of Burkina Faso of 13 July 2015, wherein it affirmed that if the Court were to wait for the applications of candidature to be possibly rejected before acting, if it had to wait for the exhaustion of the effects of any transgression before stating the law, its jurisdiction in a context of urgency would have no sense, because the electoral rights of the presumed victims for participating in the electoral race would inexorably be breached.*
>
> *In the present case, since the acceptance of any candidature in the Presidential Elections is tied to the new law on sponsorship, two – third of the political parties in Senegal would be excluded in the 24th February 2019 Presidential Elections. It follows that the effective violation of human rights, as alleged, is imminent. Consequently, contrary to the position held by the State of Senegal, the Court must declare its jurisdiction, to hear and examine the initiating Application".*
>
> *Regarding the issue of quality to act, the Court notes that in the instant case, Plaintiff/Applicant indicated, in its initiating Application that, pursuant to the time held case law of the Court, the risk of a future*

violation confers the quality of victim on a Plaintiff/Applicant, whenever the specific circumstances of the case enable the court to establish the existence of convincing and reasonable indices for the realisation of the violation, which the Court has mandate to prevent. (§52)

(...)It follows that Plaintiff/Applicant does not act to have a violation that it was a victim stopped; nevertheless, it can take advantage of the provisions of Article 10(d) of the Protocol on the Court, as amended, which open access to the Court to every individual who is a victim of human rights violation, owing to the fact that the alleged human rights violation is imminent and inevitable".

50. The Court notes that in all the three cases recalled above, i.e. Hissein Habré v. Republic of Senegal, CDP v. Burkina Faso and Union Sociale Libérale v. Senegal, the common denominator is that the cases are grounded on the existence of risk of potential or imminent violation based on functional laws already in force, whose application would produce the effects of the alleged violations and that, there were likelihood that they would inevitably be applied.

51. The Court noted in Hissein Habre (supra) that *"all steps for exceptional preparations, as enumerated by Mr. Hissein Habré show clearly that there are reasonable and convincing indices of the probability of the realisation of actions by the Defendant State against Mr. Hissein Habré, in order to try him, on the basis of the amended texts (...)"*

52. In CDP case (supra), it was noted by the Court that *"in the instant case, the alleged violation has no yet been committed, but could very soon be. Going by the indications provided to the Court, the electoral process is to open*

seventy (70) days before the scheduled date for voting, (i.e. 11 October 2015), on the fateful day of 1 August 2015. The Court was therefore seized with the case on grounds of urgency. In the present circumstances of the case, if the Court were to wait for the applications of candidature to be possibly rejected before acting, if it had to wait for the exhaustion of the effects of any transgression before stating the law, its jurisdiction in a context of urgency would have no sense, because the electoral rights of the presumed victims for participating in the electoral race would inexorably be breached".

53. Also in USL case (supra) the Court held that *"In the instant case, the action filed by Plaintiff/Applicant aims to prevent a violation that it is afraid of its realization. Indeed, the parties at cause agree that as at the time of filing the present Application, the law on sponsorship was not yet applied, and that no candidature was either presented or rejected, pursuant to that law".*

54. Flowing from the foregoing analysis, it is incumbent upon the Applicants to establish the existence of any potential or imminent breach of the right to freedom of expression and opinion based on a functional or operative law of the Respondent to ground their case. This is in pursuant to the established principle 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*".

55. 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."

56. 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".

57. 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."

58. It is pertinent to note that, the Applicants' complaint is not based on any law in force, but on an alleged Bill, which, at the time of filing the Application, was yet to pass through all the stages of promulgation of law in the Respondent's National Assembly, before it could receive Presidential assent to become a functional law with full force. The further worry of the Court is the failure of the Applicants to produce a certified copy of the Bill, the subject matter of the instant suit and the evidence of proceedings in the National Assembly.

59. In the absence of the Bill and the Hansard, the Court is handicapped in deciding the existence of any "*reasonable and convincing indices for the probability of the realization of human rights violations"*. Therefore, the hypothesis of a future or imminent violation cannot be ascertained and retained in this case.

60. Consequently, this Court holds that the Applicant have failed to discharge the burden of proving the existence of any imminent threat emanating from the processes of enacting the impugned Bill into law and all their claims fail.

X. REPARATIONS

61. It is trite law that it is only when liability is established, that any resultant harm attracts reparation to repair them.

62. In the instant case, the Court having found no violations the Respondent is not liable to make any reparations as prayed for by the Applicants.

XI. COSTS

63. The Applicants prayed for costs of the suit against the Respondent but the Respondent did not pray for costs of the proceedings.

64. 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."*

65. In light of the provisions of the Rules, the Court holds that since the Respondent, being a successful party did not 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 Applicants failed to prove their case and all their claims fail and same are dismissed

On Costs:

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

Hon. Justice Edward Amoako **ASANTE** **……**

Hon. Justice Dupe **ATOKI** ……..

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

Assisted By:

Dr. Athanase ATANNON Deputy Chief Registrar ……

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