



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

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

In the Matter of

**COL. MOHAMMED SAMBO DASUKI (RTD) V FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/20/21 Judgment NO. ECW/CCJ/JUD/19/24

JUDGMENT

ABUJA

Date: 6th June, 2024

JUDGMENT NO. ECW/CCJ/JUD/19/24

COL. MOHAMMED SAMBO DASUKI (RTD)

- APPLICANT

V.

FEDERAL REPUBLIC OF NIGERIA

- RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE

- Presiding

Hon. Justice Sengu Mohamed KOROMA

- Member/Rapporteur

Hon. Justice Claudio Monteiro GONCALVES

- Member

ASSISTED BY:

DR. Yaouza OURO-SAMA

- Chief Registrar



REPRESENTATION OF PARTIES:

Ahmed RAJI, SAN

- Counsel for the APPLICANT

Wale BALOGUN Esq.

Maimuna Lami SHIRU

- Counsel for the Respondent

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as the Court) delivered virtually in open Court pursuant to Article 8 (1) of the Practice Direction on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

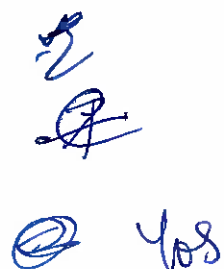
2. The Applicant is Col. Mohamed Sambo Dasuki (Rtd.), is a community citizen and resides in the Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS.

III. INTRODUCTION

4. The subject-matter of the proceedings borders on the Applicant's prayers for the Court to order the Respondent to obey and enforce the judgment of the Court delivered on 4th October 2016, *Judgment No. ECW/CCJ/JUD/23/16*.

IV. PROCEDURE BEFORE THE COURT

5. The Applicant filed an Initiating Application on 17th May 2021, in the Registry of the Court.
6. In response, the Respondent filed a Motion for the Extension of Time to file its Defense, on 28th March 2021 in the Registry of the Court. It also filed its Statement of Defense on the same day.
7. The Court held a virtual session on 31st March 2022 in which both parties were represented by Counsel. The Applicant notified the Court that he was served the Respondent's Documents 2 and 3 in Court making him constrained to respond to same and in consequence prayed the Court for cost N1,000,000 (One Million



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Naira). The Court granted leave to the Respondent to move its Motion and granted same whilst awarding cost to the Applicant as prayed. The Court adjourned to another hearing date to enable the Applicant study Documents 2 and 3.

8. Another virtual session was held on 6th November 2023, in which the Applicant was present but the Respondent was absent and not represented in Court. The Court proceeded to hear the Applicant's case on the merit in view of the fact that hearing notices had been served on both parties. The Court adjourned for judgment.

V. APPLICANT'S CASE

a) Summary of facts

9. The Applicant's claim is that he obtained a judgment from this Court against the Respondent in Suit No. ECW/CCJ/APP/01/16, between himself and the Respondent. In its judgment of 4th October 2016 (Judgment No. ECW/CCJ/JUD/23/16), the Court declared that his arrest, detention, and continued detention after being granted bail by three different domestic Courts were unlawful, arbitrary, and a violation of his right as guaranteed by the African Charter on Human and Peoples Rights (hereinafter referred to as ACHPR) and the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR).
10. Furthermore, in the said judgment, the Court held that the invasion of the Applicant's home and seizure of his property was a violation of the relevant provision under the ACHPR and the ICCPR, and ordered the release of his properties and the payment of damages of N15,000,000.00 (Fifteen Million Naira).



11. The Applicant claims that he was accused and arraigned on different charges, before three different domestic Courts, for various offences. He was subsequently granted bail by the domestic courts, but the Respondent refused to release him as ordered. Instead, the Respondent denied him his freedom for four (4) years before eventually releasing him. After his release, the Respondent refused to return his seized properties to him and failed to pay him the N15,000,000.00 (fifteen million naira) damages awarded to him. For these reasons, the Applicant has prayed this Court for several reliefs that will be reproduced herein in due course.

b) Pleas in Law

12. The Applicant is relying on the following pleas in law:

- i. Articles 10 & 24 of the Supplementary Protocol (A/SP.1/01/05) Amending the Protocol (A/P1/7/91) Relating to the Community Court of Justice.
- ii. Articles 1 & 14 of the African Charter on Human and Peoples Rights, ACHPR.

c) Reliefs Sought by the Applicant

13. For the reasons stated above, the Applicant is seeking the following reliefs from the Court:

- i. A declaration that the continued failure, refusal, and negligence of the Respondent to fully obey and comply with the Judgment of this Honourable Court delivered on the 4th October 2016, in Suit No. ECW/CCJ/APP/01/16 and Judgment No. ECW/CCJ/JUD/23/16 between COL. MOHAMMED SAMBO DASUKI (RTD) V. FEDERAL REPUBLIC OF NIGERIA to



- wit: the release of his seized properties and payment of the awarded damages; is a most egregious breach and violation of the Respondent's treaty obligations under and by virtue of its being a signatory to the Economic Community of West African State (ECOWAS) Revised Treaty, (ECOWAS Revised Treaty).
- ii. A declaration that the Judgment of this Honourable Court, in Suit No. ECW/CCJ/APP/01/16 and Judgment No. ECW/CCJ/JUD/23/16 between COL. MOHAMMED SAMBO DASUKI (RTD) V. FEDERAL REPUBLIC OF NIGERIA, delivered on the 4th day of October 2016, is binding on the Respondent and immediately enforceable against the Respondent, as part of the Respondent's mandatory treaty obligations, and as a signatory to the Economic Community of West African State (ECOWAS) Revised Treaty, (ECOWAS Revised Treaty); Protocol A/P.1/7/91 of the Community Court of Justice; and Supplementary Protocol A/Sp.1.01/05 Amending the Protocol A/P1/7/91 of the Community Court Of Justice.
- iii. A declaration that the Respondent is bound to forthwith obey and comply with the Judgment of this Honourable Court, in Suit No. ECW/CCJ/APP/01/16 and Judgment No. ECW/CCJ/JUD/23/16 between COL. MOHAMMED SAMBO DASUKI (RTD) V. FEDERAL REPUBLIC OF NIGERIA, delivered on the 4th day of October 2016, as part of the Respondent's mandatory treaty obligations, and as a signatory to the Economic Community of West African State (ECOWAS) Revised Treaty, (ECOWAS Revised Treaty); Protocol

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A/P.1/7/91 of the Community Court Of Justice; and Supplementary Protocol A/Sp.1.01/05 Amending the Protocol A/P1/7/91 of the Community Court Of Justice.

- iv. An order, directing the immediate issuance of a “*Writ of Execution*” against the Respondent and submission of the “*Writ of Execution*” by the Registrar of this Honourable Court, to the Respondent, its relevant Agent and or Representative, for the immediate enforcement and execution of the Judgment of this Honourable Court delivered on the 4th October, 2016 in Suit No. ECW/CCJ/APP/01/16 and Judgment No. ECW/CCJ/JUD/23/16 between COL. MOHAMMED SAMBO DASUKI (RTD) V. FEDERAL REPUBLIC OF NIGERIA, in accordance with Supplementary Protocol A/Sp.1.01/05 Amending the Protocol A/P1/7/91 of the Community Court of Justice.

VI. RESPONDENTS' CASE

a) Summary of facts

14. The Respondent denies the Applicant's averments and states that it did not violate the Applicant's rights as claimed.

15. It contends that the properties mentioned by the Applicant as the subject matter of his application are the subject of ongoing criminal proceedings in Nigeria in Charge No FHC/ABJ/CR/319C/2015 FEDERAL REPUBLIC OF NIGERIA v. MOHAMED SAMBO DASUKI (RTD) which was commenced before the Judgment in Suit No ECW/CCJ/APP/01/16, which the Applicant failed to mention in his Application.

16. The Respondent avers that the list of the properties alleged to have been refused to be released to the Applicant is contained in the reverse side of the Search Warrant executed on the Applicant in furtherance of the order of the Federal High Court, which is endorsed by the Applicant. The Respondent contends that the Applicant has never applied to the Federal High Court for the release of the properties.

17. The Respondent also avers that it is not aware that the Applicant has businesses, and denies destroying his means of livelihood or being in possession of any of his monies.

18. In conclusion, the Respondent submits that it did not breach any of its obligations concerning the Applicant and that the Chief Registrar of this Court had already issued a Writ of Execution dated 18th May 2021 in compliance with the known procedure of enforcement of the judgment of this Court and therefore, the Applicant's Application is superfluous.

b) Pleas in Law

19. The Respondent is relying on the following pleas in law in support of its defense:

- i. Articles 9 (3), 10 /7 24 Supplementary Protocol A/SP.1/01/05 Amending the Protocol A/P1/7/91 Relating to the Community Court of Justice.
- ii. Articles 2(1) & 19(2) of the Protocol A/P.1/7/91.
- iii. Articles 15(4) ECOWAS Revised Treaty.
- iv. Articles 3, 5, & 14 of the African Charter on Human and Peoples Rights, ACHPR.

20. The Respondent contends that all the above articles relied upon by the Applicant do not relate to the enforcement of the judgment of the ECOWAS Court.

c) Reliefs sought

21. The Respondent is urging the Court to dismiss the Applicant's application on the grounds that it is statute-barred, lacking in merit, incompetent, and constituting an abuse of Court process.

VII. JURISDICTION

22. It is trite law that a Court must first determine its competence to try a case before considering the merits thereto. Hence, this Court has imbibed the practice of determining competence before considering the merits of any claim before it. It should be noted that competence and jurisdiction are used interchangeably and could mean the same thing, i.e. the official ability to adjudicate claims before it. A Court cannot therefore, confer competence on itself as decisions taken thereunder will be a nullity. This was succinctly articulated in HOPE DEMOCRATIC PARTY & 1 OR v. FEDERAL REPUBLIC OF NIGERIA, & 5 ORS (2015) CCJELR at page 345 where the Court held that "*the competence of a Court to adjudicate on a matter is a legal and constitutional prerequisite without which a Court is a lame duck. Courts are creatures of Statutes, and their jurisdiction is confined, limited, and circumscribed by the Statutes which created them. A court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes.*" Also, in in MR. CHUDE MBA v. REPUBLIC OF GHANA (2013) CCJELR pg. 349 para 52 the Court stated that "*as a general rule, jurisdiction is inferred from the Plaintiff's claim and in deciding whether or not the Court has jurisdiction to*

entertain the present action, reliance has to be placed on the facts as presented by the Plaintiffs.”

23. The Court notes that the Applicant in the present claim has premised his claim on several pleas in law which includes Article 2 (1) & 19 (2) of the Protocol A/P.1/7/91 and Article 10 & 24 of the Supplementary Protocol (supra). The subject matter of the claim is for the execution of a judgment dated 4th October 2016, delivered by this Court and the issuance of a Writ of Execution against the Respondent for the enforcement of same. In determining this application, the issue before the Court is whether it has the competence to order the enforcement of its own judgment.
24. In doing so, the court must examine the Applicant’s claim in order to ascertain whether it has the power to hear and determine same and grant the reliefs sought. A good starting point in this analysis is reverting to the decision of the Court in CHUDE MBA V. REPUBLIC OF GHANA & 15 ORS JUDGMENT NO: ECW/CCJ/JUD/30/18 (Unreported) at pages 12 to 14 where it stated that *“The Court itself is a creature of statute so is its jurisdiction. Therefore, once the constitutive text setting up the Court does not give it a particular jurisdiction, it cannot assume that duty on its own. The Court has no jurisdiction to enforce its own decisions as this action is seeking to do, hence this action will not be entertained by the Court.”*
25. The Protocol on the Court (supra) in Article 19 (2) provides that *“Decisions of the Court shall be read in open Court and shall state the reasons on which they are based. Subject to the provisions on review contained in this Protocol, such decisions shall be final and immediately enforceable.”* The basic text of the Court lays down the law that a judgment is enforceable upon delivery. It is a positive rule that enables Member States to adhere to their obligations. Thus, when the Court delivers its final decision on a matter that decision is

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immediately enforceable. The question that emerges from knowing that the decisions of the Court are enforceable ab initio is, what the laid down procedure for enforcement is.

26. Article 24 of the Supplementary Protocol states that:

1. *Judgments of the Court that have financial implications for nationals of Member States or Member States are binding.*
2. *Execution of any decision of the Court shall be in form of a writ of execution, which shall be submitted by the Registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State.*
3. *Upon the verification by the appointed authority of the recipient Member State that the writ is from the Court, the writ shall be enforced.*
4. *All Member States shall determine the competent national authority for the purpose of recipient and processing of execution and notify the Court accordingly.*
5. *The writ of execution issued by the Community Court may be suspended only by a decision of the Community Court of Justice.”*

27. Thus, following from delivery of its decision, the Chief Registrar issues Writ of Execution which is submitted to the relevant Member State. This Writ is verified by the appointed authority of the recipient Member State before it can be enforced. It is axiomatic that the obligation of the Court when it assumes competence is to dispense justice by pronouncing its judgment. The procedure of enforcement falls outside the remits of the Court as it cannot arbitrarily expand the scope of its competence.

28. In *CHUDE MBA v. REPUBLIC OF GHANA & 15 ORS (2018) supra*, the Applicant obtained judgment from the Court and having failed to enforce the

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same by the domestic Court, brought the matter to the Court seeking its enforcement. The Court, in response, held that after reviewing Article 9 of the 2005 Supplementary Protocol on the Court, which borders on the competence of the Court, that, *“the subject matter that the Court has the competence to adjudicate upon clearly does not include the enforcement of its judgments.”*

29. It follows from the jurisprudence above, that the question raised by the Court earlier as to whether this Court has the competence to determine the current has been answered in the negative. The Court cannot adjudicate on claims bordering on the enforcement of its own judgments. In *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL* (2013) CCJELR at page 231 the Court ruled that *“where it has delivered a judgment, it is up to the parties to pursue the enforcement of same in accordance with the provisions of the Supplementary Protocol of 19 January 2005 and the Supplementary Act on Sanctions of 17 February 2012.”*

30. The Court finds it instructive to direct that once the evidence shows that the Chief Registrar has issued a Writ of Execution as mandated by law, its obligation ends. It behoves on the Applicant to file a complaint against erring Member States by individuals as in the present case, such complaints must be submitted to National Authorities responsible for regional integration or the President of the ECOWAS Commission, as provided under Articles 14 & 15 of the Supplementary Act on Sanctions of 2012. This means that even if the Court has jurisdiction to entertain this matter the Applicant does not have the *locus standi* to institute same. The *locus standi* is vested in the President of the Commission. The non-compliance with the decisions of the Court by Member States is a failure on the Member State to honour its obligations to ECOWAS and as such attract sanctions under the Supplementary Act A/SP/13/02/12. These sanctions include political and judicial sanctions. Furthermore, the

decision of the Court in *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL* (supra) establishes the premise of this line of thought as it was held that *“the Application brought by Mr. Karim Meissa Wade, in the aspects relating to requests before the Court to examine failure by the Republic of Senegal to fulfil its Community obligations, are inadmissible, for lack of locus standi... and that the enforcement of the judgments of the Court of Justice of ECOWAS is not an option but an obligation upon the Member States and Institutions of the Community, pursuant to Article 15(4) of the Revised Treaty of ECOWAS.”*

31. Consequently, the Court affirms that it lacks the competence to adjudicate the present claim but directs the Respondent to adhere to its commitment under the Revised Treaty of ECOWAS. The Court instructs the Respondent to discharge its obligation under Article 15 (4) of the Revised Treaty of ECOWAS to wit: *“Judgements of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.”*

32. In conclusion, the Court dismisses the claim for lack of competence to hear same.

VIII. COSTS

33. Article 66 (1) of the Rules of the Community Court of Justice states that *“A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.”* Article 66 (2) of the Rules of the Court also states that *“The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.”*

34. The Court notes that the Respondent has not prayed for costs in the current claim. Furthermore, recalling that the Applicant's claim depicts that he is still not enjoying the fruits of justice, the Court dismisses the claim without costs.

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

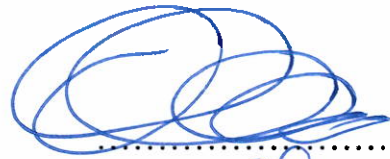
As to jurisdiction:

- i. **Declares** that it lacks jurisdiction to hear and determine the claim.

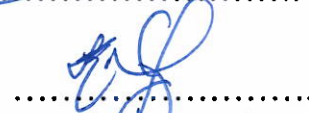
COSTS:

- ii. Dismisses the claim without costs.

Hon. Justice Edward Amoako **ASANTE**



Hon, Justice Sengu M. **KOROMA**/Judge Rapporteur



Hon. Justice Ricardo **GONCALVES**



Dr. Yaouza **OURO-SAMA** - Chief Registrar



Done in Abuja, this 6th day of June, 2024 in English and translated into French and Portuguese.

