



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

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

**In the Matter of**

**PORTIA OTTO ALAGBA & 2 ORS V FEDERAL REPUBLIC OF  
NIGERIA**

*Application No: ECW/CCJ/APP/37/19, Judgment No:ECW/CCJ/RUL/01/24*

**RULING**

**ABUJA**

**6 JUNE 2024**

**PORTIA OTTO ALAGBA & 2 ORS - APPLICANTS**

**V.**

**FEDERAL REPUBLIC OF NIGERIA - RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon Justice Edward Amoako Asante - Presiding  
Hon. Justice Dupe Atoki - Member / Judge Rapporteur  
Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Member

**ASSISTED BY:**

Dr Yaouza OURO-SAMA - Chief Registrar

**REPRESENTATION OF PARTIES:**

Emmanuel ONUCHE Esq -Counsel for Applicants

Maimuna Lami SHIRU (Mrs.)

Habiba U. CHIME (Mrs) -Counsel for Respondent

Ngosoo T.A. UCHEGBU (Mrs.)

### **Subject Matter of the Case**

1. The subject matter of this Application is the alleged violation of Article 4 of the African Charter on Human and Peoples' Rights (African Charter due to the extrajudicial killing of one Izu Joseph a professional footballer (victim), by men of the Nigerian Army on 16 October 2016.

### **Applicants Case**

2. The Applicants are the wife of the victim (1<sup>st</sup> Applicant), the daughter of the victim (2<sup>nd</sup> Applicant) and the brother of the victim (3<sup>rd</sup> Applicant).
3. According to the narration of facts of the Applicants, the victim who was a professional footballer with the Shooting Stars Football Club of Ibadan, went to his community in Rivers State of Nigeria for holidays sometime in October 2016. That on the morning of 16 October 2016, he went to the riverside in Okarki to take a bath where he was accosted by men of the 2 Brigade, Nigerian Army, led by one Major Mustapha Mohammed on operation "confidence building exercise."
4. The Applicants allege that during the operation the victim was shot on the leg and later at his waist region despite his plea that he is a footballer with the proof of his identity card and not a criminal as alleged by the soldiers.



5. The Applicants claim that after the soldiers left, members of the community went towards the riverside and found that the deceased (Mr. Joseph Izu) was still alive but bleeding profusely. He was rescued from the river and on the way to the hospital he died.
6. The Applicants submit that due to the celebrity status of the victim, there was an uproar when his death was relayed on the news channel. The Nigerian Army through its Commander 2 Brigade, made a press statement and stated that the service in its effort to rid the community of cultists, kidnappers, and other criminal elements stormed their hideout in Okarki Village, Ahoada West LGA of River State. The Army stated further that during this operation the deceased (Mr. Joseph Izu) lost his life.
7. The Applicants conclude that having failed to obtain justice from the Nigerian army, they approached the Community Court in search of justice for the victim and his immediate family for redress of the unlawful killing of the victim (Mr. Joseph Izu).
8. The Applicants state that the Respondent has failed to protect the victim's right to life guaranteed under Article 4 of the Charter, and other international human rights instruments, including the Constitution of the Federal Republic of Nigeria 1999 (as amended).

### **Reliefs Sought**

9. The Applicants seek several reliefs:



- i. **A Declaration** that the killing of Mr. Joseph Izu is a violation of the right to life assured and guaranteed under Article 4 of the African Charter on Human and Peoples' Rights, Article 3 of the Universal Declaration of Human Rights, Section 33 of the 1999 Constitution of the Federal Republic of Nigeria and Article 6 of the International Covenant on Civil and Political Rights.
- ii. **A Declaration** that the Federal Republic of Nigeria has failed to protect and guarantee the right to life assured under the African Charter on Human & Peoples' Rights, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the Constitution of the Federal Republic of Nigeria and has failed to give effect to the right in the case of the death of Mr. Joseph Izu.
- iii. **A Declaration** that the Federal Republic of Nigeria has failed to guarantee the right to fair hearing and to give effect to the said right in the case of the death of Mr. Joseph Izu.
- iv. **An Order** directing the Respondent to pay compensation in the sum of ₦2, 000,000, 000 (Two Billion Naira) only to the Applicants herein.
- v. **An Order** enjoining the Respondent to take appropriate steps to investigate the killing of Joseph Izu for the purpose of bringing criminal proceedings against the perpetrators.
- vi. **INTEREST** at the rate of 15% per annum on the judgment debt from the date of judgment until the judgment debt is fully liquidated.
- vii. **An Apology** from the Federal Republic of Nigeria to the Applicants herein for the violation of the Applicant's rights in the case of the killing of Mr. Joseph Izu which apology shall be published on a full page in 2 Newspapers having national circulation in Nigeria.



## **Preliminary Objection**

10. On 07 June 2021 the Respondent filed a preliminary objection alleging lack of jurisdiction. The Respondent denies several paragraphs of the Applicants' averment and submits that the Nigerian Army is an institution charged and empowered to suppress any insurrection and restoration of law and order when called upon. It is in that respect that the Army received information of the presence of cultists in a hideout in Okarki community and that during the raid to arrest some of the criminals, one Mr. Joseph Izu lost his life while several others fled.
11. It is in that context that the soldiers involved were lawfully called to maintain law and order in the community based on information at their disposal and are therefore immune from legal action/prosecution in respect of all lawful actions taken pursuant to the execution of their duty.
12. The Respondent furthermore states that the Applicants are aware and are subject to the provisions of Section 239 of the Armed Forces Act LFN 2004, which grants immunity from prosecution to military officers for acts or omission in the course of their lawful duties.
13. In addition, the Respondent submitted that Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999 also provides redress through the high Court for any party aggrieved of such action. Therefore, having not instituted any action before the national courts, this Court is precluded from entertaining the instant application



In the light of the above, the Respondents urged the Court to hold as follows:

- i. That the claims of the Applicants on murder or unlawful killing as contained in the Applicant's application cannot hold against the Respondent pursuant to Section 46 (1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), and Section 239 of the Armed Forces Act LFN 2004.
- ii. That this Honorable Court lacks the jurisdiction to entertain the suit in view of the above and same should be struck out.

14. The Applicants on the other hand did not put up a reply to the objection raised by the Respondent.

#### *Analysis of the Court*

15. Having regard to the preliminary objection raised by the Respondent, including the reliefs sought, the Court is invited to make two core determinations regarding its jurisdiction to entertain the Application as presented by the Applicants. ; 1) Whether the Respondent can rightly invoke its national legislation to oust the competence of the Court to entertain the present application 2) Whether the non-exhaustion of local remedies can preclude the Applicants from instituting an action before this Court.

- i. *Whether the Respondent can rightly invoke its national legislation to oust the competence of this Court to entertain the present application*



*Analysis of the Court:*

16. Considering that the objection of the Respondent is hinged on Section 239 of the Armed Forces Act of Nigeria LFN 2004, the provision is reproduced hereunder as follows:

*“No action, prosecution or other proceeding shall lie against a person subject to service law under this Act for an act done in pursuance or execution or intended execution of this Act or any regulation, service duty or authority or in respect of an alleged neglect or default in the execution of this Act, regulation, duty or authority, if it is done in aid to civil authority or in execution of military rules.”*

17. Pursuant to the provision above, the reasoning of the Respondent is that its troops in the exercise of their civil authority to maintain law and order are immune from legal action/prosecution in respect of all lawful actions taken pursuant to the execution of their duty.

18. While this exemption from prosecution is in respect of acts carried out within the territory of the Respondent, the Respondent has extended its application to international obligations that may arise from being signatory to international human rights treaties. Thus, if the action of the military men violates any provision of an international treaty they cannot be subjected to the jurisdiction of this Court. The implication is that this national law of the Respondent is superior to any international treaty signed by the Respondent.

19. It is appropriate at this stage to state that the Respondent is a signatory to African Charter on Human and Peoples' Rights of which Article 4 is alleged





to have been violated by the action of the military men and ipso facto the Respondent.

20. The matter at hand therefore raises the issue of international obligations as it relates to State Parties vis-à-vis their domestic laws. Having said this, it is imperative to state from the onset that Article 1 of the African Charter on Human and People's Rights, provides that parties are enjoined not only to honor their obligations but to ensure the realization of the rights enshrined in the Charter. It provides thus:

*"The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this charter and shall undertake to adopt legislative or other measures to give effect to them."*

21. The Court notes that the Respondent is a state party who has ratified the African Charter upon which the allegations of the Applicants are premised. By ratification therefore, the implication is that such a state party has committed to upholding the rights enshrined in those instruments including submitting to the jurisdiction of the Court.

22. In like terms, when a sovereign State freely assumes international obligations and is being held accountable in respect of those obligations, that State cannot renounce those obligations under the pretext that the matter in question is one that falls essentially within its domestic jurisdiction. See *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA ECW/CCJ/RUL/04/09 Reported in 2010 CCJELR @ Pg. 139 para 160,*



23. Thus, in keeping with the principle of *pacta sunct servanda*, the Respondent has a duty to uphold its treaty obligation in good faith. In the international context, it implies that State Parties are expected to keep to their own side of the agreement. Hence, State Parties that have ratified the Treaties, Protocols and Conventions are estopped from appealing to domestic laws in the light of their obligations under international law, as doing so would undermine their international legal commitments. See VALENTINE AYIKA V REPUBLIC OF LIBERIA ECW/CCJ/JUD/09/12/REV @ pg. 7
24. In this regards, all ratified international human rights laws remain superior to National laws which must be brought into alignment where inconsistency arises. See VALENTINE AYIKA V REPUBLIC OF LIBERIA ECW/CCJ/JUD/09/12 PG7; 3); INCORPORATED TRUSTEES OF PRINCE AND PRINCESS CHARLES OFFOKAJA FOUNDATION NIGERIA & ANOR V FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/11/24 para 40-41.
25. To this extent, where there is a conflict between the provisions of an international treaty and domestic laws, the treaty provisions will prevail. In that regard, the provisions of Section 239 of the Armed Forces Act of the Respondent cannot supersede the provisions of the African Charter and the Protocol of this Court with respect to the determination of human rights violation matters.
26. Having said this, the Court observes that the crux of the substantive application is premised on the alleged violation of the right to life of the deceased who was allegedly shot by soldiers of the Respondent in the course of their official duty. This right is protected by Article 4 of the African Charter as follows: "*Human beings are inviolable. Every human being shall*



*be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."*

27. In this regards, Article 9(4) clothes the Court with competence to determine the violation of human rights that occur in any member state. Therefore, the allegation of the Applicant being premised on the violation of the provision of the African Charter to which the Respondent is a signatory, a submission that the Court is devoid of jurisdiction is not tenable.

28. Flowing from the totality of the considerations above, the Court holds that relying solely on the Armed Forces Act of Nigeria LFN 2004 to evade international jurisdiction in a human rights violation matter, despite ratifying relevant protocols and instruments, cannot succeed before this Court. The Court therefore finds that the objection of the Respondent is otiose and lacks probative weight and value in the light of its treaty obligations.

29. The Court therefore holds that it has the requisite jurisdiction to determine the present application which borders on human rights violations. The objection of the Respondent on this head of claim is hereby dismissed.

ii. *Whether the Non-Exhaustion of Local Remedies can preclude the Applicants from instituting an action before this Court.*

30. The Respondent's case is that the Court is incompetent in regards to this application, the Applicant having not exhausted the option of local remedy available to them before approaching the Community Court to adjudicate on the matter. This is in view of Section 46(1) which provides that: "*Any person*



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*who alleges that any provisions of this chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court for redress''.*

*Analysis of the Court*

31. This Court has, through its plethora of jurisprudence, clarified that parties need not exhaust local remedies before invoking its powers to adjudicate on any matter within its scope of competence. The implication of this is that where there is an allegation of violation of human rights, an aggrieved party is at liberty to file an action before this Court even without recourse to its domestic Courts. This is notwithstanding the fact that the exhaustion of local remedy contemplates that States must have been given an opportunity to address and remedy a violation of human rights before they are brought before an international tribunal for violation of such rights.
32. This is so as the ECOWAS Court has retained its uniqueness amongst other International Courts, which require that local remedies must be exhausted before approaching the Court by dispensing with their requirement. See MR. AMOS BROSIUS v. REPUBLIC OF LIBERIA ECW/CCJ/JUD/06/20 @ pg. 17.
33. Consequently, based on Articles 9 (4) and 10 (d) of the Supplementary Protocol of the Court, the Court has repeatedly reaffirmed that the exhaustion of domestic remedies does not constitute a condition for lodging applications before it. See ALEX NAIN SAAB MCRÂN V, REPUBLIC OF CAPE VERDE ECW/CCJ/RUL/07/20 @ pg. 21 para



83. See also MILES INVESTMENTS (S.L.) & ANOR. V. REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/07/21 @Pg. 28 para 65.

34. In the light of the foregoing, the Court holds that the objection of the Respondent on the non-exhaustion of local remedies goes to no issue and is hereby dismissed.

**OPERATIVE CLAUSE:**

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

- i. **Declares** that it has the requisite jurisdiction to entertain this application.
- ii. **Dismisses** the preliminary objection in its entirety.

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

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

Hon. Justice Ricardo Claudio Monteiro GONÇALVES -Member.....

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

Done in Abuja this 6<sup>th</sup> Day of June 2024 in English and translated into French and Portuguese.

