



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

**THE REGISTERED TRUSTEES OF HEDA RESOURCE CENTRE
(HUMAN & ENVIRONMENTAL DEVELOPMENT AGENDA)**

V.

FEDERAL REPUBLIC OF NIGERIA

Application No: ECW/CCJ/APP/ 40/21 Judgment NO. ECW/CCJ/JUD/25/24

JUDGMENT

ABUJA

DATE: 4th July, 2024.

SUIT NO: ECW/CCJ/APP/40/21

JUDGMENT NO. ECW/CCJ/JUD/25/24

**THE REGISTERED TRUSTEES OF HEDA
RESOURCE CENTRE
(HUMAN & ENVIRONMENTAL
DEVELOPMENT AGENDA)**

-APPLICANT

V.

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Dupe ATOKI

- Presiding

Hon. Justice Sengu Mohamed KOROMA

- Member/Rapporteur

Hon. Justice Ricardo Claudio Monteiro GONCALVES

- Member

ASSISTED BY:

Gaye SOWE, Esq.

- Registrar



REPRESENTATION OF PARTIES:

Femi FALANA, SAN

- Counsel for the APPLICANT

Nurudeen A. OGBARA, Esq.

Femi ADEDEJI, Esq.

Maimuna Lami SHIRU (Mrs.)

- Counsel for the RESPONDENT

Ibrahim I. HASSAN, Esq.



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 Session, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant is the Registered Trustees of HEDA Resource Centre (Human and Environmental Developmental Agenda), a non-governmental organization, leading anti-corruption organization in Nigeria and non-partisan human rights and development league registered under Part F of the Companies and Allied Matters Act, 2020 of the Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS.

III. INTRODUCTION

4. The claims herein are premised on allegations of human rights violations, particularly the rights to life, dignity of the person, the right to enjoy the best attainable state of physical and mental health, and the right to have a general satisfactory environment for the citizens of Nigeria and Nigerians residing in the oil producing states as guaranteed under various fundamental human rights treaties.

IV. PROCEDURE BEFORE THE COURT

5. The Applicants filed their Initiating Application on 19th July 2021, in the Registry of the Court.



6. On 2nd March 2023, the Applicant filed a Motion for Default Judgment in the Registry of the Court.
7. Shortly after this, on 9th March 2023, the Respondent filed a Motion for the Extension of Time to file a Preliminary Objection and Statement of Defense, Facts and Plea in law in the Registry of the Court.
8. The Court held a virtual session on the 12th May 2023, after issues had been joined. At the session, the Applicant and Respondent were represented by Counsel, and the latter moved its Motion for the Extension of Time. The Court granted the prayer and also obliged the Applicant time prayed for, in which it could respond to the Preliminary Objection of the Respondent.
9. Another virtual session was held by the Court on 23rd October 2023, in which the Applicant was absent, but the Respondent was present. The Respondent prayed the Court to strike out the case for want of diligent prosecution on the part of the Applicant. The Court declined and instead adjourned for judgment on the basis that all pleadings had been filed and issues had been sufficiently joint to enable it reach a decision.

V. APPLICANT'S CASE

a) Summary of facts

10. The Applicant's claim borders on the harmful effects of gas flaring, an issue that it claims the Respondent has always acknowledged as far back as 1979, when it made gas flaring illegal through the passage of the Associated Gas Reinjection Act, 1979 and set a deadline for the 1st January 1984 as the end date of gas flaring in Nigeria. Notwithstanding this piece of legislation, forty years after, gas flaring is still an issue, and the Respondent is still infringing on the fundamental rights of its people residing in the Niger Delta region and other oil producing communities by condoning the practice.





11. The Applicant submits that the Respondent has made several commitments to end gas flaring; one such commitment is the Paris Agreement, adopted at the United Nations Climate Change Conference (COP21) in Paris, France, on 12th December 2015 and another is at the United Nations Climate Change Conference – COP22 held in Marrakesh, Morocco in 2016, where it pledged to do everything within its powers to bring gas flaring to an end by the end of the year 2020. In this wise, the Respondent, in a bid to end gas flaring by 2020, in 2016 commissioned the Nigerian Gas Flare Commercialization Program and in 2018, signed the Flare Gas (Prevention of Waste and Pollution) Regulations which provides penal sanctions in form of fine for defaulting oil companies. However, the penal sanctions have not been effectively handed down to the oil producing companies and it is notoriously evident that gas flaring still happens in oil fields.
12. The Applicant claims that the Respondent at its House of Representatives' Public Hearing on the need to end gas flaring in Nigeria which held on 15th February 2021, verbally announced that it has extended its deadline to end gas flaring in Nigeria to the year 2025, inspite of the fact that there would be a transition of the Executive arm of government after elections on 29th May 2023. This extension demonstrates the lack of commitment of the Respondent to end gas flaring or protect the fundamental rights of its people.
13. It is the submission of the Applicant that the Respondent is one of the top gas flaring countries in the world; seventh in the world. The effect of this is that the people of the Niger Delta region in the Respondent state, and other oil producing communities have not been spared from the hazardous effect of gas flaring which include life threatening sickness, cancer, deformities and even death. Gas flaring introduces toxic pollutants such as Sulphur dioxide and carbon monoxide into the atmosphere which leads to environmental pollution such as acid rain, as well as the generation of greenhouse gases which traps heat in the atmosphere, contribute

to global warming and climate change and causes environmental and health hazards. Gas flaring has also been associated with cancer, deformities in children, lung damage, skin problems amongst others.

14. The Applicant also claims that the Respondent, has over the years, lost over \$750,000,000:00; a humongous amount of money to gas flaring. This money could have been utilized in funding its annual budget, providing infrastructural developments, and solving the issue of shortage of gas for electricity production. However, the Respondent has not bothered to consider the negative, unhealthy and very damaging impact on the health, lives and environment of the persistent gas flaring activities and has made no arrangement to provide its people with adequate medical attention and facilities to cushion the adverse effects of gas flaring activities.

15. It is further claimed by the Applicant that the fundamental right to life and human dignity of citizens residing in the Niger Delta region and other oil producing communities has been breached. It is the claim that these citizens have been deprived of the right to clean poison-free and pollution-free air, healthy environment conducive for human habitation which aids development and full enjoyment of life; and these rights are continuously and persistently violated and threatened by the continuous gas flaring activities.

16. The Applicant is therefore seeking several reliefs from the Court for the violation of the fundamental rights of the Nigerian people, especially those in the Niger Delta region and other oil producing communities who will continue to suffer various sickness, deterioration of health and premature death.

b) Pleas in law

17. The Applicant is relying on the following pleas in law in support of the facts aforementioned:



- Articles 1, 2, 4, 5, 16 & 24 of the African Charter on Human and People's Rights.
- Article 33 of the Rules of the Community Court of Justice.
- Article 10 of the Supplementary Protocol (A/SP.1/01/05) Amending the Protocol on the Community Court of Justice (A/SP.1/01/05).

c) Reliefs sought.

18. Based on the foregoing claims and pleas in law, the Applicant is seeking the following reliefs from the Court:

- a. A declaration that the continuous flaring of gas in Nigeria is illegal and a gross violation of the fundamental rights of the Nigerian people especially those who reside in the Niger Delta region and other oil producing communities as enshrined in Articles 4, 5, 16 and 24 of the African Charter on Human and Peoples' Rights.
- b. A declaration that the Respondent is under a legal obligation to stop all oil and gas producing companies from flaring gas in Nigeria as it infringes on the Nigeria people's right to life, human dignity, best attainable state of physical and mental health and the right to general satisfactory environment as guaranteed in Articles 4, 5, 16 and 24 of the African Charter on Human and Peoples' Rights.
- c. An order mandating the Respondent to enforce the Flare Gas (Prevention of Waste and Pollution) Regulations against any defaulting oil producing companies forthwith.
- d. An order directing the Respondent to collect all the fines handed out as penal sanctions to the defaulting oil producing companies in breach of the Flare Gas (Prevention of Waste and Pollution) Regulations from 1984 to date.



VI. RESPONDENT'S CASE

a) Summary of facts

19. The Respondent avers that it has not infringed on the fundamental rights of its people, especially those residing in the Niger Delta region and any other region of the Federation.
20. The Respondent admits paragraphs (ii)-(iv) of the Applicant's narration of facts only to the extent that it is trying to put in place sanctioning measures against defaulting companies in its concerted efforts to eliminate gas flaring which is the Global Gas Flaring Reduction Partnership (GGFR).
21. The Respondent in response to paragraph (v) of the Applicant's narration of facts states that it is committed to and is doing its best in ending gas flaring in Nigeria. The Respondent denies paragraph (vi), (vii) – (ix) of the Applicant's narration of facts and states that it is committed and doing its best within the resources available at its disposal to ending gas flaring in Nigeria.
22. The Respondent denies paragraph (x) of the Applicant's narration of facts and states further that the Applicant is not in charge of administering the national budget as such is ignorant of what is involved in the administration of the Federal Republic of Nigeria. It also further denies paragraphs (xi)-(xiv) of the Applicant's narration of facts and puts the Applicant to the strictest proof of the facts contained therein.
23. It is averred by the Respondent that the Applicant's claims are not substantiated by facts and evidence to support the reliefs sought. In sum, the Respondent prays the Court to dismiss the Applicant's claim as frivolous, baseless, and unsubstantiated.

b) Relief sought



24. The Respondent, having submitted its defense, prays that the Court consider its argument in opposition and dismiss the suit for lack of merit.

VII. PROCEEDINGS BEFORE THE COURT

Preliminary Objection

25. The Respondent contends the Applicants application on two preliminary grounds namely:

- The subject matter is not within the Court's competence.
- Pendency of a similar action before the Court.

26. The Respondent avers on the first ground that the subject matter does not fall within the purview of Article 9 of the Supplementary Protocol A/SP.1/01/05 amending the Protocol A/P1/7/91 relating to the Community Court of Justice. It contends that the subject matter of the claim falls under the civil realm of a tortious liability of negligence and nuisance. This calls to mind the duty of care, breach of that duty and consequential loss and damage suffered as a result thereof. The principle herein was laid down in the English *locus classicus* case of RYLAND'S V FLETCHER.

27. The Respondent avers in support of its contention, that the Court has held in several cases that the mere allegation of human rights violation is enough to confer jurisdiction on it. The Respondent cites the cases of ALHAJI MUHAMMED IBRAHIM HASSAN VS GOVERNOR OF GOMBE STATE & ANOR. (2012) CCJELR and EL HAJI MAME ABDOU GAYE VS THE REPUBLIC OF SENEGAL (2012) CCJELR and submits that based on the above principle of law, the claims of the Applicant in this action are not for the enforcement of fundamental rights but rather for the tortious liabilities of negligence and nuisance which puts them outside the competence of the Court.



28. The Respondent is therefore seeking an order of the Court to strike out this suit for want of jurisdiction.

29. The Respondent, with regards to the second issue, contends that there is a pending application before this Court in Suit No. ECW/CCJ/APP/34/2018 between JOHNY KING & 10 ORS V FEDERAL REPUBLIC OF NIGERIA dealing with same subject matter with the present suit. That the subsequent institution of the present suit amounts to abuse of process. The Respondent submits that the conditions or circumstances bringing about abuse of Court process are not conjunctive, they are rather disjunctive, each standing independent of the other. Therefore once one of the circumstances occurs, the Court will not wait for others to come together before ruling on abuse of court process. Consequently, the Respondent avers that it is the duty of the Court to consider the content of the first process vis-à-vis the second one to see whether they are aimed at achieving the same purpose to prevent abuse of its process at all times. In support of this proposition, it refers the Court to the case of AGWASIN VS OJICHIE (2004) 10 NWLR (PT 882) 613.

30. In conclusion, the Respondent prays that the Court, in light of legal authorities cited, upholds its preliminary objection.

31. The Applicant filed no response to the Preliminary Objection.

Analysis of the Court

32. Having heard the Preliminary Objections of the Respondent, the Court notes that the grounds for the same are premised on jurisdiction and admissibility. Therefore, it will determine them seriatim.

a. Jurisdiction



33. The question for determination before this Court on this ground is that the subject matter of the claim is not within the competence of the Court. In addressing this contention, the Court recalls Article 9(4) of the Supplementary Protocol (supra) which provides that *"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State."* This provision confers on the Court its human rights jurisdiction. It is a well-established principle of law that a Court is competent when: it is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and the subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. (MR. AFOLABI OLAJIDE V. FEDERAL REPUBLIC OF NIGERIA (2004) at page 1).

34. From the contention before it, the Respondent is averse to the Court exercising its jurisdiction as it argues that the subject matter of the claim is tortious and not a human rights violation. The claim of the Applicant is that the activity of gas flaring in the Niger Delta region, has caused environmental degradation which has led to the alleged violation of Articles 4 (right to life), Article 5 (right to dignity), Article 16 (right to health), Article 22 (right to development) and Article 24 (right to environment) guaranteed by the African Charter on Human and Peoples' Rights (hereinafter ACHPR).

35. The tradition at the Court is to admit claims for human rights violation on the basis of mere allegation. Hence early on in its jurisprudence, in the case of THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (2014) CCJELR at page 33 it held that: *"The*

mere allegation that there has been violation of human rights in the territory of a Member State is sufficient prima facie to justify the jurisdiction of this Court on the dispute, surely without prejudice to the substance and merits of the complaint which has to be determined only after the parties has been given opportunity to present their case, with full guarantees of fair trial.” The mere allegation of violation of human rights is sufficient to trigger the jurisdiction of the Court and the Court will assume jurisdiction without necessarily examining the merit of the said allegation: DR. GEORGES, BOLEY V. REPUBLIC OF LIBERIA & 4 ORS JUDGMENT NO ECW/CCJ/JUD/24/19(UNREPORTED) at page 10.

36. Having carefully considered the contention of the Respondent and the claim of the Applicant against its jurisprudence, the Court is bound by the doctrine of “*stare decisis*.” This doctrine loosely translated means “*let the decision stand*,” allows the Court to rely on its earlier position in law. Thus, considering that the Court has steadfastly followed its jurisprudence of assuming competence over claims that have merely evinced a subject matter of human rights violation, it stands to reason that it would preserve this tradition. Furthermore, the Court has no evidence before it that would sway it from its laid down position. The contention before the Court is a claim that the action is tortious and not a human rights violation. This contention is not sufficient to quash the tradition of the Court as the Applicant has claimed a violation of human rights. Consequently, the Court declares that it has jurisdiction to hear and determine the claims before it and dismisses the Preliminary Objection on this ground.

b. Admissibility

37. The second ground of the Preliminary Objection of the Respondent is that a claim on all fours with the present claim is pending before the Court. The Court



Yes

therefore considers this a feature of admissibility and will consider the contention within the requirements laid down in Article 10 (d) of the Supplementary Protocol (supra). Article 10 (d) of the Supplementary Protocol (supra) provides that:

“Access to the Court is open to the following... 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.”*

38. This provision guides the Court in its determination of the admissibility of cases before it.

39. The Court recalls the Respondent’s contention that SUIT NO. ECW/CCJ/APP/34/2018, JOHNY KING & 10 ORS V FEDERAL REPUBLIC OF NIGERIA, is a case that has been filed before this Court with similar facts that renders the present claim inadmissible as it is an abuse of court process. In reaching a decision, the Court is inclined to dispose of the requirements for admissibility seriatim as they must cumulatively be affirmed.

40. On the issue of anonymity, the Court notes that the claim has been brought by a Non-Governmental Organization (NGO), Registered Trustees of HEDA Resource Centre (Human and Environmental Developmental Agenda), on behalf of the people of the Niger Delta of Nigeria. It is given that where the application complies with Article 33 (1) of the Rules of the Community Court of Justice i.e., the identification (albeit name and address) of the Applicant et al, it is deemed to have discharged the anonymity requirement. Thus, in this instance, where the Applicant has sufficiently appended its name and address for service on the face





of its Initiating Application, the Court finds that it has complied with this requirement.

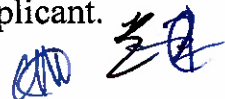
41. The Court has a settled jurisprudence that NGOs and public-spirited individuals may bring applications before it on behalf of a group or community of persons that are indeterminate in number for the violation of human rights which are jointly held by them. In this regard, the Court recalls that public-spirited person (s) and NGOs shall be allowed to seek reliefs for the violation of the human rights of an indeterminable group of persons without express authorization from them: **THE REGISTERED TRUSTEES OF JAMA'A FOUNDATION & 5 ORS V FEDERAL REPUBLIC OF NIGERIA & ANOR JUDGMENT NO: ECW/CCJ/JUD/04/20 (UNREPORTED)**, at page 14-15; **INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/16/20** and **PATRICK EHOLOR (PRESIDENT OF ONE LOVE) V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/51/23** at page i5. The Court notes that the Applicant in the present case pleads that it has the mandate to protect and promote universally recognized human rights, accountability and environmental justice in Nigeria and Africa, in accordance with international standards. This is by virtue of its legal authorization by the Respondent under registration.
42. The second criterion is proof that the Applicant is a victim or an established fact that it possesses the necessary *locus standi* in the action. What the Court requires here is that the Applicant establishes victim status, i.e., direct or indirect, representational or public spirited, which in turns will reveal its *locus standi* in the claim. The Applicant in this instance has brought the claim as a public spirited individual, which is *actio popularis*. It clearly states that the claim is on behalf of the people of the Niger Delta, who have allegedly suffered the after-effects of gas

flaring activities in their communities, including the destruction of their land, water, and their environment. This destruction has in turn allegedly led to health issues in the children and adults of the communities. The human rights implicated are the right to life, dignity, health, and right to a general, satisfactory environment favorable to their development, all of which are guaranteed in the African Charter. All these rights are capable of being held by the public, which in this case is a community of indeterminable persons of the Niger Delta.

43. In bringing a claim *actio popularis*, certain criteria must be met as was held in THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/16/20 (Unreported). The Court held that the criteria to be met are:

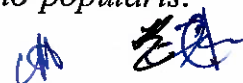
1. *The rights allegedly violated must be established to be capable of being held by the public and not a private right.*
2. *The reliefs sought must be exclusively for the benefits of the public to the exclusion of the personal interest of the Applicant. An exception must be made when the Applicant is a member of the community or the group concern.*
3. *The victims, while not determinable, must for purposes of award of reparation, be capable of being envisioned or envisaged by the Court.*

44. The Court notes that the Applicant has established the capacity in which it is bringing the claim, and the fact that the rights alleged to have been violated are capable of being held by the public, which in this case is a community of indeterminable persons of the Niger Delta. The claims are premised on various articles under the ACHPHR which the Court considers sufficiently public to hold that the first criteria for *actio popularis* has been met by the Applicant.



45. With regards to the second criteria, it requires that the reliefs sought shall be for the benefit of the public to the exclusion of the personal interest of the Applicant, unless he is a member of that community. The Court observes that the reliefs sought by the Applicant are all declaratory for breaches of fundamental human rights guarantee under the ACHPR. Nonetheless, the Applicant has also ordered from the Court, for the Respondent to enforce the Flare Gas (Prevention of Waste and Pollution) Regulations and collect fines handed as penal sanctions to the defaulting oil producing companies in breach of the Regulations. The Court considers that none of these reliefs are to the personal benefit of the Applicant, but rather they would benefit the alleged victims who are the people of the Niger Delta. Therefore, the Court finds that the second criteria for *actio popularis* has been met. See: INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE V FEDERAL REPUBLIC OF NIGERIA (*supra*) and PATRICK EHOLOR (PRESIDENT OF ONE LOVE) V FEDERAL REPUBLIC OF NIGERIA (*supra*).

46. The third and final criteria for *actio popularis*, is that the victims while not determinable, must for purposes of award of reparation, be capable of being envisaged (or identified) by the Court. The Court notes that the alleged victims in the instant case are the people of the Niger Delta and other oil producing communities who have been exposed to gas flaring activities of oil companies in the area. It is clear that persons from these communities are indeterminable in number. Nonetheless they are capable of being envisaged by the Court, as the people coming from distinct States in Nigeria, who are capable of suffering from human rights violations of a public nature. Moreover, this Court recalls that the reliefs sought by the Applicant are not pecuniary in nature but require the proper enforcement of extant laws. This culminates in a finding by the Court that the Applicant has fulfilled the third criteria for bringing the claim *actio popularis*.



Yes

Thus, the Court finds that the Applicant has sufficiently demonstrated its interest in the claim, which is *actio popularis* and as such considers that second requirement under Article 10 (d) of the Supplementary Protocol (*supra*) fulfilled.

47. As to the final requirement for an action to be admissible under Article 10 of the Supplementary Protocol, which is the pendency of the claim before another international Court; the Court notes the contention of the Respondent that the application is an abuse of Court process due to the fact that there is currently a case pending before the Court with a similar subject matter. The Court has held in several cases that “...*the only limit to its jurisdiction is as prescribed under Article 10(d) (ii) of the Supplementary Protocol on the Court, which bars it from entertaining a case which is already before another competent International Court: EL HAJI MAME ABDOU GAYE v. THE REPUBLIC OF SENEGAL (2012) CCJELR at page 19.* The importance of this provision is that the pendency principle is to avoid parallelism of various international proceedings on the one hand, and on the other hand, to avoid conflict between various international Courts. Indeed there is no order of hierarchy between such international Courts, and it follows that none amongst them is competent to revise the decision of another international Court: HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER (2008) CCJER at page 217. The position is different if a similar case is pending before a domestic court.

48. Thus, the Court held in REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) V THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR (2016) CCJELR at page 433, that where a case is lodged before the local judge under the domestic court system of a Member State, there is no bar on the Community Court entertaining the same case.

49. The Court finds it necessary to state that a situation where applications with the same subject matter are filed before it for adjudication, is catered for under Article 38 of the Rules of the Community Court of Justice, to wit:

1. *The Court may, at any time, after hearing the parties, order that two or more cases concerning the same subject matter shall, on account of the connection between them, be joined for the purposes of the written or oral procedure or of the final judgment.*

2. *The cases may subsequently be disjoined.*

50. What the Respondent contends can be addressed under Article 38 aforesaid. This provision of the rules affords a possible remedy that the Court may resort to in such a situation, which is, to order a joinder of these cases to avoid a duplication of procedures on the same issues and violations. However, it must be noted that an order for a joinder of cases is a discretionary measure not an obligatory one. As no application has been made for a joinder, the Court shall not exercise its discretion in favor of same. This jettisons the Respondents contention on pendency, as Article 10 (d) (ii) contemplates “*another international Court*” not a similar suit filed within the Community Court itself.

51. Having considered the requirements for admissibility and the contentions raised by the Respondent, the Court finds that Applicant has cumulatively met same. Consequently, the Court declares the application admissible and dismisses the Preliminary Objection of the Respondent.

VIII. MERITS

52. The Court has considered the submissions of the parties herein and the issues in contention, to wit, the alleged breaches of Articles 1, 2, 4, 5, 16 and 24 of the ACHPR. However, the Court notes that whilst the Applicant states that there was



a breach of Article 2 of the ACHPR, the reliefs sought are bereft of a claim under this provision. Also noteworthy, is that the claim for breaches of Articles 4, 5, 16 and 24 of the African Charter, are the alleged consequences of the activities of gas flaring occurring in the Niger Delta region of the Respondent. Having regard of these nuances in the pleadings of the Applicant, the Court will determine the merits seriatim after recalling the brief facts of the claims of both parties.

Applicant's Case

53. The Applicant alleges that gas flaring introduces toxic pollutants such as Sulphur dioxide and carbon monoxide into the atmosphere which leads to environmental pollution such as acid rain, as well as the generation of greenhouse gases which traps heat in the atmosphere, contribute to global warming and climate change and causes environmental and health hazards. Gas flaring has also been associated with cancer, deformities in children, lung damage, skin problems amongst others. It specifically states that gas flaring has been the major cause of pollution, environmental and health hazard in the Niger Delta and other oil producing communities for years and its total stoppage will be in the best interest of the Respondent and its people.
54. The Applicant avers that the Respondent has over the years, lost over \$750,000,000.00 to gas flaring, money that could have been utilized in funding its annual budget, provide infrastructural development. It alleges also that the Respondent has not bothered to consider the negative unhealthy and very damaging impact on the health, lives, and environment of the people due to the persistent gas flaring activities in the Niger Delta. Furthermore, it avers that the Respondent has made no arrangement to provide its people with adequate medical attention and facilities to cushion the adverse effects of gas flaring activities. The Applicant asserts that it is evident and a known fact that Nigerians



especially those residing in the Niger Delta region and other oil producing communities are at the receiving end of gas flaring. That it infringes on their right to life, human dignity, right to enjoy best attainable state of physical and mental health and the right to general satisfactory environment as enshrined and guaranteed under the African Charter on Human and People's Right, which Nigeria is signatory to, and domesticated as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Vol 1. Laws of the Federation of Nigeria, 2004.

55. The Applicant, therefore, prays the Court for several declaratory reliefs and orders for the violation occasioned by the breach of several provisions under the ACHPR.

Respondent's Case

56. In its defense, the Respondent avers that contrary to the facts presented by the Applicant in its application, it has never relented on its daily routine of protecting the rights of its citizens. The Respondent rebuts the claims brought by the Applicant and contends that the claims have not been proved as required by law. It argues that it is trite law that there must exist a link of cause and effect between the offence committed and the harm caused, and this is not found in this case. In support of this, the Respondent cites the case of *KARIM MEISSA WADE V REPUBLIC OF SENEGAL* (2013) CCJELR at page 28 where this Honorable 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.*"

57. The Respondent relies on the decision of the Court in *HON. JUSTICE S.E. ALADETOYINBO V FEDERAL REPUBLIC OF NIGERIA* JUDGMENT NO:



Yes

ECW/CCJ/JUD/18/20 (Unreported) at page 31 where this Honorable Court held that “... to qualify for an award of reparation, the Applicant must prove the prejudice suffered which was occasioned by the decision of the committee, for example that based on the decision, he was dismissed or suspended from work, or his salaries and emoluments were unpaid. The court was not presented with any facts evidencing any harm, injury or prejudice arising from said violation...”

58. The Respondent contends that the Applicant has not presented the Courts with evidence of harm or injury or prejudice arising from the said violation to entitle the Applicants to the reliefs sought against the Respondent. It further contends that gas flaring is a global issue, and it is common place during production or industrial activities on oil rigs, refineries, and chemical and coal plants. In Eurasia (Europe and Asia) and the Middle East, they recorded the highest volume of gas flaring since 2000.

59. The Respondent also submits that it is committed to on-going regulatory pledges to end gas flaring globally, Nigeria inclusive. Hence, the Global Gas Flaring Reduction Partnership (which Nigeria is part of) is making a concerted effort in eliminating gas flaring globally by 2030. According to PWC online article “Assessing the impact of gas flaring in Nigerian economy” gas flaring in Nigeria has reduced drastically and it is because gas production has been growing while gas flaring has been reducing. Gas flared in 2002 was equivalent to 53% while in 2018 is equivalent to 10%. This proves that the Nigerian Government is making concerted efforts to end Gas Flaring. The Respondent states that in its bid to reduce and end gas flaring launched several policies with the recent policy being the July 2017 National Gas Plan (Nigeria Gas Flare Commercialization Programme (NGFCP)), which amongst others is aimed at protection of the environment, reduce environmental and social impact caused by flaring, prevention of waste of natural resources and creation of social and economic

Yes

benefits from gas flare capture. Other measures aimed at reducing gas flare is by the Petroleum Industry Administration Bill which is currently in the process of being signed by the President of the Respondent into law after successful passage of the bill by the National Assembly. The Respondent submits that it has reduced its gas flare by 70% in the last 15 years. The World Bank Online Publication of April 28, 2021 titled "*Global Gas Flaring Tracker Report*" is herein relied on.

60. The Respondent affirms its commitment by stating that government and governance is continuous, and the end of a particular government does not end government or government policies that have been made.

61. In conclusion, the Respondent respectfully urges the Court to consider the Respondent's argument in opposition to the Applicant's application and consequently dismiss the suit for lacking in merit and unsubstantiated.

On whether there has been a breach of Article 1 of the ACHPR

62. It is imperative that the Court denotes Article 1 of the ACHPR for ease of reference:

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

63. This provision guides the commitment of Member States under international human rights law. In *ADOU KOUAME & ORS. V REPUBLIC OF COTE D'IVOIRE* JUDGMENT NO: ECW/CCJ/JUD/46/23 (Unreported) at paragraph 175 -179, the Court held that the obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. Thus, the Court considers that where a Member State fails to discharge its obligations accrued under the ACHPR, the consequence may result in a breach thereof.



Yes

64. The Court had emphasized in the earlier case of STELLA IFEOMA NNALUE & 20 ORS. V FEDERAL REPUBLIC OF NIGERIA (2015) CCJELR at page 253, that the State shall guarantee the actual implementation of stipulated rights, by taking measures to ensure that they are not wantonly violated. The question then is whether the Respondent has breached Article 1 of the ACHPR.
65. The Court notes the submission of the Applicant that the Respondent passed the Associated Gas Reinjection Act 1979 and set deadlines for the 1st January 1984, to end gas flaring. It is also alleged that at the United Nations Climate Change Conference - COP22 held in Marrakesh, Morocco in 2016, the Respondent pledged to do everything within its powers to bring gas flaring to an end by the end of the year 2020. Thus, in keeping with this target, the Respondent commissioned the Nigerian Gas Flare Commercialization Programme in 2016 and in 2018, signed the Flare Gas (Prevention of Waste and Pollution) Regulations which provides penal sanctions in form of fine for defaulting oil companies.
66. The Court notes the Respondents submissions in this wise, particularly its admission that the practice of gas flaring exists in the country but shall also nonetheless, take into consideration the evidence adduced by the Respondent to show the measures taken to reduce the practice of gas flaring in Nigeria. The Respondent adduces Annexure FGN 1, which is a report titled; *“Assessing the impact of Gas Flaring on the Nigerian Economy”* published in 2019 by PriceWaterCoopers Limited. A portion of the report at page 6 reads as follows: *“There has been a steady drop in the percentage of gas flared in Nigeria. While the volume of gas flared in 2002 was equivalent to 53% of gas produced, the volume of gas flared in 2018 was equivalent to 10% of the volume of gas produced...Accounting for this drop is a few combined factors including: The increased reinjection of gas to lift more crude oils out of the wells, when*



Yes

production declines; Significant growth in industrialization around oil producing areas, which has been responsible for mopping up gas flares for industrial use; Growing environmental awareness and regulations has compelled international oil companies in Nigeria to cut down their emissions level due to global outcry...In Nigeria, the indigenous and international oil producing companies are investing in gas commercialization projects under the Nigeria Gas flare commercialization Programme (NGFCP)."

67. The Court also notes Annexure FGN 2 which is an article by The Cable, an online news publication, titled "*Buhari signs Petroleum Industry Bill into law*" and dated 21 August 2021. The Respondent submits this piece of evidence that the Petroleum Industry Bill was passed into law, after the then President, Muhammadu Buhari, assented to it in 2021. The article states that, "*The PIB contains 5 Chapters, including governance and institutions, administration, host communities' development, petroleum industry fiscal framework and miscellaneous provisions in 319 clauses and 8 schedules.*"

68. The Court notes further that the 2021 Petroleum Industry Act which is pleaded as Annexure FGM 3 by the Respondent provide legal governance, regulatory and fiscal framework for the Nigerian Petroleum Industry and development of host communities. It contains 5 chapters, 319 sections and 8 schedules centered on 20 top changes. The Respondent has also repealed previous laws relating to the Petroleum Industry and exploration in general, enacted by the Respondent, including the Associated Gas Reinjection Act, 1979 Cap. A25, Laws of the Federation of Nigeria, 2004 and its amendments.

69. The Respondent also puts into evidence Annexure FGN 4, which is a World Bank Online Publication of 28th April 2021, titled a "*Global Gas Flaring Tracker Report*". Page 9 of the report states that "*[A]nother bright spot can be found in Nigeria, the seventh-largest flaring country in 2020. Although the country has*

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Yes

remained in the top seven flaring countries, it has nonetheless steadily reduced its flaring by some 70 percent over the past 15 years. Flaring has declined from over 25 bcm in 2000 to close to 7 bcm in 2020, while oil production has remained flat at around 2 million barrels a day.”

70. The Court notes that none of the evidence presented by the Respondent was challenged by the Applicant. It is a cardinal principle of law that evidence which is unchallenged and uncontroverted ought to be accepted by the Court. This was the position of the Court in *PETROSTAR NIGERIA LIMITED V. BLACKBERRY NIG LIMITED & ANOR* (2011) CCJELR at page 87. Consequently, the Court is swayed by the evidence adduced in rebutting the claim of violation under Article 1 of the ACHPR, i.e., Annexures FGN 1- 4. The Court is inclined to state that in taking measures to ensure that the rights enshrined in the ACHPR are fulfilled, the positive obligation of Member States does not end with enactment of laws and policies but extends to ensuring the implementation and the enjoyment of these rights by citizens. Hence, Member States may have to take other measures including putting in place mechanisms, institutions, and other forms of manpower to ensure that the laws and policies are implemented. A failure to implement laws and policies for the fulfilment of human rights amounts to failure to meet the obligations set by international human rights law.



71. In the instant case, it is axiomatic that the Respondent has put in place updated laws on the regulation of the petroleum industry and for the protection of the host communities. It is therefore clear to the Court that not only has legislative measures been taken but other implementation measures are being taken by the Respondent to improve the petroleum industry and to regulate the practices of external and internal companies involved in oil exploration.

72. Based on the foregoing, the Court finds that there has been no breach of Article 1 of the ACHPR.



On whether Article 4 of the ACHPR has been breached by the Respondent.

73. In determining this issue, it is necessary to reproduce Article 4 of the ACHPR for ease of reference. It reads “*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.*”
74. The Court has continued to follow a general rule which was endorsed in the cases of *MUSA SAIDYKHAN V REPUBLIC OF THE GAMBIA* (2010) CCJELR and *COL. MOHAMMED SAMBO DASUKI (RTD)* (2016) CCJELR that a party who asserts a fact must prove them to the satisfaction of the Court. However, to prove that a life has been arbitrarily taken, there must be proof of actual loss of life. This fine distinction was reached by the Court in its decision in the case of *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA* JUDGMENT NO. ECW/CCJ/JUD/11/21 (Unreported) at page 32.
75. In the present claim, the Applicant has put forward several statements of facts claiming a violation of Article 1 as a result of gas flaring which has a harmful effect on the environment and on communities living within range. Notwithstanding this assertion, the Court observes that evidence in support of this has not been adduced, that is proof of actual loss of life. It is imperative that for such an allegation, proof of the lives that have been lost in the Niger Delta as a result of the activities of gas flaring must be evinced before this Court. This will establish how complicit the Respondent has been with failing to fulfill its obligation under Articles 1 and 4 of the ACHPR.
76. Based on the foregoing, the Court finds that the Applicant has failed to prove that there was actual loss of life in the Niger Delta region as a result of the activities of gas flaring, to which the Respondent is allegedly complicit. It follows that

Yes

without evidence of loss of life, the Court cannot find a violation of the right to life against the Respondent. In consequence, this claim fails.

On whether Article 5 of the ACHPR was breached by the Respondent

77. Article 5 of the ACHPR provides that *“Every individual shall have the right to the respect of the 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.”* The Court has carefully elucidated two significant phrases within this provision in AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO. ECW/CCJ/JUD/11/21 (Unreported) where it held that the *“respect for human dignity”* and *“prohibition of torture and other cruel, inhuman and degrading punishment and treatment”* are two elements of this provision. The Applicant is claiming that the Respondent breached its obligation under Article 5 with regards to the first element of Article 5: *“respect for human dignity.”*

78. The term *dignity* is a derivative of the Latin word ‘*dignitas*’ meaning “worth,” (Mairis.1994; Clark, 2010). However, the Oxford Advanced Learner’s Dictionary, 10th Edition, Oxford University Press at page 432 defines *dignity* as *“a calm and serious manner that deserves respect.”* In understanding the notion of dignity, the former United Nations Special Rapporteur on Torture explains:

“Human dignity is the main philosophical foundation of human rights, as expressed in the Charter of the United Nations, the Universal Declaration of Human Rights, and many other documents. The concept of human dignity is meant to distinguish human beings from other creatures, notably animals. It underlines the uniqueness of human beings among all

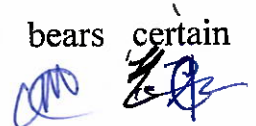




creatures, above all their free will, individual autonomy and capability of independent decision-making based on reason and free moral choice... ”

79. In elaborating the consequences of acts of indignity, the UN Special Rapporteur stated further that “...*In my opinion, it is the experience of absolute powerlessness which creates the feeling among the victims of certain gross human rights violations to have lost their dignity and humanity. As the slave holder exercises absolute power over slaves, the torturer, the rapist, the genocidaire, the trafficker exercises absolute power over their respective victims. Many victims of torture, rape, trafficking, female genital mutilation, corporal punishment, and inhuman prison conditions whom I interviewed in my function as Special Rapporteur on Torture in all world regions had reached a stage in which they regarded death as a relief compared to the suffering of being further dehumanized.*” MANFRED NOWAK (LUDWIG BOLTZMANN INSTITUTE OF HUMAN RIGHTS, UNIVERSITY OF VIENNA; U.N. SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT).

80. The Court finds it imperative to instruct that a claim for the violation of dignity must be supported with evidence of the breach (MRS. HELEN JOUSHUA & ANOR. V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/02/22 (UNREPORTED)). In the instant case, the Court notes that though the Applicant alleged there was breach Article 5 of the ACHPR resulting in a violation of the right to dignity of the human person, they have not adduced evidence to support their claims. They have also not established any link between the alleged violation and the people of the Niger Delta whose right to dignity they claim have been violated. The Court recalls that environmental issues such as the ones alleged can impact on individuals and community's enjoyment of fundamental rights, which are guaranteed under international human rights instruments in relation to which the state bears certain



responsibilities. Environmental degradation negatively affects the ability of people to fully develop their personality and fulfil their aspirations. Yet to apportion liability to the Respondent, evidence must be adduced to sufficiently discharge the burden of proof. See SIA MOMOH & 7 ORS. V REPUBLIC OF SIERRA LEONE JUDGMENT NO: ECW/CCJ/JUD/20/23 (UNREPORTED). In the instant case, even assuming that gas flaring seriously damages the environment, the Applicant has not brought forward any convincing arguments showing that the Respondent by its action or omission is responsible for the violation of their right under Article 5.

81. Consequently, the Court finds that the Applicant has not discharged the burden of proof and therefore dismisses the claim of a breach of Article 5 of the ACHPR.

On whether Article 16 of the ACHPR has been breached

82. On the Applicant's claim that the Respondent breached its obligations under Article 16 of the ACHPR resulting in a violation, the Court finds it necessary to reproduce the provision hereunder:

Every individual shall have the right to enjoy the best attainable state of physical and mental health.

States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

83. This provision behooves Member States to ensure that the citizens enjoy the highest attainable standard of physical and mental health and the right to a general environment satisfactory for development, international and regional human rights law. Thus, in SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) & 10 ORS. V FEDERAL REPUBLIC OF NIGERIA (2012) CCJELR at page 121, the Court encouraged Member States to adopt a largely

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Yes

non-interventionist approach, i.e., not to carry out, sponsor or tolerate any practice, policy or legal measure that violates the integrity of the individual.

84. Furthermore, the Court notes the Human Rights Committee in its General Comments No. 14, affirms that the right to the highest attainable standard of physical and mental health is not restricted to the right to medical care, but also includes *“a wide range of socio-economic factors that provide conditions for individuals to lead a healthy life and extends the concept to underlying determinants of health such as food, nutrition, housing, access to safe drinking water and adequate sanitation, healthy and safe working conditions and a healthy environment.”* (See page 90-91-§4 page 92 §11).

85. The Court also recalls that the African Commission’s *Principles and Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter on Human and People’s Rights* (see §60 to 67), include *“national plans, policies and systems”* for the *“right to health.”* It provides as that *“(…) the right to health should be incorporated into development plans, which be based on health, social and environment impact assessments.* (See paragraph 67-point J) *Ensure that all plans and policies, including particularly at the local level, are developed, and implemented in a transparent and participatory manner without discrimination to maximize community input.* (See point l.) *Ensure that national development plans and programs are designed towards the realization of a healthy environment that is conducive to the right to health, for example in matters relating to water resources management and sanitation.* (See point q.) *Protect individuals and peoples against environmental, industrial, and occupational hazards, preventing air, land and water pollution and alleviating the adverse effects of urban development, industrialization and global warming on ecosystems, livelihood and food security.”* (See point s)

86. The Court recalls that the Applicant in the instant case, claims that the practice of gas flaring in the Niger-Delta has led to the violation of the right to health of the citizens living in communities where the practice is carried out. Again, the Court is inclined to instruct that the cardinal rule of proof cannot be dispensed with. Allegations must be sufficiently proved with evidence to discharge this legal burden. In this regard, the Court finds the claims before it bereft of evidence discharging this burden. The Applicant has not presented reports, hospital records or even individuals who have suffered from health challenges as a result of the practice. The list is not exhaustive. The Court notes that the Respondent on the other hand has shown the Court evidence of some form of improvement in the environment of the Niger-Delta region, which is as a result of enactment of laws and the reduction of gas flaring.

87. In the circumstance, the Court finds that the Applicant has not proved its allegation herein and therefore dismisses same.

On whether Article 24 of the ACHPR has been breached.

88. The Court recalls the Applicant's claim that the Respondent violated the rights of the citizens of the Niger-Delta to a satisfactory environment, which is provided for in Article 24 of the ACHPR. Article 24 provides that "*All peoples shall have the right to a general satisfactory environment favorable to their development.*" This provision imposes on Member States the obligation to maintain a state of environment which satisfies the human beings who live there and enhances their sustainable development. It is therefore by examining the state of the environment and objective factors that one judges by the results whether the State has fulfilled this obligation. Thus, in **SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) & 10 ORS. V FEDERAL REPUBLIC OF NIGERIA (2012) CCJELR** at page 121 the Court held that if the





State taking all appropriate legislative, administrative and other measures, it must ensure that diligence and vigilance are being applied and observed towards attaining concrete results.

89. The Court further recalls that the Respondent has passed updated laws for the protection of host communities and various reports adduced have shown that there is a decrease in the practice of gas flaring albeit that it has not been eradicated. The Applicant on its part has not countered the information or provided the Court with adverse evidence or reports showing that the evidence provided by the Respondent are false. Hence, the Court is persuaded by the Respondent's show of good faith in not only passing the laws but also allowing independent reporting on the improvement in the reduction of gas flaring (Annexures FGN 1 and 4 - Reports from PriceWaterCoopers Limited and the World Bank).

90. Therefore, in the absence of proof demonstrating that continuous gas flaring has caused environmental degradation affecting the rights of the citizens living in the Niger-Delta region, the Court finds no breach of Article 24 of the ACHPR. The Court dismisses the claim under Article 25 of the ACHPR for lack of proof.

IX. COSTS

91. 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.*"

92. Furthermore, having regard to Article 66 (2) of the Rules of the Court, which states that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings;*" and relying on its jurisprudence in *HASAN ABDU NOUHOU V REPUBLIC OF NIGER*



JUDGMENT NO: ECW/CCJ/JUD/30/23 (UNREPORTED), the Court orders nominal costs of N100, 000.00 against the Applicant.

X. OPERATIVE CLAUSE

93. For the reasons stated above, the Court sitting in public, after hearing both parties decides:

As to jurisdiction:

- i. **Declares** that it has jurisdiction.

As to admissibility

- ii. **Declares** the application admissible.

As to merits of the case:

- iii. **Dismisses** the claim of breach of Article 1 of the ACHPR.
- iv. **Dismisses** the claim under Article 4 of the ACHPR for lack of proof.
- v. **Dismisses** the claim under Article 5 of the ACHPR for lack of proof.
- vi. **Dismisses** the claim under Article 16 of the ACHPR for lack of proof.
- vii. **Dismisses** the claim under Article 24 of the ACHPR for lack of proof.
- viii. **Dismisses all other claims.**

COSTS:

- ix. Orders the Applicant to pay a nominal cost of N100, 000 (One Hundred Thousand Naira) to the Respondent.

Hon. Justice Dupe **ATOKI**

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

Hon. Justice Ricardo **GONCALVES**

Gaye **SOWE**, Esq. - Registrar

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Done in Abuja, this 4th day of July, 2024 in English and translated into French and Portuguese.

