



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

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

In the matter of

- 1. GLORY OKOLIE**
- 2. INCORPORATED TRUSTEES OF ONE LOVE FOUNDATION AND CARING**
- 3. INCORPORATED TRUSTEES OF BEHIND BARS HUMAN RIGHTS FOUNDATION**

V.

FEDERAL REPUBLIC OF NIGERIA

Application No. ECW/CCJ/APP/50/21 - Judgment No.
EECW/CCJ/JUD/38/24

JUDGMENT

ABUJA

On the 21st of November 2024

APPLICATION No. ECW/CCJ/APP/50/21

JUDGMENT No. ECW/CCJ/JUD/38/24

BETWEEN

1. GLORY OKOLIE

**2. INCORPORATED TRUSTEES OF ONE LOVE FOUNDATION
AND CARING**

**3. INCORPORATED TRUSTEES OF BEHIND BARS HUMAN
RIGHTS FOUNDATION**

APPLICANTS

And

FEDERAL REPUBLIC OF NIGERIA

DEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo C. M. **GONÇALVES** – Presiding/Judge Rapporteur

Hon. Justice Sengu Mohammed **KOROMA** – Member

Hon. Justice Edward Amoako **ASANTE** - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA -

Chief Registrar

REPRESENTATION OF THE PARTIES

IHENSEKHIEN SAMUEL JNR

- Counsel to the Applicant

MAIMUNA LAMI SHIRU

OLATUNJI A. COKER

- Counsel for the Defendant

I. JUDGMENT

1. This is the Court's Judgment read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The first Applicant, Ms. Glory Okolie, is a student from Owerri in Imo State, Nigeria, a citizen of the Community by virtue of Article (1) (a) of Protocol A/P3/5/83.

3. The second Applicant is an NGO (One Love Foundation), represented by its president, which is also interested in the instant case and has alleged that it sought the first Applicant's consent to bring this action.

4. The third Applicant is an NGO, to which the first Applicant belongs, and which also brought this action on her behalf and on the basis of public interest.

5. The Defendant is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States, ECOWAS and a signatory to the African Charter on Human and Peoples' Rights, hereafter the African Charter.

III. INTRODUCTION

6. The instant case seeks the responsibility of the Defendant for the acts carried out by the Nigerian police, which allegedly violate the human rights of the first Applicant.

7. In fact, on June 13, 2021, the 1st Applicant disappeared after taking an exam in Owerri, Imo State. The family began a frantic search, but to no avail. It emerged that the first Applicant was arrested by the police in Owerri and subsequently transferred to Abuja, where she was held incommunicado and without access to lawyers or adequate health care.

8. Despite the efforts of her family and human rights organizations, the first Applicant remained in detention without bail. The police alleged charges of espionage and terrorism, which were widely discredited. This narrative was perceived as retaliation by the Defendant against the first Applicant.

9. The Applicants seek various reliefs from this Court, emphasizing the importance of justice in this case and highlighting this Court as the last hope for guaranteeing the rights of the first Applicant and seeking reparation for the damage suffered.

IV. PROCEEDINGS BEFORE THE COURT

10. The application initiating proceedings (Doc.1) was lodged at the Registry of this Court on August 24, 2021.

11. The Defendant was duly served on 26th August 2021.

12. On March 28, 2022, a virtual session was held due to a request by the Defendant for an extension of the defense deadline, which was accepted, a period of two more weeks was granted, and the case was adjourned to April 27, 2022.

13. On August 1st, 2022, the Defendant submitted its declaration of defense (doc. 2) and, separately, its declarations of facts (doc. 3). Both were served on the Applicants on August 2, 2022.

14. The Applicants sent a application for an extension to submit their reply to the Defendant's statement of defense and statement of facts (doc. 4) on May 29, 2024, the same day that the virtual hearing was held, and at which the Applicants were absent. The process was adjourned to July 3, 2024.

15. On June 5, 2024, the Applicants sent their rejoinder to the statement of defense and to the Defendant's statement of facts (doc. 5).

16. On July 2, 2024, the Defendant filed its motion on the extension of the deadline to submit defense(retroactive) (doc. 6).

17. The parties were heard at a virtual hearing held on 8th July 2024, at which they formulated their oral submissions on the merits of the case, and the Defendant was absent.

18. On July 8, 2024, an application for a default judgment was registered at the Court Registry by the Applicants.

19. On 27 September 2024, the parties were heard in a virtual hearing. The Applicants sought the withdrawal of the application for Judgment by Default. The Court granted the Defendant's Motion for Extension of Time. The Court also granted the Applicants' Motion to regularize the reply.

20. The judgment was adjourned to November 21, 2024.

V. APPLICANTS' CASE

a. Summary of Facts:

21. On June 13, 2021, the first Applicant, a candidate for the Joint Admissions and Matriculation Board (JAMB) Examination left her family home in Imo State to run errands and did not return home that day.

22. From June 17, 2021, family members began frantically searching for her in hospitals, churches and mosques, but all to no avail.

23. The family members, in their search for the first Applicant, approached the Owerri Police Command in Nigeria, which charged the first Applicant's uncle the sum of 50,000 Naira to trace her last known location.

24. The aforementioned telephone tracking showed that the first Applicant was arrested by officers of the Defendant's IGP (Inspector General of Police) IRT (Intelligence Response Team) at its Owerri Tiger unit, and when her uncle approached that facility, the said Defendant's unit denied ever having arrested the first Applicant, nor that she was in its custody.

25. It was only at the end of June 2021 that a certain Izuchukwu Okeke, who had just been released from the cell of the Owerri Tiger unit, informed the family and uncle of the first Applicant that she was in custody in the cell of the Owerri unit and that she cooked for the police officers, washed their clothes and sometimes the officers of the Owerri commando unit took turns to sexually abuse the first Applicant.

26. The Defendant's officers then demanded a monetary commitment from the first Applicant's uncle with a view to her release on bail, whereupon the first Applicant's uncle made payments in cash and through bank transactions (POS) to the Defendant's officers at the Owerri Tiger unit, and also paid different sums in this regard (copies of these POS transactions mentioned are identified as Exhibit A).

27. Even when the first Applicant's uncle paid the sums mentioned above, the first Applicant was not released by the Defendant and its officers, and on

the other hand, they all refused to return the sum paid by the first Applicant's uncle.

28. Subsequently, the above atrocious act of the Defendant's police unit and its officers went viral on social media and the same was reported to Behind Bar Initiative and the 3rd Applicant, a premier human rights agency, which quickly constituted a team of experienced activists and lawyers and then mobilized for the release and grant of bail to the 1st Applicant (copies of the viral news of the 1st Applicant's illegal detention by different online media are identified as Exhibit B).

29. The aforementioned human rights organization discovered that the first Applicant had been transferred to the dreaded SARS (Special Anti-Robbery Squad) unit Abbatior IGP IRT in Abuja which, once again, kept the first Applicant in secrecy, without access to a lawyer, healthcare or visitation by any members of her family.

30. The members of the aforementioned organization in Abuja pressed for the release of the first Applicant, all to no avail, even after a videotaped telephone conversation with the members of the aforementioned organization, the first Applicant's lawyers and the Defendant's police officers, in which the latter assured the first Applicant was safe, and also assured the lawyers that the first Applicant would be released on August 17, 2021.

31. Consequently, it came as a shock to the interested persons mentioned above that the first Applicant was denied bail and was kept in secrecy by the Defendant's security agents.

32. On August 22, 2021, after the Defendant was highly embarrassed by the exposure of its atrocious act against the first Applicant, both by the media and the internet, the protocol of the Nigeria police force and the Nigeria press

chief then issued a press release stating that the first Applicant was detained for espionage activities, terrorism and criminal offenses as well as for providing hosting assistance on her bank account, having received money sent to her by one Mr. Benjamin Uzoma Emorji, an alleged member of the outlawed Indigenous People Of Biafra (IPOB) group in Nigeria.

33. The above press release by the Defendant's police press officer is a trap and a ruse, since the first Applicant is a law-abiding citizen, a virgin and a Christian church worker, and there is no way the first Applicant can be found guilty of the above-mentioned crimes.

b. Pleas in Law

34. The Applicants relied their claims on following articles:

- i). 4 (g) of the Revised Treaty of the Economic Community of West African States (ECOWAS),
- ii). 4, 5, 6, 7 (1) (b) (d) of the African Charter;

35. They further relied on the case law of this Court.

c. Reliefs Sought

36. The Applicants concluded, seeking from the Court:

a. A DECLARATION that the act of the Defendant in detaining the first Applicant from June 13, 2021 to date, without an order from any court authorizing it, constitutes a violation of the first Applicant's right to due process and personal liberty as enshrined in Articles 1, 3, 4, 5, 6 and 7 of the African Charter on Human and Peoples' Rights Ratification and Enforcement) Act Chapter A9 LFN, 2004.

b. A DECLARATION that the Defendant's act of detaining the first Applicant since June 13, 2021, and beyond seventy-one (71) days to date, without an order from any court authorizing it, constitutes a violation of the

first Applicant's right to due process and Personal Liberty as enshrined in Articles 1, 3, 4, 5, 6 and 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 LFN, 2004.

c. A DECLARATION that the beating, torture, physical assault and verbal abuse of the first Applicant by the IGP IRT officers of the Defendant, without her having committed any crime established by law, is unlawful, unconstitutional and constitutes a violation of the first Applicant's right to due process and personal liberty as enshrined in Articles 1, 3, 4, 5, 6 and 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 LFN, 2004.

d. A DECLARATION that the abuse of the first Applicant by the Defendant's IGP IRT officers, having assaulted her sexually; and that they forced the first Applicant to wash the clothes of the Defendant's IGP IRT officers and that they forced the first Applicant to cook for the Defendant's IGP IRT officers, when the first Applicant was illegally under the Defendant's custody, and without her having committed any crime established by law, is illegal, unconstitutional and constitutes a violation of the first Applicant's right to due process and personal liberty as enshrined in Sections 35 and 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 1, 3, 4, 5, 6 & 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 LFN, 2004.

e. AN ORDER compelling the Defendant to desist from engaging in vicious, violent and irrational conduct against the first Applicant.

f. AN ORDER granting bail to the first Applicant on liberal terms, namely unconditionally and conditionally, pending such time as the Defendant sees fit, to charge the first Applicant in court in this regard.

g. AN ORDER of this Honorable Court directing the Defendant to pay to the first Applicant the sum of ₦100,000,000 (one hundred million) Naira as general and punitive damages separately for breach of the first Applicant's rights.

h. AN ORDER mandating the Defendant to pay the first Applicant the sum of N50,000,000.00 (Fifty Million Naira) as punitive damages for its recklessness, partiality, malice, breach of its statutory duty, when the Defendant's officers, with its knowledge and consent, totally infringed on the first Applicant's fundamental rights in this regard.

i. Any other measures that this Honorable Court deems appropriate to take under the circumstances of the case.

VI. DEFENDANT'S CASE

a. Summary of Facts:

37. The Defendant vehemently denies that the first Applicant was unlawfully detained at the Inspector General's Response Team, Tiger Base Unit, Owerri and furthermore puts the Applicants to the strictest proof of that material allegation of fact.

38. The Defendant denies paragraphs 9, 10 and 12 of the Applicants' declaration of facts and puts them to the strictest proof.

39. The Defendant avers that the information received from a certain Izuchukwu Okeke, is false and unfounded and further puts the Applicants to the strictest proof of the same.

40. The Defendant vehemently denies that the first Applicant was forced to cook, wash or clean the clothes of the Nigerian Police officers and further puts the Applicants to the strictest proof of that assertion.



41. The Defendant denies that the first Applicant was sexually abused by any officer of the Nigerian Police Force or any officer of other security agencies in Nigeria and further puts the Applicants to the strict test.

42. The Defendant asserts that the true facts about the arrest and detention of the first Applicant are that she was arrested after a thorough investigation, on allegations that she was involved with terrorists, had given them assistance and had money in her bank account that was sent to her by members of a banned group called the Indigenous People of Biafra (IPOB), to be used to carry out acts of terrorism in the territory of the Defendant State.

43. The Defendant avers that at the time the first Applicant was arrested, it was experiencing serious internal security problems in the Eastern part of the country, caused by some armed groups, particularly the Eastern Security Network (ESN) which is an affiliate of the banned Indigenous People of Biafra (IPOB).

44. The Defendant avers that the level of insecurity had reached a stage where police stations were been set on fire, policemen were been killed and arrested in their Correctional Facilities and released by agents of the Eastern Security Network (an affiliate of the banned Indigenous People of Biafra).

45. The Defendant avers that the insecurity led to a thorough investigation which revealed that the first Applicant confessed being a member of the banned Indigenous People of Biafra and was used as a channel to sponsor terrorism in its territory.

46. The Defendant submits that the arrest and detention of the first Applicant are in accordance with the laws of the National Assembly of Nigeria (the legislative arm of the Defendant nation).

47. The Defendant avers that the Nigerian Police obtained the necessary court orders to continuously detain the first Applicant until she was released.

48. The Defendant avers that the first Applicant has now been released and is free to move around.

49. The Defendant avers that documents to prove all its material submissions will be provided in the course of the trial.

50. The Defendant avers that the action taken by the Nigeria Police Force against the first Applicant in conjunction with other security agencies was to prevent her from committing more heinous crimes and for the protection of its national security.

51. The Defendant avers that the Applicants have no right to the reparations they are seeking against it.

b. Pleas in Law

52. The Defendant, in support of its case, relied on Articles 10 of the Constitution of the Republic of Nigeria and 13 of the Declaration of Human Rights.

c. Reliefs Sought

53. The Defendant prays the Court to:

i. Dismiss all of the Applicants' claims.

VII. ON THE JURISDICTION

54. In the instant case, the Applicant's allegations are relied on the matter of violation of her human rights under the relevant provisions of the African Charter on Human and Peoples' Rights and of the other international instruments for the protection of human rights, namely the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, as relied on.

55. In this context, the instant action falls within the jurisdiction conferred on this Court under Article 9(4) of Protocol A/P1/7/91 on the ECOWAS Court of Justice, as amended by Additional Protocol A/SP.1 /01/05, to try cases of human rights violations occurring in any member state (see the cases of *SERAP v. FEDERAL REPUBLIC OF NIGERIA AND 4 OTHERS*, Judgment No. ECW/CCJ/JUD/16/14, (§72) and *KARIM MEISSA WADE v. RÉPUBLIQUE DU SENEGAL*, Judgment No. ECW/CCJ/JUD/19/13, §72).

56. Accordingly, the Court declares that it entertains jurisdiction to hear the instant case and holds and declares so.

VIII. ADMISSIBILITY

57. In considering whether the application is admissible, the Court does it under the terms of Article 10(d) of the Supplementary Protocol (supra), which provides that:

58. *“Access to the Court is open to the following: a... d) 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;”*

59. This provision requires Applicants to demonstrate capacity to bring an action as a victim; the claim must not be anonymous or pending before another international court.

On the Locus Standi of the Applicants

60. It is always imperative to determine the *locus standi* of an Applicant, as it is a proof to the Court that they have a sufficient interest in the action. In

FEDERATION OF AFRICAN JOURNALISTS & 4 ORS v. REPUBLIC OF GAMBIA, JUDGMENT No.: ECW/CCJ/JUD/04/18 (not reported) on page 17, the Court defined locus standi as "... the interest in bringing proceedings before a Court or being heard in a particular case. In other words, the strict application of locus standi means that an [Applicant] who wishes to bring an action must have a sufficient interest in the matter to have standing to litigate it. The position in the law has globally moved beyond insisting on the strict rule of locus standi in cases of human rights violations."

First Applicant

61. In accordance with the terms of Article 10(d) of the Supplementary Protocol, since the first Applicant has identified herself as a victim of human rights violations, the Court finds that the application is neither manifestly unfounded under the terms of the aforementioned article nor inadmissible on any other ground.

62. Accordingly, the action must therefore be deemed admissible as regards the first Applicant.

Second and Third Applicants

63. Firstly, it is settled case law that a legal person, including an NGO, may bring an action before the Court if it is duly registered in an ECOWAS Member State.

64. Registration is a condition for legal existence, recognition by the state and public authorities, and gives the legal person (NGO) the capacity to act on the territory of the Member State. Proof of registration is established by a certificate or receipt of registration issued by the State's competent authority.

65. In the case at hand, neither the second nor the third Applicants submitted proof of their registration to this Court.

66. The second Applicant also claims to have brought the action with the consent of the first Applicant. The question of proof of its legal existence as such not having been overcome, since its registration is not shown in the file, the Applicant still had to attach to the case-file (insofar as it claims to have the First Applicant's consent) a mandate in good and due form [see the case of *Délégués Départementaux de la Filière Café Cacao (CNDD) v. République de Côte d'Ivoire* (ECW/CCJ/JUD/03/13) of February 22, 2013] which had been granted to it by the first Applicant, authorizing it to act in court on her behalf.

67. In the case of *SERAP v. The Federal Republic of Nigeria* ECW/CCJ/RUL/03/14: "*The court ruled that, with regard to human rights violations, only victims can have access to the court; that, apart from cases of collective interests, NGOs cannot be substitute for victims; that the Applicant SERAP is not a victim of any violation and has not received prior authorization to act on behalf of the victims or their next of kin.*"

68. Transposing the conclusions of this ruling to the case at hand, the obvious conclusion is that the second Applicant (because it has not presented any power of attorney granted to it by the first Applicant, in which the latter grants it representative powers to bring the action on her behalf), lacks legal standing to bring the action in the instant case. The second Applicant's action must therefore be dismissed as inadmissible.

69. The third Applicant claims to be bringing the action on behalf of the first Applicant and also on the basis of public interest. It did not attach any power of attorney granted to it by the first Applicant, so what was said in paragraphs 61 at 63 of this decision is entirely applicable to the 3rd Applicant also.

70. Having this Applicant also claimed the public interest as a ground for its standing, the Court observes that in order for a case based on the *actio popularis* to be accepted, the following requirements must be met: 1) *The rights allegedly violated must be considered to be a public right and not a private right.* 2) *The reliefs sought must be exclusively for the benefit of the public, excluding the personal interest of the Applicant. An exception must be made when the Applicant is a member of the community or group concerned.* 3) *Victims, although not determinable, must, for the purposes of awarding reparation, be able to be foreseen or taken into account by the Court.*”

71. This has, moreover, been the consistent position of this Court and was recently held in the case of *PATRICK EHOLOR (PRESIDENT OF ONE LOVE FOUNDATION) AGAINST THE FEDERAL REPUBLIC OF NIGERIA DECISION No. ECW/CCJ/JUD/52/23* of December 7, 2023 § 52)

72. In the instant case, the first Applicant came to claim the violation by the Defendant of her rights to life and physical integrity; the right to human dignity and the prohibition of torture and inhuman and degrading treatment; the right to liberty and security and the violation of due process, provided for respectively in Articles 4, 5, 6 and 7, all of the African Charter.

73. The rights allegedly violated by the Defendant are personal rights and not collective rights, so they cannot be defended by *actio popularis*. On the other hand, in the instant case, the victim is a well-identified individual, so it is clear that the *actio popularis* conditions are not met.

74. The third Applicant, because it does not meet the requirements of *actio popularis* does not qualify as a legitimate party in this action and for this reason its case is dismissed as inadmissible.

75. In summary, with regard to the first Applicant, since she is a citizen of an ECOWAS Member State who identifies herself as a victim of the violation of her human rights, she has legal standing to bring the instant case before the Court. As for the second and third Applicants, they are not legitimate parties before the Court and their case is therefore dismissed as inadmissible.

76. Consequently, the action must be declared admissible only for the first Applicant, hereinafter referred to as the Applicant, while the Court notes that the action is not anonymous, and the same case is not pending before any other international court for adjudication.

IX. PROCEEDINGS BEFORE THE COURT

Application for extension of time limit

77. Both the Applicants and the Defendant filed a motion to extend the time limit.

78. The Applicants' application was made with the aim of extending the time limit for submitting their reply.

79. The Defendant's application was for an extension of the time limit to present its defense.

Motion on the extension of the time limit

The Applicants

80. The Applicants sent an application for an extension of the time limit to submit their response to the Defendant's statement of defense and statement of facts on May 29, 2024, the same day as the virtual hearing, at which the Applicants were absent. As a result, the process was adjourned to July 3, 2024.

The Defendant

81. On March 28, 2022, seven months after the filing of the originating application, a virtual session was held due to an application for an extension of the time limit to submit defense, made by the Defendant, although the deadline was 30 days from receipt of the application and any application for an extension must be made within that period, the application was accepted under opposition from the Applicant, and the time limit of two more weeks was granted as requested at an additional cost of 1 million naira to the Defendant, the case was adjourned to April 27, 2022.

82. Only on July 2, 2024, did the Defendant file with the Registry its motion for an extension of the time limit to submit defense, which was retroactive.

Court's analysis of the time limit extension

83. The parties were heard at a virtual hearing held on 8th July 2024, at which they formulated their oral submissions on the merits of the case, and the Defendant was absent.

84. The Court at the hearing observed that all the parties had been late in submitting and exchanging legal documents, without regard for the provisions of the Rules of the Court. The Applicants appealed to the Court's conscience to admit their documents, submitted out of time. The Court adjourned the case *sine die*, as other documents were not properly submitted to the Court.

85. Taking into account that all the parties were late in submitting their documents contrary to what is specified in Article 35 (1) of the Rules of the Court, dismissing the applications would deprive the Court of relevant information necessary to render a fair and impartial decision. The Court therefore considers both motions for extensions of time limit to be admissible.

X. MERITS

86. The Court then goes on to assess each of the human rights allegedly violated by the Defendant.

a) Alleged violation of Articles 1 and 7 of the African Charter on Human Rights

Applicant's Submissions

87. In support of her claim for violation of the above right, the Applicant submits, in summary, that on June 13, 2021, she left home and did not return; that from June 17, 2021, her family members searched for her in various places; that following the tracing of her phone by the Owerri Police Command of Nigeria, they discovered that she was detained by the officers of the IGP IRT of the Defendant at its Owerri Tiger Unit, with the latter denying the commission of such acts; that at the end of June 2021, one Izuchukwu Okeke, informed the family that the Applicant was detained in the cell of the Owerri unit; even after paying bail to the Defendant's officers, the Applicant was not released, and there was no return of the bail paid.

88. The human rights organization Behind Bar Initiative found that the Applicant was once again transferred to the dreaded IGP IRT unit of Sars Abbatior in Abuja and once again held incommunicado, without access to a lawyer.

89. The Applicant's lawyers were assured by the Defendant's police officers that she was safe and would be released on August 17, 2021. As a result, it

came as a shock to those close to the Applicant that she was denied bail and held incommunicado with her family.

Defendant's Submissions

90. On its part, the Defendant submitted, inter alia, that the Applicant was arrested after a thorough investigation, on the grounds that she was involved with terrorists, assisting them, and money was found in her bank account that was sent to her by members of the banned group called Indigenous People of Biafra (IPOB), to be used to carry out acts of terrorism in the territory of the Defendant State; that at the time the Applicant was arrested, the country was experiencing serious internal security problems, caused by some armed groups; that due to the insecurity, they carried out a thorough investigation, in the context of which the Applicant confessed to being a member of the banned Indigenous People of Biafra and that she was used as a means to sponsor terrorism in the Defendant State; that the Nigerian Police obtained the necessary court orders to detain her until she was released.

The Court's Analysis

91. Several international instruments emphasize the importance of the investigation process in guaranteeing the right to a fair trial.

92. Article 10 of the Universal Declaration of Human Rights (UDHR) establishes that *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

93. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) sets out detailed provisions on the rights to a fair and public trial by a competent, independent and impartial tribunal or court, including the right to be presumed innocent until proven guilty and the right to have the

time and means necessary to prepare one's defense. These rights inherently cover the investigative phase of criminal proceedings.

94. Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial, stating that "*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*"

95. Article 8 of the American Convention on Human Rights (ACHR) also guarantees the right to a fair trial, highlighting the right to be heard with full guarantees and within a reasonable time by a competent, independent and impartial tribunal or court.

96. Article 7 of the African Charter guarantees the right to a fair trial, including the right to be tried within a reasonable time by an impartial tribunal or court.

97. These international instruments recognize that a fair trial encompasses not only the trial proceedings themselves, but also the investigative phase that precedes the trial. They emphasize the importance of procedural fairness, due process and the protection of fundamental rights throughout the legal process, from the investigation to the final decision and res judicata.

98. The principle of the presumption of innocence, one of the components of the right to a fair trial, as established by Article 7 (1) (b) of the African Charter, was dealt with in the case *MESSRS ABDOULAYE BALDE & ORS v. REP OF SENEGAL ECW/CCJ/JUD/04/13* pg. 20, in which it was noted that without any prior establishment of guilt against the Applicants, the Special Prosecutor portrayed them in his press conference as guilty of embezzlement.

99. This situation is similar to the instant case where the Defendant's agents, in front of the press, issued a statement claiming that the Applicant was

arrested for espionage activities, terrorism and criminal offenses, including financial assistance coming from a Mr. Benjamin Uzoma Emorji, an alleged member of a proscribed group in Nigeria, IPOB.

100. From the criminal law principle of the presumption of innocence, it follows that anyone who is prosecuted or even simply suspected of having committed an offense is considered innocent until found guilty by a competent court.

101. It is a fundamental right recognized and guaranteed by all international legal instruments, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, binding on the Federal Republic of Nigeria (see the case *MESSRS KHALIFA ABABACAR SALL & 5 ORS v. REPUBLIC OF SENEGAL ECW/CCJ/JUD/17/18* pg. 31-32).

102. The Court recalls that an effective investigation confers on the State the responsibility to carry out due diligence in any matter brought to its attention that may affect the rights of third parties (see the case *CHIEF DAMIAN ONWUHAM & 22 OTHERS v. REPUBLIC FEDERAL OF NIGERIA AND ANOTHER ECW/CCJ/JUD/22/18* pg. 25).

103. In the case at hand, despite the accusations made by the Defendant against the Applicant, there is no evidence in the case file that she was arrested on the basis of a judicially valid warrant (see the case *SIKIRU ALADE V. FEDERAL REPUBLIC OF NIGERIA (2012) ECW / CCJ / JUD / 10/12 PG. 207*), nor that she was brought before an independent and impartial Court to rule on her case, despite the fact that the facts relate to June 2021.

104. In addition, the Applicants gather to their Reply evidence showing that they submitted case FCT/CV/2083/2021 (marked as Annex AC) to the

Supreme Court of Nigeria, which found, on the basis of Articles 1 and 7 of the African Charter, that the Nigerian agents unlawfully detained the Applicant. Although the Supreme Court ordered the Applicant's release, this order was not complied with, leading the Court to issue a second release order in order to obtain the requested result.

105. In its defense, the Defendant states in paragraph 16 that “... *the Nigerian Police obtained the necessary court orders to continue detaining the 1st Applicant until her release*” and in paragraph 18 states that “... *the documents proving all our allegations will be presented in the course of this trial*”.

106. However, in contradiction to the allegation in paragraph 16, the Supreme Court of Nigeria held that the Applicant's detention violated the right to a fair trial. Furthermore, in relation to paragraph 18, the Respondent has not presented any evidence to this Court, as it had stated.

107. In this regard, the Court's finds that the Defendant violated the Applicant's right to a fair trial provided for in Article 7 of the African Charter.

b) Alleged violation of Article 6 of the African Charter on Human Rights

108. The Applicant presents the same facts mentioned above (see paragraphs 21 to 33 and 87 to 89) to substantiate the violation of the right in question. The Defendant's submissions are also set out in paragraphs 42 to 47 and 90 and the contents of which are as if hereby reproduced in seriatim.

The Court's Analysis

109. Article 6 of African Charter provides that:

“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

110. The Universal Declaration of Human Rights (UDHR) in its Articles 3 and 9 and the ICCPR in its Article 9 (1) follow in the same vein.

111. Arrest or deprivation of liberty occurs as soon as an individual is forcibly held in a police station or in a prison or when an authority orders him/her to stay in a designated place.

112. All the human rights protection instruments mentioned above guarantee to individuals the right to personal liberty and security, establishing that the deprivation of liberty must, in all cases, happen for reasons and under conditions previously established by law (it is thus understood to be the domestic or national law of the State Parties), that is, with due respect to the principle of legality (see Human Rights Committee, General Comment No. 35 § 22).

113. In this regard, the Court wrote in the case, *BENSON OLUA OKOMBA v. REPUBLIC OF BENIN*, Judgment No. ECW/CCJ/JUD/05/15 that: *“The human rights treaties mentioned above state that deprivation of liberty within a State must, in all cases, be carried out in accordance with the law.”* (page 16) (see also the case, *CHIEF EBRIMAH MANNEH v. REPUBLIC OF GAMBIA*, Judgment No. ECW/CCJ/JUD/03/08 in LR 2004-2009, (§15)

114. The Court has also defined arbitrary detention as *“any form of restriction of individual liberty that occurs without legitimate or reasonable cause and violates the conditions established by law”* (see the case, *BADINI SALFO v. REPUBLIC OF BURKINA FASO*, Judgment No. ECW/CCJ/JUD/13/12) and held also in the case *DAME HADJITOU MANI*

KORAOU v. REPUBLIC OF NIGER, Judgment No. ECW/CCJ/JUD/06/08, that “*A detention is considered arbitrary when it has no legal basis.*” (§ 91).

115. The African Court on Human and Peoples' Rights (AfCHPR), in the Judgment delivered in the case *ONYACHI AND NJOKA v. TANZANIA* (Application No. 003/2015, of September 28, 2017), highlighted the three criteria established by international human rights jurisprudence to determine whether or not a deprivation of liberty is arbitrary, as being the following: “*(...) the lawfulness of the deprivation of liberty, the existence of clear and reasonable grounds and the availability of procedural guarantees against arbitrariness.*” And concluded that “*these are cumulative conditions and failure to comply with one of them makes deprivation of liberty arbitrary.*” (see also “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa” adopted by the African Commission, Principle M. [1.(b)]).

116. Thus, detention or imprisonment is therefore considered arbitrary when it is in violation of national or international law, and this happens when it lacks legitimacy or reasonable grounds for its ordering or maintenance (see the Judgment of this Court ECW/CCJ/JUD/05/17, rendered in the case *BENSON OLUA OKOMBA v. REPUBLIQUE DU BENIN* (pag.16) and Judgment No. ECW/CCJ/JUD/04/09, rendered in the case, *AMOUZO HENRI ET OUTRES v. REPUBLIQUE DU CÔTE D'IVOIRE*, § 88).

117. This Court also reiterated in the case *MARTIN GEGENHEIMER & 4 ORS. v. THE REPUBLIC OF NIGERIA & ANOR*, in its Judgment No. ECW/CCJ/JUD/03/21, of March 4, 2021, §104 that “*The key word for the validity of any arrest is legality and reasonableness. Therefore, it follows that powers of arrest must not only be provided for by law, but the grounds on which they are exercised must be reasonable, otherwise what may initially be lawful becomes arbitrary and unlawful. (...)*” (see also the case *KODJO*

ALAIN VICTOR CLAUDE v. REPUBLIC OF THE COAST OF MORPHIN, Judgment No. ECW/CCJ/JUD/09/21 §53).

118. In the instant case the Defendant to justify the arrest of the Applicant alleged, inter alia, that she was arrested after a thorough investigation, on the allegation of her involvement with terrorists, assisting them; by having in her bank account money that was sent by members of a banned group called Indigenous People of Biafra (IPOB), to be used in carrying out acts of terrorism in the Defendant's territory; that the Applicant confessed to being a member of the banned Indigenous People of Biafra and was used as a means to sponsor terrorism in the Defendant State; that the Nigerian Police obtained the necessary court orders to detain the Applicant until she was released.

119. However, despite the justification put forward by the Defendant, the truth is that it has not specified the legal provision that justifies the arrest of the Applicant.

120. Such a burden was upon the Defendant (See the case *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. THE FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/11/21, para. 127; see also Human Rights Committee case *CARLOS DIAS AND CAROLINA DE FATIMA DA SILVA FRANCISC v. ANGOLA*, Communication No. 711/1996, para. 8.3.).

121. This is because, although the burden of proof in relation to an allegedly arbitrary detention falls, as a rule, on the Applicant, in the instant case, since the Defendant admits that it detained the Applicant, it was up to the Defendant to demonstrate the specific circumstances that led to the detention of the Applicant and that they were in accordance with national or international law.

122. This principle was referred to by the Court in the aforementioned case *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. FEDERAL REPUBLIC OF NIGERIA*, para. 128, where it ruled that: “*although the burden of proving that a detention is arbitrary rests on the Applicant, however, in the case at hand, since the Defendant did not deny the alleged detentions, but claimed that they were in compliance with the Armed Forces Act, the burden then shifts to the Defendant to discharge the burden of proving that the detention was not arbitrary, being the same in compliance with the Law.*”

123. Reiterating this principle, the Court stated the following “*Ordinarily, the Applicant in this case has the burden of producing evidence to prove the allegations he made in his Application. However, the Defendant did not deny the arrest and detention of the Applicant, but presented a defense of justification. The burden therefore shifts from the Applicant to the Defendant to establish the justification for the lawfulness of the Applicant's arrest and detention.*” (See *MR. GODSWILL TOMMY UDOH V FEDERAL REPUBLIC OF NIGERIA*, Judgment NO. ECW/CCJ/JUD/26/16 PAGE 17).

124. The Defendant's agents, by detaining the Applicant without presenting in minimally reasonable terms the legal basis for their action, and without demonstrating what procedural guarantees were ensured to the Applicant at the time and during the period of her detention, the Court finds that the Defendant's actions did not comply with due process of law (see the aforementioned case *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. FEDERAL REPUBLIC OF NIGERIA*, para. 129, see also Human Rights Committee, case *MR. DIMITRY L. GRIDIN v. Russian Federation*, Communication No. 770/1997, para. 8.1).

125. Furthermore, the Applicants gather to their reply evidence showing that case FCT/CV/2083/2021 was referred to the Nigerian Supreme Court, which, on the basis of Article 6 of the African Charter, found that the

Nigerian agents unlawfully deprived the Applicant of her liberty and security. Consequently, the Supreme Court ordered the Applicant's release, as described in paragraphs 122 to 124 of this judgment.

126. Consequently, in the absence of any evidence presented by the Defendant to justify that the detention of the Applicants was in accordance with domestic or international law, the Court finds that the Defendant violated the Applicants' right to liberty under Articles 9 (1) of the Covenant, 3 and 9 of the UDHR and 6 of the African Charter.

c) The alleged violation of Articles 4 and 5 of the African Charter on Human Rights

127. The Applicant's allegations are set out in paragraphs 25 to 33 and 87 to 89 and the Defendant's are set out in paragraphs 40 to 45 and 50, the contents of which are as if hereby reproduced in seriatim.

The Court's Analysis

128. Article 4 of the African Charter on Human and Peoples' Rights states that "*Human rights are inviolable rights. 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.*"

129. The Protocol on the Rights of Women in Africa, like Article 4 of the ACHPR, links integrity to the right to life, but also to security of the person, the latter being anchored in Article 5 of the ACHPR. The Protocol provides more detail than the ACHPR, requiring States to adopt measures to prohibit and prevent violence against women.

130. The obligation of States to protect life, as enshrined in Article 4 of the African Charter on Human and Peoples' Rights, implies that the State must

establish an administrative and legal framework specifically designed to deter violent acts against people. The framework must be anchored in an enforcement mechanism designed to prevent, suppress and sanction violent acts (see the case of *MRS. MODUPE DORCAS AFOLALU v. FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/15/14 pg 11).

131. The State's responsibility to protect individuals in custody includes the right to medical care, as set out in General Comment No. 3 on the Right to Life, adopted by the African Commission on Human and Peoples' Rights.

132. Although the Applicant mentioned the deprivation of access to medical care, it is relevant to note that she should have invoked Article 16 on the right to health instead of Article 4 to substantiate this claim.

133. The court's jurisprudence demonstrated the violation of the right to life when there is a loss or threat to life, as in the case of *WING COMMANDER DANLADI ANGULU KWASU v. FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/04/17.

134. This right is considered fundamental, as it is a prerequisite for the exercise of other rights. This is why it should not be interpreted in a restrictive way, but should also cover protection against acts or omissions intended to cause premature death or impair the guarantee of a dignified life (see *HEMBADOON CHIA & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR.* ECW/CCJ/JUD/21/18 pg 18).

135. However, the Applicant did not specify which element of her right to life was violated and did not present evidence to that effect. Therefore, the violation of the right to life, as provided for in the aforementioned legal provisions, has not been proven.

136. In this sense, the Court finds that the violation of the right to life, provided for in the aforementioned articles, has not been established.

137. Regarding the right to dignity, a Defendant does not have a duty to present contradictory evidence after putting an applicant to a rigorous test. This means that the Applicant must produce sufficient evidence to discharge the burden of proof on him/her. When she/he succeeds in doing so, and the evidence remains unchallenged, the Court will then accept it and act on it (see *MUSA SAIDYKHAN v. REPUBLIC OF GAMBIA JUDGMENT No. ECW/CCJ/JUD/08/10 pg. 11*).

138. In the case *sub judice*, the Applicant did not demonstrate evidence of a violation of the right to dignity, limiting herself to the mere allegation of the right without its materialization in concrete facts.

139. Despite the fact that she had mentioned a witness in the originating application, this witness was not added to the list of witnesses at the hearing, so the Court considers that the violation of the right to dignity has not been established.

Of the Remaining Reliefs Sought by the Applicant

140. The Applicant further seeks an order from the Court compelling the Defendant to desist from engaging in perverse, violent and irrational conduct against her person and also that the Court grant her bail on liberal terms, namely unconditionally and conditionally, pending such time as the Defendant sees fit, to charge the first Applicant in court in this regard.

141. With regard to the first request, the Court has no mandate to issue such an order to the Defendant. As for the second, it is a procedural measure that can only be formulated in the domestic court, and this Court has no mandate to do so.

142. Accordingly, the Court considers that the claims in question should be dismissed and so declares.

XI. COMPENSATION

143. The Applicants sought compensation in the amount of ₦100,000,000 (one hundred million) Naira for the damage suffered.

144. The Defendant believes that the Applicant is not entitled to any reparation as it has not violated any of her human rights.

145. In the instant case, it has been established that the Defendant State, through its agents, violated the right to a fair trial as well as the right to liberty and security of the Applicant, as set out above, which entitles her to reparation in accordance with the principle of international law, which states that: *"everyone who has suffered a violation of his or her human rights is entitled to a fair and equitable reparation"*, considering that in matters of human rights violations, full compensation is generally impossible (See Judgment No. *ECW/CCJ/JUD/01/06*, rendered in the case *DJOT BAYI TALBLA & OTHERS v. FEDERAL REPUBLIC OF NIGERIA & OTHERS*, in *CCJ ELR* (2004-2009)).

146. Now, considering the seriousness of the rights violated and their consequences for the Applicant, making a global and equitable assessment, the Court awards the Applicant, as compensation for damages suffered as a result of the violation of her human rights, the amount of ₦10,000,000 (ten million Naira).

XII. THE COSTS

147. The Court recalls Article 66 (1) of its Rules of Procedure, which provides that *"A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings."*

148. Moreover, Article 66 (2) provides that *"The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings."*

149. On the basis of this provision, the Court declares that the Defendant should bear the costs of these proceedings and orders the Registry to settle them.

XIII. OPERATIVE CLAUSE

150. For the reasons set out above, the Court, sitting on a virtual open court after hearing both parties:

As to jurisdiction:

- i. Declares itself competent to examine the application.

As to admissibility:

- ii. Declares the application admissible for the first Applicant.
- iii. Declares the application inadmissible as regards the second and third Applicants.

On the merits of the case:

- i. **Declares as established** the violation of the Applicant's right to a fair trial.
- ii. **Declares as established** the violation of the Applicant's right to liberty and security
- iii. **Declares as not established** the violation of the right to human dignity.

iv. **Declares as not established** the violation of the right to life.

Compensation:

- v. **Orders the Defendant** to pay the Applicant the sum ₦10,000,000 (ten million Naira) as compensation for the damage suffered by the Applicant.
- vi. Dismisses all of the Applicant's other claims.

XIV. THE COSTS

151. Pursuant to Rule 66(1) of the Rules of Court, the costs shall be borne by the Defendant.

Signed by:

Hon. Justice Ricardo C. M. GONÇALVES – Presiding/Judge
Rapporteur.....

Hon. Justice Sengu Mohammed KOROMA –Member

Hon. Justice Edward Amoako ASANTE – Member.....

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

152. Done in Abuja, on the 21st day of November 2024, in Portuguese
and translated into French and English.

