

COMMUNITY COURT OF JUSTICE,

ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,

CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,

CEDEAO



No. 10 DAR ES SALAAM CRESCENT,

OFF AMINU KANO CRESCENT,

WUSE II, ABUJA-NIGERIA.

PMB 567 GARKI, ABUJA

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**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC  
COMMUNITY OF WEST AFRICAN STATES (ECOWAS) HOLDEN IN  
ABUJA, NIGERIA ON THIS 07<sup>th</sup> DAY OF JUNE, 2016.**

SUIT N° : ECW/CCJ/APP/02/14

JUDGMENT N° : ECW/CCJ/JUD/18/16

**BETWEEN:**

1. The Incorporated Trustees of Fiscal and Civic Right Enlightenment Foundation (for and on behalf of Families of the Persons shot dead by the officers and men of the 2<sup>nd</sup> Defendant who are enumerated on the face of the application as follows:

- a. Nura Abdullahi
- b. Ashiru Musa
- c. Abdullahi Manman
- d. Buhari Ibrahim
- e. Suleiman Ibrahim
- f. Ahmadu Musa
- g. Nasir Adamu
- h. Musa Yobe

2. Muttaka Abubakar
3. Sanni Abdulrahman
4. Nuhu Ibrahim
5. Ibrahim Mohammed
6. Ibrahim Aliyu
7. Yahaya Bello
8. Abubakar Auwal

**Applicants**

9. Yusuf Abubakar
10. Ibrahim Bala
11. Murtala Salihu
12. Sanni, Usman

AND

1. Government of the Federal Republic of Nigeria
  2. Nigerian Army
  3. The Department of State Security Services
- } Defendants

**BEFORE THEIR LORDSHIPS:**

- 1- Hon. Justice Friday Chijioke Nwoke – Presiding
- 2- Hon. Justice Maria Do Ceu Silva Monteiro – Member
- 3- Hon. Justice Micah Wilkins Wright – Member

Assisted by Tony Anene- Maidoh - Chief Registrar

**Representation of the Parties;**

1. Alhaji Aliyu Umar (SAN), with
  - i. Dr. Nasiru Adamu Aliyu
  - ii. Musa Adamu Aliyu
  - iii. Abdul Mohammed
  - iv. Aliyu Ibrahim Lemu
  - v. Sanusi Musa
  - vi. Mage Daphine Acho(Ms)
  - vii. Igwe Ugochukwu Esq

} (For the Plaintiffs/ Applicants)
  
2. Dr. Fabian Ajogwu (SAN), with
  - i. Charles Nwabulu Esq
  - ii. Justina Fakulude(Mrs.)
  - iii. Mathew Echo
  - iv. Gideon Odionu
  - v. Olufunke Cole (Ms)

} For the 1<sup>st</sup> Defendants

3. Muhammed Ibrahim Sanni with.....

4. Chief Solomon Akunna MON, SAN with

- i. George Ukaegbu Esq.
  - ii. Emma N. Ukaegbu Esq.
- } For the 3<sup>rd</sup> Defendant

## 1. CIRCUMSTANCES OUT OF WHICH THE ACTION AROSE

This action is for a claim for reparation and payment of compensation to the victims of the 20<sup>th</sup> September, 2013 raid of an uncompleted building situated at Aderemi Adesoji Crescent Apo Zone E in the Federal Capital Territory of the Federal Republic of Nigeria by the officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the course of the raid of the premises in search of weapons allegedly buried by suspected members of the dreaded Boko Haram Terrorist Group.

## 2. THE PLAINTIFFS' CASE

On Friday, the 20<sup>th</sup> September, 2013 about 12.00 am, some armed men comprising officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants raided an uncompleted building at Aderemi Adesoji Crescent Apo Zone E on the alleged suspicion that there are likely weapons buried in the vicinity by members of the dreaded Boko Haram Terrorist Group and that some of the Terrorist are occupying the building.

Owing to the alleged suspicion, the members of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants went to the building heavily armed and fired several gun shots into the building without any warning or regard to any of the standard rules of engagement. The uncompleted building had been used by the Applicants and other menial job workers as their makeshift residence upon payment of a weekly rent of N200 to the Security guard at the premises.

The victims who were residents in the uncompleted building alongside over one hundred persons, who lived as tenants in the uncompleted building, were deep asleep and were awoken by the gunshots from the men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and they started running for their dear lives upon hearing of the gunshots.

After the operation, the men of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, knowing fully well that some civilians had been injured in the operation, left the scene and abandoned the Applicants unattended, hence left them to their fate with several gunshot wounds. The Applicants were bleeding profusely with no provision of medical aid. Seven of the victims were fatally wounded and bled to death owing to non-provision of medical aid.

It took almost eight hours, after the raid of the uncompleted building at 8:00 am or thereabout when the members of the Nigeria Police Force and the Nigeria Security and Civil Defense Corps came to the scene of the incident and took the Applicants and the dead bodies to Asokoro General Hospital.

There was no weapon found in the premises nor was any found on the Applicants when the officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants entered the premises.

There was no search conducted in the premises or any digging of any part of the premises prior to the shooting and afterwards there was no attempt up till the time of initiating this proceedings to recover any weapon allegedly buried by dreaded Boko Haram Terrorists nor were there any weapons recovered anywhere in connection to the fact and the circumstances leading to this case.

The Applicants argue that they do not belong to any terrorist group. Even if they do (which has been vehemently and uncontrovertibly denied), they could not and should not have been left abandoned by the men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant with bullet wounds and without the provision of medical aid after the attempt to arrest them. As a result of the attack, the 2<sup>nd</sup> to 12<sup>th</sup> Applicants suffered various degrees of gunshot injuries as shown on pages 17,18,19,20,21,22,23,24,25,26 and 27 of the folder containing Death Certificates and photographs of the Applicants.

Owing to the public outcry, the Senate of the Federal Republic of Nigeria set up a Joint Committee comprising of the Senate Committee on National Security and Intelligence and Senate Committee on Judiciary, Human Rights and Legal Matters to investigate the actions of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the 20<sup>th</sup> September, 2013 at the uncompleted building at Aderemi Adesoji Crescent Apo Zone E.

The Joint Committee conducted an investigation on the matter and found out that all the victims presenting this Application are not members of the Boko Haram

Terrorist Group but may have interacted with them “unknowingly” while living as tenants in the uncompleted building. The Applicants shall relied on page 62 of the Senate Report.

It is the reasonable expectation of the Applicants that law enforcement agents, including members of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, are required to be circumspect in the exercise of their duty and to also provide compensation to any innocent victim who loses his property, limb or life in the course of operation leading to the violation of the Applicants’ rights.

That during the Question and Comments session with the Commander, Guards Brigade, of the 2<sup>nd</sup> Defendant, he conceded that compensation to the victims could heal wounds. Below is a representation of the interaction as contained in page 56 of the Senate Report;

At the Senate Joint Committee hearing, the Counsel to the Applicants, Mr. Sanusi Musa, who presented a written submission did request the Senate Joint Committee to direct the payment of compensation to the victims as follows;

- a. N 100,000,000 to each of the victims as follows;
- b. N 20,000,000 to each of the injured.

However, this request was never heeded. The failure to heed to this request is because the Nigerian Government has deliberately and actively insisted on **ZERO COMPENSATION** to innocent victims of the 1<sup>st</sup> Defendant fight against Boko Haram insurgency. Prior to the episode of 20<sup>th</sup> September 2013, the Nigerian Government set up a Presidential Committee on the Security challenges in the North-East relating to acts of insurgency and terrorism. The Presidential Committee in the month of November 2013 submitted its report to the President of Nigeria recommending that Nigeria should pay compensation to the victims of the Boko Haram insurgency. However, by several newspaper publications circulated within Nigeria on the 6<sup>th</sup> day of November 2013, the Nigerian Government rejected the recommendation.

The Socio –Economic Rights and Accountability Project, SERAP, (a renowned non-governmental organization reputed for fighting for the enthronement of the rule of law and the enforcement of fundamental rights in Nigeria) petitioned the

President of Nigeria requesting it to reverse its decision for zero compensation to Boko Haram victims.

The Organization stated that, in the wake of the devastation by Boko Haram, compensation and reparation programmes are absolutely essential to deliver justice to the victims of human rights abuses precipitated by the group. They further contended that paying compensation and reparation to victims of human rights by Boko Haram is a matter of right and not charity; also that refusing or failing to pay adequate compensation and reparation to victims is to buy impunity for perpetrators.

SERAP is seriously concerned about the policy of your government that there will be no compensation paid to victims of Boko Haram attacks. This policy is a clear violation of the Country's international human rights obligations and commitments to provide effective remedies, including compensation and reparation to victims of serious human rights abuses such as those perpetrated by Boko Haram.

The attacks against innocent citizens by the Boko Haram constitutes gross violation of international human rights law, having been systematically perpetrated, and affecting in qualitative and quantitative terms, the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person.

The content of the petition is published in several Newspaper publications published in Nigeria. The Applicants relied on the contents of these publications as made available at page 12 of vol. 25. No 62010 of the Vanguard Newspaper of the 8<sup>th</sup> November 2013 in proof of this averment.

Even though the 1<sup>st</sup> Defendant was given a 14 day ultimatum, it failed, refused and or neglected to provide reparation and compensation to the victims of Boko Haram, including the Applicants.

This formed the reason why the National Assembly (the legislative arm of the 1<sup>st</sup> Defendant) under the auspices of the Senate Joint Committee on National Security and Intelligence and Judiciary Human Rights and Legal matter on the investigation alleged extra- judicial killings in Apo, Abuja, merely recommended

that Government at all levels should improve the quality of healthcare, water supply and other social services.

Finally, the Applicants contended that by not recommending the payment of compensation to the Applicants as requested by their counsel, the report's recommendation falls short of Nigeria's obligation to its innocent citizens and injured in the cause of carrying out internal operations as contained in all the international instruments under which the application is brought. They further contended that this Court has the power to compel the 1<sup>st</sup> Defendant to perform its obligations under international law, being a member of the civilized world.

Consequently, the Applicants sought the following orders and reliefs from the Court;

1. **A DECLARATION**, that the Applicants as law abiding citizens of the 1<sup>st</sup> Defendant are entitled to the right to life, freedom of movement, freedom of Association, right to human dignity, integrity and security of their persons.
2. **A DECLARATION**, that the shooting of the Applicants by the officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the 20<sup>th</sup> of September, 2013 while they were raiding a supposed Boko Haram Camp, thereby causing death or permanent bodily injuries to the Applicants, constitute a flagrant abuse of the Applicants' fundamental human rights to life, dignity of the human person, integrity and security of their person, as guaranteed under international laws by which the application is brought and are entitled to reparation and compensation for the infringement of those rights.
3. **AN ORDER** directing the Defendants to pay compensation to the families of the deceased and surviving victims of the 20<sup>th</sup> September, 2013 Apo killings in the manner stated below:
  - a) The sum of USD \$100,000,000.00 (one hundred million United States Dollars only) to families of each of the eight deceased victims.
  - b) The sum of USD \$10,000,000.00 (Ten million United States Dollars only) to each of the surviving victims for the mutilation of the Applicants who suffered injuries caused by bullet wounds affecting their spinal cord, fracturing of tibia, plateau, proximal metaphysics

and neck of fibula, abdomen wounds and fracture of their hands and other limbs and therefore permanently mutilating their body and robbing them of their ability to secure a dignified livelihood and thereby constituting a breach of their fundamental rights.

4. **AN ORDER** of this Honourable Court directing the Defendants to settle the cost of this action as incurred by the Applicants AND
5. Any other further orders that the Court may deem fit to make.

Upon the service of the originating application, the Defendants raised preliminary objections to the suit and the Court took arguments on the objections of the Defendants and decided to rule on the preliminary objections as well as the substantive suit in one judgment.

### **3. PRELIMINARY OBJECTION OF THE DEFENDANTS.**

#### **1. The First Defendant.**

The First Defendant in her preliminary objection (Document No 2) sought an order striking out her name from the suit and also dismissing the Applicants' suit dated the 24<sup>th</sup> day of February, 2014 on the grounds that;

- i. The 1st Applicant lacks the locus standi to bring this application, as it lacks legal personality and is not a victim or relative of the victim of any human rights violation, nor does it have any evidence of authority of the persons or relatives of the persons it represents.
- ii. That the Applicants disclosed no cause of action as the victims actually received medical attention.
- iii. That the 1<sup>st</sup> Defendant is under a duty placed on her by the Constitution of Nigeria to protect the lives and properties of the citizens of Nigeria and the Constitution is superior to all laws, including statutes, conventions, enactments and treaties.
- iv. That the law enforcement agents acted within the law and in a situation of justifiable necessity.
- v. That the Applicants' request for monetary compensation cannot be granted in view of the circumstances of the case.

The notice of preliminary objection was supported by a twelve paragraph affidavit sworn to by one Mr. Nnamdi Ekwem, a Nigerian citizen of Gwandal Center, Plot

1015 Fria Close, Formella Street, Adetokunbo Ademola Crescent Wuse 2, Abuja Federal Republic of Nigeria, and the 1<sup>st</sup> Defendant relied on all the depositions in the affidavit.

In his legal arguments, the Counsel to the 1<sup>st</sup> Defendant formulated two issues for determination, namely;

- a. Whether from the facts and circumstances of the case there exists reasonable cause of action and / or locus standi on the part of the Applicants to activate the judicial power of this Court.
- b. Whether the claims of the Applicants in this suit are grantable having regards to the facts and circumstances of the suit.

With regard to the first issue, the 1<sup>st</sup> Defendant argued that a cause of action is a **“bundle or aggregate of facts which the law will recognize as giving the Plaintiff a substantive right to make the claim for the relief being sought”**.

To him, the fact on by the Plaintiff to support his claim must be one recognized by law as giving rise to a substantive right capable of enforcement against the Defendant. Where the application discloses no cause of action, the statement of claim (application) will be struck out and action dismissed.

The 1<sup>st</sup> Defendant further argued that a nexus exists between cause of action and locus standi.

Accordingly, where a party commences an action in which no reasonable cause of action exists, the locus standi of such party is affected and the consequence is that he cannot validly activate the judicial powers of this Court.

Citing the Nigerian case of **Oloriode Vs Oyebi (1984) 5 S C 1 at 28**, he posited that;

**“it is a basic principle of law that no action can lie where there is no reasonable cause of action and the requisite locus to sue is absent because these fundamental principles of law render the process incompetent”**

He therefore concluded that from the originating process filed by the Applicants, the 1<sup>st</sup> Applicant has no locus to commence the action having done so for and on behalf of families of the persons shot dead by officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. This is because, to him, a person suing on behalf of a deceased, must

do so on behalf of the deceased estate. Thus, it is only the Administrators/Executors and /or Probate Court as the case may be can legally empower a party suing on behalf of the deceased.

Counsel to the 1<sup>st</sup> Defendant also referred to the decision of this Court in **SERAP Vs FEDERAL REPUBLIC OF NIGERIA & ANOR (ECW/CCJ/09/11)** delivered on 13<sup>th</sup> February, 2013 which held that:

**“If for any reason the direct victim of the violation cannot exercise his or her rights, in particular, for being irreversibly incapacitated or having died as a result of the violation, the closest family members can do so, while assuming the status of direct victims”.**

Furthermore, to the 1<sup>st</sup> Defendant, the 1<sup>st</sup> Applicant is not a body known to law, that the burden of establishing that the Plaintiff is a body known to law rests on the Applicants. This burden of proof can only be discharged by production of the certificate of incorporation.

He relied on **FAWEHINMI Vs. N.B.A & 5 ORS (N<sup>o</sup> 2) (1989) 2 N W L R (PT 105) 558 at 632**. He concluded that without this, the 1<sup>st</sup> Applicant, not being a juristic person, has robbed the Court of the jurisdiction to entertain the suit against the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Defendant raised other issues bordering on terrorism to show why the case is incompetent. These matters appear to hinge on substantive issues already canvassed and will be dealt with in the course of the substantive suit if any.

With regard to issue (N<sup>o</sup>.2), the 1<sup>st</sup> Defendant argued that the claim for monetary compensation for and on behalf of the deceased and the victims who are alive are not grantable if the 1<sup>st</sup> Applicants have no locus standi to commence this action and that the action must fail.

He therefore concluded and urged the Court to hold that the 1<sup>st</sup> Applicant's lack the requisite locus standi and cause of action to commence the action against the 1<sup>st</sup> Defendant and that, in any case, their claims are by no means grantable.

### **3.2 The 2<sup>nd</sup> Defendant.**

The 2nd Defendant also filed a preliminary objection to the suit (document N<sup>o</sup>.4). The 2nd Defendant's motion also raised objections similar to that of

the 1<sup>st</sup> Defendant. He further contended that since the suit is for human rights violation, the 2<sup>nd</sup> Defendant, being an organ of the 1<sup>st</sup> Defendant, ought not to be joined as a party, as suits of this nature can only be instituted against a State.

Arguing the motion, the Counsel to the 2<sup>nd</sup> Defendant submitted that only States are the appropriate Defendants in actions for human rights violation before this Court. He relied, inter alia, on the decision of this Court in **ALIMU AKEEM Vs FEDERAL REPUBLIC OF NIGERIA** and urged the Court to follow its previous pronouncement in that case.

Accordingly, since the suit was instituted against a wrong party, (in this case the 2<sup>nd</sup> Defendant) the action is incompetent and cannot stand.

As earlier noted, the 2<sup>nd</sup> Defendant also questioned the standing of the 1<sup>st</sup> Applicant in bringing this suit as well as its legal personality to institute same. The 2<sup>nd</sup> Defendant therefore urged the Court to strike out the name of the 2<sup>nd</sup> Defendant from the suit.

### **3.3 The 3<sup>rd</sup> Defendant.**

The 3<sup>rd</sup> Defendant also raised a preliminary objection (DOC N<sup>o</sup> 9) against the Applicants' suit. The major planks of the preliminary objection are as follows;

- i. That the suit is academic and constitutes abuse of judicial process.
- ii. That the 1<sup>st</sup> Plaintiff lacks locus standi to bring this suit on behalf of families of the deceased.
- iii. That the 1<sup>st</sup> Plaintiff is not a legal person and, not being victim or relative of a victim of any alleged human rights violation, lacks the competence to institute this action ;
- iv. That the suit being incompetent, the Court lacks jurisdiction to entertain same. He cited the Nigeria case, **ONYEBUCHI Vs. INEC (2002) 8 N W L R (PT 769) P. 417 at 45**, where abuse of judicial process was defined as; "It is an abuse of Court process for Plaintiff to litigate again over an identical question which has already been decided against him. In the case of **Domer Vs. Gulf Oil (Great Britain) 1975 119 S.J 392**, it was held that where proceedings which were viable when instituted have by reason of subsequent events become

inescapably doomed to failure, they may be dismissed as being an abuse of the process of the Court”.

The 3<sup>rd</sup> Defendant posited that the suit by the Applicants constitutes an abuse of Court process because the complaint before the National Human Rights Commission pursuant to sec 5(a) and (j) of the National Human Rights Commission, which necessitated a public inquiry, is the same as the present suit. That the Commission having awarded N 10 million in respect of each of the deceased person and N5 Million Naira to each of the Applicants in this suit, divests the Court of jurisdiction to make any other award on the same subject matter as it will tantamount double portion, which the law frowns act. He urged the Court to dismiss the suit on grounds of abuse of process.

The 3<sup>rd</sup> Defendant also submitted that the suit is an academic exercise having regard to the reliefs sought by the Applicants as enumerated above. He argued that those reliefs were the same sought before Nigeria’s National Human Rights Commission for which an award was made.

Relying on the Nigerian cases of **PLATEAU STATE GOVERNMENT Vs. AG. OF THE FEDERATION (2006) 3 N W L R (PT 967) P 346 at 419. ADEOGUN Vs. FASHOGBON (2008) 1 7 NWLR (PT 1115) 149 at 180-181 and AGBAKOBA Vs. INEC (2008) 18 NWLR (PT 1119) P. 489 at 546-547**, he urged this Court to decline jurisdiction as it would amount embarking in a futile exercise since the suit is merely academic and has no practical utilitarian value to the Plaintiffs.

On the issue of locus standi of the 1<sup>st</sup> Applicant, he submitted on the same line with the 1<sup>st</sup> Defendant that the 1<sup>st</sup> Applicant lacks a standing to institute this suit since “**is not qualified under our laws to present this claim**”.

He relied on **SERAP Vs. FEDERAL REPUBLIC OF NIGERIA (suit no: ECW/CCJ/APP/09/2011 delivered on 13/12/2014.**

He concluded that the issue of absence of locus standi goes to issue of jurisdiction and that since the Applicant lacks standing to institute the proceedings, the Court lacks jurisdiction to hear same.

### **3.4 The Applicants Reply.**

The Applicants filed a counter affidavit to the affidavit of the Defendants. He opposed the granting of the objections of the Defendants (see documents, 7, 11, and 12).

First, in his counter affidavit in support of Reply to the Applicants to the preliminary objection, the 1<sup>st</sup> Applicant exhibited its **CERTIFICATE OF INCORPORATION** (marked exhibit 1), the process of registration with the Corporate Affairs Commission (exhibit 2) and the Constitution of the 1<sup>st</sup> Applicant (exhibit 3).

The first Applicant argued that it was suing in a representative capacity and on behalf of the relatives of the deceased which it has exhibited on the face of the record. Accordingly, **SERAP Vs. FEDERAL REPUBLIC OF NIGERIA (SUPRA)** does not apply.

The 1<sup>st</sup> Applicant also argued that it was not a party to the petition before the National Human Rights Commission as shown on the processes before this Court and cannot be engaging in academic exercise. He also contended that this could only avail to the Respondents especially the 3<sup>rd</sup> Respondent/ object or if it was raised in the substantive suit. He cited the decision of this Court in **ESSIEN VS. REPUBLIC OF GAMBIA & ANOR (2004-2009) CCJ ELR 95 at 108.**

Furthermore, the 1st Applicant argued that the argument that this suit is an abuse of Court process and an academic exercise on an account of similar suit having been determined by the National Human Rights Commission, is misconceived. He relied on Article 10(d) of the Supplementary Protocol of this Court, 2005 as the only condition precedent to invoking the jurisdiction of this Court.

In its totality, the 1<sup>st</sup> Applicant urged this Honourable Court to dismiss the objections of the Defendants in its totality.

### **4 Analyses of the Court.**

Having considered the facts of this case, the preliminary objections raised by the Defendants and the reply of the Applicants and the legal arguments

in support, the Court will now consider the issues that require serious consideration in the preliminary objections before delving into the substantive matter, if necessary. We hold that there are four major issues to be determined at this stage, namely:

- a. Whether the first Applicant is a legal person and not being a victim or related to a victim, have a standing to institute the present action on behalf of the deceased victims.
- b. Whether the facts put forward by the Applicants have disclosed any cause of action.
- c. Whether the action as presently constituted is an abuse of Court process and/ or an academic exercise as alleged by the 3<sup>rd</sup> Defendant.
- d. Whether the 2<sup>nd</sup> Defendant and by implication the 3<sup>rd</sup> Defendant are proper parties to this suit. The Court will briefly consider these issues seriatim.
  - a. Whether the 1st Applicant is a legal person and not being a victim, or related to a victim have a standing to institute the present action?

The Defendants raised in their objection the legal capacity of the 1<sup>st</sup> Plaintiff to institute the present action. They rightly contended that locus standi is a condition precedent to the determination of a case on its merit. Where the Plaintiff have no standing to bring the action, the suit is incompetent and divests the Court of jurisdiction to entertain same. They further contended that where standing order is lacking the action must fail. They relied in the case of **ODAFE Vs. ECOWAS COUNCIL OF MINISTERS & 2 ORS SUIT N°: ECW/CCJ/APP/05/07** where this Court held that since the Applicant has not personally or by his organization suffered any harm he does not have the locus standi to bring the application and it was thus declared inadmissible.

They also relied in **SERAP Vs. FEDERAL REPUBLIC OF NIGERIA SUIT N°: ECW/CCJ/APP/09/11, RULLING N°**

ECW/CCJ/RUL/ 03/14, where this Court stated the law as follows;

- a) In cases of violation of human rights, only the victims may have access to the Court;
- b) Aside from cases of collective interests, NGO's cannot substitute the victims
- c) Non –victims of violations must receive prior authorization to act on behalf of victims or their closest relatives.

The issue of legal capacity is germane in all proceedings. It is trite law that proof in civil cases including, human rights, the standard of proof is on preponderance of evidence and the burden is usually on the person who will fail where no evidence is led. In their counter affidavit to the Defendant's preliminary objections, the 1<sup>st</sup> Applicant annexed its certificate of incorporation (Annexure 1) and the process of its registration. The certificate of incorporation is a prima facie evidence of the personality of the 1<sup>st</sup> Applicant who is registered as a non-governmental Organization (NGO). Having produced their certificate of incorporation, it is for the Defendants to dispute the authenticity or otherwise of that certificate. Not having done so, this Court will presume the regularity of that certificate as evidence of the legal personality of the 1<sup>st</sup> Plaintiff and we so hold.

Aligned to the above is the question of locus standi. The jurisprudence of this Court as stated in SERAP case (SUPRA) and other cases is to the effect that it is only the direct victims of human rights violation that have the standing to move this Court.

However, exceptions to this rule exist. These include but not limited to cases of collective interest (usually referred to as public interest litigations) and the non-victims receiving authority to act on behalf of the victims or their close relations.

It is noteworthy that public interest litigations refer to cases in which Courts allow volunteers like Lawyers, Citizen Petitioners, NGO's to bring actions on behalf of some victimized groups who ordinarily are without sufficient means of access to legal services or justice.

In the instant case, the 1<sup>st</sup> Plaintiff has established that it is a registered NGO authorized by its constitution to engage in public interest litigation. Similarly on the face of the Application, it is described as suing “for and on behalf of families of the persons shot dead by the officers and men of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. These victims were also enumerated on the face of the Application. The eight victims enumerated are deceased and cannot maintain this action. The burden of proving lack of authority on the part of the 1<sup>st</sup> Applicant to institute this action on behalf of the deceased victims rests on the Defendants. It is not sufficient merely to raise lack of authority without more. In this regard the principles in SERAP’s case supports this suit as it can be regarded as one of the exceptions to the rule that only victims of human rights violation can sue.

In **ADESANYA VS. PRESIDENT OF NIGERIA, (1981) 1 A11 NLR 1 at 20** the Supreme Court of Nigeria, Per Fatayi- Williams CJN, rightly observed as follows:

**“I take significant cognizance of the fact that Nigeria is a developing Country with multi-ethnic society and a written Federal constitution where rumor- mongering is the past-time of the market places and construction sites. to deny member of such a society who is aware or behaves or is led to believe that there has been an infraction of any provisions of our constitution, or that any law passed by any of our legislative houses,..... is unconstitutional, access to a Court of law to hear his grievances on the flimsy excuse of lack of insufficient interest is to provide a ready recipe for organized disenchantment with the judicial process”.**

In the Nigerian context, it is better to allow a party to go to Court and to be heard than to refuse him access to our Courts. Non –access to my mind, will stimulate the free for all in the media as to which law is constitutional and which law is not. In any case our Courts have inherent powers to deal with vexations litigations and frivolous claims.

Although this dictum is related to the Nigerian society, it is applicable mutatis mutandis to ECOWAS States to whom the jurisdiction of this Court applies. More pointedly, **THE SUPREME COURT OF INDIA IN FERTILIZER CORPORATION KAMAGER UNION VS. UNION OF INDIA (1981) A I R (S C) 344 succinctly** captured the modern Jurisprudence on locus standi as follows:

“Restrictive rules about standing are in general inimical to a healthy system of growth of administrative law, if a Plaintiff with a good cause is turned away merely because he is not sufficiently affected personally, that could mean that **“some government agency is left free to violate the law. Such a situation would be extremely unhealthy and contrary to the public interest. Litigants are unlikely to spend their time and money unless they have some real interest at stake and in some cases where they wish to sue merely out of public spirit, to discourage them and thwart their good intentions would be most frustrating and completely demoralizing”**”.

The activities of the Government and its agencies including law enforcement agents that violate the rights of individuals, especially the right to life is a matter in which the public can legitimately be interested, as in this case. The 1<sup>st</sup> Plaintiff is not a busybody as the Defendants would want this Court to believe and we so hold.

This Court is not devoid of its jurisprudence in the area of locus standi. In **SERAP Vs. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA & UBEC (2010) CCJ L R P.119**, this Court held the view that taking into account the need to reinforce access to justice for the protection of human rights, an NGO duly constituted can sue an action on behalf of victims of abuse and all they need to show is that there is a public right worthy of protection. Similarly, in **SERAP Vs. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA & 8 ORS (2010) CCJ LR 231 at 248**, this Court observed and rightly too that;

**“There is a large consensus in international law that when the issue at stake is the violation of rights of entire communities as in the case to damage to the environment, access to justice should be facilitated”**

In this regard, where the right violated as in this case, the right to life of community of persons who are deceased, as in this case, access to justice should be facilitated because the outcome is very likely to impact positively on the activities of law enforcement agents who sometimes act overzealously.

Based on the foregoing, it is the considered view of this Court that the 1<sup>st</sup> Applicant can institute and prosecute the present action. This position is reinforced by the fact that the 2<sup>nd</sup> to 12<sup>th</sup> Applicants are direct victims of the alleged violation of

human rights, shall we also deny them capacity and standing to prosecute this claim. We think not.

- b. The next issue for determination in this objection is whether the facts put forward by the Applicants disclose any cause of action.

A cause of action can be defined as a matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is the right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable.

In law, a cause of action is a set of facts, a combination of facts giving rise to a claim or this right to sue. The ground for this action is the alleged violation of the Applicants' human rights. The Applicants have alleged that they were shot at, by the agents of the 1<sup>st</sup> Defendant which resulted to injury to the 2<sup>nd</sup> to the 12<sup>th</sup> Applicants and the death of the persons named and represented by the 1<sup>st</sup> Applicant as suing on behalf of the relatives of the deceased.

It is trite law that whether a cause of action exists or not, can only be gathered from the statement of claim and not defense. A cause of action of course can be extinguished by effluxion of time. This is usually provided for by statute, see for example Article 9(3) of the Supplementary Protocol of the ECOWAS Court of Justice 2005. The Applicants have alleged violation of their human rights. The Jurisdiction of this Court in relation to human rights is predicated on Article 9 of Supplementary Protocol A/ S P. 1/01/05 provides as follows:

**“The Court shall has Jurisdiction to determine cases of violation of human rights that occur in any member State”.**

The Plaintiffs have alleged the violation of their various rights under the African Charter on Human and Peoples' Rights and this raises a fundamental issue of violation of human rights against the 1<sup>st</sup> Defendant and this is sufficient cause of action. Although the Applicants have a cause of action, this does not automatically tantamount to proof of the allegations contained in the Application.

Accordingly, from the narration of facts presented by the Applicants, the Court holds that they have made out a cause of action necessitating the Court's adjudication.

One of the issues raised by the 3<sup>rd</sup> Defendant in its preliminary objection is that

**“The suit is an academic exercise and constitutes an abuse of judicial process. The basis of this plea according to the 3<sup>rd</sup> Defendants is that the suit is an abuse of Court process in that the suit is the same with the complaint before the National Human Rights Commission (NHRC) lodged on 24<sup>th</sup> September, 2013 (see Exhibits D SS1 and DSS 2 of the Affidavit in support) and that NHCR has already rendered a ruling and as such the instant suit became inescapably doomed to fail and as such constitute abuse of process”.**

The Applicants herein are seeking for damages which have been awarded to them by the NHRC. In the same vein the 3<sup>rd</sup> Defendant opined that the suit is merely an academic exercise because the reliefs sought by the Applicants' before this Court in the same as the orders made by the NHRC in its ruling of 17th April, 2014.

However, curiously, the 3<sup>rd</sup> Defendant neither alleged nor established that the Applicants were parties to the petition or that the NHRC is a Court of law. Be that as it may, even if these were established, this could not have been a bar to the exercise of this Court's jurisdiction. This is because Article 10(d) of the Supplementary Protocol relating to the Community Court of Justice with regard to access to the Court provides that access is open to:

Individuals on application for relief for violation of their human rights, the submission of which shall:

- i. Not be anonymous; nor
- ii. Be made whilst the same matter has been instituted before another international Court for adjudication.

This Court has reiterated that it cannot impose other extraneous conditions on litigants other than the ones provided for in this Protocol. Accordingly, we hold that the Applicants have satisfied the conditions precedent for access to this Court. Consequently, the Application is neither an abuse of Court process nor an academic exercise.

- c. The next issue that is for determination is whether the 2<sup>nd</sup> Defendant ought to be a party to this. One of the grounds of objection by the 2<sup>nd</sup> Defendant is that

“The application in the nature of this suit ought to be made or instituted against the 1<sup>st</sup> Defendant (The Federal Government of Nigeria) alone. Her main plank of complaint is that this type of suit should have been instituted against the 1<sup>st</sup> Defendant, a State as reiterated by this Court in *ALIMU AKEEM VS. FEDERAL REPUBLIC OF NIGERIA* JUDGEMENT N° ECW/CCJ/APP/105/11. They concluded that once an action is for human rights violation, the application shall be made against the State, irrespective of the organ of State which committed the alleged infraction”.

Article 9(4) of the Supplementary Protocol ( A/SP.1/01/05) amending protocol (A/P1/7/91) relating to the Community Court of Justice upon with the human rights jurisdiction of this Court is predicated provides that the Court shall

“... Have jurisdiction to determine cases of violation of human rights that occur in any Member States”. The Court has emphasized in a long line of cases, a few of which will be referred to here that in cases alleging violation of human rights brought before it, the appropriate Defendant is a Member State of the Economic Community of West African States. Accordingly, neither individuals, agents nor organs of a Member State can be sued as Defendants before this Court for human rights violation. In its decision in suit N° ECW/CCJ/APP/04/09, *PETER DAVID VS. AMBASSADOR RALPH UWECHUE*, this Court held that in dispute between individual on alleged violation of human rights, the natural and proper venue before which the case may be pleaded is the domestic Court of State party where the violation occurred. It is only when at the national level that there is no appropriate and effective forum for seeking redress against individuals that the victim of such offences may bring an action before the international Court, against the signatory State for its failure to ensure the protection and respect for the rights allegedly violated.

See also the decision in *CDD Vs. MAMADOU TANDJA* (2011) CCJ L R 103 especially at 115-116.

This Court has consistently maintained the position and have no reason to deviate from it.

Accordingly, since this Court has no jurisdiction to entertain disputes between individuals on alleged cases of human rights violation, the preliminary objection of the 2nd Defendant on this Count is upheld. The Court therefore holds that the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants, not being State parties to the ECOWAS Treaty, are not proper parties in this suit. The names of the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants are hereby struck out from the suit.

With regard to the 1<sup>st</sup> Defendant, his ground of preliminary objection are hereby dismissed and the Court holds that the case against her is admissible. The Court will now proceed to consider the case against the 1st Defendant on the merits.

## **1. THE SUBSTANTIVE CASE**

1.1 The Plaintiff's case. For the purpose of clarity and emphasis, we shall restate the facts and circumstances leading to this application, the claim of the Applicants and the evidence in support.

The 1<sup>st</sup> Applicant described as a registered Non –Governmental Organization (NGO) in Nigeria, brought this Application in a representative capacity as representatives of eight deceased persons named (therein) and the 2<sup>nd</sup> to 12<sup>th</sup> Applicants, against the 1<sup>st</sup> Defendant and the two others whose names have been struck out. Their right are enshrined in Articles 3,5,7 and 8 of the Universal Declaration of Human Rights, Articles 5,6 and 7 of the African Charter on Human and Peoples' Rights.

The facts of the case as alleged by the Applicants is that on Friday 20<sup>th</sup> September, 2013 at about 2am, the armed men comprising officers and men of the Nigerian Armed Forces and the Department of State Security Services (DSS), agents of the 1<sup>st</sup> Defendants, raided an uncompleted building at Aderemi Adesoji Crescent Apo, Zone E, on the alleged suspicion that there are weapons buried in the vicinity by members of the BOKO HARAM terrorist group and that some of the terrorist are occupying the building .

Owing to the alleged suspicion, the security agents of the 1<sup>st</sup> Defendant, the Federal Republic of Nigeria and a Member State of the Economic Community of West African States (ECOWAS), went into the building.

They were heavily armed and fired several shots into the building without any warning or regard to the standard rules of engagement.

At the time of the raid, the victims who were deep asleep were awakened by the gunshots and they ran for their life. The deceased Applicants and the living 2<sup>nd</sup> -12<sup>th</sup> Applicants have been occupying this premises and have been paying N200 (two hundred naira) to the security guard of the premises.

After the operations, the Security agents of the Defendant knew that some Civilians had been injured, left the scene, abandoned the Applicants who were bleeding profusely without medical aid. Seven of the victims bled to death, while 2<sup>nd</sup> to 12<sup>th</sup> Applicants, who suffered gun-shot wounds, survived till 8.00am. When members of the Nigerian Police Force and Nigerian Security and Civil Defence Corps came around 8.00am and evacuated them (both the dead and injured) to the Asokoro General Hospital, one of the victims, **Nasiru Adamu** later died at the hospital on 23/09/2013 as a result of the gunshot injuries he sustained.

The Applicants specifically alleged circumstances culminating in the violation of the Applicants' rights as follows:

- a. The agents of the Defendant did not enter the building but shot from outside, without provocation.
- b. The Applicants, out of fear, ran out of the building unarmed and were shot individually.
- c. The agents of the Defendant were directing at them when they had ran outside the building. The said agents left the Applicant's in the pool of their own blood without first aid or medical attention.
- d. No weapons were found on the premises when the Applicants were shot.
- e. No search was conducted in the premises prior to the shooting or afterwards and no attempt has been made up to the time of initiating this proceeding to recover any weapon allegedly buried by the Boko Haram Terrorist group. No Weapon was also recovered anywhere in connection with the Applicants.

Following the death and injury caused by the Defendant, the Applicants (the 1<sup>st</sup> Applicant suing for and on behalf of the families of the deceased

victims named in this process) brought this suit, seeking the following relief from this Court:

1. **A DECLARATION**, that the Applicants (as law abiding citizens) are entitled to right to life, freedom of movement, freedom of association, right to human dignity, right to integrity of their persons and the security of their person.
2. **A DECLARATION** that the shooting of the Applicants by the officers and men of the Defendants while raiding a supposed BOKO HARAM camp on the 23<sup>rd</sup> day of September, 2013 thereby causing the death and/or permanent bodily injuries to the Applicants constitute a flagrant abuse of the Applicant's fundamental Human Rights of life, dignity of the human persons, integrity and security of the human person, as guaranteed under international law under which this application is brought  
(Articles 3, 5 7 and 8 of UDHR, 5,6, and 7 ACHPR, Articles 2 of ICCPR, Article 14 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment etc.) and are entitled to reparation and compensation for the infringement of those rights.
  - i. AN ORDER directing the Defendant(s) to pay compensation to the families of the deceased and surviving victims of the killings in the manner stated below:
  - ii. The sum of USD \$100,000,000 (One hundred Million United States Dollars only) to the families of each of the eight deceased victims.
  - iii. The sum of USD \$10,000,000.00 (Ten Million United States Dollars only) to each of the surviving victims for the injuries suffered by them.
  - iv. An order directing the Defendant to settle the cost of this action as incurred by the Applicants.
  - v. Any order further Orders the Court may deem fits to make.

## **1.2 EVIDENCE IN SUPPORT OF THE APPLICANT CASE.**

The Applicants relied on documentary evidence provided by them for the purpose of proving their case.

These are as follows:

- i. Medical Report submitted to the Senate Joint Committee on National Security and Intelligence and Judiciary, Human Rights and Legal matters (Senate Committee Report) by Medical Doctors at Asokoro General Hospital contained in page 49 and 50 of the Joint Senate Committee Report on Investigation into alleged killings in Apo, Abuja.
- ii. A copy of the Senate Joint Committee Report.
- iii. Death certificate of the deceased namely,
  - a. **Nura Abdullahi**
  - b. **Ashiru Musa**
  - c. **Abdullahi Manman**
  - d. **Buhari Ibrahim**
  - e. **Suleiman Ibrahim**
  - f. **Musa Yobe ( not issued)**
  - g. **Ahmadu Musa**
  - h. **Nasir Adamu**

The death certificate of the 8<sup>th</sup> deceased contains details of the cause of death of all the deceased, see PP 2, 3,4, 6,8,10,28 and 29 of the *FOLDER CONTAINING DEATH CERTIFICATES AND PHOTOGRAPHS OF THE APPLICANTS*.

- iv. Report of the Joint Senate Committee on National Security and Intelligence and the judiciary, Human Rights and legal Matters on the Investigation into the alleged Extra- Judicial Killings in Apo, Abuja.
- v. Newspaper publications regarding the Apo Killing, namely; Weekly Trust, Sunday Trust, The Guardian Newspaper, Vanguard all authenticated and certified by the National Library of Nigeria.

## **2 THE APPLICANT’S ARGUMENT AND PLEAS IN LAW.**

In an attempt to prove their case, the Applicants argued as follows:

1. That Nigeria accepts and enforces international customary law regarding the well-established legal Maxim “Ubi jus ibi remedium”. ie where there is

a legal wrong, there is a remedy. He cited Nigeria cases of **BELLO VS. ATTORNEY –GENERAL OF OYO STATE (1986) J NWLR 528**, **NEMI VS. ATTORNEY- GENERAL OF LAGOS STATE &ANOR (1996) 6 NWLR (P 452) C A 42**.

2. That the death and injuries caused the Applicants are in contravention of Articles 4,5 and 7 of the African Charter on Human and Peoples' Rights.
3. That the action of the Defendant(s) violated Resolutions 2,3,4, and 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth UN Congress on the prevention of crime and the Treatment of offenders, adopted at Havana, Cuba in August 27<sup>th</sup> to September 7<sup>th</sup> 1990 and Articles 2 and 5 of the Code of conduct for Law Enforcement Officials adopted by General Assembly Resolution 34/169 of 17<sup>th</sup> December, 1979.They argued that by these provisions which bind the Defendant, the agents of the Defendant ought to use reasonable force in the execution of their operation. They ought to have used non-lethal force in incapacitating members of BOKO HARAM in the circumstances leading to this application.
4. That even though the Defendant's agents argued before the Senate Committee that they were fired at and shot back in retaliation, they ought to have known by their intelligence gathering that there were civilians occupying the said building. They also asserted that there is no evidence of used canisters by alleged members of the BOKO HARAM to prove the "heavy gunfire" as contained by the Defendant's agents in their press release forming the fulcrum of the Defendant's defence.
5. The Applicants further opined that in international law as evidenced by the basic rules of engagement referred to in (iii) above, the use of firearm is an extreme measure that should not be applied against Children and, if used at all, it should be in extreme situation only; like where the suspect offers armed resistance or otherwise jeopardizes the lives of others. The agents of the Defendant (originally 2<sup>nd</sup> and 3<sup>rd</sup> Defendants) alleged they were shot at first and that they recovered a magazine from the site of the raid. None of

their men were injured while eight Civilians were shot dead and eleven others sustained various degrees of gun-shot wounds.

6. The Applicants also made references to International Humanitarian law principles governing armed conflict to support their case.
7. The Applicants further submitted that by virtue of Article 9(1) (d) and 10(c) and (d) of the Supplementary Protocol (A/SP.1/01/05) relating to the Community Court of Justice of ECOWAS, the Court has power to hear applications bordering on enforcement of human rights contained in the African Charter on Human and Peoples' Rights as well as other international treaties, Declarations and Conventions; citing the decision in **JERRY UGOKWE VS. FEDERAL REPUBLIC OF NIGERIA AND ANOR (2004-2009) CCLR 37 (A) 49 TO 52.**
8. That by virtue of the Defendant being a signatory to the UN General Assembly Resolution 40/34 of November, 1985 on the Declaration of the Basic Principles of Justice for victims of crime and victims of abuse of power, the Defendant accepts that victims of fundamental human rights abuse are persons who:

**“Individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative in Member States”.**

Accordingly, victims include, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or preventing victimization. The Applicants further submitted that the complaints made in the Application are clearly covered by the African Charter on Human and Peoples' Rights and S.33 of the Constitution of the Defendant which guaranteed the right to life except in circumstances permitted by law.

They drew the Court's attention to the Senate Report, which states that in this particular case, the operations of the agents of the Defendant's "leaves much to be desired" and that the "Apo incident" is tragic and regrettable".

9. That the Defendant has a duty in International Law to make a reparation. They urged the Court to sustain their contention and hold the Defendant liable in the course of enforcing the law. They referred to the decision of

this Court in **EBRIMAH MANNEH VS. THE REPUBLIC OF THE GAMBIA (2004-2009) CCLR 181 AT 195**. Where the Court relied on the European Court decision in **SELMONNI VS. STATE OF FRANCE (2005) CHR 237** and **MIROSLAV VS. REPUBLIC OF CROATIA (2005) CHR 429**.

In conclusion, they urged the Court to grant all reliefs sought for in this application.

### **3. THE DEFENDANT'S CASE**

The Defendant, in response to the claim against her, filed a statement of defence (Document No.3) apparently out of the time stipulated by the Rules of this Court. Realizing the gaffe, the Defendant now filled a motion on notice seeking for enlargement of time within which to file her defence. The prayer was granted and issues were thus properly joined by the parties. In their statement of Defence, the Defendant denied violating the rights of the Applicants in any manner whatsoever. The main planks of their denial of liability are as follows:

- a. That terrorism cannot be justified under any circumstances and must be combated in all forms.
- b. That pursuant to this Member States of the Organization of African Unity (OAU) now African Union (AU) on the 13<sup>th</sup> of July, 1999 promulgated the Prevention and Combating of Terrorism. That the Convention was ratified by the Defendant on April 28, 2002.
- c. That Article 4(2) of the Convention on the Prevention and Combating of Terrorism provides that;  
**“State parties shall adopt any legitimate measures aimed at preventing and combating terrorists’ acts in accordance with the provisions of this Convention and their respective national legislation”.**
- d. That the Convention imposed on Members States the duty of preventing their territories from being used as a base for planning, organization or execution of terrorist acts.
- e. That pursuant to the above provision, the terrorism (Prevention) Act 2011 was enacted by the National Assembly of Nigeria, which made provisions for the prevention, prohibition and combating of acts of

terrorism and the financing of terrorism in Nigeria. That the Nigerian Terrorism Act of 2011 was amended by the terrorism (Prevention) (Amendment) Act 2013, under which the responsibility for the gathering of intelligence and investigation of offences constituting acts of terrorism was vested in the Nigerian Law Enforcement and Security Agencies.

- f. That S. 40 of the Terrorism Prevention (Amendment) Act 2013 provides that law enforcement and security agencies include the Nigerian Armed Forces.
- g. That intelligence gathered by law enforcement and Security agencies in the Country confirmed increased activities of suspected BOKO HARAM Terrorist (BHT) in certain places within and around Apo, Karu, Mararaba (around Abuja FCT) and Suleja areas. Intelligence reports further confirmed that suspected BOKO HARAM members fleeing Borno State and other parts of the North East of Nigeria had taken refuge in uncompleted building in the capital city of Abuja from where they engaged in menial jobs such as Hawking, Keke Napep Riding, Selling of water, Shoe shinning and Driving of Taxis in Abuja.
- h. Based on the development above, the Army Garrison and Guards Brigade activated various operations (one of which was the September, 20 2013 operation) to rid the city of criminals and Boko Haram elements. These two formations support the Department of State Security Services (DSS) operations in Abuja from time to time as is the case with other Nigerian Army Formations across the Country.
- i. On Friday, 20<sup>th</sup> September, members of the Nigerian Army and Department of State Security Services (DSS) (who were hitherto the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants and whose names were struck out from the suit at the preliminary objection stage) went to an uncompleted building at Aderemi Adesoji Crescent, Apo Zone E on the alleged suspicion that there were likely weapons buried in the vicinity by members of the BOKO HARAM Terrorist Group and that some of

the terrorists were occupying the building. As the members of the Army and State Security Service approached the vicinity, several gunshots were fired at them from the building in response to which they fired gunshots into the building as a means of self- defence.

- j. They further contended that as a normal cause of events following a shootout, there is more often than not the loss of lives within the vicinity. Regrettably, this was not an exception as some persons were killed and wounded while the operation was on.
- k. Further to the raid, the Defendant deployed members of the Nigerian Security and Civil Defence Corps to convey the Applicants and the deceased to Asokoro Hospital for appropriate medical care. The officers could not carry out this assignment until day break at about 8.00am on September 21, 2013 to avoid being harassed or attacked by aggrieved members of the Community.
- l. That the Government of the Defendant is committed to the security of lives and properties of Nigerians. There is no action or policy of the Federal Government or any of its agencies that encourage murder of any section of Nigerians as the Constitution of the Federal Republic of Nigeria recognizes the right to life of every Citizen.
- m. That the Defendant cannot be said to have violated Articles 3,5,7 and 8 of the Universal Declaration of Human Rights or Articles 5,6 and 7 of the African Charter on Human and Peoples' Rights because the Defendant has a "sacrosanct" duty to protect the lives, properties and well-being of citizens of the Country.
- n. That the Senate Report commended the agents of the Defendants for averting what would have been a major terrorist attack in the City of Abuja in view of the fact that three (3) Members of the sect were arrested.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants (whose names have been struck out) also filed the statements of defence in the same line with the Defendant. However, since they are no longer parties, the processes filed by them are of no consequence to the determination of this Application.

#### 4. ARGUMENTS BY THE DEFENDANT.

In their argument in law, the Defendant formulated two issues for determination in this application namely;

- i. Whether the Defendant(s) are in breach of International conventions and law such as the African Charter on Human and Peoples' Rights and other International Conventions relied on by the Applicants.
- ii. Whether in the circumstance of this case, the Applicant has a cause of action and locus standi to institute this action.

With regard to issue no 1, she submitted as follows:

- i. That the Constitution of the Federal Republic of Nigeria 1999 provides for the Supremacy of the Constitution over all other laws.
- ii. That the Constitution also recognizes the right to life under s.33 thereof thus:

**“Every person has a right to life, and no one shall be deprived intentionally of his right of life”.**

Furthermore, it was submitted that the African Charter on Human and Peoples' Rights in Article 4 provides that;

**“Human beings are inviolable, every human being shall be entitled to respect to his life and integrity of his persons. No one may be arbitrarily deprived of his right”.**

Moving further, the Defendant cited s.33 (2) of the Constitution of Nigeria 1999 relating to the exceptions to the right to life as follows;

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use to such extent and in such circumstances as are permitted by law, such force as is necessary-

- a. For the defence of any person from unlawful violence or for defence of property.
- b. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained , or
- c. For the purpose of suppressing a riot, insurrection or mutiny. He specifically defined insurrection as distinct from an offence connected by Mob violence by the fact that in insurrection there is an organized

and armed uprising against authority or operations of government (underlying theirs).

The Defendant argued that the activities of the BOKO HARAM sect in her territory constitutes an act of insurrection, and as such the right to life as guaranteed in the Defendant's Constitution is not absolute but subject to the suppression of insurrection.

- o. That the Defendant is committed to respecting the right to life, freedom of movement, freedom of association, right to human dignity, right to integrity and right to the security of Nigerians. That the Defendant is also committed to ensuring the protection of human rights contained in all international human rights instruments.
- p. Furthermore, that the National Assembly of the Defendant set up the Committee to investigate the circumstances leading to the death and injury of the Applicants and others as contained in the Senate Committee Report on the Investigation on alleged Extra- Judicial Killing in Apo Abuja, which report commended the Defendant in many respects.
- q. That the Defendant is taking steps to strengthen Security to ensure the protection of lives and property of its citizens; and that the Defendants took the injured for treatment on its own expense. Accordingly, to the Defendant, these acts are "responsive and noble acts expected of a democratic Government" and urged the Court to resolve issue one in favour of the Defendant and refuse the reliefs sought by the Applicants.

With regard to issue No2, i.e. whether in the circumstances of this case, the applicant has a cause of action and locus standi to institute this suit, the Defendant submitted as follows:

- i. That a cause of action is a bundle or aggregate of facts which the law will recognize as giving the Plaintiff a substantive right to make the claim for the relief being sought. The factual situation must be recognized by law as giving rise to a substantive right capable of enforcement. Where an

application discloses no cause of action, the claim must be struck out and the action dismissed.

- ii. It is true that the African Charter on Human and Peoples' Rights and the Defendant's Constitution confer certain human rights on Citizens. He cited the case of **ABACHA Vs. FAWEHINMI (2002)6 NWLR (PT 660) 228 at 289** which he described as the locus classicus on the applicability of treaties, particularly the African Charter on Human and Peoples' Rights to Nigeria.
- iii. The Defendant recognized that by virtue of Article 4 of the African Charter on Human and Peoples' Rights, human beings are inviolable and are entitled to respect to life and integrity of their person and no one may be arbitrarily deprived of his right to life.
- iv. The Defendant also contested the locus standi of the 1<sup>st</sup> Plaintiff to institute the action against the Defendant on behalf of the deceased. Citing the case of **ODAFE OSERADA Vs. ECOWAS COUNCIL OF MINISTERS & 2ORS SUIT NO: ECW/CCJ/APP/05/07** where this Court decided that 'since the Applicant has not personally or by his organization suffered any harm, he does not have the locus standi / cause of action to bring the application. The Application was thus held inadmissible. The Defendants also argued that the right to sue can only be conferred by statute or by the Constitution or Customary Law or Contract and concluded that the Applicant lacks locus standi to institute the action as no right was conferred on it to do so. Thus, the 1<sup>st</sup> Applicant has not shown that its own interest is at stake, but purports to enforce the rights of persons who have not instructed it to represent them. That this Court in **SERAP VS. FEDERAL REPUBLIC OF NIGERIA, SUIT NO ECW/CJ/APP/09/11** have held that:
  - a. In Cases concerning the violation of human rights, only the Victims may have access to the Court,

- b. Aside from cases of collective interests NGO's cannot substitute the victims
- c. Non- victims of violation must receive prior authorization to act on behalf of the victims or their closest relatives.

The Defendant submitted that the 1<sup>st</sup> Applicant have no cause of action because no wrong was done to it. She submitted that on the strength of SERAP's case above that none of the parties to this application is a victim of human rights to violation and urged the Court to hold that the monetary and other claims of the Applicants disclose any cause of action and no locus standi to which they can be predicated upon and urged the Court to dismiss the application as lacking in merit.

In conclusion, the Defendant urged the Court to hold as follows:

- i. That the activities of the BOKO HARAM sect constitute an armed uprising against the authority of the Defendant and a threat to lives, property and well-being of Nigerians.
- ii. That the Apo incident was an urgent and necessary operation carried out to pre-empt a planned attack on some location in Abuja
- iii. That it cannot be said that the Defendant failed to provide protection and exercise due diligence before, during and after the raid.
- iv. That the Defendant provided reasonably adequate treatment to victims of the raid of the uncompleted building at Apo Zone E.
- v. That the Defendant, promptly took steps through the Police and Civil Defence to convey the dead and the wounded to the hospital and should be commended.
- vi. That the Defendant did not in any way breach or violate the fundamental human rights of the victims of the raid on 20<sup>th</sup> September, 2013 or of the Applicants. In Particular, their right to life, dignity of the human person guaranteed under the Constitution of the Federal Republic of Nigeria 1999, The African Charter on Human and Peoples' Rights, Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights.

- vii. That the Applicants lacks both a cause of action and locus standi to institute this suit.

## 5. DISCUSSION AND ANALYSIS BY THE COURT

The facts of this case as pleaded by the Applicants and the Defence are not substantially in dispute. The allegations of the Applicants is that on the 20<sup>th</sup> of September, 2013, the armed agents of the Defendant invaded an uncompleted building occupied by the Applicants, killed some of the Applicants (as named and represented by the 1<sup>st</sup> Applicant) and wounded the 2<sup>nd</sup> to the 12<sup>th</sup> Applicant thereby violating their right, inter alia, to life and integrity and dignity of the human person.

The Defendant's admitted that they actually invaded the premises as alleged, shot, killed and wounded some persons who were suspected to be members of the dreaded Boko Haram Terrorists. However, their defence is that when they approached the building in question, they were first shot at by the occupants and they returned fire which resulted in some deaths. Accordingly, their contention is that there was no violation of the rights of the Applicants in view of the fact that they acted in self – defence and out of necessity.

It appears from the narration of facts by both parties that after the incident some groups lodged various complaints to the National Human Rights Commission of the Defendant, who requested the Nigerian Army( Security Agents of the Defendant) to respond to the complaints. The Human Rights Commission on the 7/04/14 delivered a ruling as follows:

- i. Awarded the sum of N10 Million (Ten million Naira) as compensation for each of the deceased or N80 million (Eighty Million Naira) in respect of the eight deceased persons to be paid by the Defendant.
- ii. Awarded the sum of N5 million (Five Million Naira) to each of the injured survivors to be paid by the Government of the Federation (The Defendant)
- iii. Ordered the Honourable Attorney General of the Federation and Minister of Justice to ensure evidence of payment is lodged with the Registry of the Human Rights Commission within thirty days of the decision.

Similarly, the Senate of the National Assembly of the Defendant carried out an investigation in which they made a report attached to this proceedings. The Report suggested that some persons arrested by the Security Agents of the Defendant confessed to being members of the Boko Haram Sect, who intended causing mayhem in the Federal Capital Territory, Abuja. In the Report, Agents of the Defendant explained that the invasion of the uncompleted building at Apo Abuja was based on proactive intelligence gathered by the Security Agencies and that standard rules of engagement were applied where Terrorists attack law enforcement agencies.

Although this Court is not bound by the Report of either the National Human Rights Commission or the Senate Report of the Defendant, it is noteworthy that majority of the findings and recommendations contained in the latter report was not supported by any evidence properly so called. The Security Agencies were merely interviewed and whatever they said were taken hook line and sinker. It equally appears that the Applicants were not parties properly so called, nor were any of the surviving Applicants interviewed by the Senate investigating panel with regard to their own side of the story.

There is consensus on the part of the Applicant and Defendant as to the events of 20<sup>th</sup> September 2013 that necessitated the current action; namely:

That the Security Agents of the Defendant acting on presumed intelligence report invaded an uncompleted building at Apo, Abuja, Nigeria and in the course of their operations killed the deceased named in this suit as represented by the first Applicant and also injured the 2<sup>nd</sup> to the 12<sup>th</sup> Applicants. However, there is divergence as to whether the killings and/ or injuries are justified.

The Defendant posits that the death of the deceased and injury to the Applicants was committed in their exercise of the right of self- defence and necessity as provided for by law having been fired at first by the occupants of the building.

Making reference to Article 4(2) of the AU Convention on the Prevention and Combating of Terrorism Act which enjoins State Parties to adopt any legitimate measures aimed at preventing and combating terrorism acts in accordance with the provisions of the Convention and their national legislation, the Defendant submitted that pursuant to the above, she enacted the Terrorism (Prevention) Act

2011 which provided for measures for the prevention, prohibition and combating of acts of Terrorism in Nigeria.

She also contended that under the Terrorism (Prevention) (Amendment) Act 2013, the responsibility for gathering intelligence and investigating offences constituting acts of terrorism lies with the law enforcement and Security agencies which includes the Nigeria Armed Forces.

Furthermore, the Defendant submitted that intelligent report gathered by Security agents of the Defendant confirmed increased activities of suspected Boko Haram Terrorists within and around Abuja, as a result of their fleeing from Borno State and other parts of North Eastern Nigeria. That such elements were taken refuge in uncompleted building in Abuja from where they engaged in menial jobs like hawking, driving “Keke Napep” hawking water and cab driving.

As a result of these, the Defendant’s Security agencies including the Army, and the Department of State Security do carry out operations in Abuja from time to time. Pursuant to the above, the Agents of the Defendant invaded an uncompleted building at Adesoji Aderemi Crescent Apo, Zone E on an alleged suspicion that there were likely weapons buried in the vicinity by members of Boko Haram and that some terrorists were occupying the building. The Defendant further contended:

- a. That when the Agents approached the vicinity, several gun shots were fired at them from the building and they fired gunshots into the building in self-defence which resulted in the loss of lives and injuries while the operation was on.
- b. That members of the Police force and Civil Defence of the Defendant were deployed the following day to the scene to convey the Applicants and deceased bodies to Asokoro Hospital. In their words, **“The officers could not carry out assignment until day break to avoid being harassed or attacked by aggrieved members of the Community”**.
- c. That even the Senate Report commended the Agents of the Defendant for a job well done.
- d. That in carrying out the operations, the Defendant’s agents complied with all known rules of engagement. More so, as some Terrorists were arrested

including one Yayan Gida known to be a violent extremist responsible for the death of several people.

- e. That in these circumstances, the Defendant cannot be said to have violated Articles 3,5,7 and 8 of the Universal Declaration of Human Rights or Articles 5,6, and 7 of the African Charter on Human and Peoples' Rights. The Defendant's plea and submissions have been restated for emphasis.

The issues raised by the claim and submissions of the parties raise fundamental questions regarding the general concerted effort by mankind against terrorism on the one hand and international protection of human rights on the other.

There appears to be only one issue for determination; namely:

Whether the injury caused by the agents of the Defendant to the 2<sup>nd</sup> -12 Applicants constitute a violation of their human rights especially right to life and whether the death of the deceased as represented by the 1<sup>st</sup> Applicant is justified in law. To answer these questions, the Court will consider the law and marry them with the facts to arrive at an informed decision.

One of the side effects of terrorist activities and the international response to it has been the tendency to pit the ideas of liberty and security against each other. The notion of terrorism has often been viewed (especially by Governments and their agents) as being in conflict with protection of human rights. This is basically the perceived conflict in the instant case.

Indeed the notion of human rights protection has often been viewed as being in conflict with protection from terrorism.

International human rights standards emerged from a need, and obligation to control violent and extreme behavior which terrorism tends to perpetrate. Thus a general abrogation and violation of human rights in the face of threat from terrorists amounts to succumbing to the blackmail and threats of violent acts by extremist groups.

It is now generally accepted that the International Human Rights framework is applicable to dealing with the terrorist threat, from addressing its causes, to dealing with its perpetrators, to protecting victims, and to limiting its consequences.

States have an obligation to provide protection against terrorist attacks. Human Rights standards impose positive obligations on States to ensure the right to life, protection from torture and other human rights and freedoms. Acts of terrorism and attempts at fighting it, no doubt, are likely to result in infringement of fundamental rights. This is not to suggest that an act of terrorism amounts to a failure to protect by the State.

International law have attempted to balance the interest of the State in fighting terrorism and the duty to protect human rights. The case law of International Courts and Tribunals, as well as Domestic Courts, including the works of the United Nations, attests to these efforts. In this regard, practice recognize and acknowledge the fact that counter-terrorism measures have resulted and do result in;

- i. Prolonged detention
- ii. Denial of the right to challenge the rightfulness of the detention,
- iii. Denial of access to legal representation, monitoring of conversation with lawyers,
- iv. Incommunicado detention or ill treatment or even torture of detainees as well as inhuman and degrading treatment,
- v. Use of lethal force resulting in death.

These counter – terrorism measures may result in derogation from human rights norms. However, in determining whether a State is justified in such derogation, the International Courts and Tribunals usually consider certain factors which include:

- i. Legality i.e. whether there is a legal basis for interference with rights
- ii. Justification: This considers whether there are justifiable grounds for restricting the application of fundamental rights. In this regards, justifiable grounds include, national security, public order, morality, health and the right of others.
- iii. Necessity: Necessity does not mean indispensability or reasonableness. It implies a pressing social need for the restriction of rights and that pressing need must accord with requirements of democratic society whose hallmark is tolerance, pluralism, and broad –mindedness.

- iv. Proportionality: Proportionality requires that there is a reasonable relationship between the means employed and the aims to be achieved.

All these factors may not all exist or be considered necessary in all circumstances. With regard to right to life (the principal subject matter of the suit under consideration), international human rights provisions relating to the right to life must be strictly construed. This is particularly in cases where excessive use of force is used by law enforcement agencies.

The right to life should be understood as creating two obligations, namely, a substantive obligation in relation to the guarantee of life itself; and the procedural obligation, where there has been a loss of life.

The United Nations Human Rights Committee, in a long line of cases, which cannot be captured here for lack of space, has addressed the relationship between the right to life and armed conflict and has noted the link between non-compliance with international law rules prohibiting resort to armed force and loss of innocent lives.

First, a State has a responsibility to ensure that the law protects everyone's life. This includes a procedural aspect whereby the circumstances of deprivation of life receives public and independent scrutiny.

Second, a State has obligation to investigate deaths irrespective of how the authorities found about the death whether State authorities were involved or circumstances surrounding the death.

This responsibility is not diminished in the counter-terrorism context. Failure to investigate properly a death will be at odds with a State procedural obligations in relation to the right to life and this will be in addition to any violation found in relation to the killing itself.

These are therefore the two aspects to the right of life. We have analyzed the principles of international law regarding the protection of human rights, even in the situation of counter –terrorism, in order to make reasoned findings(s) with regard to the case at hand.

As earlier noted, the Applicants' primary contention as a basis for their claim is that the security agents of the Defendant failed to use reasonable force in the execution of the operation of 20<sup>th</sup> September, 2013 which led to the death of eight

persons (represented in this claim by the 1st Applicant on behalf of the deceased families) and injury to the 2<sup>nd</sup> to 12<sup>th</sup> Applicants. Their argument is that the agents of the Defendant, ought to have used non – lethal force in incapacitating suspected members of the Boko Haram Sect during the operation.

Article 4 of the African Charter on Human and Peoples’ Rights, the most fundamental Provisions of the Charter encapsulates and safeguards the right to life. It provides as follows:

**Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this life.**

In the same vein, S.33 of the Defendant’s Constitution 1999 provides that:

A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary;

- a. For the defense of any person from unlawful violence or for the defense of property.
- b. In order to effect a lawful arrest or prevent the escape of a person lawfully detained;
- c. For the purpose of or suppressing a riot, insurrection or mutiny (we may equally add or terrorism);

From the totality of the provisions especially the Charter, what makes a deprivation of life under Articles 4 unlawful is the arbitrariness of the act.

The word ‘Arbitrariness’ is defined by the Black’s Law Dictionary (7<sup>th</sup> Edition) as “depending on individuals discretion rather than by fixed rules of procedure or law.

In the same vein, S.33 (1) of the Defendant’s Constitution prohibits intentional deprivation of life and where intentional must be in accordance with S.33 (2) stated above. Deprivation of life is therefore unacceptable when not done in accordance with the law.

Thus, the legality of a killing outside the context of armed conflict (as in this case) is governed by human rights standards especially the ones concerning the use of force. Sometimes referred to as “**law enforcement model**”, they do not in fact apply only to armed forces or in time of peace. They apply to all government officials who exercise police powers including the military and Security forces operating in contexts where violence exist but falls short of the threshold of armed conflict. Lethal force under human rights law is legal if it is strictly and directly necessary to save life. Thus, the defense of self-defense and necessity (as purportedly claimed by the Defendant in this case) must be circumscribed within the limits of force required by human rights law. Questions of due diligence, reasonableness, and proportionality, the use of warnings, restraint and capture are all matters to be considered in this regard.

In **McCann Vs. UK (1995) ECHR 18984/91** at paragraph 150, the European Court of Human Rights in dealing with the deprivation of life contrary to Article 2 of the European Convention which is similar to the provisions of Article 4 of the African Charter, which stressed that the Court must subject allegations of breach of Article 2 of the Convention to the most careful scrutiny and that in cases concerning the use of force by State agents , it must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances including such matters as relevant regulatory framework in place and the planning and control of the actions under examination. See also **Makaratzis Vs. Greece (2004) ECHR 5038/99 at Paras 57-59**.

That indeed appears to be the international minimum standard regarding the use of lethal force. The United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials adopted on 7th September, 1990 by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and Treatment of Offenders provides in paragraph 9 as follows:

**“Law enforcement officials shall not use firearms against persons except in self- defense or defense of others, against the imminent threat of death or serious injury, to prevent the perpetration of a particular serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event**

**intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.**

It may be stated that a law enforcement officer may be justified in using lethal force in the arrest of a person he reasonably believed to have committed an offence or is in the process of committing a felony involving the risk of serious harm or death to others. The important condition here is reasonable necessity. Thus, once there is such reasonable necessity, even if the reasonableness is wrong, the use of force will be justified. The United States Supreme Court in **GRAHAM VS. CONNOT** 490 US 386(1989) succinctly laid down the issues necessary for the determination of whether a circumstance of reasonable necessity exists to warrant the use of lethal force as follows-;

- a. What was the severity of the crime believed to have been committed?
- b. Did the suspect present immediate threat to the safety of the officers or the public
- c. Was the suspect actually resisting the arrest /or attempting to escape.

The Court further observed that “the calculation of reasonableness must embody allowance of the fact that police officers are often forced to make split – second judgments in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation. Thus, it is the law that when officers are confronted by particularly powerful suspects, additional force may be justified. Where a soldier on patrol shot and killed an unarmed man who ran away when challenged, Lord Diplock held exonerating the officer for murder and that soldier who is employed in the civil power is under a duty enforceable under Military Law to search for criminals if so ordered by his Superior officer and to risk his life should this be necessary in preventing terrorist acts. For the performance of this duty, he is armed with a firearm, a self- loading rifle from which a bullet, if it hits a human body is almost certain to cause serious injury if not death.

Similarly, in *R.V Clegg* (1951) IAC 482, where a Military officer shot at a vehicle driving at a very high speed towards the check point/

Lord LLYOD of Berwick stated at P. 479;

**“In the case of a soldier in Northern Ireland in the circumstances in which Private Clergy found himself, there was no scope for graduated force, the only choice being between firing a high- velocity rifle which if aimed accurately, was almost certain to kill or injure and doing nothing at all”**

In considering the concept of necessity, the question to be determined is given the nature of the threats what are the minimum actions necessary to respond to the threats.

This Court takes judicial notice of the fact that Boko Haram is a terrorist group with the capacity and tendency to inflict deadly unprovoked injuries on human beings and properties. The Applicants have contended that the Security Agents of the Defendant ought to have used non-lethal force in incapacitating the Boko Haram Group.

The Applicants contended that they were unarmed while the Defendant stated that they were first shot at by the suspects and they reacted in self- defense.

It should however be noted, that facts stated in pleadings are not proof and, unless where they are admitted, the burden of proof is on the person who will fail if no evidence is offered. Self- defense is a judicial concept that needs certain factors for proof. The Defendant pleaded self-defense i.e. while they were approaching the uncompleted building they were fired at by the suspects.

However, there is no evidence of such a firing including, recovered guns, bullet or its pellets tendered in before the Court as proof of the circumstances. The Applicants clearly stated that they were unarmed, while the Defendant asserted that the suspects fired at them. The burden of proving self-defense is on the Defendant and this burden has not been satisfactorily discharged. Indeed as earlier noted, pleading is not evidence. There must be evidence that the Defendant acted in self-defense against a powerful terrorist group in a non – conflict environment. This burden has not been satisfactorily discharged by the Defendant.

Reasonableness suggests that an officer of any sort must act without passion or prejudice, in a non-conflict zone, consideration should have been made with regard to persons who might have occupied the place in error and who are not among the suspect terrorists. The international minimum have included the use of warnings, a shot fired in the air, as well as other methods of information to give

time to the occupants to surrender. This is in view of the fact that there is no evidence of self – defense. The Defendant alleged that before the raid on the building on the 20<sup>th</sup> of September, 2013, there was security report indicating a plan by the Boko Haram sect to invade Abuja.

This report was not made available nor was there anyway the Court could determine the veracity or otherwise of a report not brought before it.

As earlier noted, right to life as enshrined in human rights instruments is very fundamental because other rights necessarily depend on it. Secondly, there is substantive and procedural responsibility imposed on States by the International Human Rights Standard. Was there any thorough investigation of this incident by the Defendant? If not, this will also engage the responsibility of the Defendant. As the European Court of Human Rights held in the case of **MAKARATZIS Vs. GREECE (2004) ECHR 5038/ 99 AT PARA 58**, national law regulating Police operation must be put on ground a system of adequate and effective safeguards against arbitrariness and abuse of force even against avoidable accident.

Indeed, the obligation to protect the right to life, if read together with the States general duty under Article 1 of the African Charter, requires, by implication, that there should be some form of effective official investigation when individuals have been killed as a result of force (see **CAKICI VS. TURKEY**) (1999) ECHR 23657/94 at para 88.

The essential purpose of such investigation is to secure the effective implementation of the domestic laws safeguarding the right to life, and in those cases involving States' agents or bodies to ensure their accountability for deaths occurring under their responsibility (SEE **ANGUELORA VS. BULGARIA (2002) ECHR 38361197** at para 137.

For an investigation into an alleged unlawful killing by State agents to be effective, the person responsible for and carrying on the investigation must be independent and impartial in law and in practice. See **GULEC Vs. TURKEY (1998)** ECHR 215 93/ 93 at para 81-82.

In this case, there was a Senate Committee convened to investigate the events that led to this case. The Committee considered submissions from various persons and groups involved and presented a report. None of the current Applicants (Nos 2-12) as invited to testify in the course of the investigation.

It may be argued that both parties, especially the Applicant, have not questioned the impartiality of the investigation. Be that as it may the exclusion of the interest of the individuals currently pursuing this case is a minus for that investigating body whose evidence does not bind this Court. Thus it cannot be said that the current Applicants were party to the investigation.

The National Human Rights Commission made recommendations for monetary compensation after castigating the law enforcement officers for breaching the rules of engagement, recognized by international law and practice.

Placing the two reports side by side, it appears that the findings of the National Human Rights Commission, an Institution established under the laws of the Defendant is more credible having been based on credible evidence clearly stated.

Accordingly, the Court holds that the defense of self –defense exercised against a powerful terrorist group cannot stand in view of lack of evidence to support the plea.

Accordingly, the Defendant failed in this case to establish the defense of self – defense or necessity. The Court recognizes the devastation that Boko Haram have

inflicted on the Nigeria Nation especially in the North East, However, a situation where a group of Citizens of a State can be styled as members of a Terrorist Group (without any conclusive evidence) and shot portends danger for the society at large. This needs to be discouraged.

As earlier noted, apart from the substantive right to life in International Human Rights Law, the procedural aspect is equally important. International law imposes a duty on a State to carry out independent investigation into killings in the circumstances that it is likely to be extra-judicial. After the killings in this case, no further action was taken by the Defendant; this is unfortunate to say the least.

Even if the State is not guilty of substantive violation of the right to life, it can still be liable for failure to investigate. Accordingly, as the European Court of Human Rights stated in **MAKARATEIS Vs. GREECE (2004) ECHR 5038/99** the national law regulating policing operation must put on ground a system of adequate and effective safeguards against arbitrariness and abuse of force even against avoidable accident.

Thus, the obligation to protect life, read together with the State's general duty under Article 4 of the Charter (Equivalent to Article 4 of the African Charter on Human and People's Rights) (words in Parenthesis is ours) requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see **CAKACI Vs. TURKEY (1999) ECHR 2365/94**).

The essential purpose of such an investigation is to ensure the effective implementation of domestic laws safeguarding the right to life, in those cases involving State agents or bodies, to ensure their accountability for deaths

occurring under their responsibility (See *ANGUELOVA Vs. BULGARIA*( 2002) ECHR 38361/97.

For an investigation into alleged killing by State agents to be effective, the persons responsible for carrying out the investigation must be independent and impartial in Law and Practice (See *GULEC Vs. TURKEY* (1998) ECHR 21593/ 93.

In the instant case there was a Senate Committee convened by the Legislative Arm of the Defendant to investigate the circumstances and events that led to this case which considered submissions from various persons and groups and presented a report. While not castigating the report of the Committee, it is worthy of note to state that it did not make any specific finding as to the legality of the killings. It also appeared to have relied heavily on the submission of State agents in most respects lacking in any concrete evidence without question.

Above all, the National Human Rights Commission, an independent body established under the law of the Defendant to investigate cases of violation of human rights occurring within the territory of the Defendant, made submissions before the Committee which tended to contradict the testimonies of the agents of the Defendant, but curiously no reliance was placed on these statements of fact.

The Commission itself recommended the payment of compensation, having found that the grounds for the killings were largely unfounded. The Defendant did not deem it necessary to comply with any of them.

The Court, based on the evidence before it, finds that the procedural requirements of International Law with regard to extra- judicial killings were not complied with

by the Defendant. All these acts amount to a violation of Article 4 of the African Charter on Human and Peoples' Rights.

Accordingly, the application of the Applicants succeeds.

## **DECISION**

The Court adjudicating in a public sating, after hearing the parties in last resort, after deliberating in accordance with the law,

### **AS TO MOTION FOR EXTENSION OF TIME:**

Declares that all motion for extension of time filed by all the Parties be granted and the same are hereby granted.

### **AS TO THE PRELIMINARY OBJECTION OF THE DEFENDANTS:**

Declares that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are not appropriate parties to this suit and their names are hereby struck out from the proceedings, but all other grounds of objections are hereby dismissed.

### **AS TO THE MERITS:**

Rules that the arguments and defense of the Defendant are not supported by evidence, and accordingly, enters judgment against the Defendant for the illegal killings of the persons named and represented by the 1<sup>st</sup> Applicant and injuries caused to the 2<sup>nd</sup> to the 12<sup>th</sup> Applicants; And awards the sum of **§200,000** (two hundred thousand United States Dollars) to each of the deceased families and

**§150,000.00** (one hundred and fifty thousand dollars) each to the 2<sup>nd</sup> to 12<sup>th</sup> Applicants for injuries caused them by the agents of the Defendant.

**AS TO COSTS.**

The Court rules that costs are hereby awarded to the Applicants against the Defendant as assessed by the Registry of the Court.

Thus made, adjudged and pronounced in a public hearing at Abuja this day 7<sup>th</sup> day of June, 2016 by the Court of Justice of the Economic Community of West African States, ECOWAS.

The Following Judges have signed this Judgment.

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|--|--------------------|
| <b>1- Hon. Justice Friday Chijioke Nwoke</b>       | <b>– Presiding</b> |
| <b>2- Hon. Justice Maria Do Ceu Silva Monteiro</b> | <b>– Member</b>    |
| <b>3- Hon. Justice Micah Wilkins Wright</b>        | <b>– Member</b>    |

<b>Assisted by Tony Anene –Maidoh</b>	<b>- Chief Registrar</b>
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