



IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS) HOLDEN AT
ABUJA, NIGERIA

SUIT N°: ECW/CCJ/APP/20/15

JUDGMENT N°: ECW/CCJ/JUD/03/17

BETWEEN:

1. Nosa Ehanire Osaghae
2. Jonah Gbemire
3. Peter Aiko Obabiafo
4. Daniel Ikponmwosa

} Plaintiffs

Suing for themselves and
on behalf of Niger Delta People

AND

Republic of Nigeria

} Defendant

1. COMPOSITION OF THE COURT:

Hon. Justice Friday Chijioke Nwoke – Presiding

Hon. Justice Yaya Boiro – Member

Hon. Justice Alioune Sall – Member

Assisted by: Mr. Tony Anene Maidoh -- Chief Registrar

2. COUNSELS FOR THE PARTIES AND ADDRESSES FOR SERVICE:

For the Plaintiff

Solomon Omobudu Esq.
Wise Counsel Chambers
No 129 Siluko Road
Benin City Nigeria.

For the Defendant

1. Maimuna Lami Shiru (Mrs.)
2. Abubbakar Musa
3. Taiwo Abidogun Esq.
4. T.A Gazali
5. D. Agbe

Federal Ministry of Justice Abuja – Nigeria.

3. This Application is brought pursuant to Article 32 (1-5) & Article 33 (1-7); of the Rules of the Community Court of Justice, Article 11 (1-2) of the Community Court of Justice Protocol, Article 10 of the Supplementary Protocol, Article 1, 2, 4, 9, 16, 21, 22, 23 & 24 of the African Charter on Human and People's Rights (ACHPR) , Articles 1, 2, 3, 6 & 8 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 1, 2, 3, 5, 9, 11, 12 & 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

4. NAMES AND ADDRESSES OF THE PLAINTIFF:

Mr. Nosa Ehanire Osaghae, Mr. Jonah Gbemre, Mr. Peter Aiko Obobaifo and Mr. Daniel Ikponmwosa of No. 18 Ezoti Street, Off Airport Road, Benin City, Edo State, Nigeria.

5. DESIGNATION OF THE DEFENDANT:

Federal Republic of Nigeria

6. SUBJECT MATTER OF PROCEEDINGS:

Violation of the Plaintiff's fundamental human, civil, social and economic rights and that of the Niger Delta people of Nigeria.

7. FACTS AS PRESENTED BY THE PLAINTIFFS

The 1st to 4th Plaintiffs are citizens of the Federal Republic of Nigeria and reside at no. 18, Ezoti Street, off Airport Road, Benin City, Edo State.

The Defendant is a Member State of the ECOWAS and a signatory to the Revised Treaty establishing the ECOWAS.

The 1st Plaintiff who is from Edo State avers that he has suffered marginalization from the Defendant and its agents in the Niger Delta region. The 2nd Plaintiff is from Delta state and claims to be a victim of injustice being perpetrated by crude oil exploration/mining companies arising from crude oil spills, gas flaring and environmental degradation. The 3rd Plaintiff is from Edo State and avers that he is a victim of apparent destruction of communal fishing water in the Niger Delta region by oil companies. Lastly, the 4th Plaintiff from Edo State claims to be a victim of

unlawful takeover of communal natural resources and environmental degradation. The Plaintiffs are suing for themselves and on behalf of the Niger Delta people of Nigeria.

The Plaintiffs claim that the core Niger Delta Region of Nigeria made up of 6 States in the South-South Geopolitical Zone namely: Edo, Delta, Bayelsa, Rivers, Akwa Ibom, and Cross River States are perpetually under serious environmental attack by the agents and companies purportedly holding Oil Mining Lease (OML) granted to them by the Defendant. That they have been faced with unprecedented degradation, destruction, poisoning, and pollution of the environment through crude oil spills and gas flaring thereby destroying their social and economic life. The spills have destroyed Farmlands and Rivers which is the only source of clean drinking water and also used for fishing.

The Plaintiffs further state that the indigenous Communities where these oil and gas explorations are carried out have no input whatsoever in the way and manner the explorations are carried out based on the undemocratic, unlawful, oppressive, repressive, abusive, and discretionary use of Constitutional laws imposed on the underdeveloped and impoverished indigenous owners of the land.

The Plaintiffs state that the gas flaring and exploration are done in ways and manner injurious to the Niger Delta region environment thus making such environments a death trap that has led to indiscriminate killings and brutal massacres by the military of thousands of innocent indigenes including old men, women, and children. This

precipitated militant retaliatory attacks by the heavy armed indigenous youths against the Defendant and the oil companies.

The Plaintiffs further aver that the Defendant has fraudulently awarded oil and gas mining licenses/leases to both indigenous and non-indigenous firms some of whom have no prior experience or qualification in the upstream oil production and are even co-owned by a single individual with some of their family members, friends and associates. Some of the licenses were awarded for a long period of up to 20 years. The Plaintiffs state that this has not been done in accordance with the legal requirements.

That the award of such contracts are lopsided, do not follow due process, and are evidently biased as most owners of the oil blocs are Northerners and Westerners while the Southerners have not been given any opportunity to benefit from what rightfully belongs to them.

That the allocations were based on tribalism, nepotism, favoritism and frivolous whims and thus gives notice to the Defendants to produce a detailed information on how oil blocs mining leases were awarded, and also documents showing how and when the indigenous oil companies were incorporated, the incorporation documents as well as values of each shareholder.

That the Defendant has perfected its plans to once again corner the impoverished and poverty stricken people of the Niger Delta by unilaterally renewing these same oil blocs licenses without recourse to the impact and damage the activities of the

crude gas explorations have done and are still doing to the Niger Delta. The Plaintiffs further state that the Defendant has failed or neglected to reduce the frequent incidences of crude oil spills and gas flaring that have killed or incurred health hazards to thousands of people in the Niger Delta.

That the above acts complained of constitute a violation of their fundamental human, civil, social and economic right of ownership, use and benefit of the natural resources in their ancestral land. The Defendant has overlooked the apparent inhuman suffering and recurrent deaths occasioned by ill-health caused by severe damage to the environment in the oil producing communities. That unless the Defendant is restrained from renewing the already expired oil mining blocs exploration licenses, the people of the Niger Delta shall continue to suffer from these crude oil exploration activities.

Whereupon the Plaintiffs filed this application seeking for the following orders:

- i) **A DECLARATION:** that the unilateral allocation of Crude Oil Blocs to private Nigerians and their firms by the Federal Government of Nigeria in total disregard to the people of the communities in whose lands the crude oil is located is unlawful and same violates their Fundament Rights as entrenched in Article 21, 22 & 24 of the African Charter on Human and Peoples Rights (ACHPR); Article 1 (1-3) of the International Covenant on Civil and Political Rights (ICCPR); and Article 1 (1-3) & 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

ii) **A DECLARATION:** that the unbridled crude oil exploration, gas flaring and resultant pollution and deaths of people in the Niger-Delta region in the past 30 years which has led to severe environmental degradation and destruction without proper steps being taken by the Federal Government of Nigeria to prevent same is unlawful and a clear violation of their Fundamental Rights to life, and the dignity of Nigerians living in the oil producing areas of the Niger-Delta Region, Right to Self Determination, Right to healthy Environment and same is contrary to the provisions of Article 1, 2, 4, 16 & 24 of the African Charter on Human and Peoples Rights (ACHPR); Article 1 & 6 of the United Nation's International Covenant on Civil and Political Rights (ICCPR); Article 1 & 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

iii) **AN ORDER:** directing the Federal Government of Nigeria to immediately declare a **MORATORIUM** on all oil blocs transactions by suspending or ceasing all onshore and offshore Oil Blocs acquiring, awarding, leasing, renewing, prospecting, buying and selling in any form whatsoever pending the hearing and determination of the substantive matter (ACHPR: Article 1 & 21.2).

iv) **AN ORDER:** mandating the Federal Government of Nigeria to re-allocate the ownership of all onshore and offshore oil blocs in the Niger Delta region back to the indigenous oil communities (ACHPR: Article 21 & 22) & (ICESCR Article 11).

v) **AN ORDER:** directing the Federal Government of Nigeria to immediately pay remedial environmental damages for an immediate clean up exercise in the oil polluted Niger Delta region to the tune of **\$30 billion** for the excess of **9 million barrels of spilt crude oil** in the Niger Delta region and for hazardous gas flaring over the last fifty years of oil exploration and exploitation in the Niger Delta region (ACHPR: Article 1, 21 & 24;) & (ICESCR Article 12).

vi) **AN ORDER:** mandating the Federal Government of Nigeria to facilitate an enabling environment for the people of Niger Delta in actualizing their innate desire, yearning, cry, call and demand for the conduct of a **SELF-DETERMINATION REFERENDUM** for the over 30 million people of the Niger Delta region who are impoverished, deprived, aggrieved, and who are unlawfully and unjustly being marginalized by successive Federal Governments of Nigeria since independence till date (ICCPR & ICESCR: Article 1.1, 1.2 & 1.3).

8. The Defendant being out of time to file its defense, filed an application for extension of time dated 10/12/15 to which it attached its defense. Defendant averred that the nature of the case necessitated the need to liaise with other Government agencies for the defense hence their being out of time. On 15/12/15, the Defendant filed a preliminary objection challenging the jurisdiction of the court on the following grounds:

- The Plaintiffs have no locus standi to institute this suit;
- The Plaintiffs' are faceless people without identity;

- Some aspects of the Plaintiffs claim are res judicata while some are statute barred;
- The Plaintiffs suit is speculative and does not disclose a reasonable cause of action;
- The suit constitutes an abuse of Court process;
- That there's a feature in the Plaintiff's suit which robs this court of jurisdiction, and
- That the subject matter of the Plaintiff's suit a subject of their domestic court.

In defence to the Plaintiffs Application, the Defendant denied each and every material allegation of fact contained in the Plaintiffs' application and puts the Plaintiffs' to the strictest proof of those facts.

Defendant further states that the facts relied upon by the Plaintiffs are false and made with the sole intention of misleading the court. That the award of operation license in the oil sector in Nigeria is done in compliance with global standards and are not made to individuals or families but to companies with requisite experience in the operation of oil business. That the award of oil blocs are done in line with the relevant laws regulating the operations of the oil sector and that the procedure for the issuance and renewal of licenses is prescribed by law.

That the Petroleum Act of the Federal Republic of Nigeria has laid down guidelines on the necessary requirements needed before license is granted and the agency charged with the issuance of license complies with the due process. That the

Plaintiffs failed to indicate any company that applied and was refused license on the ground that it comes from the Niger Delta.

The Defendant admitted that there are companies who exercise their right of renewal of the mining lease but that the treaties and laws the Plaintiff relied upon only confirms the ownership by the Defendant of her land and resources found within her boundaries. The Defendant added that the revenue derived from its resources are shared between the three tiers of Government in compliance with the formula for distribution spelt out in the 1999 Constitution.

The Defendant contends that in compliance with the provisions of its constitution, the Plaintiffs have representatives both in the senate and House of Representatives, and by virtue of their representation, the Plaintiffs lack the requisite standing to sue for and on behalf of the alleged 6 states.

That the Federal Government of Nigeria only oversees the oil sector but all the revenue accruable to the federation account from this sector is shared to all the three tiers of government in accordance with the laid down law after paying 13% derivation to oil producing states who also benefit from the remaining 87%.

On the issue of environmental degradation, the Defendants aver that it is their responsibility to prevent degradation of land in oil producing states. That it has made tremendous efforts and it is still putting more resources in the reclamation of land, water, and air composition of the affected communities. That recently, in line with her internal, regional and international obligation, the government released the sum

of N10, 000,000,000.00 (Ten Billion Naira) for the reclamation of Ogoni land as part of ongoing mechanisms to curtail oil pollution in the affected communities. They have also created a Niger Delta Corporation and the Ministry of Niger Delta which in partnership with the oil companies, international organizations, agencies, both private and public are working to reduce gas flaring, oil pollution, degradation of land, air and water pollution amongst others. That this is apart from the 13% derivation benefit from the National Revenue that is paid to the oil producing communities, and other forms of royalties the oil companies pay the affected communities i.e. the fees, tax, duties, and levies paid to the affected states.

The Defendant state that the issue of degradation is a collective problem which does not just affect a single community. On the notice given to the Defendant by the Plaintiffs to produce certain agreements entered into with various companies, organizations and corporations, the Defendant states that it is not a registry or a depository of agreements and can therefore not produce what is not in its possession.

Finally, the Defendant submits that the Plaintiffs are not entitled to reliefs relating to the right to self-determination as same can only be achieved by a referendum called by the National Assembly and not the court. As to the monetary reliefs sought, the Defendant submits that the Plaintiffs are not entitled to same having failed to pin point any victim of the oil pollution and urged the court to dismiss this suit in its entirety.

9. ANALYSIS OF THE COURT.

From the foregoing, the issues were joined between the Plaintiffs and the Defendant bordering on violation of the Plaintiffs right to self- determination, the right to the management of their resources among others. The cases raises issues on preliminary and substantive issues. Consequently, the Court will consider them in that light.

9.1: PRELIMINARY OBJECTION

In deciding on the preliminary objection raised by the defendant, this court has to consider the following issues:

1. Whether this application as conceived and constituted can be entertained by this court.
2. Whether the Plaintiffs have disclosed a reasonable cause of action

9.2: SUBSTANTIVE APPLICATION

Whether from the facts presented, the Plaintiffs have led sufficient evidence to substantiate their claims against the Defendants

9.3: ON WHETHER THE APPLICATION AS CONCEIVED AND CONSTITUTED CAN BE ENTERTAINED BY THIS COURT.

Whereas the Plaintiffs allege a violation of their human rights as enshrined in Articles 1, 2, 4, 9, 16, 21, 22, and 24 of the African Charter on Human Peoples Rights (ACHPR), Article 1 of the International Covenant on Civil and Political Rights

(ICCPR), and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Defendant submits that this court lacks the jurisdiction to entertain this suit on grounds of the plaintiffs lack of standing and identity, res judicata, lack of reasonable cause of action, and that the suit constitutes an abuse of process of the court.

In purported response to the Defendants objections, the Plaintiffs submit that the Defendant is treaty bound by international law to acknowledge and recognize that the Niger Delta people are the de facto, natural and legitimate owners by birthright of the Niger Delta land with all its antecedent natural resources. That this inalienable and incontestable fundamental human right is absolutely sacrosanct and guaranteed by the International Law Treaties, Charters and Covenants. That their application is perfectly in accordance with the Court's Protocol, Rules of Procedure, and the Revised Treaty. That the objections raised by the Defendant are just legal technicalities. The Plaintiffs further state that the Defendant is in serious breach of its Treaty obligations in the ceaseless, incessant and relentless violations of the Human rights of the Niger Delta people for decades.

The plaintiffs failed to address the issues raised by the defendant in the preliminary objection. This court in its inherent jurisdiction to do justice at all times will however proceed to analyze the issues raised in line with the facts presented by the plaintiffs in the initiating application. This is more so as jurisdiction is determined from the facts presented in a Plaintiffs application and not from the defence.

The facts as presented by the Plaintiffs is that they are victims of marginalization, injustice perpetrated by crude oil exploration/mining, crude oil spills, gas flaring, environmental degradation, apparent destruction of communal fishing water and land, and unlawful take-over of communal and land resources. They relied on Articles 1, 19, 20, 21, 22, 23 and 24 of the African Charter in which they claim that their economic, social and cultural rights, and the right to self-determination have been violated by the Defendants.

On the Plaintiffs standing to institute this action a careful perusal of the facts shows that the Plaintiffs claims are in two parts. On one part the Plaintiffs allege personal injuries/violations of their rights by the Defendant while on the other part they allege violation of the rights of the peoples of Niger Delta. The Plaintiffs action are first for themselves and secondly on behalf of the people of Niger Delta. To properly address the issue of Plaintiffs standing these two prongs will be addressed separately.

The term *locus standi* connotes the interest a party has in the subject matter of litigation before a Court .Generally to be granted audience by a Court, a party must prove sufficient interest in the subject matter. There is however the exception here in cases of action popularis where by duly constituted NGOS and public spirited individuals are given access without the requirement of personal interest.

As regards the allegation of personal injuries caused the Plaintiffs due to crude oil spills, gas flaring, environmental degradation and pollution of communal fishing

water, these allegations fall within the ambit of internationally protected rights which if substantiated will amount to violations of human rights.

By virtue of Articles 9(4) and 10(d) of the Supplementary Protocol this Court has jurisdiction to determine cases of violation of human rights that occur in any Member State and individuals have direct access to it for application for relief for violation of their human rights.

In *Serap V. Federal Republic Of Nigeria & 4 ors, (2014) ECW/CCJ/JUD/16/14 (unreported)*, the Court held that the mere allegation that there has been a violation of human rights in the territory of a member State is sufficient prima facie to justify the jurisdiction of this Court on the dispute, surely without any prejudice to the substance and merits of the complaint which has to be determined only after the parties have been given the opportunity to present their case, with full guarantees of fair trial.

In *Bakary Sarre & 28 ors Vs. Senegal (2011) (unreported) Pg. 11, Para. 25*, the Court held that its competence to adjudicate in a given case depends not only on its texts, but also on the substance of the Initiating Application. The Court accords every attention to the claims made by the Applicants, the pleas in law invoked, and in an instance where human right violation is alleged, the Court equally carefully considers how the parties present such allegations.

Similarly in *El Hadji Aboubacar Vs. BCEAO & Rep. of Niger (2011) CCJELR (unreported) pg. 8, Para 25*, the Court found that for an application to be admissible in matters of human rights, the mere citing of the facts connected with such description suffices to confer competence on it.

The Court therefore looks to find out whether the human right violations as observed, constitute the main subject matter of the application and whether the pleas in law and evidence adduced if proven will establish such violations. The invocation of facts which fall in line with the subject matter is sufficient on its own to establish its competence on human right matters.

Applying the above authorities in relation to the facts of this case, and in the absence of anything to the contrary, this matter falls within the ambit of the Court's jurisdiction and the Plaintiffs who allege violation of their rights have the right to bring same for adjudication. The Defendant's objection in this regard is therefore not tenable.

The second arm of Plaintiffs allegation is on the alleged infringement of the rights of the peoples of Niger Delta. Human rights are human centered and the admissibility of an application is linked among other criteria to the status of the victim. This condition necessarily entails the Applicant, acting on personal grounds as a result of a legally protected injured interest, or in a representative capacity, having the mandate to act on behalf of an identifiable group whose legally protected interest have been harmed.

Where a petition is submitted on behalf of a victim, it must be with their consent, unless submitting it without their consent can be justified. Such justification would be the case of serious or massive violations pursuant to article 58 of the African Charter or a documented and well-reasoned problem for the victims in doing so themselves.

In *Aumeeruddy-Cziffra and Others v. Mauritius (Communication No. R.9/35) 9 April 1981*, the United Nations Human Rights Committee pointed out that to bring an Application before it, an individual must be 'actually affected' by the act complained of and that 'no individual can in the abstract, by way of *actio popularis*, challenge a law or practice claimed to be contrary to the Covenant'.

For the Plaintiffs to access the court for and on behalf of the people of Niger Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent. This is different where the Application is brought by an NGO. While the NGO's enjoy a wide range of access to Court on behalf of individuals, the individuals on the other hand have access mainly in their personal capacity on alleged human rights violations and approaching the Court in a representative capacity requires authorization.

In *Mikmaq V Canada Communication No. 78/1980, views adopted on 29th July 1984*, where a communication was brought by a representative of the Mikmaq tribal society who claimed that Mikmaq peoples' right of self-determination had been

violated by Canada. The Committee held that the complaint was inadmissible on the basis of lack of locus standi of the tribe's representative- in light of failure of the Grand council, in its legal entity, to authorize the author.

In *Serap V. Federal Republic Of Nigeria, (2012) CCJELR unreported*, where the Plaintiff, an NGO, filed the action on behalf of the People of Niger Delta, against the Federal Republic of Nigeria, the Defendants challenged the Plaintiffs locus on the grounds that the application was filed without the prior information, accord and interest of the people of Niger Delta and that Serap acts in its own name with no proof that it is acting on behalf of the People of Niger Delta, the Court held that the NGO known as SERAP has the locus standi to institute this action.

Relating this to the instant case, it is important to distinguish the capacity upon which the parties act, i.e. as non-natural and natural persons. While in SERAP supra, the Plaintiff by virtue of its registration under the Laws of Nigeria is recognized to represent the People of Niger Delta without the need to produce any proof of authorization. The Plaintiffs in this case are natural persons claiming to appear on behalf of the People of Niger Delta without authorization. The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.

The Niger Delta is so vast that an action brought for and on behalf of the said people without authorization sounds questionable. The Plaintiffs have failed to attach a mandate if any, given to them to clear the air in this regard. Above all no proof that the Niger Delta Region is a "people" within the context of the right of self –

determination. The term is merely a coinage for administrative purposes and that does not qualify them as a people to which the right of self- determination in international law can be claimed.

In *Bakary Sarre & 28 Ors V. The Republic Of Mali (2011) CCJELR, pg. 72, para 38*

where the Applicant claimed to act for and on behalf of a group of people vide a power of attorney, the Court noted that the said power of attorney which carried a joint representation does not vest powers on the Applicant to act on behalf of the group. The Court therefore held that the Applicant does not have the locus standi to lodge the complaint.

In Bakery's case, the Court stressed that the criteria for representation must be respected. A party authorized to act on behalf of another person or for a group of people shall exercise the power of representation in such action by virtue of the vested power.

For an application of this nature to succeed, the victims must be identifiable, and the representatives must present a mandate from the said victims authorizing them to act on their behalf. Where it is impracticable to obtain a mandate, the representatives must give reasons why it is so impracticable.

In view of the foregoing, The Court is of the view that the Plaintiffs lack the locus standi to act on behalf of the people of Niger Delta.

ON RES JUDICATA

The Defendant again contends that some aspects of the Plaintiffs claim are **res judicata** and thus prohibits the Court from entertaining same.

The doctrine of res judicata simply states that once a matter/cause has been finally determined, it is not open to either party to re-open or re-litigate that same matter.

A matter is said to be **res judicata** if it has already been adjudicated upon by a competent Court. This prevents it from being pursued further by the same parties. Res judicata precludes the continued litigation of same issues between the same parties. The matter cannot be raised again either in the same Court or in a different Court. In other words, for a plea of res judicata to be sustained, both the subject matter and parties must be the same.

In the instant case, the Defendant is challenging the admissibility of the suit on the grounds that part of the claims of the Plaintiffs have already been decided upon by this Court in the case of *Serap V. FRN. (2012) CCJELR (unreported)*.

A comparative analysis of the instant case and SERAP supra, shows that though the claims are similar in nature, the reliefs sought are not the same. Particularly, the parties in both suits are not the same.

The rule on res judicata is clear and unambiguous and therefore not applicable in this case. An argument on res judicata can only be upheld if it is established that the case brought before the court is essentially the same as another which has been

adjudicated upon by another competent Court. In other words, the parties are the same, the subject matter is same and had previously been litigated upon.

In *Aliyu Tashoku V. FRN, ECW/CCJ/RUL/12/12, (unreported)*, The Court was of the view that the argument concerning res judicata can only succeed when it is established that the Application brought before it is essentially the same as another one already satisfactorily decided upon before a competent Domestic Court or an International Tribunal.

The Defendant has failed to establish that this case has been satisfactorily decided by a National Court. They have also failed to prove that the Application brought before the Court is essentially the same as that of SERAP i.e. in terms of the subject matter and parties.

From the foregoing, the issue of res judicata does not apply to the instant case and therefore fails.

ON Pendency of suit before a Domestic Court

The Defendant in challenging the jurisdiction of this Court argues that there is a pending case on the same subject matter before its Domestic Court.

Article 10 (d) of the Supplementary Protocol provides:

Access is open to individuals on application for relief for violation of their human rights; the submission of Application for which shall:

- i) Not be anonymous; nor

- ii) Be made whilst the same matter has been instituted before another international Court for adjudication.

This Court has repeatedly stated that the pendency of a case before a Domestic Court does not oust its jurisdiction to entertain a matter. As long as the matter is not before another International Court, this Court has the competence to entertain same.

In Valentine Ayika V. Republic Of Liberia (2011) CCJELR, pg. 237, para 13, the Court held that the Supreme Court of Liberia and for that matter any other Court in Member States does not qualify as international court within the meaning of Article 10 (d)(ii) of the Protocol as amended.

ON WHETHER THE PLAINTIFFS HAVE DISCLOSED A REASONABLE CAUSE OF ACTION

The Defendant further contends that the Plaintiffs have not disclosed any reasonable cause of action.

A cause of action is a set of facts sufficient to justify a right to sue. It must contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto.

The term “**cause of action**” was defined in McKenzie v Farmers’ Co-operative Meat Industries Ltd 1922 AD 16 at 23 as “...*every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each*

fact, but every fact which is necessary to be proved." See also Mousa Leo Keita (2004-2009) CCJELR pg. 75

See also *Afolayan V. Oba Ogunrinde & 3 ORS, (1990), 1 NWLR, (Pt. 127) 369 @ 371. SCNJ 62. Where Karibi-Whyte JSC* stated that a cause of action means: a) "A cause of complaints; b) A civil right or obligation for the determination by a Court of law; c) A dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine"

The crux of this application is the plaintiffs' allegation of crude oil spills, gas flaring, environmental degradation, destruction of communal fishing water and unlawful takeover of their communal natural resources by the Defendants. The above are issues and elements suggestive of rights violation.

The object of pleading is to ascertain with precision the issue between the parties. The facts alleged by the plaintiffs as summarized above are precise and discloses a reasonable cause of action which if established will entitle them to the reliefs sought. The argument of the Defendant on this ground therefore fails.

SUBSTANTIVE ISSUES

On the substance of the Application this Court has to determine whether from the evidence presented, the Plaintiffs have substantiated their allegations against the Defendant as to entitle them to the reliefs sought.

The Plaintiffs allege that their economic, social and cultural rights as well as their right to self-determination have been violated due to environmental degradation. The Plaintiffs also allege that the allocation of oil mining lease licenses by the Defendants are lopsided. Plaintiffs placed reliance on Articles 1, 19, 20, 21, 22, 23 and 24 of the African Charter. The provisions of these articles are summarized below:

Article 1 provides for the recognition by Member States of all the rights enshrined in the Charter, and adoption of means to give effect to them.

Article 19 provides for the equality of **all peoples**, having the same rights and not to be dominated by other people.

Article 20 provides for the right to existence of **a people**, their self-determination as well as economic and social development.

Article 21 guarantees the rights of **all peoples** to freely dispose their wealth and natural resources, recovery in the case of spoliation and dispossession, and the right to be fully compensated.

Article 22 makes provisions for **peoples** right to economic social and cultural development with due regard to their freedom and identity and the equal enjoyment of the common heritage of mankind.

Article 23 provides for **all peoples'** right to international peace and security, while Article 24 provides for **all peoples** right to a general satisfactory environment favorable for their development.

It is important to note that the rights guaranteed under the African Charter are categorized. While one part strictly protects individual rights, the other part protects collective rights.

The combined purport and intendment of articles 19 to 24 as can be inferred from the above is the protection of peoples' collective rights as against individual rights. In other words these articles refer to collective rights belonging to a people as against personal right. *In Kemi Penheiro SAN V. Republic of Ghana, ECW/CCJ/JUD/11/12 (2012) (unreported)*, where the Applicant alleged the violation of Articles 20 and 22 of the African Charter, the Court stressed that it is opinio juris communis that the rights referred to in Articles 19-24 of the African Charter are rights of (all) "peoples" in contrast to the rights of "every individual", "every human being", or "every citizen" proclaimed in Article 2-17.

Self-determination on its own denotes the legal right of a people to decide their own destiny in the international order. Under the United Nations Charter and the International Covenant on Civil and Political Rights, self-determination is protected as a right of "all peoples." It refers to the rights of people indigenous to an area to determine their destiny. Indigenous peoples' rights are collective rights. In other words, they are vested in indigenous persons that organize themselves as peoples. With the adoption of the UN Declaration on the right of indigenous people, the international community clearly affirms that indigenous peoples require recognition of their collective rights as peoples to enable them to enjoy human rights.

For the Court to determine whether or not a violation of the Charter has occurred, it must have access to credible evidence and information on the alleged violation. The burden of presenting this evidence is on the Plaintiff as he stands to fail if no such evidence is adduced.

In *Petrostar (Nigeria) Limited V. Blackberry Nigeria Limited & 1 or (2011) CCJELR*, the Court in its consideration reiterated the cardinal principle of law that “he who alleges must prove”. Therefore, where a party asserts a fact, he must produce evidence to substantiate the claim.

It is not sufficient simply to challenge a law or State policy or practice in the abstract (*actio popularis*) without demonstrating how the alleged victim is individually affected. The complaint must be sufficiently substantiated. See *Aumeeruddy-Cziffra and Others v. Mauritius* (Communication No. R.9/35) 9 April 1981 decided in the African Commission on Human and People’s Rights.

Environmental issues such as the ones alleged in this case can impact on individuals and communities enjoyment of fundamental rights including the right to health, the right to adequate standard of living, the right to self-determination, and the right to life itself. These are rights which are guaranteed under international human rights instruments in relation to which the state bears certain responsibilities. However, these responsibilities cannot be borne by the state unless the party alleging the violation discharges his burden of proof.

The Plaintiffs failed to adduce evidence to support their allegation. They did not attach any photograph, or expert report to show the extent of the said degradation and its negative impact on them personally.

In *Kemi Penheiro SAN V. Republic of Ghana, supra*, where the Applicant alleged the violation of Articles 20 and 22 of the African Charter, the court held that the plaintiff as an individual has failed to specify how he became the bearer or the holder of those rights and how the rights have been violated by the Defendant.

In *Bordes and Temeharo v. France Communication No. 645/1995, U.N. Doc. CCPR/C/57/D/645/1995 (1996)*, where the claimants attempted to place the burden of proof on the Government, the United Nations Human Rights Committee found the case inadmissible on the ground that the claimants did not qualify as victims of a violation.

The Committee further held that the Applicants had not substantiated their claim. Thus, the lack of scientific certainty coupled with the burden of proof on the Applicants, limited the claimants' ability to obtain relief through human rights proceedings.

The Plaintiffs have failed to establish personal injury to their persons as to entitle them to the reliefs sought under this head.

As to the award of oil mining leases, the Defendants denied the Plaintiffs allegation and states that the award are done in compliance with the due process in its National

Laws. The Plaintiff failed to lead any evidence or establish with specificity that any of them applied for the said mining license and was denied on the sole reason that he is from the Niger Delta. They thus failed to discharge the evidential burden of proof necessary to establish their allegation. Above all the Defendants acted within the purview of its Domestic Law which this Court lacks competence to question same in situation that its provisions have the effect of violating the rights of the Plaintiffs.

In Front for Liberation of the State Of Cabinda V. Republic Of Angola 5th November 2013, ACHPR, 328/06, 54TH Ordinary Session, where the Plaintiffs brought the application on behalf of the People of Cabinda on alleged violations of Articles 19, 20, 21, 22 and 24 of the African Charter, by infringing on their rights to natural resources, authorizing exploitation activities that did not favor the development of the people of Cabinda and allowing companies to operate in manners that are harmful to the environment and human health. The Commission held that the complainant failed to adduce evidence to support that the people of Cabinda were treated unequally in comparison to other people in Angola in violation of Article 19 of the Charter.

By virtue of its independence, Nigeria remains an indivisible and indissoluble state. With regards to the ownership of land, Section 1 of the Land Use Act 1978 vests all land in the Government of Nigeria to hold such Land in trust and administered for the common benefit of the people and would be responsible for allocation of land in

all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes.

In the Cabinda case above, the Commission made a distinction between indigenous rights to land that warrant special protection, and other rights to land, which can be legitimately limited by the state on public interest grounds.

In **Balmer-Schafroth & Ors V. Switzerland 1997 IV ECHR** Judgment of 26th August 1997, where the Applicants argued that they were entitled to a hearing over the Government's decision to renew an operating permit for a nuclear power plant, the European Court found that the Applicants had not established a direct link between the operating conditions of the power station and their right to protection of their physical integrity, because they failed to show that the operation of the power station exposed them personally to a danger that was serious, specific and above all imminent. They failed to establish the dangers and remedies with a degree of probability that made the outcome of the proceedings directly decisive for the right they invoked

Assuming that the Plaintiffs have the right to challenge the award of oil mining licenses, they have failed to sufficiently provide evidence to support the facts they bring forth or to buttress the discrimination they claim to have been victims of. They have failed to prove that they actually participated in a bid and were disqualified, neither did they attach any documents to show that they complied with the

requirements for the grant of mining license and were so disqualified on the sole ground that they are from the Niger Delta.

In all, the Plaintiffs case is unmeritorious, and should be dismissed in its entirety.

DECISION:

The Court adjudicating in a public sitting after hearing the parties in the last resort after deliberating according to law:

1. AS TO ADMISSIBILITY:

DECLARES:

- i. That the suit is admissible with regard to the personal rights of the Plaintiffs alleged to have been violated; and all preliminary objections to the suit be dismissed and is hereby dismissed.

2. AS TO THE MERITS

Declares that Plaintiffs case is unmeritorious and should be dismissed in its entirety on the basis of the reasons adduced above.

3. AS TO COSTS:

Parties should bear their own costs.

Dated at Abuja this 10th day of October, 2017.

AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES;

1. Hon. Justice Friday Chijioke Nwoke ----- Presiding

2. Hon. Justice Yaya Boiro ----- Member

3. Hon Justice Alioune Sall ----- Member

Assisted by:

Mr. Tony Anene Maidoh ----- Chief Registrar