

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.

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

HOLDEN AT ABUJA, IN NIGERIA

On Thursday, 19<sup>th</sup> day of May 2016

SUIT No: ECW/CCJ/APP/09/14

JUDGEMENT No: ECW/CCJ/JUD/17/16

“For and on behalf of the Community”

**BETWEEN**

- 1 - KHADIJATU BANGURA
- 2 - FREEMAN, PATRICK D. T.
- 3 - SILLAH, SIDIQUE
- 4 - SAMUEL TURAY
- 5 - Mrs. GLADYS SAWYER & 175 OTHERS

APPLICANTS

Having as Counsels GARBER, Maurice (Esq.),  
Lawyer registered with the Bar in Sierra - Leone,  
AJOMO, Ibukun (Esq.), Lawyer registered with  
the Bar in Nigeria, and whose address for service is  
Akinlawon & AJOMO Law Firm, No. 12  
Odunlami Street, Doreona Plaza, 2<sup>nd</sup> Floor Anthony  
Village, Ikeja, Lagos, Nigeria

**AND**

- 1 - THE REPUBLIC OF SIERRA - LEONE
- 2 - SIERRA NATIONAL AIRLINES

DEFENDANTS

Represented by OSMAN I, KANU (Esq.)  
Dept. of Public Prosecutions, Lamina Sankho Street  
Freetown, Sierra - Leone

**BEFORE THEIR LORDSHIPS:**

<b>Hon. Justice Friday Chijioke NWOKE</b>	<b>: Presiding</b>
<b>Hon. Justice Micah Wilkins WRIGHT</b>	<b>: Member</b>
<b>Hon. Justice Yaya BOIRO</b>	<b>: Judge Rapporteur</b>
<b>Assisted by Mr. Tony Anene – Maidoh, Esq.-</b>	<b>: Chief Registrar</b>

The Court thus constituted delivers the following Ruling:  
The Court,

- Having regard to the ECOWAS Revised Treaty of 24<sup>th</sup> July 1993 on the Economic Community of West African States;
- Having regard to the Protocol of 6<sup>th</sup> July 1991, and the Supplementary Protocol of 19<sup>th</sup> January 2005 on the ECOWAS Court of Justice;
- Having regard to the Rules of the ECOWAS Court of Justice, of 3<sup>rd</sup> June 2002 ;
- Having regard to the Universal Declaration of Human Rights of 10<sup>th</sup> December 1948 ;
- Having regard to the African Charter on Human and Peoples' Rights of 27<sup>th</sup> Jun 1981;
- Having regard to the initiating Application filed by the above - mentioned Plaintiffs/Applicants on 2<sup>nd</sup> June 2014 ;
- Having regard to the Memorial in defence, filed by the above- mentioned Defendants, on 27<sup>th</sup> January 2015;
- Having regard to the annexure, filed in the case file;
- Having regard to the submissions made by Counsels to the parties, during their appearance at the hearings;

- Having regard to the Ruling no: ECW/CCJ/RUL/10/15 dated 3<sup>rd</sup> December 2015, delivered by this Honourable Court

**As to the merit of the case**

**Facts and procedure**

1. Having regard to the exhibits filed, in the present procedure, which revealed that during the course of the year 2005, the National Commission of Sierra - Leone on privatisation proposed the liquidation of *Sierra National Airlines Ltd*, to the Government of Sierra Leone;
2. On 5<sup>th</sup> April 2006, the said liquidation was ordered by the Government; and this decision was adopted by the Parliament on 26<sup>th</sup> September 2006. Following this adoption, the Sierra - Leone Airports Authority inherited equipment and machines, which belonged to the *Sierra National Airlines*, on the condition that the former shall absorb 73 workers of the latter.
3. On 24<sup>th</sup> September 2010, the Ministry of Labour and Social Security calculated both the terminal employment benefits, and the severance pay due to the Plaintiffs/Applicants, all former workers of the *Sierra National Airlines Ltd*, and got a figure of 17.177.644.816, 00 Leones.
4. In the meantime, and especially on 2<sup>nd</sup> August 2010, the State of Sierra - Leone effected payments in favour of Plaintiffs/Applicants, on the condition that each beneficiary shall sign an undertaking that s/he shall not make any further claims.
5. In August 2012, while feeling not satisfied with the settlement that was proposed to them, Plaintiffs/Applicants decided to take the defendants to court, in Sierra - Leone.

6. In December 2013, owing to the delay in the judicial procedure, Plaintiffs forwarded a correspondence to the President of Sierra - Leone, on their claims, but to no avail.

7. On 30<sup>th</sup> June 2014, Plaintiffs filed a case dated 2<sup>nd</sup> June 2014 at the Registry of the Community Court of Justice, ECOWAS, and sought from the Court, the following reliefs:

- A declaration that Defendants have violated their rights, notably their rights to draw salary arrears, pension, and severance allowances due and owed them, in total disregard for the provisions of the African Charter on Human and Peoples' Rights (articles 5, 7, 14 and 15), the Universal Declaration of Human Rights (article 23, paragraph 3) and the Constitution of Sierra - Leone of 1991 (articles 20, 21 and 23, paragraph), which guarantee human dignity, the right to fair hearing, the right to own property and the right to work in equitable and satisfying conditions;
- Consequently, an order that Defendants should pay them the understated amounts of money:
- Le 17.177.644.816,00 together with accrued interests;
- Le 722.755.265,74 together with accrued interests, as allowances due and owed them by the Sierra - Leone Airports Authority;
- Le 230.428.235 together with accrued interests, calculated from October 2009, till date, as compensation for the contributory pension to the NASSIT, which is due to, and owed some of them;
- Enjoin Defendants to respect the instant laws of Sierra - Leone, by paying them the sum of 24.900.000 USD, which represents the counterpart funding from the defunct *Sierra National Airlines Ltd*, which is due and owed them;

- An order on Defendants, to pay each of them, the sum of one million USD, as damages, and further order Defendants to bear all the costs.

8. By Ruling no. ECW/CCJ/RUL/10/15 dated 3<sup>rd</sup> December 2015, the Honourable Court declares as follows: -

*<< The Court,*

*Sitting in a public hearing, in a first and last resort, and after hearing both parties, in a human rights violation matter,*

*As to form*

*Approves* Plaintiffs' decision to withdraw their request seeking a judgment by default, to be entered by the Court, against the Defendants;

*Rejects* the preliminary objection raised by Plaintiffs, seeking the Memorial in defence filed by defendants, to be declared as inadmissible, owing to the justified lateness in filing it;

*Declares* as inadmissible, the rejection to the continuation of the case as raised by Defendants, notably their Application for a stay of proceedings;

*Invites* Counsels to parties to argue their case, on its merit;

*Reserves* its right, as to costs. >>

9. At the external court session held in Abidjan (Republic of Côte d'Ivoire) on 18 April 2016, Plaintiffs/Applicants failed to appear; they neither were represented by their Counsels, unlike the State of Sierra - Leone, which was represented by its Counsel, Barrister Osman I. Kanu, who argued on the merit.

**II – Claims and pleas – in – law by Applicants**

10. Whereas in support of their claims, Plaintiffs/Applicants aver, through their above named Counsels that the termination of their appointments in 2006 was sequel to the bankruptcy and liquidation of their former employer, a state owned company known as Sierra National Airlines;

11. They claim that, at the time of the liquidation of the said state owned company, they incurred great losses in the sense that they lost their means of livelihood, without being compensated substantially, in a way as to make - up for their losses. This situation, according to them, constitutes an infringement upon their socio-economic rights, such as the right to earn compensation (in terms of salary, salary arrears, severance pay, the right to own property...), which are guaranteed under international legal instruments stated above, especially, Article 21 of the Sierra - Leonean Constitution and Article 14 of the African Charter on human and Peoples' Rights.

12. Plaintiffs/Applicants equally claim that Article 27 (a) and (b) of the Statutes of the Defendant company - Sierra National Airlines - provides that: *“Payment of emoluments shall not be unduly delayed, for whatsoever reasons. When the waiting period becomes so long that it has affected years of service, which shall be calculated in arrears, the Employer must base the calculations of emoluments, to cover the whole waiting period.”*, thus, they aver that they are right under the law, to claim, without further delay, all their rights inherent in the loss of their jobs.

13. On this note, Plaintiffs/Applicants conclude by averring that << the significance of this Article is that the severance allowances of all the former workers should be recalculated, and that the salary arrears due and owed them must be revised, by adding at least, an amount of Le 1,000,000,000 (one billion Leones) to each year passed during which there was no payment of severance pay to Plaintiffs/Applicants by Defendants. >>

14. Within the same line of thinking, Plaintiffs/Applicants recall that the common law that is the law subscribed to by the State of Sierra - Leone provides that it is obligatory upon an employer to pay settle any severance pay within reasonable period. They add that the worse scenario is that the refusal to pay severance allowances under reference, apart from being a cruel and degrading act, was likely to have infringed upon the human dignity of their persons (Article 5 of the African Charter on Human and Peoples' Rights.)

15. Also, Plaintiffs/Applicants allege the violation of Article 7 of the said Charter, because their right to be heard by an independent, impartial court, and within reasonable period, was disregarded. This is because according to them, the liquidator, who is supposed to represent the interest of Sierra National Airlines, and its creditors (among whom are Plaintiffs /Applicants in the instant case), equally represents the first Defendant, because his nomination and representation before the national courts of Sierra - Leone were by the leave of the first Defendant;

16. Finally, Plaintiffs/Applicants allege the violation of Articles 5, 7, 14 and 23 of the Universal declaration of Human Rights, and Articles 20, 21 and 23 of the Constitution of Sierra - Leone of 1991, all of which guarantee the safeguard of human dignity, the right to fair hearing, the right to own property, and the right to work in equitable and satisfying conditions;

17. Whereas on their own part, Defendants, namely the State of Sierra - Leone and the Sierra National Airlines, through their Counsel, seek the setting aside of all the claims made by Plaintiffs/Applicants, by arguing that they (Plaintiffs/Applicants) did not avail the Court of any tangible proof, whatsoever, for a human rights violation, within the purview of the international legal instruments that they relied on;

18. Whereas the slowness in the process of the liquidation of Sierra National Airlines was independent of Defendants, but rather, intimately connected to the long administrative and parliamentary procedures;

19. Whereas Defendants equally argue that most of the Plaintiffs/Applicant have been adequately compensated, and that a court pronouncement was made, lately, ordering that those of Plaintiffs/Applicants that are yet to be taken care of, should be fully compensated;

20. Whereas Defendants finally point out that the process of liquidating Sierra National Airlines was initiated, pursuant to a court judgment dated 21 October 2011, and that, on this premise, Sierra National Airlines should not be cited as party to the instant case, because, as a corporate body, it is different from the State of Sierra - Leone.

III - Legal analysis by the Court.

A - On the appropriateness of the claims made by Plaintiffs/Applicants

21. Taking cognizance of the fact that in their initiating Application, filed before the Court, Plaintiffs/Applicants invoke, essentially, the Constitution of Sierra - Leone, Article 27 (a) and (b) of the Statutes of the Defendant known as Sierra National Airlines, and a certain number of international legal instruments, among which are the Universal Declaration of Human Rights, and the African Charter on Human and Peoples' Rights. They also allege the violation of a certain number of civic and socio - economic rights, such as the right to fair hearing, within reasonable period, the right to own property, and the right to just and equitable compensation;

22. The Court finds, straightaway, the irrelevance of the domestic texts invoked by the Applicant, like the citing of the Constitution of Sierra Leone; in principle, the Court restricts itself to examining disputes on human rights violation submitted



before it within the confines of the rules of the international law which the Member States have subscribed to. In other words, it is a consistently held principle that the Court does not handle disputes concerning the domestic law of the Member States of ECOWAS. For illustrative purposes, one may cite Judgment of the Court dated 24 April 2015 on *Bodjona v. Republic of Togo*, §37, where it is clearly stated that: “*...In examining the cases brought before it, the ECOWAS Court of Justice shall refer exclusively to the norms of international law as binding on the Member States which have subscribed thereto.*”

23. It follows therefore that in its analysis, the Court shall set aside every reference made to the Sierra Leone domestic law, be it the Constitution of Sierra Leone; it will rather devote its attention to the international instruments invoked by the Applicants, notably the African Charter on Human and Peoples’ Rights (its Article 5) and of the Universal Declaration of Human Rights (its Articles 5, 7, 14 and 23), which, taken together, do guarantee human dignity, right to fair trial, right to property, and the right to work under fair and satisfactory conditions.

24. In considering the facts of the case, the Court finds that the liquidation process initiated by the State of Sierra Leone does not in any constitute a violation of any of the rights invoked by the Applicants. At any rate, it is established from the proceedings that the liquidation of Sierra National Airlines was ordered in 2006 by the Government of Sierra Leone, and the decision was adopted by Parliament some months after.

25. In 2010, the Ministry of Labour and Social Security of Sierra Leone evaluated the terminal and severance benefits at 17,177,644,816.00 Leones, with the payment to beneficiaries (with the exception of the training personnel of the Sierra National Airlines) completely made on 2 August 2010, and the beneficiaries made to acknowledge receipt of payment, with a pledge to put a definitive end to any existing dispute between them and the State.

26. Whereas it is established from the duly signed attestations, pleaded as “acts of renunciation of any further claim”, under the exhibits of the case-file, that the Applicants, except the said training personnel, had acknowledged that they were totally settled before they made such “renunciation of any further claim” from the Sierra Leone Government.

27. Whereas the acknowledgment of that definitive settlement is clearly mentioned in the Initiating Application dated 2 June 2014 (see paragraphs 19 and 20), even if the Applicants plead further on, without supporting evidence, that they were coerced to establish and sign the said attestations.

28. The Court equally notes that the diligent efforts made by the judicial authorities of Sierra Leone to resolve the dispute among the parties, pursuant to the Sierra Leone High Court Decision of 17 August 2015, which upheld the entitlements due the trainers of Sierra National Airlines who were absorbed by Sierra Leone Airport Authority.

29. Whereas moreover, the said judicial decision, like the one which was dated 21 October 2011 and ordering the judicial liquidation of Sierra National Airlines, is inconsistent with the complaint made by the Applicants, according to which the Sierra Leone judiciary is incapable of rendering a fair judgment in reasonable time. Going by that assertion, it becomes worthy to recall that it was not until 2012 that the Applicants lodged the case in question for the first time before the Sierra Leone judiciary, and less than two years after, on 30 June 2014, to be precise, they brought the matter before the ECOWAS Court of Justice.

30. In sum, it is imperative to notice that the complaints deriving from violation of the socio-economic rights of the Applicants or from their right to fair trial – that their cause be heard in reasonable time or that they work under satisfactory conditions, are neither relevant nor buttressed by concrete and convincing evidence.

31. Supposing even that the Applicants did indeed suffer a denial which is to be restored to them, or that they suffered any other harm as a result of a termination of the contract with Sierra National Airlines, such denial or prejudice may not necessarily be construed as “a human rights violation”, since this latter concept is more precise and makes reference to a specified catalogue of prerogatives.

32. From the foregoing, it shall be justified to dismiss the complaints filed by the Applicants against the Defendants as baseless.

33. In terms of involving Sierra National Airlines in the dispute between the Parties, the Court is always guided by its time-held traditional principles which has been guiding its jurisprudence. The Court has always held that human rights protection is the exclusive preserve of States, and the Court has thus expressed this position in numerous decisions it has had to make, including the one delivered on 8 November 2010 in *Mamadou Tandja v. Republic of Niger*, where it declared that, it is a general principle that procedures of human rights violation are brought against States, and not individuals. Indeed, that the obligation to respect and protect human rights lies on States.

34. Hence, Sierra National Airlines must be exonerated from every blame.

#### **On the claim of compensation made by Plaintiffs/Applicants**

35. Whereas Plaintiffs/Applicants did not bring any proof, in support of their claim on the violation of their human rights, for which they could be victims;

It follows that the Court shall reject their claim on compensation.

#### **3- As to costs**

36. Whereas Plaintiffs/Applicants have succeeded in their case, and that there is need to award costs, pursuant to the provisions of Article 66 of the Rules of procedure of the ECOWAS Court of Justice

## For these reasons

**The Court,**

Sitting in a public hearing, in a first and last resort, and after hearing both parties, in a human rights violation matter,

*As to form*

**Declares** as admissible, the Application filed by Plaintiffs/Applicants

*As to merit*

**Declares** that Defendant Sierra National Airlines should not be cited as party to this case

**Declares** that the claims made by Plaintiffs/Applicants are not founded

Consequently, **strikes out** all the claims made by Plaintiffs/Applicants

**Orders** Plaintiffs/Applicants to bear all the costs

Thus made and adjudged in Abuja, the seat of the Court on the day, month and year as stated above

And the following have appended their signatures

**Hon. Justice Friday Chijioke NWOKE : Presiding**

**Hon. Justice Micah Wilkins WRIGHT : Member**

**Hon. Justice Yaya BOIRO : Judge Rapporteur**

**Assisted by Tony Anene - Maidoh (Esq.) : Chief Registrar**