



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

**HOLDEN AT ABUJA, NIGERIA**

**SUIT NO: ECW/CCJ/APP/13/14**

**JUD. NO. ECW/CCJ/JUD/ 22 /18**

**BETWEEN**

1. CHIEF DAMIAN ONWUHAM (ALABEKE)
2. MRS. THERESA ONWUHAM
3. MRS. LIVINA ONWUHAM
4. MR. ANTHONY CHUKWUMEKA ONWUHAM
5. MRS. OZIOMA ONWUHAM
6. KAMJIKA ONWUHAM
7. MRS. JOY ONWUHAM
8. MR. MBADIWE ONWUHAM
9. MRS. ULUNMA
10. MR. BEN ONWUHAM
11. MRS. IFEOMA ONWUHAM
12. MR. CHINEDU ONWUHAM
13. PRISCA ONWUHAM
14. CHIADI ONWUHAM (AGE: 12 YEARS)
15. CHUKWUDI ONWUHAM (AGE: 14 YEARS)
16. CLINTON ONWUHAM (AGE: 9 YEARS)
17. CHIBUEZE ONWUHAM (AGE: 12 YEARS)
18. CHIDIEBERE ONWUHAM (AGE: 10 YEARS)
19. CHIDINMA ONWUHAM (AGE: 8 YEARS)
20. CHIZITARA ONWUHAM (AGE: 2 YEARS)
21. EMMANUEL ONWUHAM (AGE: 2 YEARS)
22. OYIBO ONWUHAM (AGE: 17 YEARS)
23. ABOY ONWUHAM

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**AND**

1. FEDERAL REPUBLIC OF NIGERIA

2. IMO STATE GOVERNMENT

} RESPONDENTS

Before their Lordships:

Hon. Justice Friday Chijioke Nwoke - Presiding

Hon. Justice Yaya Boiro – Member

Hon. Justice Alioune Sall- Member.

**Assisted by Athanase Atannon ----- Assistant Chief Registrar**

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Federal Ministry of Justice

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## **FACTS OF THE CASE**

The Applicants are Nigerian Citizens, members of one family and reside in Imo State, Nigeria.

The 1<sup>st</sup> Applicant is the head of the family of all the Applicants.

The 2<sup>nd</sup> – 21<sup>st</sup> Applicants are the wives, children, in-laws and grandchildren of the 1<sup>st</sup> Applicant respectively.

The 1<sup>st</sup> Respondent is a Member State of the Economic Community of West African States (ECOWAS) and a signatory to its Treaties, Protocols, Directives and Regulations as well as the Universal Declaration on Human Rights, African Charter on Human and Peoples Rights, and the International Covenant on Civil and Political Rights.

The 2<sup>nd</sup> Respondent is a component State of the 1<sup>st</sup> Respondent.

The Applicants' filed this action against the Respondents for the violation of their right to dignity, right to property, right to fair hearing and effective investigation.

The Applicant's aver that the Respondent through its agents arbitrarily demolished its 15 bedroom flats with 2 sitting rooms, 6 bedroom flats with a sitting room and a 7 bedroom flats with a sitting room. That the demolition was carried out without fair trial or in furtherance of a Court order.

That on the 19<sup>th</sup> of December 2012, agents of the 2<sup>nd</sup> Respondent came into the 1<sup>st</sup> Applicant's compound with 5 Toyota Hilux trucks filled with men armed with various types of guns who were ushered in by 2 persons that pointed out the 1<sup>st</sup> Applicants son as a suspect in a kidnap case being handled by the 2<sup>nd</sup> Respondent's security network. They handcuffed the 1<sup>st</sup> Applicants son and asked him to take them to his room where they brought out all of his belongings and burnt them right in front of the 1<sup>st</sup> Applicants house, after which he was bundled and taken away. The Applicants have up to the time of filing this suit not been allowed to see him and the alleged suspect has still not been charged to any court for trial.

That on the 12<sup>th</sup> of April, 2014 in the morning, agents of the Respondents' went to the 1<sup>st</sup> Applicants house again, led by the same persons who previously accompanied them with a Hilux and a bulldozer, and demolished the 1<sup>st</sup> Applicants 3 units of detached bungalows, one 6 bedroom flat with a sitting room, one 7 bedroom flat with a sitting room and one 15 bedroom flat with two sitting rooms of which all their household items, furniture, electronics, clothing, certificates, landed documents, receipts, farm tools, traditional chieftaincy beads and Regalia, one complete small scale palm oil press plant, and cash crops were all destroyed.

The Applicant's aver that the Respondent's failed to carry out investigations on the owner of the landed property before demolishing same and that they have not charged the suspect or any of the Applicants to Court. Furthermore, the Applicants state that there is nothing to show that any of them have been convicted of any offence to warrant the confiscation and demolition of their house and property, and thereby turning them to destitute and internally displaced persons.

The Applicants aver that they have been subjected to terrible sleeping conditions as a result of the arbitrary deprivation of their properties by agents of the Respondent's.

On the 17<sup>th</sup> of December 2014, the Applicants filed an application for leave to prove their case since the Respondents have failed to put up a defense. They also prayed for an expedited hearing.

By an application dated the 12<sup>th</sup> of February 2015, the 1<sup>st</sup> Respondent prayed this honorable Court for leave to file its defense and written address out of time and urged the Court not to visit the sin of counsel on the Respondent.

In their defense, the Respondents denied the Applicants claims seriatim and further state that at that point in time, kidnapping became a menace to the people of Imo State in Nigeria and lives of indigenes and visitors were threatened as a result of which investors started leaving the state in troops for fear of their life.

That Ohaji Egbema where the Applicants hail from became the center stage for kidnapping activities. That an anti-kidnapping law was passed in 2009 to curb this crime.

The Respondents vehemently denied the alleged act of 19<sup>th</sup> of December 2012 or any other day and denied being in custody of the 1<sup>st</sup> Applicant's son (Obinna Kasarachi Onwuham) and that they would not have embarked on such an exercise without the co-operation and involvement of the Eze (Traditional Ruler of the Community) by virtue of traditional rulers' relevance in the administration of the State. The Respondents further argued that none of them nor their agents were at the scene at any point in time as alleged by the Applicants. They denied the alleged act of 12<sup>th</sup> April 2014 and put the Applicants to the strictest proof.

The Respondents attached a document to its application which shows that a security initiative known as Operation Rescue Imo was launched and that the Government distributed 100 brand new Hilux Patrol Vehicles and other security gadgets to security operatives and Communities. The said security initiative is a coalition of the police, soldiers, the State Security Service, and Civil defense Corps.

On the 11<sup>th</sup> of June 2015, the Respondents filed a notice of Preliminary Objection on the following grounds:

- That there is no proper cause of action before this court against the 2<sup>nd</sup> Respondent and therefore not a proper party to this suit.
- That the 2<sup>nd</sup> Respondent is a component State of the 1<sup>st</sup> Respondent and not a signatory to the ECOWAS Treaty, therefore cannot be brought to the Community Court for Violation of Human Rights.
- That the Court lacks jurisdiction to entertain this matter among others.

On the 14<sup>th</sup> October 2015, the Applicants filed an application to withdraw and/or discontinue the suit against the 2<sup>nd</sup> Respondent.

The aggrieved Applicants have filed this application praying for the following Declarations and Orders:

A DECLARATION THAT:

- A. The Applicants' right to dignity inherent in a human being was and is still being breached by the Respondents.
- B. The Applicants' rights to freedom from exploitation, cruelty, inhuman and degrading punishment and treatment was, and is still being breached by the Respondent
- C. The Applicants' right to presumption of innocence was and is still being breached by the Respondent.
- D. The Applicants' right to property was and is still being breached by the Respondent.
- E. The Applicants' inalienable rights were arbitrarily breached by the Respondents on an unsubstantiated allegation that one adult member of their family by name Obinna Kasarachi Onwuham is a kidnapper thus holding the Applicants vicariously guilty and hideously punished for the alleged unsubstantiated offences of their relative.
- F. The Applicants are victims of spoliation and dispossession of their property and persons entitled to recovery of the property and compensation.
- G. The demolition of the Applicants' three houses was illegal, unlawful, unconstitutional, flagrant abuse and breach of the Applicants' fundamental human rights.
- H. The acts of the Respondents in the premises of the Applicants on the 12<sup>th</sup> day of April 2014, after the arrest of their suspect Obinna Kasarachi Onwuham constitutes a trespass.

ORDERS SOUGHT:

- GENERAL DAMAGES** for trespass in the amount of **N50, 000,000.00 (Fifty Million Naira) only.**

- ii. **SPECIAL DAMAGES** in the amount of **N100,089,140.00 (One Hundred Million, Eighty Nine Thousand, One Hundred and Forty Naira) only**, being the total cost of building 3 new houses of the same and similar attributes with the 3 houses destroyed by the Respondents including household items, furniture, electronics, clothing, certificates, landed documents, receipts, farm tools, my traditional Chieftaincy beads and regalia, one complete small scale palm oil press plant, cash crops and orchards, indeed the entire personal property of the Applicants’.
- iii. **EXEMPLARY DAMAGES** based upon the extreme ill will, recklessness, insensitivity, malice and deprivation of Applicants’ fundamental rights exhibited by the Respondents’ against the Applicants’ in the sum of **N500,000,000.00 ( Five Hundred Million Naira) only**.

The Plaintiff in order to establish his claim, presented three witnesses who gave oral testimony.

The Plaintiff witness 1 was the 1<sup>st</sup> Plaintiff himself who after adopting his witness statement on oath narrated how on the 19<sup>th</sup> of December, 2012, an agency called the Imo security network with armed Policemen and Soldiers arrested his son, one Obinna Kasarachi Onwuham. The Security agents came in the company of one Paul Obieze Amaliri and one Marshall Ifeanyi Akujinwa (alias Dauda).

The witness further alleged no one informed him of the reason for the visit but that one of the Security officers stated that his son is suspected of being a kidnapper. He also stated that they entered his house, the part allotted to his son, Obinna, removed all the household item from the house and burnt them and at the same time demolished The House. They also demolished all other structures within the compound, including economic trees.

They took away the son and till date he does not know his where about. According to him the demolition took place in 2012, 2013 and 2014.

The second Plaintiff’s witness who identified himself as Justus Eromonsele is a qualified Quantity Surveyor.

He stated his qualifications as Bachelor of Science Quantity Surveying from the Ahmadou Bello University Zaria, Nigeria and an Associate member of the Nigerian Institute of Quantity Surveyors. He stated that he was contracted to evaluate the buildings of the Plaintiff that was demolished. He evaluated same and submitted a report signed by him. He identified the report with his signature. The Report was tendered in evidence and marked as **Exhibit 1**.

The third Plaintiff witness, is Amunwa Nnaemeka a member of the Nigerian Security and Civil Defence Corps. He knew the Plaintiff. He testified that on 12/04/2014 while on his Duty post he overheard two women discussing that Chief Alabeke's house (the 1<sup>st</sup> Plaintiff) has been demolished. Being a surveillance officer, he decided to go to the scene. On his way he saw security agents, Police, Army and Imo Network personnel on a Hilux Van and when he got to the 1<sup>st</sup> Plaintiff's house, he was informed of the demolition of the house by Security agents and also saw the demolished house. He took his personal inventory and left. He didn't know the reason for the demolition.

The Plaintiff closed his case. It is to be noted that the Defendant merely filed a notice of preliminary objection without taking any further step in the proceedings. The Preliminary objection was dismissed on the 11<sup>th</sup> March, 2017 and the Defendant did not take further steps in the proceedings.

However, for purposes of clarity, both the preliminary objection and the substantive suit will be determined herein.

## **ISSUES FOR DETERMINATION**

### **PRELIMINARY OBJECTION**

In addressing the preliminary objection raised by the Respondents this court has to determine:

1. WHETHER THIS COURT HAS THE JURISDICTION TO ENTERTAIN THIS MATTER AS CONSTITUTED.
2. WHETHER THE 2<sup>ND</sup> RESPONDENT IS A PROPER PARTY IN THIS SUIT.

### **WHETHER THIS COURT HAS THE JURISDICTION TO ENTERTAIN THIS MATTER AS CONSTITUTED.**

Jurisdiction is the fulcrum of any successful proceeding. This implies that any matter assumed in excess of jurisdiction is an exercise in futility. Jurisdiction cannot be implied or conferred by agreement but must be provided for by statutes. It is therefore imperative to consider whether or not this court is seized with the requisite jurisdiction as it relates to the facts of this case.

**Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05) provides:**

***“The court has jurisdiction to determine cases of violation of human rights that occur in any member state”.***

Article 10 (d) of the same Protocol grants access to individuals on application for relief for violation of their human rights with certain conditions.

**In HISSEIN HABRE V. REPUBLIC OF SENEGAL (2010) CCJELR, the court held that it shall examine:**

- **If the issues submitted before it deals with a right which has been enshrined for the benefit of the human person;**
- **Whether it arises from international or community obligations of the state complained of, as human rights to be promoted, observed, protected, and enjoyed;**
- **Whether it is the violation of that right which is being alleged.**

International human rights law aims at protecting citizens from abusive actions of states and their agents. This court is a Regional court with human rights mandate. Therefore where the allegation in an initiating application lodged invokes the human rights jurisdiction of the Court, this court will examine the facts as presented by the Applicant and if the Court is convinced from the facts that there exists an element of human right violation, the Court will, in the absence of anything to the contrary entertain the suit.

The court has held that for its jurisdiction to arise the alleged violation must be founded on an international or community obligation of the state and it will not matter that the state was not involved in the actual commission of the physical act. Once there is an inaction or failure by the member state to fulfill any of its obligations to protect, promote, ensure and fulfil, the Court will assume jurisdiction. See Mamadou Tandja (2010 CCJELR) 109, Hissen Habre vs Senegal (2010 CCJELR) 65 and Bakare Sarre V Mali (2011) CCJELR, 57.

It is necessary to point out that jurisdiction is glimpsed from the Plaintiffs case and not from the defense. We will therefore look into the defense at this stage.

The Plaintiff's allegation is that their rights to property, fair hearing and right dignity as provided under Articles 5 and 7 and 14 of the African Charter respectively were violated by the Defendants agents and that the Defendant have failed to carry out effective investigation into the matter.

***Article 5 of the African Charter deals with the right to dignity and provides:***

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.*

Article 7 of the African Charter provides:

*“Every individual shall have the right to have his cause heard. This comprises:*

- a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
- b) The right to be presumed innocent until proved guilty by a competent court or tribunal;*
- c) The right to defence, including the right to be defended by counsel of his choice;*
- d) The right to be tried within a reasonable time by an impartial court or tribunal”.*

Article 14 of the African Charter guarantees the right to property and provides:

*“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”*

Going by the combined effect of Article 5, 7 and 14 above, as well as Article 9 (4) of the Supplementary Protocol of the Court, the subject matter of the application is within the ambit of the court’s competence. The Plaintiffs allege a demolition of their residence by agents of the Defendant without notice and hearing. They attached photo evidence of the demolished houses.

The issue at this point is whether a prima facie case of violation has been made out as to cloth this court with the jurisdiction to hear it. This court in *Bakare Sarre V Mali* (2011 CCJELR) 67, para 25, 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 claims made by 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. The court therefore looks to find out whether the human rights violation as observed constitutes the main subject matter of the application and whether the pleas-in-law and evidence produced essentially go to establish such violation.

In view of the foregoing, it is our view that the initiating application is admissible as the subject matter is within the courts competence and a prima facie case has been established against the Defendant.

The Defendant submits that there is no cause of action against the 2<sup>nd</sup> Respondent and that the 2<sup>nd</sup> Respondent is not a proper party to this suit. Article 10 of the supplementary protocol provides for who can sue and be sued before this court

This Court has held in a plethora of cases that only member states and institutions of the community can be brought before it. The second Respondent is neither a member state of ECOWAS nor an institution of the community.

In **SERAP Vs The President of the Federal Republic of Nigeria and 8ors (2010 CCJELR)** this court held that only member states and institutions of the community can be sued before it for human rights violations.

In view of the above, the 2<sup>nd</sup> Respondent, not being a member state is not a proper party before this court and should be struck out from this suit.

Having dealt with the preliminary objection we now turn to the issues raised in the substantive application and the defense thereto.

#### SUBSTANTIVE APPLICATION

From the averments of both parties to this suit, the following issues call for consideration by this court

1. WHETHER IN THE LIGHT OF THE TOTALITY OF EVIDENCE ADDUCED, THERE HAS BEEN VIOLATION OF THE APPLICANTS RIGHTS AS ALLEGED.
2. IF THE ANSWER TO THE ABOVE IS IN THE AFFIRMATIVE CAN RESPONDENT BE HELD LIABLE FOR THE VIOLATION?

The Applicants allege that their fundamental rights to be heard, right to dignity, right to property and right to effective investigation have been violated by the Respondent through the unjustified demolition of their 3 units detached bungalows, one 6 bedroom flat with a sitting room, one 7 bedroom flat with a sitting room and one 15 bedroom flat with two sitting rooms which contained their household items, furniture, electronics, clothing, certificates, landed documents, receipts, farm tools, traditional chieftaincy beads and Regalia, one complete small scale palm oil press plant, and cash crops wherein all the aforementioned properties were destroyed.

The Respondent on the other hand denied the alleged act of 19<sup>th</sup> December 2012, and 12<sup>th</sup> April 2014, or any other day and states that they would not have embarked on such an exercise without the co-operation and involvement of the Eze (Traditional Ruler of the Community) by virtue of traditional ruler's relevance in the administration of the State. That none of them nor their agents were at the scene at any point in time as alleged by the Applicants.

The Respondent further put the Applicants to the strictest proof.

The Respondent further stated that the kidnapping menace had greatly affected their state. It must be noted that in all these, while the Respondent has not conceded to any involvement in the demolitions on the other hand they submit that due to the high level of kidnapping in the state, the Government distributed 100 brand new Hilux cars to the security personnel for purposes of patrol and surveillance in order to eradicate the kidnapping menace. And that at some point, properties allegedly belonging to suspected fraudsters were set ablaze or looted. They referred to the anti-kidnapping Bill stressing that it provided a death penalty for anyone CONVICTED of kidnapping or whose premises are used to hold a victim hostage.

We therefore find it difficult to reconcile these two assertions by the Respondent bearing in mind the evidence that the Respondents agents came to the Applicants house with 5 Toyota Hilux trucks on the 19<sup>th</sup> December, 2012, and again in a Hilux accompanied by a bull dozer on the 12<sup>th</sup> of April 2014. That the Applicants house was demolished on an allegation of kidnapping.

In determining whether or not the Applicants have led sufficient evidence in proof of their assertions, recourse has to be made to the facts of the case along-side the international instruments upon which the application is premised.

The court recalls that the right to be heard, right to dignity, right to property and the right to effective investigation are all fundamental rights guaranteed under the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR) and other international instruments with similar

provisions which the Respondent has ratified and therefore constitute international obligations.

Looking critically at the grounds, circumstances and the purported legislation upon which Respondent allegedly acted, one would want to ascertain its consistency with the international provisions guaranteeing those rights allegedly violated.

**Article 5** of the African Charter on Human and Peoples Rights (ACHPR) provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. It prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.

The Applicants contend that they have been turned to destitute and internally displaced persons and subjected to terrible sleeping conditions and severe suffering as a result of the arbitrary deprivation of their property and thus constitutes a violation to the right of dignity inherent in the human person.

Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities are entitled to without discrimination. It is an inherent right which every State is obligated to respect and protect by all means possible.

In **BOUYID V. BELGIUM [GC]**, no. 23380/09, ECHR 2015. On an allegation of violation of right to dignity. The Grand Chamber concluded that “any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention”.

In **SELÇUK AND ASKER V TURKEY**, (12/1997/796/998-999)JUDGMENT STRASBOURG 24 April 1998, where the Complainants home was set on fire by the defendant, the Court held that “Even in the most difficult circumstances, such as the fight against organized terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.” The Court concluded that the treatment suffered by the applicants in this case was so severe as to constitute a violation of Article 3, adding that “...bearing in mind in particular the manner in which the applicants’ homes were destroyed ... and their personal circumstances, it is clear that they must have been caused suffering of sufficient severity for the acts of the security forces to be categorized as inhuman treatment within the meaning of Article 3”.

In Dafur's case, 279/03-296/05 : **Sudan Human Rights Organization & Centre on Housing Rights and Evictions (COHRE) Sudan**, the African Commission used the facts of the case that relate to the rights to housing, food and water to find a violation of Article 5. It argued that the forced eviction of civilian population from their homes and villages, and the destruction of their houses, water wells, food crops, livestock and social infrastructure by the state and its agents amount to cruel, inhuman and degrading treatment that threatened the very essence of human dignity.

The Applicants also claim that their right to be heard has been violated by the Respondent as they were not informed of any offence they committed and were not heard before demolishing their property.

The right to be heard has a corresponding right to be informed. This is so because of the underlying principle of presumption of innocence.

**Article 7** of the African Charter on Human and Peoples' Rights not only guarantees the right to be heard, but also states the right to be proved innocent until proven guilty.

**Article 4** of the ICCPR provides:

- *“ in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination only on the grounds of race, colour, sex, language, religion or social origin.*
- *No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.*
- *Any state party to the present covenant availing itself of the right of derogation shall immediately inform the other states parties to the present covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”*

This Article thus sets out those rights from which states can never derogate, even in times of public emergency that threatens the life of the nation of which Article 7 is one of them.

The Respondent stated in its defence that at that point in time, kidnapping became a menace to the people of Imo State in Nigeria and lives of indigenes and visitors were threatened as a result of which investors started leaving the state in troops for fear of their life. That Ohaji Egbema where the Applicants hail from became the center stage for kidnapping activities. That an anti-kidnapping law was passed in 2009 to curb this crime.

As a matter of fact, the issue of kidnapping has a devastating effect on any state so confronted in terms of its economy and safety of inhabitants and thus calls for such drastic measures to put an end to it. However, such measures have to be within the confines of law, having due regard to what is fair and just in the circumstance and avoiding acts that tend to violate the rights of others.

It appears that the anti-kidnapping law of the Defendant, if it exists, prescribes punishment without recourse to trial by an independent tribunal.

The international best practices is that where a law creates an offence, it envisages that any person accused of having committed such offence must be tried by a Court or any other independent tribunal where impartiality must be guaranteed and all other forms of due processes guaranteed. It's against all known human right norms for punishment to be automatically imposed on a suspect without the necessity of a trial. Such a law is approbices, punitive, obnoxious and indeed an exhibition of the highest point of impunity. If this kind of practice is allowed under any guise then all of us are endangered species.

Human rights are inter-connected so much as one relates to the other. In the instant case, there is no proof before the Court of any charges against the Plaintiffs perhaps for harboring kidnap victims or any charge whatsoever, neither is there any proof that the Plaintiffs were heard on the merits and the outcome of that hearing was a decision to demolish their property. There is yet nothing on the records to show that the Defendant actually investigated the alleged acts in a bid to ascertain the actual suspect(s), and the actual owner of the property prior to its decision to demolish. No proof of service of any demolition order, or proof that the Plaintiffs unequivocally waived their right to be heard. This is indeed sad.

In **CHIEF EBRIMAH MANNEH V. REP OF GAMBIA** CCJELR 2004-2009 Pgs 191-192, the Court re-emphasized a Plaintiffs right to be heard which comprises the right to be presumed innocent among others. The Court held that the Plaintiffs right to be heard had been violated by the Defendant for its failure to put the Plaintiff before a competent court or tribunal for purposes of establishing its guilt or innocence.

In **DJOT BAYI TALBIA V. FRN & 3 ORS**, 2004-2009 Pg 265, para 40, the court was of the opinion that for the fact that the Defendants presented the Applicants before the press when no Judge or Court has found them guilty, certainly constitutes a violation of the principle of presumption of innocence such as provided in Article 7 (b).

The later part of Article 7 (2) states: “*punishment is personal and can be imposed only on the offender*”.

The implication of the above is that collective punishment for acts allegedly committed by one person is entrenched, this is indeed reprehensible and condemnable.

Collective punishment is a form of sanction imposed on persons or a group of persons in response to a crime committed by one of them or a member of the group. As noted by the **International Committee of the Red Cross (ICRC)**, the concept of collective punishment does not refer to sanctions imposed pursuant to the application of penal law characterized by respect for due process, but rather to penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not personally committed.

From the facts before this court, it is clear that the reason behind the demolition is the kidnapping menace in the Respondent’s state. It is also clear that the Applicants’ are victims of an unsubstantiated allegation not against them but against one member of their family.

In investigating incidents of this nature, State authorities have an additional duty to take all reasonable steps not only to unmask any kidnap suspect, but to establish whether or not his relatives have played a role in the chain of events. The Defendant has failed to devote the requisite attention into such sensitive factors before embarking on demolition of the property.

Punishment is personal and can be imposed only on the offender. It should not be extended to any other. Denying the uninvolved the right to have a roof over their heads means using them for the sole purpose of deterrence to others. It implies that such uninvolved persons were used as a means to serve an external purpose which in turn constitutes a violation of a collection of rights viz: rights to dignity, right to property, right to be heard and the right to be presumed innocent.

There appears to be a gross inconsistency between the purported anti-kidnapping law and the Respondents 1999 Constitution (as amended). The legislation authorizing a demolition without hearing persons so allegedly involved and rendering other innocent inhabitants homeless is blatantly and rapaciously unconstitutional and grossly incoherent with the provisions of the constitution.

**Section 1 (1) of the 1999 Constitution** (as amended) states: *“this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”*

**Section 4 (5)** of the same Constitution directs that: *“if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void”*.

The Respondent’s Constitution guarantees the right to be presumed innocent, the right to be heard and the right own property. There is no provision in the Constitution that guarantees punishment without being tried and convicted of an offence.

There is also an inconsistency between the anti-kidnapping law and the International human right Treaties. A country that ratifies a treaty is legally obligated to protect the rights it describes. It is trite that where a national law or legislation is inconsistent with the international laws on fundamental rights or in derogation from fundamental rights, such law is to the extent of its inconsistency null and void.

**Article 4 of the International Covenant for Economic, Social and Cultural Rights (ICESCR)** provides:

*“The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”*.

**In Abacha and Others v Fawehinmi (2001) AHRLR 172 (NgSC 2000)**; the African Commission ruled that *“the African Charter on Human & Peoples Rights (ACHPR) is domestically enforceable, with its status higher than any ordinary legislation in Nigeria. It further held that the Charter possesses a greater vigor and strength' than any other domestic statute....”*

This implies that in the event of any conflict between the African Charter on Human Rights & Peoples Rights (signed, ratified and domesticated by Nigeria in 1983) and any Act of the National Assembly; the African Charter prevails.

The Court holds that the said anti-kidnapping law passed by a component state of the Respondent falls short of the international standards. The Court therefore holds that the said law is to the extent of its inconsistency null and void, same violating the international principles ratified by the Respondent.

Having said this, we now turn to the issue of proof of allegation by the Applicants. The general principle of evidence is that he who alleges must prove. In civil cases, this burden is not beyond reasonable doubt but on preponderance of evidence. It thus shifts with time and rests on the party that will lose if no further evidence is led.

The initial burden of proof thus rests on the Applicant who is to establish through evidence, all the requisite elements to succeed in his case. If that burden is met, the burden of proof then shifts to the Respondent who now has to lead evidence in rebuttal of the Applicants' assertions by preponderance of evidence.

In substantiating their claims, the Applicants' annexed as evidence pictures and videos showing the property prior to demolition and the bare land after demolition. They attached annexures which reveal that indeed there was a joint tax force being a coalition of the Army, police, civil defence etc. for purposes of eradicating the kidnapping menace. They also annexed newspaper publications on the mandate given to this set as well as information on brand new patrol Hilux cars given to them in furtherance of their operations.

Having provided these pieces of evidence in substantiation of their allegation, the Applicants' have thus discharged the burden on them. Consequently, it is incumbent on the Respondent to provide the relevant proof to rebut the facts.

In **GUTIERREZ SOLER V. COLOMBIA**, Inter-Am. CT.HR (Ser.c) No. 132, (Sept 12 2005), the commission and court found that there was not enough evidence but decided that the absence of such evidence was directly the responsibility of the state.

In **BENJAMIN N. IROAGBARA V. DAVID UFOMADU** (2009) 5-6 SC (PT 1) 83. The court stated that the burden of proof rests on the party (whether plaintiff or defendant) who substantially asserts the affirmative of the issue. When it is said that the onus of proof shifts from the plaintiff to the defendant and vice versa from time to time as the case progresses, it means no more than the burden of proof may shift depending on how the scale of evidence preponderates.

Richards LJ in **R (N) v Mental Health Review Tribunal (Northern Region)** [2006] QB 468, at [62] states that:

*"Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*

In the case of **BOUYID V.BELGIUM** [GC] (23380/09, 28 September 2015, Information Note 188), the Court reiterated that the authorities bore the burden of proof in respect of events occurring while an individual was under the control of the police or of a similar authority.

The Respondent has failed to adduce evidence in rebuttal. The Respondent only succeeded in stating that there was indeed an articulated security formation which culminated into the operation rescue Imo, a coalition of the police, soldiers, the state security service, SSS and Civil Defense Corps with the aim of curbing the kidnapping menace and threats to indigenes and visitors. They also asserted that the Anti-Kidnapping law was passed to take care of every infringement against the law on kidnapping and that 100 new Hilux Patrol vehicles and other security gadgets were distributed by the government to security operatives and communities for that purpose.

There is no evidence before this Court to show that the Applicants' house was used to keep kidnap victims hostage. Even if there was, the presumption of innocence has not been given due consideration. Assuming without conceding that the 1<sup>st</sup> Applicant's son Obinna onwuham was a kidnapper, the question is, was he tried by any competent court? Was he convicted as required by the anti-kidnapping bill? Was it established that the father i.e. 1<sup>st</sup> Applicant is an accomplice to the fact to warrant demolishing his house?

It is not enough for the Respondent to merely state that they were not at the Applicants property on the dates mentioned or any other day. It may be curious to note that the Respondent did not carry out any investigation to unravel the persons involved in the demolition. This is indicative of the Respondent's acquiescence of the demolition.

Having put the Applicants to the strictest proof of their averments we are satisfied by the evidence placed before us by the Applicants in proof thereof. We therefore hold the Respondent's responsible and liable for the demolition of the Applicants' houses.

On the right to property, **Article 14** of the African Charter on Human and Peoples Rights (ACHPR) guarantees the right to property. It further states that the right may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

*In Ivcher Bronstein V. Peru, Inter-American Court of Human Rights Series C No. 74 Judgment of 6 February 2001 “Property” was defined as those material objects that may be appropriated, and also any right that may form part of a person’s patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.*

The principle of enjoyment of property has been enunciated in several international human rights instruments. It is trite that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. Be that as it may, such laws should not be inconsistent with the provisions guaranteeing and protecting the right to own a property as well as the general principles of international law.

The right to property protects against arbitrary or disproportionate forms of interference. Such interference can take the form of deprivation or the form of limitation of rights which in turn affects the enjoyment of ones right to property.

Article 1 Protocol No. 1 of the European Convention on Human Rights guarantees the “peaceful enjoyment” of ones possessions. It provides:

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The 1999 constitution of the Defendant donates this right to citizens and all persons where it stated in section 44(1) that:-

*“No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law, among other things-*

A house is not merely a person's property, it represents memories, identity, history and link to the land, personal belongings, status and tradition. The Applicants found themselves overnight, roofless, homeless, humiliated and forced to find shelter under the trees or even deserted buildings with no hope of ever going back to their previous lives.

In the *Darfur* case (supra), the Commission found Sudan in violation of the right to property for its failure to refrain, and protect victims, from eviction or demolition of their houses.

In **James and Others v. the United Kingdom judgment of 21 February 1986**, Series A no. 98-B, p. 29, para. 37, the Court laid down the principle of peaceful enjoyment of property wherein it stated that deprivation of possessions must be subjected to certain conditions and emphasized the role of the Contracting States to amongst other things, control the use of property in accordance with the general interest.

An interference with peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. See **Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, para. 69**).

It is therefore imperative to determine whether the deprivation of the Applicants' property pursued a legitimate aim, in the public interest and in accordance with the law.

In **Media Rights Agenda, Constitutional Rights Project, v. Nigeria, communications 105/93, 128/94 and 130/94**, the African Commission found that the sealing of the premises of two magazines violated the right to property under the African Charter. The African Commission stated that:

*The government did not offer any explanation for the sealing up of the premises of many publications. Those affected were not previously accused in a court of law, of any wrongdoing. The right to property necessarily includes a right to have access to property of one's own and the right not for one's property to be removed. The Decrees which enabled these premises to be sealed up and for publications to be seized cannot be said to be "appropriate" or in the interest of the public or the community in general. The Commission holds a violation of Article 14. In addition, the seizure of the magazines for reasons that have not been shown to be in the public need or interest also violates the right to property.*

One would want to ask whether the act of the Defendant is an administrative preventive measure or whether it is a punitive measure. If it is punitive, suffice to say that it must fulfil the domestic and international conditions proving that such an act was sanctioned by a judicial authority after fulfilling the requirement of fair trial and that it should be considered as a legitimate measure and not a cruel and inhuman act. This is not the position in the instant case as this position is clearly akin to a forced eviction.

Forced eviction is the removal of individuals, families or communities from their homes, land or neighborhood, against their will, directly or indirectly attributable to the State.

The United Nations Committee on Economic, Social, and Cultural Rights considers forced evictions to be the “permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Evictions and expropriations may be lawful when they are conducted in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law. Forced evictions are prohibited under international law.

The Respondent has not proved that the demolition was done in accordance with the law, neither has it been proven to have been done in the overall interest of the public. Most importantly, the Respondent has failed to lead any evidence to prove any causal link that the property in question was used to harbor kidnap victims.

The Respondent states that the Applicants’ are not entitled to recovery of any property or compensation and that they have not held the Applicants’ vicariously guilty neither were they punished for any purported offence. What better meaning could be given to the acts of the Respondent in the circumstance?

The Committee on Economic, Social and Cultural Rights has placed considerable emphasis on forced evictions and has asserted, in its General Comment No. 4 (1991) on the right to adequate housing that “instances of forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”

**In Centre for Housing Rights and Evictions (COHRE) v. Sudan Communication 296/2005 (29<sup>th</sup> July 2010) ACHR**, the African Commission found violations of the right to property (Article 14) of the African Charter on Human and

Peoples' Rights related to forced eviction from homes and land, including land used for agricultural or herding purposes. The Commission went on to hold that:

*“It doesn't matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by Article 14.”*

By doing so, the Commission looked at the traditional use of land as a unique qualifier as opposed to indigenous status. The Commission also turned for guidance to the UN Principles on housing and property restitution for refugees and displaced Persons (Pinheiro Principles) as “emerging principles in international human rights jurisprudence” including expressly Principle 5, which states that: “States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of lands as a punitive measure or as a means or methods of war.”

For a deprivation of the property to be compatible with the right to property embodied in the Convention, it must be based on reasons of public utility or social interest, subject to the payment of just compensation, and must be in accordance with forms established by law.

In **CONNORS V. UNITED KINGDOM Application No. 66746/01 (27<sup>th</sup> May 2004) ECHR**, the European Court of Human Rights ruled that the lack of procedural safeguards to eviction from local authority Gypsy and Traveller sites breached Article 8 of the European Convention for Human Rights.

The Court ruled out the justification of such eviction under margin of appreciation by the State, stating that the eviction in question was not attended by the requisite procedural safeguards, namely the requirement to establish proper justification for the serious interference with the rights of the Applicants and consequently cannot be regarded as justified by a “pressing social need” or proportionate to the legitimate aim being pursued.

The procedural safeguards available to the Applicants will be especially material in determining whether the Respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the bill leading to the interference was fair and afforded due respect to the interests safeguarded by the human rights instruments. The court must also look beyond mere appearances and establish the real situation behind the condemned act.

There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized.

The Court finds that the Applicants have had to bear an individual and excessive burden which had upset the fair balance that should be struck between the requirements of the general interest and the protection of the right to peaceful enjoyment of one's possessions.

Having regard to the foregoing, the Court reiterates that the Applicants were definitively deprived of their home and all the possessions used to run their daily family life. The interference in question was thus manifestly in breach of both the international and domestic legislations to which the Respondent is bound.

The Court holds that the demolition was a disproportionate interference with the Applicants' right to the peaceful enjoyment of their possessions which was not attended to by the requisite procedural safeguards namely the requirement to establish proper justification for the serious interference with their rights and consequently cannot be regarded as justified by a "pressing social need" or proportionate to the legitimate aim being pursued. Although only the 1<sup>st</sup> Applicant has a legal rights to the house, other Applicants had lived in the property for a number of years. It was therefore "home" for all of them. The order for demolition amounted to interference with their right to respect for their home.

In Conclusion, the Court holds that the act of the Respondents agents was arbitrary, unwarranted, unconscionable and baseless and amounts to a gross violation of the Applicants rights.

HAVING FOUND A VIOLATION OF PLAINTIFFS RIGHT BY AGENTS OF DEFENDANT, WHETHER OR NOT DEFENDANT IS LIABLE FOR THE VIOLATION.

The Applicants allege that the Respondent failed to carry out effective investigation into the matter before carrying out the demolition.

The task of assuring legality is to define and create a set of measures or procedures which provides a reasoned and acceptable likelihood that justice will be done through an independent inquiry for purposes of acquisition of facts and subsequent application of relevant laws to the facts so obtained. This is the very essence of effective investigation.

An effective complaint and response system is critical to the determination of the effectiveness of the state and its agents in carrying out its responsibility to bring perpetrators to book. Furthermore, the requirement of promptness and reasonable expedition is paramount.

Effective investigation vests on the state a responsibility to carry out due diligence into any matter brought within their knowledge and likely to affect the rights of others.

In **CABRERA GARCIA AND RODIFO MONTIEL FLORES 735/01 Inter-Am CT.HR (2004)**, the court found that the lack of an effective investigation or the lack of full analysis into the facts when faced with serious allegations generated responsibility for the Mexican State.

The Respondent in the instant case had an unflinching duty to effectively investigate the matter to ascertain the perpetrators and the extent of their involvement. Prior to demolition, Respondents had the duty to investigate and ascertain who the actual owner of the property is and whether or not he was involved in the alleged act. This practically would be the plank upon which any further action will be carried out.

For an investigation to qualify as effective, the authorities must show that they have taken reasonable steps available to them to secure all evidence concerning the incident culminating into a comprehensive report.

There is nothing before this court to show how the Respondents arrived at the conclusion that the Applicants were involved in the kidnap act and that there was indeed an investigation into the matter. No report in that regard, no statement from the suspects, no evidence of any charge before any court on the said allegation, no court order and no prior demolition notice to prove that the Respondent actually did the needful before demolishing the Applicants' property.

In **ILHAN V. TURKEY, Judgment of 27 June 2000 p.114**, where an individual had an arguable claim that he had been tortured or subjected to ill treatment by the state. An effective investigation was mandated by Article 13, and there had been significant defects in the domestic inquiry. The court held that no effective remedy has been provided and therefore a violation of Article 13 of the ECHR.

The decision to demolish a building without proper investigation and fair hearing falls short of the standard of reasonableness. The agents of the Respondent solely demolished the Applicants house based on a suspicion or allegation that one of the residents of the house was a kidnap suspect. Equally it has not been shown that the Respondent in their capacity have the legal right suo moto to demolish the house of citizens without recourse to due process of the law. Such conduct is at best described as an unwarranted use of governmental powers.

It is trite that the rules of state responsibility applies to international human rights law. Article 122 of the UN Draft Article on Responsibility of States for

Internationally wrongful acts, adopted by the ILC at its 53<sup>rd</sup> session and submitted to the UN General Assembly provides:

1. Every internationally wrongful act of a state entails the internal responsibility of that State.
2. There is an internationally wrongful act of a state when conduct consisting of an action or omission.
  - (a) Is attributable to the State under internal law and
  - (b) Constitutes a breach of an international obligation of the State

The court has held in a plethora of cases that the acts of state agents are attributable to the state. This implies that states will be responsible for acts done without due care and diligence in preventing human right violations and for failure to investigate and punish acts violating those rights.

In **Amnesty International Vs. Sudan (2000) AHLR 297 (ACHPR)**, it was held that the Government has a responsibility to protect all people residing under its jurisdiction and even when the Country is going through Civil War, the State must take all possible measures to ensure that its Citizens are treated in accordance with International Humanitarian Law.

In **Malawi African Association &ors Vs. Mauritania (2000) AHLR 149 at 164-165.v.**it was held that the duty of due diligence in International law extends to the obligation of a State to prevent human rights violations and where they occur, to investigate, prosecute and punish the perpetrators and failure to do so incurs the responsibility of the State.

In the light of the parties' arguments and the evidence in its possession, the Court notes at the outset that the Respondents failed to conduct an impartial and effective investigation into the matter before demolishing the property. Furthermore as noted above, the Respondent on becoming aware of the demolition did nothing to assuage the victims. There is no evidence placed before this court to show steps taken by the Respondents to investigate the demolition and hold those responsible for it accountable.

It is clear that the Respondents agents acted rashly and arbitrarily in the guise of carrying out their duties.it is equally trite that the state is responsible for the acts of its agents in the course of their employment whether authorized or not. Consequently the court holds the Respondent's responsible for the unwarranted acts of its agents.

## **DECISION:**

The Court adjudicating in a Public sitting after hearing the Parties in the last resort after deliberating in accordance to law.

## **DECLARES:**

As to the Preliminary objection: Dismisses the Defendants case and holds the case Admissible.

## **(II) AS TO THE MERITS:**

### **DECLARES THAT:**

(1) The demolition of the Plaintiffs property, namely one unit of bungalow consisting of 15 bedrooms and two sitting rooms, one bungalow consisting of seven bedrooms and one sitting room, and one unit of bungalow consisting of six bedrooms and a sitting on account of and unsubstantiated allegation of the offence of kidnapping and without trial is illegal, unlawful and violated;

- (i) The Plaintiff's right to fair hearing and presumption of innocence as guaranteed by Article 7 of the African Charter of Human and Peoples' Rights,
- (ii) The Applicant's right to property under Article 14 of the African Charter on Human and Peoples' Rights;
- (iii) Violated the Applicant's right to dignity as enshrined in Article of the African Charter on Human and Peoples' Rights.

## **2. ORDERS**

- (i) The Defendant to pay the sum of One hundred million Eighty nine thousand, one hundred and forty naira (**N100, 089, 140.00**) being special damages representing the total cost of the buildings and other household items destroyed by the Defendants.

(ii) The sum of Fifty Million Naira (N20, 000.000.00) jointly paid as general damages for the violation of the rights of the Applicants fundamental rights to fair hearing, human dignity and right to property.

(iii)The Court cannot grant the rest of the claims of the Plaintiffs

**3. DIRECTS,**

The Defendant to investigate the circumstances surrounding the disappearance of the 1<sup>st</sup> Applicant’s son, Obinna Kasarachi Onwuham with a view to determining his whereabouts, and where an offence is found to have been committed, prosecute the Culprits in accordance with law.

**AS TO COSTS;**

Cost is awarded to the Applicants against The Defendants and as assessed by the Registry of this Court.

Dated at Abuja this **3rd day of July, 2018.**

The following Judges have signed the judgment.

- 1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
- 2. Hon. Justice Yaya Boiro ----- Member
- 3. Hon. Justice Alioune Sall ----- Member

Assisted by Athanase Atannon ----- Deputy Chief Registrar