

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



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

HOLDEN IN ABUJA NIGERIA

ON THE 11TH OF DECEMBER, 2018

SUIT NO: ECW/CCJ/APP/22/16

JUDGMENT NO. ECW/CCJ/JUD/30/18

BETWEEN:

MR. CHUDE MBA

APPLICANT

AND

- 1. THE REPUBLIC OF GHANA**
- 2. THE REPUBLIC OF BENIN**
- 3. THE REPUBLIC OF BURKINA FASO**
- 4. THE REPUBLIC OF CAPE VERDE**
- 5. THE REPUBLIC OF COTE D'IVORE**
- 6. THE REPUBLIC OF GAMBIA**
- 7. THE REPUBLIC OF GUINEA**
- 8. THE REPUBLIC OF GUINEA-BISSAU**
- 9. THE REPUBLIC OF LIBERIA**
- 10. THE REPUBLIC OF MALI**
- 11. THE REPUBLIC OF NIGER**
- 12. THE FEDERAL REPUBLIC OF NIGERIA**
- 13. THE REPUBLIC OF SENEGAL**
- 14. THE REPUBLIC OF SIERRA LEONE**
- 15. THE REPUBLIC OF TOGO**
- 16. PRESIDENT, ECOWAS COMMISSION**

RESPONDENTS

17. CHAIRMAN, AUTHORITY OF HEAD OF STATE AND GOVERNMENT, ECOWAS

COMPOSITION OF THE COURT

HON. JUSTICE EDWARD AMOAKO ASANTE	- PRESIDING
HON. JUSTICE KEIKURA BANGURA	- MEMBER
HON. JUSTICE JANUARIA T. S. MOREIRA COSTA	- MEMBER

ASSISTED BY

TONY ANENE-MAIDOH - CHIEF REGISTRAR

JUDGMENT

PARTIES

The Applicant is a Nigerian citizen with dual Nigerian/British citizenship and as such a citizen of the Economic Community of West African States (ECOWAS). The 1st Respondent is the government of the Republic of Ghana, a Member State of the ECOWAS and the Defendant in Suit No. **ECW/CCJ/APP/01/13- Mr. Chude Mba V. Republic of Ghana**. The 2nd-15th Respondents are other Member States of the ECOWAS while the 16th Respondent is an appointee of the 17th Respondent who presides over the affairs of the ECOWAS Commission, the Executive arm of the Community. The 17th Respondent is the Chairman of the highest organ of ECOWAS, the Authority of Heads of State and Government of ECOWAS.

For convenience of reference the parties hereinafter shall be referred to as the Plaintiff and Defendants.

SUMMARY OF FACTS

The Plaintiff filed this application against the Defendants for failure of the 1st Defendant to enforce the judgment of this Court having been issued and served with a Writ of Execution. The Plaintiff avers that, on the 21st January 2013, he filed an application against the 1st Defendant for the enforcement of his fundamental human right pursuant to ACHPR, the Constitution of the Republic of Ghana and the UDHR. The suit was numbered Suit No. **ECW/CCJ/APP/01/13- Mr. Chude Mba V. Republic of Ghana.** The 1st Defendant who was out of time, failed to file its defence to the Plaintiff's application. Subsequently the Plaintiff filed an application for default judgment against the 1st Defendant and same was duly served. The 1st Defendant, after several letters seeking adjournments failed to file its response to the action, therefore the court entered judgment for the plaintiff.

The Court in its judgment held that the Plaintiff's action was admissible in total compliance with all the procedural requirements of this Court and that the Plaintiff had adduced sufficient facts and evidence to be granted a default judgment. Thus the Court ordered the 1st Defendant to pay the Plaintiff the sum US\$800,000.00 (Eight Hundred Thousand United States Dollars) as damages for violating the Plaintiff's fundamental human rights and N500, 000.00 (Five Hundred Thousand Naira) only as cost of the action.

The 1st Defendant filed an application to set aside the default judgment but the Court dismissed the application as unmeritorious and expressly found that the 1st Defendant did not establish any grounds to warrant setting aside the default judgment, having failed to utilize the repeated opportunities given to it to defend the matter.

On the 24th of November 2014, the Registrar of this Court issued and served a Writ of Execution on the 1st Defendant. The Plaintiff through his Counsel wrote to the 1st Defendant demanding payment of the Judgment debt and compliance with order of this Court but the 1st Defendant failed, refused and/or neglected to obey the orders of this Court. Following the failure of the 1st Defendant to comply with the decision and orders of this Court, the Applicant instructed his Ghanaian Counsel to file an application before the High Court of Accra, Ghana seeking an order of that Court to enforce the decision and orders of this Court. The High Court of Ghana dismissed the Plaintiff's application in its ruling delivered on 2nd February 2016 on the grounds that the decision of the ECOWAS Court cannot be enforced by the Court in Ghana because the Republic of Ghana has not domesticated the Protocols of the ECOWAS Court of Justice.

Subsequent to the decision of the High Court of Accra, Ghana refusing to enforce the judgment of this Court, the Plaintiff addressed a petition to the 17th Defendant and copied the 16th Defendant wherein he urged them to impose the sanctions prescribed in Article 77 of the ECOWAS Revised Treaty on the 1st Defendant for the refusal to comply with the decision and orders

of this Court. However, the 16th and 17th Defendants failed to respond to the Plaintiff's petition. Following this, the Plaintiff filed this application seeking reliefs to enable him enforce the judgment entered in his favor by this Court in the face of the 1st Defendant's failure and refusal to honor its Public International Law obligation under the ECOWAS Treaty and Protocol. The reliefs sought in this very action, which are in part, a reflection of the earlier judgment are as follows:

RELIEFS SOUGHT BY THE APPLICANT

The Applicant seeks the following reliefs from the Honourable Court:

1. **A DECLARATION** that the 1st Defendant is in breach of its treaty obligations by not complying voluntarily with the decision and orders of this Honourable Court made in favour of the Applicant against the 1st Defendant.
2. **A DECLARATION** that the 1st Defendant is in breach of its treaty obligations by failing to take the necessary steps to domesticate the ECOWAS Protocols setting up this Honourable Court, the ECOWAS Court of Justice so as to render the decisions of this Court enforceable within its territory.
3. **A DECLARATION** that the 2nd – 15th Defendants are under an obligation to take all reasonable steps to compel the 1st Defendant to comply with the decision and orders of this Honourable Court made in favour of the Applicant against the 1st Defendant
4. **AN ORDER DIRECTING** the 1st Defendant to forthwith comply with the decision and orders of this Honourable Court by paying the judgment sum of US\$800,000.00 and costs of N500,000.00 to the Plaintiff

5. **AN ORDER DIRECTING** the 2nd – 15th Defendants to permit the Plaintiff to enforce the decision and orders of this Honourable Court made in his favour against any of the 1st Defendant's assets that may be found within any of their territories without any regard to the 1st Defendant's putative sovereign immunity.
6. **AN ORDER MANDATING** the 16th and 17th Defendants and the Authority of Heads of State and Government of ECOWAS to impose the sanctions prescribed in Article 77 of the ECOWAS Revised Treaty on the 1st Defendant if it continues in its refusal, failure and/or neglect to comply with the decision and orders of this Honourable Court made against it.
7. **COSTS** of this application.

The 16th and 17th Defendants filed a preliminary objection praying this Court to dismiss/strike out this suit for want of jurisdiction or in the alternative, to strike out their names from the suit; they not being proper parties.

Specifically, the 16th and 17th Defendants/Applicants' motion is grounded as follows:

1. That the Honourable Court lacks jurisdiction to entertain the Plaintiff/Respondent's application for enforcement of its judgment
2. That the 16th and 17th Defendants/Applicants not being proper, desirable or necessary parties in this action should have their names struck out from the suit against the 1st Defendant.

The Application for preliminary objection was heard in open Court by the previously constituted panel of the Court but was unable to deliver

judgement as a result of the expiration of its tenure. Upon assumption of office by the currently constituted panel, the parties were afforded opportunity to adopt both their written and oral submissions, which they did and urged the Court to determine the Application on the strength of those submissions.

ISSUES FOR DETERMINATION

1. Whether from the facts presented by the Plaintiff, this Court is seized with the requisite jurisdiction to entertain this suit?
2. Whether the proper parties in this suit are before the Court?

WHETHER FROM THE FACTS PRESENTED BY THE PLAINTIFF, THIS COURT IS SEIZED WITH THE REQUISITE JURISDICTION TO ENTERTAIN THIS SUIT

The Plaintiff filed the present application seeking reliefs to enable him enforce the judgment entered in his favor by this Court as a result of the 1st Defendant's failure and refusal to honour its public international law obligation under the ECOWAS Treaty and Protocols. In relation to this issue, the 16th & 17th Defendants have characterized the suit by the Plaintiff dated 12/07/16 as an application seeking to enforce the judgment of this court in Suit No. ECW/CCJ/APP/01/13 which was given against the 1st Defendant, the Republic of Ghana.

The 16th and 17th Defendants further contend that, the Plaintiff's attempt to seek enforcement of his judgment has been grounded by him on the following Texts of the Court:

- Article 9(1) & 10(e) & (d) of the Supplementary Protocol (A/P.1/01/05) amending Article 9(1) of the Protocol relating the Community Court of Justice (A/P.1/7/91);
- Article 23 of the Protocol (A/P.1/7/91) on the Community Court of Justice;
- Article 5(2) & (3) and 15(4) of the Revised Treaty of the ECOWAS;
- Article 95 of the Rules of Community Court of Justice; and
- Under the Inherent jurisdiction of the Court.

It is the case of the 16th and 17th Defendants that this Court lacks jurisdiction to entertain the Plaintiff's suit because the said suit does not comply with the applicable laws for the enforcement of its judgements particularly Article 24 of the Protocol, A/P.1/7/91. The Applicants, therefore, conclude that by hearing the suit, this Court will be acting *ultra vires* its jurisdiction.

The Plaintiff in his response to the preliminary objection by the 16th & 17th Defendants, failed to admit that, by his suit, he is seeking enforcement of the judgment of this Court but claims his action is seeking declaratory reliefs pursuant to which enforcement action may be taken in other member states of ECOWAS , and an order against the 16th & 17th Defendants, directing them to carry out their obligations under the Revised Treaty of ECOWAS, in the light of the 1st Defendant's refusal to honour its treaty obligations. The Plaintiff maintains that his suit falls squarely within the jurisdiction of this court as provided for in Article 9(1) (a), (d), (e) and (f) of the Supplementary Protocol, (A/P.1/01/05). The Plaintiff affirms that the subject matter of his

suit is the failure of a member state of ECOWAS to honour its treaty obligation as enshrined in Article 5(1), (2) & (3) and 15(4) and the role of the 16th & 17th Defendants in measures to ensure compliance by member states of ECOWAS with their treaty obligations provided for under Articles 7(2) and 77 of the Revised Treaty of ECOWAS.

LEGAL ANALYSIS BY THE COURT

To determine whether this Court has jurisdiction to entertain this suit or not, the following pertinent sub-issue needs to be resolved as to whether the subject matter of this suit is the enforcement of the judgment of the Court dated 6/1 1/13 given in favour of the Plaintiff or it is the failure of a member state of ECOWAS to honour its treaty obligations as provided for in the relevant Texts of the Community.

The subject matter, if properly put in perspective, will help this Court interrogate the 16th & 17th Defendants' preliminary objection vis-à-vis the claims of the Plaintiff. It is trite that the subject matter of any suit is deduced from the pleadings of the parties, together with the relevant legal principles regulating the conduct and activities forming the blocks of the pleadings. To this end, and in this suit, the subject matter is discernible from the pleadings of the parties thus far before this Court and the legal grounds of their respective claims.

The Plaintiff, from his own showing and the legal texts of the Court grounding his claims, cannot be said to be merely seeking declaratory reliefs. It matters

not, the manner or style in which the reliefs are couched, but the effect of their grant by the Court determines whether or not they are enforcement or declaratory reliefs.

At paragraphs 6.2 and 6.4 of the Plaintiff's initiating application, these, inter alia, are the issues he is inviting this Court to resolve:

6.2 "Whether the Plaintiff is not entitled to have the judgment of this Honourable Court entered in his favour enforced against the 1st Defendant?"

6.4 "Whether this is not an appropriate situation where this Honourable Court should make an order mandating the 16th & 17th Defendants and the Authority of Heads of State and Government of ECOWAS to impose the sanctions prescribed in Article 77 of ECOWAS Revised Treaty on the 1st defendant for its refusal and/or neglect to comply with the decision and orders of this Honourable Court?"

The Plaintiff prays this Court to resolve these issues among others; in his favour by arguing and submitting, inter alia, that Article 15(4) of ECOWAS Revised Treaty, Articles 19(2) and 22(3) of the Protocol, A/P.1/7/91 on the Community Court of Justice and 24(1) to (5) of the Supplementary Protocol, (A/SP.1/01/05) on the Community Court of Justice beg for an interpretation the effect of which is capable of sustaining his claims. These provisions are reproduced hereunder for ease of reference and they provide as follows:

Article 15(4) of the Revised Treaty of the ECOWAS

“Judgements of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.”

Article 19(2) of the Protocol (A/P.1/7/91) on the Community Court of Justice

“Decisions of the Court shall be read in open Court and shall state the reasons on which they are based. Subject to the provisions on review contained in this Protocol, such decisions shall be final and immediately enforceable”

Article 24(1-5) of the Supplementary Protocol (A/SP.1/01.05) relating to the ECOWAS Community of Justice

“(1) Judgments of the Court that have financial implications for nationals of Member States or Member States are binding.”

“(2) Execution of any decision of the Court shall be in the form of writ of execution, which shall be submitted by the Registrar of the Court to the relevant Member State for execution according to the rules of civil procedure of that Member State.”

“(3) Upon the verification by the appointed authority of the recipient State that the writ is from the Court, the writ shall be enforced.”

“(4) All Member States shall determine the competent national authority for the purpose of receipt and processing of execution and notify the Court accordingly.”

“(5) The writ of execution issued by the Community Court may be suspended only by a decision of the Community Court of Justice.”

Article 22(3) of the Protocol (A/P.1/01/91) on the Community Court of Justice

“(3) Member States and Institutions of the Community shall take immediately all necessary measures to ensure execution of the decision of the Court”

It is a well-established principle in the law of interpretation of Deeds and Statutes that a document that is, prima facie, clear in meaning does not require interpretation by the court. If the provision of a statute is very clear and unambiguous courts do not import words into it under the guise of interpretation. To this extent, this Court has ruled in the case of **MR. OLAJIDE AFOLABI v. FEDERAL REPUBLIC OF NIGERIA (2004 – 2009) CCJELR 1 pg. 14** that ***“when the meaning of the Treaty is clear, it is applied not interpreted”*** **SEE also Elmer Driedger, Construction of Statutes, Toronto Butterworths, 1983 pg.1** .It is the conviction of this Court, and the Court holds that the provisions of the texts reproduced verbatim above, are bereft of any ambiguity, and therefore do not call for any interpretation.

The only irresistible import of the reliefs being claimed by the Plaintiff; whatever spectacle from which one looks at them, is the enforcement of the judgment of this Honourable Court dated 6/11/13, given in favour of the Plaintiff herein. Having found that the combined effect of the reliefs being claimed by the Plaintiff, is for the enforcement of the judgement of this Court

standing to his credit, it is appropriate at this juncture, to consider the fundamental issue raised in the Application for Preliminary Point of law, thus; whether this Court has jurisdiction to enforce its judgments.

In determining the jurisdiction of this Court to adjudicate on any subject matter, it is important to commence our interrogation from the Supplementary Protocol (A/SP.1/01/05) amending the Protocol (A/P.1/7/91) on the Community Court of Justice which provides as follows:

Article 9: Jurisdiction of the Court

(1) “The Court has competence to adjudicate on any dispute relating to the following:

- a) the interpretation and application of the Treaty, Conventions and Protocols of the Community;***
- b) the interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;***
- c) the legality of regulations, directives decisions and other subsidiary legal instruments adopted by ECOWAS;***
- d) the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, Regulations, Directives or Decisions of ECOWAS Member State;***
- e) the provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;***
- f) the Community and its officials; and***

g) the action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.

The subject matter that the Court has competence to adjudicate upon clearly does not include the enforcement of its judgments.

The jurisprudence of the Court amply supports this position. In the decided case of **KARIM MEISSA WADE v. REPUBLIC OF SENEGAL (General List No. ECW/CCJ/APP/09/13 and Judgement No. ECW/CCJ/JUD/19/13**, this Court ruled that where it has delivered a judgment, it is up to the parties to pursue the enforcement of same in accordance with the provisions of the Supplementary Protocol of 19 January 2005 and the Supplementary Act on Sanctions of 17 February 2012. **(SEE ECOWAS OFFICIAL JOURNAL VOL. 60 pg. 76)** Therefore, the Court declared that it lacks jurisdiction to entertain the matter. Again in the absence of jurisdiction *ratione materiae* on cases seeking for the enforcement of the Court's judgments, the judgment of this Court in the Suit No. **ECW/CCJ/APP/12/15 between LES ETABLISSEMENTS VAMO & ORS v. BENIN** is instructive. In that case, the applicants requested the Court to order the enforcement of its judgment dated 3rd July 2013, with reference number ECW/CCJ/JUD/07/13 between AZIAGBEDE KOKOU & 33 ORS ETC. v. REPUBLIC OF TOGO, the Court ruled that it lacks jurisdiction to enforce its own judgments (see ECW/CCJ/JUD/29/16).

What then is the fate of a judgment creditor in this Honourable Court? In Article 24, the Supplementary Protocol (A.SP.1/01/05) on the Community Court of Justice reproduced above provides methods of implementation of

judgments of the Court. The fact that the Plaintiff herein is a judgment creditor is not in issue. In fact, he has taken advantage of Article 24(2) only for his efforts to be torpedoed by the constraints inherent in rules of civil procedure in the 1st defendant's country as evidenced from **Annexure CM8 & CM9**.

Be that as it may, the Plaintiff's suit hinges on the failure of the 1st defendant to voluntarily comply with the judgment of this Court in the Suit No. HRCM/376/15 granted in his favour. The inability of the Plaintiff to utilize the methods provided by the rules of this Court for the execution of the judgment was as a result of the 1st defendant's failure and/or neglect to live up to its obligations as a member of ECOWAS. In such situation, what cause of action, if any, is open to the Plaintiff?

A **"Cause of action"** has been defined in Halsbury's Law of England (4th ed), Vol 37, para 20 at page 27 as follows:

"..a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which the defendant would have a right to traverse. Cause of action has also been taken to mean that particular act of the defendant which gives the plaintiff his cause of complaint, or subject matter or grievance founding the action, not merely the technical cause of action."

This definition of ***“cause of action”*** has received the blessings of this Court when it delivered itself in the following words in the case of **INCORPORATED TRUSTEES OF FISCAL & CIVIC RIGHTS ENLIGHTENMENT FOUNDATION v. FEDERAL REP. OF NIGERIA & 2 ORS ECW/CCJ/JUD/18/16** as:

“a matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is the right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable.” See also Gabriel Inyang & Anor V. The Federal Republic of Nigeria ECW/CCJ/JUD/20/18 unreported.

Article 3(1) of the Supplementary Act A/SP.13/02/12 provides:

“Member State or their leaders that fail to honour their obligations to the Community shall be liable to judicial and political sanctions”.

Article 7(3) (g) of the ECOWAS Revised Treaty vest in the Authority of Heads of States and government the powers to refer where it deems necessary any matter to the Community Court of Justice when it confirms that a Member State or Institution of the Community has failed to honour any of its obligations.

Again, **Article 77** of the Revised Treaty, sets out a sanctions regime for states that fail to undertake their obligations under the treaty.

Article 77 provides for sanctions applicable for non - fulfilment of obligations as follows:

- 1. Where a Member State fails to fulfill its obligations to the Community, the Authority may decide to impose sanctions on that Member State.**
- 2. These sanctions may include:**
 - (i) Suspension of new Community loans or assistance,**
 - (ii) Suspension of disbursement on-going Community projects or assistance programmes;**
 - (iii) Exclusion from presenting candidates for statutory and professional posts;**
 - (iv) Suspension voting rights; and**
 - (v) Suspension from participating in the activities of the Community.**
- 3. Notwithstanding the provisions of paragraph 1 of this Article, the Authority may suspend the application of the provisions of the said Article if it is satisfied on the basis of a well-supported and detailed report prepared by an independent body and submitted through the Executive Secretary, that the non-fulfillment of its obligations is due to causes and circumstances beyond the control of the said Member State;**
- 4. The Authority shall decide on the modalities for the application of this Article.**

Unfortunately, the said article enjoins only Authority of Heads of States [the 17th defendant herein] to take action to enforce that obligation. The Article gives no right or cause of action to individuals to do so. Following these clear provisions of the text, the court finds that the plaintiff has no locus standi in this action against the defendants as claimed. This court also finds as a fact that it has no jurisdiction to entertain this action having regard to the reliefs

sought. The court makes this latter finding based on the fact that the court itself is a creature of statute so is its jurisdiction. Therefore, once the Constitutive Text setting up the Court does not give it a particular jurisdiction, it cannot assume that duty on its own. The court has no jurisdiction to enforce its own decisions as this action is seeking to do, hence this action will not be entertained by the court.

On the issue of whether the parties in this suit are proper parties, it is trite that Parties to an action have been classified into three namely:

- a. Proper parties
- b. Desirable parties, and
- c. Necessary parties.

The classification is essential to the survival of any suit since firstly the constitution of the suit invariably depends on the quality of the parties, and secondly the execution of any judgment of the court equally depends on the quality of the parties.

Proper parties are those whose absence an effective order can be passed, but whose presence in the suit is necessary for a complete and final decision on the question/issue involved in the suit. In absence of a proper party an order or decree can be passed.

Desirable or nominal parties are those who have interest in the plaintiffs' claims or who may be affected by the result of the decision.

Indispensable or necessary parties are those that are not only interested in the subject matter of the proceedings but also whose absence in the matter will render the court unable to effectually and completely adjudicate upon issue before the court. **(See Black's Law Dictionary, 7 ed. 1999)**

Apart from few exceptional cases, this Court grants access to individuals mainly in matters of human rights violations. As it stands now, the Plaintiff's cause of action is in the nature of compelling through the hands of this court the 16th and 17th Defendants to perform their assigned treaty obligations of applying sanctions against the 1st Defendant.

The reasoning of the Court is amply supported by the philosophy underpinning the drafting of both the Revised Treaty of ECOWAS and the Supplementary Act **A/SP.13/02/12 on SANCTIONS AGAINST MEMBER STATES THAT FAIL TO HONOUR THEIR OBLIGATIONS TO ECOWAS. Under Article 14 of A/SP.13/02/12**, itemized procedures for activation of sanctions against culpable States are provided. Unfortunately, none of the provided procedures affords the Plaintiff herein **locus standi before this Honorable Court** against the 16th & 17th Defendants either for their failure to activate or for compelling them to activate the application of sanctions against the 1st Defendant for the delict in complying with its treaty obligations. In the **KARIM MEISSA WADE v. REPUBLIC OF SENEGAL mentioned (supra)**, the **Court held as follows:**

“that it has jurisdiction to examine actions brought for failure by an ECOWAS Member State to honour its obligation;

(...) on the other hand, that in the instant case, the Application brought by Mr. Karim Meïssa Wade, in the aspects relating to requests before the

Court to examine failure by the Republic of Senegal to fulfil its Community obligations, are inadmissible, for lack of locus standi;

(...) that the enforcement of the judgments of the Court of Justice of ECOWAS is not an option but an obligation upon the Member States and Institutions of the Community, pursuant to Article 15(4) of the Revised Treaty of ECOWAS”

See also the case of **GNASSINGBE KPATCHA v. REPUBLIC OF TOGO (ECW/CCJ/JUD/19/13)**.

Under the relevant Texts of the Community Court of Justice, ECOWAS, a mere interest in a problem, no matter how qualified an individual or group/organization is in evaluation of the problem, it is not sufficient by itself to render such an individual group/organization adversely affected or aggrieved for the purpose of giving it standing to obtain judicial decision. Only real party in interest as contemplated for in the Texts of the Court has the right to be heard in appropriate cases.

On the basis of the foregoing, the Court holds that the Plaintiff lacks the locus standi to prosecute this suit against the 16th and 17th Defendants. The 16th and 17th Defendants have not violated any human rights of the Plaintiff to warrant an action before this Court against them. One may ask, what human rights of the Plaintiff have been or are about to be breached by the defendants to clothe him with this action? In the candid view of this Court, this not a human rights action, and it must fail as such.

In conclusion, this Court totally agree with the reasoning of the learned Counsel for the 16th & 17th Defendants/Applicants that this Court lacks jurisdiction to entertain the Plaintiff's application for the enforcement of its judgment against all the defendants herein. The Plaintiff does not have the capacity to maintain an action against the Defendants for the reliefs being sought, and therefore the suit is inadmissible for adjudication.

Article 87(1) of the Rules of the Community Court of Justice, ECOWAS provides that *“a party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application by a separate document”*. Additionally, **Article 88(1)** of the same document states that: *“Where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the parties and without taking further steps in the proceedings, give a decision”*.

The 16th and 17th Defendants duly complied with the above provisions of the Rules of the Court by their Application dated 9/08/16 and filed at the Registry of this Court on 11/08/16.

DECISION

This Court after examining the initiating Application and the notice of preliminary objection by the Defendant; and after hearing counsel of the parties herein, and for the reasons canvassed above, holds that the Plaintiff's action is manifestly not maintainable against the Defendant for lack of capacity and same is inadmissible.

The case is inadmissible and the Parties are to bear their respective costs.

THIS DECISION IS MADE, ADJUDGED AND PRONOUNCED PUBLICLY BY THIS COURT, COMMUNITY COURT OF JUSTICE, ECOWAS; SITTING AT ABUJA, NIGERIA ON THE DAY 11TH DECEMBER, 2018.

HON. JUSTICE EDWARD AMOAKO ASANTE - PRESIDING

HON. JUSTICE KEIKURA BANGURA - MEMBER

HON. JUSTICE JANUARIA T. S. MOREIRA COSTA - MEMBER

TONY ANENE-MAIDOH - CHIEF REGISTRAR