



**IN THE COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES
HOLDEN AT ABUJA
ON MONDAY, THE 29TH DAY OF APRIL, 2019
SUIT NO: ECW/CCJ/APP/42/16
JUDGMENT NO: ECW/CCJ/JUD/17/19**

BETWEEN

HIS LORDSHIP JUSTICE PAUL UTER DERY

HIS LORDSHIP JUSTICE MUSTAPHA LOGOH APPLICANTS

HIS LORDSHIP JUSTICE GILBERT AYISI ADDO

AND

THE REPUBLIC OF GHANARESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Gberi-Be Quattara	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member
Assisted by Tony ANENE-MAIDOH	- Chief Registrar.

REPRESENTATION TO THE PARTIES

Nii Kpakpo Samoa Addo	-For the Applicants
Dorothy Afriyie-Ansah	-For the Respondent

JUDGMENT

This is the judgment of the Court and Parties were both heard in the open Court.

PARTIES

The Applicants are citizens of Ghana and Justices of the Superior Court of Judicature of the Republic of Ghana

The Respondent, the Republic of Ghana, is a member of the Economic Community of West African States (ECOWAS).

APPLICANTS' CASE

1. The Applicants averred that on 10th September, 2015, they were informed via a letter dated 9th September, 2015 signed by the Chief Justice of the Supreme Court of the Republic of Ghana notifying them of a petition written by one Tiger Eye PI which was sent to the President of Ghana seeking their removal from office as Justices of the Superior Court. The Chief Justice requested that they submit their responses to the allegations by 14th September, 2015.

2. The 1st and 2nd Applicants contested the validity of the action of the Chief Justice and therefore filed writ of summons at the High Court of the Republic of Ghana against the petitioner, Tiger Eye PI, the Chief Justice and the Attorney General. They prayed the Court for a declaration that the petition to the President be declared null and void on grounds of public disclosure of the evidence on which the petition was based. The Supreme Court in its judgement, while agreeing that the public disclosure of the evidence on which the petition was based, violated the provisions of article 146(8) of the 1992 Constitution but, took the view that the violation did not automatically result in vitiating the petition as to render it void against them.

3. The 3rd Applicant who however responded to the petition as requested by the Chief Justice was suspended after a prima facie case was made against him. The Applicants further state that the Chief Justice having purportedly made a determination of a prima facie case against the 3rd Applicant amongst other indicted Justices, brought the matter before a Judicial Disciplinary Committee pursuant to Articles 146(3), (4) and (5) of the 1992 Constitution. They alleged that the Chief Justice in making the said determination relied on audio-visuals and

transcripts of various discussions and other acts that allegedly took place between the petitioner, the judges concerned and the Court staff which the petitioner produced in support of the petition, as evidence. The 3rd Applicant subsequently caused a writ of summons to be issued at the High Court against the petitioner, Tiger Eye PI and 8 others contesting the validity of the determination of a prima facie case against him.

4. The Applicants further averred that on 16th December, 2015 the Judicial Council of Ghana at its meeting, having deliberated on said petition decided to pay the Applicants half of their monthly salaries while suspending the payment of all allowances. They stated that they were never invited and hence made no presentation at the meeting of the judicial Council. That on receipt of said decision, the 1st and 3rd Applicants commenced proceedings at the Supreme Court challenging the legality and constitutionality of the actions taken by the Judicial Council and same was dismissed by the Supreme Court.

5. The Applicants aver that even though the Chief Executive Officer of Tiger Eye PI one Anas Aremeyaw Anas disclosed via the social media, its identity as a company registered in accordance with the laws of Ghana and licensed by law to carry out private investigations, a search conducted at the Registry of Companies of Ghana revealed that the petitioner is not a registered company in Ghana. Rather, Tiger Eye PI Media Limited was found with Anas Aremeyaw Anas as its sole shareholder. The search further disclosed that Tiger Eye PI Media Ltd became defunct in September, 2012 and was replaced by Stallion Tiger Company Limited which was incorporated on 12th September, 2012.

6. Based on the search report, and in the light of the fact that the Defendants in Suit No. J1/9/2016 (Tiger Eye PI, the Chief Justice and the Attorney-General) referred to the petitioner in their Statement of defense as Anas Aremeyaw Anas and not Tiger Eye PI, the Applicants instituted another action at the Supreme Court challenging the legal capacity of the Petitioner, Tiger Eye PI, to submit a petition to the President seeking their removal from office. That on 27th October, 2016, the Supreme Court gave the judgment wherein it noted that there was evidence to

show that the said Petition was indeed signed by Anas Aremeyaw Anas in his personal capacity as a citizen of Ghana and not as Tiger Eye P1.

7. The Applicants aver that whilst all these cases were pending, the Director-General of the Criminal Investigations of the Ghana Police Service commenced an investigation into the allegations levied against the Applicants by Tiger Eye PI. In response, the 2nd and 3rd Applicants wrote a protest letter against the said investigations but the 1st Applicant caused a writ to be issued in the High Court challenging the validity of any such investigation by the Ghana Police Service.

8. Following from the above facts, The Applicants filed this initiating application on 8th December, 2016. The Respondent having failed to file a defence to the action, the Applicant filed an application for default judgment on the on 14th of March, 2017. Furthermore, the Applicants on 29th of March 2017 filed another application for Provisional Measures seeking an order to restrain the Respondent from proceeding with their impeachment pending the hearing and determination of the substantive suit.

SUMMARY OF PLEAS IN LAW OF THE APPLICANT

RIGHT TO FAIR HEARING AND ADMINISTRATIVE JUSTICE

9. The Applicants invoke the following Human Rights Instruments; **Article 10 of the Universal Declaration of Human Rights, Article 14(1) of the International Covenant on Civil and Political Rights and Article 7(1) (a) of the African Charter on Human and Peoples' Rights**, to support the case that their right to fair hearing has been breached.

10. Further, the Applicants argue that there is no provision in **the 1992 Constitution of Ghana** which empowers **the Judicial Council** to take those decisions on the **16th December, 2015** to pay the Applicants half salary and suspend the payment of all allowances to them as a result of the **Tiger Eye PI** petition without given them the opportunity of Fair hearing.

11. Applicants submit that **the Republic of Ghana** by the above described actions and decisions as to the identity of even the Applicants' accuser, alone go to show how unfairly the Applicants are being treated. This, it is submitted, constitute a violation of the Applicants' rights to fair hearing as enshrined in **Articles 10, 14(1) and 7(1)(a)** of the **Universal Declaration of Human Rights**; the **International**

Covenant on Civil and Political Rights; and the African Charter on Human and Peoples' Rights respectively.

EQUALITY BEFORE THE LAW AND FREEDOM FROM DISCRIMINATION

12. Applicants argue that they have not been treated equally before the law contrary to Articles 2 and 7 of the Universal Declaration of Human Rights, Articles 2 and 26 of the International Covenant on Civil Political Rights and Articles 2 and 3 of the African Charter on Human and Peoples' Rights all of which guarantees equality before the law and freedom from discrimination. Applicants submits that the Human Rights Committee in its General Comment No. 18 at its thirty-seventh session in 1989 defines the term "discrimination" in paragraph 7 as follows:

"...any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms."

13. Applicants argue that their case was treated differently from that of **Agyei Twum v. The Attorney- General and Bright Akwetey [2005-2006] SCGLR 732** despite sharing similar situations. Applicants submit that in the **Agyei Twum Case** supra, the petition was aborted for failure to make a prior determination of prima facie case before appointing the committee to investigate and also for breach of the in camera proceedings by the petitioner. This is in line with Article 146(2), (3), (6) and (8) of the Constitution. The Supreme Court declared that the petition was still valid despite the breaches of Article 146(8) of the Constitution by the Chief Justice and the petitioner.

14. Applicants therefore submits that the decision of the Supreme Court by which it declared the petition still valid is in violation of the Applicants' right to equality before the law and freedom from discrimination in contravention of the above stated provision of Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the African Charter on Human and Peoples' Rights.

RIGHT TO PRIVACY

15. Applicants canvass legal argument on the violation of their right to privacy by invoking **Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights**. Applicants submits that what constitutes interference with privacy in the context of digital communications and the meaning of “arbitrary and unlawful” use of private data is most relevant to the instant case. Applicants argue that In the instant case, the petitioner, Tiger Eye PI or Anas Aremeyaw Anas by secretly filming and recording their conversations amounts to interference with their privacy and violates the law on collection and retention of personal data as regulated by **the Data Protection Act, 2012 (Act 843)**, law of Ghana.

16. Applicants further argue that the report of the United Nations office of the high commissioner on Human Rights Committee; **General Comment No.16** which was adopted at its **thirty-second session** on **8th April, 1988** has explained the right protected in Article 17 of the International Covenant on Civil and Political Rights to include unlawful and arbitrary use of data which constitutes interference with interference with privacy in the context of digital communications.

17.The Applicants further submit that paragraph 2 of Article 17 of the International Covenant on Civil and Political Rights deals with the right to the protection of the law against unlawful or arbitrary interference with their privacy and that it was also emphasized in the General Comment report and therefore submits that the Office of the United Nations High Commissioner on Human Rights in paragraph 20 of its report to the Human Rights Council and the General Assembly, referred to herein before also significantly states that:

“...any capture of communications data is potentially an interference with privacy and, further, that the collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently consulted or used...”

18. It is the submission of the Applicants that for a person to lawfully obtain, process, hold, use or disclose personal information, the person must register under Act 843, Therefore, the collection of the communication data of the Applicants by Tiger Eye PI or Anas Aremeyaw Anas in the instant case is unlawful and a violation of the Applicants rights to privacy provided for in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as well as the Data Protection Act of Ghana(Act 843) and Article 18(2) of the Constitution of Ghana.

RIGHT TO WORK

19. Applicants argue the violation of their right to work by invoking **Article 23(1) of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Economic, Social and Cultural Rights and Article 15 of the African Charter on Human and Peoples' Rights**. The Applicants submit that their suspension from work is an attempt to unfairly deprive them of their freely chosen employment and violates their right to work.

The Applicants rely on **Article 23(1) of the Universal Declaration of Human Rights** which provides as follows:

“Everyone has the right to work, to free choice of employment, to just favourable conditions of work and to protection against unemployment”.

This is also provided in Article 6 of the International Covenant on Economic, Social and Cultural Rights and Article 15 of the African Charter on Human and Peoples' Rights.

20. The Applicant also rely on the treaty body of the International Covenant on Economic, Social and Cultural Rights, that is, the Committee on Economic, Social and Cultural Rights explained the States obligations as required by the right to work in its General Comment No. 18 adopted on 24th November, 2005 at its thirty-fifth session held in Geneva, from the 7th to the 25th November, 2005 and submits that the Republic of Ghana has taken steps aimed at violating the Applicants right to work by the impeachment processes initiated against them

21. RELIEFS SOUGHT

1. **A DECLARATION** that every individual within the territorial jurisdiction of the Republic of Ghana is entitled to the internationally recognized human rights enshrined in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the African Charter on Human and Peoples' Rights.
2. **A DECLARATION** that the Republic of Ghana has an obligation to respect, protect and fulfil within the territorial jurisdiction of the Republic of Ghana the internationally recognized human rights of every individual enshrined in the Universal Declaration of Human Rights; the International Covenant on

Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the African Charter on Human and Peoples' Rights.

3. **A DECLARATION** that the Republic of Ghana has violated and continues to violate the Applicants' rights to fair hearing and administrative justice, enshrined in Article 10 of the Universal Declaration of Human Rights; Articles 5(2); and 14(1) of the International Covenant on Civil and Political Rights; and Article 7(1) (a) of the African Charter on Human and Peoples' Rights.
4. **A DECLARATION** that the Republic of Ghana has violated and continues to violate the Applicants' rights to equality before the law and freedom from discrimination enshrined in Articles 2 and 7 of the Universal Declaration of Human Rights; Articles 2; 14(1); and 26 of the International Covenant on Civil and Political Rights; and Articles 2 and 3 of the African Charter on Human and Peoples' Rights.
5. **A DECLARATION** that the Republic of Ghana has violated and continues to violate the Applicants' rights to privacy enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.
6. **A DECLARATION** that the Republic of Ghana has violated and continues to violate the Applicants rights to work enshrined in Article 23 of the Universal Declaration of Human Rights; Article 6 of the International Covenant on Economic, Social and Cultural Rights; and Article 15 of the African Charter on Human and Peoples' Rights.
7. **AN ORDER** prohibiting the Republic of Ghana from continuing with the impeachment and investigation of the Applicants based solely on evidence unlawfully procured by Tiger Eye PI in violation of the Applicants' rights to privacy enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.
8. **AN ORDER** directed at the Republic of Ghana to pay with interests the salaries and allowances of the Applicants which it unlawfully suspended since January, 2016 arising out of a petition by Tiger Eye PI/Anas Aremeyaw Anas for their removal from office.

9. **AN ORDER** directed at the Republic of Ghana to pay compensatory damages to the Applicants who are victims of human rights violations by the Republic of Ghana.
10. Costs including legal fees on full indemnity basis.
11. Any other order(s) or direction(s) as the Court deems appropriate for giving effect to or enabling effect to be given to the declarations made herein.

RESPONDENTS CASE

22. The Respondent being out of time to file its defense, filed an application for extension of time within which to file the said defense on the 24th of March, 2017 and also an application in opposition of the Applicants application for default judgment dated 27th of March, 2017.

23. On 20th April, 2017, the Respondent filed an application seeking the leave Court for an Amici Curiae to intervene in the matter and the Applicants filed a response to this application on the 2nd of May, 2017.

24. The case of the Respondent is that an investigation was conducted by one Tiger Eye PI into the activities of judiciary officers in Ghana in which various acts of corruption, bribery and unethical practices were uncovered. That upon this discovery, the President of Ghana was petitioned for the removal of the superior Justices who were implicated based on which the President of Ghana referred same to the Chief Justice in accordance with the provisions of the 1992 constitution of Ghana.

25. Respondent further averred that upon receipt of the petitions, the Chief Justice studied the said petitions together with the evidence which consisted mainly of audio visual recordings and found a prima facie case against the Applicant's and other Justices of the High Court. That the said recordings showed the Applicants' engaging parties outside their official functions, with the 1st Applicant seen in his official residence accepting monies from both his clerk and alleged relative of the

accused person as well as sheep and goat from the said relative. That the 2nd Applicant was also seen taking the money from his table and putting it either in his bag or drawer by his side. That in so far as the 3rd Applicant is concerned, the money was brought to him in his house.

26. Respondent claim that by a letter dated 9th September, 2015, the Chief Justice requested the Applicants to respond to the allegations contained in the petition by Monday, the 15th September, 2015. This was to enable the Chief Justice to determine whether or not a prima facie case had been established against the Applicants after taking into account the contents of the audio visual recordings.

27. That without responding to the letter of 9th September, the 1st Applicant caused a writ to be issued in the Supreme Court against Tiger Eye PI, the Chief Justice, as well as the Attorney General in a writ numbered JI/29/2015. The 1st Applicant prayed the Supreme Court to declare the petition to the President as null and void on grounds of public disclosure of the evidence upon which the petition was based as same amounts to a violation of Article 146 (8) of the 1992 Constitution. Though the Supreme Court agreed with the 1st Applicants contention, it took the view that the said violation does not automatically result in vitiating the petition as to render it void against the 1st Applicant.

28. The Respondent state that the 2nd and 3rd Applicants responded to the letter of the Chief Justice denying the allegations in the petition against them. A committee was then set up to determine the petition in line with the provisions of Article 146 of the Constitution. The Chief Justice made a determination that a prima facie case has been made against the 2nd and 3rd Applicants. The 1st Applicant failed to respond to the letter from the Chief Justice but caused a writ to be issued in the High Court on the 17th November, 2015, challenging the petition brought against him as well as finding of a prima facie case against him by the Chief Justice.

29. The Respondent aver that the 1st Applicant remained on duty, while the 2nd & 3rd Applicants were suspended in accordance with Article 146 (2) of the Constitution. That the 1st Applicant on the 14th of October, 2015, applied for administrative leave which was approved by the Chief Justice. However, on the 16th of December, 2015, the Judicial Council decided to place the Applicants on half

salary for the period upon which they were on interdiction. That this position was communicated to the Judges through letters dated 8th and 11th January, 2016, by the Council in compliance with the provisions of Regulation 8 of the Labor Regulations on the conditions of service of employee Justices. That the council further suspended the payment of allowances of the Applicants' with the exclusion of their rent pursuant to Article 158 (2) of its Constitution.

30. The Respondent further state that the 2nd and 3rd Applicants then commenced proceedings in the Supreme Court of Ghana challenging the legality and constitutionality of the actions taken by the Judicial Council and same was dismissed by the Supreme Court.

31. The Respondent claim that in an attempt to investigate the allegations which was now of public knowledge and interest, the Director-General of the Criminal Investigations of the Ghana Police Service invited the Applicants given that bribery and corruption is an offence in Ghana. While the 2nd and 3rd Applicants wrote a protest letter against the said investigations, the 1st Applicant caused a writ to be issued in the High Court challenging the validity of any such investigation by the Ghana Police Service. However, the application was struck out on grounds that the Court cannot stop the police from investigating a matter where it has reasonable grounds to believe that a crime has been committed.

32. The Respondent further stated that in another writ, the Applicants challenged the legal capacity of Tiger Eye PI to investigate the subject matter of the petition on the grounds that it is not a legal person. This application was dismissed by the Court on grounds that the Applicants' submission that Tiger Eye PI is an unincorporated body and therefore incompetent to submit a petition to the President is not only disingenuous, but also a ruse to sway the Supreme Court from the real issues.

33. The Respondent stated that in yet another Application before the Supreme Court, the Applicants argue that upon a true and proper interpretation of the 1992 Constitution of Ghana, the Chief Justice lacks the jurisdiction to enquire into the petition as the said petition made criminal allegations against the Applicants. That this application is still pending before the Court. The Respondent further states that

the suit before this Court is one of a series of proceedings contrived by the Applicants to frustrate their obligation to directly confront the audio visual evidence of their engagement in corrupt and unethical conduct whilst acting as judges of the High Court of the Republic of Ghana.

34. The Respondent contend that the issues raised in this suit have been finally and effectually adjudicated upon by the Courts of competent jurisdiction in Ghana and that bringing it before this Court amounts to an abuse of Court process. That by assuming jurisdiction, this Court will be turned to an Appellate forum which it cannot rightly assume. They further contend that the issues in this application are caught up by the doctrine of res-judicata.

SUMMARY OF PLEAS IN LAW OF THE RESPONDENT.

THE RIGHT TO A FAIR HEARING

35. The Respondent rely on Article 10 of Universal Declaration of Human Rights, Article 14 (1) of the International Covenant on Civil and Political Rights which are in pari-material with Article 7(1) (a) of the African charter on Human and Peoples' Rights which states that:

*“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;(emphasis mine)”*

Respondent argue that Applicants were heard by many Superior court of records in Ghana and lost the cases and that all they should have done was to seek for a judicial review of the Supreme Court decision if they were not satisfied.

The RIGHT TO PRIVACY

36. Respondent says that the Applicants relied on Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights and Article 12 of the Universal Declaration of Human Rights which provides that;

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation”

37. The Respondent says that Applicants further seek to rely on the protection under the Data Protection Act, 2012 and claim that there is a law in Ghana, which seeks to regulate the collection and retention of personal data. That is the Data Protection Act, 2012 (Act 843). Per Section 27 (1) of Act 843;

“A data controller who intends to process personal data shall register with the Commission”

38. The Respondent disagrees with the assertion that they have acted contrary to the provisions of Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights. Respondent submits that Article 29 of The Universal Declaration of Human Rights states that the rights conferred on individuals are subject to limitations placed by law on the exercise of such rights for the purpose of morality, public order and the general welfare in a democratic society.

39. RELIEF SOUGHT BY THE RESPONDENT.

1. That the Court, not been an appellate court has no jurisdiction to entertain the suit and should accordingly be dismissed.
2. A declaration that the Respondent has not violated the rights of the Applicant as alleged.

40. THE ANALYSIS OF THE COURT.

The Court having delivered the ruling on 22nd of November 2018 on the application for provisional measures by the Applicant and denying same will proceed to consider the following issues for determination in the substantive suit:-

ISSUES FOR DETERMINATION

- I. WHETHER THE COURT HAS THE JURISDICTION TO HEAR THIS CASE
- II. WHETHER THE HUMAN RIGHTS OF THE APPLICANTS HAVE BEEN VIOLATED AS ALLEGED.

WHETHER THE COURT HAS THE JURISDICTION TO HEAR THE CASE:

41. The Applicants by an originating application before this Court contend that the disciplinary procedure leading to their suspension arising from a petition alleging misconduct by one Tiger P1 was unlawful. They further argue that their right to privacy was violated through an illegally obtained electronic audio-visual recording which formed the basis of the evidence of the alleged misconduct contrary to the Data Protection Act of the Republic of Ghana. Applicants not satisfied with the outcome of the disciplinary proceedings and the judicial decisions of the various actions they instituted before the High Courts and the Supreme Court of Ghana; approached this Court for the enforcement of the alleged violations of their rights to privacy, right to equality before the law, right to work and right to fair hearing.

42. The Respondent contend that the issues raised in this suit have been finally and effectively adjudicated upon by the Courts of competent jurisdiction in Ghana and that bringing it before this Court amounts to an abuse of Court process. That by assuming jurisdiction, this Court will be turned to an Appellate forum which it cannot rightly assume. They further contend that the issues in this application are caught up by the doctrine of res-judicata and therefore the Court lacks the jurisdiction to hear this case.

43. This Court has in its flourishing jurisprudence held that it lacks the jurisdiction to sit on appeal over decisions of National Courts. In *BAKARY SARRE & 28 ORS V. THE REPUBLIC OF MALI (2011), ECW/CCJ/JUD/03/11*, the Court in determining the application filed by the Plaintiffs held that:

“The said application substantially seeks to obtain from the Court a reversal of judgment delivered by the Supreme Court of Mali and seeks to project the Court of Justice of ECOWAS as a Court of cassation over the Supreme Court of Mali. Viewed from that angle, the Court declared that it had no jurisdiction to adjudicate on the matter.”

See also Ocean King v. Republic of Senegal Para 66, pg. 161. This position was reiterated that it does not compose itself as an appellate court over decisions of National courts. See *SIKIRU ALADE V. FEDERAL REP. OF NIGERIA (2012)*; *MUSA LEO KEIT V. MALI (2004-2009) pg. 72 Para 26 & DR. JERRY UGOKWE V. FRN & 1 OR, (2005), ECW/CCJ/JUD/03/05.*

44. Also, in *LINDA GOMEZ & 5 ORS V. REPUBLIC OF THE GAMBIA*, Suit No. ECW/CCJ/APP/18/12 at paragraph 27, where the Court stated as follows:

“It is clear that the Court has neither jurisdiction to annul domestic legislations of ECOWAS Member States nor the jurisdiction to act as appellate Court over their domestic Courts”.

The objection that adjudicating on this matter will amount to sitting on appeal of the Respondent decision is not founded and the Court so holds.

45. The court is also called upon to address the issues of res judicata in the context that the facts of the case at the national court are the same with the instant. From the pleas of both parties it is undisputed that the Applicants’ cause of action in the national court was premised upon the following:

46. That the petition, due to the public disclosure of evidence on which it was based is null and void; That the action of the judicial council was constitutionally illegal; That the petitioner lacked juridical capacity to carry out the investigation being unknown to Law; That the investigation by the Police Service was illegal. On the other hand, the case at hand is purely on allegation of violation of right to fair hearing, right to privacy, right to work and equality before the law. Additionally the parties are not the same: whilst the current case is against the Respondent: Republic of Ghana, the national cases were against several parties including the petitioner, the Chief Justice, the Attorney General, the judicial Council and the head of the Police force. The principle of res judicata contemplates similar facts and same parties. In view of the above, the Court reiterates that it is not an appellate court and the facts do not lend credence to the operation of res judicata.

47. The Court under its Human Rights mandate in Articles 9 (4) and 10 (d) of the protocol A/P.1/07/91 and supplementary protocol A/SP.1/01/05 ***‘has jurisdiction to determine cases of violation of human rights that occur in any Member State’*** while giving access to ***‘individuals on application for relief for the violation of their human rights’***. In *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v. Federal Republic of Nigeria & Another*, ECW/CCJ/APP/08/2009, this Court on an application by the 2nd Defendant alleging that this Court lacks jurisdiction to entertain an action filed by the plaintiff in which

the latter alleged the violation of the right to quality education, right to dignity amongst others guaranteed by *Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' rights* ruled thus:

“It is a well-established principle of law that jurisdiction is a creature of statute. The statute that spells out the jurisdiction of this Court is the Supplementary Protocol on the Court of Justice, specifically Article 9 thereof. For this Court to have subject-matter jurisdiction over the suit as instituted by the Plaintiff, the subject-matter of the suit must fall within the confines of Article 9 of the Supplementary Protocol of the Court. Under Article 9 (4) of the Supplementary Protocol, the Court clearly has jurisdiction to adjudicate on applications concerning the violation of human rights that occur in Member States of ECOWAS.”

48. In the instant case, the Applicants allege violation of their human rights to fair hearing and fair trial; equality before the law and non-discrimination; privacy and work as guaranteed by various provisions of the UDHR, ICCPR, ICESCR and the ACHPR all of which are treaties ratified and domesticated by the Respondent through provisions in the 1992 Constitution and other statutes. The Court in a plethora of case law has held that mere allegation of human rights violation is sufficient to invoke the jurisdiction of the Court. In *His Excellency Vice-President Alhaji Samuel Sam-Sumana v. Republic of Sierra Leone.-SUIT NO: ECW/CCJ/APP/38/16 and JUD NO: ECW/CCJ/JUD/19/17*, the Court held that:

“Indeed allegations of violations of human rights by an Applicant is sufficient to invoke the jurisdiction of this Court. This is distinct from the issues of the veracity of the allegation(s).”

The Court equally reaffirmed its consistently held case laws that:

“The mere invocation of violation of human rights as falling within the sphere of competence of the Court is sufficient to establish the jurisdiction of the Court and that once human rights violation constituting international or community obligations of member states are brought against any member state, the Court declares its jurisdiction to examine such violation.”

See also BAKARY SARRE & 28 ORS V. THE REPUBLIC OF MALI (2011) ECW/CCJ/JUD/03/11 pg. 70, Para 33 & El Haji Mame Abdou Gaye v. Republic of Senegal ECW/CCJ/JUD/01/12 at Para 28 and 46.

This Court therefore declares that it has jurisdiction to entertain the instant application by the Applicants.

WHETHER THE HUMAN RIGHTS OF THE APPLICANTS HAVE BEEN VIOLATED AS ALLEGED:

49. The Applicants alleged that the Respondent violated their rights to fair hearing, privacy, work and equality before the law. The Court will now analyze each right seriatim to find whether there is violation as alleged or otherwise.

Right to Fair Hearing.

50. The Applicants alleged that their right to fair hearing has been violated by the Respondent contrary to Art 10 of the UDHR, 14(1) Of the ICCPR and 7(1) of the ACHPR. Their case is that on receipt of the petition submitted by Tiger Eye PI on the 10th September, 2015 seeking their removal from office as Justices of the Superior Court, they challenged same by instituting various actions in the national courts. Whilst still pending, the Judicial Council of Ghana purportedly met on 16th December, 2015 and without inviting the Applicants or provide an opportunity to be heard, decided to suspend the Applicants, and place them on half of their monthly salary while all allowances save housing rent were suspended. They further alleged that the uncertainty as to the identity of their accuser is a violation of their right to fair hearing, contending that the petitioner on one hand is known as Tiger Eye PI and as Anas Aremeyaw Anas on the other hand. Furthermore upon challenging the inconsistency, the Supreme Court's decisions were incongruent and that the facts above led credence to the violation of their right to fair hearing contrary to the above referred human rights instruments.

51. The Respondent on the other hand whilst admitting that the right to a fair hearing is inalienable contend that nothing in the Applicants' entire complaint amounts to a denial of the right to just and fair treatment in the administrative decision making process. The 1st Applicant refused or failed to respond to the letter

dated 10th September, 2015 requesting a response to the allegation. On the other hand, others who responded and appeared before the committees were given the opportunity to cross examine the petitioner. Furthermore the Respondent stated that the meeting held by the judicial Council constituted but a preliminary stage, a stage of formation of an opinion by the Council as to whether to give any direction and if so, the nature of directions to give to the investigative panel. In response to the uncertainty of the identity of the petitioner, the Respondent stated that it is most unfortunate and disingenuous for the Applicants to say that the identity of the petitioner remains a mystery to them as the petition clearly reveals the identity of the petitioner.

52. The Court in reviewing these facts as submitted by the parties' notes that the right to fair hearing is articulated in several international human rights instruments as listed above, however Article 7 of the ACHPR which is pari material with the others is set out below:

“Every individual shall have the right to have his cause heard and 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 defense, 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.”

53. The Court recognizes the principles of Audi alteram partem (hear the other side) which requires that persons affected by an adverse position must be given an opportunity to make representation. The right to be heard by its own nature connotes an opportunity to be heard within a reasonable time by an impartial court or Tribunal. This right is not limited to a one on one verbal representation but encompasses every avenue accorded to a party to be heard in a matter. This Court

reiterated the principle that parties must be given an opportunity to be heard in any matter affecting their interest in the following words:

“the right to fair hearing is a human right derived from the concept of fair hearing, in this regard, a fair trial is not only seen as an additional instrument for protection of the rights of defence largo sensu.....”

See MOHAMMED TAYYIB BAH V. REP OF SIERRA LEONE JUD NO: ECW/CCJ/JUD/11/15, (Unreported) in its consideration relied on the case of Ugokwe v. Okeke (2008), CCJELR pg. 149@ 146.

The Court also stressed that the minimum standards required of all institutions exercising powers that may affect the legitimate interest of the parties or one or more of them is to act **fairly**.

54. Article 7(a) above is very instructive as it gives a right of appeal in event of an act amounting to violation of an applicant’s rights. The Applicants in their originating application admitted that they were served with a notice by the Chief Justice to answer within a stipulated time to a petition submitted against them alleging judicial misconduct. The 2nd Applicant responded and was given an opportunity to cross examine the petitioner and upon review was informed that he had a case to answer. The 1st and 3rd Applicants however failed to respond instead filed an action at the High Court contesting the legality of the investigation. This clearly is the situation contemplated by Article 7(a). A recourse to a **competent national organ**, (in this case the High Court of Ghana) is the guaranteed rights therein which the Applicants exercised. Having failed to respond to the preliminary process of the investigation, and having opted rightfully to lodge an appeal before a competent Court in accordance with Article 7 (a), the Applicants is estopped from raising the flag of violation of fair hearing.

55. Furthermore, records submitted by parties before this Court show that about six (6) cases were filed by the Applicants against the Respondent at different times before various national constituted courts. It is not in dispute that the Applicants were given opportunity to be heard in all these cases, to be defended by counsels of their choice; neither is there any evidence canvassed regarding delay in the trial. Indeed all the cases filed by the Applicants were heard and judgments rendered accordingly albeit against the Applicants. Failure to secure a favorable judgment is not tantamount to a denial of the right to fair hearing.

The Court finds compliance with all the elements of Article 7 of the ACHPR and holds that the Applicants have not established a violation of their right to fair hearing.

Right to privacy.

56. It is the contention of the Applicants that the petitioner and his agents secretly filmed and recorded conversations of the Applicants and indeed other judges, magistrate and other judicial service staff. These secret filming and recordings were either done in the Judges or Magistrates or court staff residences, office chambers or other private locations. In the case of the 1st and 3rd Applicants herein, the secret filming and recordings were done at their residences while the 2nd Applicant was at his office chambers. The Applicants further contend that the collection and retention of the said conversations in the form of audio-visuals and transcripts thereof by the petitioner, which were subsequently used as evidence to support their removal amounts to interference with their privacy.

57. In further support of their allegation of violation of their right to privacy, the applicant averred that the Data Protection Act of Ghana (Act 843) is the primary legislation which regulates the collection and retention of personal data and provides for the registration with the Data Protection Commission of any data controller who intends to process personal data. While recognizing that interference with an individual's right to privacy is only justifiable if done lawfully and/or not arbitrarily, they argued that Tiger Eye PI not being a registered company and therefore unknown to law cannot be said to have conducted a lawful investigation and therefore not been in accordance with Law is a violation of their right to privacy.

58. It is the further contention of the Applicants that though the Supreme Court's decision dated 16th December, 2015, found the Chief Justice, the Respondent, and Tiger Eye PI and Anas Aremeyaw Anas in violation of the privacy requirement of the impeachment proceedings by publishing the identity of the indicted judges (including the Applicants), the content and evidence in support of the petition; nevertheless, it ruled that the violation did not affect the validity of the petition, rather opined that a suit for an award of damages is an appropriate remedy. This they also content is a violation of their right to fair hearing. They conclude that

there is a universal recognition of the right to privacy and the need to ensure it is safeguarded and therefore sought a declaration from the Court that their right to privacy has been violated by the Respondent.

59. The Respondent did not contest the facts as pleaded by the Applicants but state that they have not violated or acted in any way to unlawfully interfere with the Applicants right to privacy. Whilst recognizing the provisions in Articles 12 of the UDHR, and 17 of the ICCPR, it notes that Article 18(2) of the 1992 Constitution of the Respondent which is in pari-material with the Article 29 of the UDHR confers the rights therein subject to limitations placed by law on the exercise of such rights for purpose of morality, public order and the general welfare in a democratic society.

Article 29 (2) of UDHR reads as follows:

2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

60. In respect of the requirement of the limitation to be “in accordance with the law”, the Respondent state that the act of the petitioner is in accordance with the Whistle Blowers Act 2006 (Act 720) which empowers individuals to collect and disclose information about any wrong doing. The Act provides as follows:

Art 1. (1) Disclosure of impropriety:

1. (1) a person may make a disclosure of information where that person has reasonable cause to believe that the information tends to show

1. (1) (b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person

They contend that the said investigation targeted at exposing the Judges of acts which are criminal in nature is in compliance with Article 1(1) b above and therefore

is in accordance with the law and therefore is not in violation of the Applicants right to privacy.

61. With respect to the allegation that the petitioner being unknown to law, having not registered under the Data Protection Act, thus making the alleged acts unlawful; the Respondent stated that the Petitioner is a Company registered under the laws of Ghana and this was further confirmed by the decision of the Supreme Court where it held that the submission of the Plaintiffs (now Applicants) that the 1st Defendant (Tiger eye Pl) is an unincorporated body and therefore incompetent to submit a petition to the President is not only disingenuous, but a ruse to sway the Court from the real issue. The Supreme Court found the Plaintiffs' submission as unwarranted and dismissed same.

62. The Respondent further stated that the petitioner is covered by Section 61 of the Data Protection Act, which provides as follows:

The processing of personal data is exempt from the provisions of this Act for the purposes of;

- a) The prevention or detection of crime,***
- b) The apprehension or prosecution of an offender, or***
- c) The assessment or collection of a tax or duty or of an imposition of a similar nature.***

They contend that since the petitioner collected the information for the purpose of detecting crime and were thus exempted from the provision of the Act as it relates to registration, the filming and recording being in accordance with the Law is not a violation of the right to privacy of the Applicants.

63. On the limitation for purpose of meeting the requirement of morality, public order and the general welfare in a democratic society, the Respondent contend that the investigation was focused at exposing the acts of the judges which is detrimental to the enjoyment of rights of free and fair trial by all citizens They contend that Judges in Ghana and in fact globally, have been personified as the symbol of Justice in any given society as their judgments determine the fate of citizens arraigned before them. Morally, judges are expected to be above board and uphold and defend the integrity of the Law.

64. In analyzing the submission of the parties, the Court is mindful to ask what the right to privacy contemplates. The origin of the right to privacy is derived from the principle of the right 'to be left alone' which can be evoked to protect the privacy of an individual from invasion either by a too enterprising press, a photographer, or the possessions of any other modern devices for the recording or reproducing of scenes and sounds. See *Prince Albert Vs Strange*; (1849) 47 ER 1302. This principle has been codified by several international human rights instrument in varying styles but basically guaranteeing the protection of individuals from unlawful or arbitrary interference to the privacy of their homes, property, correspondence or communications. See Articles Article 17 ICCPR which is pari – material with Article 12 of the UDHR and Article 18(2) of the Constitution of the Republic of Ghana is hereby recited: Article 17 ICCPR reads:

- 1) ***"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.***
- 2) ***Everyone has the right to the protection of the law against such interference"***

Exceptions to the Right to privacy

65. While these articles protect the right to privacy, however this right should not be understood to be absolute and unconditional. Art 29 of the UDHR which is pari-material with Art 8(2) of the ECHR and Article 18(2) of the Constitution of the Republic of Ghana limits their enjoyment. Article 29 UDHR reads:

- 1) ***In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.***

66. A successful defense of the violation of this right is contingent upon compliance with two vital conditions: that the interference, is prescribed by, or is in accordance with, law and that it is necessary in a democratic society in pursuit of one or more of the objectives outlined. The exception raises four questions which the court will now address. First, was there an interference with the right in question? Secondly, if so, was it in accordance with, or prescribed by, law? Thirdly, was it genuinely in pursuit of one or more of the legitimate purposes at issue? Finally, taking all the

relevant circumstances into account, was it necessary in a democratic society for these ends see *Steven Greer: The exceptions to Articles 8 to 11 of the European Convention on Human Rights*.

1) Interference with the right to privacy.

67. The question to answer is whether there was an interference with the right to privacy of the Applicants. It is the Applicants' case that the filming and recording of the activities in their offices and residence was effected without their consent. This fact was not controverted by the Respondent and thus remains factual. Consequently the Court finds an interference with the privacy of the Applicants.

2) In accordance with law

68. The purpose of the phrase "in accordance with the law" is to ensure that the scope for arbitrary tampering with rights by the executive is limited by domestic legislative or judicial authority. The question that arises is did the filming and recording comply with the law so as to justify the interference in the applicants' privacy. In the case of *Huvig v. France 11105/84* and *Kruslin v. France 11801/85*; the European Court of Human Rights identified three questions which provide a test for deciding if any given interference with a specific right(s) was "legal": Does the domestic legal system sanction the infraction? Is the relevant legal provision accessible to the citizen? Is the legal provision sufficiently precise to enable the citizen reasonably foresee the consequences which a given action may entail?

a) Sanction of infraction by domestic legal system

69. The concept of "law" in this context is not confined to domestic legal processes but admits compliance with international human rights laws that impose international legal obligations applicable to the state in question, and a variety of internal regulations based on law. The case of the respondent is that the petitioner's acts are in compliance with both the Whistle Blowing Act and The Data Protection Act and therefore are in accordance with the Law. The Applicants have not disputed the assertion. It is clear from the interpretation of the Whistle Blowing Act 2006 (Act 720) of Ghana that it empowers the disclosure of any information by any person on reasonable suspicion that another person has not complied with a law, is about or **likely to break a law** which imposes an obligation on that person.

Indeed the information disclosed is about the commission of a crime of bribery which is an act that amounts to ***breaking the law***. The Court therefore finds that the alleged act of interference being premised on a national legislation is in accordance with the law.

b) Accessibility of the law

70. A provision of law will be deemed accessible when the individual concern can adequately access it or is aware of it through the dissemination process applicable in the given case. In the *Silver and Others v. United Kingdom* case 5947/72 6205/73 7052/75 , the ECHR held that the Standing Orders and Circular Instructions which the British Home Secretary issues to prison governors failed the accessibility test since they were not published, were not available to prisoners, nor were their contents explained in cell cards. They were, therefore, not “law” for the purpose of Article 8, paragraph 2 of the ECHR. In the instant case, the applicants are not just lawyers but judges of Superior Courts charged with the interpretation of the laws of the Respondent. The referred laws are published and indeed form part of the national laws to which they are from time to time called upon to adjudicate upon. Having not denied the existence or knowledge of the said laws, they are deemed to be accessible to the Applicants and therefore adjudged as Law and the Court so finds.

c) foreseeability of the consequences of action

71. It is expected that to pass the foreseeability test, the law in question had to be sufficiently clear to give the public an adequate indication as to the circumstances in which and the conditions on which resort to this kind of secret interference with private life is allowed. Laws are framed in general terms, the interpretation and application of which are matters of practice. The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover, and the number and status of those to whom it is addressed. A judge cannot claim ignorance of the precise nature of the law against bribery, the consequences of infraction of which is very well foreseeable. The investigation of the Applicants on bribery, corruption and unethical practice was not the result of an unforeseeable application of the provision as it concerns conduct not only against the ethics of their profession calling but criminal in nature. Indeed, the code of conduct to which they swore allegiance to provides in section 9.4.9 (L) of the Human Resources Management

Policy Framework and Manual for the Ghana Public Services the kind of activities likely to constitute misconduct for civil servants to include amongst others:

“Receiving or soliciting any contribution, fee, gift of value or emolument of any kind from any person for services rendered in the discharged of the public servant’s official duties.”

72. The Court agrees with the Respondent that the Applicants should have known that in accepting bribes to influence their judgment, they were engaging in acts against the ethics of their call and ran the risk of encountering an undercover investigation whose task is to expose them. The Court therefore finds that foreseeability test has been met and all other requirements for the interference to be ‘legal’ has been fulfilled, the court therefore holds that the interference is in accordance with the law.

3) Pursuit of the legitimate purposes

73. Both Art 8(2) of the ECHR which is pari material with Art 12 of the Constitution of Ghana identify the legitimate purposes for which an interference can be justified namely public safety, economic well-being of the country, protection of health and morality and the prevention of disorder or crime. From the facts already established the interference was to capture the commission of a crime - receiving bribes from relative of an accused person. This clearly falls within the ambit of the pursuit of a legitimate aim of exposing the commission of a crime. For this reasons the Court holds that the interference is in accordance with the law.

4) Necessary in a democratic Society

74. Even when the interference is in accordance with the law it must in addition be necessary in a democratic society for any of the following purposes: public safety, economic well-being of the country, protection of health and morality and the prevention of disorder or crime. The nature of the democratic necessary is such that mere expediency is not sufficient. The interference must be justified by a “pressing social need” relating to one or more of the legitimate aims above. *In CNDD v. COTE D’IVOIRE (2009), CCJELR Para 44, pg. 325 the Court relied on the*

European Court of Human Rights decision in OPEN DOOR AND DUBLIN WOMAN VS. IRELAND, (1992) which affirmed that:

“It had to examine if the disputed legal measure was in response to an urgent social need and particularly if it was proportionate to the legitimate goal pursued by Ireland; and the court had to monitor closely its compatibility with the principles of a democratic society.”

75. In determining whether such a need exists, attention must be paid to the particular facts of the case and to the circumstances prevailing in the given country at the time. In the instant case the pressing social need is the prevention of crime and the Court will situate its analysis only on this head.

Prevention of crime: The case of the Applicants is that the filming and recording of certain activities in their offices and residence without their consent was an unlawful interference in their privacy. The Respondent contend that the Applicants were captured in a secret audio visual recordings where the 1st Applicant was seen in his official chambers accepting monies, sheep and goat from both his clerk and the relative of an accused. The 2nd Applicant was also seen taking the money received from his table and putting it either in his bag or drawer by his side. In so far as 3rd Applicant is concerned the money was brought to him in his house. To the extent that these gifts were meant to influence their judgment, the Applicants’ action amounts to bribery - a crime under the national law. Courts are accepted by the public as being a proper forum for the ascertainment of legal rights and obligations and the settlements of disputes and the public has respect for the confidence in the capacity to fulfill this function. The Applicants, by virtue of their position as judges are public officers who are public figures;

“... holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.”

76. See Van Hannover Vs Germany No. 59320/ECHR 2004. In that capacity, they are accountable to the public in the performance of their duty and are susceptible to investigation particularly as it relates to transparency and diligence in the exercise of their judicial functions. The right to be informed is an essential right in a democratic society and public figures must recognize that the special position they occupy in society automatically entails increased pressure to be informed of actions carried out even in their privacy. The conditions upon which the Applicants’ were

investigated are premised on the prevention of disorder or commission of crime, therefore the interference with the privacy of the Applicants with the purpose of procuring an information to show the breaking of a law is justified and as such is in accordance with the Law and necessary in a democratic society. In the case of *Ludi Vs Switzerland* No 238 ECHR 1992, where a telephone conversation was intercepted in an attempt to control crime of smuggling of cocaine the European Court of human rights held as follow:

“Although the Court has no doubt that the telephone interception had been an interference with Ludi’s private life and correspondence, it found however that this interference had been in accordance with the Law.”

77. It is instructive that the Applicants did not deny the content of the film as captured by the petitioner rather their contention is the unlawfulness of the method used to obtain the information. The Court aligns its thoughts with the reasoning in the Case of *Van Hannover Vs Germany* No 59320/00 ECHR 2004 where the European Court of Human Rights opined thus;

“There is nothing unconstitutional when balancing the public interest of being informed against the protection of private life, in attaching the importance to the method used to obtain the information in question”

78. Based on the reasoning above, the court finds that whilst the recording and filming that took place in the offices and residence interfered with the right to privacy of the Applicants, it was however done in accordance with the Law and is necessary in the a democratic society for the prevention and exposure of the commission of a crime. The allegation of violation of right to privacy of the Applicants fails. The Court therefore holds that the interference subject to the exceptions is not a violation of the right to privacy of the Applicants.

79. An ancillary issue which the Court needs to address relates to the allegation of the status in law of the petitioner. The Supreme Court having ruled that the petitioner was duly registered and *stricto sensu* not been a human right issues, this Court will not review the decision as it amounts to sitting on appeal on the decision of the national court. The court further reiterates that it is not an appellate court

and will only admit cases from national courts where human rights violation are alleged in the course of the proceeding. See *Private Alimu Akeem v. Federal Republic of Nigeria* ECW/CCJ/RUL/05/11, *Hissein Habre v. Republic of Senegal* ECW/CCJ/RUL/03/10 and *Messrs. Abdoulaye Balde & 5Ors. V. The Republic of Senegal* ECW/CCJ/RUL/01/13. *Jerry Ugokwe Vs Nigeria (2004-2009) CCJELR*, *Ocean King Vs Senegal* ECW/CCJ/JUD/07/11, *Bakare Sarres Vs Mali*.

Right to work.

80. The Applicants contend that arising from the allegation by the petitioner and the commencement of the unlawful impeachment process by the Judicial Council, they were suspended, placed on half salary with all allowances save the housing rent withdrawn. This they alleged violates their right to work and chosen employment contrary to Articles 23 of the UDHR, 6 of the ICESCR and 15 of the ACHPR. It is instructive that all the articles are pari-material to Article 15 of the ACHPR which is set out below:

“Everyone has the right to work, to free choice of employment, to just favorable conditions of work and to protection against unemployment”.

81. The Applicant raised the fact that the Respondent did not canvass any legal pleas to rebut this allegation and thus being undefended they urged the Court to enter judgement for them on this head. The court notes this observation but states that the fact that a claim is undefended does not guarantee instant judgement for the claimant. The Court is obliged to analyse the totality of the facts to decide whether the claim has been proved in the light of all possible legal requirement. The fact that the Applicants were suspended is undisputed by the Respondent. This does not ipso facto ...entitle the Applicant to a declaration that their right to work has been violated. In reaching a decision on this alleged violation, the Court needs to ask a pertinent questions: *DOES SUSPENSION FROM WORK PENDING AN INVESTIGATION AMOUNT TO VIOLATION OF THE RIGHT TO WORK?*

The right to work envisages the freedom to retain or stay on a job and earn the pay as agreed and not to be deprived of employment unfairly. In that regard, the African Commission in *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Zimbabwe* found a violation of Article 15 of the ACHPR

where the Respondent State had without just cause, closed down the Complainant's business premises.

82. Considering that the fact before the Court on which a declaration for violation of right to work is sought is based on unlawful suspension from work, the question above needs to be answered. The violation of right of work contemplates a severance from work which permanently deprives the employee of the job under condition that is manifestly unfair. The concept of suspension is an administrative process which in the course of an investigation into an alleged wrong doing puts the affected officers temporarily on hold (out of work) to enable a fair and transparent investigation devoid of undue influence from the affected officers. This process sometimes comes with unpaid salary, which is not the situation in the instant case. Since the suspension is a temporary measure, it contemplates a reversal or confirmation of the suspension with the possibility of a recall of the affected officer and restoration of all allowance if the allegation is unsubstantiated or a dismissal if otherwise proved.

83. In the instant case, the facts before the court as narrated by the Respondent in their statement of defence @ paragraph 2.3 stated that the Applicants' suspension was in accordance with section 146 (10) b of the 1992 Constitution of Ghana which provides that:

“Where a petition has been referred to a committee under this Article, the President may-
(b) In the case of any other Justice of a Superior Court or of a Chairman of a Regional Tribunal, acting in accordance with the advice of the Judicial Council, suspend that Justice or that Chairman of a Regional Tribunal”

This provision of law has not been disputed to be nonexistent by the Applicants and it therefore avails the Respondent.

84. Though in the instant case, the Applicants were suspended, they were still paid their salaries albeit half and also their housing rent. This suspension to the extent that it did not permanently deprived them of work but merely a temporary measure pending the outcome of an investigation on a wrong doing cannot be deemed a violation of their right to work. The Court therefore holds that the Applicants' right to work has not been violated by the Respondent.

Equality before the law and freedom from discrimination

85. The Applicants allege that their right to equality before the law and freedom from discrimination was violated by the respondent contrary to Articles 2&7 of the UDHR, 2&26 of the ICCPR and 2&3 of the ACHPR which are pari-material.

Article 7 UDHR provides thus:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination”.

86. The case of the Applicants is that they were not given equal treatment before the law in the determination of their case before the Supreme Court of Ghana in comparison with the similar case of *Agyei Twum v. The Attorney- General and Bright Akwetey [2005-2006] SCGLR 732*, where a petition was sent to the President to remove the Chief Justice on allegation of judicial misconduct and abuse of power. It is the further contention of the Applicant that the Supreme Court in that case upheld the two declarations sought on the reasoning that since the Chief Justice is a Justice of the Superior Court, for him to be removed from office on the ground of misconduct or stated misbehavior, the procedure laid down in Article 146 of the Constitution of Ghana had to be strictly followed. In that case, the petition was aborted based on the failure of the judicial council to make a positive determination of a prima facie case before setting up the Committee to investigate the Chief Justice and for the publication of the petition to persons other than the President of the Republic of Ghana.

87. As in the allegation of right to work above, the Respondent did not canvass any legal argument to rebut this allegation. The court reiterate its reason above and state that the Applicant is not automatically entitled to its claim nevertheless.

The Court will examine the totality of all the facts canvassed to determine whether the legal requirement for a claim of violation of right to equality before the law has been substantiated by the applicants. Whilst not a legal submission, the facts narrated in the statement of defence of the Respondent in the following paragraphs are instructive:

2.4 - As this Court, will very easily note, upon receipt of a petition requesting the removal from office of a Justice of the Superior Court of the Republic of Ghana, the President is required to refer the petition to the Chief Justice of the Republic of Ghana.

2.8 - Having received the petition sent to His Excellency the President of the Republic of Ghana by Anas Aremeyaw Anas, the Chief Justice, in fulfilment of her mandate under Article 146(3) of the 1992 Constitution of the Republic of Ghana, studied the petitions, together with the evidence upon which the petitions were based, and found a prima facie case, established against the Applicants and other Justices of the High Court. The evidence upon which the petition was based consisted mainly of audio visual recordings and are attached hereto and marked as EXH "AG2".

2.12 - Be that as it may, the Chief Justice requested Applicants in her letter of the 9th September 2015 to respond to the allegations contained in the petition by Monday, 14th September, 2015. This request was made by the Lady Chief Justice to enable her determine whether or not a prima facie case had been established against Applicants after taking into account, the contents of the audio visual recordings which contained the evidence upon which the petition against them was made.

2.14 - Without responding to the Lady Chief Justice's letter, 1st Applicant caused a Writ to be issued in the Supreme Court against Tiger Eye PI and the Chief Justice as well as the Attorney-General in Writ numbered J1/29/2015. Copies of this Writ are attached to the Application as Exh. "DLA 11".

88. For an action of discrimination to succeed under the articles listed above, there must be established a difference of treatment in an identical or similar case. In *BADINI SALFO V THE REPUBLIC OF BURKINA FASO JUD NO: ECW/CCJ/JUD/13/12*, the Court while relying in its judgment in *CNDD v. COTE D' IVOIRE (2009) Para 55*, and *PROF. ETIM MOSES v. REP OF GAMBIA, (2007) Para 31*, held that:

"Equality before the law presupposes that equal treatment is accorded people finding themselves in similar situations. Thus, examining the allegation of the violation of the principle of equality requires that, at least

two similar legal situations be put side by side as to compare and find out whether an ill treatment was concretely meted out to either one or both of them”.

89. In the case *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS V. REPUBLIC OF KENYA APPLICATION No. 006/2012 JUDGMENT 26 may 2017*, which deals with the violations of various rights of the indigenous people of Ogiek tribe in Kenya forest, the African Court on Human and Peoples Rights ruling on allegation of discrimination based on differential treatment of the tribe by the government of Kenya in comparison to other tribes in similar situation held as follows:

“The Court accordingly finds that, if other groups which are in the same category of communities, which lead a traditional way of life and with cultural distinctiveness highly dependent on the natural environment as the Ogieks, were granted recognition of their status and the resultant rights, the refusal of the Respondent to recognize and grant the same rights to the Ogieks, due to their way of life as a hunter gatherer community amounts to 'distinction' based on ethnicity and/or 'other status' in terms of Article 2 of the Charter.”

90. The European Court of Human Rights in the case of *RATZENBÖCK AND SEYDL v. AUSTRIA (Application no. 28475/12)*, in an action of discrimination for refusal to register a same sex marriage in Austria held as follows:

“In order for an issue to arise under Article 14 of the European Convention on Human Rights (which is in pari-material with Article 14 of the ICCPR) there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently. However, not every difference in treatment will amount to a violation of Article 14. “

91. In the instant case, the two similar legal situation before this court is the allegation of misconduct by judges of the Superior Courts. The similarity ends here as the records before the Court show that following the establishment of a prima facie case against the Applicants, they were given an opportunity to respond to the allegation. This undisputed fact is clearly distinguishable from the *Agyei Twum* case supra, where no prima facie case was made against the Plaintiff neither was he

invited to answer any allegation based on the initial findings. Having not been able to establish that the two situations are identical in all ramifications, a difference in treatment is justified and a claim of discrimination fails. This Court therefore holds that the right to equality before the law and freedom from discrimination of the Applicants has not been violated.

92. Following from all the analysis of this instant case, the Court adjudicating in a public hearing, in the first and last resort, after hearing both Parties on matter of human rights violation, decides as follows:

DECISION:

- The Court declares:
- That it has jurisdiction to adjudicate on this matter.
- That the Applicants have not established a violation of their right to fair hearing by the Respondent.
- That the Applicants have not established a violation of their right to privacy by the Respondent.
- That the Applicants have not established a violation of their right to work by the Respondent.
- That the Applicants have not established a violation of their right to equality before the law and freedom from discrimination by the Respondent.

For reasons adduced above, the case is hereby dismissed.

Thus pronounced and signed on this 29th day of April, 2019 in the Community Court of Justice, ECOWAS Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon. Justice Gberi-Be Quattara	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member

Assisted by

Tony ANENE-MAIDOH	- Chief Registrar.
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