



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

In the Matter of

PASTOR EKPEMSIDEM DAN EKPEMSIDEM AND 6,499 OTHERS V.  
VINCENT AGU & ORS AND FEDERAL REPUBLIC OF NIGERIA & 5 ORS

*Application No: ECW/CCJ/APP/06/12/TP.3: Judgment No. ECW/CCJ/JUD/02/21*

*JUDGMENT*

ABUJA

25 February 2021

**SUIT NO: ECW/CCJ/APP/06/12/TP.3**  
**JUDGMENT NO. ECW/CCJ/JUD/02/21**

**PASTOR EKPEMSIDEM DAN**  
**EKPEMSIDEM & 6,499 ORS. .... APPLICANTS**

**VS.**

**VINCENT AGU & 19 ORS .... APPLICANTS/RESPONDENTS**

(For themselves and as representing mine victims of the Nigerian civil war including all the 493 victims pre-  
enumerated by the Ministry of defence through RSB Holdings as well as Communities where these victims  
come from which were contaminated by landmines and other explosive remnants of war except any person or  
Community dissenting).

**AND**

**FEDERAL REPUBLIC OF**  
**NIGERIA & 5 ORS. .... RESPONDENTS/RESPONDENTS**

***COMPOSITION OF THE COURT:***

Hon, Justice Edward Amoako ASANTE	- Presiding
Hon. Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Januaria T. Silva Moreira COSTA	- Member

***ASSISTED BY:***

Mr. Tony ANENEH- MAIDOH

- Chief Registrar

***REPRESENTATION OF PARTIES:***

Inalegwu ADOGA, Esq

- Counsel for Applicants

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Solomon CHUKWUOCHA, Esq.

Counsel for the Respondents/Respondents



## ***I. JUDGMENT:***

This is the judgment of the Court.

## ***II. DESCRIPTION OF THE PARTIES:***

1. The Applicants, the Third Party Applicants Number 3 made up of Pastor Ekpemside Dan Ekpemside and 6,499 others (hereinafter referred to as “TP.3”), are community citizens who reside in different States of the Federal Republic of Nigeria.
2. Vincent Agu & 19 others are the Applicants in an Application No ECW/CCJ/APP/06/12 (hereinafter referred to as the (“Initial Applicants”).
3. The 1<sup>st</sup> Respondent is the Federal Republic of Nigeria, a member State of ECOWAS;
4. The 2<sup>nd</sup> Respondent is the Ministry of Defence, an agent of the Federal Republic of Nigeria;
5. The 3<sup>rd</sup> Respondent is a Minister and Chief Executive Officer of the Ministry of Defence of the Federal Republic of Nigeria;
6. The 4<sup>th</sup> Respondent is a company incorporated in the Federal Republic of Nigeria, hired by the 2<sup>nd</sup> Respondent to clear the war affected areas of Nigeria of landmines and explosives among other related responsibilities;



7. The 5<sup>th</sup> Respondent is a company incorporated in the Federal Republic of Nigeria, which were hired by the 2<sup>nd</sup> Respondent to carry out the same responsibilities stated above;
8. The 6<sup>th</sup> Respondent is the chief law officer of the Federal Republic of Nigeria.

### ***III. INTRODUCTION***

#### **Subject matter of proceedings**

9. The third party application seeks for an order of Court to vacate a previous judgment no ECW/CCJ/JUD/14/17 of 30 October 2017 and for a joinder of the Applicants to partake in the compensation awarded for victims of land mine explosions in the said judgment for reasons that they are equally victims of land mine explosion.

### ***IV. PROCEDURE BEFORE THE COURT***

10. TP.3 filed the third party Application on 21 February 2019 and the Registry served it on the Respondents on 28 February 2019.
11. On 12 April the Respondents having failed to respond within time, filed an application for extension of time within which to file a response and also filed a notice of Preliminary Objection to the third party Application. Furthermore, the Initial Applicants also filed a reaction to the Third Party Application on the same date. All three documents were served on TP.3 on 18 April 2019.





12. On 27 April 2019, TP.3 filed a Counter-Affidavit to the Preliminary Objection of the Respondents and also filed a reply to the reaction of the 1<sup>st</sup> to 20<sup>th</sup> Applicants on 6 May 2019. These were served on the Respondents on 6 May 2019.
13. On 29 June 2019, TP.3 filed an application for interim measures, restraining the 1<sup>st</sup> to 20<sup>th</sup> Applicants from killing, attacking or intimidating them in respect of their Application before the Court. This was served on the Respondents on 10 September 2019.
14. On 12 September 2019, TP.3 filed a further affidavit in support of their original application for rejoinder. This was served on the Respondents on 16 September 2019.
15. Having defaulted in filing a response within the stipulated time, on 25 October 2019, the 1<sup>st</sup> to 20<sup>th</sup> Applicants filed an application for extension of time and also filed further and better affidavit to the TP 3's Counter Affidavit. This was served on TP.3 on 14 November 2019. The further and better Affidavit of the 1<sup>st</sup> to 20<sup>th</sup> Applicants were also filed and served on the abovementioned respective dates.
16. On 15 November 2019, TP. 3 filed a Counter Affidavit to the abovementioned further and better Affidavits of the 1<sup>st</sup> to 20<sup>th</sup> Applicants.
17. On 3<sup>rd</sup> December 2019, the 1<sup>st</sup> to 20<sup>th</sup> Applicants filed an application for an Order of the Court to preserve and protect the Consent Judgment of the Court delivered on 30 October 2017. This was served on TP.3 on 11 December 2019.



18. On 16 December 2020, TP.3 filed a counter-affidavit in response to the application of the Respondents and it was served on 18 December 2019.

19. On 3 February 2020, the Court relying on Article 38 of its Rules ordered that all Applications in relation to Vincent Agu & 19 others including Applicants TP 1-11, filed before the Court, as of that day, should be consolidated into one document for ease of addressing the issues therein.

20. Furthermore, on 25 June 2020, the Court ruled to hear the Application of TP.3 separately from the consolidated application.

#### ***V. THIRD PARTY APPLICANTS' CASE***

##### **a) Summary of facts.**

21. The TP3 Application is based on Suit No ECW/CCJ/APP/06/12, which was filed in 2012 by the Initial Applicants who claimed to be land mine victims of the Nigerian Civil War of 1967-1970, following which terms of settlement proposed by the Parties was adopted by the Court as Consent Judgment (ECW/CCJ/JUD/14/17 of 30 October 2017). Furthermore, Schedule 4(1) of the terms of settlement provided compensation of fifty billion Naira (50,000,000,000) for all the named victims therein.

22. The TP3 are 6,500 Applicants allegedly living in communities in Delta, Akwa Ibom, Cross River, Bayelsa and Benue States. It is their claim that some of them fought during the said Civil War and suffered severe injuries as a result of land mines, bombs and bullets during the said War.



23. It is the further claim of the TP.3 that while the 4<sup>th</sup> and 5<sup>th</sup> Respondents enumerated and verified the victims in the Initial Application, they failed to capture their communities and were therefore omitted from benefiting in the Consent Judgment. They allege that several casualties of mines explosions on the railway line from Otukpo to Eha Amufu, as well as the killing and maiming of the people of Ogoja, Ogbudu, Gakem, Iyalla, Boki and many others in Cross Rivers State as a result of mines and explosives left by the Biafran soldiers were omitted. In addition, other communities in Benue, Akwa Ibom States that also suffered injuries and loss of life as a result of the mines planted by the Biafran soldiers were omitted.
24. It is the contention of TP.3 that the Initial Applicants in the original application of 2012 misdirected the Respondents and the Court when they claimed during the negotiation that led to the Consent Judgment, that the Initial Applicants were the only mine victims of the Nigerian Civil War.
25. They insisted that though the Consent Judgment mentioned that landmines and bombs were found in certain communities like Orokam, Owukpa, Ichama, Ekle and Agila in Benue, Cross River and Akwa Ibom States, members of the said communities were not informed of nor aware of the proceedings leading to the Consent Judgment. A situation they allege as disturbing and uncomfortable.
26. TP.3 are thus challenging the decision of the Court that left them out of the proceedings while capturing only selected people and communities. They therefore urged the Court to stay the execution of the Consent Judgment and order that they be joined as beneficiaries to enable them participate in the compensation earmarked for victims in the Consent Judgment.





**b) Pleas in Law**

27. The TP.3 relied on the Consent Judgment of the Court in Application No ECW/CCJ/JUD/14/17 of 30 October 2017.

**c) Reliefs sought**

28. The reliefs sought by TP.3 are as follows:

- i. An Order of Court to stay execution of Consent Judgment No. ECW/CCJ/JUD/14/17 of 30 October 2017;
- ii. An Order of Court to join Pastor Ekpemside Dan Ekpemside and 6,499 Applicants (TP.3) as beneficiaries in the Consent Judgment.

***VI. RESPONDENTS' CASE***

29. Only the Initial Applicants and the 4<sup>th</sup> and 5<sup>th</sup> Respondents filed defence to the application of TP.3 with the Initial Applicants raising a Preliminary Objection to the admissibility of the application.

**a) Summary of the facts (Initial Applicants)**

30. The Initial Applicants are Vincent Agu and nineteen others who filed Suit No. ECW/CCJ/APP/06/12, on 2 May 2012 against the 1<sup>st</sup> to 6<sup>th</sup> Respondents. After several years, the 1<sup>st</sup> Respondent opted for an out of Court settlement with the Initial Applicants that culminated in Consent Judgment No



ECW/CCJ/JUD/14/17, which the TP.3 now seeks an Order of the Court to vacate and join them as beneficiaries.

31. The Initial Applicants deny each and every material allegation of fact contained in the TP.3's submission save for those admitted in their submission. They state that the TP.3 are not "claimants" or "plaintiffs" in fact or law; that they are simply third Party Applicants seeking the Court's indulgence to consider their case.
32. They insist that the *Quo Warranto* on which the substantive action was based does not recognise TP.3 as victims. They reasserted that TP.3 are not victims as defined in Document 1 Page 16 of the Initiating Application, because the real victims know themselves by virtue of their common tragedy and collective interdependence as well as through the support they received from a Non-Governmental Organisation called Hope Alive.
33. They further argue that the TP.3 have not provided any evidence to show that they are victims of the post- Civil War mine explosions, as a mere claim of having suffered injuries without particulars of same would not suffice as proof of being victims in the eye of the law, particularly under the definition of victims by the United Nations Mine Ban Treaty.
34. Additionally they state that the 4<sup>th</sup> and 5<sup>th</sup> Respondents at the instance of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents carried out enumeration and verification exercises to ascertain the true victims of landmines explosions in communities affected by the War. They assert that the processes of identifying and verifying the true victims of landmine explosions carried out by the 4<sup>th</sup> and 5<sup>th</sup> Respondents was



not done in secret as alleged by TP. 3, as they disseminated information about the enumeration, verification and demining exercises in the local and national media.

35. Based on the above they maintain that the TP.3 cannot feign ignorance of the proceedings of the Initiating Application before this Court, because the deliberations of the Court in Abuja and Ibadan were duly covered by local and international media, by way of publications, radio and television broadcast. This is more so because the processes of filing the Initiating Application and the exchange of processes from Document 1 to Document 33 spanning a period from 2012 to 2017 and visits to the locus in quo were also made public.

36. In concluding this argument on secrecy, the Initial Applicants insist that all persons affected were consulted which enabled their participation from the beginning of the process. However, if the TP.3 allege that they were not consulted, it can only be because they are not victims but ex-Biafran combatants who were injured during the War and who lack the locus standi to be consulted or included in the suit.

37. In further proof that no community qualified to be enumerated and verified was omitted and in order also to clarify the areas covered by the Consent Judgment, they reproduced the schedules annexed to the said Consent Judgment as follows:

- i. Schedule 1 – Identified public schools and buildings affected by war listed for rehabilitation;





- ii. Schedule 2 – Construction of one block of ten classrooms for fifty communities who are presently barred from using their school facilities, construction of court houses, churches and worship centres where explosives ordinance were found by the 4<sup>th</sup> and 5<sup>th</sup> Respondents;
- iii. Schedule 3 – List of contaminated areas by explosive remnants of war from South-East and South-South of the Federal Republic of Nigeria yet uncleared;
- iv. Schedule 4 – (1) victims as contained and defined at page 16 of Document 1 of the originating application.

38. The Initial Applicants therefore urged the Court to dismiss the Application of TP.3 to vary and join them as beneficiaries in the Consent Judgment, on the grounds that they are neither victims as captured above nor have they proved that they qualified as such thus lacking in locus standi.

#### **b) Pleas in Law**

39. The Initial Applicants relied on the following laws:

- i. Article 91(1) (b) of the Rules of Court;
- ii. Article 91(3) of the Rules of Court;
- iii. United Nations Policy on Victim Assistance in Mine Action (2016)





### c) Reliefs Sought

40. The Initial Applicants seek the following reliefs:

- i. An Order of this honourable Court dismissing the 3<sup>rd</sup> party application for being incompetent, the (TP.3) applicants having no locus standi to lodge this application and the application being statute barred.
- ii. An Order of this honourable Court restraining the 3<sup>rd</sup> party applicants from further spreading dangerous propaganda, capable of rupturing the delicate peace and security in South East and South-South Nigeria.
- iii. An Order of this honourable Court restraining the 3<sup>rd</sup> party applicants, their agents, assigns or any person acting under, through, with, or for them, from mobilizing violence against the real victims, their families or communities or against the victims' solicitors, family or staff.
- iv. An Order of this honourable Court compelling the 3<sup>rd</sup> party applicants to enter cognizance to wit write undertakings that they will not continue to spread dangerous propaganda against the programs of the Federal Republic of Nigeria in so far as this Judgment and its execution is concerned.
- v. An Order of this honourable Court compelling the 3<sup>rd</sup> party applicants to enter cognizance to wit write undertakings that they will not harass,



hurt, or harm the victims or their solicitors or anyone related to them as family or staff howsoever.

- vi. And for other Order(s) the circumstances of this case may require from the honourable Court.

**a) Summary of the facts (4<sup>th</sup> and 5<sup>th</sup> Respondents)**

41. The 4<sup>th</sup> and 5<sup>th</sup> Respondents are companies known as RSB Holdings Nig. Ltd and Deminers Concept Nig. Ltd respectively. They were sued along with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Respondents by the Initiating Applicants in Suit No. ECW/CCJ/APP/06/12, in 2012.
42. It is their claim that they were hitherto contractors hired by the 2<sup>nd</sup> Respondent for the pre-enumeration of landmines victims and the clearance of landmines, bombs, unexploded ordinance and explosive remnants of the Nigerian Civil War that took place from 1967 to 1970. Following their engagement, they jointly carried out a survey on landmines contaminated and affected areas spanning several square kilometres that covers Abia, Imo, Anambra, Enugu, Cross River, Rivers, Ebonyi, Akwa Ibom, Delta States and some parts of Benue State.
43. It is their contention that going by the United Nations definition of landmine victims, it is clear that TP.3 are not victims but Biafran soldiers who took up arms against Nigeria during the Civil War. They assert that several years after the War, on 27 June 2014, TP.3 registered an association called Eastern



Veterans Social Welfare Initiative at the Corporate Affairs Commission, an association of veterans who fought on the side of Biafra during the War.

44. On the other hand, landmine victims include directly impacted individuals who were accidentally injured after the War ended; including survivors, their families and communities affected by mines, Explosive Remnants of War (ERW), cluster munitions (CM) or Improvised Explosive Devices (IEDs) abandoned by both sides of the War.
45. In that wise, soldiers and combatants who were wounded during the War cannot be classified as landmine victims as claimed by TP.3. Consequently, they conclude the Nigerian Government cannot be expected to pay compensation to a rebel army that fought against it.
46. Additionally, the 4<sup>th</sup> and 5<sup>th</sup> Respondents argue that the Application of TP.3 is statute barred on the ground that it was filed later than two months from date of publication of the judgment in the ECOWAS Community Journal contrary to Article 91 (3) of the Rules of Court.
47. They also content that the Application is statute bared on the ground that it was filed more than three months after the TP.3 had knowledge of the Application contrary to Article 92 of the Rules of Court. They question why TP.3 waited for 16 months after the judgment was delivered and publicised by many Nigerian media before filing their Application.
48. In view of above, it is the conclusion of the 4<sup>th</sup> and 5<sup>th</sup> Respondents that TP.3 have no locus standi and their Application is statute barred. They therefore



urged the Court to dismiss Application of TP.3 with substantial cost more so as it was brought in bad faith.

**b) Pleas in Law**

49. The 4<sup>th</sup> and 5<sup>th</sup> Respondents relied on the following laws:

- i. Article 91 (1) (b) of the Rules of Court;
- ii. Article 91(3) of the Rules of Court;
- iii. Article 92 of the Rules of Court;
- iv. United Nations Policy on Victim Assistance in Mine Action (2016)

**c) Reliefs sought**

47. The 4<sup>th</sup> and 5<sup>th</sup> Respondents urges the Court to hold that it lacks jurisdiction and dismiss the TP.3 Application with substantial costs.

***VII. JURISDICTION***

50. The Court has jurisdiction as the instant Application is premised on an existing one upon which the Court had already assumed jurisdiction.

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## ***VIII. ADMISSIBILITY***

### ***Preliminary Objection of the Initial Applicants.***

51. Before proceeding to address above objection, the Court will at this point provide the prelude to this application for a fuller understanding of the context within which this application was filed. An Initiating Application registered as Suit No. ECW/CCJ/APP/06/12, was filed on 2 May 2012 by Vincent Agu & 19 others against the above-mentioned Respondents, seeking compensation for injuries they sustained through landmine explosions in the aftermath of the Civil War in Nigeria.
52. After several years of proceedings, the 1<sup>st</sup> Respondent opted for an out of Court settlement with the Initial Applicants, which culminated in Consent Judgment No ECW/CCJ/JUD/14/17 of 30 October 2017 (hereinafter referred to as Consent Judgment). Therein, fifty billion Naira (N50, 000,000,000) was awarded as compensation to the parties who were enumerated and defined as landmine victims in Document 1, Page 16 of the Initiating Application. While thirty-eight billion Naira (N38, 000,000,000) was awarded for the 4<sup>th</sup> and 5<sup>th</sup> Respondents to complete the demining and destruction of bombs and landmines in the affected areas listed in Schedule 3 of the Consent Judgment.
53. Following the Consent Judgment, eleven third Party Proceedings were filed seeking an order of the Court to join and partake of the compensation awarded therein. The Court then ordered all the third parties save TP.3 to consolidate their processes with the directive that TP.3 will be heard alone having been refused joinder by others who contended that they are not landmine victims.



54. This Application by TP.3 therefore seeks an Order of this Court to arrest/vacate the abovementioned Consent Judgment of the Court and be joined as beneficiaries having allegedly suffered the same injuries as the Applicants in the initiating Application.

55. The Initial Applicants in response to the Third party application raised a Preliminary Objection to the application on the grounds that; 1) they are not land mine victims and thus lack locus standi to file the third party application, and 2) that the said Application is statute barred, and based on these objections they conclude that the application is inadmissible and should be dismissed.

56. The Court notes that an objection on locus standi must of necessity be addressed on the merits stage in order to review all facts and evidence presented by parties and this process precludes a determination at the preliminary stage. In the instant case, a decision on whether the TP3 are victims or not is a process needing evidentiary evaluation, thus the Court decides to address the preliminary objection as it relates to locus standi at the analysis on the Merits.

57. However the arguments as it relates to statute bar will be addressed hereunder.

**i. Argument of the Initial Applicants on statute bar**

58. The Initial Applicants argued that the third party Application is statute barred by virtue of Article 91 (3) of the Rules of Court, which stipulates that such application shall be filed within two months from date of publication in the Official Journal of the Community. Consequently, any party seeking to benefit from the discretionary powers of the Court must fulfil the conditions precedent for the Court to exercise such discretion. Since the Application was filed well



after two months from the date of publication of the Consent Judgment in the Journal, the Respondents conclude that it is statute barred.

59. In conclusion the Initial Applicants urged the Court to dismiss the third party Application with costs for being inadmissible.

**ii. Response of TP.3 on statute bar**

60. In response to this objection, TP.3 argues that the proceedings of the Initiating Application, which led to the Consent Judgment, were shrouded in secrecy and kept away from them. Furthermore, that the 4<sup>th</sup> and 5<sup>th</sup> Respondents connived to cover up the proceedings before the Court and kept it away from the people of Benue, Akwa Ibom, Bayelsa and Cross River States, who suffered more serious consequences of the aftermath of the Civil War, being in border areas where bombs, mines and other explosives were placed to protect the Igbos from invasion by the federal troops.

61. They further argued that the secrecy surrounding the proceedings leading to the Consent Judgment prevented them from joining the action in good time. That the Court as a court of justice has the jurisdiction to include TP.3 who were erroneously suppressed from bringing their action timeously. Also, the Court as a human rights Court has powers to admit the case pursuant to Article 77 (1) of the Rules of Court, which provides, "*Any time limit prescribed pursuant to these Rules may be extended by whoever prescribed it.*"

62. It is the further submission of TP.3 that Nigeria has a high rate of illiteracy such that rules and journals may not reach applicants within a specific time.





63. In conclusion TP.3 urges the Court to allow the Application for third party joinder in the interests of justice and preservation of human rights.

#### **Analysis of the Court on statute bar**

64. Article 91 (3) of the Rules of Court on which the Respondents premised their objection states as follows;

*“Where the judgment has been published in the Official Journal of the Community, the application must be lodged within two months of the publication.”*

65. The prerequisite of the operation of this Rule is the establishment that the said judgment was published in the Official Journal of the Community after which time starts to run from the date thereon. In this wise, the question whether an applicant has acted with due diligence to progress the proceedings which he/she has brought, or has simply let them expire by effluxion of time, is a factor relevant to the determination of whether the jurisdiction of the Court that has been established within the meaning of Article 91(3) of the Rules of the Court.

66. In arguing an objection based on effluxion of time prescribed in the Article above referred, a burden is placed on the Initial Applicants to lay before the Court evidence to support this claim and in the instant - a copy of the said journal containing the date of publication which will enable a mathematical calculation by the Court of compliance or otherwise with the time line prescribed.





67. The jurisprudence of the Court is replete with decisions on the principle of burden of proof. The Court in affirming this principle held that, "*The burden therefore, lies on the Applicant to establish their allegation.*" See FEDERATION OF AFRICAN JOURNALISTS AND OTHERS V. THE REPUBLIC OF THE GAMBIA, JUDGMENT NO: ECW/CCJ/JUD/04/18, PG. 54.

68. Equally, the Court confirmed this principle of law when it held that

*"As always, the onus of proof is on a party who asserts a fact and who will fail if that fact fails to attain that standard of proof that will persuade the Court to believe the statement of the claim"* see FEMI FALANA & ANOR V REPUBLIC OF BENIN & 2 ORS ECW/CCJ/JUD/02/12 PG. 34.

69. In the instant case, the Court has no record that the Initial Applicants placed any documentary evidence of the publication of the Consent Judgment before it. Consequently the facts failed to attain the standard of proof to persuade it to uphold the objection that the Application was brought outside the two months' time line.

70. In light of this analysis, the Court dismisses the objection of the Initial Applicant that the third party application is statute barred and so holds.

## ***IX. MERITS***

71. The Court ahead of its analysis notes that only the Initial Applicants and the 4<sup>th</sup> & 5<sup>th</sup> Respondents filed a response to the objection. The claim of TP.3 is to the effect that some of them fought during the Nigerian Civil War of 1967 to 1970

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and suffered severe injuries as a result of land mines, bombs and bullets during the said War.

72. They also claim to be victims of land mines in the aftermath of the War but were excluded from the list of victims in the Consent Judgment. In support of this claim of exclusion, the TP.3 under paragraph 4.7 of their Counter Affidavit to the Preliminary Objection, recounted several deaths resulting from mines on railway line from Otukpo to Eha Amufu; injuries sustained by people from Benue State - Agila district, people of Ogoja, Ogbudu of Cross River State, Ibibios from Akwa Ibom and Effiks from Cross River, Idomas from Benue State and so on.
73. It is the further allegation of the TP.3 that while the 4<sup>th</sup> and 5<sup>th</sup> Respondents enumerated and verified the victims in the Initial Application, they failed to capture their communities and were therefore omitted from benefiting in the Consent Judgment.
74. They insisted that though the Consent Judgment mentioned that landmines and bombs were found in certain communities like Orokam, Owukpa, Ichama, Ekle and Agila in Benue, Cross River and Akwa Ibom States, members of the said communities were neither informed of nor aware of the proceedings leading to the Consent Judgment.
75. TP.3 are thus challenging the decision of the Court that left them out of the proceedings wherein only selected people and communities were allegedly involved. They therefore urged the Court to stay the execution of the Consent

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Judgment and order that they be joined as beneficiaries to enable them participate in the compensation earmarked for victims in the Consent Judgment.

76. The combined responses of The Initial Applicants and the 4<sup>th</sup> and 5<sup>th</sup> Respondents' on the other hand is to the effect that the TP 3 are not mine victims as defined in page 16 of document 1 of the Initiating Application, which is the foundational instrument from which the negotiations, terms of settlement and the Consent Judgment sought to be varied, drew their lives. They further contend that TP.3 are not victims but Biafran soldiers who fought against 1<sup>st</sup> Respondent during the Civil War.

77. Furthermore, they maintained that the United Nations definition of landmine victims, includes directly impacted individuals who were accidentally injured after the War ended; including survivors, their families and communities affected by mines, Explosive Remnants of War (ERW), cluster munitions (CM) or Improvised Explosive Devices (IEDs) abandoned by both sides of the War. The TP3, they conclude do not fall within this definition and as such have no locus standi to bring the Application before the Court.

78. Based on the above, they conclude that the third party Application is inadmissible and urged the Court to dismiss same.

### **Analysis of the Court**

79. The Court in analysing the merits of this case to determine whether TP.3 can be joined as beneficiaries to Consent Judgment No ECW/CCJ/JUD/14/17, will be





guided by the requirements provided in Article 91 of the Rules of Court on third Party Proceedings. Specifically, Article 91 (1-3) provides,

1. *“Articles 32 and 33 of these Rules shall apply to an application initiating third party proceedings. In addition such an application shall:*
  - a) *Specify the judgment contested;*
  - b) *State how that judgment is prejudicial to the rights of the third party;*
  - c) *Indicate the reasons for which the third party was unable to take part in the original case.*
2. *The Application must be made against all the parties to the original case;*
3. *Where the judgment has been published in the Official Journal of the Community, the application must be lodged within two months of the publication...”*

80. From the facts before the Court, the requirements of sub-Articles 91(1) (a), (c), (2) and (3) above have been addressed.

81. As a start, TP.3 referenced in their Application the contested Judgment viz: Judgment No ECW/JUD/14/17, thereby complying with 91(1) (a).

82. Equally, TP.3 proffered reasons why they were unable to take part in the original case amongst which is that they were not notified and were unaware of





the proceeding same being shrouded in secrecy. While this is in compliance with the requirement of Article 91(1)(c) to state reasons, it is not a given that the Court has approved the reason.

83. Also, the Application was made against all the parties in the Initiating Application, which are Vincent Agu and nineteen (19) others, the Federal Republic of Nigeria, Ministry of Defence, Hon Minister of Defence, R.S.B Holdings Nigeria Limited, Deminers Concept Nig. Limited and the Attorney General of the Federation in compliance with Article 91(2).

84. Finally, the Court already addressed the requirement of Article 91(3) regarding the timeline for publication of the judgement same having been considered in the Preliminary Objection raised by the Initial Applicants.

85. The only outstanding requirement is Article 91(1)(b) on whether the Judgment is prejudicial to the rights of the third party, which is considered hereunder.

***On Judgment being prejudicial to the rights of the third party***

86. This requirement presupposes that an applicant has a right inherent in the judgment which would be prejudiced if the application for joinder is denied. The Court will first address the requirement that the Applicant has a right before analysing the prejudice requirement.

87. It is not in contest that the subject matter from which the TP3 seeks relief is a claim for compensation for victims of landmine explosions, as detailed in the Initiating Application and upon which a Consent Judgment was adopted. Therefore the right of third parties seeking to be joined as beneficiaries in the



said Consent Judgment can only be premised on the proof that they are victims of the landmine explosions captured in the Initiating Application.

88. This Court has held in many cases that to qualify for relief of human rights violation, the Applicant must justify its legal capacity as a victim. In the case of CENTER FOR DEMOCRACY AND DEVELOPMENT V. MAMADOU TANJA & REPUBLIC OF NIGER, ECW/CCJ/JUD/05/11 @ 27, the Court held that:

*“Cases shall be brought before the court by natural or legal persons endowed, within the framework of their national laws, with the required legal capacity, and who, in addition, shall justify their condition of being a victim... the Court recalls that when an application on human rights violation is brought before it, it is so done necessarily “by a person who is a victim of the said violation against one or several Member states.”*

89. It follows from the above decision that only persons who can justify their claims of being directly affected have the standing to seek reliefs for violations of human rights from the Court and a fortiori alleged right derived from a judgement premised on human right violation.

90. Additionally, since the instant case is a claim of victims of mine explosions, the definitions of victim hereunder as contained in Page 16 of Document 1 of the Initiating Application as well as the United Nations Policy on Victim Assistance in Mine Action (2016) is instructive.



91. Page 16 Document 1 of the Initiating Application defines “victim” as “...*the individual directly hit by a Mine/ERW explosion, his or her family and community.*”

92. The United Nations Policy on Victim Assistance in Mine Action (2016) states thus;

*“The term “victim” is a person who has suffered physical, emotional and psychological injury, economic loss or substantial impairment of his or her fundamental rights through acts or omissions related to the use of mines or the presence of ERW. Victims include **directly impacted individuals** (including survivors) their families and communities affected by mines, ERW, cluster munitions or improvised explosive devices (IEDs) following conflict. The term “survivor” shall refer to a person who was harmed or injured as a result of a mine, ERW, cluster munitions or IED accident and has survived the accident”. **Emphasis ours***

93. The import of the above definition is that a proof of injury is paramount with an additional evidence to establish a nexus between it and the bomb blast; in other words evidence of a direct impact by the explosion is imperative. This was emphasised when the Court held that, “*To claim to be a victim, **there must exist a sufficient direct link between an applicant and the prejudice he deems to have suffered as a result of the alleged violation***” **Emphasis ours** See AZIAGBEDE KOKOU & 68 ORS V. REPUBLIC OF TOGO ECW/CCJ/JUD/07/13 PAGE 175 @24.

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94. The Court further held that, “... *In other words, only victims of the violation of human rights can ground an action before the Court which means an Applicant must prove his/her locus standi in the case*”. See REV. FR SOLOMON MFA & 11 ORS V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/06/19. See also, ODAFE OSERADA V. ECOWAS COUNCIL OF MINISTERS, ECOWAS PARLIAMENT & ECOWAS COMMISSION, ECW/CCJ/JUD/01/08 @ 27.
95. The question to determine is whether TP.3 in this case are victims of land mine explosions as defined in page 16 of Document 1 of the Initiating Application and the United Nations Policy on Victim Assistance in Mine Action (2016), as claimed.
96. The crux of the argument of the Initial Applicants and the 4<sup>th</sup> & 5<sup>th</sup> Respondents is that the beneficiaries of the Consent Judgements are victims of land mine explosions but TP.3 are not such but rebels who fought during the war sustaining injuries thereof and therefore have no locus standi before this Court. The TP3 maintain on the other hands that they are victims of land mines explosion entitled to benefit from the compensation awarded in the consent judgment.
97. The Court considers that the success of the claim of TP.3 hinges on their ability to prove first that they suffered injuries which are consistent with injuries from the land mine explosions. This is more so that a comprehensive list of mine victims had already been enumerated and verified and compensation ordered for the said victims as per the Consent Judgment earlier referred. Admittance of additional victims under this third party application requires proof of injuries through a medical report or other relevant documents supporting the claim that

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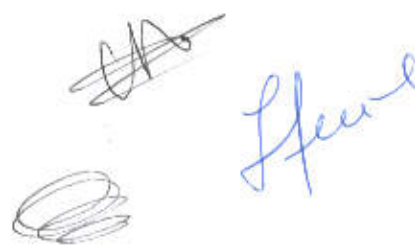


TP.3 suffered injuries associated with mine explosion. The proof of a nexus between the claimed injuries and the mine explosion is imperative to a successful claim by the TP.3. This will evidently disprove the allegation by the Respondents that they are soldiers/ rebel combatants injured during the Civil War

98. It is trite that the burden of proof of a fact lies on the party who claims same with the attendant obligation to establish as in the instant case a link between the injury allegedly suffered and the mine blast. The Court was explicit on this when it held that "*The burden therefore, lies on the Applicant to establish their allegation.*" See FEDERATION OF AFRICAN JOURNALISTS AND OTHERS V. THE REPUBLIC OF THE GAMBIA, JUDGMENT NO: ECW/CCJ/JUD/04/18, PG. 54. See also AZIAGBEDE KOKOU & 68 ORS V. REPUBLIC OF TOGO (SUPRA).

99. In the instant case, all that was placed before the Court are the names of the 6,500 third party applicants, their next of kin and in some instances unit of posting and rank. There is neither evidence of the nature of the injuries suffered by each of them which is consistent with mine explosion, nor the nature and extent of the incapacity if any suffered by the named applicants.

100. On the other hand the victims in the Consent Judgment (to which the TP.3 is seeking to be joined as beneficiaries) were thoroughly processed by the 4<sup>th</sup> and 5<sup>th</sup> Respondents by medical experts and out of the initial claim by 685 survivors only 493 were verified as victims of either land mines or other dangerous military ordinances. These 493 victims are consequently captured and referred to in schedule 4(1) of the Consent Judgment. TP.3 in the instant case presented



6,500 applicants claiming to have suffered injuries from mine explosion without a single proof to substantiate such claim.

101. It is expedient at this point for the Court to state clearly that a third party application is not a *carte blanche* (French expression for unrestrained freedom) for all comers to seek to be joined in a process that has led to a judgment. It is a closed door that can only be open to parties who must prove a prejudice will emanate from their continuous shut out having established concurrently that they fall within classification of victims in the said judgement.

102. The Court recalls that the Initial Applicants raised a preliminary objection challenging the locus standi of the TP.3 applicants to institute this action. As earlier ruled this is an argument for the merit. A third party application being in essence a prayer urging the Court to open the door of an already closed case for entry to enable a variation of the judgment which would otherwise be prejudiced to his/her rights if denied; such right being foundational must justify the standing. Indeed the objection of the Initial Applicants is apt as locus standi is the key that enables an applicant to enter a Court to present a petition. In this wise the Court aligns with the arguments of the Initial Applicants on the lack of locus standi by TP3.

103. From the facts available to the Court, TP.3 are at best combatants/soldiers that fought during the Civil War who have not established proof of any injuries suffered or that they emanated from the post-Civil War landmine blast/explosion.

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104. The case of the TP.3 can be likened to an inheritance situation where a man died and left a will with the instruction that his property be shared in equal proportion to all “my children whom I have recognised and acknowledged as such”. The man had three children by his lawful wife who were named in the will as such. Upon his demise, a claim to his property was laid by two other sets of people. One claimant presented various supporting documents including many pictures taken with the deceased from the claimant’s childhood to various school graduations but more importantly a notarised documents wherein the deceased acknowledged his paternity over this claimant and his entitlement to his property as provided in the will. The other set of claimants numbering five presented no evidence save that they bear the same surname and similarity in look with the deceased. The question as to who has established a right over the property and entitled to be joined as children with the other three children of the deceased is not far-fetched.
105. In all, the TP.3 have not been able to convince this Court that they are victims with standing within the meaning of the United Nations Policy on Victim Assistance in Mine Action (2016) and within the contemplation of Article 91(1) (b) of the Rules of Court which will qualify them to partake in the compensation provided for mine victims in the Consent Judgment.
106. In the light of the above analysis, the Court dismisses the application of TP.3 and so holds.
107. As regards the second leg of Article 91(1) (b) requiring the establishment that the judgment is prejudicial to the right of the applicant, having found that TP.3 have not established a right inherent in the Consent Judgment and

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therefore lack the locus standi to bring this application, the issue of whether the judgment is prejudicial to their right is therefore devoid of substance. Equally, the requirement under Article 91 (1) (c) to “indicate the reason for which the third party was unable to take part in the original case.” is equally otiose. The Court will therefore not proceed to analyse both of them.

## **X. COSTS**

108. The Initial Applicants and the 4<sup>th</sup> and 5<sup>th</sup> Respondents made an application for costs in their pleadings, while TP.3 on the other hand made no submission as to costs.

### **Analysis of the Court.**

109. Article 66 (1) of the Rules of Court provides, “*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*”

110. Further, Article 66 (2) provides, “*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party’s pleadings.*”

111. The Initial Applicants and 4<sup>th</sup> & 5<sup>th</sup> Respondents applied for cost and TP.3 have been adjudged unsuccessful nevertheless the Court holds that parties shall bear their costs.

## **XI. OPERATIVE CLAUSE**

For the reasons stated above, the Court sitting in public after hearing both parties:

### **As to Jurisdiction:**





- i. **Declares** that it has jurisdiction.

**As to Admissibility:**

- ii. **Declares** the Application admissible.

**As to the Preliminary Objection:**

- iii. **Upholds** the Preliminary Objection of the Initial Applicants on locus standi of the Third Party 3.
- iv. **Dismisses** the Preliminary Objection of the Initial Applicants that the third party application is statute barred.

**On Merits:**

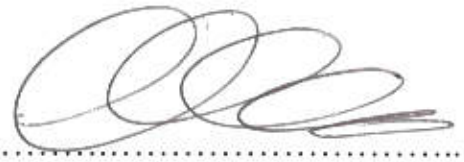
- v. **Dismisses** the prayer of TP.3 for stay of execution of Judgment No ECW/JUD/14/17.
- vi. **Dismisses** the prayer of TP.3 to join Pastor Ekpemside Dan Ekpemside and 6,499 others in Consent Judgment No ECW/JUD/14/17.
- vii. **Dismisses** all other reliefs sought by the Initial Applicants.

**On Costs:**

- viii. **Orders** All parties to bear their cost.



Hon. Justice Edward Amoako **ASANTE**



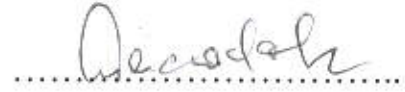
Hon. Justice Dupe **ATOKI**



Hon. Justice Januaria T. Silva Moreira **COSTA**



Mr. Tony Anene- Maidoh - Chief Registrar



Done in Abuja, on this 25<sup>th</sup> Day of February 2021 in English and translated into French and Portuguese.

