

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



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

In the Matter of

**MARTIN GEGENHEIMER & 4 ORS. v. THE REPUBLIC OF NIGERIA
& ANOR.**

Application No: ECW/CCJ/APP/23/20 Judgment No. ECW/CCJ/JUD/03/21

JUDGMENT

ABUJA

4TH MARCH 2021

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

SUIT NO: ECW/CCJ/APP/23/20

JUDGMENT NO. ECW/CCJ/JUD/03/21

1. MARTIN GEGENHEIMER
2. JULIET GEGENHEIMER
3. STEPHANIE GEGENHEIMER
4. CHRISTOPHER GEGENHEIMER
5. SAT SWISS AVIATION NIGERIA LTD. APPLICANTS

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. NIGERIA IMMIGRATION SERVICE RESPONDENTS

COMPOSITION OF THE COURT:

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

ASSISTED BY:

Mr. Tony **ANANE-MAIDOH** - Chief Registrar

REPRESENTATION OF PARTIES:

Counsel for the Applicant:

Dr. D. D. **MAKOLO** Esq.

Festus A. **OGWUCHE** Esq.



Counsel for the Respondents:

Mallam J.A. **ADAMU** Esq.

Deputy Director/Legal Advisor

Nigeria Immigration Service Hqrts.

I. JUDGMENT:

1. This is the judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES:

2. The 1st Applicant who has been living in and out Nigeria since 1990, is a German national married to the 2nd Applicant, a Nigerian citizen on 4th June, 1999.
3. The 3rd and 4th Applicants are children of the couple described in paragraph 2 and are citizens of the ECOWAS Community, from the Federal Republic of Nigeria seeking justice for Mr. Martin Gegenheimer, the 1st Applicant, with their families and children living in Lagos, Nigeria and Switzerland.
4. The 5th Applicant is a corporate citizen of the ECOWAS Community. A taxpaying legal entity with headquarters in Abuja, who invited the 1st Applicant to come into Nigeria to help negotiate and seal a business transaction.
5. The 1st Respondent is the government of the Federal Republic of Nigeria, a member state of ECOWAS and a signatory to the African Charter on Human and Peoples' Rights (hereinafter referred to as the "Charter").
6. The 2nd Respondent is an official agent to the 1st Respondent responsible for immigration services within the latter's federation.

III. INTRODUCTION:



7. The Applicants are seeking for the enforcement of their fundamental human rights arising from the 1st Applicant's wrongful arrest and unlawful detention and the seizure of his German Passport.
8. The Applicants are contending that the 1st Applicant who legally entered Nigeria for business purposes, while returning to his home base in Kenya was wrongfully arrested and detained and that his rights to fair hearing, freedom of movement, dignity of his human person have been violated and are therefore seeking the release of his passport and compensation for various infraction on his rights.

IV. PROCEDURE BEFORE THE COURT:

9. The Originating Application was filed on the 5th June, 2020 at the registry of the Court together with two other interlocutory applications namely: Application for Expedited Procedure and Application for Provisional Measures. All the three applications were duly served on the Respondent on the 22nd June, 2020.
10. The Applicant again filed on the 22nd September 2020, Application for Default Judgment which was also duly served on the Respondents on the 24th September, 2020.
11. Before the Motion for Default Judgment could be heard, the Respondents on the 9th November 2020 applied for an extension of time to file Preliminary Objection and Defence together with the Notice of Preliminary Objection and Statement of Defence which were all served on the Applicants on the same day.
12. At the first virtual court session on the 10th November 2020, all parties were represented by counsel in court. Applicants' counsel acknowledged the receipt of all the processes filed by the Respondents and craved the indulgence of the Court to consider the Applicants' application for expedited hearing and interim



- measures. The motion for Default Judgment was struck out after the Applicants' counsel did not object to the regularization of the statement of defence filed by the Respondents. The application for expedited hearing was granted by the Court.
13. On the 23rd November 2020, the Applicants filed their responses to the Preliminary Objection and the statement of defence of the Respondents which were served on the same day.
14. The Respondents, on the 26th November 2020 filed a Counter Affidavit and Written Observations in opposition to the Applicants' Motion for Provisional Measures which were served on the same date.
15. At the second virtual court session, all the parties were represented by counsel in court. Applicants' counsel withdrew the application for interim measures and the case was adjourned to the 2nd December 2020 for hearing. On the 2nd December 2020 all the parties were present and represented by their lawyers. The Preliminary Objection was heard and adjourned to be considered together with the judgment in the substantive case.

V. APPLICANT'S CASE:

a. Summary of Facts

16. The 1st Applicant who is a German national and a professional aviator, has lived in and outside Nigeria and carries on business in Nigeria, Kenya and Africa at large since 1990. He specializes in commercial airline startup businesses for both, passenger and cargo, known globally for his expertise. Due to poor commercial airlines activities in Nigeria and West Africa, he relocated from Nigeria sometimes in 2015/2016 to Germany, later Switzerland and now lives in Kenya with his family.

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17. According to the 1st Applicant, he was requested to come to Nigeria for business negotiations so he obtained necessary the approvals for visa on arrival to legally enter Nigeria.
18. Whilst in Nigeria, he was requested to attend some business negotiation in Istanbul Turkey for finalization of a Consultancy Contract a copy of which was annexed to his documents as "*Exhibit 16*".
19. The 1st Applicant arrived at Murtala Muhammed International Airport (MMIA) Ikeja, Lagos via Kenya airways flight number KQ 532 on 9th of February 2020 and was officially issued with a one month Business visa number E0014938 at the visa on arrival counter by the officials of the 2nd Respondent.
20. While returning to his home base in Kenya on 23rd February 2020, he was stopped at the boarding gate of the Kenya Airways aircraft after all necessary departure formalities were completed, he was arrested, his passport was seized and was kept in a jam-packed detention cell from 23rd February, 2020 to 4th March, 2020 despite the effect on humanity of the Covid-19 Pandemic without acceptable food and medical care.
21. The 1st Applicant alleges that he was not informed about any justifying circumstances recognized by law, and neither warrant of arrest nor any order of court were produced as the basis for his arrest and detention. He was also never afforded any opportunity to promptly give him fair hearing before any lawful authority or competent court since then.
22. It was not until the 4th of March, 2020 that an administrative bail was secured for him in the face of pending lockdown in Abuja due to the Covid-19 pandemic, under very stringent condition to be reporting at periodic intervals at the detention centre, with the retention of his German passport in the explicit custody of the Comptroller General of Nigeria Immigration Service.



23. Applicants contend that the retention of the passport of the 1st Applicant has the effect of keeping him in perpetual detention in Nigeria. The 1st Applicant cannot continue his business nor return to his family in Kenya neither does he know the nature of the allegations against him as he has neither formally been informed nor charged of any offense.
24. According to the Applicants, the 1st Applicant's right to the dignity of his human person was recklessly violated with impunity, wherein, he was subjected to mental, emotional, psychological, physical torture, and cruel, inhuman, degrading treatment and punishment unlawfully which is against UNDHR and the Charter as well as other Conventions and treaties to which the 1st Respondent is a signatory.
25. The 5th Applicant entity that invited the 1st Applicant to Nigeria and gave an official written acceptance of his Immigration Responsibility (I.R.) while in Nigeria has not received any official communication from officials of the 2nd Respondent who granted him approval, issued him a business visa on arrival in Nigeria as per his scheduled trip. He received the approval in Angola with which he boarded the Kenya Airways flight KQ 532 on 09/02/2020.
26. The 1st Applicant's family members in Nigeria, Kenya and Germany or the Embassy of the Federal Republic of Germany in Abuja were not informed of his whereabouts. He was made to sleep on the bare floor while in detention for days, an act, which is dehumanizing. He was not allowed even on demand to consult a doctor or be taken care of by a doctor of his choice or any doctor at all.
27. The 1st Applicant managed to reach out from the cell to the 5th Applicant's management after days in the dark cell incommunicado. The 5th Applicant quickly got in touch with the 2nd Respondent through a professional Immigration Consultant who was employed to secure his release and after spending over twenty thousand United States Dollars [\$20 000.00] in employing different

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lawyers and spending money desperately through these various channels to secure the 1st Applicant's release.

28. Since then the 1st Applicant has been confined to Abuja indefinitely against his wish and business demands, and been reporting to the head office of the 2nd Respondent until the government Lockdown of Abuja as a result of the Covid-19 pandemic. He remains in the 2nd Respondent's unlawful custody in Nigeria and has been living at Sheraton Hotel in Abuja at huge cost (Bills annexed as *Exhibit 28*) and in suspense and emotional trauma not knowing what next will happen to him.

29. The Applicants claim that all the businesses of the 1st Applicant are presently running at a heavy loss globally as one of the major contracts he was working for has been terminated and a new contract to be signed in Turkey has not come to fruition as a result of his inability to travel to Turkey on time and he is being surcharged for reparations as a result. He attached as *Exhibit 15* his onward ticket schedule to Turkey for the continuation of his business trip and a contract under negotiation worth a minimum of \$1,032,000USD (One Million and thirty two thousand United States Dollars per annum) to the 5th Applicant.

b. Pleas in law:

30. The Applicants cited Article 5, 6, 7, 12 of the Charter and the following international human rights instruments in support of their case: Article 3, 4, 5 & 9 of the Universal Declaration of Human Rights; Articles, 8, 9(2 & 3), 10 & 14 (3) of the International Covenant on Civil and Political Rights; Articles 4 and 12 of Third Geneva Convention and Article 29 of the Fourth Geneva Convention; Articles 34, 43 & 78 of the Fourth Geneva Convention and 75 of the Additional Protocol 1 of 1977; Article 14 & 15 of the UN Convention Against Torture.

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c. Reliefs sought:

31. The Applicants are seeking the following reliefs from the Court:

- a. A declaration that the 1st Applicant shall be entitled to be 'promptly' informed of the charge against him and to a fair and public hearing by a competent, independent and impartial tribunal established by law.*
- b. A declaration that the arrest of the 1st Applicant without warrant or any official communication for his arrest and detention since 23/02/2020 at MMIA Ikeja in Lagos is wrongful and his subsequent transportation to Abuja against his wish and further detention in Abuja till date is arbitrary.*
- c. A declaration that the 1st Applicant's right to freedom of movement and dignity of his human person was violated in the process.*
- d. A declaration that the right of the applicant to be brought promptly before a judge or other officers authorized by law to exercise judicial power and his right to unbiased trial within a reasonable time or be released without undue delay was violated.*
- e. A declaration that the arrest, intimidation, harassment and detention of the 1st Applicant in very agonizing circumstances and in such excruciating inhuman condition since on 23/02/2020 violates the provision of the 1st Respondent's Anti-Torture Act, Violence Against Persons Act and the U. N. Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment adopted by the UN General Assembly on 10 December, 1984 which came into force on 26/06/1987.*
- f. A declaration that the continuous retention of the 1st applicant's German Passport by the Respondents since on 23/02/2020 without official retention*



receipt issued to him is illegal and amounts to continuous detention of the 1st Applicant by the Respondents.

- g. An Order compelling the Respondents to immediately and unconditionally release to the 1st Applicant, his German passport number C93X6C4L6 unlawfully seized from him by the Respondents agents and remove his name from watch list.*
- h. An Order compelling the 2nd Respondent to issue the 1st Applicant a two year gratis multiple business visa into Nigeria to enable him attends arising legal matters against him personally.*
- i. An order awarding the Applicants the sum of NGN 25,000,000.00 (TWENTY FIVE MILLION NAIRA) special damage being the reparation for various losses and cost to the 1st Applicant while under the forced detention in Nigeria.*
- j. An order awarding the 1st Applicant the sum of Four Million United States Dollars (\$4,000,000USD) being general damages for the illegal arrest, loss of business and the inhuman and cruel treatment suffered while he was put in the wrongful detention by the Respondents in Nigeria.*

VI. RESPONDENTS' CASE:

a. Summary of facts:

32. The Respondents state that the 1st Applicant is a German Citizen, and has not shown that he has acquired the citizenship of any Country which is a member state of the Economic Community of West African States, and therefore, lacks the capacity to bring this action.
33. The Respondents state that 1st Applicant's marriage to a Nigerian Citizen could not and did not confer Nigerian Citizenship upon him without the appropriate application and approval. Though the Nigeria Constitution permits dual

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Citizenship, Germany's Immigration law does not permit a German to acquire the citizenship of any other country without first renouncing German citizenship.

34. The Respondents further state that Nigerian International Passports are never issued via proxies because it is only the owner of the passport whose photo, biometric and other personal details are captured by the 2nd Respondent. There is no evidence on record that the 1st Applicant has ever approached nor applied for a Nigerian International passport but rather he has a record of having applied and obtained CERPAC years back.
35. The Respondents state that the stoppage, arrest and movement of the 1st Applicant to the 2nd Respondent's office in Abuja was because on his way out of Nigeria, he presented a Nigerian standard international passport number *AO3685413* bearing his photograph and other details but which when scanned, revealed the name, passport photograph and details of one Tanimu Aisha, a Nigerian female citizen.
36. Based on the above facts, there was a major irregularity evidencing that the passport number *AO3685413* in the possession of the 1st Applicant indicating that the passport photograph and other details did not tally with the breeder documents used for the issuance of the said passport and that his details were superimposed on an existing passport details of the original applicant who was issued with this said passport number *AO3685413*.
37. The Respondents aver that the facts in the immediate preceding paragraphs raised allegation of suspicion of forgery of a Nigerian standard passport number *AO3685413* made against the 1st Applicant which required further investigation by the Document Fraud Unit of the 2nd Respondent at its Headquarter offices at Abuja, the nation's Capital.
38. The 1st Applicant was moved to Abuja on the 24th of February, 2020 on the next available flight and subjected to the usual investigative procedures of the 2nd



Respondent and when his lawyers applied for his release, bail was granted after he satisfied the bail conditions set by the 2nd Respondent. However, both the Nigerian and German passports were retained to ensure that he remained available for his likely trial, if charged to court.

39. The Respondent further aver that all through this period, the 1st Applicant was fully aware of the reason for his arrest and this was clearly made known to him and therefore deny any wrong doing or infraction on their part saying that the Screening Centre of the 2nd Respondent in the premises of its Headquarters in Abuja is not a detention facility and certainly does not consist of any “jam packed detention cell”.
40. In specific response to the Applicants’ allegation of maltreatment of the 1st Applicant at its office, the 2nd Respondent states that the screening center is where travelers or applicants who breach the immigration laws of Nigeria are taken to for examination or screening pending their clearance or trial if charged to court.
41. The Respondents aver that they are under no obligation statutorily or otherwise to officially communicate with the family of the 1st Applicant about his arrest especially since his mobile phone was never taken from him nor was he in any way hindered from communicating with his family or his lawyers throughout the duration of his stay with the 2nd Respondent.
42. Furthermore, the Respondents aver that the 1st Applicant among others at the Screening Centre, was well catered for and provided with food and all basic comforts during his stay and deny all sundry allegations of violation of the 1st Applicant’s rights made by the Applicants.
43. The Respondents contend that after conclusion of investigation of the Nigerian passport number *AO3685413* submitted by the 1st Applicant, a charge was filed at the Federal High Court, Abuja Judicial Division, and *CHARGE NUMBER FHC/ABJ/CR/152/2020 - FEDERAL REPUBLIC OF NIGERIA v. MARTIN*



GEGENHEIMER which the 2nd Respondent is processing to get a date for the hearing of the charge. The Charge is here attached as *Exhibits NIS 1* which contains the following offences:

- (a) *Unlawful alteration, tampering and mutilation of a standard Nigerian Passport No. AO3685413 contrary to Section 10 (1) (b) of the Immigration act 2015 and punishable under Section 10 (1) (h) of the Immigration Act, 2015,*
- (b) *Forging and being in possession of a forged passport, knowing same to be forged contrary to Section 10 (1) (g) and punishable under Section 10 (1) (h) of the same Act.*
- (c) *Forging or trafficking in passport plus holding a Nigerian standard passport knowing fully well that he is a German Citizen contrary to Section 12(1) and punishable under Section 12(3) of the same Act.*

b. Respondents' Reliefs:

44. The Respondents seek the following:

1. An Order Dismissal of this suit on the following grounds:

- (i) *that this suit is an effort to pervert the course of justice and escape from justice*
- (ii) *that the 1st Applicant's entire processes are supported by misrepresented facts against Nigeria as a nation.*
- (iii) *that the 1st Applicant is trying to claim citizenship of the ECOWAS in order to confer jurisdiction on this Court where it does not have*
- (iv) *that this suit is frivolous, unmeritorious and a mere academic exercise and unsupportable by any credible evidence placed before this Court by the 1st Applicant;*



2. *And for such other order that this Court may wish to make in the circumstances*

VII. JURISDICTION:

45. The Applicants relied on legal provisions granting the human rights jurisdiction of this Court to ground their case by quoting Articles 9(4) of the 2005 Protocol on the Court which defines the competence of the Court to entertain cases of human rights violations that occur in member states to wit:

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

46. However, the Respondents raised an objection to the jurisdiction of the Court on the grounds that the 1st Applicant not being an ECOWAS community citizen but a German Citizen should not have access to the Court.

47. In *MOUSSA LEO KEITA v. THE REPUBLIC OF MALI (2004-2009) CCJERL 63*, this Court held that:

“It has a competence to adjudicate matters involving the violation of human rights within its Member State. This Court also held that the Applicant must show proof indicative of a characteristic violation of a fundamental human rights: “and in the absence of any such violation application must be declared inadmissible.”

48. See also *SERAP v. FRN & 4 ORS, (2014) (Unreported)*, where the Court again held that:

“the mere allegation that there has been a violation of human rights in the territory of a member state is sufficient prima facie to justify the jurisdiction of this court on the dispute, surely without any prejudice to the substance and merits of the complaint which has to be determined



only after the parties have been given the opportunity to present their case, with full guarantees of fair trial.”(Underlined by me for emphasis)

49. From the jurisprudence of the Court carefully couched from its constitutive texts and other relevant statutes, it is not in doubt that its territorial jurisdiction covers the subject matter jurisdiction of any acts of human rights violation that occurs in any Member State of ECOWAS without recourse to whether the victim is a community citizen or a visitor.
50. It is pertinent to note that any treatment by this Court of victims of human rights violation within the territorial borders of Member States of ECOWAS on the basis of their nationality will amount to dereliction of the hallowed responsibility of the Court’s intervention towards rebuilding trust and confidence of Community Citizens and all the people of the world within the territories of Member State parties to the ECOWAS treaties and protocols in terms of the promotion and protection of their fundamental human rights.
51. The requirement *sine qua non* for conferment of jurisdiction on the court is to fulfill the condition that “*the act of violation did occur in the territory of a member state*” and the Applicant is a victim of the violation.
52. Since the alleged violations in the instant case occurred in the territory of the 1st Respondent, this Court holds that it has jurisdiction and the Applicants have the standing to access the Court as victims of the alleged violations and the court so holds.

VIII. ADMISSIBILITY:

53. The 2nd - 4th Applicants contend that they are seeking justice for the 1st Applicant, who was invited by the 5th Applicant to come into Nigeria to help negotiate and seal a business transaction. The 5th Applicant is contending that



having taking the Immigration Responsibilities for the 1st Applicant, she is entitled as of right to be communicated with by the 2nd Respondent's officials as part of the fulfilment of the contract terms for the approval of visa for the 1st Applicant.

54. The 5th Applicant's case is that the failure of the Respondents to inform him about the arrest and detention of the 1st Applicant falls short of its right to fair hearing and a violation of the contractual terms and condition for the grant of the business visa to the 1st Applicant on arrival in Nigeria.
55. It is settled law that the test for the validity of the institution of an action, as far as the capacity of the party is concerned, is whether the party has been granted access to the court by the latter's' constitutive text. See the case of *TAAKOR TROPICAL HARDWOOD COMPANY LTD v. THE REPUBLIC OF SIERRA LEONE* 92019) ECW/CCJ/JUD/02/19 @ Pg. 15(Unreported)
56. In line with its constitutive texts, though individuals are permitted to institute action for violation of their human rights, the texts prescribe in Article 10 of the 1991 Protocol on the Court (as amended), the context within the individuals may access the Court. It has been settled that "*individuals within the context of Article 10 of the protocol refers to human beings and no more. Thus, by expressly giving access to individuals, the Supplementary Protocol sought to give that right exclusively to individual human beings who are victims of human rights abuse to the exclusion of all others*". SEE *OCEAN KING NIGERIA LIMITED V. REPUBLIC OF SENEGAL* (2011) CCJELR 139 @ pg. 156
57. In respect of corporate bodies instituting action for violation of human rights, the Court has held that: "*In order to harmonize the prior inconsistent decision of the court.....this court in the exercise of its inherent power hereby departs from all decisions wherein corporate bodies were accommodated under*

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Article 10(d) of the 1991 Protocol on the court as amended by Supplementary Protocol, 2005; and affirms that only individuals have access for human rights violations except in internationally accepted conditions". SEE DEXTER OIL LIMITED v. REPUBLIC OF LIBERIA (2019) ECW/CCJ/JUD/03/19 @ Pg. 21(Unreported).

58. The Court observes that the 2nd – 4th Applicants' capacity in which they approached the Court suffers from a fatal admissibility challenge. By purporting to seek justice in this suit for the 1st Applicant denotes that they themselves are not victims of the alleged violation. To that extent, this Court holds that the 2nd – 4th Applicants are utterly bereft of the requisite capacities needed to mount an action before this Court for violation of human rights. Consequently, the 2nd – 4th Applicants are hereby nonsuited in this action.
59. The 5th Applicant which seems to come under the established exception granted corporate bodies to access the Court also suffers similar fate of lack of *locus standi* in this action. *"The established exceptions under which corporate bodies can ground an action are; rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression"*. See *DEXTER OIL LIMITED v. REPUBLIC OF LIBERIA (Supra) @ Pg. 21*
60. However, notwithstanding its claims of violation of right to fair hearing, the 5th Applicant has not adduced any evidence to establish that there is an existing cause of action between her and the respondent to ground her claim of violation of right to fair hearing. The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.



61. The 5th Applicant's assertion that the Immigration Responsibilities she undertook for the 1st Applicant covers any Immigration offense alleged to have been committed by the 1st Applicant is not legally sustainable. The alleged immigration offences levelled against the 1st Applicant are personal and not transferable. The Court holds that the 5th Applicant therefore lacks the requisite capacity as a party to this suit for the enforcement of any fundamental right and is hereby nonsuited.
62. The Applicant sued Nigerian Immigration Service, an agent of the 1st Respondent responsible for immigration services as 2nd Respondent. This Court in the case of *KHADIJATU BANGURA v. SIERRA LEONE (2016) CCJ/JUD/17/16 (Unreported) at page 11*, held that:
- "... (it) has always held that human rights protection is the exclusive preserve of States, and the Court has thus expressed this position in numerous decisions it had to make, including the one delivered on 8th November, 2010 in MAMADOU TANGJA v. REPUBLIC OF NIGER (2010) CCJELR 109, where it declared that, it is a general principle that procedures of human rights violation are brought against States, and not individuals. Indeed, that the obligation to respect and protect human rights lies on States".*
63. In pursuant to the above stated jurisprudence, it is the considered view of this Court that the 2nd Respondent being an agency of the 1st Respondent, cannot be sued before the ECOWAS Community Court. The suit is therefore not admissible against the 2nd Respondent. Consequently, the Court *suo muto* hereby strikes out the Applicants' action against the 2nd Respondent. The 2nd Respondent is consequently disjoined from the case.

IX. PROCEEDINGS BEFORE THE COURT:



a. Application for Expedited Procedure:

64. As already captured under paragraph 11 of this judgment, the Originating Application was filed together with two other interlocutory applications namely: “*Application for Expedited Procedure and Application for Provisional Measures*”.
65. At the Court’s first sitting on the 10th November 2020, the Applicant’s application for expedited procedure was heard by the Court. The Applicant, in the said application argued that after his release on bail, he is still in detention in Abuja staying in a Hotel running bills and waiting indefinitely and has run out of funds to settle his bills and his businesses around the globe are folding up hence the application for expedited procedure to have the substantive suit heard urgently to protect him from any potential embarrassment and continued ruining of his business fortunes.
66. Since there was no opposition from the Respondent and more importantly, having complied with and convincingly established the urgency necessitating the speedy trial of the suit as provided for under Articles 59 and 79 of the Rules of the Community Court of Justice, the Court granted the application for expedited hearing of the substantive suit.

b. Notice of Preliminary Objection:

67. The Respondent, in its Notice of Preliminary Objection, submitted that the Applicant is a German citizen and not having shown that he is a citizen of any of the Member States of ECOWAS, as such, the Community Court lacks jurisdiction to entertain this suit. The Applicant opposed the objection with a counter submission that once the alleged violation occurred in the territory of a Member State, this Court has jurisdiction to entertain the matter.



68. On the 2nd December 2020, in a court session represented by all the parties, the Court heard and received legal submissions from the parties and intimated that the judgment in the suit shall incorporate the ruling on the preliminary objection which has been addressed in paragraphs 43- 57 under the heading jurisdiction. In sum therefore, the court hereby dismisses the preliminary objection raised by the Respondent as to the jurisdiction of the court to entertain this action on grounds that the first applicant is not a community citizen.

X. MERITS:

a. Allegation of Unlawful Arrest and Detention:

69. The Applicant who was in Nigeria on a Business visa number E0014938, submits that he was travelling with a German passport No. C93X6C4L6; had already cleared departure formalities at the Murtala Muhammed International Airport (MMIA), Ikeja, Lagos, about boarding the Kenyan Airways Aircraft KQ 532 on the 9th February, 2020 when he was invited by the immigration office, arrested and detained in the Airport office by the immigration officers who did not disclose the reason for his arrest and subsequent detention.
70. The Respondent contends that the Applicant was travelling on allegedly forged Nigerian passport number A03685413 bearing his photograph and other details but when scanned, revealed the name, passport photograph and details of one Tanimu Aisha, a Nigerian female national. This assertion of the Respondent was vehemently rebutted by the Applicant who expressly stated that he neither applied for nor used any Nigerian Passport for travel neither for the purpose of entry into nor exit from the Nigerian borders on the day in question.

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71. The Respondent denies violating any rights of the Applicant and states that, on suspicion of forgery of Nigerian Standard Passport No. A03685413 by the Applicant at MMIA, he was arrested and moved to Abuja on the 24th February 2020 and subjected to the usual investigative procedures of Nigerian Immigration Service where screening/investigations by its Document Fraud Unit are conducted.
72. That after the conclusion of investigations, a charge has been filed at the Federal High Court, Abuja against the Applicant awaiting a date to be given for hearing.
73. The Applicant is claiming inter alia, violation of Article 6 of the Charter and Article 9 of the Universal Declaration of Human Rights (UDHR), both of which deal with arbitrary arrest. Article 6 of the Charter reads: *“A person shall not be deprived of his liberty except in circumstances permissible by Law.”*
74. It is trite law that he who alleges must prove. The burden of proof of violation of his rights therefore rests upon him who must establish the violations as claimed. In emphasizing the significance of proof, the Court in *FEMI FALANA & ANOR. v. THE REPUBLIC OF BENIN & 2 ORS (2012) CCJELR 1* 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”*.
75. Again in the case of *DAOUDA GARBA V. REPUBLIC OF BENIN (2010) CCJELR 1* at para. 34 & 35, the court held that: *“cases of violation of human rights must be backed by indications of evidence which will enable the Court to find that such violation has occurred in order for it to prefer sanctions if need be.”*
76. This Court had an opportunity to decide on unlawful arrest and detention in the case of *CHUDE MBA v. REPUBLIC OF GHANA (2013) CCJELR 335*. The Applicant in that case was invited for an interview by an Agency of the



government who accused him of money laundering, the Agency did not give him the details of the crime and did not charge him to Court, he was arrested and detained for hours but later released under stringent bail conditions, it was held that: "*Plaintiff/Applicant's arrest and detention was not based on reasonable grounds of suspicion and therefore constitutes a breach of the Applicant's right to freedom from arbitrary arrest and detention.*"

77. In the instant case, it has been factually established that the Applicant was arrested and detained for number of days by the Nigerian Immigration Service without being informed of the reasons for his arrest and detention. The question then is, why was he not informed about the reasons for his arrest and was his arrest and detention not based on reasonable grounds of suspicion to render same unlawful?
78. On the issue of right to be promptly informed of the reasons for one's arrest, Article 9 (2) of the International Covenant on Civil and Political Rights provides: "*Everyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him*".
79. The Human Rights Committee in its General Comment 35 on Article 9 of the ICCPR (*Liberty and Security of Person*), has recognized that "*not only must the deprivation of liberty be in accordance with laid down laws, but must also be accompanied with procedural safeguards to ensure that such deprivation is not arbitrary. One of these procedural safeguards is that an arrested person must immediately be informed at the time of arrest, of the reasons for his arrest and charges against him*". See African Court decision in *APPLICATION NO. 005/2013, ALEX THOMAS v. UNITED REPUBLIC OF TANZANIA*.
80. Again in the case of *CHIEF EBRIMAH MANNEH v. THE REPUBLIC OF THE GAMBIA (2004-2008) CCJELR 181 @ pg. 197*, this Court held that: "*The*



Applicant's arrest on the 11th July 2006, by the Police Force of the Gambia and his detention incommunicado without being charged or informed of the reason of his arrest, or proof that the act was in accordance with a previously laid down law, is clearly in violation of the provisions of Articles 2, Article 6 and 7 (1) of the African Charter on Human and Peoples Rights."

81. Though the officials of Nigerian Immigration Service have the right embedded in the exercise of their discretion to arrest or detain any person for suspicion of having committed any immigration offence, the right of anyone arrested to be informed of the reason for his arrest at the time and place of his arrest is non-negotiable and cannot be dispensed with under any circumstances.
82. On the basis of the analysed jurisprudence on the subject supra, and the fact that the Applicant was not promptly informed about the reasons for his arrest renders his arrest clearly in violation of the provisions of Article 6 of the Charter and the Court so holds.
83. In respect of reasonableness of the suspicion for arrest, the case of *FOX CAMPBELL & HARTLEY v. THE UNITED KINGDOM* (1990) ECHR 12244/86; the European Court held that: "*What is reasonable depends upon all the circumstances, but the Court must be furnished with at least some facts or information capable of satisfying it that the arrested person was reasonably suspected of having committed the alleged offense and not having provided any further material upon which the suspicion against the applicants was based, it will not go into the purpose for which the Applicant was arrested.*"
84. So it stands to reason that "*reasonable suspicion*" means the existence of facts or information which would satisfy an objective observer that a person concerned might have committed the offence. Again, it is a general consensus in international law that the respect for legal channels in cases of arrest and



detention, presupposes that the denial of a freedom must have *a legal basis in the domestic law of the State*.

85. The above position in the immediate preceding paragraph has found favour with this Court when in the case of *MAMADOU TANDJA v. GENERAL SALOU DJIBA & ANOR*. (2010) CCJELR 109, Applicant who was a former President of the Republic of Niger alleged that his detention and arrest after his regime had been toppled in a coup was arbitrary, the Court held that: “*Arrest and Detention must be premised on legal grounds and that, in the instant case, the State of Niger has not invoked any legal basis for arrest and detention of Mr. Mamadou Tandja.*”
86. This Court considers it imperative to establish the veracity of the claims of the parties as to which passport the Applicant was travelling with on the date in question in order to resolve whether his arrest and detention on suspicion of forgery was reasonably grounded. This is because to ground any such suspicion, there must first and foremost be in existence the alleged passport and secondly, the Applicant must have been in possession of same at the material time and date of his arrest.
87. On the authority of *FEMI FALANA & ANOR v. THE REPUBLIC OF BENIN & 2 ORS (supra)*, and in the circumstances of this case, neither party is alone in bearing the burden of proof and the determination of the burden of proof depends on the type of facts which it is necessary to establish for the purposes of the decision of the case. Since it is for this Court to evaluate all the circumstances of the case with a view to establishing the facts, the parties herein shall bear the respective burden on their allegations.
88. To this extent the Applicant, on preponderance of probability has produced incontrovertible evidence to discharge the burden on him to the effect that he actually entered Nigerian with his German Passport No. C93X6C4L6 having



been granted Business visa number E0014938 to enter Nigeria. Indeed he has produced evidence of the visa number E0014938 in his German Passport and stamping when he was arriving and observing the departure formalities at MMIA, Lagos before he was apprehended.

89. Again, it is pertinent to note that the prerequisite for granting visa to prospective visa applicants is the ascertainment and authentication of the validity of their passports by the issuing authority. This means that the Applicant could not have obtained a valid visa from the Nigerian Immigration Service if he was indeed using a forged Nigerian Passport as being alleged by the Respondent.
90. Having categorically denied that he was travelling on the 23rd February, 2020 with any Nigerian passport, and that he was not in possession with any such passport before his arrest as alleged by the Respondent on the said date, the burden of proving those facts was on the Respondent. However, the Respondent woefully failed to produce any credible evidence to establish its allegation that the Applicant was travelling on allegedly forged Nigerian passport number A03685413 bearing his photograph and other details but when scanned, revealed the name, passport photograph and details of one Tanimu Aisha, a Nigerian female national.
91. In the quest to substantiate its claims of forged Nigerian Standard Passport No. A03685413 by the Applicant, the Respondent annexed to its statement of defence, Nigerian Immigration Service Passport File/Jacket on the said passport as *Exhibit "NIS-2"* containing; Statutory Declaration of Age of the said passport Applicant, Passport Payment Slip, Two (2) Passport Guarantors' Form and a Biodata Page of the alleged forged passport.
92. All the application documents mentioned [supra] on the alleged forged passport were in reference to one Aisha Tanimu as the passport applicant and dated 3rd October, 2017 whereas the biodata page bears the date of issue as 28th October

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- 2018 for five years to expire on 28th October 2023. This piece of evidence introduced by the Respondent clearly connotes an impression that the alleged forged passport was issued to the said Aisha Tanimu on the 28th October 2018.
93. It is the case of the Respondent that, the Nigerian Standard Passport No. A03685413, allegedly applied, guaranteed and paid for on the 3rd October 2017 but strangely issued on 28th October 2018 was the passport that the Applicant altered by superimposing his particulars thereon.
94. What is more intriguing is the fact that the purported Charge Sheet of the Applicant allegedly filed before the Federal High Court, Abuja pursuant to screening and investigations of the case of forgery against him indicates that the Applicant *"on or about the 29th October 2016, at the Abuja Passport Office of the Nigeria Immigration Service ... did unlawfully alter, tamper, and mutilate a standard Nigerian Passport No. A03685413, originally issued to Tanimu Aisha"*.
95. Assuming without conceding to the Respondent's allegation of forgery of Passport No. A03685413, the question that begs for answer is how could a passport be forged in the year 2016, two years prior to its issuance in the year 2018? Again, to believe the claims of the Respondent as put forward in this suit is suggestive that the Nigerian Immigration Service issued the Applicant a Business visa using a forged Nigerian passport to enter Nigeria. This in the opinion of the Court, is impossible having regard to the detailed security features in the clearance processes at the Respondent's disposal and at the various international airports and carriers accessed/utilized by the Applicant before of entering Nigeria.
96. Again, if indeed the Applicant did travel to Nigeria and was exiting with the said alleged forged Nigerian Passport, there should have been documentary evidence of stamping at the port of departure to Nigeria, at the port of entry into

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Nigeria and even during his alleged departure formalities to the point where he was arrested.

97. Unlike the Applicant who tendered in evidence of the usage of his German Passport in entering and exiting Nigerian, none of those was adduced in evidence by the Respondent to give credence to its allegation that the Applicant was using a forged Nigerian passport to exit Nigeria.
98. The Respondent also exhibited Nigerian Immigration Service Interrogation Sheet which incorporate an alleged statement volunteered by the Applicant dated 25th February 2020. All the information contained in those document relate to different issue which occurred sometime in 2019 from what is before this Court. The Court is unable to place any probative value on such evidence on grounds that they are not material and relevant to the issue at stake.
99. To a larger extent, the Court considers that the evidence of the Applicant is consistent and credible and stands largely uncontroverted to the effect that he entered and was leaving Nigeria on his German Passport No. C93X6C4L6 on the 23rd February 2020, when he was arrested, detained and the said passport retained in the custody of the Respondent's agents.
100. However, contrary to the submission of the Applicant, the propriety or otherwise of his arrest and detention and the seizure of his passport in the circumstances of this case cannot be based on whether or not there was warrant of arrest or order from the court authorizing his arrest. The Immigration laws of the Respondent, like those of every civilized nation, give a wide discretion to the Immigration authority to arrest and detain any immigrant as well as the retention of any document found on him on suspicion of having committed any immigration offence.
101. What would make the arrest, detention and seizure of any documents of the Applicant unlawful is whether the suspicion upon which he was arrested was

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not reasonably grounded in law or fact (*i.e. the ratio in Chude Mba case supra*) or any given activity pursuant to the arrest exceeded the prescribed period of the exercise of the said discretion. See *IMMIGRATION ACT of 2015, (Act No. 8 of 2015)* of Nigeria.

102. Where the “*lawfulness*” of arrest, detention and retention of any documents is in issue, including the question whether “a procedure prescribed by law” has been followed, the Charter refers essentially to the national laws and lays down the obligation to conform to the substantive and procedural rules thereof. Section 15(4) of the Immigration Act of 2015 of the Respondent, (Act No. 8 of 2015) is instructive to the instant case and it states that: “*An Immigration Officer may examine, and may detain, for such time as he thinks proper for the purpose of examination **not exceeding seven days**, any documents produced pursuant to or found on a search under this section*”.
103. It has been held that “*The watch word for the validity of any arrest is lawfulness and reasonableness. It follows therefore that powers of arrest must not only be provided for under the law but the grounds upon which it is exercised must be reasonable, otherwise what might be initially lawful becomes arbitrary and illegal*” See the case of *MR. GODSWILL TOMMY UDOH v. FEDERAL REPUBLIC OF NIGERIA (2016) ECW/CCJ/JUD/26/16, page 17 (Unreported)*.
104. The question of when arrest and detention are or become arbitrary is not definitively answered by the international instruments. The Universal Declaration of Human Rights merely provides in Article 9 that: “*No one shall be subjected to arbitrary arrest, detention or exile*”. Article 9(1) of the International Covenant on Civil and Political Rights is scarcely any clearer: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty*

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except on such grounds and in accordance with such procedure as are established by law."

105. This Court has ruled that "*Arbitrary detention is a detention not in conformity with the national or international law and which occurs without a legitimate or reasonable ground*". See *BENSON OLUK OKOMBA V REPUBLIC OF BENIN (2017) ECW/CCJ/JUD/05/17 @ page 16. (Unreported)*.
106. Notwithstanding the want of precise definition, customary international law considers as arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States. One general principle established in the case-law is that detention will be "*arbitrary*" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities.
107. In the mind of the Court, the instant case of the Applicant smacks of some element of bad faith or deception on the part of the Nigerian Immigration Service who for some undisclosed reasons, have not been able to present any credible evidence to ground the suspicion of forgery for the arrest and detention of the Applicant. Indeed, from the totality of evidence thus far presented by both parties, there is no scintilla of evidence establishing any incriminating nexus between the Applicant and the said forged passport.
108. Flowing from the foregoing analysis, the Court holds that the suspicion upon which the Applicant was arrested and detained was not reasonably grounded in law or fact. Consequently, in the absence of any legal basis for his arrest and detention, this Court finds that the Applicant's arrest, detention and seizure of his German Passport were not only arbitrary and unlawful, but also curtailment

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of his individual liberties and an affront to the dignity of his human person that amount to palpable violation of his rights under Articles 5 and 6 of the Charter.

b. Alleged violation of fair hearing:

109. The Applicant says that following his unlawful arrest, he was initially taken to the duty office of the Nigerian Immigration Service at MMIA. He was kept at the duty station till 2:00p.m the following day when he was offloaded from the MMIA via Max Air flight to a detention centre in Abuja without being told the reasons for his arrest and detention, neither was he charged to Court nor granted bail promptly. He is alleging violation of his right to be brought before a competent court of jurisdiction within a reasonable time.
110. While admitting that the Applicant was arrested on 23rd February 2020 at MMIA and moved to the Documents Fraud Unit of Nigerian Immigration Service detention centre in Abuja on the 24th February 2020, the Respondent says that a Charge has been filed at the Federal High Court, Abuja Judicial Division, **Charge number FHC/ABJ/CR/152/2020 - Federal Republic of Nigeria Vs. Martin Gegenheimer** which the Respondent is processing to get a date for the hearing of the charge.
111. Article 7(1) of the Charter provides and affords the Applicant *"the right to have his cause heard and to be tried within reasonable time by an impartial court or tribunal"* having been arrested and detained on suspicion of commission of a crime. Indeed, as stated in a relatively recent case of *MR. CHEIKH GUEYE v. REPUBLIC OF SENEGAL (2020) (Unreported)* *"this Court has held in a plethora of cases that the right to a fair hearing guaranteed under Article 7 of the African Charter is sacrosanct and admits no derogation. "Article 7 (1) clearly states that every individual shall have the right to have his cause heard*



and this comprises among other things the right to be presumed innocent until proven guilty by a competent Court or Tribunal, the right to defense, including the right to be defended by counsel of his choice and the right to be tried within a reasonable time by an impartial Court or Tribunal” - (SEE CHIEF EBRIMAH MANNEH v. THE REPUBLIC OF THE GAMBIA, CCJELR (2004-2008), p. 191, § 21)”.

112. The object of detention for questioning of the Applicant was to further a criminal investigation by confirming or discontinuing suspicion for his arrest which has already been held to be unreasonable. Without recourse to the determination of whether or not the suspicion of his arrest was well grounded, the arresting authority in this case, was under a mandatory legal obligation as per the extant laws of the Respondent and its treaty obligations, to have sent the Applicant to court within a reasonable period of no longer than two days. *SEE SECTION 35 OF THE 1999 NIGERIAN CONSTITUTION.*
113. The Applicant was arrested on the 23rd February, 2020 whereas the purported Charge filed at the Federal High Court, Abuja is dated 4th August 2020. Again, no date has been set for the hearing of the purported charge against the Applicant. How can it be construed that the mere filing of a Charge Sheet at the registry of a court without a definite date of hearing is tantamount to arraigning an arrested person before court. As it stands now, the Applicant who was arrested without a warrant of arrest or a court order has not been furnished with any date to appear in court.
114. It is on the basis of the foregoing, and in absence of any superior reasons canvassed by the Respondent necessitating its failure or inability to arraign the Applicant before court since his arrest on the 23rd February 2020, that the Court finds the Respondent in violation of the Applicant’s right to fair hearing

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particularly “*the right to be heard and tried within a reasonable time by an impartial court or tribunal*” under Article 7 (1) d of the Charter.

c. Alleged violation of freedom of movement:

115. The Applicant contends that since his unlawful arrest and detention on the 23rd February 2020, he has been confined to Abuja indefinitely against his wish and business demands. His German passport taken from him is still in the custody of the Nigerian Immigration Service. Not even a passport retention receipt was issued to him. His demand to be allowed to make an arrangement to leave Nigeria with German and European Union relieve flight at the peak of Covid-19 insurgence was met with refusal.

116. It is provided under Article 12 of the Charter that “*Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country*”.

117. The Court observes that it is not in doubt that the seizure of the German Passport of the Applicant and the stringent bail conditions have made it impossible for him to leave Nigeria. Having found his arrest and detention arbitrary and unlawful, the restrictions imposed on the movement of the Applicant by the agents of the Respondent *prima facie* constitute violation of his right to freedom of movement under Article 12 of the Charter and the Court so holds.

d. Alleged violation of the right to dignity of human person and torture:

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118. It is the case of the Applicant that following his unlawful arrest, he was initially taken to the duty office of the Nigerian Immigration Service at MMIA on or about 10:00a.m where he was kept on a metal bench until his flight departed at 12: 40p.m without any officials attending to him. He further submits that he was made to sleep at the duty station on the metal bench without food or any courtesy till 2:00p.m the following day when he was offloaded from the MMIA, Lagos to a detention centre in Abuja without being told the reasons for his arrest and detention.
119. He was kept at the last of a four-tier iron-chained over packed cell with over forty (40) other detainees for many days on one shirt without considering the health implication despite the prevalent spread of Covid-19, without necessary sanitary facilities, suitable food, medical care and without considering his age as an elderly man at over sixty five years of age. This, to him constitutes torture, inhuman and degrading treatment that gave him psychological trauma. None of his business associates or family members were informed about his incarceration.
120. Based on these facts, the Applicant is seeking for a declaration that his arrest, intimidation, harassment and detention in what he describes as "*very agonizing circumstances and in such excruciating inhuman condition*" from the 23rd February 2020 till the 4th of March 2020 when he was granted bail violate the provision of the Respondent's Anti-Torture Act, Violence Against Persons Act and the U. N. Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment adopted by the UN General Assembly on 10 December, 1984 which came into force on 26th June 1987.
121. While denying keeping the Applicant in a jam packed detention cell, the Respondent states that the detention cell was well furnished and she was not

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under any obligation statutorily or otherwise to officially communicate with the family of the Applicant about his arrest.

122. Reiterating its position on the subject of proof, the Court in the case of *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (2010) CCJELR 139* held that *“In assuming the burden of proof, it means that if at the end of day the Plaintiff has not produced evidence to discharge the burden on him he must lose the decision on the particular issue. However, being a civil matter the burden that the Plaintiff assumes is one of a proof by preponderance of probability or sometimes called reasonable probability.”*
123. Article 5 of the Charter provides that *“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.*
124. Having carefully studied the overall evidence of the Applicant, particularly those submitted in support of his claim of torture against the Respondent, it is the considered view of the Court that there is no basis to indulge in judicial analysis of whether a case of torture has been made against the Respondent. This is because the facts presented by the Applicant and the subsequent legal submissions on the subject do not *prima facie* support the claim of torture to warrant the Court’s interrogation of same. In the circumstances, the Court considers that, notwithstanding the regrettable shortcomings mentioned in paragraphs 118 and 119 above, the treatment complained of cannot be considered as having caused the applicant suffering attaining the threshold of torture. Consequently, the Applicant’s claim of violation of the right against torture is dismissed.

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125. However, the claim of violation of the Applicant's right to his human dignity is sustainable on the basis of the available evidence on records. The Court, under this heading considers that the authorities, which were under an obligation to safeguard the Applicant's dignity and well-being, were found in dereliction of their said obligation when no proper shelter was provided leaving him to pass a whole night on a metal bench on the 23rd February 2020 at MMIA, Lagos.
126. Again, the Applicant's complaint for his inappropriate placement in the overcrowded cells in a single shirt where he slept on the bare floor for days coupled with lack of requisite sanitary facilities in the face of highly infectious Covid-19 pandemic at the time clearly amounted to inhuman and degrading treatment that led to the psychological trauma he experienced therein. There is no gainsaying that these and other factors surrounding his arrest negatively affected the dignity inherent in his human person, particularly at an advanced age of sixty-five (65).
127. It is on the basis of the aforementioned reasons that as already indicated, the Court considers and holds that the Applicant's right to dignity inherent in his human being, provided for under Article 5 of the Charter, was violated by the Respondent when he was arrested and detained both at the MMIA office in Lagos and the headquarters of the Nigerian Immigration Service, Abuja.

XI. REPARATION.

128. The Court having adjudged his arrest and detention and as well as the seizure of the Applicant's German Passport as unlawful and same constituting a violation of his rights, will proceed to examine the reliefs sought by the

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Applicant to determine the extent of reparation/compensation for the violation of the said rights.

129. To this end, the endorsements contained in the Applicant's reliefs "g", "h", "i" and "j" are instructive, and they read:

- g. *An Order compelling the Respondent to immediately and unconditionally release to the Applicant, his German passport number C93X6C4L6 unlawfully seized from him by the Respondent's agents and remove his name from watch list.*
- h. *An Order compelling the Respondent to issue the Applicant a two year gratis multiple business visa into Nigeria to enable him attends arising legal matters against him personally.*
- i. *An order awarding the Applicant the sum of NGN 25,000,000.00 (TWENTY FIVE MILLION NAIRA) special damage being the reparation for various losses and cost to the Applicant while under the forced detention in Nigeria.*
- j. *An order awarding the Applicant the sum of Four Million United States Dollars (\$4,000,000USD) being general damages for the illegal arrest, loss of business and the inhuman and cruel treatment suffered while he was put in the wrongful detention by the Respondent in Nigeria.*

130. It is trite law that there is a right in international law to an effective remedy for violations of the rights of any accused, as reflected in Article 2(3) (a) of the ICCPR which states:

"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the



violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."(SEE ALSO BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, G.A. RES. 60/147 (16 DECEMBER 2005).

131. In this respect, the ICCPR specifically envisages compensation as an appropriate remedy in certain circumstances, such as in the case of the Applicant, whose arrest and detention have been held to be unlawful, that led to violation of his right to dignity of his person, fair trial, freedom of movement and seizure of his German passport.
132. The question remains, however, whether it is appropriate for this Court to grant the reliefs under these headings as prayed for by the Applicant, particularly award of financial compensation, as part of the remedy for the violations of his rights. The jurisprudence of this Court reflects that the nature and form of any effective remedy should be proportional to the gravity of harm that is suffered. See the case of *MR. KPATCHA GNASSINGBE & ORS V. THE REPUBLIC OF TOGO* (2013) CCJELR 141 where it was held that:

"The ECOWAS Court of Justice does not have such a mechanism in the texts governing its mode of function, which would enable it to fix accurately the compensations to be awarded to Applicants who are

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victims of human rights violation. In the absence of assessing, calculating and determining the conditions for depositing applications for equitable satisfaction, the ECOWAS Court of Justice has opted for compensation of both material and moral damages based on all-inclusive assessment of the harms suffered by an Applicant".

133. Again, in the case of *TIDJANE KONTE & ANOR v. REPUBLIC OF GHANA (2014) ECW/CCJ/JUD/11/14 (Unreported)* @ page 17, it was held that "Reparations are a '**victim centric remedy**' focused on repairing harm caused as a result of wrongdoings. Apart from repairing, reparation also tends to compensate victims for loss suffered".
134. From the reliefs sought by the Applicant by way of reparation, apart from the prayer for the release of his German Passport, the two other reliefs concern special and general damages. It is convenient to treat these three headings in seriatim.

a. Release of the Applicant's German Passport:

135. The Applicant prays for the release of his seized German Passport which in the custody of the Respondent since his arrest and detention on the 23rd February 2020. He contends that the continued retention of his passport in the custody of the Respondent has the effect of prolonging his indirect detention in Abuja thereby restricting his freedom of movement.
136. The Court having adjudged the seizure of the Applicant's German passport as unlawful and without any basis in law, there exists no justification for the continued retention of same in the custody of the Respondent. It has been the Court's aim to restore to any violated person, his *status quo ante* when it held that: "*the Court ... asserts that reparation should as much as possible restore*




the Applicants to the position they were before the violation of their rights and it should be proportionate to the violations found depending on the circumstances of each case.” See LA SOCIETE BEDIR SARL v. REPUBLIC OF NIGER, (2020) ECW/CCJ/JUD/11/20, (Unreported).

137. Any delay in the release of the said passport to the Applicant has the potency to further exacerbate the already volatile predicament the Applicant finds himself in rather than restoring his *status quo ante*. The Court therefore finds no impediment in ordering via *restituto integrum*, the immediate release of the Applicant’s German Passport No. C93X6C4L6 to him and the Court hereby directs the Respondent to immediately release the Applicant’s said passport to him.

b. Reparation in the form of Special Damages:

138. Reparation may also take the form of monetary compensation as special damages. When reparation is in the form of special damages, the Court has held that they “*have to be specifically pleaded and proved in order for them to be awarded. This is compensation for losses that can easily be quantified or proved*”. See *CHIEF EBRIMAH MANNEH v. THE REPUBLIC OF THE GAMBIA (2004-2009) CCJELR 181@ pg. 194 para. 29.*
- 1439 The Applicant alleges that upon his arrest, an Immigration Consultants were employed to secure his release and a colossal sum of Twenty Thousand United States dollars (20,000,USD) was spent in the process. He exhibited three bail applications (*EXHIBIT 26 and 27 annexed to the Applicant’s Originating Application*) made to the Respondent by these consultants. However, the actual charges by these consultants were not particularized or itemized and no receipts of payment was exhibited.

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140. The failure of the Applicant to itemize the charges of the Consultants with evidence of payment, though not fatal to this particular claim, leaves the Court to grant the prayer by resort to its discretion as to the quantum. The Court will therefore exercise its discretion and award the Applicant half of the sum endorsed on his application being Ten Thousand United States Dollars (\$10,000 UDS).
141. Again, under this heading, the Applicant alleges that upon his release on bail on the 4th March 2020, he was restrained from traveling from Abuja via stringent bail conditions. He was compelled to take residence at Sheraton Hotels, Abuja where his accumulated bills covering approximately two months commencing 4th February 2020 to the 30th March 2020 amounting to NGN 10,730,185.00 (Ten Million, Seven Hundred and Eighty Five Thousand Naira).
142. The Applicant says that his bills at the Sheraton Hotels are still running until he is able to leave the jurisdiction. The Applicant has annexed to his Originating Application, evidence of payment of Sheraton Hotels' charges in the form of Guest Reconciliation Account covering the two months he has been staying in the hotel. A projected hotel charges based on the two months' charges furnished by the Applicant will amount to Fifty Three Million, Six Hundred and Fifty Thousand Naira, and Nine Hundred and Twenty Five Kobo (NGN 53,650,925.00) from March 2020 to February 2021.
143. The Applicant's endorsement for special damages even though quoted "*NGN 25,000,000.00 (TWENTY FIVE MILLION NAIRA) special damage being the reparation for various losses and cost to the Applicant while under the forced detention in Nigeria, he intimated that the cost of living in Nigerian under the restrictions imposed on him by the Respondent is still running until he gets his liberty.*"

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144. This Court believes that as the human rights court of the Community, it has jurisdiction to make any justified award where the circumstances of the case demand and grant any relief as the justice of the case may warrant. The Court will therefore grant the projected expenditure of the Applicant based on the NGN 10,730,185.00 (Ten Million, Seven Hundred and Eighty Five Thousand Naira) proven cost of living at his current hotel, Sheraton for two months.

d. Reparation in the form of General Damages:

145. Reparation may also take the form of monetary compensation as general damages. When reparation is in the form of general damages, the Court has held that “*General damages are items of harm or loss suffered, for which only a subjective value may be attached. Examples of these might be pain, physical suffering, emotional trauma or suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, loss of enjoyment of life etc.*” See *CHIEF EBRIMAH MANNEH V THE REPUBLIC OF THE GAMBIA (Supra)*.
146. In the case of *MR. GODSWILL TOMMY UDOH v. FEDERAL REPUBLIC OF NIGERIA (2016) ECW/CCJ/JUD/26/16 @ page 22(Unreported)*, the Court held that “*having determined that the arrest and detention of the Plaintiff were unlawful hereby awards the plaintiff damages for all the pain and suffering, humiliation, embarrassment and inconvenience he suffered because of his arrest and detention*”.
147. The Applicant is a professional Aviator who was on a business trip from his home base in KENYA to Luanda in ANGOLA. Round trip Ticket to Angola plus hotel bills (**Exhibit 9, 10 & 11**). During the trip, he was requested for a change of plan to come to Nigeria for business negotiations. Whilst in

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Nigeria, he was requested to attend some business negotiation in Istanbul Turkey. (German nationals are visa free to Turkey). (**Exhibits 15 ticket, 16 draft contract to be finalized during the visit to Turkey**).

148. All his businesses are presently running at a heavy loss globally as one of the major contracts he was working for has been terminated and a new contract to be signed in Turkey has not come to fruition as a result of his inability to travel to Turkey on time and he is to be levied with reparations for his breach. Attached as exhibit 15 is his onward ticket schedule to Turkey for the continuation of his business trip and a contract under negotiation worth a minimum of \$1,032,000USD (One Million and thirty two thousand United States Dollars per annum) to his company.
149. The Court has held supra that the arrest and detention of the Applicant were unlawful. The Court observes that as a businessman of global repute, his arrest and detention has had a huge negative impact on his businesses. He has adduced evidence to support some of the losses suffered and potential losses he stands to incur in the future as a result of his incarceration. He again stands to be surcharged for breach of some contractual obligations. He may have to forgo some air tickets because he could not inform them about his inability to travel on those scheduled dates.
150. The Court having taken into reasonable account, all the heads of damage in respect of which the Applicant is complaining about to wit: the pain he undergone; the effect of the incarceration on his health; the expenses incidental to attempts to get his freedom; the pecuniary loss sustained through inability to attend to his profession or business; moral and psychological trauma he suffered, decides to award to the Applicant a bulk sum of Ten Million Naira (NGN10,000000.00) as general damages against the Respondent.



OPERATIVE CLAUSE:

151. For the reasons stated above, the Court, adjudicating in a public hearing, after hearing both parties, and their submissions duly considered in the light of the African Charter on Human and Peoples' Rights and other international human rights instruments, and also the Protocol on the Court as amended and the Rules of Court, hereby declares as follows:

As to jurisdiction:

- a. Declares that it has jurisdiction.

As to Admissibility:

- b. Nonsuits the 2nd – 5th Applicants
- c. Declares the application is not admissible against the 2nd Respondent.
- d. Declares that the application is admissible against the 1st Respondent.

As to compliance with Rules of the Court.

- e. Finds compliance by the Applicant with Article 28(3) of the Rules of the Court.
- f. Finds compliance by the Applicant with Article 33 (2) of the Rules of the Court.

On Merits of the case.

- a. Finds that the arrest and detention of the Applicant and the seizure of his German Passport by the Respondent were arbitrary and unlawful.
- b. Finds a violation of the Applicant's right to fair hearing by the Respondent.
- c. Finds a violation of the Applicant's right to freedom of movement by the Respondent.
- d. Finds a violation of the Applicant's to his dignity of person by the Respondent.
- e. Finds no violation of the Applicant's right against torture by the Respondent.
- f. Dismisses all claims of the Respondent.

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ON REPARATION.

On the release of the Applicant's Passport:

Orders the Respondent to immediately and unconditionally release to the Applicant, his German passport number C93X6C4L6 and remove his name from watch list.

On special damages:

Orders the Respondent to pay the Applicant the sum of Fifty Three Million, Six Hundred and Fifty Thousand Naira, and Nine Hundred and Twenty Five Kobo (NGN 53,650,925.00) as compensation for special damages for various losses and cost to the Applicant while under the forced detention by the Respondent in Abuja.

Further orders the Respondent to pay the Applicant the sum of Ten Thousand United States Dollars (\$10,000.00USD) being the expenditure the Applicant spent on securing bail.

On general damages:

Orders the Respondent to pay the Applicant the sum Ten Million Naira (NGN10, 000000.00) as reparation for all the violations and moral prejudice suffered for the violation of his rights.

XIII. COMPLIANCE AND REPORTING:

Orders the Respondent to submit to the Court within two (2) months from the date of notification of this judgment, a report on the measures taken to implement the orders set forth herein save the release of the Applicant's German Passport which shall be forthwith.

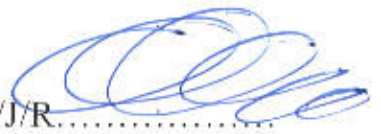
ON COST:

No order as to costs.

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Hon. Justice Edward Amoako **ASANTE**

- Presiding/J/R.....



Hon. Justice Dupe **ATOKI**

- Member



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

- Member



Assisted by:

Mr. Tony **ANANE-MAIDOH** - Chief Registrar

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Done in Abuja, this 4th of Day of March 2020 in English and translated into French and Portuguese



AT
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