

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

**DANIEL AGADA OKOH & 42 ORS. v. FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/37/16 Judgment NO. ECW/CCJ/JUD/04/21

JUDGMENT

ABUJA

9TH MARCH 2021

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

SUIT NO: ECW/CCJ/APP/37/16

JUDGMENT NO. ECW/CCJ/JUD/04/21

BETWEEN:

- 1) DANIEL AGADA OKOH
- 2) JOSEPH AKOR AGBO
- 3) KINGSLEY OGEYI
- 4) PASTOR JOHN ATTAH
- 5) RAPHAEL INNOCENT OGEYI
- 6) EKERETE GORDIE JAMES
- 7) ABRAHAM KAFAR
- 8) ONYEMERE IFEANYI COLLINS
- 9) CATHERINE ONWANUMAH
- 10) SOLOMON ANJORIN
- 11) JOSEPH ABAH
- 12) SABASTINE UGWU
- 13) MRS. BILIKISU OYENIRAN
- 14) MRS. GLORIA EZEKHUME
- 15) MR. PETER UDOFA
- 16) MRS. MERCY O. EMMANUEL
- 17) MR. HENRY AFFAIR NYAH
- 18) ELIZABETH ASUKWO
- 19) CHARITY SUNDAY
- 20) PRINCE INEM

- 21) MR. SYLVESTER OKON
 - 22) INNOCENT IDOMA
 - 23) RICHARD KING
 - 24) SOLOMON EZE
 - 25) AGBOH MECEY EBERE
 - 26) FRIDAY OGOKE
 - 27) VALENTINE OGBODO
 - 28) OBINNA AGBO
 - 29) ANTHONY A. EZE
 - 30) ABIGAIL EPHRAIM
 - 31) AGBO EMMANUEL
 - 32) ENGR. JOHN OKOEDE
 - 33) OMEKA CHRISTOPHER
 - 34) MRS. COMFORT AGUNYELE
 - 35) JOHN AZORO
 - 36) SOLOMON UGWU
 - 37) STEPHEN FRIDAY EDEH
 - 38) MRS. ELIZABETH UCHE
 - 39) MR. LAWRENCE OKOUGBO
 - 40) MR. ANDY M. EDEH
 - 41) JUDE NNAMANI
 - 42) REGINALD OGUCHINALU EKE
 - 43) ANAYO HELEN
- APPLICANTS

*(Suing for themselves and on behalf of
106 others who lost their properties
in Kano State during the Post-election
violence of 2011)*



AND

FEDERAL REPUBLIC OF NIGERIA

.... RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE** - Presiding
Hon. Justice Dupe **ATOKI** - Member
Hon. Justice Januaria Tavares Silva Moreira **COSTA** - Member

ASSISTED BY:

Mr. Athanase **ATANNON** - Deputy Chief Registrar

REPRESENTATION OF PARTIES:

Applicants' Solicitor:

Kayode **AMODU**, Esq.

J. B. Majiyagbe & Co.

4, Human Rights Avenue

Kano- Nigeria

Respondent's Solicitors:

Maimuna Lami **SHIRU** (Mrs.)

Abdullahi **ABUBAKAR**, Esq.

Civil Litigation & Public Law Department,

Federal Ministry of Justice,

Abuja.



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 PARTIES:

2. The Applicants are Nigerian citizens and alleged victims of 2011 presidential post - election crises in Nigeria. They are ECOWAS Community citizens who reside in the northern part of Nigeria and their individual addresses are duly provided in the initiating application.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS and signatory to the African Charter on Human and People's Rights (hereinafter referred to as the "**Charter**") and other international human rights treaties.

III. INTRODUCTION:

4. This suit is in respect of the alleged failure on the part of the Respondent to prevent the 2011 presidential post-election violence and its failure to provide security to the Applicants during the said post-election violence which allegedly occasioned the violation of the rights of the Applicants as enshrined in Articles 2, 6, 13(1), 14 and 23(1) of the Charter.



5. Additionally, the Applicants again are complaining about the Respondent's selective compensation of some persons who lost their properties in the post-election violence of 2011 while allegedly refusing to compensate the Applicants who claim to have also lost their properties and means of livelihood in the same post-election violence of 2011. According to them, this amounts to discrimination against them, and inequality in treatment and application of the law.

III. PROCEEDURE BEFORE THE COURT:

6. The Applicants' Initiating Application was filed at the registry of the Court on the 13th October 2016 and served on the Respondent on the 19th October 2016. They filed a Motion for Default Judgment on the 24th March 2017 when the Respondent failed to file its defence on time. The motion was served on 28th March 2017 but before it could be argued, the Respondent on the 18th May 2018, filed Notice of Preliminary Objection which was served on the same date. The Applicants filed their response to the Notice of Preliminary Objection on the 2nd August 2018 and same served on the Respondent on the 10th August 2018.

7. In the first Court session held on the 4th February 2020, both parties were represented by counsel in open Court. However, the business for that day, hearing of the Preliminary Objection was adjourned because of the absence of the substantive counsel for the Respondent whose brief was held by a colleague from his department who sought an adjournment.



8. On the 25th February 2020, the Applicants filed a motion for leave to amend their Initiating Application together with the proposed Amended Initiating Application which were served on the Respondent on the 27th February 2020.
9. In the second session of the Court's hearing on the 2nd March 2020, counsel for both parties were present in open Court and the Respondent's preliminary objection was argued. The Court dismissed the preliminary objection and directed the Respondent to respond to the Applicants' amended pleading before the next adjourned date for consideration, which was the 19th May 2020.
10. The Respondent, on the 19th June 2020 filed motion for extension of time to file its defence together with the Statement of Defence itself which were served on the Applicants on the 21st June 2020.
11. In the third session of the Court's virtual hearing on the 13th July 2020, both counsel were present where the motion for default judgment was withdrawn and the Applicants' Amended Initiating Application was accepted. The Applicants applied for an adjournment to enable them file a Reply to the Respondent's Statement of Defence. This was granted and the processes were filed on the 2nd October 2020 and were served on the Respondent on the same day.
12. The Court had its fourth hearing of this case virtually on the 7th October 2020 where both parties were represented by counsel in Court. The Respondent's Statement of Defence and the Applicants' Reply were all granted as prayed for by counsel. Final hearing of the case on the merits of their respective cases



was adjourned to the 10th of November 2020 due to the poor network. Hearing of the case was subsequently conducted where both counsel relied on their already files processes and the court adjourned the matter for judgment.

V. APPLICANTS' CASE:

a. Summary of Facts

13. It is the case of the Applicants that on the 16th April, 2011 presidential election was held throughout the Respondent State to elect a president, and following the announcement of the election result on 18th April, 2011, widespread riots erupted mostly in the northern parts of the country including various parts of Kano State where the Applicants were residents. The Applicants further claim that the failure of the Respondent to prevent the occurrence and provide security to the Applicants during the said violence occasioned the violation of their rights as enshrined in Articles 2, 6, 13(1), 14 and 23(1) of the Charter.
14. The Applicants claim that the post-election violent clashes and riots occasioned loss of lives of their loved ones, wanton destruction of their properties and means of livelihood.
15. The Applicants state that the Respondent; acknowledging its failure to protect lives and properties, and in a bid to compensate the victims of the resultant violations, constituted and commissioned a panel of enquiry headed by one Sheikh Ahmed Lemu, to amongst other things, identify the spread and extent of losses suffered across the country and make relevant recommendations.



16. According to the Applicants on 9th July 2011, the Ahmed Lemu Panel visited Kano State where it held public investigations at the Sani Abacha Stadium in Kano State. The Applicants were duly invited in the company of other victims of the crises and their memoranda containing all the relevant evidence comprising police report, affidavits which they had deposed to and photographs of the destroyed properties were submitted to the Ahmed Lemu Panel at the Sani Abacha Stadium, Kano which said documents are still in the custody of the Respondent. The Applicants aver that some of them still have copies of their documents which were submitted to the panel while others have lost theirs and therefore put the Respondent on notice to produce the documents in their possession.

17. It is the case of the Applicants that upon conclusion of investigations, the Ahmed Lemu Panel submitted its report to the then President and Commander-in-Chief, President Goodluck Jonathan after which the report was adopted by the Federal Executive Council paving way for the approval and subsequent release of the total sum of Five Billion Seven Hundred Million Naira (N5,700,000,000.00) to compensate those who suffered losses of property and whose means of livelihood and places of worship were destroyed as a result of the violence in the nine states in the country including Kano State, where the Applicants reside.

18. Out of the approved amount released by the Respondent for the victims, a colossal sum of Nine Hundred and Forty-Four Million, Eight Hundred and Twenty-Seven Thousand Naira (N944, 827,000.00) was allocated for the compensation of verified victims from Kano State.

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19. The Applicants state that, in the company of other victims they converged at the Kano State Deputy Governor's Office, where they were told to converge for the payments sometime in September 2013 only for them to discover that their names were conspicuously omitted from the list of persons to receive compensation, while some other persons mainly landlords, whose house and places of worship were destroyed were included in the list.
20. The Applicants are contending that all their efforts made to ensure that they were compensated for the violations they suffered like the other victims, were ignored despite several promises made by the Respondent that they will be compensated. Applicants contend that there were subsequently several correspondences exchanged between them and the Respondent, but to no avail. They further claim that the last correspondence was a letter dated the 1st July, 2014, in which they caused their Solicitor to write a reminder to the President of the Federation through the office of the Chief of Staff of the President of the Respondent.
21. The Applicants aver that despite all of their letters and pleas, the Respondent has refused to pay them till date of filing the instant suit. The Applicants add that shortly before the conduct of another presidential election in March 2015 which produced the current president of the Respondent - President Muhammadu Buhari, the Respondent again approved and released monies for compensation of Kaduna State victims of the same post-election violence of 2011, while again refusing to pay the Applicants their due compensation for the losses suffered like the other victims.



22. According to the Applicants, there is no justification for the Respondent's act of paying some people and refusing to pay them when they all suffered losses during the same post-election riots of 2011 over nine years since they suffered these losses and have been deprived of their properties and means of livelihood.

23. It is the case of the Applicants that the Respondent was unjust in its action of failing to provide security to the Applicants during the post-election violence of 2011 and also failing to fulfill its obligations under Article 1 of the African Charter, and by compensating some who lost their properties in the post-election violence of 2011 while refusing to compensate the Applicants who also lost their properties and means of livelihood in the same violence.

b. Applicants' Summary Pleas in Law

24. The Applicants relied on Articles 1, 2, 6, 13[1], 14, and 23[1] of the Charter to establish their case. They conclude by submitting that the provisions of Article 1 binds the Respondent to recognize and take measures to give effect to the rights of the Applicants as contained in Articles 2, 6, 13(1), 14 and 23(1) of the Charter.

c. Reliefs/Orders sought by the Applicants

25. The Applicants, in their amended application filed at the registry of the Court dated 24th February 2020, on the account of the aforementioned facts, are seeking the following reliefs and declarations from the Court.



- a) *A DECLARATION that the Respondent's failure to prevent the post-election violence of 2011 and its failure to provide security to the Applicants during the violence amounts to a violation of its obligations under Article 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004.*
- b) *A DECLARATION that the failure of the Respondent to fulfill its obligations under Article 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004, occasioned the violations of the rights of the Applicants as guaranteed by Articles 2, 4, 6, 13(1), 14 and 23(1) of the same Charter.*
- c) *A DECLARATION that the Respondent is to be held responsible for the violations of the rights of the Applicants as guaranteed by Articles 2, 4, 6, 13(1), 14 and 23(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 Laws of the Federation of Nigeria 2004.*
- d) *A DECLARATION that the Respondent's act of selective compensation of only some persons who lost their properties in the post-election violence of 2011 while refusing to compensate the Applicants who also lost their properties and means of livelihood in the same post elections violence is unjust.*
- e) *Cost of Sixteen Billion, Five Hundred Million Naira (N16, 500,000,000.00) as compensation to the Applicants.*

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IV. RESPONDENT'S CASE:

a. Summary of Facts

26. Contrary to the facts presented by the Applicants, the Respondent contended that it never relented in its daily routine work of protecting the rights of the citizens at all time. The Respondent in every election conducted by its government usually deployed its security personnel to make sure peaceful elections were conducted.
27. The Respondent contends that following the 2011 presidential post-election riots in some states of the Federation, the federal government promptly set up a panel of enquiry headed by Sheik Ahmed Lemu, a jurist and distinguished Islamic Scholar to investigate the immediate and remote causes of the riots in those states.
28. In implementing the approved report of the panel of enquiry, a white paper was issued by the Federal Government by releasing the sum of NGN 5.7 Billion for the compensation of the victims of the riots across the country.
29. The Respondent submitted that the Applicants are not entitled to the reliefs sought and that the instant suit is an abuse of court process having been decided at the Federal High Court of Nigeria holding at Kano, *with Suit No. FHC/KN/CS/152/2014*, on the subject matter and the matter having been struck out. A copy of the originating process in that suit tendered in evidence as Exhibit "A".

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30. The Respondent further contends that the claim of the Applicants that they lost their properties is unsustainable because they failed to show receipts and other evidence as proof of ownership of those properties. The absence of any police report showing the nature and number of properties lost in the riots also worsens their case.

b. Respondent's Pleas in Law

31. The Respondent relied on the decision of the Federal High Court of Nigeria holding at Kano, *in Suit No. FHC/KN/CS/152/2014*, on the subject matter and argued that this is an abuse of the court process and must be struck out as such.

c. Reliefs/Orders sought

32. The Respondent urges the Court to consider its argument in opposition to the Applicants' Application and consequently dismiss this suit for lacking in merit.

V. APPLICANTS' REPLY:

33. The Applicants stated in their reply that they are 149 of them and they only elected the 43 Applicants to sue on behalf of all of them and that all of them itemized all the losses they suffered and sent same together with duly sworn affidavits/police reports/valuation reports to the Lemu Panel of the Respondent which is in custody of the Panel to date. The Respondent is in possession of all the originals of the documents evidencing the losses incurred by the 149 Applicants.



34. The Applicants state that while it is true that they had initially commenced a suit before the Federal High Court in Kano, they had on 14 June, 2016 applied to withdraw the matter and it was struck out by the court to enable them file the instant application before this court. The matter was never decided in the Federal High Court but struck out as admitted by the Respondent in its Statement of Defence. The Applicants have applied to the Federal High Court Kano for the records of proceedings showing that the matter was struck out but the court has not been able to locate the file despite repeated searches. A copy of the application letter was pleaded and annexed as Exhibit 15.

VI. JURISDICTION:

35. Article 9 (4) of the Protocol on the Community Court of Justice, ECOWAS, as amended grants the Court mandate to adjudicate on matters of human rights violations. It provides "*The Court has jurisdiction to determine cases of violation of human rights that occur in any member state.*" In the instant case, the allegation of the Applicants are based on the subject matter of violation of their human rights contrary to the relevant provisions of the Charter relied upon, therefore the suit falls within the human rights jurisdiction of the Court.

VII. ADMISSIBILITY:

36. The forty three (43) Applicants described themselves as victims of the post-election violence of 2011 in Kano State who allegedly lost various properties and their sources of livelihood in the violence and have all come together under the name *KANO TENANTS AND SHOP OWNERS FORUM* to fight for



compensation from the Respondent for themselves and on behalf of 106 others who also allegedly lost their properties in Kano State during the said election violence of 2011.

37. In terms of the provisions of Article 10 (d) of the Protocol on the Court as amended, even where the jurisdiction of the Court is established, an application whose subject matter concerns human rights violation, shall only be admissible when three criteria are met: the Applicant's status as "victim" must be established, the non-anonymity of the application, and the absence of *litis pende*nce before another international Court or Tribunal. This provision was further confirmed in the case of *AZIAGBEDE KOKOU & 33 ORS; ATSOU KOMLAVI & 4 ORS; TOMEPEKE A. LANOU & 29 ORS v. REPUBLIC OF TOGO* (2013) CCJELR 167 @ pg. 174.

38. In respect of representative capacity, this Court has held that "*the proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with. The Court went on further to state that, for the Plaintiffs to access the court for and on behalf of the people of Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent.*" The Court further stressed that: "*The criteria for representation must be respected. A party authorized to act on behalf of another person or group of people shall exercise the power of representation in such action by virtue of the vested power*". See the case of *NOSA EHANIRE & 3 ORS v. FEDERAL REPUBLIC OF NIGERIA* (2017) ECW/CCJ/JUD/03/17 Unreported.



39. In respect of the 43 Applicants whose names and addresses are endorsed on the Originating Application, there is no doubt about their capacity and propriety in instituting the instant suit but their purported representation of the 106 others alluded to suffers a fatal admissibility requirement, particularly, on grounds of anonymity.

40. Failure by the supposed 106 other Applicants to personally endorse their names on the Application would not have made it an anonymous application if it had contained information that could identify the said Applicants. However, a close scrutiny of the instant application fails to disclose any credible information as to the identity of these purported applicants, and further to this, there was no evidence of a formal mandate delivered by them to the 43 Applicants, to act on their behalf.

41. In the light of the foregoing, the Court is unable to admit the case on behalf of the purported 106 other Applicants who are not specifically identified or identifiable on the face of the records before it. Their case is declared anonymous. The case of 43 identified Applicants is therefore declared admissible, and that of the 106 other applicants is struck out as inadmissible.

VIII. PROCEEDINGS BEFORE THE COURT:

42. The Respondent on the 18th May 2018, filed Notice of Preliminary Objection which was served on the same date. The Applicants filed their response to the Notice of Preliminary Objection on the 2nd August 2018 and same served on the Respondent on the 10th August 2018.

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43. The two prong objection of the Respondent relates to firstly; that the matter concerns an alleged non-payment of compensation by the Respondent and thus not within the jurisdiction of this Honourable Court, and secondly; that the suit is statute barred because it was commenced three years after the cause of action arose as required by the Supplementary Protocol [A/SP.1/01/05] amending the Protocol [A/P1/7/91] on the Court. The Respondent therefore sought for an order of the Honourable Court dismissing the suit for want of jurisdiction and for being statute barred.

44. On the 2nd March 2020, counsel for both parties were present in open Court and the Respondent's preliminary objection was argued. The Court dismissed the preliminary objection on the grounds that; the action was in respect of the alleged human rights violation which was within its competence, and also that, the limitation period had not elapsed and therefore the statute of limitation invoked by the Respondent was misplaced and not applicable to this instant case and the Court so held.

IX. MERITS:

a. The issue of Res judicata:

45. The Respondent put up a defence of *res judicata* and submitted that the instant case be dismissed on the grounds that the "*suit is an abuse of court process, the same case having been heard and decided at the Federal High Court of Nigeria holding at Kano with suit number FHC/KN/CS/152/2014 on*

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the same subject and was struck out, the said judgment is attached as exhibit 'A' by the Respondent".

46. It was submitted by the Respondent that this instant case has the same subject matter and same fact as the one that had been already decided at the national court and therefore cannot become a matter for litigation before another court because in doing so will amount to dealing with the same issue twice contrary to the legal principle of *res-judicata*; for this reason the Respondent made a case for the matter to be dismissed in its entirety.

47. The Applicants on the other hand contended that the said matter was struck out by the court at their behest without going through a normal trial to enable them file this application before this court. They argue that since the matter was never decided on merits, the issue of *res judicata* does not arise.

48. This Court having considered the submission of both parties under this heading, reiterates that for the plea of *res-judicata* to find purchase before any court of law, the party invoking the plea must be able to advance a very persuasive and convincing argument that the matter essentially consists of the same parties, the same facts, the same issue arising from that particular allegation and the same subject matter or issues arising from the same case as decided previously by another court of law.

49. The above mentioned elements of the plea of *res judicata* have been settled in the jurisprudence of this Court when the Court held that "*The doctrine of res judicata simply states that once a matter/cause has been finally determined, it is not open to either party to re-open or re-litigate the same matter. The*

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doctrine of res judicata serves to ensure that there is finality to litigation.”
See the case of *FEMI FALANA v. ECOWAS COMMISSION (2014) Judgment No. ECW/CCJ/JUD/10/14 (Unreported)*

50. The doctrine of *res judicata* raises estoppel against the party seeking to re-litigate what has already been decided by a court of competent jurisdiction. This Court observes from the submissions of both parties that they both have a common ground that the case was struck out by the Kano High Court but not decisively tried on merit and laid to rest by a final decision as envisaged in the application of the doctrine of *res judicata*.

51. It is pertinent to note that to strike out a case from the cause list of a court could be for various reasons. Without attempting to give an exhaustive list, among the varying grounds for striking out a case from a court's cause list are, want of diligent prosecution, for peaceful resolution/settlement by parties or by an application from the party seeking to withdraw the case for any cogent reason before it is decided on merit.

52. Based on the submission of both parties, and considering the tenor of exhibit 'A' as tendered by the Respondent, it is clear that the matter was not heard before the Kano High Court, it was struck out at the behest of the Applicants to enable them institute the present suit without going into the merit. This Court concludes that the defence of *res judicata* is not applicable in the instant case as striking out a case is not the same thing as deciding a case conclusively between the parties on merit and the Court so holds.

b. Respondent State's Obligation to Protect and prevent:

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53. The Applicants are praying this Court for a declaration that the failure of the Respondent to provide adequate and qualitative security in the affected Communities after the 2011 presidential election which led to the loss of lives and the destruction of their properties and means of livelihood amount to breaches of the latter's obligations to protect and prevent violation of the rights of the victims.

54. The Respondent in its Statement of Defence argues that, contrary to the facts presented by the Applicants in their application, the Respondent never relented in its daily routine work of protecting the rights of its citizens at all-time. The Respondent contends that there was deployment of security personnel to make sure peaceful elections were conducted.

55. It is apparent on the face of the records available to the Court that there was an outbreak of violence across the Respondent State after the declaration of the results of the 2011 presidential results. It is also factually established that the perpetrators of the riots were non-state actors. Neither did they carry out their nefarious activities with the support and tacit approval of the Respondent.

56. The Court notes that the Respondent being a signatory to the Charter is bound to recognise the rights enshrined therein and give effect to them in fulfilment of its obligation to protect its citizens from harm. The Court agrees with the reasoning of the *INTERNATIONAL LAW COMMISSION WHEN AT ITS 53RD SESSION* when it said that:

“Every internationally wrongful act by a state gives rise to international responsibility. And international wrongful acts exist; where conduct consisting of an action or omission is imputed to a state under international law, and such conduct in itself as a direct or indirect cause of an external event constitutes a failure to carry out an international obligation of the state.”

57. Conduct attributable to the state can consist of actions or omissions. Cases in which the international responsibility of a State have been invoked on the basis of the omission of that State abound in the international law jurisprudence. For example, the *CORFU CHANNEL CASE, MERIT, I.C.J REPORT 1949 p.4 at pp. 22-23* case, the ICJ held *“that it was a sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of mines in its territorial waters and did nothing to warn third parties of their presence”*. Again, in *DIPLOMATIC AND CONSULAR STAFF CASE, I.C.J REPORT 1980, p.3 at pp.31-33 paras 63, 67*, the Court concluded that the responsibility of Iran was entailed by the **“inaction”** of its authorities which **“failed to take appropriate steps”** in circumstances where such steps were evidently called for.

58. The obligation to protect is more of a positive nature and require state to guarantee that private individuals do not violate these rights. States will be held responsible for any violations of rights under the Charter regardless if such acts of violations were carried out by state agents or not. It is in that wise that The African Commission found in Communication 266/03, *KEVIN MGWANGA GUNME ET AL V. CAMEROON (2009), PARA 122; COMMUNICATION 272/03, ASSOCIATION OF VICTIMS OF POST*



ELECTORAL VIOLENCE & INTERRIGHTS V. CAMEROON (2009), as follows:

“The negligence of a State to guarantee the protection of the rights of the Charter having given rise to a violation of the said rights constitutes a violation of the rights of the Charter which would be attributable to this State, even where it is established that the State itself or its officials are not directly responsible for such violations but have been perpetrated by private individuals.”

59. In the instant case, the Respondent, though not directly responsible for the violence that occurred after the declaration of the results of the 2011 presidential election, its responsibility is entailed by the **inaction** of its security operatives which woefully failed to take appropriate measures to against a known and foreseeable threat to life and property from the acts of the perpetrators of the riots after the election.

60. The combined effect of Article 1 of the Charter to which the Respondent is a signatory and Section 33 of the 1999 Federal Constitution of Nigeria is that, the Respondent is under the obligation to recognize the rights enshrined in the Charter and adopt legislative or other measures to give effect to them. In other words, the Respondent is obliged to protect the human rights of its citizens and prevent their violation.

61. However, for this Court to find that the Respondent is in violation of its duty to protect and prevent, the Applicants must establish that they were impacted by Respondent’s failure of obligation by establishing that they are actually



victims of the violence, for instance in the case of alleged violation of right to property; the nature of the property, proof of ownership authenticating their right over it and proof of its destruction which is linked to the election violence.

62. Again, even where the Applicants have been able to establish their victim status to warrant a finding to the effect that the Respondent is in violation of its duty to protect and prevent, such a finding may be inappropriate where the Respondent, acknowledging its failure to prevent and protect, has instituted appropriate measures which sufficiently sought to remedy any violation occasioned by its inaction resulting into the breach.

63. In the European Court of Human Rights case of *TAGAYEVA AND OTHERS v. RUSSIA Nos. 26562/07 AND 6 OTHERS, 13 April 2017*, the Court considered the obligations of the State, as regards a large-scale hostage-taking by terrorists which took place in a school. There were hundreds of dead and injured and the Applicants were next-of-kin and survivors. In its judgment on merits, the Court found that there had been a violation of Article 2: “*a failure to protect against a known and foreseeable threat to life of the deceased from terrorist act and breach of State's obligation to investigate*”.

64. The African Commission, in a Cameroonian case of; *THE ASSOCIATION OF VICTIMS OF POST ELECTORAL VIOLENCE & INTERIGHTS v. CAMEROUN; COMMUNICATION 272/03, PARAGRAPHS 124 – 126*; held against Cameroun that:

“Failure to take adequate measures to prevent the violence which led to the physical harm and material damage suffered by the victims violated Article 2 of the Charter of ACHPR.”



The Court added that:

"The State of Cameroun failed to fulfill its obligation to protect, which [is] incumbent upon the State."

65. In both cases of the European Court of Human Rights and the African Commission (supra), the States concerned were held to have breached their duty to protect because the Applicants in those cases were found to have suffered damages in one form or the other as a result of the States' failure to protect their rights. This means that for a State to be adjudged liable in violation of its duty to protect, the Applicant must adduce competent evidence to establish his victim status vis-à-vis the events complained of.

66. It is in the light of the analysis [supra] that this Court considers it expedient to proceed to determine the alleged violations of the rights of the Applicants in order to conclude whether the Respondent is in violation of its obligations under Articles 1 and 2 of the Charter.

c. Alleged violation of the rights of the Applicants:

67. The Applicants are seeking a declaration that the failure of the Respondent to fulfill its obligations under Article 1 of the Charter occasioned the violations of their rights as guaranteed by Articles 2, 4, 6, 13(1), 14 and 23(1) of the same Charter and so the Respondent should be held responsible for the said violations.

68. While it is true that the Respondent, to some extent accepted the responsibility of its failure to protect, the fact remains that not every citizen of the affected

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States was a victim of the said violation even though implicitly, the obligation is owed to the generality of its citizenry.

69. It is equally apposite that the procedural obligation to investigate and its attendant requirement of resorting to other effective domestic remedies against any known perpetrators of crime, as well as redressing victims are considered as indispensable segments of obligation to protect and prevent of any state in matters like the instant one.

70. On the issue of investigations, this Court, in the case of *SERAP & 10 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (2014) ECW/CCJ/JUD/16/14*, (Unreported), held that: “*the obligation of the state to prevent imposes the duty to carry out an effective investigation into acts amounting to human rights violations, intending to prosecute the perpetrators and redress the victims*”.

71. It is in the light of the statement in the immediate preceding paragraphs, that the Court considers that any declaration of liability for the violation of the rights of the Applicants must be treated vis-à-vis the conduct of the Respondent subsequent to the 2011 presidential post-election violence. In other words whether or not the Respondent is in breach of the rights of the Applicants as claimed must be viewed holistically from the behavior of the Respondent towards the Applicants both before and after the events in question.

72. Where a State is aware of the occurrence of acts amounting to violation of human rights in its territory and fails to carry out effective investigation into



the violation so as to identify those responsible, hold them accountable, and more so to redress the injured or victims of the violation, such State will be in violation of its obligation under international law.

73. In *VELASQUEZ RODRIGUEZ V. HONDURAS, JUDGMENT JULY 29, 1988, INTER-AM. CT.H.R (SER. C) NO. 4 (1988)* case, the Inter American Court stressed that: *“Once state authorities are aware of an incident, they should without delay institute an impartial and effective means to unravel the truth.”*

74. The Respondent contends that following the 2011 presidential post-election riots in some states of the Federation, the federal government promptly set up a panel of enquiry headed by Sheik Ahmed Lemu, a jurist and distinguished Islamic Scholar to investigate the immediate and remote causes of the riots in those states.

75. The assertion that prompt action was taken by the Respondent when the riots took place was corroborated by the Applicants when they averred that *“the Respondent acknowledged and took steps to remedy the various human rights violations that occurred during the riots by setting up a panel to assess the extent of damage and work out modalities for compensation of victims of the violations of human rights”*.

76. The Respondent’s case implicitly underscores the fact that there was an aberration of its responsibility to protect and prevent the violence that erupted after the presidential election in 2011. The Respondent, however, acknowledged its tardiness that led to the riots and without delay, instituted

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an impartial and effective means of not only to unravel the truth, but also to afford opportunity to any victims for redress of any harm caused.

77. The obligation to protect the right to life and property of the people under the Charter, read in conjunction with the State's general duty under Article 1 of the same Charter to "*recognize the rights, duties and freedoms enshrined in the Charter*" to everyone within [its] jurisdiction, requires by implication that there should be an effective official investigation when a person dies or loses his property in the way and manner as alleged by the Applicants.

78. With regard to the requirement for compensation to remedy a breach occasioned by violation of right to life or property at national level, the Court has repeatedly found that, in addition to a thorough and effective investigation, it is necessary for the State to make award of compensation to victims, where appropriate, or at least to give them the possibility of seeking and obtaining compensation for any damages sustained as a result of the violation.

79. The Court observes that the Respondent dutifully complied with its obligation towards the Applicants by given them the possibility of receiving compensation if indeed they were victims of the post-election riots in their communities. As stated earlier in this judgment, not every citizen within the communities that were affected by the riots was a victim to merit compensation. Again the Court is not oblivious of the fact that when the Respondent offered the opportunity for victims to make their cases for compensation via Lemu Panel, the flood gate was opened to both genuine and



unsubstantiated allegations from persons with both genuine and fictitious claims.

80. So it was the Lemu Panel that was tasked to receive, verify, and establish those who were the real victims of the violence and make recommendation for their compensation. From the submissions of both parties, the Panel did receive and conducted investigations from all claimants who were offered every opportunity to establish their claims. It is pertinent to note that the Applicants are not impugning the integrity or the propriety of the work done by the Lemu Panel.

81. In the case of the Applicants, they stated that *"on 9th July 2011, the Ahmed Lemu Panel visited Kano State where it held a public investigations at the Sani Abacha Stadium in Kano State. The Applicants were duly invited in the company of other victims of the crises and their memoranda containing all the relevant evidence comprising police report, affidavits which they had deposed to and photographs of the destroyed properties were submitted to the Ahmed Lemu Panel at the Sani Abacha Stadium"*.

82. After the Lemu Panel had submitted its report and recommendations, a white paper was issued approving a stated amount for compensation of the verified victims. According to the Applicants, *"out of the approved amount released by the Respondent for the victims, a colossal sum of Nine Hundred and Forty-Four Million, Eight Hundred and Twenty-Seven Thousand Naira (N944, 827,000.00) was allocated for the compensation of verified victims from Kano State"*.



83. The Applicants, who inextricably hinged their instant case on the work of the Lemu Panel, throughout their case were not able to establish that they were part of the people who were “*verified as victims*” to merit payment of compensation. It should be noted that not everyone who submitted claims to the Lemu Panel was verified and approved for payment of compensation.

84. The law is firmly and well established that in claims for declaratory reliefs, the Applicant must plead sufficient facts to constitute a platform for the reliefs being sought and he must lead or proffer cogent and credible evidence to sustain or support the said reliefs. The reason for this is obvious. Applicant seeking for a declaratory relief must rely and succeed on the strength of his own case and not on any perceived weakness in the Respondent’s case. *See the case of THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT V THE FEDERAL REPUBLIC OF NIGERIA AND 1 OTHER JUDGMENT N°: ECW/CCJ/JUD/19/16 page 28.*

85. When examining the quest of the citizenry to secure compensation from their governments in any given circumstances, the inquisitorial body must bear in mind that all manner of fictitious claims may be submitted. This Court has no reservations to come to a conclusion that, Lemu Panel might have scrutinized any such claims with specificity to the injuries alleged to have been suffered by any claimant and the nexus between them and the event that occasioned the violation in such a way as not to include fictitious claimants and also not to impose an excessive burden on the authorities. **See the case of THE REGISTERED TRUSTEES OF JAMA’A FOUNDATION v. THE FEDERAL REPUBLIC OF NIGERIA & ANOR. (2020) ECW/CCJ/JUD/04/20**

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(Unreported) where claims for compensation under the same Lemu Panel were scrupulously scrutinized to identified those who were verified by the Panel and the extent of their damages.

86. It is axiomatic that a public institution enjoys the presumption of regularity in the discharge of its official duties and functions. To successfully overcome such presumption of regularity, case law demands that the evidence against it must be clear and convincing; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit. In this case, the burden of proof to discharge such presumption lay with the Applicants. *"The Court cannot take unproven allegations at their face value. It is necessary for applicants to substantiate the complaints they raise before the Court with evidence."* See the case of *MR. OUSMANE GUIRO v. BURKINA FASO (2017) ECW/CCJ/JUD/15/17 @ page 6.*

87. In their Application, the Applicants make much of the fact that their victim status has been established by the Lemu Panel where all the nitty-gritties of their case were submitted and accepted by the Respondent who then earmarked compensation to that effect. The crux of the Applicants' case therefore is that they are left out of the compensation which the Respondent confirmed it made provision for following the Report of the Lemu Panel.

88. Having hinged their claim on the Lemu Panel's Report, it is surprising that the much referenced report was not exhibited before the Court for it to ascertain the claim of the Applicants that they were part of the verified victims to be paid compensation.

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89. While it is true that this Court cannot dictate what particular evidence the Applicants must present in order to prove their case, the fact remains that the Applicants are still bound to present clear and convincing evidence to support their claims. Proceeding therefrom, the Court remains unconvinced and might be engaging in speculation in an attempt to make any findings that is grounded on the Lemu Panel's Report that has not been made available to the Court.

90. Most significant is the glaring fact that the Applicants themselves have stated that their names were conspicuously missing from the list of persons to be paid from the allocated amount for compensation. The Court, however, is incompetent to interrogate this assertion of the Applicants in vacuum.

91. This Court has not been invited to re-evaluate the evidence already considered by the Lemu Panel. More importantly, to the extent that the evidence on record woefully failed to elicit any wrongdoing or impropriety on the part of the Lemu Panel, their findings and recommendations contained in their final report could have been of immense help to the Court in the ascertainment of the veracity of the claims of the Applicants that they have been excluded as verified victims of the 2011 post-election violence.

92. The proof of the violation of the various alleged human rights which makes them victims is a condition precedent to a finding of violation by the Respondent of Article 1 of the Charter on failure to fulfill its obligation. This obligation cannot be raised in vacuum it must be hinged on clear victims who suffered from the alleged failure of the obligation by the Respondent. As earlier stated, the Lemu report is the foundational document upon which the

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Applicants' claims are based, and having failed to place it before the Court, all claims of the Applicants become unsubstantiated and are thus dismissed.

93. The crucial corollary of this is that having failed to establish that the alleged failure of the Respondent to fulfil its obligation has caused any harm, injury or loss, the Respondent cannot be held in violation of Articles 1 with regards to the Applicants.

OPERATIVE CLAUSE:

94. 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. Declares that the application is admissible for the 43 Applicants whose names are endorsed on the Application.
- c. Declares that the application is not admissible regarding the 106 other Applicants on grounds of anonymity.

As to compliance with Rules of the Court.

- d. Finds compliance by the Applicant with Article 28(3) of the Rules of the Court.



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

On Merits of the case.

a. Finds no violation of the rights of the Applicants as provided for in Articles 2, 4, 6, 13(1), 14 and 23(1) of the Charter, and therefore, as far as the Applicants are concerned, no violation of the Respondent's duty to prevent and protect enshrined in Article 1 of the Charter occurred.

b. Dismisses all claims of the Applicants.

ON COST:

No order as to costs.

Signed:

Hon. Justice Edward Amoako **ASANTE**

- Presiding/J/R



Hon. Justice Dupe **ATOKI**

- Member



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

- Member



Assisted by:

Mr. Athanase **ATANNON** - Deputy Chief Registrar



Done in Abuja, this 9th of Day of March 2020 in English and translated into French and Portuguese.

