

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



No. 10 DAR ES SALAAM CRESCENT
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA-NIGERIA.
PMB 567 GARKI, ABUJA
TEL: 234-9-78 22 801
Website: www.courtecowas.org

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

In the Matter of

**MRS SARAH KINGSLEY ODORO V. ECOWAS COMMISSION AND 2
ORS**

Application No: ECW/CCJ/APP/33/18, Judgment No. ECW/CCJ/JUD/06/21

JUDGMENT

ABUJA

10 March 2021

MRS SARAH KINGSLEY ODORO

.....

APPLICANT

V.

1. ECOWAS COMMISSION

**2. ECOWAS BANK FOR INVESTMENT
AND DEVELOPMENT**

3. MR KINGSLEY OBIONDOMO ODORO

RESPONDENTS

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Dupe ATOKI

- Member/Judge Rapporteur

Hon. Justice Januaria T. Silva Moreira COSTA

- Member

ASSISTED BY:

Mr. Tony ANENE- MAIDOH

- Chief Registrar

REPRESENTATION OF PARTIES:

Marcellinus MARSHALL, Esq.

- Counsel for Applicant

Frank Ike CHUDE

- Counsel for Respondent



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 Applicant, Mrs. Sarah Kingsley Odoro is a Community citizen who resides in Akwa Ibom State of the Federal Republic of Nigeria.
3. The 1st Respondent, the ECOWAS Commission, is an Institution of the Community, a public international organisation of fifteen member States of West Africa, established by virtue of Article 6 of the Revised Treaty.
4. The 2nd Respondent, the ECOWAS Bank for Investment and Development is the financial institution of the Community, established by virtue of Article 6 of the Revised Treaty.
5. The 3rd Respondent, Mr Kingsley Obiondomo Odoro, is a Community citizen and an employee of the 2nd Respondent, who is the Applicant's husband.

III. INTRODUCTION

6. The subject matter of these proceedings arises from the allegation of the Applicant against the 3rd Respondent for allegedly violating her rights under

Articles 4, 5, 6, 12 and 14 of the African Charter on Human and Peoples' Rights (African Charter), and Articles 3 and 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

IV. PROCEDURE BEFORE THE COURT

7. The Initiating Application was filed on 3 August 2018 and served on the Respondents on 10 August 2018.
8. The 1st and 2nd Respondents filed their Preliminary Objection to the Application on grounds of misjoinder on 10 September 2018, and this was served on the Applicant on 14 September 2018.
9. The 2nd Respondent filed a Motion for an Order of the Court to strike out the 2nd Respondent from the suit on 9 October 2018, which was served on 9 October 2018.
10. The Applicant's reply to the Preliminary Objection of the 1st and 2nd Respondents was filed on 29 October 2018 and served on 30 October 2018.
11. The 3rd Respondent filed his Statement of Defence on 15 November 2018, which was served on 19 November 2018.
12. Having failed to file their Statement of Defence within the set time limits, the 1st and 2nd Respondents filed a Motion for Extension of Time to file their



Statement of Defence on 14 December 2018. This was served on the Applicant on 15 December 2018.

13. The 1st and 2nd Respondents also filed their Statement of Defence on 14 December 2018, and this was served on 15 December 2018.

14. The 1st and 2nd Respondents/Applicants filed a Motion on Notice for an Order of the Court declaring the act of the Applicant/Respondent an abuse of Court processes for instituting the suit and not taking diligent steps to prosecute same on 10 July 2020.

V. APPLICANT'S CASE

a) Summary of facts

15. The Applicant's case is to the effect that she and the 3rd Respondent contracted a customary law marriage under the native laws and customs of the Ibibio ethnic group of Nigeria, in November 1995. This was followed with a church blessing in December 1995 and a civil marriage at the Marriage Registry in Abomey Calavi Local Government Area of the Republic of Benin on 5 March 1997.

16. She informed the 3rd Respondent about her son whom she had before meeting him, and the latter accepted and adopted him. He was then named Ukeme Odoro. The 3rd Respondent thereafter took on the responsibility of taking care of him including his education and other related expenses.



5

GA

17. Before their marriage, the Applicant avers that the 3rd Respondent worked as a local staff of the Nigerian Embassy in Cotonou, Benin Republic and the meager salary earned was insufficient to take care of their welfare. She claimed that through the funds she realized from trading in Cotonou, she was able to support him both before he secured his present job with the 2nd Respondent and during the period of the job application and interview.
18. She continued that upon commencement of work with the 2nd Respondent, the 3rd Respondent was able to save enough money to purchase land in Akwa Ibom state in Nigeria, Togo and Ghana where they built duplexes and bought about six cars.
19. She recollected with nostalgia the peaceful life they lived for some years while waiting to have a child of their own, which failed despite several medical interventions. Furthermore an attempt to adopt a child was truncated by the 3rd Respondent's family, who advised him to take a second wife instead.
20. The Applicant recounted that subsequently the 3rd Respondent's behavior changed as he resorted to threatening to kill her and her son, subjecting her to physical assault including incessant beating, torture, inhumane and degrading treatment. This she claims amount to violation of her right as a woman and a diplomat.

Ⓞ

6
CA
Ife

21. She further stated that following this troubled period in their lives, the 3rd Respondent filed divorce proceedings against her in Lome, Togo but the Court ordered him to withdraw his case and institute the petition in Nigeria.
22. The Applicant claimed that thereafter, the 3rd Respondent became more aggressive towards her and her son while the violence earlier above enumerated continued which one of the occasion led to his brief detention at the Police station in Hadzranawoe, Lome in Togo following her complaint. He was later released due to his status as a diplomat.
23. The 3rd Respondent then illegally married a woman whom he lodged in the second building they owned in Lome, Togo, having forcefully ejected her and her son from their matrimonial home. Consequently, they have been exposed to danger, hardship, pain and left to wander about homeless.

b) Pleas in law

23. The Applicant relies on the following laws:

- i. Article 4 of the African Charter on Human and Peoples' Rights (Charter), on the right to life;
- ii. Article 5 of the Charter on the prohibition of torture, inhuman and degrading punishment or treatment;
- iii. Article 6 of the Charter on the right to liberty;

 7


- iv. Article 14 of the Charter on the right to property;
- v. Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), on every woman's right to dignity and the protection of her human and legal rights;
- vi. Article 4 of the Maputo Protocol on the rights to life, integrity and security of the person.

c) Reliefs sought

24. The Applicant's prayers are as follows:

- i. An Order of the Court enforcing and securing, within West Africa and any part of Nigeria, the Applicant's right to life, freedom of movement, personal liberty, right to her property and right to dignity.
- ii. A Declaration of the Court that the unlawful ejection of the Applicant by the 3rd Respondent from their home, without settling her is null and void and a violation of her rights as a person and a woman.
- iii. An Order of the Court that the 1st and 2nd Respondents as employers of the 3rd Respondent should immediately intervene and mandate the 3rd Respondent to allow the Applicant access to their buildings especially the one situated at Hedranowoe in Lome, Togo.


8


- iv. A Declaration of the Court that locking the Applicant out of their building in Lome, Togo and any other building deriving from the marriage is a gross violation of her rights as a person and woman.
- v. An Order of the Court restraining the 3rd Respondent, his agents, servants or privies from further harassing, intimidating, beating, embarrassing, torturing and subjecting the Applicant to inhuman and degrading treatment.
- vi. A Declaration of the Court that acts of the 3rd Respondent are in violation of the human rights of the Applicant in breach of Articles 4, 5, 6 and 12 of the Charter and Articles 3 and 4 of the Maputo Protocol.
- vii. An Order of the Court mandating the 1st and 2nd Respondents to caution or sanction the 3rd Respondent for the incessant violation of the Applicant's human rights as a person and woman including threats to the life of the Applicant and her son Ukeme Odoro.
- viii. An Order of the Court that the Applicant is entitled to some of the property (buildings, cars etc.) deriving from the marriage having been married for about 23 years to the 3rd Respondent and being instrumental to the acquisition of the properties of the marriage.
- ix. A Declaration of the Court that the forceful ejection of Ukeme Odoro from the house he lived in with the 3rd Respondent and Applicant after the marriage, leaving him stranded and wandering homeless in Lome, Togo is illegal and a violation of his rights.

 
CAZ

- x. An Order of the Court that the Applicant and Ukeme Odoro are entitled to one hundred and twenty million Naira (N120,000,000), as compensation for the incessant bating, torture, harassment, embarrassment and violation of their rights to personal liberty, freedom of movement, right to life and inhuman and degrading treatment by the 3rd Respondent.

VI. RESPONDENTS' CASE

1st and 2nd Respondent's case

25. The 1st and 2nd Respondents that is the ECOWAS Commission and the ECOWAS Bank for Investment and Development raised a Preliminary Objection challenging the jurisdiction of the Court based on the following grounds:

- i. That they are not proper parties and have been misjoined in the action.
- ii. The Application is not of an international character.

This Preliminary Objection will be addressed under jurisdiction below.

26. In addition to the objection raised the 1st and 2nd Respondent filed a defense where they deny every allegation of fact narrated by the Applicant in her Application. They assert that the Applicant is forum shopping by bringing this suit before the Court.

10


27. Specifically, they assert that they are not parties to the alleged marriage between the Applicant and the 3rd Respondent neither did they have knowledge of what transpired between them before and during the said the marriage.

28. They state that they are not responsible for the alleged divorce petition filed against the Applicant in Lome, Togo and are neither aware of the Temporary Separation Order nor any other orders by any judge. Since they are not parties to the suit, are not bound by such orders.

29. They also deny knowledge of an illegal marriage between the 3rd Respondent and a third party and are not in the position to know the whereabouts of the said Ukeme Odoro

30. They emphasize that they do not meddle in the domestic affairs of individuals and they are not aware of or responsible for the security threat to the life of the Applicant. In any case, it is their contention that such issues are to be determined by a competent court other than this Court.

Reliefs Sought by the 1st and 2nd Respondents

31. The 1st and 2nd Respondents urge the Court to dismiss the Applicant's suit in its entirety as it relates to them, as the suit is frivolous, vexatious and an abuse of court processes.

11

CA

3rd Respondent's Defence to the Application

a) Summary of facts

32. The 3rd Respondent denies each and every allegation of fact stated by the Applicant in her Application, but admitted that he was married to the Applicant for twenty-three (23) years; however, he claimed that a court of competent jurisdiction dissolved the marriage between them on 27 July 2018 before this suit was filed.

33. Specifically, the 3rd Respondent deny the allegation that the Applicant assisted him financially at any point in their marriage, especially regarding the expenses to attend the interview for the job, as the Institution made adequate provision for this.

34. He said that Contrary to the Applicant's claim that he neglected her and her son, he tried his best during the period they were married to provide for the Applicant and her son Ukeme Odoro, whom he adopted wholeheartedly and paid for his education from primary school to secondary schools in reputable institutions. One of which is the University of Bemidji, Minnesota, United States of America, where he paid sixteen thousand, eight hundred and fifty thousand United States Dollars (\$16, 850.00) per academic session. Unfortunately, Ukeme was deported for an offence contrary to the laws of the United States.

35. He stated that on the contrary, the Applicant is dishonest, duplicitous, and a blackmailer who he has had to bail out of several debts after defrauding unsuspecting persons. That when she was remanded in prison for three

Handwritten signature and initials in blue ink. The signature appears to be "S. S. S." and the initials are "CS".

weeks after she was investigated and convicted, he visited her often and continued to care for her until her release following his payment to all persons she had defrauded.

36. The 3rd Respondent recounted conducts unbecoming as a wife as the Applicant was fond of disappearing from their home, sometimes weeks without communication, only to surface to pick up her monthly allowance from him. One of such is when three days after her release from prison, she left their home for her parent's home in Uyo, Akwa Ibom Nigeria, without informing him but reporting to her parents that he sent masked men to trail and kidnap her.

37. The 3rd Respondent made several other assertions in his defence but concluded that the Court lacks jurisdiction to determine a dispute between two ordinary individuals.

b) Relief sought

38. The 3rd Respondent urges the Court to dismiss the Application for being an abuse of court process and unmeritorious.


13



VII. JURISDICTION

Preliminary Objection

i. Arguments of the 1st and 2nd Respondents on not being proper parties.

39. The 1st and 2nd Respondents argued that the facts relating to the case are completely unknown to them and they should not have been joined in the Application.

40. They state that before one can be rightfully joined as a party to an action, such a party must be a proper party against whom a cause of action has been shown. From the facts pleaded by the Applicant, she has no cause of action against them and consequently, they cannot be joined as parties to the suit.

41. The 1st and 2nd Respondents urge the Court to strike out their names from the Application in light of the fact that they are not proper parties, or necessary parties to the suit.

i. Argument that the dispute is not of an international character.

42. The 1st and 2nd Respondents contend that this Application is not of the category of human rights violation that the Court ought to entertain. That the Court's power to entertain claims for human rights violation is conferred by Articles 9(4) and 10(d) of the Supplementary protocol. Article 9(4) provides, "*The Court has jurisdiction to determine cases of violation of human rights that occur in any member States*" and Article 10(d) provides, "*Access to the*

Court is open to... individuals on application for relief for violation of their human rights...”

43.They canvass that the issue to be determined by the Court in the present case is whether the Application can be interpreted as a dispute of international character which they answer in the negative since the facts of the case clearly point to domestic issues, which must be heard by a national court of competent jurisdiction.

44.In support of their contention they cite the holding of the Court in the case of PETER DAVID V AMBASSADOR RALPHI UWECHUEHE, (2010) CCJELR PAGE 213, where it stated that,

40 “In this regard, the Court emphasizes that it is an international Court established by a Treaty and by its nature, it should primarily deal with disputes of international character.”

45.They submit that the position of the Court above referred is well supported by other international human rights courts and tribunals such as the United Nations Human Rights Council, the European Court of Human Rights and the African Court on Human and Peoples’ Rights.

46.In concluding, the 1st and 2nd Respondents submit that the Court cannot entertain the Application as it lacks jurisdiction to hear matters of a domestic nature notwithstanding the fact that violation of human rights have been alleged.



15
Heur
AA

c) Pleas in law.

- i. Article 9(4) of the Supplementary Protocol;
- ii. Article 10(d) of the Supplementary Protocol.

c) Reliefs sought

- i. An Order of Court striking out the names of the 1st and 2nd Respondents from this suit on the ground that they have been wrongfully joined;
- ii. An Order striking out the Applicant's application in its entirety on the ground that the Court lacks jurisdiction to entertain the action;
- iii. Such other Orders as the Court may deem fit to make under the circumstances.

Applicant's Response to Preliminary Objection

47. The Applicant combined her response to the two-pronged Preliminary Objection of the 1st and 2nd Respondents to the effect that they were properly joined in this action and that pursuant to Article 9(4) of the Supplementary Protocol, the Court has jurisdiction to entertain the Application.

48. The Applicant states that the 1st and 2nd Respondents are proper parties to the Application because the 3rd Respondent is an employee of the 1st and 2nd

16
Handwritten signature and initials in blue ink, including a circled 'phi' symbol and the name 'Hew'.

Respondents and he had on several occasions flaunted this position to escape liabilities or cover his wrongdoing. That the 3rd Respondent hides under the veil of his employment with the 1st and 2nd Respondent to violate the rights of the Applicant.

49. She further submits that the matter has to do with her fundamental rights which is within the purview of the Court's jurisdiction, pursuant to Article 9(4) of the Supplementary Protocol.

50. Additionally since these rights were violated in both Nigeria and Togo a National Court will not entertain a matter in which the cause of action arose from two different countries. That since both countries are Member States of the Court, only this Court can adjudicate on such a matter.

51. The Applicant concluded that the issue for determination is whether the rights of the Applicant was violated within the territory of a Member State of ECOWAS. Since the answer is in the affirmative, she submits that the Court has power and jurisdiction to entertain the matter and urges the Court to so hold.

b) Reliefs Sought by Applicant

- i. An Order of the Court dismissing the Preliminary Objection of the 1st and 2nd Respondents on the ground that the facts and law cited are misleading, unfounded and unwarranted abuse of the process of the Court;

17
Heine
CA

- ii. An Order of Court affirming that all the parties in the action are properly constituted;
- iii. A Declaration that the Court has jurisdiction to entertain the Application;
- iv. And such other Orders as the Court may deem fit to make in the circumstances to protect the rights of the Applicant as a human and woman.

Analysis of the Court

52. The 1st and 2nd Respondents jointly raised a Preliminary Objection challenging the jurisdiction of the Court to hear this Application on the basis that the 1st and 2nd Respondents are not proper parties in the instant Application and also that the Application is not reflective of an international character. The Applicant insists the Court has jurisdiction over this case. The Court will address each objection seriatim.

On allegation that the 1st and 2nd Respondents are not proper parties

53. The case of the 1st and 2nd Respondents is that the Court lacks jurisdiction to adjudicate over this Application, as they are not proper parties to it. They argue that before a party can be rightfully joined in a case, a cause of action must exist against such party. It is their contention that from the facts pleaded by the Applicant, she has no cause of action against them therefore,

 ¹⁸



they cannot be joined as parties to the suit. In all, the Court lacks the jurisdiction to hear the instant application. The Applicant on her part maintains that the 1st and 2nd Respondents were rightfully joined as parties to the Application, on the ground that they are employers of the 3rd Respondent, who has consistently used his status as an employee as a veil to commit the violations alleged

54. In addressing this objection, the Court reaffirms that Jurisdiction is the foundational competence that a court is clothed with to adjudicate on a dispute filed before it, which cannot be assumed or ousted by implication. This is determinable from the statute creating it and/or the reliefs claimed by the applicant. This Court has a plethora of jurisprudence on the nature and importance of jurisdiction and how same ought to be inferred or established. Below is an extract of a decision of the Court which proffered the fundamentals of Jurisdiction as thus:

"Jurisdiction is fundamental to any suit before a court. As a general rule, jurisdiction is inferred from the Plaintiff's claim and in deciding whether or not this court has jurisdiction to entertain an action, reliance has to be placed on the facts as presented by the Plaintiff, the Protocols of the Court, as well as the jurisprudence of the Court. "See FESTUS A.O. OGWUCHE

V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/02/18 @ pg. 10.

55. In further exposition of above the Court held that:

"The competence of a court to adjudicate on a matter is a legal and constitutional prerequisite without which a court is a lame

  19

duck. Courts are creatures of Statutes and their jurisdiction is confined, limited and circumscribed by the Statutes, which created them. A court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes.”

See HOPE DEMOCRATIC PARTY & 1 OR v. THE FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO ECW/CCJ/JUD/19/15 @ pg. 10 See also REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO ECW/CCJ/JUD/06/19 @ PAGE. 10.

56. From the above, the Court must of necessity look first to the statutes establishing the Court and then the reliefs contained in the Initiating Application of the Applicant.

57. The Community Court of Justice is a creation of statute and Protocol (A/SP.1/01/05) amending Protocol A/P.1.7/91, which established the Court sets out the various disputes over which the Court has jurisdiction. Article 9(1) of the said Supplementary Protocol provides thus;

The Court has competence to adjudicate on any dispute relating to the following:

- a. *The interpretation and application of the Treaty, Conventions and Protocols of the Community;*
- b. *The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;*

20


- c. *The legality of regulations, directives, decisions and other legal instruments adopted by ECOWAS.*
 - d. *The failure by Member States to honor their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS;*
 - e. *The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States;*
 - f. *The Community and its officials;*
 - g. *The action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.*
2. *The Court shall have the power to determine any non-contractual liability of the Community and may order the Community to pay damages or make reparation for official acts or omissions of any Community institution or Community officials in the performance of official duties or functions.*
3. *Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.*
4. *The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*

 21


5. Pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Treaty, the Court shall have the power to act as arbitrator for the purpose of Article 16 of the Treaty.

6. The Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement.

7. The Court shall have the powers conferred upon it by the provisions of this Protocol as well as any other powers that may be conferred by subsequent Protocols and Decisions of the Community.

8. The Authority of Heads of State and Government shall have the power to grant the Court the power to adjudicate on any specific dispute that it may refer to the Court other than those specified in this Article.

58. In view of the claim by the 1st and 2nd Respondents that they are Institutions of the Economic Community of West African States vide their Preliminary Objection; the relevant article for consideration from the above list is paragraph (g) supra. This provision grants the Court jurisdiction to adjudicate on “*action for damages against a Community Institution or an official of the Community for any action or omission in the exercise of official functions.*”

59. Before addressing the content of the above paragraph viz a viz the allegation and claim of the Applicant against the 1st and 2nd Respondents, it is necessary at this point to determine who are Community Institutions and if

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'Hew' and there are initials 'EA' above it.

the 1st and 2nd Respondents qualify to be so referred. A perusal of the Statute whereupon the Community Institutions derive their existence is imperative and in this wise the 1993 Revised Treaty of the ECOWAS, which established the ECOWAS as the Regional Economic Community for its 15 Member States is instructive. Article 6 of the said Treaty provides as follows:

- 1 *The institutions of the Community shall be:*
 - a. *The Authority of Heads of State and Government*
 - b. *The Council of Ministers*
 - c. *The Community Parliament*
 - d. *The Economic and Social Council*
 - e. *The Community Court of Justice*
 - f. *The Executive Secretariat*
 - g. *The fund for Co-operation, compensation and Development now Known as ECOWSA Bank for Investment & Development (EBID)*
 - h. *Specialised Technical Commissions, and*
 - i. *Any other institutions that may be established by the Authority.*
2. *The institutions of the Community shall perform their functions and act within the limits of the power conferred on them by this Treaty and by the Protocol relating thereto.*

60. The 1st Respondent is captured in paragraph (f) as the *Executive Secretariat*, which was amended to read “Commission of the Economic Community of West African States” in Article 1 of Supplementary Protocol A/SP/06/06



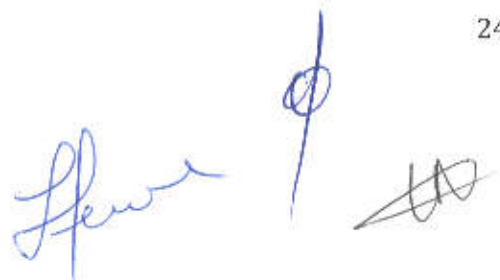
amending the Revised Treaty. The 2nd Respondent equally referenced in paragraph (g) as The Fund for Co-operation, Compensation and Development was established as the “ECOWAS Bank for Investment and Development” (EBID) in Article 21 of the Supplementary Act A/SA.9/01/07, which reads, “*An ECOWAS Bank for Investment and Development (EBID) is hereby established.*”

61. The above reviewed statutes establish accurately as claimed that not only are the 1st and 2nd Respondents Community Institutions but also that they can be sued. This has further been clarified by the Court when it held as follows,

“Within the ECOWAS Community, apart from Member States, other entities that can be brought to this Court for alleged violation of human rights are the Institutions of the Community because, since they cannot, as a rule, be sued before the domestic jurisdiction, the only avenue left to the victims seeking redress for grievances against those institutions is the Community Court of Justice.” See PETER

DAVID VS. AMBASSADOR RALPH UWECHUE (2010) CCJELR PAGE 226, PARAGRAPH 47.

62. It is now clearly undisputable that a) the 1st and 2nd Respondents are Community Institutions b) also that they can be sued for grievances against them, thus conferring a prima facie jurisdiction on the Court in this case. However the contention of the 1st and 2nd Respondents is that despite the fact that they are Community Institutions they are not proper parties to be sued in



the instant suit with the consequence that the Court lacks jurisdiction to preside over the matter.

63. The next question to answer is who are proper parties to a suit? The prerequisite ingredient to determine whether a person legal or otherwise has been properly brought before the Court thereby making him a proper party in an action is the establishment that a cause of action can be maintained against such person. In other words that the complaint, grievances or claims of the applicant can be credited to the said party. The Court has in a plethora of decisions elaborated the concept of cause of action which it has held to be,

“A set of circumstances giving right to an enforceable claim, it is the fact or combination of facts which gives rise to a right to sue and it consists of two elements: the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequential damages” See HANS CAPEHART WILLIAMS SR & 1OR VS REPUBLIC OF LIBERIA & 4 ORS JUDGMENT NO ECW/CCJ/JUD/25/15 @ PAGE 21.

64. Furthermore the Court held that,

“A cause of action is a matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is the right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or

The page concludes with three handwritten signatures in blue ink. The largest signature on the left is 'L. Lewis'. To its right is a smaller, more stylized signature, and further right is another signature that appears to be 'G.A.'.

suit is grounded whether or not legally maintainable.” See INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHTS ENLIGHTENMENT FOUNDATION V. FRN (2016), ECW/CCJ/JUD/16/18.

65. A more succinct definition of a cause of action was proffered as follows;

“the reason or the facts that entitle a person to sue or bring his case to the Court, or a factual situation that entitles one person to obtain from the Court a remedy against another person”. LETANG V. COOPER (1960) 2 All ER 929

66. The culmination of the above jurisprudence in summary is the necessity to show that the wrongful acts complained of by the Applicant associates the said party. In determining this, the Court must of necessity be guided by infractions for which a Community Institution can be held responsible for under the law. As earlier stated, Article 9(g) is the appropriate provision relating to the jurisdiction of the Court under the Article 9 of the Supplementary Protocol which clothe the Court with competence to adjudicate on dispute concerning Community Institutions and it reads thus; *“action for damages against a Community Institution or an official of the Community for any action or omission in the exercise of official functions”*. The implication of the article above- referred is that an action against a Community Institution must establish that act or omission was carried out by the Institution in an official capacity for which damages is being claimed.

67. The Court recalls that the facts of this Application is premised on an alleged domestic dispute between the Applicant and the 3rd Respondent who have



been married for many years with additional claim of several violations of the human rights of the Applicant by the 3rd Respondent all contrary to the provision of the African Charter on Human and Peoples Rights. The gamut of narration of the Applicant's case does not identify any infraction that can be credited to the 1st and 2nd Respondents, which amounts to either an official action or omission on their part as they are all matters concerning disputes in their matrimonial home. Instead the Applicant alleges that they are employers of the 3rd Respondent, who has consistently used his status as an employee as a veil to commit the various human rights violations alleged. Little wonder the 2nd Respondent is described in the Initiating Application as being *"under the 1st Defendant's Commission and the employer of the 3rd Defendant."* While the 1st Respondent is also described as *"an organization in West Africa and the main engine room of all ECOWAS programmes, projects and activities."*

68. The facts of this case clearly fail to implicate the 1st and 2nd Respondents as falling within the ambit of Art 9(g) of the Supplementary Protocol of carrying out an act or omission in official capacity by a Community Institution.

69. The Court in further addressing the claim of the 1st and 2nd Respondents, that it lacks jurisdiction over them, it will as earlier indicated look into the Applicant's claim to determine whether they support the competence of the Court or otherwise. The Court notes that of all the ten reliefs claimed by the Applicants listed in paragraph 26 supra, which border mainly on reparation for alleged human rights violations by the 3rd Respondent, only two of the

Lence  

said reliefs referenced the 1st and 2nd Respondents. For clarity purposes both claims are reproduced below:

- i. *Order 3- "An Order of the Court that the 1st and 2nd Respondents as employers of the 3rd Respondent should immediately intervene and mandate the 3rd Respondent to allow the Applicant access to their buildings especially the one situated at Hedranowoe in Lome, Togo."*
- ii. *Order 7- "An Order of the Court mandating the 1st and 2nd Respondents to caution or sanction the 3rd Respondent for the incessant violation of the Applicant's human rights as a person and woman including threats to the life of the Applicant and her son Ukeme Odoro."*

70. As earlier indicated, jurisdiction is inferred from the Applicant's claim. It is clear that these two reliefs sought against the 1st and 2nd Respondents do not establish a cause of action within the contemplation of Article 9 (g). Indeed, the reliefs claimed against them are not commensurate with reparation for any act or omission carried out in the official capacity of the 1st and 2nd. For instance, the Applicant is seeking an order of the Court to compel them to mandate the 3rd Respondent to allow the Applicant access to all the family buildings as well as an Order mandating them to caution or sanction the 3rd Respondent for violating the Applicant's human rights. These reliefs are as unlawful as they are outrageous. It is inconceivable that an employer will be made a subject of litigation and held culpable for an alleged violation of human rights by his/her staff against his spouse. In the least, this Application is an abuse of Court process.

Heure  

71. The Court without hesitation holds that it lacks jurisdiction to entertain this suit for reasons articulated above thus their name is struck out thereof.

ii. On allegation that the Application is not of international character

72. The second leg of the Preliminary Objection of the 1st and 2nd Respondents challenging the jurisdiction of the Court is based on the assertion that the Application is not of an international character, as the facts presented before the Court are domestic in nature and do not qualify to be interpreted as a dispute of international character. They state that human rights violations in this case as presented by the Applicant cannot be interpreted as a dispute of an international character. They therefore submit that the Court cannot entertain the Application as it lacks jurisdiction to hear matters of a domestic nature even when they are for claims of human rights violations.

73. The Applicant in response argues that pursuant to Article 9(4) and 10 of the Supplementary Protocol, the Court has competence to exercise jurisdiction over the Application as it deals with allegations of violations of fundamental human rights provided in the African Charter.

Analysis of the Court

74. It is a widely accepted principle that international Courts and Tribunals are creation of international Treaties or Statutes and as such can only avail

The page concludes with three handwritten signatures in blue ink. The first signature is 'Hewe', the second is a stylized 'P', and the third is 'CAZ'.

themselves to cases of international character. In essence the dispute must arise from and be provided for by an international Treaty signed by the Respondent State. Consequently, alleged violations with seemingly human rights colorations carried out within Member State will only be adjudicated upon if is devoid of National flavours. A proper case before an international court such as the Community Court of Justice must exhibit not only facts of alleged violation of an international instrument but also that the alleged perpetrator is a Member State and signatory to the said instrument. This is vital in order not to set itself in collision with National Courts.

75. The Court is of the opinion that the above reflects the objection raised by the 1st and 2nd Respondents which it aligns with while recalling its previous decision where this principle was holistically captured as follows,

“...the Court emphasizes that it is an international Court established by a Treaty and, by its own nature, it should primarily deal with disputes of international character. Therefore, it essentially applies international law where it has to find out the source of the laws and obligations, which bind those who are subject to its jurisdiction. ...the Court recalls that the international regime of human rights protection before international bodies relies essentially on treaties to which States are parties as the principal subjects of international law. As a matter of fact, the international regime of human rights imposes obligations on States. All mechanisms established thereof are directed to the engagement of State responsibility for its commitment or failure toward those international instruments.” PETER DAVID VS.

AMBASSADOR RALPH UWECHUE (2010) CCJELR, PAGE 224, PARA 40 & 42.



76. The Court in further elaboration of this principle held as follows;

“This principle is easily explicable: the international instruments, international by definition, as invoked by those bringing the action, do remain instruments binding only on States; the States concerned are the only entities which signed those instruments, and thereafter, either ratified them or declared allegiance to them. Such instruments cannot therefore, by definition, be invoked against any other entities than the States concerned, for they shall not be binding on those other entities.

MARIE MOLMOU & 114 OTHERS V REPUBLIC OF GUINEA, JUDGMENT NO. ECW/CCJ/JUD/16/16 PAGE 7.

77. The Court was more concise on this matter when it opined, *“In international law, the party to be joined in a suit is the State of Nigeria which is a sovereign State and the signatory of ECOWAS Treaty.”*

MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 2 ORS
ECW/CCJ/JUD/12/14 @ PAGE 34.

78. While the Court is much persuaded by its previous jurisprudence, it will be remiss if it does not address the forceful argument of counsel to the Applicant to the effect that mere reference of the Application to the African Charter and the various violation of human rights alleged therein clothes it with international character and thus justifies the assumption of jurisdiction by the Court. In this wise his spirited effort is noted in trying to find a correlation and convergence between their domestic dispute which is premised on intimidation, physical abuse, torture, deprivation of property by her husband, and the provisions of the African Charter in Articles 4, 5, 6 &



12 on the right to life, right to dignity freedom of movement, personal liberty. While the subject matter disputes alleged by the Applicant may find a seat within an International Treaty regime - the African Charter- its international character is not solely secured thereof. A claim for reparation must be established against the entity with the international obligation to implement and a fortiori redress the alleged violations. The Court hastens to state that the nature and circumstances of the instant case are clearly not within the purview of the Court's jurisdiction as an International Court despite allegation of violations of numerous human rights enshrined in the African Charter.

79. Consequently, the Court holds that it lacks jurisdiction to entertain the application.

iii. On whether the 3rd Respondent being an individual is a proper party

80. The jurisdiction of the Court to adjudicate over a complaint of human rights violation against the 3rd Respondent ought to be challenged in view of the fact that he is an individual. In that wise there is need for the Court to determine whether it has competence to preside over an application alleging the violation of human rights lodged by an individual against another individual. Ordinarily, the 3rd Respondent should have raised this issue as a Preliminary Objection in the appropriate form in accordance with the Rules of Court, but he merely mentioned it as a passing observation in one sentence in paragraph 64 of his defence as follows: *"This Court lacks jurisdiction to determine a dispute between two ordinary individuals."*

Handwritten signature 'Ifeve' in blue ink, with a large flourish above the 'e'. To the right of the signature is a small, illegible scribble or mark.

81. In view of the fact that this is a matter that touches on the jurisdiction of the Court and for which it must address ahead of its analysis on the merits stage of the case, the Court will now take up the issue to determine whether jurisdiction is conferred on it under this circumstance.

82. The claim of the Applicant is that since human rights violations have been alleged in her Application for that reason, the Court ought to exercise jurisdiction and be seized of it. The Court agrees with the Applicant only to the extent that it has a human rights mandate.

83. Indeed Article 9(4) of the Supplementary Protocol provides that, "*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*" The Court in interpreting this Article has held that,

Where the facts raised the issues of violations of human rights that occur in any member state and the complaint is by an individual and pursuant to Articles 9 (4) and 10 (d) of the Supplementary Protocol, Article 4(g) of the Revised Treaty of ECOWAS, Article 5 of the African Charter or any of the provisions of the African Charter on Human and Peoples Rights relating to the rights of the people collectively and individually and other international human rights instruments assented to by the Member States of ECOWAS with no pending litigation in any international court, this Court would assume jurisdiction. MAIMUNA ABDULMUMINI V. FEDERAL REP. OF NIGERIA & 2 ORS ECW/CCJ/JUD/14/14 @ PAGE 10.



84. While recognizing its subject matter jurisdiction over human rights violations nonetheless, a party seeking relief for violation of human rights must establish same against a proper party, which in this case is a Member State of the Community as provided for in Article 2(2) of the Revised Treaty, which provides "*The members of the Community, hereinafter referred to as "the Member States," shall be the States that ratify this Treaty.*" The Court in elaboration of this point held as follows:

"...ECOWAS Member States as contracting parties of the ECOWAS Community law, or as guarantors for the implementation of the human rights recognized in the Revised Treaty of ECOWAS, are obliged to subscribe to these rights, and may in that regard be sued before the principal legal organ of ECOWAS, i.e. the Community Court of Justice. Consequently, an individual may bring a proceeding against a Member State of the Community, before the Community Court of Justice. See NATIONAL COORDINATION OF DEPARTMENT

DELEGATES OF COCOA COFFEE SECTOR (CNDD) V. REPUBLIC OF COTE D'IVOIRE (2004-2009) CCJELR, PAGE 323, PARAGRAPH 34.

85. The Court made a crisp clarification when it held as follows:

"Only States that are contracting parties to the ECOWAS Revised Treaty and to the African Charter on Human and Peoples' Rights and other similar Human Rights Treaties can be sued before it, for alleged violation of human rights occurring in their territory." See THE REGISTERED TRUSTEES OF THE

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'L. F. F.' and the initials are 'EF'.

86. In the instant case, the Applicant did not lodge a complaint against a Member State as envisioned under Article 9(4); rather she is seeking relief against her husband- an individual violating her human rights.

87. The Court observes that due to the broad construction of Article 9(4) of the Supplementary Protocol, a cursory reading of the provision gives an impression that the Court is open to exercising its jurisdiction over every case of violations of human rights brought before it by all categories of persons. However the Court made a holistic clarification of this thorny issue when it held that;

“A first look at Article 9(4) may lead to the assumption that since no delimitation is done by the statute, any case of human right violation that occurs within any ECOWAS Member State, no matter who is the perpetrator of the alleged violation, falls under the jurisdiction of this Court. Assuming that such interpretation is correct, as suggested by the Plaintiff, individuals can be sued before this Court for alleged violation of human rights. But, given that almost every dispute involving individuals can be related to human rights, the conclusion is that all those disputes, from small claims between neighbours on the fringes of their properties, through disputes between employees and employers on the amount of wages... ending in the dispute between spouses on issues like child custody and so on and so forth, would

Handwritten signature and initials in blue ink.

fall under the jurisdiction of the ECOWAS Community Court of Justice.

....The result of such reading could not be most clear: the mere allegation of human rights violation by any individual against another individual would be enough to lead the Community Court of justice to replace the role of domestic courts which would become absolutely redundant. In other words the Community Court of Justice would metamorphose itself from an international jurisdiction into a domestic one, overwhelmed by a flood of all kinds of disputes coming from all Member States.

... From what has been said, the conclusion to be drawn is that for the dispute between individuals on alleged violation of human rights as enshrined in the African Charter on Human and Peoples' Rights, the natural and proper venue before which the case may be pleaded is the domestic Court of State party where the violation occurred. It is only when at the national level that there is no appropriate and effective forum for seeking redress against individuals, that the victim of such offences may bring an action before an international Court, not against the individual, rather against the signatory State for its failure to ensure the protection and respect for the rights allegedly violated.” PETER DAVID VS. AMBASSADOR RALPH UWECHUE

(SUPRA) @ PARAGRAPH 36,37 & 46. See also, HANS CAPEHART WILLIAMS SR & IOR V. REPUBLIC OF LIBERIA & 4 ORS (SUPRA), where the Court held that,

“Matters relating to violations of human rights between individuals belong to the National or domestic courts of Member States. It is only a Member State under this arrangement that can be sued as

Heave



Defendant. Individuals of any category or creed are not recognised as Defendants in a human rights action before the court."

88. Clearly from the above, Article 9(4) of the Supplementary Protocol admits no action between individuals except Article 10(g) where the parties have opted to submit to the jurisdiction of the Court for the settlement of any dispute arising out of an agreement.

89. In the light of the above analysis, the Court finds that the 3rd Respondent is not a proper party in the instant Application and same is dismissed.

VIII. COSTS

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

91. The Court notes that none of the Parties to this Application made an application for costs of the proceedings. Consequently, in line with Article 66(11) of the Rules, which provides that "*If costs are not claimed, the parties shall bear their own costs*", the Court decides that each party shall bear their own costs.

37



IX. OPERATIVE CLAUSE

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

As to jurisdiction:

- i. **Declares** that it lacks jurisdiction to hear this Application on the grounds that the 1st, 2nd, and 3rd Respondents are not proper parties before the Court.
- ii. **Dismisses** the Application for lack of jurisdiction.

On Costs

- iii. **Order** the Parties to bear their own costs.

Hon. Justice Gberi-Be **OUATTARA**



Hon, Justice Dupe **ATOKI**



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



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



Done in Abuja, this 10th day of March 2021 in English and translated into French and Portuguese.

