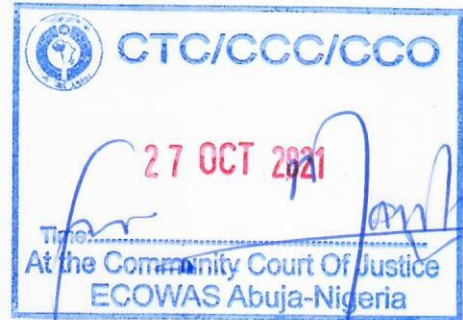


COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



No. 10 DAR ES SALAAM CRESCENT
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THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

DANIEL MAKOLO ESQ. v. THE FEDERAL REPUBLIC OF NIGERIA
Application No: ECW/CCJ/APP/24/20; Judgment No. ECW/CCJ/JUD/37/21

JUDGMENT

ABIDJAN

27 OCTOBER 2021

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABIDJAN, CÔTE D'IVOIRE

Application No: ECW/CCJ/APP/24/20; Judgment No. ECW/CCJ/JUD/37/21

BETWEEN:

DANIEL MAKOLO ESQ.

APPLICANT

AND

THE FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Edward Amoako **ASANTE**

- Presiding/ Judge Rapporteur

Hon. Justice Gberi-Be **OUATTARA**

- Member

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

- Member

ASSISTED BY:

Dr. Athanase **ATANNON**

- Deputy Chief Registrar

REPRESENTATION OF PARTIES

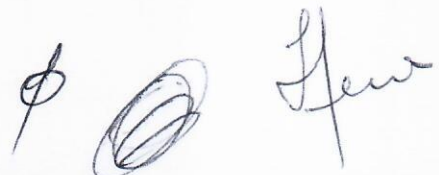
Daniel **MAKOLO**, Esq.

Counsel for Applicant

Mamuna Lami **SHIRE** (Mrs.)

O.A **OLORUNTOGBE**, Esq.

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 is a Nigerian Citizen from Ukanukpoda, Ofu Local Government Area of Kogi State.
3. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States, ECOWAS.

III. INTRODUCTION

Subject matter of the proceedings

4. The Applicant claims that he commenced a civil suit in the domestic court of the Respondent which should have attracted quick, prompt hearing and determination on the merit within a reasonable time, but upon reaching the Court of Appeal, Abuja Judicial Division, the Court has failed, refused and or neglected to hear and determine his appeal, duly filed and briefs settled since 2017 on the merit in breach of Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
5. On the account of the alleged failure by the Respondent's Court of Appeal to hear and determine his appeal within a reasonable time, the Applicant alleges, inter alia, violation of his right to be heard and his cause determined within a reasonable time as guaranteed by Article 7 (1) (c), 13, 19, 22, 26 of

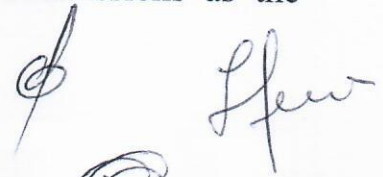


the African Charter and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

6. He also alleges that the Respondent's Court deliberately denied him effective judicial remedy by the above action for not hearing his appeal within a reasonable time having filed the appeal since 2017

IV. PROCEDURE BEFORE THE COURT

7. The Originating Application dated 15 June 2020 was filed at the registry of the Court on the same date and served on 01 July 2020 on the Respondent.
8. The Respondent, having failed to file its response to the application on time, the Applicant filed a Motion for Default Judgment dated 12 October 2020 which was served electronically on the Respondent on the same date same was filed.
9. The Applicants filed Further Narration of Facts dated 15 March 2021 on 16 March 2021 and same was served on the respondent that same day.
10. On the 13 October 2020, the Respondent filed a Motion for Extension of time to file its Statement of Defence dated 9 October 2020 together with the substantive Statement of Defence which were all served on the Applicant on the same day.
11. On the 8 March 2021, the Applicant filed at the registry of the Court a Further Narration of Facts by way of reply to the Respondent's Statement of Defence and same was served on the same day.
12. A virtual Court hearing took place on 10 March 2021 where all parties were represented by Counsel, while the Applicant's Motion for Default Judgment was successfully withdrawn, the Respondent's Motion for Extension of Time was heard and granted. Upon hearing the case on merits, both counsel adopted their pleadings and written submissions as the



arguments in the case and the case was adjourned to 10 June, 2021 for Judgment.

V. *APPLICANT'S CASE*

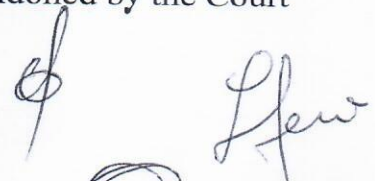
a. Summary of facts

13. Stating the background of his suit at the domestic court, the Applicant avers that Kogi State of Nigeria where he is an indigene was denied representation in the Federal Executive Council meetings in the democratic regime of President Muhammadu Buhari for over two (2) years since the demise of the only representative of the State in the Federal Executive Council through an accident on 06/03/2016.
14. He stated that the Constitution of the Federal Republic of Nigeria, 1999, as amended requires that all States being federating units that make up the Federal Republic of Nigeria must be represented in the regular constitutionally mandatory meetings. Applicant claims that the appointment of members to the Federal Executive Council is a constitutionally mandatory duty, but the President failed, refused and neglected to perform that duty in respect of the Kogi State.
15. According to the Applicant, when all efforts proved futile in getting the Respondent observe and apply the constitution by appointing a Minister from Kogi State fell on deaf ears as no response was received, he applied to the Federal High Court in Kogi State to issue an Order of Mandamus on the President of the Respondent State to compel him to perform his duty.
16. The Federal High Court initially granted the Applicant leave to apply for the Mandamus against the President but his substantive application for



mandamus to issue was refused on the 13th December 2016 on the account of insufficient interest to institute the action against the President.

17. The Applicant, dissatisfied with the refusal to grant his application for mandamus, brought an appeal before the Court of Appeal Abuja Judicial Division seeking a judicial review of the refusal on failure of the President to appoint the Minister to represent the people of Kogi State.
18. According to the Applicant, he filed a notice of appeal on 30/12/2016 which was assigned *Case No. CA/A/131/2017* as can be found at pages 154-158 of the record of appeal and entered his appeal at the Court of Appeal, Abuja Judicial Division on 07/03/2017 annexed as *Exhibit-1* herein. He subsequently filed his written arguments before the Court of Appeal, Abuja Judicial Division on 23/03/2017 annexed herein as *Exhibit 2*.
19. The 1st and 3rd Respondents to the appeal of the Applicant at the Court of Appeal filed their joint Respondents' brief of argument on 30/06/2017 herein annexed as *Exhibit 3* and the Applicant filed an Appellant's Reply on point of law on 14/07/2017 annexed herein as *Exhibit 4*.
20. It is the claim of the Applicant that, being a suit challenging the constitutionality of the action or inaction of the President of the Respondent, it ought to have attracted quick, prompt hearing and determination on the merit within a reasonable time, but upon reaching the Court of Appeal, Abuja Judicial Division, the Court has failed, refused and or neglected to hear and determine his appeal, duly filed and briefs settled since 2017 on the merit in breach of Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.
21. The Applicant states that the failure to determine his appeal within a reasonable time by an impartial Court and adjourning the matter *sine die*, keeping the appeal completely in abeyance and or abandoned by the Court

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of Appeal, Abuja Judicial Division violates, his right to be heard before the States' impartial judicial institution in Nigeria contrary to the provisions and guarantees of the international and domestic laws.

22. The Applicant states further that his right to effective judicial remedy and his right to be heard by an impartial court within a reasonable time were allegedly violated contrary to the guarantees provided under Articles 7, 13, 19, 22 & 26 – 29 of the African Charter.

b. Pleas in Law

23. The Applicant relies on the following laws:
- i. Articles 14, 25, 26 & 27 of the International Covenant on Civil and Political Rights;
 - ii. Articles 1, 2, 6, 7, 8, 9, 10 & 21 of the Universal Declaration on Human Rights.
 - iii. Articles 7, 13, 19, 22, 26 of the African Charter on Human and Peoples Rights;
 - iv. Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

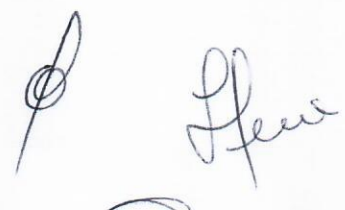
c. Reliefs Sought by the Applicant

24. For the reasons above, the Applicant is praying the Court to:
- a. *A DECLARATION that, it is incumbent on the Respondent, to ensure the existence of effective, efficient and viable judicial institutions to provide adequate and effective judicial remedies within a reasonable time by an impartial court or tribunal under proper proceedings that meets acceptable standards of International best practices to ensure the*

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protection, preservation and promotion of needed judicial environments for the enforcement of civil and political rights of its citizenry as provided for under ARTICLES 7 AND 26 OF THE AFRICAN CHARTER OF HUMAN AND PEOPLES' RIGHT.

- b. A **DECLARATION** that any excessive length or delay of civil proceedings in the Respondent's Judicial system amounts to deliberate state's institutional denial of effective judicial remedy as the state's justice institution becomes inadvertently instruments that encourages constitutional democratic subversion, in the process, leading to community citizens human rights abuses without consequences with a cycle effect on the global community.*
- c. A **DECLARATION** that the act of the Respondent's Court of Appeal, Abuja Judicial Division in refusing, neglect and or failure to hear and determine the Applicant's appeal within a reasonable time is contrary to the guarantees' provided for under the International Bill of Human Rights and Freedoms especially ARTICLES 1-3, 7, 13, 19, 22 & 26 OF THE AFRICAN CHARTER OF HUMAN AND PEOPLES' RIGHT.*
- d. A **DECLARATION** that the act of the Respondent's Court of Appeal, Abuja Judicial Division in keeping the Applicant's appeal filed on 07/03/2017 assigned suit number CA/A/131/2017 completely in abeyance and or abandoned violates the Applicant's right to be heard within a reasonable time contrary to the guarantees provided for the Applicant under ARTICLES 7, 13, 19, 22 & 26 OF THE AFRICAN CHARTER OF HUMAN AND PEOPLES' RIGHT.*
- e. AN **ORDER** compelling the Respondent to put down effective judicial measures to advance and ensure the protection, preservation and promotion of needed judicial environments for the enforcement of the rights of its citizenry by an impartial court or tribunal within a reasonable*



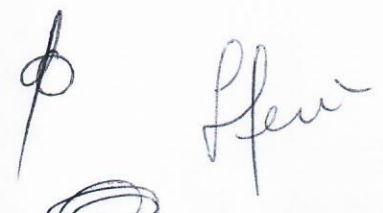
time as provided for under ARTICLES 7 AND 26 OF THE AFRICAN CHARTER OF HUMAN AND PEOPLES' RIGHT.

- f. AN ORDER compelling the Respondent to dust up, constitute an impartial court to hear and determine immediately the Applicant's appeal filed on 07/03/2017 assigned suit number CA/A/131/2017 on the merit.*
- g. AN ORDER awarding the Applicant the sum of Seventy Five Million United States Dollars (\$75,000,000 USD) being damages for violation of his right to be heard within a reasonable time by an impartial court.*

VI. RESPONDENT'S CASE

a. Summary of facts

- 25. In its defence, the Respondent denies the Applicant's claim and states that the Applicant filed a matter at the Federal High Court, Lokoja, which was determined by the court and being dissatisfied with the outcome, he filed an appeal before the Court of Appeal, Abuja challenging the decision of the Federal High Court Lokoja.
- 26. According to the Respondent, its officer who was responsible for the case of the Applicant at the domestic court, one Adedayo Ogundele (Principal State Counsel) duly informed the Applicant, that after filing the appeal, the Court of Appeal, Abuja Division ordered the Applicant to address it on whether it could exercise jurisdiction over his appeal given the fact that the facts leading to the appeal have already been overtaken by events and that any judgment rendered may result in an academic exercise, and that the Applicant having failed to address the Court on the question posed, the court declined to continue with the matter for lack of jurisdiction.



27. The Respondent states that it is untrue that the matter before the Court of Appeal was adjourned *sine dine* as there is no evidence in the form of an order or certified true copy showing this fact.
28. The Respondent further says that subsequent events have vitiated his claim owing to the fact that since the demise of Barrister James Ocholi, two ministers have been appointed by the Federal Government from Kogi State, the current one been Mrs. Ramatu Tijani minister of State for the Federal Capital Territory.
29. The Respondent states that the Applicant's reliefs do not disclose any reasonable cause of action as there is evidence of viable judicial institutions in Nigeria and the Applicant has not brought any evidence to the contrary, and to that extent, the instant suit is baseless, unfounded and an abuse of Court process.

b. Pleas in Law

30. By way of pleas in law, the Respondent solely relied on Article 7 of the African Charter and sought to distinguish all the legal texts relied on by the Applicant.

c. Reliefs sought

31. The Respondent urged the court to dismiss the claims of the Applicant as being unmeritorious.

VII. REPLY BY THE APPLICANT

32. The Applicant, by way of reply, contends vehemently that the facts given by the Respondent are not true that the Respondent ought to exhibit the court order to prove that the Court of Appeal made an order declining jurisdiction.



33. Again, the Applicant denies that his appeal has been overtaken by events but rather contends that the failure by the Court of Appeal to perform its duties as an appellate court and not a court of first instance, to review the decision of the lower court, kept his appeal in abeyance and this amounts to a violation of the Applicant's right to be heard.
34. The Applicant further states that an appeal which was filed on 07/03/2017, assigned suit number with all submissions ready since July, 2017 and still not heard till now is a violation of his right to be heard as guaranteed by both International and domestic laws.

VIII. JURISDICTION


35. The case was filed in compliance with the relevant provisions of the texts on the Court and it is hinged on alleged violation of the Applicant's human rights by the Respondent guaranteed under the African Charter and other international human rights instruments the Respondent is a signatory. This Court, therefore, under Article 9(4) of the Supplementary Protocol on the Court as amended has jurisdiction to hear and determine this matter.

IX. ADMISSIBILITY

36. This matter is admissible under Article 10(d) of the Supplementary Protocol on the Court as amended which provides that "*Access to the court is open to individuals on application for relief for violation of their human rights, the submission of application for which shall; i) Not be anonymous; nor ii) Be made whilst the same matter has been instituted before another international court for adjudication*".

X. MERIT

37. The Applicant cited several provisions of the African Charter and some selected international human rights instruments alleging violation of his right

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to court under Article 7 particularly right to have his matter heard within a reasonable time, independence of court under Article 26, right to participate in the government of one's country, equality before the law, right to development under Article 22 all of the African Charter and right to effective remedy and fair trial under Article 8 of the UDHR and 14 of ICCPR respectively.

38. However, a close study of the pleadings of the Applicant particularly the reliefs sought raises two main headings; firstly, right to court and fair hearing which involves the right to have one's matter heard within reasonable time; and secondly, right to effective remedy which shall be set out and determined by the Court as alleged violations. The Court shall first deal with the right to effective remedy.

a. Alleged violation of right to effective remedy under Article 8 of the UDHR

i. Submissions by the Applicant

39. The Applicant stated that as a result of the refusal of the Federal High Court, Kogi State to grant his application for an Order of Mandamus to compel the President of Nigeria to perform his Constitutional responsibility, and being dissatisfied with the refusal, he filed an appeal before the Court of appeal at Abuja to challenge the decision of the Federal High Court.

40. The applicant further stated that since he filed his notice of appeal on the 30/12/2016 and his brief of argument on the 23/03/2017, the court has kept the matter in abeyance completely by adjourning it *sine dine* whereby the "*Respondent's judicial system deliberately denied him effective judicial remedy and or justice ...*" and also "*his right to effective judicial remedy and his right to be heard by an impartial court within a reasonable time are*

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hereby violated...” contrary to the provisions Article 14 and 8 of the ICCPR and UDHR respectively.

41. The applicant submitted that he had had no effective remedy on the account of the delay in hearing his appeal at the Court of Appeal having satisfied all conditions of appeal.


ii. Submissions of the Respondent

42. The Respondent in its defence denies the Applicant’s claim of violation of right to effective remedy and further states that the Applicant unsuccessfully prosecuted a matter at the Federal High Court Lokoja where he was afforded all guarantees of fair trial. When the matter was concluded at the High Court, his application for grant of *mandamus* against the present of the Respondent was refused on legal grounds which he appealed against at the Court of Appeal.
43. According to the Respondent, at the appellate level, the Court of Appeal *suo motu* asked the Applicant to address it on jurisdictional issue over the matter as the subject matter of appeal had been overtaken by events preceding the hearing. Consequently the court held that it lacked the jurisdiction to hear and determine the matter and struck it out.

iii. Analysis by the Court

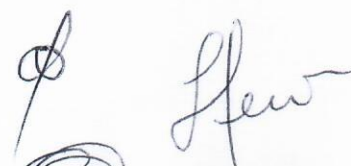
44. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. To give meaning to the right to effective remedy, Section 36(1) of the Constitution of Nigeria, 1999 provides thus;

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court




or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”.

45. The above provision of the Respondent’s Constitution guarantees effective judicial remedy to every person once there is a violation of his human rights. It is also the responsibility of the State to ensure that people have access to domestic courts to address their grievances making non-availability of judicial institutions and access is a negation of responsibility by the State. This was affirmed in the case of *AGRILAND CO. LTD v. THE REPUBLIC OF COTE D’IVOIRE (2015) CCJELR 125 @ pg 141 para 50*, where the Court reiterated that *“the right to effective remedy before the domestic courts implies the opportunity available to everyone to defend his cause before the national courts; ... the State shall put in place effective and efficacious judicial structures before which every citizen may defend his cause”.*
46. Article 8 of the UDHR which provides that *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”* guarantees the availability at national level of a remedy to enforce the rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 8 is thus to require the provision of a domestic remedy to deal with the substance of an *“arguable complaint”* relative to rights of the citizens and to grant appropriate relief.
47. From the above, it is not in doubt that the responsibility to ensure that the Applicant has access to domestic court to defend his cause rests with the Respondent whose duty it is to ensure there is in place an efficient and effective judicial system open to all.
48. The scope of the Respondent’s obligations under Article 8 varies depending on the nature of the applicant’s complaint; however, the remedy required

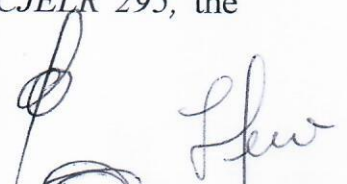
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must be “effective” in practice as well as in law in all situations. Reliefs obtainable by patrons of judicial institutions in pursuance of effective remedy may differ at the court of first instance from an appellate level.

49. The Court observes that in the instant case, the thrust of the Applicant’s case has nothing to do with non-availability of judicial structures where to take his matter to for adjudication. Indeed, the parties are in agreement that the Applicant’s matter was first filed and heard before the Federal High Court, Lokoja where judgment was given; but dissatisfied with the decision, he filed an appeal before the Court of Appeal, Abuja Division and the matter was duly lodged, processed and assigned a suit number CA/A/131/2017.
50. Though, the Applicant is not contending that he was denied access to the court by the Respondent, however, as already noted, the right to effective remedy implies both the availability of access and opportunity to defend ones cause before a competent national court, *and also to grant an appropriate relief*. It must, however, be emphasised that the “effectiveness” of a “remedy” within the meaning of Article 8 does not depend on the certainty of a favourable outcome for an applicant. Nonetheless, once an applicant has fulfilled all procedural requirements in lodging a matter before a competent national tribunal, there must be a determination with the view to producing a remedy, by way of either granting or refusing a relief sought before the disposal of the matter.
51. As earlier on underscored in this judgment, the Applicant is alleging that his appeal to the Court of Appeal, though has procedurally been appropriately received and processed, the Court has delayed in hearing the matter to deliver a verdict by adjourning it *sine die*, which to him amounts to violation of his right to effective remedy. The Respondent has countered this position with an assertion that the matter has been heard and struck out on grounds of lack of jurisdiction.



52. The contention of the parties whether the Applicant's matter was adjourned indefinitely or struck out shall be dealt with later in this judgment. At this stage, granted without admitting that the Applicant's contention that the matter has been adjourned *sine die* is proved, would that amount to violation of his right to effective remedy? The answer will certainly be in the negative; because, when a court adjourns a case, whether *sine die* or *ad diem*, the cause or matter is still pending before it and it can call it up on any day to be decided by it or upon an application by any of the parties. However, when a court stops the proceedings in a case by striking it out, the case is no longer pending before that court and the parties can no longer take further proceedings in the case until it is restored upon an application by any of the parties to do so.
53. As rightly submitted by the Applicant under a different heading, for which this Court has equally been invited to make a determination, an adjournment of a matter *sine die* without a justification, when duly proven as a delay in the trial, will amount to a violation of the right to be heard within a reasonable time under the fair trial guarantees. The point has already been made that a matter adjourned *sine die* may be resuscitated or resurrected either by the court itself, upon due service of a hearing notice to the parties; or by the parties, upon the filing of an application in the matter.
54. By the Applicant's own showing, he had access to both the court of first instance and the appellate court to present his grievances. The applicant has failed to show by way of any documentary proof or otherwise, that he applied to the court to have the matter listed for hearing, but the court refused to do so, thus violating his right to have effective remedy for his alleged violations. The Applicant having failed to give any concrete evidence to show how he has been denied effective judicial remedy, his claim on this issue must fail, and it hereby fails. In *CONGRES POUR LA DEMOCRATIE ET LE PROGRES (CDP) & ORS. v. BURKINA FASO (2015) CCJELR 295*, the



Court held that it “*has always held that it only makes rulings, in principle, on cases of human rights violation which are concrete, real and proven, and not on violations claimed to be possible, contingent or potential*”.

54. Flowing from the above, and without prejudice to the veracity of the claim of the Applicant that his matter at the Court of Appeal has been adjourned *sine die*, the Court holds that the allegation of violation of his right to effective remedy against the Respondent is not sustainable and same is dismissed.

b. Alleged violation of right to be heard within a reasonable time under Article 7(1) of the Charter

i. Submissions of the Applicant

55. One of the contentions of the Applicant is that he was denied a hearing within a reasonable time contrary to the provisions of Section 36(1) of the Respondent’s Constitution of 1999, Article 7 of the Charter and Article 14 of ICCPR. According to him, he filed an Appeal before the Court of Appeal, Abuja Division on the 07/03/2017, was assigned a suit number CA/A/131/2017 and all submissions were ready since July 2017, but till date there is no hearing as the matter was adjourned *sine die* or kept in abeyance.

ii. Submissions of the Respondent

56. According to the Respondent, at the appellate level, the Court of Appeal *suo motu* asked the Applicant to address it on jurisdictional issue over his matter as the subject matter of appeal had been overtaken by events preceding the hearing, which he failed to do. Consequently the court held that it lacked the jurisdiction to hear and determine the matter and struck it out. A move that was, according to the Respondent, justified both for lack of diligence on the

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part of the Applicant and more importantly because the case had lost any meaningful purpose.

iii. Analysis by the Court

57. The provisions of Article 7 (1) of the Charter material to the instant suit provides thus: *“Every individual shall have the right to have his cause heard. This comprises:*

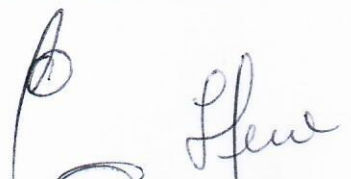
(d) The right to be tried within a reasonable time by an impartial court or tribunal”.

58. Article 14(1) ICCPR provides in part that; *“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”*

59. In pursuant to Article 1 of the Charter which demands that *“The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them,* it is provided under Section 36(1) of the Constitution of Nigeria, 1999 thus:

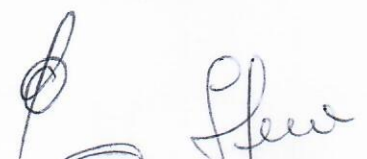
“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality”.

60. The above cited provisions clearly do not only provide for the right of a person to have his or her cause fairly and publicly heard and determined by a tribunal seised with the matter but also require the determination of his civil

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rights and obligations or of any criminal charge against him, to be made within a reasonable time frame for it to meet the acceptable international standard in the dispensation of justice required under the Charter.

61. Indeed, having one's case heard within a reasonable amount of time is a component of the right to be heard by the court contemplated in the Charter for an effective judicial protection of human rights. If the final settlement of a court dispute is delayed unjustifiably, it could have little or even no sense for the parties to the proceedings.
62. In the instant suit, the Court notes from the pleadings and submissions of the parties that, the determination of the allegation of delay which has allegedly occasioned violation of the Applicant's right to have his cause or matter heard within reasonable time is hugely dependent on the establishment of whether or not the Applicant's matter was indeed adjourned *sine die* or struck out; being the contention between the parties.
63. It is trite law that the burden of proof rests on he who asserts and, it is only after he or she establishes the facts asserted, that the burden will shift to the other party to establish otherwise. In other words, the burden of proving the existence or non- existence of a state of a thing or things falls on the party who will fail if no such evidence was adduced, that is to say the Applicant. In *FESTUS A.O. OGWUCHE v. FEDERAL REPUBLIC OF NIGERIA (2018) JUDGMENT NO. ECW/CCJ/JUD/02/18 (UNREPORTED)*, the court stated that "*as a general rule, the burden of proof lies on the Plaintiff. If that burden is met, the burden then shifts to the Defendant, who now has to plead and prove any defence, by a preponderance of evidence*".
64. The question of whether the Applicant was denied the benefit of trial within a reasonable time in the determination of his civil rights and obligations at the Respondent's Court of Appeal is a matter of fact, and in line with the case law of the Court, he bears the burden of proving same since every allegation

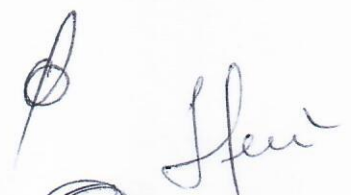
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of human rights violation must be proven with concrete facts. It is not enough to make mere allegations without more. See the case of *HEMBADOON CHIA & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR. (2018) JUDGMENT NO. ECW/CCJ/JUD/21/18, UNREPORTED* where the court declared that it has repeatedly stated that “*it will not act on mere allegation of violation but each allegation must be substantiated with some concrete facts as the case may require*”.

65. The Applicant has indeed adduced sufficient evidence to establish that he invoked the jurisdiction of the Court of Appeal, Abuja Division by lodging an appeal which was duly processed and he further fulfilled all subsequent condition precedents for the hearing of the appeal. He attached as exhibits, records from the Court of Appeal showing the filing, the receipt and registration of the appeal with a suit number, but did not attach a record of proceedings to prove the crux of his case, that is, that the matter was adjourned *sine die*.
66. As previously underscored under paragraph 62 (supra), what is germane to the proof of the case of the Applicant, is to prove that his case has been left unattended to or better still in his own words “*has been adjourned sine die*”. Upon discharge of this burden, the onus will then shift to the Respondent to justify the adjournment as either unavoidable or necessary in the context of the judicial administration of the Respondent.
67. Unfortunately, from the totality of evidence thus far adduced by the Applicant, he has woefully failed to prove on the preponderance of evidence that his matter at the Court of Appeal was adjourned *sine die*. The Applicant stated in his application that the “*failure to determine his appeal within reasonable time by an impartial court and adjourning the matter sine-dine, keeping the appeal completely in abeyance and or abandoned by the court of Appeal, Abuja Judicial Division violates, his right to*”



68. In the opinion of the Court, it is not enough for the Applicant to make such an averment without proof either by producing records of the court showing that the matter was adjourned *sine die* (indefinitely) or completely abandoned especially when the Respondent in its defence has denied his position regarding the fate of the matter at the appellate court. See the case of *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (2010) CCJELR 139* where the Court held that “*This rule that proof rests on he who asserts the affirmative and not on he who denies is an ancient rule founded on consideration of common sense and should not be departed from without strong reasons*”.
69. Undoubtedly, the Court of Appeal, Abuja Division is a superior court of records whose adjournments are documented and it behooves the Applicant to show through certified records of the court that it did adjourn the matter indefinitely as claimed without any justification. There are countless reasons for a court to adjourn proceedings and depending on the peculiarity of a given case, the adjournment may be *sine die* or *ad diem*. As stated somewhere earlier in this judgment, when a matter is adjourned either *sine die* or *ad diem*, there are several administrative procedures of resurrecting or bringing back the case on the cause list of the court concerned. The Applicant has equally failed to apprise this Court of any step taken by him when his case was allegedly adjourned indefinitely.
70. The Applicant also raised delay in the hearing of the appeal since same was filed sometime in 2017. The Court is not oblivious of the date the Applicant’s appeal was filed and the longevity it has suffered, but those are not enough grounds to claim a violation of the right to have his cause heard within a reasonable time, particularly when his assertion relative to the fate of the matter at the Court of Appeal has been vehemently denied and countered by the respondent.




71. The law is settled on the issue of reasonableness, especially as regards the period of trial, which has been held to be dependent on the circumstances and nature of each particular case and the assessment is done based on concrete facts. In other words, in determining delay, regard will have to be given to so many factors like the number of cases on the court's docket, the nature and complexity of the judicial process, superfluous and unjustified delays and other factors that have impact on cases but the applicant did not show this evidence. In *MR. KPATCHA GNASSINGBE & ORS V REP OF TOGO ECW/CCJ/JUD/15/14* it was stated by the court that "*whatever the case maybe, an assessment of the reasonableness of a trial time is done in concreto, with regard to the nature and complexity of the case.....*"
72. The bone of contention between the parties hinges on the fate of the Applicant's appeal. According to the Applicant, the application has been pending before the Court since 2017, same having been adjourned *sine die* or indefinitely kept in abeyance. On the contrary, the Respondent contends that the case was somehow disposed of by the Appeal Court when, on the failure of the Applicant to address the Court on the need to pursue further the proceedings, the Court struck out the case.
73. On the onus of proof, the Applicant on one hand demands the Respondent to produce court records showing his case was struck out as he is not aware of such order. The Respondent on the hand in its defence put the Applicant on similar proof when the Applicant said the matter was adjourned by the court *sine die*. In *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (supra)* the Court also held that:
- "a Defendant is under no duty to lead contradictory evidence having put a Plaintiff to strict proof. What it means is that the Plaintiff must produce sufficient evidence to discharge the evidential burden that rests on him. When*



he succeeds in doing that, and the evidence stands unimpeached, the Court will then accept and act on it”.

74. Save some exceptional situations, which are not applicable in the instant case, it is the time-held principle of proof that generally a respondent is not under obligation to adduce evidence to buttress a point until the Applicant discharges the burden placed on him before the burden shifts to the Defendant. *See MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (supra)*. In the instant case, the burden remains on the Applicant which he failed to discharge
75. For this Court to grant the Applicant’s relief under this heading will amount to it sitting on appeal over the decisions of the national court of Member State of which it has no such mandate. *See FINANCE INVESTMENT & DEVELOPMENT CORPORATION (FIDC) v. REPUBLIC OF LIBERIA (2018) JUDGMENT NO. ECW/CCJ/JUD/23/18 (UNREPORTED)* where the Court stated that it “*has severally drawn a distinction between its lack of jurisdiction to examine the decisions of national courts and its jurisdiction to hear cases of human rights abuses arising therefrom. The Court has consistently held that it cannot sit on appeal over decisions of national Courts of Member States*”. *See also MR. KHALIFA ABABACAR SALL & 5 ORS v. REPUBLIC OF SENEGAL (2018) JUDGMENT NO. ECW/CCJ/JUD/17/18 (UNREPORTED)*
76. Again, when a party did not succeed with his or her application, it does not mean that party has been denied fair hearing. See the case of *HIS LORDSHIP JUSTICE PAUL UUTER DERRY & 2 ORS V. THE REPUBLIC OF GHANA (2019) JUDGMENT NO ECW/CCJ/JUD/17/19 (UNREPORTED)* where the Court held that “*failure to secure a favourable judgement is not tantamount to a denial of the right to fair hearing*”.

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78. The cumulative effect of the Court's analysis of the case of the Applicant under this heading is that he failed to produce concrete and convincing evidence to substantiate his allegation in this respect. He has thus not established a violation of his right to be heard within reasonable time against the Respondent as claimed. Consequently his claim of denial of the benefit of trial within reasonable time is unsustainable and same is dismissed.

XI. REPARATIONS

79. The Applicant sought various reliefs captured under paragraph 24 of this judgment. The Court notes that all the reliefs, mostly declaratory in nature sought by the Applicants were hinged on the alleged violation of the right to have his matter heard within reasonable time and effective judicial remedy which have been unsuccessful as held in this judgment.

80. In international law, it is settled law that where there is a violation there will be reparation for the injury suffered. In the instant case there is no violation of the right of the Applicant, accordingly no reparation is necessary. In *MRS. MODUPE DORCAS AFOLALU v. REPUBLIC OF NIGERIA (2014) CCJELR 229 @ 245 para 69* where the Court stated that *"the principle of reparation constitutes one of the fundamental principles of law regarding liability. It is sufficient that the harm to be repaired must exist in reality, must be directly linked to the victim, and shall be true and capable of being evaluated"*.

81. In *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL (2013) CCJELR 231 @ 257 para 93* the Court reiterated that *"Reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cause and effect between the offence committed and the harm caused"*



82. The Respondent has not been found in violation of the Applicants' right as claimed and therefore, is not liable to pay any reparations.

XII. COSTS

83. The parties did not ask for costs. 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.*" In addition, Article 66(2) of the Rules of Court provide, "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"

84. In light of the provisions of the Rules, since the Respondent did not pray for costs, the Court orders that the parties bear their respective costs.

XIII. OPERATIVE CLAUSE

DECISION

84. 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:

On jurisdiction

i. Declares that it has jurisdiction to adjudicate on the Application;

On admissibility

ii. Declares that the Application is admissible;

On merits

iii. Declares that the Respondent is not in violation of the Applicant's right to have his cause heard within reasonable time as claimed under



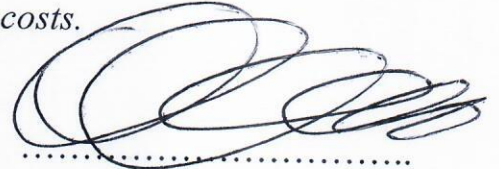
Section 36(1) of the 1999 Constitution of Nigeria, Article 7 of the African Charter and Article 14 of ICCPR;

- iv. Declares that the Respondent is not in violation of the Applicant's right to effective judicial remedy under Article 8 of the UDHR as claimed.*
- v. Dismisses all the claims by the Applicant.*

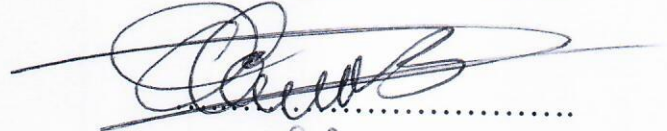
On Costs:

- vi. Orders the parties to bear their respective costs.*

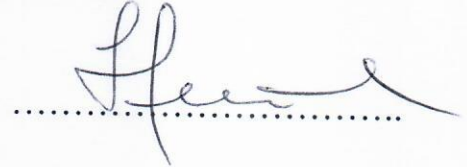
Hon. Justice Edward Amoako **ASANTE**



Hon. Justice Gberi-Be **OUATTARA**

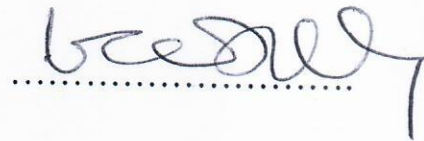


Hon. Justice Januaria T. Silva Moreira **COSTA**



ASSISTED BY:

Dr. Athanase **ATANNON**



Done in Abidjan vide the External Court Session this 27th Day of October, 2021
in English and translated into French and Portuguese.

