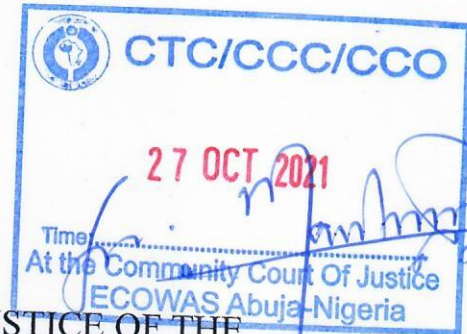


COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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

In the Matter of

KENNETH ROBERTS & 4 ORS. v. THE FEDERAL REPUBLIC OF NIGERIA
Application No: ECW/CCJ/APP/49/18; Judgment No. ECW/CCJ/JUD/38/21

JUDGMENT

ABIDJAN

27TH 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/49/18; Judgment No. ECW/CCJ/JUD/38/21

BETWEEN:

1. KENNETH ROBERTS
2. GOODLUCK EDAFE
3. DR. MATTHEW OGUCHE
4. MACAULEY S. WILLIAM-JUMBO
5. JOSEPHINE E. OKEKE (MRS)

APPLICANTS

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

F. A. OGUCHE, Esq.

K. C. NWAFOR, Esq.

M. S. WILLIAM-JUMBO, Esq.

J. E. OKEKE, (Mrs.)

Counsel for Applicants

Mamuna Lami SHIRE (Mrs.)

D. O. OLABIMTAN, 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. Applicants are Community citizens residing in different parts of Nigeria namely, Port Harcourt, Abuja, Idah and Enugu.
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 Applicants filed this application on the alleged violation of their rights under Article 21 of the Universal Declaration of Human Rights, Article 13



of the African Charter on Human and Peoples' Rights and Article 25 of the International Covenant on Civil and Political Rights.

5. The Applicants' claim is centred on the alleged outrageous cost of nomination and declaration of interest forms being imposed on political aspirants by Political Parties, which takes political office aspirations out of the reach of the middle class and the poor. The Applicants contend that such an act is a gradual and systematic entrenchment of plutocracy, a Government of the rich, by the rich and for the rich to the exclusion of the poor and middle classes.

IV. PROCEDURE BEFORE THE COURT

6. The Originating Application dated 18 October 2018 was filed at the registry of the Court on the same date and served on 24 October 2018 on the Respondent.
7. The Respondent, on the 3 March 2021 filed a Motion for Extension of time to file Defence and Preliminary Objection, Notice of Preliminary Objection and Statement of Defence all dated 26 January 2021 which were served electronically on the Applicants on the same date they were filed.
8. The Applicants filed Further Narration of Facts dated 15 March 2021 on 16 March 2021 and same was served the same.
9. A Rejoinder was filed by the Respondent on 3 April 2017 and served on the Applicant on the same day.
10. On the 16 March 2021, the Applicants again filed a Written Address which was served on the same day.
11. In a Virtual Court Session held on 23 March 2021 where all parties were represented by Counsel, the Motion for Extension of Time was taken and granted. The Respondent's motion for preliminary objection was moved,

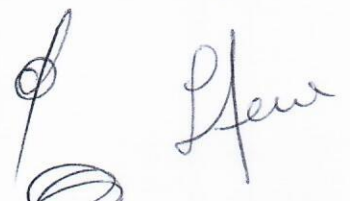
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the Applicants responded to it and the case was heard on the merit. Both Counsel adopted their submissions filed as the arguments in the case and it was adjourned to 30th June, 2021 for Judgment.

V. APPLICANT'S CASE

a. Summary of facts

12. The Applicants in their narrative stated that the Respondent operates a democracy within its national framework where qualified individuals aspire to public offices and legislative houses as provided for in its electoral laws including the 1999 Constitution (as amended), and they are essentially the office of the President and Governors and their Vice and Deputies, the National Assembly namely the Senate and House of Representatives, the Houses of Assembly of each of the States, etc.
13. The Applicants further stated that elections to such offices are done under the platform of different political parties which require the purchase of a declaration of interest and nomination forms from the respective political parties to contest in their direct primaries.
14. The Applicants contend that these forms are sold at high prices to aspirants that many people with genuine political aspirational goals cannot afford it with the resultant effect that such a requirement as a prerequisite to contest for an elective post has become a vehicle to completely marginalize and exclude the poor and middle classes from the streams of governance.
15. It is submitted by the Applicants that contrary to the tenets of democracy which prescribe a government for all, and participation by all in every sphere of its meaning, the act of the registered political parties within the Respondent's political landscape by pegging political activities, particularly

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with regards to elective positions to the high echelon of political society is crude, undemocratic and inhuman.

16. The Applicants contend that the Respondent has an electoral body established under the law, i.e. the Independent Electoral Commission which has the statutory duty to regulate the political parties in all their conducts but the said electoral body has paid lip service to these activities hence this application.

b. Pleas in Law

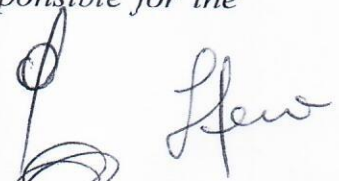
17. The Applicants rely on the following laws:
- i. Article 21 of the Universal Declaration of Human Rights;
 - ii. Article 25 of the International Covenant on Civil and Political Rights;
 - iii. Article 13 of the African Charter on Human and Peoples Rights otherwise known as the Beijing Declaration;
 - iv. African Charter on Democracy and Elections;
 - v. ECOWAS Protocol on Democracy and Good Governance Article 1 (b), (c), & (d);
 - vi. African Charter on Democracy;
 - vii. African Union Declaration on Principles Governing Democratic Elections in Africa;
 - viii. Universal Declaration on Democracy and the Criteria for Free and Fair Elections;
 - ix. UN Declaration on Criteria for Free and Fair Elections.

c. Reliefs Sought by the Applicant

18. For the reasons above, the Applicants are praying the Court to:



- a. **A DECLARATION** that the Applicants, and indeed every citizen of the Federal Republic Nigeria is entitled to the participation in the government of their country either directly or through freely elected representatives.
- b. **A DECLARATION** that the act of the registered political parties in the Respondent state in making payment of huge sum of money as criteria for issuance of nomination and declaration of interest forms as a pre-requisite for one to contest both in the congresses and the primaries is a violation of Articles 21, 13 and 25 of the Universal Declaration of Human Rights, African Charter on Human and Peoples Rights and International Covenant on Civil and Political Rights.
- c. **A DECLARATION** that the said imposition of high and outrageous fees for aspirants to elective positions for political party nomination forms deliberately excludes members within low income bracket from exercising their right of participation pursuant to Articles 21, 13 and 25 of the Universal Declaration of Human Rights, African Charter on Human and Peoples Rights and International Covenant on Civil and Political Rights.
- d. **A DECLARATION** that the said imposition of high and outrageous fees for aspirants to elective positions for political party nomination forms is to enthrone a plutocratic order, defined and circumscribed by the rich, wealthy and influential political class and elites, and a systematic relegation of citizens within the low income bracket, and is an infringement on the fundamental rights and breach of the Respondent's international obligation.
- e. **AN ORDER** compelling the Respondent to detail its electoral body, and all other institutions, organs, agents and authorities responsible for the



regulation of political parties, to take the appropriate measures to ensure that no fees, monies or payments are imposed by political parties upon aspirants for nomination or declaration of interest forms, and as pre-requisite to participation in any process pursuant to the elective positions under the Respondent's Constitution.

f. AN ORDER compelling the Respondent to ensure the full and unimpeded participation of all citizens, rich or poor in all political processes leading to elections into elective positions through the abolition of discriminatory pre-requisites or criteria for such participation.

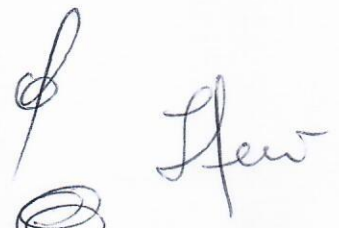
g. AN ORDER compelling the Respondent to pay the sum of N25 Million Naira as exemplary damages for the wanton infringement of the fundamental rights of the Plaintiffs and its citizenry and for breach of its international obligations to respect those rights.

h. AN ORDER compelling the Respondent to pay the cost of this litigation.

VI. RESPONDENT'S CASE

a. Summary of facts

19. In its defence, the Respondent denied each and every material allegation of fact contained in the Applicants' statement of claim. In further response, the Respondent states that the said forms cannot be considered to be sold at high prices to aspirants as there was no political party that had less than five people who obtained expression of interest forms and nomination forms across the political parties.

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20. The Respondent states that the high numbers of the good people of Nigerian obtaining forms from the political parties as and when necessary, is an ample demonstration that both the poor and the middle class have been actively participating as contestants into elective position in the governance of the Respondent contrary to the Applicants' assertion that such groups have been marginalized.
21. The Respondent further contends that there is no legislation as of date under which it can compel the political parties to stop accepting money for nomination and expression of interest forms.
22. It is also contended by the Respondent that the Applicants have not disclosed any actionable wrong done to them by the Respondent that warrants the Court to grant them the orders sought. Again, their claim for damages is not substantiated by facts to support any assessment of damages in their favour. The Respondent puts the Applicants to the strictest proof thereof.

b. Pleas in Law

23. By way of pleas in law, the Respondent solely relied on its 1999 Constitution (as amended) and some selected jurisprudence of this Court.

c. Reliefs sought

24. The Respondent urged the court to dismiss the claims of the Applicants as same are frivolous, speculative, vexatious, baseless, incompetent and an abuse of court process.

VII. REPLY BY THE APPLICANTS

25. The Applicants, by way of reply filed further narration of facts which sought to give further and better particulars of their claim by stating that the cost for

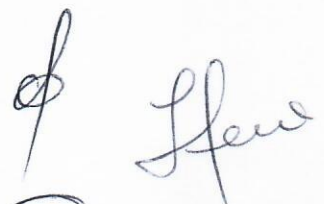


purchase of nomination and declaration of interest forms differ from one political party to another, but they are generally high and outside the reach of the average Nigerian.

26. They alleged that the cost of forms for candidates for president in the last election for the two leading political parties, i.e. All Peoples Congress (APC) and the People's Democratic Party (PDP), was Fifty Five Million Naira (N55, 000,000.00) only, amidst other sundry charges whereas that of the Governorship positions was Thirty Five Million Naira (N35, 000,000.00) and that of the Legislative Houses hovering between Twenty Five Million Naira-Forty Five Million Naira (N25, 000,000.00 –N45, 000,000.00).
27. Contrary to the assertion of the Respondent that some political parties offered their forms free of charge, the Applicants alleged that the other political parties demand for almost the same range of fees as the two major ones but with just a little variation for candidates to vie for public offices.
28. The Applicants stated that the average salary for the civil servant per annum is not up to One Million, Five Hundred Thousand Naira (N1,500,000.00), and the average income per capita for a greater percentage of Nigerians per annum is not up to Eight Hundred Thousand Naira (N800,000.00) only.

VIII. PRELIMINARY OBJECTION TO JURISDICTION

29. The Respondent on the 3rd March 2021 filed a Notice of Preliminary Objection wherein it raised objection to the jurisdiction of the Court in entertaining the present suit and premised same on the following grounds:



- a. *That the subject matter of this suit does not fall within the purview of Article 9 of the Supplementary Protocol of the Court;*
- b. *That this Court does not operate as a local Court for Member States,*
- c. *That the subject matter of the suit relates to the internal affairs of the Member State and cannot be traced under the jurisdiction of this Court;*
- d. *That there is no reasonable cause of action against the Defendant.*

30. The Court notes from the above grounds of the objection that there are two main issues i.e. lack of jurisdiction and absence of reasonable cause of action begging for consideration by the Court which shall be set out and determined in seriatim.

a. Lack of jurisdiction

31. On the issue of jurisdiction, the Respondent submitted that the subject matter of the instant suit does not fall within the purview of Article 9 of the Supplementary Protocol (A/SP.1/01/05) as amended relating to the Community Court of Justice. According to the Respondent, the subject matter concerns its internal affairs and this Court lacks the capacity to operate as a local court over such matters.

32. The Applicants, on the other hand stated in their pleadings that the instant action is anchored on the violation of their right of participation in the political activities of the Respondent State, occasioned by the discriminatory approach of levying exorbitant charges by political parties in the determination of eligibility and candidacy for elections. They claim that the act of charging such huge amounts of money as a requirement for eligibility and candidature for political offices impugns the provisions of Article 13(1) & (2) of the African Charter.

Analysis by the Court



33. It is provided for under Article 9(4) of the Supplementary Protocol on the Court as amended as follows:

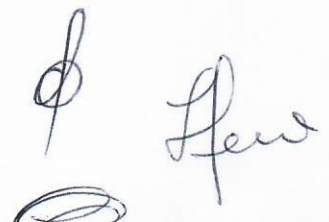
“The court has jurisdiction to try cases of violation of human right that occur in any member state”;

34. The issue of whether the jurisdiction of this Court is amenable to cases of violation of human right that occur in a Member States is not foreign to the Court. When the issue came up in the case of *MOUSSA LEO KEITA v. THE REPUBLIC OF MALI (2004-2009) CCJELR 63*, it was held that:

“The court reaffirmed its competence to adjudicate on cases of human rights violation in accordance with Article 9 (4) and (d) of its 2005 Supplementary Protocol. Also the specific human right that is violated must be clearly stated in his initiating application”.

35. The present action is alleging the neglect or dereliction of duty on the part of the Respondent’s agents and authorities in regulation of political parties leaving them to levy unbearable cost of expression and nomination forms for political offices which has allegedly occasioned the violation of the right to participate in the government of the Respondent State. In support of their case, the Applicants copiously cited and placed reliance on Article 13 of the African Charter which recognizes and guarantees as a human right, their right to freely participate in governance of their country.

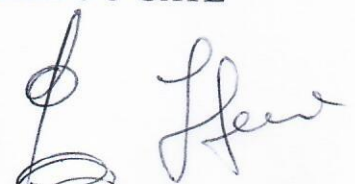
36. In the case of *BAKARE SARRE v. MALI (2011) CCJELR pg. 57*, the Court stressed that *“Once human rights violations which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case”*. It is not in doubt that the Applicants’ alleged violations against the Respondent are founded on the African Charter to which the Respondent is a signatory.



37. It is on the strength of the above analysis based on the pleadings and submissions by the parties before it that the Court holds that the contention by the Respondent that the present application does not fall within the purview of Article 9 of the Supplementary Protocol on the Court holds no weight. The reason being that the provisions of Article 9 (4) (supra) speak specifically to human rights violation that may occur in a Member State. Consequently, the Respondent's objection under this heading is not sustainable and same is dismissed.
38. The Respondent again contends in its Preliminary Objection that the subject matter of the suit relates to its internal affairs, and to that extent this Court has no jurisdiction. The Court reiterates the position succinctly espoused in its jurisprudence to the effect that a Member State who has ratified the African Charter has acknowledged the supra-nationality of the ECOWAS and therefore has an obligation to respect and protect the rights set forth in the Charter notwithstanding its domestic laws.
39. In the case of *AZALI ABLA & ANOR. v. REPUBLIC OF BENIN* (2015) CCJELR 13 @ pg. 22 the Court held that: "*ECOWAS is indeed an international organization, to which States have undoubtedly ceded powers and remits; and once so ceded, primacy is accorded the norms adopted by the overarching international body constituted as ECOWAS, over and above the domestic norms of the individual Member States forming that international organization... The resultant effect therefore is that the constituent Member States may not, by the same token, invoke their domestic law as a means of shirking their Community obligations under ECOWAS*". See also *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA* (2010) CCJELR at page 159 para 48.

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40. Perhaps it is needless to emphasise that every human right issue that comes before the Court in one way or the other strikes cords with the internal affairs of the Member State concerned. Whereas the Court is proscribed from examining the internal affairs of Member States in *abstracto*, where any impugned activities of any Member State is implicated in an application before the Court, the Court has an unfettered jurisdiction to examine the said activities with the view to ascertaining whether any human right violation has occurred. This is even so where the rights involved are protected by the laws which have been domesticated by the Member State under reference.
41. The above position was amply reiterated in the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) v. FEDERAL REPUBLIC OF NIGERIA & UNIVERSAL BASIC EDUCATION COMMISSION (UBEC) (2010) CCJELR pg. 189 para 14*, where the Court held that “*it has Jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of the Federal Republic of Nigeria, cannot oust its jurisdiction*”.
42. Also, in the case of *HIS EXCELLENCY VICE-PRESIDENT ALHAJI SAMUEL SAM-SUMANA v. REPUBLIC OF SIERRA LEONE (2017) JUDGMENT NO. ECW/CCJ/JUD/19/17 @ page 12-13, Unreported* the Court held that: “*The African Charter on Human and Peoples’ Rights and other international instruments invoked by the Applicant are indeed legal instruments the Court refers to when considering cases of human rights violations that occur in any Member State. Once the Plaintiff has raised an element of Human Rights Violation, which falls within any human right protection instruments in any ECOWAS Member State, it suffices for the Court to establish its jurisdiction which shall not be tied to whether the allegations are true or otherwise*”. See also *ELHAJI MAME ABDOU GAYE*



v. THE REPUBLIC OF SENEGAL ECW/CCJ/RUL/09/11 reported in (2011) CCJELR pg. 250 para 29.

43. Consequently, the objection to the jurisdiction of the Court by the Respondent on the ground that the subject matter concerns its internal affairs is also not sustainable and same is dismissed on the authority of the jurisprudence analysed supra.

b. Absence of Reasonable Cause of Action

44. The Respondent further contends in its Preliminary Objection to the jurisdiction of the Court that the Applicants' case is devoid of any reasonable cause of action. Arguing its case under this heading, the Respondent submitted that the Applicants' Application neither alleged any wrong-doing by the Respondent against their interest nor any consequence suffered by them as a result of the act or omission of the Respondent.

45. From the pleadings of the Applicants, they brought this action challenging the cost of expression and nomination forms by political parties in Nigeria. It is the view of the Applicants that the political parties are making it impossible for the poor in the society to contest elections. The Applicants contend that the Respondent has an electoral body established under the law, i.e. the Independent Electoral Commission (INEC) which has the statutory duty to regulate the political parties in all their conducts but the said electoral body has paid lip service to these activities hence these application.

Analysis by the Court

46. It is trite that for a court to be clothed with jurisdiction, a cause of action must be disclosed in any given action, and this Court has in plethora of cases affirmed this position. One of such cases is *EBERE ANTHONIA AMADI & 3 ORS. v. THE FEDERAL REPUBLIC OF NIGERIA (2019) JUDGMENT*

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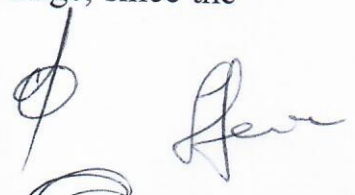
NO ECW/CCJ/JUD/22/19 @ Pg. 10 (UNREPORTED) where the Court held that:

“A cause of action is the heart of any complaint, and it is gleaned from the pleadings that initiate a lawsuit. Without a proper and adequately stated cause of action a Plaintiff’s case may be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the Plaintiff to relief. All the elements of each cause of action must be detailed in the application”.

47. Undoubtedly, a factual situation capable of giving rise to a reasonable cause of action as a matter for which an action can be brought differs in varying situations. The Court, in an attempt to define what constitutes a cause of action in any given situation, held in the case of THE REGISTERED TRUSTEES OF JAMA’A FOUNDATION & 5 ORS v. FEDERAL REPUBLIC OF NIGERIA & 1 ANOR. (2020) ECW/CCJ/JUD/04/20 @ pg 20, UNREPORTED as follows:

“a legal right predicated on facts upon which an action may be sustained. It is a 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 suit is grounded whether or not legally maintainable”. See also THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT V THE FEDERAL REPUBLIC OF NIGERIA AND 1 OTHER JUDGMENT N°: ECW/CCJ/JUD/19/16 @ pg. 22

48. When an action is challenged at the preliminary stage of the proceedings on ground of absence of a reasonable cause of action, the core duty of the Court is to peruse the pleadings of the Applicant to establish whether a probable cause of action in its slightest sense has been made. At this stage, since the

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Court is precluded from any extensive evaluation of the substance of the case, a prima facie case borne out of the Applicant's initiating application suffices.

49. The Court in reiterating the above mentioned principle, held in the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (2014) CCJELR 249 @ page 268, para 79* that: *"The Plaintiffs, by alleging facts from which can be inferred, at least prima facie, a remote possibility that the Defendants may have violated their human rights, have established in their pleadings an arguable cause of action"*.
50. The thrust of the Applicants' complaint against the Respondent gleaned from the alleged facts, is that a public institution clothed with the authority to regulate the conduct of political parties, has failed to live up to its mandate. As a result of the failure, the political parties under the instrumentality of levying exorbitant cost for expression of interest and nomination forms, are by their conduct, impeding the right of participation in government by the ordinary citizen of Nigeria who nurtures political aspirations.
51. In the case of *OBINNA UMEH & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA (2020) JUDGMENT NO. ECW/CCJ/JUD/.../20 pg. 9 para 21, (Unreported)* where the core of the Plaintiffs' case concerned an alleged violation of Article 13 of the African Charter, the Court recalled its numerous jurisprudence to the effect that *"once an allegation of human rights violation is made, the Court will assume jurisdiction simpliciter over the matter as a separate subject from the determination of the veracity of the claims being sought as amounting to violation of human rights"*.
52. The Applicants have indicated in their narrative the effect of the exorbitant imposition of cost for the purchase of declaration of interest and nomination

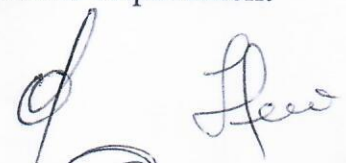


forms which allegedly impedes on the rights of citizens. This allegation cannot be overlooked in the light of the provisions of Article 13 of the African Charter, from which can be inferred, at least *prima facie*, violation of right to participate in political activities. The right to participate in political activities is an internationally guaranteed right and therefore an alleged violation of this right constitutes a reasonable cause of action.

53. Accordingly, the Court is convinced and hereby holds that the Applicants have established in their pleadings an arguable cause of action. Consequently, the objection of the Respondent under this heading against the jurisdiction of the Court is equally unsustainable and same is dismissed.
54. Having dismissed the Respondent's Preliminary Objection against the jurisdiction of the Court in its entirety, and on the strength of the Article 9 (4) of the Supplementary Protocol on the Court as amended, and the subject matter of the instant suit which is on violation of right to participate in politics provided for within the African Charter, the Court holds that it has jurisdiction to entertain this suit.

IX. ADMISSIBILITY

55. It is the statutory position of this Court that even where jurisdiction has been established, a case of violation of human right is only admissible under certain defined strictures which every Applicant must satisfy before his or her case is admitted. To this end, Article 10(d) 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*".
56. This Court has consistently ruled that save in certain exceptional circumstances, the victim status of an applicant is a cardinal requirement



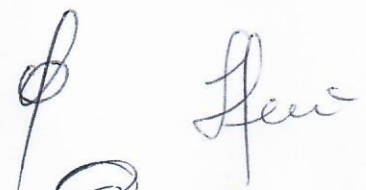
for the admissibility of any application under article 10 (d) of the Protocol on the Court, as amended. In *ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR, GOMBE STATE & FEDERAL GOVERNMENT OF NIGERIA (2012) CCJELR 81@ pg 96 para. 46*, the Court held:

“By virtue of Article 10(d) of the Supplementary Protocol, for every action relating to human rights protection, cases before the Court must be filed by an individual or a corporate body who fulfils the requirement of being a victim. As far as the texts of the Court are concerned, it is the essential criterion which enables one to declare whether an application for human rights violation is admissible, even though not an exclusive criterion.” See also *BAKARY SARRE & 28 ORS. v. MALI (supra)*.

57. Therefore, in pursuant to Article 10 (d), this Court has made it abundantly clear that for any action by any individuals to succeed, the Applicant will be required as a matter of law to establish the status of either a victim or an indirect victim. See *AMNESTY INTERNATIONAL TOGO & 7 ORS v. THE TOGOLESE REPUBLIC (2020) JUDGMENT NO. ECW/CCJ/JUD/09/20 @ para 33 UNREPORTED*.
58. The import of the above stated principles as expatiated in the jurisprudence of the Court is that, in order to substantiate an action concerning the violation of human rights, it is necessary that the applicant be a victim and that the Respondent State be responsible for the alleged violations. Therefore, the essential criterion for human rights complaint before this Court is that the applicant is a victim of the human rights violation. See *TAHIROU DJIBO & 3 ORS v. THE REPUBLIC OF NIGER (2020) JUDGMENT NO. ECW/CCJ/JUD/13/2020 @ pg 25 UNREPORTED*. See also *OUSAINOE DARBOE & 31 ORS v. THE REPUBLIC OF GAMBIA ECW/CCJ/JUD/01/20 @ pg. 36*.



59. It is not in doubt that the Applicants brought the present action in their personal capacities. Equally not in doubt is the fact that there is nothing to show that any of the Applicants in this case actually applied for and was denied the nomination or declaration of interest form on the account of their inability to pay the required amount. There seems to be no concrete link between the alleged action of the political parties and the interest of the Applicants as aspirants.
60. However, the jurisprudence of the Court is reflective of an occasion where the Court has considered the peculiarity of a given case to admit same in the absence of concrete or actual violation having been committed. In other words, the court can admit a case where there was no actual victim, but there are potential victims occasioned by imminent violation of their rights. The case in point is *CONGRES POUR LA DEMOCRATIE ET LE PROGRES (CDP) & ORS. v. BURKINA FASO (2015) CCJELR 295*, where the Respondent State contended that the case was inadmissible because none of the rights at stake had actually been violated at the time the Court was seised with the case but violation was very imminent. The Court having underscored the requirement of a victim status to ground an action before it in the following words: *“It would amount to consigning its own time-held case law to oblivion if the Court should rule that it may legitimately entertain violations which have not yet occurred, but are very imminent”*, nevertheless went ahead at page 305, paragraph 17 of the judgment to hold that: *“Therefore, in principle, a human rights violation is found à posteriori, by way of the evidence that the violation in question has already occurred. The Court has further ruled, however, that it may occur that in specific circumstances, the risk of a future violation confers on an applicant the status of a victim. Thus, there may be reasonable and convincing indications of the probability of the occurrence of certain*

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actions. Given such specific circumstances, which the Court considers akin to the conditions surrounding the instant case, the Court can perfectly adjudicate on the case”.

61. Relating the above authority to the instant case, the thorny question that begs to be answered in this peculiar case is, “how can citizens with political aspirations who are living in impoverished circumstances be able to demonstrate that they are victims of the systemic violations complained about in this case?” This is more so because, the political parties first and foremost do publish the rules of engagement which among other things, outline fees pertaining to the eligibility of prospective candidates for the various political offices. At that stage, according to the Applicants, due to the exorbitant nature of the cost involved, members of the low income bracket nurturing any aspiration for political office are automatically chickened out of the race on the account of their financial incompetence.
62. From the above scenario, a person with political aspirations like the Applicants may be a victim of the systemic violation without nothing to show in concrete terms of actual rejection of his candidature because he lacked the financial wherewithal to activate the process in the first place.
63. Given such peculiarity of the instant case, its admission in the absence of actual injury to the Applicants on the grounds of the existence of systemic prejudice to all those low income earners with political aspirations but may not be able to actualise same due to the actions of the political parties, sits well with the justice of this case. This, in the opinion of the Court is justified to afford the Court opportunity to examine the complaint of the Applicants to unravel the alleged violations, if any, of Article 13 of the African Charter.



64. Furthermore, as has been emphasized time and again by this and other courts globally, it is the duty of the Court to aim at doing substantial justice between the parties and not to let that aim be turned away by technicalities.
65. Consequently, the Court holds that the instant case is admissible in the absence of actual injury to the Applicants as an exceptional circumstance where there is an alleged imminent violation which the Court considers sufficient fulfilment of the requirement of a victim status contemplated under Article 10 (d) of the Supplementary Protocol on the Court as amended.

X. MERIT

Allegation of violation of the right to participate in government contrary to Article 13 of the African Charter

a. Submissions by the Applicants

66. On merit, the claim of the Applicants hinges on the sole violation of their rights to participate in the government of their State contrary to Articles 21 and 25 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights respectively and which are in *pari materia* with Article 13 of the African Charter being pivot of the Applicants' claim in the instant case.
67. The crux of their application is that the imposition of exorbitant fees by the Political Parties for obtaining declaration of interest and nomination forms inhibits persons within the low income bracket with genuine political aspirational goals from acquiring these forms and thereby violating their right to freely participate in the government of the Respondent. They further contend that the existence of this requirement as a prerequisite to contest for

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an elective political post is to completely marginalize and exclude the poor and the middle class from the streams of governance.

68. In attributing the alleged violation to the Respondent, the Applicants contend that the Respondent has an electoral body established under the law, i.e. the Independent Electoral Commission (INEC) which has the statutory duty to regulate the political parties in all their conducts but the said electoral body has failed to live up to its mandate and thereby allowing the political parties to decide on the fate of the peoples' participation in the politics of the Respondent.

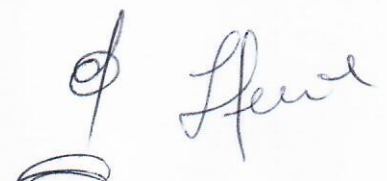
b. Submissions by the Respondent

69. The Respondent, while admitting that fees are charged by the political parties for the forms, denied that these charges are too high as there was no political party that had less than five (5) people who obtained expression of interest and nomination forms across the political parties divides. Respondent further claimed that with these numbers, the good people of Nigeria cannot be said to have been marginalized.

70. The Respondent contends that there is no legislation as of date under which the Respondent can compel the political parties to stop accepting money for nomination and expression of interest forms.

c. Analysis by the Court

71. Article 13 (1) of the African Charter guarantees every citizen "*the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law*". The right is not only recognized but also enforceable and it grants direct and free access to vote and be voted for in accordance with the provisions of the law. Any act which unjustifiably restricts citizens' participation in the



governance of their country will amount to a violation. See *OMAR JALLOW & ANOR v. REPUBLIC OF THE GAMBIA (2016) JUDGMENT NO. ECW/CCJ/JUD/33/16 @ PG 11, UNREPORTED.*

72. A reasonable deduction can be made that in order to give meaning to the right to be voted for, Article 13 further imposes as an aspect of the right to participate freely in the government of one's country, a positive obligation on the State to regulate carefully the procedures by which any political aspirant is nominated and processed before his candidature becomes acceptable to the designated State agent responsible for the conduct of elections.
73. To this extent, procedural guarantees surrounding expression of interest and nomination of candidates for elections to key political offices within the State is deemed an integral aspect of the right to free political participation in government. Indeed, it stands to reason that the concept of free participation in the government of a country would be at risk in the absence of proper regulatory framework of the procedures pertaining to the expression of interest and nomination of candidates for elections to the key political offices in the State.
74. The State's duty to properly regulate the conduct of elections to give meaning to the right guaranteed under Article 13 qualifies the right and detracts from its absoluteness as was held in the case of *HIS EXCELLENCY VICE-PRESIDENT ALHAJI SAMUEL SAM-SUMANA v. REPUBLIC OF SIERRA LEONE (2017) (supra) @ page 13*, that "*The right of a person to participate in government of his or her State is a recognized and enforceable human right. This right is not absolute but can be encroached upon in accordance with the law*".
75. In *OBINNA UMEH & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA (supra) @ para 61*, the Court held that "*The right to participate in the government*



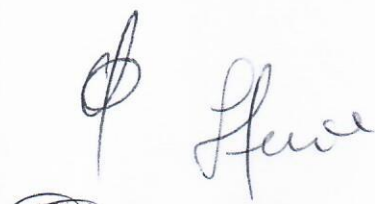
of one's country as provided for under Article 13 of the African Charter is not absolute due to the draw back clause that gives the state party the leverage to enact laws to streamline the realization of individual aspirations of participating in the government of the state."

76. The Court notes that the facts/circumstances that gave rise to this suit as presented by the Applicants point to a restrictive practice by political parties in imposing exorbitant fees to secure party nomination to contest for some important national electoral positions such as those of President, Governors and Members of the Legislative Assemblies.
77. The Court recalls its earlier position that there is a positive obligation on the State to regulate carefully the procedures by which any political aspirant is nominated and processed as candidate for national elections, however, since in the instant case, according to the application itself, the impugned practice is not directly attributed to the Respondent, it is imperative to properly delineate and analyse the legal relationship between the Respondent and the political parties within their electoral/political landscape in order to establish a liability against the Respondent. Thus, more is required to show how the impugned practice of the political parties relates to the Respondent, to entail her responsibility and requires her accountability.
78. In other words, it is the considered view of the Court that a just determination of this case, from the legal principles thus far espoused, will not only be to establish whether if considered as a whole, the fees charged by political parties for the said forms are exorbitant and not within the reach of the common man, but also whether within the Respondent's electoral/political landscape, the levying of the charges are backed by law and a fortiori sanctioned by the drawback clause of Article 13 of the African Charter.

Respondent's Electoral/Political Landscape

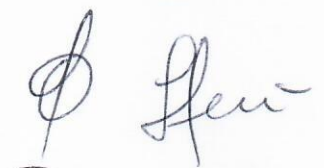
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79. There are various electoral laws in the Respondent State that govern the process of electing people into political offices. The foundational law as far as elections are concerned is the 1999 Constitution of the Federal Republic of Nigeria which among other things establishes by Section 153, the Independent Electoral Commission (INEC) as the Respondent's agent/institution mandated to organize public elections.
80. On qualifications for election, Section 65 (2) b of the Constitution provides, inter alia, "*A person shall be qualified for election if he is a member of a political party and is sponsored by that party*". Section 228 of the Constitution also empowers the National Assembly to make laws to "*provide guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions*".
81. The National Assembly of the Respondent duly passed the Electoral Act No. 6, 2010 (as amended) to serve as the primary legislation governing the conduct of elections and by Section 80 of the Act, political parties shall be bodies corporate whereas Section 31 provides that every political party shall submit to INEC in the prescribed forms, the list of the candidates the political party proposes to sponsor at the elections, "*provided the Commission shall not reject or disqualify the candidate(s) for any reason whatsoever*".
82. Paragraph 15(c) of the Third Schedule, Part 1, Section F of the Constitution provides that INEC shall "*monitor the organisation and operation of the political parties, including their finances, conventions, congresses and party primaries*" whiles Section 87 of the Act deals with nomination of candidates by Political Parties for public elections through primaries to be conducted in accordance with the constitution of the parties and rules governing procedure



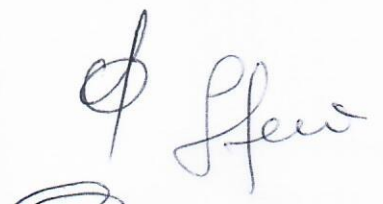
for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in their constitutions.

83. Whiles the Applicants are imputing responsibility to the Respondent for its agent's i.e. INEC dereliction of duty leading to the exorbitant charges by the political parties, the Respondent, on her part admits that monies are paid by aspirants to obtain the declaration of interest and nomination forms but contends that there is no legislation as of date under which the Respondent can compel the political parties to stop accepting monies for declaration of interest and nomination forms.
84. The Court notes that the subject matter of the instant suit is an offshoot of the constitutional requirement within the polity of the Respondent that mandates elections to key political offices to be strictly under the ticket of a political party which was unsuccessfully challenged before this Court. See *OBINNA UMEH & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA (supra)*.
85. The right to participate in the politics of a country is crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. However, democratization itself is a process that should not be drawn out longer than necessary, but which requires a period of stabilisation and a succession of elections and governments for it to be considered established. In the process, new laws are promulgated along the way to address emerging concerns and any known lacunae in the electioneering processes.
86. The above statement is akin to the Respondent's democratic journey where The National Assembly, having realised among other things, the colossal charges for nomination forms by the political parties, in 2018 passed an extensive new Electoral Act Amendment Bill awaiting Presidential assent. If assented to, the Act seeks to address a plethora of issues peculiar to the

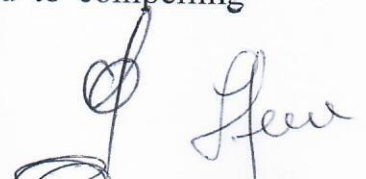


Respondent's polity such as the cost of politics, internal democracy involving charges for expression of interest and nomination forms.

87. The Court recalls that Article 13 of the Charter states in clear terms that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives "in accordance with the provisions of the law".
88. Again, in the case of *OBINNA UMEH & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA (supra) @ para 55*, the Court held that "it is trite principle in all jurisdictions where international law is applicable that in the interpretation of treaties, wherever the term in "**accordance with the law**" appears, it is usually in reference to the "**domestic or national law**" of the state party to the treaty as the case may be. It is also commonly agreed in all jurisdictions of the world that national or state parties enjoy a very wide margin of appreciation/flexibility/leverage in the application of their laws in the determination of what is in accordance with the law (so long as the law is not arbitrarily applied), because national authorities know and understand their citizens and territory better".
89. It is obvious from the political sphere, particularly the electoral legal architecture espoused above that the Respondent's extant electoral laws relative to the expression of interest and nomination of candidates for national elections (being complained about by the Applicants), have exclusively reserved those matters to the confines of the registered political parties to be governed by their Constitutions and rules as corporate bodies. The imposition of fees, therefore, becomes an internal affair of the political parties beyond the control of INEC who is bereft of any legal competence to interfere in those aspect of the political parties' organization.

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90. Though, INEC has been given a minimal responsibility to “*monitor the activities of the political parties*”, the said mandate clearly excludes control over the levying of fees by the political parties against those who expressed interest and picked their nomination forms to be sponsored by them. The Court, therefore, agrees with the Respondent when it asserts that there is no legal basis as of now that vests the Respondent with authority to control the charging or capping of nomination fees by the political parties.
91. In the European Court case of *SEYIDZADE v. AZERBAIJAN* (Application no. 37700/05) JUDGMENT STRASBOURG 3 December 2009: in which the applicant’s request for registration as a candidate was refused on the basis of Article 85 (II) of the defendants State’s Constitution, which banned “clergymen” from being elected to parliament, and Article 14.2.4 of the Electoral Code, which made “clergymen” ineligible to serve as members of parliament while they were engaged in “professional religious activity. The court held as follows:
- “Stricter requirements may be imposed on the eligibility to stand for election to parliament, as distinguished from voting eligibility. States have broad latitude to establish constitutional rules on the status of members of parliament, including criteria for declaring them ineligible. These criteria vary according to the historical and political factors specific to each State. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another.”*
92. In the case of the Respondent in the instant suit, obviously, there might be a justification for her policy to register candidates for national elections exclusively through political parties apparently to respond to compelling



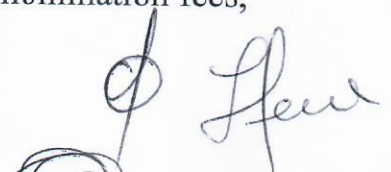
social needs based on diverse historical, political and social grounds. Perhaps, it is needless to emphasise the need to create and strengthen the party system as a response to an historical and political reality; the need to organize efficiently the electoral process in a society of close to ninety million voters, in which everyone would have the same right to be elected to political offices, needs a system properly engineered to articulate and cater for its peculiarity.

93. The European Court in the case of *SEYIDZADE v. AZERBAIJAN* (*supra*) again held in the interpretation of the import of Article 3 Protocol 1 of the European Human Rights Convention – which; as already stated; is in *pari-materia* with Article 13 of the African Charter as follows:

“The Court has established that this provision guarantees individual rights, including the rights to vote and to stand for election. As important as those rights are, they are not, however, absolute. Since Article 3 recognizes them without setting them out in express terms, let alone defining them, there is room for “implied limitations”, and contracting States have a wide margin of appreciation in this sphere. In their internal legal orders they may make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3.”

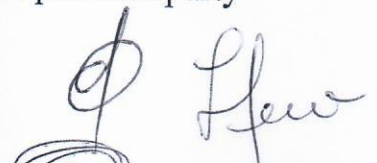
94. As already alluded to in this judgment, the Respondent, within its margin of appreciation in the context of its political sphere, has legislated that key political offices shall be contested by candidates submitted and sponsored by registered political parties. Political parties per the extant laws of the Respondent are juristic persons whose internal arrangements are exclusively reserved for its members save areas legislated out to be controlled and supervised by INEC.

95. The cumulative effect of the extant electoral laws of the Respondent have made the charging or capping of expression of interest and nomination fees,



a prerogative of the political parties, obviously in pursuant to their constitutions and internal rules and regulations which are promulgated and agreed upon by their members. It must be emphasised that internal rules and regulations of political parties including their constitutions are promulgated by the registered members at the delegates' conference, congress or meeting as sanctioned by their constitutions.

96. It follows from the foregoing, that the Respondent having exercised its margin of appreciation, reflective in its extant laws to reserve the nomination of candidates and related issues to the registered political parties within its political landscape, until the laws are altered to take same from the domain of the political parties or to give the INEC control over same, as have been intended in the Electoral Amendment Act of 2018, the Respondent will not be in violation of the activities of the political parties relative to the charging of nomination fees.
97. The impugned practice of the political parties, having the legal backing in accordance with the extant laws of the Respondent, invariably clothes and brings such activities in conformity with the provisions of the Article 13 of the African Charter that states that the enjoyment of the right to participation in the government of a country is subject to the laws in place of the country concerned.
98. The Court is not oblivious of its cherished and time-held case law relative to the non-requirement of exhaustion of local remedies before assessing its jurisdiction. However, it is observed that most of the legal texts pertaining to the issue raised in this application are within the national legal system of the Respondent, including the constitutions, rules and regulations of the political parties involved. Moreover, the Respondent State, like all other Member States, has competent administrative and judicial organs saddled with the requisite authority and competence to interpret and apply those texts with the view to addressing the concerns of any individual member of a political party

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who thinks the internal democratic structures or arrangements of the parties are not enough to guarantee their participation in the government of the Respondent.

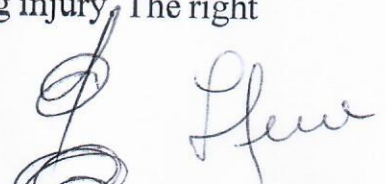
99. In conclusion, it is clear that the Respondent's electoral legal regime does restrict the right of the Applicants and for that matter the ordinary citizens in the low income from participating directly or indirectly in the elections of the country. Indeed, if the Applicants are members of any registered political party capable of submitting and sponsoring candidates to INEC for political office in the Respondent, then they have indirectly participated in the government of the Respondent anytime their parties field candidates for national elections.

100. The drawback clause in Article 13 of the African Charter amply puts the national authorities in the best position to enact local laws in accordance with the Charter to address peculiar circumstances. The proper exercise of that mandate does not amount to violation of their obligations as signatories to the Charter. The Court therefore holds that the Respondent is not in breach of its international obligations as enshrined in the African Charter on the account of the impugned practice of the political parties charging exorbitant fees for nomination of candidates for elections.

XI. REPARATIONS

101. The Applicants sought various reliefs captured under paragraph 18 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 participate in the government of the Respondent which has been unsuccessful as held in this judgment.

102. In international law, the obligation to afford reparation arises as a consequence of the breach of a primary obligation causing injury. The right



to reparation under international law obliges States to ensure that victims are able to obtain such reparation in law and in practice when the State is found culpable.

103. 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

104. The Applicants did ask for costs whereas the Respondent did not. 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.*"

105. 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

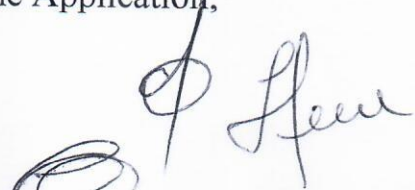
XIII. OPERATIVE CLAUSE

DECISION

106. 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. Dismisses the Preliminary Objection of the Respondent in its entirety and declares that it has jurisdiction to adjudicate on the Application;

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On admissibility

ii. Declares that the Application is admissible;

On merits

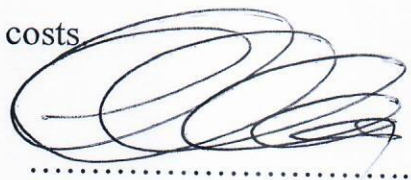
iii. **Declares** that the Respondent is not in violation of the right to participate in the government of a country as claimed by the Applicants under Article 13 of the African Charter;

iv. **Dismisses** all the claims by the Applicants.

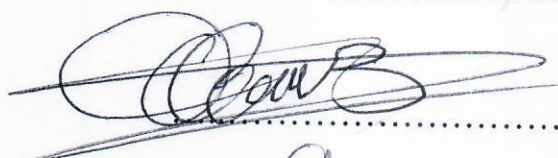
On Costs:

v. **Orders** the parties to bear their respective costs

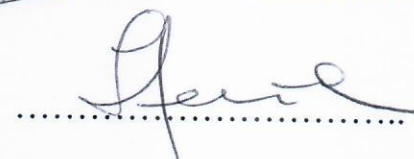
Hon. Justice Edward Amoako **ASANTE**



Hon. Justice Gberi-Be **OUATTARA**

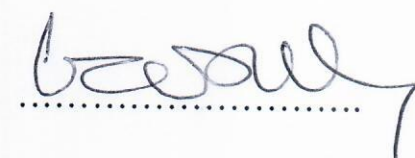


Hon. Justice Januaria T. Silva Moreira **COSTA**



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.

