



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

In the Matter of

**COUNSELLOR MUHAMMAD KABINE JA'NEH v. THE REPUBLIC
OF LIBERIA & 1 ANOR.**

Application No: ECW/CCJ/APP/33/19 Judgment NO. ECW/CCJ/JUD/28/20

JUDGMENT

ABUJA

10 November 2020



No. 10 DAR ES SALAAM CRESCENT
OFF AMINU KANO CRESCENT,
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COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO

IN THE COMMUNITY COURT OF JUSTICE OF

SUIT NO: ECW/CCJ/APP/33/19

JUDGMENT NO. ECW/CCJ/JUD/28/20

COUNSELLOR KABINEH MUHAMMAD JA'NEH APPLICANT

AND

1. REPUBLIC OF LIBERIA

2. JUDGE YUSIF D. KABA

.... RESPONDENTS

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE**

- Presiding/Judge Rapporteur

Hon. Justice Dupe **ATOKI**

- Member

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

- Member

ASSISTED BY:

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

REPRESENTATION OF PARTIES:

Counsel for the Applicant:

Femi **FALANA** (SAN)

Dr. Raymond **ATUGUBA**

Samuel **OGALA**, Esq.

Femi **ADEDEJI**, Esq.

CLLr. Emmanuel B. **JAMES**

CLLr. J. Laveli **SUPUWOOD**

CLLr. L. Koboi **JOHNSON**

Counsel for the Respondents:

CLLr. Lafayette B. **GOULD, Sr.**

CLLr. Sayma Syrenius **CEPHUS**

Agents for the Respondents:

CLLr. Micah Wilkins **WRIGHT**

CLLr. Albert S. **SIMS**

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 Community citizen of Liberian origin and resides at Duport Road, Paynesville, Monrovia, Liberia.

3. The 1st Respondent is the government of the Republic of Liberia, a member state of ECOWAS and a signatory to the African Charter on Human and Peoples' Rights (hereinafter referred to as the "African Charter").
4. The 2nd Respondent is also a Community citizen of Liberian origin and as at the time of this Application, an Associate Justice of the Supreme Court of Liberia, Temple of Justice, Capitol Hill, Monrovia Liberia.

III. INTRODUCTION:

5. The applicant alleges that as an Associate Justice of the Supreme Court of Liberia, he was removed from office, without due process. In other words, his right to fair hearing guaranteed by Article 7 of the African Charter on Human and Peoples' Rights and Article 10 of the Universal Declaration of Human Rights, which have been ratified by the Republic of Liberia, were violated. Upon a petition filed by two members of the House of Representatives, one of the Legislative Houses in Liberia, and without according him any form of fair hearing, the House began an impeachment process, they indicted and asked the Senate to trial him.
6. At the Senate, the procedure as required by law was not followed because according to the Senate, the applicant was removed by a political process of impeachment, which process of impeachment or the claim of the Senate, the Applicant claims is not in conformity with the Constitution of Liberia and the African Charter.
7. The Applicant claims violations of his rights to fair hearing, dignity of his person and work under equitable and satisfactory conditions guaranteed by Articles 5, 7 and 15 of the African Charter, when 1st Respondent removed him

from his position of Associate Justice of the Supreme Court of Liberia by means of an illegal impeachment trial and conviction.

IV. PROCEDURE BEFORE THE COURT:

8. The Applicant's initiating application dated 23rd August, 2019 was served on the Respondents on the 3rd September, 2019. Having defaulted in filing their response on time, the Respondents on the 8th October, 2019, filed Application for Extension of Time to file defence and same was served on the Applicant on the 15th October, 2019. On the 28th October, 2019, the Respondents filed their defence and same was served on the Applicant on the 29th October, 2019. The Applicant on the 7th January, 2020 filed both a motion for extension of time to file a reply to the Respondents' defence and the reply. On the 24th February, 2020, the Respondents filed their rejoinder to the Applicant's reply to their defence. On 23rd July, 2020, the case was heard through virtual court hearing where the parties relied on their processes already filed and made further submissions in support of their respective cases before the case was adjourned for judgment.

V. APPLICANT'S CASE:

a. Applicant's summary of facts:

9. According to the Applicant he was appointed, and commissioned on 29th August, 2006, by the then President of Liberia, Ellen Johnson-Sirleaf as an Associate Justice of the Supreme Court of Liberia, a position which he occupied and served in with competence and dedication for more than twelve (12) years.

10. On 17th July, 2018, two members of the House of Representatives (hereinafter referred to as “*the House*”), one of the two houses which comprise the Liberian Legislature, in the persons of Thomas P. Fallah and Acarous M. Gray, submitted a petition of impeachment to the plenary of the said House of Representatives seeking to impeach the Applicant, on allegations of:

1. Proved Misconduct
2. Abuse of Public Office
3. Wanton Abuse of Judicial Discretion
4. Fraud, Misuse of Power and Corruption”.

11. Attached to his Originating Application is a copy of the Petitioners’ Amended Petition of Impeachment dated 17th August, 2018 (*Exhibit KMJ/1*) which contains the grounds listed by the petitioners for seeking to impeach him as follows:

- i. That the Applicant misinterpreted and misapplied the Code of Conduct which was tantamount to “a serious official misconduct” and an “unsavory exercise” of his judicial discretion;*
- ii. That the Applicant, while presiding in Chambers of the Supreme Court of Liberia, abused his judicial discretion when he issued a remedial writ in the case of: “Ecobank versus Austin Clarke”; that Applicant’s conduct of issuing of that remedial writ was tantamount to “proved misconduct, gross breach of duty, inability to perform the functions of his office”;*
- iii. That Applicant misused his office as Associate Justice of the Supreme Court of Liberia by surreptitiously conniving with one J. Nyema Constance, Jr. to illegally acquire a parcel of land*

owned by a Madam Annie Yancy, widow of her deceased husband, J. Nyema Constance, Sr., which act was described as a “further testament of proved misconduct, gross breach of duty, inability to delineate between right and wrong...”

12. Upon receipt of the Petition of Impeachment, the House promptly set up a Special Ad-Hoc Committee (hereinafter referred to as “*the SAC*”) and entrusted same with the mandate to handle the petition. The Applicant claims, this was done in clear violation of the rules of the House which vest the mandate to handle all matters involving judicial officials at the committee level, in the House’s Committee on Judiciary.
13. The Applicant, as soon as the House begun the proceedings of impeachment, rushed to the Supreme Court of Liberia to file a Writ of Prohibition to stop what he considered a threatened violation of his rights in that by Article 43 of the Constitution of Liberia, the legislature is compulsorily required to prescribe the procedure for the impeachment proceedings, which shall be in conformity with the requirement of due process.
14. On 30th November, 2018, the Supreme Court of Liberia delivered its opinion in the Prohibition Petition filed by the Applicant on 6th August, 2018. Three Justices forming the majority of the Court, included Ad-Hoc Justice J. Boima Kontoe against whose decision the Applicant had issued a Remedial Writ in the matter of “*Ecobank v. Austin Clarke case*”, being one of the grounds listed for the Applicant’s impeachment.

15. The majority opinion, delivered by the Chief Justice Francis S. Korkpor with Judge Kontoe voting, quashed and vacated the Alternative/Provisional Writ of Prohibition against the House from conducting the impeachment hearing and dismissed the Applicant's petition.

16. The SAC assumed jurisdiction over the matter and on the 27th August, 2018, prepared its own Rules of Impeachment which were purportedly adopted by the House's Plenary for the sole purpose of the impeachment trial of the Applicant. The SAC also submitted a report to the plenary purporting to be the results of investigations it allegedly conducted into the allegations set forth in the Amended Petition of impeachment, in which the Applicant was never made a part of.

17. The SAC recommended that the Applicant be impeached for the following offences which were contained in their report dated 27th August, 2018 (Exhibit 'KMJ/4'):

- i. Alleged theft of record of the House of Representatives;
- ii. Filing of a petition for the writ of prohibition;
- iii. Issuance by the Applicant of the writ of prohibition growing out of a petition filed by Srimex and Connex against the Liberia Petroleum Refining Company; and
- iv. Alleged illegal acquisition of Annie Constance's real property regarding which the Supreme Court had already entered a final judgment.

18. The plenary of the House proceeded, without any modification of the recommendations of the SAC and adopted, relied on and subsequently

declared the Applicant impeached on the grounds therein listed including the *Ecobank v. Austin Clarke* case in which the Applicant is alleged to have improperly conducted himself when he was presiding over the case at the Supreme Court.

19. Following receipt of the Bill of Impeachment from the House, and similarly recognizing that the **LEGISLATURE** was yet to prescribe procedure to govern impeachment proceedings, the Liberian Senate forwarded same to its Judicial Committee. Thereafter, the Judicial Committee of the Senate drafted amendments to the Senate Standing Rules (which hitherto were for the sole internal governance of the Senate), titled Amended Rule 63 which was then adopted to govern the Applicant's impeachment trial.
20. The Plenary of the Liberian Senate approved the said Amended Rule 63 on 6th November, 2018, at least four (4) months after the Amended Petition of Impeachment had been filed against Applicant.
21. Four (4) members of the Liberian Senate, believing that the amendment made by the Senate to Rule 63 did not conform to the constitutional mandate and threshold of the phrase "**prescribed procedure by the "Legislature"**", on 9th November, 2018 filed before the Supreme Court, a petition challenging the legality of the amendments but same was dismissed by a panel presided over by the Chief Justice, Korkpor.
22. When the impeachment trial commenced at the Liberian Senate on 13th February, 2019, he filed a motion praying that Mr. Chief Justice Korkpor recuse himself from presiding over the Applicant's impeachment trial. It was

the contention of the Applicant that the Chief Justice signed the judgment of the Supreme Court in the case, “**Kabineh M. Ja’neh versus the Intestate Estate of J. Nyema Constance, Sr.**”, which case was listed as one of the grounds for impeaching the Applicant. It would be tantamount to a conflict in that case for the same Chief Justice Korkpor to preside over Applicant’s impeachment trial, especially having been involved in several facets of the impeachment proceedings, but the motion was dismissed.

23. After the close of case of the prosecution at the Senate, and believing that the House rested evidence without establishing a *prima facie* case to warrant his impeachment, he filed a motion before the Liberian Senate (the trial tribunal presided over by the Chief Justice) seeking the entry of judgment of acquittal as a matter of law. Again Mr. Chief Justice Korkpor denied and dismissed the said motion.

24. The Applicant’s motion for acquittal having been dismissed, he subsequently, opened his case by calling two (2) witnesses, i.e., the Applicant himself and an Expert Witness, a former Associate Justice of the Supreme Court of Liberia, a constitutional scholar who, himself, was involved in the drafting of the current 1986 Liberian Constitution, His Honor Philip A.Z. Banks, III.

25. After final arguments were on Thursday 28th March, 2019 submitted, and contrary to the law and the established practice in jury trials, Chief Justice Korkpor again declined and refused to charge members of the Liberian Senate, who were sitting as jurors and as triers of the facts, on the evidence produced and the applicable constitutional provisions and statutory laws, and further

neglected, failed and refused to require the jurors to remain together as jurors until they could return a verdict.

26. As per the Applicant's **Exhibit "KMJ/10"**, prior to resumption of the proceedings on 29th March 29, 2019, one of the jurors, Honorable Senator Sando Johnson, wrote a letter to the Presiding Officer seeking to bring to his attention that the verdict reached in the impeachment trial was not in conformity with Section 24 of the very controversial Senate Amended Rule 63 purportedly adopted for the trial of the Applicant; hence, Senator Johnson (Juror) was objecting to any announced outcome of the verdict.

27. It is the case of the Applicant that notwithstanding the serious allegations made by Senator Sando Johnson in the immediate preceding paragraph, the Presiding Officer permitted the President Pro Tempore of the Liberian Senate to submit a report purported to be the verdict reached by the Senators (Jurors), finding the Applicant "**Not Guilty**" in respect of:

(a) the alleged theft of the Minutes of the House of Representatives,

(b) the Petition for the Writ of Prohibition filed by Applicant against the House of Representatives, and

(c) the alleged illegal purchase of Annie Yancy Constance's property but guilty of the issuance of the Writ of Prohibition borne out of the petition filed by Srimex and Connex Corporations against the Liberia Petroleum Refining Company (LPRC), a Liberian government agency.

28. Consequently, on the 29th March, 2019 after the presentation of the verdict by the Senators, the Presiding Officer ordered as follows: "*Wherefore and in view of the foregoing, the respondent is found guilty of gross breach of duty*

and hereby impeached in accordance with Article 43 of the Liberian Constitution. I therefore order that the verdict of the Liberian Senate be recorded on the minutes of this proceeding as in keeping with Article 43 of the Liberian Constitution”. The Applicant submits that the return of guilty verdict against him for the act of issuing a writ, a judicial function/act, **violates Article 73 of the 1986 Liberian Constitution which expressly** prohibits prosecuting a judge, civilly or criminally, on account of judicial opinions rendered or expressed.

29. Based on the above, it is the Applicant’s case that the 1st Respondent violated his human rights to fair hearing and impartial trial, right to work and dignity of person guaranteed by Article 7 of the African Charter, Article 10 of the Universal Declaration of Human Rights, as well as Article 43 of the Liberian Constitution, by the purported impeachment, trial, conviction, removal and replacement of the Applicant as an Associate Justice of the Supreme Court of Liberia.

30. The Applicant further claims that the 1st Respondent violated his rights to fair hearing, dignity of his person and work under equitable and satisfactory conditions guaranteed by Articles 5, 7 and 15 of the African Charter when the 1st Respondent removed him from his position of Associate Justice of the Supreme Court of Liberia by means of illegal impeachment trial and conviction.

31. The Applicant further submits that under Chapter VII, Article 72 (B) of the 1986 Liberian Constitution, he was guaranteed the holding and protection of office as an Associate Justice upon good behavior until the age of seventy (70)

years. Consequently, the Applicant's human rights as a Liberian and ECOWAS citizen to hold this office and serve his country until his constitutional retirement at age seventy (70) were allegedly trampled upon by the conduct of the 1st Respondent in total disregard of Applicant's rights to fair and impartial trial.

b. Applicant's pleas in law:

- 33.** This Application was brought pursuant to Articles 1, 2, 5, 7, 15, and 26 of the African Charter; Article 33 of the Rules of Court, Community Court of Justice; Articles 9(4) and 10(d) of the Supplementary Protocol of the Community Court of Justice; Articles 3, 8, 10, 11 (1) & (2), 21 (1) & (2), and 23 (1) & (3) of the Universal Declaration of Human Rights; Articles 20 (a) & (b), 29, 42, 43, 65, 66, 71 and 73 of the Constitution of Liberia.

The subject-matter of proceedings - violation of the Applicant's rights to fair hearing and impartial trial guaranteed by the African Charter, the Universal Declaration of Human Rights, as well as the Liberian Constitution by the purported impeachment, trial, conviction, removal and replacement of the Applicant on the Supreme Court of Liberia by the Respondents.

32. The Applicant pleads Article 29 of the 1986 Constitution of the Republic of Liberia, which provides that legislative power of the Republic shall be vested in the legislature of Liberia which shall consist of two (2) separate houses: a Senate and a House of Representatives, both of which must pass on all legislations. Applicant submits that when the Constitution expressly imposes a duty on the "*Legislature*" to prescribe the procedure for impeachment, it contemplated that the two Houses, Senate and Representatives shall pass on a

legislation prescribing the rules for impeachment proceedings “*in Legislature assembled*”. Additionally, Article 43 of the 1986 Liberian Constitution mandates that any such legislation prescribing the procedure for impeachment of public officials, including Judicial Officers, must conform to and be consistent with the requirements of due process of law.

33. Applicant respectfully submits that the Respondent Republic of Liberia through its House of Representatives expressly admitted in preambular paragraph four (4) of the Bill of Impeachment filed against the Applicant that it did not have a specific rule to govern impeachment proceedings when it commenced these impeachment proceedings. This admission by the House of Representatives of the non-existence of prescribed procedure to govern impeachment proceedings makes the entire impeachment proceedings, trial, conviction and replacement of the Applicant on the Supreme Court Bench an outright violation of Applicant’s rights to fair hearing and impartial trial guaranteed by Articles 5 and 7 of the African Charter on Human and Peoples’ Rights, Article 10 of the Universal Declaration of Human Rights and Articles 20 (a), 43 and 73 of the 1986 Liberian Constitution.

34. The Respondent’s action has injured the Applicant’s professional standing in an immeasurable material term, exposed Applicant to tremendous public ridicule, reputational taints and damages, both nationally and internationally, depriving him of his human dignity and work under just and satisfactory conditions guaranteed by Articles 5, 7 and 15 of the African Charter.

c. Reliefs/orders sought by the Applicant:

35. The Applicant, seeks the following reliefs:

- a. *A **DECLARATION** that the Respondent Republic violated Applicant's human **right to fair hearing** guaranteed by Article 7 of the African Charter on Human and Peoples' Rights when he was subjected to impeachment proceedings **without prescribed Rules of procedure** to guarantee due process as required by Article 43 of the Respondent's 1986 Constitution.*
- b. *A **DECLARATION** that the impeachment panel which investigated and determined the allegations of misconduct against the Applicant was not constituted to guarantee its independence and impartiality and as such violated the Applicant's human **right to fair hearing** guaranteed by Article 7 of the African Charter on Human and Peoples' rights.*
- c. *A **DECLARATION** that the purported removal of the Applicant as an Associate Justice of the Supreme Court of Liberia constitutes a violation of his human **right to fair equitable and satisfactory conditions** guaranteed by Articles 7 and 15 of the African Charter on Human and Peoples' Rights.*
- d. *A **DECLARATION** that the purported removal of the Applicant as an Associate Justice of the Supreme Court has exposed him to public ridicule and odium locally and internationally and the said act constitutes a violation of his human **right to dignity guaranteed** by Article 5 of the African Charter on Human and Peoples' Rights.*
- e. *A **DECLARATION** that by subjecting the Applicant to an illegal and an unfair impeachment trial for over eight (8) months period, the Respondent inflicted injuries on his professional standing and image, thereby exposing him and his family to immeasurable public ridicule,*

*reputational taints and damages, both nationally and internationally, further impugning the Applicant's reputation built over thirty (30) years as a Justice of the Supreme Court, as a former Attorney General/Minister of Justice of Liberia and as a practicing lawyer, which situations combine to entitle the Applicant to general damages in the amount not less than **twenty-five million United States Dollars US\$25,000,000.00 (Twenty Five Million United States Dollars)** as compensation for these heinous human rights violations to fair hearing, dignity of his person and work under equitable and satisfactory conditions guaranteed by Articles 5, 7 and 15 of the African Charter on Human and Peoples' Rights; and for the further reason that the Applicant's illegal removal deprives him of salaries, allowances and other associated benefits which he would have otherwise received until his legal retirement at age 70 (seventy) years.*

- f. **AN ORDER** directing the Respondent Republic of Liberia to restore the Applicant to his position of Associate Justice of the Supreme Court of Liberia as the entire impeachment trial, conviction and replacement on the Supreme Court constitutes violations of the Applicant's rights to fair hearing, dignity of his person and work under equitable and satisfactory conditions guaranteed by Articles 5, 7 and 15 of the African Charter on Human and Peoples' Rights.*
- g. **AN ORDER** to the Respondent Republic to act immediately to **prescribe the rule of procedure to govern impeachment proceedings** in the Republic of Liberia to regulate the proper conduct of impeachment of public officials as mandated by Article 43 of the 1986 Liberian Constitution also in conformity with the right to fair hearing guaranteed by the African Charter on Human and Peoples' Rights.*

VI. RESPONDENTS' CASE:

a. Respondents' summary of facts:

36. The Respondents' accounts of events commencing from the accusations of judicial impropriety against the Applicant by two members of the House and his subsequent impeachment, trial and conviction by the Senate leading to his removal from office are not different from the Applicant's narration of facts set out supra.

37. The Respondents, in their joint memorial of defence to the Applicant's suit contended that there is absolutely no basis whether in law or in fact, to support the filing of the present suit by the Applicant as his entire accusal, trial, conviction and removal from office were all supported by and consistent with the relevant substantive and procedural laws of the 1st Respondent State particularly all the rights, privileges and benefits of due process of law and an impartial trial.

38. The Respondents denied violating the human rights of the Applicant and submitted that his impeachment was done through a political process which also followed the due process of law as laid down in Section 43 of the 1986 Constitution of Liberia.

39. The Respondents juxtaposed their impeachment processes with that of the United States of America and further urged and "*requested the Court to take judicial notice of the impeachment trial of President Donald J. Trump*" to justify that the impeachment trial of the Applicant followed the due process and procedure laid down by the 1st Respondent State's laws.

b. Respondents' pleas in law:

40. The Respondents called to question the jurisdiction and competence of the court to entertain this suit. They contend that the suit is inadmissible because the Applicant seeks to have the Court sit as an appellate court to review judicial decisions of the domestic courts of Member States, in this case, the Supreme Court of Liberia.

41. The Respondent refuted the allegation of the Applicant that Section 43 of the Liberian 1986 Constitution was not respected. According to the Respondents, there were in existence rules of impeachment at the Senate which were amended to sufficiently cater for the trial of the Applicant.

c. Reliefs/orders sought by the Respondents:

42. The Respondents seek the following reliefs/orders:

- a. **A DECLARATION** that the application is inadmissible because the community Court of Justice seeks to sit as an appellate court to review and correct judicial decisions and actions of the domestic courts of a member state.
- b. **A DECLARATION** that the application is inadmissible and this Community Court is incompetent to review, interpret and apply the national constitution and domestic laws of Member States.
- c. **A DECLARATION** that this case is inadmissible because the Court seeks to get involved in domestic political matters within member states, including prescribing the kinds of Rules to adopt.

- d. **A DECLARATION** that this application is inadmissible as it seeks to have this Court assume and exercise jurisdiction over the persons of individual as parties Defendant/Respondent contrary to the competence of this court.
- e. **A DECLARATION** that the application is inadmissible because the applicant was given a fair hearing before the appropriate forum/body duly constituted under the laws of Liberia.
- f. That the Court should declare this case inadmissible because it is void of purpose, decline to make any award of damages of any nature, or for any reason or purpose, the court should deny the claim of the Applicant and access cost of proceedings against the Applicant for bringing a frivolous and unmeritorious Application.

43. The Respondents also attached as Annexures all the relevant documents in support of their claims.

VII. JURISDICTION:

44. The Respondents, by way of objection to the jurisdiction and competence of the Court to entertain the matter submit as follows:

- i. "That the Court lacks jurisdiction over the person of individuals as defendant;*
- ii. That the Court lacks the competence to adjudicate on cases which require the Court to interpret and apply domestic laws of member states;*
- iii. That the instant suit requires the Court to sit as an appellate court and to review the decisions made by the Supreme Court of Liberia and actions taken by its Legislative Assembly;*

iv. That the instant suit is a bait to draw this Court into the business of internal political activities within the 1st Respondent State, such as pronouncing on the propriety or otherwise of the processes and rules of impeachment, trial, conviction and removal from office of the Applicant by the 1st Respondent's Legislative Assembly; and

v. That the instant application is nothing more than a vexatious, malicious and frivolous attempt to harass, embarrass and inconvenience the Respondents.”

45. The Applicant alleges specific violations of his human rights by the Respondents in the nature of right to fair hearing and impartial trial, the dignity of his person, and to work under just and satisfactory conditions, as guaranteed under several international human rights instruments to which the 1st Respondent is a party particularly the African Charter, as well as under the Constitution of the 1st Respondent, by subjecting him to impeachment without prescribed Rules of Procedure, trial, conviction, removal from office, and replacement as an Associate Justice of the Supreme Court of Liberia.

46. The Court recalls its jurisprudence on primacy of jurisdiction whenever raised in a suit where it was stated in the case of *HOPE DEMOCRATIC PARTY & 1 ANOR. V. THE FEDERAL REPUBLIC OF NIGERIA & 5 ORS. (2015) JUDGMENT NO. ECW/CCJ/JUD/19/15 (UNREPORTED) @ Pg. 11* that:

“Jurisdiction is fundamental to any judicial proceeding. It must be clearly shown to exist at the commencement of or during the proceedings otherwise such proceedings no matter how well conducted

and any judgment arising therefrom no matter how well considered or beautifully written will be a nullity and a waste of time”.

47. Again, the Court has held that *“to determine jurisdiction of a court to hear any particular matter, what ordinarily should be looked at is the Plaintiff’s claim and not the defence put forward by the defendant. Normally, it is the claim which determines whether the court has the jurisdiction to hear a matter and the defence should not ordinarily oust the jurisdiction of the court”*. See *EBERE ANTHONIA AMADI & 3 ORS V. THE FEDERAL GOVERNMENT OF NIGERIA (2019) JUDGMENT NO. ECW/CCJ/JUD/22/19 (UNREPORTED) @ pg. 8*

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

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

49. The Court having perused the Applicant’s claim of violation of human rights, recalls 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.

50. In *BAKARE SARRE v. MALI (2011) CCJELR 57*, the Court stressed that:

“Once human rights violation which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case.”

Again, in the most affirmative terms, this Court in *KAREEM MEISSA WADE v. REPUBLIC OF SENEGAL* (2013) CCJELR 231 held that:

“... simply invoking human rights violation in a case suffices to establish the jurisdiction of the Court over that case”.

51. The Applicant is alleging violation of, inter alia, Article 7 of the African Charter which guarantees him right to fair and impartial trial. In the case of *MOUSSA LEO KEITA v. THE REPUBLIC OF MALI* (2004 – 2009) CCJELR 63, this Court held that:

“the rights enshrined in the Africa Charter on Human and Peoples’ Rights have been so described so as to bring out clearly their content, import and extent of enjoyment, so that the act of their violation may be qualified as a “human rights violation”.

52. At this stage, jurisdiction ought to be considered as a separate subject from the Court’s overall determination of the veracity of the claims sought by the Applicant. This was amply stated in the case of *REGISTERED TRUSTEES OF THE SOCIO ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS.* (2014) JUDGMENT NO. ECW/CCJ/JUD/16/14 (UNREPORTED) @72, where this Court held that:

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

and merits of the complaint which has to be determined only after the parties have been given the opportunity to present their case, with full guarantees of fair trial.”

53. The Applicant in this instant case having alleged violation of his human rights to fair hearing and impartial trial, the dignity of his person, and to work contrary to the rights guaranteed for individuals under the African Charter; and the subject matter of human rights falls within the jurisdiction of this Court and based on the Court’s jurisprudence as espoused thus far, the Court holds that it has the material jurisdiction to hear and determine this suit. The Respondents’ objection under this head fails.

54. Again, in their submissions objecting to the jurisdiction of the Court, the Respondents argued that the 2nd Respondent being an individual cannot be sued before the Community Court of Justice of ECOWAS.

55. When a similar issue was presented in the case of *KHADIJATU BANGURA v. SIERRA LEONE (2016) CCJ/JUD/17/16 (UNREPORTED) AT PAGE 11*, the Court held that “... (it) has always held that human rights protection is the exclusive preserve of States, and the Court has thus expressed this position in numerous decisions it had to make, including the one delivered on 8th November, 2010 in *MAMADOU TANGJA V. REPUBLIC OF NIGER (2010) CCJELR 109*, where it declared that, it is a general principle that procedures of human rights violation are brought against States, and not individuals. Indeed, that the obligation to respect and protect human rights lies on States”.

56. Further, in the case of *REGISTERED TRUSTEES OF THE SOCIO ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) v. THE*

FEDERAL REPUBLIC OF NIGERIA & ANOR., (2016) JUDGMENT N°: ECW/CCJ/JUD/19/16, (UNREPORTED) where the Attorney General of Nigeria was sued together with the Federal Republic of Nigeria, the Court held that it “*has in a plethora of cases held that only Member States, signatories to the treaty, can be sued before this court*”.

57. Following from all the above stated jurisprudence, the objection that the 2nd Respondent being an individual, cannot be sued before the ECOWAS Community Court is sustained and consequently, the Applicant’s action against the 2nd Respondent is hereby struck out. The 2nd Respondent is disjoined from the case.

58. The Respondent further submits that if the Court admits the case, it will invariably involve the interpretation and application of the domestic laws of the Respondent, which it claims the Court is bereft of competence to do. The Respondent’s submissions are partially correct to the extent that this Court has in several of its jurisprudence, affirmed that it does not seek to interpret the national laws of member states *in abstracto*.

59. This position of the Court aligns it with the similar position adopted by the European Court of Human Rights where in its determination of the role between the domestic courts of member states and the European Human Rights Court, the latter held in the case of *M.N. AND OTHERS v. SAN MARINO - 28005/12 - Chamber Judgment [2015] ECHR 661 (07 July 2015)* that:

“However, the Court would recall that it is not its task to substitute itself for the domestic jurisdictions. It is primarily for the national

authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention."

60. The Court in adhering to its jurisprudential reasoning not to usurp the powers of national courts to examine the laws of Member States, has nonetheless not reneged on or negated its mandate to determine cases of human rights violations that occur in Member States. To this end, where in a given application before it, there exists complaint about any human rights violation occasioned by application of any national legislation, to the extent of such violation, this Court will examine the national legislation in the context and pursuit of protection of the human rights concerned. In other words, this Court shall, where a case is brought before it, examines impugned legislations to ascertain whether or not the application of that impugned legislation constitutes a violation of human rights with the view to directing a review. See *OBINNA UME & 6 ORS v. FEDERAL REPUBLIC OF NIGERIA (UNREPORTED) JUDGMENT NO. ECW/CCJ/JUD/10/20*.

61. In the case of *FEDERATION OF AFRICAN JOURNALIST v. THE REPUBLIC OF THE GAMBIA, (2018) JUDGMENT NO. ECW/CCJ/JUD/04/18 (UNREPORTED)*, the Court reviewed the question whether it can examine an impugned provision of the laws of a Member State with the view to compelling amendments where necessary. In that case, the Applicants impugned some statutory provisions of *The Gambian Criminal Code and the Information and Communication (Amendment) Act* by submitting that the continued application of those provisions violated their

rights to personal liberty. In its judgment, the Court reiterated its competence in human rights cases and emphatically held that in exercising its jurisdiction, it has the powers to examine the laws of Member States under some conditions. In citing the case of *HADIJATOU MANI KORAOU v. REPUBLIC OF NIGER (2004-2009) CCJELR, PG 232 PARA. 60*, in which the court held that: “*it does not have the mandate to examine the laws of member states of the community **in abstracto** but rather, to ensure the protection of rights of individuals whenever such **individuals are victims of the violation of those rights** which are recognized as theirs, and the court does so by examining concrete cases brought before it*”, the Court adjudged that “*in view of its jurisprudence, this Court has the competence to examine the laws upon which the allegations are based to ascertain whether the laws and punitive measures are regular or in violation of the Applicants’ rights*”.

62. In performing this task, the object is not to interpret and apply the domestic laws of member states *in abstracto*, even though they may be subject to scrutiny where such laws and procedures are impugned with the sole aim of establishing whether any human rights violations have occurred.

63. Based on the above considerations, the Applicant having cited the non-compliance with Section 43 of the 1986 Constitution of the Respondent that occasioned the violation of his guaranteed rights, particularly right to fair hearing and due process, the Court therefore finds that it has the mandate to ensure the protection of the human rights of citizens in Member States by examining any act, whether in theory or in the application of domestic law, that occasions a violation of human rights. Therefore, the Respondent’s objection under this head also fails.

64. The Respondent further contends that the admissibility of this case by the Court for determination will obviously involve adjudicating on matters already determined by a national court thus sitting as an appellate court. The Respondent argues that the instant case is an invitation by the Applicant to the Court to serve as an appellate court to review and determine the correctness of decisions already made by the Supreme Court of Liberia and its Legislative Assembly.

65. This Court has in its flourishing jurisprudence held that it lacks the jurisdiction to sit on appeal over decisions of national courts. In *BAKARE SARRE v. MALI*, (supra) the Court in determining the import and propriety of the Plaintiffs' application held that:

“The said application substantially seeks to obtain from the Court a reversal of judgment delivered by the Supreme Court of Mali and seeks to project the Court of Justice of ECOWAS as a court of cassation over the Supreme Court of Mali. Viewed from that angle, the Court declared that it had no jurisdiction to adjudicate on the matter.”

66. See also *OCEAN KING NIGERIA LIMITED v. REPUBLIC OF SENEGAL* (2011) CCJELR 139, Para. 66, pg. 161 in which this position was reiterated that this Court does not compose itself as an appellate court over decisions of national courts and other national administrative bodies that are vested with investigative and *quasi-judicial* powers. It is therefore not in doubt that the Community Court of Justice, ECOWAS, is not an appeal court before which cases decided by the courts in Member States could still be brought. (See the case of *DR. MAHAMAT SEID ABAZENE v. THE REPUBLIC OF MALI & 2 ORS* (2010) CCJELR 95.

67. However, in a more recent case of *HON. JUSTICE S. E. ALADETOYINBO v. THE FEDERAL REPUBLIC OF NIGERIA (2020) ECW/CCJ/JUD/18/20*, (Unreported) at pg. 9 para 29, the Court reviewed its extensive jurisprudence on the subject and came to a conclusion that the jurisdiction of the Court is neither to serve as an appeal court nor a court of cassation of the domestic courts of ECOWAS Member States “*must not be interpreted in an absolute manner*”. In para. 32 of the same judgment it was held that where the exercise of the Court’s mandate is not to pronounce on the propriety or otherwise of the substance of the decision rendered by the domestic court of a Member State, but to examine the process leading to the decision with the view to finding whether any protected substantive or procedural rights of the Applicant were violated, this Court is unfettered in doing so.

68. Be that as it may, it has been the cherished position of this Court and same was well articulated in the case of *LINDA GOMEZ & 7 ORS v. REPUBLIC OF THE GAMBIA (2014) Judgment No. ECW/CCJ/JUD/05/14*(Unreported) @ page 20 that:

“If an issue is solely governed by domestic law, recourse to international forum will not arise unless the complainant has been denied a hearing or the right to fair hearing of his rights in the domestic arena. When recourse is made to an international court the Plaintiff must necessarily establish his claim by the texts governing the Court”.

69. In the instant case, the subject-matter essentially has nothing to do with the determination of the correctness or otherwise of the decisions of the Supreme Court of Liberia or actions of its Legislative Assembly already delivered or taken. The Court is not asked to re-examine *in abstracto* the judgment of the

Senate of Liberia which determined the culpability of the Applicant; but rather seized with a case on human rights violations which allegedly occurred in the course of the procedure at the domestic forum.

70. To this end, this Court therefore re-affirms that it does not have the competence to review judgments of national courts and other quasi-judicial bodies of member states *in abstracto* but it is imbued with the jurisdiction to examine any human rights issues emanating from any activities which take place in Member States and their outcomes with the view to determining their compatibility with human rights obligations imposed by the African Charter and other human rights instruments to which they are parties. Consequently, the Court finds that it has the competence to hear and determine the claims of the Applicant as it is grounded on alleged human rights violation and the same has not been submitted as an appeal from the decision of the municipal Courts.

71. The Respondent submits in its defence that, admitting this case will draw this Court into the business of internal political activities within the Respondent State, which it asserts, this Court lacks competence to do since the Court will be meddling in the political matters of a Member State. The Respondent stated as follows: *“the Applicant’s removal was by the political process of impeachment, hence this Court has no mandate to interfere”*.

72. On the issue of internal political activities, this Court held in the case of *BODJONA AKOUSSOULELOU PASCAL v. THE REPUBLIC OF TOGO* (2015) Judgment No. ECW/CCJ/JUD/06/15(Unreported) @ Pg. 8 that;

“The Court must re-affirm, as it has always done in its well-established jurisprudence, that it hardly considers issues such as political

undertone, that are contained in a case, but, that the duty of the Court is to examine the facts, as presented before it, and try to find out, if really Plaintiff/Applicant's rights are violated".

73. Again in the case of *CONVENTION DÉMOCRATIQUE SOCIALE, ALIAS CDS RAHAMA v. REPUBLIC OF NIGER (2015) Judgment NO. ECW/CCJ/JUD/03/15 (Unreported) @ pg. 11*, it was held that:

"The Court shall however recall, as it has done in other decisions, that the political intents or declarations of one party or the other have no relevance to its legal mandate. More precisely, its mandate, with regard to disputes on human rights violation, is limited to examining, in reality and in concrete terms, whether there is violation of a well-defined right, and the Court does not unnecessarily entangle itself with political motives and statements".

74. It is obviously not in doubt that there were some political underpinnings in the impeachment, trial, conviction and removal from office of the Applicant by the Legislative Assembly of the Respondent which processes were governed solely by the domestic laws and procedures of the Respondent.

75. In the instant case, the House was the master of its own process, subject to the Constitution and the guaranteed procedural right of the Applicant. It is the view and has been the consistent position of this Court that States can decide or determine how they want to go about their internal affairs, including the procedure of impeachment based on the rules their legislatures consider to be in the best interest of the States concerned.

76. Again, except where a Member State steps outside its international obligations, and to the extent that the said stepping out occasioned a violation of the said international obligations, this court will not interfere in its internal political processes. One thing, however, is clear on the reading of the constitutive texts on the Court and the African Charter, that the member states placed great faith in this Court to direct, through its human rights mandate, the path that the human rights landscape of the Community must tread. It is therefore incumbent on the Court, to constantly maintain the balance between the freedom of government to act and the need to ensure that these actions protect the guaranteed rights of the community citizens.

77. So where, in the course of regulating its internal process, the House, being a principal organ of the Respondent violates the rights of a Community citizen, this Court's non-interventionist stance ceases and it will move to protect the rights involved. The Court will intervene in favour of the victim to protect a breach of a right guaranteed under the African Charter. So, contrary to the submission of the Respondent that the impeachment of the Applicant was a political trial which proscribes the Court's intervention, when conducting its internal proceedings, this Court cannot ignore any breaches of fundamental human rights occasioned in the process in order to rule in favour of political decisions. To do so would be inconsistent with both the mandate of the Court, and the provisions of the African Charter and even the Respondent's own Constitution.

78. When considering the actions of the agents and organs of governments of Member States, be it political or otherwise, it is imperative to point out that member states have voluntarily subscribed to the obligations enshrined in the

African Charter, to which they are parties and embodied in their Constitutions, Declaration of Human Rights (in the case of the Respondent, Chapter III of its 1986 Constitution).

79. The Community Court of Justice is the mandated institution in the Community legal order, charged with the responsibility to jealously protect and safeguard these rights of the *community citizens*. This is why, when actions of governments of Member States conflict with the provisions of the African Charter and any other international human rights instruments they are parties to, this Court will, when the issue is submitted before it, determine the issue of breaches of the fundamental human rights of the citizen. Following the exposition above, this Court holds that the objection of the Respondent that by hearing this application, the Court will be interfering in a national political matter is not sustainable and is hereby dismissed.

VIII. MERITS:

a. Alleged violation of right to fair trial:

80. It is the case of the Applicant that the impeachment process contravenes Article 43 of the Constitution and the House standing rules. The Applicant submits that *“upon receipt of the Petition of Impeachment, the House of Representatives promptly set up a Special Ad-Hoc Committee, forwarding same to the said Ad-Hoc Committee in clear violation of Article 57.3 of the House’s Rules which confers exclusive jurisdictional authority on the House of Representatives’ Standing Committee on Judiciary to handle all matters involving judicial officials.”*

81. The Applicant further submits “*That on August 27, 2018, the Special Ad-Hoc Committee of the House of Representatives prepared its own Rules of Impeachment which was purportedly adopted by the House’s Plenary for the sole purpose of the impeachment trial of the Applicant. The Special Ad-Hoc Committee also submitted a report purporting to be the results of investigations it allegedly conducted into the allegations set forth in the Amended Petition of impeachment, in which Applicant was never made a part of.*”

82. Again, the Applicant further argues that the proceedings at his trial by the Senate was also marred with irregularities as the Standing Rules of the Senate were amended during the trial and the result of the vote cast by the jury was not announced until after two days. It is submitted by the Applicant under paragraph 4.9 of the originating application that “*It is worth noting that the Plenary of the Liberian Senate approved said Amended Rule 63 on November 6, 2018, at least four (4) months after the Amended Petition of Impeachment had been filed against the Applicant. Such a conduct contravenes Article 21 (a) of the 1986 Liberian Constitution as well as Article 7 of the African Charter on Human and Peoples’ Rights*”.

83. The Respondent in its memorial of defence insists that the due process of the law was adhered to in accordance with the law as provided for in the section 43 of the 1986 Constitution of Liberia. The Respondent argued in Document 3 of the memorial of defence at paragraph 4:21 that “*the Applicant’s removal was by the political process of impeachment*” and at the same time claims in paragraph 4.22 in the same document that the removal procedure of the Applicant from office were all “*supported by and consistent with relevant*

*provisions of Liberian law, the most important of which was that he was accorded all the rights, privileges and benefits of **due process of law** and an impartial hearing with the right to adequate legal representation.”*

84. The Respondent in its rejoinder contained in Document 6 under paragraph 9.0 further urged and prayed this Court as follows: *“Your Lords are requested to take judicial notice of the impeachment trial of President Donald J. Trump.”*

85. This Court after a careful study of the submissions of the parties and the evidence on records, will now proceed with its analysis to determine if indeed the impeachment proceedings followed the due process of law in guarantee of the fair hearing requirement of the Applicant’s trial. It is expedient to replicate the pivotal **Section 43 of the 1986 Constitution of the Liberian** which both parties are relying on in order to put in proper perspective, the issues for determining whether any guaranteed right of the Applicant was violated as claimed. In doing so, the Court will take judicial notice of the procedure followed during the impeachment proceedings of President Donald J. Trump of the United States which the Respondent invited the court to do.

86. The 1986 Liberian Constitution provides under **Article 43** as follows:

“The power to prepare a bill of impeachment is vested solely in the House of Representatives, and the power to try all impeachments is vested solely in the Senate. When the President, Vice President or an Associate Justice is to be tried, the Chief Justice shall preside; when the Chief Justice or a judge of a subordinate court of record is to be tried, the President of the Senate shall preside. No person shall be impeached but by the concurrence of two-thirds of the total membership of the Senate. Judgements in such cases shall not

extend beyond removal from office and disqualification to hold public office in the Republic; but the party may be tried at law for the same offense. The Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirements of due process of law.”

87. This Court observes that from the above stated constitutional provisions, Section 43 only provides the core of the law but the penumbra aspect of the law which is expected to prescribe in details the procedure for impeachment in Liberia is conferred upon *the Legislature* to be fashioned out in accordance with due process of the law. The begging question in this suit is whether the Applicant’s impeachment was based on procedure prescribed by *the Legislature* and if it was, whether the procedure was in conformity with the requirement of due process of law as contemplated by the Respondent’s Constitution.

88. The Applicant argues that Section 29 of the 1986 Constitution of the Respondent provides that:

“the legislative power of the Republic shall be vested in “the Legislature” of Liberia which shall consist of two (2) separate houses: a Senate and a House of Representatives, both of which must pass on all legislations. The enacting style shall be: ‘It is enacted by the Senate and House of the Representatives of the Republic of Liberia in Legislature assembled’”.

89. So when the Constitution expressly imposes a duty on *“the Legislature”* to prescribe the procedure for impeachment, it contemplates that the two Houses, Senate and Representatives shall pass on a legislation prescribing the rules for impeachment proceedings *“in Legislature assembled”*. Additionally, Section

43 of the Constitution mandates that any such legislation prescribing the procedure for impeachment of public officials, including judicial officers, must conform to and be consistent with the requirements of due process of law.

90. It is the claim of the Applicant that the House did not have any procedure in place at the time of his impeachment and also constituted an Ad Hoc Committee to investigate and frame the impeachment charges without regard or recourse to the rule and procedure of the House which confers such function on the Judicial Committee of the House; a claim which the Respondent did not controvert. Further, the Applicant alleges that the Senate in his trial amended its rules of procedure and did not return immediate verdict after voting but waited for another two days to declare the outcome of the Vote.

91. The core of the law as it is in the Constitution, empowers the Legislature to prescribe the nitty gritty of the penumbra which is the operational details of how impeachment proceedings are to be conducted; this is a very wide power in accordance with the wide margin of appreciation a national domestic authority has in the determination and operation of its domestic law.

92. The Applicant's contention in respect of violations of his right to fair hearing may be categorized into three headings for determination. These are; firstly, the claims of violation of right to fair-trial at the Pre-trial stage of his impeachment; secondly the independence and impartiality of the court of impeachment; and lastly, the irregularities in the trial and judgment.

93. *On the issue of breaches at the pre-trial stage*, basically the Applicant's bone of contention is that, the impeachment by the House which constituted a stage

for the pre-trial investigations and framing of charges had been deficient for three reasons; firstly, the investigations were conducted by the SAC instead of the House's Judicial Committee, which is permitted by law and the practice of the House to handle such cases; secondly, there were no existing prescribed rules of impeachment at the time of his impeachment; and lastly, he was not invited nor heard at the impeachment proceeding in the House.

94. *On the issue of the SAC handling the initial investigations instead of the House's Judicial Committee*, the Applicant's argument is that since the latter is the Committee that handles all matters in the House concerning the judiciary, the departure by entrusting the investigations in his impeachment to the SAC amounted to violation of the House's rules which potentially affected the due process of law required in the handling of his impeachment.

95. It must be noted that, the House is the master of its own rules and proceedings. In the conduct of its internal affairs, this Court can only intervene where a Community citizen has established under the texts of the Court that his fundamental human rights have been violated in the process. See: *LINDA GOMEZ & 7 ORS V. REPUBLIC OF THE GAMBIA (Supra)*. Though, certainty of law and procedural rules require that, before any person is charged for criminal offence, the law and the procedures as well as bodies mandated to investigate and try the case must be sufficiently known to the accused, it is the view of this Court that, handling of the investigations by the SAC in the Applicant's case in itself, standing alone, was not adverse to the required due process of law. It must be noted that the fact that the decision to prosecute the Applicant based on the petition of the two (2) members of the House was entrusted to the SAC of the House, and may, to some extent involved

political considerations, was not of itself sufficient to raise an issue under Article 7 of the African Charter. What is important is whether the Applicant's guilt or innocence was determined by a competent tribunal or court of law in accordance with the evidence properly obtained and presented and that the process leading to the Applicant's indictment was neither arbitrary, capricious nor political to such an extent that the fairness of his trial was prejudiced.

96. It would be the manner in which the SAC carried out the task that may give rise to any breaches with the potential to mar the requirements of due process of law. The mere fact that all previous judiciary matters were handled by the House Judicial Committee, is not enough to ground an allegation of breach of due process of law in handling the Applicant's impeachment. Impeachment proceedings are different from ordinary matters affecting the Judiciary. In any case, after its initial investigations, the Report of the SAC was brought to the Plenary of the House for adoption. At that stage, the entire impeachment proceedings became the product of the House and not the SAC.

97. In the circumstances of the instant case, the handling of the investigations stage of the Applicant's impeachment at the House by the SAC in itself, standing in isolation, did not compromise the requirement of due process of law. Consequently, the Applicant's claim that the handling of his impeachment petition by the SAC violated his right to fair-trial is unsustainable and the Court so holds.

98. **On the issue of absence of prescribed rules**, the evidence on records is replete with the submissions from both parties to the effect that, there were no prescribed rules of impeachment at the time the Applicant was impeachment

commenced in the House. Attached to the Originating Application is *Exhibit KMJ/4* , a copy of the **Report of the SAC** and in the paragraphs 3, 4 and 5 of the preambular of the Report, it was stated as follows:

“Similarly, in the absence of established rules to govern impeachment proceedings, the Special Ad Hoc Committee drafted certain rules, which were later adopted by the Honourable House. Prominent in these rules is that the Respondent, Associate Justice shall be accorded his constitutional rights especially his rights to due process;

The investigation by the Special Ad Hoc Committee has been conducted on the basis of the above premises;

A few days after the initial Impeachment Petition was filed by the two (2) Honourable Petitioners and after the SAC was established, the Honourable Petitioners withdrew their original petition and filed an Amended Petition. The SAC’s investigation was therefore expanded to cover the allegations of the amended Petition”.

99. Again, in paragraph 5.17 of the defence, it was argued by the Respondent that

“An impeachment case consisting of a full trial resulting in conviction and removal from office is novel in Liberia and as such there is no precedent to follow.”

100. This Court observes that it was at the pre-trial stage that issues of how evidence was procured and compiled, the identification of witnesses, framing of charges were all conducted. The legal framework governing the pre-trial proceedings, especially the absence of prescribed rules of engagement and other material procedural issues were hugely assaulted which presented a potential prejudicial consequences on the rights of the Applicant to defend himself at the trial by the Senate. Not only would the existence of rules

governing the impeachment proceedings at the House, but the Applicant's involvement in the trial have given him the needed information in adequate preparation of his defence at the trial. So throughout the process, there were no guidelines to help the Applicant to put in place adequate preparation for his defence of the accusations brought against him.

101. The Court notes that during the trial of the instant suit, the panel inquired from the Respondent whether there were extant rules of impeachment used in the Applicant's case. Upon its affirmative answer, the Respondent on the 13 July 2020, filed at the Registry of the Court Rules and Procedures purportedly adopted by the Liberian Legislature on impeachment trials. Among the documents filed is the purported rules used in the Applicant's case titled "*RESOLUTION SETTING OUT THE RULES TO GOVERN THE IMPEACHMENT OF PRESIDENT, VICE PRESIDENT, MEMBERS OF THE SUPREME COURT, JUDGES OF SUBORDINATE COURTS, AND ALL CIVIL OFFICERS TO WHICH IMPEACHMENT MAY APPLY*".

102. The requirement of the Section 43 of the Respondent's Constitution is law passed by the Legislature of the Respondent and not a resolution passed after the House is seized with the case. The Court, therefore cannot rely on the said Resolution.

103. Where the procedural laws were not well defined for the Applicant to know what constituted the procedure to be followed in his trial, it was difficult, if not impossible for an objective observer to decipher when the trial

was crossing the strictures of due process of law, and equally difficult and almost impossible to foresee the consequences. It is therefore, not in doubt that the absence of prescribed rules of impeachment substantially affected the fairness of the impeachment proceedings at the House and the Court so holds.

104. **On the issue of the non-involvement of the Applicant in the impeachment proceedings**, the Respondent at the hearing argued and submitted as captured in the verbatim report that *“the decision in the House of Representatives does not require under our laws, the participation and person of the Applicant and lawyer.”*

105. It is pertinent to note that an *“impeachable charge”* existed from the moment the Petition for Impeachment, containing the accusations of impropriety against the Applicant, was officially brought to the notice of the House. At that point, the Applicant’s situation had been substantially affected by the actions taken by the two Honourable Petitioners of the House as a result of a suspicion against him. It followed that, the right to due process of law became applicable at that pre-trial stage; being the impeachment at the House because, at that stage, a public authority was making a decision that had an impact on the Applicant’s criminal and civil rights. To this end, the Applicant was entitled to the benefits of all the facets of due process of law at that stage to afford him the opportunity to sufficiently defend himself whether or not he was intended to be interrogated or subjected to any investigative act during the relevant period.

106. Article 7 of the African Charter envisages certain minimum pre-trial procedural rights to be accorded everyone charged with a criminal offence

including, inter alia, right to be informed promptly, and in detail of the nature and cause of the accusations against him as well as the right to access all relevant information pertaining to the accusation. The appropriate rights to be triggered by any criminal charge depends on the nature of the charge and the mode of trial anticipated. In the instant case, having regard to the nature of impeachment trial, the minimum rights to be accorded the Applicant, obviously involved the attendance and presence of the Applicant at the impeachment proceedings where the allegations against him were to be investigated and charges framed for the trial by the Senate. It is worth noting that the evidence to be used against the Applicant at the trial by the Senate was obtained and compiled at the impeachment stage before they were presented to the Senate.

107. In the *CASE OF SCHATSCHASCHWILI V. GERMANY* 9154/10 / *JUDGMENT (MERITS AND JUST SATISFACTION)* / *COURT (GRAND CHAMBER)* / 15/12/2015, the European Court of Human Rights dealing with how assessment of fairness of a trial is to be done, held that:

*“The Court’s primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings. In making this assessment, the Court will look at the proceedings as a whole, including the way in which the **evidence was obtained**, having regard to the rights of the defence”*

108. On the importance of the investigation stage in criminal trial, the Court further held that:

“The Court must stress, in that context, the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial...Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions.”

109. The Court also decided that:

“In the Court’s view, affording the defendant the opportunity to have a key prosecution witness questioned at least during the pre-trial stage and via his counsel constitutes an important procedural safeguard securing the accused’s defence rights, the absence of which weighs heavily in the balance in the examination of the overall fairness of the proceedings under Article 6 §§ 1 and 3 (d).”

110. This Court while making a declaration on the due process of the law in the case of *JUSTICE JOSEPH WOWO V. THE REPUBLIC OF GAMBIA (2019) ECW/CCJ/JUD/09/19 (Unreported)* held that:

“as regards the pre-trial stage(inquiry, investigation), the Court considers criminal proceedings as a whole including pre-trial stage of the proceedings, since the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with the necessary procedural rights of the accused.”

This Court has also made the effort in the interest of justice to study the impeachment proceedings of the United States President as urged by the Respondent and discovered that, not only was a rule of procedure produced

before the trial commenced but also that the accused was given the right and invitation to take part in the investigative and framing of charges proceedings at the House.

111. This Court also takes judicial notice that both the United States of America's House of Representatives and the United States of America's Senate have the right to make their own rules governing their procedure, and to change those rules. Under current rules, the actual impeachment inquiry begins in the Judiciary Committee of the House of Representatives; for the avoidance of doubt, the rule governing that proceeding and the relevant section which are made available to all parties before commencement of trial proceedings are reproduced here:

“House of Representative Resolution 755 - Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors; at section 6, provides that during consideration of H. Res. 755, only the following persons shall be admitted to the Hall of the House or rooms leading thereto: (a) Members of Congress. (b) The Delegates and the Resident Commissioner. (c) The President and Vice President of the United States. (d) Other persons as designated by the Speaker.”

112. This Court also discovered that, during the impeachment proceedings of President Bill Clinton, even though he was not physically invited to the House of Representatives, he was given the opportunity to participate as interrogatories containing about eighty (80) questions were sent to him for his responses for clarification of the issues before the Judicial Committee of the

House of Representatives. The record has this to say about President Bill Clinton of the United States of America impeachment trial as follows:

“The Judiciary Committee held two public hearing at which scholars and federal prosecutors testified regarding the proper grounds for impeachment. The committee did not call any witnesses identified in the Starr Report to testify in public, but did invite Starr to testify. They also propounded a set of 81 written questions to the President, to which he responded. The four articles of impeachment advanced by the committee were based largely on the Starr Report. The full House then approved two of the four articles of impeachment.”

113. It can be deduced from the impeachment proceedings of the two Presidents of the United States of America that they were both given the right to participate in the investigative and framing of impeachment resolution at the House of Representatives. This court further takes notice from the above stated cases in America that, there are clear rules and procedures governing impeachment in fulfilment and compliance with the requirements of due process of law.

114. The procedure followed in the instant case of impeachment in Liberia, is devoid of primary requirements of due process of law. Firstly, there was no identifiable committee at the House mandated to handle impeachment investigations; secondly, there was no prescribed rules of impeachment; and lastly, the Applicant was not involved in his investigations and compilation of charges and evidence against him. Though the Court has held that the effect of the first requirement was cured by the establishment of the SAC, the material prejudicial effects of the other two on the Applicant’s case was

enormous. In the circumstance of the instant case, can this Court endorse the assertion of the Respondent that the House afforded the Applicant all the essential elements of due process of the law as required by the Section 43 of the 1986 Constitution of Liberia in the light of the international human rights standards? The answer is no.

115. This Court, when called upon to make a pronouncement on how fair trial assessment should be approach, held in the case of *JUSTICE JOSEPH WOWO V. THE REPUBLIC OF GAMBIA (supra)* that: “*The contemporary approach to the determination of whether or not a trial has met the requirement of a fair trial must be devoid of piecemeal approach but rather every aspect of the trial ought to be meticulously examined.*” Similar approach was followed by the European Court of Human Rights in the case of *O’ HARRAN AND FRANCIS V. THE UNITED KINGDOM ECHR (GC) NOS. 15809/02 AND 25624/02 & 53, ECHR 2007*; where it held that: “*What constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case.*” So where any restriction is placed on an applicant like in the instant case where the Applicant was not permitted to partake in the proceedings at the House, the issue is as determined by the European Court of Human Rights in the case of *ÖCALAN v. TURKEY - 46221/99 – Grand Chamber Judgment [2005] ECHR 282 (12 May 2005)* where the Court held that: “*The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing*”. The purport of the above stated authorities is that to reach a verdict on whether a trial was fair or not, the entire procedure governing the trial must be scrutinized to come to a decision and not just one aspect.

116. In the case between *HIS LORDSHIP JUSTICE PAUL UUTER DERY & 2 ORS v. THE REPUBLIC OF GHANA (2016) Judgment No: ECW/CCJ/JUD/17/19 (Unreported)* in which the Applicants alleged the violation of their right to fair hearing; it was the case of the Applicants that while their case was in the Court for unlawful dismissal based on a petition by a private investigator, the Judicial Council purportedly met and recommended without inviting the Applicants or providing an opportunity to be heard, decided to suspend the Applicants, and placed them on half of their monthly salary while all allowances save housing rent were suspended. This court held as follows: *“The Court recognizes the principles of audi alteram partem (hear the other side) which requires that persons affected by an adverse position must be given an opportunity to make representation. The right to be heard by its own nature connotes an opportunity to be heard within a reasonable time by an impartial court or tribunal. This right is not limited to a one on one verbal representation but encompasses every avenue accorded to a party to be heard in a matter.”*

117. Consequently, in the absence of prescribed rules, it is the view of this Court that due process of law which was required in the case of the Applicant at the pre-trial stage of his impeachment at the House was not followed which adversely affected the fairness of the Applicant’s trial as a whole and the Court so holds.

118. **On the issue of Independence & Impartiality of the Court of Impeachment**, the case of the Applicant here is that the proceedings at the Senate was presided over by the Chief Justice of Liberia whom he considered

partial with the tendency of being biased against him because he presided over issues relating to his impeachment at the Supreme Court on two or more occasions and therefore cannot be objectively seen to hold a neutral opinion in his trial. The Applicant in his response to Defence Document-5 at 2.04 says *“the Chief Justice, having sat on the two cases filed before the Supreme Court, challenging the entire impeachment process, having voted in both cases and delivered an opinion in one of the said cases which involved a challenge to the Senate itself, the dignity of the Supreme Court in such event requires that the Chief Justice should voluntarily recuse himself from the impeachment trial before the Senate”*. The Applicant, out of lack of trust and confidence in the Chief Justice as the presiding judge in his case, filed an application for him to recuse himself from the trial but that request was turned down.

119. The Respondent contended that the Chief Justice neither expressed an opinion nor sat on the alleged cases on merit but rather ruled on preliminary measures applications. The Respondent also submitted that if the Chief Justice of the Supreme Court had recused himself, nobody could have presided over the Senate hearing in accordance with the provision laid down by the law in section 43 of the 1986 constitution of the Republic of Liberia.

120. It is pertinent to the resolution of this issue, to put in proper perspective, two salient points; firstly, the Chief Justice’s presidency over the impeachment trial at the Senate was in compliance with a constitutional provision as enshrined in section 43 of the 1986 Constitution of Liberia which reads in part as follows: *“When the President, Vice President or an Associate Justice is to be tried, the Chief Justice shall preside; when the Chief Justice*

or a judge of a subordinate court of record is to be tried, the President of the Senate shall preside”; and secondly, the trial was a jury trial where the Senators were the triers of fact and the Chief Justice served as the trier of law, meaning he was to ensure that everything happening in the House of Senate followed the rules set down by the law.

121. The task of this Court is to determine whether there was a substantiated case of bias against the Chief Justice warranting his recusal from presiding over the trial at the House of Senate in the interest of justice and principle of fair trial of having an independent and impartial tribunal.

122. The right to be tried by an impartial tribunal is one of the facets of right to fair trial, the relevant part of Article 7 of the African Charter of which reads as follows: *(d) “The right to be tried within a reasonable time by an impartial court or tribunal.”* In the determination of the test of impartiality or otherwise of a judge, authorities abound in various human rights jurisdictions and some of the relevant ones to this instant case will be considered to help our determination of this issue.

123. This Court, when confronted with a similar subject matter in the case of *JUSTICE JOSEPH WOWO V. THE REPUBLIC OF GAMBIA (supra)* held inter alia:

“The right of an accused to be tried before an impartial tribunal, as provided for both in the Universal Declaration of Human Rights and African Charter on Human and People’s Rights is not only an integral component of the right to fair trial but also an unqualified right.”

This Court in the same case further held:

“In determining whether there is a legitimate reason to fear that the judge lacked independence or impartiality, it is important to ascertain the standpoint of the accused and whether his doubts can be held to be objectively justified.”

124. The Applicant in this case, being an associate, and subordinate of the Chief Justice, the apprehension of fear of bias, ordinarily, should have emanated from the prosecutors in his trial but not him. However, he cited two main grounds for his alleged apprehension of bias against him by the Chief Justice; firstly, that the Chief Justice had previously been acquainted with one of the cases in which the Applicant had been implicated by the House for judicial impropriety at the Supreme Court; and secondly, since the initiation of the impeachment proceedings against him, the Chief Justice had pronounced on some applications at the instance of the Applicant. So, in the view of the Applicant, considering his previous roles, vis-à-vis the impeachment trial as a whole, the Chief Justice may not be an impartial judge for the trial of his case.

125. In the *MORICE v. FRANCE* - 29369/10 - *Grand Chamber Judgment [2015] ECHR 407* (23 April 2015) the European Court of Human Rights gave a hint of what impartiality denotes when it held that:

“The Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court’s settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behavior of a particular judge, that is, whether the judge

held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.”

126. It is obvious that the complaint of the Applicant has to do with the ‘*objective test*’, and in the immediate preceding cited case, the Court further held that:

“As to the objective test, it must be determined whether, quite apart from the judge’s conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified”

127. The Respondent proffered argument that the Chief Justice even though sat on previous matters relating to the impeachment of the Applicant, the cases were not heard on merit but were determined at the preliminary measure. The question then is whether those past judicial activities of the Chief Justice are capable of grounding the Applicant’s apprehension of fear of bias without any supportive factual circumstances.

128. In The International Criminal Tribunal for Rwanda (ICTR) case of *THE PROSECUTOR v. JEAN-PAUL AKAYESU CASE NO. ICTR-96-4-A, JUDGMENT, 1 JUNE 2001 (AKAYESU APPEAL JUDGMENT)*, the Tribunal, in deciding on an appeal ground on impartiality held as follows:

“There is a presumption of impartiality which attaches to a Judge. This presumption has been recognised in the jurisprudence of the International Tribunals, and has also been recognised in municipal law. In the absence of evidence to the contrary, it must be assumed that judges can disabuse their minds of any irrelevant personal beliefs or predispositions. It is for the Appellant to adduce sufficient evidence to satisfy the Appeals Chamber that the Judge in question was not impartial in his case. There is a high threshold to reach in order to rebut the presumption of impartiality.”

The Tribunal further held that:

“The Judges of this Tribunal and those of ICTY often try more than one case at the same time, which cases, given their very nature, concern issues which necessarily overlap. It is assumed, in the absence of evidence to the contrary, that by virtue of their training and experience, judges will rule fairly on the issues before them, relying solely and exclusively on the evidence adduced in the particular case.”

129. In the *CASE OF MARGUŠ V. CROATIA* 4455/10 | 15 | 8 | 27/05/2014 *IN THE ECHR*, the Applicant alleged, in particular, that his right to a fair trial had been violated in that the same judge had presided over both sets of criminal proceedings against him. The European Court of Human Rights held that:

“The Chamber observed that in both sets of criminal proceedings at issue, Judge M.K. had taken part at the first-instance stage. In the first set of proceedings the facts of the case had not been assessed, nor had the question of the applicant’s guilt been examined, and Judge M.K. had not

expressed an opinion on any aspect of the merits of the case. Therefore, in the Chamber's view, there was no indication of any lack of impartiality on the part of Judge M.K."

130. In the instant case, it is the Applicant, challenging the impartiality of the Chief Justice to adduce reliable and sufficient evidence to rebut the presumption of impartiality. The Applicant, failed to adduce concrete evidence of partiality but rather chose to generalize allegations that are unsupported by any evidence capable of leading a reasonable observer to apprehend bias on the part of the Chief Justice. The chief Justice is only being blamed with regard to his previous execution of judicial duties which may have some lame bearing on the case at hand. It must be reiterated that, to be exposed to material facts yet to be presented in evidence in a case does not necessarily lead to pre-judgment or partiality. The Applicant's argument overlooks the fact that judges can sit in multiple cases involving same parties based on same evidence. Although, the Chief Justice decided on some cases which struck cords in the impeachment trial itself, his judicial records in those cases are not instructive as to whether a reasonable observer properly informed could apprehend bias in the absence of concrete instances susceptible to formation of bias. While the possibility is not ruled out that previous decisions rendered by a judge could suffice to establish bias, a judge must enjoy the presumption attached to him until otherwise proven of a conduct giving rise to doubt.

131. International Tribunals, particularly, the European Court of Human Rights, have in a plethora of cases affirmed on several occasions that complaints concerning judges' lack of independence and impartiality

grounded on the content of judicial decisions cannot be considered objectively justified. See the case of *DIMITROV & ORS. V. BULGARIA*, (APPLICATION NO. 77938/11) JUDGMENT STRASBOURG 1 JULY 2014, PARA. 159 where it was held that “*under the subjective test, the personal impartiality of a judge must be presumed until there is a proof to the contrary [...]. The facts that some of the judges hearing the case sat and ruled against them on some points or decided to proceed in a certain manner do not constitute such proof*”.

132. In the *CASE OF KYPRIANOU V. CYPRUS* 73797/01 | JUDGMENT (MERITS AND JUST SATISFACTION) | COURT (GRAND CHAMBER) | 15/12/2005; it was held that it was only when there is a **proven functional defects** on the part of the tribunal or a judge that the objective fears of the Applicant could be justified:

*“The Court therefore finds that, on the facts of the case and **considering the functional defect** which it has identified, the impartiality of the Assize Court was capable of appearing open to doubt. The applicant's fears in this respect can thus be considered to have been objectively justified and the Assize Court accordingly failed to meet the required Convention standard under the objective test.”*

133. The celebrated *BANGALORE PRINCIPLES OF JUDICIAL CONDUCT* provides under Principle 2 as follows: “*Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made*”. In its application section under 2.5, it provides that: “*A judge shall disqualify himself or herself from participating in any proceedings in which the **judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially***”.

134. The impartiality of a judge is considered with regards to the whole proceedings. Such was the situation in the *CASE OF KYPRIANOU V. CYPRUS 73797/01 | JUDGMENT (MERITS AND JUST SATISFACTION) | COURT (GRAND CHAMBER) | 15/12/2005*; where the Court held that:

*“The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court. It reflects an important element of the rule of law, namely that the verdicts of a tribunal should be final and binding unless set aside by a superior court on the basis of irregularity or unfairness. **This principle must apply equally to all forms of tribunal including juries**”.*

135. As already indicated in the beginning of this analysis, the mode of trial of the Applicant was by jury. The applicant’s contention of impartiality was solely directed at the presiding judge who was only the trier of law. It is worth noting that the suspicion of the Applicant has not been situated in connection with the role the presiding judge played in his trial. The fate of the Applicant at the trial, to a larger extent, depended on the triers of fact and not the trier of law. The question for this Court to determine is, whether given the role of the Chief Justice in the previous proceedings leading to the impeachment and the trial at the Senate, can any legitimate doubt be established in the mind of an objective observer that the Chief Justice was partial or bias against the Applicant while presiding over the hearing?

136. This Court in the case of *JUSTICE JOSEPH WOWO V. THE REPUBLIC OF GAMBIA* (*supra*) in an answer to the above question on the issue of impartiality of the judge held that:

“The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submission of counsel...it must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predisposition.”

137. In the determination of the issue under this head, putting all the analysis and case law authorities together, this Court answers in the negative that the right thinking reasonable member of the society in the light of all the transactions that occurred in the impeachment proceedings of the Applicant, the Chief Justice who served as the Presiding Officer in the trial at the House of Senate could not be said to be *“unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially”*. Consequently, this Court holds that the allegation of impartiality against the Chief Justice as the presiding judge over the Applicant’s trial was a figment of the imagination of the Applicant, there being no subjective or objective grounds for his apprehension of bias and partiality, and the Court so holds.

138. **On the issue of irregularities at the trial and judgment**, it is the case of the Applicant under this head that, the trial at the House of Senate was equally fraught with several irregularities that caused irredeemable prejudice

to the Applicant at the trial. According to the Applicant, the Senate had no prior specific rules governing impeachment trial, so upon the receipt of the Bill of Impeachment from the House, same was forwarded to its Judicial Committee which then sought amendments to the Senate Standing Rules, particularly Rule 63 to enable the Senate handle the trial. The Applicant argues that though the Amended Rule 63 was adopted by the Plenary of the Senate, there was lack of clarity and certainty in the rules so far as his trial was concerned to the extent that four (4) Senators filed a suit at the Supreme Court to challenge the legality of the amendment made to the Senate Rule 63 on grounds that it did not conform to the constitutional mandate and threshold of the phrase “*prescribed procedure by the “Legislature”*”.

139. The Applicant further contends that after the submission of final arguments of the parties, and contrary to the law and the established practice in jury trials, Chief Justice/Presiding Officer again declined and refused to charge members of the Liberian Senate, who were sitting as jurors and as triers of the facts, on the evidence produced and the applicable constitutional provisions and statutory laws, and further neglected, failed and refused to require the jurors to remain together as jurors until they could return a verdict. It is on record that one of the jurors, Honorable Senator Sando Johnson, prior to the return of their verdict, wrote to the Presiding Officer seeking to bring to his attention that the verdict reached in the impeachment trial was not in conformity with even Section 24 of the very controversial Senate Amended Rule 63 hence, Senator (Juror) Johnson was objecting to any announced outcome of the verdict but his plea was ignored.

140. The Respondent on her part relied on the provision of the section 43 of the 1986 constitution of Liberia which gave the right of impeachment proceedings to the National Assembly and submitted that all procedure laid down by the law was followed and that none of the procedural rights of the Applicant was violated.

141. The Respondent on her part maintains that the impeachment trial was done in accordance with the due process of law and all necessary safeguards to ensure that the rights of the Applicant are well protected were put in place. The Respondent denied any procedural irregularities and maintain that every aspect of the impeachment was done in accordance with the due process laid down by the law of Liberia.

142. Generally, it is envisaged under Article 7 of the African Charter that procedural laws and rules governing any criminal trial must not only be clear, but also certain and known to the general public, and particularly to the accused before his trial. If it fails to do so, it suffers from a material defect capable of rendering any ensuing trial equally defective because it will amount to a significant disparity between the defence and the prosecution, attaining the level of a breach of the principle of equality of arms which **requires that the accused be given an adequate and proper opportunity to defend himself.**

143. The Inter-American Court of Human Rights case of *USÓN RAMÍREZ V. VENEZUELA JUDGMENT OF NOVEMBER 20, 2009* on what constitute due process of law, the Court held that: *“Thus, the codification of a crime shall be stated expressly, accurately, taxatively and previously, even more so when criminal law is the most restrictive and severe means to establish*

liabilities for illicit behavior, taking into account that the legal framework shall provide juridical certainty to its citizens.”

144. Also, in the case of *ALTUĞ TANER AKÇAM V. TURKEY 27520/07 | JUDGMENT (MERITS AND JUST SATISFACTION) | COURT (SECOND SECTION) | 25/10/2011*, the Court held: *“The Court reiterates that the relevant national law must be formulated with sufficient precision to enable the persons concerned – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”*.

145. The allegations of irregularities catalogued by the Applicant which were not controverted by the Respondent are very worrying and the Court takes them seriously. The following were the arguments of the Respondent’s Counsel and the remarks of the Presiding Judge when the Applicant raised the issue of irregularities: at paragraph 5.17 of the statement of defence, the Respondent stated *“Further, an impeachment case consisting of a full trial resulting in conviction and removal of office is novel in Liberia and as such there is no precedent to follow”*. Again, in respect of the irregularities in the manner the jurors conducted themselves, Counsel argues that *“These were mere perfunctory guidelines which supported and buttressed rules promulgated by the senate”*. When the Presiding Judge was to rule on the Applicant’s concerns, he is on record as contained in EXHIBIT DF/5, the judgement of the Senate trial, to have stated at page 4, closing part of the first paragraph, as follows: *“We said consistently that at this impeachment trial, the rules regarding what jurors do or don’t do are relaxed. This is why senators were not kept together so that they will not meager with the public*

and there by become influenced as it is required in regular trial in our courts. More than that, the individual senators here who are also jurors not only go home every day and discuss matters pertaining to this impeachment proceedings, but some of them have even gone on the airwaves and discussed the case. Had this been a regular trial, such jurors will not be permitted to serve on the panel.

Moreover, we take a look around and see that a good number of the Senators are not even here as their verdict is being brought. This means that the rules pertaining to regular jury trial in court are much more relaxed in this proceedings”.

146. The above position of the Court of Impeachment reveals palpable infractions of the Amended Rule 63 particularly Section 11 thereof which states as follows:

Except otherwise provided in these Rules and the Constitution, the trial of any impeachment shall be conducted in keeping with the provisions of the Criminal Procedure Law and the practice generally obtained in felony cases before trial courts in Liberia”.

147. In the case of *TAXQUET V. BELGIUM 926/05 | JUDGMENT (MERITS AND JUST SATISFACTION) | COURT (GRAND CHAMBER) | 16/11/2010*, the grand chamber considering the margin of appreciation of mode of trial permissible in the conduct of judicial systems held that:

“Accordingly, the institution of the lay jury cannot be called into question in this context. The Contracting States enjoy considerable freedom in the choice of the means calculated to ensure that their judicial systems are in compliance with the requirements of Article 6. The Court’s task is to consider whether the method adopted to that end has led in a given case to results which are compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case. In short, it must ascertain whether the proceedings as a whole were fair.”

148. For the law to be said to comply with the procedure laid down in an Act, it must be foreseeable contrary to what pertains to the instant case where the whole proceedings were deprived of the appearance of having been conducted on the basis of prescribed rules and procedures. If there were proper rules of procedure the Senate would have been under obligation to abide by those rules and procedures to legitimize the process. The lack of clarity in the rules afforded the Senate unfettered rights to resort to some unorthodox means in the trial of the Applicant which materially impaired the overall fairness of the trial.

149. The overall fairness of the proceedings could not have been guaranteed merely by process of amendment to the Senate Standing Rules (Amended Rule 63) providing for certain safeguards in the abstract. It is necessary to examine whether the operation of the amended Senate Standing Rules in the Applicant’s case had a compensatory effect in practical terms, rendering the entire proceedings fair. In addition, there were several procedural irregularities associated with the trial at the Senate which eroded any guarantee of fairness supposed to have been enjoyed by the Applicant.

150. While it is true that the Applicant was involved at the trial in the Senate, he was nevertheless deprived of proper appreciation of the proceedings due to lack of clarity in the rules due to the amendments which were effected ostensibly for his trial and the manner same were administered by the Senate. The procedure applied against the Applicant was not sufficiently clear to guarantee the effective enjoyment by the Applicant of his right to fair trial. In that connection, the Applicant was hugely prejudiced. Moreover, the Presiding Officer failed to properly put in check the conduct of the jurors by relaxing the rules of jury trial as pertains to felony trials. In spite of his efforts to impartially perform his role as the trier of the law, the Presiding Officer did not seem to have taken into account the impact of the jury's conduct on the fairness of the trial in the sense that the jurors were not adequately informed of the procedures to guide their deliberations and voting which could have guided them in assessing the significance of the defence of the applicant, to the extent that some of the jurors formally filed complaints regarding the manner their activities were subjected to abuse.

151. The Court finds that the absence, in the present case, of proper directions or guidance as to how the jury should assess the Applicant's defence, conduct their deliberations and voting, and coupled with the Applicant not having received sufficiently clear information on the procedures governing his trial, was a major defect that affected the overall fairness of his trial.

Alleged violation of the Applicant's rights to work

152. On the issue of right to work, it is the case of the Applicant that the Respondent violated his human rights to work guaranteed by Articles 5, 7 and 15 of the African Charter, when Respondent removed him from his position as an Associate Justice of the Supreme Court of Liberia by means of an alleged illegal impeachment trial and conviction.

153. The Respondent, however, submits that part of the reasons the Applicant was removed from office both by political and legal process, was for allegedly violating the function of his office in the process of execution of his duties relating to a judgment in a trial and thus, the procedure for his removal followed the due process of the domestic law of Liberia as governed by the relevant provisions of its extant laws, particularly Section 43 of the 1986 Constitution of Liberia, and therefore no right of the Applicant was violated.

154. The material part of Article 23 (1) of the African Charter which deals with the right to work reads as follows:

“Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”

It is the claim of the Applicant that the Respondent has violated his above stated right to work having been appointed to the Supreme Court as an Associate Justice for life subject to the condition of service of not violating his judicial ethics. It is his further argument that he was allegedly accused of violating his terms and condition of service while performing his official judicial function of delivering a judgment in a case before him.

155. This Court has determined the most crucial and salient issues with regards to the impeachment and removal of the Applicant and has found that he was not given the right to fair hearing, and therefore will not belabour the issue under this head; as every other issue is hinged upon the procedure of removal which has been declared inappropriate and not compatible with nor in compliance with the various international human rights standards binding the Respondent.
156. However, this Court wishes to point out that, based on the authorities of case laws from other jurisdictions which are persuasive and on the jurisprudence of this Court, the removal of judges from office is a very delicate issue which must be handled with utmost caution because of the function of their office. The then Chief Justice of the Supreme Court of the United States of America, Chief Justice William Rehnquist commenting on the removal of a judge from office opined and wrote in his masterpiece publication, "*GRAND INQUESTS-1992*" that "judicial acts – [a justice's] rulings from the bench – would not be a basis for removal from office by impeachment and conviction." Also, in a similar vein, Lord Phillips in a hearing on the report of the *CHIEF JUSTICE OF GIBRALTAR [2009] UKPC 43* stated that: "*The independence of the judiciary requires that a judge should never be removed without good cause and that the question of removal be determined by an appropriate independent and impartial tribunal.*"
157. This Court is persuaded by the opinions of the above learned law lords stated above and aligns its reasoning with them that, assuming but not conceding that perhaps the Respondent has a good cause to remove the Applicant from his office as an Associate Justice of the Supreme Court of Liberia for any

proven infraction of law or violation of the ethics or his oath of office, it should have been done in a very careful and orderly way such that it would not violate his rights to work and fair hearing as guaranteed by the various international human rights instruments including the African Charter.

158. This Court therefore comes to a decision in view of its earlier findings, and in particular reference to the terms and conditions of service of the Applicant as an Associate Justice, which guaranteed him a life-time employment with sound retirement benefits that there has been a violation of the right of the Applicant to work, and the Court so holds.

Alleged violation of right to dignity of person of the Applicant

159. **On the issue of an alleged violation of the right to dignity of person of the Applicant**, having found a violation of the rights of the Applicant to fair trial and work, the task of this Court under this heading is to examine whether those violations allegedly occasioned a further violation of the Applicant's right to dignity of his human person. The Applicant cited Article 4 of the African Charter to support his claim of violation to his dignity of person which reads: *"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."*
160. The Court has critically evaluated the case of the Applicant vis-à-vis the above provision of the African Charter and has come to the conclusion that his claim for violation of dignity of his human person is not sustainable under the provision and same is dismissed.
161. However, from the judicial spectacles of this Court, taking into consideration the way and manner in which the Applicant's removal process was carried

out; the inability of the Applicant to cater adequately for his family due to potential loss of earnings after his removal; and the dent of record and palpably irredeemable damage to the reputation of the Applicant as an Associate Justice of the Supreme Court of Liberia with distinguished international profile that has been built over years of service, have adversely affected the Applicant's moral status.

162. This Court is convinced that the loss of earnings can affect the standard of life and inflict untold hardship on a person, just as adverse publicity can affect the dignity of a person emotionally, physically and psychologically; this can in turn after damaging or affecting an individual's reputation lead to low estimation of the person in the eyes of the right thinking members of the society. This Court therefore holds that there has been a violation of the Applicant's self-esteem whose personal circumstances have been adversely affected by the loss of earning and the negative publicity assaulting his reputation and long life career as a judge, all as a result of his improper impeachment and removal by the Respondent, and he is therefore entitled to compensation.

IX. REPARATION:

163. This Court having found the violation of the Applicant's right to fair hearing and right to work as alleged will proceed to examine the reliefs sought by the Applicant to mitigate and offer reparation/compensation for the violation of the said rights.
164. He is claiming general damages as compensation for what he termed heinous human rights violations to fair hearing and work under equitable and satisfactory conditions and for further reason that the Applicant's illegal

removal deprives him of salaries, allowances and other associated benefits which he would have otherwise received until his legal retirement at age seventy (70).

165. The Applicant again prayed this Court for an order restoring him to his previous position as an Associate Justice of the Supreme Court of Liberia claiming that this order is absolutely necessary to discourage Member States from arbitrary removal of judicial officers only to thereafter get away with it by payment of simple compensation. Such restitution orders, according to the Applicant are bound to serve as adequate deterrent especially in the face of wanton arbitrary and illegal removal of judicial officers in the West African Sub-region. The Applicant concluded by praying for an order directing the Respondent to put in place rules of procedure to govern impeachment proceeding in Liberia as envisaged under Section 43 of the Liberian 1986 Constitution and in conformity with its international obligations.

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

“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall

enforce such remedies when granted.”(See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147 (16 December 2005).

167. In this respect, the ICCPR specifically envisages compensation as an appropriate remedy in certain circumstances, such as in the case of the Applicant, unfair trial and conviction that led to his removal from office. The question remains, however, whether it is appropriate for this Court to grant the reliefs under this heading as prayed for by the Applicant, particularly award of financial compensation, as part of the remedy for the violations of his right to fair hearing. The jurisprudence of this Court reflects that the nature and form of the effective remedy should be proportional to the gravity of harm that is suffered. It was held in the case of *MR. KPATCHA GNASSINGBE & ORS V. THE REPUBLIC OF TOGO (2013) CCJELR 141* that:

*“The ECOWAS Court of Justice does not have such a mechanism in the texts governing its mode of function, which would enable it to fix accurately the compensations to be awarded to Applicants who are victims of human rights violation. In the absence of assessing, calculating and determining the conditions for depositing applications for equitable satisfaction, the ECOWAS Court of Justice has **opted for compensation of both material and moral damages based on all-inclusive assessment of the harms suffered by an Applicant**”.*

168. In practice, the effective remedy accorded by this Court for violations of an accused’s human rights has been the assessment that *“The principle of*

reparation demands a concrete assessment of the harm actually suffered. May be compensated in law; harms suffered, lost profits, notably loss of benefits with potential of increasing the value of inherited wealth, and finally, material harm suffered by indirectly affected victims in circumstances of the death of the principal victim”. See the case of MRS. MODUPE DORCAS AFOLALU v. REPUBLIC OF NIGERIA (2014) ECW/CCJ/JUD/15/14 (Unreported) @ page 14. Again, in the case of TIDJANE KONTE & ANOR v. REPUBLIC OF GHANA (2014) ECW/CCJ/JUD/11/14 (Unreported) @ page 17, it was held that “Reparations are a ‘victim centric remedy’ focused on repairing harm caused as a result of wrongdoings. Apart from repairing, reparation also tends to compensate victims for loss suffered”.

169. In the case of *EDOH KOKOU v. ECOWAS COMMISSION (2010) CCJELR 25*, the Plaintiff’s employment with the Defendant was unlawfully and unexpectedly terminated without prior notice. This Court held that: *“The plaintiff is entitled to all the benefits he would have received for the rest of the course of his contract if his appointment had not been terminated.”*
170. It is argued by the Applicant that had it not been his illegal removal from office as an Associate Justice of the Supreme Court of Liberia, he would have entitled to his salaries, allowances and upon retirement, all his retirements’ benefits. As it stands now, due to his removal all these financial and other benefits are lost. He is therefore asking the Court to restore those entitlements since his removal was unlawful.
171. In line with the above jurisprudence, the Court finds that the Applicant’s rights right to fair hearing and work having been found by the Court to have been violated, he is entitled to all the benefits and emoluments accruable to him were his services not discontinued by the Respondent in the light of his

legitimate expectation by virtue of his appointment to work for life or retire at the age of seventy (70) years as an Associate Justice of the Supreme Court of Liberia. This Court in the case of *REGISTERED TRUSTEES OF ASSOCIATION OF FORMER TELECOM EMPLOYEES OF NIGERIA & 17,102 ORS. V. FEDERAL REPUBLIC OF NIGERIA & ORS (2019) ECW/CCJ/JUD/20/19 (Unreported)*, emphasised that: “*It is trite law that a legitimate expectation is capable of sustaining a claim on the right to property as same is subject to protection.*”

172. This Court, commenting upon the right to salary pronounced in the case of *EXECUTIVE SECRETARY OF ECOWAS & 2 ORS V. TOKUNBO LIJADU OYEMADE (2005) ECW/CCJ/APP/01/05 @ pg. 23* as follows:

“It is obvious that salary is the benefits paid by the employer to the employee for work done. It is the remuneration for a job or service. In other words, there can be no salary for work that was not actually done legally speaking. However, this principle could suffer an exception. It is the case when an employee is prevented from the place of work, to perform the official or professional obligation. The fact that the officer had no Access to her work place due to the sanction by the Plaintiff, should not prevent her from receiving her salaries and emoluments attached to the position she was occupying before the sanction”.

173. This Court re-affirms that the Applicant’s rights to fair hearing and work, coupled with his legitimate expectation by virtue of his appointment to work until retirement and earn pension as an Associate Justice of the Supreme Court of Liberia are subject to protection under all the international human rights

instruments applicable and particularly as enshrined in the relevant provisions of the African Charter. Those rights having been violated, accrues the Applicant a *bonafide* right to appropriate remedies. In view of this, the Applicant submitted a catalogue of reliefs among which is for this Court to restore the Applicant to his previous position as a justice of the Supreme Court of Liberia. This Court is well guided that the appointment and dismissal of the Applicant being both political and legal decision, is under the exclusive jurisdiction of the member state. It is within the purview of this Court by virtue of its mandate to provide and shall ensure sufficient remedy for the violations of the Applicant's rights occasioned pursuant to his impeachment trial by the Respondent.

174. This Court also observes that an order for reinstatement will automatically cater for all the claims of the Applicant for payment of loss of earning and other entitlements.

X. COSTS:

175. Article 66 (11) of the Rules of Court provides that if costs are not claimed, the parties shall bear their own costs. Consequently the court orders the parties to bear their respective costs.

XI. OPERATIVE CLAUSE:

176. For the reasons stated above, the Court sitting in public after hearing the parties:

As to jurisdiction:

- a. Declares that it has jurisdiction.

As to Admissibility:

- b. Declares the application is not admissible against the 2nd Respondent.
c. Declares that the application is admissible against the 1st Respondent.

As to compliance with Rules of the Court.

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

On Merits of the case.

- f. Finds a violation of the Applicant's right to fair hearing by the Respondent.
- g. Finds a violation of the Applicant's right to work by the Respondent.
- h. Finds no violation of the Applicant's right to dignity of his person by the Respondent.
- i. Dismisses all other claims of the Applicant.
- j. Dismisses all claims of the Respondent.

XII. REPARATION:

On the violation of right to fair hearing and work:

- k. **Orders** the Respondent to restore, calculate and pay to the Applicant all his withheld entitlements, including salaries, allowances and pensions benefits as from the date of his indictment from office up to the date of notification of this judgment;
- l. **Orders** the Respondent to reinstate the Applicant as an Associate Justice of the Supreme Court; or, in the alternative, to grant the Applicant the right to retire from service on the date of notification of this judgment with full pensions benefits as if he had retired at the normal retirement age for justices of the Supreme Court)

On moral damages:

m. Orders the Respondent to pay the Applicant the sum of Two Hundred Thousand United States Dollars (USD 200,000.00) as reparation for moral prejudice suffered for the violation of his rights.

XIII. COMPLIANCE AND REPORTING:

Orders the Respondent to submit to the Court within six (6) months from the date of notification of this judgment, a report on the measures taken to implement the orders set forth herein.

ON COST

Orders parties to bear their respective costs.

Signed:

Hon. Justice Edward Amoako **ASANTE** - Presiding.....

Hon. Justice Dupe **ATOKI** - Member.....

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

Assisted by:

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

Done in Abuja, this 10th of Day of November 2020 in English and translated into French and Portuguese