



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

In the Matter of

**REGISTERED TRUSTEES OF FACULTY OF PEACE
ORGANISATION & 3 ORS V FEDERAL REPUBLIC OF NIGERIA**
Application No: ECW/CCJ/APP/30/21 Judgment No: ECW/CCJ/JUD/06/22

JUDGMENT

ABUJA

21 MARCH 2022

**REGISTERED TRUSTEES OF FACULTY
OF PEACE ORGANISATION & 3 ORS**

-

APPLICANTS

V.

FEDERAL REPUBLIC OF NIGERIA

-

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE

- Presiding

Hon. Justice Dupe ATOKI

- Member/Judge Rapporteur

Hon. Justice Januária T. Silva Moreira COSTA

- Member

ASSISTED BY:

Mr. Tony ANENE- MAIDOH

- Chief Registrar

REPRESENTATION OF PARTIES:

President Aigbokhan, Esq.

R.A. Otuakhena, Esq.

- Counsel for Applicants

The Federal Government of Nigeria was not represented.

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as “the Court”) delivered 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 first Applicant, the Registered Trustees of Faculty of Peace Organisation is a Non-Governmental Organisation registered in Nigeria. The second, third, and fourth Applicants namely Comrade Kelly Omokaro, Maxist Kola Edokpayi and Comrade Osemu Ogbidi are human rights activists and Nigerian citizens. The first, second, third and fourth Applicants are hereinafter referred to as “Applicants”.
3. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS), signatory to the ECOWAS Treaty and to the African Charter on Human and Peoples’ Rights and other international human rights instruments (hereinafter referred to as the “Respondent”).

III. INTRODUCTION

4. The subject matter of this Application is premised on an allegation by the Applicants that the Respondent violated their rights to freedom of association and peaceful assembly when they were restricted from carrying out a protest against the high cost of living and the indefinite suspension of the activities of the National Council of Women Societies in Edo State. They allege that the Respondent’s action violated their rights as guaranteed by Articles 10 and 11 of the African Charter on Human and Peoples’ Rights

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

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed on 18 June 2021 and served on the Respondent by electronic means on the same day.
6. The Respondent did not file any response.
7. During the virtual court session on 20 October 2021, both parties were represented. While the Applicants made an oral submission the Respondent did not. The Court having certified that the Respondent was duly served with the Application, adjourned the case to 17 February 2022 for judgment.

V. APPLICANTS' CASE

a) Summary of facts

8. The first Applicant is a non-governmental organization registered to support the cause of women and girls. The second to fourth Applicants are individuals who allege that they were key promoters of a protest scheduled for 28 March 2021 to be held in Benin City, Edo State Nigeria. The aim of the protest was to draw Government's attention to the hike in fuel prices, sachet water and cement and its link with monopoly. In view of which the second to fourth Applicants and other persons traveled from different parts of the country to participate in the protest.
9. The claim of the Applicants is that on the day scheduled for the protest, as they assembled at the National Museum ground premises to coordinate the rally, security agents of the Respondent stormed the premises and locked them in for hours. Likewise other individuals who later came to participate

in the rally were locked out thus preventing them from gaining access to the venue. Consequently, the protest could not take place as planned.

10. It is their contention that the Respondent failed to promptly communicate the decision prohibiting the assembly to the Applicants. They submit that the lock out order of the Respondent infringed on their rights, their best interest and that of the general public. Furthermore, the grounds for the interference were not clear, it was overly broad and vague not being specific in regards to the nature nor the duration.
11. They further alleged that the Edo State Government banned the gathering of members of Nigeria Council of Women Societies in May 2021 through a public announcement. They submit that the ban was not in accordance with the principles of legality or legitimate public purpose and was unnecessary and disproportionate to achieving any meaningful purpose within a democratic society.
12. In conclusion, the Applicants submit that the Respondent violated their right to freedom of association and assembly provided by Articles 10 and 11 of the African Charter; Article 21 of the ICCPR and Section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), as well as the African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa 2017 and Guidelines for Policing of Assemblies by Law Enforcement Officials in Africa 2017.
13. The Applicants supported their claims with Exhibits A (Applicant's certificate of registration), B, C, D (Photographs at the scene of the event), E, F, G (media reports of the event by Daily Trust, Sun News online and

Vanguard News online) and H (copy of the Public announcement of the Government of Edo State banning activities of Nigeria Women Societies).

b) Pleas in law

14. The Applicants rely on the following laws:

- i. Article 33 of the Rules of the Court;
- ii. Article 10 of the Supplementary Protocol Amending the Protocol Relating to the Court;
- iii. Article 59 of the ECOWAS Revised Treaty;
- iv. Articles 3, 10, 11 and 17(1) of the Universal Declaration of Human Rights;
- v. Articles 10 and 11 of the African Charter;
- vi. Article 21 and 25 of the ICCPR;
- vii. Section 40 of the 1999 Constitution of the Federal Republic of Nigeria;
- viii. Rules 70(a), 71(b), 73 and 94 of the ACHPR's Guidelines on Freedom of Association and Assembly in Africa 2017; and
- ix. Rule 9 of the Guidelines for the Policing of Assemblies by Law Enforcement officials in Africa 2017.

c) Reliefs sought

15. The Applicants seek the following reliefs from the Court:

- i. A declaration that the Respondent's action of banning the peaceful assembly and the disruption of the procession organized by the Applicants infringes on their rights to assemble and associate as guaranteed in Articles 10 and 11 of the African Charter; Article 21 of the ICCPR; Section 40 of the Constitution of Nigeria, Articles 3, 10, 11 and 17(1) of the Universal Declaration of Human Rights (UDHR) and Rule 94(b) of the Guidelines on Freedom of Assembly and Association;

- ii. A declaration that the Respondent has a duty to ensure the protection of the assembly slated for 28 March 2021 as guaranteed in Articles 10 and 11 of the African Charter; Article 21 of the ICCPR; Section 40 of the Constitution of Nigeria, Articles 3, 10, 11 and 17(1) of the Universal Declaration of Human Rights and Rule 94(b) of the Guidelines on Freedom of Assembly and Association;
- iii. A perpetual injunction restraining the Respondent or its agents or privies from issuing any ban notice, disturbing or interfering with the rights of any person or group of persons from any part of Nigeria from holding assembly or associating with themselves as a group or part of a group in pursuance of their rights as stipulated by law;
- iv. An award of five hundred thousand (500,000) US Dollars as general damages and/or exemplary damages for the unlawful denial of the rights to association and assembly of the Applicants and interest therein at ten percent (10%) per month from the date of the judgment until judgment is fully liquidated against the Respondent.

VI. RESPONDENT'S CASE

16. The Respondent made no submissions despite being served with the processes filed by the Applicants.

VII. JURISDICTION

17. The Application is founded on the alleged violation by the Respondent of the Applicants' rights to freedom of assembly and association as provided by Articles 10 and 11 of the African Charter and other similar provisions of the ICCPR and UDHR. The basis of the Application being an allegation of the violation of human rights, the Court holds that it has jurisdiction to

adjudicate on it in line with Article 9(4) of the Protocol A/P1/7/91 on the Community Court of Justice (Protocol), which provides, “*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*”

VIII. ADMISSIBILITY

18. Admissibility of applications by this Court is provided for by Article 10(d) (i) and (ii) of the Supplementary Protocol 2005 which provides thus: “*Access to the Court is open to...d) individuals on application for relief for violation of their human rights; the submission of application for which shall: i) not be anonymous; nor ii) be made whilst the same matter has been instituted before another International Court for adjudication.*”

19. These provisions implicate three criteria for an application to be admissible: 1) the status of the applicant as a victim of human rights violations must be established; 2) the application shall not be anonymous; 3) the application shall not be instituted before another International Court for adjudication. *AZIAGBEDE KOKOU REP OF TOGO ECW/CCJ/JUD/07/13 PAGE. 7; ASSIMA KOKOU INNOCENT & ORS V. REPUBLIC OF TOGO ECW/CCJ/JUD/08/13 PAGE.9*

20. In addressing the first requirement, an additional element is implicated, that is, proof of capacity as a proper party to file an action. Thus ahead of determining whether a party is a victim or otherwise, which is an analysis on merit it is imperative to first examine the capacity of the Applicants to institute this action. This is more compelling particularly in light of the fact that the first Applicant is described in the Application as a legal person known as the Registered Trustees of Faculty of Peace Organisation, which is a Non-Governmental Organisation registered in Nigeria.

21. The enabling Article on access to Court that is Article 10(d) of The Supplementary Protocol 2005 provides thus: “*Access to the Court is open to... (d) **Individuals** (Emphasis provided) on application for relief for violation of their human rights.....*” The opening phrase- *individuals* is a determining factor in identifying the capacity of a party to access the Court for the violation of human rights.

22. The term individual in its natural definition connotes a human person/being. Though this term has been held to also accommodate a legal person, the Court has declared with regards to human rights violations that human rights are human centered. *NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 PAGE 18.*

23. The import of the above is that as a general rule, a legal person cannot be accommodated within the term *individual* to bring an action for the violation of human rights under the Charter.

24. The Court clearly put to rest the possibility of a legal person bringing an action for the violation of human rights when it held thus:

“Human rights imply the rights that belong to all human beings irrespective of their nationality, race, caste, creed and gender amongst others; like the right to life, right to health and the right against torture, inhuman and degrading treatment which are specific to a human being. On the other hand right of a corporate body, are rights that are fundamental and necessary for the existence of a corporate body which a legal entity can enjoy and be deprived of; for example right to freedom of speech as a corporation is entitled to speak about its product; right to property as the corporation generates profit in shares and, or cash and is entitled to the quiet enjoyment of same. The established exceptions under which corporate

bodies can ground an action are rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression.” DEXTER OIL LIMITED V REPUBLIC OF LIBERIA (ECW/CCJ/JUD/03/19), PAGE 21.

25. The implication of the above is a further elucidation of the humanness of a party that can bring an action for the violation of human rights violations. Thus only individuals have absolute access to the Court for human rights violation and legal persons in exceptional cases.

26. Based on the above, the Court will now proceed to determine whether the first Applicant has the capacity to bring this application. Whether the first Applicant falls appropriately under these exceptions or not will be determined by a careful consideration of their claim as well as the reliefs sought. The description of the parties as contained in the Application states as follows “*The first Applicant, the Registered Trustees of Faculty of Peace Organisation is a Non-Governmental Organisation registered in Nigeria*”.

27. Additionally, one of the reliefs sought by all the Applicants inclusive of the first Applicant is for “*A declaration that the Respondent’s action of banning the peaceful assembly and the disruption of the procession organized by the Applicants infringes on their rights to assemble and associate as guaranteed in Articles 10 and 11 of the African Charter; Article 21 of the ICCPR; Section 40 of the Constitution of Nigeria, Articles 3, 10, 11 and 17(1) of the Universal Declaration of Human Rights (UDHR) and Rule 94(b) of the Guidelines on Freedom of Assembly and Association*”

28. Flowing from above, it is undisputable that the first Applicant is a legal person who is suing for the violation of their right to association and

assembly. These rights are obviously not within the contemplation of the established exceptions of right to fair hearing, right to property and right to freedom of expression as stated in paragraph 29 (supra). The Court therefore finds that an action for the violation of the right to association and assembly not being within the contemplation of the established exceptions cannot be maintained by a legal person.

29. The Court however notes the evolution of this principle which now recognises the right of legal entities to bring action for the violation of *ANY* (*emphasis provided*) human rights when brought in a representative capacity on behalf of individual victim(s). This principle has been espoused by the Court in a plethora of decisions amongst which are cases referenced below when the Court held “.....*However, even those jurisdictions which started embracing a strict literal interpretation of the concept of victim, for the purpose of human rights protection, have evolved into a more flexible approach in order to allow other persons, not directly affected by the alleged violation, to have access to the Court and seek justice, on behalf of the actual victim and to hold accountable the perpetrator.*” *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS ECW/CCJ/JUD/16/14 (SUPRA).*

30. In further explanation the Court stated in another case that “...*It is noteworthy that public interest litigations refer to cases in which Courts allow volunteers like Lawyers, Citizen Petitioners, NGO’s to bring actions on behalf of some victimized groups who ordinarily are without sufficient means of access to legal services or justice*”. See *THE INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHT ENLIGHTENMENT FOUNDATION V. FRN (2016) ECW/CCJ/JUD18/16 & 2 ORS.*

31. As indicted in paragraphs 29 and 30 (supra), the first Applicant is a legal person suing on their own behalf and claiming relief for themselves for the sum of \$500,000 as compensation “for *general damages and/or exemplary damages for the unlawful denial of the rights to association and assembly of the Applicants*” (Emphasis provided). The principle of representative action in human rights violation envisages that an action instituted on behalf of another does not confer any benefit to the representative applicant from the relief granted under these circumstances. The relief sought above is to compensate all the Applicants which includes the first. Clearly the first Applicant has not demonstrated a representative capacity in the instant application.

32. Consequently, the Court holds that the first Applicant not being an individual but a legal person and not falling within the established exceptions, nor suing in a representative capacity is not a proper party to file an action for the violation of their right to association and to assembly. The application of the first Applicant in this regard is declared inadmissible and is therefore hereby struck out.

33. With regards to the second to fourth Applicants who are individuals, having alleged the violation of their right to association and to peaceful assembly which is in consonance with Article 10 and 11 of the Charter, the Court admits the Application and will proceed to determine same on the merits. The second to fourth Applicants will hereinafter be referred to as the “*Current Applicants*”

34. In respect of the second and third requirements for admissibility, the Court holds that the Application is admissible as it is in compliance with Article 10 (d) (i) and (ii) of the Protocol, having found that it is neither anonymous

nor made whilst the same matter has been instituted before another international court for adjudication.

IX. MERITS

35. The Court observes that the Application was not challenged by the Respondent, as no defense was filed despite being served with the Application and given ample time to respond to same in accordance with Article 35 of the Rules of Court. Moreover, at the last Court hearing on 20 October 2021, the Respondent entered their appearance before the Court, but gave no reasons for failing to file a defense.

36. The Court is guided by Article 35 (1) of the Rules of Court which stipulates the time limit for response to an application. Having not taken advantage of the opportunity for a motion for extension of time to file a defense in line with Article 35(2) of the Rules, the Court is not obliged to wait *ad infinitum* and will therefore proceed with the determination of the case based on the Applicants' submissions.

37. The Court speedily cautions that proceeding with the determination of the case will not result in an automatic finding for the Applicants. The Court must still determine whether the Application is well founded. See *VISION KAM JAY INVESTMENT LIMITED V PRESIDENT OF THE COMMISSION & ANOR JUDGMENT NO: ECW/CCJ/JUD/24/16 PAGE 13*; *LIEUTENANT COLONEL SILAS JOCK SANTOI V. FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO ECW/CCJ/JUG/01/19 PAGE 14*.

38. As previously held, the Court has declared it has jurisdiction to preside over the Application in accordance with Article 9(4) of the Protocol (as amended by the Supplementary Protocol) and same is admissible in accordance with

Article 10(d) (i) and (ii) of the same Protocol as it relates to the Current Applicant. In that wise, the Court will therefore proceed to analyse the merit of the application despite the Respondent's failure to file a defense.

39. The summary of the facts as alleged by the Applicants are as follows;

- That the Edo State Government via a public announcement on 14 May 2021 banned the gathering of members of a Nigerian Women Society. Exhibit H in support of this allegation states that “all activities of the National Council of Women Societies in Edo State, including the proposed State Chapter elections, are hereby suspended indefinitely until pending issues are resolved.”
- That the rally planned by the Applicants for 28 March 2021 to protest the hike in fuel prices, sachet water and cement and its link with monopoly was disrupted by the Respondent's security forces, that is, the police, Department of State Security Services (DSS) and the Nigeria Security and Civil Defence Corps (NSCDC) who locked them inside the premises of the Museum for hours.
- That other members who arrived later were locked out and not allowed to enter the premises.
- That this action by the security forces of the Respondent frustrated the Applicants' planned rally as they were prevented from reaching their target audience.
- That the Respondent failed in their obligation to offer the necessary facilities and eliminate existing obstacles to the attainment of the right to association and assembly.

- That the limitation on assembly and association in Edo State is overly broad and vague and that the ban of their activities is not specific with a precise nature of assembly and not limited to a duration necessary to achieve any legitimate aim.
- In conclusion the Applicants submit that the Respondent violated their right to freedom of association and assembly under Articles 10 and 11 respectively of the African Charter. They claim the reliefs in paragraph 17 (i-iv) Supra.

Analysis of the Court

40. Ahead of analyzing the substantive rights allegedly violated by the Respondent, the Court considers it expedient to first address the *raison d'être* for making the Federal Government of Nigeria the Respondent in this matter where the alleged human rights violation was carried out at the behest of the Government of Edo State.

41. In addressing this issue, the Court recalls that it has in a plethora of cases reiterated the principle of state responsibility under international law whereby a State Party to international human right instruments is held responsible for the violation of the rights of its citizens by the conduct of any of its organ empowered to exercise elements of governmental authority. Such organ having acted in that capacity, shall be considered as an act of the State under international law even if, in the particular case, the organ exceeded its competence according to internal law or contravened instructions concerning its activity. See *TIDJANE KONTE & ANOR V. REPUBLIC OF GHANA (2014) CCJELR PAGE 131, PARAGRAPH 38*.

42. This principle was further expatiated by the Court when it held that “...a Member State as an abstract entity must necessarily act through its organs

made of human beings, its responsibility when questioned must a fortiori encompass the organs acting on its behalf. Thus, for the purpose of International law, though the State consists of different organs with different functions it is treated as a unit so that the action of any of these organs is considered the action of that single legal entity...” COL. MOHAMMED SAMBO DASUKI (RTD) V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/23/16 PAGE 28; AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA APPLICATION NO: ECW/CCJ/APP/32/2019; RULING NO. ECW/CCJ/RUL/01/21 PARAGRAPH 40.

43. In the instant case, the Government of Edo State, being one of the federating states of the Respondent, its actions which allegedly violated the rights of the Applicants will be attributed to the Respondent in accordance with the principle of State responsibility under international law.

44. With this clarification, the Court will now proceed with its analysis of the merits of the Application.

Alleged violation of the right to freedom of association

45. Article 10 of the African Charter guarantees the right to freedom of association. It provides:

1. *Every individual shall have the right to free association provided that he abides by the law.*
2. *Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.*

46. The alleged violation of the right to association is premised on the indefinite suspension of the activities of the National Council of Women's Societies by the Edo State Government. All Applicants including the first Applicant

are parties to this allegation. The status of the first Applicant has already been settled as being an improper party in respect of the allegation of the violation of this right.

47. Regarding the Current Applicants, being individuals, they are within the contemplation of Article 10 of the Charter as proper parties and are therefore qualified to bring an action for the violation of their guaranteed right to association. However, there must be established a nexus between the Current Applicants and the alleged violation to justify a claim of being victims of the Respondent's action of suspending the activities of the Society. In other words the Current Applicants must prove they have the locus standi to institute the matter. In this regard the Court held thus: *"the strict application of locus standi denotes that a Plaintiff wishing to sue must have sufficient interest in the subject matter in order to have a standing to litigate same."* *FEDERATION OF AFRICAN JOURNALISTS & 4 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 PAGE. 17*; See also *EBERE ANTHONIA AMADI & 3 ORS V. THE FEDERAL GOVERNMENT OF NIGERIA JUDGMENT NO ECW/CCJ/JUD/22/19 PAGE. 13*.

48. The Court is replete with decisions to the effect that only victims who have suffered personal damages due to the violation of their human rights can access the Court. *"To plead a case before this Court one must have suffered a personal harm..."* *REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) V THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR ECW/CCJ/JUD/19/16 PAGE 23*. This obviously exempts cases of indirect victims.

49. Furthermore, *"In order to substantiate an action concerning the violation of human rights, it is necessary that the applicant be a victim and that the*

Respondent State be responsible for the alleged violations. Therefore, the essential criterion for human rights complaint is that the applicant is a victim of the human rights violation and that the applicant must prove his or her locus standi in the case. TAHIROU DJIBO & 3 ORS V. THE REPUBLIC OF NIGER ECW/CCJ/JUD/13/2020 PAGE 25. See also INCORPORATED TRUSTEES & 11 ORS V FRN & 2 ORS -ECW/CCJ/JUD/18/16 PAGES 16-17.

50. In the instant case, the Court is unable to find any evidence to support the Current Applicants' membership of the said Women Society that establishes the existence of a relationship with the Society neither is there a proof of any damage suffered by the alleged ban of the activities of the said Society. The Current Applicant have therefore not established that they are victims of the conduct of the Respondent.

51. Furthermore, it is interesting to note that the National Council of Women's Societies who is the alleged victim is not even a party to this action. It is trite that only parties to an action can benefit from an award of reparation for an alleged violation. The Court is of the considered opinion that the Current Applicants are mere meddlesome interlopers.

52. In view of the analysis above, the Court holds that the Current Applicants have not established any locus standi to bring an action for the violation of the right to association of the National Council of Women's Societies. The application in this wise is hereby dismissed.

Alleged violation of the right to assemble freely

53. The Applicants allege that on 28 March 2021, they assembled at the Museum Grounds to coordinate the rally planned to protest the hike in fuel prices, sachet water and cement and its link with monopoly. That the

Respondent's security forces, that is, the police, Department of State Security Services (DSS) and the Nigeria Security and Civil Defence Corps (NSCDC) locked them inside the premises of the Museum for hours while those who came later were not allowed to enter the premises. This action of the security forces of the Respondent frustrated the Current Applicants' planned rally having been prevented from carrying out the lawful protest. Exhibits B, C, D, E, F & G.

54. They conclude that the Respondent is in violation of their rights to peaceful assembly as provided in the African Charter, the ICCPR and Constitution of the Federal Republic of Nigeria, the ACHPR Guidelines on Freedom of Association and Assembly in Africa 2017 and Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa 2017.

Analysis of the Court

55. As earlier held, this analysis is only in respect of the second to fourth Applicants who are now referred to as the Current Applicants.

56. Article 11 of the African Charter guarantees the right to freely assemble with others. It provides thus: *“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”*

57. The right to freely assemble is also guaranteed under Article 8 of the African Charter on the Rights and Welfare of the Child; Article 20(1) of the Universal Declaration of Human Rights, Article 21 of the International

Covenant on Civil and Political Rights, and Article 15 of the International Convention on the Rights of the Child.

58. The ACHPR Guidelines on Freedom of Association and Assembly in Africa defines Assembly as follows: “*Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose.*”(Paragraph 3).

59. The right to assembly is a fundamental right in a democratic society and can only be restricted under certain circumstances. Any restriction to the right to freely assemble must be prescribed by law, necessary and proportionate for the purposes of protecting national security or public safety, preventing disorder or criminal activities, protecting the health or morals of the public, or protecting the rights and freedoms of other people. See also European Court of Human Rights’ *Guide on Article 11 of the European Convention on Human Rights- Freedom of Assembly and Association, paragraph 53.*

60. A fundamental principle in interpreting the right to assembly is the presumption in favor of the right, this means that there shall be a presumption in favor of the exercise of the right to freely assemble. States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon the right. *DJAVIT AN V. TURKEY (APPLICATION NO. 20652/92) JUDGMENT OF 20 FEBRUARY 2003.*

61. Any legal framework put in place or other steps taken relative to the rights to freedom assembly shall have the primary purpose of enabling the exercise

of the rights and not to restrict it. See *ACHPR Guidelines on Freedom of Association and Assembly in Africa*, paragraph 71. This invariably means that a positive obligation is placed on the State to ensure that the right to assembly is effectively exercised.

62. It is also pertinent to state that “*participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.*” See *ACHPR Guidelines, Paragraph 71 (Supra)*. *AMNESTY INTERNATIONAL AND OTHERS V. SUDAN, COMMUNICATION. NOS. 48/90, 50/91, 52/91 AND 89/93 (1999), PARAGRAPHS. 81-82.*

63. Furthermore, lack of notification prior to an assembly does not render such an assembly illegal, and isolated acts of violence does not render an assembly as being non-peaceful. See *ACHPR Guidelines paragraph 71 (Supra)*. The import of these principles is that great latitude is conferred on citizens in the enjoyment of their right to freely assemble while a greater responsibility is imposed on State to permit the enjoyment of the right with minimal restraint.

64. In the instant case, the Current Applicants alleged that they gathered together at the Museum in Benin Edo State to commence a protest against the hike in the price of petrol and cement. Unfortunately the security forces comprising the Police, Department of State Security Services, the National Civil Defence Corps and local vigilante group locked them in in the premises of the Museum Ground wherein they assembled to plan their rally, thereby preventing them from continuing with their arrangement or even

exiting of the premises. Others who arrived later were equally locked out. They further alleged that in so doing the security personnel prevented the Applicants from carrying out the objective of their gathering to protest the issues of concern earlier stated. This fact is supported by Exhibits B, C, D, E, F, & G.

65. The Court ahead of determining the alleged violation must be convinced of the veracity of the facts alleged as same must be proved. *ECW/CCJ/JUD/02/18 FESTUS A.O. OGWUCHE V. FEDERAL REPUBLIC OF NIGERIA PAGE 33* and *ECW/CCJ/JUD/01/20 OUSAINOE DARBOE & 31 ORS v. THE REPUBLIC OF GAMBIA, PAGE 23.*

66. As earlier stated, even though the Respondent failed to file a defense despite being informed of the case, nevertheless, all facts deposed to by the Applicant must be proved to the satisfaction of the Court. It is therefore imperative for the Current Applicants to prove that they indeed gathered at the venue cited and that the named security agents prevented them from fulfilling their objective of a peaceful protest.

67. One of the methods of establishing the occurrence of events such as in the instant case is either by oral testimony of the parties, verified video recording or media reportage which aligns with the pleadings of the Applicants. In this wise the Applicants submitted Exhibits B, C & D (photographs at the scene of the event) and Exhibits E, F, & G (Media Reports of Daily Trust, Sun news online and Vanguard News)

68. Regarding the photographs attached to the Application, the Court considers that having had no prior physical identification of the Applicants to allow a comparison with individuals in the photographs, it is unable to give any

probative value to the photographs pleaded. The Court therefore rejects the photographs as evidence that the Applicants participated in the rally and were locked up within the premises of the Museum Grounds.

Exhibits E, F, & G, are media reports of the Daily Trust, Sun News and Vanguard News online respectively, relevant excerpts of which are reproduced hereunder:

Daily Trust of 30 March 2021 – *“There was mild drama on Monday as a combined team of security agents numbering over 100 prevented a coalition of civil society organisations, students and youth groups from protesting the hike in the price of cement in Benin City, the Edo State capital.*

The protesting group converged on the premises of the national museum in Benin City to hit the street but security personnel comprising of Nigeria Police, Department of Security Services (DSS), and Nigerian Security Civil Defence Corp (NSCDC) and local vigilante group, shut the gate of the museum against the protesters.

Residents, including staff who have businesses to carry out within the premises were also shut out.

Addressing journalists, Comrade Kelly Osunbor said the protest was to draw the attention of the government and concerned authorities to the plight of Nigerians occasioned by the recent hike in the price of cement and petrol.”

Vanguard News Nigeria of 29 March 2021 – *The Police in Edo State Monday confined hundreds of civil society groups, which have gathered at the museum ground in Benin City to protest recent hikes in cement and petroleum products.*

One of the leaders of the protesters and former president of Students Union Government of the University of Benin Osemudiamen Ogbidi, demanded

that the government set up a task force within fourteen days to look into their grievances of checking the increase in the commodities.

Other civil society leaders in the protest like Kola Edokpayi, Kelly Omokaro also unanimously passed a vote of no confidence on the state Commissioner of Police Mr Phillip Ogbadu who allegedly deployed his officers to do the bidding of higher powers.”

Edokpayi said “The Commissioner of Police is supposed to be a knowledgeable man but has belittled himself before us, you can see the padlock, he ordered his men to lock us inside the museum ground, he has imprisoned us illegally.”

69. The report of Sun News online of 29th March 2021, is also similar to the above reproduced reports, thereby confirming elements found in the facts narrated by the Applicants like the date, venue and incident that occurred on the day of the protest.

70. The Court, upon review of the media reports (Exhibits E, F & G), notes that as it concerns the venue, all three media reports confirmed that the incident occurred at the Museum Grounds in Benin City, Edo State as alleged by the Applicants.

71. The organizers of the rally were named as Comrade Kelly Osunbor Omokaro, Kola Edokpayi and Osemudamen Ogbidi who are also the second, third and fourth Applicants respectively in the instant Application.

72. The media reports also named the security agents who prevented the rally as the Nigeria Police, Department of State Services, Nigeria Security and Civil Defence Corps (NSCDC) and vigilante groups which aligns with the narration of the Applicants.

73. Finally the media reports confirm the Applicants' allegation that the above named security agents locked up the protesters in the Museum premises, whilst those outside were prevented from entering the venue.

74. The above facts support the Current Applicants' narration of the alleged events and the Court is therefore satisfied that they have proved that they indeed gathered at the Museum on the date alleged and that security agents disrupted and prevented the protest from going on.

75. Having established that the facts as alleged by the Applicants have been proved, the Court will now proceed to examine the alleged violations to determine whether same have equally been proved

76. As earlier stated, the right to freely assemble though guaranteed by Article 11 of the Charter is not absolute and provides thus, "*...The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*"

77. As also earlier stated, the purpose of any interference by Government is to facilitate and not to prevent or restrict the right, as steps taken relative to the rights to freedom of assembly shall have the primary purpose of enabling the exercise of the rights and not to restrict it- *paragraph 71 of the ACHPR Guidelines on Freedom of Association.*

78. The pleadings of the Applicants did not indicate the reason given by the security agents for interfering with and dispersing the gathering. It is however, their contention that the Respondent failed to promptly

communicate the decision prohibiting the assembly to the Applicants and the grounds for the lock out were not made clear, it was overly broad and vague as it was not specific in regards to the nature of the assembly nor the duration.

79. While these assertions indicate that some reasons were given for the lock-in by the Respondent, the Applicants did not provide details to enable the Court to decide whether the reasons as alleged were indeed vague, broad, non-specific and not in accordance with the law thus amounting to the violation of the right to peaceful assembly.

80. The Court recalls again that the Respondent failed to defend this action. If they were justified as provided by law to disrupt the gathering, the Court has no such record and is precluded from making a case for them. In the absence of information from the Respondent, the Court must give credence to the facts submitted by the Applicants which is to the effect that the reason given by the Respondent to interfere with the gathering was unjustified as it was not in accordance with the law.

81. Furthermore, there is no evidence to prove that the action of the security personnel was in consonance with the restrictive clause in the Article that proves that the action was in pursuance of a legitimate aim. The Court has no record that it was aimed to protect national security or public safety, or to prevent disorder or criminal activities, protect the health or morals of the public, or protect the rights and freedoms of other people.

82. The action of the security forces was clearly not to facilitate or enable the exercise of the right of the Current Applicants to freely assemble as envisaged in the Guidelines, rather it prevented them from exercising their fundamental right to protest, thereby violating same. The Court therefore

holds that the interference by the Respondent was not in accordance with the law

83. Additionally, the facts before the Court do not indicate that interference and lock-in was provoked by the Current Applicants neither was there evidence that the gathering was violent or disruptive or had the potential to be as the Applicants alleged they only gathered to plan the protest. This fact not being controverted is admitted by the Court.

84. Even where the State is justified in restricting an assembly, it is still obliged to ensure proportionality in the measures taken. As observed by the Human Rights Committee in its General Comment No. 27 “*restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...*”

85. The action of the Respondent in locking the Applicants in the premises of the Museum for hours where no violence was established is clearly overboard. The Court is of the opinion that there are other humane options available to the Respondent to disperse the Applicants without the prolonged detention. The Respondent having failed to defend this action nor avail the Court of any justification thereof, the Court finds that the restrictive measure applied by the Respondent was out of proportion and such action further violates the Applicants’ rights to peaceful assembly.

86. The Court therefore holds that the Respondent by disrupting the gathering of the Current Applicants and locking them in for hours without justification

violated the Current Applicants' right to assemble freely contrary to Article 11 of the African Charter.

REPARATIONS

87. It is a fundamental principle of international human rights law that every right violated by a State obliges reparation. Were it not so, as observed by the African Commission on Human and Peoples' Rights, the "*rights guaranteed by the African Charter would be an empty proclamation if it was not backed by the guarantee of a right to restitution or compensation in the event of violation*".

<http://www.Achpr.Org/Communications/Decision/302.05/>.

88. In the instant case, the Court has held that there was a violation of the Applicants' rights to assembly consequently the Respondent has an obligation to provide reparation accordingly.

89. Reparations is an overarching term that covers all types of measures a court or human rights body may order, or a State may take, to remedy the harm caused by a violation. Such remedies should attempt to restore the victim to the original situation before the harm and/or compensate him/her for damage suffered.

90. This Court summed it up when it held "*A State must make full reparations for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of full restitution of the original situation if possible; compensation where it is not possible or satisfactory that is, acknowledgement of or an apology for the breach, may contribute immensely to resolving wounds from the violation.*" *MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 3 ORS ECW/CCJ/JUD/12/14, PARAGRAPH*

120. See also HAMMA HIYA & ANOR V REPUBLIC OF MALI JUDGMENT NO. ECW/CCJ/JUD/05/21.

91. Furthermore, the (UN Basic Principles on Reparations), also provides that victims of human rights violations should be provided with full and effective reparation, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

92. The Court will now proceed to examine the reliefs sought by the Applicants to determine whether they are entitled to them.

93. The following are the reliefs claimed:

- i. A declaration that the Respondent's action of banning the peaceful assembly and the disruption of the procession organized by the Applicants infringes on their rights to assemble and associate as guaranteed in Articles 10 and 11 of the African Charter and other international human rights instruments.
- ii. A declaration that the Respondent has a duty to ensure the protection of the assembly slated for 28 March 2021 as guaranteed in Articles 10 and 11 of the African Charter and other international human rights instruments.
- iii. A perpetual injunction restraining the Respondent or its agents or privies from issuing any ban notice, disturbing or interfering with the rights of any person or group of persons from any part of Nigeria from holding assembly or associating with themselves as a group or part of a group in pursuance of their rights as stipulated by law;

- iv. An award of five hundred thousand (500,000) US Dollars as general damages and/or exemplary damages for the unlawful denial of the rights to association and assembly of the Applicants and interest therein at ten percent (10%) per month from the date of the judgment until judgment is fully liquidated against the Respondent.

94. With regards to relief one, having found that the Respondent violated the Current Applicants' rights to peaceful assembly, the Court declares that the Respondent is in violation of Article 11 of the African Charter.

95. Regarding the second relief, the Court declares that the Respondent having signed, ratified and domesticated the African Charter, has the duty to ensure the protection of the assembly of the 28 March 2021 as guaranteed in Article 11 of the African Charter and other international human rights instruments.

96. Regarding the third relief, the Applicants sought a perpetual injunction restraining the Respondent or its agents or privies from issuing any ban notice, disturbing or interfering with the rights of any person or group or group of persons from any part of Nigeria from holding assembly or associating with themselves as a group or part of a group in pursuance of their rights as stipulated by law.

97. The Court is of the considered opinion that this relief is overly broad, especially in light of the fact that there are numerous groups in the country. The Court will therefore exercise caution in granting such a broad relief which does not specifically relate to the Applicants. Hence the Court will confine its orders to the Applicants as it relates to their specific situation. Therefore, the Court orders the Respondent to refrain from preventing the

Applicants from carrying out a lawful assembly except in accordance with the law.

98. Regarding the fourth relief, the Applicants seek compensation of five hundred thousand US Dollars (\$500,000.00) as general and/or exemplary damages for the violation of their rights to association and assembly.

99. Monetary compensation is a means of providing some redress when there is no way to undo the damages caused by the violation through other measures, such as restitution or rehabilitation. Damages are classified into pecuniary or non-pecuniary (moral damages).

100. With regards to pecuniary damages, they are awarded as redress for tangible harm, injury or loss which are capable of monetary calculations. Where pecuniary damages are claimed, a victim or applicant must provide documentary evidence of losses incurred by him/her including receipts, proof of ownership of property, proof of employment and payment of salaries, etc.

101. Non-pecuniary damages or moral damages as it is sometimes called seek to compensate victims for suffering, including the psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation. *BENEFICIARIES OF LATE NORBET ZONGO & 4 ORS V. BURKINA FASO (REPARATIONS) 2015 1 AFCLR 258.*

102. The Court notes that the Applicants' claim is for general damages and or exemplary damages. Though different in nomenclature, the contemplation of moral damages includes injury and harm that are

intangible which flows from the alleged violation. This also admits general damages. The Court will therefore situate the claim for general damages within the contemplation of moral damages and analyse same accordingly.

103. The Court recalls its finding that the Respondent violated the Applicants' rights to peaceful assembly consequent on which a right to redress accrues to the Current Applicants. Indeed any violation of a guaranteed right necessarily wrought with it a form of damage and in the instant case the harm or damage naturally flowing from the violation of a right to peaceful assembly is obvious distress and disappointment with possible frustration at the truncation of the Current Applicants' lawful intention to gather for a just cause.

104. In this instance, the damage in form of pain of distress and frustration suffered from the prevention of the rally together with the agony, anguish and inconvenience that must have attended the hours of forceful detention at the museum, justify the award of compensation for moral damages suffered by the Applicants. The Court therefore holds that the Current Applicants are entitled to compensation in the sum of \$15,000 (fifteen thousand US Dollars) as moral damages suffered as a result of the violation of their right to freely assemble.

105. With regards to exemplary damages, they are awards in tort and are designed not to compensate the Applicants for harm suffered but instead to punish and deter the Respondent's culpable conduct. This Court has distinguished the award of exemplary damages in tort which in itself is punitive in nature from the position in human rights law. Being persuaded by the decision of the European Court of Human Rights to deny an award

for punitive damages in in the case of *SILVER AND ORS VUNITED KINGDOM* 5.EHRR.347.61 EUR.CT.HR(*ser A*) this Court held that:

“Thus it is clear that the object of human rights instruments is the termination of human rights abuses and in cases where the abuse has already taken place, restoration of the rights in question. Compensation is awarded in order to ensure “just satisfaction” and no more. It is not the object of human rights instruments, including the African Charter on Human and Peoples’ Rights on which this application is premised to award punitive damages against offenders of the instruments. This by no means deprives a successful human rights victim from claiming monetary compensation in appropriate cases, particularly where special damages are pleaded and proven at the trial.” CHIEF EBRIMAH MANNEH V THE GAMBIA ECW/CCJ/JUD/03/08 CCJELR (2004-2009), PAGE 197, PARAGRAPH 39.

106. In view of the reasoning above, the Court denies the compensation claimed for exemplary damages.

XI. COSTS

107. The Applicants did not make any submission regarding costs.

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

109. The Court orders the Respondent to bear the costs and directs the Registry to assess the costs accordingly.

XII. OPERATIVE CLAUSE

For the reasons stated above, the Court sitting in public:

As to jurisdiction:

- i. **Declares** that it has jurisdiction.

As to admissibility:

- ii. **Declares** that the Application is inadmissible with regards to the first Applicant but declares admissible the Application as it relates to the second, third and fourth Applicants on the allegation of violation of their rights to association and peaceful assembly.

As to merits:

- iii. **Declares** that the Respondent violated the second, third and fourth Applicants' right to peaceful assembly contrary to Article 11 of the African Charter;
- iv. **Declares** that the Respondent is not in violation of the Applicants' rights to association under Article 10 of the African Charter;
- v. **Declares** that the Respondent has a duty to ensure the protection of the assembly of the 28 March 2021 as guaranteed by Article 11 of the African Charter and other international human rights instruments;
- vi. **Orders** the Respondent to refrain from interfering with the second, third and fourth Applicants' rights to freedom of assembly when conducted in line with the African Charter;

As to reparation:

- vii. **Orders** the Respondent to pay the total sum of \$15,000 (fifteen thousand US Dollars) to the second, third and fourth Applicants as moral damages for the violation of their right to peaceful assembly.

As to costs

- viii. **Orders** the Respondent to bear the costs of this proceedings and directs the Registry to assess costs accordingly.

As to compliance and reporting

- ix. **Orders** the Respondent State to submit to the Court within three (3) months of the date of the notification of this judgment, a report on the measures taken to implement the orders set-forth herein.

Done in Accra, this 21st Day of March 2022 in English and translated into French and Portuguese.