



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

In the Matter of

**INCORPORATED TRUSTEES OF CENTER FOR PEACE AND
CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA
FOUNDATION & 3 ORS V THE FEDERAL REPUBLIC OF NIGERIA**

Application No: ECW/CCJ/APP/16/21; Judgment No: ECW/CCJ/JUD/20/22

JUDGMENT

ABUJA

29 March 2022

**INCORPORATED TRUSTEES OF CENTER
FOR PEACE AND CONFLICT MANAGEMENT
IN AFRICA AND RETHINK AFRICA
FOUNDATION & 3 ORS**

- **APPLICANTS**

V.

FEDERAL REPUBLIC OF NIGERIA

- **RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be **OUATTARA**

- Presiding

Hon. Justice Dupe **ATOKI**

- Member/Judge Rapporteur

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

- Member

ASSISTED BY:

Mr. Tony **ANENE- MAIDOH**

- Chief Registrar

REPRESENTATION OF PARTIES:

Noah **AJARE Esq.**

- Counsel for Applicant

Maimuna Lami **SHIRU (Mrs.)**

I.I. **HASSAN Esq.**



Counsel for the Respondent

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 Applicants are as follows:
 - i. The first Applicant are Nigerian registered Non-Governmental Organizations with registration numbers 41552 and 114864 respectively with the sole aim of assisting the less privileged.
 - ii. The second Applicant is Elvis Chukwuma Ilomuanya, a Nigerian currently on death row in Enugu Maximum Prison Enugu State managed by the Government of the Federal Republic of Nigeria.
 - iii. The third Applicant is Raphael Ude, a Nigerian currently on death row in Enugu Maximum Prison in East Nigeria Enugu State managed by the Government of the Federal Republic of Nigeria.
 - iv. The fourth Applicant is David Amaefule, a Nigerian currently on death row in Enugu Maximum Prison in East Nigeria Enugu State managed by the Government of the Federal Republic of Nigeria.

III. INTRODUCTION

3. This Application is premised on the alleged violation of the Applicants' rights to due process of law, fair hearing, judicial independence, right to appeal and to effective remedy and the threat of secret execution by the Respondent, guaranteed under Article 5 and 7 of the African Charter on Human and Peoples' Rights.

IV. PROCEDURE BEFORE THE COURT

4. The Initiating Application was filed on 7 April 2021 and served on the Respondent on 8 April 2021.
5. The Respondent filed a Motion for Extension of Time within which to file a Statement of Defence, on 1 June 2021, same was served on the Applicants on 1 June 2021.
6. The Respondent filed their Counter Affidavit in Opposition to the Applicants' Affidavit Evidence and Statement of Defence on 1 June 2021 and both were served on the Applicants on 1 June 2021.
7. During the Court hearing on 27 October 2021, both Parties were represented in Court and the Court heard their submissions on the merits, after which the case was adjourned for Judgment.

V. APPLICANT'S CASE

a) Summary of facts

8. The second to fourth Applicants aged 50, 54 and 56 years old, were allegedly convicted separately, by the High Court of Abia State of the Respondent for the crime of murder for which they were sentenced to

death. They are currently on death row at Enugu Prisons awaiting the execution of their sentence and have spent up to 15 (fifteen) years on death row.

9. The Applicants allege that their rights to a fair hearing were violated by the Respondent as it failed to adhere to international standards by denying them access to their family and legal counsel, as well as access to medical facilities in prison.

10. It is their claim that within the various years spent on death row, they have endured torture and inhumane conditions in the prisons and live in daily fear of not knowing when they will be executed. They state that the terrible conditions of the prison and fear of not knowing when they will be executed has made them to develop serious medical conditions, including high blood pressure and depression. That these conditions constitute torture, inhuman and degrading treatment and punishment. They therefore pray that they should be released on medical grounds.

11. The Applicants further aver that they are traumatized and daily live in fear of imminent execution, particularly with the recent pronouncements by the Vice President during the National Economic Council Meeting in February 2018 and the Attorney General of the Federation and Minister of Justice in April 2018, urging State Governors to sign the death warrants to enable a decongestion of the Nigerian Prisons.

12. They state that their condition is very critical and their sense of humanity greatly diminished because prison conditions are below standard. These

conditions they state is as bad as the death penalty itself, and constitute a violation of established international human rights laws.

13. They therefore seek the intervention of the Court to order their release from the Prison.

14. The Applicants' case is also supported by a 22 paragraph affidavit sworn to by Mr. Jude Arthur Angel, a member of staff of the first Applicant.

b) Pleas in law

15. The Applicants rely on the following laws:

- i.** Articles 2, 5 and 7 of the African Charter on Human and Peoples' Rights;
- ii.** African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. 1\Cap A9, Vol 1 Laws of the Federation of Nigeria 2004;
- iii.** Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS).

c) Reliefs sought

16. The reliefs sought by the Applicants are as follows:

- i.** A Declaration that the Applicants have suffered extreme mental torture, inhuman and degrading condition having been kept on death row for more than 15 years and without access to adequate medical treatment.
- ii.** A Declaration that the Applicants by virtue of age and long stay on death row and presently suffering from chronic medical condition are entitled to be released forthwith from detention.

- iii. An Order for immediate release of the Applicants from detention forthwith.
- iv. A Declaration that the consistent and continued denial of the right to adequate medical attention and rights to the Applicants in prison under dehumanizing and harsh conditions is in violation of the Constitution of the Federal Republic of Nigeria and Articles 1,2,3,4,5,7 and 26 of the African Charter on Human and People's Rights;
- v. An Order directing the Respondent to pay a monetary compensation of 20,000,000 (Twenty Million naira) each to the Applicants for damages suffered as a result of long years they have been kept in prison under cruel degrading and inhuman condition.
- vi. An Order for reparations, including physical, psychological, social and economic rehabilitation in respect of the violation of the Applicant's human rights. And the cost of this suit which is assessed at N5, 000,000.00 (Five Million Naira).
- vii. An Order directing the Respondent to faithfully and fully implement its obligations under its own constitution and African Charter on Human and Peoples' Right as well as resolutions on Moratorium on executions adopted recently by both the African Commission on human and People's Rights and the Third Committee of the UN General Assembly.

VI. RESPONDENT'S CASE

a) Summary of facts

17. The Respondent denies each and every allegation of facts contained in the Applicants' narration of facts, asserting that they did not violate the Applicants' rights to a fair hearing and that at no point were the Applicants denied their right to file an appeal as alleged.

18. The Respondent states that the Applicants were all convicted and sentenced to death upon their trial and conviction for murder by a competent court in Abia State of Nigeria. That the punishment for the offence of murder, if the elements of the offence are proved beyond reasonable doubt by any court in Nigeria is the death sentence.

19. The Respondent denies that second to fourth Applicants or any other person on a death row was ever made to undergo torture or any inhuman conditions except for the service of sentence handed down upon them. That none of the Applicants was recommended for amnesty by the Respondent.

20. They argue that the court of first instance that tried and convicted the Applicants is not a court of last resort, which means that the Applicants have the right to appeal their conviction at both the Court of Appeal and the Supreme Court if they are dissatisfied by the decision of the trial court that found them guilty and sentenced them to death.

21. They also argue that this Court is not an appellate court to local courts of Member States including the Respondent. That the action of the Applicants

seek this Honourable Court to sit on appeal over the decisions of domestic trial court that tried, convicted and sentenced them to death.

22. That the Respondent never subjected any of the Applicants to mental, physical torture, extreme inhuman condition, and harsh condition and or any kind of maltreatment in prison. That no condition of any inmates, the Applicants inclusive has ever been made below standard.

23. The Respondent further submit that they did not in any way act in violation of the African Charter or any international human rights law and the Applicants have not disclosed any actionable wrong by the Respondent that justifies the granting of the orders sought by the Applicants.

24. They also contend that the Applicants' claims for damages are not substantiated by facts to support any assessment of damages in favour of the Applicants against the Respondent and puts the Applicants to the strictest proof thereof.

25. In concluding, the Respondent urges the Court to consider their argument and consequently dismiss the Applicants' suit for being baseless and lacking in merit.

b) Pleas in law

26. The Respondent relies on the following laws:

- i. Section 240 of the Constitution of the Federal Republic of Nigeria;
- ii. Article 27 of the African Charter.

c) Reliefs sought

27. The Respondent respectfully urges the Court to consider their argument in opposition to the Applicants' Application and consequently dismiss this suit for lacking in merit.

VII. JURISDICTION

28. This Application is founded on the alleged violation of the right to freedom from torture, cruel, inhuman and degrading treatment and right to a fair hearing guaranteed by Articles 5 and 7 of the African Charter respectively. In accordance 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*" the Court holds that, the Application being premised on the alleged violation of human rights, it has jurisdiction to adjudicate on the Application.

VIII. ADMISSIBILITY

29. The admissibility of applications in this Court is provided for in Article 10(d) (i) and (ii) of the Supplementary Protocol 2005: "*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.*"

30. The Court holds that the Application 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.

31. It is imperative to state at this point that while Article 10(d) (i) and (ii) are statutory provisions enshrined in the Protocol for the determination of the admissibility of an application therein, they are not exhaustive as certain facts of the Application may present a need for further examination of its admissibility outside the enshrined provision. One of such requirements relates to the authorization or mandate to act in a representative action lack of which renders the Application inadmissible.

32. Thus while the Application has been declared to be in compliance with the provision of Article 10(d) (i) and (ii) of the Supplementary Protocol, it is still necessary to determine the competence of the Application as it concerns authorization or mandate to act.

33. The cardinal rule on access to the Court is that only direct victims of human rights violations can access the Court for relief for the violation of their human rights. See Article 10(d) (i) and (ii) of the Supplementary Protocol 2005: *“Access to the Court is open to...d) individuals on application for relief for violation of their human rights...”* In essence, direct victims alleging violation of their rights with interest that is direct, personal and certain are the only parties inherently qualified to seek remedy for such violation which ordinarily cannot be transferable to another individual or organisations. ODAFE OSERADA V. ECOWAS COUNCIL OF MINISTERS, ECOWAS PARLIAMENT & ECOWAS COMMISSION, ECW/CCJ/JUD/01/08 @ 27.

34. It follows from the above that since the direct victim is the one personally affected, the requirement for mandate to act is obviously of no essence in an application under this circumstance.

35. While the direct victim is the party that is inherently qualified to bring action for the violation of his/her human rights, the door is however not shut against victims who are not able for recognised reasons to act for themselves as a representative action is admissible.

36. This waiver is premised on the fact that the Court recognises that Human rights are human centered, and the admissibility of an application is linked among other criteria to the status of the victim. This condition necessarily entails the applicant, acting on personal grounds as a result of a legally protected injured interest, or in a representative capacity. NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 PAGE 18.

37. While it is established that an action can be maintained in a representative capacity by a party that is not a direct victim, an authorization or mandate to act is mandatory. In this wise the Court has held that in a representative action on behalf of a group that *“The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.....for the Plaintiffs to access the court for and on behalf of the people of Niger Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent.”* NOSA EHANIRE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA, (2017) CCJELR.

38. Whilst the issue of mandate cannot be dispensed with in a representative capacity, an exception is made where due to irreversible incapacitation or death as a result of the violation, the closest family members can do so, while assuming the status of indirect victims. In other words, “*When it becomes impossible for him whose right is violated to insist on that right or to seek redress, either because he is deceased or prevented in one way or the other from doing so, it is perfectly normal that the right to bring his case before the law courts should fall on other persons close to him...*” STELLA IFEOMANNALUE & 20 ORS V FEDERAL REPUBLIC OF NIGERIA (2015) CCJELR, PAGE 463. See also VELASQUEZ RODRIGUEZ V HONDURAS, Judgment of 29 July 1988 of the Inter-American Court of Human Rights. AND THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/APP/09/11 & ECW/CCJ/RUL/03/14.

39. It is obvious that a mandate in respect of a representative action arising from the death of the direct victim is not only impracticable but impossible. Therefore such authorization is waived but the close family members who represent the victim must establish the alleged relationship.

40. Other than situations occasioned by death, the Court also recognises the possibility of a representative action in a public interest litigation which emanated from the doctrine of *actio popularis*. This doctrine was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. It was also a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited

individuals from challenging a breach of a public right in Court. See the case of SERAP V. FRN (2010) CCJELR, PG. 196, PARAGRAPH 32, & 34.

41. The Court under this situation will allow NGOs, volunteers like Lawyers, Citizen Petitioners to institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights. This is premised on the ground that this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest.

42. While NGOs and other public spirited persons can legitimately act on behalf of direct victims, the requirement for mandate to act has also been waived in their favour. While speaking to the requirement of mandate in public interest litigation, the Court held as follows; “.....*However, exceptions to this rule exist. These include but not limited to cases of collective interest (usually referred to as public interest litigations) and the non-victims receiving authority to act on behalf of the victims or their close relations...*” THE INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHT ENLIGHTENMENT FOUNDATION V. FRN (2016) ECW/CCJ/JUD18/16 & 2 ORS.

43. The Court equally cited the above referred decision in making a finding in a preliminary objection raised for lack of mandate in below referenced case, and held that the first Applicant being an NGO and acting in public interest, needs no authorization and possess the *locus standi* to approach this Court in a representative capacity. REV FR SOLOMON MFA & ORS VS NIGERIA JUDGMENT NO: ECW/CCJ/JUD/06/19 PARAGRAPH 60.

44. It must be emphasized that the fundamentals of a waiver of mandate to act in a representative action by an NGO is premised on the fact that same is instituted for public interest. In other words the overriding interest of the NGO must be the welfare of the general public which it seeks to protect. A quest for personal gain by the representing party therefore negates any such action.

45. Accordingly, whilst NGOs can sue in a representative capacity for the violation of human rights of others it cannot maintain an action as a victim of Human Rights violation. The Court has reiterated that “...*there is a clear distinction between these two classes of cases, one in which the corporate body sues as the victim and the other in which it sues on behalf of the victim, the victim here being identified as a human being. In the former situation the corporate body has no locus or capacity to sue, but in the latter situation, it has.*” THE INCORPORATED TRUSTEES OF THE MIYETTI ALLAH KAUTAL HORE SOCIO-CULTURAL ASSOCIATION V. FEDERAL REPUBLIC OF NIGERIA (2011) ECW/CCJ/RUL/11/12 (2012) CCJELR, PAGE 182, PARAGRAPH 28.

46. The summary of the preceding analysis is that a direct victim who has suffered personal and direct loss can bring an action for the violation of his/her human rights obviously without a mandate. On the other hand, an indirect victim who has not suffered directly is equally recognized to bring an action in a representative capacity on behalf of the direct victim. A mandate is waived where as in the case of death of the direct victim it is impossible or impracticable to obtain a mandate but a proof of affiliation to the victim must be established. Similarly, a legally recognized organization

such as an NGO bringing an action in representative capacity on behalf of direct victims for public interest need no mandate to act.

47. Considering that a mandate to act is pivotal to the admission of an application under this circumstance, it is now appropriate to situate the instant Application within these perimeters to determine whether it is competent with regards to the requirement of mandate to act. This Application was filed by the Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation on behalf of 3 death row inmates allegedly convicted for murder by the High Court of Abia State in Nigeria and thereafter sentenced to death. They are further alleged to be 50, 54 and 56 years old and have been on death row for at least 15 years.

48. The instant Application though brought by an NGO in a representative capacity for 3 individuals, same not being on behalf of deceased victims or in pursuance of public interest, requires a mandate to act. The Court however has no record of any authorization by these alleged inmates to the said NGO.

49. The Court at this stage must reaffirm as earlier stated that human rights are victim-centered - *NOSA EHANIRE OSAGHAE & 3 ORS V. REPUBLIC OF NIGERIA*- *Supra*. Therefore, victims of human rights violations are the core object of protection of the ECOWAS Court of Justice as well as other similar international human rights Courts. This is achieved by holding Member States accountable to the treaty obligations they signed and providing redress to victims of violations occasioned by them.

50. Consequently, in protecting such redress and ensuring that their vulnerability is not exploited, a safeguard is put in place to ensure that individuals or organisations that represent them do so in the best interest of the said victims. Therefore in a representative Application, it is imperative that the Court is convinced that the victims willingly and knowingly delegated to such individuals or organization their inherent rights to seek redress by themselves. Therein lies the import of the requirement for mandate to act and the mischief it seeks to cure.

51. As earlier stated, the Court has no record of any mandate from the said inmates, the importance of which as highlighted supra is not only imperative but equally mandatory. Lack of such mandate in the instant case is therefore grave as it renders the Application incompetent. This consequence has been affirmed in a plethora of decisions by the Court as in the case below where in further confirmation of a mandate as a legal document that gives full power to act, it held thus: “...in the absence of such mandate, the *Collectif des Association Contre l’impunite au Togo* which claims to represent Mr. *AGBETOGNON* in the instant procedure cannot validly intervene in the case in such quality. Consequently, there is need to declare the Application as inadmissible”. COLLECTIF DES ASSOCIATION CONTRE L’IMPUNITE AU TOGO VS TOGO ECW/CCJ/JUD/12/18 PARAGRAPH 12&13. See also MME AZIABLEVI YOVO & 31 ORS V TOGO TELECOM & REPUBLIC OF TOGO ECW/CCJ/JUD/04/12, PARAGRAPH 38.

52. In view of the above analysis, the Application filed by Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation on behalf of the 3 named inmates without a mandate from them

is declared incompetent. Indeed the bottom has fallen out of the entire Application and it can hold no water. The Court therefore holds that the Application is inadmissible and is consequently dismissed in its entirety.

IX. COSTS

53. 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.*”

54. In line with Article 66(4) of the Rules which provides that “*Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional; the Court may order that the costs be shared or that the parties bear their own costs*”, the Court holds that each Party shall bear their own costs.

X. OPERATIVE CLAUSE

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

As to jurisdiction:

i. **Declares** that it has jurisdiction to hear the Application;

As to admissibility:

ii. **Declares** that the Application is inadmissible;

iii. **Dismisses** the Application in its entirety;

As to costs

iv. **Orders** each Party to bear their own costs.

Hon. Justice Gberi-Be **OUATTARA** - Presiding

Hon. Justice Dupe **ATOKI** – Judge Rapporteur

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

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

Done in Accra, this 29th Day of March 2022 in English and translated into French and Portuguese.