



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

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

In the matter of

Mr. ABAYOMI BABALOLA

v.

REPUBLIC OF CÔTE D'IVOIRE

Application No. ECW/CCJ/APP/26/22

Judgment No. ECW/CCJ/JUD/21/24

JUDGMENT

ABUJA

On June 6th, 2024

APPLICATION No. ECW/CCJ/APP/26/22

JUDGMENT No. ECW/CCJ/JUD/21/24

BETWEEN

Mr. ABAYOMI BABALOLA

APPLICANT

And

REPUBLIC OF THE CÔTE D'IVOIRE

DEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE**

- Presiding Judge

Hon. Justice Sengu Mohamed **KOROMA**

-Member

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Judge
Rapporteur

ASSISTED BY:

Dr. Yaouza **OURO-SAMA**

- Chief Registrar

REPRESENTATION OF THE PARTIES

FEMI FALANA

- Counsel for the Applicant

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I. JUDGMENT

“1. This is the Court’s Judgment read virtually in an open court, in accordance with 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 Mr. Abayomi Babalola, the alleged father of Itunu Babalola, a Nigerian businesswoman residing in Côte d'Ivoire, who allegedly died during her detention in that country on November 14, 2021.

3. The Defendant is the Republic of Côte d'Ivoire, a Member State of ECOWAS and signatory to the African Charter on Human and Peoples’ Rights, hereafter the African Charter.

III. INTRODUCTION

4. Mr. Abayomi Babalola, Itunu Babalola's alleged father, filed his application initiating proceedings before the ECOWAS Court of Justice, claiming that his daughter was a Nigerian businesswoman who died during her detention in Côte d'Ivoire on November 14, 2021.

5. The Applicant alleges that the arrest, detention, trial, conviction and imprisonment of his daughter Itunu Babalola by the State of Côte d'Ivoire were unlawful because they violated her right to a fair trial, guaranteed by the African Charter and the 2016 Constitution of Côte d'Ivoire. In addition, the Applicant maintains that the death of Itunu Babalola during her detention

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constituted a violation of her fundamental rights to dignity, health and life, provided for in the same African Charter.

6. Consequently, the Applicant seeks from the Court to declare that all the measures taken by the Ivorian authorities against his daughter are unlawful, and to order the Defendant State to pay compensation of 500 million dollars for the unlawful killing of Itunu Babalola.

IV. PROCEEDINGS BEFORE THE COURT

7. The application initiating proceedings (Doc.1) was lodged at the Registry of this Court on 15th July 2022.

8. The Defendant was duly served on 5th July 2022.

9. On September 9, 2022, the Defendant filled its defense.

10. On September 12, 2022, the Applicant was duly served, but said nothing.

11. After deliberation, the trial was scheduled for June 6, 2024.

V. APPLICANT'S CASE

a. Summary of Facts:

12. The late Itunu Babalola was a citizen of Ibadan community, Oyo State, Nigeria and attended the Muslim girls' school in Ijebu Ode, Ogun State, Nigeria. She was a businesswoman in Bondoukou, Côte d'Ivoire.

13. In September 2019, Itunu Babalola's apartment in Bondoukou was robbed by an Ivorian and a report of the incident was registered with the Bondoukou police.



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14. After investigating, the Divisional Police Officer (DPO) in charge of the police station discovered that the suspect was his nephew and subsequently awarded Itunu Babalola monetary compensation, which the deceased rejected, claiming that the compensation was much less than the value of her stolen goods.

15. Surprisingly, the deceased was later arrested by the same officer from the Police Division in charge of the city of Bondoukou and was subsequently charged with human trafficking.

16. Without any evidence linking the deceased to the crime of human trafficking or any other offense, she was sentenced to 10 years in prison.

17. The deceased was then imprisoned and subjected to assaults and inhumane treatment by the Defendant's prison authorities.

18. During her imprisonment, the deceased became ill, but the Defendant's prison authorities denied her medical treatment.

19. Medical negligence resulted in her sudden death on November 14, 2021, in custody.

20. To cover up the unlawful killing of the deceased, the Defendant carried out a secret autopsy and claimed that the Deceased's death was due to complications from diabetes.

21. The relatives of the deceased and the Nigerian Embassy in Abidjan were not informed before the autopsy.

22. The parents and other relatives of the deceased read about her tragic death in the media.

23. The Nigerian Embassy in Abidjan was not informed of the death of the deceased and of the autopsy carried out by the Defendant.

24. The Defendant did not inform the Applicant of the deceased's sudden death.

25. the Defendant refused to investigate and prosecute the prison authorities, whose negligence resulted in the tragic death of Itunu Babalola.

b. Pleas in Law

26. The Applicant relied his claims on the following articles:

- i. 6 and 7 of the Constitution of Côte d'Ivoire;
- ii. 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS), 1993.
- iii. 1, 2, 3, 4, 5, 7, 16, 18 and 23 of the African Charter;
- iv. 6 of the International Covenant on Civil and Political Rights (ICCPR);

c. Reliefs Sought

27. The Respondent concluded seeking from the Court to:

- i. DECLARE that the arrest, detention, trial, conviction and imprisonment of her daughter, ITUNU BABALOLA, by the Defendant are unlawful because they violate the deceased's human right to a fair trial, guaranteed by Article 7 of the African Charter on Human and Peoples' Rights.
- ii. DECLARE that the death of ITUNU BABALOLA during her detention in Côte d'Ivoire constitutes a violation of her rights guaranteed by Articles 2, 3, 4, 5, 18 and 23 of the African Charter (ratification and application) and the 2016 Constitution of Côte d'Ivoire.

- iii. CONDEMN the Defendant to pay him the sum of 500 million dollars as compensation for the unlawful killing of his daughter, Itunu Babalola.

VI. DEFENDANT'S CASE

a. Summary of Facts:

I. IN THE MAIN PROCEEDING, *IN LIMINE LITIS*: THE LACK OF LOCUS STANDI OF MR. ABAYOMI BABALOLA

28. Mr. ABAYOMI BABALOLA brought this action claiming to be the father of Mrs. ITUNU BABALOLA.

29. However, the Applicant does not provide any evidence of his relationship with the aforementioned ITUNU BABALOLA. Furthermore, in the present proceedings before the Court, the Applicant states that his name is ABAYOMI BABALOLA, while in ANNEX "B" (newspaper clipping) produced by the latter, in the second paragraph, he said that ITUNU BABALOLA's father would be called Emmanuel BABALOLA; (Exhibit no. 1: ANNEXURE "B").

30. In any case, upon receiving the application, the State of Côte d'Ivoire carried out investigations, which resulted in no person by the name of ITUNBU BABALOLA being detained in an Ivorian prison.

31. A person of Nigerian nationality, who was being held in Bondoukou prison in Côte d'Ivoire, is called BEKI Paul, father unknown, as stated in the following documents:

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i. A judgment no. 121 issued on May 28, 2020, by the Bondoukou Judicial Section reporting the conviction of BEKI PAUL; (Annexure no. 2: Judgment no. 121 of May 28, 2020);

ii. An extract from the Abidjan prison register concerning BEKI PAUL, father unknown (Annexure 3: Extract from the register dated 11/09/2021);

iii. A death registration issued by the Abidjan prison dated November 18, 2021, concerning BEKI PAUL, father unknown (Annexure 4: Death registration of 18/11/2021);

iv. Death certificate, dated November 17, 2021 (Annexure 5: Death Certificate of 17/11/2021);

32. And several medical reports concerning BEKI PAUL, father unknown.

33. The Court will note that:

i. Mr. ABAYOMI BABALOLA appealed to the Court of Justice for alleged violations of ITUNU BABALOLA's human rights, without presenting evidence of his relationship with the latter;

ii. The inmate, a Nigerian national held in Bondoukou prison, whose name is BEKI Paul, was born to an unknown father.

34. The Court will therefore declare Mr. ABAYOMI BABALOLA's application inadmissible for lack of standing and interest in bringing proceedings.

II. ALTERNATIVELY ON THE MERIT:

III. (a) OF THE ALLEGED VIOLATIONS OF THE HUMAN RIGHTS OF MRS. ITUNU BABALOLA

35. Mr. ABAYOMI BABALOLA seeks from the Court to declare that the State of Côte d'Ivoire has violated ITUNU BABALOLA's rights to a fair trial, dignity, health and life.

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36. However, the State of Côte d'Ivoire claims that, of the investigations carried out by its competent services, it has never arrested, tried, convicted or imprisoned a person called ITUNU BABALOLA, daughter of Mr. ABAYOMI BABALOLA.

37. Consequently, the State of Côte d'Ivoire could not violate the latter's rights.

b. Pleas in Law

38. The Defendant made no reference to any legal provision.

c. Reliefs Sought

39. The Defendant prays the Court to:

IN LIMINE LITIS

Note that:

- i. The Applicant fails to prove his relationship with ITUNU BABALOLA, whose rights he claims to defend in his capacity as father.
- ii. The State of Côte d'Ivoire has never arrested a person called ABAYOMI BABALOLA.

Consequently,

- iii. The Court will declare the Applicant's application inadmissible for lack of standing and interest in bringing proceedings.

IN THE ALTERNATIVE, ON THE MERITS, WHERE APPROPRIATE:

- iv. The Court will note that ITUNU BABALOLA has never been arrested, tried, convicted or imprisoned in Côte d'Ivoire.

Consequently,

- v. Declare the Applicant's application and all his claims unfounded.

VII. ON THE JURISDICTION

40. In the instant case, the Applicant's allegations are relied on the matter of violation of human rights of his alleged deceased daughter, contrary to the relevant provisions of the African Charter on Human and Peoples' Rights and of the other international instruments for the protection of human rights, namely the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, as relied on.

41. Accordingly, the instant action falls within the scope of jurisdiction conferred on this Court, pursuant to Article 9 (4) of Protocol A/P1/7/91 on the ECOWAS Court of Justice, as amended by Additional Protocol A/SP.1/01/05, to hear cases of human rights violations occurring in any Member State (See the cases *SERAP v. FEDERAL REPUBLIC OF NIGERIA AND 4 OTHERS*, Judgment No. ECW/CCJ/JUD/16/14, (§72) and *KARIM MEISSA WADE v. RÉPUBLIQUE DU SENEGAL*, Judgment No. ECW/CCJ/JUD/19/13, §72).

42. Accordingly, the Court understands that it entertains jurisdiction to rule over the instant case.

VIII. ADMISSIBILITY

43. In the instant case, the Applicant alleges the violation of the human rights of his alleged daughter Itunu Babalola, now deceased, because she was a businesswoman in Bondoukou, Côte d'Ivoire and was arrested by the officer of the Police Division in charge of the city of Bondoukou; that without any evidence linking the deceased to the crime of trafficking in human beings or any other offense, she was sentenced to 10 years in prison; that during her imprisonment, the deceased became ill but the Defendant's prison authorities denied her medical treatment which resulted in her sudden death on

November 14, 2021, in custody; that in order to cover up the unlawful killing of the deceased, the Defendant performed a secret autopsy and claimed that the deceased's death was due to complications from diabetes.

44. On its part, the Defendant denied the above facts, claiming, in particular, that the Applicant has not provided any proof of his relationship with the aforementioned Itunu Babalola; that before the Court, the Applicant states that his name is Abayomi Babalola, while in Annexure "B" (newspaper clipping) produced by the latter, in the second paragraph, he said that Itunu Babalola's father is called Emmanuel Babalola (Exhibit no. 1: ANNEXURE "B").

The Court's Analysis

45. In view of the above, the question arises as to whether the application fulfills the main admissibility requirements laid down in Article 10(d) of the Additional Protocol on the Court of Justice.

46. The article states that the following have access to the Court: "*Anyone who is a victim of human rights violation*" *The application submitted for this purpose: ii) Will only be submitted to the Community Court of Justice if it has not been submitted to another Competent International Court (...)*"

47. It follows from the aforementioned article that there are three admissibility requirements which are to be verified cumulatively: (i) the Applicant must be a victim of the alleged violation, that is, s/he must have the status or position of a victim; (ii) the Applicant must not be anonymous, that is, the Applicant cannot be an anonymous person, and (iii) the Application must not be filled with another International Court (see *AZIAGBEDE KOKOU & OTHERS v. REPUBLIC OF TOGO* [2013])

CCJELR 167, para. 18; *ASSIMA KOKOU INNOCENT & ORS v. REPUBLIC OF TOGO*, Judgment No. ECW/CCJ/JUD/08/13, at p. 9).

48. In the instant case, the Applicant is properly identified. The information in the application clearly identifies him. Furthermore, there is no evidence that this case is pending before any other International Court where the Applicant is seeking the same or similar remedies to those he has sought from this Court.

49. Having said that, the Court concludes that the originating application meets the requirements because the Applicant is not anonymous and that the case is not pending before another International Court.

50. In addition to the above requirements, it is also required that the Applicant is an alleged victim of the human rights violation, and it is incumbent upon him/her to prove his/her *locus standi* (see *CONCERNED YOUTH OF GANTA FOR RECONSTRUCTION AND DEVELOPMENT and MR. MAMADEE F. DONZO v. STATE OF LIBERIA*, Ruling No. ECW/CCJ/RUL/06/20, para. 150).

51. The term "*locus standi*" denotes an interest in bringing a case before the court or being heard in a particular case. In other words, the strict application of *locus standi* means that an Applicant who wishes to bring an action must have a sufficient interest in the matter to have standing to take action against the alleged defendant.

It is well-established that when a Applicant's standing is questioned, he must, if he is to succeed, first establish his standing with the clearest evidence (see *EBERE ANTHONIA AMADI & 3 ORS v. THE FEDERAL GOVERNMENT OF NIGERIA JUDGMENT NO ECW/CCJ/JUD/22/19 Pg. 13*).

52. That is, the Applicant must demonstrate, *prima facie*, that he or she has been affected by a law, policy, practice or conduct of the Respondent State

that is the cause of the alleged human rights violations (see *AMNESTY INTERNATIONAL TOGO AND OTHERS v. THE TOGOLESE REPUBLIC*, ECW/CCJ/JUD/09/20, paras 31-33).

53. According to a strictly literal interpretation, only those directly affected by an act or omission that violates their human rights can enjoy the status of victim and have legal standing to file a complaint against the perpetrators of said violation. However, even jurisdictions that initially adopted a strictly literal interpretation of the concept of victim for the purposes of human rights protection have evolved towards a more flexible approach, allowing other persons, not directly affected by the alleged violation, to have access to the Court and to be able to seek justice on behalf of the real victim and hold the perpetrator accountable (see *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 page 18.).

54. Human rights laws refer to the victim as the person whose rights have been violated. And such qualification gives rise to certain rights, that is, the right to a remedy and to compensation. This, includes the right to file a complaint and to exercise procedural rights (see Ilias Bantekas and Lutz Oette, 'International Human Rights - Law and Practice' (Cambridge University Press, 2013), pp. 275-279, 536).

55. This Court has defined Victim as the person who suffered, directly or indirectly, any damage or pain (physical or mental injury), emotional suffering (for loss of family member or relative), economic loss (loss of property) or any other damage that can be classified as a violation of human rights (see *REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/06/19).

56. This concept was defined in principle 8 of the United Nations' *"Basic Principles And Guidelines On The Right To A Remedy And Reparation ..."* as *"For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law."* Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

57. In the instant case, the Applicant is bringing this action alleging that the human rights of Itunu Babalola, who is now deceased and claims to be his daughter, have been violated.

58. In international human rights law and in the practice of various human rights bodies, the requirement of *victim* status has been interpreted quite liberally.

59. Thus, in addition to the obvious case of persons who are personally and directly affected by the alleged violation of human rights (direct victims), "indirect victims" (those who are permitted to file a complaint either because the complaint raises an issue of general interest concerning respect for human rights or because they can claim that the violation has caused them harm or have a valid personal interest in having the violation stopped) may also be allowed to bring claims for human rights violations, especially when the direct victims are dead or cannot bring the claims for some other reason (see *AMNESTY INTERNATIONAL TOGO AND OTHERS v. THE TOGOLESE REPUBLIC*, ECW/CCJ/JUD/09/20, paras 31-33).

60. Such indirect victims may include “*immediate family members or dependents of the direct victim and persons who have suffered harm by intervening to assist victims in distress or prevent victimization*”, as seen in (*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, UNGA RES. A/RES/60/147 (2005), Principle 8*). See also *BENEFICIARIES OF LATE NORBERT ZONGO, ABDOULAYE NIKIEMA ALIAS ABLASSE, ERNEST ZONGO, BLAISE ILBOUDO AND MOUVEMENT BURKINABE DES DROITS DE L’HOMME ET DES PEUPLES v. BURKINA FASO (REPARATIONS) (2015) 1 AfCLR 258, paras 45-49; Judgment No. ECW/CCJ/JUD/24/23, para. 42*).

61. Therefore, when bringing an action, a Applicant who is not a direct victim of the alleged human rights violation must at least demonstrate that he or she is an indirect victim in order for the case to be admissible. He or she must therefore claim and prove that s/he has a family relationship with the victim of the human rights violation, under penalty of not having *locus standi* to bring the action (see in this regard *ALHAJI MOHAMMED IBRAHIM HASSAN v. GOVERNOR OF GOMBE STATE, [2012] CCJELR, paras. 46-47*).

62. To meet this admissibility requirement, the Applicant must provide evidence of being family or having another close relationship with the direct victim, which establishes his status as an indirect victim (see the above-mentioned case *REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA, para. 51*).

63. The Court recalls that in the case of the Beneficiaries of the Late Norbert Zongo, the African Court noted that for spouses, a marriage certificate would

be sufficient proof; for children, a birth certificate or other document would be necessary to prove parentage, and for parents, any attestation of paternity or maternity, such as a birth or adoption certificate, might suffice (see *BENEFICIARIES OF LATE NORBERT ZONGO* (2015) 1 AfCLR 258, paras. 51-54).

64. The Court observes that, in the instant case, the Applicant claims to be the father of the deceased Itunu Babalola.

65. However, he has not presented any evidence to this effect. There is no birth certificate on the case file, either for him or for his deceased father, to prove that they have a parentage relationship. He does not produce a certificate of adoption, nor does he produce testamentary documents or even affidavits or statutory declarations, nor has he attached any other evidence to substantiate that he is the father of the deceased Itunu Babalola (see *ATTIPOE KUAKU RICHARD & 19 OTHERS [DECEASED] REPRESENTED BY ATTIPOE CHOCHO BABAYI & 15 OTHERS v. REPUBLIC OF SIERRA LEONE*, Judgment No. ECW/CCJ/JUD/07/23, para. 46; *INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA v REPÚBLICA FEDERAL DA NIGÉRIA PROCESSO N° ECW/CCJ/APP/7021, ACÓRDÃO N° ECW/CCJ/JUD15/24 parágrafos 104 a 107*).

66. The mere allegation of a relationship is not sufficient to allow the second Applicant to invoke his status as the father of the deceased Itunu Babalola (see the case *MAHAWA CHAM AND SARJO CHAM v. THE REPUBLIC OF GAMBIA*, Judgment no. ECW/CCJ/APP/26/23, para. 102).

67. Consequently, the Court finds that the Applicant has not proved that he has an interest which, *prima facie*, qualifies him as a direct or indirect victim for access to the Court (see *ADOU KOUAME AND OTHERS v. STATE OF IVORY COAST*, Judgment No. ECW/CCJ/JUD/46/2023, para. 147).

68. Therefore, for *lack of locus standi* of the Applicant, pursuant to Article 10(d) of the Protocol the instant application is considered inadmissible.

IX. THE COSTS

69. The Court recalls Article 66 (1) of its Rules of Procedure, which provides that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*".

70. Moreover, Article 66 (2) provides that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"

71. On the basis of this provision, the Defendant not having specified anything in its pleadings with regard to costs, the Court decides that each party shall bear his/its own costs.

X. OPERATIVE CLAUSE

72. For the reasons set out above, the Court, sitting on a virtual open court after hearing both parties:

As to jurisdiction:

- i. Declares itself competent to examine the application.

As to admissibility:

- ii. Dismisses the application as inadmissible for lack of *locus standi*.

XI. THE COSTS

73. Decides that each party shall bear his/its own costs relating to this application.

Done in Abuja, on the 6th day of June 2024, in Portuguese and translated into French and English.

Signed by:

Hon. Justice Edward Amoako **ASANTE** – Presiding Judge

Hon. Justice Sengu Mohamed **KOROMA** – Member

Hon. Justice Ricardo C. M. **GONÇALVES** – Judge Rapporteur

Dr. Yaouza **OURO-SAMA** - Chief Registrar

