

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



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

In the Matter of

CHUKWUEMEKA EDEH

(APPLICANT)

v

FEDERAL REPUBLIC OF NIGERIA

(RESPONDENT)

App No. ECW/CCJ/APP/58/21; Judg't No. ECW/CCJ/JUD/36/24

JUDGMENT

ABUJA

14 NOVEMBER 2024

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

App No. ECW/CCJ/APP/58/21; Judgt No. ECW/CCJ/JUD/36/24

CHUKWUEMEKA EDEH

-APPLICANT

AND

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo C.M. GONÇALVES -Presiding Judge

Hon. Justice Dupe ATOKI - Member

Hon. Justice Edward A. ASANTE - Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar

REPRESENTATION OF PARTIES:

Bolaji Gabari Esq

- Counsel for APPLICANT

No Representation

-for the RESPONDENT



I. JUDGMENT

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. Applicant, Chukwuemeka Edeh, is a citizen of Nigeria resident in the Nkanu East Local Government Area of Enugu State.
3. Respondent, the Federal Republic of Nigeria, is an ECOWAS Member State and a party to the African Charter on Human and Peoples' Rights 1981 (African Charter), the International Covenant on Civil and Political Rights 1966 (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT).

III. INTRODUCTION

Subject Matter of the Proceedings

4. The Application alleges that operatives of the Special Anti-Robbery Squad (SARS), a security agency of the Respondent, unlawfully arrested the Applicant, Chukwuemeka Edeh, and subjected him to torture and cruel, inhuman or degrading treatment in violation of the Respondent's obligations under Articles 1, 2, 3 and 5 of the African Charter; Articles 2, 3, 7 and 26 of the ICCPR; Articles 10, 11, 12, 13 and 16 (1) of the Convention against Torture; and Articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights. The Applicant



seeks reliefs including compensation of 5 million naira for the physical pain or suffering and harm to his dignity.

IV. PROCEDURE BEFORE THE COURT

5. Applicant commenced this proceeding by an application dated 17 August 2021 which was filed at the Registry of the Court on 7 October 2021. The Application was served electronically on the Respondent on 20 October 2021.
6. On the date the initiating Application was filed, Applicant also filed a process entitled Application for Examination of Witnesses dated 17 August 2021. This process was served together with the initiating Application on the Respondent on 20 October 2021.
7. On 7 September 2022, the Applicant filed an application for default judgment. It was served electronically on the Respondent on 9 September 2022.
8. At a session of the Court on 2 May 2024, the Applicant was represented in Court by counsel while the Respondent was absent and not represented. The Court heard the Applicant's counsel on his application for default judgment and adjourned for deliberation and judgment.



V. CASE OF THE APPLICANT

A. Summary of Facts

9. Applicant says that sometime in June 2020, while he was at his brother's welding shop in Amaehi Obeagu, he was apprehended by four young men. Despite efforts by his brother and one other person to stop them, the young men succeeded in taking him to a riverside where they accused him of burglary and began interrogating him.

10. When the Applicant insisted that he was innocent of the accusation, one of the young men made a phone call. Shortly afterwards, operatives from the Special Anti-Robbery Squad (SARS) came and took the Applicant to their office in Enugu. On arrival there, Applicant says that he was further interrogated and instructed to write a confessional statement. He refused and maintained his innocence of the accusation levelled against him.

11. In reaction to his refusal to write the statement, an Investigating Police Officer (IPO), known as Benjamin, started writing a statement for the Applicant. Applicant says that during this time, he had been shoved to the bare floor with his hands cuffed and his legs tied with a rope. IPO Benjamin continued to interrogate him about his knowledge of two persons, Ogechukwu Ogbu and Chukwuma Onovo. According to Applicant, IPO Benjamin and other police officers present beat him when he denied knowledge of the two persons.

12. The Applicant further states that after IPO Benjamin finished writing the statement, he was asked to sign it, but he refused. This refusal led to various acts of physical assault by IPO Benjamin and his colleagues. Applicant reports being slapped by a police officer standing behind him, having tear gas sprayed into his eyes, and being beaten with an iron rod and a large stick, including blows to his head.
13. Applicant states that he sustained lacerations on his shoulder and legs and bled profusely. At this point, he was forced to sign the confessional statement written by IPO Benjamin.
14. Applicant further says that the beatings and other physical abuse he endured caused severe headaches, swollen joints, a deep wound on the back of his leg, and a dislocated arm. He states that he has been in constant pain and has limited mobility and function in the affected arm. However, he did not receive any medical attention while in SARS custody.
15. According to Applicant, he was eventually arraigned before an Enugu Magistrate Court on charges of burglary, stealing and cultism on 5 July 2020 and remanded into prison custody. But even in the prison, he did not receive any medical attention. Meanwhile, the prosecutors of his case have stopped attending Court leaving his case in abeyance.

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B. Pleas in Law

16. Applicant submits the following pleas in law:

(a) That the psychological and physical violence he suffered in the hands of the SARS agents constitute cruel, inhuman and degrading treatment and violations of his right to dignity guaranteed in Article 5 of the African Charter, Articles 1 and 5 of the UDHR, Article 7 of the ICCPR, and Article 16(1) of the Convention Against Torture (CAT).

(b) That the failure of the Respondent to provide protection and redress to the Applicant violates the Applicant's right to a remedy and the Respondent's obligations under Article 1 of the African Charter, Article 2(3) of the ICCPR, Article 8 of the UDHR and Articles 10, 11, 12, 13 and 16(1) of the CAT.

17. The Applicant requests the Court for the following reliefs:

(a) A declaration that the failure on the part of the Respondent State to recognize, promote and protect the rights of the applicant and the failure to take measures to give effect to the rights of the applicant constitute multiple violations of Articles 1, 2, 3 and 5 of [the] African Charter on Human and Peoples' Rights, Articles 2 (1) and (3), 3, 7 and 26 of the International Covenant on Civil and Political Rights, Articles 10, 11, 12, 13 and 16 (1) [of the] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights.

- (b) A declaration that the treatment meted out on the applicant by policemen of the Special Anti- Robbery Squad (SARS) in Enugu constitutes torture, cruel, inhuman and degrading treatment contrary to Articles 5 of the African Charter on Human and Peoples' Rights, Article 7 of the International Covenant on Civil and Political Rights, Articles 10, 11, 12, 13 and 16 (1) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 1 and 5 of the Universal Declaration of Human Rights.
- (c) Damages/ monetary compensation for the applicant in the sum of N5,000,000 (Five Million Naira) for the pain, suffering and harm to his dignity including mental trauma and physical injuries.
- (d) An order for the adoption of other legislative, administrative, social and economic resources as may be necessary and the effective implementation of existing local State [legislation] especially the Anti-Torture Act of 2017 to ensure the protection, punishment and eradication of all forms of torture and other cruel, inhuman and or degrading treatment.
- (e) Any such further order or orders as the Court deems fit in the circumstance.



VI. CASE OF THE RESPONDENT

18. Despite service of the initiating Application and other processes filed by the Applicant on the Respondent, the Respondent did not file a Statement of Defence or other process in response to the action.

VII. APPLICATION FOR DEFAULT JUDGMENT

19. Given the default of the Respondent to file a defence or other response to the case consistent with the Rules of the Court, the Applicant, on 7 September 2022, filed an application for default judgment.

20. The application for default judgment was served electronically on the Respondent on 9 September 2022. However, the Respondent did not file any response or reaction to the application.

21. At a session of the Court on 2 May 2022, notice of which was served on both parties, the Applicant was represented in Court by counsel, but the Respondent was absent and not represented. Consistent with the Rules of the Court, Counsel for the Applicant moved the application.

22. Counsel for the Applicant submitted that by Article 90(1) of the Rules of the Court, the Applicant may apply for judgment by default if the Respondent fails to file a defence within the prescribed period after the Initiating Application has been duly served on the Respondent. She contended, further, that by Article 35 of the Rules of the Court, a Respondent has one month within which to file a

defence when it has been served with an Initiating Application. According to her, the time limited for the Respondent to file its defence had elapsed for over 10 months, entitling the Applicant to apply for default judgment. She, therefore, urged the Court to grant a judgment in default in favour of the Applicant.

23. The Court recalls Article 90(4) of the Rules of the Court which states:

“Before giving judgment by default the Court shall, after considering the circumstances of the case consider:

- (a) Whether the application initiating proceedings is admissible
- (b) Whether the appropriate formalities have been complied with, and
- (c) Whether the application appears well founded”.

24. In *Chude Mba v. Republic of Ghana* [2013] CCJELR 335, the Court noted that Article 90(4) requires it to ensure that: (a) it has jurisdiction over the matter; (b) the application is admissible; (c) all formalities, including notice to the Respondent, have been complied with; and (d) the application is well-founded. The Court will examine each of these requirements in turn.

VIII. JURISDICTION OF THE COURT

25. Under Article 9(4) of the Court’s Protocol, the Court has jurisdiction to determine cases of human rights violations that occur in Member States of the Community. Under the Court’s long-standing jurisprudence, this jurisdiction is properly invoked when an application alleges that human rights violations have occurred in a member state and that the state is responsible for those violations,

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subject to a determination on the merits. (See *Mohammed Morlu v Republic of Sierra Leone* ECW/CCJ/JUD/04/24, para 29).

26. In this case, the Applicant alleges that he was arrested by operatives of SARS, a security agency of the Respondent, and subjected to torture and other inhuman or degrading treatment, after which he was forcibly made to sign a confession apparently incriminating himself. Given that these allegations implicate the Respondent's human rights obligations under the African Charter and other international human rights instruments cited by the Applicant, the Court concludes that it has jurisdiction.

IX. ADMISSIBILITY OF THE CASE

27. Under Article 10(d) of the Court's Protocol, there are three main admissibility requirements for human rights applications, which are (a) the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter before another international court or tribunal. (*Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167, para 18).

28. The Court is of the view that the Applicant has demonstrated his standing or victim status by presenting sufficient facts which, *prima facie*, show that the conduct of the Respondent's security agency, SARS, has adversely affected his rights. The Court also notes that the application is not anonymous and there is no evidence that the Applicant has submitted the same claim to another international court. Therefore, the Application is admissible under Article 10(d) of the

Court's Protocol, as all admissibility conditions of that provision have been met.

X. COMPLIANCE WITH FORMALITIES

29. In *Chude Mba v. Republic of Ghana* [2013] CCJELR 335 (paras 70-74), the Court identified two key formalities that need to be satisfied for the grant of an application for default judgment. The Court held that, in fidelity to the principle of giving the Respondent an opportunity to be heard, it must be shown (i) that the initiating Application was served on the Respondent to enable it to present a defence; and (ii) that the application for default judgment was also served on the Respondent for a chance to respond.

30. In this case, it has been established that the initiating Application was served on the Respondent on 20 October 2021, and the application for default judgment was also served on the Respondent on 9 September 2022. The Respondent has failed to respond to either process, despite having the opportunity to do so under the Rules of the Court. Under these circumstances, the Court holds that the essential formalities required for a default judgment have been satisfied.

XI. MERITS OF APPLICATION FOR DEFAULT JUDGMENT

31. The Court begins by noting that, in determining whether an Initiating Application is well-founded to justify granting a default judgment, it must consider whether the legal claims in the Application and the

supporting evidence sufficiently establish the Applicant's case, particularly given the Respondent's failure to respond. (See *Chude Mba v. Republic of Ghana* [2013] CCJELR 335, paras 75 & 102). This approach is consistent with the practice of other international courts.

32. In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States) (Merits; Judgment)* [1986] ICJ Reports 14 (para 28), the International Court of Justice observed that where a party fails to appear or defend a claim brought against it, it does not follow that the Court will enter "judgment automatically in favour of the party appearing, since the Court is required...to 'satisfy itself' that that party's claim is well founded in fact and law". On what it means for the Court to satisfy itself that the case is well-founded, the Court explained that it "implies that the Court must attain the same degree of certainty as in any other case that the claim of the party appearing is sound in law, and, so far as the nature of the case permits, that the facts on which it is based are supported by convincing evidence." (*Ibid*, para 29).

33. Bearing these standards in mind, the Court will now assess the two substantive claims submitted by the Applicant: (a) that the psychological and physical violence inflicted on the Applicant by the Respondent's security agents constitutes torture and cruel, inhuman, or degrading treatment; and (b) that the Respondent's failure to provide protection and redress to the Applicant violates his right to a

remedy under Article 1 of the African Charter, Article 2(3) of the ICCPR, and Articles 10, 11, 12, 13, and 16(1) of the CAT.

(a) Alleged Subjection of the Applicant to Torture and Cruel, Inhuman or Degrading Treatment or Punishment

(i) Submissions of the Applicant

34. On this issue, the Applicant argues that Article 5 of the African Charter, Article 7 of the ICCPR, and Article 16(1) of the Convention against Torture establish a non-derogable prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment. Consequently, the Respondent is not only obligated to refrain from such acts but must also take positive measures to effectively prevent their occurrence. Therefore, the fact that the Applicant was accused of an offence did not diminish the Respondent's obligation to uphold the absolute prohibition against torture or other cruel, inhuman, or degrading treatment of the Applicant.

35. Applicant submits that the treatment inflicted on him by SARS operatives—including an unwarranted slap, the spraying of tear gas into his eyes, and beatings of his body, including his head, with a stick and a metal rod—constitutes torture as well as cruel, inhuman and degrading treatment or punishment. Relying on *Egyptian Initiative for Personal Rights & Interights v Egypt* (ACHPR, Comm No 334/06) and *Bekos and Koutropoulos v Greece* (ECtHR, App No

15250/02), Applicant argues that a treatment or punishment is considered cruel, inhuman, or degrading if it is objectively intended to humiliate or debase the person concerned. Applicant submits that the treatment inflicted on him by the SARS officers was intended to humiliate, debase, and cause grievous bodily harm, and it indeed had those effects on him.

(ii) Analysis of the Court

36. The Court recalls that Article 5 of the African Charter and Article 7 of the ICCPR, both of which are binding on the Respondent, prohibit torture as well as any cruel, inhuman or degrading treatment or punishment.

37. In *Mohammed Morlu v Sierra Leone* (ECW/CCJ/JUD/04/24, para 49), this Court, relying on the definition of torture in Article 1 of the CAT, observed that “torture occurs when there is:

- a) intentional ill-treatment of a person causing severe physical or mental pain or suffering;
- b) the purpose of the ill-treatment is to obtain a confession from the victim or a third person, to punish, intimidate, or coerce the victim or a third person, or to advance any discriminatory purpose; and
- c) it is carried out by a public official or a person acting in an official capacity or with their encouragement, consent, or acquiescence.”

38. Regarding cruel, inhuman, or degrading treatment or punishment, the Court notes that these are acts that cause severe physical or mental pain or suffering and are intended, among others, to humiliate or debase the individual, or have such effect on the individual. See



Egyptian Initiative for Personal Rights and Interights v Egypt II (2011) AHRLR 90, paras 187-196; *International Pen and Others v Nigeria* (2000) AHRLR 212, para 79; and *Bekos and Koutropoulos v Greece* (ECtHR, App No 15250/02, paras 49- 50).

39. Concerning the standards to be applied in evaluating evidence of torture or other degrading treatment, the Court considers that the jurisprudence of the African Commission and other human rights bodies provides useful guidance. In *Egyptian Initiative for Personal Rights and Interights v Egypt II* (2011) AHRLR 90 (para 168), the African Commission reaffirmed the “well-established principle of international human rights law, that when a person is injured in detention or while under the control of security forces, there is a strong presumption that the person was subjected to torture or ill-treatment.” The Commission noted that in such circumstances, the burden shifts to the Respondent to demonstrate or explain why the Applicant’s allegations of torture are unfounded. (See *Ibid*, paras 168-169 and *Colibaba v Moldova* (ECtHR, App No. 29089/06, para 47).

40. Furthermore, the African Commission has noted that bodily marks or medical certificates confirming injuries sustained while in custody generally serve as important probative evidence of torture or other degrading treatment. However, because not all acts of violence leave visible or permanent marks, and detainees may not always have or be granted access to medical care, reliance on circumstantial evidence or sworn statements from the victim or witnesses may be necessary to prove torture and other degrading treatment. (See *Ibrahim Almaz*

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Deng and Others v Sudan, ACHPR, Comm No. 470/14, paras 161-166).

41. In this case, the evidence presented by the Applicant to support his claims of torture and cruel or degrading treatment are his own affidavit, an affidavit from his brother, and photos purportedly taken by his brother showing injuries allegedly sustained by the Applicant when he was in the custody of SARS. Under the evidentiary standards mentioned above, these pieces of evidence are generally relevant for proving torture or other degrading treatment or punishment. However, while evidence may be relevant and admissible, it may not necessarily have the probative value required to substantiate the claim for which it is presented. The Applicant's evidence must therefore be assessed to determine the extent to which it substantiates his claims of torture and cruel or degrading treatment.

42. The Court begins by noting that, while the Applicant presented photos purportedly showing injuries sustained from ill-treatment by SARS officers, these photos do not establish a fundamental fact necessary to resolve this case—the identity of the Applicant. Given that the Applicant was or is still in custody and did not appear before the Court in person or via video link, it was crucial for him to attach a photo identification document to the Application to enable the Court to verify his identity.




43. The issue of the Applicant's identity is critical in light of the aforementioned pictures that were annexed to the Application,

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purporting to show that the Applicant sustained injuries from the treatment he endured while in the custody of SARS. Without an official photo identity document in evidence, it is impossible for the Court to conclude that the person appearing in the photos is the same person as the Applicant.

44. In any event, the photos annexed to the Application, which are intended to prove that the Applicant was tortured and maltreated by officers of SARS, are unclear. Therefore, even if the Court were able to confirm that the images are those of the Applicant, the photos are monochrome (i.e., black and white) and so unclear that it is impossible to observe any bodily marks or injuries that would substantiate the Applicant's claims of torture and degrading treatment. Admittedly, the absence of bodily marks or other evidence confirming injuries sustained from an ill-treatment does not mean that an individual may not have been tortured or subjected to cruel or degrading treatment. However, where an applicant, positively asserts that he has bodily marks and injuries indicating torture or degrading treatment and provides evidence to support those claims, the evidence presented should persuasively substantiate the assertions made. In this case, the photos provided by the Applicant do not substantiate his claims of injuries and bodily marks for the reasons already stated.

45. The other evidence submitted by the Applicant is an affidavit in which he describes the alleged torture and inhuman treatment he suffered, as well as an affidavit from his brother, whom he was allegedly visiting at the time of his arrest. While an affidavit from a

victim or witness is relevant evidence of torture or other degrading treatment, the Court considers that such affidavits should do more than merely restate the allegations in the Application. In this case, the affidavits provided no new information or evidence beyond repeating the Applicant's claims. Without an official identity document to verify the Applicant's identity and clear photos or other evidence to demonstrate the injuries and bodily marks he alleged, the affidavits from the Applicant and his brother, which merely repeat the claims in the Application, are of limited evidentiary value.

46. In conclusion, the Court is of the view, that ordinarily, the treatment allegedly inflicted on the Applicant in SARS custody—including a slap, the spraying of tear gas into his eyes, and the beatings with a stick and a metal rod to force him to sign a confession—would constitute torture as defined in paragraph 37 above. Such acts, by their nature and character, meet the threshold of causing severe physical or mental pain. (See *Justice Aladetoyinbo v Federal Republic of Nigeria* ECW/CCJ/JUD/18/20, paras 51, 52 and 66). Similarly, the alleged treatments objectively appear to be acts designed to humiliate and instil fear in the Applicant and to break him down mentally so that he would yield to the demand to sign the confession. Therefore, the alleged treatments the Applicant suffered would also qualify as cruel, inhuman, or degrading treatment or punishment.

47. However, as the Court has discussed above, the evidence presented by the Applicant do not establish his claims of torture and degrading

treatment. In the circumstances, the Court is compelled to conclude that the Applicant's claims of torture and cruel, inhuman, or degrading treatment are not well-founded to warrant the grant of a default judgment under Article 90(2) of the Rules of the Court.

48. Having determined that there is not sufficient evidence on the record to establish the Applicant's identity and the alleged torture and cruel, inhuman or degrading treatment of the Applicant, the Court does not consider that there is any utility in deciding the second issue of whether the Respondent violated the Applicant's right to a remedy.

XII. OPERATIVE CLAUSE

49. For the foregoing reasons, the Court sitting in public and after a hearing in accordance with the Rules of the Court:

On jurisdiction

- i. *Declares* that the Court has jurisdiction to hear the initiating Application and the application for default judgment.

On Admissibility

- ii. *Finds* that the initiating Application is admissible within the meaning of Article 10(d) of the Court's Protocol and Article 90(2) of the Rules of the Court.

On compliance with appropriate formalities

- iii. *Finds* that the application for default judgment complies with required formalities under Article 90(2) of the Rules of the Court.



On the Merits of the Default Judgment Application

- iv. *Finds and declares* that the Initiating Application is not well founded to warrant the grant of a default judgment and therefore dismisses the Applicant's application for the entry of default judgment.

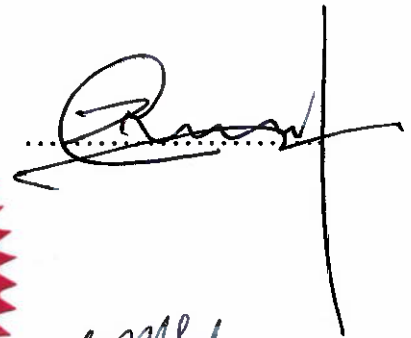
On Costs

- v. *Decides* not to make an order as to costs.

Done at Abuja this 14th day of November 2024 in English and translated into French and Portuguese.

Hon. Justice Ricardo C.M. GONÇALVES

Presiding Judge



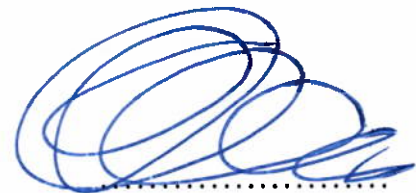
Hon. Justice Dupe ATOKI

Judge Member



Hon. Justice Edward A. ASANTE

Judge Rapporteur



ASSISTED BY:

Dr. Yaouza OURO-SAMA (Chief Registrar)

