

JUR DE JUSTICE DE LA COMMUNAUTE
CEDEAO



COMMUNITY COURT OF JUSTICE,
ECOWAS

IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC

COMMUNITY OF WEST AFRICAN STATES, (ECOWAS)

HOLDEN AT ABUJA, NIGERIA

ON FRIDAY 2ND NOVEMBER, 2007

CASE NO. ECW/CCJ/APP/04/05

BETWEEN

CHIEF FRANK C. UKOR

APPLICANT

AND

(1) MR. RACHAD LALEYE

1ST DEFENDANT

(2) THE GOVERNMENT OF THE REPUBLIC OF BENIN.

2ND DEFENDANT

CONSTITUTION OF THE COURT

HON. JUSTICE HANSINE .N. DONLI

PRESIDING

HON. JUSTICE AMINATA MALLE SANOGO

MEMBER

HON. JUSTICE SOUMANA D. SIDIBE

MEMBER

ASSISTED BY

TONY ANENE-MAIDOH ESQ

CHIEF REGISTRAR

RULING

1. PARTIES

- 1) The Applicant, who is herein called the Plaintiff for the purpose of this preliminary objection, is called Chief Frank Ukor and he instituted the substantive case for violations of Human Rights. He resides in Nigeria, and a community citizen, and of Nigerian nationality.
- 2) The 1ST Defendant, Rachad Olaleye, in this proceeding never appeared but was served with the application of the Applicant/Plaintiff. He resides in Republic of Benin where the transaction took place. He is a community citizen, and of Beninois nationality.
- 3). the 2nd Defendant is the Government of the Republic of Benin which was later joined by the Applicant/Plaintiff in this case and brought this preliminary objection under consideration. The 2nd Defendant is a Member state in the Community.
- 4) Learned Counsel for the Applicant, Mr. Wilson Esangbedo is for the Applicant/ Plaintiff,
- 5.) Learned Counsel, MR Hippolyte Yede Esq with Friggens J. Adjavon Esq. are for the 2nd Defendant.

FACTS AND PROCEDURE STATED BY THE 2ND DEFENDANT

1. The Application in the substantive, referred to, in this case as dated 14 July 2005, the Government of the Republic of Benin submitted after reading the same that Mr. Chief Frank Ukor and Rachad Laleye were in a business relationship. Mr. Rachad Laleye. He, the Applicant/Plaintiff who was purported to be a freight forwarder/clearing Agent and allegedly exercising his trade in Benin was requested by Chief Franck C. Ukor to carry out certain customs-clearance operations on his behalf in respect of 1,785 packets of items belonging to the Company called J. I. Alinnor & Brothers Limited.
2. In remuneration for his services, Mr. Rachad Laleye was supposed to receive the sum of Eight Million Seven Hundred Thousand CFA Francs (CFA 8,700,000) as the amount agreed upon between the two (2) Parties. As a result of the fraudulent representation in the process of clearing the goods as allegedly adopted by Mr. Rachad Laleye, the Applicant may have been compelled to pay other additional sums, namely:

1) The sum of Four Million CFA Francs (CFA 4,000,000), following a false declaration made by Mr. Rachad Laleye to the Benin Customs, since, instead of honestly declaring eight (8) items contained on board the truck, he fraudulently declared only one (1) item, in the words of the Applicant. (See page 3 point (h) of the Application dated 14 July 2005).

2) The sum of Three Hundred Thousand CFA Francs (CFA 300,000) to another freight forwarding agent after Mr. Rachad Laleye had abandoned the customs clearing job at

the port of Cotonou. (See page 4 point (i.) of the Application dated 14 July 2005).

3) The sum of Three Million and Forty Thousand CFA Francs (CFA 3,040,000) as parking fees to Mr. George Zinzinsouhou, owner of the trailer carrying the goods. (See page 4 point (j) of the Application dated 14 July 2005).

4) The sum of Six Hundred Thousand CFA Francs (CFA 600,000), representing the hiring fee of the vehicle which the Applicant initially accepted to hire. (See page 4 point (j) of the Application dated 14 July 2005).

5) The sum of Twelve Million and Forty Thousand CFA Francs (CFA 12,040,000) for the clearance of the goods (See page 4 point (k) of the Application dated 14 July 2005).

6.) The sum of Two Million CFA Francs (CFA 2,000,000) per week, for losses caused in connection with the trailer. (See page 4 point (l) of the Application dated 14 July 2005).

3. The Applicant/Plaintiff maintains that at the time he was clearing the 1,785 packets at the Seme-Krake border with Nigeria, the goods and its trailer were seized by the gendarmes and customs officers of Benin, with bailiffs from the Court of First Instance of Cotonou.

4. He asserts that the authorities of the Benin security system did not offer him any helping hand in the operation of mounting a search for Mr. Rachad Laleye, when he lodged a complaint against the latter, for a criminal act. This compelled him (the applicant/plaintiff) to send his case before the Embassy of Nigeria in Cotonou, but received no assistance from the said Embassy.
5. That it was in such condition, that, the following Order of seizure for protection-of-security was issued by the Cotonou Court of First Instance, on the basis of a false declaration made during the process of the said clearing which led Mr. Rachad Laleye to seize his goods.
6. He maintains that since he was not given a hearing by the judicial institutions of Benin, before the signing of the Order and he alleged that he was denied the right to equal protection by the law, as guaranteed by Articles 2 and 3 of the African Charter on Human and Peoples' Rights.
7. He equally asserts that the 1st and 2nd Defendants have violated the provisions of Article 14 of the African Charter on Human and Peoples' Rights relating to the right to property, because his trailer, which had not been implicated in the Order of seizure for protection-of-security, was *not* handed over to him and that it is, allegedly, still being detained by them. It was on the basis of these facts that Chief Franck Ukor lodged his case in this Court, seeking the following declaration:

(1) That the Defendant, by his false declaration before the Benin Court of First Instance which ordered the seizure of the 1,785 packets of various items belonging to J. I. Alinnor & Brothers Ltd., has

violated Article 3 (2)-d-iii and Article 4 of the Treaty of the Economic Community of West African States (ECOWAS).

(2) That the Defendant, following his false declaration before the Benin Court of First Instance which ordered the seizure of the 1,785 packets of various items being transported by the Applicant, has violated the Applicant's right to equal protection by the law, given that the goods in question were seized contrary to Articles 3 and 7 of the African Charter on Human and Peoples' Rights (1983 law on ratification and application).

(3) That the continuing holding of the Applicant's truck, which had not been affected by the Order of seizure for protection-of-security issued by the Cotonou Court of First Instance, on 8 January 2004, is a flagrant violation of the Applicant's right to property, provided for under Article 14 of the African Charter of Human and Peoples' Rights (1983 law on ratification and application).

(4). That the continuing holding of the goods belonging to J. I. Alinnor & Brothers Ltd., on board the Applicant's truck, upon the basis of the Order of seizure for protection-of-security issued by the Cotonou Court of First Instance, which expired on 8 February 2004, is illegal, failing any principal case pending before a Cotonou Court relating to this particular Case; that the goods in question

and the Applicant's truck are illegally being held, contrary to Article 14 of the African Charter on Human and Peoples' Rights (1983 law on ratification and application).

8. He advances a legal argument, that the 1st Defendant, Mr. Rachad Laleye employed "the judicial system of his country, by using a false deposition" to seize his trailer and the goods contained in it, thus denying him of his legal right to free movement and to do business in Benin. And that, this is contrary to the spirit of Article 3 of the Treaty of the Economic Community of West African States, which guarantees the free movement of persons, goods, services, and capital, as well as the right to residence and establishment – insinuating thereby, that the Government of Benin abets the violation of the said Article and the provisions of Articles 2, 3, 7, and 14 of the African Charter on Human and Peoples' Rights. This being so, the courts in Benin did not give him any hearing before authorising the seizure of his trailer and goods.
9. He submitted that these arguments cannot stand the test of any reasonable legal analysis, and the Government of the Republic of Benin, through its judicial powers, has not violated in any way whatsoever the provisions indicated above, as shall be demonstrated.

ORDERS SOUGHT

10. Upon these facts, the 2nd Defendant sought the following reliefs:
 - a) *To adjudge and declare that Mr. Chief Frank Ukor did not submit evidence of the proof of violation of his fundamental rights, as drawn from Articles 2, 3, 7 and 14 of the African Charter on Human and Peoples' Rights;*

b.) To adjudge and declare that Mr. Chief Frank Ukor did not, as well, tender any evidence to prove the violation his rights under Article 3 of the ECOWAS Treaty;

c.) To acknowledge that Mr. Franck Ukor did not provide evidence as to whether he ever seized the courts of the Republic of Benin to obtain the quashing of the seizure order made on his 1,785 packets of various items and trailer No. XG 796 JJJ, and as to whether the Benin courts obstructed him from defending himself through a lawyer, and whether the Benin courts refused to uphold his rights;

d.) To adjudge and declare that no wrong may be attributable to the Government of the Republic of Benin or its judiciary, and that consequently, the Government of Benin has not violated in any way whatsoever, Articles 2, 3, 7 and 14 of the African Charter on Human and Peoples' Rights, nor Articles 3 and 4 of the Treaty of the ECOWAS Community;

e.) To dismiss, purely and simply, the Application of Chief Franck Ukor, together with all his claims, purposes and orders sought, as directed against the Government of the Republic of Benin, the 2nd Defendant;

f.) To order the Applicant to bear the total cost of the proceedings, to be paid to Hippolyte Yede Esq. and Friggens J.Adjavon Esq., lawyers for the Government of Republic of Benin.

THE LEGAL ARGUMENTS OF THE 2ND DEFENDANT

11. The Government of the Republic of Benin observes that no evidence was furnished by the Applicant concerning the gendarmes and customs officials of Benin who seized his goods and trailer.
12. The Government of the Republic of Benin equally observes that Mr. Chief Franck C. Ukor did not submit, in the course of the proceedings, any evidence to prove whether he has actually made any legitimate claim of a criminal act against Mr. Rachad Laleye, and whether the Benin authorities in charge of investigating crimes were thereby unable to come to his assistance, in terms of mounting a search for him and apprehending him for the purposes of placing him under a legal arrest. Nor did he tender any evidence to prove that the Government of Benin restrained him from defending himself through any Counsel of his choice, to obtain the lifting of the Order of seizure for protection-of-security imposed by Mr. Rachad Laleye.
13. Hence, he reiterated that the applicant/plaintiff cannot claim that the 2nd Defendant violated the provisions of Article 7 of the African Charter of Human and Peoples' Rights. He further submits that the Applicant did not produce any evidence to prove that he brought his case before any of Benin's judicial bodies in order to have the Order of seizure quashed, and whether in so doing, he did not benefit from absolute equality of protection before the law vis-à-vis Rachad Laleye, and that he became a victim of discriminatory treatment within the meaning of Article 3 of the African Charter on Human and Peoples' Rights. Or yet still whether the Benin courts failed to deliver judgment and that by such act he was denied equality of protection by the law.
14. It therefore follows that the Applicant cannot maintain the position that the Government of Benin violated the provisions of Article 3 of the

African Charter on Human and Peoples' Rights. As regards the arguments relating to the alleged violation of Article 2 of the African Charter on Human and Peoples' Rights, and Article 3 of the ECOWAS Treaty, to the effect that by authorising Mr. Rachad Laleye, through Order No. 10/2004 of 8 January 2004, to seize his items for the protection-of-security, in order to recover a debt owed him, the Government of Benin had allegedly aided and abetted the violation of the freedom of goods guaranteed under Article 3 of the ECOWAS Treaty and the enjoyment of rights and freedoms guaranteed under Article 2 of the African Charter on Human and Peoples' Rights. He submits that these arguments cannot stand the test of any reasonable legal analysis and relies on the provisions of *Acte Uniforme de l'OHADA*, on methods of enforcement applicable in the Republic of Benin and that the President of the Cotonou Court of First Instance who made Order No. 10/2004 of 8 January 2004 did not violate any rule, nor did he commit any abuse of authority. He submits that the rules of OHADA, relating to seizure for protection-of-security, did not put the Benin courts under any obligation to grant a preliminary hearing to a debtor who is the victim of such seizure, before issuing the seizure order. He relies on the provision of the governing law. Article 54 of *Acte Uniforme de l'OHADA*, on methods of enforcement, thus: .

"Any individual whose debt appears legitimate and founded on principle, may, by application, request the competent court of the local area or of the home address of the debtor, the authorisation to impose a measure of protection-for-security on all the movable properties (physical and non-physical) of the debtor, without prior orders, if such measure of protection justifies any

circumstances likely to jeopardise the recovery of the debt."

Also, Article 56 further provides inter alia that:

"Seizure for protection-of-security may affect all movable properties, corporeal and non-corporeal. It renders them unavailable."

Article 59 stated the condition applicable that:

"The decision authorising a seizure for protection-of-security, must, subject to the risk of being invalidated, state the amount of money for which the guarantee the measure of seizure was being authorised, and indicate the nature of the properties being targeted for seizure."

15. In the instant case, he contends that it is Mr. Rachad Laleye, who, by application, as is well acknowledged by the Applicant, that applied for an order in the Cotonou Court of First Instance, because he considered that he had, in principle, a credit-value amounting to Eighteen Million CFA Francs (CFA 18,000,000) owed to him by Mr. Chief Frank Ukor, and in application of Article 54.
16. He submits that the matter was lodged in the Court of First Instance Cotonou, Benin, and not the said court which acted suo motu to have the case filed in court, so as to grant Mr. Rachad Laleye the initiator of the proceedings the authority to seize the goods. The said court he contends authorised the seizure in accordance with the provisions of Articles 54 and 59 of *Acte Uniforme de l'OHADA* relating to methods of enforcement. He submitted that by that order, Mr. Rachad Laleye was

authorised to enforce the measure of seizure for protection-of-security, in order to recover his debt.

17. He submitted that the court acted in compliance with the law and committed no abuse of authority, or wrong doing, in view of the said Articles 54 and 59. He submits that Article 62 of *Acte Uniforme de l'OHADA* regarding methods of enforcement provides that:

“Even where preliminary authorisation is not required – upon the request of the debtor, and whether the latter is heard or summoned – the competent court, at any point in time, may curtail the order of seizure, if the complainant does not furnish the evidence that the conditions prescribed under Articles 54, 59, 60, and 61 have been duly fulfilled”.

18. He submits that the Applicant, Chief Frank Ukor failed to resort to the proper procedure of seeking for a bailiff in Benin to file his case before that court and that such a process would have availed him the defence in respect of the goods and truck in question and that it might have had an impression upon the court to reverse the order made. He submits that having failed to tender evidence or take the necessary judicial step; the Government of Benin was devoid of any act of culpability whatsoever or that they were a party to the obstruction of free movement of his goods or the enjoyment of his right to property through the courts in Benin. He contends that consequently, the 2nd

Defendant cannot be said to be liable in the face of the alleged debt by Rachad Laleye- the 1st Defendant.

19. He submits that the applicant is in error to have invoked Articles 2 and 14 of the African Charter on Human and Peoples' Rights and Article 3 of the ECOWAS Treaty in respect of the alleged hindrance of freedom of movement of the goods. and that this Court is incompetent to adjudicate in respect of issues 5, 6, 7, 8, 9, and 10 contained in the Application dated 14 July 2005, and filed by the Applicant/Plaintiff. He submits further that since issues no. 1, 2, 3, and 4 are consequential issues to those in issues 5, 6, 7, 8, 9, and 10 of the Application as filed on 14 July, 2005, the facts in the Application cannot stand on the same ground of incompetence. He finally urges the court to strike out the case against the 2nd Defendant to wit- the Republic of Benin, on the grounds of frivolity non involvement and lack of nexus between the 2nd Defendant and the Applicant/Plaintiff on one hand and the 2nd defendant and 1st Defendant-Rachad Laleye on the other.

LEGAL ARGUMENTS BY THE COUNSEL TO THE APPLICANT/ PLAINTIFF

20. In reply, Learned Counsel for the Applicant/Plaintiff opposes the Application in all material particular and submitted that the issues that have been raised by the 2nd Defendant are issues that are very grave and bother on the ability of the Court to proceed on issues 5, 6, 7, 8, 9, and 10 which have to do with the jurisdiction of the Court.
21. He submits that the question of jurisdiction cannot be severed or objected to in part. He submitted that it is either the Court has total jurisdiction or not. He submits that it is detrimental to the Applicant's case to have the issues in respect of jurisdiction broken down into two

parts. He relies on the case of Olajide Afolabi VS FRN (decision of this court) at page 65 paragraph 32 (1), (2) and (3). He refers also to the provisions of the Supplementary Protocol with particular reference to Article 9 (1)-(4) of the Protocol to submit that at this stage of the proceedings the Court cannot deliberate on the substantive issues or consider the suit on the merit. He relies on Article 10 of the Protocol in respect of access to the Court by individuals and in particular Article 10 (c) which grants individuals access to the Court. He submits that the words 'Community Official' refer to an official of a Member State who carries out his official functions within the ECOWAS Sub-Region.

22. He refers to Article 9 (3) of the said Protocol to submit that same expands the meaning of Community to include Member States. He submits that issues 5, 6, 7, 8, 9, and 10 are all connected with violation of the Applicant's Human Rights and cannot be separated or severed in two. He submits that the Applicant/Plaintiff lodged the main Application on the basis that his Human Rights were violated contrary to Article 9 (4) of the Protocol and Article 10 (d) of the said Protocol which grant access to the Applicant/Plaintiff in respect of Human Rights' violation. On that basis, he urges the Court to hold that it has competence to adjudicate on the issues stated therein.
23. On points of law, the 2nd Defendant, even though had no right of a reply again, the Court however obliged him to reply for clarification of ambiguity that might have occurred in the earlier submissions.

CONSIDERATION OF THE FACTS, LEGAL ARGUMENTS AND THE PRELIMINARY OBJECTION AS TO JURISDICTION

24. By the Application on the issue of jurisdiction of this Court the 2nd Defendant relied on the Rules of Procedure to support the filing of the

Application in a separate from the substantive action pursuant to Article 87 of the Rules as follows:

"1. That a party applying for a decision on a preliminary objection other preliminary plea not going to the substance of the case shall make the application by a separate document.

2. The application must state the pleas of fact and law relied on and the form of order sought by the applicant and any supporting documents must be annexed to it."

25. However, the Court considers relevant Article 88 of the said Rules which provides as follows:

"1. Where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible, the court may by reasoned order, after hearing, after hearing the parties and without taking further step in the proceedings gives a decision.

2. The Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case or declare, after hearing the

parties, that the action has become devoid of purpose and that there is no need to adjudicate on it; it shall give its decision in accordance with Article 87(4) and (5) and these Rules."

26. Even though the application is filed in a separate document, this Court states that the matters that arose in the arguments touch on the substantive case because the Application herein seeks to dismiss the action on the basis of lack of jurisdiction. In this regard, Article 88 of the said Rules is materially relevant and applicable to this case. For where an Application as to lack of jurisdiction if granted disposes off the entire suit against the party that brought the action, the said preliminary objection requires no separate document, as it was done in this case. Nevertheless, the failure to so file the Application in strict compliance does not erode the powers of the Court from examining the document on its merit particularly so, when the parties have made substantial submissions for and in opposition. As always the Court will disregard enthrone ment of technicality over the hearing of the Application on its merit. On that note, we state that the preliminary objection is sufficiently relevant for our consideration.
27. Turning to the issues concerning the question of lack of jurisdiction, brings the Court to consider the jurisprudence on jurisdiction which are

deplete in the decisions of the Court, nationally and internationally as to when the may be said to lack it. On that basis, the cardinal principle of law on jurisdiction which never changes is that jurisdiction or lack of it is fundamental to the proceedings. It is trite law that jurisdiction means simply the power of a court to entertain an action. As to what constitutes jurisdiction, Counsel to the Plaintiff relied on the authority of **Afolabi Olajide vs Federal Republic of Nigeria 2004/ECW/CCJ/04 dated April 27, 2004** at page 65 paragraph 32 (1) (2) and (3) wherein the Court stated thus:

*"It is a well established principle of law
that a court is competent when:*

- 1) it is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and*
- 2) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and*
- 3) the case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction 33. The position of law which*

cannot be overstated is that any defect in competence is disastrous, for the proceedings are nullities, no matter how well conducted and decided, the defect is extrinsic to the adjudication...."

28. The submission elaborated by the 2nd Defendant's Counsel, relating to the action in the court in Benin Republic, dealt with the seizure of property in respect of the contractual relationship between the 1st Defendant and the Plaintiff whereby an order was made by that court in compliance with Article 54 of the OHADA Rules. Learned Counsel to the 2nd Defendant further relied on Articles 54, 56, 59, 60 and 61 of the said OHADA Rules to justify all the steps taken by the court in Benin Republic. There was no mention whatsoever regarding an action for the violation of Human Rights but a contractual relationship simpliciter. However in this case, the action relates to violation of the Plaintiff's Human Rights as provided in Article 9 subparagraph 4 of the Supplementary Protocol of this Court which provides that:

"the court has jurisdiction to determine cases of violation of human right that occur in any member state."

Whereas Learned Counsel to the 2nd Defendant relied on the subject matter to submit that there was no violation as to confer jurisdiction

upon the Court to adjudicate on the case. Learned Counsel to the Plaintiff relied on Article 10 paragraph (c) of the Protocol of the Court to contend that the individuals of ECOWAS have access to this Court in respect of violations of the Rights of individual or corporate bodies for an act or inaction of a Community Official and further submits that a Community means a Member State. He however failed to show the violations committed by the 2nd Defendant to wit, the Republic of Benin, in the instant case. This Court finds itself disagreeing with the submission of Counsel to the Applicant/Plaintiff that the action filed by him (Applicant) in substance amounts to Human Rights violation because the seizure of the goods and the said truck was based on a Court order from the Court of First Instance Benin. We therefore agree with Counsel to the 2nd Defendant that the acts complained by the Applicant/Plaintiff are devoid of violation of Human Rights. We therefore state that there is a serious misconception as to whether the complaint of the seizure and confiscation of the truck and goods therein, upon the court order, violates the rights of free movement of goods which Counsel hinges upon as Human Rights violation. It is trite that a valid order of the court stands until any person dissatisfied with same makes the move by following the relevant judicial process to set it aside. Consequently, this Court which has no appellate jurisdiction over the decisions of the courts of Member States cannot

act as one through this process that Counsel of the Applicant/Plaintiff impressed upon it to enforce.

29. On this note, this Court declines to act outside its mandate as specified in Protocol A/P1/7/91 and the Supplementary Protocol (A/SP.1/01/05) which clearly spelt out such mandate. The next point of concern in the legal arguments also relate to interpretation of the provision of the said Protocol. We consider the argument by Counsel to the Applicant/Plaintiff relating to such interpretation of Article 10 (c) of the said Protocol as amended that the use of the word 'Community' is akin to the words, 'Member State' of ECOWAS. By the definition of Community and Member State in the definition section of the Revised Treaty of ECOWAS, it is apparent and clear that the two sets of words cannot mean the same or be interchangeable in meaning. This brings the Court to consider the rule of construction of Statutes as same affects the Protocol in question. The rule of construction of statutes is that they should be construed according to the intent and purpose of the makers and if the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary meaning. In the case of **Chief Obafemi Awolowo v. Alhaji Shehu Shagari & 2ors 1979 A.N.L.R. 1120** the statement above was emphasised and applied. Also at page 34 paragraph 6 on canons of interpretation, in the case of **Afolabi**

Olajide v FRN supra, this Court observed and applied the rule as to interpretation of Statute/ Protocol thus: "in the rules of construction of statutes, words in the enactment should be given their ordinary and natural meaning as generally used and they have ordinarily understood the day after the statute was passed. When the words of a statute are given their ordinary, precise and natural meaning there is hardly any necessity to resort to any other principle of interpretation" Also see the book, *Laws of Treaties*. The said Article 10 (c) if interpreted, even by applying the purposive rule of interpretation, because of its clarity the words in their ordinary sense will support our stance in this case, that Community is different from Member State as ascribed in the Treaty of ECOWAS..

30. Now to the important question relating to the subject matter in which arguments have been advanced on the question of jurisdiction vis a vis violation of Human Rights, this Court after dissecting the factual of the Application which falls within the description cause of action, it agrees with Learned Counsel to the 2nd Defendant that even though the Applicant/Plaintiff mentioned Human Rights violations under the provisions of the African Charter on Human and Peoples Rights as recognised by Article 4 (g) of the said Revised Treaty of ECOWAS, the acts complained of are not in themselves violations of Human Rights because the seizure and dispossession of the goods and truck was based on the order of a competent court to wit, court of

First Instance Cotonou Benin and that the court followed the procedure and the provisions of Articles 54,56,59,60 and 61 and this Court cannot delve into the propriety of the said order which still subsists. The position of this Court is that being devoid of appellate jurisdiction; only that court can set aside the said orders made and thus make the complaints justiciable. In that vein the Court holds that issues 5,6,7,8,9,and 10 of the main Application which complained of the inappropriateness of the proceedings in Cotonou-Benin Republic, the issues fail to measure as Human Rights violations as to confer upon the Court jurisdiction under Article 9 (4) of the Protocol. Consequently, the issues being not justiciable and are accordingly jettisoned. Turning, to the submissions by Counsel to the 2nd Defendant and the reply thereto by Counsel to the Applicant/Plaintiff, as to the particulars of issues 1, 2, 3, and 4, in the main application, it was submitted that those issues were violations of Human Rights. The basis of issues 1, 2, 3, and 4, are the actions taken in the other court in Cotonou which acts are stated in issues 5, 6, 7, 8, 9, and 10. This Court agrees with the submission that the acts in issues 5,6,7,8,9,and 10 being the acts that brought about the complaints in issues 1,2,3,and 4 of the Application and stated herein, make the latter subsidiary issues to issues 5,6,7,8,9, and 10 the main. As always the principle of law that is always readily applied is that where the substantive complaints fail, the subsidiary

relief must also fail as the latter would have nothing to hang upon. Also on this note, the said issues 1, 2, 3, and 4 fail in their entirety.

31. Another point canvassed by Counsel to the 2nd Defendant relates to his submission that this Court cannot adjudge a Member State to pay damages even if the violations of Human Rights have been proved against such Member State. This Court finds the argument strictly beyond what obtains if Article 38 of the Statute of International Court and Article 19 of the Protocol of the Court are applied. The combined effect of the said Articles 38 and 19 respectively brings into focus the need to do justice at all times pursuant to the principles of ensuring the observance of law and of the principles of equity in the interpretation and application of the Treaty. Even though no provision is given in the Protocol, as conferring competence in respect of damages, this Court is always ready to adjudge matters in compliance with the notion of justice and equity in line with the universal principles of justice in respect of Human Rights violations. In the case of **Shir D K Basu and anor vs. State of West Bengal of India and 8 ors 2005 CHR page 131** it was stated that where the constitution is silent on remedies available for violations of constitutional rights, courts have evolve compensatory reliefs in cases of established unconstitutional deprivation of a person's liberties or life. Award of monetary compensation for breaches of basic Human Rights is an established

judicial practice based on the courts sense of duty towards the defence of civil liberty and social justice which rests on the principle of UBI JUS IBI REMEDIUM. It was further held that the courts, in the absence of statutory or constitutional remedies for breaches of fundamental rights can create remedies to meet the justice of particular cases.

Also in the case of **Sunday Jimoh vs. Attorney General and 2ors (1998) 1HRLRA at page 516** it was held that an applicant whose rights have been violated is entitled to general damages and exemplary and aggravated damages also, if pleaded.

32. **DECISION**

For the foregoing facts, submissions and reasons stated, the preliminary objection succeeds and the action is hereby struck out on the basis that this Court lacks jurisdiction to adjudicate on the matter stated therein in the Application of the Applicant/Plaintiff.

33. **LEGAL COSTS**

In view of the circumstances of this case and in the interest of justice, coupled with the provision of Article 66 paragraph 2 of the Rules of Procedure, the Applicant/Plaintiff shall bear all the costs of the proceedings.

THIS DECISION IS READ IN PUBLIC IN THE OPEN COURT.

DATED THIS 2ND DAY OF NOVEMBER, 2007

Hon. Justice Hansine .N. Donli
Hon. Justice Aminata Malle Sanogo
Hon. Justice Soumana D. Sidibe

Presiding

Member

Member

Hon. Justice Hansine .N. Donli
Presiding

Tony Anene-Maidoh

Chief registrar

C T C
CERTIFIED TRUE COPY

Chief Registrar

Date

2/11/2007

