

ECW/CCJ/JUD/01/09 Djot Bayi & 14 Others v. Nigeria & 4 Others

In the Community Court of Justice of the Economic Community of West African States (ECOWAS)

Holden at Abuja, Nigeria

On the 28th of January, 2009
Plaintiffs

1. Djot Bayi Talbia
2. Makomillan Tanoë
3. Boubou Diallo
4. Inza Cisse
5. Debo Jeremie
6. Mobio Etienne
7. Akaicpo Antoine
8. Fall Abdou
9. Latte Serge Alfred
10. Sawadogo Pierre
11. Vanie Pascal
12. Coulibally Hamed
13. Kpillimaka Nikabou
14. Vlavanou Zannou and

15. Koi Joachim

v.

Federal Republic of Nigeria

Attorney General of the Federation (on his own behalf and as representative of the federal government of Nigeria)

1. Chief of Naval Staff
2. Inspector General of Police and
3. Comptroller General of Prisons - Defendants

Composition of the Court

Hon. Justice Hansine N. Donli - Presiding
Hon. Justice Awa Daboya Nana - Member
Hon. Justice El Mansour Tall - Member

Assisted by: Tony Anene-Maidoh - Chief Registrar

Counsel to the Parties

Judgment of the Court

1. Chief Emefo Etudo - for the Plaintiffs
2. Nnanna O. Obom - for the 1st, 2nd, 4th, and 5th Defendants
3. Muhammad Danjuma Alhassan - for the 3rd Defendant

The Parties

1. The Applicants are Members of crew of ship/vessel MT CAPBRETON, represented by their Learned Counsel Bar. Chief Emefo ETUDO. The 1st, 2nd, 4th and 5th Defendants are namely, the 1st Defendant is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS). The 2nd Defendant is Minister of Justice, Attorney General of the Federal Republic of Nigeria. The 4th Defendant Inspector General of Police of Nigeria and the 5th Defendant is the Comptroller of prisons of Nigeria, all represented by Nnanna O. Obom. The 3rd Defendant is the Chief Naval Staff of the Nigerian Marine represented by Mr. Mohammad Danjuma Alhassan.

The Facts of the Case

2. After fifteen Applications dated from the 30th November 2006 and lodged in the Registry of the ECOWAS Court of Justice, the learned counsel to the Applicants brought a motion that the fifteen claims should be consolidated into one Application. The learned counsels to the Defendants did not oppose the application and the Court granted their demand by consolidating the said Applications due to the reason that they were the same in nature, subject matter and the reliefs sought; the facts of case are the following:

3. The said Vessel MT Capbreton, a foreign Vessel flying the flag of St Vincent and Grenadines Islands with its identified registration Number, was arrested on the 17th day of July 2003 at the coast of Forcados, a port on the high seas, sixteen (16) nautical miles of the coast of the Federal Republic of Nigeria, on the crime of dealing in crude oil within the Nigerian territorial waters.

4. The said vessel originally belonged to a petro-marine and its principal Barnex Holding SA, was sold to All Shore Marine Services Ltd, which by letter of reemployment, the said crew members were reemployed. The vessel was chartered by African Sea Shipping BV, a Geneva Branch, to which she was loaded with cargo of LPFO (Low pour fuel oil) at Abidjan for discharge at Cotonou, Benin Republic. On arrival at Cotonou, the discharge was delayed as the jetty was busy and thus deviated from her goal of discharging her cargo to render help to a nearby vessel in distress, named M.T Zogu, as she could not sail due to a faulty engine, problem of shortage of clean water and diesel for both the crew and the power generator. The said vessel could not put on its lights at night due to the shortage of Diesel; which constituted a serious danger to navigation.

5. The Vessel, MT Capbreton and her crew, which are the Applicants, set to sail towards the distress vessel off the coast of Nigeria at 16 nautical miles where she anchored. It was only blue waters insight and also, there were no installations within 200 meters of the vessel. While rendering assistance, the vessel MT Capbreton was spotted and arrested by a naval ship of the 3rd Defendant, NNS Kyenwa on the allegation that she was taking Nigerian crude oil into her; the alleged act being a crime under the laws of the Federal Republic of Nigeria. The vessel MT Capbreton, cargo, documents, vessel log book and the letter of reemployment of the Applicants were handed over to the Defendants, Nigerian Naval officers. The Applicants were arrested and detained in prison while the investigation was going on, in which the cargo documents alongside the substance removed from the said vessel were analyzed. The analysis showed that the cargo from MT Capbreton was actually fuel oil 180 cst (LPFO) Low pour fuel oil and not crude oil.

6. Notwithstanding, the above mentioned cargo documents and the result of the investigation of the substance, and despite the conclusions of the findings, the Defendants continued to detain the Applicants, during which the Applicants were paraded before the National and International press as thieves of Nigerian crude oil. Consequently, they were charged to the Federal High Court of Nigeria on two count charges on the 27th of July 2004. Following this arrest the Defendants sought and obtained consent of the Attorney General of the Federal Republic of Nigeria to prosecute the Applicants who were foreigners but ECOWAS Community citizens. During the trial, the Defendants called fourteen witnesses while the Applicants called four witnesses. The judgment of the criminal case delivered and annexed to the

Applications, ruled that the arrest of the Applicants was at 16 nautical miles off the waters and off the coast of the Federal Republic of Nigeria and the Federal High Court lacked jurisdiction except at 12 nautical miles.

7. Consequently, the Applicants lodged their case at the ECOWAS Court of Justice claiming that they have lost their gainful employment (1); suffered violations of their Human Rights of which they are claiming damages and interest for arrest and unlawful detention (2) attempt at the violation of their human dignity by parading the applicants as thieves of the Nigerian crude oil (3), for the prosecution they went through (4), dispossession of their vessel MT Capbreton and its destruction (5). The Applicants pleaded material facts that the said acts complained of amounted to violations of their Human Rights pursuant to Articles 5, 6 and 21 (2) of the African Charter on Human and Peoples' Rights, which is domesticated by cap A9 Laws of the Federal Republic of Nigeria 2004. The Applicant reiterated that out of fifteen (15) Applicants ten (10) were detained till the 30th of November 2005 while five (5) Applicants were released on the 2nd of March 2004. They added that this detention was unlawful and requested the following reparation for damages:

a) Declare that the continued detention of the Applicants by the Defendant from 1st December 2003 till the 1st of March, 2004 is unlawful and amounts to the infringement of Article 6 of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004 and section 35

x (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence. (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention. (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of - (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. (5) In subsection (4) of this section, the expression "a reasonable time" means - (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable. (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law. (7) Nothing in this section shall be construed - (a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and (b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

of the Constitution of Federal Republic of Nigeria, 1999.

b) Declare that the suit instituted against the ten Applicants from amongst the fifteen on the 1st of March 2004, for proceedings against them and their continued detention till 30th of March 2005, are unlawful, void and amount to an infringement of Article 6 of the African Charter on Human and Peoples' Rights and section 35 of the Nigerian Constitution.

c) Declare that their dispossession of MT Capbreton by the Defendants, since the 1st of December 2003, then the destruction of this vessel and the Applicants' ejection from the said vessel between January/February 2004 constitutes a violation of their Human Rights.

d) Declare that the Applicants are entitled to adequate compensation from the Defendants for dispossessing them of MT Capbreton.

e) Declare that the refusal of the Defendants to compensate the Applicants for the spoliation and dispossession constitutes a violation of their rights under Article 21 (2) of the African Charter on Human and Peoples' Rights.

f) Declare that the parading of the Applicants before the International Press as common thieves and thieves of Nigerian crude oil amounts to a destruction of their reputation as seamen and their right to human dignity as entrenched by Article 5 of the African Charter on Human and Peoples' Rights.

g) Order the immediate release of all personal effects belonging to the Applicants on board MT Capbreton.

h). An order of injunction restraining the Defendants by themselves agents or privies from further arresting or detaining the Applicants in connection with the case; and condemn them to pay damages and interest to their Applications as set out in paragraph 40 to the facts in support.

8. After Service of the Application on the Defendants, the latter filed their responses in which they ask for the rejection of the application for reparation presented by the 1st Defendants learned counsel representing the 1st, 2nd, 4th, and 5th Defendants and the 2nd learned counsel representing the 3rd Defendant. They claim justification for their acts in arresting, detaining and prosecuting the Applicants through two important defences that of privity of contract of employment between the Applicants and their employers and the statute of limitation as entrenched in Article 9 (3) [sic] of the Supplementary Protocol of the Court. The claims of the Defendants are as follows:

a) Declare that the Applicants do not have claim to any relief sought in their Application for enforcement of their fundamental human rights;

b) Declare that the arrest of the Applicants and their prosecution was constitutional, lawful and in accordance with the laws of the Federal republic of Nigeria, that no violation of human rights occurred under the African Charter on Human and Peoples' Rights;

c) Declare that no reputation of the Applicants was soiled, despite the fact that after the said trial they were discharged and acquitted by the Federal High Court of Nigeria;

d) Declare that the claim is statute barred.

e) Order the dismissal of the claim on the grounds that it is arbitrary, speculative, lacked merit and an abuse of the process of the Court;

Legal Arguments by the Parties and Considerations by the Court

9. Learned Counsel to the Applicant, Chief Emefo Esq. made the following legal submissions:

A. He submitted that by treaties, all Nations covenanted to enforce the provisions of the UN Charter on Human Rights in all Member States that ascribed or assented to the Charter. In line with this, the learned counsel contended that the detention of the Applicants from the 1st of December 2003 to 30th November

2005 was without justification, abusive and their dispossession of MT Capbreton on the above mentioned dates, as well as in parading them before the world press in Nigeria in 2004 as thieves of Nigerian crude oil was unjustified being that the spot of arrest was at 16 nautical miles outside the territorial waters off the coast of Nigeria; and that they were only rendering assistance to a distressed vessel pursuant to the provisions of Article 98 of the UN Convention of 1982 on maritime law.

B. He further relied on section 220 of Merchant Shipping Act Cap M 11 Laws of the Federation of Nigeria 2004 which permitted master or person in charge of a ship to in so far can render such assistance to every person found at sea in danger of being lost. He relied on the case of **QUEEN V. KEYN (1986) 2 exch Div. 63** where the House of Lords represented by Justice Cockburn stated, "*that the rules of International Laws on the seaward boundary of coastal states did not extend to the sea*"

C. He further relied on the jurisprudence of the Supreme Court Nigeria: **ATTORNEY GENERAL OF THE FEDERATION VS. ATTORNEY GENERAL OF ABIA STATE NO.2 (2002) 6 NWLR (PT 764) 542**, which fixed the boundary of the sea and the boundary mark of low water and maintained that the low water mark form the boundary of the land territory of not only the eight coastal states of Nigeria but equally that of the entire country. He also relied on the case **QUEEN VS. KEYN** (supra) to say that the Parliament can legislate on the limit of territorial waters which is beyond the low mark and that any exercise of judicial power beyond the area of competence of Nigeria will amount to a violation of the fundamental principles and would be declared unconstitutional.

10. He further relied on section 12 (1)

× No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.
of the 1999 Constitution of the Federal Republic of Nigeria which stipulates that:

"no treaty shall have the force of law unless same is domesticated as the Laws of Nigeria",

and based on this, the law that domesticated the UN Convention on the Law of the Sea, he maintain that the Defendants accosted and apprehended the Applicants at 16 nautical miles beyond the territorial waters from the coast land; which is 12 nautical miles that is authorized. He recalled the jurisprudence of Queen vs. Keyn (supra) to contend that the Nigeria and her Courts are bound by the laws made by the National Assembly (Parliament mentioned above); he referred to section 1 (17) of the *Miscellaneous Act* to support his argument and which states that the said law deals with transactions in petroleum within 12 nautical miles of the coast and not beyond it; or 16 nautical miles. He added that even if the location of the arrest is at the exclusive economic zone, the Applicants will not be said to have committed an offence more or less violate the conditions provided by the regulations on the exclusive economic zones.

These conditions are as follows:

- Case of the breach of fishing right pursuant to Article 73 of the United Nations Convention on the law of the sea;
- Prohibition of the Transport of slaves pursuant to Article 99 (a) of the same United Nations Convention;
- Seizure of a private ship or aircraft pursuant to Article 105 of the same Convention;
- Illicit traffic in narcotic drugs and psychotropic substances pursuant to Article 108 of the UN Convention;
- Unauthorized broadcasting from the high seas pursuant to Article 109 of the UN Convention;
- Right of hot pursuit of an escaping vessel such as provided in Article 111 of the same Convention.

11. The Learned Counsel to the Applicant equally relied on Article 56 and 58 of the UN Convention of 1982, on the Laws of the sea above cited which authorizes states to make rules and regulations regarding the

Exclusive Economic Zones. Which made Nigeria to enact her law: Exclusive Economic Zone Act and crude oil (Transportation and Shipment), which the Applicants did not contravene. Consequently, the Learned Counsel to the Applicants submitted that the act against his clients by the Defendants cannot justify. Even more, the Learned Counsel emphasized that Exclusive Economic Zone, Coastal state, such as Nigeria must respect the rights of other states, and can only act in the zone in line with Article 110 of the said United Nations Convention. He relied on section 379 (2) of merchant shipping Act to support that the extra territorial jurisdiction does not extend to acts that occurred outside Nigeria.

12. He strongly submitted that the defendants were not competent to regulate shipping outside her territorial waters, as they admitted and as mentioned in the evidence presented by Sylvester Njoku and Emmanuel Ogunka in the judgment the Nigerian Court, already pleaded, in which all vessels automatically acquire licence or an authorization, at 16 nautical miles, which is outside Nigeria territorial waters and do not need regulation or authorization.

He relied on section 7 and 6 of the crude oil Regulation (Transportation and Shipment) Cap P. 10 LFN 2004 on the creation and regulation of activities relating to petroleum occurring in Nigeria. He stated that it is no doubt that MT Capbreton did not load in Nigeria but rather in Abidjan, in Cote d'Ivoire where it loaded the LPFO.

13. The Applicants contended that their arrest, detention and the prosecution of ten of them from the 1st of December 2003 till 30th November 2005 in the Nigerian High Court, and the imprisonment of five others from the 1st of December 2003 to the 2nd of March 2004 by the Defendants was unlawful as they knew that the acts amounted to gross violations of the liberty of the Applicants.

14. The Learned Counsel to the Applicants submitted that under both Domestic and International Law, the Defendants had no right nor power to proceed against the Applicants in Nigeria as they did in the criminal charge that consequently, the charge was incompetent as well as the proceeding that followed, and that in fact, the invalid prosecution amounts to gross infringement of the rights of personal liberty and security as entrenched in Article 6 of the Africa Charter on Human and Peoples' Rights as well as section 35 x 35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence. (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention. (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of - (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. (5) In subsection (4) of this section, the expression "a reasonable time" means - (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable. (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law. (7) Nothing in this section shall be construed - (a) in relation

to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and (b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

of the 1999 Constitution of the Federal Republic of Nigeria. The Learned Counsel contended that the trial which was malicious entitled the Applicants to recover loss of earnings as stated in their Applications.

15. He contended that the facts of the case and legal arguments already developed proved that there was no reasonable cause justifying the Defendants acts.

16. He relied on the jurisprudence of **VVII BRAHAM vs. SHOW (1669) 2 WMS Sound 47a**, to state that in tort, the person in actual possession can sue in conversion, because it not necessary to prove title of absolute ownership. The Learned Counsel to the Applicants also relied on the case of **ROBERT v. WYATT (1810) 2 Taunt 268 and Clerk & Lindsell on Tort 17th Edition** to the effect that a person who is entitled to temporary possession of a furniture can sue in conversion, even against the owner. Thus, the Applicants who were in possession can sue in tort for trespass for violation of right to property and conversion of MT Capbreton against the Defendants. They further contended that no doubt they can also sue under Article 21 (2) of the African Charter on Human and Peoples' Rights as dispossessed persons. The essential element is the possession and not the title, because their right to adequate compensation is further consummated by the fact that they have proprietary right in the vessel.

17. He also relied on Article 5 of the African Charter on Human and Peoples' Rights, to the effect that the Defendants damaged their reputation, and attempt at their dignity by presenting them before the world press as thieves of Nigerian crude oil. This is a case of inhuman treatment and the worst case of indignity of their person. Consequently, the world marine industry is fully aware and no one will want to employ a thief, thus minimising their chances of getting reemployed all through the rest of their lives. The Learned Counsel to the Applicants contended that Nigerian crude oil was never declared missing. This was therefore illogical and problematic as proof since the certificate of origin showed that the cargo was from Abidjan.

18. He concluded that his clients were entitled to compensation as the charges against them are illegal, null and void pursuant to Article 97 of the UN Convention on the Law of the sea (1982) and that indeed; all the proceedings that followed are equally void. Consequently there can be neither prosecution nor valid trial.

Concerning the Defendants

19. In their Brief, the Defendants denied the allegations of the Applicants, stating that the arrest, detention and the prosecution against the Applicants were lawful pursuant to the laws of the Federal Republic of Nigeria and regular application of the law; this was why after they were brought before the Federal High Court in Lagos Nigeria on two main charges against them and which were stealing and transferring crude oil on the coast of Forcados in the territorial waters of Nigeria, pursuant to section 3 (17) (a) and (b) of the Miscellaneous Offenses Chapter 410 Laws of the Federal Republic of Nigeria 1990 as amended; The Defendants thus contended that the Applicants should [sic] vested the right to their claim. To support their defence arguments, the learned Counsel to the Defendants relied on the 1st Judgment of the Federal High Court of Nigeria of 1st March 2004 which maintained the charges against 10 of the 15 detained Applicants, interrogated 12 witnesses cited by the Defendants and four (4) cited by the Applicants. At the end of the trial, the Judge made his decision discharging and acquitting the ten of them on the grounds that the incident occurred outside the Nigerian Territorial waters whose limit is 12 nautical miles off the coast, and thus beyond the jurisdiction of Nigeria; the Defendants claimed that in arriving at this decision, some important declarations were made in relation to fact that the Applicant were dealing in crude oil but that the act did not occur in the Nigerian Territorial waters and that with these fact the Nigerian Court could not confer jurisdiction, despite the authorization of the Ministry of Justice for the Applicants to be prosecuted. The Defendants raised two arguments to support their defence, contending that the act was punishable and that the claim for damages and interest for the lost of employment is due to contract of employment which between the Applicants to their employer. They pleaded with the Court to reject the claims for damages and interest by the Applicants on the grounds that they were abusive, founded on speculation and unjust.

20. Indeed, the Defendants insisted on the fact that the Nigerian Court of first instance recognized it her decision that they were dealing in crude oil, though admitted that the Court could not confer jurisdiction in

so far as the offences did not occur in Nigeria. They relied on page 38, 2nd paragraph lines, 7 and 8 of the judgment Delivered by the High Court of the Federal Republic of Nigeria. However, these arguments do not show any dealings in crude oil within the territorial waters as to bring about the application of the provisions of the laws of Nigeria referred thereto.

21. The Learned Counsel to the Defendants contended that it was the report established by the police which revealed a *prima facie* case which led to the filing of criminal charges against the Applicants. The Defendants maintained that the steps taken by Attorney General of Nigeria are pursuant to the provisions of provided under Section 174

x (1) The Attorney-General of the Federation shall have power - (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly; (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person. (2) The powers conferred upon the Attorney-General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department. (3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process. of the 1999 Constitution, as well as the action by the police which are legal as justified by the provisions of Section 4 of the Police Act. They relied on the Supreme Court of Nigeria case of **AJIBOYE vs. STATE (1995) 8 NWLR pt 414 pp 386 - 512 at 410 ratio 5 & 6**. The Defendants further stated that the action of the Applicants before this Honourable Court is statute barred by virtue of Article 9 (3) [sic] of the Supplementary Protocol of the Court which states that:

"Any action by or against a Community institution or any Member of the Community shall be statute barred after 3 years from date when the right of action arose."

22. Consequently, the Defendants maintained that damages in this case arose on the 16th of July 2003 are punishable. To do this, the Defendants referred to page 9 of the judgment delivered by the Federal High Court of Justice to say that the suit was filed on the 30th of November 2006, this date is not correct because the Applicants and the 1st, 2nd, 4th and 5th Defendants stated that the arrest was on the 17th of July 2003 and not on the 16th of July 2003. However, the Defendants relied on the following jurisprudence and the Rules of the Court:

a) UBA LTD vs. MICHEAL O. ABIMBOLA & Co (1995) NWLR pt 419 pp 259 - 384.

b) IBRAHIM VS. JUDICIAL SERVICECOMMISSION (1998) 14 NWLR pt 584 PP 1 - 222 at page 6 ratios 182 (Supreme Court Division),

c) Article 32 (3) of the Rules of this Court which provides that

" In the reckoning of time limit for taking steps on proceedings, only the date of lodgment at the Registry shall be taken into account".

23. The Learned Counsel to the Defenders relied on the above cited jurisprudence and statutory authorities to conclude that the action of the Applicants was statute-barred and that this Court does not have the jurisdiction to hear the case. The Defendants further stated that Applicants even tried to camouflage as to the actual date of infraction, but referred the Court to paragraph 41 of the Application which is a clear admission of the date the cause of action arose. The Defendants contended that it was also not an excuse that criminal prosecution was made against the Applicants because there was enough opportunity to file and enforce the rights of the Applicants as given the facts of the case it was made known that time of arrest was 17th of July 2003. They were arrested on the 16th of July 2003 and the charges were filed against them on the 27th of July 2004, which is after one year. The Defendants maintained that the provisions of African Charter on Human and Peoples' Rights cited by the Applicants is not relevant to this instant case, due to the fact that they were lawfully tried according to due and acquittal process pursuant to Nigerian laws.

24. They contended that the Applicant did not suffer any loss of reputation, but while assuming without conceding that if any, same has now been cleared by the judgment of acquittal. The Defendants maintained that it was not true that the 3rd Defendant and in fact all the other Defendants were negligent in regard to the vessel MT Capbreton, because according to the law in which the Applicants were judged, which is that of Miscellaneous Offences Act, Section 3 sub-section 17 (b) of the said law, provided for the confiscation of the said vessel by the Federal Republic of Nigeria after condemnation. Consequently, they concluded that while the said vessel was lying in anchorage while the trial was on going, it was in the custody of the trial court and thus the Applicants cannot attribute to the negligence on the part of the Defendants.

25. They contended that it is trite law when a plaintiff is seeking the court to award special damages and interest, the plaintiff must furnish proofs which must go through rigorous verification; but that in this case, no written or other kind of evidence was produced as proof and the claim for anticipated earnings is not only speculative but a vain venture. They relied on several jurisprudence especially that of **SHELL PETROLEUM DEV CO. NIG LTD v. TIEBO VII (1996) 4 NL WR pt 445 PP 622 - 743 at 622 Q 663 ratio 5, 10 and 11; and AG Fed vs. AIC (2000) NLWR pt 675 PP 229 -449 at P 296 Ratio 1**, to declare that the courts are not charitable establishments as to award damages and interest as claimed by the Applicants.

26. Finally, the Defendants submitted that the principle relating to privity of contract shall apply in this case and that consequently, since they are not privity to the contract of employment between the Applicants and their employer, they cannot be held liable pursuant to the said contract. The Defendants relied on the case of **AG FEDERATION v. AIC (2000) NWLR pt 675 PP 229-449, page 298 ratio 3**.

Consideration of the Arguments by the Court

27. After having considered the facts of the case and the arguments raised for determination between parties, the Court summoned up the various contending legal issues in line with Article 10 (d) [sic] and Article 9 (4) [sic] of the Supplementary Protocol (A/SP.1/01/05); especially when these legal issues deals with the provisions granting the Applicants access to the Court on the one hand, and on the other hand those dealing with the competence of the Court on issues bothering on Human Rights. In this regard, the Court shall answer the questions drawn from the arguments by the parties as stated here under:

i) The action of the Applicant is it statute barred by virtue of Article 9 (3) [sic] of the Supplementary Protocol of the Court so as to make the Court have its jurisdiction ousted?

ii) Whether the detention of the Applicants by the Defendants from the 1st December 2003 to 1st March 2004 was lawful and amounts to infringement of the Applicants' Human Rights as entrenched in the Universal Declaration of Human Right and in the African Charter on Human and peoples' Rights to which reference is made in Cap A9, LFN 2004 and section 35 of the Constitution of the Federal Republic of Nigeria.

iii) Whether the suit of criminal procedure against the Applicants by the Defendants on the 2nd of March 2004 till 30th November 2005 were malicious, unlawful and void and amount to infringement of their Human Rights pursuant to Article 6 of the African Charter on Human and Peoples' Rights and also section 35 of the Constitution of the Constitution of the Federal Republic of Nigeria?

iv) Whether the refusal of the Defendants to compensate the Applicants for the said spoliation and dispossession amounts to the infringement of their rights as stated in Article 21 (2) of the African Charter on Human and Peoples' Rights.

v) Whether the parading of the Applications before the international press as vandals and thieves of Nigerian crude oil is in the circumstances of this case, the destruction of their reputation as seamen and thus an infringement of their rights to the dignity of their human persons as entrenched by virtue of Article 5 of the African Charter on Human and peoples' Rights.

vi) Whether the arguments developed by the Defending party on the effect of privity of contract between the parties can defeat the claim for loss of employment and wages attached thereto and the damages and

interest sought flow from the violation of human rights if the claims by the Applicants mentioned above succeeded.

Question No.1

The case by the defendants is whether the case is statute barred pursuant to Article 9 (3) [sic] of the Supplementary Protocol of the Court; is the case statute barred or not?

28. While the Applicants indicated that the arrest of MT Capbreton took place at 16 nautical miles, the Defendants according to them maintained that this arrest took place at 14 nautical; on the other hand, the Applicants claimed they were carrying LPFO (Low Pour Fuel Oil) and not crude oil, that they were rendering assistance to another vessel in distress on the 17th of July 2003; that 10 of them were detained and tried in the Federal High Court of Nigeria in Lagos on the 1st of March 2004, date in which they were discharged, the Defendants on their own contended that the arrest took place on the 16th of July 2003 and that based on the provisions of Article 9 (3) [sic] of the Supplementary Protocol, the case is statute barred and cannot be reopened before this court. It is Necessary to recall the provisions of Article 9 (3) [sic] of the Supplementary Protocol.

29. Pursuant to this Article 9 (3) of the Protocol, the actions founded on Human Rights violation shall not be brought after the expiration of three years from the date on which the cause of action occurred. The word used in the provision is "Shall" and the meaning is stated in Black Law Dictionary, Six Edition, page 1375 as follows:

"As Used in statutes, contracts or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning as denoting obligation. The word in ordinary usage means "must" and is inconsistent with a concept of direction"

30. However, it is important to state that this provision only concerns cases against the Community or those of the Community against another; in this case, the action is between individuals (legal Entity) and a State Member of the Community and her agents. Consequently, the Court is of the opinion that the arguments of the Defendants aiming at declaring the action statute barred does not hold water and cannot prosper. It is therefore proper to reject the arguments of the Defendants.

Question no.2

Was there unlawful detention of the applicants?

31. The Applicants contended that their detention for the period of 17th July 2003 to 30th November 2005 is unlawful and that as a result of this detention they suffered important damages for which they are seeking reparation: on one hand for the loss of their employment and on the other hand, for the seizure of their personal effects as well as the dispossession of their vessel and later the destruction of the vessel. They stated that these facts constitute their Human Rights violation pursuant to the provisions of the African Charter on Human and Peoples' Rights cited above.

32. Indeed, the provisions of Article 6 of the African Charter on Human and Peoples' Rights adopted by the legislature in Nigeria as CAP, A9 Laws of the Federation of Nigeria, 2004 provides that:

"Every Individual shall have the Rights to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law, in particular no one may be arbitrarily arrested or detained."

33. Also Article 17

x 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.

of the Universal Declaration of Human Rights provides:

- *Everyone has the right to own property alone as well as in association with others.*

- *No one shall be arbitrarily deprived of his property.*

34. Finally, Article 9

x No one shall be subjected to arbitrary arrest, detention or exile.

of the Universal Declaration of Human Rights provides that:

"No one shall be subjected to arbitrary arrest, detention or exile"

Are the Above Mentioned Provisions Applicable to this Case?

35. The Court is aware that the arrest of the Applicants took place outside the territorial waters and far from the coast of the Federal republic of Nigeria, without legal authorization, after arrest of the Applicants on the 17th of July 2003 to the 1st of March 2004 can be justified by the necessity preliminary investigation to establish if the theft or transfer of Nigerian crude oil that the Applicants are accused of is founded or not. In other words, the Court is of the opinion that on the 1st of March 2004 when the Applicants were presented before the trial judge who ordered the release of five (5) among them, it was not unlawful; but if the Defendants do not contest the fact that the Applicants were arrested outside Nigerian territorial waters, the Court is of the opinion that the prosecution of the ten (10) others and their continued detention till 30th November 2005 is not justified. However, such was the case as seen by the Federal High Court of Nigeria in her decision of 30th November 2005 declared that the Nigerian Court does have the jurisdiction and thus pronounced the released of the ten (10) other Applicants. Consequently, this decision by the Federal High Court of Nigeria on the 30th of November 2005 is analysed as the confirmation of the decision of the Judge on 1st of March 2004 who ask for the simple and pure release of the fifteen (15) Applicants.

36. Outside deciding to maintain the ten (10) Applicants among the fifteen (15) in detentions and their prosecution before the Federal High Court of Nigeria, on the grounds that these Applicants were dealing in crude oil without concrete evidence and disregard for the analysis of the expert, the Defendants are guilty of malice and unlawful arrest. This is why this Court concludes that the detention of the Applicants in March 2004 to 30th November 2005 is purely malicious and unlawful.

Question 3:

Are criminal proceedings instituted against the applicants by the defendants from the 1st of December 2003 to the 2nd of March 2004 unlawful and do they amount to the violation of their Human Rights?

37. This issue has already been resolved in the preceding consideration such that the Court is of the opinion that the detention of the Applicants during this period is justified by the necessity of the investigation. Consequently, the Court strikes out the claim of the Applicant on this point.

Question 4:

Does the refusal of the defendants to compensate the applicants for the dispossession and destruction of arrested vessel constitute a Human Rights violation in the sense of Article 21 (2) of the African Charter on Human and Peoples' Rights?

38. During the debates the Court retained that the Applicants desisted from their claim on this point. There is room to grant the request to desist by the Applicants on this point.

Question 5:

Does the parading of the applicants before the world press as vandals and thieves of Nigerian crude oil constitute a violation of their rights with regard to their dignity of persons as entrenched

in Article 5 of the African Charter on Human and Peoples' Rights?

39. The Applicants declared that during their detention, they were paraded before the world press in 2004 without real grounds; that they were regarded as thieves and vandals of Nigerian crude oil. That these defamatory acts brought disrepute to their dignity of human being and are contrary to Article 5 of the African Charter. Article 5 mentioned above provides that:

"Every individual shall have right to the respect of the dignity inherent in a human being and to the recognition of his legal status; all forms of exploitation and degradation of man... shall be prohibited"

40. The Court is of the opinion that for the fact that the Defendants presented the Applicants before the press when no judge or court has found them guilty, certainly constitute a violation of the principle of presumption of innocence such as provided in Article 7 (b) of the same African Charter and not a violation in the sense of Article 5 of the said Charter. Indeed, the Court is of the opinion that the Defendants employed language and an act of pure administrative publicity which should be condemned and which equally going beyond the framework of the preliminary investigation. Consequently, the claim of the Applicants on this point shall be granted.

Question 6:

Are the applicants entitled to the reparation of damages and interests flowing from the relative effect of their contract?

41. The Applicant claimed that they lost their employment as a result of their arrest and detention by the Defendants from July 2003 to November 2005; that as a result they can no longer claim their right to retirement and that the principle of mutuality of contract obliges the Defendants to compensate them by paying their salaries up to retirement in 2003 and even till 2005 date in which they are supposed to end their active service.

42. According to the argument of defence on the mutuality of contract, Learned Counsel to the Defendants contended that the Applicants claimed damages and interest base on the contract of employment which in no way has any relation to the Defendants. The Applicants discredited the position of the Defendants due to the fact that the claims are based on the damages suffered by the Applicants on the intervention of the Defendants and which brought about the end of their work contract. The doctrine of relative effect of contract has two elements such as: an individual who is not signatory to a contract cannot claim for compensation of this contract even when this contract must have been signed with the intention of profiting from this third party, and a third party cannot be linked to a contract that was not signed by him/her. In the case of **DUNLOP v. SELFRIDGE 1915**, the House of Lords averred that Selfridge cannot be related by the mutual effect of the contract signed between Dunlop and Dew, because it was not part of the said contract.

43. According to the principle of mutuality (relative effect), only the parties susceptible of being sued in relation to a contract, can be sued in respect of the said contract. Such is the case presented before this Court, it is the actions of the Defendants that are at the bases of termination of the contract of employment of the Applicants with their employer and even if the Defendants are not part of the contract, their actions having caused the termination of the said contract justifies the award of damages and interest. The other questions raised on the relative effect of the contract of employment. Seem to be misunderstood because the claim is not based on the contract, but on the damages suffered on the issue of tort (based on the civil responsibility of the Defendants).

44. On these grounds, the arguments of defence raised on this issue should be totally rejected in its entirety on this other point.

On Damages and Interests due to the Applicants in Respect of their Human Rights Violation

45. The is trite that the payment of damages and interest in the violation of Human Rights is an acquired principle of which the evaluation varies from one court to another, whereby the Court may grant punitive, special or general damages and interest. Indeed, the principle whereby, "*Any individual who is victim of*

violation of his rights is entitled to just and equitable reparation".

46. This can be retained by this Court, in this case that the total reparation is impossible on matters of Human Rights Violation; however, it is important to award reparation that is equitable in nature to all the Applicants that are entitling to it. Thus, as a result of the facts and elements of the case, it behoves on the court to have a sufficient evaluation and award of reparation that is inclusive of the prejudice suffered by the ten Applicants due to the unique nature of their detention which is unlawful as ruled above.

47. It is proper to state that the Supplementary Protocol of the Court does not provide for reparation in its Articles 9 and 10; the Rules of this Court only retained the principle of measures of redress. However, Article 19 (1) of the 1991 Protocol of the Court authorized the application of Article 38 (1)

× The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

of the Statute of the International Court of Justice, such as (International Law and the Court of Civilized Nations). This provision allows the Court to rule as it has done in this case in respect of the same inclusive amount to the concerned Applicants.

48. Indeed, and in the words of Aristotle:

"what the judge wants is to ensure that the parties are equal in the sanction to be imposed, whereby she retrieves from the aggressor all what he must have acquired. The equality is thus a means between the winner and loser. But gain and loss are more or less opposite, so also more good and less evil constitutes gain, and more evil and less good constitute a loss. Equality which we are trying to apply is simply seen as the intermediary between the two".

It is thus proper to award the ten (10) Applicants who suffered unlawful detention an exclusive amount of US \$42, 720 each for all the prejudices and violations against them by the 1st Defendant which is the Federal Republic of Nigeria and represented by 2nd Defendant, the Attorney General and all the defendants jointly and severally.

Decision

49. Whereas the provisions on statute of limitations stipulated in Article 9(3) [sic] of the Supplementary Protocol of the Court do not apply to the instant case; the Court declares that the action of the Applicants is admissible.

50. Whereas the detention of the Applicants by the Defendants from 1 December 2003 to 1 March 2004 is justified by the necessities of preliminary inquiry; the Court considers that such detention is not of a wrongful nature, but nevertheless, the continuing detention of the 10 Applicants after the judicial decision of 1 March 2004, as well as the criminal proceedings brought against them from 2 March 2004 to 30 November 2005 are malicious and wrongful, and constitute a violation of the human rights of the Applicants, in accordance with Article 6 of the African Charter on Human and Peoples' Rights as well as Article 35

× (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law; (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or

alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence. (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice. (3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention. (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of - (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. (5) In subsection (4) of this section, the expression "a reasonable time" means - (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable. (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law. (7) Nothing in this section shall be construed - (a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and (b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

of the Constitution of Nigeria; consequently the Court admits the application brought by the Applicants, for reparation of the harm suffered as a result of the said violation.

51. Whereas the Court upholds that the Parties have acknowledged having withdrawn their application of reparation, for the dispossession and destruction of their vessel, the Court declares that since no claim was made concerning the dispossession of the vessel, the Court makes no order hereto.

52. Whereas the Court has upheld that the portrayal of the Applicants in the international press as thieves and vandals of Nigerian crude oil, constitute excesses of the preliminary inquiry, and not a violation of the right to respect human dignity, as provided for in Article 5 of the African Charter on Human and Peoples' Rights, the Court dismisses the application of the Applicants in respect of the said relief.

53. Whereas the Court has upheld the principle of privity of contracts, it is necessary to hold that it is inapplicable in this case. However, the 10 applicants to wit, Djot Bayi Talbia, Inza Clisse, Latte Serge Alfred, Makomillan Tanoë, Viavonou Zannou, Boubou Diallo, Mobio Etienne, Koi Joachim, Kpilimake Nkadon, Debo Jeremie, having suffered harm arising from their continuing detention from 2 March 2004 to 30 November 2005, each of the said 10 applicants is entitled to fair and just reparation adjudged by this court in the lump sum of US 42,750 Dollars, against the defendants jointly and severally.

54. Whereas it is trite that claims not proved must fail, accordingly this court dismisses all other claims brought by the Applicants, for the reasons stated herein in this judgment.

55. Whereas the other 5 applicants to wit, Sawadogo Pierre, Akakpo Antoine, Vanie Pascal, Fall Abdou, Coulibaly Hamed failed to prove the claim of human rights violation against the defendants as stated in their application, the court dismisses the said claim.

Costs

56. As always cost goes with the successful party, the court awards the sum of Ten Thousand US Dollars (US \$10,000) against the Defendants, in accordance with Article 66 (2) of the Rules of Procedure of the Court.

This decision is made, adjudged and pronounced publicly by this Court of Justice, ECOWAS, on the day, month and year stated above.

1. Hon. Justice Hansine N. Donli - Presiding

2. Hon. Justice Awa Daboya Nana - Member

3. Hon. Justice El Mansour Tall - Member

Assisted by Tony Anene Maidoh - Chief Registrar