

ECW/CCJ/JUD/01/10 Daouda Garba v. Benin

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

Holden at Abuja, in Nigeria

On Wednesday, the 17th Day of February 2010

Daouda Garba v. Republic of Benin

Before their Lordships

1. Hon. Justice Awa Nana Daboya - Presiding
2. Hon. Justice Hansine Donli - Member
3. Hon. Justice Soumana D. Sidibé - Member

Assisted by Maître Athanase Atannon Registrar

The Court,

In the case

Between

Daouda Garba, Applicant, represented by

Olusola Egbenika Esq., Lawyer at Falana and Falana Chambers, 22 Mediterranean Street, Imani Estate, Opp MTN- Office, Maitama, Abuja, Nigeria

And

The Republic of Benin, Defendant, represented by

Maître Hippolyte Yede, Lawyer registered with the Court of Appeal of Cotonou, Benin, whose address for service is: Embassy of Benin in Nigeria, located on Plot No. 2579, near Algon Guest House, Yedserram Street, Maitama, Abuja, Nigeria

Delivers the following Judgment:

1. By Application dated 19 December 2008, Mi. Daouda Garba, a Nigerian national, and Programme Officer for "Peace and Security" at the Centre for Democratic Development (CDD), an NGO based in Abuja, Nigeria, brought his case before the Community Court of Justice, ECOWAS pressing charges against the Republic of Benin, the Defendant, for violation of his right to human dignity and his right to freedom of movement as guaranteed by the African Charter on Human and Peoples' Rights.
2. The case, which was argued in two parts, was amply pleaded by common consent among the two parties and the interlocutory application was joined to the merits. The first part dealt with the merits, and

constituted arguments submitted by the Applicant asking the Court to find that there has been violation of his rights, whereas the second part constituted the Preliminary Objection raised by the Defendant asking the Court to dismiss the arguments of the Applicant on the grounds of defect of procedure.

The Facts

I. Facts alleged by the applicant

3. The Applicant indicated in his Initiating Application that on 13 January 2008, while on his way on a mission to Ouagadougou, in Burkina Faso, with his colleague Mr. Dele Sonubi, a Beninese Immigration Officer at the Benin- Nigeria border asked him to pay 300 Naira before having his international passport marked with the "Entry" stamp to permit him to enter the Republic of Benin.
4. Mei demanding from the Beninese Immigration Officer an explanation for the payment of the said sum of money, the Officer indicated that it was the usual practice, and the Applicant therefore replied that they would pay that sum of money only if an official receipt would be issued for it. The Officer refused and pushed him and his colleague back, kicking their bag which contained a laptop computer.
5. Consequently, the Applicant's comment regarding how unhappy he was with the behaviour of the immigration Officer resulted in an act of assault and battery on the Applicant's person, perpetrated by certain Beninese immigration officers who were at post that day. The Applicant further claimed that he was handcuffed and severely beaten up. The Applicant also averred that he sustained serious wounds on his wrist, had bruises on his face, and developed blood clotting on his left eye. He tendered, in support of his claims, an annexed photograph marked "Exhibit B".
6. The Applicant added that Dele Sonubi, his colleague, went to alert officers of the State Security Services (SSS) of Nigeria as well as the Nigerian immigration officers, to request them to intervene in the plight of his colleague. At the end of the intervention, the Immigration Officer from Nigeria wrote a letter of commitment which enabled the Applicant to be released. The latter contended that after his release, he received medical attention at Iduna Specialist Hospital Ltd. on 21 January 2008, from Dr. Jaafar Kadiri (annexed evidence is marked "Exhibit C").

In Law

II. Pleas-in-law invoked by the two parties

Applicability of the African Charter on Human and Peoples' Rights

7. The Applicant, in support of his Application, referred to Article 4 of the Revised Treaty of ECOWAS, where the signatory States pledged allegiance to the principles of recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

Particularly, he cited Articles 2, 4, 5 and 12 of the said Charter, relating respectively to the enjoyment of rights and freedoms, the inviolability of human beings and respect for the life and integrity of the human person, respect for human dignity, and finally the right to freedom of movement.

8. He concluded thereby that these rights, as protected by the African Charter on Human and Peoples' Rights, were violated by the Republic of Benin, and asked the Court, under Article 1(1) [sic] of the Protocol on the Definition of a Community Citizen and Article 10(c)

× Access to the Court is open to the following: c) Individuals and corporate bodies in proceedings from the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies;

[sic] of the 2005 Supplementary Protocol, to:

1. Declare that the demand by the Beninese Immigration Officer for the payment of 300 Naira without the issue of an official receipt before stamping the Applicant's passport, constitutes a violation of his right to free movement as protected by Protocol A/PP1/5/79 on free movement of persons, right of residence and establishment; and Article 12 of the African Charter on Human and Peoples' Rights.

2. Declare that the Defendant and/or its Officers have no legal justification to demand payment from a Community citizen before allowing him or her to travel from one Member State to another.
3. Declare that the physical assault and wounds caused to the Applicant by the Officer of the Defendant constitute a violation of the right to the respect of human dignity, as provided for in Article 5 of the African Charter on Human and Peoples' Rights.
4. Issue an order of perpetual injunction restraining the Defendant and its Officers from any further intimidation and harassment of the Applicant.
5. Order the Defendant to pay Three Hundred Thousand US Dollars (US\$ 300,000) in compensation.
6. Adjudge that the Applicant's fundamental human rights relating to the dignity of his person and to his freedom of movement have been violated, and as such he is entitled to an amount of Three Hundred Thousand American Dollars (US\$ 300,000), for general damages.
9. In reply to the Application by Mr. Daouda Garba, the Republic of Benin, on 15 May 2009, deposited at the Registry of the Court, its Memorial in Defence in which it raised in *limine litis* the incompetence of the Court. It considered that the action by the Applicant must be declared inadmissible, for violation of Article 33 (a) of the Rules of the Community Court of Justice, ECOWAS and of Article 10 (d)-i
 - × Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: i. Not be anonymous; nor [sic] of the Supplementary Protocol on the Court.

As to the First Plea-in-law in Connection with the Preliminary Objection

10. In regard to the first plea-in-law, the Republic of Benin cited Article 33 of the Rules of the Court which states that the Application must contain the address of the applicant. It indicated that his formality was not fulfilled in the Application of Mr. Daouda Garba, in that his address did not feature in his application. That instead of the required address, it is rather his place of work which is indicated; and that the indication of the professional address of his Lawyer does not remedy this defect of procedure.
11. Relying on this defect in address, Counsel for the Defendant contended that the action by Plaintiff is improperly filed and defective and that it must be dismissed; whereas Counsel for the Plaintiff maintained that on the contrary, his action was properly filed at the Registry of the Court and that it must be admitted.

As to the Second Plea-in-law of the Preliminary Objection

12. As regards the plea-in-law of the Preliminary Objection, the Defendant referred to Article 10 (d)-i
 - × Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: i. Not be anonymous; nor [sic] which provides that in bringing cases before the Court: "*Access ... is open to ... individuals on application for relief for violation of their human rights; the submission of the application for which shall not be anonymous*"; to maintain its stance that the Application remains anonymous, even if the name of the Applicant was indicated therein without him signing it in his own hand.
13. Therefore, in regard to these two pleas-in-law, the Defendant asked that the Court to declare that the action brought by Mr. Daouda Garba is inadmissible in terms of formal presentation, and to ask him to bear the costs.
14. Counsel for the Plaintiff responded to this and made reference to the incident which occurred on 13 January 2008 when the Applicant was travelling to Ouagadougou, and stated that he was attacked and beaten up by the Benin Immigration Officer who asked for the sum of 300 Naira before stamping his international passport. He added that it was because he refused to comply with that demand that he and his colleague came under those attacks.
15. Counsel for the Plaintiff referred to Exhibit "A" and argued that Mr. Daouda Garba's international passport was issued by the Federal Republic of Nigeria, and that for the Benin Immigration Officer to have refused to stamp it, he had failed to carry out his duties, and equally by kicking the bag containing the laptop computer.

16. He maintained that the Applicant was pushed outside and severely beaten up; that he sustained bruises on his face, resulting in blood clotting on his left eye, and he tendered in evidence Exhibit "B" which shows that he received medical attention at Iduna Specialist Hospital Ltd. on 21 January 2008 from Dr. Jaafar Kadiri (refer Exhibit "C"), and that Mr. Daouda Garba had no other choice than to have recourse to a lawyer in order to plead his cause.

17. He relied on Article 4(g) of the Revised Treaty of ECOWAS and on Articles 1, 2, 4, 5, 12 of the African Charter on Human and Peoples' Rights in arguing that his request sufficiently demands that he be remedied for the violations of his rights.

18. On these last arguments, Defendant responded and averred that the facts as adduced by Counsel for Mr. Daouda Garba, are neither established nor proven and added that certain evidences must be removed from the case-file because they are inadmissible in law, and asked in particular, that the photograph showing the face of Mr. Daouda Garba must not be taken into account during proceedings, for it can easily be manipulated.

19. The Defendant added that the fact that Mr. Daouda Garba's passport was not stamped means that he did not pass through the Benin border and moreover, he did not provide any name of the Nigerian or Benin Immigration Officers so that they can be heard in court, upon the orders of the Court.

20. The Defendant equally contended that the Applicant did not take the trouble to report his case to the judicial authorities of Benin or even to the Embassy of Nigeria in Benin, in order to raise the issues complained of in his Application.

21. The Defendant considered therefore that there are doubts surrounding the medical report of Dr. Jaafar Kadiri, and asserted that since it was not signed, this report has no legal value; that the report did not also indicate the link between Mr. Daouda Garba's injuries and the facts adduced by him in his Application.

22. The Defendant concluded that there was a lot of doubt on the authenticity of the attack which the Applicant claimed was carried out against him by the Benin Immigration Officers. The Defendant also asked the Court to dismiss, purely and simply, the orders sought by Mr. Daouda Garba in his Application, in all its intents and purposes, and ask him to bear the cost of the proceedings.

III. Analysis of the Court

As Regards Competence of the Court

23. The Republic of Benin raised the objection regarding incompetence of the Court on the grounds that: firstly Article 33(a) of the Rules of the Court was violated, in that the address of the Applicant was not indicated in his Application, and that secondly, Article 10(d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: of the Supplementary Protocol on the Court was violated because Mr. Daouda Garba's Application was anonymous.

As Regards Violation of Article 33(a) of the Rules of the Court

24. The Republic of Benin blamed the Applicant for violating Article 33(a) of the Rules of the Court which provides that "*An application ... shall state ... the name and address of the applicant.*" The Republic of Benin therefore considered that a mere indication of his place of work cannot be substituted for the address of the Applicant.

25. The Defendant contended that the requirement for the address of the Applicant as provided for in Article 33(a) of the Rules of the Court will enable one to identify the Applicant and that Mr. Daouda Garba did not only fail to indicate his address but did not indicate his status and place of work, the town where he resides and his country of origin, namely Nigeria.

26. On these two points, the Court considers, on its part, that the mere absence of the citation of the Applicant's address on his Application cannot constitute an obstacle to the admissibility of the Application, and that in this respect, the Court dismisses that argument.

27. The Defendant considered that the non-signing of the Application by the Applicant constitutes a violation of Article 10(d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: [sic] of the Supplementary Protocol of the Court, which provides that "*Access to the Court is open to ... individuals on application for relief for violation of their human rights; the submission of application for which shall not be anonymous.*"

28. Article 10(d)

× Access to the Court is open to the following: d) Individuals on application for relief for violation of their human rights; the submission of application for which shall: [sic] of the Supplementary Protocol on the Court certainly requires that for an application to be admissible it must be not be anonymous; but the anonymity of an application presupposes that the author is not identified; that implies that neither the name nor status nor profession or nationality of the Applicant are known.

29. But, the Court finds that the Application of Mr. Daouda Garba contains all these indications for his identification. Besides, the Court finds that Mr. Daouda Garba, having engaged the services of a lawyer for his defence, has fulfilled all the conditions required for the representation in issue.

30. That within the context of the instant action, the lawyer adduced memorials and other pleadings before the Court for and on behalf of his client; that by engaging the services of a lawyer, the Applicant gave his lawyer the mandate to defend him and file all documents to that effect. The Court concludes, in this circumstance, that the Application filed by Mr. Daouda Garba does not need any form of signature from him in order to be admissible. The Court is equally of the view that the absence of the indication of the place of residence cannot constitute an obstacle to the admissibility of his Application and that these incidental facts must be joined to the merits.

31. Consequently, the Court finds that the Preliminary Objection raised by the Defendant in regard to the admissibility of the Application and the incompetence of the Court fails.

As Regards Violation of Human Rights

32. The Applicant considered that following the attack on him by the Benin Immigration Officers, his right to dignity and to freedom of movement as guaranteed by Articles 1, 2, and 12 of the African Charter on Human and Peoples' Rights, have been violated by the Defendant.

33. In reply, the Defendant maintained that the Applicant did not provide sufficient evidence as to the allegations of violation of his rights and cast doubt not only on the facts as pleaded by the Applicant, but also on the evidence in support of his allegations (medical certificate). The issue at stake therefore is the proof for the facts alleged by the Applicant, and refuted by the Defendant.

34. Article 9 of the Supplementary Protocol on the Court states that the Court has jurisdiction to determine cases of violation of human rights that occur in any Member State. The cases of violation of human rights must be backed by indications of evidence which enable the Court to find that such violation has occurred in order for it to prefer sanctions if need be.

35. It is a general rule in law that during trial the party that makes allegations must provide the evidence. The onus of constituting and demonstrating evidence is therefore upon the litigating parties. They must use all the legal means available and furnish the points of evidence which go to support their claims. The evidence must be convincing in order to establish a link with the alleged facts, in the instant case, the Applicant pleaded a photograph showing a bruised left eye and argued thereby that following the medical visit (not signed) he made to Iduna Specialist Hospital Ltd., the chief ophthalmologist, Mr. Jafaar Kadiri, issued him with a report; but this report is equally not covered by a letter-head from the hospital.

36. As indicated by the Defendant, between the alleged attack on Mr. Daouda Garba and the medical visit to acknowledge the attack, six days elapsed; which indeed poses a problem of link between the said attack and the injuries sustained by the Applicant.

37. The facts or violation as filed by the Applicant were refuted by the Defendant. During the oral proceedings, the Applicant had the possibility, if he wished, to call witnesses who may have been present on the scene of his attack; but no witness was cited by the Applicant so as to enable the Court adjudge as to the truth of the facts alleged by the Applicant, and denied by the Defendant.

38. Furthermore, the Applicant had the possibility of reporting the case to the police authorities, who could have set off judicial proceedings against the attackers or proceeded to gather evidence. In that manner, the Benin Immigration Officers who may have carried out the attack on the person of Mr. Daouda Garba would have been identified. A mere pleading of the medical certificate for a bruised eye does not enable one to

identify the culprits of an alleged attack, neither does it establish a direct link with the said attacker.

39. Similarly; if the photocopy of the Applicant's passport proves that he actually crossed the Nigeria-Benin border, it does not establish a particular link with the supposed attacker. Indeed, to enable the Court find that violations have occurred, particularly in the instant case, the Applicant was expected to file sufficiently convincing, and not equivocal evidence.

40. In that, it is a well-established legal principle that the party claiming a right must show evidence of that right, by all means. In civil matters, as in the instant case, where a party is claiming reparation of harm, that party must show evidence of the harm done as required by the law in criminal matters. In the case concerning *Kodilinye v. Odu 2 W.A.C.A. 336*, the West African Court of Appeal, comprising five English-speaking West African States as at then, recalled the said principle in adding that to obtain reparation for a harm done, the plaintiff must rely on concrete evidence and not on the weaknesses of the defence.

41. This is similar to the Applicant's position in the instant case. His version of the facts shows inconsistencies and inaccuracies, such that they tend to discredit his cause, more so when he is [sic] not back up his claim with any evidence. The Court is of the view that the only point of evidence provided by the Applicant is neither sufficient nor compelling enough to convince the Court of the truth of the alleged attack committed by the Benin Immigration Officers, in order for the Court to implicate the State in any offence.

Consequently,

For these reasons,

The Court:

In a public sitting, after hearing both sides, in first and last resort, in a matter concerning human rights violation,

As to Formal Presentation

42. Dismisses the objection regarding incompetence of the Court as raised by the Republic of Benin and declares that it has jurisdiction to adjudicate on the case.

As to Merits

43. Adjudges that the allegations of human rights violations by the Applicant are not backed by sufficient and convincing evidence. Consequently, the Application filed by the Applicant is dismissed.

As to Costs

44. Article 66 of the Rules of the Court states that the unsuccessful party shall be ordered to pay costs. However, in the instant case, the circumstances permit the Court to order that each party bears its own cost.

Thus made, declared and delivered in a public sitting at Abuja, by the Community Court of Justice; on the day, month and year stated above.

And the following Members of the Court hereby append their signatures:

1. Hon Justice Awa Nana Daboya - Presiding
2. Hon Justice Hansine N. Donli - Member
3. Hon. Justice Soumana D. Sidibé - Member

Assisted by Maître Athanase Atannon - Registrar