



IN THE COMMUNITY COURT OF JUSTICE, ECOWAS, HELD IN
ABUJA (FCT), FEDERAL REPUBLIC OF NIGERIA.

SUIT NO. ECW/CCJ/APP/11/07

JUDGMENT NO. ECW/CCJ/JUD/ 08/10

MUSA SAIDYKHAN.....PLAINTIFF

V.

REPUBLIC OF THE GAMBIA....DEFENDANT

BEFORE:

1. HON. JUSTICE HANSINE N. DONLI.....PRESIDING
2. HON. JUSTICE AWA NANA DABOYA...MEMBER
3. HON. JUSTICE ANTHONY A. BENIN.....MEMBER

ASSISTED BY TONY ANENE-MAIDOH.....CHIEF REGISTRAR

DATED 16TH DECEMBER 2010

COUNSEL:

Sola Egbeyinka for the Plaintiff

Martins U. Okoi for the Defendant

JUDGMENT OF THE COURT

Parties

1. The plaintiff is a journalist by profession and a national of the Republic of The Gambia and sues his own country which is a member state of the Economic Community of West African States (ECOWAS).

The Plaintiff's Case

2. By application filed with this court on 19th November 2007, the plaintiff complained of violation of his human right to personal liberty, dignity of his person and fair hearing guaranteed by Articles 1, 5, 6 and 7 of the African Charter on Human and Peoples' Rights (ACHPR). From the narration of the facts, the plaintiff was the Editor of The Independent newspaper based in Banjul, The Gambia. According to the plaintiff, his newspaper published the names of alleged coup plotters on 21st March 2006. Six days later, to be precise on 27th March 2006, he was arrested at night by a combined team of armed soldiers and policemen, without a warrant of arrest. They took him to a detention centre in the headquarters of the National Intelligence Agency in Banjul. For the next twenty-two (22) days, the plaintiff claimed he was held totally incommunicado.

3. The facts continue that during those three weeks the plaintiff was not allowed to take a bath, put on shoes or change his clothes, he was stripped naked whilst electric shocks were administered to his body, all in effort to extract a confession from him of his involvement in the coup plot. Among those who tortured him were officials of the Presidential Bodyguards including the President's cousin Lt. Musa Jammeh and RSM Tamba.

4. The plaintiff further averred that during the interrogations he was accused of being disloyal to the government because he had invited President Thabo Mbeki of South Africa to pressurize the government of The Gambia to expedite investigations into the brutal killing of one Deyda Hydera, a newspaper editor, and attacks on newspaper houses. He was also accused of embarrassing the government by writing stories about the mysterious killings of over forty ECOWAS nationals by the Gambian security forces in 2005.

5. The plaintiff claimed that he suffered injuries on his back, legs, arms and a bayonet cut on his left jaw. He also suffered mental and psychological torture.

6. He was released on bail, yet the security officers continued to put him under surveillance and this put his wife, aged mother and junior brothers to fright. The situation became unbearable so he and his wife decided to flee the country for security reasons. Therefore on the night of 13th May 2006 they fled the country and arrived in Dakar, Senegal on 15th May 2006. However, the defendant has continued to harass and intimidate his family members in Banjul, especially his brother who stood surety for his bail. He stated that it was in Dakar that he received medical attention at the expense of Amnesty International.

Pleas in law

7. The plaintiff stated in his application that he would rely on Article 4 of the ECOWAS Revised Treaty. He also stated that he would rely on Articles 1, 2, 5, 6, 7 (b) and (d) of the ACHPR. These enactments will be referred to as and when appropriate in this judgment.

Reliefs and Orders sought.

8. The plaintiff sought the following reliefs and orders from the court:

“a. A declaration that the arrest of the plaintiff in Banjul, The Gambia on March 27, 2006 by the armed agents of the defendant is illegal and unconstitutional as it contravenes the plaintiff’s human right to personal liberty as guaranteed by Article 6 of the ACHPR.

b. A declaration that the detention of the plaintiff by the defendant’s agents at the National Intelligence Agency detention centre for 22 days without trial is illegal as it violates the plaintiff’s right to personal liberty and fair hearing as guaranteed by Articles 6 and 7 of the ACHPR.

c. A declaration that the torture inflicted on the plaintiff by the defendant’s agents during his 22 days detention is illegal as it violates the plaintiff’s right to personal dignity as guaranteed by Article 5 of the ACHPR.

d. An order restraining the Defendant from harassing or intimidating members of the plaintiff’s family who are based in The Gambia in any manner whatsoever and howsoever.

e. US\$2 million being compensation for the violation of the plaintiff’s human rights to dignity, personal liberty and fair hearing.”

The Defence case

9. The defence consisted largely of a complete denial of all the averments contained in the initiating application. The defendant denied any knowledge of the publication of the names of coup plotters and denied sending any security agents to arrest any journalists. The defendant further stated they did not receive any reports of any arrests, detention or torture and put the plaintiff to strict proof.

10. The defence stated that Lt. Musa Jammeh and RSM Tamba are not identifiable persons. A person known as Col. Musa Jammeh is deceased. That the names Musa Jammeh and Tamba are very common names in the Gambian Armed Forces, with many persons bearing those names and with similar ranks.

11. In respect of the matter concerning President Thabo Mbeki, the defendant stated that this was a calculated and mischievous attempt to plant seed of discord and contempt between The Gambia and South Africa. The general traverse is sufficient to put the plaintiff to strict proof of all averments contained in the application.

12. The defence also delved into arguments which should not be engaged in during pleadings; the arguments will be considered during the analysis of the case. The court reiterates that the pleadings should be confined to a concise and precise presentation of facts and brief summary of evidence in support including references to documents. All arguments shall be reserved for the oral phase of the proceedings. Reference is hereby made to Articles 33 and 35 of the Court's Rules of Procedure.

Oral Procedure

13. The plaintiff (PW1) gave oral testimony and called a medical doctor (PW2) to give expert evidence. They put in some documents, including medical certificates to buttress the plaintiff's case. The defendant did not proffer any evidence. Instead they tried to put across their case during the cross examination of the plaintiff and his witness, whilst at the same time trying to punch holes in the plaintiff's case and attack his credibility. Let us now examine the evidence.

14. At the hearing on the 3rd June 2010, plaintiff gave evidence by himself and called one expert witness. The plaintiff stated that he was at home in Banjul, The Gambia on the 27th day of March 2006 when security operatives and police officers invaded his home around midnight and arrested him. He indicated that

he was first taken to the National Intelligence Agency Headquarters in Banjul and subsequently to different detention centres.

15. Plaintiff posited that he was interrogated by the Director of National Intelligence Agency, Captain Saeed. Thereafter he was tortured around 2:00 am on the nights of 8th and 9th April 2006 by a group of soldiers, part of the President's own bodyguards and led by Lieutenant Musa Jammeh and RSM Tumbo Thamba. Plaintiff made it known that he was stripped naked and beaten with sticks. Further, he was also dragged on the floor and electric shocks were administered on his body. He also intimated that his right hand was broken and was also threatened with death, the soldiers claiming that they had already killed and buried some suspects.

16. He went on to state that he was questioned as to the reasons for his arrest but he replied that he did not know. According to him, the soldiers then told him he was being tortured because he was a traitor and had tarnished the image of the country by telling the former President of South Africa, Thabo Mbeki that there were human rights violations in The Gambia, and in particular that the Gambian government was responsible for the killing of the Point Newspaper Editor, Deyda Hydera. He responded by telling the soldiers that he was not a traitor and all that he told Thabo Mbeki was that there were human rights violations in the country which were not being investigated by the Gambian government including two arson attacks on his newspaper and the killing of Deyda Hydera. Further, Plaintiff said he was told by the soldiers to assure them that he was going to stop practising journalism but he declined that request.

17. Plaintiff continued his testimony that about a week later the soldiers brought Lamin Laddy, a reporter of the Independent Newspaper and Madi Ceesay, the General Manager of the Independent Newspaper and himself together and tortured them. He stated that he was told that they have put the three of them together because their newspaper published a story about the failed coup attempt on 21st March 2006; that the story contained a lot of errors and was not factual. He went on to say that this time electric shocks were administered on his whole body, including his genitals until he became unconscious and went into a coma for about thirty minutes.

18. The plaintiff's evidence continued that he was later released on bail after his brother had tendered in his passport as a surety. He stated that he was informed that a decision had been taken at a meeting held at the National Intelligence

Agency to incarcerate him soon after the African Union Summit, which was to be held in July 2006. Plaintiff said that he was released because President Thabo Mbeki of South Africa had made his release a condition precedent to his attending the African Union Summit and the subsequent payment of a sum of money to The Gambia. Plaintiff further stated that after coming into knowledge of the plan by the Gambian authorities to incarcerate him and the fact that security officials of the state with unidentified vehicles used to keep surveillance of his compound late into the night, he decided to flee the country with his pregnant wife. Accordingly he and his wife left The Gambia on the 13th of May 2006.

19. The evidence continued that the plaintiff escaped to Senegal where he was able to seek medical attention through the assistance of Amnesty International and subsequently a Medical Certificate was issued to him. He sought medical assistance in Senegal because whilst in The Gambia no medical practitioner was bold enough to examine him, let alone issue him a Medical Certificate. He subsequently sought and was granted political asylum in Senegal but was relocated to the United States of America in 2008 for security reasons as officers of the Gambian National Intelligence Agency in Dakar kept monitoring him. When he got to the United States of America, he also received some medical treatment.

20. Plaintiff identified photographs that were taken after his torture to confirm the injuries he sustained as a result of the torture. The photographs were tendered in evidence by counsel to the plaintiff. Counsel to the defendant stated that the pleadings of the plaintiff did not disclose this aspect of the evidence but nonetheless did not object to their admission and stated that he would deal with that in his written address. Copies of Medical Certificates issued to the plaintiff whilst he was in Senegal were also admitted in evidence without objection from learned counsel to the defendant. Documents to support the fact that the Plaintiff received medical attention in the United States of America were also admitted in evidence although learned counsel to the defendant intimated to the Court that he wanted to place it on record that these were new documents which were never brought to his knowledge before their introduction but he was going to deal with it in his address.

21. During cross-examination by learned counsel to the defendant, plaintiff told the Court that he spoke French though he preferred the cross-examination to be conducted in English. He also told the Court that the medical procedures he

went through in the United States of America were carried out in 2008. Plaintiff refused to name the person(s) who informed him that there was a plan by the Gambian authorities to put him behind bars after the African Union Summit but stated that he had his sources within the National Intelligence Agency.

22. Plaintiff stated that he knew the vehicles patrolling his area at night were security vehicles because they were without number plates and other vehicles were generally not permitted to drive around without number plates especially at night. He also informed the Court that he has a problem with his manhood but refused to state categorically whether he was impotent or not. Plaintiff continued that he did not have a copy of the newspaper publication in respect of the alleged coup plotters, which plaintiff had said was one of the reasons for his arrest. He also said that he had a copy of the petition he sent to President Thabo Mbeki but not with him in Court. He further stated that he was beaten to a state of unconsciousness by the soldiers and he estimated that he was unconscious for thirty minutes. Finally, plaintiff stated that the security officials who arrested him were in uniforms except one; two of them were in police uniforms and four others in military uniforms.

23. The plaintiff's only witness Dr. Jalojo Dior (PW2) is a Senegalese medical practitioner resident in Dakar, Senegal. He stated that he has been in medical practice for the past twenty-eight years. He continued that he received the plaintiff in his office at the hospital and examined him when he was referred to him by the Senegalese section of Amnesty International. According to him, the plaintiff narrated his whole story to him. He stated that he conducted a medical examination on him and the examination was in two parts: questioning and physical examination. He subsequently issued the plaintiff with a Medical Certificate. He referred him to a female dermatologist who subsequently referred him to another dermatologist, Professor Khan. He stated that though he did not treat the plaintiff personally, he observed his injuries and accordingly issued him with a Medical Certificate. PW2 identified the Medical Certificate he issued through his handwriting, his letter head and his signature. At the instance of the Court, PW2 read the Medical Certificate in French which was simultaneously interpreted in English to the Court. The Medical Certificate was tendered in evidence by plaintiff's counsel.

24. During cross-examination by learned counsel to the defendant, PW2 stated that he did not know the time interval between when plaintiff left the detention camp and when they first met because he did not know when plaintiff left the

camp but they met for the first time on 27th June 2006. He also told the Court that plaintiff was referred to him by telephone. PW2 also made it known that he does not know the number of times he met plaintiff after their first meeting but they met on several occasions as plaintiff often came by his office to tell him how his treatment was going and also brought prescriptions from time to time.

25. The witness further stated that the doctors he referred plaintiff to made some referrals to him in the form of prescriptions and also mentioned that the documents involved belonged to the plaintiff so he gave them to him. He looked at some documents placed at the disposal of the Court by the plaintiff and identified some as the prescriptions by Professor Khan.

26. Following a question from the court, PW2 stated that he did not reveal the identity of plaintiff to his colleague doctors as they were not members of Amnesty International. He continued that he would have had to disclose the identity of the plaintiff to the other doctors in order to secure another Medical Certificate but he declined to do that for security reasons. Finally, he said that he gave a copy of the Medical Certificate he issued to the plaintiff to Amnesty International and added that he did not report to Amnesty International as an employee as the relationship between them was not one of employer and employee.

Issues to be resolved

27. From the pleadings, the issues that are clearly identifiable are the following: (a) whether or not the plaintiff was arrested and detained by agents of the defendant; (b) whether or not the plaintiff was tortured whilst in detention; (c) whether or not the plaintiff sustained any harm or injury, physical or otherwise; if so, whether or not plaintiff received medical treatment for any physical injury; and finally; (d) whether or not plaintiff is entitled to damages or compensation from the defendant.

Burden of proof

28. From the pleadings and the issues set out above, it becomes certain that the defendant assumes no burden of proof. The plaintiff assumes the entire evidential burden of producing evidence and of persuasion, since he asserts the affirmative of all the issues. The defence, as pointed out earlier, consists largely of denial and they put the plaintiff to strict proof. This rule, that proof rests on he who asserts the affirmative and not on he who denies, "is an ancient rule

founded on consideration of common sense and should not be departed from without strong reasons”, according to Lord Maugham in the case of *Constantine Line v. Imperial Smelting Corporation (1942) A.C. 154 at p. 174.*

In assuming the burden of proof, it means that if at the end of the day the plaintiff has not produced evidence to discharge the burden on him he must lose the decision on the particular issue. However, being a civil matter the burden that the plaintiff assumes is one of a proof by preponderance of probability or sometimes called reasonable probability.

Analysis of the issues

29. The first issue is whether or not the plaintiff was arrested and detained by the agents of the defendant. The plaintiff testified on this issue by himself. No witness was called. Before we proceed the court has to state that failure to call a witness does not derogate from the evidence adduced by one person only, nor does it prevent the court from accepting and relying on the evidence of a sole witness. It all depends on credibility and the nature of the evidence adduced. And also as decided in the case of *Morrow v. Morrow (1914) 2 I.R. 183* in a civil case where such testimony is unimpeached the court should act on it.

30. The plaintiff testified that during the night of 27th March 2006, he was arrested by a group of armed security agents of the defendant. He gave details about the places he was taken to as well as the names of some of the security personnel. He did not know why he was arrested until the security personnel told him it was in connection with inaccurate reportage his newspaper carried in respect of the alleged coup plot against the government, and also his lack of patriotism in making complaints against the government to the then South African President Thabo Mbeki. He was detained for 22 days before being released on bail.

31. In his address, Counsel for the plaintiff submitted that the evidence stood uncontroverted so the court must act upon it. He cited some decided cases in support including the decision of this court in *Chief Ebrimah Manneh v. Republic of The Gambia (2009) CCJLR (Pt 2) 116.*

32. In his submission, Counsel for the defendant stated that whilst they did not admit that the defendant’s agents arrested and detained the plaintiff, yet even if they did arrest him he the plaintiff called for it through his admission of confrontational and unpatriotic acts against the government. Moreover, since

the head of the National Intelligence Agency did not know the reason for the plaintiff's arrest, it cast a doubt on the plaintiff's story that it was the defendant who ordered his arrest.

33. Having regard to the detailed narration of events and their consistency it is difficult to say that the plaintiff was just framing up a story. The reasons he said were given by the security agents for arresting him were all matters which in fact occurred and for which he was the actor and author. So they were not falsehoods. That led the defence counsel to say that even if the plaintiff was arrested by the defendant's agents, his acts and conduct called for it. This was some kind of justification, which is belated since the defendant did not admit the acts complained of in the first place. In other words, justification must be pleaded before the court could consider any facts or submission in support thereof. And even if justification had been properly raised in the defence, it would not justify an arrest without warrant, detention for 22 days without trial and without recourse to Counsel even under the 1997 Constitution of The Gambia, chapter IV thereof.

34. Counsel for the defendant also said the fact that the head of the National Intelligence Agency did not know the reasons for the plaintiff's arrest cast doubt on the plaintiff's story. This argument does not hold. The reason being that the court has no evidence that it is only the head of the National Intelligence Agency who has the power to order the arrest of somebody. Nor is there evidence that he must necessarily know the reason for the arrest of everybody who is brought there under arrest. And even if there is such evidence, nonetheless that will only be an internal matter for the Agency to deal with their officers who acted outside their rules or regulations in arresting the plaintiff without authorisation from the head of the Agency.

35. Counsel for the defendant also submitted that the fact that the plaintiff's brother secured his bail with an expired passport and the fact that plaintiff jumped bail throw the plaintiff's character into doubt so the court should not believe him. This argument too is untenable. Desperate situations call for desperate measures. Who would not have acted the way the plaintiff did given the situation that he found himself in? Even if he had succeeded in escaping from the National Intelligence Agency detention centre without bail he would have been justified. The court rejects the call to declare the plaintiff as a person of bad character since he was justified in using every reasonable means to secure his freedom and flee for safety.

36. The court considers that the evidence of the plaintiff is consistent and credible and stands largely uncontroverted so we accept it and find he was arrested and detained by security agents of the defendant on the night of 27th March 2006. The court also accepts the evidence and finds the plaintiff was detained for 22 days before being granted bail with his brother as surety. The court accordingly rejects the submission of counsel for the defendant that the plaintiff might have been arrested by some other persons and not the defendant's agents. It was more probable for the defendant to arrest the plaintiff for his alleged unpatriotic acts and confrontational stance against the defendant than for any other unnamed person or institution, without cause. Again if the plaintiff was arrested by some persons other than defendant's agents, the probability is that he would have sought state protection against those persons, rather than flee the country for safety. Counsel's assertions are clearly not realistic.

37. The second issue is whether the plaintiff was tortured. The plaintiff said he was stripped naked, beaten with sticks and dragged on the ground. He also said electric shock was administered to his body, including his genitals and they kicked him with their boots. He said he went into coma for some minutes. His clothes were torn and he tendered them in evidence as Exhibit A1, without objection. Counsel for the plaintiff submitted that since the defendant did not proffer any contradictory evidence, it amounted to an admission. That is not, with respect, an accurate representation of the law. The reason is that the defendant was under no duty to lead contradictory evidence, having put the plaintiff to strict proof. What it means is that the plaintiff must produce sufficient evidence to discharge the evidential burden that rests on him. When he succeeds in doing that, and the evidence stands unimpeached, the court will then accept and act on it. See *Morrow v. Morrow*, supra.

38. In the absence of any facts and circumstances from which the court can say the plaintiff was not speaking the truth, and as the evidence stands unimpeached, the court is able to accept the plaintiff's evidence and find the plaintiff was tortured by the defendant's security agents while in detention.

39. The third issue is whether the plaintiff did suffer any harm or injury as a result of which he received medical attention. According to the plaintiff as a result of the torture he suffered physical injuries and has bodily pains. He tendered photographs-Exhibits B1-B8- which he said were taken after his release from detention showing facial wound, broken hand, wounds on his hips,

back and arm. They were admitted without objection from defence counsel who reserved the right to address on them. The plaintiff said whilst in The Gambia, there was no medical officer who dared to treat him, so it was when he arrived in Dakar that he got medical attention with the aid of Amnesty International, Senegal branch. PW2 was the medical doctor who first attended to him. PW2 also referred him to a lady specialist dermatologist who in turn referred him to another specialist Professor Khan in Dakar. And when eventually he arrived in the United States of America on asylum he continued to receive treatment. All the medical reports were tendered and marked as Exhibits D1-D8. Pw2 substantially confirmed the various medical procedures the plaintiff said he underwent in Dakar.

40. In his address, counsel for the plaintiff referred to the medical reports and submitted that these attest to the fact that the plaintiff was tortured and sustained injuries in the process. For his part counsel for the defendant submitted that the evidence of PW2 was nothing but hearsay, following his admission in cross-examination that his knowledge of the facts derived from what the plaintiff told him. It is common knowledge that an expert's opinion is usually based on his training and experience. In law an expert is permitted to give an opinion on the basis of hearsay information, provided that it relates to specific matters of which he does have personal knowledge. Thus a doctor can give evidence of what he was told by a patient about his condition for the purpose of evaluating his diagnosis; though his testimony is inadmissible to show what symptoms were actually being experienced by the patient; see *R. V. Bradshaw (1985) 82 Cr. App. R. 79, CA*. Thus PW2's testimony, whilst it cannot be utilised as confirming torture as counsel for the plaintiff submitted, yet it is relevant to confirm whether the plaintiff had any form of physical injury that he PW2 saw and referred him to an expert for treatment.

41. The evidence of the plaintiff on the wounds was direct and credible enough for this court to accept it. It is more probable than not that a person who has been detained and beaten for 22 days would suffer some form of physical harm. The court therefore finds as a fact that the plaintiff suffered physical injuries as he testified to. The court also finds as a fact that he underwent medical treatment in Dakar.

42. Concerning the medical treatment in the USA, having regard to the time lapse between the events and the treatment, there ought to be evidence of a direct link between the torture and the treatment. The court is not very certain

about this. The medical reports-Exhibits D6-D8 do not provide any conclusive proof of the link between the torture that took place over two years before the treatment.

43. The fourth and final issue is whether the plaintiff is entitled to damages or compensation. The plaintiff claimed the sum of two million US dollars in damages for the problems he had and still has with his health, the injuries he suffered, loss of his manhood and others. In the case of Chief Ebrimah Manneh v. Republic of The Gambia, supra, decided on 5th June 2008, this court set out some principles that will guide it in the award of damages. Though by no means exhaustive, the principles set out in that decision are relevant to this case. Principally the object of an award in human rights violation is to vindicate the injured feelings of the victim and to restore his rights and human dignity. Monetary compensation may also be awarded in appropriate cases but the objective of such an award must not be punitive. The following cases decided by the European Court of Human Rights are of relevance to this discussion on damages: *Ahmed Selmouni v. State of France* (2005) CHR 237; and *Miroslav Cenbauer v. Republic of Croatia* (2005) CHR 424, where the court awarded damages in circumstances similar to the present case, wherein the plaintiff was tortured.

44. Among the factors that the plaintiff testified to and urged the court should consider in assessing what damages to award are the fact that the plaintiff had to abandon his job and flee his country, the physical injuries he suffered and loss of manhood. The court has already found that he suffered physical injuries. The plaintiff did not talk about the mental and psychological torture that he pleaded, so it's taken to have been abandoned. There is no doubt that the plaintiff abandoned his job and fled the country.

45. It is the question of whether the plaintiff suffered a loss of his manhood that there was some uncertainty about. The plaintiff pleaded and testified that the torture inflicted upon him during the period of his detention, particularly the electric shocks, affected his manhood. However, during the cross-examination he tried to be evasive when pressed to answer whether he was impotent or not. The court reproduces this excerpt from the cross-examination of the plaintiff by counsel for the defendant:

Martins: ".....Are you impotent?"

Pw1: I have a problem with my manhood.

Martins: No, are you impotent? Yes I am, no I am not.

Pw1: I cannot clarify my potency.

Martins: Okay, you have not been able to ascertain it.

Pw1: Since then I have not had any medical examination, but what I know is that I have problem with my manhood.

Martins: If you don't mind since you put this in evidence; is your wife with you right now?

Pw1: In the United States?

Martins: Yes. But all you know is that you have problems with your manhood?

Pw1: Yes.

Martins: What kind of problem?

Pw1: I cannot function sexually the way I was supposed to and as a result my doctor gave me some prescriptions.”

From the foregoing evidence, there is no certainty about plaintiff's loss of manhood. The court is unable to find that it is more probable than not that the plaintiff has lost his manhood. In such a scenario of uncertainty or doubt, the case of *Rhesa Shipping Co. SA v. Edmunds*, otherwise called *The Popi M.* (1985) 2 All E.R. 712 at p. 718 per Lord Brandon, decides that the party on whom lies the burden of proving the existence of the fact should fail. In view of the foregoing, the court is unable to conclude that the plaintiff has lost his manhood as he claimed. Consequently, the court will not consider it as a factor in awarding damages or compensation.

Thus the court will consider the loss of job and for that matter, loss of earnings, illegal detention for 22 days as well as physical injury which no doubt would have caused him pain and suffering, in assessing the damages for the plaintiff.

Decision

46. Having regard to Article 4(g) of the ECOWAS Revised Treaty, which enables the court to apply the ACHPR, and having regard to the following provisions of the ACHPR: Article 5-prohibition against torture; Article 6-prohibition against unlawful arrest; Article 7(b)-presumption of innocence until

proven guilty; Article 7(d)-right to be tried within a reasonable time; and having regard to the findings of fact made herein, the court decides that the plaintiff has established his case that he was arrested, detained and tortured by the defendant's agents for 22 days, without any lawful excuse and without trial.

47. Consequently, the court grants Reliefs (a), (b) and (c) set out above. There is no satisfactory evidence that the plaintiff's family is being harassed or intimidated so the court refuses to grant Relief (d). On Relief (e) the court decides to award the plaintiff damages in the sum of two hundred thousand US dollars (US\$200,000.00).

Costs

48. The plaintiff is entitled to costs in this action which shall be borne by the defendant. The Chief Registrar is directed to assess the costs taking into account the relevant provisions in Articles 66-69 of the Court's Rules of Procedure.

This decision has been given in open court in accordance with Article 61 of the Court's Rules of Procedure at the seat of the court in Abuja this 16th day of December 2010 in the presence of:

Hon. Justice Hansine N. Donli Presiding Judge

Hon. Justice Awa Nana Dahoya Member

Hon. Justice Anthony A. Benin Member

Assisted by Tony Anene-Maidoh Chief Registrar

