

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE DA
AFRICA DO OESTE



No. 10 DAR ES SALAAM CRESCENT,
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA – NIGERIA
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IN THE COMMUNITY COURT OF JUSTICE
OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES
(ECOWAS)

HOLDEN IN ABUJA, NIGERIA

ON THURSDAY, THE 7th DAY OF JULY, 2011
BEFORE THEIR LORDSHIPS

HON. JUSTICE B.M RAMOS	-	PRESIDING
HON. JUSTICE HANSINE DONLI	-	MEMBER
HON. JUSTICE ANTHONY A. BENIN	-	MEMBER

SUIT NO: ECW/CCJ/APP/04/09
RULING NO: ECW/CCJ/RUL/-/ 11

BETWEEN

PETER DAVID	-	APPLICANT
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AND

AMBASSADOR RAPH UWECHUE	-	DEFENDANT
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Assisted by Tony Anene-Maidoh	-	Chief Registrar
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COUNSEL TO THE PARTIES

MR. SOLA EGBEYINKA
MR. ONYEKA OBLAJULU

for the Applicant
for the Respondent

DECISION ON APPLICATION FOR REVISION

OF THE COURT RULING NO: ECW/ CCJ/RUL/07/10

ON 3RD DECEMBER 2010

Summary of the Previous Proceedings

1. Mr. Peter David instituted an action before this Court by an Application dated 14th April, 2009 against the Defendant Ambassador Raph Uwechue alleging the violation of his fundamental Human Rights to property to wit the non payment of his outstanding Estacode Allowances. The Court, in its Ruling dated 11th June 2010, declared that it had no Jurisdiction to entertain disputes between individuals on human rights violations and ordered that the Defendant was entitled to costs.
2. The Defendant filed a Motion dated 13th July 2010 for the Assessment of cost to be awarded. The Court in its Ruling dated 3rd December 2010 awarded the sum of two hundred thousand naira (N200,000 as Cost in favor of the Defendant

Summary of the Facts

3. The Applicant filed before the Community Court of Justice, ECOWAS an Application dated 4th March, 2011 for a revision of Ruling No: ECW/CCJ/RUL/07/10 indicating that after the said Ruling was delivered, new facts have come to his knowledge which are the following:
 - a) That the Court lacked the jurisdiction to make any form of order as to cost.
 - b) That the Defendant did not oppose the counter affidavit filed by the Plaintiff

- c) That since the Court ordered that this suit be struck off the cause list; the Defendant erred in law and on facts by filing a motion on notice on the 13th day of July, 2010 without an order of this Honourable Court to relist the case.
- d) That the Ruling of this Honourable Court delivered on the 3rd day of December 2010 did not comply with the provision of Article 60 of the Rules of the Court and that there is no statutes guiding the practice and procedure of this Court empowering the Defendant to apply for an assessment of cost.
4. The Applicant contends that the new facts discovered are of a fundamental nature which justifies a revision of the Ruling. The Applicant also maintains that the new facts are unknown to the Court.

Summary of the Pleas in Law Invoked by the Applicant

5. The Applicant premised his claim on Articles 32, 33, 92, 93 of the Rules of Court, the ECOWAS Revised Treaty, the Supplementary Protocol amending the ECOWAS Revised Treaty, Article 25 of the Protocol (A/P1/7/91), Article 9 of the Supplementary protocol of the Court as amended, the Rules of Procedure of the Council of Ministers, 1977 and Article 7 of the African Charter on Human and Peoples Right.

Reply by the Respondent

6. In response, the Respondent opposes the Application for review in its entirety and contends same as frivolous, misconceived and an abuse of Court process. While relying on Article 70 of the Rules of Court and Article 25 of the Protocol, the Respondent asserts that contrary to the Applicant's averments, the Court has Jurisdiction to make order as to costs in accordance

with Article 70 of the Rules of the Court of Justice, ECOWAS. The Respondent further stated that it does not necessarily follow that where a reply is not filed to a counter affidavit, the Respondent is deemed to have admitted the averments contained therein.

7. The Respondent maintains that the order as to cost was made in addition to the order that the case be struck off the cause list and as such does not need an order of the Court to relist the suit, that the application for assessment of cost is only ancillary to the order already made by this Court.
8. The Respondent affirms that, the new facts which the Applicant is claiming to be in existence were already known to all the parties and the Court. The Respondent also prays the Court to dismiss the application with an order condemning the Applicant to pay the sum of Two Hundred Thousand Naira (N200, 000) cost as awarded by this Honourable Court in its ruling of 3rd day of December, 2010.

CONSIDERATION BY THE COURT

9. The Court having considered the arguments of the parties on the application for the revision of its ruling delivered on the 3rd of December 2010 on the award of cost, holds that the grounds for the admissibility of an application for revision must conform to the provisions of Article 25 of Protocol A/P1/7/91 relating to the Court of Justice of ECOWAS paragraph 1 which states thus: “ *An application for revision of a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence.* ”

10.Paragraph 2 of the above Article also provides as follows: “ *The proceedings for revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision and declaring the application admissible on this ground*”

11.Paragraph 3 also states that “*The Court may require prior compliance with the terms of the decision before it admits proceedings in revision.*”

12.The conditions for an application for revision as provided in Article 25 of the Protocol, is linked to the discovery by the Applicant of a new fact, of such a nature to wield a decisive influence on the decision of the Court and that such ignorance is not due to the negligence of the Applicant .

13.The facts such as presented by the Applicant, Mr Peter David in his application for revision of Ruling No: ECW/APP/RUL/07/10 of 3rd December, are not new facts.

14.In fact, all the arguments put forward by the Applicant in his request for revision of the decision on assessment of costs were known to him. It is important to point out that the last Ruling on the assessment of the costs wherein this Court awarded 200,000 Naira to the Respondent is just a concretization of a previous order contained in the decision on jurisdiction delivered by this Court on 11th day of June 2010. In that decision the Court ruled that the Defendant, Ambassador Raph Uwechue, was entitled to costs. Therefore, the decision whose revision is requested by the Applicant did not introduce any new fact, with respect to costs. It just made an assessment and

quantifies the amount of the costs awarded. For that reason, those arguments cannot be considered as "new facts" in the sense of what the Protocols and the Rules require for the admission of an application for revision.

15. The Applicant also alleges that the Court could not make an order on the costs against him because the Defendant / Respondent did not respond to the counter affidavit filed by him on the same issue. But, once again, the argument put forward by the Applicant cannot stand. It is true that the counter affidavit was served on the Respondent but he did not put in a reply in opposition to what was submitted in that pleading. That omission was known to the Applicant and the Court when the order for assessment of costs was given. Though it could have been seen as an admission on the part of the Respondent, it does not lead automatically to a favourable decision for the Applicant because the issues on discussion was related to points of law rather than matters of fact. It is a basic principle of law that the Court is not bound by the admission of the parties with respect to points of law.

16. Finally, it must be said that even in the case where the arguments presented by the Applicant could be considered as new facts, his assertion that when the Court lacks jurisdiction to entertain the case, it cannot go further to rule on the costs, does not have any support in the Rules of Procedure and the practice of this Court. In fact, Article 6, paragraph 1 provides that "*a decision as to cost shall be given in the final judgment or in the order; which close proceedings*". Paragraph 2 of the same Article states that "*where a case does not proceed to judgment, the cost shall be in the discretion of the Court*". From these two provisions, it follows that even in the case when the proceedings are closed by an order not being a final judgment, as it happens

when the Court recognizes that it lacks jurisdiction to entertain the case, the Court still has the discretionary power to make an order on the cost. It is also undisputable that a decision on the costs delivered in a given case can be followed by an application for the assessment of cost without a new order for re-listing the case.

17. Having regard to the provision of the law, the Applicant has not fulfilled the condition under which a review will be granted by this Court.

18. FOR THESE REASONS

DECISION

1. Whereas the Court by an application dated 14th April 2009 against the Defendant in proceedings alleging the violation of his fundamental human right to property and whereas the Court in its Ruling dated 3rd December 2011, declared that it had no jurisdiction to entertain disputes between individuals on Human Rights and ordered that the Defendant is entitled to cost.
2. Whereas the Defendant by an application dated 13th July 2010, sought for the assessment of costs.
3. Whereas the Court considered the application and by its Ruling of 3rd December, 2010 which awarded costs against the Applicant in the sum of Two Hundred Thousand Naira only (N200,000).
4. Whereas the Applicant was dissatisfied with the ruling and filed an application for the review of the decision of the Court Ruling No ECW/CCJ/RUL/07/10 of 3rd day of December, 2010.

5. Whereas the proceedings for revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision and declaring the application admissible on this ground.
6. Whereas the Court after hearing the submission of both parties on the revision, was satisfied that there were no new facts disclosed by the Applicant and the conditions of such a revision having not been fulfilled.

19. ORDER

Consequently, the application for Revision of the Ruling of this Court dated 3rd December, 2010 is refused and dismissed accordingly.

20. COSTS

The parties shall bear their own costs.

This Decision is read in public on this 7th day of July, 2011.

CORAM

1. Hon. Justice Benfeito Ramos
2. Hon. Justice Hansine Donli
3. Hon Justice Anthony Benin

Presiding

Member

Member

[Handwritten signatures]
 Presiding: *[Signature]*
 Member: *[Signature]*
 Member: *[Signature]*

Tony Anene- Maidoh

Chief Registrar

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