

COMMUNITY COURT OF JUSTICE,  
ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,  
CEDEAO



No. 10 DAR ES SALAAM CRESCENT,  
OFF AMINU KANO CRESCENT,  
WUSE II, ABUJA - NIGERIA.

PMB 567 GARKI, ABUJA  
TEL/FAX: 234-9-5241595/ 5240780  
Website: [www.courtecows.com](http://www.courtecows.com)

**IN THE COMMUNITY COURT OF JUSTICE OF THE**  
**ECONOMIC COMMUNITY OF WEST AFRICAN STATES**  
**(ECOWAS)**

**HOLDEN AT ABUJA, NIGERIA**

**This Friday, 6th day of July 2012**

SUIT NO: ECW/CCJ/APP/07/10

JUDGEMENT NO: ECW/CCJ/JUD/11/12

**BETWEEN**

**KEMI PINHEIRO (SAN)**

-

**PLAINTIFF**

**AND**

**THE REPUBLIC OF GHANA**

-

**DEFENDANT**

**BEFORE THEIR LORDSHIPS**

**HON. JUSTICE M. B. RAMOS**

-

**PRESIDING**

**HON. JUSTICE H. N. DONLI**

-

**MEMBER**

**HON. JUSTICE E. M. POTEY**

-

**MEMBER**

**Assisted by Tony Anene-Maidoh Esq.**

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**Chief Registrar**

**REPRESENTATION**

**APPLICANT:**

1. KEMI PINHEIRO (SAN)
2. ADEBOWALE KAMORU
3. DEJI KAJOGBOLA

**DEFENDANT:**

1. NOT REPRESENTED

## JUDGMENT

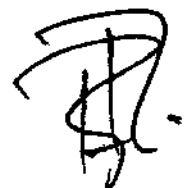

1. The Applicant, Mr. Kemi Pinhero, is a lawyer and Community citizen of Nigerian nationality. The Defendant, The Republic of Ghana, is a Member State of ECOWAS.
2. On the 25<sup>th</sup> August, 2010, the Applicant filed an application against the Defendant pursuant to Articles 7, 12, 20, 22, and 23 of the African Charter on Human and Peoples' Rights; Article 1 of Protocol A/P.3/5/82 of the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment; and Articles 1, 2, and 12 of the ECOWAS Protocol A/SP./2/5/90 on Free Movement of Persons, Rights of Residence and Establishment. In the application, the Applicant sought for the following reliefs:
  - a) **A DECLARATION** that the Ghana Law School of the Republic of Ghana in denying the Plaintiff access to qualifying examinations violated the principles enshrined in Article 2, paragraph 2 of the ECOWAS Treaty.
  - b) **A DECLARATION** that the Ghana Law School willfully deprived the Plaintiff his right of establishment as guaranteed by Article 1 and 2 of the Supplementary Protocol A/SP 2/5/90 and *a fortiori* is in violation of Articles 20 and 22 of the African Charter on Human and Peoples' Rights and therefore is illegal, null and void.
  - c) **AN ORDER** mandating the Ghana Law School to allow the immediate participation of the Applicant in its entrance qualifying examination.

### PRESENTATION OF FACTS AND PROCEDURE:

3. The Republic of Ghana is signatory to the African Charter on Human and Peoples' Rights.
4. The Plaintiff is a Community citizen by virtue of Article 1(1) (a) of the Protocol A/P3/5/83 which particularly describes who a citizen is; and by virtue of the fact that he has an ECOWAS passport, with passport number A01017374.
5. The Plaintiff is a Nigerian citizen and a Senior Advocate of Nigeria, and a Principal Partner of Pinheiro & Company, a firm of Legal Practitioners.
6. Sometime in February 2009, the Plaintiff, interested in establishing a branch of his Law firm in Ghana, was informed of the requirements to practice Law in that country. Having

met the said requirements, he applied to the Ghana School of Law to be enrolled as an aspirant.

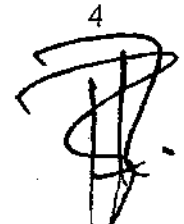
7. The Plaintiff averred that thereafter he was short listed and invited for an interview to participate in the 2009 post – call courses vide an email dated 10<sup>th</sup> June, 2009 from one Mrs. Georgina Ahorbo, which has been marked “Exhibit A1”.
8. He was therefore surprised when he noticed a further requirement had been included which stated that Applicants should be of Ghanaian nationality for eligibility for admission, which was contrary to the results of the initial enquiry as conducted by him.
9. The Applicant, based on the foregoing development, replied via email on the 13<sup>th</sup> June, 2009 asking for clarifications with regards to the requirement on citizenship, a copy of which was marked as “Exhibit A2”.
10. The Ghana law school again replied via email dated the 15<sup>th</sup> June, 2009 that it was unable to offer admission to the Plaintiff for not being a citizen of Ghana, a copy of which was marked “Exhibit A3”.
11. The Plaintiff stated that by the decision of the Ghana Law School to exclude him from admission, as conveyed in the aforementioned Exhibits, his rights have been violated under the above quoted provisions of the ECOWAS Protocol and the African Charter on Human and Peoples’ Rights.
12. The Plaintiff averred that, apart from being a violation under the relevant provisions of the law, if allowed to stand, the actions of the Defendant will bring to futility, the aims and objectives of ECOWAS.
13. The Applicant stated that in line with the Defendant’s decision in the present circumstance of the case, the Court should hold the said action to be null and void on grounds of breach of, or inconsistency with the ECOWAS Treaty and Protocols and the African Charter on Human and Peoples’ Rights.



- 14 Served with the Application, the Defendant filed its defense on the 16<sup>th</sup> Dec 2010 stating that the Applicant's claim is not maintainable and should be dismissed *in limine*.
- 15 The Defendant submitted that even by the provisions of the Professional Law Course Regulations 1984 (L.I.1296) that the Applicant relied on made in furtherance of the Legal Profession Act 1960, particularly Art. 32, which provides in part 111 rule 24 thus:  
*An Applicant shall be considered for admission to the post – call law course if he produces evidence to show that:*
- a) *He is of good character*
  - b) *He holds a degree conferred by a university approved by the council, and*
  - c) *He has successfully completed a law professional training course in a country with a legal system analogous to Ghana,*
- 16 The Applicant had therefore not met the said requirements as given above and as claimed by him.
- 17 The Defendant stated that the Applicant had not yet satisfied the required qualifications of the said statutory requirements, as his degree should be conferred by a university approved by the Ghana Legal Council. That moreover, the Ghana School of Law did not request for a letter of good standing from the "Home Bar".
- 18 It was averred that the said advert clearly stated that the registration for 2009 post-call law course which closed on the 22<sup>nd</sup> of May 2009, was limited to Ghanaians. That the advert specifically requested applicants to attach the following: photocopies of L.L.B degree or its equivalent, Bar certificates and current practicing certificate upon which applicants shall be invited for interview. The Defendant further averred that the applicant has not shown that he fulfilled the above requirements nor submitted a completed registration form on or before the closing date of 22<sup>nd</sup> May, 2009.
- 19 The Defendant further explained that the application for the Post -call legal course is generally open to all persons who meet the statutory and other requirements listed by both the General Legal Council and the Ghana School of Law. He observed that Nigerians & British citizens had participated in previous programs in 2008 & 2009 but that due to the



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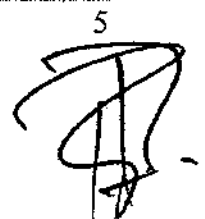


desire to clear a back log of Ghanaian applicants, a limitation was however placed on the intake in 2009.

- 20 It was submitted that the rights of the Applicants was not violated under the African Charter on Human and Peoples' Rights. The Defendant however enjoined the Applicant to register and go through the selection process just like any other person without any restrictions, as he had failed to meet the earlier registration criteria.
- 21 The Defendant went further to state that the Applicant's reliance on Articles 20 & 22 of the African Charter on Human and Peoples' Rights to lay claims to his rights to self-determination, economic, social and cultural development was not tenable as it refers to "peoples" or "groups" which therefore is not a right enjoyable by an individual.
- 22 It was submitted that it is trite learning that a statute or other legal document must be read as a whole to ascertain the intention of the maker and give effect to his intention. Therefore, that Article 20, 21 and 23 of the African Charter on Human and Peoples' Rights deals with "peoples" or "groups" rights. Thus concluding on this note, that individual rights as recognized under the African Charter on Human & Peoples' Rights are generally covered under Articles 2 to 15.
- 23 It was further submitted that since the Applicant is not claiming a group right under Article 20, therefore none of his rights has been infringed upon in terms of the African Charter on Human & Peoples' Rights.
- 24 The Defendant submitted that it has been a champion of the Community Integration and it will therefore be unfortunate to rule its actions as a violation of the principles governing Community integration, bearing in mind that the preamble of the Revised Treaty stated that diversities of the Community in the integration process should be respected.
- 25 Finally, it contended that the provisions of the Supplementary Protocol A/SP.2/5/90 cited, could not be relied upon, as the restriction did not in any way violate the Applicant's rights to establishment in Ghana and urged the Court to recognize the peculiar situation as faced in 2009 by the Ghana School of Law and dismiss the application. *in limine*.



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- 26 In reply to the Defense, the Applicant submitted that there is nothing on the face of the Professional Law Course Regulations, 1984 and the advert (Exhibit AG 2) relied upon by the Defendant that disqualifies him.
- 27 He contended that listing his degree among the requirements for admission, subject to the General Legal Council's approval, is without merit, as no such condition is contained in the Professional Law Course Regulation, 1984. That the purported advert calling for application by interested candidates is not also a requirement in the aforementioned Regulation.
- 28 The Applicant submitted that the Defendant's argument, that the provisions of Articles 20 & 22 of the African Charter on Human & Peoples' Rights deal with rights covering only "groups" & "peoples" and not individual, is totally misconceived in law. That the general reading of the African Charter on Human & Peoples' Right makes it clear that the provisions envisage clearly, the rights of persons (both as individual and as a group).
- 29 He went further to state that the Supplementary Protocol A/SP.2/5/90 tends to elaborate on the rights of personal establishment, and there is therefore nothing derogating the individual right of persons under the Charter to self-establishment.
- 30 Lastly, the Applicant submitted that being a Community citizen within the covering of Article 1(1) (a) of the Protocol A/P. 3/5/82, he possesses and is entitled to equal right and ought not to be discriminated by reaction of his nationality which runs contrary to the intention of Article 2 of the African Charter on Human and Peoples' Rights.
- 31 On 21<sup>st</sup> November, 2011, The Plaintiff filed an amended application that was rejected by the Court on 14<sup>th</sup> February 2012.
- 32 On 20<sup>th</sup> March, 2012, the Court heard the final submission from the Plaintiff as the Defendant was not present nor represented in court.

#### ANALYSIS OF THE COURT

- 33 In his application, the Applicant alleges violation by the Defendant of his rights pursuant to Articles 20 and 22 of the African Charter on Human and Peoples' Rights. He further



alleges the violation of Articles 1, 2, and 12 of the ECOWAS Supplementary Protocol A/SP.2/5/90, on Free Movement of Persons, Right of Residence and Establishment.

34. Article 20, paragraph 1 of the African Charter, which the Plaintiff alleges was violated by the Defendant, provides as follows:

*"All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen".*

35. The second provision of African Charter that the Plaintiff has alleged as having been violated by the Defendant is Article 22, which provides for peoples' right to development in the following terms:

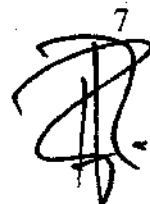
*(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.*

*(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.*

36. In his pleadings and address the Plaintiff has not specified how he, as an individual, came to be the bearer or holder of those rights and how the rights have been violated by the Defendant. However, from the wording of those provisions, it is undisputable that those are rights that protect peoples rather than individuals.

37. It is *opinio juris communis* that the rights referred to in Articles 19 to 24 of the African Charter are rights of (all) "peoples" in contrast to the rights of "every individual", "every human being" or "every citizen" proclaimed in Articles 2 to 17. If one can concede that an individual in his capacity of peoples' representative may be admitted to lodge a complaint for alleged violation of that people's right, as it was the case of the Representative of People of Katanga, before the African Commission, the ultimate beneficiary of that action should be the people and not the individual.

38. In order words, peoples' rights provided for in African Charter shall be enjoyed collectively and not individually. Consequently, the said Articles 20 and 22, allegedly



39 In order words, peoples' rights provided for in African Charter shall be enjoyed collectively and not individually. Consequently, the said Articles 20 and 22, allegedly violated by the Defendant cannot be invoked by the Plaintiff as source of an individual right to be enrolled in Ghana Law School for the single reason that the purported right does not emerge from those two provisions.

40 In conclusion, the alleged violation of Articles 20 and 22 of African Charter on Human and Peoples' Rights in the instant case is completely baseless.

41 Considering the second legal point raised by the Plaintiff, that the Defendant has violated his rights recognized by Articles 1, 2 and 12 of ECOWAS Protocol A/S.P.2/5/90 on Free Movement of Persons, Right of Residence and Establishment, according to the definition inserted in Article 1 of the Protocol on the Right of Establishment, it means:

*"the right granted to a citizen who is national of the Member State to settle or establish in another Member State other than his State of origin, and to have access to economic activities, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals."*

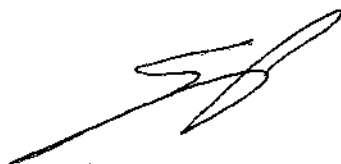
41 Article 2 of the same instrument provides that

*"the right of establishment as defined in Article 1 above shall include access to non-salaried activities..."*

42 Article 12 of the same Protocol calls for close cooperation among Member States and between them and the ECOWAS Commission in order to remove the remaining obstacles and to facilitate the full realization of the right of establishment by Community citizens.

43 There is consequently, at least in abstract, a solid and consistent legal foundation that points to the existence of a right of establishment by a citizen of ECOWAS within any Member State other than the one of its origin.

44 What must be considered now is whether in the instant case, the Republic of Ghana has violated that right the Plaintiff enjoys as a Community citizen. This is actually the substance of the dispute. However, to move to that point, this Court will first and



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foremost, determine whether the complaint has been brought to its jurisdiction in full compliance with the rules that govern the access to the Court.

45 The refusal by a Member State to implement in the internal order a Community Protocol in which it is voluntarily bound or under obligation to recognize the right of a Community citizen, as derived from that Protocol, constitutes a violation of obligations arising from Community texts.

46 In this regard, Article 9(1) subparagraph (d) provides that the Court has competence to adjudicate on any dispute relating to "the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, regulations or decisions of ECOWAS".

47 Therefore, there is no doubt that any Member State that fails to implement its obligations arising from Community texts to which it is bound, can be brought before the ECOWAS Court of Justice.

48 But, contrary to other situations in which individuals are allowed direct access to the Court, in particular, for actions against the Community, its Institutions or its employees (Article 10(c)) or against Member States for violations of human rights (Article 10(d)), the Protocol on the Court does not empower individuals with the *locus standi* to sue a Member State for violation of its obligations enshrined in Community texts. According to Article 10(a), only a Member State or the ECOWAS Commission has access to the Court to compel a Member State to fulfill an obligation.

49 Therefore, the Community citizen who has been a victim of an alleged violation of a right enshrined in the Community Protocol by a Member State is provided with only two alternatives:

- a) To ask his own State to take on the defence of his interest and file an action before the Community Court of Justice against the defaulting Member State, pursuant to Article 10(a);



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Or

- b) To decide to file an action against the defaulting Member State, addressing the domestic jurisdiction of the State where the alleged violation of his rights has occurred.

50 At this point, one should bear in mind that national courts are also Community courts as they have competence to apply the Community law which forms part of the internal order.

51 For clarification on the interpretation of the content and norms required for application of the community texts, National Courts may refer the matter to the Court of Justice under the tenet of Article 10(f) of the Protocol which provides:

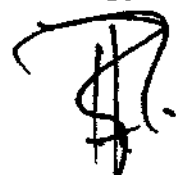
*"where in any action before a court of Member State, an issue arises as to the interpretation of provision of the Treaty, or other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the Court for interpretation".*

52 It is in this relationship between the Community Court of Justice and National Courts that the Community law will strive and be appropriated by the entire Community.

### CONSEQUENTLY

53 Whereas the Community Court of Justice is competent to adjudicate on any dispute relating to the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, regulations or decisions of ECOWAS ;

54 Whereas for actions against Member States for violation of their obligations under Community law, only Member States and the ECOWAS Commission have access to the Court of Justice.



**DECISION**

**FOR THESE REASONS**

55 The Court, after hearing the parties in an open hearing, holds that the Applicant has no legal capacity to file an action against a Member State for failure to honour its obligations arising from Community texts. Therefore, the action is dismissed.

**COSTS**

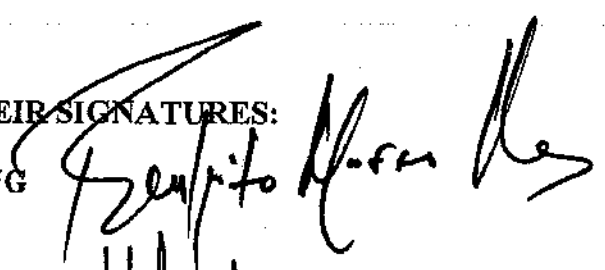
In compliance with Article 66, paragraph 11 of the Rules of the Court, each Party shall bear its costs.

Thus made, declared and pronounced in English, the language of proceedings, at a public hearing at Abuja, by the Court of Justice of the Economic Community of West African States, on the day, month and year stated above.

**AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES:**

**Hon. Justice Benfeito M RAMOS**

**PRESIDING**



**Hon. Justice Hansine. N. DONLI**

**MEMBER**



**Hon. Justice Eliam.M. POTEY**

**MEMBER**



**Assisted by Tony Anene Maidoh**

**Chief Registrar**

