

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.

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**COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF  
WEST AFRICAN STATES (ECOWAS)  
HOLDEN AT IBADAN, NIGERIA  
THIS 14 DAY OF DECEMBER 2012**

**GENERAL LIST: No ECW/CCJ/APP/12/11**

**JUD No: ECW/CCJ/JUD/17/12**

*In the case,  
Between*

**SA'ADATU UMAR**

*Represented by:  
Lawyer: Chino Edmund Obiagwu (Esq.)*

*And*

**THE FEDERAL REPUBLIC OF NIGERIA**

*Represented by:  
Lawyer: Yusuf Bado Mok (Esq.)*

**APPLICANT**

**DEFENDANT**

*Before their Lordships*

- 1. Hon. Justice Benfeito Mosso Ramos**
- 2. Hon. Justice Clotilde Médégan Nougbodé**
- 3. Hon. Justice Eliam Potey**

**Presiding  
Member  
Member**

**Assisted by Tony ANENE- MAIDOH (Esq.)**

**Chief Registrar**

**(JUDGMENT)**

*The Court thus constituted delivers the following Judgment:*

## PROCEDURE

1. By Application dated 10 June 2011, and filed at the Registry of the Court on 13 June 2011, through her Counsel, Chino Edmund Obiagwu (Esq.), Lawyer registered with the Bar in Nigeria, Mrs. Sa'adatu Umar came before the Court with a complaint against the Federal Republic of Nigeria, for her unlawful, arbitrary, illegal and illicit arrest, physical and mental torture, the infringement upon the dignity of the human person that she suffered, all this in violation of the provisions of Articles 2, 4, 6, 12 (1) (2) of the African Charter on Human and Peoples' Rights.
2. She pleads with the Court:
  - i) To declare as arbitrary, illegal and illicit, her arrest and detention, together with her three children, among whom is a baby that she is still breastfeeding, without any charges being brought against her, for, they constitute a violation of Articles 6 and 12 of the Charter;
  - ii) To declare that the curtailing of her freedom, resulting from her provisional detention, whereas she is a nursing mother, and in the company of her three children, is a form of physical and moral torture, thus constituting a violation of the provisions of Articles 4 and 6 of the Charter;
  - iii) To order the Federal Republic of Nigeria to set her free, with immediate effect;
  - iv) To order the Federal Republic of Nigeria to pay her the sum of ten million (10,000,000.00) Naira as reparation for the prejudice suffered.
3. The Federal Republic of Nigeria, having raised a preliminary objection, the Court, after hearing both parties, gave an interim ruling ECW/CCJ/RUL/12/12 dated 12 June 2012, in which it declared, not only its jurisdiction to entertain the case, but

also favourably admitted the case, and, consequently, ordered the continuation of proceedings.

4. At the Court hearing of 5 July 2012, on the merit of the case, Counsel to Federal Republic of Nigeria brought to the attention of the Court that Lawyer to Applicant informed him of the existence of a Judgment given by the Federal High Court, Abuja (a Nigerian Court), in favour of Applicant. Upon passionate plea from Counsel to Federal Republic of Nigeria, the Court ordered the production of the said Judgment before any further pleading could be made on the merit of the case.
5. Thus, on 11 July 2012, the Defendant produced before the Court, the Order given by the Federal High Court, Abuja, on a case earlier filed by Mrs. Sa'adatu Umar against the Nigerian Police Authorities. Applicant was notified of the said Order on 1<sup>st</sup> November 2012.
6. At the Court hearing of 1<sup>st</sup> November 2012, which was mainly for taking pleas, on the production of the said exhibit, and on the merit of the case, Counsel to Applicant, who had been duly notified, failed to appear, but rather, was represented by a colleague.

## **LEGAL ANALYSIS BY THE COURT**

7. The Court observes that the issue of the existence of the Order given by the Federal High Court, Abuja (a Nigerian Court) was not raised until the interim ruling that it gave on 12 June 2012, and when both parties were invited to enter pleas on the merit of the case. This fact was thus raised during the proceedings, and Counsel to Federal Republic of Nigeria now relies on the said Order, to raise an objection as to admissibility of the Application brought by Mrs. Sa'adatu Umar.

8. The Court considers the production of the Order made by the Federal High Court, Abuja, to be new evidence, which relates to the situation referred to under Article 37 of its Rules of Procedure, which provides that:

*“1. In reply or rejoinder, a party may offer further evidence. The party must, however, give reasons for the delay in offering it.*

*2. No new plea – in – law may be introduced during the course of proceedings unless it is based on matters of law or fact which come to light in the course of the procedure.*

*3. If in the course of the procedure, one of the parties puts forward a new plea – in – law which is so based, the President may, even after the expiry of the procedural time – limits, acting on a report of the Judge – Rapporteur and after hearing the parties, allow the other party to answer on that plea.*

*4. The decision on the admissibility of the plea shall be reserved for the final judgment.”*

9. The Court recalls that since the production of copy of the said Order, Counsel to Applicant was duly served and had the opportunity to react to this new evidence at the hearing of 1<sup>st</sup> November 2012, which he did not attend, and failed to make any observation thereto.

10. The Court also recalls that parties filed in their final writs, on the merit of the case, before the present Judgment; it therefore considers that the conditions stated under Article 37 (2) and (3) of its Rules are met, and that, pursuant to paragraph 4 of the said Article, it can now examine the admissibility or otherwise, of the new evidence.

***i) As to admissibility of the Order made by the Federal High Court, Abuja***

11. The Court wishes to note that the existence of an Order made by the Federal High Court, Abuja, constitutes very crucial information, for a just consideration of the

litigation, which ought to have been revealed in the initiating Application, or at best, by Counsel to Federal Republic of Nigeria.

12. To this end, the Court would like the Counsels and the parties, to remember that they have an obligation to contribute to the manifestation of the truth, and must assist the Court in the establishment of the facts, and the discovery of the other elements, for the correct examination of each one of them; also, Counsels to the parties have the obligation to cooperate with it, in all good faith and loyalty, in the administration of justice, and in the interest of the parties to the case. They must particularly inform the Court on all proceedings initiated, or which are effectively settled, at the national courts, in cases that are brought before it.
13. The Court recalls that in a similar case, for human rights violations, where the *res judicata* was relied upon, as the basis for objection to admissibility, it held that such an argument can only hold, if “it is established that the case brought before it (...) *is essentially the same* as another case which has already been satisfactorily adjudicated upon, by a competent national court” [see § 13 of the Judgment in the Aliyu Tasheku v. Federal Republic of Nigeria, dated 12 June 2012].
14. The new evidence produced in the instant case, is likely to have a decisive influence on the examination of this case, on its merit, if it is established that the case brought before it by Mrs. Sa’adatu Umar is essentially the same as the one adjudicated upon by the Federal High Court, Abuja.
15. Indeed, in such an eventuality, the Court could, even at this stage of proceedings, decide to declare the instant case inadmissible [see § 19 and 20 of the Judgment in the Aliyu Tasheku v. Federal Republic of Nigeria, dated 12 June 2012.] Consequently, the Court declares the Order made by the Federal High Court, Abuja as new evidence.

**ii) Consideration of the new evidence.**

16. The Court notes that Mrs. Sa'adatu Umar took a case before the Judge at the Federal High Court, Abuja, in which she sought the following reliefs:

- i) *“A declaration that the arrest and detention of Applicant, a nursing mother, with her three children at Bauchi Police Station, Bauchi State, and Area 10 Police Station, Abuja, respectively from 20 March to date without arraignment in a Court of Law, by the Respondents is arbitrary, illegal, unlawful and constitutes a gross violation of the Applicant’s fundamental rights to personal liberty and freedom of movement as guaranteed under Section 9 of the Child Rights Act, Cap 50, 2003; Sections 35 (1) (4) (5b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria; and Articles 6 and 12 of the African Charter on human and Peoples’ Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*
- ii) *A declaration that the arrest and detention of Applicant, a nursing mother, with her three children at Area 10 Police Station, Abuja, from 22 March 2011 to date by the Respondents is arbitrary, illegal, unlawful and contrary to Section 222 (4) of the Child Rights Act, Cap 50, 2003 and therefore constitutes a gross violation of the Applicant’s fundamental rights to personal liberty and freedom of movement as guaranteed under Sections 35 (1) (4) (5b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria; and Articles 6 and 12 of the African Charter on human and Peoples’ Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*
- iii) *A declaration that the starvation of the Applicant, a nursing mother, with her three children at Area 10 Police Station Officers action for or on behalf of or as agents of the Respondents amounts to physical and mental torture, contrary to Section AA of the Child Rights Act, Cap 50, 2003 and therefore constitutes gross violations of the Applicant’s fundamental rights to dignity*

*of human person, as guaranteed under Section 35 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria; and Article 6 of the African Charter on human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*

- iv) *An order compelling the Respondents forthwith to tender an apology to the Applicant by publishing the said letter of apology in two national dailies;*
- v) *An order compelling the Respondents forthwith to release the Applicant with her three children or detain them in any Special Mother's Centre in Abuja;*
- vi) *An order that the Respondents pay the Applicant the sum of =N= 10,000,000.00 (ten million Naira only) being the compensation for the aforesaid unlawful, illegal and unconstitutional violations of the Applicant's fundamental rights."*

17. The Court also notes that the Judge in the national Court did justice to all her reliefs sought, by making an Order in which he adjudged that:

- i) *"It is hereby declared that the arrest and detention of the Applicant, a nursing mother, with her three children at Bauchi Police Station, Bauchi State, and Area 10 Police Station, Abuja, respectively from 20 March to date without arraignment in a Court of Law, by the Respondents is arbitrary, illegal, unlawful and constitutes a gross violation of the Applicant's fundamental rights to personal liberty and freedom of movement as guaranteed under Section 9 of the Child Rights Act, Cap 50, 2003; and Sections 35 (1) (4) (5b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria; and Articles 6 and 12 of the African Charter on human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*

- ii) *It is hereby declared that the arrest and detention of the Applicant, a nursing mother, with her three children at Area 10 Police Station, Abuja, from 22 March 2011 to date by the Respondents is arbitrary, illegal, unlawful and contrary to Section 222 (4) of the Child Rights Act, Cap 50, 2003 and therefore constitutes a gross violation of the Applicant's fundamental rights to personal liberty and freedom of movement as guaranteed under Sections 35 (1) (4) (5b) and 41 of the 1999 Constitution of the Federal Republic of Nigeria; and Articles 6 and 12 of the African Charter on human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*
- iii) *It is hereby declared that the starvation of the Applicant, a nursing mother, with her three children in Police detention at Area 10 Police Station Officers action for or on behalf of or as agents of the Respondents amounts to physical and mental torture, contrary to Section AA of the Child Rights Act, Cap 50, 2003 and therefore constitutes gross violations of the Applicant's fundamental rights to dignity of human person, as guaranteed under Section 35 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria; and Article 6 of the African Charter on human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 laws of the Federation of Nigeria 1990, therefore illegal and unconstitutional;*
- iv) *The Respondents, that is the Inspector General of Police and the Commissioner of Police FCT Abuja are hereby ordered to release the Applicant with her three children or detain them in any Special Mother's Centre in Abuja; (...)*
- v) *The sum of 1,000,000.00 Naira is granted the Applicant and her three children for unlawful detention without arraignment from March, 2011 to date against the Respondents, the Inspector General of Police and the Commissioner of Police FCT Abuja."*



18. It could be deduced from paragraphs 16 and 17 above that, the Nigerian Judge, before whom the same facts, as those in the instant case were exposed, Mrs. Sa'adatu Umar invoked the violation of Article 4 (mutatis mutandi Articles 34 and 35 of the Constitution of the Federal Republic of Nigeria), 6 (mutatis mutandi Articles 34 and 35 of the Constitution of the Federal Republic of Nigeria) and 12 (mutatis mutandi Article 41 of the Constitution of the Federal Republic of Nigeria) of the African Charter on human and Peoples' Rights and sought for symbolic and monetary reparations, as well as her release or detention in a special centre. The Judge in the National Court noticed all the alleged violations, set aside the relief bordering on the symbolic reparation, but awarded the sum of 1,000,000.00 Naira in favour of Mrs. Sa'adatu Umar, and ordered her release or detention in a special centre for nursing mothers.
19. Thus, the Court notes that the facts, which constitute the subject – matter of the case that was taken before the Judge in the National Court **are essentially the same** as those contained in the instant case; the violations of Articles 4, 6 and 12 of the African Charter on human and Peoples' Rights invoked before the National Judge **are essentially the same** as the violations of Articles 2, 4, 6 and 12 of the same Charter that Mrs. Sa'adatu Umar invokes in the instant case. Moreover, the Court also notes that the reliefs sought in the instant case, which relate to her release and the award for reparation **are essentially the same** as those sought in the case that was previously taken before the Judge in the National Court, and to which that Judge did justice.
20. The Court therefore concludes that, the instant case brought before it, is **essentially** the same as the one earlier taken before the Nigerian Judge, which was adjudicated upon, and whose settlement, if unsatisfactory, could have led Applicant to file an appeal; but, this was not the case.
21. Consequently, and pursuant to its established jurisprudence, the Court declares that it does not re – consider a matter that had already been adjudicated upon in a National Court of a Member – State, and against which there has not been any appeal, and pursuant to the sacred principle of the *res judicata*, there is no need to consider the instant case on its merit.

## **DECISION**

### **On these grounds,**

22. The Court, sitting in a public hearing, after hearing both parties, and having deliberated:

- Declares that the Order made by the Federal High Court, Abuja, and which was tendered during the course of the proceedings, constitutes a new evidence;
- Declares that this new evidence is admissible, and so admits it;
- Declares that, the instant case is essentially the same as the one that was earlier adjudicated upon in the Nigerian Court;
- Consequently, the Court declares that there is no need to consider the case brought before it by Mrs. Sa'adatu Umar on its merit;

## **COST**

23. Pursuant to Article 66 (11) of its Rules of Procedure, the Court orders that each party bears the costs.

Thus made, declared and delivered in English, the language of procedure, in a public sitting at Ibadan, Oyo State, in the Federal Republic of Nigeria, by the Court of Justice of the Economic Community of West African States on the day, month and year stated above.

24. And the following have appended their signatures:

- |  |                  |
|--|------------------|
| <b>1. Hon. Justice Benfeito Mosso Ramos</b>      | <b>Presiding</b> |
| <b>2. Hon. Justice Clotilde Médégan Nougbodé</b> | <b>Member</b>    |
| <b>3. Hon. Justice Eliam Potey</b>               | <b>Member</b>    |

25. **Assisted by Tony Anene-Maidoh** **Chief Registrar**