

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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**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF  
WEST AFRICAN STATES (ECOWAS) HOLDEN IN ABUJA, NIGERIA ON THE .....**

**30<sup>TH</sup> DAY OF NOVEMBER 2015**

**SUIT N°: ECW/CCJ/APP/06/14**

**JUDGMENT N°: ECW/CCJ/JUD/25/15**

**BETWEEN:**

**Hans Capehart Williams SR**

**Mardia Paykue Williams**

**Plaintiffs**

**AND**

**Republic of Liberia**

**Republic of Ghana**

**Attorney General of the Republic of Liberia**

**Attorney General of the Republic of Ghana**

**Prof. Dr. Josefa Jamenez Hernandez**

**(on her own behalf and the management**

**of Police Hospital Accra, Ghana.**

**Defendants**

**BEFORE THEIR LORDSHIPS:**

**1- Hon. Justice Friday Chijioke Nwoke**

**– Presiding**

**2- Hon. Justice Jérôme Traoré**

**– Member**

**3- Hon. Justice Yaya Boiro**

**– Member**

Delivers the following Judgment:

**1- SUBJECT MATTER OF THE PROCEEDINGS:**

The Plaintiffs who are Liberian Citizens were charged before the first judicial Court Circuit Criminal Assizes B, Monrovia, Republic of Liberia for murder of their ward, one Ms Meideh Togba, who was found hanging in one of the bathroom of their home.

There were three independent autopsy reports on the cause of death. The first report which was in favour of the Plaintiffs, attributed the cause of death to asphyxia secondary to suicide and hanging, respectively. The second report titled "Review of Post Mortem conducted on the deceased Ms Meideh Togba by the fifth Defendant, an agent of the 2<sup>nd</sup> Defendant, at the request of the 1<sup>st</sup> Defendant, contradicted the first report and revealed that body parts of the deceased including vaginal wall, components, trachea and bronchial airways were missing and concluded that the deceased was sexually molested and strangled.

The Plaintiffs being dissatisfied with the review Report engaged the services of three medical Doctors from the Nebraska Institute of Forensic Science to conduct yet another independent examination as to the cause of death. The Plaintiffs were tried convicted of the offence and sentenced to death, on the strength of the review autopsy which the Court curiously admitted in preference to the two others.

It was based on this conviction that the Plaintiffs approached this Court on the grounds inter alia that their trial and conviction violated Articles 4, 6, and 7 of the African Charter on Human and Peoples Rights, and Article 10 of the Universal Declaration of Human Rights.

## **2- THE PLAINTIFFS' CASE:**

The case of the Plaintiffs is that on the 30<sup>th</sup> of November, 2007, the deceased was found hanging in one of their bathrooms by their son, Nans Williams Junior aged (8) eight years. At that point in time, the Plaintiffs were all sitting together in the living room and hall way waiting for electricity to be restored when they heard the alarm raised by their son. The deceased was rushed to the hospital but was pronounced dead on arrival.

An initial autopsy was carried out on the corpse and the verdict was that death was caused by asphyxia, secondary to suicide and hanging respectively. The first Defendant (The Republic of Liberia) not being satisfied with the result of the autopsy, through the Embassy of the 2<sup>nd</sup> Defendant in Monrovia requested the assistance of the 2<sup>nd</sup> Defendant to assist her with a team of investigators and pathologists to establish the circumstances surrounding the death of the deceased. Consequently, a team of police investigators including Dr. Anthony S.Quayee (a Pathologist) was sent to Liberia. The 5<sup>th</sup> Defendant requested for a review autopsy on the corpse of the deceased.

On the 18<sup>th</sup> of January, 2008, the team submitted its report titled “Review of Post Mortem on the deceased Meideh Togba” (Annexure H4). The report stated that:

*Various body parts of the deceased including the vestibular minor labial tissues, vaginal wall components of the external genitals and parts of the respiratory system were missing and concluded that the deceased was sexually violated and strangled before the hanging.*

The Plaintiffs posited that the 5<sup>th</sup> Defendant’s report was reckless and negligently fabricated as it could not have reached that decision when the report also stated that the deceased entire vaginal cavity was missing and thus not examined.

The Plaintiffs engaged the services of three medical doctors from Nebraska Institute of Forensic Science, United States of America in a bid to counter the review report. The doctors conducted a thorough autopsy on the exhumed remains of the deceased on 24<sup>th</sup> May, 2008. Their report disputed and discredited the review report by 5<sup>th</sup> Defendant as being substandard due to its failure to examine vital organs of the deceased and concluded that there was neither physical nor empirical medical evidence to support throttling or manual strangulation injuries to the deceased neck as the thyroid bone was not broken.

During the trial, the 5<sup>th</sup> Defendant neither appeared before the Court to tender the review report nor subjected to cross examination. Rather, the report was tendered through someone, who never participated in the review process and was curiously admitted in evidence. The Court convicted the Plaintiffs based on the review report which it referred to as the best among the autopsy reports. Accordingly, the Plaintiffs are contending that their conviction and sentence based essentially on the review report occasioned a miscarriage of justice, induced and procured by the 5<sup>th</sup> Defendants' autopsy report. It was equally the contention of the Plaintiffs that the High Court of Justice of Ghana had ruled that the autopsy report of the 5<sup>th</sup> Defendant is reckless, negligent and a baseless conclusion in medical terms. Relying inter alia on the breach of their rights to fair hearing, the Plaintiffs brought this application seeking the following orders and reliefs from the Court, namely;

1. *That the conviction and sentencing of the Plaintiffs to death by hanging is a result of the reckless, baseless and negligent review of autopsy report of the 5<sup>th</sup> Defendant.*
2. *A declaration that the conviction and sentence of the applicants to death by hanging resulting from the autopsy report of the 5<sup>th</sup> Defendant amounted to the violation of their rights to life, freedom of movement and fair hearing.*

3. *A declaration that the Applicants continued incarceration/ detention amounted to the violation of their fundamental human rights to freedom of movement.*
4. *An order that the Applicants be released and their rights restored.*
5. *An order directing the first Defendant to pay the sum of USD, 250,000,000.00 (Two hundred and fifty million United States Dollars) as compensation to the Applicants for subjecting them to inhuman treatment and the deprivation, humiliation and denial of their human rights and freedom.*
6. *A declaration that the 2<sup>nd</sup> , 4<sup>th</sup> and 5<sup>th</sup> Defendants should pay the sum of USD250,000,000.00 (two hundred and fifty million United States Dollars jointly and severally as compensation for damages to the Applicants for treatment, deprivation, humiliation resulting from their unlawful and unjust conviction and sentence to death by hanging.*

### **3. THE DEFENDANTS' CASE:**

In answer to the claim, the 1<sup>st</sup> and the 3<sup>rd</sup> Defendants denied all the allegations of the Plaintiffs and raised a preliminary objection on the jurisdiction and competence of the Court to entertain the action on the following grounds, namely;

1. *That the subject matter of the application i.e. the conviction and sentence of the Plaintiffs is the same as an appeal pending before the*

*Supreme Court of Liberia and so far as the appeal is pending the Plaintiffs' contention of deprivation of their right to life is premature.*

2. *That the Supplementary Protocol of the Court A/SP.1/01/05 has not been ratified by the 1<sup>st</sup> Defendant as provided for by its constitution and therefore inapplicable to it.*
3. *That Article 9(1) (g) of the Supplementary Protocol of this Court relied upon by the Plaintiffs is inapplicable as it only applies to Community Institutions and their officials.*
4. *That the laws relied upon by the Plaintiffs are inapplicable as the Defendants did not violate any of the rights of the Plaintiffs.*  
*Accordingly, the Plaintiffs have not been arbitrarily deprived of their right to life but have been arrested, detained and tried in accordance with the provisions of law by an impartial tribunal as recognized by Articles 4,6 and 7 of the African Charter on Human and Peoples Rights.*
5. *That the Court lacks jurisdiction to entertain the suit which is based on ordinary crime and within the exclusive competence of the domestic Court of the 1<sup>st</sup> Defendant.*

Similarly, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants entered their defense through a joint statement of defense filed on the 13<sup>th</sup> of June 2014; in their defense they contended as follows;

1. *That the Plaintiffs were tried and convicted of the offence for which they were charged on the 19<sup>th</sup> of March 2010. They also contended that every*

*opportunity was given to the Plaintiffs to defend themselves at the trial and that the 1<sup>st</sup> Defendant not having participated in the trial makes no admission as to the corrections or otherwise of the judgment.*

2. *That the Court lacks jurisdiction to entertain this case because the suit is grossly misconceived as its jurisdiction is invoked improperly as the Court does not exercise appellate jurisdiction over the domestic Court of Member States.*
3. *That the Plaintiffs did not exhaust local remedies before coming to the Court and that the 2<sup>nd</sup> Defendant cannot be held responsible for the act of its officials, done pursuant to a request of the 1<sup>st</sup> Defendant a sovereign State.*

The 1<sup>st</sup> and the 3<sup>rd</sup> Defendants subsequently brought an application to enter a new plea pursuant to Articles 37 (2) & (3) of the Rules of this Court. They contended that the Supreme Court of Liberia had entered final judgment in the appeal by the Plaintiffs, pending before it whereby it ordered the immediate release of the Plaintiffs from detention and the restoration of their civil rights to liberties and all other constitutional and statutory rights.

Accordingly, the effect of the Supreme Court ruling is that it raises the issue of res judicata with regard to the current claim judging from the order sought by the Plaintiffs. Consequently, there is no basis for the claim by the Plaintiffs that their civil rights to liberty and life is being violated by the defendants.



In answer to the new plea in law raised, the Plaintiffs submitted that since the defendants have raised the issue of jurisdiction, they cannot bring the present application or raise new issues until the question of jurisdiction is disposed of unless they first withdraw their objection based on jurisdiction. It is worthy to mention that the Plaintiffs, despite the close of pleadings, continued to bring frivolous applications which are in most cases repetitions and thus not relevant for the determination of the present suit.

#### **4. ANALYSIS OF THE ISSUES FOR DETERMINATION AND LEGAL ARGUMENTS OF THE PARTIES.**

From the facts of the case and the arguments of the parties, it is deducible that it raises pertinent preliminary questions of jurisdiction, admissibility and the merits of the case. It is trite law that when in an action before a Court, the jurisdiction to entertain the suit is questioned, the objection has to be disposed of first before delving into the merits.

In other words, a Court or other tribunal seised with a case must determine its competence to entertain the suit before discussing the merits of the case. Jurisdiction is the foundation for the exercise of the judicial power of a Court or tribunal. Where there is lack of jurisdiction, a decision on the merits will tantamount to an exercise in futility because you cannot place something on nothing and expect it to stand.

Accordingly, it is necessary to consider the following questions raised by the defendants in this suit, namely,

1. *Whether the Plaintiffs have the competence to institute this action without first exhausting the local remedies available to them.*
2. *Whether the pendency of the appeal against the conviction of Plaintiffs at the Supreme Court of Liberia is a bar to the present suit.*
3. *Whether the non- ratification of the Supplementary Protocol of the Court renders it inapplicable to the 1<sup>st</sup> Defendant.*
4. *Whether the present action falls within the intendment of Article 9(1) (g) of the 2005 Supplementary Protocol of the Court.*
5. *Whether the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are necessary parties to this suit, and*
6. *Whether from the totality of the facts put forward by the Plaintiffs, the present matter falls within the subject matter of the jurisdiction of this Court.*

These issues will now be considered seriatim;

1. *As a rule of customary and general international law, the rule on the exhaust local remedies flows from the basic rule of international law providing that States have no right to encroach upon the preserve of other States internal affairs.*

It is predicated on the doctrine of sovereignty and equality of States in international law. This rule allows states to use their internal legal mechanisms including constitutional procedures to solve their own internal problems before international mechanisms can be invoked.

However, it is also the rule that where such internal mechanisms or remedies are either nonexistent, or unduly or unreasonably prolonged or where it is devoid of providing effective relief, resort to such measures as a condition precedent to the presentation of international claims will not be required. Similarly, the rule can be expressly or impliedly made inapplicable by the provisions of a treaty.

Articles 9(4) and 10(d) of the 2005 Supplementary Protocol of this Court (the basis of its human rights jurisdiction) provides as follows;

*The Court has jurisdiction to determine cases of violation of human rights that occur in any member State.*

With regard to access, Articles 10 (d) of the Supplementary Protocol also provides for the conditions for the admission of human rights claims before the Court. Namely, the application must not be anonymous and must not be pending before another International court for adjudication. Exhaustion of local remedies is not a sine qua non for the presentation of claims before this Court.

As admitted even by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, citing the case of **Ocean King Nigeria LTD Vs. Republic of Senegal**, the Court has consistently maintained that an applicant in cases of human rights violation brought before

the Court, is not obliged to exhaust local remedies before accessing the Court. (See also **Musa Saïdy Khan Vs The Republic of Gambia (2010) CCJ ELRP**).

**In Kadijatou Mani Karaou Vs Republic of Niger**, The Defendant (The Republic of Niger) raised a preliminary objection challenging the admissibility of the Plaintiffs' application on the ground that non-exhaustion of local remedies on the one hand and that the case brought before the Court was pending before the National Courts of Niger, the Court held that there are no grounds for considering the non-exhaustion of local remedies as a lacuna which must be filled within the practice of the Court, for the Court cannot impose on individuals more onerous conditions and formalities than those expressly provided for by Community texts.

To hold otherwise will tantamount to additional violation of the rights of such individuals. In dismissing the preliminary objection raised by the defendant (and rightly so in our considered view), the Court held that by the provision of this Article 10(d) (11) of the Supplementary Protocol of 2005, the Community lawmakers of Economic Community of West African States (ECOWAS) intended to remain within the strict confines of what international practice has declared appropriate to abide by. That it is not the duty of this Court to add to the Supplementary Protocol condition(s) which are not provided for by the texts.

As earlier noted, the application of the local remedy rule can be expressly or impliedly excluded by a treaty and this appears to be what the 2005 Supplementary Protocol conferring human rights jurisdiction on the Court appears to have done. Accordingly, not having made provisions for particular conditions in respect of admissibility of an application, the Court cannot impose heavier ones these of. It is therefore unnecessary to over flog this issue of non-requirement of exhaustion as a condition precedent to claim for human rights violations brought before this Court.

From the arguments and contents of the statement of defense and legal arguments filed by the 2<sup>nd</sup> , 4<sup>th</sup> and 5<sup>th</sup> Defendants, it appears that the Court is being invited to over- rule itself on its position on the non- requirement of the exhaustion of local remedies. We are of the opinion that there is no cogent and convincing reason or circumstances adduced by the defendants to warrant such a course of action.

In the same vein, the question on whether the pendency of the appeal against the Plaintiffs conviction is a bar to the present application is answered in the negative. The limits to this Court's jurisdiction in an action against a member State for human rights violation are as contained in Article 10(d) above and as elucidated by the jurisprudence of this Court in the various cases cited above. These provisions are clear, lucid and unambiguous and cannot admit of any extraneous consideration. This Court has clearly stated that the

pendency of an action before national Courts in cases of human rights violation is not a bar to the exercise of the jurisdiction of this Court.

**In Valentine Ayika Vs Republic of Liberia (suit N°: ECW/CCJ/APP/07/11)**, the defendants raised a preliminary objection to the admissibility of the claim on the ground that a similar case is pending before the Supreme Court of Liberia in respect of the subject matter of the suit. The Plaintiff relied on the provisions of Article 10(d) of the 2005 Supplementary Protocol and argued that the provision only applies as a bar to proceedings before the Court where the same issue is pending before another International Court or Tribunal. In upholding the Plaintiff's contention, the Court held that the Supreme Court of Liberia as well as any other Domestic Court in member States do not qualify as international Courts within the meaning of Article 10 (d) (ii) of the Protocol.

Accordingly, this ground of objection as well as others enumerated above cannot be sustained and the Court so holds.

The 1<sup>st</sup> defendant contends that the non- ratification of the Supplementary Protocol of 2005 granting the Court Jurisdiction to hear cases of violation of human rights occurring in ECOWAS Members States by her renders the treaty inapplicable to her. Treaty is a very important source of international law.

In a nut shell, within the ambit of the Vienna convention on law of Treaties 1969, a treaty is a written agreement between States touching a particular subject matter in which they signify their intention to be bound by the

provisions. Treaties are known by variety of names, ranging from convention, international Agreements, Declarations, covenants, Protocols or their Supplements to mention but a few.

Treaties are binding only on parties to them. They come into effect either by mere signatures or ratification or by both depending on the provisions thereof. Supplementary Protocol A/SP.1/01/05 of 2005 which confers jurisdiction on this Court with regard to human rights violation occurring in Member States of ECOWAS qualifies as a Treaty. The Court takes judicial notice of the fact that the 1<sup>st</sup> Defendant is a signatory to the treaty, By Article 11(1) of the Supplementary Protocol.

*This Supplementary Protocol shall enter into force provisionally upon signature by Heads of States and Government. Accordingly, the signatory Member States and ECOWAS hereby undertake to start implementing **all** (emphasis ours) provisions of this Protocol.*

It follows that since the 1<sup>st</sup> Defendant signed the treaty in question, it cannot be seen to argue that it is not bound because of non-ratification.

The Court is not oblivious of the provisions of Art 11(2) which declares that the Supplementary Protocol shall definitely (emphasis ours) enter into force upon ratification by at least nine (9) signatory States in accordance with the constitutional procedure of each Member State.

Consequently, even if the 1<sup>st</sup> Defendant did not ratify the treaty, it is bound by its provisions upon signature, provided at least Nine member States (which may exclude the 1<sup>st</sup> Defendant have ratified it.) Accordingly the plea of the 1<sup>st</sup> Defendant that non –ratification obviates it from liability also fails, and the Court so holds.

The Defendants or some of them have also contended that the present action falls within the provisions and intendment of Article 9(1) of the Supplementary Protocol of 2005 and therefore not maintainable by the Plaintiffs, not being a Community Institution. The said Article 9(1) (g) of the Supplementary Protocol vests the Court with the competence to adjudicate on any matter relating to an action for damages against a Community institution or an official of the Community for any act or omission in the exercise of their official functions.

The ECOWAS Revised Treaty of 1993, and the Protocol A/P1/7/91/ of 1991 relating to the Community Court of Justice defines “Community” to mean the Economic Community of West African States, (ECOWAS) while Community Institutions are set out in Article 6 of the Revised Treaty of ECOWAS 1993, None of the Defendants in this case falls within the ambit of a Community Institution or Community Official.

The action is brought against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as Member States of ECOWAS as well as their officials. Article 9 (1) (g) of the



Supplementary Protocol exists for a particular purpose i.e. it covers jurisdiction with regard to actions for damages instituted against or occasioned by acts or omissions of Community Institutions or official(s).

In interpreting similar provision, the European Court of Justice in case N<sup>o</sup> 5/71 in action for damages arising from acts of an Institution of the European Community (as it was then called) held that the object of this provision is merely to compensate a party for damages arising from action or omission of a Community institution or its official(s) and nothing more.

Accordingly, in so far as Article 9 (1) g) gives the Court jurisdiction over actions for damages arising from acts or omissions of Community Institution(s) and their officials, the present action not being against such parties cannot be maintained under this Article.

However, the mere fact that an action was brought under a wrong section of a law does not deprive it of any merit, if there is another provision under the law under which it can be accommodated. This is a Court of Justice not one of technicalities. In this direction, it needs to be noted that the Plaintiffs also relied on Article 9(4) of the Supplementary Protocol which posits the human rights jurisdiction of the Court.

This Court has held in a plethora of cases that it has jurisdiction to entertain any case of alleged violation of human rights which occurred in member States,

provided that the Member State in question is a party to the International human rights instrument(s) in which the violation can be derived or accommodated. Thus State responsibility is founded on an international obligation assumed by the State (**see the cases of Bakery Sarre Vs. Republic of Mali (2011) CCJ 57, Mamadou Tandja Vs General Salou Djibo and Anor(2010) CCJ LR 109 and Hissen Habre Vs. Republic of Senegal (2010) CCJ LR 65.**

In the light of the above analysis and decided cases, it is the law that the subject matter of this action falls within the jurisdiction of this Court since the substance thereof is predicated on the purported violations of the rights of the Plaintiffs as enshrined in the African Charter on Human and Peoples Rights and other International human rights instruments to which the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants are parties. The Court therefore declares that it has jurisdiction to entertain this matter.

In order to strengthen the jurisprudence of the Court in the area of practice and procedure, it is pertinent to determine whether the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are necessary parties to this suit. In other words will their presence contribute to the dispensation of the justice of this case?. It appears a pronouncement on this matter will go a long way to sanitize the types of processes that are brought before this Court and the persons who are brought as parties. For the avoidance of doubt, Article 9(4) clearly provides that the

Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.

This provision envisages that it is the Member State whose action or omission resulted in the violation of the rights of the individual as enshrined in human right instruments that is the appropriate defendant. In other words, it is the State as an entity in international law that assumes responsibility; officials of such states or component parts or government are mere agents whose acts are attributable to their States in international law in appropriate circumstances.

Individuals, component parts of a State and other institutional categories are not necessary parties before the Court. Matters relating to human rights violations between individuals belong to the national or domestic Court of Member States. It is only a member State under these arrangements that can be sued as a defendant. Individuals of any category or creed are not recognized as Defendants in a human rights actions before the Court.

Accordingly the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Defendants have no business of being parties to this suit. In this regard, the names of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are hereby struck out of the proceedings for not being appropriate parties. With regard to the 2<sup>nd</sup> Defendant it is absurd that the Plaintiffs also instituted this action against it.

From the facts without alluding too much law it is obvious it was the 1<sup>st</sup>

Defendant who invited the 2<sup>nd</sup> Defendant to assist in carrying out some assignments with regard to the case.

The 2<sup>nd</sup> Defendant is neither the originator of the case nor did she in any manner whatsoever contribute to the violation of the rights of the Plaintiffs directly or indirectly. At best he merely acted as an agent to a named principal; the Republic of Liberia. The principle of the law of agency provides that as long as an agent acts within the ambit of his conduct, actual, usual or ostensible, the Principal answers for any act of misfeasance or non-feasance the agent committed. It is therefore sad that the 2<sup>nd</sup> Defendant who merely answered the call of a neighbouring State for assistance should be joined in this suit. It is condemnable, irresponsible and devoid of any logic and reason.

Accordingly, it is the opinion of this Court that the Plaintiffs have merely wasted the time and the scarce resources of the 2<sup>nd</sup> Defendant, it is indeed a conduct to be frowned at.

Having arrived at this stage, the Court needs to consider whether from the totality of the facts and circumstances adduced by the Plaintiffs, the subject matter (or human rights) jurisdiction of this Court have been successfully invoked.

In doing this, it is necessary to examine the entire cause of action. It consists of all those things necessary to give a right of action to a Plaintiff See:

**Hernaman Vs. Smith (1855) 10 Exch.659 at 666.** Similarly in **Dillion VMacdonald (1902) 21 N Z LR**, the Court of Appeal held that a cause of action is the act of the defendant which gives the plaintiff the cause for complaint.

In the Nigerian case of **Attorney General of the Federation Vs.Abubakar (2007) 10 NWLR (pt. 1841 p10.** a cause of action was defined as a set of circumstances giving rise to an enforceable claim. It is the fact or combination of facts which give rise to a right to sue and it consists of two elements namely; the wrongful act of the Defendant which gives the Plaintiff his cause of complaint and the consequent damage. What then are the set of circumstances that gave rise to this case? What particular act of the defendants are the Plaintiffs complaining about. A facsimile examination of the facts and circumstances of the case leads to the following deductions:

- (1) *The facts of the case arose from the death of Ms Togba in a bathroom in the Plaintiffs house.*
- (2) *The production of conflicting post-mortem examination reports of the body of the deceased to ascertain cause of death*
- (3) *The plaintiffs arrest, detention and charge, trial and conviction and sentencing of the Plaintiffs for the murder of the deceased.*

The Plaintiff's case arose out of the trial process which culminated in their conviction and sentence to death by a Court of first instance in Liberia, for which they appealed to the Supreme Court of Liberia as deciphered

subsequently during the process of hearing this suit. Their bone of contention is that the trial Court erred in law in admitting an autopsy report allegedly fabricated by the 5<sup>th</sup> Defendant and it was based on the contents of the report (Annexure H 4) that they were convicted. In their belief the Court should have relied on the original report(Annexure H1 and 2) which concluded that death was due to asphyxia secondary to suicide and hanging respectively; thus exonerating the plaintiffs from complicity in the death of the deceased.

Thus, the crux of the Plaintiffs claim; i.e. their cause of action is the alleged wrongful admission of evidence.i.e Annexure H4 titled “Report of Review of postmortem conducted on the deceased Meideh Togba” by the trial Court which according to them was tantamount to a denial of their rights to fair hearing/ trial as enshrined in Article 7 of the African Charter on Human and Peoples Rights.

In other words, the Plaintiffs are asking this Court to review the decision of the national Court of the 1<sup>st</sup> Defendant by upholding their contention that wrongful admission of evidence by the trial Court which led to their conviction and sentencing was reckless, baseless and negligent based on the autopsy report of the 5<sup>th</sup> Defendant. The Court has repeatedly in a long line of cases held the view and rightly so, that it cannot review the decisions of national Courts of Member States. It is not an appellate Court and has no supervisory authority over the national Courts of Member States of ECOWAS See: **Jerry Ugokwe**

**Vs. Federal Republic of Nigeria (2004-2009) CCJLR 63 at 74-75 and Hammani Tidjani Vs. Federal Republic of Nigeria (2004-2009) CCJLR 77 esp. at 88-90.**

In Moussa Leo Keita, in deciding on the issue of the subject matter of jurisdiction, this Court pointed out that it is only the non-observance of any of the texts applicable by it that justifies and found the legal proceedings before it and went on to hold that it does not have the competence to review decisions of domestic Courts. The Court went further to hold that in the absence of any proof of a characteristics violation of a human rights, the action must be declared inadmissible.

The purport of the decision in Leo Keita's case is that it is not enough for applicant to state that his human rights have been violated for the Court to assume jurisdiction. The allegation must disclose evidence of a characteristic violation.

In Bakary Sarre Vs. Mali this Court in considering the preliminary objection raised by Mali Stated;

*The competence of the Court to adjudicate in a given case depends not only on its texts but also on the substance of the initiating application. The Court accords every attention to claims made by applicants, the pleas-in-law invoked, and in an instance where human rights violation is alleged, the court equally considers how the parties present such allegations. The court*

*therefore looks to find out whether the human rights violation as observed constitutes the main subject matter of the application and whether the pleas-in-law and evidence produced essentially go to establish such violation.*

The Plaintiff in this case premised their pleas in law on alleged violation of Articles 4,6 and 7 of the African Charter on Human and Peoples Rights.

Article 4 provides that “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”

Article 6 provides, “every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reason and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”.

Article 7 of the African Charter provides:

***1. Every individual shall have the right to have his cause heard.***

***This comprises:***

- a. The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.*
- b. The rights to be presumed innocent until proved guilty by a competent Court or tribunal.*



- c. *The right to defense, including the rights to be defended by counsel of his choice;*
- d. *The right to be tried within a reasonable time by an impartial court or tribunal.*

***2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.***

The Plaintiff in their narration of facts supporting their claim stated clearly the events that led to their arrest and trial which has been reproduced above. Subsequent to their arrest and after the close of investigation in which the plaintiffs participated as they were allowed to conduct their own post mortem examination of the deceased, they were formally charged for the murder of the deceased. The plaintiffs fully participated in the trial and were represented by a counsel of their choice. The trial Court at the close of the case reviewed the evidence before it, found the plaintiff guilty for the murder of the deceased and sentenced them to death.

Following the conviction and sentence, the plaintiffs appealed to the Supreme Court against the judgment and sentence. Plaintiffs did not in their narration of facts allege that they were hindered from either defending themselves

during the trial or appealing against the judgment in accordance with the laid down rules.

From the reading of Article 4 of the African Charter, deprivation of life is allowed and it is only when the deprivation is arbitrary that it constitute a violation thereof. The death penalty is provided for and applicable under the laws of Liberia. Imposition of death penalty therefore will not amount to a violation of that article if in so doing due process was followed.

Articles 6 of the African Charter is also not absolute and allows for deprivation of liberty for reasons and conditions previously laid down by the law. The check here also is ARBITRARINESS.

Arbitrary is defined in Black's Law Dictionary 5<sup>th</sup> edition as something done without fair, solid and substantial cause or without cause based upon the law. An act is therefore arbitrary when it is not done in accordance with the principles of law.

**In Hamani Tidjani Vs. Federal Republic of Nigeria 2004 -2009 CCJELR 77,** this Court in considering whether it is competent to entertain an action brought under article 6 of the African Charter stated that: *“The combined effect of article 9(4) of the protocol of the Court as amended, article 4(g) of the Revised Treaty and Article 6 of the African Charter on Human and Peoples’ Rights is that the Plaintiff must invoke the Court’s jurisdiction by;*

- (i). Establishing that there is a right recognized by article 6 of the African Charter on Human and Peoples' Right;*
- (ii). That this right has been violated by the defendants or any of them;*
- (iii). That there is no action pending before another international Court in respect of the alleged breach of his right, and*
- (iv.) That there was no previously laid down law that led to the alleged breach or abuse of his rights and freedom from arbitrary arrest.*

The Court in Tidjani's case above having been satisfied that the Plaintiff was given opportunity to appeal against the decision complained of concluded that in so far as there are avenues open to the applicant to seek redress within the established and recognized hierarchy of Courts, it is immaterial that the processes are flawed or abused in some ways provided due process was followed.

The Plaintiff has not claimed that their arrest and detention were carried out without due process nor did they allege that there were charged for a non-existing offence.

The arrest detention trial, conviction and sentence of the Plaintiffs having been done in accordance with the laid down laws and the Plaintiff having been afforded opportunity to appeal against same plaintiffs case has not disclosed

any element of possible violation of Article 4 and 6 of the African Charter. The Court so holds.

Turning now to Article 7 which has been reproduced above, the essential ingredients are the right to appeal, the right to be presumed innocent until proven guilty, the right to defense by counsel of your choice, the right to be tried within a reasonable time by impartial court, and freedom from retroactive punishment. Though the Plaintiff alleged a violation of this article by the defendants they were not specific as to which of the ingredients were violated.

As explained earlier, the Plaintiffs by their presented facts participated all through the proceedings and even testified on their behalf. They were represented by a counsel of their choice and no allegation of bias was levelled against the trial Court. Furthermore, their trial was for an offence which at all times material was known in law and legally punishable under the law. There is therefore no material to indicate a possible violation of Article 7.

There is therefore no factual indication of violation of any of the articles to arouse this court's jurisdiction under Article 9(4) of the Supplementary Protocol.

The Plaintiffs' present application hinges on alleged wrongful admission of an otherwise admissible evidence to wit: the autopsy report prepared by the 5<sup>th</sup> defendant. This contention even if substantiated is an irregularity in proceedings which is an issue for appeal.

It is also on record that the Plaintiffs have rightly appealed against the decision to the Supreme Court of Liberia- a Court of competent jurisdiction which form the materials before the Court has discharged and acquitted the Plaintiffs.

This Court cannot determine whether or not the procedure adopted by the trial court in deciding to admit that piece of evidence is correct or not without reviewing that judgment. Furthermore the order sought by the Plaintiffs as reproduced above is for a reversal of the said judgment which this Court has no competence to do.

In Bakary Sarres case where a similar application was brought, this Court after analyzing the case of the Plaintiffs and finding that the applicants seek that the Court sit afresh, by examining judgments N° 116 of the Supreme Court of Mali and order a reversal of the pronouncement made by the said Supreme Court in connection with the administrative proceedings concluded:

*That it can be deduced from the application filled by Mr. Bakery Sarre and 28 others against The Republic of Mali ..... seeks to project the Court of Justice of ECOWAS as a court of cassation over the Supreme Court of Mali. Viewed from that angle, the Honourable Court declares that it has no jurisdiction to adjudicate on the matter.*

In line with the above reasoning and in view of the above analysis, the Court holds that the action of the Plaintiff's fails as none of their rights under the

African Charter on Human and People's Rights or any other known International human rights instruments have been violated by the Defendants.

**FOR THESE REASONS,**

Adjudicating in a public session after hearing both parties, in first and last resort, the Court in terms of technicalities:

- *Declares that it has competence to examine violations of human rights alleged by the Plaintiffs against the 1<sup>st</sup> Defendant (The Republic of Liberia).*
- *Declares that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are not parties to these proceedings.*

**IN TERMS OF MERITS**

Adjudges in regards to other aspects of the Application that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not violated the human rights of the Plaintiffs under any International Human Rights Instrument, in particular, their rights to life, liberty and fair trial and the Plaintiffs' case is hereby dismissed.

**AS TO COSTS;**

1. The Plaintiff's and the 1<sup>st</sup> Defendant should bear their own costs.
2. The Plaintiff should pay to the 2<sup>nd</sup> Defendant, the Republic of Ghana, the sum of USD 5,000. (Five thousand United States Dollars) as costs.

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

**1. Hon. Justice Friday Chijioke Nwoke ----- Presiding**

**2. Hon. Justice Jérôme Traoré ----- Member**

**3. Hon. Justice Yaya Boiro ----- Member**

**Assisted by: Athanase Atannon Esq ----- Registrar**