



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

**HOLDEN AT ABUJA, NIGERIA**

**SUIT N°: ECW/CCJ/APP/09/15.**

**JUDGMENT NO: ECW/CCJ/APP/02/18**

BETWEEN:

Festus A.O. Ogwuche ESQ

} Plaintiff

AND

Federal Republic of Nigeria

} Defendant

**1. BEFORE THEIR LORDSHIPS**

Hon. Justice Friday Chijioke Nwoke

Presiding Judge

Hon. Justice Yaya Boiro

Member

Hon. Justice Alioune Sall

Member

Assisted by:

Mr. Athanse Atannon

Deputy Chief Registrar

## **REPRESENTATION OF THE PARTIES.**

Festus A. Ogwuche Esq.                      For the Plaintiff

1) Dayo Apata Esq  
2) O.S. Kara Esq                      }                      For the Defendant

## **FACTS AS PRESENTED BY THE PLAINTIFF**

The Plaintiff is a citizen of the Federal Republic of Nigeria and a Legal Practitioner with his law firm situate at No. 2 Okporo Road, first artillery, Port-Harcourt, Rivers State Nigeria.

The Defendant is a Member State of the ECOWAS and signatory to its Treaty, Protocols and Conventions.

The Plaintiff filed this application for the violation of his fundamental human rights through an unwarranted and unlawful seizure and impoundment of his call to bar certificates, withholding his access, possession and use of documents which constitute his license and authority to practice law in Nigeria by agents of the Defendant (Economic and Financial Crimes Control Commission).

The Plaintiff states that he is a well-known public commentator, critic and analyst and almost on daily basis appears on radio stations, television networks, prints and social media and makes comments particularly on good governance, democracy,

human rights, and corruption as well as the inability of the anti-corruption agencies particularly EFCC to tackle corruption and most often exposing the poor practices of anti-corruption officials.

The Plaintiff avers that he was counsel to a suspect who was charged for a criminal offence of fraud at the Federal High Court Port-Harcourt Division. Being a law firm that handles mostly civil matters, the Plaintiff decided to discontinue his representation to which he filed an application to that effect on the 1<sup>st</sup> of August 2007. This application was granted by the court.

On the 16<sup>th</sup> of June 2009 while the Plaintiff was in his law firm, some agents of the Defendant (EFCC officials) stormed into his office, ransacked and took away documents, as well as the Plaintiff to their office where he was detained for two days from the 16<sup>th</sup>-18<sup>th</sup> June 2009 on the grounds that the accused person he ceased to represent sometime in 2007 had jumped bail and that the Plaintiff must produce the accused.

The Plaintiff avers that while in detention, the agents of the Defendants forced him to enter an undertaking to produce the accused on a particular day and also seized his law school certificates as conditions for his release. Not only that, the Defendants agents asked the junior lawyer from the Plaintiffs law firm, who came to surety him to deposit his Law School and call to bar certificates as a pre-condition for the release of the Plaintiff.

The Plaintiff states that the seizure of his documents has tremendously curtailed his practice and professional exertions such as his inability to attend Bar Conferences, Seminars, appearing before International Courts (particularly for the Bakassi Peninsula case) which the people of Bakassi instructed him to represent them due to his expertise in Human rights and international law, and other national and international meetings with lawyers where mostly the production of qualifying certificates is a requirement. He has also been unable to apply for Masters and Doctoral Degree Programs since 2009 till-date. As a result of this seizure, the Plaintiff has lost several opportunities to be called to the Bar and practice in foreign jurisdictions particularly the Canadian Bar which he had applied for years before the seizure of his certificates.

The Plaintiff avers that the act of the agents of the Defendant is contrary to all known laws and fundamental freedoms as the law creating the EFCC limits their operations to Economic and Financial Crimes Commission only and that there is no statute book of the Defendant criminalizing the practice of law or even rendering lawyers criminally liable for representing clients in court.

Whereupon the Plaintiff prays this Court for the following reliefs:

- a) **A DECLARATION** that the Plaintiff is entitled to the protection of the fundamental freedoms enshrined and guaranteed under the Articles of the Universal Declaration of Human rights, the African Charter on Human and

Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

- b) **A DECLARATION** that the Defendant is bound to observe and respect the rights enshrine and guaranteed under the Articles of the Universal Declaration of Human rights, the African Charter on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights on all issues whether executive, legislative and judicial relating with, and/or pertaining to the Plaintiff as a citizen.
- c) **A DECLARATION** that the Defendant EFCC action of impounding and seizing the Plaintiff's Nigerian Law School and call to Bar certificates is a violation of Article VII (1) and (2), IX and XIV of the African Charter on Human and Peoples' Rights and section 36 of the Defendant's 1999 Constitution as amended.
- d) **A DECLARATION** that the Defendant EFCC action of impounding and seizing the Plaintiff's Nigerian Law School and call to Bar certificates is a violation of Article VII of the African Charter on Human and Peoples' Rights and Articles 10 and 11 of the Universal Declaration of Human rights and the International Covenant on Civil and Political Rights

- e) **A DECLARATION** that the Defendant EFCC action of impounding and seizing the Plaintiff's Nigerian Law School and call to bar certificates is a violation of Article XIV, of the African Charter, Article 17(1) and (2) of the Universal Declaration of Human rights, and section 44 of the Defendant's Constitution and a denial of the Plaintiff's right to his property.
- f) **A DECLARATION** that the Defendant EFCC action of impounding and seizing the Plaintiff's Nigerian Law School and call to Bar certificates is a violation of section 37 of the Defendant's Constitution and Article 12 of the Universal Declaration of Human rights and 17 of the International Covenant on Civil and Political Rights.
- g) **A DECLARATION** that the Plaintiff is entitled to the fundamental freedom and right to express and disseminate opinions within the law and freedom of expression and to hold opinions without interference and to seek, receive and impart information through any media pursuant to Article IX of the African Charter, section 39 (1) of the Defendant's Constitution, Article 19 of the Universal Declaration of Human rights, and Article 19 of the International Covenant on Civil and Political Rights.

- h) **AN ORDER** enjoining the Defendant to release or cause to be released the said certificate belonging to the Plaintiff and that of his junior counsel unlawfully impounded and seized by the Defendant EFCC since the 18<sup>th</sup> June, 2009 till date.
- i) Five Hundred Million Naira (N500,000,000.00) only, being punitive and exemplary damages against the Defendant for the wanton and unwarranted violation and infringement of the Plaintiff's fundamental rights, in breach of the Defendant's national and international obligation under the Universal Declaration of Human rights, African Charter and its 1999 Constitution (as amended).
- j) **PERPETUAL INJUNCTION** restraining the Defendant, its agents, servants and privies from further violation of the Plaintiff's fundamental rights and Freedom as enshrined and guaranteed under the Universal Declaration of Human rights, the African Charter on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and chapter II and IV of the Defendant's Constitution 1999 (as amended).

k) **AND FOR ANY OTHER ORDER OR ORDERS** as the Honorable Court may deem fit to make in the circumstance.

The Defendant on the other hand filed a preliminary objection challenging the jurisdiction of the court to entertain this matter on the grounds that the Plaintiffs main claim is seizure of his certificates and therefore not maintainable before this court, secondly, that the action is statute barred as the Plaintiffs right of action arose on the 16<sup>th</sup> June 2009, while this action was filed in the year 2015, six (6) years after the right of action had arisen. The Defendants argued that the Plaintiff had 3 years within which to file its action as provided under Article 9(3) of the Supplementary Protocol.

The Defendants further argued that a party seeking relief under the Constitution of the Federal Republic of Nigeria 1999 (as amended) must ensure that the principal relief is directly on the infringement of his rights as captured in chapter IV of the Constitution. That the Plaintiff's main claim is not a right within the contemplation of chapter IV of the Constitution.

The Plaintiff filed a reply to the Defendant's preliminary objection wherein he stated that his substantive application is for the enforcement of his fundamental human rights and that the action is not statute barred. The Plaintiff further argued that the main application cannot be raised at the preliminary stage being the subject matter of the substantive application. The Plaintiff relied on the Supplementary Protocol



and some of this Courts' jurisprudence to buttress his argument stating that limitation statute cannot apply to terminate the enforcement of a right in terms of a continuous violation of that same right.

In its defense dated 13<sup>th</sup> March 2017, the Defendant merely denied all the averments in the Plaintiffs application and re-emphasized that the claims of the Plaintiff are not determinable by this Court and that the Plaintiff has not explored any means of amicable settlement with the Defendant before instituting this action. The Defendant further contends that the Plaintiff's claim is not one of breach of fundamental rights, the application is statute barred and urged the court to dismiss the suit for lacking in merit.

### **ISSUES FOR DETERMINATION OF THE PRELIMINARY OBJECTION**

- 1. WHETHER THIS COURT HAS THE JURISDICTION TO ENTERTAIN THIS APPLICATION AS CONSTITUTED AND CONCEIVED***
- 2. WHETHER FROM THE TOTALITY OF FACTS PUT FORWARD, THE PLAINTIFF IS NOT CAUGHT UP BY THE STATUTE OF LIMITATION.***

***WHETHER THIS COURT HAS THE JURISDICTION TO ENTERTAIN THIS APPLICATION AS CONSTITUTED AND CONCEIVED.***

Jurisdiction is fundamental to any suit before a court. As a general rule, jurisdiction is inferred from the Plaintiffs claim and in deciding whether or not this court has

jurisdiction to entertain an action, reliance has to be placed on the facts as presented by the Plaintiff, the Protocols of the Court, as well as the jurisprudence of the Court.

The Defendant contends that the subject matter of this suit which is the withholding of the Plaintiffs certificates by its agents is not a human right action to fall within the ambit of this Court' s jurisdiction.

**Article 9(4) of the Supplementary Protocol (A/SP./01/05)** of the Court provides:

“The Court has the jurisdiction to determine cases of violation of Human Rights that occur in Member States”.

Article 10 (c) and (d) of the same protocol grants access to individuals for actions which violates their human rights.

**In HISSEIN HABRE V. REPUBLIC OF SENEGAL (2010) CCJELR**, the court held that in determining whether it has jurisdiction, it shall examine:

- If the issues submitted before it deals with a right which has been enshrined for the benefit of the human person;
- Whether it arises from international or community obligations of the state complained of, as human rights to be promoted, observed, protected, and enjoyed;
- Whether it is the violation of that right which is being alleged.

The facts before this court and the articles relied upon lean towards rights that have been enshrined for the benefit of the human person which also attracts international

community obligations. The Plaintiff herein has alleged a violation of his right to property, right to privacy and right to be heard. All these rights being internationally guaranteed are subject to the determination of this court.

Property has been defined in the case-law of both the European and the Inter-American Courts of Human Rights as any vested right or any object capable of having value.

In the case of the **MAYAGNA (SUMO) AWAS TINGNI COMMUNITY V. NICARAGUA** (Judgment) Inter-American Court of Human Rights, Series C no. 79 (31 August 2001), para. 144: Property was defined as “those material things which can be possessed, as well as any right which may be part of a person’s patrimony; this concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value.

In the strict legal sense, it is an aggregate of rights not only guaranteed and protected by the state, but obliges the state to abstain from interfering.

Property rights extend to every specie of valuable rights and interests. More specifically, ownership, the unrestricted and exclusive right to a thing, the right to dispose of a thing in every legal way, to possess, use and exclude everyone else from interfering with it. It is the exclusive right of possessing, enjoying and disposing of a thing and the highest right a man can have to anything.

Property is classified into two: "real property" which is any interest in land, real estate, growing plants or the improvements on it, and "personal property" otherwise known as personality which is everything else capable of being owned.

For purpose of clarity, the claim before this court is in relation to personal property or personality.

The right to property is guaranteed by quite a number of international instruments with similar provisions.

**Article 14 of the African Charter on Human and Peoples Rights** provides:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”.

**Article 17 of the Universal Declaration of Human Rights** provides:

*(1) Everyone has the right to own property alone as well as in association with others.*

*(2) No one shall be arbitrarily deprived of his property for the purposes of the clarification, interpretation and elucidation and as directly applying to this case, the European Human Rights Convention will provide a guide:*

**Article 1 of Protocol 1 to the European Court of Human Rights** provides:

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

It however, goes without saying that this right does not in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest of the public.

The European human rights law recognizes the right to peaceful enjoyment of property, makes deprivation of possessions subject to certain conditions, and recognizes that States can balance the right to peaceful possession of property against the public interest.

In considering the provisions of Article 1 of Protocol No. 1 of the European Court of Human Rights, the concept of property or possession is very broadly interpreted. It covers a range of economic interests which include: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to a pension, **the right to exercise a profession**, a landlord's entitlement to rent, the economic interests connected with the running of a business. All these have been held to fall within the protection of Article 1 above. Therefore, an applicant can allege a violation of

Article 1 of Protocol No. 1 only in so far as the alleged interference relates to his or her “possessions” within the meaning of that provision.

The certificates alleged to be seized by the Defendant constitutes the Plaintiff’s right to exercise a Profession in line with the Provisions of Article 1 of Protocol 1 of the European Court of human rights. Furthermore, it is posited that such right has been guaranteed by the provisions of the African Charter on Human and Peoples’ rights which binds the Defendant and provides thus:

*“the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in general interest of the community and in accordance with the provisions of appropriate laws”.*

Article 1 prohibits all discrimination unless it is based on objective and reasonable grounds.

In **Marckx v. Belgium 1 ECHR 13<sup>th</sup> June (1979)**, the European Court of Human Rights considered for the first time Article 1 of Protocol No. 1 and explained that by recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property. This is the clear impression left by the words “possessions” and “use of property”.

Though Article 1 of Protocol No. 1 protects individuals or legal persons from arbitrary interference by the State with their possessions, it nevertheless

recognizes the right of the State to control the use of or even deprive the use of property belonging to individuals or legal persons under the conditions set out in that provision.

In **Broniowski v Poland (2005) 40 EHRR 21**, the Strasbourg Court explained that “The concept of “possessions” in the first part of Art.1 of Protocol No.1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “property rights” and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the Applicant title to a substantive interest protected by Art. 1 of Protocol No. 1

As a state party to the African Charter on Human and Peoples Right, the Defendant is under an International obligation to recognize the rights, duties and freedoms enshrined in the Charter and undertake to adopt legislative or other measures to give effect to them.

This court has held in a plethora of cases that once the application brought before it invokes its human rights jurisdiction, it is vested with competence to entertain same.

In **PRIVATE ALIMU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/RUL/05/11 (UNREPORTED)**, this Court stressed that its jurisdiction cannot be in

doubt once the facts adduced are related to human rights as indicated by its own case law.

The Defendant in challenging the competence of the court placed reliance on national authorities. This court though may be persuaded by such decisions, it is not bound by them. Moreover, the Plaintiff in bringing his application relied on international texts which recognize, protect and promote the rights which he claims to have been violated. By virtue of its ratification, the Defendant is treaty bound to respect and protect those rights enshrined in these international instruments.

It is submitted that the Plaintiffs Certificates are his personal property and therefore falls under the right to property internationally and nationally guaranteed. Other rights which flow from the alleged seizure are also internationally guaranteed and thus invoke the jurisdiction of the court. There is indeed no doubt that by acts affecting his internationally guaranteed rights, the application filed by the Plaintiff is admissible and same falls within the jurisdiction of this court.

***2. WHETHER FROM THE TOTALITY OF FACTS PUT FORWARD, THE PLAINTIFF IS CAUGHT UP BY THE STATUTE OF LIMITATION.***

For an action to be instituted before a Court, parties involved must be seized with the rules and Protocols of Court in order to comply with the provisions governing the institution of actions as well as the statute of limitation. This enables parties institute their action timeously and prevent the possibility of not being heard on the grounds of being statute barred. However, the facts and circumstances of each



particular case has to be considered in determining whether or not the Applicant is caught up by the statute of limitation.

**Article 9 (3) of the Supplementary Protocol A/SP.1/01/05** provides:

“Any action by or against a community Institution or any member of the Community shall be statute barred after three (3) years from the date the cause of action arose.”

The Defendant contends that by virtue of Article 9 (3) above, the Plaintiffs action is statute barred. Defendant further states that the cause of action arose in April 2009 and the present action was instituted in March 2015, 6 years after the cause of action arose.

The Plaintiff on the other hand maintains that the action is not statute barred as the violation is of a continuous nature. That his certificates up till the time of filing this suit are in the possession of the Defendant. This Court has held in a plethora of cases that the status of limitation does not arise unless the alleged violation ceases.

In **VALENTINA AYIKA V. REPUBLIC OF LIBERIA (2011) CCJELR**, the Court stated that where a violation of a right is continuous, a cause of action lies as long as the infringement persists.

Similarly, in **SERAP V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/12, UNREPORTED** the Court in its analysis stated that their subjection to the statute of limitation depends on the characterization of the act as an isolated act or a persistent and continuous omission that lasted until the date the complaint was filed with the Court. The Court further held it trite that in situations

of continued illicit behavior, the statute of limitation only begins to run from the time when such unlawful conduct or omission ceases.

The European Court of Human Rights and the Inter-American Commission have generated the largest existing body of jurisprudence on continued violations. Such jurisprudence affirms that the particular nature of continuing violations of jus cogens norms requires an exception to the otherwise enforceable period of repose.

In **MC DAID V. TURKEY, ECHR (1996)**, the Commission recalls that the concept of a ‘continuing situation’ refers to a state of affairs which operates by continuous activities by or on the part of the state to render the applicants victims.

From the Plaintiffs application, it is clear that the documents are still in the possession of the Defendant, who have not denied being in possession but rather maintain that the action is inadmissible being filed three (3) years after the cause of action arose. This on its own does not amount to a rebuttal but an implied admission of being in possession of the property in issue.

In view of the foregoing, it is obvious that the provisions of Article 9 (3) of the Supplementary Protocol is not applicable to this case and the Plaintiff’s application is admissible.

### **SUBSTANTIVE APPLICATION**

**WHETHER FROM THE TOTALITY OF FACTS PUT FORWARD, THE DEFENDANTS ARE IN VIOLATION OF THE PLAINTIFF’S RIGHTS UNDER THE AFRICAN CHARTER.**

The crux of the Plaintiff's application is the alleged violation of his fundamental rights through an unwarranted and unlawful seizure and impoundment of his call to bar certificates, wherein the agents of the Defendant (Economic and Financial Crimes Control Commission) withheld his access, possession and use of documents which constitute his license and authority to practice law in Nigeria. The alleged seizure was carried out on the 16<sup>th</sup> of June 2009 and the documents are still in the possession of the Defendant. According to the Plaintiff, the seizure was premised on his inability to produce a client whom he represented sometime in 2007 in a criminal case of fraud at the Federal High Court Port-Harcourt Division.

The Plaintiff further states that, the alleged seizure was further premised on the ground that the said accused person had jumped bail. Prior to the seizure, the Plaintiff had withdrawn his representation of the client and same was backed up by a court order dated 01/08/07

The Plaintiff states that his right to be heard, right to privacy, right to property and his right to freedom of expression and dissemination of information has been violated. Plaintiff contends that the seizure amounts to a conviction and therefore a violation of his right to fair hearing.

**Article 7 (1) & (2) of the African Charter on Human and Peoples Rights (ACHPR)** guarantees the right to be heard. This provision extends to ensuring that the right to presumption of innocence is respected.

**Article 10 of the Universal Declaration of Human Rights** Provides:

*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

**Article 11:**

*(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

It is not in doubt that the above article stress the significance of being heard. The question is, has the Plaintiff's right to be heard been violated stricto sensu? Was he denied the opportunity to be heard?

Notice and an opportunity to be heard are the hallmarks of due process. Opportunity to be heard means the chance to appear before a Court or tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard is an indispensable essential to the administration of due process of law. See *Tayib Ba Vs. Republic of Sierra Leone* (2014)

In the instant case, there is no evidence before this court to establish that the Plaintiffs right to be heard was violated, no proof whatsoever of any case against the Plaintiff, there is also nothing before the Court to show that he was charged

to court without being notified to appear and take his plea or given an opportunity to be heard.

From the facts before us as it relates to fair hearing, it can be rightly said that the plank in which the Plaintiff hinges the violation of this right is shaky. It is well settled that one cannot put something on nothing and expect it to stand. It goes without saying that the burden of proving the violation of this right and establishing all the ingredients of the said violation lies on the Plaintiff. This has not been discharged.

In the instant case, the Plaintiff has failed to establish how this right was violated. No evidence to prove that he was charged to court without being heard or that he sued the Defendants before the National Court and was still not heard.

What needs to be canvassed is the regularity or legality of the alleged seizure of the Plaintiffs property and to ascertain whether it was proportionate and regarded as necessary for achieving the aim.

The principle of legality is a fundamental aspect of all international human rights instruments and indeed the rule of law in general. It is a basic guarantee against the state's arbitrary exercise of its powers. For this reason, any restriction on human rights must be "provided" or "prescribed" by law.

From the facts of the case, it is obvious that agents of the Defendant acted in excess of their powers. Assuming that the Plaintiff committed contempt by failing to produce the accused, the Defendant's agent (EFCC), as a prosecutor has no business pursuing any person who has been sighted for contempt. It is and remains the responsibility of the court to issue forfeiture of the bail bond and not that of the prosecutor.

In **MESSERS ABDOULAYE BALDE V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/04/13 (2013) CCJELR** Unreported, the court found that the presumption of innocence as provided for by Article 7 (1) (b) of the African Charter was disregarded in that, without any prior establishment of guilt against the Applicant, the special prosecutor portrayed the Applicants guilty of embezzlement.

A critical look at the initiating application brings to light the fact that the seizure essentially concerns the inability to produce an accused person which the Applicant ceased to represent since the year 2007. The Plaintiff filed an application to withdraw his representation before its national Court by reason of the fact that his law firm handles mostly civil matters. This the Court acknowledged in its short ruling dated the 1<sup>st</sup> of August 2007. The Plaintiff has attached the record of proceedings from the Federal High Court Port Harcourt Division where the said application was heard granted.

From the same record, it is clear that as at the time the leave to discontinue was granted the Plaintiff, the accused was still in custody and the Judge stated that she

shall be remanded pending the fulfillment of her bail conditions. The Defendant has not proved the grounds in which the Plaintiff is made responsible for producing the accused when the accused was still remanded even at the time of discontinuance. There is no evidence to show that the Plaintiff as of fact stood surety for the accused. It is trite that a lawyer's withdrawal of legal representation implies that such counsel has become *functus officio* with the clients brief and other matters related thereto.

On the right to freedom of expression and dissemination of information, the Plaintiff has not proved how that right has been violated in relation to the seizure of his property. This allegation is therefore not tenable.

On the right to privacy, **Article 12** of the **Universal Declaration of Human Rights (UDHR)** protects individuals from arbitrary interference with their privacy or correspondence.

Private life is a broad concept which is incapable of an exhaustive definition. It is for the Applicant to establish interference which in the instant case, the Plaintiff has proved. See *CAMPBELL V. UNITED KINGDOM* ECHR 25<sup>th</sup> March 1992.

The mere storing of data relating to the private life of an individual amounts to an interference within the meaning of Article 8 of the European Convention on Human Rights, which is *pari-materia* to Article 12 of the UDHR guaranteeing the right to respect for private and family life, home and Correspondence which provides thus:

*“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.*

Indeed the European Court has stated that the protection of personal data is of fundamental importance to a person’s enjoyment of his right to respect for private and family life.

In **S and Marper v. United Kingdom [GC], nos. 30562/04 and 30566/04, § 41, 4 December 2008.**, the Grand Chamber of the European Court of Human Rights held that "the mere retention and storing of personal data by public authorities, however obtained, are to be regarded as having direct impact on the private life interest of an individual concerned, irrespective of whether subsequent use is made. We agree with this position and adopt same.

On the allegation of violation of right to property, Article 14 of the African charter states that the right to property is guaranteed and can only be encroached upon in the interest of the public and in accordance with the provisions of appropriate laws.

It follows therefore that, every person is entitled to the peaceful enjoyment of his possessions and deprivation must be subject to conditions provided by law and by the general principles of international law.

In **Broniowski v Poland (2005) 40 EHRR 21**, the Strasbourg Court explained that



“The concept of “possessions” in the first part of Art.1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the Applicant title to a substantive interest protected by Art. 1 of Protocol No. 1 similar to Article 14 of the African Charters.

By the nature of their profession, legal practitioners have an essential and fundamental role in the protection of human rights as advocates and practitioners of the law. They represent individuals who have been accused of offences with the aim of finding an effective remedy domestically and increasingly, to seek such remedies internationally and also to make sure that persons found guilty of offences face the wrath of the law. These responsibilities are to be exercised without restrictions. When so restricted, the exercise of rights would be illusory and the high principles of the Declarations and Covenants would more likely remain sterile and unenforced.

There is indeed nothing in the statute books of the Defendant criminalizing the practice of law or even rendering lawyers criminally liable for representing clients in Court.

The essence of deprivation of property is the extinction of legal rights of the owner and in the instant case, the Plaintiff. From his application, the Plaintiff contends that he has missed a lot of opportunities as a result of the seizure both in pursuing additional qualifications and in representing clients in court. To further buttress his argument, Plaintiff attached a mandate given to him to represent a group, which opportunity he lost as a result of the said impoundment of his certificates.

**In IATRIDIS V. GREECE, App No. 31107/96 ECHR, Jud 25<sup>th</sup> March 1999**, the Court established that the authorities' refusal of the Applicant's request to repossess the property in question which constituted interference with his property rights had been unlawful and that there had accordingly been a violation of Article 1 of Protocol No.1 of the European Convention.

A measure interfering with the peaceful enjoyment of possessions must be necessary in a democratic society directed at achieving a legitimate aim. It must strike a fair balance between the demands of the general interest of the community and the requirements of the individual's fundamental rights. Such a fair balance will not have been struck where the individual property owner is made to bear an individual and excessive burden.

The Defendant contends that the Plaintiff's main claim being seizure of his certificates is not maintainable before this court. The Defendants further argued that a party seeking relief under the Constitution of the Federal Republic of Nigeria 1999 (as amended) must ensure that the principal relief is directly on the infringement of his rights as captured in chapter IV of the Constitution. That the Plaintiff's main claim is not a right within the contemplation of chapter IV of the Constitution.

It is clear that the Defendant has misconceived the laws upon which the Plaintiff substantiates his claim. In as much as the case laws of member states could be persuasive, this Court is not bound by them. Where allegations of rights brought before it are in line with the international instruments which that member state has ratified, the Court will determine the matter on the merit notwithstanding the absence of specificity in citing the laws of that member state. By virtue of such ratification, member states are bound to protect and promote the human rights of its citizenry against any form of violation.

The Plaintiffs argument are hinged on violations of several Articles of the African Charter, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights. Assuming without conceding that the Defendants Constitution did not make provisions for the act complained of, the presence or absence of certain provisions in the said constitution does not oust this court's jurisdiction to entertain a matter particularly where the human right instruments ratified by that member state protect those rights.

In **PROFESSOR ETIM MOSES ESSIEN V. THE REPUBLIC OF GAMBIA ECW/CCJ/RUL/04/07**, the court held that the principal question to be posed is whether the facts of the case constitute a violation of human rights of the plaintiff and whether the rights being claimed by the Plaintiff are fundamental human rights guaranteed by the ACHPR and the UDHR.

From the documents annexed to the Plaintiffs application, it is clear that the court granted the firm of the plaintiff leave to cease its representation on behalf of the accused which was categorically stated on the 01/08/07 where the court further held that the accused shall remain in custody pending the fulfilment of her bail condition. This alone without more evidence is capable of persuading the court to believe that the accused was in custody as at the time Plaintiff withdrew his representation. The Defendant on the other hand has not led any evidence to show that after the said date, the Plaintiff stood as surety for the accused hence a justification for the seizure.

From the facts before the court, it can be inferred that there has been an interference with the Applicants rights as guaranteed under Articles 7 (1) & (2) of the African Charter, Articles 9 & 10 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The alleged interference has not been proved to pursue a legitimate aim. Even if it does, the circumstances and manner in which it was carried out, as well as its continuous nature makes it a violation.

In **OLSSON V. SWEDEN (No. 1): ECHR, 24<sup>th</sup> March (1988)**, the court elaborated on necessity where it held that: “the notion of necessity implies that an interference corresponds to a pressing social need and in particular, that it is proportionate with the legitimate aim pursued.

The Principle of proportionality recognizes that human rights are not absolute and that the exercise of individual rights must always be checked by broader public interest. This must be done with a consideration of striking a fair balance between the individual rights and the public interest.

**In SOERING V. THE UNITED KINGDOM, (Series A, No.161; Application No 14038/88) ECHR 7<sup>th</sup> July (1989)**, the court held that: inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirement for the protection of individual fundamental rights.

The Plaintiffs in his application stated the grounds upon which his documents were seized. The Defendant instead of putting up a proper defense to the Plaintiffs claims alleges that the Plaintiff is out of time and that the claims do not fall under human right violations.

The Defendant has neither proved that the act complained of was done in accordance with the law, nor that it pursues a legitimate aim necessary in a democratic society or that it is proportionate to the pursuit of a certain aim. The Defendant has evaded justifying the act. The more far reaching and severe an interference, the stronger the

reasons required to justify it. Where a Plaintiff has proved its case, the Court will rely on the evidence put before it. The weakness of the defense will therefore be detrimental to the defendants. It is trite that where a party fails to put up a defense in a suit, it becomes fatal to its case. See **FEMI FALANA & 1 OR V. REPUBLIC OF BENIN & 2 ORS ECW/CCJ/JUDL02/12 UNREPORTED**

Furthermore, the reasons adduced for seizure must be relevant and sufficient. It is not enough to state that the Plaintiff is out of time. The Defendant must prove that the reasons for the seizure have been justified by statute or that it was done in the interest of the public. General traverse without more is somewhat insufficient for the Court to tilt its reasoning to the side of the defence.

While denials are necessary, they must be specific and not evasive. Matters that have a bearing on the principal question for determination certainly need specific traverse.

The Defendant's defense appears to be evasive as it failed to answer the points of substance. The court is not unmindful of the first paragraph of the defense i.e. the general traverse. However, in respect of essential and material allegations, such a general denial ought not to be adopted. Essential allegations should be specifically traversed. See **WALLERSTEINER V. MOIR (1974) 1. WLR 991 at 1002, per Lord Denning M.R.**

In the determination of a case before a court, and in particular before this Court, the presentation of a case by the Plaintiff and reply by the Defendant is material

particularly to describe whether the parties have made out their claim or defense as the case maybe.

As a general rule, the burden of proof lies on the Plaintiff. If that burden is met, the burden then shifts to the Defendant, who now has to plead and prove any defense, by a preponderance of evidence.

In **SIKIRU ALADE V. FEDERAL REPUBLIC OF NIGERIA, (2012)**, CCJELR unreported @ para 50, the court held fast to the notion that every material allegation of the claim must be justified by credible evidence and the defense should also sufficiently satisfy every defense and put forward what will rebut the claim or take the risk of not putting anything at all if the claim by their estimation is weak and unproven. See also **JOSEPH CONSTANTINE STEAMSHIP LINE LIMITED V IMPERIAL SMELTING CORPORATION (1942)**.

It is however important to bear in mind that this Court as an international court does not operate on the basis of a developed theory or detailed stipulations of procedural law. Its approach to fact finding is also governed to a great extent by each specific situation.

In **NACHOVA AND OTHERS V. BULGARIA, [GC], 06.07.2005**, unpublished, para. 147, the Court spelt out the current state of the law on proof under the Convention in a rather flexible and contextual approach:

*“It notes in this connection that in assessing evidence, the Court has adopted the standard of proof “beyond reasonable doubt” However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States’ responsibility under the Convention. The specificity of its task under Article 19 of the Convention to ensure the observance by the Contracting States of their engagement, to secure the fundamental rights enshrined in the Convention, conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties’ submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.”*

*This Court adopts this approach as appropriate.*

In the absence of any convincing evidence from the defense, this court is of the view that the alleged seizure of the Plaintiffs certificates for eight (8) years is unjustifiable, unwarranted, unnecessary, and disproportionate and has not been proved to pursue



a legitimate aim. The Court holds that there has been a violation of the Plaintiff's rights to be heard, right to privacy and right to property.

### **AS TO EXHAUSTION OF LOCAL REMEDIES AND PROPER PARTIES**

The Defendant contends that the Plaintiff has not explored any means of amicable settlement with the Defendant before instituting this matter. Also, that by the entire facts of the case, the Defendant is not liable to the Plaintiff for any wrong doing as the Defendant is merely joint as a party in this suit to confer jurisdiction on the Court.

There is no hard and fast rule concerning the exhaustion of local remedies.

This court has stated in its numerous jurisprudence that individuals are at liberty to choose wherever they elect to file their causes or matters pertaining to violations of their human rights once the matters imbibed the international law or community texts therein. See **SIKIRU ALADE V. FEDERAL REPUBLIC OF NIGERIA, (2012)**, CCJELR unreported supra @ para 32.

In **HADIJATOU KARAOU (2004) CCJELR p228** where the issue was as to whether or not the non-inclusion of the precondition for exhaustion of local remedies was a lacuna which the court has to fill. The court made an exhaustive analysis of Article 4(g) of the Revised Treaty vis à vis Article 56 of the African charter and concluded that the modalities for the protection and promotion of human rights must not be those provided for by the charter in that, a distinction must be made between the setting out of the fundamental principles of the charter and the modalities for implementing such rights. The court then held that the absence of the requirement

for preliminary exhaustion of local remedies in article 10(d) is not 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 provided for by the texts without infringing on the rights of such individuals.

The provisions of Article 10 (d) puts it quite succinctly clear that the access to this court is not subject to exhaustion of local remedies as envisaged by the Customary international law.

The Court has in its flourishing jurisprudence held that only Member States of the Community can be brought before this Court. It therefore implies that the act of State agents are attributable to the States.

**In SERAP Vs President of the Federal Republic of Nigeria and 8ors (2010) CCJELR**, the Court held that only member states and institutions of the community can be sued before it for human rights violations.

### **STATE RESPONSIBILITY.**

It has been held in a plethora of cases that a state is responsible for the exuberant actions or inactions of its agents.

The Inter-American Court of Human Rights in **Velasquez Rodriguez V. Honduras, Series C, No. 4, para. 170 (1988)** said:

*"Under International Law a State is responsible for the acts of its agents undertaken in their official capacity and for their omission, even when those agents act outside the sphere of their authority or violate internal law".*

In **Tidjani Konte V. Republic of Ghana**, this court observed that:

***"The State remains the sole obligator to respect, protect and fulfill human rights under the Treaty and placed reliance on Article 6 of the Report of the 53<sup>rd</sup> Session of International Law Commission which provides "the conduct of an organ of State shall be considered as an act of that State under International Law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of international or subordinate position in the organization of the State".***

The law is also well settled that where there is a wrong, there must be a remedy. To this end and in this context as it relates to the facts of the case and the submissions of both parties, the state is at all material times responsible for the actions and inactions of its agents.

In view of the above, the contention of the Defence that they have been joined to confer jurisdiction on this court is not tenable. The Defendant for all intents and

purposes remains the proper party to be sued for alleged human right violations by its agents. The claim on the non- exhaustion of local remedies also fails.

Decision:

The Court adjudicating in a public hearing after hearing the Parties in the last resort and after deliberating in accordance with law.

**AS TO THE PRELIMINARY OBJECTION:**

DECLARES that the action of the Plaintiff is admissible and hereby dismiss the Preliminary Objection.

**AS TO Merits:**

**DECLARES;**

- i. That the Defendant's action of seizing the Plaintiffs call to Bar Certificate through its agents, the Economic and Financial Crime Commission (EFCC) is a violation of the right to property of the Plaintiff as guaranteed by Articles 14 of the African Charter on Human and Peoples' Right and 17 (1) (2) of the Universal Declaration of Human Rights.
- ii. That the seizure of the Plaintiff's call to Bar Certificate by the agents of the Defendant without regard to due process of law is a violation of the Plaintiff's right to fair hearing as guaranteed under Article 7 of the African Charter on Human and Peoples' Right as well as his right to privacy guaranteed under Article 12 of the Universal Declaration of Human Rights.

iii. ORDERS, the Defendant,

a). to release or cause to be released forthwith the said call to Bar Certificate belonging to the Plaintiff unlawfully seized by the Agents of the Defendants since June 18, 2009.

b). to pay the sum of N30 million as damages for the unlawful seizure of the call to Bar Certificate of the Plaintiff by the agents of the Defendant.

**AS TO COSTS**

Cost is awarded against the Defendant. Such costs to be assessed by the Registry of the Court.

Thus made, adjudged and pronounced in a public hearing this 13<sup>th</sup> day of February 2018.

**THE FOLLOWING JUDGES HAVE SIGNED THE JUDGMENT.**

Hon. Justice Friday Chijioke Nwoke                      Presiding Judge

Hon. Justice Yaya Boiro                                      Member

Hon. Justice Alioune Sall                                    Member

Assisted by:

Mr. Athanse Atannon                                      Deputy Chief Registrar