



COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST

AFRICAN STATES (ECOWAS)

Holden at Abuja, in Nigeria

On 17 May 2018

GENERAL LIST: CASE N° ECW/CCJ/APP/05/17

JUDGMENT NO. ECW/CCJ/JUD/12/18

In the case,

Between

Mr. AGBETOGNON Koffi: former Technical Staff at Togo Télécom, domiciled and living in Lomé, who is represented by the “*Collectif des Associations contre l’Impunité au Togo (CACIT)*” (Group of Human Rights Associations fighting against impunity in Togo);

Who is assisted by:

Ferdinand Ekouevi AMAZOHOUN (**Esq.**), Lawyer registered with the Bar in Togo, whose address is 05, Rue Oulita, sur l’Avenue des Hydrocarbures, a cote de la station Shell SOTED, 14 BP: 64 Lomé 14, Tel: (+228) 22 43 38 38, E –mail: ferdinandzohoun@gmail.com;

Claude Kokou AMEGAN (**Esq.**), Lawyer registered with the Bar in Lomé, whose address is 1142 Rue LITIME, Bretelle Rue de l’ocam, face au Ministère de la Justice, Von Station TOTAL, Tel: (+228)22210400, Cell phone: (+228)91913565, Lomé – Togo; E – mail: claud.amegan@yahoo.fr;

APPLICANT

And

AGAINST:

THE REPUBLIC OF TOGO, whose address is in Lomé, Palais de la Présidence, Bd du Mono, 2, Avenue du Général de GAULLE, on whose behalf its Legal Representative, Minister of Justice, and Liaising Minister with State Institutions, who lives in his office in Lomé, Rue de l’Entente is acting;

Before their Lordships

Hon. Judge Jérôme TRAORE/ Judge Rapporteur:	President
Hon. Judge Yaya BOIRO:	Member
Hon. Juge Alioune SALL:	Member
Assisted by Athanase ATTANON (Esq.):	Registrar

The Court thus constituted delivers the following Judgment:

I- PROCEDURE

1. On 11 January 2017, Mr. AGBETOGNON Koffi, who was assisted by the **Collectif des Associations contre l'Impunité au Togo**, (a group of Human Rights Associations fighting against impunity in Togo) filed a case on human rights violation before the Hon. President of the Court, through his Counsels;
2. Through a separate Application dated the same day, he requested that his main Application be admitted to an expedited procedure;
3. Notification of the two Applications was done on the Republic of Togo, by the registry;
4. On 15 February 2017, Barrister SANVEE Ohini, counsel for the Republic of Togo, filed an Application for elongation of legal time – limit, to file a response;
5. On 16 February 2017, the Hon. President of the Court, following Order N°ECW/CCJ/ORD/13/17, acceded to the Application for time elongation, and granted the Republic of Togo one (01 month during which it will file its defence.
6. On the same day, following Order N°ECW/CCJ/ORD/04/17, he rejected the Application filed by Plaintiff/Applicant seeking to submit the case to an expedited procedure;

7. On 20 March 2017, the Republic of Togo filed at the Registry of the Court an exceptional Memorial and a Memorial in defence;
8. The case came up for hearing on 31 January 2018, then was postponed to 5 February 2018, to inform the parties;
9. At the hearing of 5 February 2018, all the parties appeared in court. Following the arguments presented by parties, the case went for deliberations, for judgment to be entered on 17 May 2018.

II. FACTS-CLAIMS AND PLEAS – IN – LAW BY PARTIES

10. By Application filed at the Registry of the Community Court of Justice, ECOWAS on 11 January 2017, Mr. AGBETOGNON Koffi, who was represented by the **Collectif des Associations contre l'Impunité au Togo (CACIT)**, came before the Court, and sought from the Court:

To declare and adjudge that:

- The State of Togo, through the actions of its security officers, who arrested him, beaten and handcuffed Applicant with a view to extracting fact from him on his involvement in the theft of telecommunications gadgets, has violated the provisions of Article 21(1) and (2) of the Togolese Constitution, Articles 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR), Article 5 of the Universal Declaration of Human

Rights (UDHR), Articles 7 of the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against torture and other treatments or cruel, inhuman and degrading punishments;

- the actions of the Togolese Security Officers, who detained arbitrarily the Applicant/Plaintiff, within the premises of the CTR, and for 15 months at the “**Prison Civile**” of Lomé, on no legal ground, have violated, in a flagrant and manifest manner, the relevant provisions of Article 52 of the Code of criminal procedure of Togo, Articles 15 and 19 of the Togolese Constitution, Articles 3, 6, 7 (1.d) of the African Charter on Human and Peoples’ Rights, 9/1, 10/1 and 14/3c of the ICCPR, 4 of the Declaration of the Basic Principles of Justice for Victims of Criminality and Victims of abuse of Powers, and 10 of the UDHR;
- the right to work of Plaintiff/Applicant was disregarded, in violation of the relevant provisions of Article 11 of the Togolese Constitution, 6 (1) of the International Covenant on Economic, Social and Cultural Rights and 23 (1) of the UDHR;

Consequent upon the foregoing:

The Court

- Shall order the Republic of Togo to carry out a thorough investigation, to arrest the perpetrators of the incriminated actions, pursuant to the provisions of the UN Convention against torture and other treatments or cruel, inhuman and

degrading punishments of 10 December 1984, while taking into account the gravity of such actions within the purview of Article 4 of the same convention;

- Shall order the Republic of Togo to effect reparation for the prejudice suffered by him, while taking into account the relevant provisions of the UN Convention against torture, especially in its Article 14, as well as the Basic Principles and directives concerning the right to effective remedy and reparation for the victims of flagrant violation of international human right and serious violation of international humanitarian law, as adopted by the UN General Assembly on 16 December 2005, in its resolution 60/147 namely in forms of restitution, compensation, readaptation, satisfaction and guarantees for non-occurrence;
- Shall order the Republic of Togo to pay to Plaintiff/Applicant, the sum of one hundred millions (100.000.000) CFA Francs, as damages, pursuant to the provisions of Article 14 of the UN Convention against torture and other treatments or cruel, inhuman and degrading punishments of 10 December 1984, of Article 9/5 of the ICCPR and of Principle 35 of the Body of Principles for the protection of all persons subjected to any form of detention or imprisonment of 19 December 1988;

11. on 16 December 2005, he got a telephone call from an unknown individual, who requested that he should report at the “**Centre de Traitement des**

Renseignements (CTR)” (The Togo Detectives Office), for a case concerning him;

12. Once he got there, he was received by Lt. PALI, and two of his colleagues, who confiscated his purse and cellular telephone immediately, and labelled him a thief, a newly arrived rich man in town, and above all, an enemy of the State;
13. Conduit dans un bureau au sous-sol de l'immeuble abritant le CTR, il a été soumis à des interrogatoires musclés suivis de menaces verbales et d'intimidations ;
14. As he was led into an underground office, within the premises of the CTR, he was subjected to brutal and violent interrogation, followed with intimidation threats;
15. During the interrogations that he underwent, he was accused of involving himself in the theft of working materials;
16. During his detention, his immediate family did not know his whereabouts, as was detained in unbearable conditions;
17. He further claimed that he was subjected to inhuman and degrading treatments;
18. While continuing his statements, he averred that he was indicted on 17 January 2006, on the charges of abuse of trust, a committal order was issued against him the same day, and he was detained at the **prison civile** in Lomé for fourteen (14) months and nine (09) days in inhuman and degrading conditions.

19. After serving a twenty – four (24) month – imprisonment, with 10 months as suspended sentence, he was sacked, for serious misdemeanor, by his employer, the company known as Togo-Telecom.
20. He further claimed that he is now suffering from high blood pressure, eye pains and anal fistula, sequel to the actions of the Togolese security agents, and tendered a medical report dated 2 September 2016, which was issued by Pr. DOSSEH Ekoué David, a Surgeon at the C.H.U Sylvanus Olympio in Lomé, as exhibit, to back – up his claim;
21. He finally claimed that he was victim of torture, arbitrary detention, and that his right to work was violated, and invoked, among other things, the Constitution of Togo, the African Charter on Human and Peoples’ Rights, the Universal Declaration of Human Rights, the UN Convention against torture, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.
22. In its Exceptional Memorial in defence, the Republic of Togo pleaded with the Court to set aside the case filed by Plaintiff/Applicant for lack of quality to act by the **Collectif des Associations contre l’Impunité au Togo (CACIT)** which represented Mr. AGBETOGNON Koffi;
23. Indeed, the Defendant State held that the **Collectif des Associations contre l’Impunité au Togo** failed to produce any mandate given to it,

which justifies its quality of representative of Mr. AGBETOGNON Koffi;

24. In its Memorial in defence, as to the merit of the case, the Defendant State sought from the Court:

- An order to recognise that the Republic of Togo has begun an investigation on the acts of torture that Plaintiff/Applicant complained about, and this, pursuant to Article 12 of the UN Convention against torture;
- A declaration that the Medical Certificate issued eleven (11) years after the facts of the case took place, and which does only relate the statements of the Plaintiff/Applicant cannot be accepted by the Court, as proof for the alleged facts;
- A declaration that it was sequel to serious theft, and being an accomplice to a serious theft, which constitute serious misconduct that the Plaintiff/Applicant was sacked by his employer;

Consequently:

The Court

- Should reject all claims made by Plaintiff/Applicant on the violation of his fundamental human rights, and the order on the Defendant State to pay the sum of one hundred millions (100.000.000) CFA Francs, as compensation to him;

25. The Defendant State averred that during the year 2005, the company known as Togo-Telecom noticed the disappearance of its equipment and Networking

tools in some of its warehouses in Lomé. Following this observations, it lodged a complaint with the security agents, which led to an invitation sent to many staff of the said company, including the Plaintiff/Applicant.

26. A judge was saddled with the responsibility of the procedure, who, at the end of his investigations, referred the indicted persons to the criminal chamber.

27. Following judgment dated 28 March 2007, the Plaintiff/Applicant and the other indicted persons were found guilty of a crime of stealing, complicity in stealing, and were sentenced to twenty – four (24) months imprisonment, with ten months as suspended sentence, as well as an award of cost against them, to the tune of 1.187.121.147 FCFA;

28. Following an appeal filed by the Plaintiff/Applicant, and the other indicted persons, the Court of Appeal in Lomé partially infirmed the attacked judgment, in the civil action, and costs was severally awarded against the sentenced persons, to the tune of 89.649.147 CFA Francs, as reparation for the prejudice suffered by the company;

29. No further appeal was filed against the Appeal Court Judgment at a higher Court.

30. Sequel to the court sentence that was given to them, the company Togo-Telecom took a Management decision to sack the Plaintiff/Applicant;

31. The Republic of Togo claimed that these facts do not constitute acts of torture, arbitrary detention and the violation of the fundamental rights of Plaintiff/Applicant;
32. Defendant further claimed that regarding acts of torture, it was after the December 08, 2016 case was filed that these alleged acts were brought to its attention; it immediately ordered an investigation into the matter, pursuant to Article 12 of the UN Convention against torture; and that the investigation revealed that the allegations of torture are unfounded, because the security agent fingered denied them all;
33. Furthermore, Defendant averred that Plaintiff/Applicant did not bring any proof for the allegations that he made regarding torture; also, the medical certificate tendered dated 2016, that is eleven (11) years after the alleged facts; that the said document cannot serve as proof for the alleged acts of torture ;
34. Regarding the allegation of arbitrary detention, the investigation revealed that Plaintiff/Applicant was detained on the basis of a committal order issued against him, by the investigating judge, who took charge of the case; that it was a false claim for him to declare that he was detained illegally;
35. Finally, Defendant claimed that Plaintiff/Applicant's right to work was not violated as his sack was sequel to a jail sentenced that was confirmed by the Court of Appeal in Lomé

I- GROUND FOR THE JUDGMENT

As to form

1. On the order to set aside the case, due to lack of quality of the Collectif des Associations contre l'Impunité au Togo raised by Defendant

36. Whereas Article 12 of Protocol (A/P1/7/91) of 6 July 1991 on the Community Court of Justice, ECOWAS provides that: « Each party to a dispute shall be represented before the Court by one or more agents nominated by the party concerned for this purpose. The agents may, where necessary, request the assistance of one or more Advocates or Counsels who are recognised by the laws and regulations of the Member States as being empowered to appear in Court in their area of jurisdiction.

37. Whereas in the instant case, Mr. AGBETOGNON Koffi is represented by the ***Collectif des Associations contre l'Impunité au Togo***; thus he did not represent himself in Court;

38. However, whereas there was no trace of mandate given to the said Collectif by Mr. AGBETOGNON Koffi, to represent him in Court;

39. Indeed, whereas since representation before Court must be through a legal document, that is mandate, through which the Plaintiff/Applicant gives full power to an

Association, to act as an agent, for him and on his behalf;

40. Whereas in the absence of such mandate, the **Collectif des Associations contre l'Impunité au Togo** which claims to represent Mr. AGBETOGNON in the instant procedure, cannot validly intervene in the case in such quality;

Consequently, there is need to declare the Application as inadmissible;

2. As to costs

Whereas Article Art. 66.4 of the Rules of the Community Court of Justice, ECOWAS provides that: «*Where each party succeeds on some and fails on other heads, or where the Circumstances are exceptional; the Court may order that the costs be shared or that the parties bear their own costs* »;

41. There is thus need to ask each party to bear its own costs;

FOR THESE REASONS;

The Court,

Sitting in a public hearing in a human right violation case, and after hearing both parties, in first and last resort;

- Notes that the **Collectif des Associations contre l'Impunité au Togo**, which represented

Mr. AGBETOGNON Koffi, does not have any mandate to represent him;

- Consequently declares as inadmissible the Application filed by the **Collectif des Associations contre l'Impunité au Togo**, for, and on behalf of Mr. AGBETOGNON Koffi on the violation of his rights, for lack of quality to act;
- Declares that each party shall bear its own costs;

Thus made, adjudged and pronounced publicly by the Community Court of Justice, ECOWAS in the Federal Republic of Nigeria on the day, month and year as stated above.

And the following have appended their signatures:

Hon. Judge Jérôme TRAORE/ Judge Rapporteur: President

Hon. Judge Yaya BOIRO: Member

Hon. Juge Alioune SALL: Member

Assisted by Athanase ATTANON (Esq.): Registrar