

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,
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IN THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES
HOLDEN AT ABUJA, NIGERIA

SUIT NO: ECW/CCJ/APP/08/15

JUDGMENT NO: ECW/CCJ/JUD/23/18

BETWEEN

FINANCE INVESTMENT & DEVELOPMENT -----APPLICANT
CORPORATION (FIDC)

AND

REPUBLIC OF LIBERIA -----

RESPONDENT

BEFORE THEIR LORDSHIPS:

1. Hon. Justice Friday Chijioko Nwoke ----- Presiding
2. Hon. Justice Yaya Boiro ----- Member
3. Hon. Justice Alioune Sall ----- Member

Assisted by Djibor Aboubacar Diakité ----- Registrar

2 REPRESENTATION OF THE PARTIES

1. THE APPLICANT:

- 1 C//r. Frederick D. Cheme
- 2 C//r J. Daku Mulbah
- 3 Atty. Lafayette B. Gould Snr
- 4 C//r. Betty Lamin – Blamo

Ministry of Justice Republic of Liberia

2 RESPONDENTS:

Celetus O. Ejezie

Okwy Ejezie & Co

24 Campbell Street, 6th Floor

Lagos, Nigeria

SUMMARY OF FACTS

The Applicant is a Company registered under the laws of the Republic of Liberia and has its address as C/o Mr. Cocoa of Dennis of the City of Monrovia, Liberia.

The Respondent, the Republic of Liberia is a Member State of the Economic Community of West African States (**ECOWAS**) and signatory to the African Charter on Human and Peoples' Rights.

The Applicants have filed this suit for a violation of their rights to fair hearing and their rights to property by the Respondent.

That on the 20th of April, 2005, the Civil Law Court, Sixth Judicial Circuit, Montserrado County in Liberia delivered a judgment in its favor against the Respondent acting through the Liberian Mining Company(LIMINCO) wherein the sum of **\$15,900,000.00** was awarded to the Applicant in respect of some 800,000.00 metric tons of iron ore which was the subject of a sale agreement entered into on the 4th February, 2003, between the Applicant and the Respondent through the Liberian Mining Company(LIMINCO).

That sequel to the aforesaid judgment, a writ of execution dated 6th April 2006, was issued by the Circuit Court for the seizure and sale of the judgment debtor's property

until the judgment debt of **15,900,000.00 USD** is raised. That the Respondent in defiance of the Court Order sold 780,000 metric tons out of 800,000 metric tons from the stock of iron ore.

That in furtherance of the execution of its judgment, the Court entered into an agreement with Messrs Investment and Finance Corporation and sold the remaining 20,000 tons of iron ore at **USD200, 000.00**. The Court entered into another agreement with the same Messrs Investment and Finance Corporation and sold an estimated stock of 20,000 tons of iron ore which were scattered around the initial 20,000 tons for the sum of **USD 300,000.00**. That the Respondent frustrated this sale by imposing stringent tax clearance requirements and delay tactics making it impossible to export the cargo.

The Applicant further aver that the Court became aware of the Respondents intention to sell the remaining 20,000.00 tons which the Court had already sold to Messrs Investment and Finance Corporation. Consequent upon this, the Court issued an injunction restraining the Respondent from doing so. That the Respondent, in total disregard of the injunctive order went ahead, sold and delivered approximately 17,000 tons of iron ore which was earlier on sold by the Court to Messrs Investment and Finance Corporation.

That by a letter dated **12th November, 2009**, the Respondent through its Attorney General and Minister of Justice admitted the entitlement of the Applicants to the Judgment sum of **USD15,900,000.00** and made proposal to liquidate same but has up till the time of filing this application refused to pay to the Applicant the Judgment debt.

The Applicant states that the judgment sum of **USD 15,900,000.00** is their property and the Respondent's failure to pay the judgment sum is a violation of their right to property as enshrined under the ACHPR.

On the 30th of November 2015, the Respondent filed a preliminary objection to the Applicant's initiating application. The Respondent narrated the facts of the contract

between the Applicant and Respondent which culminated into the purported judgment of the 16th of April 2005, by the Circuit Court wherein a default judgment was entered in the sum of **US\$15,900,000.00** in favor of the Applicants.

The Respondent states that the whole process upon which the Circuit Court delivered its judgment was characterized by fraud and done without regard to due process. That the said Applicant had vide an agreement with the Respondent relinquished their rights, interest and title in the sale agreement of 4th February 2003 for the 800,000.00 metric tons of iron ore to LIMINCO the Respondent in this matter, wherein it was agreed that the Applicants would be paid the sum of USD 450,000.00.

That the agreement between both parties stipulates arbitration as the dispute resolution mechanism of which both parties are obligated to submit to.

That they were not served with any originating process as it relates to the matter and were not given hearing notice for the date in which judgment was to be delivered and there was no lawyer appointed to take the judgment on behalf of LIMINCO which the Respondent states amounts to a violation of their right to be heard and their right to appeal and constitutes an abuse of due process. The Respondent states that the matter was irregularly tried.

The Respondent states that a representative of the Applicant at the Supreme Court in Liberia admitted that the Applicant had completely sold its interest in FIDC to LIMINCO.

That the Supreme Court in Liberia on the 17th of February, 2017, delivered its judgment setting aside the decision of the Circuit Court.

The Respondents thus raise their preliminary objection on the following grounds:

- That the Applicant lacks the legal capacity to institute the suit having no evidence of incorporation;
- That the Applicant's action is statute barred pursuant to Article 9 (3) of the Supplementary Protocol of this Court;
- That based on the Admission of the Applicant before the Supreme Court of Liberia, the principle of estoppel lies against the Applicant from enforcing their fraudulent Judgment;
- That the action is now devoid of purpose based on the admission before the Court by virtue of Article 88(2) of the Rules of this Court;
- That the initial judgment be rendered void for want of due process, the Respondents not afforded the opportunity to appeal the judgment;
- That the application be declared inadmissible as it is not indicative of a characteristic of violation of human rights;

- Be declared inadmissible as arbitration is the dispute resolution mechanism agreed by parties.

In their response to the preliminary objection, the Applicant urged the Court to dismiss the preliminary objection and determine the matter on its merit.

On 18th of April, 2016, Respondent filed its defense and an application to stay proceedings.

In its defense, the Respondent argued that the Applicant's application fails to state the actual subject matter as to what the case was against the Respondent. That from the records of the civil law court, there is nothing suggesting that the Applicant filed an action for damages against the Respondent. That on May 20, 2015, it requested for the certified copies of the writ of summons, originating complaint and amended complaint in the action for damages and no such document existed in the records of the court.

That during the investigation into the matter, it observed that a separate action for specific performance was filed by the Applicant in the Civil Law Court against the Respondent and not an action for damages and the orders sought in the application was to compel the Respondent to "live freely with and by the terms and conditions of Exhibit 1 or grant the Applicant **US\$4, 000,000** as alternative". That special and general damages was never pleaded by the Applicant and also there was no evidence of a writ of summons and petition for specific performance served on the Respondent by the Applicant.

Respondent further stated that it has filed an extra ordinary writ of prohibition before the Supreme Court of Liberia. That the effect of the said writ and assumption of jurisdiction by the Supreme Court places a stay and prohibits the Court which issued the judgment from acting on same. That consequent upon this, there is a bar proceeding with this case which seeks to enforce the decision of the national court.

On the 2nd of March, 2017, the Respondents entered a new plea pursuant to Article 37 (2) (3) of the Rules of this Court.

There appears from the pleadings and Preliminary objection that one sole issue calls for determination namely:

WHETHER FROM THE TOTALITY OF FACTS PUT FORWARD, THIS COURT HAS THE JURISDICTION TO ENTERTAIN THIS SUIT AS CONSTITUTED AND CONCEIVED.

The Crux of the Applicant's case is premised on the Respondents failure to comply with the Judgment delivered on the 20th of April, 2005 by the Civil Law Court, Sixth Judicial Circuit, Montserrado County in Liberia awarding the sum of **\$15,900,000.00** in favor of the Applicants.

The Respondent on the other hand though not disputing the existence of the judgment, contend that the said judgment was characterized by fraud and failed to comply with due process.

To this end, the Respondent vide a notice of preliminary objection challenged the jurisdiction of the Court to entertain this suit, the capacity of the Applicant's to institute this suit, having failed to adduce evidence of registration. Also the Respondent states that the action is statute barred same having been commenced more than three years after the cause of action arose, and that the principle of estoppel lies against the Applicant from enforcing the fraudulent Judgment. The Respondent further states that the application is now devoid of purpose, the judgment having been appealed against and prayed the Court to declare the Applicant's application inadmissible as it is not indicative of a characteristic of violation of human rights and also on the grounds of the existence of an arbitration clause in the agreement between both parties which is binding on them.

The Court is inclined to look into the issue of jurisdiction in two folds. On the first leg, the Court will consider its human rights mandate as it relates to the rights to fair hearing and right to property as alleged by the Applicant.

On the second leg, the Court will consider whether it has the requisite jurisdiction to sit on appeal over decisions of national courts, and or compel a member state to enforce a judgment of its national court.

Article 9(4) of the 2005 Supplementary Protocol provides

"The court has jurisdiction to determine cases of violation of human rights that occur in any member state"

In **Hissien Habre V Senegal (2010 CCJELR) pg.65**, this court held: *"that to decide whether or not it has jurisdiction to hear a case, it has to examine if the issue submitted deals with the rights enshrined for the benefit of the human person and arising from the international or community obligation of the state as human rights*

to be observed, promoted, protected and enjoyed and whether the alleged violations was committed by a member state of the community."

The Applicant states that its right to property and right to fair hearing has been violated and relied on Articles 7 and 14 of the African Charter. The Respondent on the other hand contends that the Applicant's application does not indicate any characteristic violation of human rights.

Article 7 and 14 of the African Charter on Human and People's Rights guarantees the right to be heard and the right to property respectively.

Article 7 of the African Charter provides that "Every individual shall have the right to have his cause heard...."

The Court has indicated a reluctance to entertain an action of rights abuse which will require its consideration of matters not within its competence and has also refused to assume jurisdiction where the Applicant has not defined the exact violation alleged or specified the particular right allegedly violated. **See Mousa Leo Keita (2004 CCJELR)**

In AMOUZOU HENRI & ORS V. REPUBLIC OF COTE D'IVOIRE (2009) CCJELR pg297 para 57-58, the Court stressed that the right to fair hearing is guaranteed by Articles 10 of the UDHR, Article 7 of the ACHPR, and Article 14 of the ICCPR. That the UDHR and the ACHPR are legal instruments that all ECOWAS Member States, including the Defendants are signatories. At the community level, their eminent importance has been underlined, notably by the affirmation from member states which vowed to expressly respect them

The Applicant states that it filed a suit against the Respondent at their national court and the court heard the matter and delivered its judgment on the 20th of April 2005, in its favor and awarded damages against the Respondent. That the Respondent failed to pay to the Applicant the judgment debt of **\$15,900,000.00** which constitutes the property before this court in the instant application. The Respondent has however not denied the existence of the said judgment.

In the instant case, it is clear that the Applicant was heard by a competent national Court. It is therefore difficult to reconcile the Applicant's claim of not being heard whereas it is admitted in his application that the national court heard and delivered judgment in its favor.

It is also clear that the Applicant has misconceived the provisions of Article 7, ACHPR, 10 UDHR as it relates to fair hearing. This is owing to the fact that the

Applicant believes that “to have ones cause heard is to be given fair hearing and accorded the benefit of a favorable judgment. That a hearing cannot be adjudged fair if the winner of the case is denied his trophy”.

There is a clear distinction between a right to be heard and enforcement of the judgment of a Court. Where judgment has been delivered, it is presumed that both parties have been heard either on the merits or judgment is given in default. The right to fair hearing ends when the matter has been determined. An Applicant can only challenge this right when he can prove that this right was denied in the conduct of proceedings or at the appellate court which is not the position in the instant case.

There is nothing before this court suggesting that the Applicant was denied its right to be heard at the national court to persuade this court to look into it.

In **ASSIMA KOKOU INNOCENT & ORS V. REPUBLIC OF TOGO JUD. NO: EWC/CCJ/APP/08/11 (2013)**, Para 59, this Court stressed that before it concludes on the issue of occurrence of human rights violation, the concrete proof of the fact upon which the Applicant’s based their claims must be established with high degree of certainty, or at least there must be a high possibility of the claims appearing to be true upon scrutiny. In this regard, mere allegations do not suffice to elicit the conviction of the Court.

In view of the above, the Court holds that the Applicant has failed to establish concrete evidence in support of its allegation of violation of the right to fair hearing.

The Applicant further allege that its right to property has been violated.

The **Blacks’ Law Dictionary, 9th Edition** has defines property in its widest sense to include all a persons’ legal right of whatever description. A man’s property is all that is his in law. This usage, however, is obsolete at the present day, though it is common enough in the older books.... In a second and narrower sense, property includes not all a person’s rights but only his proprietary as opposed to his personal rights. The former constitutes his estate or property while the latter constitutes his status or personal condition. In this sense, a man’s land, chattels, shares, and the **debt** due to him are his property but not his life or liberty or reputation...”

Property has also 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 immovable, corporeal and incorporeal elements and any other intangible object capable of having value.

In the instant case, the Applicant states that the judgment sum awarded to it by the national court amounts to property and that the failure of the Respondent to pay the judgment debt tantamount to an infringement of his right to property in the sum of money being the judgment debt contrary to Article 14 of the ACHPR and Articles 11, 20 (a) and 21 (b) of the Respondent's Constitution.

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”.

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

Now the question to be considered by the Court is, when does the property right of the Applicant become absolute? Is it at the point of delivery of judgment by the lower court, or after the determination of an Appeal to the Higher Court?

The Respondent contends that the said decision of the Circuit Court awarding the judgment sum (property) which is the subject matter before this Court was fraudulent, not heard on the merits. More so, the Respondent further argued that it has appealed against the said decision of the Circuit Court and therefore the Applicant is estopped from claiming ownership of the said property pending the outcome of the Appeal.

A key feature of post-judgment proceedings is the requirement for a judgment debtor that has appealed a judgment to file an application for a stay of execution to stop the enforcement and execution of the judgment pending the appeal.

In the instant case, none of the parties have raised this issue and the Applicant is not challenging the fact that there is a pending appeal before the Supreme Court of Liberia. Where there is an application for a stay or there is an Appeal lying before a

Higher Court, it will be absurd for a party to enforce the same judgment as it will impose a fait accompli on the Appellate Court.

On the 18th of April 2016, the Respondents filed an application for stay of proceedings before this Court pending the outcome of the appeal they filed before the Supreme Court of Liberia. They also annexed a copy of the petition for the writ of prohibition in that regard.

On the 2nd day of March, 2017, the Respondents filed a motion to enter a new plea wherein they submitted that the Supreme Court of Liberia on the 17th of February, 2017, ruled and entered final judgment setting aside the judgment obtained by the Applicant in this case against the Respondents in the sum of \$15,900,000.00. Respondents further attached a copy of the said judgment marked as annexure M/1 in proof thereof.

The Respondent having explored its right of Appeal and obtained judgment setting aside the decision of the Circuit Court being the subject matter before this Court, now the question is, what is the basis upon which this Court is to render its decision?

In view of the above decision, it can be rightly said that the plank upon which the Applicant's claim is founded has been vacated in view of the decision of the Supreme Court which supersedes that of the Circuit Court. Consequently, the Court holds that deciding on this matter will amount to an exercise in futility as the Applicant's right in this regard is unfounded.

Now the Court will consider whether it has the requisite jurisdiction to sit on appeal over decisions of national courts, and or compel a member state to enforce a judgment of its national court.

This Court has severally drawn a distinction between its lack of jurisdiction to examine the decisions of national courts and its jurisdiction to hear cases of human rights abuses arising therefrom.

From the facts before the Court, it is clear that the purport of the Applicant's application is for this Court to direct the Respondent to pay to the Applicant the judgment sum of \$15,900,000.00 with interest at the rate of 21% per annum from the date the decision was given by the Circuit Court to the date of final liquidation.

This Court has consistently held that it cannot sit on appeal over decisions of national Courts of Member States.

In **MUSA LEO KEITA V. MALI (2004-2009)** pg. 65, the court declared that it had no jurisdiction to adjudicate on a judgment delivered by the court of a member state.

Similarly in **SIKIRU ALADE V. FEDERAL REP. OF NIGERIA (2012)** unreported, this Court reiterated its position in **MUSA LEO KEITA V. MALI (Supra)** that it does not compose itself as an appellate court over decisions of National courts.

As stated above, this Court lacks the jurisdiction to sit on appeal over decisions of National Courts. Furthermore, this Court not being an enforcing body for decisions of national courts of member states lacks the capacity to compel enforcement of decisions of national Courts.

In **MADAM ISABELLE MANAVI AMENGANVI V. REP. OF TOGO 2012 CCJELR** the Court held that it cannot go beyond its scope of competence to adjudicate on the reinstatement of the Applicants as that would amount to annulling the decision made by the Constitutional Court, an act which would be outside the purview of the Community Court of justice.

The Respondents also contend that the Applicants are statute barred from instituting this action as the cause of action arose more than three years from the date of instituting this action.

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 Court has drawn a clear distinction in its jurisprudence as it relates to limitation status on actions that have already occurred and those that are of a continuous nature.

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.

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.

From the facts before the court, it can be presumed that the act of the Respondent in withholding the judgment sum would have amounted to a continued violation in so far as the decision of the national court was final. However, this is not the case in the present application as the decision of the Circuit Court has been set aside by the Supreme Court of Liberia. Consequent upon this, the issue of limitation statute raised by the Respondent does not arise in the circumstance as the res is inexistent.

The Respondent further contends that the Applicant lacks the capacity to institute the suit having no evidence of incorporation

The term legal personality is defined in the **Black's Law Dictionary 9th Edition** as "*the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacity*".

Legal personality can be conferred either by statute or acquired by registration and it is a prerequisite for non-natural persons to institute action either for themselves or on behalf of others.

With respect to the capacity of the Applicant, it is trite that for a non-natural person to commence any action before this court, such a person must be known to law. This implies that the Applicant must be duly registered under its national laws.

In response to the Respondent's contention as to the capacity of the Applicant to institute this action, the Applicant annexed a certificate of incorporation (DOCUMENT 13) from the Liberia Business Registry with enterprise code: 051041984 in proof of its registration. The Respondent has however not led any evidence challenging the authenticity of the said company registration.

In **CNDD V. REPUBLIC OF COTE D'IVOIRE CCJELR 2004-2009** pg 317 para 19, the Court in the absence of any contrary evidence considered the existence of the Applicant as an association created in accordance with the law of Cote D'Ivoire and having legal status. See also **SERAP V. The President FRN and 8 ors 2010 CCJELR** pg 246.

In view of the above, the court holds that in the absence of any contrary evidence, the Applicant is a legal entity duly registered under the laws of the Republic of Liberia and thus has a legal capacity to institute this action. The objection regarding the Applicant's legal status therefore fails. However, this action must be considered inadmissible in view of the fact that its substance is devoid of the foundation of human rights violation.

DECISION:

The Court adjudicating in a public sitting after hearing the parties in the last resort after deliberating according to law.

DECLARES, the case inadmissible, the judgment upon which the claim is based having been finally determined by the highest Court of the Defendant.

AS TO COSTS,

Parties should bear their own costs.

Thus made adjudged and pronounced in a public hearing this 4th Day of July 2018.

The following Judges have signed the judgment.

- 1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
- 2. Hon. Justice Yaya Boiro ----- Member
- 3. Hon. Justice Alioune Sall ----- Member

Assisted by Djibor Aboubacar Diakité ----- Registrar