

COMMUNITY COURT OF JUSTICE,  
ECOWAS  
COUR DE JUSTICE DE LA COMMUNITE,  
CEDEAO  
TRIBUNAL DE JUSTICA DA COMUNIDADE,  
CEDEAO



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

ON THE 11<sup>TH</sup>, DAY OF DECEMBER 2018

Suit No: EWC/CCJ/APP/25/16  
Judgement No: EWC/CCJ/JUD/29/18

BETWEEN

**CHIEF AMBROSE OSUAN** - **Plaintiff**

AND

**FEDERAL REPUBLIC OF NIGERIA & ANOR** - **Defendant**

**COMPOSITION OF THE COURT**

Hon. Justice Edward Amaoko Asante - Presiding  
Hon. Justice Gberi-Bè Ouattara - Member  
Hon. Justice Keikura Bangura - Judge Rapporteur  
Assisted by Mr Tony Anene-Maidoh, Esq - Chief Registrar

## Judgement

### PARTIES

1. The Plaintiff is a Community citizen of the Federal Republic of Nigeria. The Defendant is the Federal Republic of Nigeria member state of the Community.
2. **Date of Originating Application: 22 July, 2016**
3. This is the judgement of the Court pursuant to the Plaintiff's claim is for violation of his fundamental human, civil, social and economic rights and that of his family. The Parties were both heard in open Court and their arguments were supported by evidence.
4. This judgement is delivered 11<sup>th</sup> December, 2018.

### PLAINTIFF CLAIMS FOR:

5. **A DECLARATION** that the forceful acquisition of the Plaintiffs ancestral/traditional family land, estate and heirloom of the Osuan Family of Benin Kingdom, by the Defendant's predecessor namely the British Colonial Government as their European Reservation Area now known as Government Reservation Area (GRA) IN Benin City, Edo State and by successive Federal and State Government of the Federal Republic of Nigeria for the last 100 years both in colonial and post-colonial era without any form of compensation whatsoever is unlawful. The same is crass violation and breach of the Fundamental Human Rights of the Osuan family to the centuries long ownership of their landed property as entrenched in article 14c of the African Charter on Human and People's rights (ACHPR); article 26 of the United Nations Declaration on the Rights of Indigenous Peoples, article 17 of the Universal Declaration of Human Rights (UDHR); article 1 of the United Nations' International covenant on Civil and Political Rights (ICCPR) and article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
6. **AN ORDER** mandating the Defendants namely the Defendant namely the Federal Republic of Nigeria and Edo State Government to immediately pay remedial damages of Three Billion US Dollars (\$3,000,000,000) to the Plaintiff namely Chief Ambrose Ouan and the Osuan family of Benin Kingdom. As an adequate compensation, for the continued forceful acquisition and use of the Osuan Family land, over the last 100 years till date, without any form of payment or benefit to the Osuan Family for their land of well over four square kilometers (4.0km<sup>2</sup>) or four hundred hectares of (400ha), of fully developed prime properties by the defendants and their colonial predecessor as

enshrined in article 21 (2) of the ACHPR article 20 (1) and 28 of the UNDRIP, article 8 of the UDHR and article 2 (3) of the ICCPR.

7. Any other orders.

## **SUMMARY OF FACTS**

### **Plaintiff's Case**

8. The Plaintiff, Chief Ambrose Osuan, the Ousan of Benin Kingdom, has brought a claim against the Defendants on behalf of himself and all the members of the Osuan family of Benin Kingdom.
9. The Plaintiff asserts that his family are traditional owners and dwellers of the land and estate located behind the Moat (Iyeke Iya) having been given the same about 400 years ago. That their family has lived on this land until it was forcefully taken from them by the British Colonial Government.
10. That the land formed family farms and plantations for food and cash crops as well as botanical gardens on the same. That this piece of land, which they had ownership of, was forcefully acquired by the British in 1897. That whilst the land was acquired by the British Colonial Government, the cadastral mapping of 1914 and 1918 Cadastral Survey Maps of Benin Province (BE.5) and European Reservation (BE.6) delineated the said land as Chief Osuan Farms.
11. That the great grandfather of the Plaintiff tried to re-claim the acquired land but failed as the Plaintiff claims his lack of education impeded his claim. The Plaintiff asserts that he sought judicial redress in the High Court in Benin City in 2013 but judgment was entered against him. He further filed an appeal in the Court of Appeal and the proceedings are still pending.

### **DEFENDANT'S CASE**

12. The Defendants filed a motion pursuant to article 35 (2) and article 77 (1) of the Rules for the Court to hear and grant and order for extension of time to file the memorandum of conditional appearance, statement of Defence and Preliminary objection. This was supported by an affidavit.
13. The Defendants made the following averments in support of their case that the land in question is not the property of the Plaintiff neither was it the property of the Plaintiff's forefathers as claimed.
14. The Defendant averred that the Plaintiff lacked the competence to institute the present action.
15. The Defendant averred that the cause of action spanned over ninety-eight (98) years.
16. That the Plaintiff's claim of title to the disputed land is statute barred and cannot be adjudicated upon.

17. That the Plaintiff's act of coming before this Court after lodging an appeal in the Court of Appeal seems on the face to be urging this Court to set aside the ruling of the High Court.
18. That the Court lacks jurisdiction to hear the case.
19. That the Plaintiff's act of merging the claim for declaration of title with a claim for enforcement of his fundamental human rights.
20. The Defendants urged the Court to dismiss the claim as frivolous, vexatious, baseless and incompetent and an abuse of court process.

**Plaintiff's Response to the Defense**

21. The Plaintiff denies the Defendants Defence and Statement of Claim in opposition citing his cause of action started ninety-nine years (99) ago and that the acquisition was unlawful and not statute barred. The Plaintiff in his claims relied on **Amodu Tijani v The Secretary, Southern Provinces** (1921) Privy Council decision which dealt with ownership of land and compensation for dispossession brought in 1921 against the British Government. That the suit was successful and the appellant was held to be entitled to claim compensation pursuant to the Court having determined ownership of the property and the right to claim.

**Articles alleged to have been violated by the defendants:**

- Article 7 (1) (a) of the African Charter on Human and People's rights (ACHPR)
- Article 14 of the African Charter on Human and People's rights (ACHPR)
- Article 21(1, 2, 3) of the African Charter on Human and People's rights (ACHPR)
- Article 1 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Article 20 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Article 26 (1 & 2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Article 28 (1 & 2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Article 8 of the Universal Declaration of Human Rights (UDHR)
- Article 10 of the Universal Declaration of Human Rights (UDHR)
- Article 17 (1& 2) of the Universal Declaration of Human Rights (UDHR)

- Article 1 of the United Nations’ International Covenant on Civil and Political Rights (ICCPR)
- Article 2 (3) a,b,c of the United Nations’ International Covenant on Civil and Political Rights (ICCPR)
- Article 14 (1) of the United Nations’ International Covenant on Civil and Political Rights (ICCPR)
- Article 1(2) of the United Nations’ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Article 26 Vienna Convention on the Law of Treaties (VCLT)
- Article 27 Vienna Convention on the Law of Treaties (VCLT)

### **LEGAL ANALYSIS BY THE COURT**

22. During the course of the hearing the Plaintiff on his on motion prayed to the Honorable for the Second Respondent to be struck out. By order of this Court the Second Respondent was accordingly struck out.
23. The Court, having heard both sides and the pieces of evidence in support of their case considers that the issue for determination is: “*Whether or not the Plaintiff’s action is statute barred*”.
24. The Court observed that the Defendant in his defence made several submissions by way of objection to the Plaintiff’s case. One such major objection is that the claim by the Defendant is statute barred and therefore this Court cannot entertain such an action. Since this submission goes to the root of the Plaintiff’s case the Court considers it as a pivotal point and worthy of determination as it borders on jurisdictional issues. To determine whether the action is brought within the statutory limit or not, the Court examined the claim by the Plaintiff, the defence to the Plaintiff’s case and the response by the said Plaintiff to the Defendant’s case.
25. In pursuit of his claim the Court notes that the Plaintiff submitted that the land in question was forcefully acquired by the British Colonial Administration in 1897 from his grandparents. The Plaintiff further stated that he instituted an action in the High Court of Benin City, Nigeria in 2013 over ninety-eight (98) years from the date of the said compulsory acquisition but the Court adjudged that the Plaintiff’s claim was out of time. The Plaintiff then appealed in the Court of Appeal and the appeal is still pending.
26. We recognise the issue before us and realise that this Court has in the past been faced with questions of law dealing with statutory limitation and has dealt with it promptly on a case by case basis. The resultant effect is that the trend has not remained on a threshold but has moved on to accommodate exceptions. The Supplementary Protocol A/SP.1/01/05 article 9 (3) states that: “*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 when the right of action arose,”* the present action expressly denoted the date **the cause of action arose** as ninety-eight (98) years ago. The Defendant has submitted that the action is statute barred therefore inadmissible and further contend that since the matter is statute barred the Court lacks competence to hear the claim. The question to be determined by this Court is whether the cause of action is within the time limit provided for by the rules?

27. The question on the time frame was settled by this Court in the decision of **Femi Falana v. Republic of Benin** ECW/CCJ/APP/10/07, at paragraph 25 in which it was held that article 9 (3) of the Protocol of the Court, as amended, is a statute of limitation applicable to actions of human rights violations generally. According to the Court, the use of the word “*shall*” as used in the article denotes a cause of action which arose more than three (3) years before the application for reliefs regarding a violation is statute barred thereby making the relief non-justiciable. However, in spite of the provisions of article 9(3) when it is a case of gross violations under International Human Rights Law and International Humanitarian Law as adopted by the United Nations General Assembly Resolution 60/147 of 16<sup>th</sup> December, 2005 (Par. 30 & 31), there are instances of exception to the provision in article 9(3) in which case time does not stop running for gross violations under Human Rights and Humanitarian Law.
28. Having reasoned out that there are instances in which the Court can dispense with the application of article 9 (3) as in **Alhaji Dr. Man M.B Joof v. President of ECOWAS Commission & Anor** ECW/CCJ/APP/04/07 where it was held that “...*where an injury is continuing, it will give rise to a cause of action die in diem (day in and out) and postpone the running of time.*” It is clear from this decision that we can now *begin* to understand why the Court employed the purposive approach to interpretation and developed the exception to the rule.
29. The facts in the instant case stated that the Plaintiff’s claim is for land which was acquired forcefully some ninety-eight years ago. The Plaintiff described the act of acquisition as a violation that was unlawful as it did not offer compensation. The Plaintiff supported his claim with pieces of evidence depicting ancestry to the area and a claim of title to the land. He further submitted that the actual body that took acquisition of the land in question was the British Colonial Government but alleged that the Defendant is now liable as they took over from the British Government.

30. The Plaintiff further stated that the said violation occurred ninety-eight years thence and but he failed to bring an action at the time, he however relies on **Amodu Tijani v The Secretary, Southern Provinces** (1921) a Privy Council decision which dealt with ownership of land and compensation for dispossession brought in 1921 against the British Government. A case which was brought against the British Government and the Privy Council decided in favour of the Plaintiff. The case relied on by the Plaintiff was brought some ninety-eight years previously against the British Colonial Administration, who also happen to be the perpetrators of the alleged violation in the instant case.
31. The Court notes that the Plaintiff claimed that his fore-fathers did not bring an action earlier as they were impeded by their lack of education. This brings us to the equitable maxim “*Equity aids the vigilant not the indolent.*” This means that one who has been wronged must act relatively swiftly to seek redress of his violated rights as alleged and the Plaintiff in the instant case did not seek redress until 2013.
32. The Plaintiff further cited the case of **Oduntan Onisiwo v. The Attorney-General (1912) 2 NLR 79** wherein the Court, at the time, compensated the Plaintiff (Onisiwo) for land which had been previously acquired. We note that the case cited was determined in 1912 against the administration that acquired the property.
33. In the instant case, the Court has to determine whether the alleged violation is of a continuous nature or not. It is clear that the Plaintiff was given the opportunity to be heard in the national Court and a decision was delivered against him on his claim. On the ground, the alleged violation cannot be continuous and therefore is not justified under the exception.
34. One thing is clear, the Court is bound by article 9 (3) and that the only exception is gross violation which is of a continuing nature to justify a departure from the statute. Given that the Plaintiff has a right which he claims to have been violated his failure to seek redress over a period of ninety-eight years makes his claim bad in law. In the circumstances the claim by the Plaintiff is out of time and this Court cannot therefore entertain such an application as it is statute barred.

### **Decision**

35. The Court sitting in public and having heard the Parties, decides as follows:
  - i. That the cause of action is statute barred pursuant to article 9 (3) of the Supplementary Protocol (A/SP.1/01/05).
  - ii. That the action is hereby dismissed.
  - iii. That costs of the action be borne by parties.

36. Thus pronounced and signed on 11<sup>th</sup> day of December, 2018 in the ECOWAS Community Court of Justice Abuja, Nigeria.

**AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:**

Hon. Justice Edward Amaoko Asante, Presiding -----

Hon. Justice Gberi-Be Ouattara, Member -----

Hon. Justice Keikura Bangura, Member/ Judge Rapporteur -----

Assisted by Mr Tony Anene-Maidoh, Esq., Chief Registrar -----