COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

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IN THE COMMUNITY COURT OF JUSTICE OF

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

HOLDEN IN ABUJA NIGERIA

ON THE 24TH OF JANUARY, 2019

SUIT NO: ECW/CCJ/APP/11/18

JUDGMENT NO. ECW/CCJ/JUD/02/19

BETWEEN:

TAAKOR TROPICAL HARDWOOD COMPANY LTD. PLAINTIFF

AND

THE REPUBLIC OF SIERRA LEONE DEFENDANT

COMPOSITION OF THE COURT:

HON. JUSTICE EDWARD AMOAKO ASANTE - PRESIDING

HON. JUSTICE GBERI-BE QUATTARA - MEMBER

HON. JUSTICE JANUARIA T. S. MOREIRA COSTA - MEMBER

ASSISTED BY:

TONY ANENE-MAIDOH - CHIEF REGISTRAR

JUDGMENT

PARTIES

The Plaintiff is a limited liability company with offices in the United States of America and Sierra Leone.

The Defendant is the Government of the Republic of Sierra Leone which is a member State of the Economic Community of West African States, ECOWAS.

SUMMARY OF FACTS

By a Concession Agreement made on July 25, 2007, the Defendant and the Plaintiff decided to co-operate for the sustainable exploitation of the Tama-Tonkolli Forest Reserve (*65,000 ha*) in East-Central Sierra Leone. Pursuant to the Agreement, the Plaintiff stated that it employed over six hundred (600) Sierra Leoneans and planted 4 million teak trees in the first 6 months of operations and had plans to plant an additional 4 million trees each year for the 20 years covered by the Agreement.

The Plaintiff stated further that it invested over $19m in equipment purchases, shipping costs, spare parts and supplies to support operations, logistics, salaries, etc. Additionally the Plaintiff constructed an all-purpose, all season main Road from Masingbi past Bandakoro as well as town Roads, Feeder Roads and secondary Roads totaling 57 kilometers. The Road network consisted of sixty four (64) water crossings through twelve (12) villages. The estimated cost according to the Plaintiff, was Nine Hundred thousand to a million and one hundred thousand US Dollars ($900,000-$1,100,000). The Plaintiff also said it rehabilitated the main highway between Masingbi and Magbaurka.

The Plaintiff went on to say that it received the Defendant's approval to rehabilitate a portion of Jui Port that was not in use and reclaimed over ten thousand square metres (10,000m^2) of land adjacent to the Port that was eroding. According to the Plaintiff, it also constructed an additional entrance into the Port, repaired and secured the two large hangers and repaired and maintained the Road connecting Jui Port with the main highway to Kissy. Furthermore, the Plaintiff said it helped the Jui Community with the Construction of a Mosque, the installation of a new well, and went as far as supplying a fishing boat with fishing nets and motor.

The Plaintiff's case is that it received an order from its first customer, Theodore Nagel (*Germany*), around the middle of January, 2008. The order was for four thousand cubic metre (4,000m3) of mixed species with a value of One Million, Two Hundred Thousand Dollars ($1,200,000 USD). It said Theodore Nagel also indicated that they would be interested in purchasing ten thousand cubic metre (10,000m^3) of mixed species each month going forward.

According to the plaintiff's pleadings, in March 2008, the Defendant breached the Agreement when it decided to illegally stop the Plaintiff from exercising their rights as outlined in the Agreement. The breach caused severe damage to the Plaintiff and robbed Defendant's citizens of much needed jobs. The plaintiff stated further that even though the Defendant illegally banned logging operations in March 2008, there were assurances that the ban would be lifted. According to the plaintiff, on account of the illegal breach of the Agreement, it was forced to stop work. Plaintiff said it had depleted its working capital after nearly a year of Defendant's delays

and even took a loan of an additional facility of Two Million Five Hundred Thousand Dollars ($2,500,000) dollars to sustain it.

According to the plaintiff, at the time the Defendant illegally halted its operations it had hauled over One Hundred and Twenty Seven thousand cubic metre (127,000m^3) of trees from the forest reserve from January 5th through the end of March of 2008. The logs were located in 2 log yards in Bandadoro, 2 log yards in Sumbaria, the main Company log yard in Masingbi, and Plaintiff's log yard inside the Port. The Plaintiff had again loaded over 600 x 40' containers for export. All the logs inside the yard were either stolen or burnt as a result of Defendant's abrupt illegal censorship of the Plaintiff's operations. The Plaintiff had sold three thousand, one hundred ninety four point fifty seven cubic metre (3,194.57m^3) of mixed species logs to a Chinese buyer prior to the ban. Although the Defendant eventually allowed the export, the Chinese buyers' Letters of Credit (LC) expired due to the repeated delays and they refused to pay for the logs after they arrived in China. Consequently, the Plaintiff lost over Four Million, Five Hundred Thousand US Dollars ($4,500,000) due to the interference by the Defendant's agencies.

It is the case of the Plaintiff that without the frustration of the agreement, the Plaintiff would have planted forty million (40,000,000) teak trees in ten (10) years. The teak plantations would have comprised an area of eighty thousand plus (80,000+) hectares with a projected business plan of employing thousands of Sierra Leoneans in industries like nurseries, tree planting, logging, sawmilling, and plywood production, in an area of the country that has a small population, with virtually no industry and subsequent high unemployment rate.

The Plaintiff said its officials attended numerous meetings with the President, Vice President, Finance Minister, Labour Minister, Minister of Agriculture, Director of Forests, Forestry Division representative to discuss the breach of the Agreement. Although, the Defendant did not rescind the ban, the Plaintiff was forced by the Defendant to pay an additional three (3) months of wages to its workers. According to the Plaintiff, it was operating at a loss, and so it decided to stop all operations after the President of Sierra Leone had reneged on his promise on three separate occasions to lift the ban. The Plaintiff was forced at great expense to relocate all its equipment to Kenema for safekeeping.

Plaintiff further states that in 2011, its representatives met with top officials of the Defendant to discuss the issue of compensation, but the Defendant refused to commit itself. From the records before this Court, in 2012, the Plaintiff sued the Defendant at the High Court of Sierra Leone (Commercial Division) for the breach of the contract. The Defendant decided not to take part in the proceedings. The court gave a default judgment in favour of the Plaintiff. Based on the default judgment obtained from the court, the Plaintiff continued up to 2017 to persuade the Defendant to reach a settlement, but the Defendant still refused to discuss compensation on the ground that the Agreement provided for arbitration and not civil litigation.

According to the plaintiff, a meeting was held between its Counsel Mr. Ibrahim Yillah on January 5, 2018, the Defendant's Attorney-General, Mr. Joseph Fitzgerald Kamara and the defendant's Attorney General informed the plaintiff that it was not prepared to refer the dispute to arbitration in line with the terms of the Venture Agreement.

The plaintiff specifically itemizes its accrued losses as follows:

I. The value of the teak plantation is One Billion US Dollars ($1,000,000,000.00 USD)

II. The Tama-Tonkololli Forest Reserve is One Billion, Five Hundred and Thirty Two Million, Six Hundred and Seventy Five Thousand US Dollars ($1,532,675,000 USD)

III. The total loss of Revenue is One Billion, Three Hundred and Eighty Million, Seven Hundred Thousand US Dollars ($1,380,700,000.00 USD)

RELIEFS SOUGHT BY THE APPLICANT

The Applicant seeks the following reliefs from the Honourable Court:

(A) **A DECLARATION** that the deliberate breach of the Concession Agreement voluntarily made on the 25th Day of July 2007 by the Defendant without any justifiable cause is illegal, unlawful, null and void and of no effect whatsoever.

(B) **A DECLARATION** that the willful and persistent refusal by the Defendant to perform its contractual obligation in accordance with the express terms and conditions stipulated in the Concession Agreement made on the 25th Day of July 2007 is illegal, null and void as same is a violation of the provisions of ARTICLE 15 of the African Charter on Human and Peoples Rights, ARTICLE 23 of the Universal Declaration of Human Rights.

(C) **AN ORDER** of this Honourable Court by way of a mandatory injunction compelling the Defendant, its agents, servants, privies and by

whatsoever name called to perform its contractual obligations as contained in the Concession Agreement made on the 25th Day of July 2007.

(D) **AN ORDER** of this Honourable Court compelling the Defendant, its agents, servants, privies and by whatsoever name called to pay over to the Plaintiff within a duration of 100 days after the delivery of Judgment in this suit the sum of *$1, 357, 200, 000.00 (One Billion, Three Hundred and Fifty-Seven Million, Two Hundred Thousand Dollars*) being an estimated consequential damages arising from loss of expenses and expected income for the contract period of 20 years.

(E) **AN ORDER** of this Honourable Court directing the Defendant, its agents, servants, privies and by whatsoever name called to pay over to the Plaintiff a Percentage of 25% Post Judgment interest on the Judgment sum delivered by this Honourable Court within a period of 100 days from the date Judgment is delivered in this suit.

(F) **AN ORDER** of Perpetual injunction restraining the Defendant, its agents, servants and privies and by whatsoever name called from leasing, alienating, transferring or parting with the interest and contractual rights of the Plaintiff in the Concession Agreement made on the 25th Day of July 2007 to any third party.

(G) **AN ORDER** of this Honourable Court compelling the Defendant, its agents, servants, privies and by whatsoever name called to immediately pay over to the Plaintiff as aggravated and punitive damages the sum of *$500, 000, 000.00 (Five Hundred Million United*

States Dollars) within a period of 100 days after Judgment is delivered in this suit.

(H) **AN ORDER** of this Honourable Court directing the Defendant, its agents, servants, privies and by whatsoever name called to immediately pay over to the Plaintiff, the sum of *$400, 000, 000.00 (Four Hundred Million United States Dollars*) as general damages for the psychological and mental trauma suffered by the Plaintiff occasioned by the breach of contract at the instance of the Defendant within period of 100 days after Judgment is delivered.

The Defendant filed a preliminary objection on the 15th October, 2018 praying this Court to dismiss/strike out this suit for want of jurisdiction.

Specifically, Defendant's motion is grounded as follows:

1. That this Honourable court lacks jurisdiction to entertain this application as against the Defendant/Applicant.
2. That this Honourable court lacks jurisdiction to entertain this application as against the Defendant/Applicant for unlawful termination of the Concession Agreement entered into between the Plaintiff and the Defendant
3. That further and/or in the alternative the action herein be set aside on the following grounds:

i. The agreement exhibited as annexure "A" the subject matter of the Plaintiff/Respondent application provides for any dispute arising from the agreement to be settled by means of arbitration and not by filing this application in the Ecowas Court.

ii. That the said action is an abuse of the process of the court in that annexure "H" is a Judgement in default obtained by the Plaintiff/ Respondent in the High Court of Sierra Leone in suit No: C.C 100/12, 2012 NO.4. which ought to have been executed by the Plaintiff/Respondent in Sierra Leone and not by filing the application herein to the Ecowas Court. This again we submit is tantamount to an appeal to the Ecowas Court by the Plaintiff/Respondent from decisions of the Sierra Leone High Court. The Ecowas Court does not serve as an appellate chamber from decisions of member states. To entertain this application will be an attack on the judicial comity existing between the Ecowas Court and courts in the member states.

On 21st November 2018, the Plaintiff filed a response against the Preliminary Objection of the Defendant. In substance the Plaintiff's response is contained in paragraphs 2, 3 and 4 of its 5 paragraph Counter affidavit (Document 4) as follows:

2. Mr. Mark Beasley, the Managing Director of the Claimant informed me on phone on 19th November, 2018 and I verily believe as follows:
    a. In 2013 and 2018 the Respondent suspended timber export in Sierra Leone, Attached herewith and marked Exhibits "J" AND "K" are photocopies of documents which reported the suspension.
3. The judgment is inconclusive in that the Commercial Court of Sierra Leone did not award any specific damages for breach of the contract.

4. The breach of the Agreement has not ceased as the Claimant has not been allowed to remove all plants, equipment and movable assets, the properties of the Claimant.

The Application for preliminary objection was heard in open Court on the 23rd November, 2018 where the parties represented by their respective counsel were given opportunity to argue their cases. Both counsel virtually relied on their written submissions without raising any new points of law. Counsel urged the Court to determine the Application on the strength of those submissions.

DEFENDANT'S ARGUMENT IN SUPPORT OF THE PRELIMINARY OBJECTION

The Defendant prays the Court to strike out the Plaintiff's suit on grounds, inter alia, that the Court lacks jurisdiction to entertain the suit. It argued its case on three main prongs.

Firstly, the Defendant contends that the **Concession Agreement (Exhibited as Annexure "A")** which forms the basis of the Plaintiff's suit provides for mode of settling any disputes arising from the Agreement. According to the Defendant, Annexure "A", expressly provides for an Arbitration under Clause 16.1 envisaging that all disputes arising out of or in connection with the Agreement shall be settled by an arbitration. The Defendant's case is that the Plaintiff's suit was brought to this Honourable Court in breach of the Arbitration Clause 16.1 of Annexure "A".

In deed the Defendant asserts that the Plaintiff, before instituting the present action had sued and obtained judgment against the Defendant at the High Court (Commercial Division) of Sierra Leone under the municipal laws of the parties. In

both suits; i.e. before the High Court of Sierra Leone and in the present case, the argument of the Defendant is that the Plaintiff is in breach of the Arbitration Clause in Annexure "A" since the parties have voluntarily and expressly agreed to resolve their dispute by arbitration under the provisions of the applicable laws of Sierra Leone. The relevant law being the Arbitration Act (Caps 25) of the laws of Sierra Leone. The Defendant, accordingly submitted forcefully that the parties have a duty to honour the arbitration clause in Annexure "A". The Plaintiff's failure to honour such an important duty as a pre-condition under their Agreement makes its present action inadmissible.

Secondly, the Defendant contends that the subject matter of the Plaintiff's suit pertains to an alleged unlawful termination of Annexure "A". The Defendant argues that the alleged illegal ban upon which the Plaintiff has grounded its action was an event which occurred in March 2008. In the circumstance, the Defendant submits that commencing the present action on 14 February 2018 renders the action statute barred under the relevant texts of this Honourable Court. The Defendant is hugely relying on Article 9(3) of the 1991 Protocol (A/P1/7/91) on the Court as amended by Article 3 of the Supplementary Protocol of 2005 (A/SP/.1/01/05). To this end, the Defendant submitted that the Honourable Court lacks jurisdiction to entertain the Plaintiff's suit because the suit is statute barred.

The third ground of the Defendant's arguments relates to the assertion of an abuse of the process of this Hnourable Court by the Plaintiff. According to the Defendant, the Plaintiff, in its initiating pleadings under paragraph 20 thereof stated that in 2012, it obtained a judgment from the High Court of Sierra Leone against the Defendant in Suit No. C.C 100/12, 2012 and exhibited same as Annexure "H". The

Defendant contends that the Plaintiff having already obtained judgment in its favour against the Defendant, ought to have sought the execution of the judgment rather than proceeding to this court. The Defendant therefore characterizes the present suit as an abuse of the Court processes seeking to invite this court to serve as an appellate court over decisions of Sierra Leonean Courts. The Defendant says that amounts to an attack on the judicial comity existing between this Court and courts of member states.

PLAINTIFF'S ARGUMENT IN RESPONSE

The Plaintiff, before responding to the three prongs argument of the Defendant, raised an issue to challenge the propriety of the Defendant's document titled ***Affidavit in Support of the Preliminary Objection*** deposed to by one Osman Ibrahim Kanu, a Principal State Counsel at the Law Officers Department in the office of the Attorney General of the Defendant and sworn to before a Commissioner for Oaths in Freetown on the 24th September, 2018. The Plaintiff's argument in this regard is that the said Affidavit in Support of the application for preliminary objection is defective and alien to the Rules of this Court since it was not deposed and sworn to before this Honourable Court but under the authority of a different court in Sierra Leone.

In response to the Defendant's argument that the present action has been instituted in breach of Annexure "A" for failing to comply with a condition precedent which provided for arbitration, the Plaintiff stated that via two letters dated 20th December, 2011 and 19th January, 2018 which were duly served on the Attorney General of the Defendant, the Plaintiff requested that an Arbitrator be appointed for the purpose of having the dispute resolved but the Defendant on

both occasions failed to react to the letters. The Plaintiff is of the view that the deliberate failure and or refusal to appoint an Arbitrator by the Defendant amounted to waiver of its right to resort to any arbitral proceeding as a pre-condition for the institution of the present action. The Defendant cannot therefore approbate and reprobate at the same time.

Also in respect of the Defendant's assertion that the Plaintiff has already sued and obtained judgment against the Defendant at the Commercial Court in Sierra Leone; rendering the present suit as an appeal, the Plaintiff responded that the judgment was inconclusive since no damages was awarded in its favour. So there is no judgment to enforce. In view of the above responses, the Plaintiff maintains that the Honourable Court is clothed with jurisdiction to entertain this suit under Article 10 of the 1991 Protocol of the Court as amended by the Supplementary Protocol of 2005. The Plaintiff states that the failure of the Defendant to provide an effective remedy for the violation of the rights of the Plaintiff has necessitated the Plaintiff's resort to this Court.

On the issue of the present action being Statute barred, the Plaintiff argues that the breach that arose from the Concession Agreement (Annexure "A") which has given rise to the cause of action in this suit is continuous in nature. The Plaintiff states that the injury suffered and complained of by the Plaintiff is continuous and to that extent, this Court has unfettered jurisdiction to entertain and determine the suit. The Plaintiff further argues that the Defendant has repeatedly suspended the export of timber from Sierra Leone contrary to the terms of Annexure "A". The suspension was announced in 2008, 2013 and 2018 thereby putting on hold their contract with the Defendant. The Plaintiff again says that it has not been allowed

to dispose of all plant, equipment and movable assets in line with article 18.0 of the Agreement. Since the movable assets of the Plaintiff have not been disposed, the breach is also continuous. The Plaintiff therefore submits that the present action is not statute barred.

ISSUES FOR DETERMINATION

At the close of hearing two main issues came up for determination by this Honourable Court as follows:

1. Whether or not this Court lacks jurisdiction to entertain this suit?
2. Whether or not the Plaintiff's action is Statute Barred?

LEGAL ANALYSIS

The Court deems it expedient, before it seeks to determine any issues presented before it, not only to establish whether it has the competence to deal with the issues so presented but also to ascertain the capacity of the parties before it. In respect of its competence, apart from the texts of the Court other factors may be considered as stated in the case of **BAKARY SARRE & 28 ORS. & THE REPUBLIC OF MALI, (2011) CCJELR** 67 that:

"*The Competence of the Court to adjudicate in a given case depends not only on its texts but also on the substance of the initiating application. The Court accords every attention to claims made by applicants, the pleas-in-law invoked, and in an instance where human rights violation is alleged, the Court equally carefully considers how the parties present such allegations. The Court therefore looks to find out whether the human rights violation as observed constitutes the main subject-matter of the*

application and whether the pleas-in-law and evidence produced essentially go to establish such violation".

However, access to the Court being an *Interstate Court* is strictly regulated by its Constitutive Texts and nothing else. The Constitutive Texts prescribe various categories of persons (both natural and juristic) clothed with capacity to access the jurisdiction of the Court in respect of certain causes of action. It is settled law that the test for the validity of the institution of an action, as far as the capacity of the party is concerned, is whether the party has been granted access to the Court by the latter's constitutive texts.

As presently constituted, access to this Court is provided for under **Article 4 of Supplementary Protocol A/SP.1/01/05 amending the Protocol of 1991 (A/P1/7/91) on the Court by the insertion of a new Article 10 which provides as follows:**

- **Article 10: Access to the Court**

  Under Article 10, access to the Court by corporate bodies is provided for:

c) ***Individuals and corporate bodies in proceedings for the determination of an act or inaction of the Community official which violate the rights of the individuals or corporate bodies;***

d) Individuals on application for relief for violation of their human rights; the submission of application for which shall:

  i) not be anonymous; nor

  ii) be made whilst the same matter has been instituted before another International Court for adjudication;

The Plaintiff in the instant case, Taakor Tropical Hardwoods Company Limited is indubitably a limited liability company (Corporate Entity) with offices in the United States of America and Sierra Leone. The Plaintiff being a corporate entity is alleging violation of its human rights by the Defendant.

This Court has repeatedly held that only an individual can sue for Human Rights violations or on his behalf by an NGO and that within the context of Article 10(d) of the Protocol as amended, "**individuals"** refers to **only human beings** and no more. In the reasoning of the Court, because Article 10 (c) mentioned individuals and corporate bodies, the legislation sought to distinguish between human beings and other legal entities. By expressly giving access to only individuals under article 10(d), the Supplementary Protocol sought to give that right exclusively to individual human beings who are victims of human right abuse to the exclusion of all others. A corporate body cannot therefore rely on the provisions of Article 10 (d) to access the jurisdiction of this Court. See ***OCEAN KING NIGERIA LIMITED V. REPUBLIC OF SENEGAL*****, SUIT NO. ECW/CCJ/APP/05/08,** paragraph 48 of the judgment of 8th July 2011.

This Court has further explained itself in the case *of* ***ALHAJI MUHAMMED IBRAHIM HASSAN V. GOV. OF GOMBE STATE*** **ECW/CCJ/APP/03/10, para 46 of Judgment NO. ECW/CCJ/RUL/07/12 of 15th March 2012** that an essential criterion for human rights complaint by a Plaintiff is that of being a victim. It is therefore necessary that the action is brought directly by the victim or on behalf of the victim by a corporate body (NGO). The Court held as follows*:*

> ***"Paragraph (d) of new Article 10 of the Protocol on the Community Court of Justice as amended by Protocol A/SP.1/01/05 of 19 January 2005 provides:***

"Access to the Court is open to … individuals on application for relief for violation of their human rights".

By virtue of this Article, for every action relating to human rights protection, cases before the Court must be filed by **an individual or a corporate body who fulfills the requirement of being a victim.**

In the case of ***STARCREST INVESTMENT LTD V. PRESIDENT ECOWAS COMMISSION*** **(2011) CCJELR 165, ECW/CCJ/APP/01/08 Judgment of 8th July 2011,** the Court held as follows;

> ***"This Court thus held in the case of the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. President of the Federal Republic of Nigeria and 8 Ors. Suit No. ECW/CCJ/APP/08/09 delivered on 10th December, 2010 unreported that no action could lie against a corporate body in human rights cases before this Court. By parity of reasoning, the converse of the decision just cited is equally true and that is, no corporate body can bring a human rights case before this Court as a Plaintiff as an alleged victim of human rights abuse. Thus the provisions of the ACHPR do not avail the Plaintiff in this Court in so far as they complain about human rights abuse against them as a Company"*** **(Paragraph 17 of the Judgment of 8th July, 2011) .**

The Plaintiff's reliefs have been carefully evaluated to see whether any of its complaints has to do with right to fair hearing in order to ground the action under the exception created by this Court within its inherent jurisdiction. In the ***OCEAN KING NIGERIA LIMITED V. REPUBLIC OF SENEGAL (cited supra)*** **the Court held that it will exercise its inherent jurisdiction to entertain an application by an aggrieved**

party that complains of a denial of the right to fair hearing which is a fundamental right open to any party who is affected by a tribunal's decision since that right is not dependent on human rights, and for that reason a party who has such a complaint of denial of fair hearing should not be thrown out of a Court without first being heard. Unfortunately, none of the reliefs being sought by the Plaintiff relates to the issue of fair hearing.

The Court has equally evaluated two decisions of this Court cited by the Plaintiff in support of its case; OBIOMA C.O OGUKWE v. REPUBLIC OF GHANA ECW/CCJ/APP/12/14 and ABIA AZALI AND ANOR. V. REPUBLIC OF BENIN ECW/CCJ/JUD/01/15. In these case, the ratio decidendi has to do with the negligence of the member states concerned in exercising due diligence over non state actors. In the present case, the acts complained of by the Plaintiff are directly against the Defendant as a contractual party. To this extent these cases are hereby distinguished.

This Court, minded by the plethora of decisions on the incompetency of a corporate body to institute an action for violation of humans rights as espoused above has come to the conclusion that, the Plaintiff in the instant case being a corporate entity, lacks the capacity to bring this suit and the Court is bereft of competence to entertain same; and as such, this case is rendered inadmissible.

It is the law that if an action fails on a plea of lack of capacity, the court does not proceed to determine the merits of the case irrespective of the evidence.

However, since the facts relied on by the Defendant is contained in the ***Affidavit in Support of the Preliminary Objection*** which is being challenged by the Plaintiff, the Court will briefly consider the argument of the Plaintiff in respect of the propriety

or otherwise of the said *Affidavit in Support of the Preliminary Objection* deposed and sworn to by an attorney at the Law Department of the Defendant. The Plaintiff's argument that the said affidavit is defective and alien to the Rules of this Court was not supported by any texts of this Court. The **Black's Law Dictionary (2nd Edition)** defines affidavit as ***"A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. An affidavit is a written declaration under oath, made without notice to the adverse party ".***

There is no contradiction that the affidavit in question was voluntarily made and sworn to before a Commissioner for Oaths in Freetown, Sierra Leone. There being no error on the face of the said affidavit and the Plaintiff's inability to adduce any cogent evidence to establish impropriety in the production of the document, this Court finds no fault with the document and therefore rules that the Plaintiff's argument in respect of the document is frivolous, unmeritorious and accordingly dismissed.

In conclusion, this Court totally agree with the conclusion but differ with the reasoning of the learned Counsel for the Defendant that this Court lacks jurisdiction to entertain the Plaintiff's application. The Plaintiff does not have the capacity to maintain an action against the Defendant for the reliefs being sought, and therefore the suit is inadmissible for adjudication

Article 87(1) of the Rules of the Community Court of Justice, ECOWAS provides that ***"a party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application***

by a separate document". Additionally, **Article 88(1)** of the same document states that: ***"Where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the parties and without taking further steps in the proceedings, give a decision".***

Defendant duly complied with the above provisions of the Rules of the Court by its Application dated 24th September 2018 and filed at the Registry of this Court on 15th October 2018.

DECISION

This Court after examining the initiating Application and the notice of preliminary objection by the Defendant; and after hearing counsel of the parties herein, and for the reasons canvassed above, holds that the Plaintiff's action is manifestly not maintainable against the Defendant for lack of capacity and same is inadmissible.

The case is inadmissible and the parties are to bear their respective costs.

THIS DECISION IS MADE, ADJUDGED AND PRONOUNCED PUBLICLY BY THIS COURT, COMMUNITY COURT OF JUSTICE, ECOWAS; SITTING AT ABUJA, NIGERIA ON THE 24TH DAY OF JANUARY 2019.

HON. JUSTICE EDWARD AMOAKO ASANTE - PRESIDING

HON. JUSTICE GBERI-BE QUATTARA - MEMBER

HON. JUSTICE JANUARIA T. S. MOREIRA COSTA - MEMBER

TONY ANENE-MAIDOH - CHIEF REGISTRAR