

COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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CRESCENT OFF AMINU KANO
CRESCENT, WUSE II, ABUJA-
NIGERIA. PMB 567 GARKI, ABUJA
TEL: 234-9-78 22 801
Website: www.courtcecowas.org

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

HOLDEN AT ABUJA, NIGERIA.

ON TUESDAY, THE 26TH DAY OF FEBRUARY, 2019

SUIT NO: ECW/CCJ/APP/11/16

JUDGMENT NO: ECW/CCJ/JUD/06/19

BETWEEN

1. REV. FR. SOLOMON MFA
2. REV. JOSEPH DOOGA
3. DR. SAM ABAH
4. DR. DAVID IORDAAH
5. HON. OCHEPO YAKUBU
6. HON. TERESE TANGE
7. FAVOUR ADAH-PAUL
8. SAMUEL MSONTER IJOHO
9. IORBEE BAJAH
10. ASHI BAJAH
11. TERSEER IORBEE BAJAH
12. MOVEMENT AGAINST FULANI
OCCUPATION (MAFO)

APPLICANTS

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. GEN. MUHAMMADU BUHARI (RTD),
[PRESIDENT FEDERAL REPUBLIC OF NIGERIA]
3. INSPECTOR GENERAL OF POLICE,
NIGERIA POLICE FORCE
4. IGP SOLOMON ARASE
5. CHIEF OF ARMY STAFF, NIGERIAN ARMY
6. LT. GEN. TUKUR YUSUF BURATAI

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member
Assisted by	
Tony ANENE-MAIDOH	- Chief Registrar.

REPRESENTATION TO THE PARTIES

1. Terence Vembe	}	for the Applicant
2. A. O. Oluwatoba		
3. K. O. Apiara		
4. Kenneth Ezewuzia		
5. Peace Alashi		
6. Mercy Alumo		
7. Dayo Apata	}	for 1st -4th Respondent
8. T. A. Gazali		
9. I. I. Hassan		
10. Offiong Ekanem	}	for 5th – 6th Respondent
11. D.M. Idoko		
12. C. E. Odum		

JUDGMENT

This is the Judgment of the Court delivered in the open Court on the 26th February 2019.

PARTIES.

1. The Applicants are citizens of the Federal Republic of Nigeria who hail from and reside in Benue State of Nigeria. They are 12 in number ranging inter alia from Clergymen, to Journalist, to a charity organization and a Fisherman.

The 1st Respondent is the Federal Republic of Nigeria, a member State of the Economic Community of West African States and a signatory to ECOWAS Treaty. The 2nd Respondent is the President and Commander in Chief of Armed Forces of the 1st Defendant and is responsible for the general administration, security, welfare and good governance of the 1st Defendant. The 3rd-6th are agents of the 1st Defendant.

APPLICANTS CASE

2. The Applicants averred that the Fulani herdsmen and farmers' conflict in Benue State which started over decades ago as mere conflict has escalated to an invasion and occupation agenda amounting to terrorism. That within the last three years preceding the filing of this case, Fulani herdsmen have carried out over fifty (50) aggressive attacks in over 15 local government areas of Benue State including their communities. That during the attacks, their community and some other communities in Benue State suffered wanton destruction of their properties including; burning and general destruction of houses, sundry household items, farms, economic trees, vehicle, machineries, food stuffs and schools. That over 1000 people have been killed and hundreds of thousands displaced and living in deplorable makeshift camps.

3. That this unimaginable level of devastation of the said communities which was reported by several newspapers and the representative of the United Nations High Commissioner for Refugees (UNCHR) to Nigeria and ECOWAS, Mrs. Angele Dikongue Atangana who visited the Agatu community and expressed utter dismay on the situation in the community which these Fulani militia left in total ruin. The Applicants further states that the Respondents are aware of the locations of these Fulani herdsmen in the neighboring communities particularly Nasarawa State and have created safe havens for them. That the Respondents have failed to take action to stop these attacks but rather allowed the Fulani militias to unlawfully carry sophisticated assault weapons with which they carried out their dastardly acts.

4. That on or about the 2nd day of January 2016, the Benue State Police Commissioner, Paul Yakadi, revealed that over 5,000 cows accompanied by armed Fulani herdsmen were occupying parts of Agatu Local Government Area(LGA) of the State. Some of the Applicants' leaders have brought the facts of these predictable attacks and locations of these Fulani militia to the attention of the Respondents at various times but the Respondents failed and /or neglected to take proactive measures to protect them.

5. That the 2nd Respondent is a grand patron of the Fulani herdsmen in Nigeria and is known to have fought for and sought protection of these Fulani herdsmen in the past. The Fulani herdsmen then took advantage of his position as President to wreak havoc on the people of Benue state without being apprehended. A case in point was on 4th day of march 2016, when one Ardo Boderi claiming to be a leader of the Fulani herdsmen said at a stakeholders meeting organized by the 3rd and 4th Respondents, claimed that because over 10,000 cattle belonging to the Fulani marauders were allegedly killed by people of Agatu, that was why he and his members attacked and killed people of the Agatu community. Despite this admission, the 4th Respondent never ordered the arrest of the said leader.

6. That after the killings of over 500 people and 10 villages razed down in Agatu LGA, the 2nd Respondent through his Minister of Interior, purportedly setup an investigation panel to enquire into the atrocities committed by these militias, but till date, the said report of the investigation panel has not been published nor any findings or recommendations reported. That the Respondents chose to protect cows belonging to these herdsmen as against lives of its citizens by deploying heavily armed military and mobile policemen to the bushes to protect the said cows.

7. That since the unfortunate Fulani attacks, the Applicants communities and thousands of their kinsmen have been camped in primary schools and shanties under deplorable conditions unworthy of human lives and bereft of basic necessities such as food and medical care. These callous attacks have been reported in various media and these incidents are common knowledge in Nigeria but, in spite of this, the Respondents have refused and or willfully neglected to provide any relief materials to ameliorate their sufferings.

8. The Applicants therefore seeks the following reliefs:

1. A DECLARATION that the failure of the Respondents, their officers, servants, agents and privies to provide a security for the Applicants and their properties but rather deploy security operatives to protect cows owned by nomads roaming the bush constitute a gross violation of Applicants' right to be equal before the law and violates their entitlement to equal protection of the Law contrary to Article 3 of the African Charter on Human and Peoples Rights.

2. A DECLARATION that the failure of the Respondents, their officers, servants agents and privies to provide adequate and timely security to the Applicants is a gross violation to the Applicants' right to liberty and security of their persons contrary Articles 4 and 6 of the African Charter on Human & Peoples' Rights.

3. A DECLARATION that the Applicants have a right to National and International Peace and Security as enshrined in Article 23 of the African Charter on Human & Peoples' Rights, and the failure of the Respondent, their officers, servants, agents and privies to take proactive measures to provide timely and adequate protection for the Applicants and their communities from the occupation of their farm land and utter destruction of their properties Fulani Herdsmen constitute gross violation of the said rights.

4. A DECLARATION that the current degradation of the environment in the Plaintiffs' ancestral homes and communities due to destruction of same by Fulani Herdsmen occasioned by failure of the Respondent, their officers, servants, agents and privies to provide adequate and timely security to them is a gross violation of their right to a general satisfactory environment favorable to their development contrary to Article 24 of the ACHPR.

5. A DECLARATION that the failure of the Respondents to secure the borders of the country constitutes a flagrant violation of the Plaintiffs' right to national and International Peace and Security as enshrined in Article 23 of the ACPHR.

6. A DECLARATION that the deplorable state of health that pervades the Internally displaced Persons (IDP) Camps littered across Benue State constitute gross violation of the Plaintiffs' and their kinsmen's right to enjoy the best attainable state of physical and mental health as guaranteed by Article 24 of the ACHPR.

7. AN ORDER of this honorable Court directing the Respondent to set up forth with a high powered investigative Panel to enquire into the atrocities committed by Fulani Herdsmen against Benue Communities over the years particularly this year and implements its findings forthwith.

8. AN ORDER of this Honorable Court directing the Respondent to pay to the Plaintiffs and the affected communities in Benue State compensation in the sum of N500 Billion (Five Hundred Billion Naira) only.

9. AN ORDER of the Honorable Court directing the Respondent to pay the Plaintiffs and the affected communities in Benue State damages in the sum of N500 Billion (Five Hundred Billion Naira) only on the footing of exemplary and aggravated damages for unlawful violation of the Plaintiffs rights, the Respondent actions being negligent, oppressive, arbitrary, capacious, and for injuring the dignity and pride of the Plaintiffs and for causing them great physical and psychological trauma.

10. AN ORDER directing the Respondent to pay to the Plaintiffs the sum of N25 million Naira only being cost of prosecuting this suit.

11. Interest at the rate of 25% (twenty five per centum) per annum on the judgment sum awarded from the date of judgment until the judgment sum is fully liquidated.

RESPONDENTS CASE.

9. The 1st-4th Respondents filed their statement of defence and in response denied paragraph 6, 9, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 28, 29 and 30 of the Respondents' summary of facts as untrue, baseless and unsupported by facts. The Respondents stated that the crisis that engulfed the Benue State of Nigeria and its environment were as a result of tribal and ethnic differences between the Agatu community and the Fulani community over farming and rearing of animals. That this fact was established by various panels of enquiry set up at different times in a bid to proffer solution.

10. That the crisis between the two rival communities are not based on security lapses or the inability of the Federal or State Governments to protect the lives and properties of the people of Benue state. That during the said crisis, security agencies were deployed to the Agatu community for the purpose of ensuring the protection of lives and properties in the interest of peace and security. That they employed the use of both the print and electronic media to ensure that the people

were sensitized on the need to maintain peace and order within the region and eschew segregation and sectarian sentiments. That they cannot be held responsible for any ethnic crimes committed by unidentified and unknown persons which constitutes a breach and these perpetrators are not connected or known to the Respondents or any of its agencies.

11. That the indigenes of Agatu community who are farmers were also known to have triggered the violence by carrying out a reprisal attacks on the herdsmen and they are not entitled to any compensation for the direct consequences of their action. That the perpetrators of these criminal atrocities are unknown to any of the Respondents, and no tacit approval was given by the Respondents to any criminal atrocities taking place between the two ethnic groups. That no group or individual anywhere except security personnel are allowed to own ordinary weapon and none of the attacks carried out was predicted by any of the Applicants giving the claim that the Respondents have neglected or refused to take appropriate steps to protect the Applicants. That they never received any facts of predictable attacks and the location or any confessional statement from anyone between the two warring ethnic groups.

12. That they have not failed in their efforts and responsibilities to protect the Agatu community in Benue state and Nigeria at large. That the 2nd Respondent gave an order to the security officers to the effect that the perpetrators who carried out attacks on all communities in Nigeria must be investigated, arrested and prosecuted. That the Applicants have not disclosed any actionable wrong to them by any of the Respondents to justify the Court making the orders sought. That the Applicants' claim for damages is not substantiated by facts. That granting any of the reliefs sought by the Applicants will result in bad blood while opening a floodgate to similar claims from other ethnic groups in the state.

13. Annexed to their statement of defence is a preliminary objection on the following grounds:

1. The Community court of justice, (ECOWAS) lacks the requisite jurisdiction to hear this matter.

2. Lack of cause of action against the 1st-4th Respondents.

The 5th and 6th Respondents in response to the Applicants application filed a preliminary objection on the following ground that the Court lacks jurisdiction

because the 5th and 6th Respondents are individuals and not a state or community institution.

14. The Applicants filed a reply in response to the 1st-4th Respondents' statement of defence and stated that, the attacks on their community is not an ethnic clash but unprovoked attacks by the Fulani Herdsmen who are not a tribe but deadly terrorist group. That the Agatu community has never attacked any Fulani Herdsmen nor their cattle neither does the community possess any form of weapon. That the victims of these attacks are hapless, helpless and unarmed civilians including women and children.

15. That the Respondents never published the findings of any investigating committee on Fulani Militants' attacks on the Applicants and their communities nor have they taken any steps to implement any such report. That the names of the members of the purported committees which the Respondents claimed to have setup and their findings were never published. That the Respondents never deployed any security officials when all these attacks were carried out but rather after the attacks. Further that the Respondents have failed to provide security and stability in the Benue communities, thereby breaching its obligations and also allowing serious violation of human rights of the Applicants and members of their communities.

ANALYSIS OF THE COURT ON PRELIMINARY OBJECTION.

16. In the cause of the hearing, the Respondents had raised a Preliminary Objection and formulated two issues for determination:

- **Whether from the totality of facts and evidence put forward by the Applicants, a cause of action has been disclosed to invoke the jurisdiction of this Court.**
- **Whether the Respondents are proper parties to this suit.**

In the light of the fact that the Court had adjourned ruling on the Preliminary Objection to the Judgment, the Court will now analyze the facts as deposed to by both parties and their pleas in law.

WHETHER FROM THE TOTALITY OF FACTS AND EVIDENCE PUT FORWARD BY THE PLAINTIFFS, A CAUSE OF ACTION HAS BEEN DISCLOSED TO INVOKE THE JURISDICTION OF THIS COURT.

17. The 1st-4th Respondents challenged the jurisdiction of this Court contending that the subject matter of this suit bothers on several killings ensuing as a result of tribal/ethnic differences which has no nexus with the jurisdiction of this Court as enshrined in the provisions of Article 9 of the Supplementary Protocol on the Court. The Respondents further contend that the Applicants have not disclosed any cause or reasonable cause of action.

18. The jurisdiction of this court to determine cases on human right violation is spelt out in Article 9 (4) of the 2005 Supplementary Protocol on the Court which provides:

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

In line with the consistently held decisions of this Court, once an alleged violation is founded on an international or community obligation of the state, the jurisdiction of this Court is invoked. See **SERAP V. FRN & 4 ORS, (2014)** unreported, where this court held that:

"the mere allegation that there has been a violation of human rights in the territory of a member state is sufficient prima facie to justify the jurisdiction of this court on the dispute, surely without any prejudice to the substance and merits of the complaint which has to be determined only after the parties have been given the opportunity to present their case, with full guarantees of fair trial."

See also **Hissien Habre V Senegal (2010 CCJELR) pg.65.**

19. In determining whether or not a reasonable cause of action has been established, this Court in **Incorporated Trustees of Fiscal & Civic Rights Enlightenment Foundation v. Federal Republic of Nigeria & 2 ORS ECW/CCJ/JUD/18/16** defined cause of action as:

"A matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is the right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable."

Similarly, in **Gabriel Inyang & Anor v. The Federal Republic of Nigeria ECW/CCJ/JUD/20/18** this court agreed with the holding in the case **Adekeya vs. FHA (2008) 11 NWLR Pt. 1099** that:

“(A) cause of action is a fact or combination of facts which establishes or gives a right of action. It is the factual situation which gives a person a right to judicial relief. In other words, a cause of action is the operative fact (or facts) that gives rise to a right of action, which itself is a remedial right...A right of action is the right to enforce a cause of action. A cause of action accrues the moment a wrong is done to the Plaintiff by the defendant...”

20. The Court further held that, in making a determination as to whether the applicants have stated a cause of action to attract the attention of the Court, the averments in the Application must be searched to determine whether a wrong is alleged over which this court has the jurisdiction to address. It is trite that the claim of the Plaintiff determines the jurisdiction of the Court to entertain an action. In summary, the allegations of the Plaintiffs are that the series of attacks and killings carried out in their community and other neighboring communities by some unidentified Fulani Herdsmen have resulted to a wanton destruction of lives and properties leaving thousands of them internally displaced under deplorable conditions and bereft of basic necessities such as food and medical care. That over 1000 people have been killed and hundreds of thousands living in deplorable makeshift camps. That the Respondents have failed to take action to stop these attacks but rather allowed the Fulani militias to unlawfully carry sophisticated assault weapons.

21. The Applicants alleged that the Respondents’ failure to honor its obligations to protect their human rights under International human rights instrument to which the 1st Respondent is a member constitutes a wrong doing against them and violates their fundamental human rights as provided for under Articles 1, 3, 4, 6, 23 and 24 of the African Charter on Human and Peoples’ Rights. This raises a fundamental issue against the Respondents and this is sufficient cause of action. This does not however suggest proof of allegation of the Applicants claim.

22. Based on the above, the Court is of the view that the Plaintiffs have made out a reasonable cause of action against the Respondents. The objection of the

Respondents that this suit be struck out on the Grounds that it bothers on tribal/ethnic differences cannot be sustained and the Court so hold.

WHETHER THE 2nd to 6th RESPONDENTS ARE PROPER PARTIES TO THIS SUIT.

23. The 1st-4th Respondents contend that the Applicants' application did not make any averment that justify their presence in this suit and therefore they cannot be made to suffer for an act which they neither committed nor are complicit in. Furthermore, the 5th-6th Respondents in their submissions contend that this court does not have the jurisdiction to entertain an action filed by an individual against another individual and accordingly cannot be admissible.

24. In the light of the fact that the Applicants on 3rd May 2017 applied to strike out the names of 2nd to 6th Respondents which the Court granted, the question as to whether they are proper persons before this Court is therefore mute. The Court will therefore not make further pronouncement on this head of the preliminary objection of the Respondents.

ANALYSIS OF THE COURT ON THE SUBSTANTIVE SUIT

25. Having held on the first head of the Preliminary objection that the Applicants have made a clear cause of action against the Respondent, the Court will now proceed to analyze the facts presented and reach a decision on the substantive suit for which the Court has distilled one issue for determination.

WHETHER THE APPLICANTS HAVE THE LOCUS STANDI TO INSTITUTE THIS CASE.

26. The Applicants are 12 in number made up of 11 people of different occupations and one organization. They aver that the Fulani herdsmen and farmers' conflict in Benue state which started over decades ago as mere conflict escalated to an invasion and occupation agenda amounting to terrorism. That within the last three years Fulani herdsmen have carried out over fifty (50) aggressive attacks in over 15 local government areas of Benue state including their communities. That during the attacks, their community and some other communities in Benue State suffered wanton destruction of their properties including; burning down and general destruction of houses and homes, sundry household items, farms, economic trees, vehicle, machineries, food stuffs, schools and that over 1000 people have been killed and hundreds of thousands displaced and living in deplorable makeshift camps.

27. The Applicants state that the Respondent was aware of the locations of these Fulani herdsmen in the neighboring communities particularly Nasarawa State and have created safe havens for them. That the Respondent have failed to take action to stop these attacks but rather allowed the Fulani militias to unlawfully carry sophisticated assault weapons. That since the unfortunate Fulani attacks, the Applicants' communities and thousands of their kinsmen have been camped in primary schools and shanties under deplorable conditions unworthy of human lives and bereft of basic necessities such as food and medical. The Applicants therefore lodged an application before this Court claiming against the Respondent as victims of violations of human rights under Articles 1, 3, 4, 6, 23 and 24 of the African Charter on Human and Peoples' Rights.

28. The Respondent denies any violation of the rights of the Applicants and insists that the problem arose out of an ethnic clash between the Fulani herdsmen and the Applicants' community and therefore cannot be held liable for any of the violations of rights that occurred.

29. The conditions precedent to ground an action before the Court is the establishment that:

- (a) The subject matter is a violation of human rights under the several accepted international human rights instruments.
- (b) That the Applicant is a victim who has suffered personal loss, hurt, or damage to property and with interest to grant locus standi (standing) before the Court. The Applicant must equally prove with certainty the injury, hurt, damage or loss as alleged.
- (c) That the Respondent is responsible for the violations alleged.

See **Suit No. ECW/CCJ/APP/09/11, Ruling No. ECW/CCJ/RUL/03/14: The Registered Trustees of the SERAP v. Federal Republic of Nigeria & Anor.**

30. In dealing with (a) above, Article 9 (4) of the Supplementary Protocol 2005 on the Court grants it the mandate to adjudicate on matters of human rights violations. It provides:

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

In the instant case, the Applicants alleged that the various attacks on their communities by the Fulani herdsmen which they claimed amounted to the violation of their human rights including right to life, right to equality before the law, right to health and right to peace and security amongst other rights. Both oral and documentary evidence were adduced to support these allegations including 5 witnesses who 3 of them are Applicants who testified to the alleged attacks that led to death of thousands of the residence of the affected communities and loss of properties.

31. The Applicants also supported their case with newspaper reports of the crisis even though, there are no pictorial evidence of the actual damage; it is undisputed from all documents before the Court that there was a general mayhem in the affected communities resulting in death and loss of property. The Court in its decisions has held that where a violation of human rights is alleged, the Court will automatically exercise its jurisdiction over the case. In **CDD v. Mamadou Tandja (2010) CCJELR pg. 109 & Bakare Sarre & 28 Ors v. Mali (2011) (CCJELR) pg. 57** the court held that:

“Once a human rights violation which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case.”

Similarly, in **Kareem Meissa Wade v. Republic of Senegal, ECW/CCJ/JUD/19/13, at pg. 259 Para. 95 (3)**, this court held that:

“Nevertheless, that simply invoking human rights violation in a case suffices to establish the jurisdiction of the Court over that case.

Therefore the condition precedent to establishing an allegation of violation of human rights to enable the Applicants access the jurisdiction of the Court has been fulfilled and the Court so holds.

32. The second condition is that an applicant of human rights violation must establish the status as a victim who has suffered a personal and ascertainable loss. Article 10(d) of the Supplementary Protocol of the Court 2005 reads as follows:

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

The implication of the above is that only individuals whose right have been violated can access the Court to claim relief. In other words, only **victims** of the violation of human rights can ground an action before the Court which means an Applicant must prove his/her locus standi in the case.

33. This Court has held in many cases that to qualify for relief of human rights violation, the Applicant must justify its legal capacity as a victim. **In the case Center for Democracy and Development v. Mamadou Tanja & Republic of Niger, ECW/CCJ/JUD/05/11 @ 27**, the Court held that:

“Cases shall be brought before the court by natural or legal person endowed, within the framework of their national laws, with the required legal capacity, and who, in addition, shall justify their condition of being victim...the Court recalls that when an application on human rights violation is brought before it, it is so done necessarily by a person who is a victim of the said violation against one or several Member states.”

Also in the case of **Musa Saidykhan v. Republic of The Gambia, ECW/CCJ/JUD/08/10 @ 43**, this Court held that:

“Principally the object of an award in human rights violation is to vindicate the injured feelings of the victim and to restore his rights and human dignity.”

It follows from the above decisions that only persons who can justify their claims of being directly affected have the standing to seek reliefs for violations of human rights from the Court.

34. The question to determine is whether the Applicants in this case are victims within the meaning of Article 10 (d) of the Protocol as claimed; and this leads the Court to determine who is a victim of Human Rights violation. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Survivors of Violations of International Human Rights and Humanitarian Law, **GA Res 60/147, pmbl, Sec IX, UN Doc A/RES/60/147 (March 21, 2006)**, defines:

“A victim is anyone who suffers individual or collective harm (or pain) such as physical or mental injury, emotional suffering, economic loss, or generally any impairment of human rights as a result of acts or omissions that constitute gross violations of human rights, or serious violations of humanitarian law norms.”

35. The European Court of Human Rights defined a victim in the case of **Groppera Radio AG and others v Switzerland (Application no. 10890/84 judgment Strasbourg 28 March 1990, Groppera Radio AG)**; as follows:

*“By ‘victim’, Article 25(1) means **the person directly affected by the act or omission which is in issue,**”*

Also in the case of **Aziagbede Kokou & 68 Ors v. Republic of Togo ECW/CCJ/JUD/07/13 page 175 @24**, the Court held that:

*“To claim to be a victim, **there must exist a sufficient direct link between an applicant and the prejudice he deems to have suffered as a result of the alleged violation.**”*

It follows from the above that a victim can be a person who suffers directly or indirectly any harm or pain (physical or mental injury), emotional suffering (through loss of a close family member or relation), economic loss (loss of Properties) or any impairment that can be categorized as human rights violation. Additionally, other than the loss, harm or damage, an Applicant must prove an interest in the matter which must be direct and personal.

36. In the case of **Odafe Oserada v. ECOWAS Council of Ministers, ECOWAS Parliament & ECOWAS Commission, ECW/CCJ/JUD/01/08 @ 27**, the Court held that:

*“Generally, and from a legal standpoint, the necessity for an Applicant to provide justification of interest in a case is attested to by the adage that where there is no interest, there is no action, and also an interest is the measuring rod for an action. In other words, an application is admissible only when the applicant justifies that he brings a case before a Judge for the purposes of protecting an interest or defending an infringement of such. Such an interest must be **direct, personal and certain.**”*

While a victim must have suffered directly from the alleged act and prove a direct or personal interest in the matter, this Court has through several decisions made exception for individuals and organizations who have not suffered directly or personally to institute actions in a representative capacity on behalf of victims.

37. An individual can bring an action on behalf of another only when Applicant is a close relation of a victim of violation of human rights. The Court held in **Alhaji Muhammed Ibrahim Hassan v. Governor of Gombe State & Federal Government of Nigeria ECW/CCJ/RUL/07/12 at page 83-(5)**, the court decides that:

“Applicant not being a victim or a relation to a victim of the violation of human rights, has no locus standi to institute the action.”

Following from the above, it is clear that individuals who are non-direct victims can ground an action before the Court if they are a relative of the direct victim of violation of human rights.

38. However any action by an individual in such representative capacity must be supported by a mandate from the victim (s). The importance of having a mandate when an individual who is a close relation of the victim is acting on behalf of the victim has been emphasized in the jurisprudence of this Court. In **Nosa Ehanire & 3 Ors v. Federal Republic of Nigeria, (2017) CCJELR** the Court held that:

“The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with. The Court went further to state that for the Plaintiffs to access the court for and on behalf of the people of Niger Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent.”

In further emphasis, the Court stressed that:

“The criteria for representation must be respected. A party authorized to act on behalf of another person or for a group of people shall exercise the power of representation in such action by virtue of the vested power.”

See the case **Bakary Sarre & 28 Ors V. The Republic Of Mali (2011) CCJELR, pg.72,**

39. Whilst the issue of mandate cannot be dispensed with in a representative capacity; an exception to the requirement was made in **Stella Ifeoma & 20 Ors v. Federal Republic of Nigeria (2015)** thus:

“when it becomes impossible for him whose right is violated to insist on that right or to seek redress, either because he is deceased or prevented in one

way or the other from doing so, it is perfectly normal that the right to bring his case before the law Courts should fall on other persons close to him... ”

This was further emphasized when the Court held that:

“if for any reason, the direct victim of the violation cannot exercise his/her rights, in particular, for being irreversibly incapacitated or having died as a result of the violation, the closest family members can do so, while assuming the status of indirect victims.”

See **The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v. Federal Republic of Nigeria, Attorney General of the Federation & Minister of Justice ECW/CCJ/APP/09/11 & ECW/CCJ/RUL/03/14.**

Even in the above stated circumstances, the Court will as a matter of law require the proof of relationship with the dead victim to maintain an action before the Court.

40. Having analyzed the various condition precedents where an applicant who is recognized as a victim with the standing to claim **personal** reliefs for violation of human rights; the Court will now proceed to examine the status of each applicant to determine if they are victims with locus standi to bring this action.

41. Ukan Kurugh who is Pw1, a witness and Journalist testified and below is excerpts from the Court proceeding:

Court: You have not said anything, there is no crisis in your statement, you visited Okokolo on your way to Okokolo that is what you said, give us the narrative.

PW1: let me take it from here, on our way to Okokolo, we heard gunshots from herders and there was massive dust so we stopped.

Vembe: Sorry, before you proceed, what was the purpose of the Media tour?

PW1: The Purpose of the Media tour was probably to tell the story to the world that is why the former Senate President arranged the Media tour.

Vembe: Tell what story?

PW1: The story of killings in Agatu

Court: Yes.

PW1: As we proceeded, we heard gunshots from where we saw haze of dust apparently from the herd's men who were retreating because we had convoy of over 40 cars and security. There was massive destruction, I saw two dead bodies that were cut down with machete and there was decaying already. So at that point we stopped and a drone was sent into the bush where we saw herdsman retreating in their numbers with their cows.

42. The testimony of PW1 recounted a media tour to the affected communities and described what he saw through pictures taken by a drone. He recounted how people were killed and properties destroyed. The Applicant did not suffer any direct harm but saw people who claimed they have been displaced and only came back because they heard the media people will be visiting to tell the story to the world. At best, PW1 is a Journalist on the line of duty reporting events witnessed in the communities affected by the Fulani attacks.

43. The Court will now proceed to review the excerpt of the testimony of the second witness who is the 1st Applicant –Rev. Fr. Solomon Mfa.

Court: Yes.

Vembe: For avoidance of doubt please clearly tell this Honourable Court your names and what you do for a living?

PW2: I am Reverend Father Solomon Mfa, a priest based in the Catholic Diocese of Gboko on secondment in Makurdi.

Vembe: How many places or stations have you worked in since you were ordained a Catholic Priest?

PW2: I worked in four places, I worked in St. Michaels Parish Jatu Oka, Our Lady of Perpetual Help Cathedral Makurdi, Sacred Heart Parish Udeye in Guma Local Government and St. Francis Catholic Mission Dauda Guma Local Government, Benue State.

Court: Yes

PW2: And now St. Augustine Parish Makurdi, Benue State.

Vembe: Yes you were telling us all your experience of the attack, did you lose anything? All your Parishioners, villagers, did you lose anything?

PW2: We lost Lives and Churches, homes were burnt down, some of our out stations were burnt down. Some yam barns, food stuffs were lost. Lives and properties and even Churches were also lost.

Vembe: father, you said you were displaced three times, did you lose anything in the course of these displacement? Whether life, whether property, anything, did you lose anything?

PW2: I lost many of my parishioners and my properties and even some of my out stations were burnt down.

44. The summary of the testimony of PW2 (1st Applicant) from the excerpts is as follows:

- He is a Clergyman in Sacred Heart Catholic Church in Udeye Parish in Guma Local Government where he was at the time of the crisis.
- He had been posted to four other Churches within Benue State Prior to the crisis.
- Several of the Parishioners in Udeye were killed during the alleged crisis at the Parish where he was Superintendent that time.
- Some of the “out stations” of the Catholic Churches were burnt.
- Some Yam barns, food stuff were destroyed.
- He lost his properties.

45. The Court takes judicial notice of the fact that the Catholic Church is a Christian religious organization with established Parishes Worldwide. 1st Applicant is a Clergy in one of the Parishes who according to his testimony has been transferred from 3 others prior to his present posting. 1st Applicant did not testified to establish ownership of any of the Churches he has been posted. At best 1st Applicant is an employee of the Catholic Church subject to a higher authority who has powers to move him from one Church to the other. In this wise, can 1st Applicant lay claim to the burnt Churches as his personal property to qualify him as a victim? The answer is in the negative. 1st Applicant equally testified to the death and injury of his parishioners, there is no evidence that any one of them is a close member of his

family for instance, his mother, father, sister or brother; neither is there evidence of an authorization by the Parishioners who are alive to institute this action on their behalf.

46. 1st Applicant testified that “my properties” were destroyed. To the extent that this is an allegation of a personal loss, the 1st Applicant prima facie is qualified to be a victim. The Court in interpreting Article 9 (4) of the 2005 Supplementary Protocol on the Court will allow a mere allegation of a violation of an Applicant’s human rights to invoke its jurisdiction. In **Kareem Meissa Wade v. Republic of Senegal, ECW/CCJ/JUD/19/13, at pg. 259 Para. 95 (3)**, this court held that:

“Nevertheless, that simply invoking human rights violation in a case suffices to establish the jurisdiction of the Court over that case.

The Court will therefore not shut him out at this stage. The Court thus holds that 1st Applicant has the locus standi to bring this case only as it relates to his claim of destruction of his property and will be heard on merit.

47. Having held Supra 73 that 1st Applicant being a victim has the locus standi to seek relief for the loss of his property, the Court will now analyze the fact to decide if the 1st Applicant has proved his claim. Article 14 of the African Charter on Human and Peoples’ Rights guarantees the right to property to which the 1st Applicant claims and it provides:

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

The first requirement to establish a claim of the violation of this right is the definitive identification /description of the said property. The Court has no record of the description of the property, their location, proof of ownership and their value. General averment that “my properties” were destroyed will not avail a relief. Which property will the court grant a relief; a car, a building, a motorbike or a farmland? The consequence of the ambiguous reference to “my properties” is that the Applicant has failed to substantiate his interest in the said property and therefore his claim to the violation of his right therein fails and the Court so holds.

48. Additionally, 1st Applicant testifies that some “Yam barn and foodstuff” were destroyed. Again, this is a nebulous claim devoid of any particulars sufficient

enough to ascribe the loss to 1st Applicant. Who owns the Yams and foodstuff? The Parishioners? The Communities? Or 1st Applicant himself? There is need for clarity of ownership and more details including the location, details of the food stuff for example; Rice, Beans, Banana, Yams and Cassava. In the absence of such, 1st Applicant has not demonstrated a personal interest to grant him right to sue for their destruction. The effect of all the above is that 1st Applicant has not established any direct loss, injury or harm arising from the crisis, neither did he submit any mandate to act on behalf of any of his Parishioners who are close family members. Therefore 1st Applicant is not entitled to bring an action for himself and on behalf of the Church and the parishioners. The Court holds that in all, 1st Applicant though prima facie qualifies as a victim, has not proven his case and therefore not entitled to a personal claim on violations of his human rights.

49. The PW3 is a seventy five years old man- Prince Adamu Iliakwu Ijele from Agugbe Agatu and a Fisherman, He is not one of the Applicants but is a leader of one of the communities affected by the Fulani attacks. Below are excerpts from his testimony before the Court:

PW3: My name is Prince Adamu Iliakwu Ijele, I am from Agugbe Agatu.

Plaintiff: Do you know Honourable Ochekwu Yakubu, the fifth Defendant in this case?

PW3: He is my Nephew.

Plaintiff: Please tell us your experience as you are narrating slowly with these attacks.

PW3: I was monitoring everything, including my Father's Palace. My father was the Chief between 1948 and 1980; for about 33 years. They in fact, ravaged everything, they destroyed everything in my father's house including the shrine. I have a list of all the people killed in my village and in about four or five neighboring villages which I may produce in the next sitting or when the Court pleases me to bring it.

Pw3 not being an Applicant, his testimony at best is that of a witness and can only have a collaborative value to support the allegation of mass killings and destruction of properties by the Applicants.

50. Hon. Terese Tange who is the PW4 and the Sixth Applicant, is a social development worker and head of an NGO called Tiv Youth Organizations. He

testified as a victim of human rights violation and excerpt of his testimony are as follows:

Vembe: You are the sixth Applicant in this case, kindly tell this Honourable Court your experience as relating to your company before this Court, so that we don't waste time. Slowly just the key major things.

*PW4: One, I am directly involved in the conflict because my immediate community was gruesomely attacked by armed Fulani herds men on Sunday 26th March, 2015. In the process, six members of my community were killed that very day, **including very close relations**. Several others were inflicted with severe wounds due to machete cuts. There was large scale displacement of natives from their ancestral homes, thereby abandoning their livelihood activities, particularly farming. With nowhere to go, the community arranged and they were temporarily accommodated in a make shift camps and they lived under trying conditions. The properties they left behind were destroyed especially crops.*

51. The testimony of PW4 who is the 6th Applicant is a narrative of a witness account of what took place in his community during the attacks. PW4 enumerated how the alleged victims were wounded, their properties destroyed and how some of them were killed including very close relations. From this narrative, PW4 did not state the reason why the injured could not come to Court by themselves nor present any mandate to represent them. The general rule is that individuals who bring action for human rights violations in a representative capacity must fulfill the requirement of convincing the Court that they have the mandate to do so. However in a situation where the victim is deceased, the Court has held that anyone bringing an action as an indirect victim must be able to establish and convince the Court of their direct relationship with the victim.

Following from the above, PW4 who alleged that some of his close relations died as a result of the Fulani herdsmen attack on his community, may have the locus standi to institute an action and claim as an indirect victim on behalf of the deceased relations. The only impediment in the instance case to PW4 is hinged on the fact that he did not have any evidence before the Court to prove his relationship to the deceased; there is no document containing the names of the deceased, their age, gender, time of death or cause of death and his relationship with them either

as a brother, son, uncle or nephew. PW4 is therefore not an indirect victim before the law and the Court so holds.

52. The seventh Applicant – Favour Adah-Paul is a humanitarian worker who operates an orphanage to cater for orphaned children in Makurdi and she is the PW5. Excerpt of her testimony is as follows:

Vembe: Can you give us an idea of the number of children you met in the camp, and how many you were able to take.

PW5: As at that time, we met well over five thousand children in the camps. Some were staying by the road side, and that is where they sleep. So we started making breakfast to meet their nutritional needs at that time but for us to be able to do something, we had to bring about fifty of them at the start into my home, where after we got more conducive environment accommodation for them. As the attack continued, we got more kids, at a point, we had over two hundred children that were orphaned from these crisis in the orphanage homes that was established purposely to cater for the needs of orphans from the crises, because they were too many and we had little space, we could not take more.

53. From the testimony above, PW5 as the 7th Applicant was very instrumental in taking care of the Children who became orphaned from the crisis, she did not suffer any personal harm, injury or loss and has not established any direct link and personal interest to qualify her as a victim of violation of human rights. Having not fulfilled the requirement to be categorized as a victim, her application before this Court cannot be entertained for lack of locus standi.

54. Having examined the testimony of the five witnesses –three of whom are themselves Applicants in this case, Vis-à-vis the condition precedents to qualify an applicant as a victim which gives locus standi before this Court, it is clear that from their testimony, PW1, PW3 and PW5 have not established any loss or harm, damage or injury with direct link to them nor a personal interest to qualify them as victims to claim for themselves. The Court will now proceed to address the claims of the remaining Applicants who did not testify.

55. Applicants 2, 3, 4, 5,8,9,10,11 who did not testify in Court, but were named as such in the Initiating Application equally claimed reliefs for violation of their human rights under the earlier stated instruments both for themselves and on behalf of

their communities. The Applicants were only introduced in the Originating Application as “citizens of the Federal Republic of Nigeria who hail from and or resides on its own properties in Benue State of Nigeria”. Other than this, there is no evidence in all documents filed that indicate their implication in this crisis as victims. There is no evidence to show they were at any time within the crises zone, nor any narration as to witnessing the alleged killings and destruction of property. There is no evidence of loss, damage and injury that was articulated by any of them either personally or to close family members. There is no record to show that any of these Applicants have personal and direct interest to ground this action (**See Odafe Oserada v. ECOWAS Council of Ministers, ECOWAS Parliament & ECOWAS Commission, ECW/CCJ/JUD/01/08**). Finally there is no evidence to show any mandate from any member of the community who was a victim that authorized these Applicants to sue on their behalf (**See Nosa Ehanire & 3 Ors v. Federal Republic of Nigeria, (2017) CCJELR**).

56. Since Applicants 2, 3, 4, 5, 8,9,10 and 11 did not establish by documentary or oral evidence proof of their status either as direct or indirect victim; their claims for relief for **themselves** fails.

57. The 12th Applicant is an organization named Movement against Fulani Occupation (MAFO), other than the fact that it is referred to as the 12th Applicant in the Originating Application, the Court has no record of its mandate, its membership and evidence of registration as a legal organization and of course no evidence that it has a mandate from the said communities to act on their behalf. It is trite law that an organization without a legal capacity cannot sue and be sued; having not provided a certificate of registration from a recognized and appropriate body, MOFA has not established a legal capacity to sue on its behalf and for others. **See Judgment No.ECW/CCJ/JUD/05/11 of May 2011 in Suit No. ECW/CCJ/APP/07/09, CDD and CDHRD v. Mamadou Tandja & Republic of Niger, para. 29** where the Court held as follows:

“The Applicants are not Associations formed from the laws of Niger and do not have any justification either as constituting a part of the Republic of Niger. The said decisions cannot therefore be against them and does not concern them intimately or remotely; they cannot therefore constitute

victims of the consequences of such decisions. Ultimately, they cannot be identified as victims.”

The Court is compelled to come to the inevitable conclusion that since there is no proof of certificate of registration before this Court, MOFA has a fundamental defect of legality and cannot be seen as a victim with the locus standi to bring this action for itself and the said communities.

58. The Court in summarizing its findings in this case, notes that none of the Applicants was able to prove orally or by documentary evidence:

- That they have suffered a direct loss, injury or damage to properties arising from the alleged crisis.
- Their relationship with any of the victims to show they are close family members for example that the victim is their father, son, daughter or mother.
- The identification of the alleged victims whom the Applicants purport to represent for example their names, gender and age.
- The exact properties allegedly destroyed for example address of the building, location of the farmlands, the food stuffs and their cost as valued.

The Court notes that the relief sought are in some cases personal to the Applicants, whilst in others they are for Applicants and on behalf of the alleged communities. The Applicants having not been able to prove they are victims to qualify for personal reliefs, declarations and orders that are for the personal benefits are hereby dismissed.

59. Even though the Court held that the Applicants have failed to maintain this action in their personal capacity, the law recognizes the right of individuals and corporate bodies who are not victims to bring an action in a representative capacity under the principle of Actio Popularis. The Court under this situation will allow NGO and public spirited individuals to institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest. Public interest issues are generally for the welfare and wellbeing of every individual in a society.

60. The doctrine of actio popularis was expounded where the Court held that:

“The doctrine of actio popularis was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court”

See the case of: **SERAP V. FRN (2010) CCJELR, Pg. 196, para 32, & 34.**

In public interest litigation, the Plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justiciable. This was further elaborated in the case of **Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) & 10 Ors, v. Federal Republic of Nigeria & 4 Ors** where the Defendant challenged the standing of the 1st Plaintiff on grounds that it has not been affected in any way by the acts attributed to the Defendant and that there is no public interest to legitimize the claim, the Court held in para 58 that:

“.....a strict legal interpretation of the concept of victim, for the purpose of human rights protection, has evolved into a more flexible approach in order to allow other persons, not directly affected by the alleged violation, to have access to Court, and seek justice, on behalf of the actual victim and to hold accountable the perpetrators”

61. The reasoning for this progressive and broad construction of the concept of locus standi was succinctly stated by the Court in **Media Foundation for West Africa v. Republic of The Gambia** in the following words:

*“With respect, the narrow construction with respect to locus standi has progressively given way to a wider construction of the doctrine especially in human rights causes and thus a plaintiff ought not to prove that he has directly suffered the breach of a legal right. **The cases of Jammeh v. Attorney General (supra) and Tuffour v. Attorney General (supra), from the Republic of The Gambia and the Republic of Ghana** respectively support the viewpoint that the strict interpretation of the doctrine has given way to a more*

*progressive and broader interpretation where plaintiffs need not show that they have suffered personally before they can sue in human rights causes. In **Fertilizer Corporation Kamager Union v. Union of India (1981) A.I.R. (SC) 344**, it was stated thus: “Restrictive rules about standing are in general inimical to a healthy system of growth of administrative law. If a plaintiff with a good cause is turned away merely because he is not sufficiently affected personally that could mean that some government agency is left free to violate the law. Such a situation would be extremely unhealthy and contrary to the public interest”.*

*This Court held in the case of **Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and the Universal Basic Education Commission, suit number ECW/CCJ/APP/08/08**, ruling delivered on the 27th day of October 2009 and other cases that a plaintiff need not establish that he has suffered personally in order to clothe him with locus standi to institute an action for the relief of violation of human rights.”*

62. As earlier stated, public spirited individuals can also maintain an action in a representative capacity. In **SERAP V. FRN (2010) CCJELR, Pg. 196, Para 32, & 34** the Court stated that:

“The doctrine of actio popularis was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court. In public interest litigation, the Plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justiciable.”

63. If registered organization (who are not classified as victims) can sue on behalf of victims of abuse by merely showing its legal capacity and that there is a public right worthy of protection, it seems incongruent to disallow public spirited persons (individuals) to sue on behalf of victims “*when for instance the issue at stake is the*

violation of the right of entire communities”. (**SERAP Vs FGN &or, 2010 CCJ LR 231 at 248**). This is reflective in the case at hand when mass killing of hundreds of people and destruction of properties across many communities is alleged. In as much as such individual(s) is (are) not suing for their personal gain, for families or nuclear groups the right to seek such reliefs for actual victims premised on public interest is a validation of access and enthronement of justice. This individual is distinguishable from the earlier person (**Supra 60**) who can sue on behalf of a close family member supported with authority where applicable. However there are two conditions in the implementation of this principle, the first is that the action must be premised on public interest. Following from the above is the second ingredient which is that reliefs sought must not be for the benefit of the Applicant. With regards to the condition that the action must be premised on public interest, there was uncontroverted report of mass killings and wanton destruction of properties across over 15 communities in Benue State, resulting in the loss of several hundreds of lives and destruction of properties. This occurrence is of grave concern to the general public. Therefore the alleged massive killings and destruction of properties of such magnitude is a matter that any public spirited individual is entitled to litigate for the public good and to avoid future occurrence. The Court therefore holds that a public interest has been established. With regards to the condition that relief sought must not be for the direct benefit of the Applicant, the Court notes from the originating Application that the declarations and orders sought are a mixed bag. Some are for themselves only and some on behalf of the communities. To the extent that some reliefs are for the benefit of the communities alleged to have been affected, the Court holds that the second condition has been fulfilled to bring this case under the principle of *actio popularis* and that the Applicants are proper persons to bring this case. The case is therefore admitted and the Court will proceed to decide same on its merits.

64. The Applicants in grounding this case must prove the alleged killings and destruction of properties. He who alleges must prove. In **FEMI FALANA & ANOR V. REP OF BENIN & 2 ORS (2012) ECW/CCJ/JUD/02/12 pg. 34**, the court held that:

“As always, the onus of proof is on a party who asserts a fact and who will fail if that fact fails to attain that standard of proof that will persuade the court to believe the statement of the claim”.

However the allegation of the Applicants that certain Fulani herdsmen perpetrated acts leading to mass killings and destructions of properties of the Agatu communities in Benue State was not denied by the Respondent. Their contention is that it was ethnic/tribal attacks for which the Respondent denies liability. It is trite law that the facts admitted need no proof. Consequently, the Court holds that the allegation of mass killings and destruction of properties of the stated community being uncontroverted has been proved.

65. Having been established by admission by the Respondent that lives were lost and properties destroyed, the Respondent ipso facto admits the violation of its obligation under Articles 1, 2, 4 and 7 of the African Charter on Human and Peoples' Rights as claimed. Furthermore, there is no evidence of the effort by the Respondent to promptly arrest the crisis and nip it in the bud or evidence that it carried out prompt investigation to identify the perpetrators, prosecute them and redress the victim. By virtue of Article 1 of the African Charter on Human and Peoples' Right, to which the Respondent is a signatory, the Respondent is under the obligation to recognize the rights enshrined in the charter and adopt legislative or other measures to give effect to them. In other words, the Respondent is obliged to protect the human rights of its citizens, in the instant case, the Agatu communities as guaranteed under the African Charter and prevent their violations even by private actors.

66. In a case against Cameroun during post-election crisis situation; **the Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroun; Communication 272/03, paragraphs 124 – 126**; The government was found wanting when the African Commission held that:

“Failure to take adequate measures to prevent the violence which led to the physical harm and material damage suffered by the victims violated Article 2 of the Charter of ACHPR.”

Even though the government put up a defense that the post-election failure was an Act of God, it was held that:

“The State of Cameroun failed to fulfil its obligation to protect, which [is] incumbent upon the State.”

67. In the same vein the obligation of state to prevent, imposes the duty to carry out an effective investigation into acts amounting to human rights violations, with the aim of prosecuting the perpetrators and redressing the victims. In **SERAP & 10 Ors v. The Federal Republic of Nigeria & 4 Ors (2014) ECW/CCJ/JUD/16/14**, the Court held that:

“By failing to prevent violation of the Plaintiffs’ rights to peaceful assembly or to carry out a thorough investigation on the violation of that right, in order to hold accountable those responsible...Federal Republic of Nigeria has breached its international obligation arising from the African Charter.”

In light of the foregoing, since the Court has no records that the Respondent took prompt action to arrest the mayhem and conducted an impartial, prompt and independent investigation into the series of attacks and killings carried out by the Fulani herdsmen in the community of the Applicants, the Court finds the Respondent is in violation of their obligation to protect the affected members of the Agatu communities. Therefore in fulfilling its obligations, it is imperative that the Respondent conducts an effective investigation into the mass killings and destruction of properties to identify the root cause of the crisis and hold the perpetrators accountable.

68. The Applicants have made claims for some compensation on behalf of the Communities. The Court has no record of the details of the victims, their names, gender, age, address; the properties destroyed have also not been specifically identified nor their value indicated. In this wise, the Court is unable to award any monetary compensation. This opinion was also held in the case of **SERAP V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/08/09/& ECW/CCJ/JUD/18/12 at Para 115** that:

“In any case, if the pecuniary compensation was to be granted to individual victims, a serious problem could arise in terms of justice morality and equity within a very large population, what would be the criteria to identify the victims that deserve compensation? Why compensate someone and not compensate his neighbour.”

69. The Court adjudicating in a public hearing, after hearing both Parties on matter of human rights violation, decides as follows:

DECISION:

- The Preliminary Objection of the Respondent is dismissed.
- The 1st Applicant failed to prove his claim as to the violation of his right to property, the claim therefore fails.
- All declarations and orders that are personal to the Applicants fails.
- The Court finds the Respondent in violation of their obligation to protect the human rights of the Agatu Community and prevent its violation.
- The Court Orders the Respondent to investigate the mass killings and destruction of properties in the alleged Agatu communities of Benue State, identify and prosecute the perpetrators and redress the victims thereof.
- The Court Orders the Respondent to provide adequate security, deploy more security personnel to the area to protect the community to prevent further occurrences of that mayhem.
- The Court Orders parties to bear their own cost.

Thus pronounced and signed on this 26th day of February, 2019 in the Community Court of Justice, ECOWAS Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon. Justice Edward Amoako ASANTE	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member
Assisted by	
Tony ANENE-MAIDOH	- Chief Registrar