



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

HOLDEN AT ABUJA, NIGERIA.

ON WEDNESDAY, THE 15th DAY OF MAY, 2019

SUIT NO: ECW/CCJ/APP/32/17

JUDGMENT NO: ECW/CCJ/JUD/20/19

BETWEEN

1. REGISTERED TRUSTEES OF ASSOCIATION OF FORMER TELECOM EMPLOYEES OF NIGERIA

2. PASTOR OLUTI AREMU GABRIEL (PRESIDENT ASSOCIATION OF FORMER TELECOMS EMPLOYEES OF NIGERIA & &17, 101 OTHERS-----APPLICANTS AND

1. FEDERAL REPUBLIC OF NIGERIA.] -----RESPONDENTS

2. ATTORNEY GENERAL OF THE FEDERATION.

COMPOSITION OF THE COURT

Hon. Justice Edward Amoako ASANTE	- Presiding
Hon. Justice Dupe ATOKI	- Member/Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member
Assisted by	
Athanase ATANNON	- Deputy Chief Registrar

REPRESENTATION TO THE PARTIES

1. M, N. Mohammed	
2. Michael Eleyinmi	-For the Applicants.
3. Olamilekan Joseph	
4. Seidu Alfa	
5. Abdullahi Abubakar	- For the Respondents

JUDGMENT

This is the judgment of the Court and Parties were heard in the open Court.

PARTIES

The 1st Applicant is a registered non-governmental entity incorporated under the laws of Nigeria with its registered address at No. 6, Wuse Abuja, or Powa international Market, Block K, Suite 5, check point Bus stop Nyanya, Abuja. The 1st Applicant has instituted this action in a representative capacity for and on behalf of members of its association.

The 2nd Applicant is a disengaged staff of NITEL/MTEL an agent of the 1st Respondent and president of the Incorporated Trustees of Association of Former Telecoms Employees of Nigeria NITEL/MTEL, who was on a permanent and pensionable employment prior to his disengagement.

The 3rd to 17,101 Applicants are individual disengaged Staff of NITEL/MTEL who were also on a permanent and pensionable employment of the 1st Respondent.

The Applicants are all Nigerians and community citizens within the meaning of Article 1 of the 2005 Protocol on the ECOWAS Community Court.

The 1st Respondent is the Federal Republic of Nigeria, a sovereign state of the Community, while the 2nd Respondent is an Agent of the 1st Respondent.

SUMMARY OF FACTS

1. The Applicants in their capacity as permanent and pensionable staff of the Respondent by an originating application filed at the Registry of the Court on the 22nd August, 2017, instituted this action claiming all their retirement and disengagement benefits in accordance with the Respondent's constitution and several Articles of the African Charter on Human and Peoples' Rights (ACHPR).

2.The Applicants' allege that in 2006, they were illegally disengaged from active service and sequel to an advert by the Respondent's agent, the Bureau for Public Enterprise (BPE) sometime in year 2012, NITEL/MTEL was privatized and sold out and its non-core assets were sold alongside some properties belonging to the Applicants.

3. That NITEL/MTEL became liquidated through the instrumentality of the Federal High Court vide a guided liquidation in which the said Court appointed a liquidator for the Respondent. That in the liquidation proceeding, the Applicants submitted their claims to the liquidator appointed to sell all the properties of NITEL/MTEL owned by the Respondent. Despite the submission of claims, the said entitlements/benefits have remained unpaid till date.

4.The Applicants contend that they are legally entitled to several allowances to wit; life pension, applicable to all categories of pensionable staff of NITEL/MTEL who have worked above 10 years, redundancy allowance after disengagement, repatriation allowance, insurance facility, payment of October 2006 salary/house rent allowance to the said disengaged staff, payment of three (3) month's salary in lieu of notice and compensation for the untold hardship since year 2006 in line with the conditions of service provided under sections 173 (1) & (2), 210 of the 1999 Constitution of the Federal Republic of Nigeria, and Articles 24, 4, 5, 6, 7, 12, 13, 14, 15, 17(2) & (b), 18 (2), 19, 20, 21, 22, 24, 25, 27, 29 (7), 45 (1), 60 & 61 of the African Charter on Human and Peoples' Rights. The Applicants affirmed that the Respondent has only paid them five (5) years pension buy out, as against the above mentioned entitled claims.

5. That by a letter dated 21st April, 2017, an agent of the Respondent known as Pension Transitional Arrangement Directorate (PTAD), wrote to the Applicants directing them to submit their documents for monthly pension payment only without including the numerous entitlements/benefits submitted to the liquidator.

6. The Applicants further claimed that they are entitled to the sum of 1.2 Billion Naira being the worth of 250 buses belonging to them which was taken over by the Respondent. The Applicants aver that during their years of active service, they formed a social cooperative wherein monthly contributions were deducted from

their salaries to which they built canteens across the 36 states of the federation. That the said canteens were sold by the Respondent with no compensation paid to the Applicants.

7. That most of the landed properties in which the said NITEL/MTEL were situate across the states belonged to some of the Applicants and same was sold by the Respondent without compensating the Applicants despite repeated demands. That the Supreme Court's decision for the Applicant's to be paid 5 years pension buy out is unconstitutional and contrary to international laws of human rights. That the acts of the Respondent in failing to pay to the Applicants all their entitlements amounts to a flagrant violation of their human rights.

8. WHEREUPON THE APPLICANTS SEEK THE FOLLOWING RELIEFS/ORDERS:

1. **A DECLARATION**, that 5 years pension buyout, Respondent paid to the Applicants as their entitlement, is a flagrant violation of a continuous right of the Applicants to section 173, 1,2,3, & 210 of the 1999 Constitution of Nigeria and the Articles mentioned above which provide for life pension to the Applicants and other entitlements.
2. **A DECLARATION** that the purported request by the Pension Transmission Arrangement Directorate (PTAD) agent of the Respondent, requesting the Applicants to submit their documents for a monthly payment of pension without other entitlement claims of the Applicants herein pleaded in this application is a flagrant violation of their rights as provided in sections 173, 1, 2, 3 & 210 of the 1999 Constitution of Nigeria and the Articles mentioned above.
3. **A DECLARATION** that the Applicants' are entitled to 200 Billion Naira only, as their pensionable retirement benefit payable in bulk since the NITEL/MTEL have being sold by the Respondent who employed the Applicants as workers under permanent and pensionable conditions of service as provided in section 173, 1, 2, 3 & 210 of the 1999 Constitution of Nigeria, and not only monthly pension as prescribed by the Respondent.
4. **A DECLARATION** that the Applicants are entitled to be paid their federal mortgage contribution fund deducted at source by the Respondent from their salary when in active service of the Respondent.

5. **A DECLARATION** that the Respondent's sale of NITEL/MTEL along with the Applicants entitlement namely (a) 250 buses worth 1.2 Billion Naira only, (b) life insurance known as workman compensation for 17, 101 workers of 1st Respondent worth 17, 639 Billion Naira Only. (c) Landed property where the facilities of NITEL/MTEL of the Respondent was situated and that compensation which should be paid to members who own this property ought to be paid to the Applicants.
6. **A DECLARATION** that the Applicants are entitled to their claims/rights entitlements submitted to the liquidator appointed by the Respondent to sell NITEL/MTEL.
7. **AN ORDER** compelling the Respondent to pay all the Applicants entitlements prayed in Paragraphs 1, 2, 3, 4, 5 & 6 above.
8. General damages of 2 Billion Naira only to the Applicants for untold hardship
9. Cost of litigation N10 Million Naira only.
10. And any other order this Court can make in the circumstances.

9. The Respondent filed a preliminary objection challenging the jurisdiction of the Court contesting that the subject matter of the dispute is an employment issue and is also statute barred as the Applicant did not initiate this action since 2012. However, on the date set for hearing, 24th January, 2019, the Respondents were not in Court to move their application. Consequently, the said preliminary objection was dismissed and the matter was slated to 5th March 2019 for judgment. The Respondents have however not file their defense to the Applicants' application.

ISSUES FOR DETERMINATION.

1. CONSIDERING THE PROVISIONS OF ARTICLE 9 (4) OF THE 2005 SUPPLEMENTARY PROTOCOL AS WELL AS ARTICLE 14 OF THE AFRICAN CHARTER, WHETHER THIS COURT IS COMPETENT TO ENTERTAIN THIS SUIT AS CONSTITUTED.
2. WHETHER IN LIGHT OF THE TOTALITY OF FACTS AND EVIDENCE ADDUCED, THE APPLICANTS HAVE SUFFICIENTLY ESTABLISHED THEIR CASE TO GROUND THE RELIEFS SOUGHT.

CONSIDERING THE PROVISIONS OF ARTICLE 9 (4) OF THE 2005 SUPPLEMENTARY PROTOCOL AS WELL AS ARTICLE 14 OF THE AFRICAN CHARTER, WHETHER THIS COURT IS COMPETENT TO ENTERTAIN THIS SUIT AS CONSTITUTED.

10. The human rights competence of this Court is specified under 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 BAKARE SARRE V MALI (2011) CCJELR pg. 57, the court stressed that:

“Once human rights violations 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.

Also, in 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.”

11. The Applicants claim relates to the non-payment of their pension and other entitlements as well as other forms of compensation on properties in which they claimed to have acquired during the course of their active service to wit; redundancy allowance, repatriation allowance, insurance facility, October 2006 salary/house rent allowance, three (3) month’s salary in lieu of notice, full pension benefit as well as compensation for the untold hardship suffered since 2006, landed property upon which some of the zonal offices were situate, 250 buses allegedly purchased with pensioners monies, contributory housing funds deducted

from their monthly salaries and building of canteens in all the 36 locations where the NITEL/MTEL offices were situated. In reinforcing their claims, the Applicants placed reliance on Articles 4, 5, 6, 7, 12, 13, 14, 15, 17(2) & (b), 18 (2), 19, 20, 21, 22, 24, 25, 27, 29 (7), 45 (1), 60 & 61 of the African Charter as well as certain provisions of the Respondent's 1999 Constitution (as amended).

12. For purposes of clarity, the above articles relate to the right to life, respect for dignity, right to liberty, right to be heard, freedom of movement, right to property, right to work, right to participate in the cultural life of the community, right of a family to be assisted by the state, right to equality, right to existence, right to dispose of wealth and natural resources, right to economic, social and cultural development, right to national and international peace and security, right to general satisfactory environment, the respect of rights and freedoms contained in the Charter, duties of individual towards his family, society and state and the duty to preserve and strengthen positive African cultural values respectively.

13. In considering the facts of the present application **vis-à-vis** the provisions relied upon, it is apparent that the bone of contention is alleged infringement on the Plaintiffs' physical assets acquired while in the service of the Respondent and non-payment of their emoluments and retirement benefits, in that regard the Court finds that the only relevant article from the above referred articles is Article 14 which deal with the right to property.

Article 14 of the African Charter on Human and Peoples' Rights provides:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws"

14. In determining whether the Applicants claim entails property rights it is imperative to ask the question what is property? In other words do all the claims of the Applicant qualify to be classified as property?

In CENTRO EUROPA 7 S.R.L. AND DI STEFANO v. ITALY (Application no. 38433/09) JUDGMENT STRASBOURG 7 June 2012, the ECHR held that:

"In considering the provisions of Article 1 of Protocol No. 1 of the European Court of Human Rights, the concept of property or possession is very

broadly interpreted. It covers a range of economic interests which include: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to pension, the right to exercise a profession, a landlord's entitlement to rent, the economic interests connected with the running of a business."

15. Protocol 1 Art.1 of the European Convention on Human Rights provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

It is not in dispute that physical assets like vehicles, buildings, and intangible assets such as monies are classified as property. However, it is imperative for the Court to determine whether pension can be classified as property right to bring the Applicants claim within the purview of Article 9 (4) of the 2005 Supplementary Protocol on the Court and Art 14 of the ACHPR.

16. The Question to ask at this point is what constitutes pension?

The Black's Law Dictionary, Ninth Edition, defined pension as:

"A fixed sum regularly paid to a person or to the person's beneficiaries by an employer as a retirement benefit."

The United States legal Definition defines Pension as:

"A payment benefit many workers receive from their employers upon retirement. There are two main types of pensions- a defined benefit plan and a defined contribution plan. Under a defined benefit plan, the benefit that an employee receives is normally based on the length of employment and the wages that were earned. Each employee does not have a separate account in these programs, as the money to support the pensions is generally administered through a trust established by the employer. In a defined contribution plan, the employer makes regular deposits into an account established for each employee. The employee is not guaranteed to

receive a specified regular payment during retirement but only the amount in the account.”

17. It follows from the above that pension is a benefit that vests on an employee from an employer under a defined plan based either on length of years of service or a contribution by the employee which becomes payable after retirement. In the instant case, the monthly contributions by the Applicants as claimed can therefore be classified as pension.

The next question to ask is whether pension is classified as property. Many judicial pronouncements abound where various international courts have held that pension is property.

18. In the case of *Azinas v. Cyprus*, JUDGMENT STRASBOURG 20 June 2002, the Applicant was a former senior public official who had been stripped of pension rights following a criminal conviction. He argued that the contributions he had paid during his 20 years of service and his employers’ undertaking to finance a pension, together with his benefits and pension amount, constituted possessions for the purposes of Article 1 of Protocol no. 1. The Court noted that:

“The Applicant when entering the public service in Cyprus, had acquired a right which constituted a possession within the meaning of Article 1 of Protocol no. 1.”

In the case of *Wessels-Bergervoet v. the Netherlands* (Application no. 34462/97) JUDGMENT STRASBOURG 4 June, 2002, the European Court of human rights confirmed that:

“The Applicant’s rights to a pension under the General Old Age Pensions Act could be regarded as a ‘possession’ within the meaning of Article 1 of Protocol No. 1”.

19. Similarly, in *FIVE PENSIONERS V. PERU* Judgment of February 28, 2003 Series C NO. 98, The Applicants in this case were state employees and had retired after working for at least 20 years. After their retirement, a Peruvian state institution suspended payment of the Applicants and reduced 78% of the pension amount without any prior notice or explanation. The Inter-American Court of Human Rights In its Judgment of 28 February 2003, held that:

“By arbitrarily modifying the victims’ pensions and by not executing the judgments of the Constitutional and Social Law Chamber of the Peruvian Supreme Court of Justice until almost eight years after they had been

delivered, the State violated both the right to property (Article 21 ACHR) and the right to judicial protection (Article 25 ACHR) of the American Convention with respect to the above named individuals.”

In WIECZOREK v. POLAND, (Application no. 18176/05) Judgment of 8 December 2009, the ECHR held that:

“Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, any right to a pension of a particular amount. However, where an individual has an assertable right under domestic law to a contributory social insurance pension, such a benefit should be regarded as a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements.”

20. This Court find persuasive the above decisions of both the Inter-American court of Human rights and especially the European Court of Human Rights which recognize pension as a property based on application of Article 1 of Protocol No. 1 to the European Convention which is in pari material to Article 14 of the African Charter on Human and Peoples’ Rights

In light of the above, the Court holds the view that pension is property which can be vested on an individual the denial of which therefore constitutes a violations of Right to property within the context of Article 14 of the African Charter on Human and Peoples’ Rights.

Following from the foregoing factual and legal considerations the Court hold that it is imbued with the requisite competence to admit this application as it is founded on alleged violation of human rights to property contrary to Art 14 of the ACHPR. The preliminary objection of the Respondent is hereby dismissed.

WHETHER IN LIGHT OF THE TOTALITY OF FACTS AND EVIDENCE ADDUCED, THE APPLICANTS HAVE SUFFICIENTLY ESTABLISHED THEIR CASE TO GROUND THE RELIEFS SOUGHT

21. The Applicants averred that they are permanent and pensionable staff of NITEL/MTEL an agent of the Respondent who made monthly contribution towards their pension. That sometime in 2006, following an advert by the Respondent's agent- the Bureau for Public Enterprise (BPE), the said company was privatized and sold out along with the non-core assets and some properties bought from the Applicants' pension contribution.

22. The Applicants' alleged that they were disengaged by the Respondent after the privatization of the said NITEL/MTEL. That being on a permanent and pensionable employment prior to the disengagement, they are entitled to all their benefits in full, a list of which was filed with the liquidator appointed by the Federal High Court on behalf of the Respondent.

23. The Applicants averred further that since their disengagement in 2006, they have been in continuous struggle to secure all their retirement/disengagement benefits from the Respondent which has proved abortive despite repeated demands.

24. The Applicants maintained that they are legally entitled to several allowances which include life pension, applicable to all categories of pensionable staff of NITEL/MTEL who have worked above 10 years, redundancy allowance after disengagement, repatriation allowance, insurance facility, payment of October 2006 salary/house rent allowance to the said disengaged staff, payment of three (3) month's salary in lieu of notice and compensation for the untold hardship since year 2006 in line with the conditions of service provided under section 173 (1) & (2), 210 of the 1999 Constitution of the Federal Republic of Nigeria, and the Articles 24, 4, 5, 6, 7, 12, 13, 14, 15, 17(2) & (b), 18 (2), 19, 20, 21, 22, 24, 25, 27, 29 (7), 45 (1), 60 & 61 of African Charter on Human and Peoples' Rights.

25. Even though the Respondent did not file a defense to the action, the Applicants are not automatically entitled to judgment. The Court will rely on the merit of the case as the Applicants must nevertheless prove their case. See *Chude Mba v. Republic of Ghana* ECW/CCJ/JUD/10/13. The burden of proof therefore rests on the Applicant who must establish the violations as claimed as he who alleges must prove. The legal burden of proof is indeed the acid test applied in arriving at a

decision in any particular case. As a matter of principle, the burden of proof lies principally on the party who stands the chance of losing where such evidence is not presented. In emphasizing the significance of proof, the Court in FEMI FALANA & ANOR V. REP OF BENIN & 2 ORS (2012) ECW/CCJ/JUD/02/12 pg. 34, 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”.

In DAOUDA GARBA V. REPUBLIC OF BENIN (2010) CCJELR Page 12.Para 34 & 35, the court held that:

“cases of violation of human rights must be backed by indications of evidence which will enable the Court to find that such violation has occurred in order for it to prefer sanctions if need be.”

See also SIKIRU ALADE V. FRN ECW/CCJ/JUD/10/12 (2012) CCJELR.

26. The Court will now examine each claim of the Applicants to determine whether a case of violation has been made against the Respondent.

27. Allegation of non-payment of Life Pension:

The Applicants averred that as pensionable staff, all categories of staff who have worked above 10 years are entitled to pension for life as provided in the 1999 constitution of the Respondent. They however claimed that they were paid 5 years buy out instead of life pension. To succeed in a claim of pension, the Applicants must establish as a fact that they are (1) employees of the Respondent who are (2) entitled to pension and lastly the amount they are entitled to. To support this claim, the Applicants filed the letters of appointment containing the condition of service of the 2nd Applicant and 2 other Applicants at pages 472 and 473 of the originating application together with correspondence exchanged between the (BPE) on March 23, 2012 and the Chairman of Association of Former Telecoms Employee of Nigeria. Of particular relevance is the last paragraph of the said letter where the Bureau of Public Enterprise said “you are also aware that all NITEL/MITEL staff had been disengaged and paid all their terminal benefits including 5 years pension buy out as agreed with your labour union, notwithstanding, some residual issues are still being treated”.

28. Also filed is a letter written to the Liquidator for the payment of 184.139 Billion Naira as outstanding pension payment for the entire 17,101 Applicants.

The above documents support the status of the Applicants as employees and pensioners and the acknowledgment of the Respondent of their obligation to that effect. Finally it is instructive that the Respondent did not contest the status of the Applicants as its employees and pensioners in its preliminary objection, rather its objection was premised on the lack of jurisdiction of the court and that the matter was statute barred. It is trite law that facts not denied is deemed proved. Based on the fact that the Respondent did not contest that Applicants are its pensionable employees and other documents from BPE and PTAD recognizing the Applicants as pensioners the Court holds that the Applicants have proved that they are employees of the Respondent entitled to life Pension.

With regards to the 3rd condition of proof of entitlement, the allegation of the Applicants is that a 5 years pension buyout paid by Respondent as their entitlement, is a flagrant violation of a continuous right of the Applicants to section 173, 1, 2, 3, & 210 of the 1999 Constitution of Nigeria which provides for life pension to the Applicants and other entitlements. Consequently they claim the sum of 200 Billion Naira only, as their pension benefit payable in bulk more so that NITEL/MTEL having been sold by the 1st Respondent is no longer a going concern. Additionally, as workers under permanent and pensionable conditions of service provided in section 173, 1, 2, 3 & 210 of the 1999 Constitution of Nigeria, payment of monthly pension as proposed by the Respondent is a violation of their right.

The Court notes that the Applicants have not supported the claim of 200 Billion with any documentary evidence. The burden of proving entitlements normally rests on the claimant where the claimant has better access to the required evidence to prove such entitlement. Where however the employer or the Defendant has sole control of the information required to prove the claim, the burden of proof shifts from the Claimant to the Defendant. In *ESTATE OF BARTON V. ADT SECURITY SERVICES PENSION PLAN* No. 13-56379 (9th Circuit, April 2016), the Court held that:

“Though the claimant bears the burden of proving entitlements, this burden must shift where the defending entity solely controls the

information that determines entitlement leaving the Claimant with no meaningful way to meet his burden of proof.”

29. It follows therefore that once the claimant makes out a prima facie case of entitlement to pension, by proof of employment but lacks access to the key information needed to substantiate his claim same being in the control of Respondent, such claim cannot fail due to being unsubstantiated. This is more so where there is no indication that the employees were informed at the time of employment to keep record of their contribution for retirement. It is a recognized fact that salary records and computations matrix are in the normal course of events in the custody and preserve of the employer in this case the Respondent who unfortunately neglected to put up a defense. The burden to provide records of the pension entitlement of the Applicant having shifted to the Respondent, the Applicants are exonerated from proving their entitlement.

30. The Court notes from the list of some of the pensioners or disengaged staff on page 622 to page 777, 779 & 787 of the originating application that all Applicants are not on the same grade level neither is the years of service the same. Life pension becomes payable after 10 years of service. In that wise a generic pension payment cannot be drawn up. It is therefore not possible for this court to determine or compute the actual amount due to each Applicant in the absence of further documents.

31. As already pointed out above, pension is money earned and a property right vested in the employee based on the number of years of service. Based on the privatization scheme, all the Applicants were compelled to exit the service prematurely with the attendant consequences that some of the Applicants may be denied pension entitlements having not attained the statutory year in service for life pension benefits.

Any person that takes up a pensionable employment is assumed to have a legitimate expectation for the payment of pension upon retirement therefrom.

The concept of ***legitimate expectation*** is premised on fairness and reasonableness to a situation where a person has an expectation or interest in a public body or private parties retaining a long-standing practice or keeping a promise.

32. In *Stefanetti & Others V. Italy* (April 2014) Judgment Strasbourg (Applications nos. 21838/10, 21894/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10, and 21870/10); the European Court of Human Rights held that:

“The Applicants considered that they had a possession provided for by domestic law that fell within the ambit of Article 1 of Protocol No. 1. Their right to a pension had been based on the salaries they had earned; however, because of Law no. 296/06 which totally reshaped the scheme to their detriment that right had been denied. For a claim to be capable of being considered an “asset” falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it. Where that has been done, the concept of “legitimate expectation” can come into play.”

See also judgment in *Čakarević v. Croatia* (Application no. 48921/13) Strasbourg 26 April 2018

33. In the instant case, the Applicants have sufficient basis in national law to maintain their claim as Sections 173, (1), (2), (3) & Section 210 of 1999 Constitution of the Respondent provides for the right of a person in public service of the Federation to receive pension or gratuity subject to the provision of the law.

The Applicants further relied on the authority of the Supreme Court of Nigeria to argue that the 5 years pension buyout paid by the Defendant is unconstitutional, and offends international laws of human rights.

34. In *Andrejeva v. Latvia*, *Application no. 55707/00*) JUDGMENT STRASBOURG, 18th February 2009, the ECHR held that:

“Where a contracting state has in force a legislation providing for the payment of rights as welfare benefits, that legislation must be regarded as generating a pecuniary interest falling within the protocol 1 of Article 1 of the European Convention on Human Rights.”

Also in *Edoh Kokou v. ECOWAS Commission*, ECW/CCJ/JUD/03/10, the Plaintiff’s employment with the Defendant was unlawfully and unexpectedly terminated without prior notice. The Court held that:

“The plaintiff is entitled to all the benefits he would have received for the rest of the course of his contract if his appointment had not been terminated.”

In line with the above jurisprudence, the Court finds that the Applicants are entitled to all the benefits and emoluments accruable to them were their services not discontinued by the Respondent in the light of their legitimate expectation. The Respondent must ensure that no Applicant is denied life pension entitlement due to reasons of not attaining pension age.

It is trite law that a legitimate expectation is capable of sustaining a claim on the right to property as same is subject to protection. In the instant case, the Applicants never envisaged that their services will be cut short by the Respondent. Upon assumption of office they had a legitimate expectation that barring any death or infraction by their actions, they will earn a life pension in accordance with the law. An abrupt termination of their services denying pension benefits which is a legitimate expectation was not within their legitimate contemplation. The Court finds that the Applicants are entitled to their legitimate expectation of life pension payment.

35. While the court had earlier come to a determination that the burden of proof of the entitlements rests with the Respondent who did not file a defence, records before the Court however show that the Respondent in 2012, paid a 5 year pension buyout as agreed by the Applicants’ union on their behalf. The Court notes that the agreed 5 year buy out was intended to satisfy the legitimate expectation of the Applicants not to be denied their pension benefit. The consequence is that irrespective of years of service, every Applicant received a computed sum of pension.

However, the Applicants claim is that even though the negotiation for a 20 year buy out failed, the payment of a 5 year buy out is a flagrant violation of a continuous right of the Applicants as provided in section 173(1), (2), (3), & 210 of the 1999 Constitution of Nigeria. Furthermore, the later proposal by PTAD in 2017 to pay a monthly pension was rejected by the Applicants as being in violation of S 173, 1, 2, 3, & 210 of the 1999 Constitution of Nigeria. Indeed in the letter dated 17th May 2017 in response to the request by PTAD for submission of document to enable the monthly payment, the Applicant stated categorically **“Therefore the monthly payment is hereby rejected”**.

It is necessary at this point to examine the provision of the above referred 1999 constitution of the Respondent to enable a proper understanding of its content and relevance to the case of the Applicants.

Section 173 (1) "Subject to the provisions of this Constitution, the right of a person in public service of the Federation to receive pension or gratuity shall be regulated by law."

Section 173 (2) "Any benefit to which a person is entitled in accordance with or under such law as is referred to in subsection (1) of this section shall not be withheld or altered to his disadvantage except to such extent as is permissible under any law, including the Code of Conduct".

Section 210 is a repeat of the above provisions.

The purport of S173 (1) & (2) and S 210 of the 1999 Constitution of Nigeria is a guarantee of the right of a person in public service of the Respondent to receive pension or gratuity subject however to law, additionally any denial or alteration with adverse effect must be to the extent permissible by law. In other words the right to pension though guaranteed is not absolute, it can be altered or denied to the extent that it is in accordance with law. The question to ask is can the payment of a 5 year pension buyout which was agreed upon by the Applicant' union on their behalf to be deemed "be withheld or altered to their disadvantage" to render it inconsistent with S173 (2) of the Nigerian Constitution.

The Court notes that the authority of the said union to act on their behalf was not controverted at any time. The Court therefore finds that the 5 year buy out having been agreed upon, the Applicant is precluded from reactivating the 20 years failed negotiation. Terms of any agreement in the absence of any vitiating factors is not voidable.

In *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130, Lord Denning J stated that:

"Parties should be prevented from going back on a promise to waive certain rights. The time had come for this to be recognized as giving rise to an estoppel."

A further claim of the Applicant is that the monthly pension payment is inconsistent with the S173 of the Nigerian Constitution. Indeed the constitution guarantees pension for all public servants but makes no provision as to the mode of payment. The Applicants have not established the overriding reason neither does the court understand the basis of rejection of a monthly pension payment. Were NITEL/MITEL not privatised, same would have been the mode of payment of a life pension when accruable to the Applicants.

The court therefore holds that neither the 5 year buyout plan nor the proposed monthly payment is in violation of S173 (2) & (3) of the Nigerian Constitution.

38. Allegation of non-payment of Federal Mortgage contribution valued at 2 Billion Naira:

The Applicants under this head are seeking a compensation/refund of the mortgage contribution by the Applicants valued at 2 Billion Naira. The Applicants attached a Certified True Copy (CTC) passbook of the Mortgage contribution of Attah Idowu David dated 10th March 2013 with particulars of contributions on pages 440-458 of the Originating application wit; opening balance of 261.25 Naira in November 1993 and closing balance of 264,964.42 Naira in December 2010. It is noteworthy that while this document is indicative that a mortgage contribution scheme existed, it is not sufficient to prove evidence of mortgage contribution by all the 17,101 Applicants. Furthermore being a voluntary contributory scheme, all the Applicants may not necessarily subscribe to the scheme neither would they have contributed the same amount.

39. Considering that the burden of proof is ordinarily on the person who asserts, and in the light of the fact that mortgage scheme is voluntary. To succeed in this claim, the Applicants are required to exhibit the specific staff who subscribed to the scheme and the total amount that has accrued to each contributor. Mortgage scheme is like a specialised Banking account in which every contributor like Attah Idowu David has a record in form of a passbook detailing all their transactions with relevant dates and amount contributed. It is the understanding of the Court that all Applicants who are contributors to the scheme should have the custody of their records as in the case of ATTAH IDOWU DAVID whose records were exhibited in the pleas of the Applicant. The court is not entitled to assume that all the Applicants are contributors to the mortgage scheme. In the absence of a list of specific contributors and the total amount contributed, the Court is unable to award the claim for 2 Billion Naira compensation as the Applicants have not proved their case. The claim of the Applicant for the refund of 2 billion naira therefore fails and the Court so holds.

40. Allegation of non-payment of life insurance entitlement:

The Applicants claim that they are entitled to workman compensation under the life insurance scheme worth 17,639 Billion Naira at the premium of 1 million Naira per staff details of which was attached at page 436 and 500 of the originating

application. To succeed under this claim, the Applicant must establish their entitlement to the claim either by exhibiting such provision in the condition of service or a life insurance contract, or any other document to substantiate the provision of a life insurance scheme for the benefit of all the Applicants. This documents will of necessity indicate the value of the insurance. Since any of these documents that are required to prove their case will in the ordinary course of event be in the custody of the Applicant, having failed to exhibit same, The Court finds that the Applicants have not proved their case, and holds that same being unsubstantiated therefore fails.

41. Allegation of non-payment of contributory pension deducted from salary at source:

The Applicants claim that the disengaged staffs made contributory pension and are all entitled to be paid back in block. In adducing evidence to support the above claim, Applicants presented on pages 460 to 470 of the originating application a detailed pay slip of 11 Applicants showing deductions from salary under various heads which were abbreviated without any explanation.

To prove this claim, the Applicant must establish that 1) they are pensionable staffs who have made such contributions and 2) their entitlement. The fact that the Applicants are former employees of NITEL/MITEL is uncontroverted. The Applicants annexed as evidence a letter to the Executive Secretary of Pension Transitional Arrangement Directorate (PTAD) on the 8th of May, 2017 wherein they were directed to submit their documents for monthly pension payment. The Respondent, having admitted and recognized the Applicants' rights to pension, same need no further proof. However, this claim is extraneous as the payment of pension scheme operative in Nigeria is necessarily dependent on contributions by employees and employers from which life pension benefit was paid. Having made a full analysis of life pension above, this claim being superfluous and irrelevant, fails and the court so holds.

42. Allegation of non-refund of proceeds of the sale of 250 Buses alleged Property of the Applicant sold by the Respondents and valued at 1.2 Billion Naira:

The Applicants urge this Court to declare that they are entitled to a refund for the buses sold by the Respondent which they alleged belong to the workers/staff of NITEL/MITEL same having been purchased from their contributions. The court has no record to substantiate the ownership of the said 250 Buses for instance the names in which the buses were purchased, their models, the license particulars. These documents should be in the custody of the Applicants as alleged owners. The only document before this Court is the letter on page 499 of the originating application addressed to the liquidation panel seeking compensation for buses valued at 1.25 billion Naira which does not in any way prove ownership.

It is trite law that he who alleges must prove See (FEMI FALANA & ANOR V. REP OF BENIN & 2 ORS (2012) ECW/CCJ/JUD/02/12 pg. 34 and DAOUDA GARBA V. REPUBLIC OF BENIN (2010) CCJELR Page 12.Para 34 & 35.) Supra.

Having not been able to prove the ownership of the said 250 buses, The Court declare this claim unsubstantiated and therefore fails and the Court so holds.

43. Allegation of Claim of ownership of landed property by members of the Applicants in NITEL/MITEL offices Nationwide:

The Applicants claim that many of their members own landed properties within the premises of NITEL/MTEL nationwide which were sold and for which no compensation was paid. It is instructive that the properties allegedly own by members was valued at 40 billion naira in page 437 of the originating application, while same was valued at 10 billion Naira in the letter to the liquidator on page 500. Apart from the letter of request for payment of the landed properties made to the liquidators attached to the initiating application on page 437, there is no proof of ownership in the form of the certificate of occupancy, details of the size and location of the land and the specific members who are owners considering that not all the Applicants are alleged to own the landed property. As earlier noted, ownership confers right to property and in the light of the fact that the Applicants have failed to provide documentary evidence to substantiate their claim for ownership of the landed properties, the allegation of violation of their right to property under this head fails and the Court so holds.

44. Allegation of failure of the Respondent to pay compensation for the staff canteens built in 36 States of the Federation by Applicants:

The Applicants averred that during their years of service, they formed a cooperative group in which monies were contributed to build canteens across the 36 States of the federation in which the NITEL/MTEL offices were located. Same having been sold during the privatisation process, they urged the court to order the Respondent to refund the sum of 2 Billion Naira as the estimated cost of building the said staff canteens.

Apart from the letter on page 500 of the originating application dated 17th August, 2016 and addressed to the liquidators requesting for the payment of 5 Billion Naira estimated cost of building the canteens, there is no evidence of title deed either conferring ownership of the said canteens or evidence of building expenditure by the Applicants or records of contributions indicating their investment in the said canteens. Since the Applicants alleged to have built the canteens they should have documents in their possession to support their claim. As stated above, he who alleges bears burden of proof where facts of allegation are within their knowledge and custody.

The Applicants have failed to satisfy the Court on this claim as ownership of the 36 canteens has not been established. The Applicants' claim of violation of their right to property under this head fails and the Court so holds.

The Applicants also made a further cocktail of claims including non-payment of October salary/ house rent allowance to the said disengaged staff, Three months' salary in lieu of notice and payment of workman life pension of one million Naira each. None of these claims were addressed at all in their pleas. Having being unsubstantiated, the said claims are dismissed.

Following from all the analysis of this instant case, the Court adjudicating in a public hearing, in the first and last resort, after hearing parties on matter of human rights violation, decides as follows:

DECISIONS:

DECLARES

- 1.** That the Court has jurisdiction to entertain the present suit being premised on allegation of violation of human rights.

2. That the 5 years pension buyout the Respondent paid to the Applicants is not contrary to section 173, 1, 2, 3, & 210 of the 1999 Constitution of Nigeria.
3. That the request by the Pension Transmission Arrangement Directorate (PTAD) agent of the Respondent, asking the Applicants to submit their documents for a monthly payment of pension is not contrary to the provisions of section 173, 1, 2, 3, & 210 of the 1999 Constitution of Nigeria and not a violation of their right to property.
4. That the Applicants have not substantiated their claims to 200 Billion Naira as their pensionable retirement benefit payable in bulk.
5. That Applicants have not substantiated their claim for a refund of Mortgage contribution deducted at source.
6. That the Applicants have not substantiated their claim as regards refund of monies on the 250 Buses, 36 canteens, landed properties and entitlement to life insurance known as Workman compensation.
7. That all other claims being unsubstantiated are hereby dismissed.
8. That this application is hereby dismissed
9. Parties should bear their own cost.

Thus pronounced and signed on this 15th day of May, 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

Athanase ATANNON - Deputy Chief Registrar