

COMMUNITY COURT OF JUSTICE,  
ECOWAS  
COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO  
TRIBUNAL DE JUSTIÇA DA COMUNIDADE,  
CEDEAO



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**IN THE COMMUNITY COURT OF JUSTICE**  
**OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**  
**HOLDEN IN ABUJA-NIGERIA**  
**ON FRIDAY, THE 28<sup>TH</sup> DAY OF JUNE 2019.**  
**SUIT NO: ECW/CCI/APP/46/17**  
**JUDGMENT NO: ECW/CCJ/JUD/24/19**

**BETWEEN:**

**DR. GEORGE S. BOLEY, FORMER VICE CHAIRMAN,  
TRANSITIONAL LEGISLATIVE ASSEMBLY -----APPLICANT**

**AND**

- 1. REPUBLIC OF LIBERIA**
- 2. MINISTRY OF FINANCE AND DEVELOPMENT  
PLANNING, REPUBLIC OF LIBERIA**
- 3. THE CIVIL SERVICE AGENCY, REPUBLIC OF LIBERIA**
- 4. MINISTRY OF JUSTICE, REPUBLIC OF LIBERIA**

**RESPONDENTS**

**COMPOSITION OF THE COURT:**

Hon. Justice Edward Amoako Asante - Presiding  
Hon. Justice Gberi-Be Quattara - Member  
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur

**Assisted by**

Athanase ATANNON - Deputy Chief Registrar

## **REPRESENTATION TO THE PARTIES**

Cllr. S.L. Lofen Keneah, Jr.        } For Applicant

Cllr. J. Daku Mulbah  
Betty Lamin Blauq                } For Respondents

## **PARTIES**

1. The Applicant is Dr. George S. Boley, former Vice-Chairman, Council of state, Republic of Liberia and a Community Citizen of ECOWAS. The Republic of Liberia is a Member State within the meaning of Article 1 of the Protocol (A/P1/7/91) relating to the definition of Member state, and a signatory to the Revised Treaty Establishing the Economic Community of West African States (ECOWAS).
2. The Ministry of Finance and Development Planning is an agency of the 1<sup>st</sup> Respondent, which is responsible for the approval and payment of retirement benefits of retired members of Legislatures of Liberia, including former members of the Counsel of State, Republic of Liberia.
3. The 3<sup>rd</sup> Respondent, the Civil Service Agency, is an Agency of the 1<sup>st</sup> Respondent that manages the benefits of former Legislatures of Liberia, including former members of the Counsel of States, Republic of Liberia, by preparing and submitting monthly payment request to the Ministry of Finance and Development Planning for approval and payment.
4. The 4<sup>th</sup> Respondent, Ministry of Justice is the legal arm of the 1<sup>st</sup> Respondent, which is the Chief Law Officer of Liberia.

## **APPLICANTS CASE:**

5. The Applicant averred that after the Civil war in Liberia, following various negotiations and agreements which culminated into the drafting of the Abuja peace agreement on August 19<sup>th</sup> 1995 (Abuja Accord), a Transitional Council was created to forestall peace and oversee the process of enabling the establishment of a democratically elected government within one year. Applicant continued that he was a Vice Chairman in the Transitional Council with the mandate of a 12 month tenure but was however allowed by the provision of Abuja agreement to resign three months before election, if they wish to contest and also allowed to suggest a

candidate for their own replacement. That while serving as a vice Chairman of the Transitional Council, an Act was enacted to provide retirement benefit for all officials serving in the council immediately after the swearing in of the new democratically elected government.

6. The Applicant stated that he resigned to contest election and thereafter nominated another candidate to take his place in the council pursuant to the provision of the Abuja accord. That after the newly democratically elected government came into office, he has written several letters to the Respondent who has refused till date to respond nor pay him his retirement entitlement. He contended that nevertheless his diplomatic passport which is part of his retirement benefit is being continually renewed by the Respondent as at when due.
7. The Applicant aver that the refusal to pay his retirement benefit affected his family life to the extent he became incapable of supporting his family leading to a divorce in his marriage and the deterioration of his health.
8. The Applicant by an originating application lodged at the registry of the Court on 18<sup>th</sup> December 2017, therefore allege the violation of his rights to retirement benefit and discrimination due to the refusal of the Respondents to pay his entitlements after several unfruitful efforts to secure same. He therefore sought the following reliefs for the violation of his human rights as provided for under the following Human Rights instruments:
  1. The denial of Applicant's rights to his legal retirement benefits by the Respondents from 1997 to present is contrary to the provision of the Retirement Benefit Act.
  2. The violation of the legitimate rights of Applicant, as enshrined in Articles 1, 2, 3, 4, and 19 of the African Charter on Human and Peoples Rights (ACHPR).
  3. Violation of Applicant rights as enshrined in Articles 6, 7, 22, and 25 (1) of the Universal Declaration of Human Rights (UDHR).
  4. Violation of the legitimate rights of Applicant as enshrined in Articles 2(1), 9, and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

5. Violation of Applicant's rights as enshrined in Article 20(a) of the 1986 Liberian Constitution on the rights of property.
6. Violation of Applicant's rights as provided for in *An Act to Provide for Retirement Benefits for Former Interim President, Chairman, and Vice Chairman of the Council of State, Speakers, Deputy Speakers and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court.*

#### **SUMMARY OF PLEAS IN LAW OF APPLICANT:**

9. The Applicant submitted that Articles 9(4) of the 1991 Protocol and 10(d) of the Supplementary Protocol on the Court of Justice (A/SP.1/01/05) support the competence of the Community Court of Justice in any application filed by individuals which alleges human rights violation:

Article 9(4):

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

Article 10(d):

**Access to the court is open to individuals on application for relief for violation of their human rights, the submission of application for which shall;**

**i) not be anonymous; nor**

**ii) be made whilst the same matter has been instituted before another International court for adjudication.**

It is the argument of the Applicant that these provisions enable an individual to access the Court directly on human rights issues, and gives the Court competence to entertain such application. The Applicant submitted that the case of *Alhaji Hammami Tidjani V. The Federal Republic of Nigeria & 4 Others*, ECW/CCJ/APP/01/06 supports his pleas on access to the Court.

10. The Applicant also premised his plea on Articles 1, 2, 3, 4 and 19, of the African Charter on Human and People's Rights, (ACHPR) Article 25 of the Universal Declaration of Human Rights, (UDHR) the Abuja Accord of 19<sup>th</sup> August 1995, International Covenant on Economic, Social and Cultural Rights, (ICESCR) as well as Article 20 (a) of the Republic of Liberia Constitution of 1986 and *The Act to Provide Retirement Benefits for Former Interim President, Chairman and Vice Chairman of*

*the Council of State, Speaker, Deputy Speaker and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court of 1997 ( which will henceforth be referred to as **The Retirement Benefit Act**) which provides in Section 1 (1) as follows:*

*“**Former** Interim President, Chairman, and Vice Chairman of the Council of State, Speaker, Deputy Speakers, and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court shall receive 50% (fifty percent) of the salaries per annum of the incumbents of the respective offices. In addition, the Chairman shall be provided with personal staff and facilities for the rest of his life. The amount for this purpose Shall not be less than USD\$5, 000.00(Five Thousand United States Dollars) on a quarterly basis (every three months). Upon leaving Office honorariums shall be disbursed as follow: Chairman, US\$25, 000.00; Vice Chairman, US\$20, 000.00; Speakers, US\$12, 800.00; Deputy speakers, US\$10, 000.00; Chief JusticeUS\$12, 800.00; Associate Justices, 10, 000.00 and TLA Members, US7, 500.00.”*

11. Based on the provisions of the above laws and International Human Rights instrument, Applicant sought an end to the continuous violation of his human rights whereof he claims against the Respondents as follows:

**ORDERS SOUGHT BY APPLICANT.**

1. A declaration that the denial of the Applicant access to receive his pension benefits is a violation of his human rights contrary to the various articles of the laws above highlighted.
2. A declaration that Respondents pay Applicant the amount of US\$726, 982.00 which constitutes the amount due to him as of the date and time of filing this action, plus 6% interests per annum; that thereafter the payment of his pension benefits, be made current.
3. A declaration that Respondents pay Attorney fees of 2% of the principle amount owe to the Applicant.

4. A declaration that the Respondents pay the sum of USD\$2, 000,000.00 (Two Million United States Dollars) as compensation for the violation of the Applicant rights and injury caused him, his family for the absence of basic needs, such as food, decent living standard, befitting a former Vice Chairman of State which contributed to the breaking up of his family.

#### **THE RESPONDENTS CASE:**

12. After seeking extension of time within which to respond, the Respondents filed an application for preliminary objection and statement of defense which was lodged at the registry on May 2, 2018. The preliminary objection was however withdrawn at the hearing on the 6<sup>th</sup> of May 2019 because it sought the same reliefs in the statement of defense.
13. The Respondent in its statement of defense denied any violation of the right of the Applicant and contend that their decision not to pay pension is consistent with The Retirement Benefit Act. The Respondents argued there is no provision in the Act that members who resigned from their positions and did not complete their terms in office are eligible to receive retirement benefits. Furthermore, since the Applicant was not retired by the Government of Liberia, he is not a retiree within the contemplation of the law.
14. The Respondent submitted that the consequences of resignation from the Government to contest the 1997 elections stripped Applicant of the qualification as a retiree of the government of Liberia and therefore not entitled to any retirement benefit or any other benefits enumerated under The Retirement Benefit Act because he resigned his post and did not complete his tenure.
15. They contended that Applicant's allegation that he was discriminated against by the omission of his name from the payment requests submitted by the Civil Service Agency to the Ministry of Finance & Development Planning is baseless and unfounded. This they argue is because the Applicant was never eligible for retirement benefits in the first place therefore, the Civil Service Agency could not have included his name amongst honorable retirees.
16. Further, The Respondent submitted that because the Applicant has taken up another job as an elected member of the current Parliament in Liberia, he is not a retiree and therefore urge the Court to hold that the Applicant is not retired.
17. The Respondent submits that during the period Applicant worked for the Government of the Republic of Liberia, he was duly compensated to commensurate

with his status. Applicant voluntarily resigned his position to contest for the presidency in 1997. Hence, he is ineligible to reap retirement benefits from the Government of Liberia because he is not a retiree. Applicant further argue that to award any amount of money to the Applicant would be tantamount to unjust enrichment and the law abhors unjust enrichment.

18. The Respondents are emphatic they have not injured Applicant in any form and manner as far as the records are concerned and neither have they violated his rights at any time and as such they are not indebted to the Applicant for the amount of US\$726,982.00 (Seven Hundred Twenty-six Thousand, Nine Hundred & Eighty-Two United States Dollars). The Respondent concluded that refusal to allow Applicant to unjustly enrich himself at the detriment of the citizens of the Republic of Liberia does not amount to the violation of the Applicants human rights within the context of the UDHR, ACHPR, ICESCR and ICCPR as claimed by the Applicant.

#### **SUMMARY OF THE PLEAS IN LAW OF RESPONDENT:**

19. The Respondents contend that the Applicant lacks capacity to bring this suit before this Honorable Court because Applicant does not meet the criteria to qualify as a retiree. Therefore, since he is not a retiree, he lacks the standing/capacity to institute this suit as it is inconsistent with *Section 11.2 (e) of Title 1 of the Civil Procedure Laws of Liberia*.

20. Furthermore the Respondents contend that the reliefs sought by the Applicant is not admissible because *Article 9(4) of the Supplementary Protocol (A/SP.1/01/05 of the Community Court of Justice* provides that:

***“The Court have jurisdiction to determine cases of violation of human rights that occur in any member state.”***

The Respondent argued that in the instant case, Applicant has not shown nor advance any evidence of any characteristic violation of his human rights nor attached to its application the specific instances how his rights were violated to trigger the jurisdiction of the court as held by this Court in the case of *Moussa Leo Keita V. The Republic of Mali ECW/CCJ/JUD/03/07*:

***“It has a competence to adjudicate matters involving the violation of human rights within its Member State. This Court also held that the Applicant must show proof indicative of a characteristic violation of a fundamental human rights: “and in the absence of any such violation application must be declared inadmissible.”***

The Respondent also cited the cases of; Hope Democratic Party and Alhaji Haruna Yahara Shaba V. The Federal Republic of Nigeria and 5 others ECW/CCJ/JUD/19/15 and Dr. Malachi Z. York V. The Republic of Liberia ECW/CCJ/JUD/5/16, which are both cases decided by this very court, in support of its contention.

21. The Respondent further argued that Applicant is ineligible to benefit as a retiree because he resigned his appointment before the expiration of his tenure. They cited the *Abuja Agreement of 19/8/1995 which Supplements the Cotonou and Akosombo Agreement as subsequently clarified by the Accra Agreement* which provides at Section 3 that:

***“Holders of positions within the Transitional Government as defined by the Cotonou Accord who wish to contest the election provided for under the Schedule of Implementation shall vacate office three months before the date of elections. They shall be replaced by their nominees or by persons nominated by the parties represented in the Council of State”.***

The submission of the Respondent is that Applicant is not a retiree and therefore not entitled to any retirement benefits. Having resigned his appointment to contest for another position in the government of Liberia, and therefore denial of the retirement benefits does not amount to violation of the human rights of the Applicant. The Respondent submitted specifically that Articles 2, 6, 7, 22 and 25 of the UDHR nor Articles 2(1), 9, and 11 of the ICESCR. The Respondent further argued that equality before the law is a basic tenet of the Liberian Government as contained in **Article 11(c) & (d) of the 1986 Constitution of Liberia**, Constitution.

22. The Respondent therefore sought the following reliefs:

**ORDER SOUGHT BY THE RESPONDENTS:**

1. A declaration that the Application is inadmissible as the Respondents are not in violation of the human rights of the Applicant as alleged under:
  - Articles 1,2,3,4 & 19 of the ACHPR.
  - Articles 6,7,22 and 25(1) of the UDHR.
  - Articles 2(1), 9, & 11 of the ICESCR.
2. The Applicant should pay all the cost of litigation incurred for the unnecessary expenditure the Applicant has caused the Respondents as a result of this frivolous suit.



3. A fine or any other punitive measure to be meted out against the Counsel of the Applicant for initiating a frivolous and unmeritorious suits which has the tendency to waste the Court's time and undermine the authority, dignity, and integrity of the Court of Member States.

#### **ANALYSIS OF THE COURT.**

23. The Court having heard the argument and written submission of the parties distilled three issues for determination to wit:

1. WHETHER THE APPLICATION IS ADMISSIBLE BY THE COURT.
2. WHETHER THE APPLICANT HAVING RESIGNED CAN STILL CLAIM THE STATUS OF A "FORMER" MEMBER OF THE TRANSITIONAL COUNCIL.
3. WHETHER IF ISSUE [2] ABOVE IS RESOLVED IN THE AFFIRMATIVE, THE APPLICANT IS ENTITLED TO HIS CLAIMS.

24. Before proceeding to analyze the facts of this case, the Court must first address the capacity of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents who are the agents of the 1<sup>st</sup> Respondent – The Republic of Liberia. It is trite law that only parties to treaties can be bound and held responsible for their implementation. This Court has held on several occasions that agents of member state of the ECOWAS treaty are not proper persons capable of being sued before this Court for the violation of the said treaty or other relevant international Human rights instruments signed by member state of the ECOWAS. In the case of JOHNNY KING & 10 Ors V. FEDERAL REPUBLIC OF NIGERIA & 9 Ors ECW/CCJ/RUL/06/19, the Court held that:

***"The Court has looked at the laws regarding its jurisprudence as well as precedents in this Court, and it is so clear that, it is only member states of ECOWAS who are signatories to the treaties can be brought before this Court for human rights violations and this Court has maintained that position in all its decisions."***

Similarly in SERAP V. THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & Ors ECW/CCJ/RUL/07/10, The Court confirms that:

***"In the context and legal framework of ECOWAS, the court stands by its current understanding that only member States and Community Institutions can be sued before it for alleged violation of human right as laid down in Peter David v. Ambassador Ralph Uwechue delivered on 11<sup>th</sup> day of June 2010".***

25. The Respondent having failed, refused/neglected to raise a preliminary objection in this regard, the Court will suo moto rule on the capacity of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents. Consequently, the 2<sup>nd</sup> to 4<sup>th</sup> Respondent, not being proper persons and devoid of capacity to be sued are hereby struck out of the list of the Respondents to this suit.

The Court will now proceed to analyse seriatim the issues for determination as already distilled.

**26. WHETHER THE APPLICATION IS ADMISSIBLE BY THE COURT.**

The Applicant approached this Court for alleged violation of his human rights occasioned by the refusal of the Respondent to pay his retirement entitlements and other benefits attached to his office as a former Vice Chairman of the Transitional Council of Liberia contrary to Articles 1,2,3,4 & 19 of the ACHPR, Articles 6,7,22 and 25(1) of the UDHR and Articles 2(1), 9, & 11 of the ICESCR.

The Respondent on the other hand contends that the Applicant has not shown any characteristic violations of his human rights to trigger the jurisdiction of this Court and therefore urges the Court to declare the application inadmissible.

27. The Court in coming to a decision on this issue, affirms its human rights mandate as provided in Article 9(4) of the 2005 Supplementary Protocol on the Court (A/SP.1/01/05) as follows in

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

This Court has held in many of its flourishing jurisprudence that mere allegation of violation of human rights is sufficient to trigger the jurisdiction of this Court and the Court will assume jurisdiction without necessarily examining the veracity of the allegation. 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.”***

Similarly, 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.”***

This position is further supported by the decision of the Court in **SERAP V. FRN & 4 ORS, (2014) ECW/CCJ/JUD/16/14** 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 the case of **His Excellency Vice-President Alhaji Samuel Sam-Sumana v. Republic of Sierra Leone.-SUIT NO: ECW/CCJ/APP/38/16 and JUD NO: ECW/CCJ/JUD/19/17** (At page 14 of the judgment) and **Mamadou Tandja (2010) CCJELR pg. 109 & Bakare Sarre & 28 Ors v. Mali (2011) (CCJELR) pg. 57.**

28. Based on the above jurisprudence, and being satisfied that the case is premised on the allegation of violation of human rights, the Court holds that the case is admissible.

The Court will now proceed to analyse the second issue for determination which is

**29. WHETHER THE APPLICANT HAVING RESIGNED CAN STILL CLAIM THE STATUS OF A “FORMER” MEMBER OF THE TRANSITIONAL COUNCIL.**

The Applicant avers that he served in the transitional government as a Vice Chairman of the Transitional Council of the Republic Liberia by virtue of which he is entitled to a retirement benefit and all the other privileges provided for in The Retirement Benefit Act. It is the case of the Applicant that he resigned his position in the former transition council three months before the end of his tenure to contest election in accordance with the provisions of the Abuja Accord of 19<sup>th</sup> August, 1995.

30. The further contention of the Applicant is that his Diplomatic Passport which is a benefit under the retirement Act has consistently been renewed since 1997 to the date of commencement of this action. Indeed according to him, the last renewal was dated 04/24/2017 with an expiration date of 04/23/2019. The case of the Applicant is that his resignation from the Transitional Council does not affect his

right as a former member of the Transitional Council. This fact he claims is supported by the continuous renewal of his diplomatic passport which is one of the retirement benefits for former members of the TC provided in the Act.

31. The Respondent contended that premised upon the circumstances under which Applicant vacated the office of the Vice Chairman of the Council of State; that is to say, by his premature and voluntary resignation, he is ineligible for the retirement benefits as provided for under the above stated Act. In justifying the refusal to pay the alleged entitlement, they argued that the Applicant is fully aware that the resignation from the Government to contest the 1997 elections stripped him of the qualifications as a retiree of the Government of the Respondent and therefore not entitled to any of the benefit under The Retirement Benefit Act

32. It is the further argument of the Respondent that the Applicant is not a retiree within the contemplation of The Retirement Benefit Act because he is currently serving as a member of the Parliament having been elected in that capacity by district 2 during the recently concluded democratic general election in Liberia.

33. The strong contention of the Respondent is that the Applicant was not retired by the Government of the Republic of Liberia, therefore he is not a retiree within the contemplation of the Act and is precluded from enjoying all the benefits therein.

34. The definition of retirement will help to put the meaning of retiree in perspective. Black's Law Dictionary (10<sup>th</sup> Edition) Bryan A. Garner defines retirement as:

**“Termination of one’s own employment or career, especially upon reaching a certain age or for health reasons; retirement may be voluntary or involuntary.”**

The above definition categorizes retirement as either voluntary and involuntary; the involuntary retirement implies that upon attaining certain age or fulfilling recommended conditions in service, an employee is expected to withdraw from service without any option, while the voluntary retirement captures a situation where the employee for other reasons which may be for health concerns or in pursuant of other personal goals or objectives decides to leave the service on his/her own accord before attaining the mandatory retirement age.

35. The Respondent in canvassing their case contended that a voluntary resignation does not amount to retirement and the Applicant having resigned from his office as Vice Chairman of the transitional council to contest an election, was “never

honorably retired by the government of the Republic of Liberia”. It is the opinion of the Court that a disengagement whether voluntary or otherwise from office can be classified as resignation or retirement and to the extent that it was not an impeachment or based on infraction of law amounts to retirement within the law. In the instant case, the Applicant falls within the voluntary act of disengagement from service and therefore is properly regarded as a retiree albeit voluntary. The Court must now determine whether resignation robs the Applicant the status of a “former member” of the transitional council making him ineligible for the benefits specified in The Retirement Benefit Act. It is noteworthy that the Respondent hung most of their defense on the fact that the Applicant is not a retiree and their pleas is replete with the word “retiree”.

36. In this wise, it becomes imperative to analyse The Retirement Benefit Act with a view to discerning the spirit behind it and the contemplation of its makers. For the purpose of clarity, The Retirement Benefit Act is reproduced again.

*An Act to Provide for Retirement Benefits for **Former** Interim President, Chairman, and Vice Chairman of the Council of State, Speaker, Deputy Speakers, and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court:*

**Section 1:**

*“That from and Immediately after the passage of this Act, all **Former** Interim President, Chairman, and Vice Chairman of the Council of State, Speaker, Deputy Speakers, and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court of Liberia in the Transitional Legislative Assembly are hereby entitled to and shall receive from the Republic of Liberia, commencing as of the date of Inauguration of the first democratically, post war elected President, as follow to wit:*

**Section 1 (1):**

*“**Former** Interim President, Chairman, and Vice Chairman of the Council of State, Speaker, Deputy Speakers, and Members of the Transitional Legislative Assembly, Chief Justices and Associate Justices of the Supreme Court shall receive 50% (fifty percent) of the salaries per annum of the incumbents of the respective offices. In addition, the Chairman shall be provided with personal staff and facilities for the rest of his life. The amount for this purpose Shall not be less than USD\$5, 000.00(Five Thousand United States*

*Dollars) on a quarterly basis (every three months). Upon leaving Office honorariums shall be disbursed as follow: Chairman, US\$25, 000.00; Vice Chairman, US\$20, 000.00; Speakers, US\$12, 800.00; Deputy speakers, US\$10, 000.00; Chief Justice US\$12, 800.00; Associate Justices, 10, 000.00 and TLA Members, US7, 500.00."*

**Section 1 (6):**

*"Appropriate diplomatic, protocol, accommodation, courtesy and facilities, and;*

**Section 1 (7):**

*"Such other social amenities, privileges and benefits appropriate to commensurate with the status of a **former** public official of similar standing,"*

37. It is informative from the content of the Act that the purpose is to provide appropriate retirement benefits for all **former** members of the transitional council that have served in the respective capacities mentioned therein, which is befitting to former public official of similar standing. The key operative word to qualify for the entitlement provided in The Retirement Benefit Act is to have been a **former** office holder. The Act did not specify whether resignation from office automatically ousts the official from being regarded as a former member. A close look at the Act shows that other than the title where the word "**Retirement**" was used once, the word "**former**" appears in three places in the body of the Act which is emphatic enough to explain the purposive interpretation of the Act that retirement benefits are meant for **former** members of the Transitional Council of Liberia. Furthermore a close look at the provision of Article 1(1) of the Act shows that payment of honorarium is merely based, "**upon leaving office**". There is no stipulated mode of leaving office in the Act to qualify one for the stipulated benefits. Black's law dictionary defines "leave" simply as **departure or act of going away**. The wordings of Act is clear and unambiguous and as such no extraneous meaning should be imported into to it. In CAMINETTI V. UNITED STATES, 242 U.S. 470 (1917), the Court while applying the Literal rule of interpretation in its reasoning held thus:

*"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms." And if a statute's*

***language is plain and clear, the Court further warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."***

38. The Court must also examine the provision of the Abuja Accord to reach a determination as to its import on the status of the Applicant. While it is incontestable that the beneficiary of the said retirement benefits must be a member, the provision of the Act must be juxtaposed with the Abuja Accord to determine the consequential effect of resignation before the end of the tenure. Article 3 of the Abuja Accord states:

***"Holders of positions within the Transitional Government as defined by the Cotonou Accord who wish to contest the election provided for under the Schedule of Implementation shall vacate office three months before the date of elections. They shall be replaced by their nominees or by persons nominated by the parties represented in the Council of State".***

39. The Court is of the opinion that it will be disingenuous in the light of the provisions of above Accord to hold that the Act contemplates a full completion of tenure to qualify for the benefits therein, in essence making resignation punitive. It is clear from the above that the resignation of member from the Council of State was anticipated and approved and the Abuja accord is a necessary provision to enable a smooth/seamless continuation of the transition process. In fact it is the opinion of the court that this gesture was geared towards a realisation of democratic governance in enabling participation in a democratic process. Had the Applicant resigned for purposes in variance with the Act, the court will all probability have come to a different conclusion. Therefore resignation cannot rightfully be concluded to waive the benefits provided for former members of the transition council and in the instant case the Applicant.

40. In reaching the above conclusion, the Court is persuaded by the opinion of legal experts of similar situations in the international domain. In a report prepared for the congress of the United States of America in August 22, 2008, Wendy Ginsberg an Analyst in American National Government and Finance Division reporting on Former Presidents: Pensions, Office Allowances, and Other Federal Benefits confirm that:

***“According to a 1974 Department of Justice opinion concerning President Richard Nixon’s resignation from office, a President who resigns before his official term of office expires may be entitled to the same lifetime pension and benefits that are authorized for Presidents who complete their term. A President who is removed from office by impeachment, however, may forfeit his pension and related benefits.”***

Similarly, in a report prepared by the Ministry of Interior and Kingdom relation of the Government of Netherlands, the entitlement of the Executive and political appointees after resignation is captured as follows:

***“Members of the executive are accountable to the municipal council for their decisions. Portfolio holders are sometimes made to resign if the council thinks they are not doing their work properly. They may also have to resign if their party loses so many seats in an election that it is no longer represented in the executive. In that case, they will resign once the new executive has been appointed. Former members of the executive are entitled to a benefit under the General Pensions (Holders of Political Office) Act, regardless of the reason for their resignation.”***

41. The case of the Applicant is further strengthened by the continued renewal of his diplomatic passport one of the benefits provided for in Section 1 (6) of The Retirement Benefit Act which states that former member shall be entitled to:

***“Appropriate diplomatic, protocol, accommodation, courtesy and facilities, and;”***

The Applicant in substantiating his case, attached to his plea a copy of his current Diplomatic Passport issued on 24/4/2017 with expiry date at 23/4/2019. The act of the Respondent in according the Applicant the privileges of diplomatic courtesy provided for in The Retirement Benefit Act by issuing a diplomatic passport puts him out as a former Vice chairman of the Transition Council. The question to ask is whether following from such show, Applicant can be estopped from claiming the rights accruable from such status?

In the instant case, possession and usage of a diplomatic passport is one of the retirement entitlements of a former member of the transitional council. The passport was not cancelled after his resignation rather it was consistently renewed



till date. The renewal of the Applicant's Diplomatic Passport is a recognition of his status as a former Vice Chairman of the transition council with all the rights to the benefits provided in The Retirement Benefit Act. Having held the Applicant out as a former Vice Chairman, a claim of bar due to resignation cannot avail the Respondent.

42. With regards to the assertion by the Respondent that the Applicant is not a retiree having taken up another full time employment at the Parliament, the Court is of the opinion that this argument is neither here nor there. Retirement of a person does not translate to inactivity or recuse from productive engagement in any chosen field. Situations abound where retired political appointees continue to engage in active service in governance, non-governmental activities like charitable causes and other fields of endeavor including getting elected into parliament as the case is in most African Countries, European Countries and other jurisdictions all over the world. The Court therefore holds that the argument of the Respondent is not tenable and is without any probative value.

43. In all, based on the above analysis and the established practices from other nations, the Court holds that Applicant's resignation is within the contemplation of the law and he therefore remains a former member of the Transitional Council. The Court will now proceed to determine the next issue, which is;

**44. WHETHER IF ISSUE [2] ABOVE IS RESOLVED IN THE AFFIRMATIVE, THE APPLICANT IS ENTITLED TO HIS CLAIMS.**

Having concluded that the Applicant remains a former member of the Transitional Council, the Court will now determine whether the Applicant is entitled to the claims provided for in The Retirement Benefit Act viz a viz the various human rights instruments cited. The Court is not unmindful of the fact that a right might be guaranteed but it can be derogated from if provided for by law, and if necessary; in a democratic society.

45. Before proceeding to determine the issue above, it is important at this stage to quickly make a short diversion to state that the fixed retirement benefit is equally referred to as pension. The Black's Law Dictionary, Ninth Edition defines pension as:

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

In the instant case, the fixed retirement benefits which Respondent provided for former members in The Retirement Benefit Act in the form of a fixed amount based on 50% the President's salary can rightly be classified as pension.

Consequently the Court will henceforth address these fixed sums in The Retirement Benefit Act as pension and others entitlements as retirement benefits.

46. Now, regarding the 3rd issue for determination, the Court has taken the liberty to reproduce the content and context of various Human Rights instruments upon which the Applicant based his claim to enable a determination whether the claims are situated within them and whether the Applicant has proved his claim.

The Applicant alleged the violation of Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is pari-material with the provision of Article 1 of the ACHPR which states:

***“The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.”***

The obligations of Member States to protect the human rights of their citizens are entrenched in the above instruments and they are expected to take measures to guarantee the rights of its citizens in order not to be in violation of their obligations under the human rights instruments to which they are signatories. The above articles are not autonomous. Their operation is dependent on the violation of other rights contained in the other instruments. Consequently a failure or otherwise of the Respondent can only be determined after concluding that the Applicant has proved his claim.

47. The Applicant also alleged the violation of Article 9 of the ICESCR which is pari-material with Article 22 of the UDHR which read as follows:

***“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”***

The above captures and recognizes the right of everyone to social security including social insurance which includes retirement benefits to ensure qualitative and financial future for retirees.

48. Furthermore, the Applicant alleged the violation of Article 25 (1) of the UDHR which is pari-material with Article 11 of the ICESCR provides as follows:

***“Everyone has the right to a standard of living adequate for the Health and well-being of himself or herself and of his or her family, including food, clothing, housing and medical care and necessary social services, and the rights to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”***

This article deals with a wide range of subjects; such as right to health, housing, food and other means of livelihood which could occasion the violation of human rights if the state by its act or omission fails to make provision for them to be affordable and available to its citizens.

49. The Applicant also alleged the violation of Article 4 of the ACHPR which provides:

***“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”***

This article prohibits the arbitrary deprivation of life which amounts to violation of the rights to life. In a situation where the State denies access to the means of livelihood which includes the denial of the right to pension, it has been held to amount to a violation of right to life.

50. The Applicant equally alleged the violation of Article 2 of the ACHPR which is pari-material to Article 7 of the UDHR which provides :

***“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status”***

This article is clear in its context as preventing discrimination based on the above listed grounds against which the facts of the Applicant will be examined

51. Lastly, the Applicant alleged the violation of Article 20 (a) of the 1986 Liberian Constitution which reads thus:

***“No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts martial and upon impeachment, the parties shall have the right to trial by jury.”***

With regards to the above, most of the rights guaranteed therein except the right to property are equally captured in the various articles earlier cited. The Court notes that the right to property is also provided for in Article 14 of the ACHPR as thus;

***“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”***

52. The allegation of the violation of the Applicant’s human rights under the above international human rights instrument cited can be summarized as follows:

1. Violation of the right to life and dignity contrary to Article 4 of the ACHPR.
2. Violation of the right to a standard of living adequate for the Health and well-being including food, clothing, housing and medical care contrary to Articles 25 of the UDHR and 11 of the ICESCR Section 20 (a) of the 1986 Liberian Constitution .
3. Violation of the right to social security and dignity contrary to Articles 22 of the UDHR and 9 of the ICESCR.
4. Violation of the right to property contrary to Article 14 of the ACHPR and 20 (a) of the 1986 Liberian Constitution.

5. Violation of freedom from discrimination contrary to Articles 2 of the ACHPR and 7 of the UDHR.
6. Violation of the duty and obligation of the Respondent to protect the Applicant' human rights contrary to Articles 2 of the ICESCR and Article 1 of the ACHPR.

From the summary of the rights above, it is clear that the case of the Applicant is that the denial or refusal to pay his pension and other entitlements is a violation of his rights to life, right to health, right to human dignity, right to Property and freedom from discrimination. The Court will now examine each of these articles to determine whether the Applicant's rights have been violated as claimed.

**53. *Violation of the right to health, dignity and life.***

The crux of provision of Article 25(1) UDHR is the guarantee of a standard of living adequate for the Health and well-being. The rights to life, health and dignity are intertwined such that a violation of one can lead to the violation of the other. It follows that the enjoyment of a healthy life is dependent on the ability to afford good medical services which in turn is dependent on the financial security sufficient for maintenance of good health. Payment of pension implicates the ability of pensioners to enjoy these guarantees. . The allegation of the violation of the right to life does not necessarily entail the actual loss of life or merely physical act of breathing, neither does it connote mere animal existence or continued drudgery through life. It has a wider meaning which includes right to live with human dignity, right to livelihood, right to health and many more. Consequently, the refusal to pay retirement benefits can occasion the violation of the right to health and thus a violation of the right to life. Of course the dignity of a person is implicated if due to lack of means traceable to denial of pension, the person becomes a relic of the society falling from his/her ordinary standard in life with the likelihood of becoming a beggar.

54. The Court further notes that the combined interpretation of Articles 22 and 25 of the UDHR with Articles 9 and 11 of ICESCR situates pension as a social security which obliges the State Parties to comply with their obligations under articles 1 ACHPR and 2 of the ICESCR. The obligation of State Parties to provide social security including pension as envisaged in Article 25 of the UDHR has been well articulated as follows by a legal expert; Z. Voroslava in his book titled: *Legal Aspects of Right for a Pension as a Human Rights*;

***“which basically means also a right to receive state’s social security, including social risk situations. The right to social security is a basic human right (which pertains to the social, economic and cultural rights – the second generation of human rights). Thus, the right to a state pension is among the basic human rights and their implementation is one of the fundamental principles of the judicial state. The right to social security is closely linked to the right to life, liberty and security of a person, provided in the Article 3 of United Nations Universal Declaration of Human Rights. Restriction of the social rights, including restriction of rights to the pension, may indirectly affect a person’s right to life.”***

55. In further support of the relationship of pension and social security, Justice D Y Chandrachud of the Bombay High Court held in the landmark case of *Manager, Solapur Municipal Corporation and Others v. Devidas Mahadev Potdar and Others*, Bombay High Court (10 December, 2008). that pension is a vital aspect of social security and that the right to receive it constitutes a right to life under Article 21 of the Indian constitution which is pari material with Article 4 of the UDHR and in addition opined as follows:

***"Deprive a pensioner of the payment and you deprive him or her of the right to life. Delayed pensionary payments place a pensioner in a position of uncertainty and dependence which impinges on the quality of life under Article 21, and the right to dignified existence of the aged,"***

In Further examination of the right to medical care and its dependence on financial security, Z. Voroslava has this to say:

***“The right to receive state pension are also provided by the United Nations Universal Declaration of Human Rights that states that the right to health has to be understood as a right to such conditions, services and goods that are necessary to obtain the highest level of health protection.”***

56. The decided cases above further strengthen the court’s opinion of the inter-relationship between denial of pension on one hand and the attendant implication on the rights to health, dignity and life. The allegation of the violation of the right to life in the instant case does not necessarily entail the actual loss of life or merely physical act of breathing, neither does it connote mere animal existence or continued drudgery through life. It has a wider meaning which includes right to live

with human dignity, right to livelihood, right to health and many more. It suffices to be established that the Applicant is entitled to pension and other retirement benefits which if paid would have enabled him live a life that is meaningful, dignified and healthy in relation to his entitlements and taking into consideration the standard of life commensurate to the expected pension.

Having said that, the Applicant has the burden to proof that the denial of his entitlement under the act has rendered him incapable of living a life with dignity. The court has no evidence to support the fact that the Applicant is unable to afford the bare necessities, minimum and basic requirement to live a life worth living. Having not discharged this burden, the claim of violation of his rights to life, dignity and health does not avail him.

#### **57. *Violation of the right to property***

A further claim of the Applicant is that denial of his pension is a violation of his right to property under Article 20 (a) of the Constitution of Liberia. The Court recalls that Article 14 of the ACHPR also guarantees the right to property. Though the Applicant did not refer to this article, it will nevertheless address the alleged violation of the right to property together with the provision of the Liberian constitution. The Blacks' Law Dictionary, 9<sup>th</sup> Edition defines property in its widest sense to include all of a persons' legal right of whatever description. A man's property is all that is his in law. The question to ask is whether pension amounts to property.

This Court has also held that pension is a property right and refusal to pay same constitutes violation of Article 14 of the ACHPR. In the case of *Registered Trustees of Association of Former Telecom Employees of Nigeria & 17,102 Ors. V. Federal Republic of Nigeria & Ors; ECW/CCJ/JUD/20/19* it held as follows.

***“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.”***

The United States Claim Tribunal in *AMOCO INTERNATIONAL FINANCE CORPORATION V. IRAN*, Award No 310-56-3 (14 July 1987), 15 Iran-US C.T.R. 189-289, held that:

***“Under the Protocol 1 of the European Convention on Human Rights, the concept of property is very broadly defined by reference to all the proprietary interests of an individual. It covers a range of economic interests: “movable or immovable property, tangible and intangible interests, such as shares, patents, an arbitration award, the entitlement to a pension, a landlord’s entitlement to rent, the economic interests connected with the running of a business and the right to exercise a profession...” (Protocol I of the ECHR is pari material with Article 14 of the ACHPR)***

In further support of the above opinion the ECHR has held in the case of BÉLÁNÉ NAGY v. HUNGARY (*Application no.53080/13*) JUDGMENT STRASBOURG 10 February 2015 @ 36 that:

***“Article 1 of Protocol No. 1 places no restriction on the Contracting State’s freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit - whether conditional or not on the prior payment of contributions - that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements”***

58. The court notes that the combined reading of article 20 (a) of the 1986 Liberian Constitution and Article 14 of the ACHPR guarantees the right to property. Following from the analysis and the jurisprudence from different jurisdiction, the court reaffirms and holds that pension is property with attendant right to be protected in accordance with the law. While the court has held that pension is property to which a proprietary right can be claimed, it should however be noted that this right is not absolute as it can be derogated from in accordance with the law or when necessary in a democratic society. The Court, in its analysis of the instant case finds no specific provision of the law which entitles a denial of the Applicant’s pension and other entitlements. Even though the Respondent contended that based on the Applicant’s resignation as provided for in the Abuja Accord, he is precluded from claiming the rights under the Act, the Court has already ruled that the Abuja Accord which allows resignation before the end of the Applicant’s tenure does not constitute a bar to his entitlement. Additionally the Respondent has not justified the denial of the pension



rights as necessary in a democratic society. The court has therefore come to the inevitable conclusion that the justification to deprive a right to property has not been substantiated. The denial of the Applicant's pension and other retirement benefits therefore amounts to the violation of his right to property contrary to Articles 14 of the ACHPR and 20(a) of the Constitution of the Republic of Liberia and the court so holds.

**59. *Violation of the right to equality before the law and freedom from discrimination***

The Plaintiff averred that the act of the Defendant in omitting his name from the payment request and the subsequent payment to his colleagues amounts to a discrimination against his person. The Defendant on the other hand contends that the Plaintiff has not proved that payments were made to other members of the Council of State who resigned prior to the 1997 elections for the purpose of contesting for the presidency. For an action of discrimination to succeed under the articles listed above, there must be established a difference of treatment in an identical or similar case. In *BADINI SALFO V THE REPUBLIC OF BURKINA FASO* JUD NO: ECW/CCJ/JUD/13/12, the Court while relying in its judgment in *CNDD v. COTE D'IVOIRE* (2009) Para 55, and *PROF. ETIM MOSES v. REP OF GAMBIA*, (2007) Para 31, held that:

***“Equality before the law presupposes that equal treatment is accorded people finding themselves in similar situations. Thus, examining the allegation of the violation of the principle of equality requires that, at least two similar legal situations be put side by side as to compare and find out whether an ill treatment was concretely meted out to either one or both of them”.***

In the case *AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS V. REPUBLIC OF KENYA APPLICATION No. 006/2012 JUDGMENT 26 may 2017*, which deals with the violations of various rights of the indigenous people of Ogiek tribe in Kenya forest, the African Court on Human and Peoples Rights ruling on allegation of discrimination based on differential treatment of the tribe by the government of Kenya in comparison to other tribes in similar situation held as follows:

***“The Court accordingly finds that, if other groups which are in the same category of communities, which lead a traditional way of life and with cultural***

***distinctiveness highly dependent on the natural environment as the Ogieks, were granted recognition of their status and the resultant rights, the refusal of the Respondent to recognize and grant the same rights to the Ogieks, due to their way of life as a hunter gatherer community amounts to 'distinction' based on ethnicity and/or 'other status' in terms of Article 2 of the Charter."***

The European Court of Human Rights in the case of RATZENBÖCK AND SEYDL v. AUSTRIA (Application no. 28475/12), in an action of discrimination for refusal to register a same sex marriage in Austria held as follows:

***"In order for an issue to arise under Article 14 of the European Convention on Human Rights (which is in pari-material with Article 14 of the ICCPR) there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently. However, not every difference in treatment will amount to violation of article 14.***

60. In the instant case, the case of the Applicant is that he has been discriminated against by the denial of his benefits whilst others were paid. The Respondent on the other hand stated that indeed two other members of the Council in persons of Charles Taylor and Alhaji G Koromah resigned to contest the presidential election and that none of them was paid any benefits under the Act. To succeed in a claim of discrimination, the Applicant must established that having regard to denial of the retirements benefits due to his resignation, other members who also resigned were nevertheless paid their entitlements. The Applicant while contesting otherwise annexed payment vouchers of several legislators who were not shown to have resigned to contest the election. In essence, the court has no record indicating payments made to other ranking members who resigned to contest the 1997 election.

61. It is trite law that he who alleges bears the burden of making out a prima facie case in support of his averments, the court in its consideration reiterated the cardinal principle of law that ***"he who alleges must prove"***. Therefore, where a party asserts

a fact, he must produce evidence to substantiate the claim. The Applicant has not been able to establish that he was treated differently from other members in similar situation with him. In the absence of evidence to support a different treatment in similar situations, the Applicant's claim of violation of equality before the law and freedom from discrimination is hereby dismissed

62. Closely linked to the right to pension and retirement benefits is the concept of legitimate expectation. In the instant case the Plaintiff served as Vice Chairman of the State of Liberia before he voluntarily resigned. Having spent time in active service of the Government of the Respondent, the Applicant is legitimately expected that upon leaving office, he will be entitled to some benefits. A legitimate expectation encapsulates the need to ensure legal certainty. Lord Fraser of Tullybelton in *ATTORNEY-GENERAL OF HONG KONG V. NG YUEN SHIU* (1983) 2 A.C. 629 said that,

***“When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty”.***

The rationale behind the doctrine of legitimate expectation is the need to prevent administrative authorities from exercising their discretionary powers so as to defeat legitimate expectations of individuals, which have been engineered by the prior conduct of those administrative authorities. Thus, the doctrine strives to make sure that administrative authorities are bound by their undertaking. In the case of *ČAKAREVIĆ V. CROATIA* (Application no. 48921/13) 26 April 2018, the ECHR Court held that, as a rule, a legitimate expectation of being able to continue having peaceful enjoyment of a possession must have a ***“sufficient basis in national law”***.

63. In the instant case, the Respondent argue that the Applicant did not complete his term in office because he resigned to contest an election and he is therefore not entitled to any pension regardless of the fact that there is no provision of the law to back up the argument. To deny the Applicant his legitimate expectation to pension after retirement without any provision of the law to substantiate such decision constitutes a violation of his human rights. This Court in Registered

Trustees of Association of Former Telecom Employees of Nigeria & 17,102 Ors. V. Federal Republic of Nigeria & Ors; ECW/CCJ/JUD/20/19, emphasised that:

***“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.”***

Applying the above decisions which are quite persuasive, the court holds that the Applicant, placing reliance on the provision of The Retirement Pension Act that upon leaving the office as a Member of the Transitional Council, he will be entitled to receive all the benefits provided for as a former member of the Transitional Council in which he was a former Vice Chairman is a valid legitimate expectation which this court will protect. The Court therefore holds that the denial of the Applicants pension is a denial of his legitimate expectation.

64. Having held that the denial of the Applicant’s pension and retirement benefits is a violation of his rights as claimed, the Court will now address the reliefs sought by the Applicant same being reproduced here for ease of reference.

The Applicant sought the following reliefs:

1. A Declaration that the denial of the Applicant to received his pension benefits is a violation of his human rights.
2. A declaration that Respondent pay the Applicant the amount of US\$726, 982.00 which constitutes the amount due him as of the date and time of filing this action, plus 6% interests per annual; that thereafter the payment of his pension benefits, be made current.
3. A declaration that Respondent pay successful Attorney fees of 2% of the principle amount owe Applicant.
4. A declaration that the Respondent pay the sum of USD\$2, 000,000.00 (Two Million United States Dollars) as compensation for the violation of the rights of Applicant, and injury caused him, his family to the absence of basic needs, such as food, decent living standard, befitting a former Vice Chairman of State, etc., which contributed to the breaking up of his family.

65. With regards to relief one, the court has based on the analysis under the various heads declared that the denial of the Applicant’s pension and other retirement

benefits did not constitute a violation of his rights as claimed save the allegation of violation of his right to property which the court upheld.

66. The Court will now proceed to address relief two which is the payment of the amount due to the Applicant as pension at the time of filing of this suit calculated at US\$726, 982.00 (United States Dollars) plus 6% interest. To substantiate the above claim, the Applicant attached as annexure 6 to the originating application a breakdown of the amount allegedly due to him from the Respondent as follows:

1. Honorarium upon leaving office -----US\$20,000.00
2. 50% of V. President Sal. pension 1997 to 2006(\$18,000x10)-US\$180,000.00
3. 50% of V. President Sal. Pension 2006/2007-----US\$11,028.00
4. Half of V. President Sal. Pension 2007/2008-----US\$22,684.00
5. Half of V. President Sal. Pension 2008/2009-----US\$22,684.00
6. Half of V. President Sal. Pension 2009/2010-----US\$28,772.00
7. Half of V. President Sal. Pension 2010/2011-----US\$36,472.00
8. Half of V. President Sal. Pension 2011/2012-----US\$36,472.00
9. Half of V. President Sal. Pension 2012/2013-----US\$42,174.00
10. Half of V. President Sal. Pension 2013/2014-----US\$42,174.00
11. Half of V. President Sal. Pension 2014/2015-----US\$42,174.00
12. Half of V. President Sal. Pension 2015/2016-----US\$42,174.00
13. Half of V. President Sal. Pension 2016/2017-----US\$42,174.00
14. Security salary @US\$200 Monthly 1997 to 2017-----US\$48,000.00
15. Transportation of size and quality 1997 to 2017 -----US\$110,000.00

**GRAND TOTAL-----=US\$726,982.00**

67. Items 1 to 13 of the above is based on the calculation of honorarium and 50% of salary of former and incumbent Vice President from 1997 till 2017 as Provided in The Retirement Benefit Act amounting to \$568,982. The Court notes that the Applicant did not provide any official document to authenticate his claim. For instance, an official gazette indicating the salaries within the stated period of past and the incumbent vice presidents, or any other official document to support the figures quoted in the reliefs. The court is not expected to accept any unsupported figures submitted by the Applicant. The court therefore holds that the specific amount in the sum of \$568,982 claimed by the Applicant, being devoid of details is unsubstantiated and therefore denied. The claim is denied based on the

unsupported **quantum** and not the substance. It is to be noted that the inability of the Applicant to provide the correct records of payment made to the previous and incumbent vice president does not necessarily vitiate his right to the pension due to him as a Former Vice Chairman of the State Council in accordance with the provisions of The Retirement Benefit Act.

68. It is trite law that when a document is in the custody of the adverse party, the burden of proof of same shifts from the claimant to the custodian of the document. It is common knowledge that information about pension benefits especially the matrix of calculation is domiciled with the employer. The employee, more often than not upon retirement is presented with the total entitlement due same having been calculated by the employer. Thus when the records and the metric of calculation are in the custody of the employer, as in this instant case, the Respondent, the onus lies on them to provide.

This was the position held by this court in the case of *Registered Trustees of Association of Former Telecom Employees of Nigeria & 17,102 Ors. V. Federal Republic of Nigeria & Ors; ECW/CCJ/JUD/20/19*, when this court held that:

***“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. 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. 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.”***

See also *ESTATE OF BARTON V. ADT SECURITY SERVICES PENSION PLAN No. 13-56379* (9<sup>th</sup> Circuit, April 2016) when the European Court held

***“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.”***

Following from the above reasoning, the Respondent being the employer and the natural custodian of relevant information/data about the pension and other retirement entitlements of all officials named in the said Act, the Court therefore orders the Respondent to calculate the honorarium and the amount due to the Applicant as pension based on 50% of the salaries of previous and incumbent vice presidents in accordance with the Act and pay same forthwith.

69. With regards to the second part of relief two, the Applicant's claim is for the sum of \$158,000 as refund for the payment for the Security services he incurred and the vehicles he purchased covered by items 14 and 15 of reliefs listed above. He based his claim on the provision of Sections 6 and 7 of The Retirement Benefit Act which states other entitlement to include;

**"Section 1 (6):**

*"Appropriate diplomatic, protocol, accommodation, courtesy and facilities, and;*

**Section 1 (7):**

*"Such other social amenities, privileges and benefits appropriate to commensurate with the status of a former public official of similar standing,"*

The Court notes that the Applicant has not substantiated this claim by submitting evidence in the form of receipts for purchase of the said vehicle and any form of document evidencing payment of salaries either personally to the security officers or to a security recruitment agency. As decided above, the court holds that though the Applicant has not proved the **quantum** of relief sought under this head, by virtue of the Sections 6 & 7 of the Act he is entitled these privileges. The Respondent having provided these privileges to other former members of the council and being the natural custodian of the documents evidencing the cost of the vehicles and fees for security services, is obliged to monetise the value of these entitlements and pay same to the Applicant forthwith. The court so orders.

70. On the relief that the Court should make a declaration that Respondent pay successful Attorney fees of 2% of the principle amount owed to Applicant. The applicant has not provided the details of cost implication to convince the court of the entitlement so claimed. The blanket claim of 2% of principal amount owed is denied. However noting that it is in evidence the Applicant engaged an attorney to

whom he must enumerate, the court in its discretion awards the cost of \$2,000 against the Respondent.

71. With regards to relief four, the Applicant claimed the sum of USD\$2, 000,000.00 (Two Million United States Dollars) as compensation for the violation of his rights, and injury caused him, his family due to the absence of basic needs, such as food, decent standard of living, befitting a former Vice Chairman of State which contributed to the breaking up of his family. The Applicant attached a copy of the Bill of Divorcement Certificate from the Montserrado County Court issued in the City of Monrovia Liberia, dated 29<sup>th</sup> of April 2019 and marked as annexure 7 to substantiate the claim of divorce. The Respondent in contention urged that the claim should be denied as it is an attempt to mislead the Court on the grounds that it was the Applicant who filed the divorce proceeding and not the wife as claimed.
72. The Court after a careful perusal of the Certificate of Divorce, notes that the cause of divorce was not indicated therein and indeed the Applicant is the initiator of the divorce proceedings. To sustain a claim that the denial of his retirement and the attendant lack of funds to sustain his home led to the divorce, the Applicant must prove in the least that his wife indeed initiated the divorce proceedings against him due to his inability to provide for her sustenance. The court takes note of the alleged lack of sustenance due to non-payment of his pension, but the applicant must prove that the divorce was due to same. The divorce certificate is silent on the cause of the separation. In this regard, the Court is precluded from imputing the alleged lack of resources by the Applicant as the cause for the divorce. The claim for the sum of USD\$2, 000,000.00 (Two Million United States Dollars) having being unsubstantiated, is hereby dismissed.
73. Following from all the above, 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 this suit.
2. The applicant's rights to life pursuant to article 4 of the ACHPR has not been violated.



3. The Applicant's right to health pursuant article 25 of the UDHR and 11 of the ICESCR Section 20 (a) of the 1986 Liberian Constitution has not been violated
4. The Applicant's right to dignity pursuant to Articles 22 of the UDHR and 9 of the ICESCR has not been violated.
5. That the Applicant's right to equality before the law and freedom from discrimination pursuant to article Articles 2 of the ACHPR and 7 of the UDHR has not been violated.
6. That the Applicant's right to property pursuant to articles 14 of the ACHPR and 20 of the Liberian Constitution has been violated by the Respondent.

**ORDERS:**

1. The Respondent to calculate and pay to the Applicant his entitlement from 1997-2017 in accordance with the provision The Retirement Benefits Act.
2. The Respondent to calculate and pay to the Applicant as refund due to him for security and transport allowance based on the amount budgeted for same for other former members.
3. The Respondent to immediately restore the pension and other retirement benefits due to the Applicant as former Vice Chairman from the date of this judgment in accordance with The Retirement Benefit Act.
4. That the Respondent file a notice of compliance with above orders on or before 120 days from date of this judgement.
5. The Respondent to pay the Attorneys fees of \$2,000 United States dollar as cost to the Applicant

**DISMISSES;**

6. The claim for the sum of \$20,000,000 for violation of right to family life and break up family.

Thus pronounced and signed on this 28<sup>th</sup> Day of June, 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 Gberi-Be Quattara - Member

Hon. Justice Dupe ATOKI - Member/Judge Rapporteur

**Assisted by**

Athanase ATANNON - Deputy Chief Registrar