

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



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

HOLDEN AT ABUJA, NIGERIA.

ON TUESDAY, THE 11TH DAY OF DECEMBER, 2018

SUIT NO: ECW/CCJ/APP/10/I5

JUDGMENT NO: ECW/CCJ/JUD/31/18

BETWEEN

- 1. FESTUS A.O. OGWUCHE ESQ**
- 2. CROWNFIELD SOLICITORSPLAINTIFFS**

AND

FEDERAL REPUBLIC OF NIGERIADEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE - Presiding

Hon. Justice Dupe ATOKI - Member

Hon. Justice Januaria Taveres Silva Moreira COSTA - Member

Assisted by

Tony ANENE-MAIDOH - Chief Registrar.

JUDGMENT.

PARTIES:

1. The 1st Plaintiff is a community citizen, lawyer, broadcaster and the Managing Director of the 2nd Plaintiff. The 2nd Plaintiff is a firm of Solicitors engage specifically in human rights advocacy, the advancement of democracy and good governance and sponsors radio and television broadcasts on the stated subjects.
2. Defendant is a member state of ECOWAS and a signatory to the African Charter on Human and Peoples' Rights and other International Human Rights instruments.

SUMMARY OF FACTS:

3. The Plaintiffs in their originating application dated 31st March, 2015 applied for the enforcement of their Human Rights to freedom of speech and free press allegedly violated by the Defendant.
4. Plaintiffs allege that they received a letter from the Defendant through its agency titled; "Additional Regulations for live Political Broadcasts" dated May 30, 2014, addressed to all Broadcasting Houses, with directives that the National Broadcasting Commission must be given 48 hours prior notification before airing any live political Programme. The letter allege that contents of the political live programs which are inciting, provocative, highly divisive and threaten the unity and peace of the country are been transmitted.
5. Plaintiffs further allege that the Defendant followed up the letter with threats of withdrawal of their broadcast licenses, outright closures of broadcast outfit, direct censorship of all broadcast materials and seizure of broadcast equipment of any organization that does not comply with the directives in the said letter.
6. The Plaintiffs aver that the Defendant stopped their live interview broadcasts on Radio and Television Stations including social media, thereby hampering the Plaintiffs' program on social advocacy for good Governance and Human Rights.
7. Plaintiffs aver that the Defendant was intimidated about the unlawfulness of their action and requested for specific proof of any repeated abuse of Programme transmission that threatens the peace and unity of the country to which there was no response.

8. Defendant filed a notice of preliminary objection dated 15th May, 2015 challenging the jurisdiction of the Court to entertain the suit and argued that the issues raised are non-justiciable under the Nigerian Constitution of 1999(As Amended) and do not fall within the Jurisdiction of this Court because , they are part of the Directive Principles of State policy.

9. Defendant insist they are performing their oversight function as the National Broadcasting Commission in accordance with the laws of Nigeria and that there was no violation of Human Rights of the Plaintiffs, contend that no cause of action arose for the Plaintiff, and that the suit is frivolous and should be dismissed.

10. In response to the motion of preliminary objection, the Plaintiffs argued that the subject matter of the suit is premised on allegation of Human Rights violation which is within the jurisdiction of the Court.

11. On the Cause of action, the Plaintiffs submitted that the letter from the Defendant raises a cause of action as it seeks to violate fundamental Human Rights to freedom of speech.

SUMMARY OF CASE HISTORY:

12. The case was commenced by the Plaintiffs with an initiating application of 18th March, 2015 with three supporting annexure and served on the 7th April, 2015.

13. Notice of preliminary objection dated 14th May 2015 lodged by the Defendant and served the following day 15th May, 2015.

14. Plaintiffs' statement in reply to the Defendant's notice of preliminary objection was lodged and served on the 11th June 2016.

15. On the 4th October, 2016, parties were in court, and the lead counsel for plaintiffs reported that he was bereaved and adjournment granted for 7th November, 2016.

16. On 7th November, 2016, both parties were in court, Defendant counsel asked for adjournment to enable the lead counsel appear, case adjourned till 7th December, 2016.

17. On December 7th, 2016, Defendant was not represented. Court adjourned on the condition that if Defendant did not appear on the next date, hearing will continue on 24th January 2017.

18. On 24th January 2017, the Plaintiff was present in the Court but the defendant was absent from court and its preliminary objection motion was struck out for want of diligent prosecution. The court ordered therefore that subsequently, the case will be determined mainly on the basis of Plaintiff's claim. The case was adjourned for hearing to 20th March, 2017 for hearing.

19. The case was subsequently called on 16th December 2017, plaintiff represented himself in Court. The Defendant was absent and not represented. The case was heard and adjourned to 5th December, 2017 for judgment.

20. On November 8th, 2018, the Court session was held again; this time constituted by a new panel of judges. 1st Plaintiff was present in Court but Defendant was absent, though earlier served with hearing notices to attend court. Plaintiffs adopted all their pleadings and prayed the Court for a date for judgment. The Court deemed all the submissions adopted and made an order that the judgment date would be communicated to the parties in due time. Consequently, the court ordered the matter to be fixed for judgment today after ordering hearing notices to be served on the parties accordingly.

The pleas in law:

The Plaintiffs filed the summary of their pleas in law with the plan to canvass legal argument during the hearing by way of written address, the case was heard in Court on 16th October, 2017 but no written address was submitted on record.

Summary of pleas in law as filed by the Plaintiffs:

21. Plaintiffs summarized their pleas in law and relied on the following provisions:

- a. Article XIX of the African Charter on Human and Peoples' Rights.
- b. Article 19 of the Universal Declaration of Human Rights
- c. Article 19 of the International Covenant on Civil and Political rights.
- e. ECOWAS Protocol on Democracy and Good Governance.

22. Pleas in law relied upon by the Defendant in their preliminary objection:

- a. Article 19 of the Universal Declaration of Human Rights & International Convention on Civil and Political Rights.
- b. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

- c. The National Broadcasting commission Act Cap NII laws of Federation 2004.

Orders Sought By the Plaintiffs:

23. A DECLARATION that the act of the Defendant's agency National Broadcasting Commission in directing that all live political broadcasts by Broadcasts Stations in Nigeria be referred to it tantamount to censorship of the press and is contrary to the fundamental freedom enshrined and guaranteed under Article XIX of the African Charter on Human and Peoples' Rights, and the ECOWAS PROTOCOL on Democracy and Good Governance.

24. A DECLARATION that the act of the Defendant's National Broadcasting Commission in directing that all live political broadcasts by Broadcasts Stations in Nigeria be referred to it tantamount to censorship of the press and is contrary to the fundamental freedom enshrined and guaranteed under Article 19 of the Universal Declaration of Human Rights.

25. A DECLARATION that the act of the Defendant's National Broadcasting Commission in directing that all live political broadcasts by Broadcasts Stations in Nigeria be referred to it tantamount to censorship of the press and is contrary to the fundamental freedom enshrined and guaranteed under Article 19 of the International Covenant on Civil and Political Rights.

26. A DECLARATION that the act of the Defendant's National Broadcasting Commission in directing that all live political broadcasts by Broadcasts Stations in Nigeria be referred to it tantamount to censorship of the press and is contrary to the fundamental freedom enshrined and guaranteed under Sections 22 and 39 (1) of the Defendant's constitution regarding the exercise and operation of a free press.

27. A DECLARATION that the act of the Defendant's National Broadcasting Commission in directing that all live political broadcasts by Broadcasts Stations in Nigeria be referred to it tantamount to censorship of the press and is contrary to the fundamental freedom enshrined and guaranteed under ECOWAS PROTOCOL on Democracy and Good Governance.

28. AN ORDER enjoining the Defendant to withdraw or cause to be withdrawn the letter from its National Broadcasting Commission of May 2014 addressed to all

Broadcasting houses, and have same withdrawal published in all the major National dailies within the Country.

29. PERPETUAL INJUNCTION restraining the Defendant, its agencies, servants and privies from further doing anything either by way of official policy, instruction and/or investigation that will in any way impede against the existence and operation of a free press in a democratic society which is guaranteed as fundamental freedoms under ARTICLE XIX of the African Charter on Human and Peoples' Rights, ARTICLE 19 of the International Covenant on Civil and Political Rights, Sections 22 and 39(1) of the Defendant's Constitution and ECOWAS PROTOCOL ON DEMOCRACY AND GOOD GOVERNANCE.

Orders Sought by Defendants in their Preliminary Objection:

30. A Declaration that the National Broadcasting commission has power to regulate its affairs.

31. A Declaration that section 22 of the 1999 Constitution of Nigeria (as amended) is not justiciable by virtue of section 6(6) c of the Constitution.

32. A Declaration that section 39 (1) of the 1999 Constitution of Nigeria (as amended) does not fall within the Jurisdiction of this Court by Virtue of section 46 of the said constitution.

33. A Declaration that plaintiffs did not disclose any cause of action.

34. An order striking out the suit of the Plaintiffs/Respondent for want of Jurisdiction.

35. Issues for Determination:

1. Whether the Court has Jurisdiction to adjudicate on this case.

2. Whether there is any violation of the Human Rights of the Plaintiffs to Freedom of Speech/Expression.

LEGAL ANALYSIS:

36. The preliminary objection of the Defendant having been struck out for lack of diligent prosecution and having not filed any defence, the analysis and decision will be based on the uncontroverted submission of the Plaintiffs as filed in their originating application.

1. Whether The Court has jurisdiction to adjudicate on this case.

37. The Plaintiffs in their originating application dated 31st March, 2015 applied for the enforcement of their Fundamental Human Rights to freedom of Speech and free Press allegedly violated by the Defendant.

38. Plaintiffs argue that the substantive suit is for the enforcement of their Fundamental Human Rights. This Court they contend is imbued with requisite jurisdiction to adjudicate on complaints of fundamental Human Rights violation that occur in any member state by virtue of Article 9 (4) and 10 (d) of the 2005 Protocol on the Court.

39. The Plaintiffs contend that the issuance of the letter headed “Additional Regulation for live political Broadcasts” by the Defendant dated May 30, 2014, which requires the Plaintiffs to notify the National Broadcasting commission in writing at least 48 hours before transmitting a political programme live and the closure of their media programs violates their right to freedom of expression.

40. The Plaintiffs relied on Article 19 of the ACHPR to support their claim. Article 19 of the ACHPR states that:

“All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”

The Court however observes that the Right to freedom of speech is provided for in Article 9 of the African Charter of Human and People’s Rights whilst the Application of the Plaintiffs is premised on the violation of a right guaranteed under Article 19.

41. The Plaintiffs also relied on Articles 19 of the Universal Declaration of Human Rights & International Covenant on Civil and Political Rights and ECOWAS Protocol on Democracy and Good Governance which deal with freedom of speech.

42. In determining the jurisdiction of the Court, it must be guided by the provisions of the enabling Act. Article 9 (4) of the 2005 Protocol on the court as Amended states that:

“The Court has jurisdiction to determine cases of violations of Human Rights that occur in any Member State.”

43. Article 10 (d) of the 2005 Protocol on the Court as amended states:

“Individuals on application for relief for violations 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 3

44. The Court will now determine if the above stated condition precedent on admissibility has been met.

45. It is the contention of the Plaintiffs that the requirement to notify the National Broadcasting Commission in writing 48 hours before Political Live broadcast and the closure of the transmission of their media programs is a violation of their rights to freedom of speech.

46. Mere allegation of Human Rights violation as opposed to the veracity of the claim has been held by this Court in decided cases, to be sufficient enough to trigger its jurisdiction to adjudicate on alleged violation of Human Rights provided for in the African Charter on Human Rights.

47. In 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)**; the court held that:

“Indeed Allegations of violations of Human Rights by an Applicant is sufficient to invoke the jurisdiction of this Court. This is distinct from the issues of the veracity of the allegation.”

48. In **Hissein Habre v. Republic of Senegal; ECW/CCJ/APP/07/08 & ECW/CCJ/03/10**, this Court held that in determining whether it has jurisdiction, it shall consider:

- If the issues submitted before it deals with a right which has been enshrined for the benefit of the human person;
- Whether it arises from international or community obligations of the state complained of, as Human Rights to be promoted, observed, protected, and enjoyed;
- Whether it is the violation of that right which is being alleged.

See also **Private Alimu Akeem v. Federal Republic of Nigeria ECW/CCJ/RUL/05/11, pg. 119** affirming the same condition precedent.

49. In **El Haji Mame Abdou Gaye v. Republic of Senegal ECW/CCJ/JUD/01/12 at Para 28 and 46**, this Court held that:

“The only limit to this jurisdiction is as prescribed in Article 10 (d) (ii) of the supplementary Protocol on the Court, which bars it from entertaining a case which is already taken by another competent international Court”.

50. This Court is hereby satisfied that the Subject matter of the case being on Human Rights violation, is sufficient to activate its Jurisdiction to adjudicate on this matter and the Court so hold.

2. Whether there is any violation of the Human Rights of the Plaintiffs to Freedom of Speech/Expression.

51. The Plaintiffs allege that they received a letter from the Defendant directing that all political live programs must be submitted 48 hours before broadcast to avoid divisive, inciting and hateful speech and contend that, this is a violation of freedom of speech.

52. Plaintiffs state that they requested by a letter to the Defendant to produce the proof of allegation of the contents that constitutes inciting and divisive statement, to which the Defendant never gave any response, rather followed up with a decision to close down Plaintiffs’ Media programs in violation of their Human Rights to freedom of speech.

53. In determining whether there is a violation of the rights of the Plaintiffs to freedom of expression, the Court needs to examine the Human Rights instrument which provides for the right to freedom of expression.

54. Freedom of expression is protected under Article 9 of the African Charter on Human and Peoples’ Rights which states as follows:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

55. International Human Rights Law also confers on individual the right to freedom of expression which is guaranteed under Article 19 of the Universal Declaration of

Human rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 (2) of the ICCPR provides:

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.”

56. It follows from the above that, interference with the Right to freedom of expression and the Right to hold free opinions in any media constitutes a violation of Human Rights of the Plaintiffs to freedom of expression.

57. Over the years, the Court has reviewed complaints of Human Rights violations pertaining to the unlawful arrests, detention, disappearances and illegal killings of journalist with the view of protecting the right to freedom of expression in the cases of **Chief Ebrimah Manneh v. The Gambia (2004 – 2009) CCJELR, 181** and **Musa Saidykhan v. The Gambia (2010) CCJELR, 139**.

58. In the most recent case of **Federation of African Journalists & 4 Ors v. The Gambia (Judgment No: ECW/CCJ/JUD/04/18)**, the 1st Applicant who is a representative body for journalists in Africa, in conjunction with the 2nd to 5th Applicants, who were citizens of The Gambia instituted that action on grounds of breach of the rights of freedom of expression. The Court held that:

“Having critically examined the criminal laws of The Gambia, the Court declares that the criminal sanctions imposed on the applicants are disproportionate and not necessary in a democratic society where freedom of speech is a guaranteed right under the international provisions cited”.

59. The court went on;

“It is our view that the impugned provisions cast excessive burden upon the applicants in particular and all those who would exercise their right of free speech and violates the enshrined rights to freedom of speech and expression under Article 9 of the African Charter, Article 19 of the ICCPR and Article 19 of UNDHR. “

60. This Court finds that the letter of Additional regulations from the Defendant directing the Plaintiffs to submit their Political Live programs for vetting 48 hours

before broadcast every time, cast excessive burden upon the Plaintiffs and violates their rights to freedom of speech and expression.

61. In the case of **Deyda Hydera JR. and Anor v. The Gambia (Suit No: ECW/CCJ/APP/30/11 Judgment No: ECW/CCJ/JUD/17/14)**. The Applicants were nationals of The Gambia, made allegations of violations of freedom of expression against the defendant state amongst other violations. In its judgment, the Court stated as follows:

“These provisions, guarantee the right to life and also freedom of expression... A State also will be in breach of international law and treaty obligations, if it fails to protect media practitioners including those critical of the regime. For freedom of expression also includes the freedom to criticize the government and its functionaries, subject to limitations imposed by the domestic laws.”

62. International law recognizes that freedom of expression may be restricted but, any limitations must remain within the strictly defined parameters as laid down in Articles 19 (3) of the ICCPR as follows:

A. For respects for the Rights or reputations of others.

B. For the protection of National Security or of public order (ordre public) or of public health and morals.

63. Similarly, Article II of the African Commission on Human and Peoples’ Rights Declaration of Principles on Freedom of expression in Africa (32nd Session, 17-23 October, 2002) Banjul, The Gambia, Article XII (2) states:

1. No one shall be subject to arbitrary interference with his or her freedom of expression.

2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a Democratic society.

64. The Plaintiffs requested for proof of inciting and divisive programme content that may fall within the exception provided for by the law to warrant the closure of their outfit but the Defendant never advanced any one.

65. The Defendant has failed to establish proof of Plaintiffs’ media programs which constitutes a threat to National Security, Public Order, or Public health and morals,

to justify the internationally recognized exceptions within the law, in which freedom of expression may be restricted.

66. Having reviewed all the circumstances of the evidence before it, the Court finds that there is a violation of the Rights of the Plaintiffs to freedom of expression as alleged.

67. In view of the new panel of Judges which sat on the case on the 8th November 2018, the case was adjourned for Judgment today the 11th day of December, 2018.

DECISION:

68. After a careful review of the case, The Court, sitting in public and having heard the uncontroverted submission of the Plaintiffs, Decides as follows:-

69. Declares it has jurisdiction to hear this matter which is premised on allegation of violation of Human Rights.

70. Finds that the freedom of speech of the Plaintiffs has been violated by the Defendant and grants the declarations sought by the Plaintiffs in paragraphs 23, 24, 25, 27 and 28 in this judgment.

71. Order the withdrawal of the said Defendant's letter titled "Additional Regulation for Live Political Broadcasts" dated May 30, 2014.

72. Restrains the Defendant from further violations of the Plaintiffs' Human Rights to freedom of Expression.

Thus pronounced and signed on this 11th day of December 2018 in the ECOWAS Community Court of Justice Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon. Justice Edward Amoako ASANTE - Presiding

Hon. Justice Dupe ATOKI - Member

Hon. Justice Januaria Taveres Silva Moreira COSTA - Member

Assisted by

Tony ANENE-MAIDOH - Chief Registrar.