

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

In the Matter of

**THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS
AND ACCOUNTABILITY PROJECT (SERAP) & 3 ORS V. FEDERAL
REPUBLIC OF NIGERIA**

Application No: ECW/CCJ/APP/23;24;26&29/21 Judgment No: ECW/CCJ/JUD/40/22

JUDGMENT

ABUJA

14th July, 2022

**THE REGISTERED TRUSTEES OF
THE SOCIO-ÉCONOMIC RIGHTS
AND ACCOUNTABILITY
PROJECT (SERAP) & 3 ORS.**

... **APPLICANT**

V.

FEDERAL REPUBLIC OF NIGERIA

... **RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Keikura BANGURA

- Member/Rapporteur

Hon. Justice Januaria T. Silva Moreira COSTA

- Member

ASSISTED BY:

Mr. Tony ANENE-MAIDOH

- Chief Registrar

REPRESENTATION OF PARTIES:

Femi FALANA, SAN

Oluwadare A. KOLAWOLE

Opeyemi OWOLABI

Ihensekhien SAMUEL JNR.

O. DOUGLAS ESQ.

Mojirayo OGUNLANA NKANGA

Padraig HUGHES

Saba ASHRAF

Admma ISAMADE

Counsel for the APPLICANT

AB *CAA*

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T.J.J. DANJUMA
Mbaseki Martin O'BONO
Chief Malcolm OMIRHOBO
Success E. OGBEBE ESQ.
Peter N. OKOROANI ESQ.
Seprebofa M. OYEGHE ESQ.
Maxwell N. EGEDE ESQ.



Deji AJARE
Nanpon B. WUYEP ESQ.
Miriam ORIKA
Oluwadisayomi S. AINA EQS.



AMICI CURIAE

Maimuna LAMI SHIRU (MRS.)
Enock SIMON
Abubakarr alhaji NUHU
Abdullahi ABUBAKARR



Counsel for the RESPONDENT

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as “the Court”) delivered virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicants are the Socio-Economic Rights and Accountability Project (SERAP) a Non-Governmental Organization registered and situated in the Federal Republic of Nigeria;
3. Patrick Eholor, President of One Love Foundation a Non-Governmental Organization registered and situated in the Federal Republic of Nigeria;
4. Chief Malcolm Omokiniovo Omirhobo a Community citizen who resides in the Federal Republic of Nigeria; and
5. Media Rights Agenda, Paradigm Initiative for Information Technology Development, Premium Times Center for Investigative Journalism, International Press Centre, and Tap Initiative for Citizens Development Non-Governmental Organizations registered and situated in the Federal Republic of Nigeria; David Hundeyin, Samuel Ogundipe, Blessing Oladunjoye and Emmanuel Nwakamri Zakari Apollo Community citizens residing in the Federal Republic of Nigeria. (Media Rights and Eight others).
6. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS), signatory to the

ECOWAS Treaty, the African Charter on Human and Peoples' Rights and other international human rights instruments (hereinafter referred to as the "Respondent").

III. INTRODUCTION

7. The subject-matter of the case borders on the legality and validity of the ban and/or the suspension of the microblogging service, Twitter, by the Respondent and its agents on the 4th June, 2021, which allegedly resulted in the violation of the right to freedom of expression, access to information and media freedom guaranteed by the African Charter on Human and People' Rights (ACHPR) and other international human rights treaties and conventions to which the Respondent is a State Party.

IV. PROCEDURE BEFORE THE COURT

8. The Applicants filed their Initiating Application at the Registry of the Court on the 8th of June, 2021 with an application for Provisional Measures and Instructions.
9. A Motion on Notice to file additional documents was lodged by the Applicant on the 21st of June, 2021 together with an Affidavit in Support of the Motion and Written Address in Support of the Motion on Notice to file additional documents before the Court.
10. The Respondent filed a Notice of Preliminary Objection on the 21st June 2021 together with its Written Address in Support of the Preliminary Objection. The Affidavit in Opposition to the Provisional Measures filed by the Applicants was also filed together with the Respondent's pleas of fact and law on the 21st June

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2021. Further, the Respondent filed the Statement of Defense and the pleas of law and fact on the same date.

11. The Applicants filed their Response to the Preliminary Objection of the Respondent and Affidavit in reply to the Respondent's Counter Affidavit, respectively on the 22nd June, 2021 at the Registry of the Court.

12. A Virtual Court Session of the Court was held on the 22nd June, 2021 with both parties present. The Applicant moved its Application for Interim Measures after which the Court ordered the Respondent to refrain from prosecuting any media outfit or citizens using Twitter but declined to order the Respondent to lift the ban and adjourned for hearing.

13. The Applicants filed a Motion for Leave to Intervene as *Amicus Curiae* and a Motion to call witnesses, at the Registry of the Court on the 1st of July, 2021.

14. The *Amicus Curiae* filed its submission on the 5th of July, 2021.

15. The Respondent filed a Motion on Notice at the Registry of the Court for the Consolidation of cases ECW/CCJ/APP/24/21 and ECW/CCJ/APP/26/2 on the 5th July, 2021.

16. A Virtual Court Session was held on the 6th July, 2021 with parties present and the Respondent moved their Motion for Consolidation which the Court granted, subject to the reorganization of the Panel of Judges.



17. A Motion on Notice to Intervene as *Amicus Curiae* was filed at the Registry of the Court on 8th July, 2021 along with the *Amicus Curiae* brief. The Respondent filed an Affidavit in Opposition to the Applicant's application for leave to intervene on the same date.

18. A Motion on Notice to intervene as *Amicus Curiae* was filed by Amnesty International on 8th July, 2021 at the Registry of the Court and they filed their brief on 21st July, 2021.

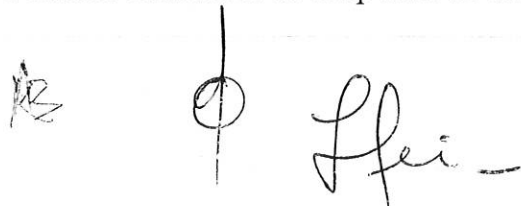
19. During the Virtual Court Session held on the 22nd June, 2021, the Court delivered its ruling on the interlocutory applications.

20. The Respondent filed a Motion for Extension of Time within which to file a Consolidated Statement of Defence to the Applicant's application at the Registry on 28th September, 2021.

21. During the Virtual Court Session held on 29th September, 2021 the Court granted the Respondent's application to file a consolidated defense and heard the Parties' submission on the merits. The *Amicus Curiae* moved its application and adopted their briefs. The case was adjourned for judgment.

22. Following the adjournment for judgment, the Respondent filed a Motion on Notice for an Order to strike out the suit for being devoid of purpose on 26th January, 2022 at the Registry of the Court.

23. The Applicants filed a Counter Affidavit in Opposition to the Respondent's Motion on 28th January, 2022 and filed a Counter Affidavit in response to the

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Respondent's Motion on 8th February, 2022. They also filed a response to the Respondent's Motion on Notice on the 15th February, 2022.

24. During the Virtual Court Session held on 16th February, 2022 the Court struck out the Respondent's Motion requesting the Court to strike off the substantive application and adjourned the case for judgment.

V. APPLICANT'S CASE

a) Summary of facts

25. The Application was filed by five Applicants against the Respondent and the Court has proceeded to consolidate the following upon the request of the Respondent and the consent of the Applicants herein:

- i. Socio-Economic Rights and Accountability Project (SERAP)
- ii. Patrick Eholor, President of One Love Foundation
- iii. Chief Malcolm Omokiniovo Omirhobo
- iv. Media Rights Agenda and Eight others

26. By virtue of the consolidation dated 22nd July, 2021 all references to the Applicant will be in the singular.

27. The Applicant has brought the claims against the Respondent because it is a signatory to several human rights treaties including the African Charter on Human and Peoples' Rights (African Charter), which they seek to rely on and which have been ratified and domesticated by the Respondent.

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28. The Applicant has established that it is a registered user of Twitter with the handle @SERAP-Nigeria, through which it undertakes various socio-economic operations including advocacy online.

29. The Applicant's claim is premised on the suspension of Twitter, a microblogging app, on the 4th June, 2021 by the Respondent who further directed its agent to commence licensing all Over the Top (OTT) and social media operations in Nigeria. It is submitted that the Respondent's statement that: "*Twitter is undermining of Nigeria's corporate existence*" was the basis given for its suspension. The Applicant claims that the resulting effect of the suspension of Twitter has been adverse to many Nigerians who carry on their daily activities on Twitter, especially impeding the right to freedom of expression of millions of Nigerians.

30. The Applicant's contention herein is that the Respondent's suspension of Twitter was as a result of the flagging by Twitter of a tweet made by President Muhammadu Buhari, which was reported as violating the Twitter community rules. The Applicant added that the suspension of Twitter by the Respondent was not premised on any law or Order of a competent court nor did it state the law that was breached by Twitter. The Applicant further submits that notwithstanding that the Respondent failed to state the law that was breached by the Applicant, it proceeded to urge its agent to immediately commence with the licensing of all OTT and social media operations in Nigeria.

31. The Applicant claims that the act of licensing is unknown in Nigerian law and constitutes a fundamental breach of the Applicant's right to freedom of

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expression, access to information and media freedom, guaranteed under regional and international human rights treaties.

32. Furthermore, the Applicant claims that the Respondent imposed punishment without recourse to the national courts and the attempt to license social media operations without notice, violates rights and freedoms which the Respondent has undertaken to protect. The Applicant submits further that the Respondent breached the right to freedom of expression, access to information, and media freedom via the Nigerian Broadcasting Act 1992 and the Nigerian Broadcasting Code.

33. The Applicant also submitted that the suspension of Twitter has left it and millions of Nigerians in fear of the possible suspension of other means of free speech such as Facebook, Instagram and WhatsApp. This action is restrictive on the freedom of expression, access to information, and press freedom in Nigeria.

34. The Applicant further submitted that the Respondent's act in suspending Twitter is an implication of the decline of freedom of expression in Nigeria. That notwithstanding its regional, sub-regional and international commitments to human rights treaties and conventions it has failed to guarantee and protect freedom of expression, and access to information. This failure has left millions of Nigerians at home and abroad unable to participate in issues of public interest, especially on ideas and views on the performance of the Respondent in relation to its constitutional and international human rights obligations.

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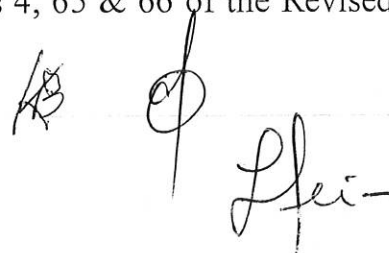
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35. The Applicant concludes by stating that the Respondent's aim is to intimidate Nigerians who expose corruption in government, criticize acts of impunity and by extension intimidate other microblogging sites into self-censorship.

b. Pleas in law

36. The Applicant relies on the following laws:

- i. Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, & 24 of the African Charter on Human and People's Rights (hereinafter ACHPR).
- ii. Articles 1, 2, 3, 5, 7, 9, 19 & 26 of the International Covenant on Civil and Political Rights (hereinafter ICCPR).
- iii. Article 1, 2, 9, 27, 28 & 30 of the Universal Declaration of Human and People's Rights 1948 (hereinafter UDHR).
- iv. Articles II & XII of the Declaration of Principles on Freedom of Expression in Africa (Hereinafter Declaration of Principles).
- v. Article 32 of the Supplementary Act (A/SA.1/01/10) on Personal Data Protection within the Economic Community of West African States.
- vi. Articles 1, 6, 7, 10, 11 & 12 of the Supplementary
- vii. Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa. Articles 4, 65 & 66 of the Revised

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Treaty of the Economic Community of West African States
(hereinafter Revised Treaty).

- viii. Article 33 of the Rules of the Community Court of Justice.
- ix. Article 10 of the Supplementary Protocol (A/SP.1/01/05) amending the Protocol (A/P.1/7/91) relating to the Community Court of Justice.

c. Reliefs Sought

37. The Applicant is seeking the following reliefs from the Court:

- A. A DECLARATION that the act of the Respondent and its agent suspending the operation of Twitter or any other social media and microblogging application without an order of a competent Court of jurisdiction is unlawful, inconsistent and incompatible with Nigerian human rights obligations and amount to breach of the right to freedom of expression, access to information and media freedom guaranteed under Article 9 of the ACHPR and Article 19 of the ICCPR.
- B. A DECLARATION that the act of the Respondent in mandating its agent to commence and continue to regulate the social media in Nigeria amounts to restriction and censorship, thus constituting violation of the international human rights and Nigeria's obligations under the ACHPR and Article 19 of the ICCPR.

- C. A DECLARATION that the act of the Respondent and its agents suspending the operation of Twitter or any other social media and microblogging application in Nigeria without any offence known to law is incompatible with Article 9 of the ACHPR and Article 19 of the ICCPR and are therefore null and void to the extent of their inconsistency and incompatibility.
- D. A DECLARATION that the directive of the Respondent, through the National Broadcasting Commission, directing and 'advising' media houses to deactivate their Twitter accounts and discontinue its use is a breach of the citizen's right to freedom of expression, access to information as well as media freedom guaranteed under Article of the ACHPR and Article 19 of the ICCPR and therefore, null and void.
- E. A DECLARATION that the act of the Respondent to frequently threaten the Applicant and other Nigerians to make use of Twitter and/or other social microblogging applications with criminal prosecution and the actual act of suspending the operations of Twitter in Nigeria, violates the principle that there is no punishment without law, and the right to fair hearing, guaranteed under the African Charter on Human and People's Rights and International Covenant on Civil and Political Rights and therefore, null and void.
- F. AN ORDER setting aside the suspension, ban, sanction or other punishments whatsoever imposed on Twitter and/or any other social media service providers by the Respondent and its agents.

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G. AN ORDER directing the Respondent and its agents to immediately revoke, withdraw and/or rescind its suspension of Twitter and/or any other social media service provider (s) in Nigeria in line with the Nigerian obligations under international human rights law especially Article 1 of the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights and the Revised Treaty of ECOWAS 1993.

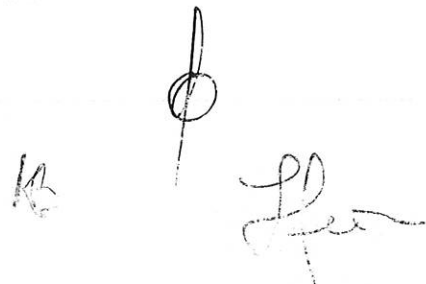
H. AN ORDER OF PERPETUAL INJUNCTION restraining the Respondent and its agents from unlawfully imposing sanctions and punishment or doing anything whatsoever to harass Twitter and/or any other social media service provider(s), media houses, radio and television broadcast stations, the Applicant and other Nigerians who are Twitter users, in violation of the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights.

I. **SUCH FURTHER** orders the Honorable Court may deem fit to make in the circumstances of the suit.

VI. RESPONDENT'S CASE

a) Summary of facts

38. Whilst admitting to paragraphs iv, v of the Applicant's narration of facts, the Respondent limits the said admission to the bare facts and denies the allegations therein on the grounds of sovereignty, threats to destabilize its corporate existence, to force Twitter to comply with extant laws.

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39. More so, the Respondent claims that Twitter is being used by a separatist leader who has perpetrated acts of violence against Nigerian soldiers and Policemen, government structures and symbols of sovereignty. That this was evident during the #ENDSARS protest, which is believed to have been sponsored by the founder of Twitter, during which violence was recorded in parts of the country.

40. The Respondent denies paragraphs vi, vii, viii, ix, x and xv of the Applicant's narration of facts and states that asking Twitter to comply with the laws of Nigeria is not a violation of the right to freedom of expression and press.

41. It further denies paragraph xvi of the Applicant's narration of facts as it argues that it cannot be ranked with states hostile to media freedom by requesting Twitter to comply with extant laws.

42. Paragraph xix of the Applicant's narration facts is denied by the Respondent who states that the suspension of Twitter was not aimed at intimidating Nigerians and denies any violation of freedom of expression, the press and access to information but to ensure that Twitter complies with extant laws.

43. The Respondent contends that its extant laws are not in any way ambiguous and made to infringe on the rights and freedoms of its citizens but in circumstances when its sovereignty is at stake, it may take measures to preserve its corporate existence.

44. That freedom of expression is not absolute and that despite its commitments to international human rights treaties these rights and freedoms should be exercised within the law.

45. The Respondent submits that the Applicant is not Twitter. It further states that it has not taken down individual users' accounts but has simply forced Twitter to comply with its laws. That Nigerian citizens continue to express their views on other social media, print and audio/visual platforms.

46. The Respondent denies all other allegations in the Applicant's narration of facts and urges the Court to dismiss the application as it is vexatious.

b) Pleas in law

47. The Respondent relies on the following laws:

- i. Section 1 (1) & (2) of the 1999 Constitution (as Amended)
- ii. Section 24 of the Cybercrime (Prohibition and Prevention etc.) Act 2015
- iii. Section 36 (12), Section 39 (1) & (2) and Section 45 (1) (a) & (b) of the 1999 Constitution
- iv. Article 9 (2) of the African Charter on Human and People's Rights
- v. Article 19 (3) of the International Covenant on Civil and Political Right (ICCPR)
- vi. Section 420 (1) & (2), Section 419 and 421 of the Penal Code (Northern States) Federal Provisions Act
- vii. Section 78 (1) (2), Section 79 and 80 (1) of the Companies Allied Matters Act 2020.
- viii. Section 2 (1) (a), (c), (d), (f), (g), (h), (i), (l), (m), (n), (p) of the National Broadcasting Commission Act.

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c) Reliefs Sought

48. The Respondent asserts that the Application lacks merit and is vexatious. Thus the Applicant is not entitled to the grant of any of the reliefs being sought and urges the Court to dismiss the Application in its entirety.

VII. JURISDICTION

49. The Court recalls that the Respondent contended its jurisdiction by way of a Notice of Preliminary Objection dated 21st June, 2021 together with a written submission in support of the Preliminary Objection and the Affidavit in Opposition to the Provisional Measures filed on the 21st June, 2021. The Respondent sought from the Court an order striking out and /or dismissing this notice of registration of the Applicant's initiating application for want of jurisdiction.

50. The Court, after hearing the parties, declared that it had competence to hear the suit and dismissed the Preliminary objection. It further held that the suit be heard expeditiously and ordered the Respondent to refrain from imposing and ban or sanctions media house or harassing, intimidating, arresting and prosecuting the Applicants, concerned Nigerians for the use of twitter and other social media platforms, pending the hearing and determination of the substantive suit.

51. The Court declined to order the Respondent to lift the ban pending the hearing of the substantive suit.

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VIII. ADMISSIBILITY

52. In determining the admissibility of the application, the Court is guided by the relevant law which is Article 10 (d) of the Supplementary Protocol of the Court 2005 to wit:

“Individuals on application for relief of violation of their human rights the submission of which shall:

- i. Not be anonymous nor*
- ii. Be made while the same matter has been instituted before another international Court for adjudication”.*

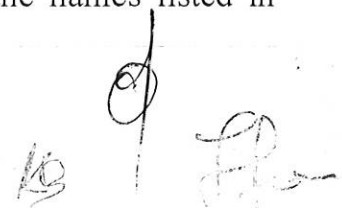
53. Having considered the Applicant before this Court and finding them to be sufficiently identified and further noting that there are no claims of pending suits of similar nature before other international Courts, the requirement for admissibility is thus satisfied.

54. Furthermore, the Court having noted no record of a challenge on the grounds of admissibility put forward by the Respondent herein, declares the application admissible pursuant to Article 10 (d) of the Supplementary Protocol (supra), and the Court so holds.

IX. PROCEEDINGS BEFORE THE COURT

a. Interlocutory Application for the Consolidation of ECW/CCJ/APP/23/21, ECW/CCJ/APP/24/21 and ECW/CCJ/APP/24/21

55. The Respondent by way of Motion dated 5th July, 2021 prayed that the Court orders the consolidation of three applications numbered ECW/CCJ/APP/23/21, ECW/CCJ/APP/24/21 and ECW/CCJ/APP/26/21, bearing the names listed in



paragraph 29 (i-iii) above. The Respondent proceeded to orally pray that the Court adds application number ECW/CCJ/APP/29/21 to the list for consolidation which bears the name in paragraph 29 (iv.) above. The consolidation was premised on the grounds that the subject matter of the claims in the four applications aforementioned and the Respondent are the same.

56. The Respondent relied on the ratio in the case of DJOTBAYI TALBIA & 14 ORS. V FEDERAL REPUBLIC OF NIGERIA (2009) CCJELR where this Court held that:

“The Court may decide to consolidate two or more applications pending before it if the subject matter and relief sought by the parties are similar in nature.”

57. The Court having heard the oral submissions of the Respondent and the reliefs sought on the face of the Motion, proceeded to hear the Applicants in all three applications concerned. The Applicants expressly consented to the consolidation and for the lead Counsel of the SERAP (ECW/CCJ/APP/23/2) to present the claims of all the Applicants herein. Consequently, the Court ordered the consolidation of application numbers ECW/CCJ/APP/23/21, ECW/CCJ/APP/24/21, ECW/CCJ/APP/26/21 and ECW/CCJ/APP/29/2, to be led by SERAP (ECW/CCJ/APP/23/2).

b. Application for intervention as Amicus Curiae

58. Three applications to intervene as *amicus curiae* were filed on different dates between the 1st July, 2021 to 8th July, 2021 by three Non-Governmental Organizations namely:

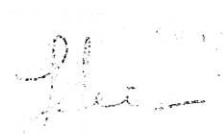


- i. Robert F. Kennedy Center for Justice and Human Rights, Alias Robert F. Kennedy Human Rights
- ii. Access Now (Electronic Frontier Foundation and Open Net Association)
- iii. Amnesty International

59. The prayers sought in all three applications was for leave to intervene in the consolidated application of SERAP (ECW/CCJ/APP/23/21) as *amici curiae*. The submissions made by the *amici curiae* bordered on the interpretation of the right to freedom of expression including online expression under international and regional human rights law, limited circumstances in which States may restrict freedom of expression and an analysis of the indefinite ban and restriction of Twitter by the Respondent. The *amici curiae* also submitted the position of the United Nations and the African Commission on Human and People's Rights on internet shutdown and how State ordered shutdowns violate domestic, regional and international law. It is submitted further that the Court should provide remedies to those harmed by the Respondent's shutdown of Twitter.

60. This Court has severally granted leave for intervention as *amicus curiae* on the grounds that the said *amicus* is not a party to the suit and has no proprietary interest in the said claim. The intervention must simply be an objective assistance into the research exercise necessary in the adjudication of the claim/s before the Court.

61. The present applications for leave to intervene as *amicus* and the submissions by the *amici curiae* has been considered by this Court and the same is granted.



X. MERITS

62. The Court, having considered the facts and evidence before it and the reliefs sought by the Applicant has identified the pivotal contention of the Applicant as follows:


- i. Contravention of Article 9 of the ACHPR and Article 19 of the ICCPR by the regulation of the social Media and the violation of the right to freedom of expression, access to the media and information
- ii. Legality of the Respondent's act of suspending the operations of Twitter.
- iii. Violation of the right to fair hearing by the Respondent prosecuting and punishing without reference to a breach of any existing law pursuant to the provisions of the ACHPR

63. Having identified the contention of the Applicant, the Court will proceed to analyze the same in the order in which they have been canvassed.

Contravention of Article 9 of the ACHPR and Article 19 of the ICCPR by the regulation of the social Media and the violation of the right to freedom of expression, access to the media and information

Analysis of the Court

64. The facts before the Court clearly establish the suspension of Twitter by the Respondent. The question therefore before this Court is whether this was done in contravention of Article 9 of the ACHPR and Article 19 of the ICCPR resulting in the violation of the Applicant's right to freedom of expression, free speech,



access to information and the media. In attempting to answer this question, due consideration will be given to the following sub-questions to wit:

- Whether access to Twitter and Information and Media is a right
- Relevance of Twitter as a platform to the enjoyment of the right to freedom of expression?
- Whether suspension of Twitter violates the Applicants' rights to freedom of speech and a breach of Articles 9 of the ACHPR and Article 19 of the ICCPR.

a. Access to Twitter and Information and Media as a right

65. It is relevant to reproduce Article 9 of the ACHPR and Article 19 of the ICCPR at this stage for ease of reference:

Article 9 of the ACHPR states that:

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.*

Article 19 of the ICCPR states that:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*



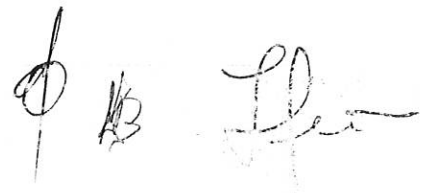
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

66. The Court notes that the phrases and words used in Article 9 of the ACHPR and Article 19 of the ICCPR create the right to free speech and to hold opinions without interference. In addition to creating the right, it also provided a derivative right to receive and impart information and ideas of all kinds regardless of the means i.e. spoken words or writing or by means of print in the form of artwork or through any media of choice. Article 19 of the ICCPR further qualified the right to free expression to the extent that the freedoms created are not absolute as the enjoyment of such right could be subjected to restrictions. It clearly stipulates that such restrictions shall be as provided by law.

67. It is clear from the analysis of Articles 9 of the ACHPR and 19 of the ICCPR that they did not only guarantee freedom of speech but also provided for a derivative right to access information, which is not a stand-alone right but a complementary right to the enjoyment of the right to freedom of expression. It is therefore considered, a derivative right which cannot be exercised in isolation but jointly with the right to the enjoyment of free speech which it complements, in exercise of such right. This is usually done or effected through several

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complementary media, which include social media platforms like Twitter, Facebook, and Instagram, to name a few.

68. Therefore, the Court will hold that access to Twitter, being one of the social media of choice to receive, disseminate and impart information, is one such derivative right that is complementary to the enjoyment of the right to freedom of expression pursuant to the provisions of Article 9 (1) & (2) of the ACHPR and Article 19 of the ICCPR. Consequently, to derogate from such a right requires lawful justification either by means of an existing law, by Court order, or otherwise in order to justify such derogation failing which the court will find that restricting such access will amount to violation of the rights to access information and the media platform and the Court so holds.

b. The relevance of Twitter as a platform to the enjoyment of the right to freedom of expression

69. The Court considers that Article 9 (1) of the ACHPR created an ancillary right to receive information whilst Article 9 (2) of the ACHPR created the right in itself to express and disseminate opinions within the law. Therefore, opinions can be expressed and disseminated by means of the following media:

- i. The internet,
- ii. Print media or electronic media, which includes Twitter, and
- iii. Via means of work of art.

70. With the development of modern technology, social media platforms, including Twitter, have become one of the most usable or user-friendly platforms through which opinions, ideas, and views are expressed, imported, received, and/or disseminated.

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71. Consequently, it is the considered opinion of the Court that Twitter has become one of such platforms through which the right to freedom of expression is exercised. In other words, Twitter is one of the vehicles provided by modern technologies by which the enjoyment of the right to free speech has been exercised. Therefore, Twitter is of much relevance in the attainment of the intended objectives of Articles 9 of the ACHPR and Article 19 of the ICCPR and in like manner, relevant in the enjoyment of the exercise of the right to freedom of expression. Any act that restricts the rights guaranteed under the provisions of ACHPR and the ICCPR will be deemed to be inconsistent with the provisions of the said Article and the Court so holds.

c. Violation of the Applicant's Right to the enjoyment of freedom of speech by suspension of the operations and a breach of the provisions of Articles 9 of the ACHPR and 19 of the ICCPR

72. Whilst the Court notes that the Respondent admits the act of suspending the operations of Twitter, it is also evident that it seeks to justify the said act of suspension by relying on the ENDSARS Protests which took place nationwide and was a threat to national security and the cooperate existence of Nigeria. It further submitted that the exercise of the right to freedom of expression is not absolute and that such right is exercised subject to restriction provided by law. In as much as the Court agrees with the Respondent that the exercise of the right to freedom is not absolute, the Court observes that the Respondent must prove by reference to existing legislation or Court Order, the right to suspend Twitter.

73. The Court recalls that the Applicant successfully established its case on the following grounds:

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- a) That they are entitled to exercise the right to freedom of speech
- b) That the right has been unduly interfered with and
- c) That such interference was not justified by law.

74. After a careful examination and analysis of the facts, the arguments and submissions by the parties, the Court finds that the Respondent has not established any proof or evidence (either by reference to a specific legislation) or order of a competent Court that authorize the power to enforce the suspension of Twitter.

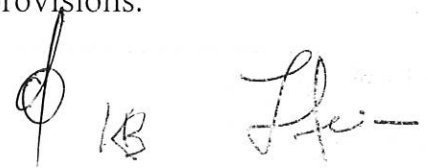
75. The Court is of the opinion that the failure of the Respondent to prove the existence of any such law or Court order justifying the suspension of the operation of Twitter presupposes that at the time of suspending the operation of Twitter there was no law in existence or order of a competent Court to justify the said act of suspension.

76. Consequently, the Court finds that the Respondent violated the Applicant's right to the enjoyment of freedom of expression as the suspension of the operation of Twitter was not sanctioned by any law or order of a competent Court, and the Court so holds.

Legality of the Respondent's act of suspending the operations of Twitter.

Analysis of the Court

77. The Court aligns with its findings that the suspension of Twitter, which is a derivative right to the freedom of expression guaranteed by Article 9 of the ACHPR and Article 19 of the ICCPR, contravenes both provisions.

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78. However, the Respondent's submission is not lost on this Court, that the suspension was done pursuant to Section 39 (1) & (2); & 45 (1) (a) & (b) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) are in conformity with Article 9 (1) & (2) of the ACPHR. Section 39 (1) & (2) of the Constitution of the Federal Republic of Nigeria reads:

(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

79. Furthermore, the Respondent submits that Sections 419, 420 of the Penal Code Federal Provisions Act gives validity to the Act and is in no way an infraction or breach of the provisions of Section 39 of the Constitution (supra).

80. The Court notes the Applicant's contention that the Respondent's act of suspending Twitter via the media was done without procuring an order of a competent Court or premising the same on an extant law. Furthermore, the

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Applicant's submission that Twitter is a vehicle for the enjoyment of the rights to freedom of expression, access to information and media freedom is well noted.

81. In determining whether the act of suspending Twitter is "unlawful" as claimed, the Court will be guided by the principle that in the act of good governance, the exercise of any state power (including legislative, executive, as well as judicial power) must be exercised from a source of authority that grants the power to act. The source can either be expressed by means of the Constitution, Acts, or by means of delegated power under delegated legislation. It can also be constructive authorization in cases where statutes gives general powers. Power can also be sourced from orders of a competent Court. For power to be exercised lawfully, it must receive the sanction of a specific law that is legislated for that purpose to serve as a source of authority and not by reference to a provision that granted the powers generally to legislate for a specified purpose such as the Penal Code Act, the Electoral Acts etc. the list goes endlessly.

82. In view of the foregoing, the Applicants in their statement of facts, submitted as follows:

- i. That the suspension of Twitter was not sanctioned by extant law or by order of Court
- ii. That the act of licensing was unknown to Nigerian law and therefore it constitutes a breach in the exercise of the right to freedom of speech and restrictions to access and receipt of information and media freedom guaranteed under several regional and international human rights instruments.

 13 

83. Given that the Applicant has challenged the Respondent in the exercise of the above powers as alleged in the first instance that there was no law pursuant to which Twitter was suspended and secondly that there was no Court Order in existence justifying the suspension of Twitter. By these submissions the obligation to show that the suspension of Twitter was lawful now shifted to the Respondent.

84. Having examined the facts as stated in the defense filed, the Court observed that the Respondent sought to justify the suspension of Twitter by relying on the corporate existence of Nigeria citing the case of END SARS protest, an event that is alleged to have been sponsored by the founder of Twitter during which occurrence violence was recorded in parts of the country. Furthermore, the Respondent submitted that freedom of expression is not absolute.

85. Whilst the Court agrees with the Respondent that the enjoyment of the right to freedom of speech is not absolute and that the same is exercised within the ambit of the laws, the Court is of the opinion that any limit to regulate the exercise of this right or to derogate from it must be expressly and specifically provided for by legislation for that purpose and the same must not have a retrospective effect in terms of its application. The Court, however, notes that the Respondent in all its statement of defense, has failed to adduce proof or evidence referencing a particular law or Court order or otherwise justifying the suspension of Twitter. This is because the Respondent only referred to an END SARS protest which they believe will have the potential threat to destabilize the corporate status of Nigeria.

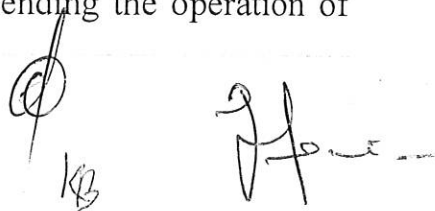
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86. In situations, such as the instant case, the only feasible scenario for derogation, in the considered opinion of the Court, is simply that it has to be done in accordance with the law. This means there must be in existence a national legislation granting and authorizing the exercise of such rights and at the same time providing the conditions under which it can be derogated from failing which the exercise of such power would be frowned at by the Court as an act of illegality. The Court, therefore, considers that the onus of proving the existence of such law lies on the shoulder of the Respondent, who is asserting that the suspension of the operation of Twitter was justified and was done in accordance with the law.

87. From the totality of the evidence available to the Court, it is clear that the Respondent had not shown either by way of reference to any specific law or by means of other proof or otherwise the existence of any such law. (See FEMI FALANA & 1 OR V THE REPUBLIC OF BENIN & 2 ORS (2012) CCJELR at page 15)

88. In view of the above analysis, the Court finds that the Respondent has failed to discharge the onus of proof sufficient to persuade and/or support its justification for the suspension of Twitter. The Court, therefore, concludes that such failure by the Respondent to provide the specific law or order of a competent Court under which the power to suspend the operation of Twitter was exercised is evidence that the suspension was not done in accordance with the law or with the support of a Court order.

89. Based on the above analysis, the Court holds that in the absence of any law or order of a competent Court to support the act of suspending the operation of

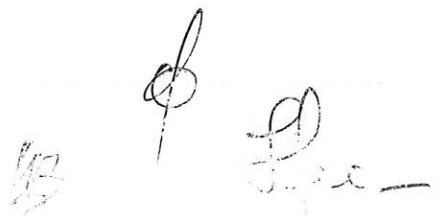
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Twitter, the said suspension is therefore deemed to be unlawful. The Court, therefore, holds that the act of suspending Twitter including all consequential acts that follows the suspension was not done in accordance with the law or by reference to any existing Court order. Consequently, it concludes that the said acts were unlawful and illegal and inconsistent with the provisions of Article 9 of the ACHPR and Article 19 of the ICCPR, and the Court so holds.

Violation of the right to fair hearing by the Respondent prosecuting and punishing without reference to a breach of any existing law pursuant to the provisions of the ACHPR

90. The Applicant claims “...that the act of the Respondent to frequently threaten the Applicant and other Nigerians to make use of Twitter and/or other social microblogging applications with criminal prosecution and the actual act of suspending the operations of Twitter in Nigeria, violates the principle that there is no punishment without law, and the right to fair hearing, guaranteed under the African Charter on Human and People’s Rights and International Covenant on Civil and Political Rights and therefore, null and void.”

91. This Court having ruled above that the suspension of Twitter was unlawful and contrary to Article 9 of the ACHPR and Article 19 of the ICCPR, is faced with determining whether the Respondent’s extended order that users of Twitter should be prosecuted is contrary to Article 7 of the ACHPR. It must be noted here that the Applicant failed to canvass the specific provision within the ACHPR however, the Court recalls the express wording within the above-referenced relief

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to the right to fair hearing guaranteed under the ACHPR” and it would therefore consider same.

92. Article 7(2) of the ACHPR guarantees that: “*Every individual shall have the right to have his cause heard... No one may be condemned for an act or omission which did not constitute a legally punishable offense at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*”

93. The right enshrined in Article 7(2) of the ACHPR presupposes that the *act or omission* must be one that is legally punishable at the time of commission. Therefore, if an act or omission is done without legal basis it cannot impose a punishment. Consequently, in the instant case, where the Respondent seeks to prosecute persons who continue to use Twitter in spite of the suspension the Court must consider the allegation in light of Article 7 of the ACHPR based on its decision above that the suspension was not prescribed by law.

94. Having regard to this, there is a need for the Court to determine the extent of this breach and in doing so it must consider the evidence adduced in support of the relief sought by the Applicant. The Applicant submits *Annexure A to E* which evidence the suspension of Twitter from various media; *Annexure A* is titled “*Names of Nigerians interested to join suit against the Federal Government over ban of Twitter.*” The Court notes that this piece of evidence simply contains a list of persons and nothing more, which prompts the Court to instruct on the application of Article 7 of the ACHPR.

95. When a claimant poses a claim for violation pursuant to Article 7 of the ACHPR,

it is presumed that the following have occurred:

- i. An act would have occurred
- ii. For which a charge would have been proffered
- iii. Before a recognized judicial body

96. It is instructive to state that fair hearing and fair trial are used interchangeably and denote the same meaning herein. In determining whether the Applicant has properly canvassed the claim, the Court will rely on its erudite jurisprudence that requires that where there is a burden of proof it must be discharged by a person making a claim. (See FEMI FALANA & 1 OR. V THE REPUBLIC OF BENIN & 2ORS (2012) (supra) at page 15).

97. Therefore, in this instance, where the Applicant has simply listed persons without stating whether the persons so listed were prosecuted for using Twitter, it lends no persuasive value necessary to discharge the burden of proof. Consequently, the Court finds that there has been no breach of Article 7(2) of the ACHPR resulting in a violation as claimed by the Applicant, and the claim is therefore dismissed as unsubstantiated.

XI. REPARATIONS

98. Having regard to the decision of the Court that the Respondent's act of suspending Twitter was unlawful and in contravention of Article 9 of the ACHPR and Article 19 of the ICCPR, it is trite that reparations must be considered on the basis of proof of loss or damage.

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99. In this instant where the Applicant has sought monetary compensation for the violation of its rights in the sum of N. 500,000,000 (Five Hundred Million Naira) for exemplary and aggravated damages the Court will therefore consider whether it is entitled to the relief based on proof. Whilst an act may be declared to be in contravention of guarantees within the ACHPR and therefore a violation of the rights enshrined therein, a claimant must show cause as to how loss or damage resulted from same.

100. Taking cognizance of the facts and evidence, the Court notes the affidavit sworn to by Chief Malcolm Emokiniovo Omirhobo stating that he was denied access to his Twitter account for which he is seeking that the Court orders for damages. However, the Applicant has failed to submit evidence of proof of the actual harm suffered from the ban on Twitter. The Court notes also, that a list of persons was adduced without details as to the actual loss or damage that resulted from the violation of the rights enshrined in Article 9 of the ACHPR. It is on this basis that the Court dismisses the claim for monetary compensation by the Applicant as the same has not been properly established before this Court.

101. This Court having regard to the omnibus relief to wit "*Such further orders the Honorable Court may deem fit to make in the circumstances of this suit*" is inclined to order a reparation that the Respondent undertakes to make a guarantee of non-repetition by reviewing and reforming its laws in order to contribute positively to international human rights law.

102. Consequently, the Court orders the Respondent to guarantee non-repetition of the ban on Twitter which contravenes Article 9 (1& 2) of the ACHPR and Article 19 of the ICCPR.

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XII. COSTS

103. The Applicant prays the Court for costs of N. 10,000,000 (Ten Million Naira) as costs for instituting the action. However, the Respondent prayed that the Court dismisses the application in its entirety as it lacks merit and did not ask for deterring costs.

104. Article 66 (1) of the Rules of the Court provides that: "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

105. In addition Article 66 (2) of the Rules of the Court provides that: "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"

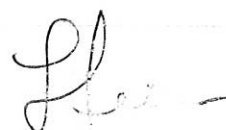
106. Having regard to the provision of the Rules above, the Court holds that the Respondent as the unsuccessful party herein shall bear the costs of the proceedings.

107. The Court however, declines to award the sum of N. 10,000,000 (Ten Million Naira) claimed as costs by the Applicant, as there is no proof justifying the amount claimed. Yet, taking into consideration the fact that the Application is consolidated, the Court directs the Deputy Chief Registrar to assess the costs for all Applicants listed.

XIII. OPERATIVE CLAUSE

For the reasons stated above, the Court sitting virtually in public after hearing both parties:

KEB



As to jurisdiction:

- i. **Declares** that it has jurisdiction.

As to admissibility

- ii. **Declares** the application admissible.

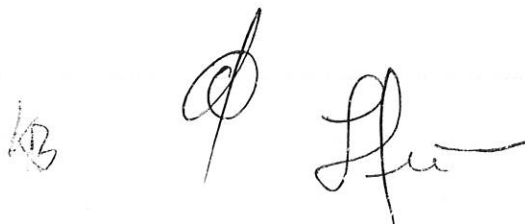
As to the merits of the case:

- iii. **Declares** that the act of suspending the operation of Twitter is unlawful and inconsistent with the provisions of Article 9 of the ACHPR and Article 19 of the ICCPR.
- iv. **Declares** that the act of the Respondent in suspending the operations of Twitter violates the Applicant's rights to the enjoyment of freedom of expression, access to information and the media contrary to the provisions of Article 9 of the ACHPR and Article 19 of the ICCPR the same having been violated.
- v. **Declares** that the Applicant's right guaranteed under Article 7 of the ACHPR was not violated.
- vi. **Orders** the Respondent to lift the suspension of Twitter, the same being in contravention of Article 9 of the ACHPR and Article 19 of the ICCPR.
- vii. **Orders** the Respondent to take necessary steps to align its policies and other measures to give effect to the rights and freedoms enshrined in the ACHPR and ICCPR.
- viii. **Dismisses** all other claims of the Applicant.

As to reparation:

Orders

- ix. The Respondent to guarantee a non-repetition of the unlawful ban of Twitter
- x. To undertake and adopt legislative or other measure on the use of Twitter to enable the enjoyment of the right to freedom of expression guaranteed under the African Charter

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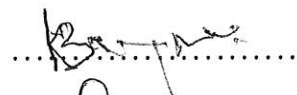
As to Costs:

- i. Orders the Respondent to bear the costs of the proceedings and directs the Deputy Chief Registrar to assess the costs accordingly.

Hon. Justice Gberi-Be **OUATTARA**



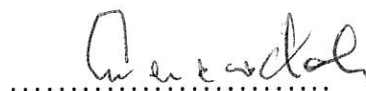
Hon. Justice Keikura **BANGURA**, Judge Rapporteur



Hon. Justice Januaria T. Silva Moreira **COSTA**



Mr. Tony **ANENE-MAIDOH** - Chief Registrar



Done in Abuja, this 14th day of July 2022 in English and translated into French and Portuguese.

