



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 RIGHT &  
ACCOUNTABILITY (SERAP) v. THE FEDERAL REPUBLIC OF NIGERIA  
& ANOR.

*Application No: ECW/CCJ/APP/10/20; Judgment No. ECW/CCJ/JUD/27/21*

***JUDGMENT***

ABUJA

9 JULY 2021

THE COMMUNITY COURT OF JUSTICE OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)  
HOLDEN AT ABUJA, NIGERIA

*Application No: ECW/CCJ/APP/10/20; Judgment No. ECW/CCJ/JUD/27/21*

THE REGISTERED TRUSTEES OF THE SOCIO-  
ECONOMIC RIGHT & ACCOUNTABILITY (SERAP) APPLICANT

AND

1. THE FEDERAL REPUBLIC OF NIGERIA  
2. CROSS RIVERS STATE RESPONDENTS

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE** - Presiding/ Judge Rapporteur  
Hon. Justice Dupe **ATOKI** - Member  
Hon. Justice Januaria T. Silva Moreira **COSTA** - Member

ASSISTED BY:

Dr. Athanase **ATANNON** - Deputy Chief Registrar

**REPRESENTATION OF PARTIES:**

Oluwadare **KOLAWOLE** Counsel for Applicant

Maimuna Lami **SHIRU** (Mrs.) Counsel for Respondent

## ***I. JUDGMENT***

1. This is the judgment of the Court read 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 Applicant is a Non- Governmental Organisation with office at No. 18 Bamako Street, Wuse Zone 1, Abuja, Nigeria.
3. The 1<sup>st</sup> Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States, ECOWAS.
4. The 2<sup>nd</sup> Respondent is the Government of Cross River State, one of the 36 States comprising the 1<sup>st</sup> Respondent Member States.
5. On the 23 March 2021, before the hearing of the case, the Applicant successfully discontinued the case against the 2<sup>nd</sup> Respondent leaving the 1<sup>st</sup> Respondent as the sole Respondent.

## ***III. INTRODUCTION***

### ***Subject matter of the proceedings***

6. The Applicant filed this action against the Respondent challenging the legality of the use of the Respondent's Cybercrime (Prohibition, Prevention, etc) Act of 2015, Terrorism (Prevention Amendment) Act 2013 and the Criminal Code Act to unlawfully charge a Nigerian Journalist, one Agba Jalingo, at the Federal High Court, Calabar Judicial Division, Cross River State, for an alleged publication on allegations of



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corruption in one of the agencies of the government of the Cross River State.

7. The Applicant alleges that the use of the above laws to charge and detain one Mr. Agba Jalingo is a violation of his fundamental rights and a breach of the Respondent's international obligation to promote and respect human rights.

### ***III. PROCEDURE BEFORE THE COURT***

8. The Originating Application dated 7 February 2020 was filed at the registry of the Court on the same day and served on the Respondent on 12 February 2020.
9. On the 10 March 2021, the Court held the 1<sup>st</sup> virtual court session where all the parties were represented. Respondent asked for adjournment to enable it file its response to the action and the Court obliged them an adjournment to 23 March 2021.
10. The Respondent filed Motion for Extension of Time to file Statement of Defence together with the Statement of Defence, Plea in Law/Statement of Facts in opposition to the Applicant's Application and a Notice of Preliminary Objection on the 16 March 2021 which were served electronically on the same day.
11. The 2<sup>nd</sup> Virtual Court Session was held on 23 March 2021 where all parties were represented by Counsel and the Respondent moved his Preliminary Objection. Case was heard on the merits. Applicant adumbrated and adopted his written submissions as his argument in the case and further intimated to the Court his intention to call witness to lay credence to the claims. The Court directed the Applicant to file processes and prepare his witness. Case was adjourned to 26<sup>th</sup> April, 2021 for hearing.
12. On the 24 March 2021, the Applicant filed Application to call witness which were served electronically on 9 April 2021.

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13. The Applicant filed its Written Submissions in Opposition to the Respondent's Preliminary Objection and Reply to the Statement of Defence which were served on the 9 April 2021.
14. The 3<sup>rd</sup> virtual court session was held on the 26 April 2021 where both parties were represented. The Applicant moved its application to call witness and same was granted. The Applicant's witness was examined in chief, cross-examined and re-examined. The Respondent opened his case, adopted his documents and urged the Court to dismiss the suit for lacking in merit. Applicant adopted his Reply to Statement of Defence. Case adjourned to 29<sup>th</sup> June 2021 for Judgment.

#### ***IV. APPLICANT'S CASE***

##### **a. Summary of facts**

15. The Applicant avers that by bringing this action, it seeks to promote the realisation of economic and social rights of individuals and to ensure that the instrumentality of ambiguous laws such as the Terrorism (Prevention Amendment) Act 2013, the Criminal Code Act, Cap C39, the Cybercrime (Prohibition, Prevention etc.) Act 2015 are not used to infringe on, breach and violate the human rights of one Nigerian journalist, Mr Agba Jalingo, the publisher of an online news outlet, Cross River Watch, who has been in prison on trumped up charges of treason filed by the Respondent at the Federal High Court of Nigeria, Calabar Judicial Division, Cross River State of Nigeria based on his publication exposing allegations of corruption in one of the agencies of the government of Cross River State.
16. It claimed that Mr. Agba Jalingo was arrested on the 22nd of August, 2019 at Lagos by the Nigeria Police and was transferred to a detention facility of the Anti-Cult and Anti-kidnapping unit of the Nigeria Police in Calabar



Cross River State where he was later arraigned in court on 31st August, 2019 after being held for days.

17. According to the Applicant, Mr. Jalingo was arrested and charged with treason in relation to a publication he made in his online news outlet, Cross River Watch, wherein he alleged that the Cross River State Governor illegally diverted the sum of 500 million naira belonging to the Cross River Micro Finance Bank.
18. The Applicant alleges further that Mr. Agba Jalingo was charged alongside one human rights activist and journalist, Mr. Omoleye Sowore for conspiracy to cause terrorism and allegedly meeting with cultists to instigate violence. The Applicant went further to aver, that the Respondent frequently use the provisions of the Terrorism (Prevention and Amendment) Act, Cybercrime Act and other repressive laws to harass, intimidate and arbitrarily arrest and detain unfairly, journalists, social media users, activists and other Nigerians who dare criticise government corruption.
19. The punishment for the offences is life imprisonment and it was intentionally done to oppress and suppress the rights of Mr. Agba Jalingo for exposing official corruption.
20. On the 4th of October, 2019, a court refused bail to Mr. Agba Jalingo as one of the offences carried a death sentence which is unbailable. Applicant claims that it is all an attempt by the Respondent to keep him in perpetual custody as this is not the first time the Respondent is using such repressive law as the Cybercrime Act to intimidate journalists. The Respondent and its agents nationwide have been in the habit of perpetrating such acts using such laws to oppress journalists.
21. The Applicant further states that the harassment, intimidation, arbitrary arrest, detention, torture, unfair prosecution and imprisonment of Mr. Agba

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Jalingo for exercising his rights to freedom of expression and information and media freedom violate all international and regional human rights instruments to which the Respondent is a State party.

**b. Pleas in Law**

22. The Applicant relies on the following laws:
- a. Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, & 24 of the African Charter on Human and Peoples Rights (African Charter);
  - b. Articles 1, 2, 3, 5, 7, 9, 19, & 26 of the International Covenant on Civil and Political Rights (ICCPR), Articles 1, 2, 9, 27, 28, & 30 of the Universal Declaration of Human Rights, 1948, (UDHR) Articles II & XII of the Declaration of Principles on Freedom of Expression in Africa;
  - c. Article 32 of the Supplementary Act (A/SA.1/01/10) on Personal Data Protection within the Economic Community of West African States;
  - d. Articles 1, 6, 7, 10, 11 & 12 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa;
  - e. Articles 4, 65 & 66 of the Revised Treaty of the Economic Community of West African States;
  - f. Articles 33 of the Rules of this Court; and
  - g. Article 10 of the Supplementary Protocol (A/SP.1/01/05) Amending the Protocol (A/P.1/7/91) Relating to the Court of Justice.

**c. Reliefs Sought by the Applicant**

23. For the reasons above, the Applicant is seeking from the Court:
- a. **A DECLARATION** that the actions of the Respondent and its agents in unlawfully using the Cybercrime Act, sections 1 & 17(2)(a)&(b) of the



*Terrorism (Prevention, Amendment) Act to arrest, detain, prosecute and imprison Mr. Agba Jalingo, Nigerian national and citizen of the ECOWAS violate his right to freedom of expression, information, opinion and privacy and media freedom guaranteed under Articles 6, 8, 9 and 24 of the African Charter on human and Peoples Rights, Articles 7, 9, 17 and 19 of the International Covenant on Civil and Political Rights 1976, Articles 2, 9, 12 and 19 of the Universal Declaration of Human Right 1948, Article 66 of the Revised Treaty of ECOWAS, 1993, Articles 1,6,9,10,11 and 12 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa, Article 32 of the Supplementary Act (A/SA,1/01/10) on Personal Data Protection within the ECOWAS and Articles II, XII AND XIII of the Declaration of Principles on Freedom of Expression in Africa 2002.*

- b. **A DECLARATION** that the continued use and application of section 41 & 59 of Nigeria's Cybercrime Act, Criminal Code Act and sections 1 & 17(2)(a)&(b) of the Terrorism ( Prevention, Amendment) Act by the Respondent to detain, prosecute and imprison Mr. Agba Jalingo is illegal and unlawful as it amounts to breaches of obligations to respect, protect, promote and fulfil the rights to freedom of expression and information and media freedom guaranteed under the African Charter on Human and Peoples Rights and International Covenant on Civil and Political Rights to which Nigeria is a state party.
- c. **AN ORDER** directing the Respondent to immediately drop all charges against Mr. Agba Jalingo and unconditionally grant, set him free from prison in respect of his publication in the Cross River Watch, the Facebook or any other print/electronic medium in line with Nigerian obligations under International human rights law especially Article 1 of the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights and the Revised ECOWAS Treaty, 1993.





- d. **AN ORDER** directing the Respondent and/or its agents in Nigeria to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honourable Court may deem fit to grant to Mr. Agba Jalingo for being unfairly prosecuted by the Respondent.
- e. **SUCH FURTHER** Orders the Honourable Court may deem fit to make in the circumstances of this suit.

**V. RESPONDENT'S CASE**

**a. Summary of facts**

24. The Respondent in its defence denies the Applicant's claim and states that its laws are neither unambiguous nor made to infringe on or to violate the fundamental rights of its citizens including Mr. Agba Jalingo who is currently on bail despite having been charged with the offence of treason and terrorism.
25. Again, the Respondent adds that its Police Force is empowered by law to arrest any person reasonably suspected of having committed an offence as in the case of Agba Jalingo. That the criminal laws of the Respondent are meant for peace and good governance and that the law by which Mr. Agba Jalingo was charged with prescribes the offence he is charged with and any offender is liable to be charged and arraigned before the court of law.
26. The Applicant states further that the offences with which Agba Jalingo was charged are ordinarily unbailable, yet the court admitted him to bail upon fulfilment of the bail conditions. That the Respondent has never enacted any unjust law designed to suppress the press or to silence any law abiding journalist and has never attempted to intimidate or harass any journalist lawfully practicing his/her profession including Agba Jalingo.



27. However, the Respondent contends that any Journalist, like Mr. Agba Jalingo who is found culpable of breaching the peace, committing treason or inciting the public against the government in the guise of the exercise of their right to freedom of expression, is often charged to court to respond to such allegations. That the allegation by the Applicant that the Respondent's tolerance to critical views is low is false as the government's tolerance to such views is very high except where such views are false.
28. The Respondent continues that the present government whose posture is a crusade against corruption cannot regard and treat any information exposing corruption as libellous and offensive unless where such publication like that of Mr. Agba Jalingo, turns out to be false, then the government will proceed to prosecute such perpetrators.
29. The Respondent further maintained that it did not deny anyone from seeking information about its activities but the law that provides for access to information also provides for the ways and means to obtain the information. The Respondent concludes that the Applicant's rights have not been breached by the Respondent's security agents as the Applicant is enjoying his bail and practicing his journalism profession till today without hindrance.

***b. Pleas in Law***

30. By way of pleas in law, the Respondent solely pleaded the case law of the Court in support of its case.

***c. Reliefs sought***

31. The Respondent urges the Court to dismiss the Applicant's case on grounds that Mr. Agba Jalingo whom the Applicant represents is not entitled to the reliefs being sought.

***VI. APPLICANT'S REPLY***

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32. The Applicant in its reply to the Respondent's defence, maintained that Mr. Agba Jalingo was arrested and arbitrary detained without trial until on grounds of ill health, he was arraigned at the Federal High Court 2 in Calabar after thirty-four (34) days in custody on September 25, 2019 for the pre-trial hearing of his bail application.
33. The Applicant further provided newspaper online links to show that the said Agba Jalingo was arrested by the Police for the publication and was so detained. That the right of Mr. Agba Jalingo to press freedom and freedom of expression was violated by the action of the Respondent and urged the Court to so hold.

#### ***VII. EVIDENCE OF APPLICANT'S WITNESS***

34. Having successfully applied to call a witness to give oral evidence in support of its case, the Applicant's witness Mr. Agba Jalingo, the principal beneficiary of the instant suit gave evidence on the 26 April 2021 as captured in the verbatim report of the day.
35. The evidence of the witness virtually corroborated the Applicant's case that on the 22nd of August, Police Operatives, eight (8) in number came to his residence in Lagos at about 2:00p.m in the afternoon, where four of them broke into his living room and arrested him in the presence of his wife, whisked him into a waiting vehicle occupied by the other four police men wielding assorted guns, dragged him in the company of his wife to Ikeja, Lagos where he was handed over to the Inspector General of Police Intelligence Response Team" (IGPIRT).
36. After he had been made to write a statement, he was thrown into a police cell for the night until 04:00am the following morning when he was bundled into the booth of a four-wheel drive vehicle with both hands and legs cuffed for transfer to Calabar, a journey that lasted for twenty-six hours.



37. According to the Witness, during the journey, he was denied the comfort of attending to nature's call and he defecated and urinated on his body until they got to Calabar. In Calabar, he was driven to the Anti- Cultism and Anti-Kidnapping Unit of the Police at the Cultural Centre. He was kept in a Waiting Room, which they called "Charging Room".
38. In the words of the witness, *"I was then handcuffed into a deep freezer, they loosed the handcuffs on my feet, it was only my hands that were handcuffed. There was a deep freezer lying in the room that I was taken into, so I was handcuffed to that deep freezer. I was in that position for thirty four days, but if they bring food for me and I want to eat, my right hand will be uncuffed, then if I finish eating, then they cuff it again. And they kept me like that for thirty four days without charges"*
39. The witness again testified that, while being kept in the Charge Room, he was persuaded to sign what he refers to as *"Terms of Settlement"* to the effect that he was not going to criticise the Governor again and promised huge sums of money but he refused to sign the document nor accept any of those promises.
40. The witness continued that *"So by the thirty fourth day they had prepared charges which they had shown to me earlier the OC Legal of the Police, the CSP. Temba and he was threatening me that if I don't sign those documents, I will be taken before a Judge for Treasonable Felony and Terrorism. I said I would rather go before a Judge than sign those documents. And on the thirty fourth day, I appeared before Justice Tamulgede of the Federal High Court in Calabar, and I was charged with four counts: Treasonable Felony, Terrorism, Cultism and attempt to overthrow President Buhari and the Governor of Cross-River State"*.



41. The witness concluded that *"I pleaded not guilty and I was subsequently remanded at ACO camp Correctional center, and I spent a total of one hundred and seventy nine days in ACO Camp before I was granted bail by another Judge, because at a point I refused continuing my trial with the first Judge and the case was transferred to another Judge, Justice Shuaibu who later granted me bail on the 22<sup>nd</sup> of February, 2020."*

## **VII. JURISDICTION**

42. Article 9(4) of the Supplementary Protocol (A/SP.1/01/05) amending the Protocol (A/P1/7/91) provides thus:

*"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State"*

43. The Court's jurisdiction to entertain and determine suits regarding the violation of fundamental rights of a citizen of a Member States of the ECOWAS has been settled in plethora of cases among which is *BAKARE SARRE & 28 ORS v. THE REPUBLIC OF MALI (2011) CCJELR 57*, where 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."*

44. In the instant case, the allegations of the Applicant are based on the subject matter of violation of the rights of Mr Jalingo contrary to the relevant provisions of the human rights instruments cited and relied upon, particularly Articles 4, 5, 6, 7 etc. of the African Charter and provisions of ICCPR and UDHR *in pari materia*, therefore the suit falls within the human rights jurisdiction of the Court. Accordingly, the Court holds that it has jurisdiction over the matter.



### ***VIII. ADMISSIBILITY***

45. The Respondent raised preliminary objection to the admissibility of this suit which was argued by the parties and the Court reserved its decision to be incorporated in this judgment.

***a. Respondent's Submissions in Support of the Preliminary Objection***

46. The Respondent premised its Preliminary Objection on grounds that there is a criminal prosecution bordering on charges of treason and terrorism involving Mr. Agba Jalingo, still pending before a domestic court i.e. the Federal High Court of the Respondent, therefore, it will be an abuse of the court process for this Court to exercise jurisdiction on the same subject matter. It further contends that the Applicant ought to have instituted his case of allegation of violation of his fundamental rights before the Respondent's domestic court.

***b. Applicant's Submissions in Opposition to the Preliminary Objection***

47. Contrary to the Respondent's assertion that the criminal action involving Mr. Agba Jalingo, whose rights are being enforced in this court, is a bar to this suit, the Applicant submits that the domestic criminal suit against Mr. Agba Jalingo does not operate as a bar against this suit and that the substance and reliefs sought in the two cases are different.

48. Applicant further contends that the case of Mr. Agba Jalingo in the domestic court is a criminal suit while the instant suit is a civil suit, whose subject matters are different in every respect. The suit at the Federal High Court is for the determination of whether Mr. Agba Jalingo is guilty of the offences he was charged with while the current suit is to enforce his fundamental

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human rights as contained in the African Charter to which the Respondent is state party.

**c. *Analysis by the Court***

49. From the above, in respect of *lis pendens*, the only instance where an application for violation of human rights will not be entertained by this Court is when the same matter is before another international court but not when it is before the domestic court of Member States as argued by the Respondent in its Preliminary Objection.
50. The Court emphatically reiterated the above position in the case of *HANS CAPEHART WILLIAMS SR & ANOR. v. REPUBLIC OF LIBERIA & 4 ORS JUDGMENT NO ECW/CCJ/JUD/25/15 @ pg. 13 (Unreported)* when it held that: *"the limits to this court's jurisdiction in an action against a Member State for human rights violation as contained in Article 10(d) and as elucidated by the jurisprudence of this court are clear, lucid and unambiguous and cannot admit of any extraneous consideration. This court has clearly stated that the pendency of an action before any national court in cases of human rights violation is not a bar to the exercise of the jurisdiction of the court"*.
51. In buttressing his argument that the present action is an abuse of court process because the matter is before the domestic court, the Respondent submitted that *"the person (i.e. Mr. Agba Jalingo) on whose behalf/interest the Applicant instituted this suit is currently being prosecuted at the municipal/domestic court of the Respondent on criminal allegations bordering on treason and terrorism"*.
52. On its own showing, the Respondent from the above submission, clearly underscores the fact that the two matters are not the same. Whereas the matter

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before the national court is criminal in nature, the matter before this court is civil, and predicated on violation of human rights. This, the Court observes, cannot be an abuse of court process as succinctly stated in the case of *DR. SAM EMEKA UKAEGBU & 7 ORS v. PRESIDENT FEDERAL REPUBLIC OF NIGERIA & 6 ORS JUDGMENT NO ECW/CCJ/JUD/29/15 @ Pg. 20 (Unreported)* that:

*“To sustain a charge of abuse of court process, there must coexist inter alia (a) a multiplicity of suits, (b) between the same opponents, (c) on the same issues. Also, the Court will consider the contents of both suits and determine whether they are aimed at achieving the same purpose”.*

53. When a similar situation presented itself in the case of *PTE ALIMU AKEEM v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/01/14 @ page 1*, the Court did not mince words by holding that *“The Application before the Court has no criminal connotation and as such, the criminal nature of the action instituted against the Applicant in Nigeria cannot be admitted as a ground for declaring the application which the Court is seized with as inadmissible”.*
54. For the foregoing reasons, as firmly rooted in its jurisprudence, the Court holds that the prosecution of the instant suit before this Court does not amount to an abuse of court process in spite of the pendency of a criminal suit against the principal beneficiary of this suit i.e. Mr. Agba Jalingo, whose rights are being enforced herein. Consequently, the Respondent’s Preliminary Objection to the admissibility of the instant suit is dismissed in its entirety.
55. Having dismissed the Preliminary Objection, the Court will consider the propriety of admitting the instant suit under Article 10(d) of the Supplementary Protocol (A/SP.1/01/05) amending the Protocol (A/P1/7/91) which provides that access to the court is open to the following;





*“individuals on application for relief for violation of their human rights; the submission of application for which shall: (a) not be anonymous; nor (b) be made whilst the same matter has been instituted before another international court for adjudication.*

56. According to its jurisprudence, any human rights violation case filed before the Court is deemed admissible once it satisfies the conditions spelt out under the said Article 10(d) of the Supplementary Protocol of 2005. On the strength of this provision, a human rights violation application is declared admissible once the Applicant is a victim of the violation, the application is not anonymous, and lastly, the application is not before any other international court of competent jurisdiction.
57. In the instant application, it is clear that Mr. Jalingo is an alleged victim of some infractions on the part of the Police, but the application was not filed by him but by SERAP, a Non-Governmental Organisation duly registered under the laws of the Respondent with the requisite mandate in advocating for respect of human rights.
58. The primary rule of the Court in respect of representation demands that an NGO desirous of representing a victim of human right violation must have been sufficiently authorised by the victim to do so on his or her behalf. However, the exception is that where there is a justification for the inability of the victim to give authorization i.e. Power of Attorney, the application may be admitted.
59. The above position was reiterated in the case of *NOSA EIHANIRE OSAGHAE & 3 ORS v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 @ page 18* where it was held that *“Where a petition is submitted on behalf of a victim, it must be with their consent, unless submitting it without their consent can be justified. Such justification would be the case of serious or massive*



*violations pursuant to article 58 of the African Charter or a documented and well-reasoned problem for the victims in doing so themselves”.*

60. The Court continued in the same case at page 19 that *“For an application of this nature to succeed, the victims must be identifiable, and the representatives must present a mandate from the said victims authorizing them to act on their behalf. Where it is impracticable to obtain a mandate, the representatives must give reasons why it is so impracticable”.*
61. The Applicant, whose mandate includes the promotion of respect for socio-political right of all Nigerians through, inter alia, litigation; is seeking the protection of the rights of Mr. Agba Jalingo, a Nigerian Journalist and Community citizen, who at the time of the institution of the suit was being prosecuted in the High Court, Calabar impeding his liberty to access the Court personally.
62. The Court recalls its jurisprudence to the effect that *“A Non-Governmental Organization may enjoy standing to file a complaint on behalf or to join them in the same complaint, even if the applicant has not been directly affected by the violations it is complaining of”.* See the case of *THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS v. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (ECW/CCJ/JUD/16/14) @ page 20 (Unreported).*
63. The Court observes that Mr. Jalingo’s inability to present an application by himself is justified for same to be done by the Applicant on his behalf. Again the application is neither anonymous nor before any other international court. The Court, therefore, is not impeded by any known legal constraint to admit this case for hearing, and it hereby do so on the strength of the above analysis.

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### **VIII. MERITS**

64. The Applicant's claim of violation of the rights of Mr. Jalingo hinges on the following which shall be determined in seriatim:
- i. Allegation of violation of freedom of expression, information, opinion and media;
  - ii. Allegation of unlawful arrest and detention;
  - iii. Allegation of torture
65. Indeed, the Applicant in its pleadings have well-articulated the chronology of events which it claims violate the right of Mr. Jalingo as enumerated above. However, as clearly stated by this Court, "*Proof is what allows one to establish the value of truth or falsity, regarding a statement or fact that is judicially relevant. To this end it is submitted that mere averments in pleadings do not amount to proof*". See the case of *OUSAINOE DARBOE & 31 ORS v. THE REPUBLIC OF GAMBIA (ECW/CCJ/JUD/01/20) @ pg. 23 (Unreported)*
66. Every alleged human rights violation must be proved with concrete evidence by whosoever alleges. In *HEMBADOON CHIA & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR (ECW/CCJ/JUD/21/18) @ pg 27 (Unreported)* the Court maintained that it "*has repeatedly stated that it will not act on mere allegation of violation but each allegation must be substantiated with some concrete facts as the case may require*".
67. The burden of proving every allegation of violation of human rights rests on the party who alleges and until he or she does that, the burden does not shift. See the case of *FESTUS A.O. OGWUCHE V.FEDERAL REPUBLIC OF*

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*NIGERIA ECW/CCJ/JUD/02/18 @ pg. 33 (Unreported)* in which the Court stated that *‘‘as a general rule, the burden of proof lies on the Applicant. If that burden is met, the burden then shifts to the Respondent, who now has to plead and prove any defence, by a preponderance of evidence’’*.

68. A Respondent is under no obligation to adduce contradictory evidence until the person who alleges the violation has discharged the burden placed on him. In *MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (2010) CCJELR 139* where the court stated that *‘‘A Defendant is under no duty to lead contradictory evidence having put a Plaintiff to strict proof. What it means is that the Plaintiff must produce sufficient evidence to discharge the evidential burden that rests on him. When he succeeds in doing that, and the evidence stands unimpeached, the Court will then accept and act on it’’*.
69. It is against these time tested principles of proof, well imbued in the Court’s jurisprudence, that the various allegations of infringement of the rights of Mr. Jalingo shall be evaluated and determined.

***a. Allegation of violation of right to hold opinion, information and freedom of expression contrary to Article 9 of the African Charter & 19 of ICCPR***

70. The Applicant alleges violation of the rights of Mr. Agba Jalingo as guaranteed under Article 9 of the African Charter and Article 19(1) & (2) of the ICCPR and similar provisions of other relevant international human rights instruments by the Respondent through the instrumentality of the Cybercrime Act and the Criminal Code Act (supra) to harass, arrest and intimidate him for exposing corruption of the Governor of Cross River State of Nigeria in his online media platform.
71. The Applicant contends that the above mentioned laws are meant to intimidate and harass journalists to keep them mute from exposing official



corruption hence upon exposure of a Five Million Naira (N 500,000,000) diversion of public funds from the Cross River State Micro Finance Bank by the Governor of Rivers State, by Mr. Jalingo, he was charged under section 41 & 59 of the Criminal Code Act and Sections 1 & 17 (2) (a) & (b) of the Terrorism (Amendment) Act of Nigeria.

72. The Respondent on the other hand denied any violation of Mr. Jalingo's rights, and maintained that he was charged within the ambit of the law for offences he was alleged to have committed. The Respondent maintained that the laws under which he was charged create the offences for which he has been charged.
73. It should be noted that the provisions of Article 9 of the African Charter, 19(1) & (2) of the ICCPR and II of Declaration of Principles on Freedom of Expression in Africa, 2002 are *in-pari-materia*. Ipso facto, the determination of the Applicant's case under Article 9 of the African Charter applies *mutatis mutandis* to the other human rights instruments cited under this heading.
74. The Applicant has alleged violation of Mr. Jalingo's fundamental right to freedom of expression, information, privacy and opinion/media freedom but has woefully failed to lead any evidence to show exactly how the Respondent violated those rights. It is not in doubt that Mr. Jalingo was arrested and detained, and later arraigned before the court on charges grounded in the extant laws of the Respondent, particularly, those referred to by the Applicant.
75. However, the Applicant impugned the extant laws under which Mr. Jalingo was charged as having been promulgated ostensibly to harass and intimidate journalists in general and Mr. Jalingo in particular, and it claims the laws are being used in the latter's case by the Respondent to shut and keep him silent.



Again, the Applicant mentioned Section 24 of the Cybercrime Act, 2015 which provides for the offence of “*cyber stalking*”.

76. These allegations in the opinion of the Court are capable of tangible proof, but the Applicant failed to prove same leaving the Court in doubt as to who those journalists were, their names, the circumstances of the violation of their rights through the instrumentality of the impugned laws. It is not enough to just make a general statement alleging violation of rights; every allegation must be established since the Court has amply registered its unpreparedness to “*act on mere allegation of violation but rather substantiated allegations with some concrete facts as the case may require*”.
77. In *CONGRÈS POUR LA DÉMOCRATIE ET LE PROGRÈS (CDP) v. BURKINA FASO (ECW/CCJ/JUD/16/15)*, the Court has held that “*it only makes rulings, in principle, on cases of human rights violation which are concrete, real and proven, and not on violations claimed to be possible, contingent or potential*”.
78. Also, the Applicant maintained that this is not the first time the Respondent is attempting to harass, intimidate and suppress journalists through the instrumentality of trumped up charges brought up under unwholesome and unjust laws and that the provisions of Sections 41 & 59 of the Criminal Code Act and Sections 1 & 17 (2) (a) & (b) of the Terrorism (Prevention, Amendment) Act constitute an infringement on the human rights of Mr. Agba Jalingo based on the fact that the provisions are tainted with “*inexactitudes which are capable of divisive and diverse subjective use and application*”.
79. To put the issue in proper perspective, the provisions of the impugned sections of the Criminal Code Act under reference are hereby reproduced as follows:

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Section 41: *“Any person who forms an intention to effect any of the following purposes, that is to say- (a)to remove during his term of office otherwise than by constitutional means the President as Head of State of the Federation and Commander-in-Chief of the Armed Forces thereof ;or (b) to likewise remove during his term of office the Governor of a State; or (c) to instigate any foreigner to make any armed invasion of Nigeria or any of the territories thereof, and manifests such intention by an overt act, is guilty of a felony and is liable to imprisonment for life”.*

Section 59: *“(1)Any person who publishes or reproduces any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of a misdemeanour and liable on conviction to imprisonment for three years. (2) It shall be no defence to a charge under sub-section(1) of this section that he did not know or did not have reason to believe that the statement, rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report.”*

80. Sections 1 & 17(2) (a) & (b) of the Terrorism (Prevention) (Amendment) Act are also reproduced as follows:



Section 1: *“A person who knowingly- (a) does, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism; (b) commits to do anything that is reasonably necessary to promote an act of terrorism; or (c) assists or facilitates the activities of persons engaged in an act of terrorism commits an offence under this Act.*

Section 17: *“Any person who conspires with another to commit an offence under this Act in Nigeria, or to commit a terrorist act in any place outside Nigeria being an act, which if done in Nigeria would have constituted an offence under this Act, shall be deemed to have conspired to do that act in Nigeria and is liable on conviction to: (a) life imprisonment where the act of terrorism is committed; and (b) an imprisonment for a term of not less than twenty years, where the act of conspiracy is committed”.*

81. The failure of the Applicant to particularise the ambiguity and void nature of the impugned provisions has compelled the Court to painstakingly peruse the above impugned provisions and has come to an irresistible conclusion, in a very candid manner, that nothing in the law deprives it of its international standards. Again the provisions are clearly written and devoid of any ambiguity as claimed by the Applicant.
82. Perhaps, it is needless to point out that freedom of expression and of the press are guaranteed human rights and the Court has consistently in its jurisprudence jealously affirmed and protected same without any hesitation. One of such instances was in the case of *FEDERATION OF AFRICAN JOURNALIST v. THE REPUBLIC OF GAMBIA (2018) ECW/CCJ/JUD/04/18 (Unreported)* where the Court held that “Freedom of





*expression is a fundamental human right and full enjoyment of this right is central to achieving individual freedom and to developing democracy. It is not only the cornerstone of democracy, but indispensable to a thriving civil society”.*

83. It is equally important to note that freedom of expression or of the press is not without limitation. Article 9 of the African Charter provides: *(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**”.* The import of these drawback provisions is that, the right must be exercised in accordance with and within the law.
84. Article 19 of the International Covenant on Civil and Political Rights provides thus: *(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.*
85. Commenting on the drawback clause to the right to freedom of expression, the Court in the case of *DEYDA HYDARA JR & 2 ORS v. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/17/14 @ page 6*, held that “*freedom of expression includes the freedom to criticize the government and its functionaries subject to limitations imposed by the domestic law*”.



86. Again, it is without gainsaying that from the above provision of the Article 19 (3) of the ICCPR, it is clear that there are responsibilities to the right and derogation from it could be justified under the circumstances listed in the instrument. The Respondent had maintained that the laws under which Mr. Jalingo was charged were made for the good governance and peace of the country especially with the rising tide in terrorism.
87. It is not in dispute from the respective cases of the parties that there is a criminal matter pending before the domestic court of the Respondent allegedly borne out partly from the conduct and publications of Mr. Jalingo which the Respondent State considers false and capable of destabilising the State.
88. Being apprehensive of the conduct of Mr. Jalingo on suspicion of having committed offences created under the Acts in reference, it is normal process in criminal justice administration to institute proceedings against him as an accused person by resorting to both the procedural and substantive laws of the Respondent State. To this extent, the Police are empowered by law to arrest, lawfully detain, investigate and arraign before the courts to answer any charges levelled against him. To this end, Mr. Jalingo's own testimony gives credence that he has been attending court after bail has been granted him, he did not allude to any impropriety in the conduct of the trial that has any slightest propensity to violate his right to freedom of expression, information, opinion, privacy and freedom to practice his vocation as a journalist.
89. The Court takes judicial notice of the fact that the architecture of the criminal justice administration of every state, including the Respondent State has been engineered in such a way that, in the course of his trial, Mr. Jalingo will be afforded the opportunity with all the guarantees of fair trial to exonerate

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himself of any wrongful charges levelled against him if indeed the charges were trumped up as being forcefully argued in the instant suit.

90. It cannot therefore be, in the opinion of the Court that charging a suspect implicated under an extant laws of the Respondent duly promulgated by its National Assembly amounts to using the laws to harass, intimidate, detain, suppress, and circumvent the rights of journalists in general, and Mr. Jalingo in particular to free expression, to information, opinion and media freedom. It should be noted that the application of the laws under reference is not limited to journalists. The laws have general application and anyone charged under them is at liberty to mount a defence in the court of law of the Respondent state.
91. Again, on the basis of the foregoing analysis, the Court in the instant case is equally unable to uphold the Applicant's submission that the continued existence and application of the Sections 41 & 59 of the Respondent's Cybercrime Act, Criminal Code Act and Sections 1 & 17(2)(a)&(b) of the Terrorism ( Prevention, Amendment) Act by the Respondent to detain, prosecute and imprison Mr. Agba Jalingo is illegal and unlawful as it amounts to breaches of obligations to respect, protect, promote and fulfil the rights to freedom of expression and information and media freedom guaranteed under the African Charter.
92. It must be pointed out that Mr. Jalingo has not been imprisoned, and where even he is imprisoned in pursuant to his trial under the law, it would be erroneous to consider such imprisonment as illegal having been obtained through the instrumentality of the extant laws of the Respondent save where the Applicant's procedural rights are breached in terms of fair hearing.
93. On the issue of right to information, the Applicant claimed that despite the passage of the Freedom of Information Act in Nigeria, in 2011, which

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guarantees the right to access to public records, the Respondent and several States in Nigeria have routinely refused to release information sought. The Respondent in its defence denied this allegation and stated that there are procedures established by the law on how to access such information by whosoever needs it and it is open to anyone.

94. The Applicant again has not shown any proof to establish that any person applied for information and was rejected or refused. It is expected that anyone who claims he sought information from a public record or in public custody and his request was met with denial would at least show evidence of the circumstances of the application and its denial. In the instant case apart from the mere statement, nothing was presented to substantiate the allegation. The Court therefore finds that the allegation of violation of right to information is ill founded.
95. Following the foregoing analysis as well as the authorities herein referred to, the Court holds that the Applicant has failed to discharge the onus of proof required to substantiate its claims that the Respondent, through the initiation of criminal proceedings against Mr. Agba Jalingo, has resorted to provisions of Criminal Code Act and the Terrorism (Prevention, Amendment) Act (supra) as vehicles to violate his right to freedom of expression, information, opinion, privacy and media freedom.
96. In effect, the Court cannot act on mere allegations of violation without being substantiated with some concrete facts as this case require. Consequently, the Applicant's claims of violation of those rights fails and same is dismissed together with reliefs 1, 2 and 3.

***b. Allegation of unlawful arrest and detention***

97. It is not in dispute that Mr. Agba Jalingo was arrested on the 22 August 2019 and detained without trial until the 25 September 2019 when he was



arraigned at the Federal High Court 2 in Calabar after thirty-four (34) days in police custody.

98. The law recognises the power of the police and other law enforcement agencies to arrest any suspect, lawfully detain, investigate and arraign any suspect before the courts to answer any charges levelled against them. In the course of performing such functions, the law enforcement authorities sometimes mete out abuses capable of infringing upon the human rights of the said suspects/accused.
99. In the case of *MR. NOEL MIAN DIALLO v. FEDERAL REPUBLIC OF NIGERIA & ANOR (2019) (ECW/CCJ/JUD/14/19) Unreported*, it was held that “*Arrest/detention made within the confines of the appropriate domestic law and other relevant international instruments cannot be said to be arbitrary*”. The Court came to a similar verdict in the case of *ASSIMA KOKOU INNOCENT & ORS v. REPUBLIC OF TOGO (2013) CCJELR 187*, where the Court stated that “*the arrest of the Applicants, which measure was taken within the framework of a judicial procedure on grounds of offences provided for and punished by the Criminal Code of Togo, is not arbitrary*”
100. As alluded to in this judgment, the Respondent cannot be faulted for the arrest of Mr. Agba Jalingo pursuant to the extant laws of the Respondent on suspicion of having committed a crime. However, in his testimony before the Court, which was not disputed by the Respondent, Mr. Agba Jalingo testified that upon his arrest, he was detained for thirty-four days without trial.
101. The jurisprudence of the Court on detention partly states that “*Once there is a detention, the burden is on the Defendant to establish that it was not arbitrary. The law presumes that it is unlawful and arbitrary unless the contrary is proved*”. See the case of *BENSON OLUA OKOMBA v.*

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102. The Respondent did not controvert the Applicant's evidence to the effect that Mr. Jalingo was detained for thirty-four days without trial neither has it offered any justification for so doing. This Court has held that "*By law any uncontroverted evidence is presumed established and the court holds so*". See the case of *MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE (2015) ECW/CCJ/JUD/11/15 @ pg. 5 Unreported*.
103. In *MR. KHALIFA ABABACAR SALL & 5 ORS V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/17/18 @ page 47*, the court stated that *arbitrary detention appears as any deprivation of liberty on the part of the State or its technical services, not based on a legal basis or in violation of the legal provisions in force in the State*.
104. In *BODJONA AKOUSSOULELOU PASCAL v. THE REPUBLIC OF TOGO JUDGMENT ECW/CCJ/JUD/06/15 @ pg 12* the Court referring to its decision in *Badini Salfo v. the Republic of Burkina Faso* stated thus: "*... an arbitrary detention is any form of curtailment of individual liberty that occurs without a legitimate or reasonable ground, and is in violation of the conditions set out under the law. One or all of these indices shall be said to be missing, if the detention, which is, at the beginning, not arbitrary, but is too prolonged. It thus leads to an abusive detention*". *This in itself is a violation because the detention is unreasonable and the Respondent did not give any reasonable explanation for it.*
105. It is provided under Article 6 of the African Charter on Human and Peoples' Rights provides that:

*"Every individual shall have the right to liberty and security of his person. No one may be deprived of his freedom except for*

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*reasons and conditions previously laid down by law. In particular no one may be arbitrarily arrested or detained”*

106. Though the Applicant failed to refer to any clear legislation in the Respondent's State that was breached when Mr. Jalingo was detained for the said period, his evidence is considered credible by this Court on account that the Respondent equally failed to deny or justify the said period of detention. More so, the Respondent's failure to deny that allegation, coupled with the unnatural position in which the Applicant alleges he was kept for that period, gives credence to the court's finding that the detention was unlawful and arbitrary contrary to Article 6 of the African Charter.

107. For the above stated reasons, reflective of the authorities cited, the Court finds that, although the arrest of Mr. Jalingo is lawful since it was carried out in pursuance of extant laws of the Respondent on reasonable suspicion of having committed an offence, same cannot be said of his detention for thirty four days without any justification before he was sent to court, which palpably amounts to violation of his right against arbitrary detention.

*c. Allegation of torture*

108. On the allegation of torture by the Respondent's agents on Mr. Jalingo, the Applicant was unable to adduce any evidence to establish its claim. As rightly stated earlier in this judgment, ordinarily, violation of human rights is predicated on proof before the Court, in the absence of proof, the claim must fail. An Applicant who claims he was tortured must show evidence of torture. However, in certain circumstances, the onus is shifted to the Respondent.

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119. In *ASSIMA KOKOU INNOCENT & 6 ORS v. REPUBLIC OF TOGO* Judgment N°ECW/CCJ/APP/08/11 (2013) *Unreported*, the Court faced with similar predicament as in the case of Mr. Jalingo who for the obvious reasons, could not produce evidence in support of his allegation of torture held that,

*“...before it concludes on the issue of occurrence of human rights’ violation, the concrete proof of the facts upon which the applicants base their claims must be established with a high degree of certainty, or at least, there must be a high possibility of the claims appearing to be true, upon scrutiny. In this regard, mere allegations do not suffice to elicit the conviction of the court. Nevertheless, as regards the allegations of torture levelled against the authorities responsible for investigation and the prison administration, the court considers whether real opportunities existed for the applicants to obtain proofs of evidence. Finding themselves in a vulnerable situation, it can reasonably be presumed that real difficulties existed for the Applicants to gather evidence on the appalling act they were subjected to, such that burden of proof shall be shifted to the Republic of Togo, to prove that there were no acts of torture or acts similar to torture.”*

110. The Applicant’s account of torture of Mr. Jalingo allegedly took place when he was brought to Calabar where he testified that:

*“I was then handcuffed into a deep freezer, they loosed the handcuffs on my feet, it was only my hands that were handcuffed. There was a deep freezer lying in the room that I was taken into, so I was handcuffed to that deep freezer. I was in that position for thirty four days, but if they bring food for*

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*me and I want to eat, my right hand will be un-cuffed, then if I finish eating, then they cuff it again. And they kept me like that for thirty four days without charges"*

111. Torture is defined by Article 1 of the Convention Against Torture (CAT) as follows:

*"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

112. The Applicant in the instant case, though failed to adduce any particulars to buttress the allegation that Mr. Jalingo was tortured by inflicting any severe pains or suffering, whether physical or mental, it must be reiterated that any person in the position of Mr. Jalingo would have faced similar fate of inability to produce any concrete evidence to buttress his or her case.

113. Again, both in the response to the application of the Applicant and in cross examination of Mr. Jalingo when he repeated in his testimony before the Court, the averment in the application that he was kept in handcuffed for thirty-four days, the Respondent did not deny the claim.

114. In the opinion of the Court, the act of handcuffing Mr. Jalingo to a deep freezer for thirty four days was capable of causing, and indeed did cause severe pain and suffering with grave restriction of movement and the

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attendant discomfort, pain and suffering to Mr. Jalingo tantamount to tortuous treatment in the contemplation of the CAT (supra). In the circumstances, the Court holds that the Applicant's allegation of torture contrary to Article 5 of the African Charter stands proven, particularly in the absence of any denial from the Respondent.

## **X. REPARATIONS**

115. The Applicant sought various reliefs captured under paragraph 23 of this judgment.

116. It is trite law and practice of all human rights enforcement institutions that reparation or compensation is given for violation of human rights that is concrete and real. Where there is no violation there will be no reparation. In *MRS MODUPE DORCAS AFOLALU v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/15/14 (Unreported)* the court held that "*the principle of reparation constitutes one of the fundamental principles of law regarding liability. It is sufficient that the harm to be repaired must exist in reality, must be directly linked to the victim, and shall be true and capable of being evaluated*". Also in *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL ECW/CCJ/JUD/19/13* the Court held that "*Reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cause and effect between the offence committed and the harm caused*"

117. In line with the above principle, it is clear that the Applicant's relief under paragraph 23(a) & (b) (supra) alleging various violations on an account of the unlawfulness of the usage of the Cybercrime Act and the Terrorism (Prevention, Amendment) Act to arrest, detain, prosecute and imprison Mr.

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Agba Jalingo, cannot be granted as it is predicated on violation of rights which have been held not violated by the Respondent.

118. As to relief 23(c) (supra), the Court cannot also order *in abstracto* the Respondent to drop charges against someone who is charged lawfully for a crime and who is facing trial before a competent national court. The option open to the accused is to defend himself and establish his innocence in accordance with both procedural and substantive laws which are presumed to afford him all the guarantees of fair trial.

119. In respect of relief 23(d), the Applicant is claiming:

*“AN ORDER directing the Respondent and/or its agents in Nigeria to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honourable Court may deem fit to grant to Mr. Agba Jalingo for being unfairly prosecuted by the Respondent”.*

120. The Court observes that, the Applicant in the relief 23(d) is claiming reparations for unfair prosecution of Mr. Jalingo, however, the Court has found that the prosecution of Mr. Jalingo, having been done in pursuant to extant laws of the Respondent, does not offend any of the Respondent's international obligation towards him to render his prosecution unfair. Flowing from that, Mr. Jalingo deserves no reparation on that account and the Court so hold.

121. In the instant case the Court having found the Respondent in violation of the rights of Mr. Jalingo by the prolonged detention before arraigning him before the Court and torture, it is submitted that he is entitled to be compensated. Since *restitutio in integrum* is impracticable having regard to the circumstances of Mr. Jalingo's detention, the only option left to the Court is monetary compensation.

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122. The Court observes that detaining Mr. Jalingo for thirty-four days without trial was tortuous enough to cause him both moral and psychological trauma with all the attendant inconveniences which have been duly taken into account in awarding him a total sum of Thirty Million Naira (N30,000,000) as compensation.

### ***XI. COSTS***

123. Both parties did not pray for costs. Article 66 (1) of the Rules of Court provides, "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

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

125. In light of the provisions of the Rules, the Court holds that parties bear their respective costs since the Applicant as a successful party failed to pray for costs.

### ***XII. OPERATIVE CLAUSE***

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

#### **On jurisdiction**

i. Declares that it has competence to adjudicate on the Application;

#### **On admissibility**

ii. Declares that the Application is admissible;

#### **On merits**

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- iii. **Declares** that the condition of Mr. Agba Jalingo's detention violated her right to dignity of human being under Article 5 of the African Charter by the Respondent;
- iv. **Declares** that the detention of Mr. Agba Jalingo violated his right to liberty under Article 6 of the African Charter by the Respondent;
- v. **Dismisses** all other declarations sought by the Applicant;
- vi. **Orders** the Respondent to pay the lump sum of Thirty Million Naira (N30, 000,000) to Mr. Agba Jalingo through the Applicant as compensation for moral prejudice suffered as a result of the violation of his rights under Articles 5 and 6 of the African Charter.

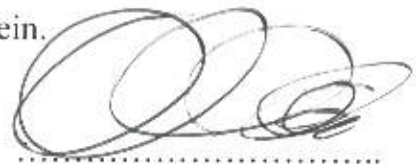
**On Costs:**

- vii. **Orders** the parties to bear their respective costs.

**As to compliance and reporting**

- viii. **Orders** the Respondent to submit to the Court within three (3) months of the date of the notification of this Judgment, a report on the measures taken to implement the orders set-forth herein.

Hon. Justice Edward Amoako **ASANTE**



Hon. Justice Dupe **ATOKI**



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



ASSISTED BY:

Dr. Athanase **ATANNON**



Done in Abuja, this 9<sup>th</sup> Day of July, 2021 in English and translated into French and Portuguese.

