**MEDIA RIGHTS AGENDA V ATTORNEY GENERAL OF THE FEDERATION**

**Closed**

**Nigeria, Africa**

**EXPANDS EXPRESSION**

**MODE OF EXPRESSION**

Press/Newspapers

**DATE OF DECISION**

December 16, 2024

**OUTCOME**

Decision - Procedural Outcome, Decision Outcome (Disposition/Ruling), Application Granted, Injunction or Order Granted, Declaratory Reliefs Granted, Constitutional Violation.

**CASE NUMBER**

FHC/ABJ/CS/1301/2021

**JUDICIAL BODY**

First Instance Court

**TYPE OF LAW**

Constitutional Law

**THEMES**

Press Freedom

**TAGS**

Journalists, Media Practitioners, Extra-Judicial Killing, Torture

**CASE ANALYSIS**

**Case Summary and Outcome**

The Federal High Court sitting in Abuja held that the killing of journalists and media practitioners while carrying out their journalistic duties was a violation of their rights to freedom of expression and their right to life. The Applicant, a not-for-profit Non-Governmental Organization registered under the Nigerian laws for promotion and defence of right to freedom of expression and media freedom, had instituted a lawsuit for the failure of the Nigerian government to prevent killings of journalists and media practitioners and investigate, prosecute and punish perpetrators of killings of journalists and media practitioners at different times in Nigeria. The Applicant had filed the lawsuit on behalf of its members, and the court assumed jurisdiction accordingly. The Applicant in particular submitted that lives of journalists like those of any other citizens are sacred and the Nigerian government has a duty to protect them. It further submitted that killings of journalist and the failure of the Nigerian government to protect the killed journalists is in contravention of right to freedom of expression guaranteed in Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and other international instruments including African Charter on Human and People’s Rights ((Ratification and Enforcement) Act, Universal Declaration of Human Rights(UDHR), International Covenant on Civil and Political Rights(ICCPR), the Revised Treaty of Economic Community of West African States and Declaration of Principles of Freedom of Expression and Access to Information in Africa. Responding to the Applicant’s case, the Respondent argued that the Applicant failed to establish that their fundamental rights were breached and that the court should dismiss the suit. In arriving at its decision, the court noted that *“journalism and media practice are constitutional professions in their respective rights and the practice thereof imposes a duty to source, gather and in most cases, visit the locus in quo for information which they are obligated to disseminate”* [p.18] The court further noted that *“It is therefore a breach of constitutional right of journalists and media practitioners where they are attacked, tortured, maimed or killed in the course of doing their duty”* [p.18]. The court in fact held that there were extra-judicial killings of journalists and media practitioners as alleged by the Applicant and that the Nigerian government failed in its duty to prevent the said killings or punish the perpetrators. The court ordered the Nigerian government to take measures to prevent attacks on journalists and media practitioners and further ordered investigation, prosecution and punishment of perpetrators of all attacks against journalists and media practitioners and ensure facilitation of access to effective remedies for victims of such attacks.

**Facts**

On October 26, 2021, Media Rights Agenda, a not-for-profit Non-Governmental Organization registered under the Nigerian laws for promotion and defence of right to freedom of expression and media freedom, had instituted a lawsuit against the Nigerian government through the office of the Attorney General of the Federation who is the Chief Law Officer to the Federal Government of Nigeria for its failure to prevent killings of journalists and media practitioners and investigate, prosecute and punish perpetrators of killings of journalists and media practitioners at different times in Nigeria. In particular, the Applicant in the supporting Affidavit to its Motion on Notice, expressly stated the names of the journalists extra-judicially killed within the territory of the Respondent and the respective dates they were killed. In establishing its case, the Applicant relied on relevant provisions of statutes and international treaties already ratified by Nigeria. The said provisions of statutes and international treaties relied upon by the Applicant are:

**Section 33 of the Constitution:**

1. *Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.*
2. *A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary –*

*(a) for the defence of any person from unlawful violence or for the defence of property:*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or*

*(c) for the purpose of suppressing a riot, insurrection or mutiny.*

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 authorised 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.*

1. *Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -*

1. *for the purpose of preventing the disclosure. of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or*
2. *imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.*

**Article 4 and 9 of the African Charter on Human and People’s Rights (Ratification and Enforcement) Act:**

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

*9 (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 6 (1) of the ICCPR:**

*6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

**Article 3 of the UDHR:**

*Everyone has the right to life, liberty and security of person.*

**Principle 20 of the Principles of Freedom of Expression and Access to Information in Africa:**

1. *States shall guarantee the safety of journalists and other media practitioners.*
2. *States shall take measures to prevent attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.*
3. *States shall take measures to raise the awareness and build the capacities of journalists and other media practitioners, policy makers and other stakeholders on laws and standards for ensuring the safety of journalists and other media practitioners.*
4. *States shall take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies.*
5. *States shall be liable for the conduct of law enforcement, security, intelligence, military and other personnel which threatens, undermines or violates the safety of journalists and other media practitioners.*
6. *6. States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing genderspecific safety concerns, including sexual and gender-based violence, intimidation and harassment.*
7. *7. In times of armed conflict, States shall respect the status of journalists and other media practitioners as non-combatants in accordance with international humanitarian law.*

**Article 66 (2) (c) of the ECOWAS Revised Treaty of 1993:**

*1. In order to involve more closely the citizens of the Community in the regional integration process, Member States agree to co-operate in the area of information.*

*2. To this end they undertake as follows:*

*(c) to ensure respect for the rights of journalists;*

The crux of the Applicant’s case is that extra-judicial killings of journalists and media practitioners within the territory of the Federal Republic of Nigeria is in contravention of right to freedom of expression and right to life and that the Respondent is duty-bound under relevant statutes and international treaties to prevent such killings, and in case of occurrence, the Respondent has a duty to investigate, prosecute and punish perpetrators of such killings and ensure access to effective remedies. In its defence, the Respondent argued that the Applicant failed to establish that their fundamental rights were breached. The Respondent consequently urged the court to dismiss the case of the Applicant as it is not entitled to the reliefs sought having failed to establish infringement of its rights. In its reply, the Applicant submitted that the Respondent failed to address the main issue in the case which is the failure, neglect, omission and refusal of the Respondent to investigate prosecute and punish perpetrators of extra-judicial killing of journalists which are the duties of the state by law.

**Decision Overview**

The presiding Judge, I.E. Ekwo delivered the judgment of the court. In delivering the judgment of the court, Judge Ekwo considered two (2) issues in the case which are:

*“1. The enforceability of treaties relied on by the Applicant.*

*2. Proof of violation of rights to freedom of expression*

1: Enforceability of Treaties Relied on by the Applicant.

Other than Nigeria’s Constitution and African Charter on Human and People’s Rights (Ratification and Enforcement) Act, the Applicant relied on international treaties, particularly, International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR) and the Revised Treaty of Economic Community of West African States. While the Nigeria’s Constitution and African Charter on Human and People’s Rights (Ratification and Enforcement) Act are naturally enforceable, the court therefore considered enforceability of international treaties stated above. The court noted that *“Where a country is only a signatory to a treaty, the signing therefore creates an obligation on the part of the signatory. The signatory, accepts thereby, an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty, in the period between signature and ratification, acceptance and approval”* [p.16]. The court went further to note that *“Where a country has ratified a treat, it becomes legally bound”* [p.16]. The court noted that Nigeria ratified ICCPR in 1993 and UDHR in 1985 and therefore Nigeria is bound by those treaties and it is “*obligated to enforce them within its territory*” [p.16]. The court therefore concluded that any person affected by breach of those treaties can have a recourse to court to enforce their rights under the said treaties.

2. Proof of Violation of Right to Freedom of Expression.

The Applicant premised this case fundamentally on provisions of Section 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) wherein freedom of expression and press freedom are rooted. The court also noted permissible restrictions to freedom of expression are provided for in Sections 39 (3) and 45 of the constitution. Judge Ekwo setting out in his judgment noted that *“journalism and media practice are constitutional professions in their respective rights and the practice thereof imposes a duty to source, gather and in most cases, visit the locus in quo for information which they are obligated to disseminate”* [p.18]. The court, in further appraising the role of journalists and media practitioners in the society and the impact of their contributions to the society, remarked that *“The society is better informed, educated, enlightened and properly guided where there is effective press”* [p.18]. The court there believed that journalists and media practitioners should be protected and failure to protect them from attack will be tantamount to breach of the constitution as the court held that *“It is therefore a breach of constitutional right of journalists and media practitioners where they are attacked, tortured, maimed or killed in the course of doing their duty”* [p.18].

The court noted that the provision of Section 46 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) gives access to a High Court for redress to any person who alleges that any of the provisions of Chapter IV of the constitution (including Section 39 of freedom of expression) has been contravened, is being contravened or is likely to be contravened. The court noted that the same access is also granted in Order II (1) of the Fundamental Rights (Enforcement Procedure) Rules 2009. The court in now proceeded to analyzing the case as brought by the Applicant to restate that the burden to establish allegation of infringement of fundamental rights rests on the shoulders of the Applicant and that the burden can be discharged by the Affidavit evidence of the Applicant as provided by the Order II (3) of the Fundamental Rights (Enforcement Procedure) Rules 2009. The court noted that the Applicant discharged this burden through its Affidavit evidence, particularly in paragraph J of the Affidavit to its Motion on Notice, as it expressly stated names of journalists that were killed within the territory of the Respondent and the dates they were killed. The court noted the response of the Respondent in this regard and observed that the respondent’s averments were *“generic in nature and they do not controvert the case of the Applicant specifically”* [p.18]. The court therefore noted that that “the position of the law is that affidavit evidence which is not challenged or controverted howsoever, is deemed admitted and can be relied upon by a court” [p.18]. In support of the position of judicial admission of affidavit evidence that is not challenged or controverted, the court relied on the cases of *Registered Trustees, Association of Community Health Practitioners of (Nig.) V Medical Health Workers Union of (Nig.) (2008) All FWLR (Pt.412) 1013, Henry Stephen Engineering Ltd V Yakubu (Nig.) Ltd (2009) 10 NWLR (Pt.1149) 416, Tukur V Uba (2012) All FWLR (Pt.652) 1624, CBN V Edet (2015) All FWLR (Pt.768) 879 at 897, Amadi V Wopara (2022) 1 NWLR (Pt.1811) 359 at 373, Mabamije V Otto (2016) 13 NWLR (Pt.1529) 171, Incorporated Trustees of Ladies of Saint Mulumba, Nigeria V Ekhator (2022) 15 NWLR (Pt.1852) 35 at 61, Owuru V Adigwu (2018) 1 NWLR (Pt.1599) 1.* The court therefore held that the Respondent admitted that the journalists mentioned in paragraph j of the Applicant’s affidavit were killed.

The court noted in very detailed manner that while the Respondent stated what the Nigerian government has done to address the issue of killings, the court could not find any thing specific to address the killings for the purpose of investigation to identify the perpetrators and for appropriate actions subsequently. The court in spotlighting the failure of the government in the killing of the journalists noted that *“The taking of lives by extra-judicial killing is an unconstitutional act. An unconstitutional act cannot take place and nothing is done about it. A breach of the constitution is an injury to the corpus of the nation. The perpetrators of such killings have demonstrated themselves as lawless people who ought not to be allowed to live freely in the society. The government owes a duty of protection to those whom the constitution has given fundamental rights”*[p.19]. While the court noted in the Respondent’s argument that some persons were arrested, the court stated that none of the persons said to have been arrested has been linked to the killings in paragraph J of the Applicant’s Affidavit. In the same vein, the court noted the Respondent’s averments on the government’s establishment of some institutions including Citizens’ Right Department, National Human Rights Commission, NOA, NTA, Federal Ministry of Information and Culture and News Agency of Nigeria but held that mere existence of these institutions does not count but effective performance of these institutions to ensure safety of journalists and media practitioners.

The court in emphasizing the constitutional protection available to journalists, the learned judge noted that the phrase “without interference” in Section 39 of the Constitution confers immunity of a very large degree on journalists and media practitioners, hence the holding of the court that *“the law forbids whatever act that might amount to assassination, bodily harm or any other impediment in the course of journalist or media practitioner carrying out his/her professional duty”.* The court therefore held that the Applicant has proven its case and granted the reliefs sought. The court among others held that, killings of journalists and media practitioners while carrying out their journalistic duty is a violation of their rights to freedom of expression and the press. The court also declared that failure of the Nigerian government to guarantee safety of journalists and media practitioners is in breach of its obligations under international treaties with respect to freedom of expression and access to information. The court consequently ordered Nigerian government to take measures to prevent attacks on journalists and media practitioners and further ordered investigation, prosecution and punishment of perpetrators of all attacks against journalists and media practitioners and ensure facilitation of access to effective remedies for victims of such attacks.

**DECISION DIRECTION**

**Expands Expression**

The judgment of the Federal High Court sitting in Abuja expands expression when the court declared the killings of journalists and media practitioners while carrying out their journalistic duties at different times violation of right to freedom of expression as guaranteed by Section 39 of the Constitution of Nigeria, 1999 (as amended) and Article 9 of the African Charter on Human and People’s Rights. More importantly, the court ordered that the Nigerian government to take measures to prevent attacks on journalists and media practitioners. The court further ordered the Nigerian government to investigate, prosecute and punish perpetrators of all attacks against journalists and media practitioners and ensure that victims of such attacks have access to effective remedies.

**GLOBAL PERSPECTIVE**

**Related International and/or regional laws**

International Covenant on Civil and Political Rights (ICCPR), Art. 6(1)

Universal Declaration of Human Rights (UDHR), Art. 3

Revised Treaty of Economic Community of West African States, Art.66 (2)(c)

Declaration of Principles of Freedom of Expression and Access to Information in Africa, Principle 20.

**National standards, Laws or Jurisprudence**

Nigeria, Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections, 33, 39 (1), (2), 45 and 46

Nigeria, African Charter on Human and People’s Rights (Ratification and Enforcement) Act, Art.s 4 and 9

Nigeria, Registered Trustees, Association of Community Health Practitioners of (Nig.) V Medical Health Workers Union of (Nig.) (2008) All FWLR (Pt.412) 1013

Nigeria, Henry Stephen Engineering Ltd V Yakubu (Nig.) Ltd (2009) 10 NWLR (Pt.1149) 416

Nigeria, Tukur V Uba (2012) All FWLR (Pt.652) 1624

Nigeria, CBN V Edet (2015) All FWLR (Pt.768) 879 at 897

Nigeria, Amadi V Wopara (2022) 1 NWLR (Pt.1811) 359 at 373

Nigeria, Mabamije V Otto (2016) 13 NWLR (Pt.1529) 171

Nigeria, Incorporated Trustees of Ladies of Saint Mulumba, Nigeria V Ekhator (2022) 15 NWLR (Pt.1852) 35 at 61

Nigeria, Owuru V Adigwu (2018) 1 NWLR (Pt.1599) 1

**CASE SIGNIFICANCE**

The decision establishes binding or persuasive precedent within its jurisdiction.

**OFFICIAL CASE DOCUMENTS**

**Reports, Analyses, and News Articles:**

<https://ifex.org/nigerias-fight-against-impunity-given-impetus-by-landmark-ruling/>

<https://punchng.com/court-orders-fg-to-probe-deaths-of-dele-giwa-other-journalists/>

<https://www.icirnigeria.org/court-orders-agf-to-re-open-dele-giwas-murder-case/>

<https://tribuneonlineng.com/38-years-after-court-orders-agf-to-re-open-investigation-prosecute-dele-giwas-killers/>

<https://www.youtube.com/watch?v=zeRYFDBwXg8>

**Attachments:**

Judgment