

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY, THE 16TH DAY OF FEBRUARY, 2024
BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE I. E. EKWO
JUDGE

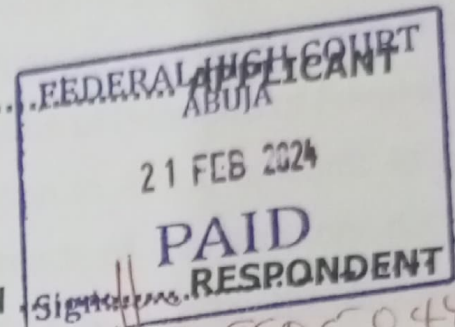
SUIT NO: FHC/ABJ/CS/1301/2021

BETWEEN:

INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA

AND

ATTORNEY GENERAL OF THE FEDERATION



JUDGEMENT

The Motion on Notice in this case is dated 26th October, 2021 brought pursuant to Order 2 (1), (2), (3), (4), and (5) of the Fundamental Rights (Enforcement Procedure), Rules 2009 (hereinafter referred to as FREPR 2009), Ss. 33 and 39 of the 1999 Constitution (as amended), Articles 4 and 9 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Cap. 29 LFN 2004 (hereinafter referred to as ACHPRRE Act) and under the inherent jurisdiction of this Court seeking the reliefs as follows:

1. A Declaration that the killing of various Journalists and media practitioners in Nigeria is a violation of their fundamental right to life as encapsulated by section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004.
2. A Declaration that the killing of Journalists and media practitioners while carrying out their journalistic duty is a violation of their rights

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Angela E. Ekwo
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to freedom of expression and the press as encapsulated by Section 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 9 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004.

3. A Declaration that the failure of the Federal Government of Nigeria to fulfil its statutory and treaty obligations to guarantee the safety of journalists and other media practitioners accordance with the provision of Principle 20 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa, amounts to a violation of the Declaration and a breach of the statutory duty imposed on the Federal Government of Nigeria by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9), Laws of the Federation of Nigeria, 2004 and Nigeria's treaty obligation under the African Charter.
4. A DECLARATION that the failure of the Federal Government of Nigeria to ensure the safety of journalists and media practitioners who have been attacked as it is required to do by Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, is a breach of the statutory duty imposed by the Declaration and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9), Laws of the Federation of Nigeria, 2004.
5. A Declaration that the failure of the Federal Government of Nigeria to take measures to prevent various forms of attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrests and detention, enforced disappearance, kidnapping, intimidation, threats of physical violence, beatings and assault, unlawful

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surveillance, among others, as required by Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, amounts to a breach of the Government's statutory duty under the Declaration and African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9), Laws of the Federation of Nigeria, 2004.

6. A Declaration that failure of the Federal Government of Nigeria to 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 in accordance with Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa amounts to a breach of its statutory duty under the Declaration and under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004.
7. A Declaration that the failure of the Federal Government of Nigeria to take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, as well as the Government's failure to ensure that the victims of such attacks have access to effective remedies in accordance with Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, is a breach of the Government's statutory duty under the Declaration and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004.
8. A Declaration that by failing to guarantee the safety of journalists and other media practitioners in accordance with Principle 20 of the

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Declaration of Principles on Freedom of Expression and Access to Information in Africa, the Federal Government of Nigeria has breached its statutory duty under the Declaration and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9), Laws of the Federation of Nigeria, 2004 and therefore, bears responsibility and is accordingly liable for the actions and conduct of law enforcement, security, intelligence, military and other officials and agents that threaten, undermine or violate the rights and safety of journalists and other media practitioners.

9. An Order directing the Federal Government of Nigeria to take measures to prevent attacks on journalists and other media practitioners.
10. An Order directing the Federal Government of Nigeria to investigate, prosecute and punish perpetrators of all attacks against journalists and other media practitioners, and ensure that all victims of attacks against journalists have access to effective remedies.
11. An Order directing the Federal Government of Nigeria to take measures to raise awareness and build the capacities of various stakeholders, particularly journalists and other media practitioners, policy makers, law enforcement, security, intelligence, military as well as other officials and relevant stakeholders on the laws and standards for ensuring the safety of journalists and media practitioners.
12. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.

The grounds thereof are that:

- i. The Applicant is a non-governmental organization registered under Nigerian Laws whose mandate includes promoting

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and defending the right to freedom of expression online and offline, media freedom, and access to information and digital rights. The Applicant has observer status with the African Commission on Human and Peoples' Rights which has its secretariat in Banjul, The Gambia.

- ii. The Application borders on the violation of the fundamental rights to life and freedom of expression of Nigerian journalists/media practitioners murdered at various times in Nigeria in the line of duty and/or under circumstances relating to their discharge of their duties as journalists and the failure of the Respondent to protect, carry out effective investigation, prosecute and punish the perpetrators of the murder of journalists.
- iii. Paragraph 3 (e) (v) of the Fundamental Rights Enforcement Procedure Rules empowers the Applicant as an association to file this suit on behalf of its members.
- iv. Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to life.
- v. Section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to freedom of expression without interference.
- vi. The Respondent is the Chief Law Officer of the Federation.

It is averred in the Affidavit in support that the Applicant is a non-governmental organization whose mandate includes promoting and defending the right to freedom of expression online and offline, media freedom, and access to information and digital rights. The Applicant has observer status with the African Commission on Human and Peoples Rights which has its secretariat in Banjul, The Gambia (Exh. A). The Respondent is the Chief Law Officer of the Federation. By virtue of exercise of Applicant's members and

associates' rights to freedom of expression as protected in S. 39 of the 1999 Constitution (as amended), members and associates of the Applicant, like Journalists, Bloggers, and media practitioners, express themselves through any media platforms including but not limited to print media, electronic media and social media discussing any subjects of interest ranging from rule of law, economy and good governance. There has been various violation of the fundamental rights to life and freedom of expression of Nigerian journalists/media practitioners who were murdered at various times in Nigeria in the line of duty and under circumstances relating to the discharge of their duties as journalists. Despite the obligations imposed upon the Respondent under various domestic, regional and international instruments, it has failed, refused, neglected and omitted to effectively investigate, prosecute and punish perpetrators of the killings of Nigerian journalists as seen in Exhs. B, C, D, E, F, G and H. By S. 33 (1) of the 1999 Constitution (as amended), and Article 4 of the African Charter on Human and Peoples Rights (African Charter), everyone, including Journalists and media practitioners in Nigeria, is entitled to the fundamental right to life. S. 39 (1) of the 1999 Constitution (as amended) and Article 9 of the African Charter on Human and Peoples' Rights guarantee the right to freedom of expression, media and the press. The African Charter on Human and Peoples' Rights has been domesticated in Nigeria by the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. A9, LFN 2004 and Nigeria is a State party to the treaty as well as a member-state of the Africa Union. The Declaration of Principles on Freedom of Expression and Access to Information in Africa (hereinafter called the Declaration) including Principle 20 of the Declaration developed and adopted by the African Commission on Human and Peoples Rights pursuant to the African Charter has the status of a subsidiary legislation and binding effect as the African Charter. Principle 20 of the Declaration is an elaboration of Article 9 of the African Charter which impose statutory and treaty

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obligations on the Federal Government to guarantee the safety of journalists and other media practitioners. The Applicant's rights as an organisation promoting and defending freedom of expression and press and good governance to file this suit on behalf of its members has been protected by para. 3 (e) (v) of the Preamble to the FREPR 2009, hence the Applicant has *locus standi* to bring the suit. This Court is the last hope of the common man, hence the Applicant's approach to this Court for redress. It will be in the interest of justice to grant this application.

The averment of the Respondent is that the primary responsibility of Government is the protection of life and properties of its citizens and the Federal Government of Nigeria (hereinafter referred to as FGN) has always discharged that responsibility of protecting lives and properties of citizens. In the last 10 years, the FGN represented by the Respondent in this case has been budgeting for security with the highest figure when compared to other sectors and has over the years enhanced through personnel training both at home and abroad, acquisition of modern operational equipment and weapons, etc. Journalists and all other media practitioners who are citizens or residents of Nigeria enjoy the protection provided by the FGN. The Respondent's recognition of the need to protect the life of its citizens led to the creation of the Citizens Right Department at the Federal Ministry of Justice, a department working round the clock to ensure that rights of citizens are not trampled upon un-noticed without consequence. The creation of the National Human Rights Commission is also a demonstration of Government to protect the rights of its citizens. The National Orientation Agency (NOA), Federal Ministry of Information and Culture, Nigeria Television Authority (NTA), News Agency of Nigeria, etc. have among their core mandate, the dissemination of information to members of the public in order to educate them on various issues including the prevention of violation of human right of Nigerians which includes that of journalists and media practitioners. The specific cases mentioned by the

Applicant, a painstaking study of the exhibits will show that on the all those occasions and incidents, the Government was pro-active in carrying out thorough investigation, arrest and prosecution and that the fact that some of those cases are yet to be concluded should not be seen as nothing is been done by the Respondent. No law proscribes a time limit within which to investigate and prosecute perpetrators of crime. The FGN's has never failed, neglected or refused to honour any of its obligations. The presence of ECOWAS structures including its Court in Nigeria is a clear demonstration of FGN's willingness and ability to honour its obligations both at home and abroad. The Respondent in compliance with the provisions of the Constitution has established and ensured the establishment of High Courts both at the State and Federal, in order that those who allege that their rights has been violated or is about to be violated can have recourse to the Court to ventilate their claims. In the first Quarter of the year 2021, the South Eastern States were constantly under attack by elements believed to be acting under the instruction of the acclaimed leader of the Indigenous People of Biafra (hereinafter referred to as IPOB), Nnamdi Kanu and it took the timely intervention of the FGN to abate and stop further violation of the fundamental rights of citizen and residence in that part of the country, the said leader, Nnamdi Kanu has since been arrested and charged before this Court. The leader of the proscribed group known as Islamic Movement in Nigeria (hereinafter referred to as IMN) Ibrahim El-Zakzaki was arrested and charged to Court on account of the activities of his group carrying out unprovoked attack on innocent citizens and violation of human rights. The incessant attacks on journalists and media practitioners have drastically reduced in recent time due to the timely effort of the FGN and it is not relenting in its effort to ensure zero tolerance for violation of human rights and timely and effective prosecution of violators. The security of life and property of citizens has and will continue to remain the primary responsibility of the Government.

The Applicant also has a duty to report any infraction or violation of human Rights be it that of journalist and media practitioners or that of any other citizen or resident of this country to the appropriate agency put in place by the Federal Government to deal with such issues. The passage of the Freedom of Information Bill into an Act by the FGN confirms its commitment to security of lives and properties. The Respondent has a unit dedicated to deal with issues associated with access to information by members of the public known as FOI Unit at the Federal Ministry of Justice. It is highly unpatriotic of the Applicant to allege that the Respondent is nonchalant towards the protection of the rights of its citizens. It will be in the interest of the public and justice to dismiss this application in its entirety as the Respondent has been relentless in ensuring the protection of the life and properties of its citizens including the journalists and media practitioners.

The submission of the Applicant is predicated on 3 issues formulated for determination by this Court to wit:

- i. *Whether the attacks and subsequent death of journalists and media practitioners by unidentified perpetrators and failure of government to protect them as well as carry out impartial and effective investigation to identify and prosecute perpetrators is not a violation of S. 33 of the 1999 Constitution (as amended)?*
- ii. *Whether the death of journalists and media practitioners and failure of government to protect them is a contravention of the right to freedom of expression as stipulated by S. 39 of the 1999 Constitution (as amended)?*
- iii. *Whether the Federal Government has an obligation to diligently investigate the violation of the right to life and freedom of expression of journalists?*

The submission on issue 1 is that everyone including the journalists is entitled to the sacred right to life and it is the duty of the State or government to guarantee the protection of lives and exercise due diligence to prosecute any person who unlawfully deprives another of the right to life; reference is made to S. 33 of the 1999 Constitution (as amended), Art. 4 of the ACHPRRE Act, Art. 6 (1) of the International Covenant on Civil and Political Rights, (hereinafter referred to as ICCPR) and Art. 3 of the Universal Declaration of Human Rights, 1948 (hereinafter referred to as UDHR) and reliance is placed on *IGP & Ors. v. Ikpila & Anor.* (2015) LPELR-40630 (CA), and *Nasiru Aliu Bello & Ors. v. A. – G., Oyo State* (1986) 5 NWLR (Pt. 45) 828. Thus, failure of the FGN to investigate, identify and prosecute the perpetrators of the death of the journalist is a violation of their fundamental rights to life.

The submission on issue 2 is that the death of journalists and media practitioners and failure of the government to protect them is a contravention of the right to freedom of expression; reference is made to S. 39 of the 1999 Constitution (as amended), Art. 19 of the UDHR, Art. 66 (2) (c) of the Revised Treaty of the Economic Community of West African States (ECOWAS) of 24th July, 1993, Principle 20 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019, Arts. 9 and 60 of the ACHPRRE Act, and Art. 19 (3) of the ICCPR.

The submission on issue 3 is that the Federal Government has an obligation to diligently investigate the violation of the right to life and freedom of expression of journalists and prosecute and punish perpetrators and in appropriate cases, ensure the payment of adequate compensation; reference is made to S. 33 of the 1999 Constitution (as amended), Art. 66 (2) (c) of the ECOWAS Revised Treaty of 1993, African Commission Resolution 185 on the Safety of Journalists and Media Practitioners in Africa, May, 12, 2011, Principle 20 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 and reliance is placed on *Obioma C. O. Ogukwe v.*

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Republic of Ghana, Judgement No. ECW/CCJ/JUD/20/16 at 13, *Carvajal Carvajal v. Colombia* Case No. 352 (2018), *Deydra Hydera v. The Gambia*, case NO. ECW/CCJ/APP/30/11/EC. The Respondent also has responsibility under International Human Rights Law to respect, protect and fulfil the human rights treaties that they are parties to. It is in the interest of the public and the society at large that the reliefs sought in the suit are granted by this Court.

The submission of the Respondent is on the sole issue formulated for determination to wit:

Whether the Applicant has adduced sufficient credible evidence in his affidavit to be entitled to the reliefs sought before this Court?

The submission thereof is that the onus is on the Applicant to establish with credible evidence that their fundamental rights were breached by the Respondent; reference is made to S. 131 of the Evidence Act, 2011 and reliance is placed on *Onah v. Okenwa* (2010) 7 NWLR (Pt. 1194) 512, *Faith Okafor v. Lagos State Govt. & Anor.* (2016) LPELR-41066 (CA), *Chief L. C. Mezue & Anor. v. Princess Nkiru Okolo & Ors* (2019) LPELR-47666 (CA), and *Idu Godwin Emeka v. Hon. Lynda Chuba-Ikpeazu & Ors.* (2017) LPELR-41920 (SC). The declaration the Applicant seeks is not granted as of right. The averment of the Applicant in the Affidavit in support has not disclosed that the Respondent has infringed on the fundamental rights of the Applicant or any of its associates. Thus, the Court is urged to dismiss this suit as the Applicant is not entitled to the relief sought or any damages or consequential relief having failed to establish the infringement of its rights.

In the response of the Applicant, it is submitted that the Respondent failed to address the main issue of the Applicant which is that the FGN whose Chief Law Officer the Respondent is, failed, refused, neglected and omitted to investigate, prosecute and punish perpetrators of the killings of Nigerian journalists as described in the Applicant's Affidavit neither is the FGN taking steps to avert future occurrence. The action or inactions of the FGN are guided

by the Respondent who also has the power to ensure the protection of the rights of the Applicants; reference is made to S. 174 (3) of the 1999 Constitution (as amended) and reliance is placed on *Esokoro v. Govt. of Cross River State* (1991) 4 NWLR (Pt. 185) 336. Contrary to the averments in para. 5 (e) of the Respondent, the fundamental rights of journalists are still being infringed on and they are still being harassed by the security agencies under the watchful eyes of the Respondent who failed to act (Exhs. J, K, L and M). The Court is urged to grant all the reliefs of the Applicant.

This suit is founded principally on Ss. 33 and 39 of the 1999 Constitution (as amended), and Articles 4 and 9 of ACHPRRE Act which provisions are as follows:

- S. 33 (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.
- S. 39 (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.

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(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.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society-

a. 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

b. 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.

Articles 4 and 9 of the ACHPRRE Act.

Art. 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.

Art. 9 (1) Every individual shall have the right to receive information.

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- (2) Every individual shall have the right to express and disseminate his opinions within the law

In between the submissions, the Applicant has cited Art. 4 of the ACHPRRE Act, Art. 6 (1) of the ICCPR, Art. 3 of the UDHR, Art. 66 (2) (c) of the ECOWAS Revised Treaty of 1993, African Commission Resolution 185 on the Safety of Journalist and Media Practitioners in Africa, and Principle 20 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 which respective provisions are as follows:

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:

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

Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa

20 Safety of journalists and other media practitioners

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

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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. States shall take specific measures to ensure the safety of female journalists and media practitioners by addressing gender specific safety concerns, including sexual and gender-based violence, intimidation and harassment.
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;

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It is noteworthy to state that Nigeria ratified the ICCPR in 1993 and also ratified the UDHR in 1985. Nigeria signed the ECOWAS Revised Treaty of 1993 in 1993. Where a country is only a signatory to a treaty, the signing thereof 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 purpose of the treaty, in the period between signature and ratification, acceptance and approval. Where a country has ratified a treaty, it becomes legally bound thereby. I find that Nigeria having ratified the treaties stated above is legally bound by them and is obligated to enforce same within its territory. The effect of this is that any person who is affected by breach of the terms of such treaty can have recourse to the Court to enforce his/her rights thereof.

The crux of the grouse of the Applicant as averred in the Affidavit in support of its case is that there have been various violations of the fundamental rights to life and freedom of expression of Nigerian journalists/media practitioners who were murdered at various times in Nigeria in the line of duty and under circumstances relating to the discharge of their duties as journalists. Despite the obligations imposed upon the Respondent under various domestic, regional and international instruments, it has failed, refused, neglected and omitted to effectively investigate, prosecute and punish perpetrators of the killings of Nigerian journalists. The Applicant has tendered Exhs. B, C, D, E, F, G and H to buttress its case. In reaction to the averments of the Respondent, the Applicant has stated that contrary to the averments in para. 5 (e) of the Respondent, the fundamental rights of journalists are still being infringed and they are still being harassed by the security agencies under the watchful eyes of the Respondent who failed to act. The Applicant then tendered Exhs. J, K, L and M to buttress this assertion.

The basic requirement in our jurisprudence in this country is that civil cases are proved on preponderance of evidence and balance of probabilities;

see *Ohochukwu v. A.-G., Rivers State & Ors.* (2012) LPELR-7849 (SC), *Elias v. Omo-Bare* (1982) 5 SC 25, *Woluchem v. Gudi* (1981) 5 SC 291, *Akinlemibola v. C.O.P.* (1976) 6 SC 205, *Oyinloye v. Esinkin* (1999) 10 NWLR (Pt. 624) 540, and *Adekunle v. Aremu* (1998) 1 NWLR (Pt. 533) 203 at 226. As much as fundamental rights enforcement action is termed as *sui generis*, it is not exempted from this rule. Going the provision of S. 46 (1) of the 1999 Constitution (as amended) any person who alleges that any of the provisions of Chapter IV thereof has been, is being or is likely to be contravened in any State in relation to him may apply to a High Court for redress. The replication of this provision can be found in Order II (1) of the FREPR 2009 wherein it is stated that any person who alleges that any of the Fundamental Rights provided for in the Constitution or the ACHPRRE Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.

The requirement for proof where allegation of infringement has been made to satisfy the rule of discharge of evidential burden is to be found in Order II (3) of the FREPR 2009 which provides that an application shall be supported by a Statement setting out the name and description of the Applicant, the relief sought, the grounds upon which the reliefs are sought, and supported by an Affidavit setting out the facts upon which the application is made. It is clear from this provision that it is the affidavit evidence of the Applicant that grounds the case of the allegation of infringement of fundamental right of the Applicant. The right to press freedom upon which this suit is founded is encapsulated in S. 39 (1) and (2) of the 1999 Constitution (as amended) wherein it is provided that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, and every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions. The permissible restriction

thereof can be found in Ss. 39 (3) and 45 (1) of the 1999 Constitution (as amended). In the exercise of the rights provided for in S. 39 (1) and (2) of the 1999 Constitution (as amended) that gives foundation for journalism and media practice, it can therefore be said 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. The society is better informed, educated, enlightened and properly guided where there is effective press. It is therefore a breach of the constitutional right of journalists and media practitioners where they are attacked, tortured, maimed or killed in the course of doing their duty.

I have studied the response of the Respondent to the averments of the Applicant and I find the said averments to be generic in nature and they do not controvert the case of the Applicant specifically. The Applicant has stated names of journalists killed in para. J of the Affidavit in support thereof as follows:

- i. The killing in para. J (a) took place on 19th October, 1986,
- ii. The killing in para. J (b) took place on 31st March, 1998,
- iii. The killing in para. J (c) took place on 1st June, 1999,
- iv. The killing in para. J (d) took place on 5th October, 2006,
- v. The killing in para. J (e) took place on 22nd December, 1999,
- vi. The killing in para. J (f) took place on 17th August, 2008, and
- vii. The killing in para. J (g) took place on 24th April, 2010.

It is pertinent to note that the Respondent has neither denied that these killings have taken place or that these persons were not journalists or media practitioners. 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; see *Registered Trustees, National Association of Community Health Practitioners of (Nig.) v. Medical and 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. Ekhaton* (2022) 15 NWLR (Pt. 1852) 35 at 61, and *Owuru v. Adigwu* (2018) 1 NWLR (Pt. 1599) 1. It is hereby deemed that the Respondent has admitted that the persons mentioned in para. J (a), (b), (c), (d), (e), (f) and (g) were journalists who were killed.

Furthermore, the averments of the Respondent with respect to what the Government has done about the killings are still in my opinion far too generic in nature to address the issue of specific response of the government to each killing. A more satisfactory response would be averments detailing the investigation and findings on each killing, and the specific identification of the perpetrators and the action taken thereof. 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 continue to live freely in the society. The government owes a duty of protection to those whom the Constitution has given fundamental rights. From the evidence in this case, it is not hard to see that there has been extra-judicial killings of journalists and media practitioners and this action has brought the issue to the fore. None of the person mentioned by the Respondent as having been arrested and prosecuted has been linked to the killings in paras. J (a), (b), (c), (d), (e), (f) and (g) of the Affidavit of the Applicant. Going by the provision of S. 39 (1) of the 1999 Constitution (as amended), the freedom of expression, including freedom to hold opinions and to receive and impart ideas and information are to be exercised and practiced without interference. By this, the law forbids

whatever act that might amount to assassination, bodily harm or any other impediment in the course of the journalist or media practitioner carrying out his/her professional duty. It is to be noted that the phrase 'without interference' confers immunity of a very large degree on the journalist and media practitioner.

I have noted the averments of the Respondent on the creation of the Citizens Right Department at the Federal Ministry of Justice, the creation of the National Human Rights Commission, NOA, NTA, Federal Ministry of Information and Culture, and the News Agency of Nigeria, which core mandate among others is the dissemination of information to members of the public in order to educate them on various issues including the prevention of violation of Human right of Nigerians which includes that of journalists and media practitioners. There is need to say that what is required here is not merely the existence of these institutions but effective measures to raise awareness and build the capacities of various stakeholders, particularly journalists and other media practitioners, policy makers, law enforcement, security, intelligence, military as well as other officials and relevant stakeholders on the laws and standards for ensuring the safety of journalists and media practitioners.

I find in the end that the Applicant has established its case by credible evidence and ought to be entitled to the reliefs sought.

Consequently, judgement is entered on terms as follows:

1. A Declaration is hereby made that the killing of various Journalists and media practitioners in Nigeria is a violation of their fundamental right to life as encapsulated by S. 33 of the 1999 Constitution (as amended), Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9. LFN 2004.

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2. A Declaration is hereby made that the killing of Journalists and media practitioners while carrying out their journalistic duty is a violation of their rights to freedom of expression and the press as encapsulated by S. 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 9 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.
3. A Declaration is hereby made that failure of the Federal Government of Nigeria to fulfil its statutory and treaty obligations to guarantee the safety of journalists and other media practitioners accordance with the provision of Principle 20 of the Declaration of Principles of Freedom of Expression and Access to Information in Africa, amounts to a violation of the Declaration and a breach of the statutory duty imposed on the Federal Government of Nigeria by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004 and Nigeria's treaty obligation under the African Charter.
4. A Declaration is hereby made that the failure of the Federal Government of Nigeria to ensure the safety of journalists and media practitioners who have been attacked as it is required to do by Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, is a breach of the statutory duty imposed by the Declaration and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004.

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5. A Declaration is hereby made that the failure of the Federal Government of Nigeria to take measures to prevent various forms of attacks on journalists and other media practitioners, including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrests and detention, enforced disappearance, kidnapping, intimidation, threats of physical violence, beatings and assault, unlawful surveillance, among others, as required by Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, amounts to a breach of the Government's statutory duty under the Declaration and African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004.
6. A Declaration is hereby made that the failure of the Federal Government of Nigeria to 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 in accordance with Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa amounts to a breach of its statutory duty under the Declaration and under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004.
7. A Declaration is hereby made that the failure of the Federal Government of Nigeria to take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners,

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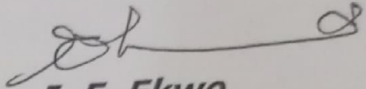
as well as the Government's failure to ensure that the victims of such attacks have access to effective remedies in accordance with Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, is a breach of the Government's statutory duty under the Declaration and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004.

8. A Declaration is hereby made that by failing to guarantee the safety of journalists and other media practitioners in accordance with Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, the Federal Government of Nigeria has breached its statutory duty under the Declaration and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. A9 LFN 2004 and therefore, bears responsibility and is accordingly liable for the actions and conduct of law enforcement, security, intelligence, military and other officials and agents that threaten, undermine or violate the rights and safety of journalists and other media practitioners.
9. An Order is hereby made directing the Federal Government of Nigeria to take measures to prevent attacks on journalists and other media practitioners.
10. An Order is hereby made directing the Federal Government of Nigeria to investigate, prosecute and punish perpetrators of all attacks against journalists and other media practitioners, and ensure that all victims of attacks against journalists have access to effective remedies.

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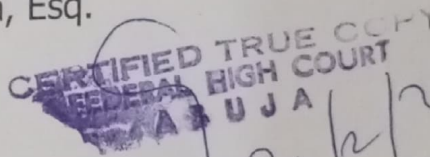
11. An Order is hereby made directing the Federal Government of Nigeria to take measures to raise awareness and build the capacities of various stakeholders, particularly journalists and other media practitioners, policy makers, law enforcement, security, intelligence, military as well as other officials and relevant stakeholders on the laws and standards for ensuring the safety of journalists and media practitioners.

This is the judgement of this Court.


I. E. Ekwo
Judge
16/02/2024

Mojirayo Ogunlana-Nkanga, Esq., for the Applicant.

The Respondent has been represented at various times by Simon Enock, Esq., (with Linus Shiru, Esq.) and Olubanke Odulana, Esq.


21/2/24