

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO
TRIBUNAL DE JUSTIÇA DA COMUNIDADE,
CEDEAO



No. 10 DAR ES SALAAM CRESCENT,
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA-NIGERIA.

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

HOLDEN IN ABUJA, NIGERIA

ON THE 11TH DAY OF APRIL 2016

SUIT N°: ECW/CCJ/APP/01/2016

RULING N°: ECW/CCJ/RUL/04/16

BETWEEN:

Col. Mohammed Sambo Dasuki (Rtd) } Applicant

AND

The Federal Republic of Nigeria } Defendant

RULING ON THE DEFENDANT'S PRELIMINARY OBJECTION

1. COMPOSITION OF THE COURT

Hon. Justice Friday Chijioko Nwoke	Presiding
Hon. Justice Micah Wilkins Wright	Member
Hon. Justice Yaya Boiro	Member
Assisted by: Athanase Attanon	Deputy Chief Registrar

2. COUNSEL FOR THE PARTIES:

i. Robert Emukpoeruo Esq. with

Wale Balogun

Abiola Adedipe

Titilayo Ajao

Vivian Umerie (Miss).

Jennifer Adike (Miss).And

Bamiyi Adejo of summit chambers, Obalende

Lagos, for the Applicants.

ii. T.A Gazali with

U.C OKoli

A.O Okoli

A.O Oloruntogbe (Miss)

U.A Lawal

Federal Ministry of Justice, Abuja for the

Defendant.

3. SUBJECT MATTER OF THE PROCEEDINGS:

The detention and continued detention of the Applicant by the agents of the Defendant, unlawful violation of the Applicant's rights to personal liberty and freedom of movement, unlawful invasion of the Applicant's privacy and seizure of his properties.

4. ARTICLES OF TREATIES ALLEGED TO HAVE BEEN VIOLATED

- i. Articles 5,6,12 and 14 of the African Charter on Human and Peoples' Rights.
- ii. Articles 9, 12 and 17 of the International Covenant on Civil and Political Rights.
- iii. Articles 3, 5, 9 and 13 of the Universal Declaration of Human Rights.

5. FACTS AS PRESENTED BY APPLICANT.

The Applicant is a Nigerian citizen and a retired Colonel of the Nigerian Army who upon retirement was made the Managing Director of the Nigerian Minting and Printing Company. He was subsequently appointed by the immediate past President of the Federal Republic of Nigeria (the Defendant) as the National Security Adviser to the Federal Republic of Nigeria, an office he held until removed in July, 2015 by the present administration.

The Defendant is a Member State of the Economic Community of West African States (ECOWAS) and a signatory to its Treaty, Protocols, Directives and Regulations as well as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

The Applicant avers that at about 6.40pm on the 16th July, 2015, while he was about breaking his Ramadan fast, his house was unlawfully invaded and several items and properties including cars and monies were taken away by the agents of the Defendant, that during this invasion, the Applicant and Members of his family, who were in his Abuja home, were subjected to severe psychological and emotional torture and were restrained from receiving any visitor or allowed to leave the house. That this was done without any lawful order or warrant. That the Applicant's homes were subsequently vacated by the agents of the Defendant on the 17th July, 2015 without any reason given for the 24 hours invasion and with a promise to be back for him. That Applicant further avers that his aged father of about 90 years old staying in his Sokoto home was psychologically shaken and was treated so shabbily by the agents of the Defendant that the old man was traumatized for several days after the invasion.

The Applicant was arraigned before a Federal High Court, Abuja on 1st September, 2015 on a one count charge of illegal possession of fire arms. He made a bail application before the Court and was admitted to bail on self- recognizance on the condition that his International Passport number A500033168 be deposited with the Court.

That he subsequently applied to the Court on the 23rd October, 2015 for leave to travel abroad for medical attention and this was granted by the Court on the 3rd November, 2015 for which he purchased his travel ticket and was issued a boarding pass.

However, a day after the order was granted, the Defendant through its agents laid siege on the Applicant's residence at No.13 Khadiya Street, Asokoro , Abuja in Nigeria for a period of one Month, blocking all entrance and exit from the premises and thereby preventing him from travelling to London for medical attention in defiance of the Court order.

On the 13th December, 2015, the Applicant was arraigned before another Court, High Court N0.4 of the Federal Capital Territory, Abuja Nigeria wherein he was charged for another set of offences. Again he applied for and was granted bail on 18th December, 2015.

Meanwhile, the Applicant was at the same time, on 15th December, 2015 arraigned before a 3rd Court, High Court No. 24 of the Federal Capital Territory, Abuja for another set of offences in charge **No. FCT/HC/CR/42/2015** between **FEDERAL REPUBLIC OF NIGERIA Vs. BASHIR YUGUDA & 5 OTHERS** for which he again applied for and was granted bail on the 21st December, 2015.

Having met all the bail conditions imposed by the High Courts, the Courts signed and issued his Release Warrants (orders) to the authorities of Kuje Prison but rather than release the Applicant he was rearrested in defiance of the Court order.

The Applicant's family are seriously worried and troubled about the condition of the Applicant's detention and more worrisome is the fact that the Applicant's state of health has deteriorated significantly his not having been able to attend to his medical needs which were granted to him by the Court since 3rd November, 2015 and the Defendant has refused to honour the Court order.

The Applicant's family concern and apprehension became compounded recently when the President of the Federal Republic of Nigeria, in his maiden Presidential Media Chat on the 30th December, 2015, said that Applicant will not be released because according to the President, the weight of the crimes allegedly committed by the accused against the Nigerian State, if he is allowed to enjoy any form of freedom, he is likely to jump bail.

Accordingly, in bringing this Application, the Applicant contended that his arrest, detention and continued detention is not in accordance with any

known law or judicial proceedings and has inflicted physical, emotional and psychological torture on the Applicant.

That if the Defendant and its agents are not restrained, his rights to life, human dignity, personal liberty, privacy, family life, freedom of movement and right to own properties, which have been impaired and violated, will continue to be impaired, violated and put in jeopardy.

THE APPLICANT THEREFORE SOUGHT THE FOLLOWING RELIEFS FROM THE COURT;

- i. **A DECLARATION** that the **continued detention** of the Applicant by the officers, servants, agents, privies of the Defendant in defiance of orders for his bail granted by Courts of competent jurisdiction in Nigeria, namely the Federal High Court of Nigeria in charge No. FHC/ABJ/CR/319/2015, **FEDERAL REPUBLIC OF NIGERIA Vs COL. MOHAMMED SAMBO DASUKI** and the High Court of the Federal Capital Territory, Abuja, Nigeria in charge N°.FCT/HC/CR/42/2015 between **FEDERAL REPUBLIC OF NIGERIA Vs. BASHIR YUGUDA & 5 ORS** and charge N° FCT/HC/CR/43/2015 between **FEDERAL REPUBLIC OF NIGERIA Vs. COL. MOHAMMED SAMBO DASUKI (RTD) & 5ORS** is **unlawful, arbitrary and an egregious violation of the Applicant's Fundamental Human Rights**

as guaranteed by Sections 34, 35 and 41 of the **Constitution of the Federal Republic of Nigeria** 1999 (As amended), Articles 5, 6, and 12 of the **African Charter on Human and Peoples' Rights** (Ratification and Enforcement) Act Cap D9 Laws of the Federation of Nigeria 2004; Articles 9 and 12 of the **International Covenant on Civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments.

- ii. **A DECLARATION** that *the detention and continued detention* of the Applicant by the officers, servants, agents, privies of the Defendant, after the Applicant met and fulfilled all the bail conditions for his release and after service on the appropriate authorities of the Defendant of release warrants issued by both Federal High Court of Nigeria and the High Court of the Federal Capital Territory, Abuja, Nigeria, *is unlawful, arbitrary and constitutes an egregious violation of the Applicant's human rights* as guaranteed by Sections 34, 35 and 41 of the **Constitution of the Federal Republic of Nigeria** 1999 (As amended)), Articles 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws

of the Federation of Nigeria 1990; Articles 9 and 12 of the **International Covenant on Civil and Political Rights** and Articles 3, 5, 9 and 13 of the **Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments.

iii. **A DECLARATION** that it is an unlawful violation of the Applicant's human rights to personal liberty and freedom of movement as guaranteed and protected by **Sections 35 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (As amended)**, **Article 6 of the African Charter on Human and Peoples' Rights**, **Article 9 of the International Covenant on Civil and Political Rights** and **Articles 3 and 13 of the Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments, for the Defendant to unlawfully detain the Applicant after he was granted bail by Courts of competent jurisdiction and fulfilled all the bail conditions for his release.

- iv. **A DECLARATION** that it is an unlawful violation of the Applicant's Human Rights to dignity of human person, privacy and family life guaranteed and protected rights under **Section 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (As amended), Article 17 of the International Covenant on Civil and Political Rights** and **Article 12 of the Universal Declaration of Human Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above legal instruments, for the Defendants' agents, privies, servants to have unlawfully detained the Applicant under a de-humanizing condition after he had been granted bail by Courts of competent jurisdiction and fulfilled all the bail conditions for his release.
- v. **A DECLARATION** that the invasion of the Applicant's Privacy, Home and or Correspondence at N° 13 John Kadiya Street, Asokoro, Abuja, Nigeria and at both Sultan Abubakar Road, Sokoto and Sabo Bini Road Sokoto, Sokoto State, Nigeria sometimes on the 16th and 17th July, 2015 and the forceful and unlawful seizure of the Applicant's properties listed in schedule of seized properties (Annexure A) by the Defendant, without any lawful order or

warrant of a Court of competent jurisdiction constitutes a gross violation of the Applicant's fundamental rights guaranteed under **Section 44 of the Constitution of the Federal Republic of Nigeria 1999(As amended), Article 14 of the African Charter on Human and Peoples' Rights(Ratification and enforcement) Act Cap A 9 Laws of the Federation of Nigeria 2004 and Article 17 of the International Covenant on Civil and Political Rights** and a most egregious violation of the treaty obligations of the Defendant under and by virtue of its being a signatory to the above listed legal instruments is therefore illegal and unlawful.

- vi. **AN ORDER** directing the Defendant and its agents to forthwith release the Applicant.
- vii. **AN ORDER** directing the Defendant and its agents to forthwith release the Applicant and or his agents/solicitors and all his unlawfully seized properties listed in Annexure A, during the invasion of the house/ home of the Applicant on the 16th and 17th July, 2015 without any lawful order or warrant of any Court of competent jurisdiction.
- viii. **AN ORDER OF INJUNCTION** restraining the Defendant, its officers, servants, agents, privies and anyone taking instruction

from them from further harassing, threatening, intimidating or in any other manner infringing on or interfering with the fundamental rights of the Applicant as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (As amended), Articles 4, 5, and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act cap D9 Laws of the Federation of Nigeria 2004, Articles 9, 12 and 17 of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

- ix. **N500,000,000.00 (Five Hundred Million Naira Only)** as compensatory damages against the Defendant for its egregious violation of the Applicant's Human Rights as guaranteed and protected by the Constitution of the Federal Republic of Nigeria 1999 (As amended), Articles 4, 5, and 14 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004, Article 17 of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

In compliance with Article 59 of the Rules of this Court, the Applicant also filed with the originating Application a motion for expeditious hearing of the suit (Document 2).

At the expiration of the period allowed by the Rules for the Defendant to enter appearance and file their defense to the claim, the Defendant failed to file a defense. Consequently, pursuant to Article 90 of the Rules of this Court, the Applicant brought an application urging the Court to enter Judgment in default, in his favour (Doc. N° 3).

For the purpose of clarity, the initiating Application (Doc. N° 1) was filed on the 4th of January 2016, accompanied by the Motion for Expedited Procedure (Doc. N° 2). The Motion for Judgment in Default was subsequently filed on the 18th of February, 2016 after the expiration of the period of one Month after the service of the Application on the Defendant as required by Article 35 of the Rules of this Court.

6. DEFENDANT'S CASE.

As earlier noted, the Defendant neither entered appearance nor entered a defense within the period required by the Rules for them to do so. Consequently, the Defendant filed a Motion seeking the order of this Court for the extension of time to file a Memorandum of Conditional Appearance and Statement of Defense as well as Preliminary Objection

(Document N° 4) and deeming same as having been properly filed and served. She also filed the said Preliminary Objection (Document N° 5) and a Statement of Defense (Document N° 6). At the hearing of the suit on the 15th day of March 2016, the Motion of the Defendant seeking the extension of time was moved and granted by the Court, not having been opposed by the Applicant. The Applicant also withdrew the Motion for Judgment in Default in view of the development stated above. The Court then proceeded to hear the Defendant's Preliminary Objection.

The Defendant brought this Preliminary Objection pursuant to Article 9 of the Supplementary Protocol of 2005 on this Court and also according to him, under Articles 6 and 133 of the Criminal Procedure Code, S. 6(b) of the Constitution of the Federal Republic of Nigeria and Order 35 of the Federal High Court Civil Procedure Rules 2013, as amended as well as under the Court's inherent jurisdiction.

The Defendant contends that the action by the Applicant was initiated without regard to due process, the reliefs sought by the Applicant were predicated on contempt Order of Nigeria's Municipal Court and as such stripped this Court of Jurisdiction to try this Application due to the pendency of the main cases before the Nigerian Municipal Court.

More specifically, the Defendant stated that;

“This Honourable Court lacks jurisdiction to try this application pursuant to the reliefs sought by the Applicant which are squarely predicated on the contempt of Orders of Nigerian Municipal Courts”.

The Defendant formulated one issue for determination in this application namely;

“Whether the Honourable Court has the requisite jurisdiction to hear and entertain this Applicant’s notice of registration of application as constituted and conceived”.

He submitted that it is settled law that before a Court can exercise jurisdiction to entertain a suit, three basic conditions must be fulfilled by the litigant who initiated the action, namely;

- a. The Court must be properly constituted
- b. The subject- matter of the suit must be within the jurisdiction of the Court.
- c. The suit must come before the Court having been initiated by due process. He cited the Nigerian case of **MADUKOLU VS. NKEMDILIM** (1962) 1 A 11 NLR 58.

The Defendant contended that the crux of the Applicant’s suit is predicated on contempt of Nigerian Courts and posited that this Court cannot entertain applications regarding violation of Nigerian Municipal Court orders, as Nigerian laws have made adequate

provisions for redress. He further contended that the appropriate procedure is to file Form 48 in the Judgment Enforcement Rules. To her, the Applicant's action in this suit is essentially one and the same thing with the one the Applicant brought before Nigerian Municipal Courts. He urged the Court to follow its decision in **ALIYU TASHEKU Vs FEDERAL REPUBLIC OF NIGERIA (2012)** Judgment N° ECW/CCJ/RUL/12/12.

Similarly, the Defendant also relied on the decision in **ALHAJI HAMMANI TIDJANI Vs FEDERAL REPUBLIC OF NIGERIA & 4 ORS** Suit No: ECW/CCJ/APP/01/06 P. 77 at 79.

The crux of the decision in these cases is that this Court cannot retry a case on which a judgment of the domestic Court of a member State has already been delivered against which no contestation has been raised.

She finally, on this count, submitted that the Applicant is tried under an existing Nigerian Domestic law as such he cannot properly file this suit before this Honourable Court.

Furthermore, the Defendant argued that the Application was initiated by a wrong procedure and as such incompetent, thereby divesting this Court of jurisdiction to adjudicate on the same. To

her, the entire action is predicated on alleged disobedience of the Orders of Nigerian Courts, and that the procedure provided for by Nigerian laws have not been complied with. He cited some Nigerian authorities and urged the Court to dismiss and/or strike out this action for want of jurisdiction stemming from incompetency in initiating the Application against the Defendant.

The Applicant, in his reply to the issues raised by the Defendant, submitted as follows;

- a. That the Application is not for contempt of Nigerian Courts but for enforcement of the human rights of the Applicant as contained in the narration of facts.
- b. That the Court has jurisdiction to entertain this suit by virtue of the provisions of Article 9 (4) of the Supplementary Protocol A/SP.1/01/05 relating to the Community Court of Justice which confers jurisdiction on the Community Court of Justice to determine cases of violation of human rights that occur in any Member State. That the Defendant is a Party to that treaty and therefore bound by it.
- c. That the Defendant is also a signatory to the African Charter on Human and Peoples' Rights, the International Covenant on Civil

and Political Rights and the Universal Declaration of Human Rights which this Court is enjoined to interpret and apply by virtue of the treaty establishing it.

- d. That the crux of the Applicant's complaint is that he is being detained without any lawful justification in disregard of the Defendant's International obligations and the Preliminary Objection is based on misconception of the juridical and jurisdictional powers of this Court.
- e. That by Article 10(d) of the Supplementary Protocol relating to this Court, it has concurrent jurisdiction with Municipal Courts over Human Rights issues.
- f. That the decision of this Court in **MUSA SAIDY KHAN Vs. REPUBLIC OF GAMBIA** ECW/CCJ/RUL/04/09 is germane to the determination of this suit and that **ALIYU TASHEKU Vs. FEDERAL REPUBLIC OF NIGERIA** (2012) ECW/CCJ/RUL/12/12 is not applicable in this case mainly because in **Aliyu Tasheku's** case the Applicant was lawfully arrested whereas here the Applicant complains about his unlawful arrest and detention without recourse to due process after being granted bail by three Courts in Nigeria. The Applicant relied on the cases of **MAMADOU**

TANDJA Vs. NIGER ECW/CCJ/JUD/05/10; **BAKARY SARRE & 28 ORS Vs. REPUBLIC OF MALI** ECW/CCJ/ JUD/03/11 (2011 CCJ ELR); **HUSSEIN HABRE Vs. SENEGAL** ECW/CCJ/JUD/02/10 of 14th May 2010, paragraph 53, 58 and 59 and the decision in **CENTRE FOR DEMOCRACY AND DEVELOPMENT & 2 ORS VS.MAMADOU TANDJA & ANOR** ECW/CCJ/JUD/05/11 to invoke the jurisdiction of this Court in this Application.

7. ANALYSIS BY THE COURT.

For the purpose of emphasis, the Defendant brought this Preliminary Objection challenging the jurisdiction of this Court to entertain the Application of the Applicant. Their objection is predicated on the ground that the Applicant's action was initiated without regard to due process of law and the reliefs sought by the Applicant were predicated on contempt of the order of the Defendant's Municipal Court. They further contended that the Court also lacked jurisdiction to entertain the Application due to the pendency of the main case before Nigerian Municipal Courts.

In his reply to the Preliminary Objection, the Applicant stated that his Application before this Court is not founded or predicated on contempt of the orders of Nigerian Courts. He maintained that the major issue before this Court is the detention of the Applicant by the agents of the

Defendant without any lawful justification, he having been originally released by the order of Municipal Courts. In the same vein, that Nigerian Municipal Courts having held that its order admitting the Applicant to bail was not flouted by the Defendant, their assertion that this action is based on the Defendant's contempt of the Municipal Court order is incorrect. Accordingly, it is also incorrect as alleged by the Defendant that the remedy available to the Applicant lies in the pursuit of proceedings provided for in Form 48 of the High Court Procedure Rules at the national level. The Applicant cited a plethora of decisions by this Court to the effect that once the allegation before this Court is the violation of human rights, the Court has jurisdiction to entertain same and concluded that the current Application, as can be gleaned from the facts, is for the violation of the human rights of the Applicant and that is sufficient to invoke the Court's jurisdiction.

Before considering the issues for determination raised by this Application, it is pertinent to observe as follows;

- i. The Defendant's objection (Document 5) which according to her is brought inter alia, under S.6 (6) of The Constitution of the Defendant and Order 35 of the Federal High Court Civil Procedure Rules, as well as S.1 Sections 6 and 133 of the Criminal Procedure

Code also of the Defendant, is legally faulty. For the avoidance of doubt bringing this Application on these planks is unfounded. This is because this Court is a Sub-Regional International Court that does not derive its powers or jurisdiction from any of the domestic laws of Member States of the Economic Community of West African States (ECOWAS). The Court's powers are as contained in the 1991 Treaty relating to the Court and the Supplementary Protocol of 2005.

8. ISSUES FOR DETERMINATION IN THIS PRELIMINARY OBJECTION.

From an analysis of the Defendant's Preliminary Objection together with the argument and pleas in law in support, as well as the Reply of the Applicant, two major issues call for the determination of this Court, namely;

- i. Whether from the totality of the facts presented by the Applicant, the subject matter of this proceeding falls within the jurisdiction of this Court.
- ii. Whether the pendency of the case or similar cases before the Municipal Courts of the

Defendant is a bar to the jurisdiction of this Court as claimed by the Defendant.

On the first issue, whether from the facts presented by the Applicant in this application, this action falls within the jurisdiction of this Court. It is trite law that jurisdiction is the cornerstone or foundation for the exercise of the judicial powers of a Court and any determination by a tribunal devoid of jurisdiction is not only a nullity but also an exercise in futility.

A Nigerian Court *Per Belgore JSC*, in the case of **PETROJESSICA ENTERPRISE LTD Vs. LEVENTIS TECHNICAL CO.LTD** (1992) 5 NWLR (PT 244)675 AT 693 have rightly observed inter alia that:

“Jurisdiction is the very basis on which any tribunal tries a case. It is the lifeline of all trials; a trial without jurisdiction is a nullity The importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, and on appeal to Court of Appeal or to this Court, a fortiori the Court can suo moto raise it. It is desirable that Preliminary Objection be raised early on issue of jurisdiction, but once it is apparent to any party that the Court may not have jurisdiction , it can be raised even Viva Voce as in this case. It is always in the interest of justice to raise issue of jurisdiction so as to save time and costs and avoid a trial in futility”

It is equally settled that for a Tribunal or Court to exercise jurisdiction over a suit before it, it must satisfy itself as to the existence of three basic conditions; namely:

- a) The Court must be properly constituted
- b) The subject matter of the suit must be within the jurisdiction of the Court
and
- c) The suit must have been initiated by due process.

In this regard, jurisdiction is inferred from the facts presented by an Applicant (Plaintiff) and not from the defense. A careful examination of the facts relied upon in this Application and the reliefs being sought by the Applicant show that the crux of his allegation is that he was arrested and detained without any lawful justification and in violation of his rights as guaranteed by Articles 3, 6, 12, 14 of the African Charter on Human and Peoples' Rights and other International Human Rights Instruments to which the Defendant is a party.

In addition, the Applicant further contends that the unlawfulness of his arrest is reinforced by the Statement purportedly made by the President of the Defendant that the Applicant will never be released.

It must be noted that the Court at this stage is not determining whether these allegations are true or not but whether it has power to inquire into the merits of the case. The jurisdiction of this Court over human rights and the accompanying jurisprudence is contained in Article 9(4) of the Supplementary Protocol 2005 which provides that:

“The Court has jurisdiction to determine cases of violation of human rights that

occur in any Member State”.

In the same vein, Article 10(d) of the said Supplementary Protocol provides for who can access the Court for human rights violations as follows:

Access to the Court is open to the following;

- d. Individuals on application for relief for violation of their human rights, the submission (or application) of which shall not be anonymous nor be made while the same matter has been instituted before another International Court for adjudication.

In expounding the import of the above provisions, this Court, in **HISSEN HABRE Vs. SENEGAL** (2010) CCJ LR P 65, held that in order to determine whether or not it has jurisdiction to hear a case, the Court has to examine if the issue(s) submitted to it for adjudication deals with rights enshrined for the benefits of the human person and arising from the International or Community Obligation of the State as human rights to be observed, promoted, protected and enjoyed and whether the alleged violations were committed by a Member State of the Community.

Similarly, in **HAMMANI TIDJANI Vs. FEDERAL REPUBLIC OF NIGERIA & 8 ORS**, this Court laid down the condition precedent to its assumption and exercise of jurisdiction as follows;

The combined effect of Article 9(4) of the Protocol of the Court (as amended), Article 4(g) of the Revised Treaty and Article 6 of the African Charter on Human and Peoples' Rights is that the Plaintiff must invoke the Court's jurisdiction by:

- i. Establishing that there is a right recognized by Article 6 of the African Charter on Human and Peoples' Rights (or other International Human Rights Instruments to which the Defendant State is a party) (words in parenthesis are ours).
- ii. That this right has been violated by the Defendant
- iii. That there is no action pending before another international Court in respect of the alleged breach of his rights and
- iv. That there was no previously laid down law that led to the alleged breach or abuse of his right.

The question that arises is whether the Applicant has sufficiently satisfied these conditions precedent to invoking the jurisdiction of this Court. The answer is in the affirmative.

International Human Rights Law aims at protecting individuals from abusive actions by States and States' agents.

Where , therefore an individual alleges an infringement by a Member State or its agents of his right under any international instruments to which the State is a

party, this Court in the absence of anything to the contrary is competent to hear the case.

The Applicant in the case alleges that the agents of the Defendant;

- i. Without warrant invaded and barricaded his house for 24 hours, conducted searches and carted away his properties in violation of his rights guaranteed under the Nigerian Constitution, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, as well as the Universal Declaration of Human Rights.
- ii. From 3rd of November to 13th December, 2015 without lawful authority blocked all access to and from his house thereby denying him access to travel for medical care, in violation of his right to personal liberty, freedom of movement, privacy and family life.
- iii. Re- arrested and detained him in an unknown location without charge in total disregard of orders of Court for his release on bail, in violation of his rights to be free from arbitrary arrest and detention.

These issues enumerated above in the opinion of this Court certainly raise questions of fundamental human rights violations and are within the subject matter of jurisdiction of this Court as provided for under Article 9 of the Supplementary Protocol 2005 of this Court.

The Plaintiff in his originating application not only itemized the subject matter of the proceedings, but also the particular Articles of the Human Rights Instruments violated and orders sought from the Court. There is nowhere either in the summary of facts presented, or in the orders sought by the Applicant can an inference of the Applicant's case be founded on contempt proceedings be deciphered.

A contempt proceeding refers generally to a willful disobedience of a Court Order or any misconduct before a court or action that interferes with the judges' ability to administer justice or that insults the dignity of the Court. It is a proceeding commenced by the Court itself against a Party guilty of the Contemptuous act.

Indeed, contempt proceedings and alleged human rights are two distinct aspects of law. It appears that the Defendant misread the Applicant's Application, which to all intents borders on human rights violations. More so, the Defendant admitted that the National Court in its decision made an order that the Plaintiff's bail, previously granted by the Court has in no way been breached or flouted.

Similarly, it is obvious that the Defendant's Notice of Preliminary Objection is built on a misconception of the definition and import of due process.

In other words, the issue of due process canvassed by the Defendant in this Objection does not relate to this case. The case pending before the National

Court is a criminal case while the case before this Court is an alleged violation of the Applicant's human right guaranteed under international human rights instruments.

The Applicant approached this Court via an Application containing his full particulars and as such is not anonymous. The present suit is also not pending before any international Tribunal or Court. Thus, the issue of due process raised by the Defendant is misconceived and goes to no issue.

The Court in **BAKARE SARRE Vs. MALI** (2011) CCLR 57 categorically stated that once the human rights allegedly violated involves the international or Community obligations of a State, it will exercise jurisdiction.

On the face of the Application presented by both parties, it is beyond contention that the issues raised above are human rights issues and within the subject matter jurisdiction of this Court as provided under Article 9 of the Supplementary Protocol, and the Court so holds.

The second issue is "whether the pendency of the case before a domestic Court ousts the jurisdiction of this Court as alleged by the Defendant".

Ouster of a Court's jurisdiction is not a matter of course. For a Court's jurisdiction to be ousted, it must be clearly shown that the particular action complained against falls outside its defined jurisdiction.

For further emphasis, Article 10 (d) of the Supplementary Protocol of 2005 relating to this Court provides that:

Access to the Court is open to individuals on application for relief for the violation of their rights and such application should neither be anonymous nor be made whilst the same matter has been instituted before another International Court for adjudication. The above provisions are clear and unambiguous requiring no further rigorous interpretation. LORD GRIFFITH has correctly stated the position in the English case of **PEPPER Vs. HART** (1993) ALL E.42 at 50 that;

“The days have long passed when the Court adopted a strict constructionist view on the interpretation which required them to adopt the literal meaning of the language, the Court now adopts a purposive approach which seeks to give effect to the true purpose of the legislation and is prepared to look at much extraneous material that bears upon the background against which the legislation was enacted”.

LORD WENSLEYDALE in **GRAY Vs. PEARSON** (1857) 6 HLC 61 at 106 equally opined that in construing written instruments, the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.

In view of the foregoing, it is clear that as in the present case, the words of the Protocols establishing the Court are unambiguous and the Court is duty bound to apply them.

The Defendant's contention that a similar action is pending before the Nigerian Court and as such this Court cannot entertain this issue is unfounded.

In VALENTINE AYIKA Vs. REPUBLIC OF LIBERIA (2011) CCJ LR P.233, the Defendant's objection to the Court's jurisdiction was based on the fact that there is a pending case before the Liberian Supreme Court, this Court held that the Supreme Court of Liberia and for that matter any Domestic Court in a Member State does not qualify as an international Court within the meaning of Article 10 (d) of the Supplementary Protocol of this Court. See also **AZIEKPELEKOKOU Vs. REPUBLIC OF TOGO** Suit: ECW/CCJ/APP/08/13.

The effect and significance of the cases cited above is such that a party who alleges a violation of his human rights not only has access to this Court even if the same suit is pending in National Courts but also can maintain such action even without exhausting local remedies. See **ETIM MOSES Vs. GAMBIA (2004-2009) CCLR 95**

A careful perusal of the Application shows that the case pending before the Domestic Court of the Defendant as presented by the Defendant shows that they are based on allegation of commission of crime which is outside the jurisdiction

of this Court, but they are not the same with the present Application. Cases pending before two Courts are considered the same if and only if the parties are the same and the subject matter is the same.

Where, therefore, as in this case, the parties and the subject matter of the proceedings are not the same, the Defendant's contention on the similarity of the cases cannot be sustained. For the avoidance of doubt, this Court is a special one and vested with special jurisdiction and its visibility is mainly in the area of the protection and enforcement of human rights. It does not exercise, appellate or supervisory jurisdiction over Domestic Courts of Member States.

As this Court stated in **Dr. MAHAMAT SEID ABAZENE Vs. REPUBLIC OF MALI**

“The Court is not a Court of Appeal against decisions delivered by National Courts of ECOWAS Member States regarding their area of jurisdiction”.

It is a Court of sui generis character whose jurisdiction is founded on alleged violation of human rights of individuals by Member States of ECOWAS and it must act within the ambit of those powers

Accordingly, this Application is declared admissible.

Consequently,

FOR THESE REASONS

The Court

