

COMMUNITY COURT OF JUSTICE,
ECOWAS
Tribunal de Justice de la Communauté,
CEDEAO
Tribunal de Justiça da Comunidade,
CEDEAO



No. 10 DARES SAI'AM CRESCENT
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA-NIGERIA.

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

HOLDEN AT ABUJA, NIGERIA
This Tuesday 10th June, 2014

SUIT NO: ECW/CCJ/APP/15/13

RULING NO: ECW/CCJ/jud/14/14

BETWEEN

MAIMUNA ABDULMUMINI

PLAINTIFF

AND

FEDERAL REPUBLIC OF NIGERIA
KASTINASTATE GOVERNMENT
THE NIGERIAN PRISONS SERVICE

DEFENDANTS

BEFORE THEIR WRDSHIPS

HON. JUSTICE HANSINE .N. DONLI
HON. JUSTICE AWA NANA DABOYA
HON. JUSTICE ANTHONY .A. BENIN

PRESIDING JUDGE
MEMBER
MEMBER

TONY ANENE-MAIDOH ESQ.

CHIEF REGISTRAR

REPRESENTATION

Ajare Noah with Kolawale Ogunbiyi
No Appearance for
Hassan Yusuf with Abdulrahman Umar

PLAINTIFF
1st DEFENDANT
2nd DEFENDANT

Oche Veronica

3rd DEFENDANT

JUDGMENT

PARTIES

1. The plaintiff is Maimuna Abdulmumini a Nigerian and a Community Citizen who was convicted contrary to section 221 of the Penal Code of Nigeria for culpable homicide punishable with death and sentenced to death by hanging.
2. The 1st Respondent is the Federal Republic of Nigeria.
3. The 2ND Respondent is Katsina State Government where the Applicant was tried, convicted and sentenced to death by hanging.
4. The 3rd Respondent is the Nigerian Prison Service where the Applicant is remanded in custody pending the hearing of her appeal and/or execution of her death sentence.

PROCEDURE

5. The Applicant lodged her application pursuant to Articles 32-33 of the Rules of Procedure on 13th of August 2013. Marked Document no. 1 stating the violations and the reliefs sought in this court.
6. The applicant filed a motion on notice pursuant to Article 59(1)(3) (7) 79 of the Rules for accelerated hearing of the application marked Document No.2.
7. The 1st Defendant filed on 4th October, 2013 their Statement of Defence raising their plea in law under Section 29(4) of CFRN of 1999 that every married woman is of full age, marked Document no. 3.....
8. The 2nd defendant filed motion for extension of time and counter affidavit under Article 33 of the Rules. Marked Document no. 4 and 5.
9. Records of proceedings of the High Court marked Document SA.
10. Statement of Defence of the 2nd Defendant marked Document no. 8.
11. Statement of the 3rd Defendant under Article 1 (1) of the Rules. Marked Document no. 11.

SUMMARY OF THE FACTS OF THE APPLICATION

12. The plaintiff/Applicant lodged in the Registry of the Court an originating application dated 13th August, 2013 under Article 33 of the Rules of the procedure of this Court whereby she sought the following reliefs stated inter alia thus:

- a) A declaration that the pronouncing of death penalty against the plaintiff is a violation of her right to be represented in court and of the right to due process as guaranteed by article 7 of the African Charter;

- b) A declaration that the sentence against the plaintiff for facts that happened during her minority is violation of her fundamental rights as guaranteed under articles 5 and 17 of the African Charter on the Rights and Welfare of the Child;
- c) A declaration that the condemnation of the mother of a young child to death is a gross violation of article 30 of the African Charter on the Rights and Welfare of the Child;
- f) a declaration that the condemnation to death by hanging is a form of torture cruel in human and degrading treatment or punishment;
- g) a order that the death sentence be quashed and the plaintiff released until it can be ensured that she will benefit from fair proceedings as guaranteed by international standards;
- h) in the alternative an order that the defendant commutes forthwith the sentence of death penalty to another sentence which will take care of the case's peculiarities, the condemnation were pronounced for facts committed during the minority of the plaintiff and while she is actually the mother of a young girl;
- i) in the further alternative, an order that the plaintiff be transferred to other facilities specifically suited for the holding of a young woman who was below 18 years of age when the facts occurred;
- j) in any event an injunction to restrain the defendants from executing the death sentence pronounced without respect of the plaintiffs rights to defence, to a special treatment as a minor and as a mother, to dignity, and to be free from torture and inhuman punishment;
- k) an order directing the defendant to pay adequate monetary compensation of N10,000000 (ten million naira) only as a result of the undergone moral damage.

FACTS OF THE CASE.

13. Based on these reliefs the plaintiff narrated the facts of the case to justify the granting of the said reliefs. The plaintiff was arrested on March 28, 2006, being suspected of setting her husband on fire and causing his death. At the time, she was only 13 years old and had already been married for 5 months. She was remanded in Katsina Children Remand Home, where she

spent about six months, until the conclusion of the Police investigation. She was released on bail.

14. She remarried two years after the death of her first husband and gave birth to a baby girl, who is now 18 months old. She is still nursing her. She received legal advice on February 25 2009, more than 2 years after her release on bail. She was charged for culpable Homicide on the person of her previous husband, pursuant to section 221 of the Nigeria Penal Code. Katsina State assigned her a Counsel, who did not file a final address nor made any mitigation plea on her behalf. As a result the judge sentenced her to death by hanging on December 6th 2012. She was subsequently admitted in Katsina Central Prisons, where she remains till today. She is imprisoned in a cell with six other inmates and nursing her baby girl inside the prison.
15. The 1st defendant denied the allegations contained in the plaintiffs statement of claim and demanded for the strictest proof thereof. The 1st defendant narrated their defence that the plaintiff was a full grown adult at the time of the commission of the crime of murder of her husband. She was accordingly charged to court, convicted and sentenced to death. The 1st defendant claimed that any woman who is married in Nigeria shall be deemed to be of full age.
16. The 1st defendant also claimed that the plaintiff was an adult both in law and biologically when she committed the offence of murder. The 2nd defendant claimed that the plaintiff knowing fully that, her husband is a cripple and while he was asleep she intentionally decided to set the room ablaze and locked him inside, at the end of the exercise she went away to an unknown destination and after sometime; she appeared on the pretext that she was confused. The 2nd defendant also claimed that the case was investigated by the police who submitted the case diary for legal advice and after a careful perusal; the Counsel found that, the plaintiff narrated the way and manner she committed the offence because nobody saw her as at the time of the incidence, consequently, the trial court had no alternative than to rely on her confessional statement and convicted her accordingly.
- 17.. The 2nd defendant also claimed that a Counsel was assigned to defend her and a careful perusal of the record of proceedings shows that the Counsel to the plaintiff at the trial court

failed to give his final address on the basis that his address will not improve on the facts of the case. The plea of allocutus was made by her Counsel which the trial judge considered and rightly recommended the executive Governor of Katsina State to act under his prerogative power of mercy to commute the sentence to life imprisonment. The 2nd defendant further claimed that the plaintiff intentionally decided to hold her baby girl until she has weaned her in order to call for local, national and international support for her release despite the initial demands for her to release the baby to her father, the plaintiff refused to do so. Furthermore, that there is no law that exists in Nigeria which prohibits passing death sentence on either adult or young person, he therefore claimed that death sentence is constitutionally and statutorily recognized and permitted in Nigeria.

18. The 3rd defendant in its defence, claimed that the applicant was received into prison custody by a lawful court order. Also, that it is statutorily mandated to take and keep custody of persons legally interned. The 3rd defendant also claimed that the applicant was committed to its custody vide a valid commitment warrant. The 3rd defendant also claimed that the applicant was an adult above 18 years when she was received into prison custody. The 3rd defendant further claimed that it is not its duty to prosecute inmates in its custody hence it did not participate in the prosecution of the plaintiff.

19. Also that nothing in the Nigerian law prevents or prohibits a court from sentencing/committing a nursing mother to prison. That going with an infant into prison custody is at a total discretion of the inmate/mother. The 3rd defendant claimed that the plaintiff's cell was reasonably decent, hygienic and standard being a new cell block. That toiletries, beddings, mattress and mosquito nets were provided for all the inmates particularly the claimant and her infant. The 3rd defendant also claimed that clean portable water is pumped by bore hole on daily basis. That the right of appeal against the decision of High Courts in Nigeria, lies to the Court of Appeal.

LEGAL ARGUMENTS OF COUNSEL:

The plaintiff:

20. The plaintiff's counsel based their arguments on the African Charter on Human and Peoples' Rights which is applicable to all Member States of ECOWAS, pursuant to Article 4 of the Revised Treaty which provides that

'The High contracting parties, in pursuit of the objectives stated in Article 3 of this Treaty,-solemnly affirm and declare their adherence to the following principles: '

4(g) ...recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human Rights '

21. . That the Federal Republic of Nigeria itself has ratified and adopted the African Charter on Human and Peoples' Rights in 1990, implemented in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9, Laws of the Federation of Nigeria, 2004. The Plaintiff avers that, being a citizen of Nigeria, she is entitled to the enjoyment of her fundamental rights as set out in the Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria and in the African Charter on Human and Peoples ' Rights The plaintiff avers that the sentence is a violation of the right to defence resulting from Article 7(c) of the African Charter and of the right to appeal a conviction. That this sentence violates her fundamental rights, the judge having ruled without considering the fact that her counsel did not effectively defend her nor represent her during the trial.

22. Also that Article 4 of the African Charter on Human and Peoples' Rights and Article 6 of the International Covenant on Civil and Political Rights both protect the right to life and provide that no one may be arbitrarily deprived of this right. Further, that **Article. N. 10 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa** reads:

'Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal' and more specifically 'Anyone sentenced to death shall have the right to appeal to a judicial body of higher jurisdiction.'

23. Therefore, being subject to a death sentence, the plaintiff must be awarded the possibility to appeal the ruling. Moreover, the appeals proceedings would stay the execution of the death sentence, as provided by the same text *'A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal '*. Plaintiff relied on the case of **Bello v AG Oyo State (1986) 5 NWLR (PT45) 828@ 860-861**, the court held that the execution of an inmate while the appeal on his conviction was still pending to be unconstitutional. The sentence violates the rights of the plaintiff as a child resulting from Article 5(3) and Article 17 of the African Charter on the Rights and Welfare of the

Child. Also, that death sentence cannot be pronounced for the crimes committed by persons below eighteen years of age. That Nigeria acted in violation of its international obligations when it agreed to include children in the scope of death penalties. Indeed, Article 6§5 of the International Covenant on Civil and Political Rights provide that *'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age'*. And Article 5§3 of the African Charter on the Rights and welfare of the Child that: *'death sentence shall not be pronounced for crimes committed by children'*.

24. He submitted that the plaintiff was below the age of 18 when the facts occurred. That special treatment due to minors has been denied to the plaintiff since the Nigerian judge did not take into consideration the fact that she was a minor when the fact occurred. Plaintiff claimed that under the African Charter on the Rights and Welfare of the Child 'A *child means every human being below the age of 18 years*'. As provided in its Article 17 *'every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth'*, and *'shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence'*.

25. More-over, Article 10 of the International Covenant on Civil and Political Rights provides that: *'Juvenile offenders shall be segregated from adults'*, therein the plaintiff was presented and sentenced by a court as an adult, without any consideration of her young age. That the African Charter on the Rights and welfare of the Child also provides in its Article 30 that *mothers should not be imposed death sentence*. That the detention of a mother with her infant deprived of any access to basic care constitutes a form of torture, cruel, inhuman and degrading treatment or punishment. Plaintiff relied on Article 5 of the African Charter and Article 30 of the African Charter on the Rights and welfare of the Child to buttress their point.

26. In conclusion, plaintiff avers that death by hanging is a form of torture, cruel, inhuman and degrading treatment or punishment. The plaintiff avers that she is entitled to perpetual injunction to restrain the defendants from infringing on her fundamental rights aforesaid.

1st defendant:

27. The 1st defendant relied on Section 29(4) of CFRN, 1999 (as amended) which recognizes every married woman as of full age. Also, that decisions of High Courts lie on appeal to the Court of Appeal Furthermore, that the constitution provides for prerogative of mercy to be exercised by the Governor upon the application of section 212 of the CFRN, 1999 as amended and that death penalty is still an extant law in Nigeria. It therefore prayed that the application be dismissed for lack of merit.

2nd defendant:

28. Relying on the case of **Joseph Ibidapo v Lufthansa Airlines (1997) 4 SCNJ Pg1 at pg 3**, the 2nd defendant stated that in view of the decision in the above case, no law exists, which prohibits passing death sentences on either adults or young persons. Also in the case of **Joseph Amoshima v The State (2011) 6 SCNJ Pg 245 at 247** held:

'Whereas in very many jurisdictions the death sentence is frowned upon or even abolished. In Nigeria, it is fairly enshrined in our statutes'

29. Therefore, death sentence is constitutionally and statutorily recognized and permitted in Nigeria. On the applicability of International Conventions, the 2nd defendant relied on the case of **Harka Air-Service (Nig) -Limited v Emeka Keazor (2011), 6 SCNJ, 151 AT 155** where it was held that:

'The Warsaw Convention 1929 which is applicable and relevant to the instant appeal was domesticated as a Nigerian Law by the carriage by air (colonies, protectorates and Trust Territories) order 1953 Vol. XI laws of the Federation 1958, as amended by the Hague protocol. It is still part of the existing law in Nigeria pursuant to section 315 of the 1999 constitution as it has not been repealed by any law or rendered invalid or incompetent by any court of competent Jurisdiction'

30. The 2nd defendant stated consequently, that all the conventions mentioned with the exception of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9, Laws of the Federation of Nigeria, 2004, none of such conventions was either ratified or domesticated as Nigerian Law to warrant its applicability in the country, they therefore urged the Court to discountenance the submission made by

the plaintiff counsel. Furthermore, that in the case of **Abacha v Fawehinmi (2000) 6 -NWLR PT (660) PG 228 AT PP 288-289** where it was held:

'Suffice to say that an International treaty entered into by the Government does not become binding until enacted into law by the National Assembly see Section 12 (1) of the 1979 Constitution'.

31. The fundamental rights as provided in Chapter IV of the 199 Constitution of Federal Republic of Nigeria as amended were dully observed by the trial court bearing in mind that, the offence of culpable homicide contrary to Section 221 of the Penal Code carries death sentence. On enforcement of international human rights standards the 2nd defendant cited the case of **Segun Ogunsanya v The State (2011) 6 SCNJ PAGE 190 AT PAGE- 195** where the Court held that

A case is won on credible evidence and not on address. No amount of brilliant address or playing to the gallery by counsel can make up for lack of evidence to prove or defend a case in court. The main purpose of an address is to assist the court, and is never a substitute for compelling evidence. Failure to address will not be fatal or cause miscarriage of justice'.

The 3rd defendant

The 3rd defendant-relied on the provisions of regulation 2 of the Prisons. Regulation made pursuant to section 15 of The Prison Act Cap P27 Laws of the Federation of Nigeria, 2004 which lays down the conditions by which a person may be admitted into Prison custody Also, that the Prisons Standing Order 2011 provides in Order 476 that the officer who receives any prisoner must satisfy himself that the usual papers are brought with the prisoners and that they are in order. Based on this, the 3rd defendant stated that they have exhibited the warrant/commitment which the accused person was admitted into custody. The 3rd defendant also relied on the united Nations Minimum Standard Rules for the treatment of Prisoners (UN MSR) adopted by the United Nations General Assembly Resolution 43/173 of 19th December 1988 which sets out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of penal institutions. The provisions of Nigerian Prison Standing orders concerning treatment of infants complies substantially with the UN MSR.

33. Furthermore, the 3rd defendant avers that it does not lie within its powers to determine whether, when or how a death warrant is to be-executed. That it is the exclusive preserve of the representative State Governors or the President of the country. It made reference to Sections 371 and 374 of the Criminal Procedure Act Cap C41 Laws of the Federation of Nigeria, 2004 and sections 294-298 (Criminal Procedure Code). Also section 204 of the 1999 constitution of the Federal Republic of Nigeria vests in the Court of Appeal, the exclusive jurisdiction to hear and determine appeals from the High Court of a State. The 3'd defendant relied on the case of **Mousa Leo Keita v The State of Mali (2009) 1 CCJLR (PT2) 58**: The Community Court of Justice held that it is not a Court of Appeal vis-a-vis the national courts of member states. Also, that it does not possess the power to revise decisions made by the domestic courts of member States; hence it was powerless and cannot adjudicate upon decisions of national courts. It therefore submitted that the jurisdiction of the Community Court does not extend to appeals from decisions of domestic courts of member States.

ANALYSIS OF THE COURT

34. Having considered the facts of this case, the legal arguments of the respective parties, the reliefs sought by the parties, we hold that the said issues require serious consideration to determine their veracity, justification and the proof of the application herein.

JURISDICTION

35. Let us restate clearly from the onset that the question of jurisdiction was determined in the preliminary ruling decided in this case whereby the court held that where the facts raised the issues of violations of human rights that occur in any member state and the complaint is by an individual and pursuant to Articles 9(4) and 10(1) of the Supplementary Protocol, Article 4(g) of the Revised Treaty of ECOWAS, Article 5 of the African charter or any of the provisions of the African Charter on Human and Peoples Rights relating to the rights of the people collectively and individually and other international human rights instruments assented to by the Member States of ECOWAS with no pending litigation in any international court, this Court would assume jurisdiction. Having considered the facts and all the relevant instruments we held that the court had jurisdiction to determine the subject matter in this case. We further affirm that this court has jurisdiction in this case. Now to the issues raised in the substantive matter which shall be taken below thus:

- a) *whether the sentence of death passed on the Applicant/plaintiff by the defendant happened when she was a minor thereby making her conviction and sentence of death a violation of her fundamental rights as guaranteed under Articles 5 and 17 of the African Charter on the Rights and Welfare of the Child; A declaration that the condemnation of the mother of a young child to death is a gross violation of article 30 of the African Charter on the Rights and Welfare of the Child;*
- b) *whether a declaration that the condemnation to death by hanging is a form of torture cruel in human and degrading treatment or punishment;*
- c) *Whether Articles 5(3) and 17 of the African Charter on the Rights and welfare of the Child are applicable in this case to defeat the conviction and sentence of death passed on the applicant being a child below the age of 18 years.*
- d) *Whether by declaring or not that Article 5(3) and 17 of the said Charter are applicable amounted to reviewing the decision of the High Court of Dutsinma in Katsina State, a judicial organ of Nigeria- a Member State.*

36. Whether the provision of any national legislation can defeat the provision of a Treaty or the African Charter on Human and Peoples' Rights which have been domesticated under Section 12 of the Constitution of the Federation of Nigeria.

37. The submission of the 3rd defendant that it did not lie within the powers of this court to determine when and how a death warrant is to be executed is misconceived; though the conviction and sentence is the exclusive preserve of the State Governors or the President of the country to amend or vary same. Sections 371 and 374 of the Criminal Procedure Act Cap C41 Laws of the Federation of Nigeria 2004 and sections 294-298 (criminal Procedure Code) are applicable to the proceedings in the national trial court and also section 204 of the 1999 constitution of the Federal Republic of Nigeria for such cases to lie on appeal at the Court of Appeal, from the High Court of a State in terms of violation of human rights pertaining The 3rd defendant relied on the case of **Mousa Leo Keita v The State of Mali (2009) 1 CCJLR (PT2) 58**: The Community Court of Justice held that it is not a Court of Appeal vis-a-vis the national courts of member states. Also, that it does not possess the power to revise decisions made by the domestic courts of member States; hence it was powerless and cannot adjudicate upon decisions of national courts. It therefore submitted that the jurisdiction of the Community Court does not extend to appeals from decisions of domestic courts of member States.

38. The question is whether the relief sought in this case by the Applicant/plaintiff had been justified. Taking the first issue for determination, the review of what the learned counsel submitted becomes necessary in this case. The 1st defendant relied on Section 29(4) of CFRN, 1999 (as amended) which recognizes every married woman as of full age also, that decisions of the High Court lie on appeal to the Court of Appeal of Nigeria. The 2nd defendant, relying on the case of *Joseph Ibidapo v Lufthansa Airlines* (1997) 4 SCNJ Pg 1 at pg 3, stated that in view of the decision of the above case, no law exists, which prohibits passing of death sentences on either adults or young persons and also relied on the case of *Joseph Amoshima v The State* (2011) 6 SCNJ Pg 245 at 247 where the court held:

'Whereas in very many jurisdictions the death sentence is frowned upon or even abolished. In Nigeria, it is fairly enshrined in our statutes'.

38. He therefore, urged the Court to hold that death sentence is constitutionally and statutorily recognized and permitted in Nigeria and that the fundamental rights as provided in Chapter IV of the 1999 Constitution of Federal Republic of Nigeria as amended were dully observed by the trial court bearing in mind that, the offence of culpable homicide was contrary to Section 221 of the Penal Code which carried a death sentence. The 3rd defendant relied on the case of *Mousa Leo Keita v The State of Mali* (2009) 1 CCJLR (PT2) 58 where this Court held that it is not a Court of Appeal decisions of national courts of Member States. Also, that it did not possess the power to revise decisions made by the domestic courts of member States; hence it was powerless and cannot adjudicate upon decisions of national courts. It therefore submitted that the jurisdiction of the Community Court does not extend to appeals from decisions of domestic courts of member States.

39. However, the plaintiff contended that the sentence of death passed on the Applicant/plaintiff is a violation of her human rights pursuant of Article 7(c) of the African Charter on Human and Peoples' Rights and that the trial judge having even observed that her counsel did not effectively defend her nor represented her during the trial. He also referred to Article 4 of the African Charter on Human and Peoples' Rights and Article 6 of the International Covenant on Civil and Political Rights which are laws that both protect the right to life and provide that no one may be arbitrarily deprived of this right. He further referred to Article N.10 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa to justify his stance.

40. On the decision of the trial court being subject to appeal and that execution of the sentence shall be stayed¹ while the appeal to the Court of Appeal is yet to be determined, he urged the Court to hold that execution of the applicant should be halted until the appeal is determined. Plaintiff relied on the case of **Bello v AG Oyo State (1986) 5 NWLR (Pt45) 828 @ 860-861**, where the court held that the execution of an inmate while the appeal on his conviction was still pending to be unconstitutional thereby justifying that a judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal'. The sentence violates the rights of the plaintiff as a child resulting from article 5§3 and article 17 of the African Charter on the Rights and welfare of the Child.

41. Also, that death sentence cannot be pronounced for the crimes committed by persons below eighteen years of age. That Nigeria acted in violation of its international obligations when it agreed to include children in the scope of death penalties. Indeed, Article 6(5) of the International Covenant on Civil and Political Rights provide that:

'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age'. And Article 5(3) of the African Charter on the Rights and welfare of the Child that: 'death sentence shall not be pronounced for crimes committed by children'.

42. He submitted that the plaintiff was below the age of 18 when the facts occurred. That special treatment due to minors has been denied to the plaintiff since the Nigerian judge did not take into consideration the fact that she was a minor when the fact occurred. Plaintiff claimed that under the African Charter on the Rights and Welfare of the Child *'A child means every human being below the age of 18 years'*. As provided in its Article 17 *'every Child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth', and 'shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence'*. Moreover, Article 10 of the International Covenant on Civil and Political Rights provides that: *'Juvenile offenders shall be segregated from adults, 'therein the plaintiff was presented and sentenced by a court as an adult, without any consideration of her young age. The African Charter on the Rights and welfare of the Child provides in Article 30 that mothers should not be imposed death sentence and that the detention of a mother with her infant would deprive them of access to basic care constitutes a form of torture, cruel, inhuman and degrading treatment or punishment. On Article 5 of the African Charter and Article 30 of the African Charter on the Rights and Welfare of the*

Child justified the argument. The plaintiff submitted that death by hanging is a form of torture, cruel, inhuman and degrading treatment or punishment and urged the Court to grant the Applicant a perpetual injunction to restrain the defendants from infringement of her fundamental rights aforesaid

43. After reviewing the submission the Court hereby reiterates that this court is not an appellate court over the decision of the national courts as decided in **Mousa Leo Keita v The State of Mali (2009) 1 CCJLR (PT2) 58** and rightly cited by the 3rd defendants Counsel. However, by the provision of Article 4g of the Revised Treaty of ECOWAS which enjoined all member states of ECOWAS to,

'Recognize, promote and protect human and peoples' rights in accordance with the provisions of the African Charter on Human Rights , the African charter became an important instrument for that regard.

44. On the whole this court holds that the application succeeds in part as enumerated above and the issue of her being a minor even though as opposed to other national laws of Nigeria succeeds and that at time the offence was committed she was below the age of 18 and the conflicting evidence as to whether she was 13 years or more is also resolved in her favour accordingly.

45. DECISION

1. Whereas the applicant filed an application seeking for three main reliefs albeit an order for accelerated hearing, an order for injunction restraining the defendants from executing the death sentence pending the decision of the Court and same was granted as set out hereinbefore under Article 20 of Protocol A/PI/7/91 on the Community Court of Justice;;
2. Whereas an order that the death sentence be quashed and the plaintiff released until it can be ensured that she will benefit from fair proceedings as guaranteed by international standards which is not within the competence of this court and such order cannot be assented to;
3. Whereas the applicant sought an alternative order that the defendant commutes forthwith the sentence of death penalty to another sentence which will take care of the case's peculiarities, as the condemnation was pronounced for facts

committed during the minority of age of the plaintiff and while she is also actually the mother of a young girl and whereas this court was of the view that the issue of age of a convict is not foreclosed by the fact of the marriage of the applicant and where there is doubt as to the age of the applicant as in this case, same shall be resolved by this Court in favour of the said applicant and we so resolved her minority status in her favour.

4. Whereas the applicant sought for an order that being a minor at the time of the offence it shall be necessary to keep the applicant in young persons' prison or home as the case may be and we so grant it herewith.
5. Whereas the applicant sought for an order for injunction to restrain the defendants from executing the death sentence pronounced on the applicant and whereas this court was influenced by Article 6(5) of the International Covenant on Civil and Political Rights provide that: '*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age,*' and also Article 5(3) of the African Charter on the Rights and welfare of the Child that: '*death sentence shall not be pronounced for crimes committed by children*'; this Court holds that the said Article 5(3) stated above applies herein.
6. Whereas the applicant sought for an order directing *the* defendant to pay adequate monetary compensation of N10,000,000, but considering the magnitude of the crime of culpable homicide punishable by death in that a person died as a result of her action even though this court is not an appellate court over that decision, we make an order of compensation for 5million Naira for the Applicant against the Respondent accordingly.

The Court Decides that:

7. In view of the fact that her age was in doubt as to whether she was 13 years at the time of the offence and as also stated by the trial court, Article 5(3) of the African Charter on the Rights and Welfare of the Child applies.
8. Consequently the Applicant is entitled to compensation in the sum of 5 Million Naira against the Respondents.

46. COSTS

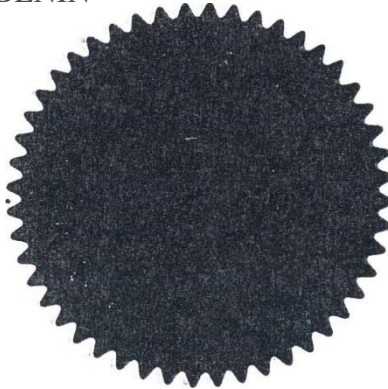
This Court in line with its Article 66 of the Rules of Procedure makes an award of cost in sum of One Million Naira accordingly.

The Ruling is read in public in accordance with the Rules of this Court on this 10th June 2014 at Abuja-Nigeria.

HON. JUSTICE HANSINE N.DONLI
HON. JUSTICE AWA NANA DABOYA

HON. JUSTICE ANTHONY .A. BENIN

PRESIDING JUDGE
MEMBER
MEMBER



HON. JUSTICE .H. N. DONLI
PRESIDING JUDGE

TONY ANENE-MAIDOH
CHIEF REGISTRAR

