

COMMUNITY COURT OF JUSTICE,  
ECOWAS  
COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO  
TRIB UNAL DE JUSTICA DA COMUNIDADE,  
CEDEAO



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

This 31<sup>st</sup> day of January, 2014

SUIT NO: ECW/CCJ/APP/14/13

BETWEEN

THE REGISTERED TRUSTEES OF AVOCAT SANS  
FRONTIERES FRANCE

1ST PLAINTIFF

THANKGOD EBOHS

2ND PLAINTIFF

AND

FEDERAL REPUBLIC OF NIGERIA

1ST DEFENDANT

EDO STATE GOVERNMENT

2ND DEFENDANT

BEFORE THEIR LORDSHIPS

HON. JUSTICE HANSINE N. DONLI

PRESIDING

HON. JUSTICE BENFEITO RAMOS

MEMBER

HON. JUSTICE MEDEGAN NOUGBODE

MEMBER

Assisted by

ABOUBAKAR DJIBO DIAKITE

REPRESENTATION

1. NOAH AJARE, KOLAWOLE OGUNBIYI AND ANGELA UWANDUFOR - PLAINTIFF/APPLICANT
2. T.A.GAZAU, O. ADETOYE(MRS), T. AFOLABI ONI(MISS),A.O.RUFAl(MRS)and  
B.HAMEED 1<sup>st</sup> DEFENDANT;
3. A.O.OKUNGBOWA 2ND DEFENDANT;

# RULING

## PARTIES

1. The 1st plaintiff is the Registered Trustees of Avocat Sans Frontieres France;
2. The 2nd plaintiff is Thankgod Ebohs;
3. The 1st defendant is the Federal Republic of Nigeria;
4. The 2nd defendant is Edo State Government;
5. The 2nd Plaintiff, a Nigerian and a Community Citizen is among the people who are on the death row in Nigeria having been sentenced to death by Tribunal constituted under the Military government in 1995. Without allowing the 2nd Plaintiff to exhaust his right of Appeal, the Defendants threatened to execute him pursuant to his conviction and sentence to death with all other persons on the death row in Nigeria.
6. The Plaintiff contend that the 1st and 2nd Defendants' threat of execution of the 2nd Plaintiff while his case is reportedly pending on appeal is a violation of his Rights to life; to due process of law; access to justice and judicial independence;
7. The 2nd Plaintiff further contended that the Defendant's action violates the resolutions adopted by both the African Commission on Human and Peoples' Right and the UN General Assembly requiring countries to adopt Moratorium on execution of the Death penalty.
8. The Resolution also asked AU Member States who still have capital punishment, including the Federal Republic of Nigeria to fully comply

9. with their obligation under the African Charter on Human and Peoples' Rights, and guarantee to every person accused of crime for which capital punishment *is* applicable, fair trial standards; which shall include in their periodic reports, information on the steps they are taking to move toward the abolition of death penalty in their countries.
10. The Plaintiffs contend that the trial of the 2nd Plaintiff did not meet due process safeguards as required by the African Charter on Human and Peoples' Rights and other relevant international standards having been tried by a Tribunal even when the offence could be tried by a regular Court.
11. The plaintiffs contend that unless the relief sought is granted, the Defendants will continue to be in breach of the International Human Rights Obligations and Commitment, as highlighted above.
- 12... The Plaintiffs contend that unless the relief sought are granted the 1st and 2nd Defendants may proceed by 2013 to secretly execute the 2nd Plaintiff, thereby violating the Requirements of transparency.

### **SUBJECT MATTER OF THE ORIGINATING PROCESS**

11. Violation of the human rights, right to life, to due process of law, to access to justice and judicial independence, to fair hearing to right of appeal, and to effective remedy in the threat of a possible secret execution of the 2nd Plaintiff herein by the 1<sup>st</sup> and 2nd Defendants.

12. The recent development in Edo State where inmates were hurriedly executed after the judgment of the Federal High Court without room for

appeal against the judgment is an indication that there are no appropriate safeguards to 2nd Plaintiff with regards to fair hearing, right to life, right to appeal and access to justice. With the above substantive application lodged, the plaintiffs filed two separate applications by way of motions seeking for accelerated hearing of the substantive application and a motion on notice for interim injunction and supported by an affidavit deposed to by Okoroafor John Esq., Male, Christian, and a Nigerian citizen of No. 29 1st Avenue, Kado Street, Abuja wherein he stated on oath as follows;

13. That he is a Legal Practitioner with Avocat Sans Frontieres France; By virtue of his position, and being conversant with the facts of this case, and with the consent of his principal he deposed to this Affidavit, this Suit was filed at the Registry of this Honourable Court on the 17th day of July, 2013.; and the 2nd Plaintiff who was convicted and sentenced to death the Robbery and Firearms Tribunal, sitting at Kaduna State with Charge No. KD/ART/490, and Judgment which was delivered by Honourable Justice J. S. Abiriyi on the 30th day of April 1995, convicted and sentenced him to death under the Robbery and Firearms Tribunal Act and repealed against decision.

14. He stated that Robbery and Firearms Act as amended Cap W16 LFN 1990 would allow room for appeal as the Nigerian Constitution guarantees the 2nd Plaintiffs right of appeal. The 2nd Plaintiff has a valid and subsisting appeal at the Court of Appeal Kaduna Division with Appeal *CAIK I274 IM I2013*. A copy of the notice of appeal is already before the Honourable Court and the 2nd Plaintiff's right to life is about to be permanently violated with the impending death execution which is irreversible.

15. The 2nd Plaintiff who was taken to the gallows for execution on the 24th June, 2013 and would have been executed but he was taken back to prison cell because the gallows did not work. He stated that he the 2nd Applicant equally witnessed the execution of the other four death row inmates in Edo State prison whose appeals were pending at the Court of Appeal with appeal No *CA/L/797/M/2012* to wit, Godwin Pius and others v Governor of Abia State and 36 others.

16. He stated that despite the pendency of the matter the 2nd plaintiff filed at the Federal High Court and the Court of Appeal Kaduna Division, the Defendants had gone ahead to place the 2nd Plaintiff on death row and on a waiting list of those about to be executed. He stated the records show that defendants did not usually take cognisance of pending appeals as most of the time they proceed with execution despite the pendency of several appeals and referred to Documents showing such attitude. He stated that where there is no urgent pronouncement by this Honourable Court, the Defendants will proceed with the execution of the 2nd Plaintiff/ applicant. He further stated that

the 2nd Plaintiff has the right to approach all courts and explore all available options that would prevent the violation of his right to life.

17. He referred to the 1st defendant's averment that no court can inquire into the validity of the Robbery and Firearms Tribunal Act and stated in reply that the averment was wrong and a misconception of law,

including the 1st defendant's assertion that the Plaintiff's reliefs need a Constitutional amendment was equally wrong and misleading. He also stated that the provisions of the Robbery and Firearms Tribunal Act denying applicant's right of appeal is inconsistent with the Constitution which is the grand norm.

18. He recognized that due to the difficult position that the 2nd applicant finds himself there *is* an urgent need to approach this Honourable Court.

19. He stated that if the Defendants are not urgently restrained by this Honourable Court, the 2nd Plaintiff will be executed and thereby rendering void any attempt to challenge his conviction and sentence under the Robbery and Firearms Tribunal Act. The Plaintiffs contended that the Nigerian President's declaration of June 16, 2013 is a clear indication that execution is imminent, and that the President of Nigeria, Goodluck Jonathan himself called on governors to sign warrants of execution to decongest prisons on June 16, 2013: whereby he said *"In the case of capital punishment, the state governors will sign. Even governors sometimes find it difficult to sign and I have been telling governors that they must sign because that is the law. The work we are doing has my sweet part and very ugly part and we must perform both. No matter how painful it is, it is part of their responsibilities"* this quote was widely reported in the media and referred to documents showing this report.

20. The second Plaintiff further stated that he narrowly escaped execution on the 24th of June, 2013, following the signing of the

warrants of execution by Edo's governor, Mr. Adams Ashiomole, four inmates on death row who were taken to the gallows for execution while second Plaintiff was also taken along. At the point of hanging him, the Sheriff discovered that he was to be executed by firing squad as provided in the judgment which sentenced him to death. He stated that he now faces the psychological trauma for the experience he had in the gallows every day and with the threat from the prisons authority.

21. The second Plaintiff contended that he has an Originating Motion on Notice dated 26/6/2013 pending before the Federal High Court in the Abuja Judicial Division for the enforcement of his fundamental right to appeal against his conviction and sentence. Therefore, executing him would result in a violation of his right to appeal his conviction as guaranteed by the African Charter Article 7.

22. He the plaintiffs further contended that the executions of Chima Ejiofo, Daniel Nsofor, Osarenmwinda Aiguokhan and Richard Igagu were done while their appeals were pending, which showed that, while on death row, second Plaintiff can be executed at any moment with no consideration of the pending proceedings.

23. The Defendant alleged that the second Plaintiff filed a suit at the Federal High Court seeking the same reliefs as those pending before this Court and the plaintiffs contended that no exhaustion of remedies is required before the ECOWAS Court.

24. The Plaintiffs further contended that there is no requirement regarding domestic remedies before an individual can bring a claim to

the ECOWAS Court of Justice, pursuant to the provisions of the Supplementary Protocol of 19th January, 2005 which was applied in the case of Koraou v. Niger (27th October, 2008) where the Court stated that, *((the rule of exhaustion of local remedies is not applicable before the Court)* and in the case of Essien v. The Republic of The Gambia (17th March 2007), the Court ruled that, *( the objection regarding the non-exhaustion of local remedies has no bearing with the requirement in bringing this action before this Court'*.

25. The Plaintiff further averred that in June 24, 2013 in another matter while the appeals instituted at the Court of Appeal in Lagos by five inmates on death rows and on behalf of all inmates on death rows in Nigeria against Abia State governor and others were pending and also the appeal filed at Court of Appeal in Benin, in Olu Fatogun & others v Governor of Edo State which had been served on A.G. Edo State and the Controller of Prisons in Edo State, the executions of the said 4 inmates were still carried out in Benin Central Prisons.

26. The Plaintiffs further contended that the first Defendant's allegations and that of the second Plaintiffs condemnation by the Robbery and Arms Tribunal was said to be a final judgment and that consequently, the ECOWAS Court would allegedly have no jurisdiction to adjudicate on violations of human rights resulting from the said decision of a Nigerian Military Tribunal but the 2nd plaintiff refuted same and stated that the said allegation is a misconception.

27. He stated that the ECOWAS Court can adjudicate on any human rights violation as provided by the Supplementary Protocol, Article 3 that:

*“The Court has competence to adjudicate on any dispute relating to the following: d) The failure by Member States to honour their obligations under the Treaty Conventions and Protocols...”*

*He referred to Article 9(4) of the Supplementary Protocol that,*

*“The Court has jurisdiction to determine case of violation of human rights that occur in any Member State”.*

He further stated that the ECOWAS Court can adjudicate in respect of a continuing violation of human rights regarding the second Plaintiff's complaint and referred to the observation of the African Commission c that the denial of right to appeal amounts to a violation of right as envisaged by Article 7 of the African Charter on human and peoples' rights. In the case of Egyptian Initiative for Personal Rights and Interrights v. Egypt (May 2011) case no. 334/06 that court stated, *“The foreclosure of any avenue of appeal to competent national organs in a criminal case attracting punishment as severe as the death penalty clearly violates Article 7(1) (a)”*

28. The Plaintiffs further contended that since the second Plaintiff was sentenced to death by the said military tribunal and had been deprived of his right to appeal from the date of his sentence till now, the 2nd Plaintiff has continued to suffer violations of his fundamental rights. That the Plaintiff averred that since the second Plaintiff was sentenced to death on the 30th May, 1995 by a Nigerian Military Tribunal which

created the said Court, the tribunal adopted unusual procedure that resulted in the charging, convicting and sentencing thereon.

29. He referred to the high standards required in such trials and quoted thus: *“it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies”* and referred to European Court of Human Rights, *Salduz v. Turkey* 2008. The Plaintiffs stated that sentence by Nigerian military tribunals violates article 4 and article 7 of the African charter as an arbitrary deprivation of the right to life.

30. He stated that **It** is clear case law from the African Commission that proceedings before Nigerian military tribunals violate fair trial standards as provided by article 7 of the African Charter: *“Applying fair trial principles to special tribunals) the African Commission has held that they violate Article 7 (1) (d) of the African Charter because their composition is at the discretion of the executive branch”*. 334/06 Egyptian Initiative for Personal Rights and Interights v. Egypt (May 2011), where it stated in these words, *“Given that the trial which ordered the executions itself violates Article 7 (fair trial standards), any subsequent implementation of sentences renders the resulting deprivation of life arbitrary and in violation of Article 4 (right to life)”*, International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria; Nos 137/94, 139/94, 154/96 and 161/97 (1998).

31. That the Plaintiff contends that taking the view that the imposition of death penalty following an unfair trial is a breach not only of

procedural standards but also of the right to life. The UN Human Rights Committee in the case *Reid v. Jamaica* and the Inter-American Commission in the case *Graham v. United States* [Case 11.193, Report No. 97/03, Inter-Am C.H.R., OEA/Ser./L/V.II.114 Doc. 70 rev. 2 at 705 (2003)] also considered that a violation of due process invalidates a conviction and sentence. Therefore, military courts should not in any circumstances whatsoever have jurisdiction over civilians and Special Tribunals should not try offences that fall within the jurisdiction of regular courts.

32. That the plaintiffs further stated that in addition, no appeal of the sentence rendered by the Nigerian military tribunals is possible by virtue of section 11 (4) of Robbery and Firearms (Special Provision) Act. That until now, inmates sentenced to death by Nigerian military tribunal have been continuously denied the rights to appeal against their conviction.

He stated that the 2nd Plaintiff is therefore in imminent danger of being executed and urged that it will be in the interest of justice to grant this application because the Defendants would not be prejudiced if the application succeeds.

33. Having set out the summary of the facts of the substantive case, and the pleas in law regarding same, we move to consider the instant application of interim injunction, restraining the defendants from executing the death penalty on the 2nd plaintiff pending the hearing and determination of the substantive matter, to this effect, the plaintiffs' counsel filed a 37 paragraph affidavit to support the motion on notice dated 6th November 2013 wherein he deposed to the facts that he was

convicted by the Robbery and Firearms Tribunal Kaduna State, and sentenced to death but that he filed an appeal against the conviction and sentence to the Court of Appeal, Kaduna Division which appeal is still pending for hearing.

34. He deposed that going by the practice in the Nigerian Prisons, a person convicted and sentenced to death may be executed while his appeal is still pending for hearing. Based on the fact that his rights to appeal to the Court of Appeal may be violated upon by the defendants, he sought for an interim injunction to ensure that he is not put to death before his appeal to the Court of Appeal is heard.

#### **PRELIMINARY POINT RAISED BY THE 1<sup>ST</sup> DEFENDANT**

35. However 1st defendants counsel filed a counter affidavit of 20 paragraphs and an additional counter affidavit opposing the grant of the motion for interim injunction on the grounds that paragraphs 16, 7, 24, 26, 27, 28, 30 and 32 of the plaintiffs affidavit dated 5th and 6th November 2013 contravened the law on how the facts of the affidavit should be deposed to, and that when the deposed facts are faulted, same should be struck out. He also deposed in paragraph 6 of the affidavit that there was no valid and substantive appeal at the Court of Appeal Kaduna Division with Appeal No CA/K/274/M/2013 pending for hearing and same was a motion seeking for an extension of time to file an appeal against a substantive appeal and also in the additional counter affidavit, he deposed to facts that a motion for extension of time to file a Notice of Appeal cannot be said to hold as a substantive Notice of Appeal. He stated that the application for interim injunction should be

refused and the substantive case determined. He stated this Court cannot sit on appeal on cases decided upon by the National Court and he further deposed that the plaintiff would not in this case be prejudiced if the application is refused.

36. The 2nd defendant filed a motion on notice dated 28th January 2014 for extension of time to file a defence against the plaintiffs' claim.

### **ANALYSIS OF THE PRELIMINARY POINT**

Having considered the facts deposed to by the 2nd plaintiff and the 1st defendant's counsel on the application for interim injunction, it is pertinent to consider the preliminary objection made by the 1st defendant in respect of the admissibility of paragraphs 16, 17, 24, 26, 27, 28, 30 and 32 of the 2nd plaintiffs affidavit dated 5th and 6th November 2013, which allegedly contravened the provisions of the Evidence Act of the Federal Republic of Nigeria that facts deposed to in an affidavit should contain facts and not law and that same should not be argumentative or conclusions and that the source of information in an affidavit should be stated to justify its admissibility.

37. Each paragraph complained of in the instant case had been examined to see whether it fell below the standard required in accordance with the provisions of the Evidence Act - Laws of the Federal Republic of Nigeria. After such examination, we found that the paragraphs were not too conclusive, argumentative or amounting to legal arguments. Similarly, some paragraphs in the counter affidavit of

the 1st defendant are not also fully in consonance with the said requirements of the Evidence Act.

For the purpose of clarity on the issue of admissibility of the said paragraphs, Section 115 of the Evidence Act of the Federal Republic of Nigeria 2011 may provide the answer. It states that:

- (1) Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.
- (2) An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion.
- (3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.
- (4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.

38. The question is whether the paragraphs in the affidavit complained of, by the 1st defendant contravened the above requirement of a valid affidavit. The totality of the 1st defendant's objection as to the said affidavit centered on section 115 (2) above as to whether the affidavit contained extraneous matters, by way of objection, prayer or legal

argument or conclusion. We are not in doubt that the said paragraphs are prayer or legal argument and or conclusion, therefore the objection by the 1st defendant is sustained. The next question is, even if the said paragraphs are discountenanced would the remaining paragraph sustain the application for interim injunction?

### **ANALYSIS ON THE APPLICATION FOR INTERIM INJUNCTION**

39. Article 20 (21) of Protocol (A/P1/7/91) on the Community Court of Justice states that the Court, each time a case is brought before it, may order any provisional measure or issue any provisional measure or issue any provisional instructions which it may consider necessary or desirable. Also Article 79 of the Rules of this Court provides that an application under Article 20 of the Protocol shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of facts and law abolishing a prima facie case for the interim measures applied for.

40. It follows that even though the said provision of the Protocol and the Rules of the Court mentioned interim measures, the effect of the relief sought in the motion /application of the 2<sup>nd</sup> plaintiff would mean the same thing. Whether the application used the words, interim injunction, interim measures or provisional measures, the relief is the same and within the purview of Article 20 of the said Protocol and Article 79 of the Rules of this Court.

41. It is now well established practice in law regarding applications for interim measures that some factors should be considered before the grant of same. The Court ought to consider whether the reasons given in the affidavit show the situation of the applicant to be of extreme gravity and urgency, and also whether it would be necessary to avoid irreparable damage of persons by granting the interim order. As suggested in the cases referred to herein before, the Court should adopt such provisional measures as it deems pertinent in the given circumstance of each case.

42. In other Regional and International jurisdictions particular the International American Human Rights Court, Article 63 (2) states:

"In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the court shall adopt such provisional measures as *it* deems pertinent in matters *it* has under consideration ..."

In Peace Community of San Jose de Apastado Case (Colombia) the Court ordered States to adopt measures to protect specifically named persons and on special occasions it requested that a group of unnamed persons be protected when they are at grave risk. See Provisional Measures in the Case Law of Human Rights by Clara Burbano Herrera. Also in Suarez Roseto case (Ecuador), Loayza Tomayo Case (Peru), Gallardo Rodriguez Case (Mexico) and Cesti Hurtado case (Peru) and reported on page 4 of the book mentioned above, the court ordered sometimes that some beneficiaries *to* regain their freedom and that newly organized trails have led to a reduction of the death penalty

sentence to a prison term of the person or persons concerned, see the case of Suarez Rosero supra.

43. In the instant case the reasons or grounds relied upon by the 2nd plaintiff is that;

1. The 2nd plaintiff was convicted and sentenced to death by the Robbery and Firearms Tribunal sitting at Kaduna State with charge No K.D/ART/490 and judgment was delivered by Honourable Justice J.S. Abiriyi on the 30th day of April 1995.
2. The Robbery and Firearms Tribunal Act has been repealed and or amended and that what is operational at present is Robbery and Firearms Act as amended in Chapter W16 Laws of the Federation of Nigeria, 1990.
3. The Nigerian Constitution 1979 as amended guarantees the right of appeal which the 2nd plaintiff utilised to appeal to the Court of Appeal Kaduna Judicial division with appeal No CA/Kj274/M/2013 and a copy was annexed thereto in the motion.
4. The 2nd plaintiff's right to life is about to be permanently violated with the impending death penalty and if the interim injunction/interim measures is not made, the execution would proceed and the action irreversible.

44. In paragraph 11 to 21 of affidavit of the 2nd plaintiff of 6th November 2013 and marked document No. 6 by the Court are indicative of the facts that despite the pending appeal of the 2nd plaintiff, the defendant has gone ahead to place him (the 2nd plaintiff) on death

row and awaiting execution, and that without an urgent pronouncement by the court the defendant will proceed with the execution and render void the attempt to challenge the conviction and sentence under the Robbery and Firearms Tribunal Act.

45. Furthermore there is an urgent need for the Court to make a pronouncement by way of the relief sought in this case. In connection with the 2nd defendant in paragraph 22 of the affidavit of the 2nd plaintiff, he deposed that he (the 2nd plaintiff) narrowly escaped execution on the 24th of June 2013 following the signing of the warrant of execution by Edo State Government of Nigeria, Mr Adams Oshiomhole and that executing him would result to the violation of his right to appeal guaranteed by Article 7 of the African Charter on Human and Peoples Rights. He further stated that he the 2nd plaintiff filed a case at the Federal High Court seeking the same reliefs as before this court as no exhaustion of local remedies required before this Court.

46. The case of *Koraou v Niger* delivered on the 27th October 2008 on the exhaustion of local remedies was relied upon on the question of local remedies as a prerequisite of bringing actions before an international Court, like this Court. However, it was made clear that the question of local remedies was inapplicable in bringing actions of human rights before this Court. He also stated that the sentence in question alleged the violation of Articles 4 and 7 of the African Charter if a convict is executed without exhausting the avenues for appeal and that it would also amount to an arbitrary deprivation of right to life. He also mentioned that the circumstances of the 2nd plaintiff disclosed imminent

danger. This Court cannot but consider the urgency of the matter and as in other international courts and their practices which this Court referred to above; the application ought to be granted in order not to render the substantive case before us nugatory and void.

47. On the other hand, the 1st defendant stated in his paragraph 6 dated 7th November, 2013 of his counter affidavit, that the 2nd plaintiff has no valid and subsisting appeal at the Court of Appeal Kaduna Division with Appeal No. CA/IC/274/M/2013 and that the letter "M" in the appeal number *is* indicative that the 2nd plaintiff filed a motion for extension of time to file an appeal, which did not amount to a substantive appeal. In paragraph 5 of the additional counter affidavit the 1st defendant stated that he orally confirmed from the Registrar of the Court of Appeal, Kaduna Judicial Division, Surajo Gusau that what the 2nd plaintiff filed before the Court of Appeal is a motion for extension of time to file a Notice of Appeal and not a substantive Notice of Appeal.

48. When this Court considers the substance of the facts in the affidavit on one hand and those facts in the counter affidavit and additional counter affidavit, *it* would be apparently clear that the dispute of the parties relates to whether there was a valid appeal pending before the Court of Appeal Kaduna Division in respect of the intention and other act on the 2nd plaintiff to challenge this conviction and sentence to death by the Robbery and Firearms Tribunal Kaduna.

49. There is no doubt that the 2nd plaintiff indicated clearly his intention to appeal against his conviction and sentence to death whether by way

of a motion for extension of time to appeal or by a substantive notice of appeal. The two options stated above did not reduce the fact that the 2<sup>nd</sup> applicant has shown his desire to appeal against the conviction and sentence of death given by the trial Judge, Justice J.S. Abiriyi, on the 30<sup>th</sup> day of April 1995. Even though the period of conviction and sentence appeared to be very long, the notice for extension filed by the 2<sup>nd</sup> plaintiff made it difficult not to look on the side of justice, on such grievous matter as life and death.

50. The question of whether the Court can sit on appeal in respect of cases decided upon by the National Court is not a material point for a decision, because this Court, times without number made it clear in its jurisprudence that its jurisdictional powers did not extend to hearing appeals from the decision of national Courts see *Kaita v Republic of Mali* delivered on 22<sup>nd</sup> March 2007 and *Alimu Akeem* delivered on 27<sup>th</sup> January 2014. The originating application indicated a prima facie violation of human rights of the 2<sup>nd</sup> plaintiff under Articles 4 and 7 of the African Charter on Human and Peoples Rights, Article 9 (4) of the Supplementary Protocol 2005 of Community Court of Justice and International Instruments.

51. These grounds upon which the 2<sup>nd</sup> plaintiff lodged the action are based on violation of human rights and not on grounds of appeal against the conviction and sentence. Article 4 of the African Charter on Human and Peoples Rights states that, "Human beings are inviolable rights. 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"

Where an applicant is deprived of the process of an appeal after conviction and sentence of death, it may be an action of arbitral deprivation of the right to life as envisaged by the Article 4 of the said Charter.

52. Moreover Article 7 of the African Charter on Human and People

Rights states:

"Every individual shall have the right to have his cause heard.

(a)The right to an appeal to competent national organ against acts violating his fundamental rights as recognized and guaranteed by conventions, laws regulations and customs in force....." In light of the facts stated herein before the application by the 2<sup>nd</sup> plaintiff satisfied the requirements for a grant of interim injunction or measures as provided in Article 20 of the Protocol and Article 79 of the Rules of Procedure of this Court. We therefore hold that the 2<sup>nd</sup> plaintiff's application succeeds and it is granted accordingly.

### **53. Decision**

1. Whereas the 2<sup>nd</sup> plaintiff filed an application for interim injunction.
2. Whereas the application for interim injunction is the same as application for interim measure.
3. Whereas the 2<sup>nd</sup> applicant who was convicted and sentenced to death, filed an appeal to the Court of Appeal of the Federal Republic of Nigeria and whether it was a motion for extension of time to appeal to the Court of Appeal or a substantive subsisting

appeal, there is an indication that the 2nd plaintiff is desirable to appeal against his conviction and sentence to death should operate to tilt in favor of the 2nd applicant than to hold otherwise.

4. Whereas analysis of the jurisprudence on the provisional measures indicates that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the court shall adopt such provisional measures as it deems pertinent in a matter of this nature.

5. Whereas a conviction and sentence hanging on the 2<sup>nd</sup> plaintiff when his intention to appeal against the conviction and sentence is in the Court's estimation is of extreme gravity and urgency and to avoid irreparable damage to the 2nd plaintiff, the Court shall grant he interim measure/injunction by ordering that the defendants shall suspend the death sentence until the case before the Court is determined.

6. Whereas an application as in this case for alleged violation of human rights under Article 9 (4) of the Supplementary Protocol i? within the jurisdiction of this court and does not amount to an appeal from the decision of the National Court albeit the Robbery and Firearms Tribunal of Nigeria and the jurisprudence of this court is long settled by plethora of judicial decisions evidenced by the authorities of Keita v Mali supra and Alimu Akeem supra.

7. Whereas the 2nd applicant/plaintiff succeeds in his application for interim measures against the 1st and 2nd defendants albeit suspension of death sentence and the removal of the 2nd plaintiff's name from death row, pending the determination of the substantive application filed before this Court.

### **COSTS**

54. The cost of this action shall be borne by the 1st defendant, the Federal Republic of Nigeria for the applicant.

This Ruling is read in public in accordance with the Rules of this Court this 31st of January 2014.

**HON. JUSTICE HANSINE N. DONLI**

**PRESIDING**

**HON. JUSTICE BENFEITO RAMOS**

**MEMBER**

**HON. JUSTICE MEDEGAN NOUGBODE**

**MEMBER**



**ASSISTED BY REGISTRAR**

**ABOUBAKAR DJIBO DIAKITE**

