

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL 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, IN NIGERIA**

ON 15TH, DAY OF MAY, 2019

SUIT No: ECW/CCJ/APP/19/16

JUDGMENT No: ECW/CCJ/JUD/21/19

BETWEEN

SGT MIKAH RANGO & 243 ORS

- APPLICANTS

AND

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSTION OF THE COURT

Hon. Justice Edward Amoako Asante

- Presiding

Hon. Justice Dupe Atoki

- Member

Hon. Justice Keikura Bangura

- Member

Assisted by Mr. Tony Anene-Maidoh, Esq.

- Chief Registrar

JUDGEMENT

PARTIES

The Applicants are community citizens of Nigerian origin. The Respondent is the Federal Republic of Nigeria and a member state of the Community. The Applicants lodged an application at the registry of the Court on the **7th day of June, 2016**.

Background

By an initiating application dated 7th June, 2016 filed in the Registry of this Honorable Court, the Applicant in this suit commenced an action against the Respondent herein. Amongst other claims, the Applicant claim against the Respondent the following:

- Dismissal of the Applicants from the services of the Nigerian Army without process.
- That their said dismissal without arraignment, prosecution and sentence by a duly constituted Court Martial is illegal, unlawful null and void.
- That the act of the Respondent constituted a violation of the Applicants' right to fair hearing guaranteed under the provisions of Section 36 (1) of the Federal Republic of Nigeria 1999 as amended by the alteration, Article 7 of the African Charter on Human and People's Rights, Article 8, 10, 11 (1) of the Universal Declaration of Human Rights
- That the conduct of the Respondent constituted a gross violation of the Applicants' rights to work under equitable and conducive environment as guaranteed by the provisions of Article 6 (1), 7(a) & (b) of the International Covenant on Economic Social and Cultural Rights and Article 15 of the African Charter on Human and People's Rights.
- That the act of the Respondent constituted a gross violation of the Applicants' fundamental rights to work and freedom from unemployment as guaranteed by the provisions of Article 23 of the Universal Declaration of Human Right.

In view of the above stated violations the Applicants are claiming against the Respondent the following reliefs:

1. A **declaration** that the dismissal of the Applicants as soldiers in the Nigerian Army some time in February 2016 by the Respondent without arraignment,

prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void whatsoever **as the act of the Respondent herein constitute a violation of the Applicants Fundamental Rights to fair hearing as stated in the provisions of the section 36 (1) of the 1999 Constitution of Federal Republic of Nigeria (as amended) Third Alteration Act , Article 7 of the African Charter on Human and People's Rights, Article 8, 10, 11 (1) of the Universal Declaration of Human Rights.**

2. **A declaration that the act of the Respondent herein is a gross violation of the Rights of the Applicants to work under equitable and conducive environment as guaranteed by the provisions of Articles 6 (1), 7(a) (i), (b) of the International Covenant on Economic Social and Cultural Rights, Article 15 of the African Charter on Human and People's Rights.**
3. **A declaration that the act of the Respondent is a gross violation of the Applicants Fundamental Rights to work and Freedom from unemployment as expressly guaranteed by the provisions of Article 23 of the Universal Declaration of Human and People's Rights.**
4. An **order** of this Honorable Court directing the Defendant, its agents, organs, servants, privies or by whatsoever name called to immediately reinstate all the Applicants to their respective rank in the Nigerian Army.
5. An **order** of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to all the Applicants their monthly salary and other allowances from the month of **January 2016 until the date judgement is enforced** in this suit.
6. An **order** of this Honorable Court directing the Respondent, , its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicants the sum of N1,000,000 (One million Naira) only each as general damages for the psychological and mental torture suffered by the Applicants as a result of their dismissal as soldiers in the Nigerian Army.
7. An **order** of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicants each the sum of N2, 000,000 (Two Million Naira) only as aggravated and punitive damages that will serve as a deterrent to the Defendant.
8. An **order** of this Honorable Court directing the Respondent to pay over to the Applicant the sum of N5, 000,000 (Five Million Naira) only being the solicitors fees and other incidental cost.

SUMMARY OF FACTS

Applicant's Case

The facts as averred are that the Applicants (244 enlisted soldiers) were until their dismissal in 2016, soldiers in the Nigerian Army. They stated that some of them were stationed in the Nigerian Army School of Infantry in Jaji, Kaduna State whilst some were Rukubu Barracks in Jos, the Plateau State capital or on military assignment prior to their dismissal. That whilst serving, the Armed Forces Act regulated the terms and conditions of their service. That the Applicants enlisted into the Nigerian Army from periods ranging from 3 to 36 years.

The Applicants aver that some of them in Rukubu Barracks were given forms to fill by the Military Police Commander. That they were all drafted to the North east Geopolitical Zone of the Respondent State to quell the dreadful Islamic Sect, Boko Haram in 2014. That they participated actively in this assignment especially on the attack of the 28th October, 2014 in the North East.

The Applicants aver that some of them were made to serve in that area for a period of two years whilst some spent periods ranging from six months to a year. That during this period they were denied communication with their families and further denied the monthly salary and allowances for six months (UNSPECIFIED).

That sometime in 2015 some of the Applicants were drafted to the Nigerian Army Training Centre in Niger States were they were further denied one month (UNSPECIFIED) salary and some of them were subjected to inhuman and regimental lifestyle.

That at various times during these assignments they encountered three military Commanders one of whom advised them to withdraw from the war theatre in the North East to Jos.

The Applicants aver that they were not provided sophisticated weaponry even after they demanded that the Respondent provide them with the same. That the Respondent however, proceeded to arbitrarily dismiss the Applicants shortly after their demands.

The Applicants aver that they were part of some soldiers re-absorbed into the Nigerian Army in 2015 and posted to the Command and Staff College in the Nigerian Army School of Infantry (NASI) in Jaji, Kaduna. That whilst there they were subjected to dehumanizing and ill treatment on the 5th January, 2016 the Commandant announced that the Respondent had posted the hitherto dismissed soldiers to the North-East. That even though they claimed to have been reinstated they were denied access to military facilities, letters of reinstatement were never issued and they were denied seven months' salary to date.

The Applicants aver that the Chief of Administration asked them if there was any complaint with respect to their assignment to which some of them availed themselves. That the names of soldiers posted to the North-East were called and the identity cards seized without reason. That some soldiers were drafted to various Military formations the Applicants were orally dismissed without due regard to the Armed Forces Act.

The Applicants therefore are claiming the aforementioned reliefs.

The Respondent's Case

The Respondent filed a defense in response to the allegation levied against them. In it the Respondent denied the allegation of facts as alleged by the Applicants. However, the Respondent made the following admission despite his denial:

- That the Applicant were among ex-soldiers who were pardoned in August 2015 and reabsorbed into the Nigerian Army after completing their training
- That those officers who completed their training in Jaji were posted back to the North-East flank
- That the Applicants had been dismissed from the Nigerian Army because they had committed several acts of indiscipline and misconduct for which they were Court martialed and dismissed from the Army.

Further, to the above-mentioned admission by the Respondent, he also submitted a Preliminary Objection praying for the Court to dismiss the suit.

Preliminary Objection

The Respondent raised a Preliminary Objection on the ground that:

1. That the Honorable Court lacked jurisdiction to try the application pursuant to the reliefs sought by the Applicant which borders on employment dispute already covered under the Nigerian Municipal Courts.

The import of this ground is suggestive of the requirement for the Applicant to exhaust local remedies.

Applicant's Response

The Applicant amended their reliefs sought by praying for certain orders and declarations pursuant to violation of rights enshrined in treaties ratified by the Respondent.

The Applicants argued that the Court is vested with jurisdiction pursuant to the Protocol of the Court as amended and those obligations accruing from treaties ratified by the Respondent. The Applicant relied on the jurisprudence of the Court in expounding on his argument therefore urged the Court to dismiss the Preliminary Objection as vexatious and frivolous but asks that the case be set down for hearing.

The Court has examined the ground for the Preliminary Objection so far advanced by the Respondent in support of his objection. The Court has also considered the response by the Applicants to the Preliminary Objection. On the strength of their submissions the Court is able to identify two keys issues which are of relevance for consideration and for determination by the Court. That is:

- Whether this Court has jurisdiction to hear and determine this application as indicated in the Preliminary Objection
- Whether exhaustion of local remedies is a condition precedent to access this Court

In response to the Applicants' submission, the Respondent, the Applicants amended their reliefs sought and also prayed for other reliefs pursuant to their alleged human rights violation as enshrined in the treaties that have been signed and ratified by the Respondent. The Applicant further submitted that this Court has the mandate and is vested with the jurisdiction to hear and determine this application pursuant to Article 9 (4) of the amended Protocol. In addition he maintained that those obligations that accrue to Member States under treaties by reason of the fact that they have not signed

such treaties but also have ratified them, gives them the onus to discharge any obligation under it.

The Court will now examine these issues for the determination seriatim.

Whether the Court has jurisdiction to hear and determine the case

The test criteria for the Court to admit any application that is before it or to assume jurisdiction to hear these applications are found in Article 9 (4) of the Protocol as Amended which provides that the Court has jurisdiction to determine cases of human rights violation that occur in any Member State. Before proceeding on the issue of jurisdiction the criteria test for admissibility of application by this Court in accordance with Article 9 (4) and Article 10 (d) of the Amended Protocol must be considered. Important among the criteria are those provided for in Article 10 (d) which states as follows:

- i. not be anonymous; nor*
- ii. be made whilst the same matter has been instituted before another International Court for adjudication;*

Article 9(4) of the Amended Protocol only states that there must be a violation right for which the application is brought before the Court for determination. Article 9 (4) sets the core mandate of the Court and Article 10 (d) (i) and (ii) of the Amended Protocol merely set out the conditions precedent to be met for the Court to admit an application. Where these criteria have been met the Court will declare such an application admissible.

The claim of the Applicants' is for violation of their right to work and the right to fair hearing and are seeking several reliefs including declarations, directives, orders, compensation and costs of the action. The Respondent has denied all the claims and states clearly that the Court lacks jurisdiction to hear and determine the claims as they submit that it is a matter devoid of human rights violation and entirely under the purview of the Armed forces Act of Nigeria and the Constitution of the Federal Republic of Nigeria 1999 as amended.

The Court in several of its judgements has consistently held that its jurisdiction shall be upheld whenever an application before it invokes human rights violations arising from the provisions of Article 9 (4) of the Protocol of the Court as amended by the 2005 Supplementary Protocol which provides that: ***“The Court has jurisdiction to***

determine cases of violation of human rights that occur in any Member State”:
See Hissein Habre v Republic of Senegal ().

In the instant case, the Applicants alleged specifically Human Rights violations pursuant to Article 15 of the African Charter on Human and People’s Rights (ACHPR) and Article 6 (1) of the International Convention on Economic Social and Cultural Rights (ICESCR), all the other relevant human right instruments relating to the right to work are in *pari materia* with these provisions.

The Applicants in the instant case claim to have directly suffered from the alleged violations and as such are victims. The Court holds that mere allegation of human right is sufficient to invoke its jurisdiction. The criteria pursuant to the amended Protocol of the Court, Article 9 (4) which states that “*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State*” has therefore been met by the Applicants. The Court notes that pursuant to Article 9 (4) of the Protocol of the Court as amended it has jurisdiction to adjudicate in a suit brought before it for the violation of human rights which occurred in the Member State particularly for those treaties ratified by Member States of the Community.

It is undoubtable that this Court has over the years dealt with series of cases bordering on jurisdictional issues. The Court has held in series of cases that a mere violation of human rights allegation is sufficient enough to invoke the jurisdiction of this Honorable Court. It was so held in **Bakarre Sarr & 28 ors. v the Republic of Mali** (2011)CCJ/JUD/09/12 where the Court held that mere allegation of human right is enough justification to invoke the jurisdiction of the Court. In the case of **Hadijatou Mani Koraou v The Republic of Niger (2008)** CCJ/JUD/06/08 the Court further strengthened its position on this. Equally so, Article 9 (4) of the amended Protocol states that the Court has the mandate to determine cases of human right violation occurring in any member state. This article is the operative article that underlies the human rights mandate of the Court. On this note the Court holds that it has jurisdiction to hear and determine this application that is before it.

In view of the above the Court will now examine the other issues for determination. On the question of whether the exhaustion of local remedy is a precondition and a requirement to access this Court as the Respondent rightly wanted this Honorable Court to believe. The Respondent in his defense averred that this Honorable Court lacks jurisdiction to try this application pursuant to the reliefs sought by the

Applicants, which borders on employment disputes already covered by the Nigerian Municipal Courts. In furtherance of this argument he submitted his defense that the Applicants should have exhausted themselves of internal mechanism via Section 178 of the Armed Forces Act Cap A20 of the Laws of the Federal republic of Nigeria 2004. This issue has not been the major grounds of Preliminary Objection as submitted by the Respondent but it raises the issue of exhaustion of local remedies and should therefore not be left out unaddressed. It is on this note that the Court has decided to consider and determine the submission that was raised by the Respondent in his response to the Applicant's case. On the requirement of the exhaustion local remedies, this Court has in its jurisprudence held in series of decided cases that exhaustion of local remedy is not a pre-condition to access this Court. In the case of **Valentine Ayika v Liberia (2012) CCJ/JUD/09/12** is not a condition precedent to access this Court and this Court so holds.

After considering the ground for the Preliminary Objection and the responses from the Applicant, the Court is of the view that the Preliminary Objection is unfounded and not supported by any reasonable grounds.

The Court having considered and examined the submissions of the parties including the authorities relied on, the Court is of the view that it has mandate to hear and determine this application pursuant to Article 9 (4) and 10 of the Protocol as amended. In consequence thereof, this Court hereby declares that the application is admissible and also that it has mandate to hear and determine the application before it and the Court so holds.

ISSUES FOR DETERMINATION

The Court has to consider the following issues for determination:

- a. Whether the Applicants' right to fair hearing was violated
- b. Whether the Applicants' right to work was violated

a. Whether the Applicants' right to work was violated

The Right to work contemplates rights that are assessorly to it which together they form the right to work. It includes among others the following:

- Right to know the terms of engagement
- Right to receive equal remuneration for equal job

- Right to work in conducive environment
- Right to avail the employee the opportunity to be heard in any disciplinary proceedings against him
- Right to be protected from unlawful dismissal

The right to work as guaranteed by the under mentioned treaties expressly states that:

1. Article 6 (1) of the ICESCR: *“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”*
2. Article 7 (a) & (b) of the ICESCR: *“The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular, remuneration which provides all workers, as a minimum, with, fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. (b) Safe and healthy working conditions.”*
3. Article 15 of the ACHPR: *“Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.”*
4. Article 23 of the UDHR: *“(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protect against employment. (2) Everyone without any discrimination has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.*

The Court will now proceed to quickly deal with the rights assessor to the right to work.

Right to know the terms of engagement

The Applicant on the Right to know the terms of engagement averred that upon their reinstatement into the Armed Forces of Nigeria, they were neither given a letter of re-instatement nor were they informed about their condition of work. This was not rebutted by the Respondent. Facts that are usually not denied by parties to an action are deemed to have been admitted. On this note the right for the Applicants to know the terms of their engagement was breached and subsequently violated.

Right to receive equal remuneration

On the issue of Right to receive equal remuneration for equal work done the Applicants averred that they were not receiving salary for a period of seven months and also their allowances were paid for this period. Of equal strength is the allegation that the Applicants' were dismissed without them being paid their allowances and salaries for a period of seven months and without end of service benefits. The Respondent did not rebut this averment anywhere in his defense. During cross examination of the Applicants' witness, where the Respondent had the opportunity to rebut this allegation he also failed to do so. Therefore the facts as alleged are deemed to have been admitted. To this end deprivation of the Applicants' to earn salaries and allowances in respect of work they have so far done amounts to a breach on their right to receive equal remuneration for work done and such breach will constitute a violation.

Right to work in conducive environment

The Applicants further to their averments, claim that during the period of their work they were denied communication with their families and that the working environment was not conducive. This also was not denied by the Respondent which also constitutes an admission and violation of the right to work in a conducive environment.

On the totality of the evidences so far adduced by the Applicants including the testimony of Applicants' witness before the Court during examination-in-chief and cross-examination by the Respondent Counsel, the allegation remain unrebutted and as such confirmed to be credible and admitted.

The Court notes that any failure for any party engaged in employment to enforce any one of the above stated rights can constitute a breach and therefore an act of violation of such rights. The Court observes that the Applicants in their initial application

submitted that their right to work had been violated contrary to Article 6 (1), 7(a) (i) & (b) of the International Convention on Economic, Social and Cultural Rights and Article 15 of the African Charter on Human and People's Rights (ACHPR) and Article 23 of the UDHR.

Requirement to comply with the applicable law

In the service of the Armed Forces of Nigeria an officer can only be dismissed if the dismissal is in accordance with the provisions of the Armed Forces Act of the Federal Republic of Nigeria. Amongst which, Section 32 of the said Act provides as follows:

- 1. Unless otherwise prescribed by this Act, if an enlisted person becomes entitled to be discharged with all convenient speed; but until discharged, he shall remain subject to service law under this Act.*
- 3. Except in pursuance of a sentence of a court-martial under this Act, an enlisted person shall be discharged unless his discharge has been authorized by order of the respective Service Chief in accordance with regulations made under this part of this Act.*
- 4. An enlisted person shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed, provided that, an enlisted person who is discharged within six months of the date of attestation shall not be entitled to receive a certificate of discharge.*

For the employees to summarily and arbitrarily remove or dismiss the Applicant without following due process of the law when the Act so provides will amount to a violation of his rights.

The case of the Applicant is that they were not given the opportunity to be heard before a neutral and duly constituted Court Martial in any charge that is brought against them and if found guilty the order of sentence of the Court will be implemented accordingly. This follows the case of the reported dismissal without due process, as already stated, which is contrary to the provisions of Section 178 of the Armed Forces Act the Federal Republic of Nigeria. To these allegation the Respondent did not advance any legal argument and or present evidence to rebut the claim by the Applicant. From the evidences the following issue were identified as having been agreed by the Respondent and admitted in his pleadings.

The Respondent did not rebut the allegation of the Applicant and therefore confirmed

- That the Applicants were amongst the soldiers that were dismissed from the service of the Nigerian Armed Forces but were later pardoned in 2004
- that the Applicants were subsequently reinstated into the Nigerian Army after their first dismissal but without a letter of employment signifying their tenure of engagement
- according to the Applicants they were subsequently de-kitted, their guns withdrawn, their identity cards and chased out of the Barracks without due process as laid down in Section 32 and Section 178.
- They were not given any opportunity to be heard

The main issue here for the Court to consider, on determination of the right to work is the manner in which the Applicants were dismissed. The allegation that they were chased out and dismissed from the service of the army without being the opportunity to be heard remain irrebutable throughout the proceedings. For the employees to be summarily and arbitrarily removed or dismissed by the Respondent without following due process of the law especially so when there is an enabling Act that governs such conduct amounts to a breach of those provisions. However, the Court is mindful that there are provisions in the Armed Forces Act that provided legal framework for settlement of complaints internally, the relevant provision is Section 32 which provides as follows:

1. Unless otherwise prescribed by this Act, if an enlisted person becomes entitled to be discharged with all convenient speed; but until discharged, he shall remain subject to service law under this Act.

3. Except in pursuance of a sentence of a court-martial under this Act, an enlisted person shall be discharged unless his discharge has been authorized by order of the respective Service Chief in accordance with regulations made under this part of this Act.

4. An enlisted person shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed, provided that, an enlisted person who is discharged within six months of the date of attestation shall not be entitled to receive a certificate of discharge.

The defense of the Respondent was that the Armed Forces Act has procedures for internal complaint mechanism as provided for by the rules to which the Applicants were to avail themselves of but failed to comply and therefore they ought not to be heard before this Court. The principle of fair hearing requires that parties involved in the proceedings must be given an opportunity to be heard. This is a derivative from the principle of *audi alteram partem* which requires the other side must be heard and includes:

- The Right to be heard before an independent, competent tribunal
- The Right to be represented by Counsel of your choice

To violate the principle of fair hearing in any tribunal or proceedings or decisions will have the consequences of making such decisions that may emanate from such hearing null and void of no legal effect. Therefore failing to observe the Right to fair hearing will amount to a breach. In the instant case the manner in which the dismissal of the Applicants were done clearly speak to the fact that the Respondent were in breach of the right of the Applicant to fair hearing. Especially so when the Applicant maintained that they were de-kitted, their identity cards withdrawn from them, their guns were withdrawn and then chased out of the barracks without given them any opportunity to be heard or paying them their arrears of salaries, allowances and end of service benefits. Under these conditions the Applicants left the services hurriedly and arbitrarily without them being given the opportunity to be heard. The issue here is whether in the circumstances as explained by the Applicants they were bound to refer to the internal complaint settlement mechanism in accordance with the Section of the Armed Forces Act to which the Respondent is seeking to rely on as a defense.

The Court notes that the Applicant in their bid to reach an amicable settlement engaged the services of the lawyer who wrote to the Army Chief about their complaint but there was no response. On this note even though it is mandatory that the Applicants must comply with the internal rules they are at liberty to come before this Court for the violation of their human rights because they took advantage of the proceedings and wrote a letter of complaint but there was no response. So therefore the defense by the Respondent that the Applicants failed to comply with the internal rules of procedure cannot hold because they did not admit/deny the receipt of the letter in their defense.

It is therefore without doubt that the Respondent, throughout his defense, never rebutted the claim that by and the averments that the Applicants were soldiers in the Nigerian Army, they failed also to rebut the loss of earning which is a condition to the right to work, all these are covered by the provisions of Article 6 (1), 7(a) (i) & (b) of the ICECR, Article 15 ACHPR and Article 23 of the UDHR.

The Court notes that the Applicants relied heavily on the above mentioned provisions in order to establish their claim of a violation of right to work. They also have relied on the following case of **MOHAMED EL TAYYIB BAH V REPUBLIC OF SIERRA LEONE (2013)** in which the Applicant was dismissed from the service of the Sierra Leone police force without being given the opportunity to be heard. See also the case of **Dr. Rose Mbatomon Ako v West African Monetary Agency & 5 Ors. (2013) CCJ/JUD/02/13.**

From the observation noted above it is clear to the Court that the Applicants right to work has been breached by the consistent act of the Respondent and therefore constitutes a breach of that right and the Court holds that the Applicants' right to work were violated.

C. Whether the Applicants right to fair hearing was violated

- The Right to be heard before an independent, competent tribunal
- The Right to be represented by Counsel of your choice

The Court notes that Article 7 of the ACHPR, Article 8, 10, UDHR guarantees right to fair hearing. It provided thus:

Article 7 of the ACHPR:

- 1. Every individual shall have the right to have his cause heard. This comprises:*
 - 1. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
 - 2. The right to be presumed innocent until proved guilty by a competent court or tribunal;*

3. *The right to defense, including the right to be defended by counsel of his choice;*
4. *The right to be tried within a reasonable time by an impartial court or tribunal.*
2. *No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*

Article 8, 10 and 11 of the UDHR:

- *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*
- *Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*
- *(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

The Applicant submits that pursuant to Article 7 of the ACHPR and Article 8, 10, 11 of the UDHR their rights to fair hearing and their presumption of innocence were further breached by the Respondent were further breached and constitute a violation of the right to fair hearing. Given particulars of the alleged breach the Applicants claim for their violation of the right to fair hearing. In support of the allegation they averred that they were dismissed from the service of the Nigerian Army without them being brought before a Court Martial duly constituted for that purpose as is required by Section 32 of the Armed Forces Act as already being referred to.

The compliance with this proceeding is a pre-condition to fair dismissal because in the proceedings an opportunity must have been given to the Applicant to be heard. On this note and based on the references and authorities stated and relied on by the parties, this Court is of the opinion that the Applicants' Right to fair hearing was also compromised and breached and therefore such conduct constitutes a violation of the Applicants' Right to fair hearing and the Court so holds.

Decision

The Court having considered the written submissions of either party and listened to the oral evidences of the Applicant including the cross-examination of the Applicants' witness by the Counsel for the Respondent, the Respondent having failed to rebut the averments of the Applicants' and his witness the claim of the Applicant is deemed to have been admitted. On the totality of the evidences of the parties the Court decides as follows:

DECLARATIONS

1. The Court declares that it has jurisdiction to hear this suit same being premised on an alleged violation of human rights.
2. The Court declares that the Applicants' right to work was violated by the Respondent
3. The Court declares that the Applicants' right to fair hearing was violated by the Respondent

ORDERS

4. That the Respondent shall appoint a Committee to assess the arrears of allowances, salaries and end of service benefits due to the Applicants' and pay to them without any delay in any case within a period of two months from the date of this order.
5. That the Respondent should pay the sum of Two Million Naira (N2, 000,000) as cost of the action and Two Million Naira (N2, 000,000) each to the Applicants as damages for unlawful dismissal.

Thus pronounced and signed on 15th day of May, 2019 in the ECOWAS Community Court of Justice Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon. Justice Edward Amoako Asante, Presiding

Hon. Justice Dupe Atoki, Member

Hon. Justice Keikura Bangura, Member

Assisted by Mr. Tony Anene-Maidoh, Esq., Chief Registrar