



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

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

In the Matter of

**THE INCORPORATED TRUSTEES OF PRINCE & PRINCESS CHARLES
OFFOKAJA FOUNDATION AND PRINCE PRINCESS CHARLES
OFFOKAJA, SWITZERLAND V FEDERAL REPUBLIC OF NIGERIA**
Application No: ECW/CCJ/APP/25/23 Judgment NO. ECW/CCJ/JUD/06/25

JUDGMENT

ABUJA

DATE: 14th February, 2025.

JUDGMENT NO. ECW/CCJ/JUD/06/25

**1. THE INCORPORATED TRUSTEES OF PRINCE
AND PRINCESS CHARLES OFFOKAJA
FOUNDATION, NIGERIA**

- APPLICANTS

**2. PRINCE & PRINCESS CHARLES OFFOKAJA ,
SWITZERLAND**

V.

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Sengu Mohamed KOROMA

-Presiding/Rapporteur

Hon. Justice Gberi-Be OUATTARA

-Member

Hon. Justice Edward Amoako ASANTE

- Member

ASSISTED BY:

Dr. Athanase ATANNON

- Deputy Chief Registrar



REPRESENTATION OF PARTIES:

Charles OFFOKOJA

- Counsel for the APPLICANT

I. I. HASSAN

- Counsel for the RESPONDENT

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I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as 'the Court') delivered virtually in open Court pursuant to Article 8(1) of the Practice Direction on Electronic Case Management and Virtual Court Session, 2020.

II. DESCRIPTION OF THE PARTIES

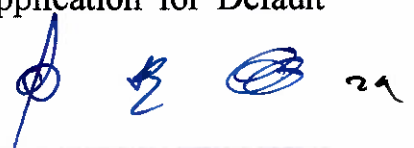
2. The First Applicant is THE INCORPORATED TRUSTEES OF PRINCE AND PRINCESS CHARLES OFFOKAJA FOUNDATION, a Non-Governmental Organization registered under the Laws of the Federal Republic of Nigeria with a mandate to promote human rights.
3. The Second Applicant is PRINCE AND PRINCESS CHARLES OFFOKAJA FOUNDATION, a Non-Governmental Organization established under the Swiss Civil Code with a mandate for human rights promotion.
4. The Respondent is the Federal Republic of Nigeria, a Member State of the ECOWAS.

III. INTRODUCTION

5. The subject-matter of the claims herein is for human rights violations, contrary to the African Charter on Human and Peoples' Rights and the other international human rights instruments binding on the Federal Republic of Nigeria.

IV. PROCEDURE BEFORE THE COURT

6. The Applicants filed their Initiating Application on 21st July 2023, in the Registry of the Court.
7. On the 11th December 2023, the Applicants filed an application for Default Judgment.

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8. A Certificate of Non-Lodgement was transmitted to the Judge Rapporteur on 8th December 2023.
9. On 25th September 2024, the Respondent filed a Motion for the Extension of Time to file its defence, and a Statement of Defence in the Registry of the Court.
10. The Court held a hearing on 25th September 2024, in which both parties were represented by Counsel. The Applicant raised a concern of late service of the Respondent's Motion and defence and asked the Court for time in which to lodge its opposition. The Court granted the Applicant's request and adjourned the hearing.
11. Another virtual session was held by the Court on 21st November 2024, in which both parties were represented by Counsel in Court. The Court heard the case on its merits and adjourned for judgment.

V. APPLICANTS' CASE

a) Summary of facts

12. The Applicants' claim is that Respondent has failed to build the Dasin Hausa Dam, located at the Dasin Village of Fofure Local Government Area of Adamawa State within the latter's jurisdiction, which was designed to absorb the overflow from the Lagodo Dam in Cameroun. This overflow was to have been dammed up materially to prevent flooding in Nigeria and to be used for irrigation and electricity. However, the Respondent failed to complete and/or build the dam within reasonable time even though it was designed as far back as 1982.
13. The Applicants claim that this delay, or not prioritising the completion of the said dam which is meant to assuage destruction of property and provide a much needed resource in the form of electricity, amounts to a violation of multiple human rights of the Nigerian people.

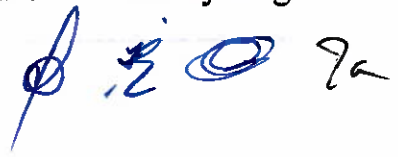


14. It is submitted by the Applicants that the Respondent, through its agent, i.e. an Honourable Minister of Water Resources of the Respondent State, stated that plans to build the Dasin Hausa dam were discontinued in 2016 because of poor feasibility studies and engineering design. However, the Applicants claim that given the urgency of the situation, swiftly ensuring a better feasibility study and engineering plan would have been a better solution than halting the Dam building project. They further claims that the cessation of the project has lasted for over 40 years, during which time the Respondent has resorted to just asking residents of affected areas to hurriedly relocate from their property and businesses any time the excess water from the Lagodo Dam is released and flowing toward Nigeria.
15. According to the Applicants, the direct impact of this flood is felt largely by Kogi, Benue, Borno, Adamawa, Taraba, Gombe, Bauchi, Borno, and Yobe. Delta, Bayelsa, Rivers, Cross River, and Anambra States of Nigeria. The indirect impact is felt throughout the country through effects like loss of income, transport/haulage delays, food scarcity and adverse rises in food prices, uncertainty and trauma, unemployment, pressure on facilities and several other harms.
16. More particularly, the Applicants allege that the release of excess water from the Lagdo Dam on 24th August, 2012 resulted in a huge number of internally displaced persons, loss of life and property. Also, in 2022, another flood release of excess water from the Dam caused the worst case of flooding in Nigeria since 2012. The result of series of flooding incidents displaced thousands of Nigerian families from their houses, and in both cases, schools had to be closed, interrupting the education of many Nigerians. The Applicants claim that the flooding also caused the destruction of farmland, crops and livestock which adversely affected the food security in the Respondent State. Furthermore, the news reported that the flooding swept reptiles which had been displaced from their natural habitat into communities thereby posing a threat to people. The effect of the flood on those who depend on daily income to

survive, have seen their lives and livelihoods disrupted, with a resultant loss of income and suddenly increased hardship.

17. The Applicants also claim that there are allegations that the Nigerian and Cameroonian governments had entered into an agreement to build the two dams. The Dasin Hausa Dam (to be built by Nigeria) and the Lagdo Dam (to be built by Cameroon) were to be built so that the waters from each of the dams would be able to flow into the other from time to time, to absorb the pressure from each other and prevent floods. However, while Cameroon built the Lagdo dam from 1977 to 1982, Nigeria is still in the process of building and completing the Dasin Hausa Dam in 2023. They submit that the Respondent has denied the existence of such an agreement, but insists that experts have confirmed that such a dam as the Dasin Hausa Dam is needed to forestall the possibility of serious flooding that is likely to happen in Nigeria each time Cameroon opens the Lagdo Dam—in the absence of a *cushioning* dam like the Dasin Hausa Dam. The Applicants further insist that the mere fact that the Respondent started the process of constructing the Dasin Hausa Dam, is confirmation enough that it agrees at least in principle with the summation of the experts.

18. The Applicants conclude their narration of facts by emphasizing that by finalizing the construction of the dam, the Respondent can fulfill the rights of many Nigerians to development, as it has the capability to provide water for irrigation of farms in dry season/drought and generation of electricity for Nigerians. They submit that in 2023, the Nigerian Senate in a resolution sequel to the adoption of a motion on '*Urgent Need to Intervene in the Flooding Issues in Sagamu, Ijebu areas of Ogun-East and Edu, Patigi areas of Kwara- Noth and other parts of the country*' has '*Urged the Federal Ministry of Water Resources to revisit the proposed construction of Dasin Hausa Dam and any other Dams to take in the flood waters from Lagdo Dam in Cameroon.*' It is their submission that a resolution is not sufficient as it should be backed by a Court order of this Honourable Court, because almost half a century is an unreasonably long



time for the Respondent to have delayed construction of the Dasin Hausa Dam. This is considering the huge amount of funds that the Respondent has been privy to as a major exporter of crude oil within the period; and considering the wasteful use of funds in several vanity projects during the period.

19. The Applicants finally submit that there is an urgent need for the construction of the Dasin Hausa Dam in the face of dire predictions of more serious climatic pressure of global warming and climate change.

20. The Applicants are seeking certain declaratory reliefs from the Court and orders as a result of the undue delay which has caused violation of the human rights of Nigerians.

b) Pleas in law

21. The Applicants are relying on the following pleas in law:

- i. Articles 1, 4, 14, 15, 16(1), 17, 22 and 24 of the African Charter on Human and Peoples' Rights;
- ii. Articles 2(1), 7(b) and 11(1) and 11(2)(a) of the International Covenant on Economic Social and Cultural Rights;
- iii. Article 6 of the International Covenant on Civil and Political Rights.

c) Reliefs sought

22. The Applicants are seeking the following reliefs from the Court:

- i. A declaration that the Respondent has violated multiple rights of the Nigerian People under the African Charter on Human and Peoples' Rights by not prioritizing the completion of the Dasin Hausa Dam for decades despite the likelihood of loss of life and property and environmental degradation due to flooding each time Cameroon opens the Lagdo Dam to release excess water, as happened notably in 2012 and in 2022; and despite the Respondent's

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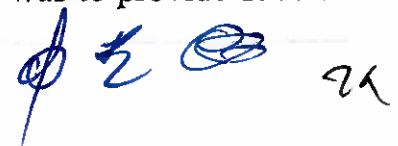
- significant financial capabilities being a major exporter of crude oil since the 1970s.
- ii. An order compelling the Respondent to complete the building of an updated version of the Dasin Hausa Dam and have it operational within a period of 18 months after delivery of judgement by this honourable Court on the instant case.
 - iii. An order compelling the Respondent to set up an emergency committee overseen by the appropriate ministry(ies) to: ensure the speedy review of the feasibility study and engineering design of the proposed dam and ensure speedy revisions if required; explore ways of streamlining any inhibiting bureaucracy and report to the President/appropriate ministry(ies); ensure adequate quality assurance monitoring through regular reports/recommendations to the President/appropriate ministry(ies); explore if international assistance or private sector investment or loans are necessary for a speedier completion of the Dasin Hausa Dam construction project and advise the President of the Respondent State/it's Federal Executive Council on that; report regularly to the President of the Respondent State on progress of the project as well as have direct access to the President if required for the speedy completion of the dam; and also present a report to the honorable Court 2 years after judgement is given, to brief the Court on implementation of the judgement; and take on any other responsibilities delegated to it by the Respondent that would help to ensure that the Dasin Hausa Dam is completed within 18 months of judgement by the Honourable Court.
 - iv. An order compelling the Respondent to take proactive measures to ensure that the Dasin Hausa Dam when completed is as effective as possible in shielding Nigerians against flooding from the Lagdo Dam in the face of Global Warming.

v. Any other reliefs the honourable Court may deem fit to grant.

VI. RESPONDENT'S CASE

a) Summary of facts

23. The Respondent denies the claims of the Applicants except those it has expressly admitted
24. It avers that the Dasin Hausa Multipurpose Dam Project was only conceived in 1982 when a Consultant was commissioned to carry out pre-feasibility studies on the development of water resources of the Benue Basin. After the pre-feasibility studies, the consulting firm identified the Dasin Hausa location in River Benue as a possible site for the realization of construction of a multipurpose dam and associated works.
25. The Respondent avers that contrary to the submission of the Applicants, the only form of agreement between the Federal Republic of Nigeria and Cameroun in this regard was a Memorandum of Understanding dated 3rd May 2016, which is adduced herein as Annexure 2. The premise of this MOU was the recognition of the water resources of the Benue Basin and its potential to enhance socio-economic development. It was also aimed at cooperation in managing the waters of the Benue Basin through the exchange of information and shared experiences. The Respondent avers that the Project on completion, was to receive and contain the irregular release of water from the Lagdo Dam and provide for irrigation, hydro-electric power, an increase in fish production and gainful employment.
26. However, the Respondent contends that Cameroun breached the MOU by opening the Lagdo Dam severally without recourse to the latter. It avers that it took appropriate measures through diplomatic means and by building other dams to cushion the effect of the breach.
27. The Respondent avers further that it entered into a Public Private Partnership for the design and construction of the Dasin Hausa Dam in which it was to provide 15% of



- the contractual sum, while the other party was to provide 15% and the remaining 70% was to be sourced as a concessionary loan from the China Exim Bank in 2017. However, the PPP failed as the other party was not convinced of the accuracy of the design data, (which one of the Respondent's agents also raised) and it adduces Annexure 5 dated 23rd September 2013 in support of this. The borrowing plan was halted as the Project was not included in the 2016-2018 Government Medium Term Borrowing Plan and the Respondent adduces Annexure 7 in support of this averment.
28. Nonetheless, the Respondent re-awarded the contract on 31st January 2022, with a completion period of eight months. The process of finalising the pre-contractual rituals commenced and by Annexure 9, the contractor is in the process of completing the feasibility studies and submit a detailed design of the project.
29. Contrary to the claims of the Applicants, the Respondent avers that it is aware of the flooding and its effect on communities, lives and properties; and is working tirelessly with limited funds to ensure that the Project is completed. It contends that it has taken several steps to ameliorate the effect of the Lagdo Dam opening, including a resolution by the Senate to facilitate the inclusion of the dredging of Rivers Benue and Niger, and other rivers in the 2024 Appropriation Bill. It submits Annexure 10 in support of this averment.
30. The Respondent submits that although the Court has jurisdiction to determine cases of human rights violation that occur in any Member State; it is a known fact that access to the Court is open to individuals on application for relief for violation of those rights. In the instant case, it contends that the Applicants have failed to state or point out the victims they are representing and specific areas affected by the incessant floods.
31. The Respondent concludes that it has not relented in its efforts to complete the construction of the Dasin Hausa Dam to ensure a safe environment, development and/or promoting an adequate standard of living for all Nigerians.

b) Pleas in law

32. The Respondent is relying on the following pleas in law in support of its defence:

- Article 8 of the Universal Declaration on Human Rights.
- Articles 9 (4), 10 (d) of the Supplementary Protocol (A/SP.1/01/05).
- Articles 22 (1) and 28 of the African Charter on Human and People's Rights.

c) Relief/s sought

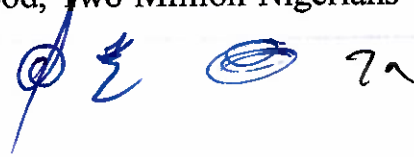
33. The Respondent's only relief is that the Court considers its argument in opposition and dismiss the claims of the Applicants entirely as they have no concrete evidence to back them which is speculative at best and a waste of the Court's time.

VII. APPLICANT'S REPLY

34. The Applicants maintain their claims and contends firstly, that the Respondent's action or inaction regarding the Dasin Hausa have not met with its obligations under Articles 4 & 24 of the African Charter on Human and People's Rights.

35. The Applicants exhibit Annexure 1 which is proof that the First Applicant is duly registered in the Respondent State. Further, the Applicants submit that the reference to the Resolution of the House of Representatives substantiates the existence of an agreement to construct the dam. The Applicants thus claim that the Respondent has an obligation to protect and fulfil the rights of its citizens by timeously completing the dam and a failure to do this has led to avoidable deaths and significant harm to the citizens, which is a breach of Articles 4 & 16 of the ACHPR.

36. They maintain that the Respondent's admission that the Dam Project was not included in the 2016-2018 Borrowing Plan is a clear indication that it was not prioritised. The Applicants maintain that as a result of the 2012 flood, Two Million Nigerians were

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displaced and Three Hundred and Sixty-Three individuals died. Nonetheless, the Respondent failed to include the said project in its Borrowing Plan even though the disaster cost it an estimated \$16.9 Billion in losses. The Applicants aver that the Respondent has adequate funds to complete the Project but has not prioritised it even in the midst of repeated loss of life and property.

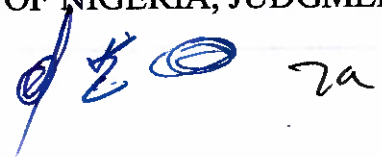
37. The Applicants speculate that had the Dam been built even as late as 2021, it would have prevented the 2022 floods which were exacerbated by the release of water from the Lagodo Dam. The effect of the 2022 flood was the death of Six Hundred and Three individuals, Fourteen Million individuals displaced from their homes and destruction of Eighty-Two Thousand homes, and considerable hectares of farmland. They support this claim with Annexure 8.

38. The Applicants juxtapose the cost of the most expensive dam in Africa with the Project and submit that given the foreign reserves of the Respondent, it could complete the Project if prioritised. They submit that the defence of the Respondent establishes the need for the Dam but the lack of prioritising this need is a breach of several obligations under the African Charter on Human and People's Rights.

VIII. JURISDICTION

39. The claim is premised on allegations of human rights violations under the African Charter on Human and People's Rights (hereinafter the ACHPR). However, the Court finds no express provision/s put forward by the Applicants that aligns its competence to determine the claim. Therefore, it will *suo motu* hear and determine the claims pursuant to Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05). The said provision reads: "[T]he Court has jurisdiction to determine cases of violation of human rights that occur in Member States."

40. In dilating on the meaning behind this provision, the Court in *FESTUS A. O. OGWUCHE ESQ. & ANOR V FEDERAL REPUBLIC OF NIGERIA*, JUDGMENT

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NO: ECW/CCJ/JUD/31/18 (Unreported) at page 8, held that mere allegations of human rights violation as opposed to the veracity of the claim has been held by the Court to be sufficient enough to trigger its jurisdiction to adjudicate allegations of human rights violations provided for by the ACHPR.

41. Hence, the jurisdiction of the Court is invoked by the mere allegation of human rights violations. Having found no objection to its jurisdiction in the facts and evidence before it, the Court rules on jurisdiction as a necessary precondition before going into the merits of the case. Consequently, the Court declares that it has jurisdiction to adjudicate the claims.

IX. ADMISSIBILITY

42. Another pre-condition to be met before the determination of the merits is that of admissibility. Whilst jurisdiction is ascertaining whether the Court has the power to determine the claim, admissibility is the test the Court uses to see if the claims have been brought properly before it.

43. Article 10 (d) of the Supplementary Protocol (supra) directs that claims for the violation of human rights, brought by individuals should not be anonymous or be pending before another international Court.

44. What this entails is that persons bringing the claim must first establish '*locus standi*' (LAWRENCE H. JOTHAN & 13 ORS. V FEDERAL REPUBLIC OF NIGERIA, JUDGMENT NO: ECW/CCJ/JUD/33/21 (Unreported) at page 25) which simply means an individual must demonstrate its stake in the claim as a victim or a person indirectly impacted by the violation. When this is met, the applicant in a claim is then faced with discharging the conditions cumulatively to enable it pass the admissibility test especially that laid down in SAWADO GO PAUL & 3 ORS. V REPUBLIC OF BURKINA FASO, JUDGMENT NO: ECW/CCJ/JUD/07/20 (Unreported at page 9) to wit: "...a) the Applicants must be victims of human rights violations, b) the

Applicants must not be anonymous, and c) the application must not have been instituted before another international Court for adjudication."

45. In dispensing with the first criteria i.e. *locus standi*, the Court recalls its jurisprudence in THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE V FEDERAL REPUBLIC OF NIGERIA, JUDGMENT NO: ECW/CCJ/JUD/16/20 (Unreported) at page 18 where it held therein that adopting a flexible broad approach to applying *locus standi* allows others not directly affected by the alleged violation to gain access to the Court.

46. The Court notes that the present claim has been brought by the Applicants for violations occasioned on the Nigerian people as a result of the breach by the Respondent. In determining whether they possess *locus standi*, the Court recalls the Respondent's contention that the Applicants are not properly before it. The Court, in disposing this contention, will rely on a description of the Applicants as narrated in the initiating application. The First Applicant is an incorporated body established under the Laws of the Respondent State as indicated in Annexure 1, which is a copy of the notarized certified true copy of registration certificate. The Second Applicant on the other hand, is a registered body under Swiss law. The Court has held in INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA V FEDERAL REPUBLIC OF NIGERIA, JUDGMENT NO: ECW/CCJ/15/24 (Unreported) at paragraph 109, that actions brought by non-governmental organisations are subject to two admissibility criteria: the legal existence of the NGO, and the nature of the action; which in turn highlights a representative action or an *actio popularis*.

47. In TRANSPARENCY INTERNATIONAL & 2 ORS. V REPUBLIC OF GHANA, JUDGMENT NO: ECW/CCJ/JUD/32/23 at paragraph 56 the Court held that only NGOs registered and possessing a legal personality accrued in an ECOWAS Member State can bring an action before the Court on behalf of persons who have suffered from a violation of human rights. In the instant case, the Court notes that the Second

Applicant is a registered body under Swiss Law and finds therefore, that it lacks the capacity to institute a claim before it. The First Applicant on the other hand, by virtue of Annexure 1 which was not controverted by the Respondent, is adjudged to possess the capacity to bring a claim before the Court.

48. In expounding how the First Applicant (hereinafter referred to as the Applicant) possesses *locus standi*, the Court considers the character of the action that has been brought. It is noted that the claims are in the interest of the Nigerian people as a whole. Furthermore, the Court notes that the Applicant has not brought the claim in a representative capacity but out of an interest in the welfare of the Nigerian people. This distinction is noted as there is no evidence of a mandate of representation as is required by law for a representative action. Therefore, the claim has been brought as a public interest litigation or an *actio popularis*.

49. The Court in *THE REGISTERED TRUSTEES OF JAMAÁ FOUNDATION & 5 ORS. V FEDERAL REPUBLIC OF NIGERIA*, JUDGMENT NO: ECW/CCJ/JUD/04/20 (Unreported) at page 14 held that “...non- governmental organisations (NGOs) and public spirited individuals can institute actions on behalf group of victims from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and financial capacity to maintain legal action of such magnitude which affects the rights of many people, as public interest issues are generally for the welfare and well-being of every individual in a society.”

50. It is clear to the Court, that a public interest litigation has imbibed in it the protection of fundamental human rights. Hence, if they are aimed at protecting and promoting collective legitimate human rights and public policy which may be subject to a breach resulting in a violation they could be admitted. It is, therefore, imperative to state that the protection of human rights and the improvement of the social and economic rights of the vulnerable people is a critical part of social contract and one of the cardinal and

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historical objectives of public interest litigation. Consequently, the Applicant in a public interest litigation need not show that he has suffered any personal injury or has a special interest that needs to be protected in order to possess *locus standi*. What must be established hereunder is a public right worthy of protection which has been allegedly breached and that the matter in question is justiciable and the action is not instituted for the personal gains of the Applicant.

51. For an action to be admissible as a public interest litigation the Court requires that three conditions must be fulfilled: 1) the rights alleged to have been violated must be established to be capable of being held by the public and not a private right; 2) the reliefs sought must be for the exclusive benefit of the public to the exclusion of the personal interest of the Applicant. An exception must be made when the Applicant is a member of the community or the group concerned; and 3) the victims, while not determinable, must for the purposes of award or reparation, be capable of being envisioned or envisaged by the Court. (See PATRICK EHOLOR (PRESIDENT OF ONE LOVE FOUNDATION) V FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/51/23 at para 52).

52. The Court holds that the Applicant has fulfilled the first criteria as the reliefs prayed for by demonstrating that the rights alleged to have been violated are capable of being held by the public. Similarly, with regards to the second criteria, the reliefs sought exhibit no pecuniary interest to the Applicants benefit. However, the Court in determining the third criteria is faced with the proper meaning of the phrase “...*while not determinable, must for the purposes of award or reparation, be capable of being envisioned or envisaged by the Court*” as laid down in PATRICK EHOLOR (*supra*). In the PATRICK EHOLOR, the Court found that the Applicants’ claim was for the alleged violation of the right to freedom of expression of Nigerians. Its question then was “...*who actually are the alleged victims on whose behalf the Applicant is bringing this action...*” The Court, in the said case, held that the facts did not enable any answer

that gave clarity for the Court to make a determination either way. It found that it was unable to envision the victims whose rights the Applicants were seeking to protect. The rationale being that the Court cannot make a blanket declaration towards the protection of the rights of Nigerians. Furthermore, it emphasised that for the third element to be fulfilled in a public litigation the claim must be carefully canvassed, as it requires that the Applicants firmly establish the victims sufficiently for them to be capable of being envisioned by the Court. However, the Court observes that the Applicant has failed to do this and it therefore, strikes out the claim.

53. In doing so the Court recalls that Applicant's allegation denotes the '*Nigerian People*' as the victims in the claim; the Applicant's reliefs sought in the Initiating Application, refers to the violation of multiple rights of the '*Nigerian People*.' The crux of the claim is that the Respondent has failed to build and/or construct a multi-purpose dam located in Adamawa State within the Respondent's jurisdiction. The Court is mindful to note that the location of the site informs the effect of the flooding in the Respondent's State. The Applicants claim that flooding in this area causes infrastructural loss, human loss, social and economic loss, is quite clear. However, the class of persons who have suffered from this loss is what has not been made clear to this Court. The Court considers that the geographical area where the effect of the flood is allegedly felt would have ideally yielded a more robust group of victims, unlike the choice of '*Nigerian People*' presented by the Applicant before it.

54. Furthermore, the Court recalls that the requirement is that the class of victims in a public interest litigation even when *indeterminable* should be *capable of being envisaged by the Court*. The Nigerian people are in thirty six states or location of the Respondent State. While the effects of a deadly flood may have ripple effects, the claim before the Court is that the area of the proposed dam, according to the Applicant, has a huge class of victims. Contrary to the distinct class in its narration of facts, the Applicants seeks relief for the '*Nigerian People*'. In this regard, the Court

finds that labelling the '*Nigerian People*' as whole as victims, renders them incapable of being envisaged by the Court. The Court is compelled to instruct that the duty of a public interest litigant is to ensure that groups affected by breaches of the Respondent's obligation should be properly identified. Where such identification is not done, the Court cannot grant access to the litigants under Article 10 (d) of the Supplementary Protocol (*supra*).

55. By virtue of the doctrine of '*stare decisis*' the Court is bound by its decision in PATRICK EHOLOR (*supra*) which remains good law in admitting public interest litigants. The effect of this jurisprudence on the current claim is that the Applicant is required to meet all three criteria for the Court to grant it access. While the Court considers that it has fulfilled the first two requirements, it has not met the third requirement. The Court must emphasise that the cumulative burden established in the jurisprudence aforementioned (PATRICK EHOLOR) must be discharged. Consequently, due to the failure of discharging the cumulative burden aforesaid, the Court finds the Applicant has not met the requirement to establish that the victims are capable of being envisaged by it.

56. As a result of the failure of the Applicant in fulfilling the last requirement, the Court finds that it lacks the capacity to institute this public interest suit. Consequently, the Court dismisses the claim in its entirety.

X. COSTS

57. The Court is bound by the Article 66 of the Rules of the Court which states in paragraph 12 that "*where a case does not proceed to judgment the costs shall be in the discretion of the Court.*" Having not considered the merits of the case, the Court considers that the same has not proceeded to judgment and has merely been dismissed for failing the admissibility test. Therefore, the Court will not award costs in this

respect, applauding the effort of the Applicant in trying to seek redress for society for wrongs committed.

XI. OPERATIVE CLAUSE

For the reasons stated above the Court sitting in public after hearing both parties:

As to jurisdiction:

- i. **Declares** that it has jurisdiction.

As to admissibility

- ii. **Declares** the application inadmissible.
- iii. **Dismisses all the claims.**

Hon. Justice Sengu Mohamed KOROMA -Presiding/Judge Rapporteur.....

Hon. Justice Gberi-Be OUATTARA

-Member

Hon. Justice Edward Amoako ASANTE

-Member

Dr. Athanase ATANNON – Deputy Chief Registrar

Done in Abuja, this 14th day of February, 2024 in English and translated into French and Portuguese.



