



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

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

In the Matter of

**PATRICK EHOLOR (SUING ON BEHALF OF MEMBERS OF HIS
NGO WHO WERE BRUTALISED, AND ONE AND MORE PERSONS
KILLED BY NIGERIA SECURITY FORCES AT THE LEKKI TOLL
GATE) V THE FEDERAL REPUBLIC OF NIGERIA**

Application No: ECW/CCJ/APP/71 /21; Judgment No. ECW/CCJ/JUD/04/25

JUDGMENT

ABUJA

14 FEBRUARY 2025

PATRICK EHOLOR (SUING ON BEHALF OF MEMBERS OF HIS NGO WHO WERE BRUTALISED, AND ONE AND MORE PERSONS KILLED BY NIGERIA SECURITY FORCES AT THE LEKKI TOLL GATE)

APPLICANT

V.

THE FEDERAL REPUBLIC OF NIGERIA

- RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo C. Monteiro Gonçalves	-President
Hon. Justice Sengu Mohammed Koroma	-Member
Hon. Justice Dupe Atoki	-Member/Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA	- Chief Registrar
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REPRESENTATION OF PARTIES

IHENSEKHIEN SAMUEL JNR	- Counsel for the APPLICANT
MAIMUNA LAMI SHIRU(MRS)	-Counsel for the RESPONDENT:-

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (herein after 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 PARTIES

1. The Applicant is a Nigerian citizen and the President of One Love Foundation, a Non-Governmental Organization committed to the rule of law, justice and engaged in public interest litigation. Its office is situated at Gayata Hotel premises, Kubwa, Abuja, Nigeria.
2. The Respondent is the Federal Republic of Nigeria, Member State of the ECOWAS and signatory to its Treaties, Protocols and Conventions.

III. INTRODUCTION

3. The subject matter of the application is premised on the alleged violation of the rights to freedom of expression and information, right to assembly of the Applicant, members of his NGO and some persons killed at the Lekki Toll Gate on the 24th October 2020 contrary to Articles 8 and 9 of the African Charter on Human and Peoples' Rights and other similar international human rights instruments.

IV. PROCEDURE BEFORE THE COURT

- i. The initiating application commencing this suit was filed on 17 November 2021 and served electronically on the Respondent on 08 December 2021.
- ii. Respondent filed a Motion on Notice for Consolidation of cases in Suit Nos ECW/CCJ/APP/71/21 & ECW/CCJ/APP/72/21. This application was dated 24 February 2022 and served on the Applicant electronically on 24 February 2022.

- iii. A Counter Affidavit to the Motion for Consolidation dated 12 April 2022 was served on the Applicant on 24 February 2022 Electronically.
- iv. A Motion on Notice for Extension of Time to File Defense, dated 15 June 2023 was served on the Applicant electronically on 19 June 2023 electronically.
- v. The Statement of Defense of the Respondent dated 15 June 2023, was served on the Applicant on 19 June 2023 electronically
- vi. On 29 January 2024, Respondent filed an application requesting an adjournment.

V. PROCEEDINGS BEFORE THE COURT

- 4. On 08 May 2023, during the Court session, both Parties were represented by Counsel. The Respondent filed a Motion for Consolidation, and the Applicant raised no objection. However, Bolaji Gabari who is for the Applicant in another case filed a Counter objecting to the request for consolidation. Doc. 3 was moved accordingly by Mrs. Bolaji Gabari. The Respondent alleged non-receipt of Doc. 3 but the Registry shared Proof of Service accordingly. Respondent responded orally to the Counter Affidavit. The Court ruled, refusing the Application for Consolidation. Therefore, the cases will proceed separately. Counsel to the Respondent urged the Court for an adjournment to enable him to file a Defence, and the case adjourned to 22nd June 2023 for Hearing.

VI. APPLICANTS CASE

a) Summary of facts

- 5. The Applicant is acting on behalf of members of his NGO and one or more persons allegedly killed on the night of 20 October 2020 when members of the Nigerian Army opened fire on unarmed End SARS protesters at the Lekki Toll gate in Lagos State of Nigeria.
- 6. A panel of inquiry was set up to investigate the event which according to the Applicant led to the "Lagos State #EndSARS Lekki Toll Gate findings and

reports". Drawing significantly from this report, the Applicant urged that the findings of this Court be based on the said report.

7. Applicant narrates that the activities and actions of the protesters were consistently peaceful and orderly, and not generally associated with criminal elements, except for an isolated incident on 12th October 2020, which involved reports of unruly behavior, including the pelting of water sachets at the Governor and heckling of the Deputy Governor of Lagos State.
8. That according to eyewitness testimonies and video footage submitted by witnesses and the Lekki Concession Company (LCC), the protest at the Lekki Toll Gate remained peaceful on all days, including the 20th of October 2020, until the arrival of members of the Nigerian Army.
9. The Applicant further states that the protesters took proactive measures to maintain order, including hiring cleaners to clear the environment of debris, stones, and other dangerous objects. During the protest, some protesters camped in tents, others used their cars, and some even slept on the grass. Applicant states that the panel confirmed that the gathering did not involve hoodlums or cultists, as the protesters remained vigilant, handing over petty thieves and miscreants to the police.
10. That on October 20, 2020, the protesters deployed three drones, enabling them to capture graphic details of the events that transpired on that day. The Applicant, relying on the Panel's report, noted that the principal witness for the Respondent, Brigadier-General Taiwo, attempted to justify the Army's deployment by stating that any protest lasting more than 2-3 days would inevitably be hijacked by hoodlums. However, the Panel found this assertion to be unsubstantiated.
11. Applicant recounts that evidence from participants in the protest, including one Miss Serah Ibrahim, Onileowo Legend, Dabiraoluwa Ayuku, and Kamsichukwu Ibe, whom the #EndSARS Panel found to have vividly documented the events, revealed that Nigerian soldiers killed innocent protesters at the Lekki protest site.

12. That during the protests, live ammunition was fired by the Nigerian Army, and empty shell casings recovered from the scene were submitted as evidence by witnesses before the Panel. Additionally, during the Panel's visit to the locus in quo, members recovered further empty shell casings. Testimonies from Reddington Hospital confirmed that individuals with bullet injuries were treated at their facility.
13. The Applicant also asserted that video evidence shows soldiers firing shots into the air and, at times, directly at protesters. That the testimony of forensic experts and ballistic specialists supports this evidence. Furthermore, documents submitted by the Lekki Concession Company indicate that the Nigerian Army fired at protesters and disrupted their activities on the 20th of October 2020. That these documents confirm that the Lekki Toll Gate protest was peaceful until it was interrupted by the Nigerian Army, who fired on unarmed, peaceful protesters. In support of this claim, the Applicant referenced the Lekki Concession Company's press release dated 21st October 2020.
14. Applicant further asserts that the brutal maiming and killing of unarmed, helpless, and peaceful protesters who were sitting on the ground, waving Nigerian flags, and singing the National Anthem amounts to a 'massacre' in that context. This assertion is corroborated by the Panel, which found that the protesters were defenseless members of the civilian population, comprising mainly of youth and young adults.
15. The Applicant also argue that the presence of protesters at the Lekki Toll Gate did not pose a threat to the territorial integrity of the state and could not be classified as a civil insurrection that would justify the intervention of the Nigerian Army.
16. Applicant claims that soldiers turned away ambulances that had been called to provide first aid to the wounded protesters, an action that constitutes a crime against humanity. That the actions of the Nigerian Army at the Lekki Toll Gate on 20th October 2020 amounted to a massacre, thereby invoking the jurisdiction of this Court to seek reparation and remedies.

b) Pleas in law

17. Applicant relied on the following laws:

- a. Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, & 24 of the African Charter on Human and Peoples' Rights.
- b. Articles 1, 2, 3, 5, 7, 9, 19 & 26 of the International Covenant on Civil and Political Rights.
- c. Articles 1, 2, 9, 27, 28 & 30 of the Universal Declaration of Human Rights 1948.
- d. Articles II, & XII of The Declaration of Principles on Freedom of Expression in Africa.
- e. Article 32 of The Supplementary Act (A/Sa.1/01/10) on Personal Data Protection within Economic Community of West African States.
- f. Articles 1, 6, 7, 10, 11, & 12 of The Supplementary Act (A/Sa.1/6/10) on Freedom of Expression and Right to Information in West Africa.
- g. Articles 4, 65 & 66 of The Revised Treaty of The Economic Community of West African States.
- h. Article 33 of The Rules of The Community Court of Justice.
- i. Article 10 of The Supplementary Protocol (A/Sp.1/01/05) Amending The Protocol (A/P.1/7/91) Relating to The Community Court of Justice.

c) Reliefs Sought

18. Applicant is seeking the following reliefs from the Court:

- A. A Declaration that the act of Nigeria government in banning/suspension of all protests of all kind in Nigeria during the #End SARS protest of Lagos state of on 20th October 2020 and ENDS SARS MEMORIAL EVENT OF ON 20TH October 2021 and the Nigeria government act/directive to criminalize/prosecute persons protesting, and arrest of all group members of the plaintiff, the plaintiff and all other protesters of all kinds in Nigeria in respect of the 20th October 2020 lekki toll gate protest and same illegal criminalization of same by the Nigeria government is entirely inconsistent and incompatible with international human rights standards and infringe on the rights to the freedom of expression, right to peace full assembly and opinion guaranteed under the African Charter on Human and Peoples' Rights,



the Declaration of Principles on Freedom of Expression in Africa 2002, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1976, the Revised Treaty of the Economic Community of West African States 1993, the 1999 Constitution of the Federal Republic of Nigeria.

- B. An Order directing the Respondent and/or its agents and Lagos State of Nigeria to provide effective remedies and reparation of 1 billion dollars each to parents/wards of every person and persons, Applicant is representing in representative capacity and all deceased persons killed by the Nigerian Police and officers of the Nigerian Army on 20th October 2020 in Lagos State of Nigeria, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the honorable Court may deem fit to grant to human rights defenders, activists bloggers, journalists and other online and off-line media practitioners that have harassed, intimidated, unlawfully arrested, detained, and unfairly prosecuted by the Respondent because of lawful protest of #End SARS of Lagos State on 20th October 2020, through criminalization of same by Nigerian Government.
- C. An Order directing the Respondent and/or its agents and Lagos State of Nigeria to give effect and further mandatory injunction of this honorable Court mandating the Respondent and its agents to give full effect to all the recommendations and resolutions of the Lagos State #End SARS report and adequately compensate each and every person, who were either killed, life taken, brutalized and maimed as a contained in the Lagos State #End SARS report on the Lekki toll gate killings as released on 15th November 2021.
- D. Cost of this suit in the sum of \$1,000,000.00 (One Million Dollars), in contingent fees, general damages in the sum of \$100,000,000.00 (One Hundred Million Dollars), being all inconveniences, damages suffered by the Applicants, its group and its NGO members by the Clamp down and banning by the Nigeria federal government of all protests of all kinds and further criminalizing #End SARS protest.

VII. **RESPONDENTS CASE**

a) Summary of facts

19. In its defence, Respondent denied each and every material allegation of facts set out in the Applicant's statement of facts. In further denial, Respondent states that members of the Applicant were among the group of unlawful protesters (i.e. hoodlums) who on 20th October 2020 unlawfully assembled themselves at the Lekki Toll Gate to confront the Nigerian Police Force in a violent manner under the guise of protest against the Special Anti-Robbery Squad (SARS), a unit of the Nigerian Police Force over how SARS carries out its official duties.
20. They maintained that, despite the violent protest its security agents at the scene of the protest maintained a high level of their rules of engagement which did not lead to the shooting and killing/murder of the protesters in their effort to calm and control the violence of the protest fueled by the members of the Applicant.
21. Furthermore, the acts of members of the Applicant on 20th October 2020 incited unlawful protest against its security agents who were at the scene to calm down violence and identify escaped members of the Boko haram sect and bandits who may be found amidst the unlawful protesters.
22. That in the midst of this, some members of the Applicant took on to social media particularly Instagram, putting up inciteful posts against the law enforcement agents of the Respondent who successfully dispersed the violent Applicant's members on 20th October 2020.
23. That the dispersed group resurfaced the next day with the reinforcement of members of their gang in an attempt to engage the security agents in a skirmish which was repelled through the application of the rules of engagement of the Respondent.
24. Respondent vehemently denied the killing of any protester at the Lekki ground by its agents through shooting or any other means. In addition, the Respondent observed that members of the Applicant in supplying logistics and welfare to

the unlawful violent protesters showed their unwavering support to these protesters against the security agents of the Respondent.

25. This led to the switching off of the electronic billboard to avert the continuation of the unlawful violent protest initiated by the Applicant's members against SARS. That the sound of gun shot heard was shot in the air to scare and disperse the unlawful protesters.

26. The Respondent denied that any soldier at the scene of the unlawful protest threatened members of the Applicant but rather reiterate that their presence was to restore peace and calm resulting from the violent protest. They added that the arrival of the police after the soldiers departed was to further maintain peace which necessitated the use of tear gas to disperse obstinate protesters.

27. Respondent denied shooting at any protester upon being ordered to run, they also denied refusing access to the scene to ambulances. That all their actions were guided by the provisions of its Constitution in relation to fundamental rights of its citizens.

28. Respondent affirmed that the subject matter giving rise to this cause of action has already been resolved by the National Human Rights Commission of the Respondent as well as a special panel of inquiry set up by the Respondent who treated the complaint of the Applicant members and protesters and awarded compensation to deserving victims as well as other recommendations which are being implemented.

b) Pleas in law

29. Respondent relied on the following laws:

- i. Section 14 (2) 1999 Constitution.
- ii. Section 131 and 132 of the Evidence Act of the Federal Republic of Nigeria.

c) Reliefs Sought

30. The Respondent urged the Court to dismiss this suit same being unsubstantiated and lacking in merit.



VIII. *JURISDICTION*

31. The present application arises from the purported violation of the rights of the Applicant to freedom of expression and the right to peaceful assembly enshrined in Articles 8 and 9 of the African Charter on Human and Peoples' Rights, Articles 7, 9 & 19 of the International Covenant on Civil and Political Rights, and other international human rights instruments.

32. In view of the fact that these rights represent human rights internationally recognized and legally justiciable before this Court in line with Article 9 (4) of its Supplementary protocol, and in the absence of any objection by the opposing party thereto, the Court holds that it has the requisite jurisdiction to determine the application as presented.

IX. *ADMISSIBILITY*

33. The assumption of jurisdiction to entertain an application does not in itself render the matter admissible. The Court must ensure that all essential criteria related to the admissibility of applications have been met before proceeding to the merits of the case. In that regards, Article 10 (d) of the 2005 Supplementary Protocol on the Court, A/SP/01./05 is instructive: "*Access to the Court is open to the following: Individuals on application for relief for violation of their human rights; the submission of application for which shall:*
i. Not be anonymous; nor ii. Be made whilst the same matter has been instituted before another International Court for adjudication".

34. The provision outlined above specifies that there must be an identifiable prima facie victim seeking relief for the violation of their rights. Additionally, the application must not be pending before another international Court of repute neither must the parties be anonymous. *AZIAGBEDE KOKOU V. REP OF TOGO* ECW/CCJ/JUD/07/13 @ pg. 7.

35. In this Regards, from the facts before the Court, the Applicant has disclosed his identity which satisfies the requirement of non-anonymity, furthermore there is no indication that the matter is currently pending before any other international Court of similar jurisdiction.

(Signature)

36. The only issue for the Court to determine is whether the victim status requirement has been satisfied by the Applicants to make their application admissible.
37. The Court has maintained that the standpoint of victim requirement is an essential criterion which enables it to declare whether an application for human rights violation is admissible, even though not an exclusive criterion. See ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR OF GOMBE STATE & ANOR ECW/CCJ/RUL/07/12 Reported in 2012 CCJELR Pg 81 @ para. 46.
38. A victim includes a person who suffers, directly or indirectly any harm or pain (physical or mental injury) emotional suffering (through loss of a close family member or relation) economic loss (loss of properties) or any impairment that can be categorized as human rights violation, additionally, other than the loss, harm or damage, the Applicant must prove an interest in the matter which must be direct and personal. In REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO. ECW/CCJ/JUD/06/19 (Unreported)
39. The sum total of the above jurisprudence is indicative of the requirement that the Applicant must demonstrate *prima facie*, that he or she was affected by either law, policy, practice, or conduct of the Respondent State which is the cause of the alleged human rights violations.
40. In this regards, an Application can be filed by a direct victim, or an indirect victim with adequate interest in the matter, see AMNESTY INTERNATIONAL TOGO & ORS V TOGOLESE REPUBLIC ECW/CCJ/JUD/09/20 paras 31-33, see also TAHIROU DJIBO & 3 ORS V THE REPUBLIC OF NIGER ECW/CCJ/JUD/13/20 @ pg. 25.
41. A representative with authorization can also file an application. See NOSA EHANIRE OSAGHAE V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17 PG 18-19,
42. An individual or NGO for public interest without authorization. See PATRICK EHOLOR V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/51/23 pg. 47-48.

43. Regarding being a direct victim, under the heading "Name and Address of Applicant" on page 1 of the Initiating Application, the Applicant mentioned in brief and presented himself as a direct victim claiming to have been "arrested by the Nigeria security forces at the Lekki toll gate on 20th October 2021 by Nigeria security forces for granting a press interview on #End Sars". The Court is not presented with the minimal evidence to reach a finding that the Applicant is a prima facie victim as no further reference was made in the remaining narration of the facts of this Application. Besides, on the face of the Initiating Application, the Applicant presents himself as suing in a representative capacity on behalf of some determinable person.

44. On an action in a representative capacity, the Applicant titled his application thus; "*Patrick Elohor as Applicant (suing on behalf of members of his NGO who were brutalized, and one or more persons killed by Nigerian security forces at the Lekki toll gate).*" It is therefore clearly evident that the Applicant is suing in a representative capacity for both members of his NGO and some persons killed at the Lekki toll gate."

45. The admissibility of this Application will therefore be examined under the capacity of a party bringing a representative action.

Capacity of the Applicant as an individual to institute an action on behalf of other individuals for the violation of their rights.

46. As earlier indicated, it is important to emphasize that access to this Court is primarily granted based on a party's victim status. This is the fundamental principle. AMNESTY INTERNATIONAL TOGO AND OTHERS V TOGOLESE REPUBLIC ECW/CCJ/JUD/09/20 @ 33-34. However, where circumstances make it impractical for a victim or victims to approach the Court directly, they may delegate authority to another individual to act on their behalf. BAKARRY SARRE & 28 ORS V MALI ECW/CCJ/JUD/03/11 CCJELR 2011 PG 72 @ 38.

47. Having said this, it is imperative to state that in a representative action, whether on behalf of a few selected individuals or a large group of similarly affected persons, the Applicant appearing before the Court must have the mandate of the person or group of persons on whose behalf he claims to act.



The proof of such a mandate is instructive to the Court's declaration of the admissibility of an application. This position has also been captured by the Court in REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS ECW/CCJ/JUD/06/19 @ Pg. 16 & 17. See also MAHAWA CHAM AND SARJO CHAM V THE REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/26/23 paragraph 110-111

48. The reasoning behind the requirement of mandate is primarily to serve as a safeguard in ensuring that individuals or organizations representing persons or group of persons as victims do so in the best interest of the said victims. Therefore, in a representative Application, it is important that the Court is convinced that the victims willingly and knowingly delegated to such individuals or organization their inherent rights to seek redress by themselves. Therein lies the import of the requirement for mandate to act and the mischief it seeks to cure. INCORPORATED TRUSTEES OF CENTER FOR PEACE AND CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA FOUNDATION & 7 ORS SUPRA.

49. In this regards, the Court notes that the Applicant mentioned in passing in page 1 of the Initiating Application under the heading - Name and Address of Applicant- *"and also has the consent and authorization of one or two families of the Lekki #End Sars protest whose wards and family members was cut short and killed by Nigeria security forces"*. No further reference to, or document attesting the authorization was mentioned in the remaining narration of the facts of this Application.

50. Considering that members of the Applicant's NGO as well as the *"one or two families whose wards were killed"* are determinable and being unable to access the Court as direct victims, an authorization from them is imperative from anybody claiming to represent them.

51. The Court has maintained that in cases requiring proof of relationship or authorization as an indirect victim, it cannot accept the claims of the Applicant at face value. Specific proof of authorization is mandatory to render the case admissible. INCORPORATED TRUSTEES OF CENTER FOR PEACE AND CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA FOUNDATION



& 7 ORS (CONSOLIDATED) v. THE FEDERAL REPUBLIC OF NIGERIA: ECW/CCJ/JUD/17/22 @ pg. 25 para 81. See also ATTIPOE KUAKU RICHARD & 19 ORS V REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/07/23, PG 17, @ 46.

52. The jurisprudence of the Court is replete with decisions that in the absence of a mandate or proof of authorization or even a power of attorney, an application submitted in a representative capacity is deemed inadmissible. NNENNA OBI V FEDERAL REPUBLIC OF NIGERIA- NO. ECW/CCJ/APP/JUD/27/16 @ pg. 15. LAWRENCE H. JOTHAN AND 13 OTHERS v. FEDERAL REPUBLIC OF NIGERIA. ECW/CCJ/JUD/33/21 @ pg. 31 para 81. See also CONCERNED YOUTH OF GANTA FOR RECONSTRUCTION AND DEVELOPMENT & 1 OR. v. THE REPUBLIC OF LIBERIA ECW/CCJ/RUL/06/2020 @ pg. 32 para 17.

53. Having failed to present a proof of authorization, the Court holds that the Applicant lacks the capacity to maintain this action in a representative capacity on behalf of members of his NGO and for one or more persons killed by the Nigeria Security Forces at the Lekki toll gate on the 20th October 2020.

54. The application in this regard is therefore declared inadmissible.

X. COSTS

55. Pursuant to Article 66 (4) of the Rules of Court, the Court decides that each party shall bear their own costs.

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 to determine the Application.

As to Admissibility;

- ii. **Declares** the case of the Applicant is inadmissible.

As to Costs:

Orders each party to bear their costs.

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Hon. Justice Ricardo C. Monteiro Gonçalves




Hon. Justice Sengu Mohammed Koroma



Hon. Justice Dupe Atoki /Rapporteur



Dr. Yaouza OURO-SAMA-Chief Registrar



Done in Abuja this 14th Day of February 2025 in English and translated into French and Portuguese

