



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

**PATRICK EHOLOR (SUING ON BEHALF OF MAKIA MEDIA LIMITED
AND BEING AN ANALYST TO BROADCASTING STATIONS) V
FEDERAL REPUBLIC OF NIGERIA**

Application No: ECW/CCJ/APP/43/21 Judgment NO. ECW/CCJ/JUD/01/25

JUDGMENT

ABUJA

DATE: 27th January 2025

JUDGMENT NO. ECW/CCJ/JUD/01/25

PATRICK EHOLOR (SUING - APPLICANT
ON BEHALF OF MAKIA MEDIA LIMITED AND
BEING AN ANALYST TO BROAD ASTING STATIONS)

V.

FEDERAL REPUBLIC OF NIGERIA -RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Claudio Monteiro GONCALVES	-Presiding
Hon. Justice Sengu Mohamed KOROMA	- Member/ Rapporteur
Hon. Justice Dupe ATOKI	-Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

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REPRESENTATION OF PARTIES:

Ihensekhien SAMUEL Jnr.

- Counsel for the APPLICANT

O. DOUGLAS Esq.

Maimuna Lami SHIRU (Mrs.)

- Counsel for the RESPONDENT

Daniel E. MODOZIE Esq.

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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 Applicant is Patrick Eholor a citizen of the Federal Republic of Nigeria and President of One Love Foundation, a non-governmental organisation (NGO) committed to the rule of law and justice, which engages in public litigation. He also states that he is a frequent analyst to a lot of broadcasting and radio stations in Nigeria and is suing on behalf of Makia Media Limited.
3. The Respondent is the Federal Republic of Nigeria, a Member State of ECOWAS.

III. INTRODUCTION

4. The application is premised on legality of the enforcement of various provisions of the Nigeria Broadcasting Code, which are at variance with the African Charter on Human and People’s Rights, occasioning human rights violations under the aforesaid treaty and other international treaties and conventions.

IV. PROCEDURE BEFORE THE COURT

5. The Applicant filed an Initiating Application on 28th July 2021, in the Registry of the Court.
6. The Court held a virtual session on 12th May 2023, in which both parties were represented. The Court noted that the Respondent has not filed any response but

the latter insisted that the same had been filed in the Court. Proof of said lodgement could not be adduced by the Respondent, who proceeded to seek for an adjournment to tidy up its papers. The Applicant prayed for costs of Ten Million Naira in response to the Respondent's application for adjournment. After oral submissions by the parties, the Court adjourned to the 30th May 2023 and awarded cost of Two Hundred and Fifty Thousand Naira against the Respondent.

7. The Court via email dated 22nd May 2023, requested for the Microsoft Word copies of the processes filed by the Respondent.
8. On 25th May 2023, the Court sent a reminder of its earlier request to the Respondent.
9. On 30th May 2023, the Respondent electronically transmitted its Notice of Preliminary Objection, Statement of Defence, Statement of Facts and Pleas in law to the Registry of the Court, all of them dated 9th September 2021.
10. On the same day (30th May 2023), the Respondent sent a correspondence via its Counsel, S.A. Ogunlowo Esq., to the Court premised on the order for costs awarded against it.
11. The Court held a virtual session on the same day, 30th May 2023, in which both parties were represented. The Court dealt with the late filing of the Respondent's brief (contrary to its previous order) and ordered that the Counsel for the Respondent should be withdrawn by the relevant authority of the Member State as it found the conduct of the said Counsel unprofessional. The Court awarded Five Hundred Thousand Naira against the Respondent as costs, in addition to the previous award.
12. The Solicitor-General of the Federal Republic of Nigeria in a letter dated 10th July 2023, addressed to the Court, prayed that the Court should set aside the

costs of Seven Hundred and Fifty Thousand Naira as it was unjustly awarded against the Respondent.

13. On the 14th September 2023, the Respondent filed a Motion for the Extension of Time within which it may file its Preliminary Objection and Statement of Defence.
14. The Applicant on the same date, 14th September 2023, filed a Written Address in Opposition to the Respondent's Preliminary Objection and a Reply to the Respondent's Statement of Defence, in the Registry of the Court.
15. The Court held a virtual session on 23rd October 2023, in which the Respondent was absent and unrepresented but the Applicant was represented by Counsel. The latter proceeded to pray for cost of N750, 000 from the Court citing the Respondent's absence as the basis. The Applicant further prayed that the Court should prevent the Respondent from defending the cause and from taking any further steps. The Court declined the application for cost and other orders, as prayed for by the Applicant but adjourned for hearing at a later date.
16. Following this, the Court held another virtual session on 30th January 2024, in which the Respondent was represented by Counsel and the Applicant was absent and unrepresented. The latter however, sought an adjournment via a letter to which the Respondent had no objection. The case was adjourned for hearing on a later date.
17. The Court had a final virtual session on 12th November 2024, in which both parties were represented in Court. The Court granted the parties leave to adopt their processes and adumbrate on the Preliminary Objection. The case was adjourned for judgment.

V. APPLICANTS' CASE

a) Summary of facts



18. The Applicant is suing on behalf of Makia Media Limited, and describes himself as a frequent analyst to a lot of broadcasting radio stations. He also states that he is the Chief Executive Officer of a media organisation and President of the One Love Foundation, which is a Non-Governmental Organisation.

19. It is the claim of the Applicant that the Respondent through its agents and extant laws, has trampled on human rights defenders, activists, bloggers, journalists, broadcasters and social media users' right to freedom of expression, information amongst others. He submits that criticizing and critiquing the actions of government, government officials and expressing one's opinion on issues of national, political, social or economic interest is the bedrock of a vibrant and transparent democracy. This requires that persons in government, as the Respondent and its agents are, must exercise high tolerance to criticisms.

20. He claims that sometime in July 2020, the Respondent via the National Broadcasting Commission in enforcement of the nebulous and suppressive provisions of Sections 5, 4 (1) (f) and 5 (4), (3) of the Nigeria Broadcasting Code (hereinafter NBC for short) (on Nigeria broadcasting radio/television stations), instructed all broadcasting, radio, media houses, and other news medium to adhere to a directive via a circular to broadcasting stations in a letter entitled "*NEWSPAPER REVIEWS AND CURRENT AFFAIRS PROGRAMMES: A NEED FOR CAUTION.*" The letter stated that:

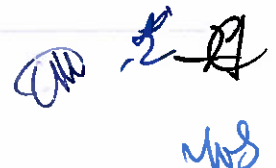
- i. *All broadcasting stations not to glamourize/report the nefarious activities of insurgents, terrorists in Nigeria;*
- ii. *All broadcasting stations not giving details of either the security issues or victims of these security challenges.*

21. The Applicant alleges that following this letter, the Respondent through the NBC, started the implementation of the same and condemns the action as a



draconian directive. The implementation included clamping down on news media, radio stations and television stations that flouted the directive in the aforesaid letter. The letter and the nature of implementation are both criticised by the Applicant who submits that the present suit has been lodged as a public interest suit on behalf of all media, television and radio stations in Nigeria.

22. He alleges further that though the Respondent has ratified several fundamental human rights treaties, it still demonstrates a very low tolerance for contrary political views which results in unlawful detention of people and media practitioners, including bloggers, human rights defenders and activists. This low level of political tolerance for views perceived to be critical of government policies and government official's action in the Respondent State, means that the press/media continues to be a subject of never ending intimidation by state actors.
23. The Applicant also alleges that the Respondent and its agents consider all broadcasting stations' coverage on security issues as a threat to governance at all levels. However, he points out that this consideration is untrue as the Respondent's fear is because of the rising influence of broadcasting platforms in Nigeria as major sources of information dissemination and public expression.
24. Furthermore, he alleges that according to the 2016 and 2017 Freedom House Reports on Nigeria, internet/broadcasting freedom of expression declined due to an unprecedented pattern of arbitrary arrests and detention; most of which never led to criminal charges in court and the few that were taken to court were dropped by the government due to the apparent weaknesses of the charges.
25. The Applicant alleges further that despite the enactment of the Freedom of Information Act, 2011, which guarantees the right to access public records, the Respondent and its agents and several states of Nigeria have routinely refused to release any public information sought. According to Freedom House Report,



2016, online reporters who use the broadcasting platforms to report on sensitive issues such as official corruption are regularly subjected to criminal prosecution. He claims that even whistle-blowers, who ought to be protected under international human rights law and the Freedom of Information Act 2011 and other related laws are punished by being sacked, harassed, arrested and detained or even accused and ultimately prosecuted.

26. He claims that a Press Freedom Index in Nigeria showed significant improvement after the Freedom of Information Bill was signed in 2011. However, there has been a steady decline in the press freedom index since then and it comes as no surprise that the Respondent State is presently ranked alongside countries hostile to media freedom such as Afghanistan, Chad, the Philippines, Saudi Arabia, Zimbabwe and Colombia.

27. The Applicant chronologically highlights some alleged high-profile cases of harassment, intimidation, arrest, unlawful detention, prosecution and imprisonment of journalists, bloggers, broadcasters, social media users, human rights defenders and activists in Nigeria by the Respondent, its agents and several states of Nigeria. In this wise, he states that on the 8th of August 2015, one Abubakar Sidiq Usman, the publisher of *Abusidiqu.com* blog was allegedly arrested by armed operatives of the Economic and Financial Crimes Commission (EFCC), allegedly for criticizing the EFCC in his blog. Despite the intervention of the SERAP via a letter published on 9th August 2016, and by Vanguard newspaper, the blogger was detained for thirty-six hours and denied access to his lawyer for spurious allegation of cyber stalking. Also, on 20th August 2016, Musa Babale Azare was allegedly arrested in Abuja by Police from Bauchi State for 'criticizing' the policies and actions of the Bauchi State Government on social media platforms. The Respondent carried out the arrest and detention despite the arrest being illegal as it was made outside the

jurisdiction of Bauchi State. Also, in October 2015, Desmond Ike Chima a blogger, was allegedly arrested and spent the next six months in prison for publishing an article considered '*damaging*' about the managing director of a bank. The charges were later dropped. He also submits that in September 2016, Sahara Reporters reported that soldiers, mobile policemen and State Security Service agents of the Respondent stormed a hotel in Edo State and arrested ten reporters from an independent news websites Watchdog Media News. He submits that in January 2017, Omoyele Sowore, a reporter for online broadcasting news outlet Sahara Reporters, was allegedly harassed by police in Lagos on the basis of a complaint about a report published on its website. Also in March 2017 – two bloggers Kemi Olunloyo and Samuel Walson were allegedly detained in prison for publishing an article about an elite pastor, Pastor David Ibiyeomie in Rivers State. The Applicant submits that on 6th January 2017, the Vanguard published the letter signed by an NGO calling for the immediate release of Journalist Nsibiet John who was allegedly arrested on the orders of the Akwa Ibom State Deputy Governor Moses Ekpo for allegedly publishing '*defamatory*' materials against the Deputy Governor. Lastly, the Applicant submits that on 23rd November 2018, Mr Segun Onibiyo, a broadcaster with the Federal Radio Corporation of Nigeria (FRCN) was allegedly arrested over alleged incitement, defamation of character and injurious falsehood against the Kaduna State Governor, Mallam Nasir el-Rufai. Mr Segun Onibiyo was detained for twenty-four days in Kaduna Prison over an unfounded charge which turned out to be perpetrated by alleged hackers who had reportedly hacked into his former and abandoned Facebook account.

28. Based on the foregoing chronology of harassments, intimidation, arrest, detention and prosecution of human rights defenders, activists, broadcasting journalists and bloggers by the Respondent, the Applicant claims therefore, for

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the human rights violations. He claims that the extant law should not be used erode the sacred right to freedom of expression, information and media freedom, which is the bedrock of the rule of law and sustainable democracy.

29. In conclusion, the Applicant alleges that the Respondent has violated the right to freedom of expression and of the press.

b) Pleas in law

30. The Applicant is relying on the following pleas in law:

- Articles 8 and 9 of the African Charter on Human and Peoples' Rights;
- Article 19 of the International Covenant on Civil and Political Rights 1976;
- Article 66 of the Revised Treaty of the Economic Community of West African States 1993;
- Articles 1,5,7,10,11 and 12 of the Supplementary Act (A/SAI/6/10) on Freedom of Expression and Right to Information in West Africa 2010; and
- Article 32 of the Supplementary Act (A/SA.1/01/10) on Personal Data within the Economic Community of West African States.




c) Reliefs sought

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

- i. A declaration that the actions of the Respondent and its agents including the Nigeria Broadcasting Commission (NBC) in arbitrarily enforcing sections 5, 4 (1 f and 5,4,3) of the NBC Code on Nigeria broadcasting radio/television stations in Nigeria, which is illegal/unconstitutional and or other similar laws to criminally

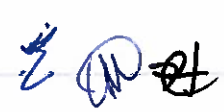
punish news reporting deemed breach of security of Nigeria by media houses, broadcasting stations, radio, online and news medium resident in Nigeria and the Economic Community of West African States (ECOWAS) violate the rights to freedom of expression, information, opinion and privacy and media freedom, guaranteed under Articles 6, 8, 9 and 24 of the African Charter on Human and Peoples' Rights, Articles 7, 9, 17 and 19 of the International Covenant on Civil and Political Rights 1976, Articles 2, 9, 12 and 19 of the Universal Declaration of Human Right 1948, Article 66 of the Revised Treaty of the Economic Community of West African States (ECOWAS) 1993, Articles 1, 6, 9, 10, 11 and 12 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa, Article 32 of the Supplementary Act (A/SA.1/01/10) on Personal Data Protection within the Economic Community of West African States and Articles II, XII and XIII of the Declaration of Principles on Freedom of Expression in African 2002;

- ii. A declaration that the act of Nigeria government agency, the NBC in enforcing vide its NBC directive of Sections 5,4 (1 f and 5,4,3) of the NBC Code on Nigeria broadcasting radio/television stations in Nigeria, which is illegal/unconstitutional and or other similar laws to criminally punish news reporting deemed breach of security of Nigeria by media houses, broadcasting station, radio, online and news medium resident in Nigeria and the Economic Community of West African States (ECOWAS) is entirely inconsistent and incompatible with international human rights standards and infringe on the rights to the freedom of expression, information 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 Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Rights to Information in West Africa, the 1999 Constitution of the Federal Republic of Nigeria(as amended) and the Supplementary Act (A/SA.1/01/10) on Personal Data Protection with the Economic Community of West African States;

- iii. An order directing the Respondent agent, NBC to immediately withdraw the enforcement of sections 5,4 (1 f and 5,4,3) of the NBC Code on Nigeria broadcasting radio/television stations in Nigeria, which is illegal/unconstitutional and or other similar laws to criminally punish news reporting deemed breach of security of Nigeria by media houses, broadcasting station, radio, online and news medium resident in Nigeria and the Economic Community of West African States (ECOWAS);
- iv. An order directing the Respondent and/or its agents and several states of Nigeria to provide effective remedies and reparation, including adequate compensation, restitution, satisfaction or guarantees of non-repetition that the Honourable Court may deem fit to grant to human rights defenders, activist bloggers, journalists and other online and off-line media practitioners that have been harassed, intimidated, unlawfully arrested, detained, and unfairly prosecuted by the Respondent as regard twitter usage through the criminalization of same by Nigeria government;



- v. Costs of this suit in the sum of \$1,000,000.00(One Million Dollars) in contingent fees;
- vi. General damages of the sum of \$100,000,000.00(One Hundred Million Dollars) being all inconvenience, damages suffered by the Applicant and broadcasting organizations in Nigeria in the enforcement of Sections 5,4 (1 f and 5, 4, 3) of the NBC code on Nigeria broadcasting radio/television stations in Nigeria, which is illegal/unconstitutional and or other similar laws to criminally punish news reporting deemed breach of security of Nigeria by media houses, broadcasting station, radio, online and news medium resident in Nigeria and the Economic Community of West African States (ECOWAS);
- vii. Such further orders the Honorable Court may deem fit to make in the circumstances of this suit.

VI. RESPONDENT'S CASE

a) Summary of facts

- 32.The Respondent denies each and every allegation of fact contained in the Applicant's Narration of Facts as if each of such allegations was traversed *seriatim*.
- 33.The Respondent denies Paragraph 2 of the Narration of Facts and states that the actual Applicant in this Application is MAKIA MEDIA LIMITED on whose behalf Patrick Eholor is acting. The Respondent further states that '*One Love Foundation*' is not a party to this case and that its concerns, mandates, objectives and other activities are irrelevant to the Applicant's Application.
- 34.The Respondent avers that contrary to insinuations in Paragraph 2 of the Applicant's Initiating Application, no Court has declared any portion of the laws

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and regulations governing broadcast in Nigeria to be ambiguous or illegal. That laws and regulations for media organizations in Nigeria do not violate the rights of Nigerian citizens.

35. The Respondent denies Paragraph 3 of the Narration of Facts and states that the Applicant being a corporate entity cannot be an analyst to any media organization unless done through natural human beings. The Respondent further denies all averments in Paragraph 3 of the Narration of Facts and states that the '*reports and available evidence*' referred to in the Paragraph are irrelevant to the Applicant's application because they do not affect or concern the Applicant in any manner whatsoever and they are not before the Court.
36. The Respondent asserts that it did not trample on any of the rights of the Applicant as it, being a corporate body, does not possess human rights. Further, the Respondent has never prevented the Applicant's agent or any citizen from exercising their rights within the limits of the law.
37. The Respondent denies all averments in Paragraph 4 of the Narration of Facts and states that there is nothing nebulous or suppressive in Sections 5, (4), (1)(F) and 5(4), (3) of the Nigeria Broadcasting Code of the Respondent. It submits that the instruction issued to the National Broadcasting Commission was not addressed to the Applicant as he does not operate any radio or television station in Nigeria. The contents of the letter issued by the National Broadcasting Commission did not affect the Applicant in any manner whatsoever as the same was meant only to caution and did not ban or hinder the practice of journalism or operation of the media organizations in Nigeria.
38. The Respondent denies all averments in Paragraph 7 of the Initiating Application and states that there is nothing to enforce in the letter because it only cautioned media organizations and reminded them to operate in the interest of national security. It avers that the directive in the memorandum or letter, is

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neither arbitrary nor draconian because it is based on the law in force. The Respondent contends that no radio or television station operating in Nigeria within the law has been victimized in any manner whatsoever in relation to the directive by the National Broadcasting Commission.

39. It further contends that the Applicant did not suffer any wrong as a result of the directive by the National Broadcasting Commission as the Applicant does not operate either a radio or a television station and cannot file this action on behalf of those who do. The Respondent avers that it did not curtail or violate in any manner whatsoever any of the rights of the Applicant or its agent including freedom of expression, information or press. It submits that it has never prevented or hindered the Applicant or its agent from expressing contrary political views to those of the government or public officials.
40. The Respondent avers that it did not illegally arrest or detain the Applicant or its agent at any time prior to the filing of this Application. Furthermore, it contends that it did not intimidate the Applicant or its agent in any manner whatsoever. The Respondent argues as untrue the claim of the Applicant that it considers media reports on security as threats to national security. Further, it denies as baseless the assertion that its agencies are incompetent. The Respondent avers that it is not hostile to the free operation of media organizations in Nigeria operating within the limits of the law.
41. The Respondent avers that all reports referred to by the Applicant, including the 2016-2017 Freedom House Reports on Nigeria and others, are not true and they are irrelevant to the Applicant's case.
42. The Respondent avers further that it did not unduly withhold any information from the Applicant or its agent concerning the subject matter of the Applicant's Application. It submits that under the Freedom of Information Act 2011 of the Respondent, there are adequate legal remedies that any aggrieved person can

explore before domestic courts. It avers that neither the Applicant nor its agent applied to the Respondent under the Whistle Blower Policy and was punished or victimised rather than being commended and rewarded.

43. The Respondent denies Paragraphs 13 and 14 of the Initiating Application and states that it is merely an unsubstantiated opinion of the Applicant or its agent. It also denies all averments relating to the alleged high profile cases of alleged harassment, intimidation, arrest, unlawful detention, prosecution and imprisonment of the named persons who are not parties to this Application as none of it has anything to do with this case. The Respondent avers further that neither the Applicant nor its agent was harassed, intimidated, arrested, unlawfully detained, prosecuted or imprisoned prior to the filing of the Applicant's Application.

b) Reliefs sought

44. The Respondent urges the Court to dismiss the Applicant's case in its entirety for lacking in merit.

VII. APPLICANT'S RESPONSE TO THE STATEMENT OF DEFENCE

45. The Applicant denies the assertions of fact made by the Respondent in its Statement of Defence. He contends that he instituted this suit in his name but that he is suing for a corporate company, a practice which is permissible under the ECOWAS Rules of Court and Protocol. He maintains that he has filed this case in public interest capacity on behalf of his company, the Nigerian press and radio houses and the general Nigeria citizenry.

46. He alleges that contrary to the Respondent's averments, different courts have declared null and void the NBC Rules and Regulation, which is herein pleaded in this regard. He adduces a report and pieces of evidence which he submits are

mutually relevant to this case and form the basis of this suit. Furthermore, the Applicant claims that the report of Respondent is suppressive, draconian, in bad faith and meant to gag the Applicant's company from fair reportage of security issues alongside other media houses.

47. The Applicant asserts that the letter by Respondent was addressed to all media and television houses of which the Applicant is one of them. He contends that all actions of Respondent are meant to hinder free speech and gag analysts of radio, print media from expressing views on security issues. The Applicant states that all his narration of facts are all true and consistent with attempts to fully gag the Applicant, media houses and newspapers from expressing their freedom of expression and press.

48. Consequently, the Applicant pleads that the Court upholds all his claims and reliefs sought in his Initiating Application.

VIII. PROCEEDINGS BEFORE THE COURT

Preliminary Objection

49. The Respondent raises a Preliminary Objection challenging the admissibility of the application on two grounds.

50. The first ground of the Respondent's objection is that the Applicant failed to state any instance of violation of rights that he suffered and upon which the present application has been anchored. Secondly, it argues that the Applicant is a corporation or body corporate to which human rights cannot be attributed.

51. Furthermore, the Respondent argues that the National Broadcasting Commission is an agency of the Respondent and not a Community Institution of the Economic Community of West African States (ECOWAS). Based on this fact, any challenge to the validity to its official action or decision should be made before the domestic courts.

52. The Respondent avers that the Applicant's application before this Honourable Court is intended to move the Court to declare as unconstitutional and illegal, the memorandum or letter of caution issued to radio and television stations in Nigeria as well as some provisions of the Nigeria Broadcasting Code. It submits that this move by the Applicant is devoid any knowledge of the competence of the Court, which is not set up to and does not have the power to enforce the Constitution of Member States including the Respondent.

53. These contentions are summarised into two issues for determination as follows:

- *Can the Applicant, a corporate body, maintain its application for enforcement of human rights before this Honourable Court?*
- *Whether the Applicant's application, intended to challenge domestic norm and enforce domestic constitution, is admissible?*

54. The Respondent therefore, prays the Court to resolve the issues in its favour and uphold the Preliminary Objection, and consequently declare the Applicant's application inadmissible.

Applicant's Response to the Preliminary Objection

55. In his response to the Respondent's Preliminary Objection, the Applicant points out that the cases and statutory provisions that the Respondent cited do not follow the principle of *stare decisis* and *classicus*. He argues that all the cases cited are distinguishable from the instant case and do not represent the factual situations between parties.

56. With regards to the first limb of the Respondent's objection, on whether a corporate body can maintain an action for the enforcement of human rights before this Honourable Court, the Applicant submits that he is actually an individual suing in public interest capacity for persons directly affected by



actions of the Respondent. He claims that based on this, the application is proper.

57. The Applicant argues that the doctrine of "*locus standi*" and competence to sue has since been relaxed in favour of public litigation. Citing the decision of the Court in the case of REGISTERED TRUSTEES OF THE SOCIO - ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) V. THE FEDERAL REPUBLIC OF NIGERIA AND ANOR. SUIT NO ECW/CCJ/APP/08/08. He argues further that the capacity of NGOs and its leaders, just like the Applicant, to lodge complaints related to human rights is also recognized by the American Convention on Human Rights which provides in its Article 44 "*that any person or group of persons, or any non governmental entity legally recognized in one or more member states of the organization, may lodge petitions with the commission containing denunciations or complaints of violation of this Convention by a state party...*"
58. The Applicant asserts that public interest litigation in this regard, is for the general welfare of the public and warrants recognition and protection. Also, it is something in which the public as a whole has a stake especially an interest that justifies governmental regulation. He submits that under public interest litigation, it is not necessary that the applicant has suffered some injury of his own or has had personal grievance to litigate. Public Interest litigation is therefore, a right given to the socially conscious members or a public spirited NGO.
59. With regards to the second objection, that the application is intended to challenge domestic norm and enforce domestic constitution, the Applicant states that the argument is not materially applicable in any ramification to this case. The Applicant relies on Article 9 (4) of the ECOWAS Protocol, as amended by the ECOWAS Supplementary Protocol, formally recognises that

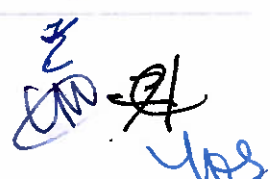
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the ECOWAS Court “has jurisdiction to determine cases of violation of human rights that occur in any Member State.” Article 10 (d) of the ECOWAS Supplementary Protocol states that access to the ECOWAS Court is open to “individuals on application for relief for violation of their human rights.” based on this the Applicant submits that the Court can exercise jurisdiction in the following ways:

- *Ratione personae: Any individual alleging a violation of human rights committed in any Member State may bring a case before the Court. Applications from organisations acting on behalf of a group of people whose rights have been violated can also be accepted.*
- *Ratione temporis: Human rights cases must be brought within three years of the cause of action arising. In instances where violations are ongoing, it will give rise to a cause of action die in diem (day in and out) and postpones the running of time.*
- *Ratione materiae: the Court has jurisdiction over all human rights violations that occur in the jurisdiction of Members of ECOWAS.*

60. The Applicant argues that from the above, it can be seen that the Court is vested with requisite jurisdiction in respect of cases of illegal use of domestic laws and statutes that generally run foul and in variance with ECOWAS Protocols and established laws, just like the enforcement of Sections 5, (4) (1) (f) and 5, (4), (3) of the NBC, on persons that the Applicant is representing herein.

61. In conclusion, the Applicant alleges that it would be seen as an aberration, if the his claims are not granted and the Respondent’s contention are taken into cognizance when further enforcement of Sections 5, (4) (1) (f) and 5, (4), (3) of the NBC on Nigeria broadcasting radio/television stations in Nigeria is illegal/unconstitutional. This law affects the rights of the Applicant, TV stations, represented personality (sic), radio stations and whether same is not unjust,



oppressive and wide, taking into cognizance that it will work hardship and is in total variance to every established rights to freedom of speech and of the press. The Applicant prays that the Court decides in his favour in the determination of the objection.

Analysis of the Court

62. In addressing the Preliminary Objection raised by the Respondent, the Court will reproduce the grounds upon which it is premised:

- that the Applicant is a corporate body which does not have human rights that can be violated;
- the Applicant seeks to challenge a domestic law of the Respondent.

63. It is obvious that the first ground points to the admissibility criteria under Article 10(d) of the Supplementary Protocol as it relates to the standing of the Applicant before this Court. On the other hand, the second ground falls under the subject matter jurisdiction of the Court.

64. The Court will therefore, analyse the two grounds under the rubrics '*jurisdiction*' and '*admissibility*' respectively.

IX. JURISDICTION

65. The jurisdiction of the Court on human rights is guided by Article 9(4) of the Supplementary Protocol, which provides; "*The Court has jurisdiction to hear cases of human rights violation that occur in a Member State.*" This provision has been articulated by the jurisprudence of the Court as simply meaning that the mere allegation/s of human rights in the territory of a Member State is sufficient *prima facie* to justify its jurisdiction: THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY

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PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA
& 4 ORS (2014) CCJELR at page 249.

66. The Court notes that the application borders on the violation of various human rights contrary to fundamental treaties ratified by the Respondent. In this regard, the Court declares partly that it is properly seised with competence to determine the same.
67. However, the Court is mindful that it cannot make a full declaration of jurisdiction without considering the Respondent's Preliminary Objection, which is that which concerns the challenge of the submission of a domestic law for adjudication by the Respondent, as it contends that this is outside the jurisdiction of this Court.
68. The Court recalls its jurisdiction does not consist of examining the domestic laws of a Member State *in abstracto*, or in assessing whether such domestic laws are consistent or not with the Member State's international obligations as was held in *KARIM MEISSA WADE V. REPUBLIC OF SENEGAL* (2013) CCJELR at page 231. The Court espoused that the alleged violation must have resulted from an actual implementation of the law, to the detriment of the Applicant in question. To that effect, mere presumptions or conjectures do not suffice.
69. The tradition of the Court then is to refrain from adjudicating on the national laws of Member States or to review decisions made by the domestic courts of Member States as was held in *MESSRS ABDOULAYE BALDE & ORS V REP OF SENEGAL* (2013) CCJELR at page 65. However, this fine ratio emerged from the Court's decision in *HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER* (2008) CCJELR at page 217 that whilst it has no mandate *in abstracto*, in the protection of the human rights of individuals it will do so with particular inference to the case before it.

70. The above jurisprudence of the Court depicts that whilst it has no mandate to examine the laws of Member States, it will do so where the application of such laws in the territory of a Member State, occasions the violation of the human rights of its citizens.
71. Consequently, the Court has sufficient legal mandate clothing it with jurisdiction in this instance. The fact that the claim is for an alleged human rights violation in the application of extant law (Nigeria Broadcasting Code), vests the Court with *prima facie* jurisdiction.
72. Thus, the Court finds that the first ground which borders on jurisdiction is overruled. It is the considered view of the Court that its determination will not be on the law but on the application of the law that has allegedly occasioned human rights violations. Consequently, the Court declares that it is fully vested with jurisprudence to determine the claims.

X. ADMISSIBILITY

73. It is trite law that the admissibility of a claim before the Court is dealt with as a pre-condition pursuant to Article 10(d) of the Supplementary Protocol which provides that "*Access to the Court is open to... individuals on application for relief for violation of their human rights, the submission of application for which shall not be i) anonymous; nor ii) be made whilst the same matter has been instituted before another international Court for adjudication.*" The Court has since articulated this provision in its jurisprudence *AZIAGBEDE KOKOU & OTHERS V REPUBLIC OF TOGO* (2013) CCJELR at page 167 and narrowed down the admissibility criteria to three as follows:

i) the applicant's victim status or locus standi;

ii) the non-anonymity of the applicant(s); and

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[Handwritten signature]

iii) the non-pendency of the case before another international Court.

VICTIM STATUS/LOCUS STANDI

Respondent's Case

74. The Respondent's objection is that the actual Applicant is Makia Media Limited and not Patrick Eholor, (the Applicant herein) as it is stated on the face of the application. It submits therefore, that this is inappropriate and renders the application inadmissible as the Court has held that only natural human beings are capable of making use of the rights enforcement mechanism of the Court. The Respondent in sustaining its argument relies on the decision of the Court in OCEAN KING NIGERIA LTD. V. REPUBLIC OF SENEGAL (2011) CCJELR at page 139, where it was declared that applications brought by corporate bodies were inadmissible, as such applicants are not considered as having human rights that can be violated.

75. The Respondent avers that the actual Applicant is Makia Media Limited and Patrick Eholor is its agent. It thus submits that the act of an agent on behalf of his principal is by law the act of the principal himself. Therefore, the Application before the Court belongs to Makia Media Limited and certainly not of Patrick Eholor. Patrick Eholor only filed it for and on behalf of Makia Media Limited. The Respondent humbly urges the Honourable Court to so hold based on the maxim "*Qui facit per alium, facit per se*," which means "*he who acts through another is deemed in law to do it himself*."

Applicant's Response

76. In response to the Respondent's objection on this point, the Applicant states that in this material suit, he is actually an individual suing in public interest capacity

for persons directly affected by actions of the Respondent, which makes the action and application properly filed before the Court.

77. He argues further that the doctrine of '*locus standi*' and competence to sue has since been relaxed to accommodate the public litigation which is geared towards the protection of human rights.

Analysis of the Court

78. The Court notes that the crux of the Preliminary Objection is that the Applicant is suing on behalf of Makia Media Limited, which is a company registered under the laws of the Respondent State. The contention of the Respondent is that Makia Media Limited, being a corporate body, is not entitled to sue for the violation of human rights. However, the Applicant on his part stated that indeed he is suing the Respondent in the interests of the public, specifically for Makia Media, the Nigeria press and radio houses and the general Nigeria citizenry.
79. It is pertinent to note therefore, that the face of the Initiating Application indicates that the Applicant (Patrick Eholor) is suing on behalf of '*Makia Media Limited.*' This cannot be interpreted in any other context than in the literal sense, which is that the Applicant is suing on behalf of Makia Media Limited. Therefore, the Court considers that the Applicant is suing on behalf of Makia Media Limited, a corporate body which is the alleged victim in the instant case and so hold. Consequently, the Court declares that the Applicant is suing the Respondent in a representative capacity for Makia Media Limited.
80. Furthermore, the Court notes the Applicant's submission that it is also suing in the interest of the public under the *actio popularis* principle. In this wise, the Court recalls that the objection of the Respondent bordering on admissibility is that the Applicant is a corporate body to which human rights cannot be attributed, hence the claim should be dismissed. However, the Court will



examine the question of accessing the Court pursuant to Article 10 (d) of the Supplementary Protocol under three component headings:

- *The effect of suing as a corporate body;*
- *Locus standi under actio popularis; and*
- *Suing as a representative.*

The effect of suing as a corporate body

81. The Court recalls the first objection of the Respondent, to wit that a corporate body cannot bring a claim for human rights violation citing the case of OCEAN KING NIGERIA LTD. V. REPUBLIC OF SENEGAL (2011) CCJELR, where the Court found *inter alia* that “*Corporate bodies can access the court only when there is a prior agreement between the parties to a particular transaction that disputes arising out of that transaction shall be settled by the court, or alternatively, in proceedings for the determination of an act or omission of a community official which violates their rights and no more*”, as provided under Article 9(1)(g) and 6 of the Supplementary Protocol.
82. Unfortunately, this position has evolved as laws change as often as society evolves. Thus, in DEXTER OIL LIMITED V REPUBLIC OF LIBERIA JUDGMENT NO: ECW/CCJ/JUD/03/19 (Unreported)), the Court moved away from its previous position and held that “*...in the exercise of its inherent power it hereby departs from all decisions wherein corporate bodies were accommodated under Article 10 (d) of the 1991 Protocol on the Court as amended by Supplementary Protocol, 2005; and affirms that only individuals have access for human rights violations. The established exceptions under which corporate bodies can ground an action are; rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression.* Further, the Court held that

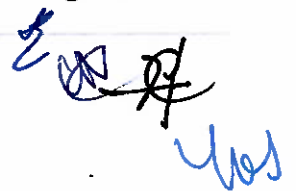
“Human rights imply the rights that belong to all human beings irrespective of their nationality, race, caste, creed and gender amongst others; like right to life, right to health and right against torture, inhuman and degrading treatment which are specific to a human being. On the other hand right of a corporate body, are rights that are fundamental and necessary for the existence of a corporate body which a legal entity can enjoy and be deprived of; for example right to freedom of speech as the corporation is entitled to speak about its product; right to property as the corporation generates profit in shares and, or cash and is entitled to the quiet enjoyment of same. The established exceptions under which corporate bodies can ground an action are; rights that are fundamental rights not dependent on human rights and they include right to fair hearing, right to property and right to freedom of expression.”

83. In the instant case, the Court notes that the claim brought by the Applicant is for the violation of the right to freedom of expression. Therefore, based on DEXTER OIL (supra) the Applicant is entitled to bring a case before this Court on behalf of a corporate body, as the claim falls under the established exceptions (freedom of expression) under which corporate bodies can ground an action before this Court.

84. Consequently, the Court overrules the Respondent’s objection in this regard.

Locus standi under the actio popularis principle

85. The Court has established that under the *actio popularis* principle “or a right resident in any member of a community to take legal action in vindication of a public interest” (SOUTH WEST AFRICA, ETHIOPIA AND LIBERIA V SOUTH AFRICA, International Court of Justice judgment of 1966, 47, para 88), an applicant need not be the direct victim of a human rights violation. In essence, an NGO or a public spirited individual has a right to bring an action



only in respect of public-centric matters for an indeterminable number of victims.

86. Under this principle, the interest of the public is paramount and for which an applicant does not need to demonstrate that he suffered any personal injury or that he has a special interest that needs to be protected. This is a well-established ratio laid down in the jurisprudence of the Court particularly in **CONCERNED YOUTH OF GANTA FOR RECONSTRUCTION AND DEVELOPMENT & 1 OR V. THE REPUBLIC OF LIBERIA** JUDGMENT NO: ECW/CCJ/RUL/06/2020 (Unreported) at page 29.

87. Thus, the Court in furtherance of its consideration of an *actio popularis* application before it, must consider certain pre-conditions of admissibility. In granting an applicant the right to bring an *actio popularis* application, the following conditions must be fulfilled as laid down in its decision in **MOUVEMENT NIGERIEN POUR LA PROMOTION DES PEUPLES DE LA PROMOTION DE LA DEMOCRATIE V REPUBLIC DU NIGER** JUDGMENT NO: ECW/CCJ/JUD/01/23 (Unreported) at page 14 paragraph 46:

1. The rights allegedly violated must be capable of being held by the public and should not be a private right.
2. The reliefs sought must be exclusively for the 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 concern.
3. The victims while not determinable, must for purposes of award of reparation be capable of being envisioned or envisaged by the Court.

88. The aforesaid conditions have become a tradition for the Court and it maintained this in **THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS**



AWARENESS INITIATIVE V. THE FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/16/20 (Unreported) at page 19, that an Applicant suing in the interest of the public needs to demonstrate that there is a public interest worthy of protection which has been allegedly violated. Furthermore, the matter in question must be judicious and the legal action is not brought for the personal benefit of the Applicant. Lastly, that the identification of the victim is not an essential requirement for such action to be brought before the Court.

89. Therefore, the Court in its determination of the present case will do so in line with the requirements laid down in MOUVEMENT case (supra).

Right capable of being held by the public

90. The Court recalls the crux of the application before it, which is that the act of the Respondent is in violation of the right to freedom of expression of the Nigerian press, radio houses and the general Nigerian citizens. It is evident that this right is that guaranteed under Article 9 of the African Charter on Human and People's Rights. The proper denotation of Article 9 aforesaid reads "1) *[E]very individual shall have the right to receive information. 2) Every individual shall have the right to express and disseminate his opinions within the law.*" Clearly, this guarantee was drafted as a general protection for everyone and not an individual or private right. The Court is inclined to conclude that any right or guarantee which are capable of affording protection to everyone can be described as a public right.

91. Relying on its decision in PATRICK EHOLOR (PRESIDENT OF ONE LOVE FOUNDATION) V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/51/23 (Unreported) at page 15, the Court in the present case, finds that the requirement has been met. It therefore, finds that based on the fact



that Article 9 of the ACHPR is a public right, the requirement under this rubric has been fulfilled.

The reliefs sought must be exclusively for the benefit of the public

92. In considering the second requirement, that the reliefs must be exclusively for the benefit of the public, the Court notes that the Applicant sought the following pecuniary reliefs in the Initiating Application: "...General damages of the sum of \$100,000,000 (one hundred million dollars) being all inconvenience, damages suffered by the Applicant, Broad casting organizations in Nigeria in the enforcement of Sections 5, (4) (1) (f) and 5, (4), (3) of the NBC on Nigeria broadcasting radio/television stations in Nigeria, which is illegal/unconstitutional and or other similar laws to criminally punish news reporting deemed breach of security of Nigeria by media houses, broadcasting station, radio, online and news medium resident in Nigeria and the Economic Community of West African States (ECOWAS)."

93. The Court finds it imperative to state that the import of an *actio-popularis* is the support of the vulnerable who may not be able to seek redress for the protection of their human rights. It is the people-centric nature of this form of litigation that has allowed international Courts create a niche that offers an extra layer of protection of fundamental human rights. The Court cannot over-emphasize that a public right must be enforced for the benefit of the public in terms of enhancing the protection and promotion of human rights. Thus, where the claim expresses any form of personal gain on the part of the Applicant, it loses the people-centric character that endears it to the Court.

94. In the instant case, the Court observes that the reliefs sought include pecuniary interest on the part of the Applicant, and broadcasting organisations in Nigeria. This leads the Court to its findings that this relief is centred on the Applicant



and falls short of the reliefs that should be prayed for in a public action suit. Consequently, the Court holds that the requirement has not been met by Applicant.

Victims must be capable of being envisioned

95. Furthermore, the Court considers that it is a settled principle that the victims of an *actio popularis* suit while not determinable, must for purposes of award of reparation be capable of being envisioned or envisaged by it.

96. Thus, it explained in *SERAP V FEDERAL REPUBLIC OF NIGERIA* (2016) CCJELR at page 433 paragraph 8.4.3 where it held that “... further, the Plaintiff has not given the method of distribution of the damages nor has the Plaintiff specified who the beneficiaries are or would be and how they are determined. In the circumstances, this Court is not inclined to grant the damages sought and hereby declines to do so.” It is evident that that the Court desires that an *actio popularis* claim is sought for a determinable group/class/part of society who have been adversely affected by the actions or inactions of the Respondent. This reasoning follows the *ratio* in *REV. FATHER SOLOMON MFA & 11 ORS V FEDERAL REPUBLIC OF NIGERIA*, JUDGMENT NO: ECW/CCJ/JUD/06/19 (Unreported) where the Court held that “The Applicants have made claims for some compensation on behalf of the communities. The Court has no record of the details of the victims, their names, gender, age, address; the properties destroyed have also not been specifically identified nor their value indicated. In this wise, the Court is unable to award any monetary compensation.”

97. The nature of the Court is to establish tests and criteria that will enable it reach a just decision. Hence, while it is apparent that generally *actio popularis* is people centric, it is quite aware that litigants may try to use the said root to

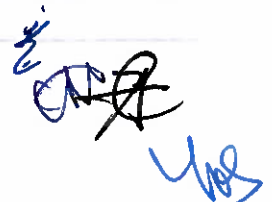


flood its registry with claims that are actually not people centric. The principle of *stare decisis* always keeps the Court abreast with its evolution though it can only evolve when sufficient evidence supports facts to the extent that a test or criteria may prove fallible.

98. In this instance, the Court finds that its test in this regard, is for the time being is infallible. Having perused the facts and evidence before it, the Court finds that the application has not passed the test for a determinable class of victims, or demonstrated that the victims are capable of being envisioned by the Court.
99. The Court finds it imperative to state at this juncture that the test for the admissibility of a public interest litigation is cumulative, and the failure to meet one negates the action entirely. It is evident that the present application has not met the cumulative feature of the criteria, as the preceding paragraphs denote. Without more, the Court deems that he has not cumulatively passed the test for admissibility for a public interest litigation. Consequently the Court, finds that the Applicant lacks *locus standi* in this instance.

On behalf of Makia Media Limited: representative

100. As earlier established by the Applicant, the application has been filed in a representative capacity on behalf of Makia Media Limited, a Non-Governmental Organisation. However, the claim is for the violation of the right to freedom of expression, guaranteed under Article 9 of the ACHPR which puts the claim under the exception analysed earlier by the Court. Yet, the Court is bound to determine whether the Applicant has sufficiently established that it indeed has the fulfilled the requirement for acting in a representative capacity. One of such requirements relates to the authorization or mandate to act in a representative action the lack of which renders the Application inadmissible, as was held in the case of INCORPORATED TRUSTEES OF CENTER FOR PEACE AND



CONFLICT MANAGEMENT IN AFRICA AND RETHINK AFRICA FOUNDATION & 7 ORS (CONSOLIDATED) V THE FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/17/22 (Unreported) at page 23.

101. This ratio was borne out of Article 10(d) (i) and (ii) of the Supplementary Protocol 2005 which provides that *"Access to the Court is open to...d) individuals on application for relief for violation of their human rights..."*
102. The Court is aware that often times, the victims themselves cannot afford to bring a claim before it as they may be constrained so to do. Therefore, the Court considers that the interest of a victim can be represented by another albeit through an expressed consent or mandate to act as such. In this regard, the Court has held that in a representative action, *"The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.....for the Plaintiffs to access the court for and on behalf of the people of Niger Delta, they need the mandate upon which they act and when questioned must establish consent of the people or a justification for acting without such consent;"* NOSA EHANIRE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA, (2017) CCJELR.
103. In the instant case, the Applicant stated that he is acting on behalf of Makia Media Limited, yet the facts and evidence before the Court are devoid of a mandate to act in a representative capacity. Having clearly set out the jurisprudence laying down the conditions for a representative action, the Court cannot dispense with same. There is no evidence or a peculiar set of facts before it that will sway it from its existing practice.
104. Consequently, the Court declares the application inadmissible in this regard as it is devoid of a mandate to act in a representational capacity.

105. The Court having declared the suit inadmissible both as an actio popularis suit and a representational suit, declares the entire suit inadmissible as it has failed the test under Article 10 (d) of the Supplementary Protocol (supra).

XI. COSTS

106. 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 claim has not proceeded to judgment but has merely been dismissed for failing the admissibility test which is a preliminary feature. 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.

107. Notwithstanding this, the Court being a Court of records, recalls that it had previously awarded cost in the course of hearing. The first being cost of Two Hundred and Fifty Thousand Naira as cost being awarded against the Respondent for tardiness. The second being Five Hundred Thousand Naira being award for unprofessionalism. However, in view of the date evidenced in the documents that formed the basis of the latter costs, i.e. 9th September 2021, and the Court noting that the Applicant has in no way challenged the veracity of this date, vitiates the second cost pronto.

XII. 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.**

COSTS:

- i. Orders that the payment of the interlocutory cost of 250,000 Naira against the Respondent.

Hon. Justice Claudio Monteiro GONCALVES -Presiding.....

Hon. Justice Sengu Mohamed KOROMA - Member/ Rapporteur.....

Hon. Justice Dupe ATOKI -Member.....

Dr. Yaouza **OURO-SAMA** - Chief Registrar

Done in Abuja, this 27th day of January, 2024 in English and translated into French and Portuguese.

