

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



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

In the Matter of

KHAFILA ABIOLA AND OTHERS  
(APPLICANTS)

v

FEDERAL REPUBLIC OF NIGERIA  
(RESPONDENT)

*Application No. ECW/CCJ/APP/62/22; Ruling No. ECW/CCJ/RUL/01/25*

***RULING***

ABUJA

28 FEBRUARY 2025

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

*Application No: ECW/CCJ/APP/62/22; Ruling No. ECW/CCJ/RUL/01/05*

BETWEEN

**KHAFILA ABIOLA AND OTHERS** **-APPLICANTS**

AND

**FEDERAL REPUBLIC OF NIGERIA** **-RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon. Justice Sengu M. <b>KOROMA</b>	-Presiding Judge
Hon. Justice Gberi-Be <b>OUATTARA</b>	- Member
Hon. Justice Edward Amoako <b>ASANTE</b>	- Judge Rapporteur

**ASSISTED BY:**

Dr. Yaouza <b>OURO-SAMA</b>	- Chief Registrar
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**REPRESENTATION OF PARTIES:**

Femi Falana, SAN	- Counsel for APPLICANT
Maimuna Lami Shiru, Esq	-Counsel for RESPONDENT



## **I. RULING**

1. This is a ruling of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

## **II. DESCRIPTION OF THE PARTIES**

2. Applicants, Khafila Abiola, Moriam Abiola and Hadi Abiola are Nigerian citizens suing for themselves and for the estate of the late Mrs Kudirat Abiola who was allegedly murdered by armed militias within Nigeria.
3. Respondent, the Federal Republic of Nigeria, is an ECOWAS member state and a party to the African Charter on Human and People's Rights 1981 (African Charter) on which Applicant relies in this case.

## **III. INTRODUCTION**

### ***Subject Matter of the Proceedings***

4. The Application states that the late Mrs. Kudirat Abiola was the wife of Nigerian politician and statesman Chief MKO Abiola, who won the June 1993 presidential election but was barred from assuming office by the military junta led by Ibrahim Babangida. Following General Sani Abacha's coup in November 1993, Chief Abiola was arrested in June 1994 for declaring himself the democratically elected president of Nigeria. He was charged with treasonable felony and imprisoned without trial in solitary confinement. Mrs. Kudirat Abiola, who led a campaign for her husband's release, was shot dead by unidentified

gunmen in June 1996. The Applicants seek reliefs, including declarations that the Respondent violated Mrs. Abiola's right to life by causing her death through its agents and by failing to charge and prosecute the perpetrators, including one Sergeant Barnabas Jebila, who confessed to the crime.

#### **IV. PROCEDURE BEFORE THE COURT**

5. Applicants initiated this proceeding by an application dated 8 December 2022 and filed at the Registry of the Court on 12 December 2022. It was served electronically on the Respondent the same day.
6. On 26 January 2023, Respondent filed an application for extension of time to enable it to file its Preliminary Objection and Statement of Defence. Also filed was the Respondent's prepared Preliminary Objection and Statement of Defence. All three processes were served on Applicants the same day.
7. At a virtual session of the Court on 25 September 2024, Applicants were absent and not represented while Respondent was represented by Counsel. Counsel for Respondent moved the application for extension of time to file Respondents preliminary objection and defence. It was granted by the Court and the processes were deemed as regularly filed. The Court then heard Respondent's Counsel on the preliminary objection and adjourned for deliberation and ruling.

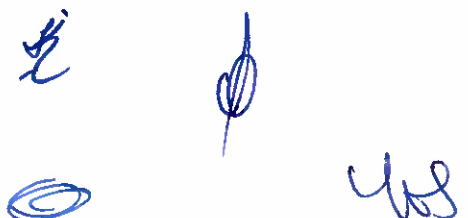
## V. APPLICANT'S CASE

### *a. Summary of Facts*

8. According to Applicants, the late Mrs Kudirat Abiola was the wife of the Nigerian politician and statesman Chief MKO Abiola who contested and won Nigeria's presidential election held on 12 June 1993. The election was adjudged as the most free and fair election in the country's history by local and international election observers. However, the results of the election were annulled by the ruling military junta led by General Ibrahim Babangida.
9. Consequently, instead of handing over power to Chief Abiola as the democratically elected president, the Babangida military junta illegally installed an interim National Government, which was headed by Chief Ernest Shonekan, on 27 August 1993. On 10 November 1993, the Lagos State High Court declared the interim National Government illegal and void.
10. Following this, General Sani Abacha seized power in a coup on 17 November 1993. Subsequently, in June 1994, Chief Abiola was arrested for declaring himself as the democratically elected President of Nigeria on the basis of the June 1993 election. The Abacha military junta charged him with treasonable felony and detained him in solitary confinement at an unknown location for four years without trial.
11. Chief Abiola's wife, Mrs Kudirat Abiola, led a campaign for the unconditional release of her husband from illegal custody and to be

inaugurated as President. Applicants claim that the Abacha government was angered by her campaign and that of other human rights organisations and activists. On 4 June 1996, Mrs Abiola was shot dead in her car in Lagos by unknown gunmen.

12. According to Applicants, the military government condemned the assassination of Mrs Abiola and promised to investigate, arrest and prosecute the perpetrators. However, they diverted attention from the actual murderers by arresting some allies and family members of the late Mrs Abiola whom they briefly detained and then released.
13. Following the restoration of constitutional rule in May 1999, the Olusegun Obasanjo Administration set up a Commission of Inquiry to investigate the gross human rights violations of the military era. Upon request of the Applicants, the Commission investigated the death of Mrs Abiola. One Sergeant Barnabas Jebila (alias Sergeant Rogers) confessed that he shot and killed Mrs Abiola on the orders of Major Hamza Al-Mustapha, who was the chief security officer of General Abacha from November 1993 to June 1998.
14. Subsequently, Major Al-Mustapha and others were charged and tried for conspiracy to murder Mrs Abiola before the High Court of Lagos. They were convicted and sentenced to death, but later acquitted by the Court of Appeal on technical grounds. The Supreme Court granted leave to the Lagos State Government to appeal the judgment of the Court of Appeal. That appeal has since been filed and is pending in the Supreme Court.

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15. Applicants say that in the case of *Mohammed Abacha v The State* (2002) 31 WRN 1, the Supreme Court stated that Major Al-Mustapha was not properly charged with conspiracy to murder and questioned why Sergeant Rogers and two others who actually killed the late Mrs Abiola were not charged. Despite the Supreme Court's finding, the Respondent has not charged Sergeant Rogers and the two others, Mohammed Abdul and Aminu Mohammed with the murder of Mrs Abiola.

16. Applicants contend that the killing of Mrs Abiola by the armed agents of the Respondent was a violation of her human rights to life and dignity.

*b. Pleas in Law*

17. As pleas in law, Applicants make the following legal submissions:

- (i) That the brutal killing of Mrs Kudirat Abiola by armed agents of the Respondent on 4 June 1996 was a violation of her rights to life and dignity contrary to Articles 4 and 5 of the African Charter.
- (ii) That the refusal of the Respondent to charge Sergeant Barnabas Jebila (alia Rogers), Mohammed Abdul and Aminu Mohammed for the murder of Mrs Abiola violates Articles 4 and 5 of the African Charter.

- (iii) That the Respondent is liable to pay compensation of \$10 million as reparation to the Applicants for the unlawful killing of the late Mrs Abiola.

*c. Reliefs sought*

18. Applicants request the Court for the following reliefs:

- (i) A declaration that the gruesome murder of Mrs. Kudirat Abiola by armed agents of the [Respondent] in Lagos on June 4, 1996 is a violation of her rights to life and dignity guaranteed by Articles 4 and 5 of the African Charter on Human and Peoples' Rights.
- (ii) A declaration that the refusal of the [Respondent] to charge Sergeant Barnabas Jebila (a.k.a. Rogers) Mohammed Abdul (a.k.a Katako) and Aminu Mohammed Sergeant Barnabas Jebila with murder for the brutal killing of Mrs. Kudirat Abiola in Lagos on June 4, 1996 is a violation of her rights to life and dignity guaranteed by articles 4 and 5 of the African Charter on Human and Peoples' Rights.
- (iii) An order directing the [Respondent] to charge Sergeant Barnabas Jebila (a.k.a. Rogers) Mohammed Abdul (a.k.a Katako) and Aminu Mohammed with murder for the brutal killing of Mrs Kudirat Abiola in Lagos on June 4, 1996.



- (iv) An order directing the [Respondent] to pay the sum of \$10 million to the Applicants as compensation for the unlawful killing of Alhaja Kudirat Abiola.

## VI. RESPONDENT'S CASE

### *a. Summary of Facts*

19. Respondent admits that the late Mrs Kudirat Abiola was the wife of the late Nigerian politician and statesman Chief MKO Abiola. However, it denies the Applicants claim that the June 1993 presidential election of Nigeria was the most free and fair in the country's history.
20. Respondent equally denies that the Babangida military junta refused to hand over power to Chief MKO Abiola by installing an illegal interim national government. Yet, it admits that on 10 November 1993, the High Court of Lagos State indeed declared the interim national government void and illegal.
21. Respondent states that on 17 November 1993, General Sani Abacha seized power in a coup, but state that contrary to the Applicants' assertion, Chief MKO Abiola was arrested for causing societal disorder and for declaring himself the democratically elected president of Nigeria which was unconstitutional, treasonable and capable of causing anarchy and public disorder.

22. Respondent further states that the Abacha military government condemned the alleged assassination of Mrs. Abiola and that the arrest and detention of some of her political allies and family members were for the purpose of investigating her killing, not to divert public attention from the unknown gunmen, as alleged by the Applicants.
23. Respondent confirms that after the restoration of constitutional rule in 1999, the Olusegun Obasanjo administration appointed the Justice Oputa Commission of Inquiry to investigate the human rights violations that occurred during the military era. Respondent, however, denies the Applicants' claim that Sergeant Rogers confessed before the Oputa Commission to the killing of Mrs. Abiola on the orders of Major Hamza Al-Mustapha.
24. Nevertheless, Respondent states that Major Al-Mustapha and others were charged for the murder of Mrs. Abiola, tried before the Lagos State High Court and convicted. However, in exercise of their right to appeal, the Court of Appeal acquitted them after carefully looking into the matter and not on technical grounds as alleged by the Applicants.
25. Respondents further state that the Supreme Court did not question why Sergeant Barnabas Jebila (alias Rogers), Mohammed Abdul and Aminu Mohammed were not charged with murder. Rather, the Court only gave an opinion on the facts of the case. And that in any event, the decision whether to prosecute Sergeant Rogers or not is a discretionary one and depends on the facts and evidence available to

the Respondent. The Respondent cannot therefore be compelled to prosecute a particular person.

*b. Preliminary Objections*

26. The Respondent raises a preliminary objection on the following grounds:

- (i) That the Court lacks jurisdiction over the subject matter of the Application as it does not fall within Article 3 of the Protocol of the Court and Article 87 of the Rules of the Court.
- (ii) That the suit improperly invites the Court to exercise appellate jurisdiction to set aside the decision of Nigeria's domestic courts, particularly, the Supreme Court of Nigeria's decision in *Mohammed Abacha v The State* (2002) 31 WRN 1.
- (iii) That the action is statute barred given that the Application was filed more than three years after the cause of action arose.

*c. Reliefs Sought*

27. Respondent prays the Court to dismiss the action on the basis of the above grounds of its preliminary objection.

## VII. JURISDICTION OF THE COURT

28. The preliminary objection of the Respondent is hinged on three main grounds: (a) that the subject matter of the case does not fall within the purview of Article 9 of the Court's Protocol; (b) that the Application improperly invites the Court to exercise appellate jurisdiction over the Supreme Court of Nigeria's decision in *Mohammed Abacha v The State* (2002) 31 WRN 1; and (c) that the case is statute-barred. Only the first ground is jurisdictional; the other two are issues of admissibility, as respectively established by the Court's precedents in *Gregory J Todd v Federal Republic of Nigeria* (ECW/CCJ/JUD/41/23) and *Attipoe Kuaku Richard & Others v Sierra Leone* (ECW/CCJ/JUD/07/23). The Court will therefore address them accordingly.

### *(a) Respondent's objection to jurisdiction*

29. Regarding jurisdiction, the Respondent argues that the subject matter of this Application does not fall within the confines of Article 9 of the Protocol of the Court as it does not call for the interpretation or application of any treaty or convention or protocol of the Community. Nor is it an action inviting the interpretation or application of the regulations, directives, decisions or other subsidiary instruments adopted by ECOWAS. Rather, the Application is challenging the validity of the alleged refusal of the Respondent to prosecute Sergeant Barnabas Jebila and others, a matter already determined by the domestic courts of the Respondent. Respondent, therefore, urges the Court to decline jurisdiction.

*(b) Analysis of the Court*

30. Under Article 9(4) of the Protocol of the Court, the Court has jurisdiction to determine cases of human rights violations that occur in a member state of the Community. That jurisdiction is properly invoked if an application to the Court alleges that a human rights violation has occurred in the Respondent state and that the Respondent is responsible for those violations. See *Al-Hassan Fadia v Togolese Republic* (ECW/CCJ/JUD/17/24, para 43).

31. In this case, the Application alleges that Mrs Kudirat Abiola was brutally murdered by security agents of the Respondent state. That despite the investigations of a Commission of Inquiry that identified the real killers of the deceased, the Respondent has refused to hold them accountable by charging and prosecuting them in violation of its obligations under Articles 4 and 5 of the African Charter.

32. The Court notes that, at the time of Mrs. Abiola's murder in 1996, the Respondent had ratified and was bound by the African Charter. However, the 2005 Supplementary Protocol, which granted this Court jurisdiction over human rights cases, only came into effect for the Respondent in 2005. Generally, this Court has temporal jurisdiction only when the alleged human rights violation occurred after the entry into force, for the Respondent, of both the substantive human rights treaty (here, the African Charter) and the 2005 Supplementary Protocol, which established the Court's human rights mandate. (See *Global Justice and Research Project v Republic of Liberia*

[ECW/CCJ/RUL/04/24], paras 36-40; and *Beneficiaries of the late Norbert Zongo and Others v Burkina Faso* (preliminary objections) (2013) 1 AfCLR 197, paras 62 and 68).

33. However, in this case, the crux of the Application is not necessarily the murder of Mrs. Abiola in 1996, an act that was completed before the Court's human rights jurisdiction became effective in January 2005. Rather, the Applicants' complaint relates to the Respondent's failure to fulfil its continuing obligation to hold the perpetrators accountable and provide compensation for the violation, matters over which the Court has jurisdiction. (See *Tanganyika Law Society and Others v Tanzania* (merits) (2013) 1 AfCLR 34, para 84).

34. There is no doubt, therefore, that the Application raises issues of human rights violations, which the Court is mandated to adjudicate under Article 9(4) of the Protocol of the Court. For these reasons, the Respondent's contention that the Court lacks jurisdiction under any provision of Article 9 of the Court's Protocol is erroneous and is accordingly dismissed.

## VIII. ADMISSIBILITY OF THE CASE

### *(a) Respondent's Objections to Admissibility*

35. First, relying on *Hope Party v Federal Republic of Nigeria* [2015] CCJELR 345 and *Dr Mahamat Seid Abazene v Republic of Mali* [2010] CCJELR 95, Respondent submits that this Court cannot



exercise appellate jurisdiction over decisions of national courts of ECOWAS member states. Therefore, because the present Application invites the Court to set aside the Supreme Court of Nigeria's decision in *Mohammed Abacha v The State* (2002) 31 WRN 1, the Court must declare the Application inadmissible.

36. Secondly, Respondent states that by Article 9(3) of the Protocol of the Court, "any action by or against a Community institution or any member of the Community shall be statute-barred after three (3) years from the date when the right of action arose." According to Respondent, the Applicants' cause of action arose 27 years ago, hence, they are caught by the three-year limitation in Article 9(3) of the Court's Protocol.

*(b) Analysis of the Court*

37. Regarding the issue of whether the Application invites the Court to exercise appellate jurisdiction over Nigeria's domestic courts, the Court recalls its recent ruling in *Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation (on Behalf of Vincent Ogueri) v Federal Republic of Nigeria* [ECW/CCJ/RUL/05/24] (para 45) where it offered the following clarification on the matter:

[T]he Court would only be acting as an appellate forum over national courts if it were to review or rehear national court decisions, including by interpreting or applying the national laws on which those decisions were based, and issue orders to directly reverse or vary such national court judgments. In other words, the idea that the Court lacks appellate jurisdiction simply means that, as an international court, it cannot review or rehear a national court

case and issue orders to directly reverse or alter the national court's decision.

38. Having examined the contents of the initiating Application, the Court finds no submissions or prayers therein inviting it to rehear, review, or re-examine the findings and legal conclusions of the Supreme Court of Nigeria in *Mohammed Abacha v. The State* (2002) 31 WRN 1, or to make any consequential orders varying or altering that decision. The Court notes that the Application refers to the *Mohammed Abacha* case, but only to highlight that the real killers of Mrs. Abiola were not prosecuted in that case, and therefore, the Respondent still has a continuing obligation to hold the actual perpetrators accountable. The Court does not consider this reference to the case as an invitation to review or set aside the Supreme Court of Nigeria's decision. Accordingly, this ground of objection is misconceived and is dismissed.

39. Regarding the issue of the statute of limitation in Article 9(3) of the Protocol of the Court and its applicability to human rights cases, the Court recalls that that matter has been definitively settled. In *Angwukwang M. Sampson v Federal Republic of Nigeria* (ECW/CCJ/JUD/16/17), *Federation of African Journalists v The Gambia* (ECW/CCJ/JUD/04/18) and *Attipoe Kuaku Richard & 19 Others [Deceased] Represented by Attipoe Chocho Babayi & 15 Others v Republic of Sierra Leone* (ECW/CCJ/JUD/07/23), this Court held that the statute of limitation in Article 9(3) of the Court's Protocol applies only to cases involving the extra-contractual liability



of the Community, and not human rights cases. The Court reiterated this position in its recent ruling in *Incorporated Trustees of Centre for Peace and Conflict Management in Africa and Rethink Africa Foundation (on Behalf of Vincent Ogueri) v Federal Republic of Nigeria* [ECW/CCJ/RUL/05/24], a case in which the Respondent was a party. For this reason, the objection to admissibility based on Article 9(3) of the Court's Protocol is dismissed for lack of any merit.

**▪ The main admissibility Requirements of Article  
10(d) of the Protocol of the Court**

40. Having considered and addressed the Respondent's objections, the Court finds it necessary, for the sake of completeness and judicial economy, to also address the main admissibility requirements in Article 10(d) of the Court's Protocol. That provision specifies three main admissibility conditions for human rights cases which are (a) the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter before another international court or tribunal. See *Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167 (para 18).


41. In this case, the Application is not anonymous nor is there evidence that it is pending before another international court. Therefore, the requirements of non-anonymity and non-pendency before another international court are satisfied.

42. On the issue of victim status or standing under Article 10(d) of the Court's Protocol, the general understanding as confirmed by the

Court's jurisprudence is that Applicants must demonstrate that they are, *prima facie*, victims of human rights violations attributable to the Respondent. In other words, they have been injured by the conduct of the Respondent (be it an act, omission, practice, or law) and therefore have a personal interest or stake in the matter. (See *Amnesty International Togo and Others v The Togolese Republic* [ECW/CCJ/JUD/09/20], paras 31-33).

43. The Court has recognised some exceptions to the above general rule on standing that allows persons who are not direct victims of human rights violations to bring cases before the Court. These are:

- (a) actions brought by indirect victims, that is, persons closely related to the direct victim and who potentially suffer indirect consequences of the human rights violation (see *Kehinde Enagameh v The Gambia* ECW/CCJ/JUD/34/23, para 30; and *Attipoe Kuaku v Republic of Sierra Leone* ECW/CCJ/JUD/07/23, paras 42-45);
- (b) a representative action brought by an individual or NGO on behalf of an individual victim or a group with the authorisation of such individual or group (see *Bakary Sarre and 28 Others v Mali* [2011] CCJELR 57, para 37); and
- (c) public interest actions (*actio popularis*) brought by NGOs or public-spirited individuals (see *Patrick Eholor v Federal Republic of Nigeria* ECW/CC/JUD/51/23, paras 51-52 and



*Isaac Mensah v Republic of Ghana* ECW/CCJ/JUD/30/24,  
para 76-77).

44. In the entire Application, the only thing the Applicants say which has any bearing on their victim status or standing is that “they are Nigerian and Community citizens” and that “they have sued the [Respondent] on behalf of themselves and the estate of the late Mrs Kudirat Abiola, a Nigerian and a Community citizen who was gruesomely murdered by armed militias within the [Respondent’s] territory”.

45. Applicants have not pleaded any facts establishing personal legal injuries they suffered as a result of the alleged acts of the Respondent that would entitle them to sue in their own right. They have also failed to plead any facts or provide evidence in the Application demonstrating their relationship to the late Mrs. Abiola or any legal mandate entitling them to sue as indirect victims on behalf of her estate. For instance, they have not shown that they are the executors of her will, personal representatives under her personal law, or immediate family members.

46. In *Rev Solomon Mfa & Others v Federal Republic of Nigeria* [ECW/CCJ/JUD/06/19] (para 51), the Court held that in a “situation where the victim is deceased...anyone bringing an action as an indirect victim must be able to establish and convince the Court of their direct relationship with the victim.” (See also *Mahawa Cham*

*and Sarjo Cham v. The Gambia* [ECW/CCJ/JUD/26/23], para 98). In this case, not only did the Applicants fail to establish their relationship to the deceased victim, but they also failed even to plead it. Given these facts and the position of the law, the Court is compelled to conclude that the Application is inadmissible for lack of standing.

## **IX. OPERATIVE CLAUSE**

47. For the foregoing reasons, the Court sitting in public and after hearing the parties:

### ***On jurisdiction***

- i. *Rules* that the Court has jurisdiction over the Application and therefore dismisses the Respondent's preliminary objection to jurisdiction.

### ***On admissibility***

- ii. *Rules* that the Respondent's objections to admissibility on grounds that the Application is statute barred and that it invites the Court to exercise appellate jurisdiction are without merit and are accordingly dismissed.
- iii. *Finds and rules* that the Application is inadmissible because the Applicants have failed to establish their standing or victim status within the meaning of Article 10(d) of the Protocol of the Court.

***On Costs***

- iv. Decides* that each party shall bear their own costs pursuant to Article 66(4) of the Rules of the Court.

Done at Abuja this 28th day of February 2025 in English and translated into French and Portuguese.

Hon. Justice Sengu M. **KOROMA**

Presiding Judge



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Hon. Justice Gberi-Be **OUATTARA**

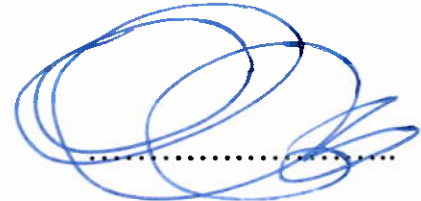
Member of Panel



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Hon. Justice Edward Amoako **ASANTE**

Judge Rapporteur



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ASSISTED BY:

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



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