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

In the Matter of

DOROTHY BEBE

v.

FEDERAL REPUBLIC OF NIGERIA

Application No. ECW/CCJ/APP/48/23 - Judgment No. ECW/CCJ/JUD/16/25

JUDGMENT

ABUJA

On 4th April, 2025

APPLICATION No. ECW/CCJ/APP/48/23 - JUDGMENT No. ECW/CCJ/JUD/16/25

BETWEEN

DOROTHY BEBE **APPLICANT**

AND

FEDERAL REPUBLIC OF NIGERIA **DEFENDEDANT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES - Presiding / Judge Rapporteur

Hon. Justice Sengu Mohamed KOROM – Member

Hon. Justice - Gberi-Be OUATTARA - Member

ASSISTED BY

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF THE PARTIES

Rommy Mom

Bamidele A. Jacob - Counsel for the Applicant

Maimuna Lami Shiru - Counsel for the Defendant's

I. JUDGMENT

1. This is the judgment of the Court read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant is Mrs. Dorothy Bebe, a Nigerian citizen, born in Benue State, Nigeria, on December 25, 2002.

3. The Defendant is the Federal Republic of Nigeria, a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights, hereinafter referred to as the African Charter.

Iii. INTRODUCTION

4. In the instant case, the Applicant alleged the violation of her human rights, since she was raped by a Mr. Emmanuel; became pregnant; she subsequently became pregnant and sought legal and potentially safe ways to terminate the pregnancy, but to no avail; that she was informed that there is no government safe abortion facility for victims of rape and sexual assault; that she reported the case to the

Nigerian police to obtain justice, but was accused of having been raped and blamed for her predicament.

IV. PROCEEDINGS BEFORE THE COURT

5. The application initiating proceedings (doc.1) was registered at the Registry of this Court on 21st December 2023.

6. Duly served on December 21, 2023, the Defendant State, on April 8, 2024, filled an application for extension of the time limit to present its defense (doc. 2) and at the same time lodged its defense (doc. 3), which were served on the Applicant on the same date.

7. The reply (doc.1) was registered at the Registry of this Court on September 27, 2024.

8. At the virtual hearing held on November 22, 2024, to hear the parties on the merits of the case, both parties were represented and made their oral submissions.

9. The case was adjourned for judgment on 4th April 2025.

V. THE APPLICANT'S CASE

a. Summary of Facts

10. The Applicant dropped out of school in 2012, after obtaining her junior secondary school certificate at JSS 3, and that she was unable to continue her studies due to a lack of financial resources.

11. In September 2018, at the age of 14, she was taken from the custody of her parents in Benue State to Abuja, to serve as a maid for a Mrs. Doyum who promised to sponsor her education.

12. The said madame Doyum had a young son, and a boyfriend called Emmanuel who often visited them in their one-bedroom apartment in Lugbe, Abuja.

13. Sometime between September and October 2019, while the aforementioned Madame Doyum was out of Abuja on a trip, Mr. Emmanuel gained access to the house and raped her.

14. While she was being raped, she screamed and alerted some neighbors who later came in and saw the situation, while the aforementioned Mr. Emmanuel fled the scene.

15. Seeing the situation, some neighbors called Madame Doyum to inform her of the situation, but she ignored the complaints made against her boyfriend, claiming that the Applicant was a liar and was just looking for attention.

16. The Applicant (a minor at the time) says that, due to fear, she kept to herself, and that Mr. Emmanuel came back later, during the same period, and raped her a second time.

17. Shortly after the incidents, she began to feel unwell and a concerned neighbor, who knew about the rape incidents and noticed her mental disposition and the physical changes in her body, took her for a pregnancy test.

18. The pregnancy test came positive and after that she looked for legal and possibly safe ways to terminate the pregnancy, but to no avail.

19. All the assistance she sought from neighbors, hospitals and informally from security agents was fruitless, since she was informed that there is no government

facility for safe abortion for victims of rape and sexual assault and that the Nigerian government only permits it under exceptional circumstances when the mother's life is at risk. She was sternly warned that she could end up in prison if she tried to have an abortion by any other means.

20. The Applicant became aware of unconventional and potentially unsafe methods for removing the fetus, including unlicensed local doctors, but she was afraid of losing her life under the hands of unprofessionals in her attempt to terminate the pregnancy resulting from rape and she did not have the option of going to any reputable medical establishment to have the procedure carried out safely.

21. Given her difficult situation and her desperation to terminate the pregnancy, she received a lot of solicited and unsolicited advice from neighbors who urged her to take some drugs and medication to terminate the pregnancy, since she couldn't afford it.

22. The Applicant's situation worsened when Mrs. Doyum found out that she was pregnant and threw her out of the house, back to her parents in Benue, a distance of more than 300 km, who had no idea how to deal with the situation and she ended up giving birth to a baby girl on July 1, 2020.

23. During her pregnancy, she suffered various emotional and mental traumas, which led her to destabilize and suffer physical stress due to the lack of proper nutrition and prenatal, natal and postnatal care.

24. During this period, she was exposed to stigma, discrimination and shame and was unable to bond with her daughter after the birth of the child.

25. Since the birth of her child, she has not been able to continue her studies, as she has been forced to support the child through manual labor in order to survive.

26. In addition, Mr. Emmanuel, the child's father, deliberately refused to be part of the child's life or to help ensure the child's well-being.

27. After she had weaned the child and was able to return to Abuja, she reported the case to the Nigerian police to get justice but was accused of being raped and blamed for her difficult situation.

28. Had the Defendant provided safe abortion facilities, she would not have been burdened with the responsibility of caring for the child that was conceived from a traumatic event; her brutal rape, nor suffered stigma and discrimination and childbirth without any medical assistance, including giving birth as a minor from a rape incident.

b. Pleas in Law

29. The Applicant relied on the following Articles:

i. 16(1), 18(1) and (3) of the African Charter on Human and Peoples' Rights.

ii. 33 of the Rules of the Community Court of Justice, ECOWAS.

iii. 14(2)(c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

iv. 16 and 27 of the African Charter on the Rights and Welfare of the Child.v. 3(1)(a, b, c, d) of Supplementary Protocol A/SP.1/01/05 amending the preamble.

vi. 1, 2, 9 and 30 of Protocol A/P.1/7/91 on the Community Court of Justice and 4(1) of the English version of that Protocol.

v. Reliefs Sought

30. The Applicant concludes by seeking from the Court:

i. A DECLARATION that with the adoption of the African Charter; Ratification of the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the provisions of the Maputo Protocol are in force in determining the sexual and reproductive health and rights of women in Nigeria.

ii. A DECLARATION that, in accordance with the provisions of Article 16(1), and Article 18(1) and (3) of the African Charter, the right of the Applicant to the enjoyment of the highest attainable standard of physical and mental health and the protection of the rights of women, as stipulated in the International Declarations and Conventions, are guaranteed and this has been violated by the Defendant by criminalizing (and prohibiting abortion under all circumstances, including rape, incest and sexual assault, as well as in circumstances where the life of the expectant mother is at risk due to the pregnancy?) and denying safe medical abortion to women and girls, as provided for in the Maputo protocol.

iii. A DECLARATION that the pregnancy resulting from the rape of the Applicant constitutes a violation of her sexual and reproductive health and rights and a violation of her rights to physical and mental health as guaranteed under Articles 16 (1), 18 (1) and (3) of the African Charter, and reproductive rights under Article 14 (2) (c) of the Maputo Protocol, and that she should have been granted the right to a safe medical abortion.

iv. a) A DECLARATION that the provisions of sections 228-230 and 297 of the Criminal Code of Nigeria, Cap. 89 of Northern Nigeria 1963, which do not provide for exceptions even in cases of rape, sexual assault and incest, are not

compatible with the African Charter on Human and Peoples' Rights and the Maputo Protocol and other international human rights instruments applicable in Nigeria, thereby continuously violating the rights of the Applicant and other women and girls in Nigeria.

v. AN ORDER urging the Defendant to repeal Articles 228 to 230 and 297 of the Penal Code of Nigeria, Chapter 89 of the Northern Region (1963) as incompatible with the African Charter on Human and Peoples' Rights, the Maputo Protocol and other international human rights instruments binding on Nigeria, or, alternatively, adopt the necessary legislative measures to introduce exceptions to the criminalization of abortion, namely in cases of rape, sexual assault and incest, guaranteeing access to safe medical abortion in such circumstances.

vi. AN ORDER mandating the Defendant to repeal, amend and bring its laws into conformity with the provisions of international instruments, and particularly the Maputo Protocol.

vii. AN ORDER compelling the Defendant to enact and effectively implement laws, regulations and safeguards in order to comply with its obligations under international human rights law, including the African Charter, the ECOWAS revised treaty and the Maputo Protocol.

viii. AN ORDER compelling the Defendant to pay the sum of 30 million Naira as general damages to the Applicant, for the trauma, physical and mental stress

caused by the Defendants' incompetence in "enacting good laws" allowing access to safe medical abortion as provided for in the provisions of the Maputo Protocol.

ix. AN ORDER compelling Defendant to make abortion and post-abortion care available in Public Facilities for access by those who need it and requiring it to implement awareness programs on comprehensive sexuality education and availability of abortion and post-abortion care, including identifying those who qualify for access to abortion and post-abortion care.

x. Any other orders that the Court deems appropriate.

VI. THE DEFENDANT'S CASE

a. Summary of Facts

31. The Defendant expressly denies each and every one of the material allegations contained in the present application, as they are presented and specifically described in each part.

32. The Defendant denies paragraphs 5(a), 5(b), 5(c), 5(d) and 5(e) of the Applicant's declaration of facts and avers that the entire declaration of facts did not reveal any violation of the Applicant's right on the part of officials in the exercise of their official duties.

33. The Defendant denies paragraphs 5(f), 5(g), 5(i), 5(j), 5(k), 5(l) and 5(m) of the Applicant's declaration of facts and asserts that it is not the Government's responsibility to investigate a matter that was not reported to the Police at the

time it happened, since the author carried out the act of rape in a private capacity and not as an agent of the Defendant.

34. The Defendant denies paragraphs 5(o), 5(p), 5(q), 5(r), 5(s), 5(t) and 5(u) of the Applicant's declaration of facts and asserts that the Applicant cannot be entitled to any declaratory relief sought from the Court against the Defendant as there is no violation of the Applicant's human rights and there is no consequence suffered by her as a result of the alleged act or omission of any officials.

35. The Defendant avers that the Applicant's case shows that the matter is of a criminal nature and relates to a violation, which can be judged by the Municipal Court.

36. The Defendant maintains that it can only be held responsible for human rights violations committed against its citizens or nationals when such acts or omissions are carried out by State agents or public officials in the exercise of their official duties. Thus, it argues that it cannot be held responsible for acts of third parties, including private citizens that have not been formally reported to the competent authorities.

37. The Defendant asserts that the Applicant's Application is a cause of action statute-barred, having arisen in 2019, more than five years before the lodging of the instant case.

38. The Defendant also submits that the reliefs sought by the Applicant in the instant case cannot be accepted by this Court, on the basis that abortion is not one of the matters on which this Court can rule. Furthermore, it is not legally permitted in the Defendant State, unless it is done in order to preserve the life of the mother.

39. That the reliefs sought by the Applicant are at odds with the provisions of the African Charter on the Rights of Peoples, since they defend traditional values.

And that the Defendant State's law on abortion is a reflection of its cultural value and should be upheld.

b. Pleas in Law

40. The Defendant, in support of its case, relied on:

i. Article 9(1)(F) and (G) of the Supplementary Protocol (A/SP.1/01/05) on the ECOWAS Court of Justice.

ii. Section 6(6)(b) of the 1999 Constitution of the Federal Republic of Nigeria.

iii. Article 9(3) of the Supplementary Protocol (A/SP.1/01/05) of the Community Court of Justice.

It also relied on the case law of this Court.

v. Reliefs Sought

41. The Defendant State prays the Court to:

i. Grant its reliefs sought, because it is in the interests of justice to do so.

VII. ON THE JURISDICTION

a) The alleged lack of jurisdiction of the Court

42. We note that the Defendant alleged the lack of jurisdiction of this Court to examine the application and it being statute-barred.

The Court's Analysis

43. Before addressing the parties' submissions on the Preliminary Objection raised by the Defendant, the Court must first examine whether the Defendant's objection complies with the Court's Rules.

44. Article 87 of the Rules of Court on preliminary objections before the Court provides as follows:

"1. A party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application by a separate document.

2. The application must state the pleas of fact and law relied on and the form of order sought by the applicant and any supporting documents must be annexed to it."

45. The above provision implies that any preliminary objection before the Court must be presented in a separate application from the document in which the substantive matters are addressed. This allows the Court to examine and decide on such an application separately.

46. The Court takes note that the Defendant's Preliminary Objection was not submitted in a separate document, as required by Article 87(1) of the aforementioned Rules. Instead, the preliminary objection is found in the body of the statement of defense.

47. The Court is bound by the provisions of its Rules of Procedure, which guide litigants on how cases should be brought before the Court and the procedures to be followed. Therefore, an application that does not comply with the rules risks being rejected. (See *MAHAMANE OUSMANE v. THE REPUBLIC OF NIGER*, Judgment No: ECW/CCJ/JUD/26/22, para. 47).

48. The provisions of the Protocol and the Rules of the Court are clear and unambiguous and must be complied with by the parties before the Court. (See *VISION KAM-JAY INVESTMENT LIMITED v. PRESIDENT OF THE ECOWAS COMMISSION, Judgment No: ECW/CCJ/JUD/26/22, page 9*).

49. Therefore, since the Defendant has not complied with the Rules of the Court regarding the manner in which a preliminary objection must be submitted, the Court decides that it will not proceed to examine the Defendant's preliminary objection.

50. The Defendant's preliminary objection is therefore dismissed.

51. However, it is necessary to ascertain whether the Court has jurisdiction to examine the following reliefes sought by the Applicant from the Court:

a) A DECLARATION that the provisions of sections 228-230 of the Penal Code Act and 297 of the Criminal Code of Nigeria, Cap. 89 of Northern Nigeria 1963, which do not provide for exceptions even in cases of rape, sexual assault and incest, are not compatible with the African Charter on Human and Peoples' Rights and the Maputo Protocol and other international human rights instruments applicable in Nigeria, thereby continuously violating the rights of the Applicant and other women and girls in Nigeria.

b) AN ORDER mandating the Defendant to repeal sections 228-230 of the Penal Code Act and 297 of the Criminal Code of Nigeria, Cap. 89 of the Northern Nigeria Act 1963, as they are incompatible with the African Charter and the Maputo Protocol and other international human rights instruments and or provide for exceptions involving safe abortion in cases of rape, sexual assault and incest.

c) AN ORDER mandating the Defendant to repeal, amend and bring its laws into conformity with the provisions of international instruments, and particularly the Maputo Protocol.

52. In considering the above reliefs sought, it is the Court's understanding that the question is whether the Court can examine, *in abstracto*, sections 228-230 of the

Penal Code Act and 297 of the Criminal Code of Nigeria, Cap 89 of the Northern Nigeria Act 1963, to ascertain whether such legislation contravenes and violates the Applicant's rights guaranteed by the UDHR, the African Charter and/or others to which the Defendant State is a party.

53. In this regard, this Court in the case of *HISSIEN HABRÉ v. SENEGAL* CCJERL (2010) p. 65, stated that: *"In order to decide whether or not it has jurisdiction to hear a case, it must examine whether the question referred deals with rights enshrined for the benefit of the human person and arising from the State's international or community obligations, as human rights to be observed, promoted, protected and enjoyed, and whether the alleged violations have been committed by a Member State of the Community".*

54. Also, in the case, *FEDERATION OF AFRICAN JOURNALIST & ors v. REPUBLIC OF GAMBIA (ECW/CCJ/JUD/04/18)*, this Court, based on its own case law, reiterated that "*it will not examine the laws of Member States in abstracto, since it is not a constitutional court, but, whenever a violation of human rights is alleged, it will exercise its jurisdiction to examine whether there has been a violation.*" (page 31). It also pointed out in the cited judgment that: "*Freedom of expression is a fundamental human right and its full enjoyment is essential for the realization of individual freedoms and the development of democracy. It is not only the cornerstone of democracy, but also indispensable for a dynamic civil society.*

Having reiterated its competence in human rights cases, it is therefore implied that this Court, in the exercise of its jurisdiction, is empowered to examine the root cause of the violation, i.e. the laws that the applicants are challenging, in order to determine whether they are contrary to the provisions of international human rights law with regard to freedom of expression."

55. In the instant case, notwithstanding the aforementioned requests, the Applicant, in its statement of facts, does not link the violation of the aforementioned articles of the African Charter and the UDHR to the specific application of the aforementioned articles of the Defendant's Penal Code in order to demonstrate that, by applying them, the Defendant violated her human rights.
56. Thus, the Court were to analyze the above allegations, it would be making an abstract analysis of the Defendant's legislation and this is not its responsibility.
57. Therefore, the Court finds that the Court does not have jurisdiction to examine a law of a Member State on which there is an allegation of a human rights violation.
58. With regard to the remaining claims, it should be mentioned that the Applicant's allegations are based on the violation of her human rights contrary to the relevant provisions of the African Charter and other international instruments for the protection of human rights, in particular the UDHR, as relied on.
59. In this sense, the present action falls within the scope of the jurisdiction conferred on this Court under Article 9 (4) of Protocol A/P1/7/91 on the ECOWAS Court of Justice, as amended by Supplementary Protocol A/SP.1/01/05, to hear cases of human rights violations occurring in any Member State, and the Court therefore considers that it has jurisdiction to hear the instant case.

VIII. ADMISSIBILITY

60. Having established the jurisdiction of this Court to hear this case, it is now necessary to examine its admissibility. The admissibility of an action for violation of human rights is subject to certain conditions, which each applicant must fulfill before the Court can proceed to examine it. In this context, Article 10(d) of the ECOWAS Court Protocol A/P.l/7/91, as amended by the Supplementary Protocol A/SP.1/01/05, provides that "*access to the Court shall*

be open to individuals seeking redress for violations of their human rights, and their application must: (i) not be anonymous; and (ii) not have been submitted to another international court for trial."

61. Thus, three requirements must be met in order for the case to be considered admissible: the applicant's status as a "victim", the identification of the Applicant and the absence of a case pending on the same matter before another international court. This position is corroborated by the Court's opinion in the case of *Daniel Agada Okoh & 42 Others v. Federal Republic of Nigeria,* Judgment No. ECW/CCJ/JUD/04/21, p. 16, para. 37.
62. In the present case, the applicant is not anonymous. Furthermore, there is no evidence that this dispute has been submitted to another international court for judgment. The Applicant grounds her claim on the alleged violation of her rights under the African Charter on Human and Peoples' Rights, as well as other international human rights instruments, which qualifies her as a direct victim of the violations invoked.
63. Accordingly, the Court finds that the present case meets all the admissibility criteria and, consequently, declares the action admissible for consideration on the merits.

IX. MERITS

64. The Court will then examine each of the human rights allegedly violated by the Defendant State, taking into account the questions as brought by the Applicant before the Court.

a) The alleged violation of the right to health

Applicant's Arguments

65. In support of the violation of the right under analysis, the Applicant claimed, in summary, that her current situation is based on the fact that the Defendant State has not provided facilities for safe medical abortions and has not prescribed means of access to them; that a pregnancy resulting from the rape of a minor is an unplanned pregnancy, an its interpretation in most cases it would attract the hatred of the community and lead to the victim being ostracized by members of the community, with the consequent mental torture of the victim, as in the case of the Applicant.

Defendant's Argument

66. The Defendant refutes the above facts and maintains that the Applicant has not provided sufficient evidence to prove that she was the victim of rape and that her pregnancy resulted from that crime. Furthermore, it argues that the Applicant did not report the incident to the competent authorities, which, according to the State, made it impossible to adopt any measure to prosecute the alleged aggressor and provide the necessary services. It also argues that it cannot be held responsible for a situation in which there is no direct evidence that the Applicant was prevented from having a safe abortion within the limits established by current legislation.

The Court's Analysis

67. In recent years, there have been considerable developments in international law regarding the normative definition of the right to health, which includes both health care and health conditions.
68. Thus, health is considered a fundamental human right that encompasses the right to access health care and the underlying determinants of health and is indispensable for the enjoyment of other human rights. (See African

Commission, *PUROHIT AND ANOR v THE GAMBIA* (Communication No. 241/2001) [2003] ACHPR 49; (29 May 2003), page 80; *MR. KPATCHA GNASSINGBE & ORS v. REP OF TOGO*, Judgment No. ECW/CCJ/JUD/06/13, page 22).

69. Every human being has the right to the enjoyment of the highest attainable standard of health, conducive to living a life of dignity. The realization of the right to health can be pursued through numerous complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organization (WHO), or the adoption of specific legal instruments. In addition, the right to health includes certain components that are legally enforceable.
70. The right to health has been enshrined in numerous international and regional human rights instruments, including the African Charter.
71. The UDHR is the first international human rights instrument to enshrine the right to health.
72. According to Article 25 (1) of the UDHR: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...*"
73. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most comprehensive article on the right to health in international human rights law.
74. According to Article 12(1) of the ICESCR, States Parties recognize "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" while Article 12(2) lists, by way of illustration, a series of "steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right.*"

75. Article 16 of the African Charter further establishes that:

"*1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.*

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick."

76. Article 14 (1) of the Maputo Protocol also states that "*States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:*

a) The right to control their fertility; (...)"

77. In addition, Article 14(2)(c) of the Maputo Protocol establishes that States must:

"*Protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.*"

78. Now, to address the right to health, it is essential to understand the importance of the above articles.

79. The right guaranteed is the enjoyment of the best possible state of physical and mental health. It should not be misinterpreted as meaning the right to be healthy. States are not obliged to ensure that all individuals are completely healthy, but they must guarantee, in particular, the creation of conditions that guarantee everyone medical services and medical care in the event of illness, both physical and mental, including the provision of equal and timely access to basic preventive care and the supply of essential medicines.

80. The right to health contains freedoms and rights. Freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. Conversely, rights include the right to a health protection system that provides equal opportunities for people to enjoy the highest possible standard of health.

81. As can be seen, the right to health is closely related to and depends on the realization of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, privacy, access to information and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health. (See *AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI v. THE FEDERAL REPUBLIC OF NIGERIA*, Judgment No. 1 ECW/CCJ/JUD/11/21, paras. 104 and 106).

82. In its General Comment No. 14 on the right to health, adopted in 2000, the UN Committee on Economic, Social and Cultural Rights states that, "*the right to health must be understood as a right to the enjoyment of a variety of facilities, goods,services and conditions necessary for the realization of the highest attainable standard of health... right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing...*"

83. According to the aforementioned General Comment, the right to health contains four elements: availability, accessibility, acceptability and quality, and imposes three types of obligations on States – to respect, fulfill and protect the right. In

terms of the duty to protect, the State must ensure that third parties (non-State actors) do not infringe on the enjoyment of the right to health.

84. With regard to availability and accessibility, the Commentary stated that:

"(a) Availability. Functioning public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Program on Essential Drugs."

"b) Accessibility. Health facilities, goods and services6 have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups (...)

Accessibility to information: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality."

85. The same General Comment states that *"Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations:*

(a) To ensure the right of access to health facilities, goods and services on anon-discriminatory basis, especially for vulnerable or marginalized groups;

86. In the instant case, although the Applicant alleges the above facts, it has not been proven, in particular, that between September and October 2019, while the said Madame Doyum was away from Abuja on a trip, the said Mr. Emmanuel had access to the house and raped the Applicant (a minor), who, due to fear, remained isolated and that the said Mr. Emmanuel returned later and raped her a second time; that following this, the Applicant became pregnant, that she turned to the Defendant's health services and the latter did not provide her with the means and access to services that would allow her to have a safe abortion (there was a denial of access to the Defendant's health facilities, goods and services); that due to these facts the Applicant is an underage mother with no resources to take care of the child; that after she had weaned the child and was able to return to Abuja, she reported the case to the Nigerian police to obtain justice, but was accused of having been raped and blamed for her difficult situation; that she gave birth without any medical assistance from the Defendant's services.

87. Indeed, no pregnancy test was gathered to the case file, nor any document that could possibly demonstrate that the Applicant's alleged pregnancy resulted from the alleged rape, not least because she didn't even attach any evidence to demonstrate the alleged rape.

88. In other words, it has not been proven that there was an omission or failure by the Defendant to take the necessary measures arising from legal obligations to protect the Applicant's health, namely, to protect the Applicant's reproductive rights by authorizing the alleged medical abortion resulting from the alleged sexual assault, nor that the Defendant State refused to carry out an investigation into the above facts after the Applicant allegedly reported them to the Defendant's competent institutions.

89. The onus was on the Applicant, and she failed to do so. (See in this sense the case *FEMI FALANA AND ORS v. THE REPUBLIC OF BENIN AND ORS*, Judgment no. ECW/CCJ/JUD/02/12, in LR page 1 to 18; *FANTA CISSE v. STATE OF GUINEA*, Judgment No. ECW/CCJ/JUD/21/2021, paras. 226 and 227; *ADVOCAID LTD v. REPUBLIC OF SIERRA LEONE*, Judgment No. ECW/CCJ/JUD/33/24, para. 52).

90. Accordingly, it is the Court understanding that the Defendant did not violate Articles 16 of the African Charter.

b) *Alleged violation of the Protection of the Family, the Rights of Women, the Elderly and Persons with Disabilities*

Applicant's Arguments

91. In support of the violation of the right under review, the Applicant alleges that the Federal Republic of Nigeria has violated Article 18 of the African Charter on Human and Peoples' Rights by failing to ensure adequate protection for

women, especially with regard to reproductive rights. She argues that by denying access to safe abortion services for rape victims, the State has imposed physical and psychological suffering, social stigma and economic hardship, failing in its duty to protect.

92. Furthermore, the Applicant maintains that this omission reinforces gender discrimination, leaving women and girls without access to essential medical care. By failing to ensure an adequate legal and medical framework for the termination of pregnancy in cases of sexual assault, Nigeria is in breach of its obligations under Article 14 of the Maputo Protocol, which requires access to medical abortion in these circumstances.

Defendant's Argument

93. The Defendant refutes the above facts and maintains that the Applicant has not provided sufficient evidence to prove that she was the victim of rape and that her pregnancy resulted from that crime. Furthermore, it argues that the Applicant did not report the incident to the competent authorities, which, according to the Defendant State, made it impossible to adopt any measure to prosecute the alleged aggressor and provide the necessary services. It also argues that it cannot be held responsible for a situation in which there is no direct evidence that the Applicant was prevented from having a safe abortion within the limits established by current legislation.

The Court's Analysis

94. Article 18 imposes on the signatory States of the African Charter the obligation to protect the family, guaranteeing the safeguarding of the rights of women, the elderly and people with disabilities. This article reads as follows;

"1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

...

3. The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

95. The article must be interpreted in conjunction with other norms of the African Charter that ensure equality and human dignity, as well as with complementary international instruments such as the Maputo Protocol and the African Charter on the Rights and Welfare of the Child, which impose more detailed obligations on the protection of women and children in situations of vulnerability. Article 18 is not limited to family protection in the strict sense, but extends to the public and political spheres, imposing a positive duty on states to remove structural barriers that perpetuate inequalities and aggravate the vulnerability of women and children.

96. In this context, the Applicant alleges that the Federal Republic of Nigeria has violated Article 18 of the African Charter by failing to ensure the adequate protection of women and children with regard to reproductive rights and access to essential health services.

97. It is the Court's understanding that the State's refusal to provide access to safe abortion in cases of rape constitutes a systemic failure to protect women and reinforces gender discrimination, as it forces victims of sexual violence to bear the physical, psychological and social consequences of a forced pregnancy. This omission, in addition to compromising the protection of the family, exposes women to conditions of extreme vulnerability, contrary to the fundamental principles of Article 18 of the African Charter.

98. However, the violation of these provisions requires the demonstration of State conduct or specific omissions that show a failure to comply with these obligations.

99. The case law of the ECOWAS Court has reiterated that, although victims of human rights violations are often in a situation of vulnerability, it cannot be automatically assumed that a violation has occurred on the basis of generic allegations alone. In case *SERAP v. Nigeria (ECW/CCJ/JUD/18/12)*, the Court stressed that a mere summary of the facts, unaccompanied by minimal evidence, is not sufficient to sustain an infringement of the rights protected by the African Charter. Similarly, in the case of *Peter David v. Nigeria (ECW/CCJ/JUD/03/13)*, the Court emphasized that the Applicant must do more than allege a violation - it must present a coherent exposition and at least some elements to substantiate its claim. Also, in case *Centre for Democracy and Development (CDD) v. Nigeria (2022)*, the Court reaffirmed that not every allegation automatically implies jurisdiction or the granting of relief, and that it is essential to distinguish between well-founded complaints and those that are merely theoretical.

100. Thus, it is essential that the Applicant provide a minimum of evidence, indicating, for example, the name of the hospital that refused the abortion and the person who communicated the refusal, which are verifiable factual elements that enable a court to exercise its power of review. In the instant case, this requirement was not met.

101. Consequently, in the absence of any concrete factual evidence — such as medical records, correspondence with health services, reports from competent authorities, or third-party testimony — it cannot be established, with the degree of certainty that can reasonably be required, that the Defendant State effectively failed to ensure protection to the Applicant under Article 18(1) and (3) of the African Charter.It should be added that the Applicant did not provide evidence

that services were available under national law and that she was denied them in a discriminatory or negligent manner.

102. Accordingly, the Court finds that the Defendant did not violate Articles 18 of the African Charter; 14 (2) (c) of the Maputo Protocol and Articles 16 and 27 of the African Charter on the Rights and Welfare of the Child.

X. REPARATION

103. The Applicant sought from the Court:

- AN ORDER compelling the Defendant to enact and effectively implement laws, regulations and safeguards in order to comply with its obligations under international human rights law, including the African Charter, the ECOWAS revised treaty and the Maputo Protocol.

- AN ORDER compelling the Defendant to pay the sum of 30 million Naira as general damages to the Applicant, for the trauma, physical and mental stress caused by the Defendants' incompetence in "enacting good laws" allowing access to safe medical abortion as provided for in the provisions of the Maputo Protocol.

- AN ORDER compelling Defendant to make abortion and post-abortion care available in Public Facilities for access by those who need it and requiring it to implement awareness programs on comprehensive sexuality education and availability of abortion and post-abortion care, including identifying those who qualify for access to abortion and post-abortion care.

The Court's Analysis

104. The Federal Republic of Nigeria, as a State party to the International Covenant on Civil and Political Rights (ICCPR), Nigeria is bound by inalienable legal obligations to protect the rights enshrined therein.

105. In accordance with Article 2(3) of the ICCPR:

"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..."

106. In the instant case, since none of the alleged violation of the human rights has been established, the Applicant's claims for compensation are without legal ground.

107. The Court therefore dismisses the claims for compensation and consequently rejects them.

XI. COSTS

108. The parties said nothing about the payment of expenses.

109. Article 66 (1) of the Rules of the Court establishes that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

110. Furthermore, Article 66(2) of the Rules provides that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings*".

111. Therefore, in the light of the above provisions, the Court determines that the parties shall bear their own costs.

XII. OPERATIVE CLAUSE

112.For these reasons, the Court held a public hearing and having heard the parties:

On Jurisdiction

i. Declares itself competent to hear the Application.

On the Admissibility:

i. Declares the application admissible.

The merits of the case:

ii. **Declares as not established** the violation of the Applicant's right to health, in accordance with Articles16 of the African Charter.

iii. **Declares as not established** the violation of the right to the Protection of the Family, the Rights of Women, Older Persons and Persons with Disabilities, pursuant to Articles 18 of the African Charter; 14 (2) (c) of the Maputo Protocol, 4; Articles 16 and 27 of the African Charter on the Rights and Welfare of the Child.

Reparation

iv. The Court dismisses the claims for damages and, consequently, rejects them.

On the expenses:

v. According to Court's decision, each party shall bear own's costs.

Signature:

Hon. Justice Ricardo C. M. **GONÇALVES** - Presiding/Judge Rapporteur _____

Hon. Justice Sengu Mohamed **KOROMA** - Member _____

Hon. Justice Gberi-Be **OUATTARA** - Member _____

Dr. Yaouza OURO-SAMA - Chief Registrar _____

113. Done in Abuja on 4th April 2025, in Portuguese and translated into English and French.

