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

In the Matter of

CHARLES NII ARMAH MENSAH

V

REPUBLIC OF GHANA AND GAMING COMMISSION

Application No: ECW/CCJ/APP/25/24 Judgment No: ECW/CCJ/JUD/21/25

JUDGMENT

LAGOS

8 May 2025

Plot 1164 Joseph Gomwalk Street, Gudu District, Abuja Nigeria.
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CHARLES NII ARMAH MENSAH **-APPLICANT**

AND

REPUBLIC OF GHANA AND
GAMING COMMISSION **-RESPONDENTS**

COMPOSITION OF THE PANEL

Hon. Justice Ricardo Claúdio Monteiro GONÇALVES - Member

Hon. Justice Sengu Mohamed KOROMA - Member

Hon. Justice Dupe ATOKI - Member/Rapporteur Judge

ASSISTED BY

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

REPRESENTATION OF THE PARTIES

Bobby Banson Esq. - Counsel for the Applicant

Hellen Akpene Awo Ziwu,

Jonathan Acquah & Reginald NII Odoi - Counsel for the 1st Respondent

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as 'the Court') delivered in open court.

II. DESCRIPTION OF THE PARTIES

2. The Applicant Mr. Charles NII Armah Mensah, is a musician, recording artist, entrepreneur and philanthropist. He is a Ghanaian and community citizen residing at No. 69, Block Factory East Legon, Accra, Ghana.

3. The 1st Respondent is the Republic of Ghana, a member of the Economic Community of West African States (ECOWAS) and a signatory to the African Charter on Human and Peoples' Rights and other international human rights instruments. The 2nd Respondent, The Gaming Commission, is a governmental agency, saddled with the responsibilities to regulate, control, monitor and supervise the business of gaming and betting in Ghana. They are (hereinafter referred to as 'the Respondents').

III. INTRODUCTION

4. This application is premised on the alleged violation of the Applicant's right to freedom from discrimination sequel to the Guideline VII under the General Advertising Guideline of the Respondents' Gaming Commission upon which he was prevented from endorsement as a brand ambassador contrary to the provision of Articles 1, 2 and 3 of the African Charter on Human and Peoples' Rights.

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed by the Applicant on 8 October 2024 and the Application was served on the Respondent electronically on 8 October 2024.

6. The Respondents filed Statement of Defence on 11 November 2024 and same was served on the Applicant electronically on 12 November 2024

7. The Applicant filed a Reply to the Respondent's Statement of Defence on 26 November 2024 and the Reply to the Statement of Defence was served on the Respondent on 26 November electronically.

8. The Respondents filed a Rejoinder on 24 December 2024 and this was electronically served on the Applicant on 7 January 2025.

9. At the virtual hearing of the suit on March 2025, both parties were represented by counsel and having been informed of the business of the Court for the day, counsel were given time to make their oral presentation on the merits of the case. Parties adumbrated on the merits and the Court thereafter adjourned the matter for judgment.

V. THE APPLICANT'S CASE

a. Summary of facts

10. The Applicant is a multiple award-winning musician, recording artiste, entrepreneur and philanthropist operating with a stage name Shatta Wale whose celebrity status and hard work has earned him delight among business owners for collaboration, product and services endorsement within and across the Respondents' territory.

11. It is the submission of the Applicant that, he was approached by a licensed company in Ghana (name withheld to avoid stigmatization) as their ambassador. The discussion was terminated upon directive of the Commission that the provision of Guideline VII of the Advertising Guidelines of the Gaming Commission provides that "operators shall not use celebrities in their advertisements to entice the general public to gamble". This the Applicant claim to cause him to lose the financial opportunities which he would have gained had he been appointed as an ambassador of the betting company.

12. The Applicant submits that his inability to secure the ambassadorial or product endorsement by virtue of his social standing as a "popular person" "celebrity" or "well known personality" is discriminatory and a violation of

his freedom from discrimination guaranteed by the African Charter on Human and Peoples' Rights.

b. Pleas in law

13. The Applicant relied on the following laws:

a. Articles 1, 2, & 3 of the African Charter on Human and Peoples' Rights.
b. Articles 2 & 26 of the International Covenant on Civil and Political Rights 1976.
c. Articles 1, 2 & 7 of the Universal Declaration of Human Rights 1948.
d. Articles 4, 65 & 66 of the Revised Treaty of the Economic Community of West African States.
e. Article 33 of the Rules of the Community Court of Justice.
f. Article 10 of the Supplementary Protocol (A/AP.1/01/05) Amending the Protocol (A/P.1/7/91) Relating to the Community Court of Justice.

c. Reliefs sought

14. The Applicant prays to the Court for the following reliefs:

i. A declaration that Guideline VII under the General Guidelines of the Advertising Guidelines of the Gaming Commission published by the 2nd Respondent is in breach of the Applicant's right to non-discrimination based on fortune or social status guaranteed by Articles 1, 2 and 3 of the African Charter on Human and Peoples' Rights; Articles 2 & 26 of the International Covenant on Civil and Political Rights, and Articles1, 2 & 7 of the Universal Declaration of Human Rights.
ii. An order directing the Respondents to repeal and revoke Guideline VII under the General Guidelines of the Advertising Guidelines of the Gaming Commission published by the 2nd Respondent.
iii. Such further orders the Honorable Court may deem fit to make in the circumstance of this suit.

VI. THE RESPONDENTS' CASE

a. Summary of facts

15. The 1st Respondent in its defense deny each and every material allegation of facts as contained in the originating application except where specifically admitted.

16. The 1st Respondent recounted the Applicant's brief and reliefs sought. It avers that allowing celebrities and popular individuals to engage in gambling and betting will denigrate the value of society, especially the younger generation.

17. It however alleges that the Court has no jurisdiction to adjudicate on relief 2 of the Applicant on the grounds that the Court has no requisite power to order national legislation to be repealed or revoked.

18. The 1st Respondent contends that the Gaming Commission does not seek to prevent all people from advertising for betting companies but rather prohibits well-known personalities and celebrities in order to dissuade young lads from taking into betting because of its associated risks and ensure that protection of individual rights does not jeopardize general public interest.

19. The Respondents submit that the Applicant must lead evidence to show that operators in Ghana have been allowed to use celebrities of similar standing in their advertisements to entice the general public and a difference of treatment perpetrated by the 2nd Respondent in an identical or similar case to establish whether an ill treatment has been meted out to him.

20. They continue that the Gaming Commission in the Respondents' territory has not prevented anyone from entering into any agreement with any gaming company operating outside its territory contrary to the Applicant's assertion that the like of Micheal Essien and Emmanuel Adebayor celebrities who are resident in Ghana but are advertising for SportyBet and 22bet both gaming company operating outside of Ghana. They argue that the advertisement by foreign stations in Ghana do not amount to its legalization.

21. The Respondents submit that research carried out by the University of Oxford indicates that advertisement with well-known personalities may have strong appeal on children by virtue of their influence and this may lead to irresponsible gambling that could have negative effects on the younger generation if not regulated.

22. According to the Respondent, part of the outcome of the research is that the use of celebrities in gambling and betting makes the general public to pay more attention to the advertisement than they would have been if people

relatively unknown or not popular are used and this may arouse their involvement leading to a negative influence on them.

23. It is the contention of the Respondents that what the Guideline seeks to achieve is for the operators within the territory of Ghana to adhere strictly to the provisions of the guideline as non-adherence will affect renewal of such permit or approval.

24. The 1st Respondent concludes that the Guideline is reasonable and necessary for the public good and in line with international best practices and that it is not an over-board capable of nullifying the freedom guaranteed by the relevant laws contrary to the averment of the Applicant.

b. Pleas in law

i. Articles 1, 2 and 3 the African Charter on Human and Peoples' Rights (ACHPR).
ii. Articles 2 and 26 the International Covenant on Civil and Political Rights (ICCPR).
iii. Articles 2 and 7 the Universal Declaration of Human Rights (UDHR).

c. Reliefs sought

25. The Respondents therefore seek the following reliefs from the Court:

a. The Applicant is not entitled to any of the reliefs as sought against the Respondents and thus the Applicant's action against the Respondents should fail.
b. Prays the Honorable Court to dismiss the Applicant's action.

VII. JURISDICTION

26. Article 9(4) of the Supplementary Protocol A/SP.1/01/05 amending Protocol A/P.1/7/91 provides as follows *"this Court has jurisdiction to determine cases of violation of human rights that occur in any Member State"*. By virtue of this provision, the Court is vested with requisite power to adjudicate on violation of human rights that occur within the territorial limit of any Member State of the community.

27. A mere allegation of human rights violation vests the Court with jurisdiction. See HON. JUSTICE ALADETOYINBO V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/18/20 PAGE 8 PARA 22.

28. In view of the fact that this application alleges violation of human rights guaranteed by the African Charter, the Court holds that it has jurisdiction to adjudicate over the matter.

Whether the 2nd Respondent is a proper party before the Court.

29. The Court suo moto notes that this Application was filed against two Respondents that is, the Republic of Ghana (1st Respondent) and the Gaming Commission (2nd Respondent).

30. The provisions of Articles 9 and 10 of the Supplementary Protocol specify the categories of entities and individuals against which a complaint may be filed before the Court. These provisions are clear in stating that only Member States and institutions of ECOWAS can be brought before the Court. N'NADOZIE CHRISTIAN UGOCHUKWU V TOGOLESE REPUBLIC & ANOR, ECW/CCJ/APP/07/21, ECW/CCJ/JUD/36/23 PAGES 12-14, PARAS 36-40. Accordingly, neither individuals, agents nor organs of a Member State can be sued as Respondents before this Court for human rights violation. PETER DAVID V. AMBASSADOR RALPH UWECHUE ECW/CCJ/APP/04/09 (2010) CCJELR.

31. Further, under the international principle of state responsibility which the Court has reiterated in several decisions, Member States shall be held liable for acts or omission of their agents, institutions or organs acting in their official capacity, even if such acts were committed outside of the scope of their official authority or in violation of domestic laws.

32. Thus, instances where agents of a state violate the rights of an individual(s), these violations will be imputed to the State whether it was sanctioned by it or not, thereby establishing its international responsibility for the acts or omissions. See TIDJANE KONTE & ANOR V. REPUBLIC OF GHANA ECW/CCJ/JUD/11/14 @ PAGE 16, AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V THE FEDERAL REPUBLIC OF NIGERIA. RULING NO.

ECW/CCJ/RUL/01/21PAGE 18-20, COL. MOHAMMED SAMBO DASUKI (RTD) V THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/23/16 PAGE 28.

33. The Court notes that the Gaming Commission is neither a Member State nor an institution of ECOWAS but an agency of the Respondent. Therefore, all wrongs committed by the Gaming Commission if established shall be imputed to the Respondent.

34. In light of the foregoing, the Court holds that it lacks jurisdiction to entertain the application as it relates to the 2nd Respondent. Consequently, the 2nd Respondent not being a proper party is hereby struck out from this Application. The Court will therefore adjudicate on the Application against the 1st Respondent only and hereinafter address them as "Respondent".

VIII. ADMISSIBILITY

35. The Court holds that the Application is admissible as it is in compliance with Article 10 (d) (i) and (ii) of the Protocol, having found that the Applicant is an individual seeking relief for the violation of his human rights and the Application is neither anonymous nor made whilst the same matter has been instituted before another similar international Court for adjudication.

IX. MERITS

36. Having found that the Application can be seized by the Court, and it meets the admissibility requirements, the Court will now proceed to examine the human rights allegedly violated by the Respondent State.

- *Alleged violation of the right to non-discrimination*
  Applicant's argument.

37. The case of the Applicant is that he is a multiple award-winning musician, recording artiste, entrepreneur and philanthropist operating with a stage name Shatta Wale whose celebrity status and hard work has earned him recognition among business owners. In that status, he enjoyed endorsement for advertisement of products and services within and across the Respondent's territory.

38. It is his further submission that based on his celebrity status, he was approached by an undisclosed gaming company licensed to carry out betting games in Ghana to be their ambassador. However, discussions were terminated upon order by the Gaming Commission that the engagement of

the Applicant will contravene the provision of Guideline VII of the Advertising Guidelines of the Gaming Commission which prohibits operators from using "celebrities in their advertisements to entice the general public to gamble". This intervention the Applicant claimed has caused him the loss of financial opportunities.

39. The Applicant concluded that his inability to secure the product endorsement based on his social status as a "celebrity" is discriminatory and a violation of his right not to be discriminated against guaranteed by the African Charter on Human and Peoples' Rights. This is particularly in view of the specific provision of the African Charter prohibiting discrimination based on "*fortune, birth or other status*".

40. Consequently, the inscription of the term "*celebrity*" in the guidelines has implication on his status as such is a violation of Article 2 of the African Charter.

41. In justifying the allegation of discrimination, the Applicant submits that the prohibition of celebrities from advertising for betting games is only peculiar to Ghana as other ECOWAS and African countries allow celebrities such as retired footballers to advertise betting games.

42. In that regard, he named Michael Essien and Emmanuel Adebayor both famous Ghanaian and Togolese footballers who are resident in Ghana and who advertise for Sporty Bet and 22bet respectively. Annexures 2 & 3.

Respondent's argument

43. The Respondent rebutted the above facts, stating, inter alia, that the Applicant must produce evidence showing that other operators in Ghana are allowed to use celebrities of similar status as the Applicant in their advertisements to attract the general public. Respondent submits that the persons referred to in Annexures 2 & 3 as celebrities are resident outside Ghana and are hired by those countries whose regulation permit the use of celebrities for gaming advertisement. They further argue that the fact that the advertisement involving these celebrities is aired on Ghana televisions which take a live

feed of events from a TV network operating outside Ghana is not indicative of a different treatment to the Applicant.

44. In that regard, they argue that the annexures do not in any way constitute evidence that the Gaming Commission of Ghana, has authorized the said personalities to advertise in Ghana contrary to its guidelines. Consequently, they exonerate themselves from any violation of discrimination as alleged by the Applicant.

The Court's analysis

45. The crux of the Applicant's case is premised primarily on the violation of his right to non- discrimination. He alleged that he was approached by a company licensed to operate betting in Ghana (name omitted to avoid stigmatization) to be an ambassador for the purpose of advertising for the said betting company. However, sometime in April 2024, the betting company terminated discussions with the Applicant on the basis that provisions of Guideline VII of the Advertising Guidelines of the Gambling Commission barred the use of celebrities in their advertisements. In that regard, he alleges that the said guideline is discriminatory and in violation of his right guaranteed under the Charter.

46. He cited several Articles of the African Charter including Article 1, 2 and 3. The Court will however examine his allegation based on Article 2 of the African Charter being the appropriate provision on the issue of discrimination.

47. Article 2 of the African Charter on Human and Peoples' Rights provides that *"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status".*

48. While the term 'discrimination' is not used in Article 2 of the Charter, the spirit of the letter accommodates the term which should be understood to imply any distinction, exclusion, restriction, or preference which is based on race, color, sex, language, religion, political or other opinion, national or

social or social origin, fortune, birth or any status and which has the purpose of or effect of nullifying the recognition, enjoyment, or exercise by all persons on an equal footing. See HUMAN RIGHTS COMMITTEE GENERAL COMMENT NO 18: NON-DISCRIMINATION 1989 PARAGRAPHS 6 &7.

49. Non-discrimination constitutes a basic principle relating to the protection of human rights. Thus Article 2 of the African Charter, obliges each State Party to respect and ensure all persons within its territory enjoy the rights recognized in the Charter without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social or social origin, fortune, birth or any status. See ISAAC OLAMIKAN & ORS v THE FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/APP/31/21, ECW/CCJ/JUD/43/23 PAGES 14-15 PARAS 47-49

50. The provision therefore strictly prohibits any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, and national extraction, social or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment. These provisions are irrevocable and must therefore be respected in all circumstances so that everyone can enjoy all the other rights provided for in the African Charter. (See African Commission, PUROHIT AND ANOR v. GAMBIA (Communication No. 241/2001) [2003] ACHPR 49; (29 May 2003); Human Rights Committee, General Comment No. 18 - Non-discrimination, 1989, §7).

51. Article 2 is imperative for the respect and enjoyment of all other rights and freedoms protected in the Charter, as it establishes a principle that is essential to the spirit of the African Charter and is therefore necessary to eradicate discrimination in all its forms and to guarantee equality between all human beings. See African Commission on Human Rights MALAWI AFRICAN ASSOCIATION v. MAURITANIA, Communication No. 54/91, para. 131).

52. In general, equality is a requirement whose object is to fight against differential treatments based on race, ethnicity, color, sex, language, religion, political opinion, social background, fortune, birth, or any other situation. CNDD v COTE D'IVOIRE ECW/CCJ/JUD/05/09 PAGE 8 PARA 58.

53. Where discrimination is alleged, it implies that the Applicant is treated differently from others in similar situation due to their age, sex, religion,

ethnicity amongst others. Indeed, for an action of discrimination to succeed, there must be established a difference of treatment in an identical or similar case." JUSTICE PAUL UUTER DERRY & 2 ORS V. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 PG. 32 *PARA 88.*

54. In examining the allegation of discrimination, the watch phrase is differential treatment which has been expatiated by this Court as follows; "In order for a party to establish a successful claim under Article 2 of the African Charter, the Applicant must demonstrate that the Respondent State has not accorded him/her the same treatment as it has accorded to others in a similar situation or that, the Respondent State granted favorable treatment to others in the same position as the Applicant." HIS LORDSHIP PAUL UUTER DERY (Supra) para. 88; MATCHI DAOUDOU and SOCIÉTÉ COMMERCIAL POLIVALENTE (SCP) SARL-U v. STATE OF THE REPUBLIC OF TOGO, ECW/CCJ/JUD/38/2022, para. 186).

55. In that regards, having alleged discriminatory action by the Respondent, in line with the general principle of law that he who asserts must prove, the Applicant therefore bears the onus to prove facts to support the said allegation. REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) v. THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR: ECW/CCJ/JUD/40/22 page 29 para 87.

56. Consequently, flowing from the facts narrated by the Applicant, he must at the onset lay a credible foundation with incontrovertible proof of the existence of the treatments which he alleged are discriminatory. The allegation of discrimination therefore requires empirical proof of the following alleged facts:

- *Proof of the correspondence from the unknown betting company nominating the Applicant as an ambassador for purpose of advertising,*

57. The Applicant alleged that as a celebrity, he was contacted by a company authorized to operate bets in Ghana (name omitted to avoid stigmatization) to be their ambassador, but the discussion was terminated by the betting company. The proof of this allegation is fundamental to the success of the Applicant as it sets the basis of his position against which the treatment of

others can be benchmarked. However, the Court is not presented with any documentary or oral evidence of this commitment by the unidentified gaming company. Considering the fact that the discussion has not crystalized to a concrete agreement, a copy of the minutes of the various discussion or oral recording of same may suffice as proof.

58. In that regards and in the absence of any such proof, the Court is of the considered opinion that the Applicant failed to convince the Court of any discussion between him and the unidentified gaming company concerning his appointment as an ambassador. This allegation to that effect is therefore dismissed for lack of proof.

- *Identity of the betting company*

59. Additionally, the Court observes that the identity of the betting company is not disclosed. Paragraph 4(iv) of the initiating application is reproduced below for clarity, *"The plaintiff was approached by a company licensed to operate betting in Ghana (name withheld to avoid stigmatization) for him to be an ambassador for its betting company)*". From the records, neither the Applicant nor the Respondent identified the gaming company who is a critical party to this matter. Consequently, the Court is faced with a situation where it is prayed to grant reliefs that has implications for an unidentified party.

60. The Court recalls that the rules of admissibility of the Court inscribed in Article 10 (d) (i) of the Supplementary Protocol of 2005 requires that individuals applying for reliefs for the violation of their human rights shall submit an application that is not anonymous. While this Article may be interpreted to implicate only an Applicant, it goes without contention that all other parties who may be beneficiaries of or affected by the order of the Court must be clearly identified.

61. To bring to more clarity the importance of the gaming company and the necessity for its identification, the Court posits a consequential hypothetical scenario where for good reasons the Court grants the reliefs sought by the Applicant. In which case the Court will order the Respondent/Commission to reverse its decision and grant authorization to an unknown gaming company to carry on with the Applicant. It then puts to question and make

the Court wonder against which company the Respondent is defending its action.

62. The consequence is that the Court would be making an order that implicates an unknown party against which its enforcement is impracticable. It is therefore the considered opinion of the Court that the non-disclosure of the gaming company is fatal to the Applicant's case.

- *Proof of the correspondence by the Respondent to the unidentified gaming company rejecting the application for the endorsement of the Applicant as an ambassador due to regulatory provisions.*

63. In the event that the Applicant was even able to establish a commitment from the gaming company, considering his allegation that the Respondent/ Commission ordered the gaming company to discontinue the discussion on his engagement to advertise for the said company, it is imperative to also provide proof of the correspondence received by the gaming company from the Gaming Commission to that effect.

64. The Court has no record of that correspondence; accordingly, it is unable to find that such discontinuance was ordered by the Gaming Commission. The allegation to that effect having not been substantiated is thus dismissed.

- *Proof of the correspondence to the Applicant by gaming company that the Gaming Commission has ordered the termination of the discussion.*

65. The case of the Applicant is that in April 2024, the betting company terminated contacts with him on the basis that it was informed that, in accordance with the provisions of Guideline VII of the Advertising Guidelines of the Gambling Commission, the betting company cannot appoint the Applicant as its Ambassador due to his celebrity status.

66. As earlier indicated, any facts alleged in respect of an allegation must be proved by the party alleging it. The Court notes again that it has not been presented with any correspondence supporting the Applicant's allegation that the Betting Company terminated his appointment as its Ambassador due to its inconsistency with the provisions of the Advertising Guidelines of the

Gambling Commission. Consequently, this allegation is dismissed same being unsubstantiated.

67. The summation of the Applicant's case is that he has not presented the Court with any evidence to support the existence of an agreement between him and gaming company on appointment as an ambassador, nor has he presented any document from the Commission to the gaming company directing the termination of the discussion with the Applicant. There is also no document terminating the discussion between the Applicant and the gaming company to engage him as an ambassador.

68. As earlier indicated, the burden of proof lies on he who asserts to adduce compelling evidence to ascertain his allegation. See FEMI FALANA AND ORS v. THE REPUBLIC OF BENIN AND ORS, (2012) CCJELR page 15 para 38, FANTA CISSE v. STATE OF GUINEA, ECW/CCJ/JUD/21/2021, paragraphs 226 and 227). This burden falls on the Applicant who, however, did not allege or succeed in proving the above facts, but merely made a general allegation.

69. The burden of proof principle is so engrained in the dispensation of justice that the Court has a plethora of decisions to demonstrate its importance. It has held that "The law is firmly and well established that in claims for declaratory reliefs, the Applicant must plead sufficient facts to constitute a platform for the relief being sought and he must lead or proffer cogent and credible evidence to sustain or support the said relief....." DANIEL AGADA OKOH & 42 ORS. V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/04/21 pg. 30 para 84.

70. In further emphasis, it is pertinent to note that the presentation of the case by the Plaintiff and the reply of defendants in material particular describe whether the parties have made out their claim or defense as the case may be. The plaintiff has a duty to place all material facts to establish the reliefs he seeks for in the present case with credibility which would convince the members of the Court or present arguments that would cause the Court to be persuaded to decide either for the plaintiff or defendant. SIKIRU ALADE V THE FEDERAL REPUBLIC OF NIGERIA (2012) CCJELR PAGE 189 PARAS 48-50

71. The identity of the gaming company to which the Respondent allegedly denied the employment of the Applicant as an ambassador is not disclosed.

It is surprising that the Respondent did not raise any of these lacunas as part of its defence. It is more surprising that the Respondent in the face of this non-disclosure went on a foray of its own to justify the legality of the guideline and its appropriate application to the gaming company, the identity of which is undisclosed and therefore to all intent and purpose may be unknown to the Respondent.

72. The absence of any proof of the alleged information between the Respondent and the gaming company as well as that between the Applicant and the gaming company present a formidable defence for the Respondent which was not utilised.

73. Nevertheless, the law is settled that the Applicant cannot profit from the weakness of the defence of the Respondent. The law is firmly and well established that in claims for declaratory reliefs, the Applicant must plead sufficient facts to constitute a platform for the relief being sought, and he must lead or proffer cogent and credible evidence to sustain or support the said relief. The reason for this is obvious. Applicant seeking for a declaratory relief must rely and succeed on the strength of his own case and not on any perceived weakness in the Respondent's case. DANIEL AGADA OKOH & 42 ORS. V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/04/21 pg. 30 para 84.

74. The main ingredient required to succeed in an allegation of discrimination is proof of different treatment in an identical or similar case. Based solely on the strength of the Applicant's case, the Court is convinced that he has failed to prove facts to support his claim of the treatments alleged to be discriminatory. The Court will therefore not proceed on a foray of its own to examine whether the alleged treatments are different from others in similar situation thus amounting to discrimination.

75. The Court aligns with B Cheng-General principles of law as applied by International Courts and Tribunal OUP London 1953 p.329, reaffirming that "a party having the burden to proof must not only bring evidence in support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency, of proof".

76. The Court therefore finds that the Applicant has not presented evidence to support the treatments alleged to be discriminatory. The considered opinion of the Court in this case is that the Applicant has failed in all material

particular to establish his case against the Respondent. The totality of the Applicant's claim fails same lacking in sufficient proof and is therefore dismissed.

X. COSTS

77. The Applicant did not pray for costs, but the Respondent prayed the Court to order the Applicant to pay his cost.

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

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

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

XI. OPERATIVE CLAUSE

81. For these reasons stated above, the Court sitting in public after hearing both parties:

As to jurisdiction:

i. **Declares** it has jurisdiction on the application.

ii. **Declares** that the 2nd Respondent being an organ of the 1st Respondent is not a proper party to this suit.

As to admissibility

i. **Declares** that the application is admissible.

As to merit:

i. **Dismiss** the application in its entirety as lacking in merit.

Hon. Justice Ricardo Claúdio Monteiro **GONÇALVES** – Presiding .....

Hon. Justice Sengu Mohamed **KOROMA** – Member .....

Hon. Justice Dupe **ATOKI**– Member/Judge Rapporteur .....

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

Done in Lagos, this 8th May 2025 in English and translated into French and Portuguese.