THE COMMUNITY COURT OF JUSTICE OF THE

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

SOLOMON EKOLAMA & ANOR. V FEDERAL REPUBLIC OF NIGERIA

Application No: ECW/CCJ/APP/41/19 Judgment NO. ECW/CCJ/JUD/24/25

JUDGMENT

LAGOS

DATE: 12th May 2025.

JUDGMENT NO. ECW/CCJ/JUD/24/25

1. SOLOMON EKOLAMA ... **APPLICANTS**

2. FAR-REACHING TECHNOLOGIES LTD

V.

FEDERAL REPUBLIC OF NIGERIA ... **RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Sengu Mohamed KOROMA - Presiding/Judge Rapporteur

Hon. Justice Gberi-Be OUATTARA - Member

Hon. Justice Edward Amoako ASANTE - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

Chief Festus OGWUCHE — Counsel for the APPLICANTS

Maimuna Lami SHIRU(Mrs.) — Counsel for the RESPONDENT

Enock SIMON, Esq

P. E. OGWU (Mrs.)

D. N. LAMIRI

I. JUDGMENT:

1. This is the judgment of the Community Court of Justice ECOWAS (hereinafter referred to as 'the Court') delivered virtually and in open Court under Article 8(1) of the Practice Direction on Electronic Case Management and Virtual Court Session, 2020.

II. DESCRIPTION OF THE PARTIES:

2. The First Applicant is SOLOMON EKOLAMA, a Registered Engineer with the Council for the Regulation of Engineering in Nigeria (COREN), and a Community citizen of ECOWAS residing in the Federal Republic of Nigeria.
3. The Second Applicant is FAR-REACHING TECHNOLOGIES LTD, a company registered under the Laws of the Federal Republic of Nigeria.
4. The Respondent is the Federal Republic of Nigeria and a Member State of ECOWAS.

III. INTRODUCTION

5. The subject matter of the claims before the Court borders on allegations of the violation of the right to property, theft of a software application, invasion and infringement of their right to property contrary to the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights, the Berne Convention for the Protection of Literary and Artistic Work and the World Intellectual Property Organization Copyright Treaty.

IV. PROCEDURE BEFORE THE COURT

6. The Applicants filed their Initiating Application on the 20th November 2019, in the Registry of the Court.

7. On 16th March 2020, the Respondent filed a Motion for the Extension of Time to file its Statement of Defense, and the Statement of Defense in the Registry of the Court.
8. On 16th July 2020, the Applicants filed a Motion Invoking the Oral Procedure Measures along with its Reply to the Respondent's Statement of Defense in the Registry of the Court.
9. The Court held a virtual session on the 26th October 2021, in which both parties were represented by Counsel. The Respondent moved its Motion for the Extension of Time, and the Applicants, in response, did not object to the application but prayed for costs of N200,000. The Court granted the Respondent's application but denied the Applicant's plea for costs. The Court further granted the Applicant's Motion to Call Witnesses on the condition that they file the witness depositions and serve them on the Respondent before the next hearing date.
10. On 4th November 2021, the Applicants filed a Witness Deposition on Oath in the Registry of the Court, as ordered by the Court.
11. The Court held a second virtual session on 30th March 2022, in which both parties were represented by Counsel. The witness, Solomon Ekolama, was affirmed, examined, and re-examined before the Court. The Respondent adopted its processes and applied to the Court to file its Written Address.
12. The Applicant filed its Written Address on 19th April 2022 in the Registry of the Court.
13. Following this, the Court had a virtual session on 5th December 2023, in which the Applicants were represented by Counsel and the Respondent was not represented. The Applicants noted that the case had been withdrawn for judgment however, the Court stated the need to invite an expert to submit a

technical report before judgment can be delivered. It adjourned to 15th December 2023.

14. On 15th December 2023, during its virtual session in which both parties were represented by Counsel, the Court informed the parties of the need to contract an expert. It also informed the parties of the change in panel and a need for further hearing for the benefit of the new member of the panel. The parties consented and readopted their pleadings, while the Respondent prayed for leave to file its Final Address. The Court granted the prayer and waived the need for an expert witness while adjourning the case to 28th February 2024.
15. The Applicants filed their Further Written Address on 31st January 2024, in the Registry of the Court.
16. On 12th February 2024, the Respondent filed its Final Written Address in the Registry of the Court.
17. Subsequently, on the 29th February 2024, the Court held a virtual session, in which both parties were represented by Counsel. The Court, *suo motu*, under Article 45 of the Rules of the Court, ordered the Chief Registrar to appoint an independent expert to obtain an expert report. It is ordered that the parties must be informed and that the Chief Registrar should contract said expert within two weeks and furnish said person with a terms of reference and the pleadings of the case. The Respondent consented and welcomed the opportunity to comment on the suitability of the expert. The Court adjourned after reiterating that it would follow the procedure in Article 45 of the Rules to the letter.
18. On 21st October 2024, an announcement for the appointment of an independent expert was made.
19. This was followed by the Respondent's request for an adjournment by way of letter during the Court's penultimate virtual session on 14th November 2024.

20. The Court held its final virtual session on 3rd March 2025, in which both parties were represented by Counsel. The Applicant informed the Court of their objection to the appointment of the first expert and prayed that the Court should deliver its judgment based on the documents before it. The Respondent, however, had no objection to the appointment of the expert contracted by the Court. This elicited a further objection from the Applicant that the Respondent, having failed to lodge its written observations, cannot *viva voce* make the same. The Court withdrew the file for judgment and adjourned the session.

V. APPLICANT'S CASE

a. Summary of facts

21. The Applicants' claim is centered on the development of a security software infrastructure intended to provide quick reportage of crime and a corresponding response by the appropriate security forces. They claim that after a lengthy research process, software design and processing, a framework called Nigerian Community Safety and Security Software Infrastructure, which is also known as Nigerian Secure Portal, was born. Their claim includes a submission that the software was registered with an agent of the Respondent and certified with Certificate No. LW1785 issued by the Copyright Commission and dated 7th September, 2016.

22. The Applicants claim that they submitted a proposal to an agent of the Respondent, the National Information Technology Development Agency (hereinafter referred to as NITDA), which resulted in series of meetings on the development of the infrastructure of community based security intelligence. They maintain that the Respondent had access to its intellectual

property during these meetings via their numerous submissions and presentations.

23. They claim that after being told that their submissions had been sent for further study on the recommendation of the Office of the President, they were surprised that shortly after this discovery, an application on Google Play Store called Nigeria Internal Security and Public Safety Alert System (NISPAS) was discovered. That upon investigation, the application showed a direct lifting of the Applicants' concept and features.

24. The Applicants allege that further investigations revealed that the NISPAS was owned by an agent of the Respondent and that it bore striking similarities with the web infrastructure that they (the Applicants) developed. The premise of this claim is that the functionality and administrative procedure of the Respondent's application is a direct copy of the Applicants' creation. In support of this, the Applicants submit that, following demonstrations to the respective agencies of the Respondent, it managed to put up the same application on the website of the Ministry of Interior. The Applicants claim that this is theft and are therefore claiming that they have suffered loss which is unquantifiable.

25. It is the unreserved averment of the Applicants that the theft of their web application, which is an intellectual property, was perpetrated by the Respondent and passed off on its platform as its own. As a result of this, the Applicants notified the Respondent of its breach of their intellectual property rights on the 14th August 2019.

b. Pleas in law

26. The Applicants have relied on the following provisions in support of their claim:

- ARTICLE 17 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.
- ARTICLE 14 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS.
- ARTICLE 26 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.
- SECTIONS 42 AND 43 OF THE DEFENDANT'S CONSTITUTION.
- ECtHR, BOLAN V. MOLDOVA, NO. 19247/03, 29 JANUARY, 2008.
- SMITH KLINE & FRENCH LAB TECH LTD V. THE NETHERLANDS (DEC) NO. 12633/87, 4 OCTOBER, 1990 EcommHR.
- LENZING V. THE UNITED KINGDOM, (DEC), NO. 38817/97, 9 SEPTEMBER, 1998.
- "INTELLECTUAL PROPERTY IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS" PROCEEDINGS OF THE INTERNATIONAL CONFERENCE CKS-CERDOCT DOCTORAL SCHOOLS, CHALLENGES OF THE KNOWLEDGE SOCIETY, BUCHAREST, 15 – 16 APRIL, 2011, 93.
- TIMOTHY PINTO, "THE INFLUENCE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN INTELLECTUAL PROPERTY RIGHTS." 24(4) EIPR 209 (2002).
- ECtHR, ANHEUSER – BUSCH INC. V. PORTUGAL (GC) NO. 73049/01, 11 JANUARY, 2007, PARA 72.

- ECtHR, PAEFFGEN GMBH V. GERMANY (DEC.), NO. 25379/04, 21688/05, 21722/05 AND 21770/05, 18 SEPTEMBER, 2007, PARA 1.
- ECtHR, A.D V. THE NETHERLANDS (DEC.), NO. 21962/93, 11 JANUARY, 1994.
- ECtHR, ARAL TEKIN AND ARAL V. TURKEY (DEC.), NO. 24563/94 ECtHR, 14 JANUARY, 1998.
- ECtHR, MELNYCHUK V. UKRAINE (DEC.), NO. 28743/05, 5 JULY, 2005.
- ECtHR, EDITURA ORIZONTURI SRL V. ROMANIA, NO. 15872/03, 13 MAY, 2008.
- ECtHR, SIA AKKA/LAA V. LATVIA NO. 562/05, 12 JULY, 2016.
- THE DEFENDANT'S COPYRIGHT ACT, CAP C28, LAWS OF THE FEDERATION OF NIGERIA, 2004 (PROTECTING CREATIVITY). – SECTIONS 1, 10, 11, 12, 15, 18, AND 19 OF SAME DEFENDANT'S STATUTE.
- NEIJ V. SWEDEN, APP NO: 40397/2, EUR. CT H.R. 2013.
- THE RIGHT TO PROPERTY AND THE PROTECTION OF INTERESTS IN INTELLECTUAL PROPERTY – A HUMAN RIGHTS PERSPECTIVE ON THE EUROPEAN COURT OF HUMAN RIGHTS DECISION IN: ANHEUSER–BUSH INC V. PORTUGAL.
- DRAGOS BOGDAN – INTELLECTUAL PROPERTY IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS.

- P.L.C. TORREMANS(ED) INTELLECTUAL PROPERTY AND HUMAN RIGHTS: ENHANCED EDITION OF COPYRIGHT AND HUMAN RIGHTS (KLUWER LAW INTERNATIONAL, 2008).
- BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, 1886.
- WIPO COPYRIGHT TREATY, 1996.

c. Reliefs sought

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

a) A declaration that the Plaintiffs are entitled to the protection of the fundamental freedoms enshrined and guaranteed under the Articles of the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights.

b) A declaration that the Defendant state is bound to observe and respect the rights enshrined and guaranteed under the Articles of the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights regarding the property rights of the Plaintiffs to the Nigeria Community-Based Safety and Security Software Infrastructure (NCSSSI) otherwise known as Nigeria Secure Portal.

c) A declaration that the Defendant's Ministry of Interior in reproducing and aping the Plaintiffs' Nigeria Secure Portal a web agent created by the 1st Plaintiff to serve as an electronic

reporting platform and remolding the said Portal into a Nigeria Internal Security and Public Safety Alert System (NISPSAS), safety and security portal using the same structure, content, framework, development techniques, reporting and administrative concept and the consumer-to-national safety and security mechanism, is an infringement on the property rights of the Plaintiffs and a violation of their fundamental rights guaranteed and enshrined under Article 14, of the African Charter on Human and Peoples' Rights, Article 26 of the International Covenant on Civil and Political Rights, and Sections 42 and 43 of the Defendant's Constitution.

d) An order compelling the Defendant to submit and/or release to the Plaintiffs, the 'Nigerian Internal Security and Public Safety Alert System (NISPSAS)' and all the materials and artifacts related or connected thereto existing in both web and mobile platforms in accordance with law.

e) An order prohibiting the Defendant perpetually, its agents, servants, privies and assigns from further developing any website, software or IT device, in the mode, character, form, nature and dimension of the Plaintiffs' Nigerian Community-Based Safety and Security Software Infrastructure (NCSSSI).

f) The sum of $441,927,961.00 (Four Hundred and Forty-one Million, Nine Hundred and Twenty-seven Thousand, Nine Hundred and Sixty-one Dollars) being the Project Development cost.

g) The sum of $154,674,786.40 (One Hundred and Fifty-four Million, Six Hundred and Seventy-four Thousand, Seven

Hundred and Eighty-six, Dollars and Forty cents) to the Plaintiffs as compensation for the infringement on their property rights and violation of their fundamental rights.

h) The sum of $1,487,407.00 (One Million, Four Hundred and Eighty-seven Thousand, Four Hundred and Seven Dollars) being damages.

VI. RESPONDENT'S CASE

a. Summary of facts

28. The Respondent admits the first assertion of the Applicant, that it is beset with security challenges to the extent that there have been several insurgency attempts and other crimes within the Respondent state. However, it denies knowledge of the Applicants creative energy and elaborate research effort towards developing a web application to address insecurity issues as claimed.

29. In sum, the allegations levied by the Applicants are all denied by the Respondent, who states that the facts as alleged are within the knowledge of the Applicants alone. That the efforts expended and the expenses incurred in procuring research and data gathering as claimed by the Applicants were done of their own freewill and pleasure. It however, admits that the registration and certification of the Applicants' proprietary interest in the application is true.

30. The Respondent contends that even if the security intelligence mechanism known as the Nigeria Portal is a brainchild of the Applicant, it did not engage them to produce or design the same for its own use.

31. It is submitted by the Respondent that the narration of facts by the Applicants is largely distorted, as the Respondent cannot award a contract except via its Public Procurement Act.

32. The Respondent submits further that NISPSAS is not the brainchild of the Applicants and the latter's claim of intellectual theft is unfounded. The Respondent argues in rebuttal that the NISPSAS application has no similarity with the Applicants' web application; therefore, it puts them to strict proof.

33. It is specifically stated that the security number of the Respondent's application differs from the Applicants', even though the features may appear to be similar. Nonetheless, the Respondent submits that the forum for redress in view of the allegation of intellectual rights theft should be the national Courts.

34. The Respondent in its Final Address submits that while the Applicants claim that their invention was stolen by it, its First Witness under oath stated that he was not told that the invention was stolen.

35. In light of the foregoing, the Respondent considers the application frivolous, made in bad faith, gold digging, and an attempt to distract the Respondent from its efforts to provide maximum security, and prays that the Court dismisses the entire application based on the aforesaid grounds.

VII. APPLICANTS' RESPONSE TO THE RESPONDENT'S DEFENSE

36. The Applicants maintain their claim and rebut the Respondent's contention as to the inconsistencies in the dates of association with its agents, submitted in its narration of facts. They, however, restate the procedure employed in the concept and development of its software and submit a table of expenses that they incurred in the process.

37. They also aver that the Respondent did not procure or engage their services but that they offered their services out of patriotism. Further, the norm for

researchers, inventors, and manufacturers alike is that they do not need to be solicited.

38. They submit vehemently in their Further Address that:

> *"Incidentally, intellectual property rights are recognized in Nigeria, and are enforceable by the courts and this is informed chiefly by its being a party to the Berne Convention on Literary and Artistic Works. By this indication, and for the enforcement of intellectual property rights (specifically as in this case, copyrights). It is important that the domestic copyright law can only come into consideration in the areas assigned to it by the Berne Convention for the Protection of Literary and Artistic Works, 1979. Some key area are reserved for the domestic legislature by the Convention in what may be regarded as a Margin of Appreciation for municipal intervention.*
>
> *The infringement complained of in the circumstance of this application falls essentially under international law, which provisions and principles thereby apply via the defendant's Copyright Act. The reason for this is not far-fetched- the areas reserved by the Convention and covered by the domestic Act are seen and construed as part of the Convention and its provisions thereunder. For this reason, the court will not be said to have gone outside its jurisdictional mandate to interpret or enforce municipal laws, but rather exercising its jurisdiction to interpret an international convention. Secondly, the international conventions applicable in construing the extent and ramifications of intellectual property rights, holds sway and prevails in the event of an inconsistency with any domestic law. In other words, the international convention is the gauge or barometer for measuring the*

correctness or otherwise of domestic laws on intellectual property, specifically as in this case, the Nigerian Copyright Law.

To this extent, we state that the applicable convention in this circumstance is the prime instrument for consideration around which the adjudication and consideration in this case should revolve. The World Intellectual Property Organization (WIPO) has set standards for protection of intellectual property by the enactment of the Berne Convention of which Nigeria is signatory, alongside 170 other countries. The WIPO copyright Treaty (WCT) is a special agreement under the Berne convention that deals with the protection of works and the rights of the authors in the digital environment, such as in this circumstance. The main criteria for consideration of the protective status of a work as a literary work are where they are fixed in a definite format, and the proof that sufficient effort has been expended in the making of the work to give it an original character.

We submit that the Applicant has shown by his processes before the court particularly his witness deposition on Oath of which evidence was led before the court on 30th March that the work concerned is not only in a fixed definite format, but is distinct, and incapable of reproduction except by a party privileged to have been introduced to it and its intricate workings."

39. The Applicants are urging the Court to grant the application in the interest of justice and as a measure to stymie the blatant acts of infringement and theft that are becoming a regular occurrence in some domestic entities. It submits that by granting the application, it would be taking a step in protecting artistic and literary works for a better society.

VIII. JURISDICTION

40. Having regard to the fact that the claim has been partly premised on Article 14 of the African Charter on Human and People's Rights (hereinafter ACHPR), Article 26 of the International Covenant on Civil and Political Rights (hereinafter ICCPR), BERNE Convention and the WIPO Treaty, the Court is mindful to carefully determine its competence to hear and determine the claim.

41. With regards to Article 14 of the African Charter on Human and People's Rights, which is a provision guaranteeing the right to property of citizens in the Member States, the Court considers that an allegation of breach thereunder falls under Article 9 (4) of the Supplementary Protocol (A/SP.1/01/05). This provision states that the Court has competence to adjudicate claims of human rights violations occurring in Member States. Thus, in the present claim regarding the alleged violation of Article 14 of the ACHPR, the Court will rely on EL HADJI TIDJANI ABOUBAKAR V REPUBLIC OF NIGER (2011) CCJELR at page 8, where it held that "For an application to be admissible in matters of human rights, the mere citing of the facts connected with such description suffices to confer competence on the Court." The Court has steadfastly declared competence over cases on the strength of a mere allegation of human rights violation occurring within the jurisdiction of Member States. Therefore, the Court declares that it has the competence to determine the claim under Article 14 of the ACHPR.

42. On the competence of the Court regarding Article 26 of the International Convention on Civil and Political Rights, which denotes that *"[A]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection*

against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Following Article 9 (4) of the Protocol (supra) and the aforementioned jurisprudence of the Court in EL HADJ ABOUBAKAR TIDJANI (supra), the Court holds that it has the competence to determine the claim under Article 26 of the ICCPR.

43. Regarding the claims under the Berne Convention for the Protection of Literary and Artistic Works, and by extension the World Intellectual Property Copyright Treaty, the Court is guided by Article 19 of the Protocol on the Community Court of Justice (A/P.1/7/91) which states that *"The Court shall examine the dispute before it in accordance with the provisions of the Treaty and its Rules of Procedure. It shall also apply, as necessary, the body of laws as contained in Article 38 of the Statutes of the International Court of Justice."* Article 38 of the Statute of the International Court of Justice (ICJ) outlines the sources of law that the ICJ applies when deciding disputes submitted to it. It specifies international conventions, international customs, and general principles of law, and subsidiary means like judicial decisions and the writings of legal scholars. It is the same modus that the Court applies in its determination of claims before it however, the claims must firstly fall within its subject matter jurisdiction as well as meet the requirements laid down in MR OLAJIDE AFOLABI V. FEDERAL REPUBLIC OF NIGERIA (2004) CCJELR at page 1. The Court held in this case that *"It is a well-established principle of law that a Court is competent when: it is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or another; and the subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and the case comes before*

the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction."

44. The subject-matter jurisdiction of the ECOWAS Court is not codified like in other Courts however, Article 9 (supra) guides the application and scope of the subject-matter. It is trite law that the same Article provides the Court with four core mandates, i.e., a Community Court interpreting ECOWAS legal instruments, a Public Service Court resolving disputes between the Community and its officials, a Human Rights Court handling human rights violations in ECOWAS member states, and an Inter-State dispute resolution Tribunal. Each core mandate is guided by texts that inform its subject-matter jurisdiction and form the basis of its competence. As a Community Court and a Public Service Court, it uses Community law, which is made up of the ECOWAS Treaty, Protocols, and Supplementary Protocols that establish the framework for the economic, social, and political framework of integration of ECOWAS. As a human rights Court, it uses the fundamental human rights treaties of the United Nations (International Covenant on Civil and Political Rights; International Covenant on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; International Covenant on All Forms of Discrimination Against Women; International Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment; International Convention on the Rights of the Child; International Covenant on the Protection of the Rights of All Migrant Workers and Their Families; International Convention on the Protection of All Persons from Enforced Disappearance, International Convention on the Rights of Persons with Disabilities) and the regional human rights treaty i.e. the African Charter on Human and People's Rights. All protocols to the international and regional treaties form part of the texts that the Court uses in

the determination of claims bordering on human rights violations. The fourth mandate of the Court is still in the frontier stages, so no definite text has been adopted or earmarked for the purposes of application.

45. In the brief narration of texts that inform the subject-matter jurisdiction of the Court, the Berne Convention (supra) and its ancillary WIPO Treaty do not form part of the texts that guide its adjudication within its competence under Article 9 of the Protocol of the Court as amended. It is needless to say that the Court's competence is derived by law; therefore, it cannot *suo motu* create a new arm of competence regardless of how exhaustively a claimant has pleaded his cause.

46. Consequently, being mindful of the conclusions of the Applicants to wit: "*a. The defendant's security portal is the Original expression of the work of the plaintiffs and not just the underlying idea behind the work. b. There is a casual connection between the original work and the infringing work. c. The defense of fair use, or fair dealing as applied in the US Supreme Court decision in Oracle v Google cannot avail the defendant as it has been shown, and demonstrated before the court that the defendant has not met any of the criterion for such defense to avail it;* the Court finds that the claim in this regard, is outside its competence. For emphasis, the Court holds that the Berne Convention and its ancillary WIPO Treaty are completely outside its competence and declares that it lacks the competence to adjudicate the claim in this regard.

47. Furthermore, the Court views the submissions of Sections 42 and 43 of the Constitution of Nigeria by the Applicants as misguided. The reason being that it has held severally that it lacks the competence to examine the laws of Member States or to review decisions made by domestic courts of Member States: MESSRS ABDOULAYE BALDE & REPUBLIC OF SENEGAL

(2013) CCJELR at page 75. This jurisprudence remains good law and gives the Court the basis to declare that the claim under Sections 42 and 43 of the Constitution of Nigeria is outside its competence.

48. Based on the foregoing analysis, in sum, the Court finds that it has the requisite competence to determine the claims pertaining to human rights violation and so holds.

IX. ADMISSIBILITY

49. In determining admissibility of a human rights claim, the Court must, as a matter of law, determine whether parties have the requisite standing to institute the action: MR. CHUDE MBA V. REPUBLIC OF GHANA (2013) CCJELR at page 18. In determining whether the Applicant has proper standing, the Court will rely on the following ratio that *"Admissibility of a human rights violation case is to meet two cumulative conditions, which are: the said case should neither be anonymous nor be taken before another international Court of competent jurisdiction:"* MRS. NAZARE GOMES DE PINA V. THE REPUBLIC OF GUINEE BISSAU (2018) CCJELR at page 10-11. This requirement is set under Article 10 (d) of the Protocol as amended (supra), and the Court considers that the Applicants have sufficiently identified themselves as victims with a claim for violation of human rights. The Court therefore, finds the first part of Article 10 (d) fulfilled; and having found no fact or evidence that the same claim is before another international Court, this Court finds that the Applicant has fulfilled both conditions for admissibility.

50. Having considered the facts and evidence before it, the Court finds that the requirements for admissibility for applications bordering on human rights allegations have been met and declares the application admissible.

X. MERITS

51. The Court notes that the admissible claims before it are those brought for the alleged violation of the right to property pursuant to Article 14 of the ACHPR and Article 26 of the ICCPR. It has been the tradition of the Court to regard the Universal Declaration on Human Rights as soft law as it is not binding on any state, it therefore maintains the same tradition in this case.

52. The Applicants are seeking several declarations giving effect to the rights guaranteed in Article 14 of the ACHPR and Article 26 of the International Convention on Civil and Political Rights, and orders of release, prohibition, and compensation for costs and damages.

53. In determining the claims and reliefs sought by the Applicant, the Court has formulated two issues, to wit: "*Whether the Respondent has infringed on the right to property of the Applicants pursuant to Article 14 of the ACHPR on the one hand, and Article 26 of the ICCPR on the other.*"

Article 14 of the ACHPR

54. Article 14 of the ACHPR states that: *"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."* This guarantee is, however, not absolute as it can be derogated from in certain instances within the law. This was articulated in the Court's decision in DEXTER OIL LIMITED v. REPUBLIC OF LIBERIA

JUDGMENT NO ECW/CCJ/JUD/03/19 (Unreported) at page 24 where it stated that: *"Even where the Applicant's claim to ownership is substantiated, it is trite that the right to property in Article 14 of the ACHPR is not absolute as it may be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of the appropriate laws."*

55. The facts in the present case show that the Applicant conceptualized and developed a software which was duly registered under law and exhibited before this Court for ease of reference. The Respondent, in turn, has corroborated this piece of evidence, and the Court takes note of its submission that the same is authentic. It is on this property, the intellectual property rights which were registered by the Applicants, that the present claims of a breach of Article 14 of the ACHPR have been based.

Establishing a proprietary right

56. In determining issue one, which is establishing that the Applicant has a proprietary right to the property in the claim pursuant to Article 14 of the ACHPR, the Court considers the facts and evidence before it, particularly the Copyright Registration Certificate No. LW1785 was issued by the Nigerian Copyright Commission on 7th September, 2016. This is for it to dispense with the question of what forms a property or what is a property. Generally, property is viewed as a thing that can be owned, and the said ownership of property is usually vested by way of law. Yet, every jurisdiction has the right to set the standard of ownership and the manner of registration of ownership. Ownership of a thing includes intellectual property, which extends to creations of the mind, etc. Therefore, the registration and certification of such

a thing vests the interest in the person making the application and endows him with the power to hold that interest exclusively.

57. In the present claim, the Court notes that the certificate submitted demonstrates that the proprietary interest of the Applicants' creation, i.e., they are vested with proprietary. It is thus axiomatic that the certificate is sufficient to establish a property right, and the Court so holds.

Evidence of dispossession of ownership

58. Notwithstanding proof of proprietary interest, the Court considers it imperative that the Applicants in a claim under Article 14 of the ACHPR must adduce evidence of a violation of the said right. Thus, it is considered that the facts and evidence before it must be sufficient to prove a breach of the right.

59. It has been established before the Court by way of evidence that the Applicants have a proprietary right to a certain web application. However, they claim that the said right was breached when the Respondent allegedly infringed on it by using the same. To this end, the Court notes the Applicants' submission that after several meetings and presentations, the Respondent went ahead to adopt the Applicants' web design, rename the same and deploy it for public use. This allegedly improper use of a web application believed to be theirs is an infringement of their proprietary right and a breach of Article 14 of the ACHPR.

60. On its part, the Court notes the Respondent's rebuttal of all the claims and its averment of possessing independent ownership of its invention and a unique security code. It contends that the Applicants were never engaged by it and they have in no way infringed on the rights of the Applicants.

61. The Court considers that the obligation of the State concerning Article 14 of the ACHPR can be summarized as not to:

- interfere with the peaceful enjoyment of property; or
- deprive a person of their possessions; or
- subject a person's possession to control.

62. It is, however, accepted that this right can be interfered with lawfully and in the public interest. The concept of property and possessions includes tangible things like land and money, but also includes contractual rights, shares, leases, claims for compensation, intellectual property rights, statutory rights to benefits, etc. The genuine, effective exercise of this right does not only depend on the State's duty not to interfere, but it may also require positive measures to protect property to be acquired. This is particularly the case where there is a direct link between the measures a property owner may legitimately expect from the authorities and the effective enjoyment of his or her possessions. So, for example, a public authority's negligence that leads to property destruction may breach this right. Any interference with this right must be subject to conditions provided for by law and must achieve a fair balance between the general public interest and the protection of an individual's property rights. What is considered to be in the public interest is often left to the government to decide, but any interference must strike a fair balance between the demands of the general interests of the community and the requirements of the individual's fundamental rights. A lack of appropriate compensation would likely be considered disproportionate.

63. The Court has gone into this academic analysis so that the parties can appreciate what a claim for violation of property rights entails. In this instance, therefore, the Court is concerned that the Applicants are claiming theft of their proprietary interest, not a violation of the right to property. The Court finds it

necessary to instruct that couching a claim as a human rights violation will only allow the Court to assume jurisdiction. However, the claim must be sufficiently proved before it is found on the merits for it to find purchase as a violation. This Court is civil in character and does not have a mandate to adjudicate on criminal matters. Hence, in the instance of a claim of theft, which is a crime, the Court cannot develop competence outside that which the law has bestowed on it. Article 14 of the ACHPR denotes a guarantee for the right to property, and a breach of the same would amount to a violation. However, the facts and evidence before this Court establish that the claim is a crime and not a violation as envisaged under Article 14 of the ACHPR, which puts it out of its competence under Article 9 (4) of the Supplementary Protocol. Consequently, the Court dismisses the claim of theft as sought by the Applicants.

64. With regard to the claim of infringement, the Court notes that the Respondent has confirmed ownership of the Applicants' web design, i.e., that the right to property is vested in the Applicants. It also notes that the same has not been withdrawn at any point, either arbitrarily or lawfully. The facts and evidence point to allegations of passing-off and theft. When it comes to a violation of Article 14 of the ACHPR, this Court is concerned with a deprivation of property occasioned by the Respondent or its agent or subjecting a person's possession to control. The said owner must be divested of his proprietary rights for the act to qualify as a violation under Article 14 (supra). Hence, the allegations of the Respondent copying the web application fall short of divesting the said Applicants of their proprietary interest. The Court notes that the Applicant still possesses the ownership of their web creation, which flaws the argument of a deprivation of ownership.

65. Where the proprietary interest is still vested in the owner and no unlawful control has been so exercised, the act cannot be said to be in consonance with a breach under Article 14 of the ACHPR.

66. Given the foregoing, the Court holds that the Respondent has not acted outside its obligation under Article 14. Furthermore, the Court holds that it cannot determine a claim of theft clothed in a violation for human rights as its scope of application excludes criminal claims. As a consequence of the analysis under this rubric, the Court dismisses the claim of a violation under Article 14 of the ACHPR in its entirety.

Article 26 of the ICCPR

67. The Court notes that the Applicant has listed Article 26 of the ICCPR, which provides that *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

68. It further recalls the Applicants' relief to wit: *"A declaration that the Defendant's Ministry of Interior in reproducing and aping the Applicants' Nigeria Secure Portal a web agent created by the First Applicant to serve as an electronic reporting platform and remolding the said Portal into a Nigeria Internal Security and Public Safety Alert System (NISPSAS), safety and security portal using the same structure, content, framework, development techniques, reporting and administrative concept and the consumer-to-national safety and security mechanism, is an infringement on the property*

rights of the Applicants and a violation of their fundamental rights guaranteed and enshrined under Article 14, of the African Charter on Human and Peoples' Rights, Article 26 of the International Covenant on Civil and Political Rights, and Sections 42 and 43 of the Respondent's Constitution."

69. The Respondent, on the other hand, submits that the Applicants merely glossed over their claims, which are speculations, as they have failed to prove their claims. It is the prayer of the Respondent that the Court should dismiss the application with costs.

70. The Court is mindful to rely on its jurisprudence in the determination of a breach of Article 26 of the ICCPR. In the case of ABDOULAYE BALDE & ORS. V REPUBLIC OF SENEGAL (2013) CCJELR at page 96, 136 §41, 65 it stated that *"The violation of equality before the law would therefore result from the performance of discriminatory acts against a citizen by an administration or any person in authority, which acts could be based on his sex, race, origin, nationality, ethnicity, religion... The principle of equality of citizens before the law implies that citizens are made to go through the same mode of application of the law by a particular judicial institution, in the sense that citizens coming before the Court to seek justice and finding themselves in the same situation shall be tried by the same Court or Tribunal and according to the same legal rules of procedure."*

71. The jurisprudence implies that everyone, regardless of their status, background, or any other attribute, is subject to the same laws and legal processes. Without more, this principle does not allow for privileged exemptions from legal sanctions but guarantees equal treatment for all. The Court finds instructive the African Commission's decision in the case of CIVIL LIBERTIES ORGANISATION & ORS. V FEDERAL REPUBLIC OF NIGERIA (2001) AHRLR 75 (ACHPR 2001) paragraphs 27 & 44 that ad

hoc tribunals should be subject to the same requirements of fairness, openness, justice, independence, and due process as in regular tribunals.

72. Essentially, the Court notes that the right to equality before the law has not been canvassed by the Applicants. Having carefully analyzed the import of Article 26 of the ICCPR and the facts and evidence before it, the Court dismisses the plea thereunder as frivolous.

XI. COSTS

73. Article 66 (1) of the Rules of the Court provides that: "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*" The Court orders hereunder that the parties are to bear their own costs.

XII. OPERATIVE CLAUSE

74. For the reasons stated above, the court sitting in public after hearing both parties:

As to jurisdiction:

i. **Declares** that it has jurisdiction.

As to admissibility

ii. **Declares** the application admissible with regards to Article 14 of the African Charter on Human and People's Rights and Article 26 of the International Convention on Civil and Political Rights.

iii. **Dismisses the claims under the Berne Convention, WIPO Treaty and the Constitution of the Federal Republic of Nigeria.**

As to the merits of the case:

iv. **Dismisses** the claim for violation of the right to property pursuant to Article 14 of the ACHPR.

v. **Dismisses** the claim for violation of the right to equality before the law pursuant to Article 26 of the International Covenant for Civil and Political Rights.

vi. **Dismisses all other claims.**

COSTS

vii. Orders that the parties bear their own costs.

Hon. Justice Sengu Mohamed KOROMPresiding/Rapporteur.....

Hon. Justice Gberi-Be OUATTARA .....

Hon. Justice Edward Amoako ASANTE .....

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

Done in Abuja, this 12th day of May, 2025 in English and translated into French and Portuguese.