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

HOLDEN AT ABUJA- NIGERIA

In the Case of

NURA ALIYU AGAINST STATE OF BENIN.

Application N° : ECW/CCJ/APP/43/23 *Judgment N°. ECW/CCJ/JUD/27/25*

JUDGMENT DELIVERED AT

ABUJA

ON 13TH MAY 2025

CASE N°: ECW/CCJ/APP/43/23

JUDGMENT N° ECW/CCJ/JUD/27 / 25

NURA ALIYU **APPLICANT**

V.

STATE OF BENIN **DEFENDDANT**

BEFRE THEIR LORDSHIPS

Hon. Judge Dupe **ATOKI**	Presiding
Hon. Juge Gberi-Bè **OUATTARA**	Judge Rapporteur/Member
Hon. Juge Edward Amoako **ASANTE**	Member
ASSISTED BY: Me. Marie SAINE	Registrar

I. *REPRÉSENTATION DES PARTIES :*

Mr Aliyu Suleiman JATAU	Counsel to Applicant

The Respondent was not represented in Court

II. *JUDGMENT OF THE COURT*

This is the judgment delivered by the Court in a virtual public hearing pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Hearings, 2020.

III. *DESIGNATION OF the PARTIES*

1. The Applicant is NURA ALIYU, a businessman of Nigerian nationality residing in Kaduna, Nigeria at the following address: No. 6 Hayin Banki Road Rafin Guza, Kawa Kaduna, (hereinafter referred to as 'the Applicant');

2. The Respondent is the State of Benin, a Member State of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments relating to the protection of human rights (hereinafter referred to as "the Respondent");

IV. *INTRODUCTION*

3. The purpose of these proceedings is to examine the Application by which the Applicant requests the Court to find that the Respondent has violated his right not to be arbitrarily detained, his right to human dignity and his right to property. He asked the Court to order the defendant to compensate him for the damage he had suffered. The defendant did not file a statement of defence;

V. *PROCEDURE BEFORE THE COURT*

4. On 12 October 2023, the Applicant lodged an Application with the Court Registry against the Respondent for violation of his human rights.
The Respondent was notified of this Application on 13 October 2023;

5. On 18 January 2024, the Applicant lodged with the Court Registry an Application for a certificate of failure to lodge a statement of defence.
On 24 January 2024, the Chief Registrar of the Court replied to this request;

6. On the expiry of the one-month time-limit within which it had to lodge its statement of defence, and in the absence of a request from the Respondent for an

extension of the time, the Applicant lodged an application for judgment by default with the Registry of the Court on 23 February 2024;
The Respondent was notified of that application on 23 February 2024;

7. At the adjournment hearing, the Respondent was absent. The Applicant, through counsel, pleaded the case on the merits and the Court reserved judgment;

VI. *ARGUMENTS OF THE APPLICANT*

a) *Summary of facts*

8. By initiating Application received at the Court Registry on 12 October 2023, Nura Aliyu brought an action before the Court against the State of Benin for violation of the human rights of which he claims to be a victim;

9. The applicant states that he is a Nigerian citizen carrying out commercial activities in Benin and that in the course of his activities, he contracted a debt of four million five hundred thousand (4,500,000) CFA francs from one Alhaji Abdullahi Umaru, a businessman carrying on his activities at No. A 9, Parc, Zone Fifa, Cotonou, Republic of Benin;

10. The Applicant states that he has repaid the sum of two million five hundred thousand (2,500,000) CFA francs, leaving a balance of two million (2,000,000) CFA francs;

11. The Applicant states that on 12 July 2023, he called Alhaji Abdullahi Umaru to invite him to meet him at Parc Bala, Cotonou, Republic of Benin. He maintains that when he arrived at the agreed location, he found two other persons who were later identified as police officers;

12. The applicant reports that he was stopped by the two police officers who searched him and seized four million (4,000,000) CFA francs that he had in his possession;

13. He stressed that the police officers then took him to Superintendent Babi, the superintendent of the Agblangandan Police Station, to whom they handed over the confiscated money. The superintendent then ordered that he be beaten and thrown into a cell;

14. The applicant stated that later that night, when he came out of the cell, he wanted to know what he was accused of, whether he had committed any offence or broken any law and whether there was any complaint against him that justified his arrest by the police; these questions provoked a strong reaction from the Superintendent of Police, who severely reprimanded him for having had the audacity to make such statements;

15. The applicant states that the Superintendent first threatened to kill him without leaving any trace, which plunged him into great fear and psychological depression, and then ordered his men to beat him, which they did;

16. He indicates that the Superintendent also ordered him to pay him money and insisted that he call his family in Nigeria to make a transfer to account no. 3812054011 FCMB belonging to one Atiku Yusuf Abdullahi. His brother Bashir Saidu Mohammed transferred one hundred thousand (100,000) Naira. The transfer receipt is attached to these pleadings as **(Exhibit A);**

17. On 14 July 2023, another sum of Nine Hundred Thousand (900,000) Naira was transferred to the same account, the transfer receipt is attached hereto as **(Exhibit B)**;

18. The applicant states that despite the successive payments of one hundred thousand (100,000) and nine hundred thousand (900,000) naira that he made to the police, the Superintendent continued to threaten and torture him, insisting that the money was not sufficient. Another seven hundred thousand (700,000) naira was transferred, the receipt is attached hereto as **(Exhibit C)**;

19. The Applicant states that in order to save his life, he felt obliged to hand over to the police his red Nissan Micra vehicle worth one million six hundred and seventy thousand (1,670,000) CFA francs in order to clear the debt owed to Alhaji Abdullahi Umaru (see photograph of the car parked at the car stand, which is attached as **(Exhibit G)**;

20. The applicant states that he was humiliated in the Superintendent's office because he was filmed and the video was posted on social media on 14 and 18 July 2023. This recording was seen by many people, including his clients. This has damaged his dignity and self-esteem and caused financial losses for his establishment. The video and photos are attached hereto as **(Exhibit D)**;

21. The applicant adds that he was forced to draw up an undertaking to repay six million six hundred and eighty-eight thousand (6,688,000) CFA francs to his creditor and was forced to swear on the Holy Koran that he would bring this sum of money before or at the end of the year. The undertaking is attached to these pleadings as **(Exhibit E)**;

22. The applicant claims to have been released on 18 July 2023 after spending 6 days in a cell without any attention and in disregard of the Constitution of Benin. He said that he was ill and traumatised by the inhuman treatment he had suffered during his detention;

23. He reports that he immediately brought the facts to the attention of the Nigerian Embassy in Cotonou, Republic of Benin. The Embassy made two members of staff available to accompany him to the police station in order to seek redress from the Superintendent, but the Superintendent categorically refused to make any concessions and threatened to re-arrest him;

24. It was in these circumstances that he decided to take his case to the Honourable Court to demand that justice be done so that he could obtain compensation;

25. In a second Application received at the Court Registry on 2 May 2024, the Applicant, pursuant to Article 90 of the Rules of Procedure, requested the Court to declare the Respondent in default on the ground that the Respondent, having been duly notified on the initiating Application, had failed to respond by lodging a statement of defence;

b) *Pleas- in - law*

26. The applicant relies on the following pleas in law:

- Violation of the right not to be arbitrarily arrested and detained under Articles 6 of the ACHPR, Articles 3 and 9 of the UDHR and Articles 2 and 9 of the ICCPR;

-Violation of the right to human dignity under article 5 of the ACHPR;

-Violation of the right to property under article 14 of the ACHPR;

- Violation of the provisions of articles 8, 15, 16, 17, 18 and 19 of the Constitution of Benin;

-Violation of Article 90 of the Rules of Court;

c) *Conclusions*

27. The applicant solicits that may it please the Court:

- To enter a default judgment against the defendant;

- To declare and adjudge that his arrest and detention for six (6) days was arbitrary;

- To find that his unjustified and arbitrary arrest violates human dignity;

- To find that the seizure and confiscation of the sum of four million (4,000,000) CFA francs, his vehicle and the sum of one million seven hundred thousand (1,700,000) Naira were carried out illegally;

- To order the State of Benin to pay him the sum of $1,000,000 by way of damages and compensation for the harm he has suffered as a result of the violation of his fundamental rights, namely the right to liberty, the right not to be arbitrarily arrested or detained, the right to security of person and the right to property;

- As to costs, the plaintiff requests that the defendant be ordered to pay him fifty thousand (50,000) dollars.

- To order the defendant to bear all costs.

VII. ARGUMENTS BY THE RESPONDENT

a) Summary of facts

28. The defendant, which had thirty (30) days from notification of the Application on 13 October 2023, did not apply for an extension of time or lodge a statement of defence with the Registry;

VIII. *AS TO JURISDICTION*

29. The Court recalls that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court of Justice, which provides that: 'The Court has jurisdiction to hear cases concerning violations of human rights that occur in any Member State';

30. The Court points out that the rights invoked by the Applicant, namely the right not to be arbitrarily arrested or detained, the right to human dignity and the right to property, form part of the human rights which fall within its jurisdiction;

31. Since the Respondent is a Member State of ECOWAS, all the conditions are met for the Court, in accordance with its own established case-law, to declare that it has jurisdiction to hear this case;

IX. AS *TO ADMISSIBILITY*

32. The Court notes that the admissibility of Applications before it is governed by the provisions of Article 10-d of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court, which provides that: <<*Access to the Court is open to individuals who are victims of human rights violations;*

The application submitted to this effect

i) shall not be anonymous;

ii) (ii) shall not be brought before the Court of Justice of the Community if it has already been brought before another competent international court>>;

33. It follows from this provision that in order to be admissible, the Application submitted to the Court must be lodged by a person claiming to be the victim of a violation of his or her human rights; it must not be anonymous and must not have been brought before another international court having the same jurisdiction as the Court.

In this case, the Applicant is clearly identified in the Application. He is NURA ALIYU.

The Court notes that the application is therefore not anonymous;

34. Moreover, there was no evidence that the applicant had applied to another international court with jurisdiction in human rights matters to hear the same case. In those circumstances, in keeping with its usual case-law, the Court has no option but to declare the Application as admissible;

X THE NATURE OF THE DECISION

35. On 23 February 2024, the Applicant requested that the Court give judgment by default against the Respondent. In support of his Application, he explained that he had lodged an Application against the Respondent with the Court of Justice of this Court on 12 October 2023 and that on 13 October 2023, the Chief Registrar of the Court had notified the Respondent of the Application, stating that he had one month (30) days in which to lodge a statement of defence;

36. The applicant argued that the time-limits of one month (30 days) given to the defendant to file a statement of defence had expired without him doing so, whereas under Article 90 of the Rules of Court, 'if the defendant, having been duly summoned, does not reply to the application in the prescribed form and within the prescribed time limit, the applicant may request the Court to award him his pleadings'.

He therefore requested that the Court give judgment by default against the defendant in accordance with the provisions of Rule 90;

ANALYSIS BY THE COURT

ON ADMISSIBILITY OF THE APPLICATION FOR DEFAULT JUDGMENT

37. The Court notes that, under Rule 90 of the Rules of Court, *<<If the respondent, having been duly summoned, does not reply to the application in the prescribed form and within the prescribed time-limit, the Applicant may request the Court to award him his claims against the applicant>>*;"

38. In the present case, the Applicant applied to the Court on 12 October 2023 and the Registry notified the application to the State of Benin on 13 October 2023 at the usual address of its legal representative;

39. In accordance with Article 35 of the Rules of Court, the State of Benin had one (01) month in which to produce its statement of defence. It therefore had until 13 November 2023 to file its statement of defence. To date, no statement of defence has been filed by the State of Benin;

40. On 18 January 2024 the Applicant lodged with the Registry an Application for a Certificate of Failure to File a Defence, to which the Chief Registrar of the Court replied on 24 January 2024;

41. On 23 February 2024 the applicant requested that the Court award him his claims pursuant to Rule 90 of the Rules of Court;

42. In accordance with Rule 90.4, before giving judgment by default, the Court examines the admissibility of the Application, whether the formalities have been duly completed and whether the Applicant's submissions appear to be well-founded. This is what the Court decided in Mohammed El Tayyib Bah v. The Republic of Sierra Leone, judgment no. ECW/CCJ/JUD/11/15 in the following terms:
''*Granting the Application for judgment by default against the defendant does not automatically mean that judgment on the merits has been given in favour of the Applicant. The Court must examine the issues of jurisdiction, admissibility and evidence before deciding the case on the merits*";

43. In the present case, the Court considers that the Application submitted complies with the formalities required and concludes that, in view of the foregoing, it is appropriate to declare the Application for judgment by default admissible and to examine whether it is well-founded;

AS TO THE GROUNDS OF THE APPLICATION FOR JUDGMENT BY DEFAULT

44. The Court points out that a judgment is deemed to have been delivered 'by default' where the defendant has been absent from the proceedings. A judgment given without the defendant being present is termed a 'default judgment';

45. The Court notes that, in the present case, the Application was lodged at the Registry on 12 October 2023 and that, on 13 October 2023, the Chief Registrar notified it on to the Respondent's judicial agent, informing him that he had one month (30) days within which to lodge a statement of defence;

46. The Court points out that the time-limit of one month (30 days) allowed to the Respondent to lodge a statement of defence expired on 13 November 2023 and that on 23 February 2024 the Applicant lodged at the Registry an application for judgment by default;

47. The Court notes that the Application was served on the defendant on 23 February 2024 at the habitual address of the defendant's legal representative, and that the defendant did not react;

48. The Court points out that, under Rule 90 of the Rules of Court, 'if the respondent, having been duly summoned, does not reply to the application in the prescribed form and within the prescribed period, the applicant may request the Court to adjourn his pleadings'.

The Court therefore concludes that in the present case, pursuant to Rule 90 of the Rules of Court, it is necessary to give judgment by default;

XI ON THE MERITS OF THE CASE

49. The Applicant alleges that the Respondent violated his right not to be arbitrarily arrested or detained under Article 6 of the ACHPR (A). He also alleges that the Respondent violated his right to human dignity under Article 5 of the ACHPR (B). Lastly, he argues that the defendant had violated his right to property relating to sums of money (C).

Before making any decision, the Court will examine the applicant's claims in turn;

A. VIOLATION OF THE RIGHT NOT TO BE ARBITRARILY ARRESTED OR DETAINED

50. The Applicant states that on 12 July 2023, he called Alhaji Abdullahi Umaru to invite him to meet him at Parc Bala, Cotonou, Benin Republic with a view to settling his debt with him. He claims that when he arrived at the agreed location, he found two other people who were later identified as police officers;

51. The applicant reports that he was stopped by the two police officers, who searched him and confiscated four million (4,000,000) CFA francs that he had in his possession;

52. He considers that his arrest and detention were carried out in violation of the procedure in force in Benin and in disregard of the provisions of the African Charter on Human and Peoples' Rights;

53. The defendant has not filed a brief in its defence;

ANALYSIS DE LA COUR

54. The Court notes that under Article 6 of the African Charter on Human and Peoples' Rights, *'everyone has the right to liberty and security of person. No one shall be deprived of his liberty except on grounds and in conditions previously determined by law; in particular, no one shall be arbitrarily arrested or detained'*;

55. It follows from this provision that no one may be arrested or detained except in strict application of the law. Any arrest must comply with the requirements of the law. No arrest may be made other than in the cases exhaustively provided for by law. When an individual suspected of committing a criminal offence is apprehended, he may not, in principle, be detained on police premises for more than 48 hours. However, this period may be extended once in accordance with the procedure in force in Benin. In the meantime, the defendant must be brought before a judge or released.

It follows that no one may be arbitrarily arrested or detained;

56. The Court recalls that arbitrary detention consists of arresting and depriving a person of his liberty in defiance of national law and international human rights standards. It constitutes a violation of the right to liberty.

Arbitrariness refers to the absence of a legal basis and therefore to the unlawful and unjustified nature of the arrest and detention.

57. In this regard, the United Nations Working Group on Arbitrary Detention has identified three criteria for determining the arbitrary nature of a detention, namely:

- It is manifestly impossible to invoke any justification for the deprivation of liberty;

- the deprivation of liberty results from the exercise by the person concerned of the rights or freedoms proclaimed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States are parties to the International Covenant on Civil and Political Rights;

- The total or partial non-observance of the international standards relating to the right to a fair trial, set out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is so serious that the deprivation of liberty takes on an arbitrary character;

58. By way of example, mention should be made of judgment ECW/CCJ/JUD/05/10 of 8 November 2010 of this Court in the case of Mamadou Tandja v. General Salou Djibo and the State of Niger. In this judgment, in order to uphold the arbitrary nature of the detention of the aforementioned, the Court used the definition of the Working Group of the United Nations Commission on Human Rights, considering as arbitrary the deprivations of liberty that are contrary to the relevant international standards set out in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States;

59. In the present case, the Court notes that, in order to maintain that his arrest and detention were arbitrary, the applicant alleges that he was stopped by two police officers when he called his creditor to inform him of his presence in Cotonou, where he had gone on business;

60. The Court notes that it does not appear from the case file that, at the time of his arrest, the police officers clearly informed the Applicant of his rights, especially since, in all likelihood, there was no dispute between the two businessmen and the Applicant was clearly unaware of the reasons for his arrest, whereas any person

arrested must be informed immediately of the reasons for his arrest and be notified of any charges brought against him as soon as possible;

61. The Court observes that, owing to the commercial nature of the relationship between the Applicant and his creditor, any dispute arising from the failure to perform the credit sales contract in terms of payment of the purchase price of the goods, as is clear from the facts recounted by the Applicant and supported by documentary evidence, can only be a civil matter which, in no way, requires the arrest of the contracting debtor;

62. The Court notes that it is clear from the documents in the proceedings, in particular document No. F in the file, that the applicant and his creditor Alhaji Abdullahi Umaru had been in partnership for a very long time and worked in the car dealership business. The applicant used to buy motor vehicles on credit from Alhaji Abdullahi Umaru, who is a car dealer residing in Cotonou in Benin, and to pay him the purchase price of the vehicle after reselling it. In this way, he and Alhaji Abdullahi Umaru bought a TOYOTA Corolla 2016 for four million five hundred thousand (4,500,000) CFA francs, paying him the sum of two million five hundred thousand (2,500,000) CFA francs, with the remainder to be paid in part after the sale of the vehicle. As the vehicle had not yet been sold, the claimant did not pay his supplier the balance within the time limit set. Nevertheless, the claimant travelled to Cotonou to make another purchase and informed his co-contractor. The latter enlisted the services of police officers to arrest him with a view to recovering his debt;

63. The Court points out that, in acting as they did, the police officers acted as credit recovery agents, a role which is not legally assigned to them or recognised. It follows

that the arrest and hence the detention of the applicant lacked any legal basis and violated the right to a fair hearing.

64. The Court has always considered any detention without a legal basis to be arbitrary. Thus, in case no. ECW/CCJ/JUD/07/16 of 21 April 2016, AMETEPE KOFFI v. Republic of Togo, the Court held that, in the absence of any legal basis for the applicant's arrest and detention, they were unlawful and therefore arbitrary;

65. Similarly, in the decision relating to the case of Institute For Human Rights and Development in Africa and others v. Democratic Republic of Congo, the African Commission on Human Rights stated that detention without relevant grounds is considered arbitrary and violates the provisions of Article 6 of the African Charter on Human and Peoples' Rights (ACHPR);

66. Indeed, in this case, the African Commission on Human Rights maintained that the alleged participation of KUNDA MUSEPELO Pierre in the insurrection movement alongside the MRLK did not constitute a relevant reason to justify his detention for three (3) months and that, in so doing, the State of Congo had violated article 6 of the ACHPR;

67. The Court therefore finds that the Respondent violated the provisions of Article 6 of the ACHPR by unlawfully and therefore arbitrarily arresting and detaining the Applicant;

B ON THE VIOLATION OF THE RIGHT TO HUMAN DIGNITY

68. The complainant states that he was beaten and locked in a cell after his arrest and that when he requested to know the reason for his arrest and detention, the police superintendent ordered his officers to beat him afresh, which they did;

69. He also states that he received death threats from Superintendent Babi and that scenes of the humiliations they inflicted on him were broadcast on social networks by the police with the aim of discrediting him;

70. The Court recalls that under Article 5 of the African Charter on Human and Peoples' Rights, "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

71. Article 5 of the UDHR adds that <<no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment>>;

72. The Court notes that it is clear from the provisions of Article 5 of the aforementioned ACHPR that the inherent dignity of the human person is violated and his or her legal personality is disregarded whenever a person is subjected to any form of exploitation or degradation, in particular when he or she is reduced to slavery, sold like cattle, tortured morally or physically or subjected to cruel, inhuman or degrading treatment;

73. The Court notes that in the present case the Applicant states that he was beaten and tortured by the men of Superintendent Babi of the Agblangandan police division. He produced a video and receipts for transfers of sums of money that he had had to

make in order to obtain clemency from the police as evidence of the constraints exerted by the police on his person;

74. The Court notes that under Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <<*the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any other reason based on discrimination of any kind, where such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This term does not extend to pain or suffering resulting solely from, inherent in or occasioned by lawful sanctions*>>;

75. The Court notes that torture is a serious violation of human dignity and cannot be tolerated under any circumstances. Torture and ill-treatment are always prohibited, including in situations of war, emergency or other threats to the stability of a State. The prohibition of torture is absolute and may not be derogated from under any circumstances. States have an obligation to adequately ensure the physical and psychological integrity and well-being of all detainees;

76. The Court emphasises that the complainant firmly maintains that the acts of torture of which he complains were committed by members of the judicial police (C.I.D), as required by Article 1 of the United Nations 'Convention' on torture, which provides that alleged acts of torture must be 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity';

77. The Court notes in the present case that, contrary to the Applicant's statements to the effect that the exhibits in the case file reveal traces of his injuries as a result of acts of torture and other bodily harm, the said exhibits do not unequivocally establish proof of the injuries relied on and of the acts of torture of which he accuses the agents of the respondent State;

78. In these circumstances, even in the absence of contradiction, the Court declares that it has not been established that there has been a violation of human rights as a result of torture or cruel, inhuman or degrading treatment;

79. The Court so ruled in the case of ASSANE DIOUF and SERIGNE CHEIKH MBACKE GADIAGA against the State of Senegal for failure to prove the alleged acts of torture;

80. As the applicant was no longer in detention at the time the case was referred to the Court, it was open to him to adduce evidence of the attacks on his physical integrity by producing a medical certificate or even photographs of his injuries;

81. The case law generally accepts that there is torture when the acts of torture or cruel, inhuman or degrading treatment consist of making the Applicant adopt a very uncomfortable position in which he must remain for a long time, tightening the handcuffs to the last safety, holding him incommunicado, i.e. preventing him from having any contact with his family or lawyer, or subjecting him to electric shocks to extract statements against his will. It also accepted that the Applicant's moral integrity had been violated when the acts consisted of interrogating him at gunpoint with ammunition or depriving him of food and personal hygiene;

82. In its case-law, the Court has always required the Applicant to prove his allegations and not merely to make statements or inferences;

83. Thus in the case of Kodjovi Agbelengo Djelou and Others v. Togo, Judgment No. ECW/CCJ/JUD/17/15, p.13, the Court held that 'it is incumbent on the Applicant to produce proof of his allegations; whereas in applying this principle, the ECOWAS Court of Justice has always held that all cases of human rights violations brought before it by an Applicant must be described in precise terms, with sufficiently convincing and unequivocal evidence';

84. The Court reiterated the same position in the case of Godswill Tommy Udo v. Nigeria, judgment no. ECW/CCJ/JUD/26/16, in the following terms: 'Ordinarily, it is for the Applicant in the present case to adduce evidence in support of the allegations he has made in his Application instituting proceedings';

85. Lastly, in Assima Kokou Innocent and Others v. Republic of Togo, judgment ECW/CCJ/JUD/18/13, the Court stated that it: *''....stresses that, before it can conclude that there has been a violation of human rights, the facts on which the Applicants rely must be established with a high degree of certainty or, at the very least, must give rise to a strong presumption of their existence. Mere allegations are insufficient in this respect to establish the Court's conviction''*;

86. In the present case, the Applicant denounced the involvement of the Beninese police in the acts of intimidation, beating and deprivation of liberty of which he claimed to be the victim, as well as in the death threats which had forced him to sign

an IOU and to ask his relatives in Nigeria to save his life by paying the money demanded by the police, without however describing with accuracy and precision the concrete acts of torture within the meaning of Article 1 of the United Nations Convention on Torture cited above;

87. In the light of the foregoing, the Court considers that the treatment inflicted on the applicant by the police did not constitute torture within the meaning of Article 1 of the United Nations Convention against Torture.
The Court accordingly holds that the defendant did not violate the applicant's right to human dignity.

C ON THE VIOLATION OF THE RIGHT TO PROPERTY

88. The Applicant avers that, at the time of his arrest, the police had taken the sum of four million (4,000,000) CFA francs from him and handed it over to Superintendent Babi of the Agblangandan police station;

89. He further maintains that he had paid the sum of one million seven hundred thousand (1,700,000) naira to the police at the express request of Superintendent Babi to avoid being subjected to ill-treatment and that he had been forced to swear on the Holy Koran and undertook to repay the sum of six million six hundred and eighty-eight thousand (6,688,000) CFA francs in addition to his vehicle which had been confiscated;

90. The Court recalls that the right to property is provided for in Article 14 of the African Charter on Human and Peoples' Rights (ACHPR), which states that

'The right to property is guaranteed. It may be infringed only by public necessity or in the general interest of the community, in accordance with the provisions of the appropriate laws';

91. The Court notes that ownership is the right to enjoy and dispose of things in the most absolute manner. That right applies to property of all kinds, whether movable or immovable. It includes the right to use the thing, to hand it over to someone else to use, to alter it, to destroy it or to dispose of it;

The right of ownership is an absolute right by virtue of which the holder may use the thing to which it relates (usus), enjoy the fruits of the thing (fructus) and even dispose of it (*abusus*);

92. The Court points out that in order to successfully claim ownership of any property, it is necessary to produce the title which confers on the claimant the right of ownership over that property. In movable property, this may be a receipt for payment or even the simple fact of possessing the thing, because in movable property, possession is equivalent to title;

93. The Court notes that in the present case the applicant was unable to adduce formal proof that he had in fact been dispossessed of the sum of four million (4,000,000) CFA francs, as no eyewitness to the events confirmed his allegations;

94. The Court also notes that the Applicant did not produce in the file copies of the administrative documents relating to the driving of the TOYOTA Micra vehicle worth one million six hundred and seventy thousand (1,670,000) CFA francs to show that he is the owner;

95. The Court observes, however, that it is clear from the documents in the case file that while the complainant had voluntarily travelled to Cotonou and called his

creditor on his own initiative to invite him to meet him, the creditor, in the absence of any previous dispute relating to the payment of his debt, had engaged the services of two police officers to assist him. This unequivocally demonstrates the creditor Alhaji Abdullahi Umaru's irrevocable intention to recover his debt by force;

96. The Court also points out that when an individual is arrested by the police, before being taken into custody, he is stripped of all his possessions, including his clothes.

Since the applicant was held in police custody for six days, it goes without saying that before that measure was carried out he was searched and stripped of everything he was wearing. With a view to recovering the sum of money that the applicant still owed to their principal, there is no doubt that, having discovered the sum of four million (4,000,000) CFA francs that he was carrying, the officers handed it over to their superior, Superintendent Babi;

97. The Court further points out that despite the seizure and confiscation of the sum of four million (4,000,000) CFA francs by the police officers in order to pay off their principal, to whom the Applicant still owed only the sum of two million (2,000,000), they forced him to sign a written document in which he undertook, after swearing an oath on the Koran, to pay his creditor the sum of six million six hundred and eighty-eight thousand (6,688,000) CFA francs. This demonstrates the limitless greed of these agents, which leaves no room for doubt when the applicant states that they confiscated his TOYOTA Micra vehicle worth one million six hundred and seventy thousand (1,670,000) CFA francs, after forcing him to seek financial assistance from his parents, who transferred the total sum of one million seven hundred thousand (1,700,000) naira;

98. The Court notes that with regard to the payments made under the threat of violence against him, the applicant produced evidence in the file of the transfers made, in particular with regard to the sum of one million seven hundred thousand (1,700,000) naira as well as the undertaking he gave to pay the sum of six million six hundred and eighty-eight thousand (6,688,000) CFA francs when all that remained owing to his creditor was the sum of two million (2,000,000) CFA francs;

99. The Court concludes that the Police officers confiscated the sum of four million (4,000,000) CFA Francs, as well as seizing the Applicant's vehicle;

100. The Court therefore holds that, since these facts were proven, the defendant, through the actions of the national police, violated the Applicant's right to property;

XII ON THE REPARATION OF THE ALLEGED PREJUDICES SUFFERED

101. The Court notes that the Applicant is seeking the sum of one million fifty (1,050,000) dollars by way of damages;

102. The Court reiterates that its jurisdiction in respect of violations of human rights enables it not only to find such violations but also to order compensation for them where appropriate;

103. Nevertheless, the Court points out that damages are awarded to the victim of an injury only to make good the loss that the victim has actually suffered as a result of the fault of the tort feasor;

104. It follows that the victim must justify his status as a victim and prove the loss for which he is seeking compensation.

105. The Court notes that it has always ordered reparation where it finds that the respondent State has violated the Applicant's rights;

106. In the present case, the Applicant requests the Court

- To order the respondent to pay him the sum of one million fifty thousand (1,050,000) dollars by way of reparation for all causes of prejudice combined;

107. The Court notes that in the present case it has sufficiently established that the Applicant's right not to be arbitrarily arrested or detained and his right to property have been violated by the Respondent through the conduct of its judicial authorities and that this situation has caused him damage;

108. In these circumstances, the Court considers that his claim for damages must be declared well founded;

109. The Court nevertheless considers that the quantum of the claim is exaggerated and that it should be reduced to a fair proportion, taking into account the supporting documents in the file, in order to set the amount at twenty thousand (20,000) dollars;

XIII. AS TO COSTS

110. Under Article 66, paragraph 2, of the Rules of Procedure, the unsuccessful party is ordered to pay the costs if the other party so requests. The Court notes that in the present case the Applicant has made such a submission. Consequently, the Court rules that the unsuccessful defendant shall bear the costs.

FOR THESE REASONS

The Court

Sitting in open court in absentia as regards the defendant and having heard the applicant

On jurisdiction

Declares that it has jurisdiction to examine the present litigation.

On admissibility

Declares the initiating Application as admissible.

As to the merits of the case

Declares and adjudges that the respondent did not violate the applicant's right to human dignity;

Holds, however, that the Respondent has violated the Applicant's right not to be arbitrarily arrested or detained;

Holds that the defendant violated the applicant's right to property;

Orders the Respondent to pay the Applicant the sum of twenty thousand (20,000) dollars by way of damages for the harm suffered as a result of these violations;

On costs

Orders the Respondent to bear all costs

Thus done and adjudged on the day, month and year as stated above.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES

Hon. Judge Dupe **ATOKI**	Presiding
Hon. Judge Gberi-Bè **OUATTARA**	Judge Rapporteur/ ~~Member~~
Hon. Judge Edward Amoako **ASANTE**	Member

ASSISTED BY :Me. Marie SAINE