THE COMMUNITY COURT OF JUSTICE OF THE

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

MR EDWIN LENYIE & 25 ORS. V FEDERAL REPUBLIC OF NIGERIA & 1 OR.

Application No: ECW/CCJ/APP/34/17 Judgment NO. ECW/CCJ/JUD/03/25

JUDGMENT

ABUJA

DATE: 13th February, 2025.

1. **MR. EDWIN LENYIE** - **APPLICANTS**
2. **MRS. UGERE TOMMY**
3. **CHIEF GIDEON TEEBIENWA**
4. **CHIEF JOSEPH MARK**
5. **MR. JIM TOM-GEORGE**
6. **MR. GERALD OKEKE**
7. **MR. GODFREY KPOOKPE**
8. **MR. DORNU DOOKPE**
9. **MR. EMMANUEL M.Z. ALUZUM**
10. **CHIEF BEBAA GOTEH FRIDAY**
11. **MR GODSON N-AASUA**
12. **CHIEF JOSEPH DINEE**
13. **ALHAJI OGUNDELE BURAIMOH AGBEDE**
14. **ALHAJA NIMOTA JATTO**
15. **CHIEF PRIOR OHUNYON**
16. **REV. ISREAL AKINTIMEHIN**
17. **MRA ABIGAIL OLADUNJOYE**
18. **REV. JOHN OLARENWAJU GBOBO**
19. **MR. MICHEAL ATINDEWA**
20. **MR. PETER SIMENOU**
21. **MR. ADEBAYO IMAM**
22. **MRS. HONORINE FANGNON**
23. **MR. OLUSESAN A. ADEKUNLE**
24. **MR. SAMUELBABATUNDE**

25.COMRADE J. I. EJITOLA

26.MR. JOHN GANDONU

V.

FEDERAL REPUBLIC OF NIGERIA **-RESPONDENT**

NATIONAL HUMAN RIGHTS

COMMISSION, NIGERIA

COMPOSITION OF THE COURT:

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES	-Presiding
Hon. Justice Sengu Mohamed KOROMA	- Member/ Rapporteur
Hon. Justice Gbéri-Bè OUATTARA	- Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

M. A. ALO Esq. -Counsels for the APPLICANT

T. A. NGERI

Suleiman JUBRIL - Counsel for the RESPONDENT

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as 'the Court') delivered virtually in open Court pursuant to 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 MR. EDWIN LENYIE, a citizen of the Federal Republic of Nigeria.
3. The Second Applicant is MRS. UGERE TOMMY, a citizen of the Federal Republic of Nigeria.
4. The Third Applicant is CHIEF GIDEON TEEBIENWA, suing on behalf of himself and as representative of persons evicted from Eagle Island-Agip/UST Waterfront, a citizen of the Federal Republic of Nigeria.
5. The Fourth Applicant is CHIEF JOSEPH MARK, suing on behalf of himself and as a representative of persons evicted from Njemanze Waterfront, a citizen of the Federal Republic of Nigeria.
6. The Fifth Applicant is MR. JIM TOM-GEORGE, a citizen of the Federal Republic of Nigeria.
7. The Sixth Applicant is MR. GERALD OKEKE, suing on behalf of himself and as a representative of persons evicted from Abonnema Wharf Waterfront, a citizen of the Federal Republic of Nigeria.
8. The Seventh MR. GODFREY KPOOBEE, a citizen of the Federal Republic of Nigeria.
9. The Eighth Applicant is MR. DORNU DOOKPE, a citizen of the Federal Republic of Nigeria.

10. The Ninth Applicant is MR. EMMANUEL M. Z. ALUZIM, a citizen of the Federal Republic of Nigeria.
11. The Tenth Applicant is CHIEF BEBAA GOTEH FRIDAY, a citizen of the Federal Republic of Nigeria.
12. The Eleventh Applicant is MR. GODSON N-AASUA, a citizen of the Federal Republic of Nigeria.
13. The Twelfth Applicant is CHIEF JOSEPH DINEE, suing on his behalf and as a representative of persons evicted from Ueken, Kaani & Sogho communities, a citizen of the Federal Republic of Nigeria.
14. The Thirteenth Applicant is ALHAJI OGUNDELE BURAIMOH AGBEDE, a citizen of the Federal Republic of Nigeria.
15. The Fourteenth Applicant is ALHAJA NIMOTA JATTO, a citizen of the Federal Republic of Nigeria.
16. The Fifteenth Applicant is CHIEF PRIOR OHUNYON, a citizen of the Federal Republic of Nigeria.
17. The Sixteenth Applicant is REV. ISRAEL AKINTIMEHIN, suing on his behalf and as a representative of persons evicted from Otumara Community, a citizen of the Federal Republic of Nigeria.
18. The Seventeenth Applicant is MRS. ABIGAIL OLADUNJOYE, a citizen of the Federal Republic of Nigeria.
19. The Eighteenth Applicant is REV. JOHN OLARENWAJU GBOBO, suing on his behalf and as a representatives of persons evicted from PURA Community at NPA Quarters Bar Beach – East Mole, a citizen of the Federal Republic of Nigeria.
20. The Nineteenth Applicant is MR. MICHAEL ATINDEWA, a citizen of the Federal Republic of Nigeria.

21. The Twentieth Applicant is MR. PETER SIMENOU, suing on his behalf and as a representative of persons evicted from Ilubirin Community, a citizen of the Federal Republic of Nigeria.
22. The Twenty-first Applicant is MR. ADEBAYO IMAM, suing on his behalf and as a representative of persons evicted from Oju Olokun Community, a citizen of the Federal Republic of Nigeria.
23. The Twenty-second Applicant is MRS. HONORINE FANGNON, suing on his behalf and as a representative of persons evicted from Ecole Internationale-Ayalegou, a citizen of the Federal Republic of Nigeria.
24. The Twenty-third MR. OLUSESAN A. ADEKUNLE, suing on his behalf and as a representative of persons evicted from Ajelogo Market, a citizen of the Federal Republic of Nigeria.
25. The Twenty-fourth Applicant is MR. SAMUEL BABATUNDE, suing on his behalf and as a representative of persons evicted from Idasho Community & 9 Other Villages, a citizen of the Federal Republic of Nigeria.
26. The Twenty-fifth Applicant is COMRADE J. I. EJITOLA, suing on his behalf and as a representative of persons evicted from Ejitola House at Dodan Barracks, a citizen of the Federal Republic of Nigeria.
27. The Twenty-sixth Applicant is MR. JOHN GANDONU, suing on his behalf and as a representative of persons evicted from Old Ilubirin Village, a citizen of the Federal Republic of Nigeria.
28. The First Respondent is the Federal Republic of Nigeria and a Member State of ECOWAS.
29. The Second Respondent is the National Human Rights Commission, Nigeria.

III. INTRODUCTION

30. The application borders on an allegation of human rights violation, particularly the right to fair hearing and the right to reparation for acts/violations perpetrated by the Respondent contrary to its obligations under various fundamental human rights treaties.

IV. PROCEDURE BEFORE THE COURT

31. The Applicants filed their Initiating Application in the Registry of the Court on 8th September 2017.

32. A Motion to Enter Judgment in Default was filed by the Applicants, in the Registry of the Court, on 8th June 2018.

33. On 10th October 2018, the Second Respondent filed a Motion on Notice for Enlargement of Time within which it may appear, along with a Preliminary Objection and its Statement of Defence against the Initiating Application.

34. The Applicant's, on 24th May 2019, filed a Reply to the Second Respondent's Statement of Defence and a Counter Affidavit in Opposition to the Statement of Defence.

35. On 20th September 2019, the Applicants filed a Motion for an Order of the Court setting the suit down for hearing.

36. The Court held a session on 3rd February 2020, in which the Applicants were represented by Counsel but the Respondent was absent. Due to the absence of the Respondent, who had filed a Preliminary Objection, the Court reserved its ruling on the same until the final judgment. The case was however, adjourned after the Court discovered that the Applicants had failed to comply with Article 43 of the Rules of Procedure.

37. On 5th February 2020, the Applicants filed, in the Registry of the Court, a Motion for an Order of the Court Granting Leave to the Applicants to present Witnesses at the oral hearing.

38. The First Respondent filed a Motion on Notice for the Extension of Time, a Preliminary Objection and Statement of Defence and Statement of Fact and Plea in Law, in the Registry of the Court on 24th June 2021.

39. Following this, the Court held a hearing on 25th June 2021, with both parties represented by Counsel. The Court, having heard the Respondent on its Motion for the Extension of Time, granted same. It also agreed to combine the hearing on the Preliminary Objection and the adumbration on the Merits of the case but it had to adjourn as the Applicants complained that they had not been given enough time to peruse and respond to documents filed by the Respondents.

40. Another hearing was held in which both parties were represented by Counsel and the Respondent promptly applied for cost on the grounds of delay on the part of the Applicants. The Applicants opposed the application and argued that they were within time in filing her response. The Court refused the application for cost and adjourned the matter.

41. On 8th July 2021, the Applicants filed a Written Address in Opposition of the First Respondent's Notice of Preliminary Objection along with a Statement of Facts and Plea in Law.

42. From 12th November 2021 to 23rd April 2024, the Court had five consecutive hearings; the multiple hearings were as a result of delays which included a change of the college of judges, witness hearings and the adoption of the final written address by the parties before it adjourned for judgment.

V. APPLICANTS' CASE

a) Summary of facts

43. The facts before the Court contains allegations of human rights violations guaranteed by a treaty which is ratified and domesticated by the Respondent.

44. The claims have been brought by the Applicants by themselves and on behalf of some communities in Lagos and Rivers States who were forcefully evicted from their residence by the State Government through the Nigerian Police Force and other agencies of the State. They submit that between 2004 and 2013, the First Respondent through the Nigerian Police Force and other security forces, forcefully evicted tens of thousands of residents of EAGLE ISLAND-AGIP/UST WATERFRONT, NJEMANZE WATERFRONT, ABONNEMA WHARF WATERFRONT, UEKEN COMMUNITY, KAANI COMMUNITY, and SOGHO COMMUNITY all in Rivers State, OTUMARA COMMUNITY, PURA COMMUNITY at NPA QUARTERS BAR BEACH-EAST MOLE, ILUBIRIN COMMUNITY and OJU OLOKUN COMMUNITY all in Lagos State, amongst many others.

45. The Applicants claim that in each of these cases, the eviction was carried out without prior notice, or with no attempt to identify the persons involved, and no form of compensation or provision for an alternative shelter was offered to the victims. Most of the evictees were made to become homeless, some lost their educational opportunities and others their livestock and properties in the process.

46. It is narrated also that sometime in the mid of 2013, when the news of their eviction was publicized, the Nigerian Human Rights Commission (hereinafter referred to as NHRC) announced that it would be conducting an inquiry on the mass eviction and demolition especially as it affects the poor in the society. The NHRC then solicited the victims for submission of complaints from the Non-Governmental Organizations representing their communities. In response to this call, the affected communities through their legal representatives filed detailed complaints seeking a remedy for the massive violation of their human rights. It is reported that in some cases, communities that had earlier prepared to take their

case to the National Courts, opted to forgo legal recourse before the courts and pursued their cause before the NHRC.

47. On the 18th to 21st November 2014, the NHRC Panel of Inquiry had its first sitting in Lagos State Federal High Court. During the hearing, the Panel took oral evidence from witnesses from the Otumara community and conducted a *locus* visit to the site of the demolition, and the submissions of parties were heard. Furthermore, on 5th - 8th May 2014, the NHRC Panel had a second hearing but did not deliver its decision on the Otumara Community amongst other matters pending.

48. The NHRC Panel started the Rivers State hearings on 19th to 22nd of May 2014, and proceeded to a *locus in quo* visit to the site of the evictions. The Applicants narrate that following the delay in appearance of the Principal Defendant, there was no progress in the hearing. After this, the NHRC invited the communities for another hearing at the Federal High Court Enugu State, a day before the hearing, the communities were informed that the Panel had cancelled the sitting. The matter was subsequently adjourned. Two days before the scheduled hearing, the Panel suddenly cancelled the hearing. The Applicants narrate that from July 2015, no hearing notices or further communication from the NHRC on the petition was sent to the communities involved. Several letters of inquiries were submitted by the petitioning communities in this regard, but they have not received any reply till date.

49. The Applicants claim that since then the evicted communities have been left in limbo and their fundamental rights unattended to. They have no idea whether or not the hearing will resume or conclude and most of the petitioning communities withdrew their cases from the national court in lieu of the NHRC's promise to adequately adjudicate and provide effective remedy in the cases pending before it. However, the Applicants and their communities have waited for long-delayed

hearings and effective remedy and Respondent has still not delivered any decision on the matter till date.

50. In view of the above, the Applicants prayed the Court to grant several reliefs for the continued violation of their rights.

b) Pleas in law

51. The Applicants are relying on the following pleas in law:

- Article 33 of the Rules of the Court;
- Articles 9 (1), (4), 10 (c), (d) and 12 of the Supplementary Protocol (A/SP.1/01/05);
- Articles 4, 7, 14, 16, 17, 18 and 21 of the African Charter on Human and People's Rights (hereinafter ACHPR);
- Articles 2 (3), 6, 14 and 17 of the International Covenant on Civil and Political Rights (hereinafter ICCPR);
- Articles 6, 11 (1), 12 and 13 of the International Covenant on Economic Social and Cultural Rights (hereinafter ICESCR);
- Articles 4 (4), 10, 11 and 12 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
- Article 2 (i) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

c) Reliefs sought

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

i. A declaration that the undue delay in hearing, adjudicating and providing adequate remedy in response to their complaint by the National Human Rights Commission constitutes a violation of their

right to be heard, fair hearing and effective remedy guaranteed by Article 7 of the African Charter on Human and People's Rights and Articles 2(3) and 14 of International Convention on Civil and Political Rights.

ii. An order that the Respondents jointly and severally, shall pay a sum of One Hundred Million Naira (N100,000,000.00) in general damages to the Applicants for the violation of their right to be heard, to fair hearing and to effective remedy.

iii. An order of mandatory injunction that the Second Respondent enabled by the First Respondent proceed without further delay to hear, adjudicate and award appropriate remedy in response to the Applicants'complaints pending before the National Human Rights Commission; OR IN THE ALTERNATIVE,

iv. An order by this Honourable Court assuming jurisdiction to hear, adjudicate, and award appropriate remedy in response to the Applicants' complaints pending before the National Human Rights Commission.

VI. RESPONDENT'S CASE

a) Summary of facts

53. The First Respondent denies the averments of the Applicants and states in response that the Applicants voluntarily withdrew their case from its domestic Courts and submitted same before the Second Respondent's Panel of Inquiry which was set up to deal with cases relating to alleged breach of fundamental rights. The Respondent avers that from the evidence before this Court, the National Human Rights Commission Panel of Inquiry started its first sitting in May 2014, and the Applicants' commenced this suit in 2017. The First

Respondent contends that it is therefore, misleading for the Applicants to complain of series of adjournments and delay in the delivery of their case after three years of the first sitting of the Panel.

54. The First Respondent avers that the nature of the claims of the Applicants, the number of petitions and witnesses to be called presented a complex case for the Panel to consider and three years cannot be seen as an unreasonable time that breaches the right to fair hearing of the Applicants. Also, the Panel deals with petitions running into thousands from respective individuals of various States in Nigeria and needs considerable time to conduct investigations into their various complaints and come up with a sound outcome.

55. The First Respondent concludes on the issue of proper party, that from the evidence contained in the Applicants' plea of facts, this action is primarily against the Second Respondent. Thus, merely joining the Federal Republic of Nigeria as a party cannot transfer the liability to it to warrant the grant of the reliefs sought by the Applicants.

56. The Second Respondent on its part filed an application for extension of time to file its defence and Preliminary Objection. The Second Respondent challenges the jurisdiction of the Court on the basis that the issues and reliefs sought by the Applicants, robs this Court of the competence to entertain the matter.

57. The Second Respondent contends that it is not a party to this suit and has been wrongly joined. In this wise, it urges the Court to strike out the suit against it. Furthermore, the Second Respondent denies each and every allegation of fact contained in the Applicants' Statement of Fact and states in contention that it identifies as a body saddled with the powers to conduct investigation and inquires in a manner it considers appropriate. Therefore, in the discharge of its functions, it received complaints between 2012 and 2013 on illegal demolition and eviction of communities in the South-West, South-East and South-South geo-political

zone among which were the Applicants. Contrary to the Applicants' claims, the Second Respondent avers that it set up a Panel of Inquiry headed by the Chair of the Governing Council to investigate various complaints. That the terms of reference of the Panel included receiving oral and documentary evidence in order to determine the human rights violations complained of, assess damages resulting from such violations and make necessary recommendations/awards in line with the provision of the NHRC Act 1995 as Amended.

58. The Second Respondent submits that through a memoranda, it received calls from interested parties and dates were fixed for sitting at each geo-political zone. It narrates that at various times between 2014 and 2015, the Panel sat at different locations in Lagos, Port-Harcourt, Enugu and Abuja. However, the public inquiry was not concluded as a result of the dissolution of its Governing Council by the President of the Republic of Nigeria in 2015.

59. The Second Respondent concludes that it is known for its commitment in protecting, promoting and enforcing the fundamental rights of Nigerians and those residing in Nigeria. Consequently, in view of the said dissolution of its Governing Council, it does not have the power to constitute a Panel of Inquiry to make any decision, recommendation or amend same.

b) Reliefs sought

60. The Respondents are severally praying the Court to dismiss the suit against the Second Respondent for lack of jurisdiction on the one hand, and on the other strike out the suit for lack of merit.

VII. JURISDICTION

61. Jurisdiction is the mandate bestowed by law on Courts to act on claims before it; in the case of the Court, Article 9 of the Protocol of the Court (A/P1/7/91) as

amended by the Supplementary Protocol (A/SP.1/01/05) (hereinafter referred to as the Protocol of the Court vests in it the right to hear and determine various claims. However, in the instance of a claim bordering on the violation of human rights Article 9 (4) of the Supplementary Protocol provides that "*The Court has jurisdiction to determine case of violation of human rights that occur in any Member State.*"

62. The question of how a claim for human rights violation passes muster, to be heard on its merits by the Court, was long established by the jurisprudence of the Court. In its classical decision in BAKARY SARRE & 28 ORS. V REPUBLIC OF MALI (2011) CCJELR at page 57, the Court held that "*Human rights protection constitutes a cardinal and fundamental value for the community. The Court in the exercise of this function of protection, may not by virtue of excessive formalism arising from the quality of the application, decline to exercise that jurisdiction.*" Simply put, the Court held that it will assume jurisdiction for all claims bordering on human rights without delving into the merits of the same. This position was reiterated in OBIANUJU CATHERINE UDEH & 2 ORS. V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/29/24 (Unreported) at page 8 where the Court held that "*The Court finds that the subject matter of the present claim, being a violation of human rights, is within its jurisdiction as vested by law.*"

63. Having thus established how the Court assumes jurisdiction, particularly how it is vested with the right to determine human rights violations, by simply pleading same, it is necessary to determine if the present claim is within its competence. The Court is mindful to recall the Second Respondent's contention that it is not a proper party in the suit and therefore, it will firstly entertain this application on grounds of jurisdiction, as it has rightly done; and subsequently, consider the said contention.

64. Regarding the question of jurisdiction raised in the Preliminary Objection, the Court notes that the Applicants' claims are premised on several violations of human rights occurring within the jurisdiction of the Respondent. Without more, by virtue of Article 9 (4) of the Supplementary Protocol, the Court declares that it is vested with jurisdiction to hear and determine the claims before it.

65. Thus, on the second limb of the contention raised in the Preliminary Objection, as to whether the Second Respondent is a proper party, the Court will determine same under the admissibility rubric.

VIII. ADMISSIBILITY

66. In determining claims before it, the Court must dispense with the admissibility requirement pursuant to Article 10 (d) of the Supplementary Protocol (supra) to wit: *"The Court will grant access to:*

> *"Individuals on application for relief of violation of their human rights the submission of which shall:*
>
> *i. Not be anonymous nor*
>
> *ii. Be made while the same matter has been instituted before another international Court for adjudication."*

67. It is imperative to scrutinise the Applicants' Initiating Application to determine whether it has fulfilled the admissibility criteria. There are three cumulative admissibility criteria as per Article 10 (d) of the Supplementary Protocol, which includes establishing that the Applicant is a victim, that the claim is not anonymous and not pending before another Court.

68. The Court recalls that the Applicants are twenty six in number and suing for themselves, as victims, and on behalf of members of different communities

aforesaid. The First Applicant and twelve others are suing for themselves as victims of the claims herein, whilst the Third Applicant and twelve others are suing for themselves and members of their community. The Court is making these fine distinctions to establish that the victims are not anonymous and furthermore, to establish their *locus standi* in the claim. The rationale behind this was explained in THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) & 10 ORS V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS (2014) CCJELR at page 246, paragraph 58: "*According to a strict literal construction, only those directly affected by an act or omission violating their human rights can enjoy status of victim and have standing to lodge a complaint against the perpetrators of the said violation. However, even those jurisdictions which started embracing a strict literal interpretation of the concept of victim, for the purpose of human rights protection, have evolved into a more flexible approach in order to allow other persons, not directly affected by the alleged violation, to have access to the Court and seek justice, on behalf of the actual victim and to hold accountable the perpetrator.*"

69. In this regard, the Court notes that all the Applicants have established that they are victims and have sufficiently identified themselves in the Initiating Application. However, in the case of the thirteen Applicants suing on behalf of members of their communities, they must fulfil certain criteria laid down in the jurisprudence cited above. Furthermore, the Court has established the rules for individuals representing groups in claims for human rights violations before it in NOSA EHANIRE OSAGHAE & 3 ORS. V REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/03/17 (Unreported) at page 18, where it held that an Applicant trying to access the Court on behalf of a group of people need the mandate upon which they are meant to act and when questioned, and which

must establish consent of the people or a justification for acting without such consent. The proof of authorization in the case of natural persons acting on behalf of a group cannot be dispensed with.

70. In elucidating on the necessity of a mandate to act the Court stated in MR. AKUNGWANG M. SAMPSON & ANOR. V FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/16/17 at page 6 that notwithstanding the fact that the application contains a list of the allegedly affected groups, the signature of victims must be included to denote consent to act.

71. The Court notes that the Applicants in the present case, suing on behalf of members of their communities, have not evinced a mandate to act on behalf of these communities. The Court therefore, considers their submission bereft of any authority vested in them to so act and therefore, declares that based on the victim and anonymity criterion, the twenty six Applicants have established that they are victims and not anonymous. It dismisses their claim of acting on behalf of unidentified persons and groups as they lack the mandate to do so.

72. In establishing whether the claim is pending before another international Court as per Article 10 (d) of the Supplementary Protocol (supra), the Court finds no evidence before it attesting this.

73. The question for consideration under this rubric is whether the Second Respondent is a proper party before the Court, as was raised by it in its Preliminary Objection and the omnibus relief therein, seeking that the Court strikes or dismisses the claims for want of jurisdiction.

74. The contention of the Respondents in challenging the jurisdiction of the Court, is that the claim of the Applicants is primarily against the Second Respondent who is not a competent party to this suit. The Applicants oppose this contention by stating that the Second Respondent is not an organ of the First Respondent

but rather a statutory corporation created by the legislative arm of the First Respondent and an independent institution whose independence is essential to its compliance with the requirements of the United Nations Paris Principles established to govern the conduct of National Human Rights Institutions (hereinafter NHRIs) adopted on 20th December 1993, by General Assembly Resolution 40/134.

75. The Court finds it imperative to state that in international law the conduct of certain institutions performing public functions and exercising public powers, like in the case of the Second Respondent, is attributed to the State. (See the Draft Articles on the Responsibility of States for Internationally Wrongful Acts) adopted by the International Law Commission at its Fifty-third Session in 2001. Regardless of the fact that the institution is a creature of extant law as an autonomous body and independent of the three arms of government i.e. executive, legislative and judiciary, it remains an organ of the Respondent. Furthermore, international law ascribes liability to a State for the conduct of all the organs, and officials which form part of its organization and act in that capacity, whether or not they have separate legal personality under its domestic law.

76. The Court relies on the *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* (adopted by the International Law Commission at its fifty-third session, in 2001), and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10) which states in Article 2 that:

> *"There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State."*

77. Based on the facts and evidence before it, the Court deduces that the Second Respondent, the National Human Rights Commission (hereinafter NHRC), by virtue of its enactment, is an entity established by the National Human Rights Commission (Amendment) Act, 2010 Cap. N46 Laws of the Federation of Nigeria. Thus, the NHRC, being a creation of the First Respondent, is empowered by extant law to exercise some form of governmental authority. In this wise, the First Respondent is responsible for all actions, inactions and omissions of the National Human Rights Commission, so far as the acts are done in its official capacity.

78. Consequently, where a question of a proper Respondent in a claim before the Court arises, it looks inward for instruction. It is settled that in a claim for human rights violations only Member States can respond based on the principle of privity of contract. The ACHPR and other like treaties or covenants were signed and ratified by Member States therefore, liability for any acts or omissions resulting in violations can only be attributed to the state. This was eloquently articulated in BAMA BOUBIE & 10 AUTRES V. REPUBLIC OF COTE D'IVOIRE JUDGMENT NO:ECW/CCJ/JUD/05/18 (Unreported) at page 6, the Court held that only Member States can be defendants as international norms on human rights are drawn from conventions or treaties that are ratified by state parties who can be held liable for a breach or omission.

79. This principle has also been reiterated in the Court's decision in NANCY BOHN DOE v. REPUBLIC OF LIBERIA JUDGMENT NO ECW/CCJ/JUD/12/19 (Unreported) at page 11 that: *"In matters concerning human rights violation, the jurisprudence of the Court is well established regarding the fact that only States shall be Defendants, as the principal subjects of international law, and not individuals".*

80. The Court therefore holds that Second Respondent, being a creation of the First Respondent, is an organ of the First Respondent and as such, cannot be party to this suit. It hereby strikes out the Second Respondent as a party herein. However, this does not apply to the First Respondent; the claims having been brought against one of its organs, acting in its official capacity, makes it the proper party as a signatory to the instruments alleged to have been violated. In consequence therefore, the Court strikes out the Second Respondent and holds that the First Respondent is a proper respondent herein.

81. Having thoroughly considered the claims against the facts and evidence before it, the Court declares the application admissible in respect of the twenty-six Applicants suing for themselves and dismisses the Preliminary Objection raised on all grounds.

IX. MERITS

82. In considering the merits, the Court resorts to the reliefs sought by the Applicants for direction in determining the claims, and two issues emerge from this:

- Whether there is a violation of Article 7 of the ACHPR
- If there is a violation, are the Applicants entitled to reparation.

83. While the Applicants have submitted an elaborate list of international instruments in adumbrating their claims, have only sought reliefs for the violation of Article 7 of the ACHPR. The analysis of the Court therefore, will delve into the central issue identified above as it pertains to Article 7 of the ACHPR.

Whether there is violation of Article 7 of the ACHPR

Applicant's Case

84. The Applicants' claim hereunder is that the Respondent, through its agents, evicted them from Eagle Island-AGIP/UST, Waterfront (Rivers State), Njemanze Waterfront (Rivers State), Abonnema Wharf Waterfront (Rivers State), Ueken Community, Kaani Community and Sogho Communities Rivers State), Otumara Community (Lagos State), Pura Community (Lagos State), Iluburin Community (Lagos State) and Oju Olokun Community. Their allegation is that the evictions were done without adequate or no notice given to the Applicants, and no compensation or award was meted out to them after the evictions.

85. It is the claim of the Applicants that the outcome of the eviction was that they were left without alternative shelter, they lost their homes and properties, suffered several health impacts as a result and had to put up with adverse living conditions. That the displacement resulted in families being separated. Due to the forceful eviction the Applicants sought redress from the NHRC, which had set up a special Panel of Inquiry and solicited call for submission of complaints from the victims. However, the NHRC started the hearings in some cases but did not complete or conclude with findings, recommendations, decisions or award. Instead the Panel was dissolved leaving the Applicants with no form of redress as they had withdrawn their complaints from the national courts.

86. The Applicants submit that their right pursuant to Article 7 of the ACHPR and Article 14 of the ICCPR has been violated. More particularly, they claim that Article 7 (1) (d) of the ACHPR which provides that "*Every individual shall have the right to have his cause heard. This comprises...the right to be tried within a reasonable time by an impartial court or tribunal,*" was violated. They have relied on some case law to lay emphasise this but argued that the African Commission on Human and People's Rights decision in ANNETTE PAGNOUILLE (on behalf of Abdoulaye Mazou) v CAMEROUN, ACHPR,

Communication No. 199/97 is instructive. The African Commission in this decision found that two years without any hearing or projected trial date constitutes a violation of Article 7 (1) (d) of the ACHPR. This is the argument of the Applicants in the present claim, that the extreme and excessive delay and total failure to communicate information about future hearing dates or when judgment will be delivered is a violation of their right to fair hearing. That the Respondent cannot hide behind the argument of complexity of the claims as the submissions made to the NHRC were supported with uncontroverted evidence. Further that the Applicants have been diligent in prosecuting their claims while the Respondent has caused undue delay.

87. For these reasons, the Applicants are seeking from this Court, a declaration that their rights pursuant to Article 7 of the ACHPR has been violated, an order of One Hundred Million (N 100,000,000) for damages resulting from the violation of Article 7 of the ACHPR, an order of mandatory injunction for the Respondent hear the complaints or that this Court assumes jurisdiction and dispenses with the substantive claims.

Respondent's Case

88. In response to the claims hereunder, the Respondent denies every allegation and avers that it cannot be held responsible for the acts of the NHRC since the facts of the Applicants' case is primarily linked to the NHRC. Furthermore, the Respondent submits that the Panel of Inquiry deals with petitions running into thousands from various States in the Respondent's country and the nature of the Applicants claim presents a complex case for the Panel to consider. It is the submission of the Respondent that three (3) years after the commencement of the proceedings of the Panel of inquiry, is not an unreasonable time to constitute a violation of the Applicants right to fair hearing.

89. In short, the Respondent claims there has been no violation of Article 7 of the ACHPR as claimed and urges the Court to dismiss the claims for lack of merit.

Analysis of the Court

90. It is the duty of the Court to set out what constitutes a violation under Article 7 of the ACHPR and determine whether the Applicants have discharged the burden of proof with sufficient evidence to uphold their claim.

91. Article 7 (1) of the ACPHR provides that

> *"Every individual shall have the right to have his cause heard. This comprises:*
>
> *a. the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
>
> *b. the right to be presumed innocent until proven guilty by a competent court or tribunal;*
>
> *c. the right to defence, including the right to be defended by counsel of his choice;*
>
> *d. the right to be tried within a reasonable time by an impartial court or tribunal.*

92. The Court, in MOHAMMED EL TAYYIB BAH V REPUBLIC OF SIERRA LEONE (2015) CCJELR at page 193 articulated, Article 7 as: *"... the rule that an individual should not be penalized by decisions affecting his rights or legitimate expectations without being given prior notice of the case, a fair opportunity to answer and/or opportunity to present their own case. The fact that a decision affects rights or interest of a person is sufficient to subject the decision to the procedures required by natural justice."* Relying on this *ratio,* the Court notes that the right to fair hearing was derived from the principle of

natural justice: *audi alteram partem*, which means '*hear the other side'*. Hence, the obligation of Member States (pursuant to Article 1 of the ACHPR) is to ensure legislative and other frameworks necessary to give effect to rights enshrined in the ACHPR.

93. In the decision of the African Commission on Human and People's Rights in Communication 201/97 – MOUVEMENT BURKINABLE DES DROITS DE L'HOMME ET PEOPLES/BURKINA FASO at paragraph 40 it was held that "*Fifteen years without any action being taken on a case, or any decision being made either on the fate of the concerned persons or on relief sought, constitutes a denial of justice and a violation of equality of citizens before the law. It is also a violation of Article 7 (1) (d) of the African Charter which proclaims the right to be tried within a reasonable time by an impartial Court or Tribunal."* Noting the contention raised by the Respondent in the present claim that three years is not '*reasonable time*' for the act or omission to constitute a violation; the Court must determine what is '*reasonable*.'

94. Relying on the ratio in MOUVEMENT BURKINABLE DES DROITS DE L'HOMME ET PEOPLES/BURKINA FASO (supra), where the Commission held that fifteen years was a reasonable time, the Court is faced with towing the precedence set by the Commission or evaluating the evidence to see if mitigating circumstances can abridge what is deemed as reasonable time.

95. In the present claim, the alleged violation occurred between 2004 and 2013, and a Panel of Inquiry was set up by an organ of the Respondent in 2013. The Applicants submit Exhibit A in support of this, which is a newspaper report of 8th November 2013 on the terms of reference and mandate of the Panel. The Panel had sporadic hearings from 2013 up until 2015 when it was dissolved by the Respondent. In 2017, the Applicants instituted this action before the Court on the grounds that withholding a decision on redress and/or failing to hear the

Applicants for human rights violation is a violation of their right to fair hearing. The reliefs sought in their Initiating Application denotes their need to be heard, to wit: "*An order by this Honourable Court assuming jurisdiction to hear, adjudicate, and award appropriate remedy in response to the Applicants' complaints pending before the National Human Rights Commission.*" The Court notes that the hearings were sporadic at best and inconclusive as it yielded no decision. Neither was there any information as to upcoming hearings or the intention to afford the victims the right to an effective remedy. While the claim was filed in the Court in 2017, two years after the hearings ceased, there is no evidence before this Court pointing to a resumption of the hearings.

96. The Court recalls the Respondent's submission that "*reasonable time*" has not elapsed for its acts or omissions to be considered a violation. The ACHPR did not define what constitutes "*reasonable time*" but in CONSTITUTIONAL RIGHTS PROJECT & ANOTHER V NIGERIA Comm. 60/91 (1995) at paragraph 20, the Commission held that a two-year detention without charges being filed as an unreasonable delay and a violation of Article 7 (1) (d) of the ACHPR. It seems to the Court that the pendulum for what is considered "*reasonable time*" swings on discretion.

97. The Court further relies on the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003) which states that:

> *(a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.*
>
> *(b) The right to an effective remedy includes:*
>
> *1. access to justice;*
>
> *2. reparation for the harm suffered;*

3. access to the factual information concerning the violations.

(c) Every State has an obligation to ensure that:

1. any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;

2. any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;

3. any remedy granted shall be enforced by competent authorities;

4. any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.

(d) The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy

98. It is axiomatic that the Principles and Guidelines (supra) were promulgated to guide the lacuna in Article 7 of ACHPR. Hence, the Court considers access to justice, access to reparation for harm, and access to the information that constitutes the harm are part of a process of guaranteeing the right to fair trial. It goes without saying that the State has a duty to ensure these frameworks are available. While the Court has evidence of the existence of a competent judiciary and quasi-judicial bodies in the Respondent state, it has no affirmative submission of efforts made by the Respondent to discharge its obligation under

the ACHPR. The facts and evidence show a commencement of hearings and a cessation but no evidence has been put forward by the Respondent as to how it intends to ensure that the victims of the eviction have access to some remedy for any harm suffered.

99. Article 2 of the Draft Articles of the Responsibility of States for Internationally Wrongful Acts (2001), considers acts or omission of State as a breach of international law. Thus, the act of ensuring that the Applicants have access to justice is attributable to the Respondent. However, while instituting a Panel of Inquiry was a positive step towards following the Principles and Guidelines (supra), discontinuing the same without affording the victims redress is a breach of its responsibility. For as long as the hearings are adjourned *sine dine*, the Applicants rights seem to have been put in abeyance.

100. While the Respondent argues that the Applicants could have proceeded to the national courts for redress, the Court finds this argument nonchalant. This is because a legal conclusion was not made by the quasi-judicial body set up by the Respondent. The onus of eviscerating the claims and arriving at a decision cannot be dispensed with by any tribunal or court of law. All judicial or quasi-judicial hearings must be concluded; unless a claim is struck out, dismissed or a decision is given, a party to the claim considers its claim alive before that body. Consequently, this Court finds that the Applicants still have a claim before a quasi-judicial organ the Respondents which was adjourned in 2017. The Court considers the present year 2024, and the lack of any information from the Respondent to the Applicants as to next hearing date an "*unreasonably long*" time. The guarantee under Article 7 of the ACHPR in this regard has been breached by the Respondent.

101. Based on the foregoing, the Court finds that the Respondent breached its duty under Article 7 of the ACHPR which resulted in a violation against the Respondent.

Whether the Applicants are entitled to reparation

102. The Court notes that the general principle of law is that where there is injury, there must be a remedy (*ubi jus ibi remedium*). This right to a remedy is one of the fundamental principles of International Law enshrined in various international treaties such as the ICCPR Article 2(3), ICERD Article 6, and CAT Article 14 and also affirmed by various international and regional courts. In KARIM MEISSA WADE V. REPUBLIC OF SENEGAL (2013) CCJELR page 257 paragraph 93, the Court held that: *"Reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cause and effect between the offence committed and the harm caused."*

103. Having found a violation of the Applicants right to fair hearing, the Court recalls the Applicants relief on the one hand for general damages of One Hundred Million Naira (N 100,000,000), and an order for a mandatory injunction or an order by the Court to assume jurisdiction to hear and determine the claims on the other.

104. In dealing with the relief for general damages, the Court recalls its earlier decision that Applicants herein are twenty-six in number and that all claims in a representative capacity are jettisoned. Thus, having succeeded in their claim for a violation pursuant to Article 7 of the ACHPR the Court finds that they are entitled to a remedy for their injury.

105. In OBIANUJU CATHERINE UDEH & ANOR V FEDERAL REPUBLIC OF NIGERIA (supra) at paragraph 163, the Court directed that *"... reparations*

in human rights cases is meant to put the victims/claimants of violations, in the position that they were before the violation occurred. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, United Nations General Assembly Resolution 60/147 Adopted 15 December 2005, provides that victims have a right to reparation for harm suffered as a result of a gross violation of human rights law." The Court is always mindful to instruct that reparations are not meant to be punitive but a means of ensuring that victims enjoy their right to a remedy. Consequently, the Court orders that the Respondent pays Two Million Naira (N2,000,000) respectively to the twenty-six Applicants as general damages for the violation of Article 7 of the ACHPR.

106. Regarding the order for a mandatory injunction, the Court must point out that such a relief is an interlocutory relief sought by litigants in court. This means that an action should be pending in court for a mandatory injunction to be sought in a bid to protect the *status quo*. Thus, the Court dismisses this request as it has no claim before it that will warrant the consideration of a grant for a mandatory injunction. Having disposed of the claim before it and granted reparation for same, the Court dismisses all other reliefs sought as they extraneous to the claim.

X. COSTS

107. The Court, in the spirit of Article 66 of the Rules of the Court, awards costs in favour of the Applicants to be calculated by the Chief Registrar.

XI. OPERATIVE CLAUSE

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.

iii. **Strikes** out the Second Respondent as a party to the suit.

As to merits of the case:

iv. **Finds a breach** of Article 7 of the African Charter on Human and People's Rights.

v. **Dismisses all other claims.**

As to reparation:

vi. **Orders payment of** Two Million Naira (N 2,000,000) respectively to the twenty-six Applicants by the Respondent as general damages for the violation of Article 7 of the ACHPR.

COSTS:

vii. Orders that the Respondent pays costs to the Applicants, to be calculated by the Chief Registrar of the Court.

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** .....

Hon. Justice Sengu Mohamed **KOROMA**/Judge Rapporteur .....

Hon. Justice Gbéri-Bè **OUATTARA** .....

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

Done in Abuja, this 13th day of February, 2024 in English and translated into French and Portuguese.

