

ECW/CCJ/JUD/04/10 Nigeria & 3 Others v. Djot Bayi Talbia & 14 Others

In the Community Court of Justice of the Economic Community of West African States (ECOWAS)
Holden at Abuja, Nigeria
On Thursday, the 3rd day of June, 2010 before their Lordships

Hon. Justice Awa D. Nana - President

Hon. Justice Hansine n. Donli - Member

Hon. Justice Anthony a. Benin - Member

Assisted by

Tony Anene-Maidoh - Chief Registrar

Between:

1. Federal Republic of Nigeria - Applicant

2. Attorney-General of the Federation - Applicant

3. Comptroller General of Police - Applicant

4. Inspector General of Police - Applicant

And1. Djot Bayi and 14 Others - Respondents

2. Chief of Naval Staff - Respondent

Judgment

1. The applicants herein, being dissatisfied by a judgment of this Court, (ECW/CCJ/JUG/07/09) brought the instant application for its revision pursuant to Article 25 of the Protocol on the Court of Justice (A/P1/7/91). The application for revision of the judgment was predicated on two grounds, namely:

a. Oral proceeding was not conducted at the trial.

b. Evidence was not adduced by the respondents to ground the award of damages.

2. The applicants stated that these facts are new and decisive and therefore warrant a review of the judgment delivered by this Court. They argued that under Article 13 of the Court's Protocol (A/P1/7/91) as amended by Article 14 [sic] * of the Supplementary Protocol of the Court (A/SP.1/01/05), proceedings shall be of two parts: written and oral. They continued that Article 40 of the Rules of the Court also lends credence to the fact that the procedure before the Court shall also include an oral part except in special circumstances. Applicants contended that the present case does not fall within the exceptions permitted under Article 40 of the Court's Rules where the Court can dispense with the oral part of the procedure. They concluded that the Court should make an order setting aside the said judgment so that oral proceedings might be conducted in the matter.

3. Counsel for the applicants also submitted that no evidence was led by the respondents (plaintiffs) in the substantive case to justify the award of damages in their favour. Counsel contended that the award of damages must be based on evidence and principles of law and not on the estimation of the Court and that

evidence should have been adduced before the award of damages in the respondent's favour. Counsel concluded by stating that both local and international decisions support the view that evidence should be led before the award of damages.

4. In response, learned counsel for the respondents argued that the application is incompetent and should be dismissed with heavy costs. Counsel stated that the applicants were ably represented in the entire proceedings in the substantive matter and were aware of any defect in the case but these are not new facts for the reason that counsel for the applicants was always in court and took an active part in the entire proceedings. It is therefore untenable for the applicants to claim that any issue with respect to the trial is a new fact. Counsel argued that under Article 92 of the Rules of the Court the applicants had three months from the date on which judgment was given to file the application for review since their grounds for the review are all procedural in nature. Counsel concluded that this review application was filed out of time as judgment was delivered in January 2009 and the review application was filed in July 2009, without the applicants filing an application for extension of time.

5. Learned counsel to the applicants in reply stated that the application was brought within five years so it was properly brought under the Protocol A/P1/7/91 and contended that the issues raised are fundamental to justice in that evidence was not led before the award of damages. Counsel stated that there seems to be a conflict between Protocol A/P1/7/91 and the Court's Rules and concluded that the Protocol is superior to the Rules so in the event of a conflict the Protocol prevails.

6. An application for review of a judgment/decision of this Court is governed principally by Article 25 of the Protocol on the Court of Justice (A/P1/7/91) and Article 92 of the Rules of the Court. The relevant portions thereof read thus:

Article 25 of the Protocol

1. An application for revision of a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence.

4. No application for revision may be made after five (5) years from the date of decision.

Article 92 of the Rules of Court:

An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge.

7. A critical reading of the articles quoted above indicates that there are three conditions precedent to a successful application for review of a judgment/decision of this Court. The three conditions are as follows:

a. An application for a review must be made within five years of the delivery of the decision which is sought to be reviewed.

b. The party applying for a review must file his application within three months of his discovering the new fact/facts upon which his application is based.

c. An application for a review must be premised on the discovery of new facts that are of a decisive nature, which facts were unknown to the Court or the party claiming revision provided that such ignorance was not due to negligence.

8. Therefore, a party wishing to succeed with an application for review must satisfy these three conditions above. Learned counsel to the applicants stated that there seems to be a conflict between Article 25 of Protocol A/P1/7/91 which requires review applications to be filed within five years of the delivery of the judgment / decision which is sought to be reviewed and Article 92 of the Rules of the Court which requires parties to file their application for review within three months upon coming into knowledge of the facts on which the review application is based. However, there is no conflict between the two provisions at all. In fact Article 92 of the Rules of the Court is complementary to Article 25 of Protocol A/P1/7/91. Article 25 of the Protocol requires parties to apply for review within five years of the delivery of the judgment/decision in

question whilst Article 92 of the Court's Rules imposes a duty on parties to file their application for review within three months upon coming into knowledge of the new facts which necessitate the review application. In other words, parties have up to five years to discover the new facts which constitute the basis of their application for review, but they have only three months to file the application for review upon coming into knowledge of the new facts which support the application.

9. Applicants herein base their application on two grounds namely that oral proceeding was not conducted at the trial and that evidence was not adduced by the respondents to ground the award of damages. Applicants argue that these are new and decisive facts which came to their knowledge after the decision was given.

10. Respondents contend that these are issues that concern the nature of evidence or the procedure at the trial and cannot be said to be new facts as contemplated by the provisions of Article 25 of Protocol A/P1/7/91 as applicants were represented throughout the trial. Respondents concluded by stating that the application for review is statute barred having been filed after three months upon the delivery of the judgment.

11. The first condition that must be satisfied for a successful review of a judgment/decision of this Court is that the application for review should have been filed within five years of the date of delivery of the judgment/decision. From the record, the judgment in the original case was delivered on 28th of January 2009. The application for review was filed on the 30th of July 2009. Thus the application for review was filed in the same year as the judgment was given in the substantive matter. This fulfills the first condition as it was filed within the stipulated five year duration within which parties are permitted to discover the facts that constitute the basis for the review application.

12. We shall consider together whether the facts upon which the application for review is based are new and decisive and whether they came to the knowledge of the applicants over three months before they filed their application. We consider a joint consideration of these two issues to be expedient having regard to the documents filed by the parties.

13. It is important to state at this point that the issue as to when a particular fact came to the knowledge of the applicant is a question of fact to be determined by the Court after carefully considering all the information available to it. The facts on which the applicants premised their application for review is that oral proceedings were not conducted at the trial and that evidence was not adduced by the respondents herein to ground the award of damages in their favour.

14. Applicants were represented in Court on the date of judgment by their counsel, N. O. Ibom. They therefore knew on that date that oral proceedings were not conducted at the trial and that oral evidence was not introduced before the award of damages in plaintiff's favour.

Costs

The defendants/applicants are to bear the costs of this application.

Hon. Justice Awa D. Nana - President

Hon. Justice Hansine n. Donli - Member

Hon. Justice Anthony a. Benin - Member

Tony Anene-Maidoh - Chief Registrar

* Editor's note: The supplementary Protocol has only 12 Articles. The reference made here is Article 13 of the 1991 Protocol.