

Chief Ebrimah Manneh v The Republic of The Gambia

Community Court of Justice of the Economic Community of West African States(ECOWA), suit ECW/CCJ/APP/04/07, judgment ECW/CCJ/JUD/03/08, 5 June 2008

Judges: Benin, Daboya, Tall

1. The plaintiff is a community citizen, a national of the Republic of The Gambia . The defendant is a member state of the Economic Community of West African States (ECOWAS).

2. Femi Falana with Chinedum Agwarambo (Mrs) and Sola Egbeyinka appeared for the plaintiff. Defendant failed to enter an appearance.

3. The plaintiff has come to this Court seeking the following reliefs:

1. (a) A declaration that his arrest by the National Intelligence Agency of The Gambia at the premises of *The Daily Observer* in Banjul on 11 July, 2006, is illegal and unlawful as it violates article 6 of the African Charter on Human and Peoples' Rights which guarantees his human right to personal liberty.
2. (b) A declaration that his detention on 11 July 2006, and his continual detention since then without trial is unlawful and a violation of his right as guaranteed by articles 4, 5 and 7 of the African Charter on Human and Peoples' Rights.
3. (c) An order mandating the defendant and/or its agents to immediately release the plaintiff from custody.
4. (d) US\$ 5 000 000 (five million United States dollars) being compensation for the violation of the applicant's human rights to dignity, liberty and fair hearing.

4. The defendant was first served on 31 May 2007 with the application initiation the proceedings through its High Commission in Abuja, the capital city of the Federal Republic of Nigeria, where the Court has its seat and also by registered mail. The defendant failed to file a defence within the thirty day period stipulated for the filing of a defence without assigning any reasons for the failure. The Court served a hearing notice on the defendant through its High Commission in Abuja and by a registered mail on 14 June 2007. The defendant failed to appear in Court on 16 July 2007 when the case was due for hearing. The Court adjourned the case to 26 September 2007 to enable the defendant to enter an appearance and defend the action. A hearing notice was served on the defendant on 19 July 2007 through its High Commission in Abuja and by registered mail. Notwithstanding all the efforts of the Court in getting the defendant to take part in the proceedings, the defendant failed to enter an appearance or defend the action. Hence the case was heard on 26 September 2007 without the participation of the defendant. However, by a letter dated 23 August 2007, addressed to the President of the ECOWAS Commission, a copy of which was received by the Court on 28 September 2007, the defendant had decided not to 'participate or attend proceedings fixed for 26 September 2007'. Due to a change in the composition of the panel members on the case, the case had to be tried *de novo*. A hearing notice was accordingly sent to the defendant but again they failed to enter appearance on 26 November 2007 when the case was heard. Consequently the case proceeded to trial without the participation of the defendant.

Summary of the facts

5. According to the facts contained in the plaintiff's application, (i) the plaintiff is a community citizen by virtue of his nationality of the Republic of The Gambia . (ii) The plaintiff is a journalist with the *Daily Observer* newspaper based in Banjul , The Gambia. (iii) The Plaintiff was arrested by two officials of the National Intelligence Agency of The Gambia at the *Daily Observer's* premises in Banjul on 11 July 2006 without any warrant of arrest. (iv) The reasons for his arrest have not been disclosed by the government of The Gambia. (v) Efforts by his family, friends and lawyers to know his whereabouts or have access to him have proved futile. (vi) Since his arrest the plaintiff has been detained at the National Intelligence Agency Headquarters, State Central Prison, Kartong, Police Station, Sibanor Police Station, Kuntaur Police Station and Fatoto Police Station. (vii) The plaintiff has not been accused or charged with the commission of any criminal offence. (viii) The conditions under which the plaintiff is detained are dehumanizing as detainees are made to sleep on bare floor in overcrowded cells. (ix) The plaintiff has been held in solitary confinement and denied access to adequate medical care. (x) The plaintiff's counsel's letter dated 16 March, 2007 demanding for the release of the plaintiff was ignored by the defendant.

6. In line with article 43 of the Court's Rules of Procedure, the Court demanded that evidence should be introduced to prove the facts, notwithstanding the absence of the defendant.

Evidence of witnesses

7. On 26 November 2007 during the hearing the plaintiff called in three witnesses who testified on his behalf. The first witness, (PW1) Mr Usman S Darboe, a native of the Republic of The Gambia and the news editor of the *Daily Observer* newspaper said he was present at the time the plaintiff was arrested. He stated that he has personally known the plaintiff for well over 17 years and has worked with him for seven years. According to him, on 11 July 2006, while they were in the office, the Gambian police came and arrested the plaintiff. He further stated that he has not seen the plaintiff since his arrest, but as a journalist he made investigations about him in the course of his work and was informed that the plaintiff was detained at Mile 2 Central Prison, Banjul . PW1 also said that to the best of his knowledge the plaintiff has not been charged with any criminal offence. PW1 stated that sometime during the latter part of July 2006 it came to his knowledge that the plaintiff had been moved from the National Intelligence Agency (NIA) to Fatoto police station.

8. The second witness (PW2), Mr Yaya Dampha, is a journalist with the *Foroyaa* newspaper based in The Gambia. He stated that he knew the plaintiff as both of them worked as journalists in The Gambia. He mentioned that he does not know the whereabouts of the plaintiff presently but that he was informed of his arrest in July 2006. PW2 continued that he last saw the plaintiff in December 2006 after his office had a tip off that the plaintiff had been moved from the Central Prison in Banjul to an unknown location. He then embarked on a search mission and visited several prisons. He eventually saw the plaintiff in Fatoto police station when the plaintiff was being escorted back to his cell after a meal. Mr Yaya Dampha further testified that the *Foroyaa* newspaper published the arrest and detention of the plaintiff. This was tendered as exhibit 'A'. The publication did not elicit any reaction from either the police or National Intelligence Agency.

9. The third witness (PW3), Professor Kwame Karikari, is a native of the Republic of Ghana and a professor with the University of Ghana , Legon. He is the executive director of an organization called the Media Foundation for West Africa which has correspondents in each of the fifteen countries of ECOWAS. They monitor issues that concern the media and press freedom. Professor Kwame Karikari does not know the plaintiff in person, but as a journalist, who was working with the *Daily Observer* in The Gambia. The organization received information that the plaintiff had been arrested and detained without any criminal charge(s) preferred against him in July 2006. This information was confirmed when they contacted other media men in The Gambia. The Media Foundation contacted lawyers in The Gambia to facilitate the release of the plaintiff but they were advised that they could not obtain justice in The Gambia so they should pursue the matter before the Community Court of Justice, ECOWAS.

10. The evidence of these witnesses stood uncontroverted. Even after the evidence of these witnesses, the Court by a ruling, gave another opportunity to the defendant to attend the next session to cross-examine the witnesses, and to present their side of the story, if they so desired, but they still failed or refused to attend. It is manifestly clear the defendant does not desire to be heard, so the trial proceeded in default.

11. The facts to the Court for determination are in respect of the violation of articles 2, 6 and 7(1) of the ACHPR, related to individual freedom, fair hearing and the prohibition of all forms of arbitrary detention.

Issues for determination

Issue 1: Whether the arrest and detention of the plaintiff is justified under the African Charter on Human and Peoples' Rights

12. The competence of the Community court of Justice in applications filed by individuals arises from articles 9(4) of the 1991 Protocol and 10(d) of the Supplementary Protocol on the Court of Justice. They provide:

- Article 9(4) The Court has jurisdiction to determine cases of violation of human rights that occur in any member state.
- Article 10(d) Access to the Court is open to individuals on application for relief for violation of their human rights.

These provisions enable an individual to access the Court directly in human rights issues, and to give the Court the competence to entertain such applications.

13. The application of the plaintiff was primarily premised on article 6 of the African Charter on Human and Peoples' Rights which reads as follows:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. *In particular, no one may be arbitrarily arrested or detained.* (Emphasis added).

14. Article 14(g) of the Revised Treaty of the Economic Community of West African States (ECOWAS) provides for the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

15. The effect of article 6 of the African Charter on Human and Peoples' Rights as stated above is that no one shall have his right to liberty limited or restricted unless it is in accord with a law previously laid down. In other words, the law under which a person is arrested and/or detained must have been valid and in force, before or at the time of such arrest and/or detention. Plaintiff alleges that his rights under article 6 of the African Charter on Human and Peoples' Rights have been violated and therefore the intervention of this Court is justifiable under article 9(4) of the Protocol of this Court, as amended.

16. This Court in the case of *Alhaji Hammami Tidjani v Nigeria and 4 Others*, suit ECW/CCJ/APP/01/06, judgment delivered on 28 June 2007 held that the combined effect of article 9(4) of the Protocol of the Court, as amended, article 4(g) of the Revised Treaty and article 6 of the African Charter on Human and Peoples' Rights is that the plaintiff must invoke the Court's jurisdiction by (i) establishing that there is a right recognized by article 6 of the African Charter on Human and Peoples' Rights; (ii) that this right has been violated by the defendant; (iii) that there is no action pending before another international Court in respect of the alleged breach of his right; and (iv) that there was no previously laid down law that led to the alleged breach of abuse of his rights.

17. In this case, applicant alleges his rights have been violated under article 6 of the ACHPR and seeks an end to be put to it, and this is what was done by hearing the witnesses.

18. Plaintiff witness 1 (PW1) stated that he was present when the plaintiff was arrested by two security operatives of the Republic of The Gambia in the office of the *Daily Observer* newspaper where they both worked. PW1 further stated that though the policemen were not in official uniforms, he knew they were police officers because he personally knew one of them, one Corporal Sey, from the National Intelligence Agency.

19. Furthermore, the arrest of the plaintiff was confirmed by Professor Kwame Karikari, plaintiff witness 3 (PW3). He stated that his organization, the Media Foundation for West Africa raised an 'alert' in order to get confirmation about the arrest of the plaintiff when it came to their notice. PW3 stated that the arrest of the plaintiff was confirmed. PW3 also stated that his organization made the necessary enquiries in order to secure the release of the plaintiff but they were told that it was impossible because of the conditions prevailing at The Gambia at the time. They were therefore advised to pursue the matter at the Community Court of Justice, ECOWAS. The conduct of the plaintiff which amounted to a criminal offence for which he was arrested was not disclosed to him, neither was he told of the law which made that conduct a crime. PW1 stated that plaintiff was held *incommunicado* after his arrest and has since been detained without trial, neither has he been charged with the commission of any criminal offence known to the law of the Republic of The Gambia .

20. Plaintiff witness 2 (PW2) in his evidence stated that he saw the plaintiff at the Fatoto police station during his visits to several police stations when his firm, *Foroyaa* newspaper, got a tip-off that the plaintiff had been moved from the Central Prison to an unknown destination. PW2 further stated that though they followed the case of the plaintiff and other detainees, they were not arraigned before court within the seventy-two hours stipulated by the Gambian Constitution for detainees to be brought before court, and that the plaintiff till date has not been brought before court to his knowledge. All these facts stand uncontroverted, and they appear credible so the Court accepts them.

21. Article 7 of the African Charter on Human and Peoples' Rights is very instructive with regards to the treatment of people once they have been arrested. Article 7(1) of the African Charter on Human and Peoples' Rights stipulates thus:

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 proved 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.

Article 7(1) clearly states that every individual shall have the right to have his cause heard and this comprises among other things the right to be presumed innocent until proven guilty by a competent court or tribunal, the right to

defence, including the right to be defended by counsel of his choice and the right to be tried within a reasonable time by an impartial court or tribunal. From the evidence of PW1, the plaintiff has been denied the right to have his cause heard by an impartial court or tribunal as the defendant has failed to put him before such a competent impartial court or tribunal for his guilt or innocence to be established.

22. The plaintiff was arrested on 11 July 2006 and has since been detained without trial and no criminal offence known to the law of the Republic of The Gambia has been levelled against him for a period exceeding one year. Holding a person for over a year without trial will be an unreasonable period unless proper and distinct justification is provided.

23. From the foregoing, it is clear that the arrest and detention of the plaintiff is contrary to the rules enshrined in Articles 6 and 7(1) of the African Charter on Human and Peoples' Rights.

Issue 2: Whether the plaintiff is entitled to have his human rights to the dignity of the person, personal liberty and freedom of movement restored

24. The fundamental human rights of the individual have been guaranteed by various human rights instruments. Among the core rights guaranteed by these various human rights instruments, including the African Charter on Human and Peoples' Rights are the right to life and the integrity of the person, personal liberty, freedom from torture and other inhuman and degrading treatment and the right to political or any other opinion.

25. Article 2 of the African Charter on Human and Peoples' Rights affirms the recognition and protection of the basic rights of the individual. Article 2 states that

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

26. Article 6 of the African Charter on Human and Peoples' Rights clearly states that the individual shall have the right to his liberty and personal freedom, with the proviso that that right may only be limited or restricted for reasons and conditions previously laid down by law. It is clear from the provisions of article 6 of the African Charter on Human and Peoples' Rights that there is a presumption of innocence in favour of the liberty of the individual. Therefore, any infringement on the liberty of the individual must clearly be in conformity with reasons and conditions previously laid down by law, otherwise any such deprivation or limitation of the liberty of the individual cannot be sustained.

27. From the facts of the present application, which facts have not been disputed, the plaintiff was arrested without a warrant of arrest. The reason for the arrest of the plaintiff has not been communicated to him. He has been detained since his arrest without any criminal charges being levelled against him. He has not been arraigned before any court of competent jurisdiction in order to ascertain his guilt or innocence. This is clearly contrary to the provisions of articles 2 and 6 of the African Charter on Human and Peoples' Rights which dictate that every individual, regardless of race, ethnic group, colour, sex, religion, political opinion or other like distinction shall have the right to liberty and to the security of his person in the absence of any reasons and conditions previously laid down by law.

28. The defendant refused to appear to defend this claim. Since the defendant has failed to establish that the arrest and detention of the plaintiff was in accord with the provisions of any previously laid down law, the plaintiff is entitled to the restoration of his personal liberty and the security of his person.

Issue 3: Whether the plaintiff is entitled to monetary compensation in the sum of US\$ 5 000 000

29. Compensation that is given to a party that has been wronged in a legal action is referred to as damages. Generally speaking, there are three kinds of damages: special damages, general damages, and punitive damages. Special damages are the enumerable or quantifiable monetary costs or losses suffered by the plaintiff. For example, medical costs, repair or replacement of damages property, lost wages, lost earning potential, loss of business, loss of irreplaceable items, loss of support, etc. Special damages have to be specifically pleaded and proved in order for them to be awarded. This is compensation for losses that can easily be quantified and proved. The loss of a plaintiff's income as a result of an unlawful detention for instance can easily be proved and claimed accordingly as a special damage. Where the amount claimed for damages is quantified in the claim, the plaintiff is required to introduce facts to justify it. However, the plaintiff failed to plead and prove any ground under which the amount ought to be awarded. In the absence of any proven losses which will justify the award of special damages, no special damages will be awarded the plaintiff.

30. General damages are items of harm or loss suffered, for which only a subjective value may be attached. Examples of this might be pain, physical suffering, emotional trauma or suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, loss of enjoyment of life, etc.

31. Generally, punitive damages are not awarded in order to compensate the plaintiff, but in order to reform or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff. Punitive damages are awarded only in special cases.

32. Having concluded in issues 1 and 2, above, that the plaintiff's right to his personal liberty has been abused, the plaintiff is entitled to some damages for the wrongs that he has suffered. The amount of damages, however, is dependent on the facts of this application and the relevant rules governing the award of damages. Learned Counsel for the plaintiff prayed this honourable Court to award the sum of \$ 5 000 000 as compensation to the plaintiff for his unlawful arrest and detention. Counsel stated that the essence of this Court awarding such a substantial amount is to deter other member states of the Community from engaging in violations of the human rights of Community citizens contrary to their obligations under domestic and international law. Counsel urged this Court to award some punitive damages in favour of the plaintiff in order to deter governments of member states from infringing on the rights of Community citizens with impunity. However, as stated earlier, punitive damages are awarded only in limited circumstances as it is not awarded to compensate the plaintiff but to deter the defendant and others from very reprehensible behaviour.

33. Although this Court is not bound by the precedents of other international courts, it can draw some useful lessons from their judgments, especially when the issues involved are similar: in other words, such decisions can be of persuasive value to this Court.

34. The European Court of Human Rights has awarded damages to successful plaintiffs whose human rights were violated by various governments of the European Union. In *Selmouni v France* [2005] CHR 237, the European Court of Human Rights awarded damages to the plaintiff who established to the satisfaction of the Court that the treatment meted out to him by the French authorities amounted to torture, inhuman and degrading treatment contrary to the provisions of article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

35. The European Court of Human Rights similarly awarded damages to the plaintiff in the case of *Cenbauer v Croatia* [2005] CHR 429 when the Court held that he had been treated in a way that violated article 25 of the European Convention on Human Rights.

36. Notwithstanding the fact that the European and the Inter-American Courts have been in existence for long, there is no record available to us that showed that any of them had awarded punitive damages in a human rights cause.

37. In the European Court of Human Rights, applicants first argued for the award of punitive damages in the case of *Silver and Others v. United Kingdom*, 5 EHRR 347, 61 Eur Ct HR (ser A). This case was referred to the Court in March 1981 by the European Commission of Human Rights. The case originated in seven applications against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on various dates between 1972 and 1975. The applicants complained that the stopping by the prison authorities of a number of letters written by or addressed to them constituted a violation of articles 8 and 13 of the European Convention of Human Rights and asked for general damages for violation of their rights. In addition, three of the applicants claimed punitive damages against the government of the United Kingdom. Among the issues for determination by the Court was whether the acts complained of by the applicants amounted to a violation of their rights under articles 8 and 13 and whether the applicants were entitled to the damages sought, including that of the punitive damages. By judgment of 25 March 1983, the Court held that the stopping by the prison authorities of a number of letters written by or addressed to the applicants had given rise to violations of articles 8 and 13 of the Convention. The Court, however, denied the request for punitive damages, without discussing the merits or otherwise in the claim. The attitude of the Court in the case cited above clearly indicated that the Court was not in favour of awarding punitive damages in a human rights cause such as the one that was before them.

38. In *Anufrijeva and Another v Southwark London Borough Council; R (Mambakasa) v Secretary of State for the Home Office; R(N) v Secretary of State for the Home Office*[2004] QB 1124 it was held that

Where an infringement of an individual's human rights has occurred, the concern will usually be to bring the infringement to an end and any question of compensation will be of secondary, if any, importance.

This point was emphasized in *R (Greenfield) v Secretary of State for the Home Department* [2005] UKHL 14, where Lord Bingham noted that the focus of the Convention is on the protection of human rights and not the award of compensation.

39. Thus it is clear that the object of human rights instruments is the termination of human rights abuses and in cases where the abuse has already taken place, restoration of the rights in question. Compensation is awarded in order to ensure 'just satisfaction' and no more. It is not the object of human rights instruments, including the African Charter on Human and Peoples' Rights on which this application is premised to award punitive damages against offenders of the instruments. This by no means deprives a successful human rights victim from claiming monetary compensation in appropriate cases, particularly where special damages are pleaded and proven at the trial.

40. With regard to general damages, the peculiar circumstances of this case would be taken into account. Plaintiff was arrested on 11 July 2006 and has since been detained. He has not been charged with any criminal offence and has not been put to trial before any court of competent jurisdiction. He has not even been told of the reason for his arrest. He has been held *incommunicado*. Plaintiff is a journalist who was working and living a normal life before he was arrested and detained. The Court considers an award of compensation to be justified in these circumstances.

Decision

41. The Court has found that the applicant was arrested on 11 July 2006 by the police force of The Gambia and has since been detained *incommunicado*, and without being charged. He has not been told the reasons for his arrest, let alone the fact that it was in accord with a previously laid down law. The Court holds these acts clearly violate the provisions of articles 2, 6 and 7(1) of the African Charter on Human and Peoples' Rights. Furthermore, in view of the fact that these violations of applicant's human rights were caused by the defendant, which refused to appear in Court, it entitles the applicant to damages. And the Court considers that this violation should be terminated and the dignity of the applicant's person is to be restored.

Costs

42. The plaintiff is adjudged to be entitled to the costs of this application to be borne by the defendant, as will be assessed, under and by virtue of article 66 of the Court's Rules of Procedure.

Reasons

43. For these reasons, the Community Court of Justice, sitting in public after hearing the applicant, in the absence of the defendant who refused to appear, in first and last resort, considering article 4(g) of the Revised Treaty, as well as articles 2, 6 and 7(1) of the African Charter on Human and Peoples' Rights, and also the Supplementary Protocol of the Court and the Court's Rules of Procedure, declares this application to be admissible in human rights and the Court enters judgment for the plaintiff against the defendant, who is liable for this violation.

Orders

44. Consequently, the Court orders:

- That the Republic of The Gambia releases Chief Ebrimah Manneh, plaintiff herein from unlawful detention without any further delay upon being served with a copy of this judgment;
- That the human rights of the plaintiff be restored, especially his freedom of movement;
- The Republic of The Gambia pay the plaintiff the sum of one hundred thousand United States Dollars (US\$100 000) as damages;
- The defendant to pay the costs of this action to be assessed.