

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE.
CEDEAO



No. 10 DAR ES SALAAM CRESCENT,
OFF AMINU KANO CRESCENT,
WUSE II, ABUJA-NIGERIA.
PMB 567 GARKI, ABUJA
TEL/FAX: 234-9-6708210/09-5240781
Website: www.ecowascourt.org

IN THE COMMUNITY COURT OF JUSTICE, ECOWAS
HOLDEN AT ABUJA FCT IN THE FEDERAL REPUBLIC OF NIGERIA.
ON FRIDAY 8TH JUNE 2012

SUIT NO. ECW/CCJ/APP/07/11

JUDGMENT NO. ECW/CCJ/JUD/09/12

BETWEEN

VALENTINE AYIKA-----PLAINTIFF

AND

REPUBLIC OF LIBERIA-----DEFENDANT

BEFORE THEIR LORDSHIPS:

HON. JUSTICE HANSINE N. DONLI-----PRESIDING

HON. JUSTICE BENFEITO M. RAMOS-----MEMBER

HON. JUSTICE ANTHONY A. BENIN-----MEMBER

ASSISTED BY

TONY ANENE-MAIDOH-----CHIEF REGISTRAR

REPRESENTATION

C. O. Ejezie Esq. for the plaintiff

Counsellor M. Williams Wright, Solicitor-General, Republic of Liberia, with Counsellors Emmanuel B. James, Rose Marie B. James and A. Kanie Wesso for the defendant.

JUDGMENT OF THE COURT

SUMMARY OF THE FACTS

1. The plaintiff herein is a national of the Federal Republic of Nigeria. The defendant is a member state of the Economic Community of West African States (ECOWAS). The brief facts of this case are as follows. On or about 9th September 2006, the plaintiff arrived in Monrovia, the capital city of the Republic of Liberia, aboard a flight from the Federal Republic of Nigeria. He had on his person the sum of US\$508,200.00 which was seized by the authorities of defendant because the plaintiff had not declared it as required by the laws of the country.

2. Subsequently, by an order dated 30th November 2006, the Circuit Court in Liberia formally confiscated the money. But the court's record is clear that the order was sought for and granted without reference to the plaintiff herein. The proceedings before this court further shows that the matter did not end with the court order. It is clear investigations continued into the source of the money, the purpose for which it was brought into the country as well as the ownership thereof. The receipt from the Central Bank of Liberia dated 11th September 2006 confirms this. These investigations continued from 2006 through 2009 as confirmed by correspondence dated 10th December 2008 (Annexure B) 27th December 2008 (Annexure C) both of which form part of plaintiff's pleadings in this case. By a letter dated 23rd January 2009, the defendant's Minister of Justice and Attorney-General wrote a letter to the Central Bank of Liberia confirming that investigations into the confiscated amount had been concluded and it was in

favour of the plaintiff so the bank should release the money to him, less the penalty for non-declaration of the money.

3. The defendant said that this letter was withdrawn the very next day when it was discovered that it had been written on misrepresented facts and that the Central Bank of Liberia was directed to continue to hold the money pending further investigations. In the meantime the record discloses that an action is pending before the Supreme Court of Liberia in respect of the same subject-matter.

4. The plaintiff instituted this action pursuant to Articles 10 (c), (d) and 12 of the 1991 Protocol of the Community Court of Justice as amended by the Supplementary Protocol of 2005, Article 33 of the Rules of this Court, Articles 15, SO and 54(2) of the Revised Treaty of ECOWAS as well as Articles 7(1)(b) 12 and 14 of the African Charter of Human and Peoples' Rights. In particular, plaintiff relied on Article 14 of the African Charter on Human and Peoples' Rights which states thus "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws". Furthermore, the action was brought pursuant to Articles 2, 11(a), 20(a), (b), (c), (f), (h), (i), 22(a) and 24 of the 1986 Constitution of the Republic of Liberia and the inherent jurisdiction of the Court.

5. The plaintiff sought the following orders:

- (a) Declaration that the confiscation of the sum of USD 508,200.00, being the property of the applicant as proceeds of criminal conduct and seizure of his ECOWAS passport is unconstitutional, null and void.
- (b) An order directing the Respondent to release forthwith to the applicant the sum of USD 508,200.00 with interest at the rate of 21% from 9/9/06 till date of final liquidation.
- (c) An order directing the Respondent to release forthwith to the applicant his ECOWAS passport.
- (d) Costs of twenty thousand Liberian Dollars to the applicant.

6. The defendant in opposing the application stated that when the applicant arrived at the Roberts International Airport on the 9th of September 2006, he submitted to Immigration and Customs, Bureau of Immigration and Naturalization, Ministry of Justice and the Ministry of Finance but at every point he declared that he was bringing nothing of value into the country that warranted a declaration as per the requirements of both the Immigration and Naturalization Law and the Revenue Code of Liberia Act of 2000. Defendant averred that it was when plaintiff was leaving the airport that security personnel were alerted that the applicant had falsely stated that he was carrying nothing that warranted a declaration. Defendant continued that when plaintiff was accosted and searched, it was found that he had US\$508,200.00 strapped to his body. The money was subsequently seized and sent to the Central Bank for verification whilst investigation continued as to why plaintiff failed to declare to the Central Bank personnel as well as the Immigration and Custom authorities at the airport. A copy of the report of the Criminal Investigation Division of the Liberian National Police which narrates the incident was attached as defendant's Exhibit "R-3".

7. Further, defendant averred that whilst investigations continued, her County Attorney for Montserrado County filed an application with the Circuit Court of the First Judicial Circuit, Criminal Assizes "C" for the confiscation of the money seized by the security officials from the plaintiff. A copy of the said application was attached and marked as respondent's Exhibit "R-4". An Order of Confiscation was issued by the said Court on December 1, 2006 and a copy was attached and marked as Exhibits "R-5" and "R-6" of defendant's pleadings.

8. Defendant stated that investigations continued into the matter and a Status Report was released on 30th September 2006 and copy of it was attached and marked Exhibit "R-3" of the defendant's pleadings. Following the Status Report, defendant's officials continued their investigations, which were still ongoing when the plaintiff filed this action.

ORAL PROCEDURE

9. The plaintiff relied on the pleadings, particularly the documents annexed which were not in dispute, and called no oral evidence. For their part the defendant called four witnesses to testify largely on the manner plaintiff brought the money into their country and non-declaration thereof.

CONSIDERATION BY THE COURT

10. Defendant contended that the fact that the plaintiff did not testify himself or call witnesses to testify on his behalf amounts to a waiver of his claim as there is no substantiating evidence upon which judgment can be granted in his favour. Defendant urged the Court to dismiss the plaintiff's claim as it is unverified and unsubstantiated. With respect, this position canvassed by the defendant is not tenable at law. A plaintiff can prove his case either by relying on documents or by providing oral evidence or he could use a combination of both. A party is free to prove his case by any means he deems appropriate.

11. At law where facts are admitted or not traversed in the pleadings, a party is not obliged to lead any further evidence. The documents on which the plaintiff relied on in this proceeding were all admitted by the defendant who also relied on all those documents as well as her own. In such an instance, it is not necessary for the plaintiff to provide oral evidence to prove these facts as they are admitted by the defendant. Thus, defendant's contention that plaintiff did not provide evidence to substantiate his claims and should be deemed to have waived them is not acceptable in law and so same is respectfully rejected by the Court.

12. The facts in this case are largely undisputed and so are; the documents relied upon by the parties. From the facts, the key issue that arises for determination is whether the plaintiff is entitled to recover his USD508,200.00 all the other issues are ancillary to this one. In determining this core issue, the Court will look at the following sub-issues.

(i) Mode of transportation and declaration of the currency.

(ii) Legality of the Confiscation order.

(iii) Effect of the investigative reports by the defendant's agents.

The addresses by both counsels will be considered as we examine the various issues set out above.

MODE OF TRANSPORTATION AND DECLARATION / NON DECLARATION OF THE CURRENCY

13. The defendant contends that they are right in withholding plaintiff's money because the way and manner in which plaintiff carried the money into her territory and the non-disclosure thereof violates the Central Bank Act of 1999, the Revenue Code Act of 2000 and the Immigration and Naturalization Law. Defendant avers that the plaintiff strapped the money to his body in a deliberate attempt to smuggle same into her country, which act he perfected when he failed to declare same to her officials at the Roberts International Airport upon his arrival. Defendant continued that plaintiff at the various check points at the airport declared that he was carrying nothing of value which warranted a declaration. Defendant further stated that it was only when plaintiff had left the airport and was accosted by security officials that it was detected that he had strapped the money in question to his body.

14. Defendant's counsel contended that the mode of transportation of the money by the plaintiff and the non-declaration thereof points to the fact that the plaintiff never intended to use the money for any legitimate business within defendant's territory. Defendant alleged that though the plaintiff stated that he was a businessman with businesses in both the Federal Republic of Nigeria and Liberia for which purpose he brought in the money, there were no records produced by the plaintiff to show that he was conducting business in Liberia. Defendant counsel contends that plaintiff only exhibited a notarized article of incorporation of Captino Inc., which is by no means sufficient proof of his business activities in Liberia. Defendant further stated that there were no indications that Captino Inc., kept records of its activities, especially financial records, no indication that taxes

were paid by Captino Inc. and no records to show that it actually transacted business with its purported business partners in Liberia.

15. Counsel to the defendant concluded that plaintiff deliberately strapped the money around his body determined to smuggle same into the country and violate and evade the Immigration and Revenue Laws as well as penal laws of the country. Defendant argued that she is entitled to withhold plaintiff's money as he deliberately violated her laws.

16. In his reply to the defendant's defence, the plaintiff disputed the claims and arguments of the defendant and stated that he violated no laws of the defendant. Plaintiff stated that he did not incorrectly answer any questions put to him either in a statutory immigration form or by the defendant's officials and challenged the defendant to produce any documents wherein he failed to declare that he had the money in question on him. Plaintiff averred that there were no officials of defendant's Central Bank present when he arrived at the airport and hence his inability to declare that he had the sum in question on him.

17. The plaintiff continued that when he was accosted and questioned by security officials as he was about to leave the airport, he promptly informed them that he had the money on him. Further, counsel to the plaintiff contends that there is no universally accepted mode of carrying cash and it is incumbent on everyone to use the means that could effectively safeguard their cash from theft. Plaintiff contended that it is of no relevance whether the cash was strapped to his body or not.

18. Plaintiff also stated that he is a businessman and has business interests in both Nigeria and Liberia. He stated that he owned a private depot in Pleebo, Maryland County, Liberia, where he stored rubber he purchased and resold to the Firestone Company in Liberia and also owned two motor vessels namely MV Valerie and MV Prince Eweka, which plied Liberian routes transporting rubber from Maryland to Monrovia. Plaintiff stated that the Status Report issued by defendant's officials during investigations confirmed that he submitted a Memorandum of Understanding between Pleebo Rubber Corporation and Captino Inc. and another Memorandum of Understanding between Firestone

Company and Captino Inc. Plaintiff further stated that Exhibit '1' and other documents established that he sourced the cash in dispute from his legitimate business in Nigeria.

19. Defendant called four witnesses, Bala Camara, Alfred Korleh, Johnnton Robertson Wolo Junior and Susanna Steve Blackie to give evidence on her behalf. The substance of the evidence of all four witnesses is that plaintiff arrived with his money strapped to his body. This evidence was uncontroverted under cross examination. Plaintiff failed to produce any evidence to dispute the claim that the money was strapped to his body. The Court finds that the plaintiff strapped the money to his body.

20. As earlier pointed out defendant contends that this fact of strapping the money to his body is evidence of the fact that plaintiff did not intend to use the money for any legitimate purpose, and did not prove that he had any legitimate business in Liberia and therefore entitles her to confiscate same. However, plaintiff argued that he had legitimate business interests in both Liberia and Nigeria and that the money was intended to be used to expand his business in Liberia. Exhibit R-3 of defendant's pleadings is a Status Report issued by her officials during the investigation and confirms that indeed the plaintiff had legitimate business interests in Liberia. The Report listed the documents submitted by the plaintiff to the investigative team for review which included a notarized article of incorporation of Captino Inc. dated 26th August 2005 and marked exhibit "C" as well as a Memorandum of Understanding between Pleebo Rubber Corporation, represented by its Director Moses Collins, and Captino Inc. represented by Valentine Ayika (plaintiff) dated August 31, 2005 concerning Cavalla Rubber Farm, marked as Exhibit "H" and another Memorandum of Understanding between Firestone and Captino Inc. for the purchase and sale of unprocessed rubber.

21. A notarized Article of Incorporation is prima facie evidence of the existence of a business entity. A public document is presumed to be authentic until the contrary is established. Further, the Article of Incorporation was issued by defendant's agents and she did not allege that this document was fraudulently

procured. A Memorandum of Understanding between plaintiff's registered business and other companies offers further proof that plaintiff indeed had business interests in Liberia.

22. The fact that the money was strapped to plaintiff's body alone does not support the assertion by defendant that plaintiff had no legitimate business in Liberia. Although the method employed by the plaintiff in carrying his cash seems a little odd or even unorthodox, that in itself does not amount to any crime. It gives rise to reasonable suspicion of crime, which would be established or not after investigations, especially when coupled with the fact that the plaintiff did not declare the currency at the country of departure. A member state will be justified in carrying out investigations into the conduct of any person on its territory when it has reasonable cause, as in this case, to believe that there is crime committed by that person or to prevent that person from committing crime on its territory. Moreover, non-declaration of the money before leaving the airport might also raise suspicion that the plaintiff might have some impure motive for bringing in the money and that might give rise to legal consequences under Liberian laws and must be dealt with in the light of the laws prevailing at the material time.

23. Defendant alleged that the plaintiff failed to declare the money in question but the plaintiff vehemently denied that and asked the defendant to prove same. It is trite learning that the one who makes allegation bears the burden of proving same. It is pertinent to note that in the Status Report issued by defendant's agents and which forms part of her pleadings they admitted that the Central Bank did not have officials at the Roberts International Airport when the plaintiff arrived. One Mrs. Davis, the Deputy Governor of the Central Bank of Liberia whilst explaining the absence of the Bank's officials stated that the Bank had withdrawn its employees from the airport because other agencies at the airport, including customs, said that the Bank was carrying out their functions.

24. However, it is not in dispute that the relevant laws of the defendant enjoin arriving passengers to declare the currency on them. To satisfy the law the passenger must look out for officials of the state, however designated, to declare

the currency. It is not only bank officials who can perform such functions. Since the plaintiff asserts the affirmative of the issue, he assumes the burden of producing evidence that he did declare the amount on him. All the evidence points to the conclusion that he did not declare it and he could not take solace in the fact that there was no bank official there at the time. If the law says there must be a declaration, it is the duty of the passenger to comply with it however cumbersome the process might appear to be. The plaintiff is also not saying that only bank officials were authorised under Liberia law to receive the declaration. Having regards to the mode the plaintiff carried the money it is more probable than not that he did not intend to declare that money. The court finds the plaintiff did not declare the money at the airport to any official of the defendant.

LEGALITY OF CONFISCATION ORDER

25. Counsel to the plaintiff argued that the confiscation order made by His Lordship Judge Kaba of the First Judicial Circuit, Criminal Assizes 'C' Monteserrado County, Liberia, which directed the Central Bank of Liberia to keep custody of the plaintiff's money pending the conclusion of criminal investigations into the matter was null, void and of no effect as no notice of the proceedings was served on the plaintiff to enable him defend his rights. Counsel continued that this is an infraction of the provisions of Section 15-119 of An Act to Amend the New Penal Law, Title 26 as amended, of the Liberian Code of Laws Revised and the 1986 Constitution of Liberia. Plaintiff says he was deported to Nigeria before the proceedings leading to the confiscation order were commenced.

26. Counsel to the defendant rejected the arguments of the counsel to the plaintiff and contended that the confiscation order was properly made as the laws of Liberia allow for the confiscation of proceeds suspected to derive from criminal activities pending final determination in order to prevent the criminal having access to proceeds of the crime. Counsel continued that if the applicant believed that any of his rights had been or were being violated, he had the full protection of the law and could have sought legal redress. He concluded that the applicant chose not to pursue the matter despite the availability of legal remedies.

27. The defendant has placed nothing on record to show that plaintiff was served with any notice before the confiscation proceedings were commenced. The plaintiff also averred that he was deported to Nigeria before the said confiscation proceedings and the defendant did not deny this averment. All that the defendant said is that there were legal remedies available to the plaintiff but he chose not to pursue them. A fundamental principle of law is the "audi alteram partem" rule which literally means "hear the other side". This principle requires that both parties in any judicial proceedings ought to be heard before their rights are determined. The undisputed evidence before this Court indicates that the plaintiff was not served with a notice of the hearing of the confiscation proceedings. Indeed, the plaintiff had already been deported out of the country. It is therefore conclusive that the plaintiff was not heard nor given the chance to be heard in the confiscation proceedings. This offends the letter and spirit of the cardinal principle of fair hearing in judicial proceedings. The defendant's defence in this regard is respectfully not acceptable and is therefore rejected accordingly.

Be that as it may, the proceedings before the court did not finally determine the rights of the plaintiff. They were only provisional so as to enable investigations to be carried out. Thus no prejudice resulted from it to the detriment of the plaintiff.

INVESTIGATIVE REPORTS BY THE DEFENDANT'S OFFICIALS

28. The investigative reports are pleaded by both parties and the contents are undisputed. The only issue with respect to the investigative report is the legal effect of the documents. The plaintiff avers that the investigative reports issued by the defendant's National Police Force exonerated him from drug trafficking and money laundering allegations and also made a finding that in fact there was no official of the Central Bank of Liberia at the Roberts International Airport on the date the applicant arrived at the said airport. Plaintiff further avers that it was on the strength of these reports that the defendant's Minister of Justice and Attorney General directed the Executive Governor of the Central Bank of Liberia to release his money to him after deducting at least 25% of same as penalty for non-declaration. According to plaintiff this is conclusive evidence that his money is not the result of any criminal activity and therefore should be released to him.

29. The defendant's contention is that though the Minister of Justice and Attorney-General wrote to the Executive Governor of the Central Bank of Liberia to release plaintiff's funds to him, that letter was predicated on misrepresentations made to the Minister by one of the counsels to the plaintiff. Defendant continued that the said letter was withdrawn the very next day when the Minister realised that the facts upon which he wrote to the Executive Governor were misrepresentations and therefore clearly indicated that further investigations into the issue were being carried out.

30. A careful analysis and evaluation of the investigative reports is essential to the core issue before the Court in this case. The basis of plaintiff's application is that he is entitled to recover his money that is unlawfully being withheld by the defendant as he has committed no crime which entitles defendant to withhold his money whilst the defendant's defence is primarily that she is entitled to keep same as plaintiff committed crimes against her. This is the case before the Court; everything else is ancillary to this issue.

31. The record of proceedings before this Court clearly indicates that the plaintiff's money was withheld and kept at the defendant's Central Bank after it was directed to do so by a confiscation order of His Lordship Judge Kaba of the First Judicial Circuit, Criminal Assizes 'C' Monteserrado County. A careful scrutiny of the entire proceedings that led to the confiscation of plaintiff's money is essential as that provides the basis upon which plaintiff was divested of his money and same kept in the custody of the defendant. Annexure 'A' of the plaintiff's pleadings and Exhibit R-5 of the defendant's pleadings is the record of proceedings before the court which made the confiscation order. The contents in both documents are the same. From these documents, the plaintiff was charged with money laundering. Thus, the confiscation order was made pending the investigation into the alleged money laundering activities carried out by the plaintiff as clearly shown in the record of proceedings before the court. Thus, the court granted the confiscation order to enable defendant withhold plaintiff's money whilst she investigated money laundering charges preferred against the plaintiff.

32. Having established the basis upon which plaintiff's money was withheld by defendant, we will now turn our attention to the basis upon which the money ought to be returned to plaintiff or retained by defendant. As earlier noted the money was withheld pending investigation into money laundering charges preferred against the plaintiff and therefore whether it has to be released to plaintiff or not depends on the outcome of investigations into the money laundering charge. We will consider the reports that emanated from the investigations conducted by the defendant's officials into the money laundering charges preferred against the plaintiff.

33. First, the Status Report of the Liberian Police Force (Annexure 'D') addressed to the Director of the Liberia National Police and dated 30th September 2006, contains documents that were submitted by the plaintiff to the investigation team. Of particular relevance here is a document from Spring Bank, Nigeria. Plaintiff stated that he withdrew the US\$508,200.00 from the account of his company, Captino Global Limited domiciled at the said bank. In making their recommendations, the investigative team stated thus "Having gathered the above stated documents indicating the source of the US\$508,200.00 and other relevant documents which were critically scrutinized...". Defendant's officials conducting the investigation into the charge of money laundering against the plaintiff at this stage acknowledged that they had critically scrutinized the documents submitted to them by the plaintiff which indicated among other things the source of his funds. Plaintiff had indicated that the funds were sourced from his business accounts domiciled at the Spring Bank, Nigeria. The investigations did not find this to be false.

34. Next, Annexure 'C' of plaintiff's pleadings includes two documents which were written by the defendant's National Police Force to the Deputy Inspector General of Police in charge of operations and the Inspector General of Police dated December 24, 2008 and December 27, 2008 respectively. The relevant portions of the letter to the Deputy Inspector General of Police stated that "Investigation into the matter revealed that the subject had on his person said undeclared amount of US currency as indicated in the foregoing, but there was no illicit drugs found. Our investigation at the time was unable to associate the amount in question to either

money laundering, fraud or drug". The letter to the Inspector General of Police read in part thus "During preliminary investigation conducted, it was established that Mr. Valentine Ayika is a businessman with assets in both Liberia and Nigeria. But, the manner in which he brought such a huge amount of money in Liberia violates Central Bank of Liberia (CBL) rules and regulations ...No drug was discovered".

35. On January 23, 2009, the Minister of Justice and Attorney General wrote to the Executive Governor of the Central Bank stating as follows: "The Reports of the various officials and agencies, attached hereto, conclude that while the act of Mr. Ayika violated the Central Bank Regulations on Foreign Currency Declaration Limit, there was no evidence that there was an attempt to engage in money laundering or that the amount was associated with or the result of any criminal activities perpetrated by Mr. Ayika or any person or institution which sought to convert their criminal activities into a legitimate activity by laundering the money. Predicated upon the said findings that the amount was not part of any money laundering scheme, the officials have recommended that the fun be released to Mr. Ayika, subject to the penalty prescribed by the Central Bank for the violation of its regulations, and which we understand to be not less than 25% of the value of the undeclared amount".

36. On January 24, 2009, the Minister of Justice and Attorney General wrote again to the Executive Governor of the Central Bank and advised that they had received additional information which warranted further investigation into the matter and therefore withdrawing the request for the funds to be released to the plaintiff pending the conclusion of the investigation.

37. The legal justification for withholding plaintiff's cash is clear from the record. The court ordered for the confiscation of plaintiff's fundspending investigations into the money laundering charges preferred against him. This is confirmed by the receipt issued by the Central Bank upon receipt of the money. This extract from the bank's receipt is self-explanatory and it reads: 'On September 11, 2006, the said amount was taken to the Central Bank of Liberia for counterfeit verification. The verification exercise proved that the money was not counterfeit.

However, the money is being safe-kept at the Central Bank of Liberia while the probe is being conducted to determine the origin, the ownership and the purpose of the funds.'

Thus, plaintiff would be entitled to recover his money if investigations exonerate him from the charge of money laundering which provided the legal basis for the defendant to confiscate the money.

38. The reports of the various investigative teams of the defendant clearly exonerated the plaintiff of any crime. In particular, the extracts of the reports clearly established that the plaintiff is a businessman with legitimate business interests in both Liberia and Nigeria. Further, the extracts of the reports made it crystal clear that the plaintiff did not carry illicit drugs into defendant's territorial boundary. It also stated explicitly that the plaintiff was not guilty of the money laundering charge preferred against him. These are conclusions from the investigation reports of defendant's own agents and officials. These are documents which speak for themselves and their contents admitted without further proof.

39. It was based on the findings of the investigative teams that exonerated the plaintiff of any crime that the Minister of Justice and Attorney General, the highest legal officer of the defendant wrote to the Executive Governor of the Central Bank requesting the release of plaintiff's funds subject to the penalty for non-declaration. This is based on the fact that the Minister of Justice and Attorney General knew that having been cleared of the criminal charges preferred against him, the plaintiff was entitled to recover his money as there was no legal justification for the defendant to hold on to same.

40. The investigative reports only faulted the plaintiff with respect to the way he carried the money, strapped to his body. However, that in itself does not entitle the defendant to confiscate plaintiff's money. The way and manner plaintiff carried his cash raised a suspicion of crime but the investigative reports clearly exonerated him of any crime which he was suspected to have committed.

41. However, the defendant seeks to find a legal basis for withholding plaintiff's money by relying on the letter written to the Executive Governor of the Central Bank withdrawing the request for the release of plaintiff's funds. The said letter stated that plaintiff's funds should not be released pending further investigations into the matter. Defendant argued that the letter asking for the release of plaintiff's funds was written based on misrepresentations made by one of the lawyers of the plaintiff in Liberia. However, defendant failed to name which lawyer made those misrepresentations, neither did she tender the said statement as evidence in this proceeding. The Court cannot accept oral statements made by the defendant without further proof as to its veracity.

42. Further, the letter in question was written on January 24, 2009 whilst the present action was instituted on April 8, 2011. Thus, this action was commenced over two clear years from the date which the defendant indicated that she wanted to further investigate the issue but she placed nothing on record to show the Court that indeed some further investigations have been conducted into the issue. And even if they did conduct further investigations, there is no evidence anything adverse to the plaintiff was found. The court will thus conclude that no crime was found against the plaintiff from the day of his arrest to date.

43. It is important to note that the plaintiff was divested of his money on September 9, 2006. It thus took the defendant over two years to conclude investigations and recommend the release of plaintiff's funds. Thus, defendant had over four years to investigate this issue before plaintiff commenced this action. The fact that the defendant had not been able to find evidence to support the charge preferred against the plaintiff in four years coupled with the fact that her officials had succinctly stated that plaintiff was not guilty of the charges preferred against him leads the Court to the irresistible conclusion that the plaintiff is not indeed guilty of the charge preferred against him. The defendant therefore has no legal justification to withhold plaintiff's money.

44. The Court must place it on record that member states have a duty to expedite investigations when they confiscate money based on reasonable suspicion that strangers entering their territory are carrying money for criminal purposes, or the

money is the object of money laundering or otherwise illegally obtained. The investigations should be conducted within a reasonable time in the light of the facts and circumstances of the case in order not to place such persons who may eventually be found innocent in undue hardship. Given the facts and circumstances of this case, the time lapse of over four years between the confiscation of the money and conclusion of investigations was unduly long.

ANCILLARY ISSUES

45. Defendant also sought to establish that the plaintiff is indeed a criminal and therefore the Court should take that into consideration in arriving at its decision. The defendant relied on the opinion of the then Attorney-General and Minister of Justice of the Federal Republic of Nigeria as expressed in a letter written to her Attorney General and Minister of Justice (Exhibit R-1). Relevant portions of that letter were quoted extensively by the defendant thus:

"(4) Mr. Ayika ... had been on the US DEA's list of wanted persons for drug trafficking and money laundering ..."

"(7)... Valentine Ogbonna did not disclose this huge sum of money to the appropriate authorities before leaving the country (Nigeria) with same. The non-declaration of the money at the point of departure in Nigeria in accordance withthe Money Laundering (Prohibition) Act 2004 as well as the circumstances surrounding the transfer of this huge sum of money outside the country without passing through a bank or financial institution are prima facie evidence that the money was laundered."

"(8) Intelligence at our disposal is that Valentine Ogbonna was convicted in . Philippines in 1997 for trafficking in cocaine between Bangkok and Philippines. He is also believed to have been involved in laundering of proceeds of drugs, as he is believed to own and operate several accounts in China and Hong Kong."

46. The applicant denied that he had been on the US DEA's list of wanted persons for drug trafficking and money laundering and stated that he had never been

convicted for money laundering or drug trafficking in any part of the world. Further, applicant stated that when he was deported to Nigeria, he was detained and only released after the said allegations had been investigated and proved to be untrue.

47. These were damning allegations about the plaintiff and heightened defendant's belief that he is a criminal and sought to perpetrate crime within her jurisdiction. However, these allegations were not proved or substantiated. There is no document on record which shows that the plaintiff had been on the list of wanted persons of the US DEA for drug trafficking. Similarly, there is no evidence before the Court to prove that plaintiff had been convicted for drug trafficking or money laundering anywhere in the world. It is necessary to take cognisance of the fact that the Attorney General and Minister of Justice of the Federal Republic of Nigeria stated that there is a prima facie case of money laundering. A prima facie case calls for investigation and prosecution if necessary. It is not conclusive. Since defendant's investigations exonerated the plaintiff of both crimes (drug trafficking and money laundering) and there was no evidence supporting these allegations, they remained nothing more than hearsay and bore no evidential weight in this case. The totality of all these raises strong suspicion of crime or criminal conduct against the plaintiff. But in law a multitude of suspicions do not ripen into guilt.

CONCLUSION

48. Whereas the Court has found that the plaintiff did not declare the currency on him before leaving the airport to any official of the defendant;

Whereas the Liberia Circuit Court ordered the confiscation of the money pending investigations into criminal conduct, if any, against the plaintiff, but the investigations revealed no criminality against the plaintiff;

Whereas the Central Bank held on to the money to ascertain their genuineness as well as the source of the money, and their investigations found the money to be genuine and the plaintiff as the true owner;

Whereas the defendant no longer had justification to keep the plaintiff's money;

Whereas Article 14 of the ACHPR is applicable, the plaintiff having been found to be the true owner of the money and nothing adverse exist to warrant depriving him of it;

DECISION

48. The Court, sitting in public at Abuja, decides that the plaintiff has established his claim and therefore enters judgment for him. The defendant is hereby ordered to return the amount of \$508,200 to the plaintiff less 25% of the said amount as per the country's laws. The defendant is also ordered to restore the plaintiff's passport to him. The claim for 21% interest is not allowed for lack of justification.

COSTS

49. The court has already said that the defendant unduly delayed the investigations. It is the court's view that at the end of the prolonged investigations if the defendant had followed their own domestic law and released the portion of the money due to the plaintiff to him, this action would not have been necessary. In the circumstances the plaintiff is entitled to recover costs in this action against the defendant which he has asked for in his application and plaintiff is accordingly awarded the sum of \$20,000.00 as costs against the defendant.

Dated at Abuja this 8th day of June 2012 before their Lordships

Han. Justice Hansine N. Donli

Presiding

Han. Justice Benfeito M. Ramos

Member

Han. Justice Anthony A. Benin

Member

Assisted by Tony Anene-Maidoh

Chief Registrar

