



**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, IN NIGERIA**

ON 25th DAY of June, 2020

SUIT No: ECW/CCJ/APP/19/16/SUPP

JUD No: ECW/CCJ/JUD/08/20

BETWEEN

SGT MIKAH RANGO & 243 ORS

- APPLICANTS

AND

FEDERAL REPUBLIC OF NIGERIA

-RESPONDENT

COMPOSTION OF THE COURT

Hon. Justice Gberi-Be OUATTARA

- Presiding

Hon. Justice Dupe Atoki

- Member

Hon. Justice Keikura Bangura

- Member/Rapporteur

Assisted by :

MR. TONY ANENE-MAIDOH

- CHIEF REGISTRAR

JUDGMENT

A. PARTIES

1. The Applicants are officers of the Nigerian Army and Community citizens of Nigerian origin. The Respondent is the Federal Republic of Nigeria and a Member State of the Community.

B. SUBJECT MATTER OF THE PROCEEDINGS

2. The Applicants lodged with the Registry of the Court, a Supplementary Application pursuant to Article 63 and 64 of the Rules of the Community Court of Justice, ECOWAS, by way of motion dated 14th June, 2019 in which they sought the following orders:
 - a. An Order of this Honorable Court supplementing the judgment in Suit No: ECW/CCJ/APP/19/16 between *SGT MIKAH MAI RANGO AND 243 ORS. V FEDERAL REPUBLIC OF NIGERIA* delivered on Wednesday 15th May, 2019 by mandating the Respondent to reinstate them back to its employment having found that their dismissal without arraignment, prosecution and sentence by a duly constituted Court Martial is illegal, null and void.
 - b. An Order of this Honorable Court of Justice directing the Respondent to immediately reinstate all the Applicants to their respective ranks in the Nigerian Army and to pay each of the Applicants their monthly salaries and other allowances from the month of July, August, September, October, November and December 2015, January, February, March, April, May, June 2015 and such other months until the date judgment is enforced having found that their right to work and fair hearing was violated by the Respondent.
 - c. And for order or further orders as this Honorable Community Court of Justice may deem fit and proper to make in the circumstances of this suit.

C. GROUNDS IN SUPPORT OF THE APPLICATION

3. The Applicants, in support of their application made the following submission as grounds for the application:

- a. That this Honorable Community Court of Justice delivered judgement in Suit No: ECW/CCJ/APP/19/16 between Sgt. Mikah Mai Rango and 243 Ors. V Federal Republic of Nigeria on Wednesday 15th May, 2019.
- b. That this Honorable Community Court of Justice found that the Applicants; 244 soldiers who enlisted into the Nigerian Army for periods ranging between three and thirty-six years and were dismissed without arraignment, prosecution and sentence by a duly constituted Court Martial is illegal, unlawful and void.
- c. That in the said judgment delivered by Honorable Justice Keikura Bangura in the company of Honorable Justice Dupe Atoki this Court held that the Applicants' right to work and fair hearing were violated by the Respondent.
- d. That the Court awarded a cost of Two (2) Million Naira against the Respondent therein.
- e. That no pronouncement whatsoever was made on the other heads of claim having found that their dismissal by the Respondent without arraignment, prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void.
- f. Article 63 (1) provides that without prejudice to the provisions relating to the interpretation of judgments in the Court may, of its own motion or on application by a party made within one month after the delivery of a judgment, rectify clerical mistakes, errors in calculation and obvious slips in it.
- g. Similarly, Article 63 (2) provides that the parties whom the Chief Registrar shall duly notify (of the judgment) may lodge written observations within a time prescribed by the President.
- h. That Article 64 (1) provides that where the Court omits to give a decision on a specific head of claim or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgement.

D. ARTICLES APPLICANTS RELIED ON IN SUPPORT OF THE SUPPLEMENTARY APPLICATION

4. The Applicants relied on article 63 and 64 of the Rules of the Community Court of Justice, ECOWAS.

E. DOCUMENTS RELIED ON IN SUPPORT OF THE SUPPLEMENTARY APPLICATION

1. The Applicants filed an affidavit in support of the motion sworn to on the 14 June, 2019 by Paul Ochayi, a Litigation Clerk, attached to the law offices of Falana and Falana in ABUJA.
2. The Judgment of this Honorable Court in Suit No: ECW/CCJ/APP/10/16 between Sgt. Mikah Rango and 243 Ors v Federal Republic of Nigeria delivered on 15th May, 2019.
3. The Rules of the Community Court of Justice.

F. REPONSE OF THE RESPONDENT TO THE SUPPLEMENTARY APPLICATION

5. The Respondent replied to the Supplementary Application by way of an Affidavit in Opposition, sworn to on the 9th July, 2019 by Thomas Etah, a Litigation Clerk attached to the Federal Ministry of Justice in Abuja where in the Respondent contended amongst others that;
 - a. The Court judiciously and judicially granted to the Applicant relief no.7 and ordered that the sum of Two Million (2,000,000) Naira be paid to each of the Applicants as damages.
 - b. The judgment delivered by this Honorable Court had no mistake, error in calculation or obvious slips as the Applicants wanted this Court to believe.
 - c. The Court in its deliberation confines itself to the issue of right to fair hearing contrary to paragraph 4 sub paragraph 6 of the Affidavit in Support of the Motion by the Applicants.

AND

- d. The Respondent prays the Court to dismiss the application as the Applicants had shown no content with the judgement of the Court but is subtly seeking the Court to reopen its decision and make an order for the reinstatement of the Applicants even when it is obvious that the court is not an industrial Court.
6. In order to address the reliefs sought in the current Application, it is imperative for the Court to revisit the facts and reliefs sought in the initiating application.

G. Summary of Facts in the initiating application.

- a. The Applicants (244 enlisted soldiers) were, until their dismissal in 2016, soldiers in the Nigerian Army. They averred that they were part of some soldiers re-absorbed into the Nigerian Army in 2015 and posted to the Command and Staff College in the Nigerian Army School of Infantry (NASI) in Jaji, Kaduna where they were subjected to dehumanizing and ill treatment.
- b. That on the 5th January, 2016 the Commandant announced that the Respondent had posted the hitherto dismissed soldiers to the North-East. That even though they claimed to have been reinstated they were denied access to military facilities, letters of reinstatement were never issued and they were denied seven months' salary to date.
- c. That following complaint of ill-treatment the names of soldiers posted to the North-East were called and the identity cards seized without reason and they were orally dismissed without due regard to the Armed Forces Act.

H. Reliefs sought in the Initiating Application

- a. A declaration that the dismissal of the Applicants as soldiers in the Nigerian Army some time in February 2016 by the Respondent without arraignment, prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void whatsoever as the act of the Respondent herein constitute a violation of the Applicants' fundamental rights to fair hearing as stated in the provisions of the Section 36 (1) of the 1999

Constitution of Federal Republic of Nigeria (as amended) Third Alteration Act, Article 7 of the African Charter on Human and People's Rights, Article 8, 10, 11 (1) of the Universal Declaration of Human Rights.

- b. A declaration that the act of the Respondent herein is a gross violation of the rights of the Applicants to work under equitable and conducive environment as guaranteed by the provisions of Articles 6 (1), 7(a) (i), (b) of the International Covenant on Economic Social and Cultural Rights, Article 15 of the African Charter on Human and People's Rights.
- c. A declaration that the act of the Respondent is a gross violation of the Applicants fundamental rights to work and freedom from unemployment as expressly guaranteed by the provisions of Article 23 of the Universal Declaration of Human and People's Rights.
- d. An order of this Honorable Court directing the Respondent, its agents, organs, servants, privies or by whatsoever name called to immediately reinstates all the Applicants to their respective rank in the Nigerian Army.
- e. An order of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to all the Applicants their monthly salary and other allowances from the month of January 2016 until the date judgement is enforced in this suit.
- f. An order of this Honorable Court directing the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicants the sum of N1,000,000 (One million Naira) only each as general damages for the psychological and mental torture suffered by the Applicants as a result of their dismissal as soldiers in the Nigerian Army.
- g. An order of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to

pay over to the Applicants each the sum of N2, 000,000 (Two Million Naira) only as aggravated and punitive damages that will serve as a deterrent to the Defendant.

- h. An order of this Honorable Court directing the Respondent to pay over to the Applicants the sum of N5, 000,000 (Five Million Naira) only being the solicitors fees and other incidental cost.

I. JUDGMENT OF THE COURT

7. The Court dismissed the Preliminary Objection and heard the case on its merits. It thereon adjudged as follows:

- i. That it has jurisdiction to hear this suit same being premised on an alleged violation of human rights.
- ii. That the Applicants' right to work was violated by the Respondent.
- iii. That the Applicants' right to fair hearing was violated by the Respondent.
- iv. That the Respondent should pay the sum of Two Million Naira (N2, 000,000) as cost of the action.
- v. That the Respondent should pay the sum of Two Million Naira (N2, 000,000) each to the Applicants as damages for unlawful dismissal.

J. ISSUES FOR DETERMINATION

8. The Court, in addressing the Supplementary Application, has formulated the following issues for determination:

- a. Whether the Supplementary Application is admissible pursuant to Article 63 and 64 of the Rules of the Community Court of Justice.
- b. Whether the Supplementary Application has merits.

K. ISSUE 1: Whether the Supplementary Application is admissible pursuant to Article 63 and 64 of the Rules of the Community Court of Justice.

a. Article 63 (1) of the Rules provides as follows:

“Without prejudice to the provisions relating to the interpretation of judgments, the Court may, of its own motion or on application by a party made within one month after the delivery of a judgment, rectify clerical mistakes, errors in calculation and obvious slips in it”

9. The Court notes that the Supplementary Application did not cite the particular clerical mistake, error in calculation or obvious slips in the judgement to which the Court is called to rectify. The mistakes that are clerical in nature or calculations of sums that are inaccurate or obvious slip having not been specifically pleaded, the Court holds that the application to rectify the Judgment under Rule 63 cannot stand and this Supplementary Application having being premised on Article 63 is inadmissible.

b. Article 64 (1) provides that

“Where the Court omits to give a decision on a specific head of claim or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgment.”

10. To determine whether the Supplementary Application is admissible under this rule, the relevant requirement of the Rule is that the Court omitted to give a decision on a specific head and then the application must be filed within one month after service of judgement. From the records of the Court, the judgment was delivered on 15th May, 2019 and the Supplementary Application was filed on the 14th June, 2019. The Applicants have therefore met the requirements as regards Article 64 (1) of the Rules of Court, same having been filed within a timeline of one month following service of judgment on them. The Application is hereby admissible under Article 64 of the Rules and the Court so holds.

L. ISSUE 2: Whether the application has merits.

11. Having decided that the Application is admissible under Rule 64(1), The Court must now review its judgement, viz-a-viz the reliefs claimed in the originating

Application, to determine *whether it omitted to give a decision on a specific head of claim or on costs as alleged in the Supplementary Application.*

12. The reliefs sought in the Originating Application, the judgment of the Court and the relief sought in the Supplementary Application will be reproduced hereunder again for ease of reference.

M. The reliefs sought in the Initiating Application

- a. A declaration that the dismissal of the Applicants as soldiers in the Nigerian Army some time in February 2016 by the Respondent without arraignment, prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void whatsoever as the act of the Respondent herein constitute a violation of the Applicants Fundamental Rights to fair hearing as stated in the provisions of the section 36 (1) of the 1999 Constitution of Federal Republic of Nigeria (as amended) Third Alteration Act , Article 7 of the African Charter on Human and People's Rights, Article 8, 10, 11 (1) of the Universal Declaration of Human Rights.
- b. A declaration that the act of the Respondent herein is a gross violation of the Rights of the Applicants to work under equitable and conducive environment as guaranteed by the provisions of Articles 6 (1), 7(a) (i), (b) of the International Covenant on Economic Social and Cultural Rights, Article 15 of the African Charter on Human and People's Rights.
- c. A declaration that the act of the Respondent is a gross violation of the Applicants Fundamental Rights to work and Freedom from unemployment as expressly guaranteed by the provisions of Article 23 of the Universal Declaration of Human and People's Rights.
- d. An order of this Honorable Court directing the Defendant, its agents, organs, servants, privies or by whatsoever name called to immediately reinstate all the Applicants to their respective rank in the Nigerian Army.

- e. An order of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to all the Applicants their monthly salary and other allowances from the month of January 2016 until the date judgement is enforced in this suit.
- f. An order of this Honorable Court directing the Respondent, , its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicants the sum of N1,000,000 (One million Naira) only each as general damages for the psychological and mental torture suffered by the Applicants as a result of their dismissal as soldiers in the Nigerian Army.
- g. An order of this Honorable Court compelling the Respondent, its agents, organs, servants, privies or by whatsoever name called to pay over to the Applicants each the sum of N2, 000,000 (Two Million Naira) only as aggravated and punitive damages that will serve as a deterrent to the Defendant.
- h. An order of this Honorable Court directing the Respondent to pay over to the Applicant the sum of N5, 000,000 (Five Million Naira) only being the solicitors fees and other incidental cost.

N. Operating portion of the judgment delivered on 15th May, 2019

13. The Court having heard the submissions of parties adjudged on the initiating application as follows:

- i. That it has jurisdiction to hear this suit same being premised on an alleged violation of human rights.
- ii. That the Applicants' right to work was violated by the Respondent.
- iii. That the Applicants' right to fair hearing was violated by the Respondent.
- iv. That the Respondent should pay the sum of Two Million Naira (N2, 000,000) as cost of the action.

- v. That the Respondent should pay the sum of Two Million Naira (N2, 000,000) each to the Applicants as damages for unlawful dismissal.

O. The reliefs sought in the Supplementary Application.

- a. An Order of this Honorable Court supplementing the judgment in Suit No: ECW/CCJ/APP/19/16 between *SGT MIKAH MAI RANGO AND 243 ORS. V FEDERAL REPUBLIC OF NIGERIA* delivered on Wednesday 15th May, 2019 by mandating the Respondent to reinstate them back to its employment having found that their dismissal without arraignment, prosecution and sentence by a duly constituted Court Martial is illegal, null and void.
 - b. An Order of this Honorable Court of Justice directing the Respondent to immediately reinstate all the Applicants to their respective ranks in the Nigerian Army and to pay each of the Applicants their monthly salaries and other allowances from the month of July, August, September, October, November and December 2015, January, February, March, April, May, June 2015 and such other months until the date judgment is enforced having found that their right to work and fair hearing was violated by the Respondent.
 - c. And for such order or further orders as this Honorable Community Court of Justice may deem fit and proper to make in the circumstances of this suit.
14. The grounds for seeking the above reliefs by the Applicants is that “*while the Court awarded a cost of Two (2) Million Naira against the Respondent, no pronouncement whatsoever was made on the (other heads) (emphasis ours) of claim having found that their dismissal by the Respondent without arraignment, prosecution and sentence by a duly constituted Court Martial is irregular, illegal, unlawful, null and void*”. See paragraphs 3(e) supra. This allegation is clearly incorrect. A review of the judgment viz a viz the reliefs sought by the Applicant in the initiating application reveals that the Court made pronouncements on the following heads of claim:

- a. Paragraph iii of the said judgment addresses relief (a) of the initiating Application having declared that the right to fair hearing of the Applicants was violated as alleged.
- b. Paragraph (ii) of the judgment addresses reliefs (b/c) of the initiating Application having declared that the right to work of the Applicants was violated as alleged.
- c. Paragraph (iv) of the judgment addresses relief (g) having awarded the sum of 2 million Naira as cost of the action as against the sum of 5 million Naira claimed by the Applicant
- d. Paragraph (v) of the judgment addresses relief (h).
- e. Paragraphs (d) on reinstatement of the Applicants which is one of the heads specifically alleged to have been omitted and for which an order for same is sought in this Application is unfounded. The Court is mindful of that fact that every violation of a human right attracts a remedy. In the instant case, the Court awarded damages in lieu of reinstatement in the sum of 2 million Naira to each of the Applicants for wrongful dismissal. The Court considers this reasonable and sufficient remedy in the circumstances of the case. The stand of the Court is supported by several decisions where it has awarded damages in lieu of reinstatement on matters of wrongful dismissal. See the case of *Alhaji Samuel Sam-Sumana V. Republic of Sierra Leone (2017) ECW/CCJ/JUD/19/17* unreported where the Court ordered that damages be paid to the Applicant and declined reinstatement. Similarly so in the case of *Dr. Rose Mbatomon Ako v West African Monetary Agency & 5 ors. (2013) ECW/CCJ/JUD/02/13* the Court awarded damages and declined to order reinstatement. Having awarded damages in lieu of reinstatement, the Court cannot be said to have omitted a pronouncement on the head. Based on the above, the Court holds that it has not omitted to give a decision under this head in its judgment and the relief seeking for an order

of Court for reinstatement of the Applicants sought under this supplementary Application is hereby declined.

- f. With regards to paragraph (e) on payment of salaries and other entitlements of the Applicants, having decided that the employment of the Applicants was unlawfully terminated, they are thus entitled to arrears of salaries and other entitlements. The Court concedes that it did not make a pronouncement on this head. The Court however notes that the quantum of the claim was not specifically established. A monetary claim particularly salaries which is within the knowledge of the Applicants must be sufficiently computed and pleaded to enable the Court make a definitive award. Despite this lapse, since the Respondent did not deny that the Applicants were in the employment of the Army within the stipulated period, they are entitled to arrears of salaries and other allowances due to them up to February 2016 as claimed in the Initiating Application when they were dismissed and the Court so holds.

15. The Court wishes to remark that at all times material, all deliberations in this case was heard by a three member panel and at no time was the case heard by two members as erroneously stated in paragraph (c) of the grounds in support of the Supplementary Application. While no issue was made of this by the Applicants nonetheless, the records of the Court must not be distorted.

P. Decision

16. For the reasons stated above, the Community Court of Justice, sitting in public after hearing the parties, and their submissions duly considered in the light of the provisions of Article 63 and 64 of the Rules of the Community Court of Justice, ECOWAS decides as follows:

- i) The Supplementary Application is inadmissible under Article 63 of the Rules of Procedure of the Court of Justice, ECOWAS.

- ii) The Supplementary Application is admissible pursuant to Article 64 of the Rules of Procedure of the Court of Justice, ECOWAS.
- iii) The Court did not omit to give a decision on reinstatement of the Applicants the original judgment
- iv) The relief for an order of court directing the Respondent to reinstate the Applicants is refused.
- v) The Court omitted to give a decision on the payment of arrears of salaries and other entitlement of the Applicants in the original judgment
- vi) The relief for order for payment of arrears of salaries and other entitlement of the Applicants is granted.
- vii) The judgement of the Court delivered on 15th May, 2019 is hereby supplemented with additional paragraph no (vi) to read;

'The Respondent is ordered to pay all arrears of salaries and other entitlement of the Applicant up to January 2016.'

Thus pronounced and signed on this 25th Day of June 2020 at the Community Court of Justice, ECOWAS, Abuja, Nigeria.

HON. JUSTICE Gberi-Be OUATTARA – PRESIDING

HON. JUSTICE Dupe ATOKI - PRESIDING

HON. JUSTICE Keikura BANGURA – MEMBER

Mr. Tony ANENE-MAIDOH – Chief Registrar