

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



No. 10 DAR ES SALAAM CRESCENT,  
OFF AMINU KANO CRESCENT,  
WUSE II, ABUJA-NIGERIA.

PMB 567 GARKI, ABUJA  
TEL/FAX: 234-9-5241595/ 5240780  
Website: [www.eccj.net](http://www.eccj.net)

IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES  
(ECOWAS)

HOLDEN AT ABUJA, NIGERIA  
THIS TUESDAY 27<sup>TH</sup> DAY OF OCTOBER, 2009

SUIT NO: ECW/CCJ/APP/08/08

BETWEEN

REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY  
PROJECT (SERAP)

Plaintiff

VERSUS

1. FEDERAL REPUBLIC OF NIGERIA

1<sup>st</sup> Defendant

2. UNIVERSAL BASIC EDUCATION COMMISSION

2<sup>nd</sup> Defendant

BEFORE THEIR LORDSHIPS

HON. JUSTICE HANSINE .N. DONLI  
HON. JUSTICE ANTHONY BENIN  
HON. JUSTICE SOUMANA .D. SIDIBE

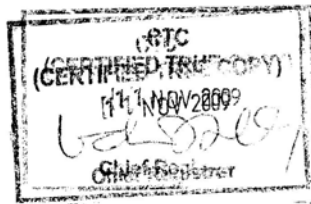
PRESIDING JUDGE  
MEMBER  
MEMBER

Assisted by Athanase Athanon Esq.

Court Registrar

COUNSEL TO THE PARTIES

A. A. MUMUNI Esq.  
JOHN GAUL Esq.



For the Plaintiffs  
For the 2<sup>nd</sup> Defendants

---

**RULING ON PRELIMINARY OBJECTION BY THE SECOND DEFENDANT**

1. Plaintiff is a human rights non-governmental organization registered under the laws of the Federal Republic of Nigeria whilst the first defendant is a Member State of the Economic Community of West African States and second defendant is the Commission on universal basic education established by the first defendant.

2. The plaintiff filed an application against the defendants alleging the violation of the right to quality education, the right to dignity, the right of peoples to their wealth and natural resources and the right of peoples to economic and social development guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights.

3. Before the Court could go into the merits of the application, the second defendant filed a motion alleging that this Court lacks jurisdiction to entertain the action filed by the plaintiff. They objected to the jurisdiction of the Court on the following grounds:

1. That the jurisdiction of the Court is limited to the provisions of Article 9 of the Supplementary Protocol and that the Court lacks jurisdiction to determine the subject matter of the suit.

2. That the Compulsory and Basic Education Act 2004 and the Child's Rights Act 2004 are Municipal Laws of Nigeria and not subject to the jurisdiction of the Court because it is not a treaty, convention or protocol of ECOWAS.

3. That the educational objective of the Federal Republic of Nigeria is provided for under Section 18 (1), (2) and (3) of Chapter II of the 1999 Constitution and is non justiciable or enforceable and cannot be determined by the Court.

4. That the Plaintiff has no locus standi to institute or maintain this action against the second defendant.

4. In considering the preliminary objection raised by the second defendant, grounds two and three thereof would be considered together, as both arise from the Constitution as well as the domestic laws of the Federal Republic of Nigeria, as against the Treaty and Protocols of ECOWAS.

**ISSUE 1.**

**WHETHER THE COURT HAS JURISDICTION TO ADJUDICATE ON THE APPLICATION FILED BY THE PLAINTIFF**

5. Second defendant contends that under Article 9 of the Supplementary Protocol the Court does not have the competence to adjudicate on subject matters outside a treaty, convention or protocol of the Community. They contend that the issues complained of by the plaintiff are grounded in the municipal law of the Federal Republic, a matter which the Court has no jurisdiction over. They relied on paragraph 1 (a) (b) and (c) of Article 9 of the Supplementary Protocol on the Court to conclude that this Court lacks subject- matter jurisdiction over the suit filed by the plaintiff.

6. Second defendant continues that this Court has not the competence to adjudicate on the claim as filed by the plaintiff because this Court lacks the subject - matter jurisdiction to so do. Second defendant relied on the provisions of Article 9 (1) (a), (b) and (c) to conclude that this Court lacks subject matter jurisdiction in the present suit. Article 9 (1) (a), (b) and (c) stipulates thus:

*1. The Court has the competence to adjudicate on any dispute relating to the following:*

*(a) the interpretation and application of the treaty convention and protocol of the Community;*

*(b) the interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;*

*(c) the legality of regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;*

7. Second defendant concluded that from the above provisions of the Supplementary Protocol, the jurisdiction of this Court is limited to the interpretation, application, legality or implementation of treaties, conventions or protocols of ECOWAS.

8. In response to the above submissions by second defendant, plaintiff stated that the suit is not based solely on the domestic legislation of the Federal Republic of Nigeria, to wit the Compulsory and Basic Education Act and the Child's Right Act but also on legally enforceable international and regional

human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights. Plaintiff contended that Nigeria has a duty to fully implement its international human rights obligations, and to make necessary legislations to implement them. Plaintiff also averred that this Court is statutorily empowered to hear cases of violations of human rights.

9. Plaintiff argued that the position canvassed by the second defendant is fundamentally flawed as the issues raised by the plaintiff in his application are based not only on the domestic laws of Nigeria but on international human rights instruments over which the Court clearly has jurisdiction. Plaintiff further states that the Court is statutorily empowered to hear cases of violations of human rights, even if such cases rely in part on national laws.

10. It is a well established principle of law that jurisdiction is a creature of statute. The statute that spells out the jurisdiction of this Court is the Supplementary Protocol on the Court of Justice, specifically Article 9 thereof. For this Court to have subject- matter jurisdiction over the suit as instituted by the plaintiff, the subject matter of the suit must fall within the confines of Article 9 of the Supplementary Protocol on the Court.

11. The subject matter of the application filed by the plaintiff respondent in the instant proceedings is the violation of the right to education and human dignity. They further alleged a violation of the right of peoples to their wealth and natural resources as well as the right of peoples to economic and

social development. They claim these rights are guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights.

**12.** Article 9 of the Supplementary Protocol which governs the jurisdiction of this Court has eight subsections, which grant the Court jurisdiction on several different issues. Second defendant relied on the provisions of Article 9 (1) (a), (b) and (c) to conclude that the Court lacks jurisdiction as those sub-sections of Article 9 only govern issues relating to the application and interpretation of ECOWAS texts. However, Article 9 has several other sub sections which grant other forms of jurisdiction to the Court.

**13.** Under Article 9 (4) of the Supplementary Protocol, the Court clearly has jurisdiction to adjudicate on applications concerning the violation of human rights that occur in Member States of ECOWAS. Article 9 (4) stipulates in part that:

*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.*

**14.** The thrust of plaintiff's suit is the denial of the right to education for the people of the Federal Republic of Nigeria, denial of the right of people to their wealth and natural resources and the right of people to economic and social developments guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights of which Nigeria is a signatory. The Court has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of the Federal Republic of Nigeria, cannot oust the

jurisdiction of the Court. Second defendant's reliance on Article 9 (1) (a) (b) and (c) of the Supplementary Protocol of the Court to argue that the Court does not have subject - matter jurisdiction over human rights issues is misconceived as they failed to take cognizance of the entire provisions of Article 9. In law, an enactment must be read as a whole. This Court clearly has subject matter jurisdiction over human right violations in so far as these are recognized by the African Charter on Human and Peoples' Rights, which is adopted by Article 4(g) of the Revised Treaty of ECOWAS. As the plaintiff's claim is premised on Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights, the Court does have subject matter jurisdiction of the suit filed by the plaintiff.

**ISSUE 2.**

**WHETHER THE RIGHT TO EDUCATION IS JUSTICIABLE AND CAN BE LITIGATED BEFORE THIS COURT.**

15. Second defendant applicant contends that the educational objective of the first defendant, the Federal Republic of Nigeria, contained in Chapter II of the 1999 Constitution of the Federal Republic lies at the heart of the plaintiff's suit. Second defendant contends that the provisions of Chapter II of the 1999 Constitution are the directive principles of state policy and are therefore not justiciable. They postulate that the principles of state policy represent the ideals which the Federal Government ought to strive to achieve and do not confer any positive rights on any citizen. They stated further that the Federal Government of Nigeria has absolute powers over educational matters and that by Section 6 (6) (c) of the Constitution, jurisdiction over such issues is reserved exclusively for the Federal High Court. Again, second defendant stated that though the Constitution has imposed a duty on

all the three organs of government to strive to eradicate illiteracy and to provide free compulsory basic education, these are just educational policies which are non-justiciable. In short, the second defendant contends that the subject-matter of the suit is covered by the provisions of the Nigerian Constitution on the directive principles of state policy and cannot be determined or enforced by this Court.

16. In response, plaintiff contends that the second defendant's argument on the non-justiciability and non-enforceability of the right to education before this Court is misconceived. They stated that the right to education is recognized by the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights as legally enforceable human rights. Plaintiff contends that these international instruments which clearly recognize the right to education as an enforceable human right have been ratified by Nigeria and must be enforced as such. Finally, plaintiff contends that the fundamental objectives and directive principles of state policy in the Nigerian Constitution contain norms which are internationally recognized as enforceable social and economic rights.

17. It is important to assess the basis of the plaintiff's claims in determining the justiciability or otherwise of his claims with respect to the right of education and whether it can be litigated before this Court. Whilst second defendant contends that the right to education is one of the fundamental principles of state policy enshrined in the 1999 Constitution of the Federal Republic of Nigeria and is therefore unenforceable, plaintiff contends that the right to education is one that is internationally recognized as enforceable. Plaintiff in instituting the present action relied primarily on the International



Covenant on Economic, Social and Cultural Rights as well as the African Charter on Human and Peoples' Rights to allege that there is a right to education which has been breached. Though they factually based their claim on the Compulsory Basic Education Act and the Child's Right Act of the Federal Republic of Nigeria, they alleged a breach of the right to education contrary to Article 17 of the African Charter on Human and Peoples' Rights and not a breach of the right to education contained under Section II of the 1999 Federal Constitution of Nigeria.

18. The directive principles of state policy of the Federal Republic of Nigeria are not justiciable before this Court as argued by second defendant and that fact was not contested by the plaintiff. And granted that the provisions under the directive principles of state policy were justiciable, it would be the exclusive jurisdiction of the Federal High Court, being a matter solely within the domestic jurisdiction of the Federal Republic of Nigeria. However, the plaintiff alleges a breach of the right to education contrary to the provisions of the African Charter on Human and Peoples' Rights. The right to education recognized under Article 17 of the African Charter is independent of the right of education captured under the directive principles of state policy of the 1999 Federal Constitution of Nigeria.

19. It is essential to note that most human rights provisions are contained in domestic legislations as well as international human rights instruments. Some of the fundamental human rights, such as the right to life, have even been elevated to the status of "Ius Cogens", peremptory norms of international law from which no derogation is permitted. Hence the existence of a right in one jurisdiction does not automatically oust its

enforcement in the other. They are independent of each other. Under Article 4 (g) of the Revised Treaty of ECOWAS, Member States of ECOWAS, affirmed and declared their adherence to the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. The first defendant is a signatory to the African Charter on Human and Peoples' Rights and reenacted it as laws of the Federal Republic of Nigeria to assert its commitment to same. The first defendant is also signatory to the Revised Treaty of ECOWAS and is therefore bound by their provisions.

20. It is trite law that this Court is empowered to apply the provisions of the African Charter on Human and Peoples' Rights and Article 17 thereof guarantees the right to education. It is also well established that the rights guaranteed by the African Charter on Human and Peoples' Rights are justiciable before this Court. Therefore, since the plaintiff's application was in pursuance of a right guaranteed by the provisions of the African Charter, the contention of second defendant that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold.

**ISSUE 3.**

**WHETHER THE PLAINTIFF LACKS LOCUS STANDI TO INITIATE OR MAINTAIN THIS ACTION**

21. The second defendant herein contends that the plaintiff lacks the requisite locus standi to initiate the present proceedings because plaintiff has failed to show that he has suffered any damage, loss or personal injury in

respect of the acts alleged in the suit. They contend that the plaintiff has no right, interest or obligation that can give them the right to maintain this action; or alternatively that plaintiff does not have a sufficient or special interest in the performance of the duty sought to be enforced by the institution of this action. Therefore, second defendant urges the Court to strike out plaintiff's action for lack of the necessary locus standi.

22. Plaintiff, in his reply to the preliminary objection, contends that second defendant's argument with respect to locus standi is based on the restrictive and outdated interpretation of standing, especially in human rights matters. They contend that the modern trend in most national and international jurisprudence is to embrace a more flexible and progressive interpretation of the doctrine of standing, especially in human rights causes. They contend further that with the flexible approach in the interpretation of the doctrine of standing, any citizen is allowed to challenge a breach of a public right in court. Plaintiff outlined a number of cases in which the sufficient interest or injury test in the determination of standing was rejected in order to buttress their point. Plaintiff concluded that since the right they are seeking to enforce is a public right, they have the requisite standing to maintain the action.

23. Second defendant relied on a number of decisions from the Supreme Court of the Federal Republic of Nigeria to support their argument that a plaintiff cannot sustain an action unless he has personally suffered some injury or has shown that he has a special interest which must be protected; in the absence of that a plaintiff has no justifiable ground to invoke the jurisdiction of a court. Second defendant relied on the case of ADESANYA V.

PRESIDENT OF NIGERIA (1981) NSCC vol. 12, 146 at 147; where the Supreme Court of the Federal Republic of Nigeria stated that

*“What constitute a fact of locus standi is the exercise of a right or interest that is “worthy of protection” by Judicial discretion; the matter must attach to a right and obligation”.*

24. Second defendant also relied on the case of AJAGUNGBADE III V. ADEYELU (2000) 9 W.R.N. 92 at 99 where the Court stated in part that:

*“there are two tests used in determining the locus standi of a person” namely:*

- (a) The action must be justifiable; and*
- (b) There must be a dispute between the parties.*

25. Further, second defendant sought to buttress their point with the decision in the case of A.G. KADUNA STATE V. HASSAN (1985) 2 NWLR (Pt.7) 483, where the Supreme Court of Nigeria stated inter alia that:

*The law is that when a party's standing to sue is in issue in a case, the question is whether the person whose standing is in issue is a proper person to request an adjudication of an issue and not whether the issue itself is justiciable. The question is whether or not a claimant has sufficient justifiable interest or sufferance of injury or damage depends on the facts and circumstances of each case.*

26. Second defendant also used cases such as AWEHIMI V. AKILU (1987) 11- 12 SCNJ 151 at 200, OKOYE V. LAGOS STATE GOVERNMENT (1990) 2 NWLR (Pt.136) 115, ELENDU V. EKOABA (1995) 3 N.W.L.R 386, ADEFULU V. OYESILE (1995) 5 N.W.L.R. (Pt.122) 577 and others to support their contention that for a party to have standing, that party must have suffered some harm or prove to have some special interest which is worthy of protection. These cases clearly support the view put forward by the second defendant that a party must have suffered injury or have some special interest that warrants a judicial protection before that party would be clothed with locus standi to initiate and sustain a claim in respect of that matter.

27. The Plaintiff, on the other hand, produced a list of judicial decisions, both under domestic and international jurisdictions to augment their claim that there is a shift from a restrictive to a flexible approach to standing in cases of human rights violations and therefore a plaintiff need not establish that he has suffered injury or has a special right in order to have standing. Instead plaintiff has to show that the right alleged to have been breached is public in nature and that the matter is justiciable.

28. Plaintiff relied on the case of FERTILIZER CORPORATION KAMAGER UNION V. UNION OF INDIA (1981) A.I.R. (SC) 344, where it was stated:

*Restrictive rules about standing are in general inimical to a healthy system of growth of administrative law. If a plaintiff with a good cause is turned away merely because he is not sufficiently affected personally that could mean that some government agency is left free to violate the law. Such a*

situation would be extremely unhealthy and contrary to the public interest. Litigants are likely to spend their time and money unless they have some real interest at stake and in some cases where they wish to sue merely out of public spirit, to discourage them and thwart their good intentions would be most frustrating and completely demoralizing.

29. Plaintiff also relied in an observation in the case of ABRAHAM ADESANYA V. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (1981) 1 ALL N.L.R. 1 at 20, to bolster their argument wherein Fatayi-Williams CJN said thus:

*I take significant cognizance of the fact that Nigeria is a developing country with multi-ethnic society and a written Federal constitution, where rumour-mongering is the pastime of the market places and the construction sites. To deny any member of such a society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of our legislative Houses, whether Federal or State, is unconstitutional, access to a court of law to hear his grievance on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for organized disenchantment with the judicial process. In the Nigerian context, it is better to allow a party to go to Court and to be heard than to refuse him access to our courts. Non-access, to my mind, will stimulate the free-for-all in the media as to which law is constitutional and which law is not! In any case, our courts have inherent powers to deal with vexatious litigants or frivolous claims.*

30. Plaintiff relied on other decisions, including ATTORNEY-GENERAL OF BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION (1982) 2 NCLR 1, BRITISH AMERICAN TOBACCO V. ENVIRONMENTAL ACTION NETWORK LTD. (2003) 2 EA 377, BENAZIR BUTTO V. FEDERATION OF PAKISTAN PLD (1988) (SC) 416, KAZI MUKHLESUR V. BANGLADESH 26 DLR (SC) 44, NAACP V. BUTTON, 371 US 415 (1963), THE SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN (IRELAND) LTD. V. COOGAN (1989) IR 734, to support their stance that in public interest litigation, the plaintiff need not prove that he has personally suffered injury or that he has a special interest that has to be protected judicially.

31. The authorities cited by both second defendant and plaintiff support the viewpoints canvassed by them. However, we think that the arguments presented by the plaintiff are more persuasive for the following reasons.

32. The doctrine 'Actio Popularis' was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court.

33. Plaintiff cited authorities from around the globe to support the position that in human rights litigation, every spirited individual is allowed to challenge a breach of public right. Decisions were cited from the United States, Ireland, Bangladesh, Pakistan, India, the United Kingdom and other jurisdictions which all concur in the view that the plaintiff in a human rights violation cause need not be personally affected or have any special interest worthy of protection.

34. A close look at the reasons above and public international law in general, which is by and large in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest litigation, the plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justiciable. This is a healthy development in the promotion of human rights and this Court must lend its weight to it, in order to satisfy the aspirations of the citizens of the sub-region in their quest for a pervasive human rights regime.

### **35. DECISION ON THE PRELIMINARY OBJECTION**

- a) Whereas the second defendant filed a preliminary objection that the suit is not justiciable and that the plaintiff had no locus standing to bring the action before this court;
- b) Whereas the respondent /plaintiff argued that the court has jurisdiction to hear the case on all the issues in the relief sought;
- c) Whereas the court having deliberated on the application and the issues therein together with the response by the plaintiff;
- d) Whereas the court is satisfied that at this stage prima facie facts have emerged in support of the case that the plaintiff has proper standing to bring the action and that the matter is justiciable in this court.

### **ORDERS**

This Court hereby orders that for the foregoing reasons the preliminary objection is overruled and r



**COSTS**

The application having been refused, cost shall be within costs and in favour of the plaintiff against the second defendant.

**This Ruling is read in the Open Court to the Public this 27<sup>th</sup> day of  
October 2009.**

HON. JUSTICE HANSINE .N. DONLI  
HON. JUSTICE ANTHONY BENIN  
HON. JUSTICE SOUMANA .D. SIDIBE

PRESIDING JUDGE *Hhli*  
MEMBER *Douglas*  
MEMBER *Hy*

TONY ANENE-MAIDOH

Chief Registrar *[Signature]*

