

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



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

COMMUNITY COURT OF JUSTICE

GENERAL LIST: No. ECW/CCJ/APP/06/06

JUDGMENT No ECW/CCJ/APP/07/07

22 November 2007

Between

1. MRS. ALICE R. CHUKWUDOLUE
2. MRS. ROSEMARY ADAEZE AMANZE
3. PRINCE R. N. J. CHUKWUDOLUE (I. K.) JNR
4. PRINCESS JULIET ADAORA CHUKWUDOLUE
5. MRS. JENNIFER ADAOBA OBASI
6. MRS. CARMEN NGOZI ODERINDE
7. MRS. ALICE JANE OBIAGERI UWAOMA
8. MRS. ANGELA CHIOMA EFOSA

APPLICANTS

And

THE REPUBLIC OF SENEGAL

DEFENDANT

COMPOSITION OF THE COURT

1. Hon. Justice Aminata Mallé-SANOOGO
2. Hon. Justice Anthony A. BENIN
3. Hon. Justice Hansine N. DONLI

PRESIDING
MEMBER
MEMBER

Assisted by Aboubacar Djibo Diakité Esq.

REGISTRAR

JUDGMENT OF THE COURT

1. The Applicants, Mrs. Alice Raphael Chukwudolue, Mrs. Rosemary Adaeze Amanze, Prince R. N. J. Chukwudolue (I. K.) Jnr., Mrs. Jennifer Adaora Chukwudolue, Mrs. Carmen Ngosi Oderinde, Mrs. Alice Jane Obiageri Uwaoma, Mrs. Angela Chioma Efosa, are all Community citizens and nationals of Nigeria, a Member State of the Community; the Defendant, Senegal, is a Member State of the Community.
2. The Applicants, appearing on their own behalf and in their capacity as the Administrators and Beneficiaries of the estate of Prince Dr. R. N. J. Chukwudolue, were represented by their Counsel, Adekunle Ojo Esq., Legal Practitioners & Notaries Public, No.2 Adeboye Solanke Street, by First Bank Bus Stop, Allen Avenue, Ikeja.
3. The Defendant was represented by Professor Cheikh Tidiane Thiam, Ambassador, Director of Legal and Consular Affairs, *Place de l'Indépendance*, Dakar-Fann, Republic of Senegal; Mafall Fall, Judge, Deputy State-Attorney, Ministry of Finance, Republic of Senegal; assisted by their Counsel, *Mes. Tounkara et Associés*, Lawyers at the Court of Appeal of Dakar, 15 Bd, Djily Mbaye X, Rue de Thann, Immeuble Xeewel-1er étage, Dakar, Republic of Senegal.
4. The Applicants brought a case against the Republic of Senegal in terms of violation of their human rights and the right to inheritance of the estate of Prince Dr. R. N. J. Chukwudolue; that they have been denied access to the enjoyment of assets left for them by the deceased as an inheritance.

PRESENTATION OF THE FACTS AND PROCEDURE

5. The Applicants, who are heirs to the late Prince Dr. R. J. N. Chukwudolue (respectively his wife and children), lodged an Application on 29 November 2006 at the Registry of the Community Court of Justice, ECOWAS.
They lodged their Application through their Lawyer, Adekunle and Associates, with the following submissions:
6. That Prince Dr. Ralph Nwachukwu James Chukwudolue, Economist in Industrial Development, a Nigerian and husband of the 1st Applicant, was born on 14 May 1930 and died on 14 November 1974.
7. That the said Prince Dr. Ralph Nwachukwu James Chukwudolue, a Nigerian, deposited on 2 May 1973, a sum of Two Billion Four Hundred Thousand American Dollars (US\$2,000,400,000), and a sixty (60) kilogramme bag containing precious metals, stones, diamonds and rubies,

evidenced a certificate of deposit bearing the imprimatur of the Government of the Republic of Senegal (Defendant).

8. The Applicants claim that the said certificate of deposit was duly signed by Mr. Ousmane Fall, Commercial Attaché of the Embassy of the Republic of Senegal at Lagos, Nigeria, upon the instructions of the Senegalese Ambassador to the Federal Republic of Nigeria.
9. That the certificate of deposit dated 2 May 1973 puts the Republic of Senegal under an obligation to account for the assets deposited by Prince Dr. R. N. J. Chukwudolue.
10. That on the said certificate, Prince Dr. Chukwudolue gave instructions to the Government of the Republic of Senegal, Defendant, to go ahead with the purchase of sixty-thousand square miles (60,000 miles²) of land in Africa and Brazil, where his organisation intended to establish, with the aid of the UNO, OAU, OAS, and with all men of goodwill throughout the world, an independent State for all stateless citizens of the world for his peace, love and social gospel mission. This project did not see the light of day.
11. The Applicants maintain that the Senegalese Ambassador accredited to Nigeria took charge of the transportation of the precious stones, which he deposited at Paris.
12. The Applicants maintain that before the death of Prince Dr. R. N. J. Chukwudolue, he handed over to the 1st Applicant, the original of the certificate of deposit; but that, the Senegalese Government neither executed nor implemented the instructions of the deceased.
13. That there is no evidence to prove that the said instructions have been executed, nor, is there any proof that an amount may have been handed over to the United Nations or one of its Agencies (UNHCR), to help solve the problems envisaged by Prince Dr. Chukwudolue.
14. The Applicants maintain that till today, the Senegalese Government continues to make conversions from the said deposit.
15. The Applicants assert that due to their tender age and the traumatism associated with the death of their father, they have not been able to question the Republic of Senegal as regards the deceased's legacy.
16. That all the steps they have taken so far to recover the deposits from the Senegalese Government have remained fruitless.

17. That the Republic of Senegal, a sovereign nation, and its ally, the BCEAO, have both departed from the fundamental obligations binding them, with respect to their mandate.

18. That the Defendant, in refusing to hand over the deposit to the Applicants, had completely ignored their interests, and in so doing, the well-being, means of subsistence, human and economic rights, as well as their accommodation and education of the children have been seriously affected.

19. That the rights of the Applicants are guaranteed and protected by Articles 14, 21(1), (2) and (3) of the African Charter on Human and Peoples' Rights; Articles 9(1) (a) and 9(4) of the Supplementary Protocol A/SP.1/01/05 amending Protocol A/P1/7/91 relating to the Community Court of Justice; Article 32 of the Rules of Procedure of the Community Court of Justice; and Article 17(1) and (2) of the Universal Declaration of Human Rights.

SUMMARY OF PLEAS-IN-LAW INVOKED BY THE APPLICANTS

(1) The African Charter on Human and Peoples' Rights

20. In support of their Application, the Applicants invoke Article 4 of the Revised Treaty of the Economic Community of West African States (ECOWAS) 1993, which entrenches the observance, promotion and protection of human and peoples' rights, in accordance with the provisions of the African Charter on Human and Peoples' Rights.

21. They further invoke Articles 1, 2, 14, 21(1), (2) and (3) of the African Charter on Human and Peoples' Rights.

22. Article 2 provides: *"Every individual shall be entitled to the enjoyment of the rights and freedoms recognised 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."*

23. In the terms of Article 14 of the said Charter: *"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."*

24. Article 21(1), (2), and (3) of the said Charter provides: *"All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it."*

(2) The Universal Declaration of Human Rights

25. The Applicants also cite Article 17 (1) and (2) of the Universal Declaration of Human Rights which provides that: *“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”*

26. They stated that the action or inaction of the Senegalese Government and its Agents led to the denial of the Applicants’ right to property, thus constituting a violation of their fundamental right as guaranteed under the African Charter on Human and Peoples’ Rights, and also a violation of the provisions of the Universal Declaration of Human Rights, of which the Defendant is a signatory.

27. The Applicants urged the Court for the following orders:

(a) A declaration that the Defendant and his associates have violated the Human Rights of the Applicants, by way of their arbitrary denial and dispossession of the Applicants’ right of access to the enjoyment of their father’s assets as guaranteed and protected by Articles 14 and 21(1), (2) and (3) of the African Charter on Human and Peoples’ Rights, and Article 17(1) and (2) of the Universal Declaration of Human Rights.

(b) A declaration that the Defendant is duty-bound to render account to the Applicants regarding the deposit of the deceased, by virtue of the certificate of deposit made for the purposes of being executed, and the obligation to receive from the Defendant the services due to be rendered, that the Defendant’s refusal to render account of the items mentioned on the certificate of deposit dated 2/5/73, is illegal and contrary to the spirit of the ECOWAS Treaty and of the African Charter on Human and Peoples’ Rights, which objective is to safeguard the rule of law in the West African sub-region.

(c) A declaration that the Defendant, having refused to implement the instructions of Prince Dr. Chukwudolue, the property constituted by the deposited items must return to the heirs of the late Prince Dr. Chukwudolue.

(d) A declaration that the Applicants, as title holders to the property of Prince Dr. Ralph Nwachukwu James Chukwudolue, do have the right to ask, in accordance with the Universal Declaration of Human Rights, and the African Charter on Human and Peoples’ Rights, that the Defendant

render account and return to them the assets cited on the certificate of deposit dated 2 May 1973.

(e) An order enjoining the Defendant to account for the items appearing on the certificate of deposit dated 2 May 1973, together with the interest accruing.

(f) An order enjoining the Defendant to hand over to the Applicants the entire deposit, with all the accruing interests (or its value in cash) cited and specifically mentioned on the certificate of deposit bearing the reference number No. SN73 ARS/N, dated 2nd May 1973, and duly signed and stamped on behalf of the Defendant on at Lagos, Nigeria, by the Commercial Attaché, Mr. Ousmane Fall (3rd Defendant) on behalf of the Senegalese Government.

(g) An order against the Defendant, to pay costs in the sum of Five Million Naira (N 5,000,000).

SUMMARY OF PLEAS-IN-LAW INVOKED BY THE DEFENDANT

28. By a Memorial in Defence lodged at the Court Registry on 17 August 2007, *Mes. Tounkara et Associés*, Lawyers at the Court of Appeal of Dakar and Counsel for the Republic of Senegal, raised an Objection regarding the incompetence of the Court, as drawn, on the one hand, from the jurisdictional clause appearing on the document tendered in evidence by the Applicants, and on the other hand, as it regards the subject matter.

(1) In regard to the incompetence of the Court, as drawn from the jurisdictional clause appearing on the document tendered in evidence

29. The Defendant maintains that, from the document exhibited by the Applicants themselves, there is a clause worded as follows:

“NB: Any dispute or claim is to be referred to the World Court at the Hague, or the International Court of Arbitration and no diplomatic immunity”

30. That in compliance with this clause, the Court lacks jurisdiction.

31. That indeed, it is an accepted principle of international law that the parties to a dispute, even public entities, may choose to submit their dispute to a specific court or to an arbitration process.

32. That while relying on the evidence as tendered, the Applicants cannot escape the application of the jurisdictional clause contained therein.

33. The Defendant requests the Court to declare that it lacks the jurisdiction to adjudicate upon the case.

(2) In regard to the incompetence *rationae materiae* of the Court

34. The Defendant considers that even if the Supplementary Protocol extended the jurisdiction of the Court to include matters on human rights violation, the Applicants have but inappropriately brought their case before the Court, because their claim does not fall within the subject-matter of human rights violation.

35. The Defendant also indicates that the Applicants have no grounds for invoking, in support of their claims, Articles 14, 16, 17, and 21 of the African Charter on Human and Peoples' Rights, nor Article 17 of the Universal Declaration of Human Rights.

36. That indeed, Article 14 of the African Charter of Human and Peoples' Rights relates to the right to property – which is guaranteed for every citizen.

37. That such right to property may only be encroached upon by way of expropriation justified by appropriate compensation.

38. That Article 21 of the same Charter concerns all peoples' rights and not those of an individual.

39. That Article 16 sets out the principle of the right to physical and mental health, and entrusts the responsibility of taking the necessary measures for guaranteeing those rights, upon the State whose national insists upon such rights.

40. That the same principles stand out, in respect of the interpretation of Article 17.

41. That in the instant case, no problem arises as to Human and Peoples' rights; and that what is at stake is simply a claim to the general and common right of a group of individuals alleging that the author of their document may have entrusted to a particular State, or one of the institutions of that State, assets or valuable properties whose restitution they demand.

42. That it is a question of certain individuals relying on the deposit of a contract, and on a contract regarding power of attorney, which require execution.

43. That the present dispute is therefore one that concerns fundamentally general law, which is not within the jurisdiction of the Community Court

of Justice, ECOWAS, as provided for under Article 9 of the Supplementary Protocol A/SP.1/01/05, amending Protocol A/P.1/7/91 relating to the Community Court of Justice, ECOWAS.

44. The Defendant points out, at any rate, that the Applicants only communicated to them the photocopy of the deposit-receipt of 2nd May 1973.

45. That as a general rule, mere photocopies cannot serve as articles of proof, except where they have been certified as true copies of the original.

46. That at any rate, the Applicants' request is frivolous, for the simple reason that Prince Dr. Chukwudolue, who, as the Director of a Company while he was alive, could not have confused the Embassy of a foreign country with a bank; and also that the sums of money and precious stones could not have been transferred out of Nigeria without leaving a trace.

47. That the very content and wording of the deposit-receipt sufficiently prove the frivolity of the document.

48. That a close examination of the document reveals the following strange features and anomalies:

-The text of the receipt is written entirely in English, whereas it is supposed to be an official document of the State of Senegal, whose official language is French;

-The absence of a serial number on the receipt;

-The Ambassador is mentioned at the top of the receipt and yet he did not sign it;

-The purported signatory of the receipt never bore the title "Commercial Attaché" of the Embassy of Senegal in Nigeria; as it were, that title did not even exist at the Embassy.

49. The Defendant concludes, in the alternative:

-That the Application made by the Applicants must be dismissed, as being unfounded and vexatious;

-That the Applicants must pay to the Republic of Senegal, a token remedy, as damages;

-That the Applicants must bear the costs, to be paid in accordance with an established schedule of payment.

50. At its session of 19 November 2007, the Court decided to hear the Parties on the Preliminary Objection raised by the Republic of Senegal.

THE COURT'S ANALYSIS

As to the competence of the Court

51. Whereas the Applicants brought an Application before the Community Court of Justice on a complaint against the Republic of Senegal, for violation of their human rights and their rights as administrators and beneficiaries of the estate of Prince Dr. R. N. J. Chukwudolue, and that they were denied access to the enjoyment of the said estate.

52. Whereas they assert that the wishes and directives formulated by the deceased, as mentioned on the certificate of deposit, were never executed nor put into effect by the Government of the Republic of Senegal.

53. Whereas they maintain that all their attempts and moves to recover the assets deposited with the Embassy of the Republic of Senegal proved futile.

54. Whereas the Defendant, principally, raised the issue of incompetence of the Court, as drawn from the jurisdictional clause provided for in the certificate of deposit, as well as the incompetence *rationae materiae* of the Court, on the grounds that the present dispute does not concern Human Rights.

55. Whereas in the alternative, the Defendant refutes the arguments invoked by the Applicants, and maintains that the present dispute deals with general law, and that such law does not fall within the jurisdiction of the Community Court of Justice, in the terms of the 2005 Supplementary Protocol amending the 1991 Protocol.

DECISION OF THE COURT

1. As regards the incompetence of the Court, drawn from the jurisdictional clause

56. Whereas there exists among the documents tendered in the instant Case, particularly as is evident from the photocopy of the certificate of deposit-receipt dated 2 May 1973 tendered by the Applicants, an inscription regarding a jurisdictional clause worded as follows: "*NB: Any dispute or claim is to be referred to the World Court at the Hague, or the International Court of Arbitration and no diplomatic immunity*".

