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COMMUNITY COURT OF JUSTICE,
ECOWAS



COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO

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

HOLDEN AT ABUJA NIGERIA

WEDNESDAY THE 28TH OF JANUARY 2009

O. ECW/CCJ/APP/10/06

JUDG. NO. ECW/CCJ/JUG/01/09

LOT BAYI & 14 OTHERS

APPLICANT

AND

FEDERAL REPUBLIC OF NIGERIA

ATTORNEY GENERAL OF THE FEDERATION

ON HIS OWN BEHALF AND AS REPRESENTATIVE
OF THE FEDERAL GOVERNMENT OF NIGERIA)

CHIEF OF NAVAL STAFF

INSPECTOR GENERAL OF POLICE

COMPTROLLER GENERAL OF PRISONS

RESPONDENTS

COMPOSITION OF THE COURT

on. Justice Hansine N. DONLI

- Presiding Judge

on. Justice Awa DABOYA NANA

- Member

on. Justice El Mansour TALL

- Member

Assisted by: Mr. Tony ANENE-MAIDOH

- Chief Registrar

Counsel to the Applicants

- Chief Emefo ETUDO

Counsel to the 1st, 2nd, 4th, and 5th, Respondents

- Nnanna O. OBOM

Counsel to the 3rd Respondent

- Muhammad Danjuma ALHASSAN

JUDGMENT OF THE COURT

THE PARTIES

The Applicants are Members of crew of ship/vessel M.T CAPBRETON, represented by their Learned Counsel Bar. Chief Emefo ETUDO. The 1st, 2nd, 4th and 5th Defendants are namely, the 1st Defendant is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS). The 2nd Defendant is Minister of Justice, Attorney General of the Federal Republic of Nigeria. The 4th Defendant Inspector General of Police of Nigeria and the 5th Defendant is the Comptroller of prisons of Nigeria, all represented by Nnanna O.

Obom. The 3rd Defendant is the Chief Naval Staff of the Nigerian Marine represented by Mr. Mohammad Danjuma Alhassan.

THE FACTS OF THE CASE

After fifteen Applications dated from the 30th November 2006 and lodged in the Registry of the ECOWAS Court of Justice, the learned counsel to the Applicants brought a motion that the fifteen claims should be consolidated into one Application. The learned counsels to the Defendants did not oppose the application and the Court granted their demand by consolidating the said Applications due to the reason that they were the same in nature, subject matter and the reliefs sought; the facts of case are the following:

The said Vessel MT Capbreton, a foreign Vessel flying the flag of St Vincent and Grenadines Islands with its identified registration Number, was arrested on the 17th day of July 2003 at the coast of Forcados, a port on the high seas, sixteen (16) nautical miles of the coast of the Federal Republic of Nigeria, on the allegation that she was taking crude oil into her, a

crime of dealing in crude oil within the Nigerian territorial waters.

The said vessel originally belonged to a petro-marine and its principal Barnex Holding SA, was sold to All Shore Marine Services Ltd, which by letter of reemployment, the said crew members were reemployed. The vessel was chartered by African Sea Shipping BV, a Geneva Branch, to which she was loaded with cargo of LPFO (Low pour fuel oil) at Abidjan for discharge at Cotonou, Benin Republic. On arrival at Cotonou, the discharge was delayed as the jetty was busy and thus deviated from her goal of discharging her cargo to render help to a nearby vessel in distress, named M.T Zogu, as she could not sail due to a faulty engine, problem of shortage of clean water and diesel for both the crew and the power generator. The said vessel could not put on its lights at night due to the shortage of Diesel; which constituted a serious danger to navigation.

The Vessel, MT Capbreton and her crew, which are the Applicants, set to sail towards the distress vessel off the coast of Nigeria at 16 nautical miles where she

anchored. It was only blue waters insight and also, there were no installations within 200 meters of the vessel. While rendering assistance, the vessel MT Capbreton was spotted and arrested by a naval ship of the 3rd Defendant, NNS Kyenwa on the allegation that she was taking Nigerian crude oil into her; the alleged act being a crime under the laws of the Federal Republic of Nigeria. The vessel MT Capbreton, cargo, documents, vessel log book and the letter of reemployment of the Applicants were handed over to the Defendants, Nigerian Naval officers. The Applicants were arrested and detained in prison while the investigation was going on, in which the cargo documents alongside the substance removed from the said vessel were analyzed. The analysis showed that the cargo from MT Capbreton was actually fuel oil 180 cst (LPFO) Low pour fuel oil and not crude oil.

Notwithstanding, the above mentioned cargo documents and the result of the investigation of the substance, and despite the conclusions of the findings, the Defendants continued to detain the Applicants, during which the Applicants were

paraded before the National and International press as thieves of Nigerian crude oil. Consequently, they were charged to the Federal High Court of Nigeria on two count charges on the 27th of July 2004. Following this arrest the Defendants sought and obtained consent of the Attorney General of the Federal Republic of Nigeria to prosecute the Applicants who were foreigners but ECOWAS Community citizens. During the trial, the Defendants called fourteen witnesses while the Applicants called four witnesses. The judgment of the criminal case delivered and annexed to the Applications, ruled that the arrest of the Applicants was at 16 nautical miles off the waters and off the coast of the Federal Republic of Nigeria and the Federal High Court lacked jurisdiction except at 12 nautical miles.

Consequently, the Applicants lodged their case at the ECOWAS Court of Justice claiming that they have lost their gainful employment (1); suffered violations of their Human Rights of which they are claiming damages and interest for arrest and unlawful detention (2) attempt at the violation of their human dignity by parading the applicants as

thieves of the Nigerian crude oil (3), for the prosecution they went through (4), dispossession of their vessel MT Capbreton and its destruction (5). The Applicants pleaded material facts that the said acts complained of amounted to violations of their Human Rights pursuant to Articles 5, 6 and 2 (2) of the African Charter on Human and Peoples' Rights, which is domesticated by cap A9 Laws of the Federal Republic of Nigeria 2004. The Applicant reiterated that out of fifteen (15) Applicants ten (10) were detained till the 30th of November 2005 while five (5) Applicants were released on the 2nd of March 2004. They added that this detention was unlawful and requested the following reparation for damages:

a). Declare that the continued detention of the Applicants by the Defendant from 1st December 2003 till the 1st of March, 2004 is unlawful and amounts to the infringement of Article 6 of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, LFN, 2004 and section 35 of the Constitution of Federal Republic of Nigeria, 1999.

b). Declare that the suit instituted against the ten Applicants from amongst the fifteen on the 1st of March 2004, for proceedings against them and their continued detention till 30th of March 2005, are unlawful, void and amount to an infringement of Article 6 of the African Charter on Human and Peoples' Rights and section 35 of the Nigerian Constitution.

c). Declare that their dispossession of MT Capbreton by the Defendants, since the 1st of December 2003, then the destruction of this vessel and the Applicants' ejection from the said vessel between January/February 2004 constitutes a violation of their Human Rights.

d). Declare that the Applicants are entitled to adequate compensation from the Defendants for dispossessing them of MT Capbreton.

e). Declare that the refusal of the Defendants to compensate the Applicants for the spoliation and dispossession constitutes a violation of their rights under Article 21 (2) of the African Charter on Human and Peoples' Rights.

f). Declare that the parading of the Applicants before the International Press common thieves and thieves of Nigerian crude oil amounts to a destruction of their reputation as seamen and, their right to human dignity as entrenched by Article 5 of the African Charter on Human and Peoples' Rights.

g). Order the immediate release of all personal effects belonging to the Applicants on board MT Capbreton.

h). An order of injunction restraining the Defendants by themselves agents or privies from further arresting or detaining the Applicants in connection with the case; and condemn them to pay damages and interest to their Applications as set out in paragraph 40 to the facts in support.

After Service of the Application on the Defendants, the latter filed their responses in which they ask for the rejection of the application for reparation presented by the 1st Defendants learned counsel representing the 1st, 2nd, 4th, and 5th Defendants, and the 2nd learned counsel representing the 3rd Defendant. They claim justification for their acts in arresting, detaining and prosecuting the Applicants through two important

defences that of privity of contract of employment between the Applicants and their employers and the statute of limitation as entrenched in Article 9 (3) of the Supplementary Protocol of the Court. The claims of the Defendants are as follows:

a). Declare that the Applicants do not have claim to any relief sought in their Application for enforcement of their fundamental human rights;

b). Declare that the arrest of the Applicants and their prosecution was constitutional, lawful and in accordance with the laws of the Federal republic of Nigeria, that no violation of human rights occurred under the African Charter on Human and Peoples' Rights;

c). Declare that no reputation of the Applicants was soiled, despite the fact that after the said trial they were discharged and acquitted by the Federal High Court of Nigeria;

d). Declare that the claim is statute barred.

e). Order the dismissal of the claim on the grounds that it is arbitrary, speculative, lacked merit and an abuse of the process of the Court;

AL ARGUMENTS BY THE PARTIES AND CONSIDERATIONS HE COURT

Learned Counsel to the Applicant, Chief Emefo Esq. made the following legal submissions:

He submitted that by treaties, all Nations covenanted to enforce the provisions of the UN Charter on Human Rights in all Member States that ascribed or assented to the Charter. In line with this, the learned counsel contended that the detention of the Applicants from the 1st of December 2003 to 30th November 2005 was without justification, abusive and their dispossession of MT Capbreton on the above mentioned dates, as well as in parading them before the world press in Nigeria in 2004 as thieves of Nigerian crude oil was unjustified being that the spot of arrest was at 16 nautical miles outside the territorial waters off the coast of Nigeria; and that they were only rendering assistance to a distressed vessel pursuant to the provisions of Article 98 of the UN Convention of 1982 on maritime law.

