



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

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

In the Matter of

SHALIMAR ABBIUSI V THE REPUBLIC OF GHANA

Application No: ECW/CCJ/APP/03/24; Judgment No. ECW/CCJ/JUD/41/24

JUDGMENT

ABUJA

22 November 2024

JUDGMENT NO. ECW/CCJ/JUD/41/24

SHALIMAR ABBIUSI

- APPLICANT

THE REPUBLIC OF GHANA

- RESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Ricardo Cláudio Monteiro Gonçalves

-Presiding

Hon. Justice Sengu Mohamed Koroma

-Member

Hon. Justice Dupe Atoki

- Member/Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar

REPRESENTATION OF PARTIES

Hon. Francis-Xavier Kojo Sosu (ESQ)

- Counsel for the APPLICANT

Dr. Sylvia Adusu

- Counsel for the RESPONDENT



I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (herein after referred to as the Court), delivered virtually in open Court pursuant to Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF PARTIES

2. The Applicant is a Belgian citizen who has been residing in Ghana for about five (5) years. She is the spokesperson of a new political movement known as the New Force which seeks to challenge the status quo of governance and politics in Ghana.
3. The Respondent, the Republic of Ghana, is a member of the Economic Community of West African States (ECOWAS), a signatory to the ECOWAS Treaty and its protocols, the African Charter on Human and People's Rights and other International Human Rights Instruments

III. INTRODUCTION

4. The subject matter of this application is centred on an alleged unlawful arrest and detention of the Applicant by Immigration officers of the Respondent upon being invited for questioning at their office which the Applicant alleges violates her right to liberty, to fair hearing, to freedom of movement and to freedom from discrimination, all enshrined in the African Charter on Human and Peoples Rights to which the Respondent State is a party.

IV. PROCEDURE BEFORE THE COURT

5. The initiating application dated 19 January 2024, was served electronically on the Respondent on the same date.
6. Applicant's application for Default Judgment, dated 30 April 2024 was also served electronically on the Respondent on 02 May 2024.
7. Respondent's Statement of Facts in response to the Applicant's Application for Default Judgment, dated 07 June 2024 and served on 10 June 2024 electronically.



8. On 8 July 2024, a virtual Court session was convened wherein both parties were represented by Counsel in Court. At the sitting, the Court noted that the Respondent was not properly before it, as its response had not been properly lodged. The Court noted that the only document lodged by the Respondent was filed out of time without a reasoned application for extension of time. To this end, the Court ruled that the application initiated by the Applicant remains undefended.
9. In that regard, Applicant craved the indulgence of the Court to move its application for judgment to be entered by default after which the matter was adjourned for judgment.

V. APPLICANT'S CASE

a) Summary of Facts

10. Applicant asserts that on 01 December 2023, she was invited by the Immigration Service for questioning regarding her residence permit. On 04 December 4, 2023, she complied with the invitation by appearing at their office. However, upon her arrival, the invitation was converted into an arrest, followed by her detention. She was not brought before a court of competent jurisdiction within 48 hours, as required by Article 14(3) of the 1992 Constitution of the Respondent's State.
11. The Applicant was subsequently charged with an offence under section 52(1) of the Immigration Act 2000 (Act 573), before the District Court, Kaneshie where she was granted bail, and the matter was set for trial on 19 December 2023.
12. Applicant filed a motion for disclosure at the District Court to have access to the documents in the possession of the Ghana Immigration Service to enable her to properly prosecute her case. Similar request was made to the Ghana Immigration service to furnish her with documents they claimed they relied on to charge her but same was refused.
13. Applicant contends that her detention and mandatory reporting to the Ghana Immigration Service under her bail conditions were marred by persistent threats of deportation, undermining her right to a fair trial even before her case could be heard by the District Court. She then filed a human rights

action at the High Court (Human Rights Division) against the Comptroller General, the Minister for the Interior, and the Attorney General, seeking various reliefs.

14. On December 19, 2023, the Immigration Service withdrew the pending criminal charges against Applicant but immediately re-arrested her without providing any reasons for the arrest. She claims she was forcibly taken into a van, escorted by armed Immigration officers, and transported to the National Investigations Bureau. There, she was served with a notice of removal and a permit revocation, signed by the Comptroller General, despite the ongoing human rights case of which the Respondents had been properly notified.
15. Applicant was given 24 hours to leave the country and was subsequently detained. That same night, she was forcibly deported to Belgium, escorted by Immigration officers, without the High Court having an opportunity to hear her case.
16. The Applicant further alleges that during her seven-day detention, she was denied access to her counsel, even during interrogation. She claims to have suffered severe psychological and emotional trauma, as well as anxiety, which have negatively affected her overall quality of life. Applicant asserts that the actions of the officials of the Respondent were arbitrary, unlawful, and violated her fundamental rights.

b. Pleas in law

- i. Applicant relied on the following laws:
- ii. Article 6 and 15 of the ECOWAS Revised Treaty
- iii. The 1991 Protocol on the Court A/P. I/7/91
- iv. The 2005 Supplementary Protocol on the Court A/SP. I/01/05
- v. Articles 2, 3, 6, 7(1) (a), 12 of the African Charter on Human and People's Rights
- vi. Articles 2, 7, 9, 10 and 13 of the Universal Declaration of Human Rights
- vii. Articles 2, 5(2), 9, 12, 14 and 26 of the International Covenant on Civil and Political Rights
- viii. Principles 2 and 11 of the Body of Principles for the protection of all persons under any form of detention or imprisonment.
- ix. The 1992 Constitution of the Republic of Ghana

x. The Criminal and other Offences (Procedure) Act of Ghana

c. Reliefs Sought

17. The Applicant is seeking the following reliefs from the Court:

- a. A declaration that every individual within the territorial jurisdiction of the Republic of Ghana is entitled to the internationally recognised human rights enshrined in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Body of Principles for the protection of all persons under any form of detention or imprisonment; and the African Charter on Human and Peoples' Rights.
- b. A declaration that the Republic of Ghana has an obligation to respect, protect and fulfil within the territorial jurisdiction of the Republic of Ghana the internationally recognised human rights of every individual enshrined in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Body of Principles for the protection of all persons under any form of detention or imprisonment and the African Charter on Human and Peoples' Rights.
- c. A declaration that the Republic of Ghana has violated the Applicant's rights to liberty and security of her person and freedom from unlawful and arbitrary arrest and detention enshrined in Article 9 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights; Principles 2 and 11 of the Body of Principles for the protection of all persons under any form of detention or imprisonment and Article 6 of the African Charter on Human and Peoples' Rights.
- d. A declaration that the Republic of Ghana violated the Applicant's rights to fair hearing and administrative justice, enshrined in Article 10 of the Universal Declaration of Human Rights; Articles 5(2); and 14(1) of the International Covenant on Civil and Political Rights; and Article 7(1)(a) of the African Charter on Human and Peoples' Rights.

- e. A declaration that the Republic of Ghana has violated the Applicant's rights to equality before the law and freedom from discrimination enshrined in Articles 2 and 7 of the Universal Declaration of Human Rights; Articles 2; 14 (1); and 26 of the International Covenant on Civil and Political Rights; and Articles 2 and 3 of the African Charter on Human and Peoples' Rights.
- f. A declaration that the Republic of Ghana has violated the Applicant's rights to freedom of movement enshrined in Article 13 of the Universal Declaration of Human Rights; Article 11 of the International Covenant on Civil and Political Rights; and Article 12 of the African Charter on Human and Peoples' Rights.
- g. An order directed at the Republic of Ghana to pay compensatory damages of Ghana Cedis Equivalent of One Million United States Dollars (USD 1,000,000.00) to the Applicant who is a victim of human rights violations by the Republic of Ghana.
- h. Costs including legal fees on full indemnity basis.
- i. Any other order(s) or direction(s) as the Court deems appropriate for giving effect to or enabling effect to be given to the declarations made herein.

VI. RESPONDENT'S CASE

18. The Respondent, although duly served with the initiating Application and other processes filed by the Applicant, did not file a defence or other process in response to the action.

APPLICATION FOR DEFAULT JUDGMENT.

19. At a session of the Court on 08 July 2024, both parties were represented in Court. The Respondent was served with the initiating application on 19th January 2024, having not filed a defense within time, on 02nd May 2024, the Applicant filed an application for default judgment. On 10th June 2024, the Respondent filed a response to the application for default judgment. On 8th July 2024, when the case was heard, while the Respondent entered their appearance, the Court had no record of a defense to the initiating application and the response to the application for default judgment was filed out of time without a reasoned application for extension of time to file same.

20. However, after the Court's hearing on the 8th of July 2024, the Registry received the Respondent's application for extension of time to file their defense along with the substantive defense which was filed on the 17th of July 2024.
21. At the hearing, counsel for the Applicant submitted that by Article 35 of the Rules of the Court, a Respondent has one month within which to file a defence when it has been served with an Initiating Application. Further, Article 90(1) of the Rules of the Court, allows that in default of such defense by a Respondent, the Applicant can apply for judgment by default.
22. In that regards, she contended that the time limited for the Respondent to file its defence had elapsed for over four (4) months, having been served with the initiating application on 19 January 2024, thereby entitling the Applicant to apply for default judgment. She, therefore, urged the Court to grant a judgment in default in her favour.
23. The Applicant, having met the criteria under Article 90 (1), (2) & (4) the Court granted the Applicants prayer for judgment to be entered in default of a defense by the Respondent.

Analysis of the Court.

24. Considering that such judgment is not entered as a matter of course same required to comply with Articles 34 and 35 of the Rules, the Court proceeded to examine the compliance with these rule.
25. The Court notes that the Applicant's submission under Articles 35 and 90(1) of the rules of Court are consistent with the provisions therein for an application for default judgement. However, in granting the said default judgment, the Court is guided by Article 90(4) of the Rules of the Court which states that: "*Before giving judgment by default the Court shall, after considering the circumstances of the case consider: (a) Whether the application initiating proceedings is admissible (b) Whether the appropriate formalities have been complied with, and (c) Whether the application appears well founded*".

26. The Court in interpreting the above Article has formulated the following conditions to be met in granting a judgment in default : (a) it has jurisdiction over the matter; (b) the application is admissible; (c) all formalities, including notice to the Respondent, have been complied with; and (d) the application is well-founded. See CHUDE MBA V. REPUBLIC OF GHANA [2013] CCJELR 335 MOHAMMED EL TAYYIB BAH V. THE REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/11/15 @ pg.6.

27. The Court will examine each of these requirements in turn.

VII. JURISDICTION.

28. The jurisdiction of the Court to determine claims of human rights violations gains credence from Article 9 (4) of the Supplementary Protocol on the Court. A/SP.1/01/05: *“The Court has the jurisdiction to determine cases of violation of human rights that occur in any Member State.”*

29. The case before the Court presents various violations of human rights contrary to the guarantees enshrined in the fundamental human rights treaties to which the Respondent State is a party. These rights include the right to liberty, right to fair hearing, freedom of movement and freedom from discrimination.

30. The Court is therefore satisfied that it has the jurisdiction to adjudicate on the matter. The Court so holds.

VIII. ADMISSIBILITY

31. Article 10 (d) of the Rules of Court outlines three key requirements for the admissibility of a matter concerning human rights violations. They are: (a) the Applicant’s victim status or standing, (b) the non-anonymity of the Application; and (c) the non-pendency of the matter before another international Court or tribunal. AZIAGBEDE KOKOU & OTHERS V REPUBLIC OF TOGO [2013] CCJELR 167 PARA 18.

32. The Applicant has demonstrated her standing or victim status by presenting sufficient facts which, *prima facie*, show that the conduct of the Respondent’s immigration agency has adversely affected her human rights

including the right to liberty, right to fair hearing, right to freedom of movement and freedom from discrimination. Additionally, the application is not anonymous, and the Court has no record that the same matter has been instituted before another International Court for adjudication. In light of these considerations, the Court finds that the Application has met the requirements for admissibility and so declares.

On compliance with formalities

33. Articles 34 and 35 of the Rules of the Court set out the two formalities that need to be satisfied for the grant of an application for default judgment. It must therefore be shown that (i), the initiating Application was served on the Respondent to enable it to present a defence; and (ii), that the application for default judgment was also served on the Respondent for a chance to respond. This is in keeping with the principle of *audi alterem partem* by giving the Respondent an opportunity to be heard. In that regard, “the first formality that must be observed throughout the process has to do with the adversarial principle which aims at notifying the Respondent that an application has been filed against him/her at the Court and offering him/her the opportunity to defend”. CHUDE MBA V. REPUBLIC OF GHANA [2013] CCJELR 335 (PARAS 70-74).
34. In the instant case, it has been established that the Respondent was served with the initiating application on 19 January 2024, and the application for default judgment was also served on the Respondent on 02 May 2024. The Respondent has failed to respond to either process, despite having the opportunity to do so under the Rules of the Court.
35. In view of the established sequence of compliance, the Court is satisfied that the appropriate formalities have been complied with.

On whether the Application is well founded

36. Article 90 (4) of the rules is instructive in this regard. It states that: “Before giving judgment by default, the Court shall, after considering the circumstances of case, consider: Whether the initiating application initiating the proceedings is admissible; whether the appropriate formalities have been complied with; and whether the application appears well founded.”

37. Having ascertained that all appropriate formalities have been complied with, the Court must now move to consider whether the facts and evidence submitted by the Applicant are sufficient to support a judgment in her favour. The Court in determining whether an Initiating Application is well-founded to justify granting a default judgment, it must consider whether the legal claims in the Application and the supporting evidence sufficiently establish the Applicant's case, particularly given the Respondent's failure to respond. (See *Chude Mba v. Republic of Ghana* [2013] CCJELR 335, paras 75 & 102). This the Court will do by considering the merits of the case vis-a-vis the totality of evidence brought forward by the Applicant in support of her case. SUNDAY ADEYEMO V REPUBLIC OF BENIN ECW/CCJ/JUD/50/23 PG. 12.

38. It is imperative to reaffirm that where a party fails to appear or defend a claim brought against it, it does not follow that the Court will enter "judgment automatically in favour of the party appearing, since the Court is required...to 'satisfy itself' that that party's claim is well founded in fact and law". In other word, the Court must attain the same degree of certainty as in any other case that the claim of the party appearing is sound in law, and, so far as the nature of the case permits, that the facts on which it is based are supported by convincing evidence." CHUKWUEMEKA EDEH V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/36/24 @ pg. 13, MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/11/15 @ pg.6 . See also MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA V UNITED STATES) (MERITS; JUDGMENT) [1986] ICJ REPORTS 14 (PARA 28), and para 29.

IX. MERITS

39. Flowing from above, the Court will now proceed to examine the facts presented by the Applicant to satisfy itself that the application is well founded. In that regards, the Court is called upon to make four substantive legal determinations concerning the alleged violations resulting from the acts of the Respondent: (a) alleged violations of the rights to liberty contrary to Article 6 of the African Charter; (b) alleged violation of the right to fair hearing contrary to Article 7 of the African Charter; (c) alleged violation of the right to free movement contrary to Article 12 of the African Charter; and (d) alleged violation of the right to freedom from discrimination under Article 2 of the African Charter. The Court will examine these issues seriatim.

40. The Court at this point deems it necessary to emphasize that, while the violations of the rights in question were constructively executed by the agents of the Respondent, namely the Immigration officers of the Republic of Ghana, the underlying principle remains that a State bears responsibility for the actions or omissions of its agents performed in the course of their official duties. Accordingly, all acts, omissions of the Immigration officer will be imputed on the Respondent.

On allegation of Arbitrary Arrest and Detention.

41. Regarding the allegation of arbitrary arrest and detention, the facts indicate that the Applicant was allegedly arrested and detained on two occasions. First at the point of questioning, and secondly on the premises of the Kaneshie District Court in Accra upon withdrawal of the charges against her.

On allegation of arrest and alleged arbitrary detention at the point of questioning.

▪ *Arrest*

42. As it concerns the Applicant's allegation that her attendance of an invitation by the immigration officers was transformed to an arrest, she did not allege that the arrest was arbitrary, rather her grouse was on the legality of the attendant detention. Having not raised any issue with regards to the alleged arrest, the Court will not proceed to examine its lawfulness or arbitrariness.

▪ *Detention*

43. Applicant's case in this regard is that she was invited on 01 December 2023 by Immigration officers of the Respondent in relation to her residence permit. On 04 December 2023, she presented herself to honour the invitation where upon she was detained, and denied access to her counsel, interrogated for hours and the unlawful detention continued for 7 days. That she was only charged before the Kaneshie District Court in Accra Court on 06 December 2024. Additionally, she stated that upon detention, she was not brought before a court of competent jurisdiction within 48 hours, as required by Article 14(3) of the 1992 Constitution of the Respondent.

44. Consequently, she alleged that her detention under these circumstances was arbitrary and violates her right under Article 6 of the African Charter.

Analysis by the Court

45. The applicable law on the right to liberty is provided in Article 6 of the African Charter as follows: *“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”*

46. The import of this provision is that the right to liberty is guaranteed albeit with certain conditions. This implies that while the right can be restricted, any such interference must strictly adhere to the provisions of the law.

47. A detention refers to the confinement or restriction of a person’s freedom for a specific purpose which may or may not lead to criminal charges. It can occur for various reasons, such as pending investigation, trial, or as part of immigration control. In that regards, detention as deprivation of liberty can also occurs as soon as an individual is forcibly held in a police station or prison or when an authority orders him/her to remain in a certain place. MR. CHERIF MADI v. REPUBLIC OF NIGER ECW/CCJ/JUD/24/2022 @ pg.24 para 124/125.

48. Detention is often seen as a preventive measure to ensure compliance with legal processes, maintain public order, or safeguard national security. However, the practice is subject to legal frameworks and must align with principles of justice, including the right to a fair trial, protection from arbitrary detention, and adherence to due process.

49. It is not in dispute that the Applicant was detained on the 1st of December 2023 when she responded to an invitation from the immigration officers who restricted her movement and confined her to the immigration office. Effectively the Court finds that her liberty was deprived. The Court will proceed to determine whether as alleged by the Applicant the said detention was arbitrary. As earlier clarified the prohibition in Article 6 of the African Charter is not absolute, as it can be interfered with in accordance with the provisions of the law. In this regards, Article 6 of the African Charter guarantees the right to liberty of an individual but makes the deprivation

of this right where appropriate subject to the ‘*reasons and conditions previously laid down by law*’.

50. The phrase “*in accordance with the law*” connotes legality. That is, the relevant action must be carried out within the confines of a law- domestic or international, which will otherwise render it illegal. It is a well-established principle of law that no action can survive on illegality which is captured in the Latin phrase: *Ex turpi causa non oritur actio*.
51. Consequently, in order to meet the requirement of lawfulness, detention must be “in accordance with a procedure prescribed by law”. This means that detention must conform to the substantive and procedural rules of national law or international law where appropriate. FEDERATION OF AFRICAN JOURNALISTS & 4 ORS V. REPUBLIC OF THE GAMBIA ECW/CCJ/JUD/04/18 @ pg. 52
52. The starting point in determining whether a person has been deprived of his liberty in relation to an alleged detention is to consider whether such curtailment is lawful, having a legitimate base, in other words it is lawfully founded. Thereafter the detention must be subject to the test of arbitrariness. In this regard, it is imperative to distinguish between a lawful detention and an arbitrary detention.
53. For a detention to be considered lawful, it must be provided for by the law which supports its lawfulness. It is imperative to state that a detention may be lawful yet arbitrary where the appropriate safeguards are absent, but a detention cannot be arbitrary without being lawful in the first place. Thus, lawfulness serves as a foundational requirement however, additional safeguards are essential to prevent arbitrariness. See KODJO ALAIN VICTOR CLAUDE V REPUBLIC OF COTE D'IVOIRE ECW/CCJ/JUD/ 09/21@ pg. 13 para 37.
54. It is therefore important to examine the alleged detention to determine whether it is legally founded, in other words whether it is in accordance with the law.

55. In determining the lawfulness of the alleged detention, the burden rests on the State to prove the legality of a detention. Whilst the Respondent in the instant case failed to defend the allegation, the Court must nevertheless in satisfying itself of the merit of the Applicant's case, examine all facts and documents submitted to reach a justifiable finding. In that regards the Court notes the charge sheet (Exh SA1) annexed to the Initiating Application contains a sole count alleging that the Applicant obtained a student permit by false declaration contrary to Article 51 (1) (i) & (j) of the Immigration Act. This is in consonance with the Applicants statement that she was invited in respect of her resident permit.
56. The combination of the offence contained in the charge sheet indicating a falsehood in obtaining a resident permit and the Applicant's confirmation of the reason for her invitation is sufficient to convince the court that her detention is justified under Article 51 (1) (i) & (j) of the Immigration Act. This Act categorizes immigration offences to which detention is justified one of which is when "*.... A person who "(i) by false declaration obtains or attempts to obtain for himself or any other person any registration certificate, card, passport, permit or visa, or any other certificate.*"
57. The power of arrest and detention is equally conferred on the immigration officers by virtue of Section 22 of the Immigration Act (2000) which grants: "*An immigration officer enforcing this Act has the authority and powers of a police officer relating to arrest, detention and search*" These powers "*include upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana*".
58. From these facts and laws, the Court is able to reach a finding that the detention of the Applicant was lawful, the offence having been provided by law and detention premised on reasonable grounds of suspicion of committing a criminal offence viz falsification of a student permit contrary to Section 52 (1) (i) of the Immigration Act 2000 (Act 573).
59. The Court must at this point establish whether the detention was arbitrary. The established international human rights jurisprudence sets three criteria to determine whether or not a particular deprivation of liberty is arbitrary, namely, the lawfulness of the deprivation, the existence of clear and reasonable grounds and the availability of procedural safeguards against

arbitrariness. These are cumulative conditions and non-compliance with one makes the deprivation of liberty arbitrary. *ONYACHI AND NJOKA V TANZANIA* (2017) 2 AFCLR 65 ph. 130-131.

60. As earlier indicated, any action depriving the liberty of a person must be in accordance with the law and in this regards the domestic law. One of such procedural safeguards provided in the laws of the Respondent is that a suspect must not be detained beyond 48 hours without being presented before a court of competent jurisdiction. For this purpose the Court is guided by Section 14 (3) (b) of the 1992 Constitution of Ghana which provides thus: *(3) A person who is arrested, restricted or detained— (b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before a court within forty-eight hours after the arrest, restriction or detention.*
61. The Applicant alleged that she was not arraigned before the Court within 48 hours of her detention and same not being in accordance with the provision of the Constitution of the Respondent is arbitrary.
62. The Court recalls that the Applicant alleged she was invited by the immigration officers in respect of her resident permit on the 1st of December 2023 and she honored the invitation on the 4th of December 2023 following which she was detained. She was subsequently charged with an offence under Section 52 (1) (i) of the Immigration Act 2000.
63. The evidence before the Court in particular the charge sheet shows that she was charged to Court on 06 December (EXH SA1) having been detained on 04 December. In the absence of specificity regarding exact time of detention and arraignment before the Court, a simple mathematical calculation of the period between 4th of December 2023, when she presented herself at the Immigration office, to 6th of December 2023 gives a 48-hour range.
64. It is trite that he/she who alleges must prove. The Applicant failing to give the precise time she was detained on the 4th of December as well as precise time she was presented before the Court on the 6th of December, The Court is of the considered opinion that the detention is not outside the 48-hour range as prescribed by Section 14 (3) (b) of the 1992 Constitution of Ghana.

65. The Court therefore finds that this allegation not being substantiated holds that the detention in this regard is in accordance with the law.
66. In the same development, the Applicant alleged that upon her detention she was continually interrogated and kept in custody for 7 days accordingly her detention in this regard is arbitrary. The understanding of the Court is that the Applicant arrived at the immigration office on the 4th of December 2023 and was charged and arraigned before the Court on the 6th of December 2023 but was granted bail on December 19th, 2023, fixed for the hearing of the case.
67. Having been granted bail on the 6th of December 2023, the allegation that she was kept in custody for 7 days is obviously incorrect. A simple mathematic calculation shows the Applicant was in custody for two (2) days. Consequently, the Court finds that the allegation of detention for seven (7) days is unsubstantiated.
68. Based on the totality of the facts deposed to and the documentary evidence submitted, the Court is able to reach a finding that the detention of the Applicant at the immigration office on the 4th of December 2023 for purposes of interrogation on account of a reasonable suspicion of having committed an offence prohibited under the Immigration laws of Ghana, and having been presented before a Court of law within the prescribed time limit was carried out in accordance with the law.
69. Consequently, a detention made within the confines of the appropriate domestic law and other relevant international instruments cannot be said to be arbitrary. NOEL MIAN DIALLO V NIGERIA & ANOR ECW/CCJ/JUD/14/19 @ pg. 12& 13.
70. The allegation of arbitrary detention on this head is hereby dismissed.
- *On Arrest of the Applicant upon withdrawal of charges.*
71. Applicant alleged that following the withdrawal of criminal charges against her on 19 December 2023, the Respondent immediately re-arrested her on the premise of the District Court Kaneshie without informing her of the reason for her arrest. She further contends that the arrest was executed with excessive force and that her counsel was not informed of her whereabouts

until the following day. Furthermore, she was given 24 hours to leave the Country and was thereafter deported. She therefore alleges that her arrest is arbitrary.

Analysis by the Court

72. As earlier stated, an arrest or detention must be carried out in accordance with the law which can be the domestic law of the Respondent. Thus, the facts as narrated by the Applicant must be examined against the provision of the law of the Respondent and in this regard the relevant provision on arrest is as follows: Section 14 (2) of the Ghana Constitution of 1992 provides that : “(2) *A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.*”

73. The procedure requiring a suspect arrested to be informed of the reason for the arrest is fundamental to the principle of natural justice and due process. It is imperative for the suspect at the time of arrest to be given enough details to enable an on-the-spot decision regarding the need of a lawyer to contest the allegation. The reasons should include not only the general legal basis for the arrest, but also sufficient factual details to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim. The "reasons" concern the official basis for the arrest, not the subjective motivations of the police officer who made the arrest. This information should be provided immediately after the arrest. MATCHI DAOUDOU and SOCIÉTÉ COMMERCIAL POLIVANTE (SCP) SARL-U V STATE OF THE TOGOLESE REPUBLIC ECW/CCJ/JUD/38/22@pg.45 Para 232-233.

74. This position is also supported by the African Court on Human and Peoples Right when it held that “The Human Rights Committee in its General Comment 35 on Article 9 of the ICCPR (*Liberty and Security of Person*), has recognised that “*not only must the deprivation of liberty be in accordance with laid down laws, but must also be accompanied with procedural safeguards to ensure that such deprivation is not arbitrary. One of these procedural safeguards is that an arrested person must immediately be informed at the time of his arrest, of the reasons for his arrest and charges against him*”. See African Court decision in APPLICATION NO 005/2013, ALEX THOMAS v. UNITED REPUBLIC OF TANZANIA.

75. The Applicant in supporting her claim that her re-arrest was arbitrary submitted that she was immediately re-arrested on the ground of the Court without any information on the reason for her arrest and whisked to the National Investigations Bureau, where she was handed a notice of removal and a deportation order.

76. Whilst the Applicant was aware of the reason for her arrest and detention at the immigration office for which she was charged, the Respondent having voluntarily dropped the charges is indicative that the Applicant is exonerated from the charge in question. She may however be re-arrested and charged with another offence subject to compliance with the law. It is not expected that the Applicant assumes that the re-arrest is in respect of the earlier charge which was withdrawn.

77. Though the officials of the Immigration Service have the power to arrest or detain any person on suspicion of having committed any immigration offence, the right of anyone arrested to be informed of the reason for his arrest at the time of arrest is sacrosanct and cannot be dispensed with under any circumstances. In the absence of any evidence to controvert the assertion of the Applicant that she was not informed of the reason for her arrest on the 19th of December 2023, the Court is convinced that she was not informed of the reason for her re-arrest.

78. Consequently, the failure to promptly inform the Applicant of the reasons for the arrest is not in accordance with Section 14 (2) of the Ghana Constitution of 1992 and same not in accordance with the law, renders such arrest clearly in violation of the provisions of Article 6 of the African Charter. MARTIN GEGENHEIMER & 3 ORS V FEDERAL REPUBLIC OF NIGERIA & 1 or ECW/CCJ/JUD/03/21 @ pg. 23 para 81-82. See also MATCHI DAOUDOU supra @ pg. 45 para 231.

- Detention after re-arrest.

79. The Applicant alleged that after she was re-arrested in the premises of the Court, she was detained in an undisclosed location for over 12 hours without access to her counsel and was subsequently deported. In that regard, the Applicant allege that her detention is arbitrary.

Analysis of the Court.

80. While these allegations remain uncontroverted, the Court must be convinced that while the right to liberty is guaranteed, the Applicant's right was infringed upon contrary to the law. ALEX NAIN SAAB MORAN V REPUBLIC OF CABO VERDE ECW/CCJ/JUD/07/2021 @ pg. 39 Para 165.
81. The first rule of the thumb is that a detention no matter how short must be legally founded. In other words, the offence and power of detention must be provided by law. The uncontroverted facts before the Court is that the Applicant was not informed of the reason for her arrest neither was she informed of same within the period she was detained. The Court not been presented with any reason for the detention is unable to determine its legality. The detention having not been proved to be provided for by law and the Applicant not also been informed of the reason cannot be said to be legally founded. The Court is therefore convinced that the detention after the re-arrest was not in accordance with the law.
82. The Court however notes that the Applicant alleged in paragraph 4.15 of her initiating application that upon arrival at the National Investigations Bureau, she was issued a notice of removal and permit revocation under the hand of the Comptroller General. Could this be considered to amount to disclosure of ground for arrest and subsequent detention?
83. The Court must emphasize that there is a distinction between a notice of removal and grounds for arrest or detention. A notice of removal and permit revocation which merely informs a party of their impending removal from the country, cannot be substituted for the legal obligation to provide the specific reasons for an arrest and detention. While the former addresses immigration status, it does not fulfill the requirement to formally notify such persons of the grounds for their arrest or detention (a precursor to the deportation), which constitutes a separate and distinct legal safeguard.
84. The position was affirmed by European Court of human rights when it held that: "...As a crucial part of the Convention's protective framework, individuals must be told, in clear, straightforward language that they can

understand, the legal and factual basis for their arrest, enabling them to challenge the legality of the detention in Court if they choose to do so. The Court stressed that authorities must provide specific legal and factual grounds for detention and cannot merely use the deportation process as a blanket justification. ČONKA v. BELGIUM (*Application no.51564/99*) JUDGMENT STRASBOURG 5 February 2002 pgh.50. See also KHALIFA AND OTHERS V. ITALY [GC], 2016, § 115). See also SAADI V. THE UNITED KINGDOM (*Application no. 13229/03*) JUDGMENT STRASBOURG 29 January 2008. Ph. 84. See also M.A. V. CYPRUS (2013).

85. On the whole, the Court finds that the detention of the Applicant at the first instance following an invitation was lawful, same being premised on lawful grounds and upon reasonable suspicion of having committed a criminal offence. However, in light of the foregoing, and in the absence of an adequate demonstration by the Respondent that the second detention was lawful having been carried out based on a provision of the law, the Court concludes that the re-arrest and subsequent detention of the Applicant after the charge was withdrawn was arbitrary and violated her right to liberty contrary to Article 6 of the African Charter.

▪ *On alleged violation of the Right to Fair Hearing*

86. The case of the Applicant is that throughout her detention and reporting to the Ghana Immigration service every other day per the conditions of her bail after same was granted by the court, she was threatened with deportation by officials of the Ghana Immigration Service

87. That Applicant's right to a fair trial under Article 19 of the 1992 Constitution of the Republic of Ghana was thus under threat of being violated by the Ghana Immigration service as they had evinced an intention to unlawfully deport the Applicant from the country before the hearing of her matter before the District Court.

88. In further support of this allegation, the Applicant cited several international human right laws that guarantee the right to fair hearing and stated under paragraph 5.20 of the Initiating Application thus: "*Your Excellences, as already elaborated in the summary of facts, the agents of the Respondent arbitrarily arrested the Applicant after failing to prove*

their case against her in Court and further proceeded to detain her for over 12 hours in an undisclosed location, unlawfully without any recourse to a fair trial in Court to defend herself. Your Excellences, we strongly believe the acts and conduct of the Respondent has demonstrated an explicit disregard for the fundamental human and civil rights of the Applicant herein. Naturally, it would be undeniably untenable that State agents can be allowed to carry out such unhinged violations against the civil rights of not only foreigners to a state but to their own citizens as well. The right to a fair trial is an undeniable human right and we entreat this Honorable Court to intervene on behalf of the Applicant in remedying the violations meted out on her by the agents of the Respondent.

89. She consequently sought a relief for a declaration that the Respondent violated her right to fair hearing.

Analysis by the Court

90. The right to fair hearing is encapsulated in Article 7 (1) of the African Charter and it comprises of: a). the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; b). the right to be presumed innocent until proved guilty by a competent court or tribunal; c). the right to defence, including the right to be defended by counsel of his choice; d. the right to be tried within a reasonable time by an impartial court or tribunal.
91. The intendment of the right to fair hearing is to ensure that the procedural safeguards during the proceeding of a trial should not prejudice the accused, the general public or the victim. The essence of the right to a fair hearing lie in its role as a fundamental safeguard of justice and fairness in the conduct of legal proceedings. It aims to protect individuals from arbitrary decisions and ensures that disputes are resolved in a manner consistent with the principles of equity and due process. These safeguards as enumerated above are therefore sacrosanct.
92. The Court notes that in the whole narration supporting the allegation of the violation of her right to fair hearing, the only submissions made in this context are as follows: *“the agents of the Respondent arbitrarily arrested the Applicant after failing to prove their case against her in Court and further proceeded to detain her for over 12 hours in an undisclosed*



Yes

location, unlawfully without any recourse to a fair trial in Court to defend herself". Additionally, "That Applicant's right to a fair trial under Article 19 of the 1992 Constitution of the Republic of Ghana was thus under threat of being violated by the Ghana Immigration service as they had evinced an intention to unlawfully deport the Applicant from the country before the hearing of her matter before the District Court."

93. It is important to note that Article 7 of the African Charter on right to fair hearing starts with a preamble; thus: "*every individual shall have the right to have his cause heard. This comprise of.....*" The components are then listed @ 90 supra.
94. The Court is not unmindful of the fact that the Applicants mentioned the intention of the immigration officers to deport her *before the hearing of her matter at the District Court*, nevertheless, the Court has not been presented with the specific components of the right to fair hearing that was violated by the arbitrary arrest and detention.
95. Considering that the right to fair hearing has a number of distinct unrelated components, it behooves on the Applicant in proof of the violation of that right, not only to specify the component of the right that was violated by her arbitrary arrest but convince the Court with cogent arguments that will move it to grant her relief for a declaration that her right to fair trial was violated.
96. The Court is not obliged to plead the case of a party. On the contrary, a party is obliged to present its case clearly, providing supporting evidence, and advance relevant arguments in line with established legal procedures.
97. The Court has overtime stated that it behoves the claimant making an allegation to support the same with uncontroverted evidence. The claims, without evidence, are viewed as mere statements that have been explained alongside a copious presentation of case law but without evidence to persuade this Court of its veracity. MATTHEW ISABU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/41/22 @ pg.25 para 79.

98. The law is firm and well established that in claims for declaratory reliefs the Plaintiff must plead sufficient facts to constitute a platform for the reliefs being sought and he must lead or proffer cogent and credible evidence to sustain or support the said reliefs. The reason for this is obvious. A plaintiff seeking for a declaratory relief must rely and succeed on the strength of his own case and not on any perceived weakness in the Defendant's case. REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT (SERAP) V THE FEDERAL REPUBLIC OF NIGERIA AND 1 OR JUDGMENT NO: ECW/CCJ/JUD/19/16 page-28

99. In view of the above analysis, the Court finds that the Applicant has not substantiated the allegation that the Respondent violated her right to fair hearing and same is hereby dismissed.

▪ *On the violation of the Right to freedom of movement*

100. In support of her allegation that her right to freedom of movement was violated by the Respondent, the Applicant cited several international human rights treaties on the guarantee of the right to movement and the various exception thereunder. Thereafter, she pleaded the justification of her allegation thus: *"Your Excellences, the Applicant fell in none of the exceptions under which personal liberty may be curtailed. The Ghana Immigration service in dealing with the Applicant unlawfully detained her for 7 days depriving her of enjoying her right of movement. Your Excellences, it is respectfully submitted that the Republic of Ghana by the above action violates the Applicant's right to movement as enshrined in Article 13 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on "Civil and Political Rights and Article 12 of the African Charter on Human and Peoples' Rights."*

101. On the basis of the above narration, the Applicant then sought a declaration that her right to movement has been violated.

Analysis by the Court

102. Article 12 of the African Charter guarantees free movement as follows:

(1). *Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.*

(2). *Every individual shall have the right to leave any country including his own, and to return to his Country. This right may only be subject to*

restrictions provided by law, for the protection of national security, law and order, public health or morality.

103. The intendment of the right to freedom of movement is to guarantee a citizen of a State a right to travel, reside in, and/or work in any part of the State that he/she wishes to, without interference from the State. It also guarantees an individual's right to leave the State in which that citizen resides, travel to any destination, and return to his/her home State at any time. NNAMDI KANU v. FEDERAL REPUBLIC OF NIGERIA & 2 ORS, ECW/CCJ/JUD/34/19 @ Pg. 21.
104. The Applicant rests her case of alleged violation of her right to freedom of movement solely on her detention for seven (7) days. There is obviously a misconception of the concept of freedom of movement and detention. The Court restates that unlawful detention occurs when a person is deprived of their liberty without legal justification or due process and typically involves confinement or restriction on physical freedom.
105. The violation of the right to movement on the other hand refers to interference with a person's ability to move freely within a country, leave, or return to their country without valid justification. In summary, unlawful detention targets a person's liberty by confining them whereas a violation of right to movement restricts their ability to navigate freely without necessarily involving a detention process.
106. Based on the above explanation, the Court finds the Applicant's justification of her allegation of the violation of her freedom of movement based on the alleged detention for seven (7) days as inconceivable. Even if that were so, the Court had dismissed the Applicant's seven (7) days alleged detention as unsubstantiated. Supra @ 66.
107. In view of the above, The Court holds that the Applicant's allegation that the seven (7) day detention constitute a violation of her right to freedom of movement is unsubstantiated. The allegation is therefore dismissed.
- *On allegation of the right to equality before the law and freedom from discrimination*
108. The Applicant submits that her right to equality before the law and freedom from discrimination was violated solely on the basis that she is a foreigner.

109. That the agents of the Respondent realised that they could not legally oppress the Applicant in the Court of Law and so resorted to arbitrary executive action by way of unlawful deportation to execute their malicious intentions towards her.
110. She therefore maintained that her right to equality before the law and the right to freedom from discrimination under Articles 2 and 3 respectively of the African Charter, have been violated by the Respondent.

Analysis by the Court

111. The relevant laws that guarantee freedom from discrimination and equality before the law are Articles 2 and 3 of the African Charter respectively. Equality before the law and non-discrimination are interdependent principles under international human rights law. The principle of Non-discrimination compliments equality before the law by prohibiting the unfair or prejudiced treatment of individuals based on specific characteristics such as race, gender, ethnicity, disability or religion. They collectively promote the protection of human rights and dignity of individuals, ensuring that all people have equal treatment without prejudice or bias or preference.
112. Though the violation of both rights are collectively pleaded, nevertheless, the Court will examine each allegation seriatim.

- *On the violation of the right to Violation of freedom from discrimination.*

113. Article 2 of the African Charter provides that: *Every individual shall be entitled to the enjoyment of the rights and freedoms recognized 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.*

114. This principle has been elaborated to mean “.....any distinction, exclusion, restriction or preference which is based on any ground such as race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” United Nations Human Rights Committee in its General Comment No. 18 on Non-discrimination @ pharagagh 7 **CITED** in The REGISTERED TRUSTEES OF EMPOWERMENT OF UNEMPLOYED YOUTHS’ INITIATIVE V FEDERAL REPUBLIC OF NIGERIA & 2 ORS CCJ/JUD/37/22 @ pg 34 para 115.

115. In this regard, the Applicant submits that her right to freedom from discrimination was violated solely on the basis that she is a foreigner. It is imperative to say at this stage the Applicant though a Belgian citizen and thus a foreigner residing in the territory of The Republic of Ghana is entitled to enjoy the guarantees of all the human rights embedded in the instruments to which the country has signed unto, subject however to a possession of valid resident permit. Therefore, any established act of discrimination based on her national status will amount to a violation of Article 2.
116. However, the rule of thumb is that for an allegation of discrimination to succeed there must be established a different treatment in a similar or identical case. JUSTICE PAUL UUTER DERY V. THE REPUBLIC OF GHANA ECW/CCJ/JUD/17/19 PH. 88. See also ADAMA VANDI v. STATE OF SIERRA LEONE ECW/CCJ/JUD/32/22 @ pg. 25 para 101.
117. In this regard, the Court has not been presented with any fact demonstrating a different treatment by the Ghana Immigration officers in respect of another person in identical situation with the Applicant. The Court therefore is not convinced that the arrest, detention and deportation were premised on her status as a foreigner. Consequently, the Applicant’s allegation in this regards is dismissed.
- *On the violation of the right to Equality before the law.*
118. The same facts adduced to support the allegation of discrimination was also submitted in proof of the alleged violation of equality before the law viz, the act was based on the fact that she is a foreigner.

119. Article 3 of the African Charter provides that: (1). *Every individual shall be equal before the law*, (2). *Every individual shall be entitled to equal protection of the law*.
120. The principle of equality ensures that all individuals are treated equally under the law regardless of their background or status. It guarantees that nobody is above the law, and everyone is subject to the same legal rules, protections and consequences fostering a society where the rule of law prevails. *AJAMI YASMINE MARIE JEANNE v. REPUBLIC OF COTE D'IVOIRE ECW/CCJ/JUD/12/2020 @ para 224.*
121. Equality before the law presupposes that equal treatment is accorded people finding themselves in similar situations. Thus, examining the allegation of the violation of the principle of equality requires that at least two similar legal situations be put side by side as to compare and find out whether an ill treatment was concretely meted out to either one or both of them. *BALDINI SALFO V. BURKINA FASO ECW/CCJ/JUD/13/12 pg.298.* See also *AJAMI YASMINE MARIE JEANNE v. REPUBLIC OF COTE D'IVOIRE ECW/CCJ/JUD/12/2020 @ 224.*
122. As with the allegation of discrimination, the Applicant has not proved any act that supports a differential in the application of the law to her by the immigration officers. Consequently, in the absence of such evidence, the Court finds that the Respondent State has not violated the Applicant's right to equality before the law. The relief sought by the Applicant on this head fails and is hereby dismissed.

X. ON REPARATION

123. Applicant prays the Court to order the Respondent to pay as compensation to her an amount equivalent to One Million United States Dollars (USD 1,000,000.00) in Ghana Cedis for the violation of her rights.
124. It is a principle of international law that every person who has suffered a violation of his or her human rights is entitled to a fair and equitable remedy, considering that in human rights violations, full compensation is,

as a rule impossible. See CHIEF SUNDAY ADEYEMO V REPUBLIC OF BENIN ECW/CCJ/JUD/50/23 @ pg. 24.

125. The finding of the Court is that the only right violated by the Respondent is the Applicant's right to freedom from arbitrary arrest, and detention, consequently the Applicant is entitled to appropriate reparation in the form of monetary compensation for damaged suffered as a result of the Respondent's actions.

XI. AS TO COSTS

126. The Applicant prayed for costs including legal fees on full indemnity basis.

127. Article 66 (1) of the Rules of Procedure of the Court provides that: "*the judgment or order that ends the process decides on expenses.*" Paragraph 2 of the same Article states that "*the unsuccessful party is ordered to pay the cost if so decided.*"

In the light of the totality of the instant case, the Court orders parties to bear their own cost.

XII. OPERATIVE CLAUSE

128. The Court adjudicating in a public hearing, after hearing the Applicant in an application for default judgment on matters of human rights violations decides as follows:

On jurisdiction.

- i. *Declares* that the Court has jurisdiction to hear the initiating Application and the application for default judgment.

On Admissibility

- ii. *Finds* that the initiating Application is admissible within the meaning of Article 10(d) of the Court's Protocol and Article 90(2) of the Rules of the Court.

On compliance with appropriate formalities



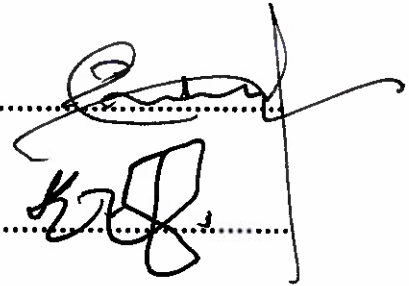
- iii. *Finds* that the application for default judgment complies with required formalities under Article 90(2) of the Rules of the Court.

On the Merits of the Default Judgment Application

- iv. **Declares** that the detention of the Applicant by the Respondent during the interrogation at the immigration office is not in violation of her right to liberty as provided to Article 6 of the African Charter.
- v. **Declares** that the re-arrest of the Applicant by the Respondent after the charges were withdrawn was arbitrary and violated her right to liberty contrary to Article 6 of the African Charter.
- vi. **Declares** that the detention of the Applicant by the Respondent after the charges were withdrawn was arbitrary and violated her right to liberty contrary to Article 6 of the African Charter.
- vii. **Dismisses** the Applicant's alleged violation of her right to fair hearing by the Respondent.
- viii. **Dismisses** the Applicant's alleged violation of her rights to freedom of movement.
- ix. **Dismisses** the Applicant's alleged violation of her rights to equality before the law and freedom from discrimination.
- x. **Dismisses** all other claims by the Applicant.
- xi. **Orders** the Respondent to pay to the Applicant the sum of \$10,000 (ten thousand USD) equivalent in Ghana Cedis as damages for the violation of her rights.
- xii. **Orders** all parties to bear their costs.



Hon. Justice Ricardo Cláudio Monteiro Gonçalves Presiding.....



Hon. Justice Sengu Mohamed Koroma



Hon. Justice Dupe Atoki Judge Rapporteur



Dr. Yaouza OURO-SAMA-Chief Registrar



Done in Abuja this 22nd Day of November 2024 in English and translated into French and Portuguese.

