



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

OLUWATIMILEHIN ADEBAYO

V.

THE FEDERAL REPUBLIC OF NIGERIA

Application No: ECW/CCJ/APP/47/23; Judgment No. ECW/CCJ/JUD/44/24

JUDGMENT

ABUJA

3 December 2024

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

HOLDEN AT ABUJA, NIGERIA

App No. **ECW/CCJ/APP/47/23;**

Judgment No. **ECW/CCJ/JUD/44/24**

OLUWATIMILEHIN ADEBAYO

APPLICANT

AND

FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

COMPOSITION OF THE COURT

Hon. Justice Sengu Mohamed KOROMA - Presiding
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur
Hon. Justice Gberi-Be OUATTARA - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

Mr. Daniel Shangotola - Counsel for the APPLICANT

Maimuna Lami Shiru (Mrs.)
Okoye A. A. Princess - Counsel for the RESPONDENT



I. JUDGMENT

1. This is the judgment of the Court read 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 THE PARTIES

2. The Applicant is a Nigerian citizen, resident in Ikorodu, Lagos State, Federal Republic of Nigeria.
3. The Respondent is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS).

III. INTRODUCTION

4. This case is premised on the alleged violations of the Applicant's right to freedom from torture, cruel, inhuman, or degrading treatment, as well as the right to a remedy by the Federal Republic of Nigeria.

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application dated 15 December 2023 was served on the Respondent electronically on the same date.
6. On 07 February 2024, the Respondent filed a Motion for Extension of Time to file its Preliminary Objection and Defence. This was accompanied by a Preliminary Objection as well as a Statement of Defence, both dated 07 February 2024. These were served on the Applicant electronically on 08 February 2024.

7. The Applicant filed a Reply to the Respondent's Defence, dated 27 February 2024. This was served on the Respondent on 08 March 2024.
8. The Applicant also filed a Written Address in Opposition to the Respondent's Preliminary Objection, dated 27 February 2024. This was served on the Respondent on 08 March 2024.
9. On 03 July 2024, the Court held a virtual court session to hear the Parties. Both parties were represented in Court by Counsel. The Court granted the Respondent's motion for extension of time to file a preliminary objection. The Respondent then moved the Preliminary Objection, and the Applicant responded. The Court reserved its ruling on the Respondent's Preliminary Objection to its final judgment, and proceeded to the case on the merits. Both Parties presented oral arguments on the merits of the case, and the case was adjourned for judgment.

V. APPLICANT'S CASE

Summary of Facts

10. The Applicant, who lives in Ikorodu area of Lagos State, Nigeria, alleges that he met an artisan named Peter, who works in Ikorodu. He became acquainted with one Islamiyat whom he believed to be Peter's sister.
11. He developed an amorous relationship with Islamiyat, and she subsequently got pregnant. Based on mutual agreement, she left sometime in December 2017 to take care of herself at her aunt's place in Idiroko, Ogun State. While she was there, the Applicant kept in touch with her and regularly sent money to her through Peter.
12. Islamiyat assured the Applicant that she will return to Lagos, but that he needed to visit her aunt in Idiroko before she will be allowed to return. Thus, on 08 May 2018, the Applicant travelled to Idiroko as requested.

13. During the visit, there was a hot exchange of words between Peter and Islamiyat. To the Applicant's surprise, Peter informed the Applicant that Islamiyat is his wife, contrary to what the Applicant had earlier been made to believe.
14. The matter was reported to the Divisional Police Station at Ipokia, Ogun State. In the course of interrogation, Islamiyat confirmed that the Applicant was responsible for her pregnancy. Thereafter, the Applicant was taken to the Ipokia Police station, and locked in a cell.
15. The following morning, the Applicant was taken to the Police Headquarters in Abeokuta, Ogun State and asked to thumbprint on a statement already written for him. He refused and elected to write his statement in Yoruba language, but it was torn by the Policemen who accused him of being stubborn, for defying their instruction.
16. The Police then chained his hands and legs to a pole. He was beaten on his joints and legs with the handle of an axe and the side of a cutlass. In the process, he was injured on his scrotum. He also had severe headaches and swollen joints.
17. The Applicant spent a month and a half at the Ogun State Police Headquarters, Abeokuta before he was arraigned for robbery at the Ipokia Magistrate Court and remanded at Ilaro Correctional Centre on July 9, 2018.

Pleas in Law

18. The Applicant relied on the following legal provisions:
 - i. Articles 1, 2, 3 and 5 of the African Charter on Human and Peoples' Rights;
 - ii. Articles 2 (1) and (3), 3, 7 and 26 of the International Covenant on Civil and

Political Rights (ICCPR);

iii. Articles 10, 11, 12, 13 and 16 (1) of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and

iv. Articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights.

Reliefs Sought

19. Consequently, the Applicant sought the following reliefs:

a. **A DECLARATION** that the failure on the part of the Respondent State to recognize, promote and protect the rights of the Applicant and the failure to take measures to give effect to the rights of the Applicant constitute multiple violations of Articles 1, 2, 3 and 5 of African Charter on Human and Peoples' Rights, Articles 2 (1) and (3), 3, 7 and 26 of the International Covenant on Civil and Political Rights, Articles 10, 11, 12, 13 and 16 (1) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights.

b. **A DECLARATION** that the treatment meted out on the Applicant by policemen at the Police headquarters, Elewera, Abeokuta, Ogun State constitutes torture, cruel, inhuman and degrading treatment contrary to Articles 5 of the African Charter on Human and Peoples' Rights, Article 7 of the International Covenant on Civil and Political Rights, Articles 10, 11, 12, 13 and 16 (1) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 1 and 5 of the Universal Declaration of Human Rights.

c. **DAMAGES/ MONETARY COMPENSATION** for the Applicant in the sum of N30,000,000 (Thirty Million Naira) for the pain, suffering and harm to his dignity including mental trauma and physical injuries.

d. **AN ORDER** for the adoption of other legislative, administrative, social and economic resources as may be necessary and the effective implementation of existing local State legislatives, especially the Anti- Torture Act of 2017 to ensure the protection, punishment and eradication of all forms of torture and other cruel, inhuman and or degrading treatment.

e. Any such further order or orders as the Court deems fit in the circumstance.

VI. RESPONDENT'S PRELIMINARY OBJECTION

20. The Respondent filed a preliminary objection to the jurisdiction of the Court on two grounds, viz

a. The Applicant's suit is statute barred as it was filed more than three years since the cause of action arose.

b. This Court cannot sit in a suit that is sub-judice / judgment of a municipal court of the Member State.

21. After careful consideration, the Court is of the opinion that the issues raised in the preliminary objection go to the admissibility of this case, and not the jurisdiction of the Court. The Court will therefore first determine whether it has jurisdiction in this case.

VII. JURISDICTION

22. This case is premised on allegations that the Respondent violated the right of the Applicant to freedom from torture, inhuman and degrading treatment, as well as his right to a remedy under international human rights instruments binding on the Respondent. In view of the fact that Article 9 (4) of the Supplementary Protocol grants the Court jurisdiction to determine cases of violation of human rights that occur in any Member State, the Court holds it has jurisdiction to hear and determine this case.



VIII. ADMISSIBILITY

Preliminary Objection

23. The Respondent challenged the competence of the Court to determine this case on two grounds:
- a. That the matter is statute-barred, having been filed more than three years after the cause of action arose; and
 - b. The Court lacks jurisdiction to determine this case as the Court cannot sit in suit that is sub-judice/judgment of a municipal court of the member state.
24. The Court will now consider each of these objections in turn.
- *On Statute of Limitation*
25. The Respondent's case is that the instant case is statute barred having been filed more than three years from when the cause of action occurred contrary to Article 9 (3) as amended by Supplementary Protocol [A/SP.1/01/05] which provides that "*Any action by or against a community institution or any member of the community shall be statute barred after 3 years from the date when the right of action arose*".
26. Based on the Article referred above, the Respondent argued that the instant application which was filed in December 2023 in respect of a matter that occurred in 2018, was statute barred having been filed more than three years from the date when the cause of action arose. They therefore urged the Court to dismiss the application.
27. The Applicant on the other hand, argued that the limitation imposed in the said Protocol does not apply to human rights cases against State Parties before the Court.

Analysis of the Court

28. The Court agrees with the Applicant and reaffirms that the statute bar in Article 9 (3) does not apply to human rights cases brought by individuals against Member States. See FEDERATION OF AFRICAN JOURNALISTS AND OTHERS V THE GAMBIA, ECW/CCJ/JUD/04/18, at pages 19 - 22; DJOT BAYI & 14 OTHERS V. NIGERIA & 4 OTHERS, ECW/CCJ/JUD/01/09, at paras 28 – 30.
29. In the instant case, the Court notes that the Application is centered on alleged violations of human rights of an individual against a Member State. The Court therefore holds that in matters of human rights violation, the statute of limitation does not apply. The Respondent's objection in this regard is dismissed.

▪ *Exercise of appellate jurisdiction*

30. The Respondent in this regard contends that this Court has no jurisdiction to adjudicate on a judgment delivered by a national court as that amounts to sitting on appeal, as such it urged the Court to declare the application inadmissible.
31. The response of the Applicant on the other hand is that the instant case is not before any national court, and no judgment has thus been given in that respect. The Applicant further argued that although he had been charged for an offence of murder before a municipal court, the said charge, its validity and/or otherwise is not the subject of litigation before this Court. Pointing out that the crux of the Application before this Court is for the enforcement of his fundamental human rights.

Analysis of the Court.

32. The Court's understanding of the Respondent's objection is that the national court is seized of this case, therefore any decision of this Court in respect of the instant

Application will amount to an exercise of appellate jurisdiction over the local court.

33. The Court has maintained that it does not exercise appellate or supervisory jurisdiction over domestic Courts of Member States. See COL. MOHAMMED SAMBO DASUKI (RTD) V. FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/RUL/04/16 at page 31; BAKARY SARRE & 28 ORS V. REPUBLIC OF MALI ECW/CCJ/JUD/03/11 @ pg. 13
34. However, where an Applicant alleges procedural irregularities in the local proceedings that violate his/her rights, the Court will examine the matter in relation to the alleged human rights violations.
35. The records before the Court in this regard is that the Applicant was charged for robbery and has not been tried to any logical conclusion. The possibility of exercising an appellate action is clearly non-existent. Obviously, an appeal is based on an unsatisfactory decision which another court, usually higher in ranking, is called upon to review.
36. The instant Application is not in respect of the charges of robbery against him before the Magistrate Court, but concerns alleged pre-trial actions taken by the Respondent before he was charged to the Court, which allegedly violates his rights to freedom from torture and to a remedy, perpetrated by law enforcement agents.
37. Consequently, the Respondent's objection based on the alleged perception that the Court will be sitting on appeal if it hears the instant Application is unfounded. The objection in that regard is therefore dismissed.

▪ Sub-judice

38. The Respondent also raised an objection that the case before the magistrate Court is sub-judice thus preventing this Court from entertaining the instant Application. The opinion of the Court is that this submission shows a clear misunderstanding of the context of the application of the principle of sub-judice. This principle is a Latin term meaning “under judgment.” It refers to a matter that is under judicial consideration and, therefore, prohibited from public discussion or media commentary to avoid prejudicing the court’s decision.
39. This principle is particularly important in legal systems where the right to a fair trial is protected. The concept ensures that ongoing legal proceedings are not influenced by public opinion or external pressures.
40. The Court finds that the facts as presented do not support the claim of sub-judice of the case before the Magistrate Court. Consequently, the principle of sub-judice being inappropriately invoked, the objection to that effect is dismissed.
41. In light of the above, the Court dismisses the preliminary objections of the Respondent in their entirety.
42. Having dismissed the Respondent’s preliminary objections on admissibility, the Court must therefore proceed to examine whether the case meets the relevant admissibility criteria.
43. Article 10 (d) of the Protocol of the ECOWAS Court A/P.1/7/91 as amended by Supplementary Protocol A/SP.1/01/05 provides for access to the Court for “[i]ndividuals on application for relief for violation of their human rights; the submission of application for which shall: (i.) Not be anonymous; nor (ii.) Be

made whilst the same matter has been instituted before another International Court for adjudication”.

44. Thus, three conditions must be cumulatively met before the case can be held admissible, i.e. the Applicant's status as "victim" must be established, the non-anonymity of the application, and the absence of lis pendence before another international Court or Tribunal. See DANIEL AGADA OKOH & 42 ORS. V. FEDERAL REPUBLIC OF NIGER ECW/CCJ/JUD/04/21 @ pg. 16 Para 37.
45. In this case, the Applicant is not anonymous. In addition, there is no indication that this case has been submitted to another international court or tribunal for adjudication. The Applicant's allegation to have suffered torture, cruel, inhuman and degrading treatment from agents of the Respondent make him a *prima facie* victim.
46. The Court therefore finds that this Application satisfies the admissibility criteria as provided in Article 10 (d) of the Supplementary Protocol. In that regard, the Application is declared admissible.

IX. MERITS

Applicant's case.

47. The Applicant's case is that while working in Ikorodu town in Lagos State, he became acquainted with one Islamiyat and one Peter whom he believed was her brother. The relationship with Islamiyat grew into an amorous and she became pregnant for him. She then decided to go to Idiroko where she can be cared for by her aunt but insistence that the Applicant visit her Aunt. The Applicant obliged and on arrival at her aunt's place, he met Peter there. Shortly after, an altercation ensued between Peter and Islamiyat in respect of the pregnancy in the course of which he discovered that Peter was the husband of Islamiyat. The Applicant was questioned



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about the pregnancy and on confirming that he was responsible for Islamiyat's pregnancy, he was arrested and taken to the Divisional Police Station at Ipokia, Ogun State.

48. Subsequently, he was transferred to the Ogun State Police Headquarters on 09 May 2018 where he was instructed to sign a statement he did not write. He elected to write his own statement. This irked the police officers who proceeded to chain down his hands and legs to a pole, and beat him with the handle of an axe and the side of a cutlass. He sustained injuries including to his scrotum which was recommended for surgery.
49. Following his detention and maltreatment, on 09 July 2018, he was arraigned for robbery at the Ipokia Magistrate Court and remanded at Ilaro Correctional Centre.
50. The Applicant submitted that as at the time of filing the instant Application, the Respondent had not investigated the torture he was subjected to, nor have the perpetrators been prosecuted.
51. In view of the facts narrated by the Applicant, he alleged the violation of his right to freedom from torture and right to a remedy. The Court will now proceed to examine the allegations seriatim.

Respondent's case

52. The Respondent denied all the allegations in the Applicant's Initiating Application, except where expressly admitted.
53. While specifically denying that the Applicant was tortured by the police, the Respondent puts the Applicant to the strictest proof. They claim that the Applicant was never beaten by the police with the handle of an axe and or cutlass, and that the injuries on the scrotum of the Applicant were not caused by the Respondent.

54. The real victim, they argued, is Islamiyat, whom they claim was taken advantage of by the Applicant.
55. They conclude that the instant action has become academic in light of the criminal case pending against the Applicant at the Magistrate Court in Ogun State.

Pleas in Law

56. The Respondent relied on the following legal provisions:
- a. African Charter on Human and Peoples' Rights
 - b. Protocol of the ECOWAS Court A/P.1/7/91 as amended by Supplementary Protocol A/SP.1/01/05
 - c. Universal Declaration of Human Rights

Reliefs Sought

57. The Respondent sought an order for the Court to dismiss the suit in its entirety.

Applicant's Reply

58. In response to the Respondent's assertion that the Applicant's action of impregnating Islamiyah was illicit, immoral and contrary to the public order, public morality and public health, the Applicant argued that the act was between two consenting adults. Further, even if it were true that the Applicant violated Islamiyat's dignity, there is no justification for the Respondent to subject him to torture.

a. Alleged violation of the right to freedom from torture, cruel, inhuman and degrading treatment

59. The Applicant alleged that the Police requested him to sign an already written statement which he refused to sign, electing to write his own statement. Dissatisfied with the refusal of the Applicant, the police officers chained his hands and legs to a pole, and beat him several times on his joints and legs with the

handle of an axe and side of cutlass. In the process, his scrotum was affected and became swollen.

60. The Applicant submits that these acts of the police officers constitute torture in that the treatment humiliated and caused him grievous bodily harm.
61. He further submits that the acts amount to cruel, inhuman and degrading treatment relying *inter alia* on the decisions of the African Commission on Human and Peoples' Rights in EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS & INTERRIGHTS V EGYPT (COMMUNICATION NO. 334/06) and the European Court of Human Rights' decision in BEKOS AND KOUTROPOULOS V. GREECE 43EHRR 2, IHRL 3184 (ECHR 2005), where the European Court held that, in determining whether treatment is degrading, it considered whether the object of such treatment is to humiliate and debase the person concerned, and whether it adversely affected his or her personality.
62. The Applicant's case is supported by the statement on oath of one Omofiwasewa Odeyemi, a legal practitioner, who stated that she met and interviewed the Applicant at the Ilaro Correctional Centre, Ogun State, Nigeria, where he was then being detained.
63. He also annexed a picture of the swollen scrotum, as well as a medical report from the State Hospital Ilaro, Ogun State which states that the scrotal swelling is due to trauma. The report states that he needs urgent surgical intervention to repair the swelling before it gets out of hand, which the Applicant alleged was yet to be carried out.
64. The Respondent denied that the Applicant was tortured, neither was he beaten with the handle of an axe head and or cutlass. The fact that there were no deep cutlass cuts and wounds all over his body confirms the falsehood.

Handwritten signature and initials in blue ink, including a large 'O' and 'C' and the number '468'.

Analysis of the Court

65. The relevant provision on torture, cruel, inhuman or degrading punishment and treatment is found in Article 5 of the African Charter on Human and Peoples' Rights which provides thus: *"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."*
66. Taking inspiration from the provisions of Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Court notes that torture involves the intentional infliction of severe physical or psychological distress by, or with the approval or acquiescence of, government agents acting for a specific purpose, including to inflict punishment or to obtain information or confession. See HON. JUSTICE S. E. ALADETOYINBO V. NIGERIA, ECW/CCJ/JUD/18/20 at paras 49 – 51; DEDJO KOMLA SENA V. TOGO, ECW/CCJ/JUD/26/21 at paras 65 – 66; AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V. NIGERIA, ECW/CCJ/JUD/11/21 at paras 44 – 45.
67. The core components of torture as deduced from Article 1 of UNCAT are; 1) acts which cause physical or psychological distress. 2) Carried out with the approval or acquiescence of government agents. 3) for a specific purpose, including to inflict punishment or to obtain information or confession. In addressing the allegation of torture, it is imperative to examine the facts and determine whether they can be situated within these core components and sufficient evidence is adduced to support them.

- *Alleged acts causing physical or psychological harm or distress.*

68. With regards to the first component, the Applicant alleged that his hands and legs were chained to a pole, and he was beaten on his joints and legs with the handle of an axe and side of cutlass. In the process, his scrotum was injured. It is incontestable that such acts as described by the Applicant are capable of causing severe pain and suffering.
69. The Respondent on their part denied carrying out any of the alleged acts. The burden of proving torture rests on the Applicant. The general principle of evidence is that he who alleges has the burden of proof. Once a person who has the onus to prove fulfils same, he carries the benefit of presumption, and as such the burden of proof passes to the other party. MR. CHUDE MBA V. REPUBLIC OF GHANA ECW/CCJ/JUD/10/13 @ pg. 25.
70. In the discharge of this burden the Applicant is required to prove every material fact as alleged by him. Given the seriousness of the allegation of torture, the Court will expect the Applicant to prove the allegation of torture by way of independent medical evidence to establish torture as alleged, or through independent credible witnesses whose pieces of evidence are capable of corroborating each other. MR. NOEL MIAN DIALLO v. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/14/19 @ Pg. 14
71. In proof of his allegations of torture, the Applicant has annexed the statement on oath of one Omofiwasewa Odeyemi, a legal practitioner, who states that she met and interviewed the Applicant at the Ilaro Correctional Centre, Ogun State, Nigeria, where he is currently detained. The statement says that during this meeting, the Applicant informed Ms. Odeyemi of the circumstances under which he had been arrested, brought to the police station and beaten by the police till he sustained injuries on his scrotum.

72. The Applicant has also annexed a picture of the swollen scrotum, but an examination of the evidence shows that the said picture is an unclear, black and white photocopy from which the Court is unable to get a clear view of the injuries alleged. To that extent, the Court is unable to attach any probative value to the picture in proof of the Applicant's alleged torture.
73. The Applicant equally submitted a medical report from the State Hospital Ilaro, Ogun State dated 27 May 2020 and signed by one Dr. E.S. Omirin, Principal Medical Officer at the hospital, in which the doctor states that Oluwatimilehin Adebayo, Applicant in this case, was seen at the hospital with scrotal swelling due to trauma. The report also states that he needs urgent surgical intervention to repair the swelling before it gets out of hand.
74. This medical report supports the allegation of torture more so that it shows that the injury is consistent with the torture alleged. PRIVATE BARNABAS ELI v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/29/19 @ pg. 23. The Court is therefore convinced that the medical report from the State Hospital, Ilaro corroborates the allegations of the injury to the Applicant's scrotum.
75. However, since the Applicant has placed corroborating medical evidence before the Court to show that he has been tortured in the custody of the Respondent, the burden shifts to the Respondent who needs to go beyond mere denial and adduce evidence to show that the Applicant was treated with respect and dignity. OUSAINOE DARBOE & 31 ORS v. THE REPUBLIC OF GAMBIA ECW/CCJ/JUD/01/20 @ pg. 23.
76. Thus, it is not enough for the Respondent to merely deny the Applicant's allegations of torture. The Respondent must adduce convincing evidence to exonerate its agents from the allegation of torture of the Applicant. This is

especially as the Applicant has remained in the custody of the Respondent's agents since he was arrested in May 2018.

77. In this case, the Applicant has provided witness testimony and medical evidence that are consistent with his allegations that he was tortured while in the custody of agents of the Respondent. The medical evidence attests to the fact that the swollen scrotum was due to trauma which needs urgent surgical intervention.

78. The Court is therefore convinced that the acts allegedly carried out by the agents of the Respondent is capable of causing physical and psychological harm.

- *The alleged act to be carried out with the approval or acquiescence of government agents.*

79. The case of the Applicant is that after the altercation between Peter and Islamiyat he was taken to the police station in Ipokia, Ogun State, and later transferred to the State Police Headquarters where he was detained on a charge of robbery. In the absence of any denial by the Respondent, considering that the Applicant was under the exclusive control of the police, the Court is convinced that the alleged acts were carried out by police officers who are agents of the Respondent.

- *Alleged act carried out for a specific purpose, including to inflict punishment or to obtain information or confession*

80. Having been presented with a written statement which the Applicant refused to sign electing to write his own, it is no gainsaying that the purpose of the alleged beating was to inflict punishment or to obtain information or confession. The Court is therefore convinced that the acts inflicted on the Applicant by the Police was for the purpose of punishing or obtaining a confession from him.

81. From the totality of the facts and evidence adduced by the Applicant, the Court considers that when a person is injured in detention or while under the control of law enforcement or security agencies of the State, there is a strong presumption that the person was subjected to torture or ill-treatment. See EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS AND INTERRIGHTS V ARAB REPUBLIC OF EGYPT, ACHPR, Communication No. 334/06 at para 168.
82. This was also the view of the European Court of Human Rights when it held that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. See BOUYID V BELGIUM, GRAND CHAMBER JUDGMENT, APPLICATION NO. 23380/09, at para 83; SALMAN V TURKEY, GRAND CHAMBER JUDGMENT, APPLICATION NO. 21986/93, at para 100.
83. The Court finds that the acts of beating the Applicant with the handle of an axe, and the side of a cutlass, while having his hands and legs tied to a pole with a chain, are capable of causing severe physical pain or suffering that fit the intendment of definition of torture. Furthermore, the Applicant's allegations satisfy the conditions to establish torture as the acts that caused him severe pain and suffering were inflicted intentionally by law enforcement agents for the purpose of obtaining a confession, or to punish him for not signing the pre-written confession.
84. The Court at this point deems it necessary to recall Article 1 & 4 of the United Nation Draft Articles on Responsibility of State for Internationally Wrongful Act 2001 which enunciated that States bear responsibility for the actions or omissions of its agents performed in the course of their official duties. In that regards,

considering that the violations of the rights in question were constructively executed by the agents of the Respondent, namely the Nigerian Police force, the Court holds the Federal Republic of Nigeria is accountable for the conduct of the policemen acting in their capacity as their agents.

85. Consequently, the Court finds that the Respondent State has violated the right of the Applicant under Article 5 of the African Charter on Human and Peoples' Rights.

b. Alleged violation of the right to a remedy

86. The Applicant alleged that his right to a remedy has been violated by the failure of the Respondent to carry out an investigation into his allegations of torture at the hands of the police.
87. The Applicant relies on Article 1 of the African Charter on Human and Peoples' Rights which obliges States to "recognize the rights and undertake to adopt legislative or other measures to give effect to them". The Applicant makes reference to the decisions of the African Commission on Human and Peoples' Rights which are to the effect that States have to take reasonable steps to effectively investigate human rights violations occurring within their jurisdiction. ZIMBABWE HUMAN RIGHTS NGO FORUM / ZIMBABWE, COMMUNICATION NO. 245/02, PARAGRAPH 144; AND COMMISSION NATIONALE DES DROITS DE L'HOMME ET DES LIBERTÉS V. CHAD, COMMUNICATION NO. 74/92 (1995), PARAGRAPH 22.
88. To support the obligation to investigate the acts of torture, the Applicant referred to Articles 10, 11, 12, 13 and 16 of Convention against Torture which together place an obligation on the State to carry out an effective investigation into all acts of torture committed in its territory, and to prosecute the perpetrators.

89. He concluded by arguing that the psychological and physical violence he suffered in the hands of State agents have been exacerbated by the failure of the State to guarantee his rights by carrying out an investigation, and to prosecute the perpetrators.
90. The Respondent maintains that they recognise the right of individuals to a remedy when their rights have been breached but maintains that it has not violated the right of the Applicant to a remedy.

Analysis of the Court.

91. The right to remedy is captured in Article 1 of the African Charter which obliges States to recognize the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative or other measures to give effect to them.
92. This provision imposes an obligation on the State to carry out an effective investigation into human rights violations and provide justice for the victims. See HEMBADOON CHIA & 7 ORS V. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/21/18 @ PG. 30.
93. International law places a duty on States to investigate alleged infractions of rights of its citizens especially where formal complaints are made. Apart from any other acts or omissions alleged on the part of the State or its officials, failure to investigate such allegations itself constitutes a breach under international law. DOROTHY CHIOMA NJEMANZE & 3 ORS V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/08/17 @ pg. 42-43.
94. In the same vein, Article 13 of the UNCAT states *inter alia* that: “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”

95. Where a State is aware of the occurrence of acts amounting to a violation of human rights in its territory and fails to carry out effective investigation into the violations to identify those responsible and hold them accountable, such State will be in violation of its obligation under international law. See *THE REGISTERED TRUSTEES OF JAMA'A FOUNDATION & 5 ORS v. FEDERAL REPUBLIC OF NIGERIA & 1 OR* ECW/CCJ/JUD/04/20 @ pg. 33.
96. To activate the duty to investigate, it must be established that the State is aware of the alleged human rights violations, which the Applicant denounces. Therefore, to engage the State's duty to investigate, it is necessary that the alleged violations be reported to the State via the responsible agencies. The State must have official knowledge of the violations for it to kick-start an investigation.
97. In this case, there is no evidence before the Court to suggest that the Applicant has formally reported his allegations of torture to responsible agencies in Nigeria. There is also no evidence that suggests that the Respondent's agencies are otherwise aware that the Applicant had been subjected to acts of torture.
98. Thus, the State cannot be held liable for the failure to carry out an investigation when it has not received a complaint about the violations.
99. The Court thus holds that the Applicant has not proved that his right to remedy has been violated by the Respondent.

X. REPARATIONS

100. The Applicant seeks from this Court declaratory reliefs and orders, amongst which are payment of financial compensation in the sum of Thirty Million Naira (N30,

000, 000.00) as general damages for the pain, suffering and harm to his dignity, including mental trauma and physical injuries.

101. Furthermore, the Applicant seeks an Order for the adoption of other legislative, administrative, social and economic resources as may be necessary and the effective implementation of existing local State legislatives especially the Anti-Torture Act of 2017 to ensure the protection, punishment and eradication of all forms of torture and other cruel, inhuman and or degrading treatment.

Analysis on Reparations

102. It is settled law that once the Court finds a violation of human rights, its discretion to order reparation is unquestionable. The kind of reparation to be granted by the Court depends on the circumstances of each case. *WOMEN AGAINST VIOLENCE EXPLOITATION IN SOCIETY (WAVES) v. SIERRA LEONE*, ECW/CCJ/JUD/37/19 @ pg. 29.

103. Reparation may be made, inter alia, by restitution, if possible, by returning the victim to the situation he or she was in before the violation of the law occurred, or by compensation, to be awarded for each economic loss, as appropriate and proportionate to the gravity of the violation and the circumstances of each individual case resulting from the violation of international human rights law. See *No. VII and IX §19 and 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law*; *MR. IBRAHIMA KASSUS DIOUBATE & ANOR v. THE REPUBLIC OF GUINEA* ECW/CCJ/JUD/14/2020 @ pg. 62.

104. In this vein, the Court having found that the Applicant's right to freedom from torture has been violated by the Respondent, holds that the Applicant is entitled to

five million Naira (N5,000,000) as compensation for the physical injuries and trauma occasioned by the torture inflicted on him.

105. Regarding the prayer to grant an Order for the adoption of other legislative, administrative, social and economic resources as may be necessary and the effective implementation of existing local State legislatures especially the Anti-Torture Act of 2017; the Court has not found that there is a failure to adopt legislative, administrative, social and economic resources as may be necessary. The existence of the Anti-Torture Act of 2017 is indicative of the compliance.

106. Therefore, the relief is dismissed.

XI. OPERATIVE CLAUSE

For the reasons stated above, the Court sitting in public, after hearing both Parties:

As to Jurisdiction:


Declares that it has jurisdiction to determine this case;

As to admissibility:

Declares that the case is admissible;

As to the merits:

- Declares that the Respondent has violated the right of the Applicant to freedom from torture contrary to Article 5 of the African Charter on Human and Peoples' Rights,
- Dismisses allegation of the Applicant that the Respondent violated his right to a remedy;



Yes

As to Reparations:

- Orders the Respondent to pay to the Applicant the sum of 5 million Naira (N5,000,000) as compensation for the violation of his right to freedom from torture;
- Orders the Respondent to carry out a prompt, impartial and effective investigation into the torture meted out on the Applicant, and to prosecute and bring to justice all those responsible;
- Orders the Respondent to report to the Court within six (6) months on measures it has taken to implement this judgment;

As to costs:

Orders each Party to bear its own costs.

Hon. Justice Sengu Mohamed KOROMA - Presiding 

Hon. Justice Dupe ATOKI - Member/Judge Rapporteur 

Hon. Justice Gberi-Be OUATTARA 

Dr. Yaouza OURO-SAMA - Chief Registrar 

Done in Abuja, on this 3rd day of December 2024, in English and translated into French and Portuguese.

