COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTÉ,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO


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

**HOLDEN AT ABUJA, NIGERIA**

**ON THE 14TH DAY OF JULY 2020**

**SUIT NO: ECW/CCJ/APP/27/18**

**JUGDEMENT NO: ECW/CCJ/JUD/18/20**

**BETWEEN**

**HON. JUSTICE ALADETOYINBO -APPLICANT**

**AND**

**THE FEDERAL REPUBLIC OF NIGERIA - RESPONDEN**

**COMPOSITION OF THE COURT**

Hon. Justice Edward Amoako Asante -Presiding

Hon. Justice Dupe Atoki -Member/Judge Rapporteur

Hon. Justice Keikura Bangura - Member

**ASSISTED BY:**

Tony Anene-Maidoh - Chief Registrar

**REPRESENTATION TO PARTIES.**

1. K.C Muoemeka Esq.
2. Maxwell Opara Esq.
3. Leona Nwisienyi (Mrs.)
4. Chukwuma Ozougwu Esq

Applicants

1. Anne C.Akwiwu (Mrs.)
2. Linda Amego (Mrs.)
3. Daniel Modozie
4. A.O. Rufai
5 . I.I Hassan Esq.

Defendants

## JUDGMENT OF THE COURT

### Parties

1. The Applicant a Nigerian Citizen is a Judicial Officer within the Judiciary of the Federal Republic of Nigeria (hereinafter referred to as "the Applicant").

2. The Respondent is the Federal Republic of Nigeria (hereinafter referred to as "the Respondent") a signatory to the ECOWAS Treaty thus a Member State of the ECOWAS.

***Subject Matter of the Proceedings***

3. These proceedings arise from allegations of the Applicant that the Respondent violated his right to fair hearing, and freedom from torture, when they subjected him to a disciplinary process which culminated in a written warning which was widely publicised causing him great mental torture as it destroyed his integrity respect and good name and thus violated his right under Article 5 of the African Charter on Human and Peoples' Rights (the African Charter) and Article 3 of the Universal Declaration of Human Rights (UDHR). Further, the committee being incompetent violates his right to fair hearing contrary to Article 7 of the Charter. The Applicant therefore prays the Court to find the Respondent liable for the

violation of the above referred instruments and award compensation for the harm caused.

4. ***Procedure***

On June 14th, 2018, the Applicant filed a motion for expedited procedure seeking expedited hearing of the suit

On the same 14th June, 2018, the Applicant also filed another motion for Provisional Measure seeking an Order of the Court granting an interim measure suspending the operation of the letter of warning/ watch list dated the 20th day of March 2018 issued by the Respondent against the Applicant

On the 14th day of August, 2018, the Respondent filed a motion before the Court seeking extension of time within which to file its Preliminary Objection and Statement of Defence

On 13th May, 2019, the Applicant filed a motion to amend his Application

On the 3rd of February 2020, the Respondent filed a notion to amend its own defence accordingly and attached same.

On the 23rd of February 2020 the Applicant filed its reply to the defence of the Respondent.

5. In addressing this application, The Court having granted leave for the Applicant to amend its application, will rely on the amended claims as well as amended defence of the Respondent.

**6. *Statement of facts of the Applicant.***

The Applicant, a Judicial officer brought this action against the Respondent alleging a violation of his right to fair hearing, degrading treatment and the destruction of his integrity before all right meaning members of the society, total humiliation of him in the eyes of his family and extended family and the whole world and total destruction of his emotional wellbeing.

7. The Applicant averred that he was appointed a Magistrate in 1989 and subsequently elevated to a Judge of the High Court of the Federal Capital Territory, Abuja, Nigeria on the 17th day of September, 1998. The issue that gave rise to the present action emanated from a judgment he delivered in a case of *BILL CONSTRUCTION NIGERIA LIMITED v. GAZI CONSTRUCTION COMPANY LIMITED Suit No FCT/HC/CV/219/96* in respect of one Plot 505/MISC/319 Cadastral Zone A2, Wuse, Abuja. At the end of the adjudication, judgment was delivered

in favour of the Plaintiff and the defendant being dissatisfied with the decision appealed to the Court of Appeal, Abuja Division.

8. The Applicant further averred that while the matter was pending at the Court of Appeal, the then Minister of the Federal Capital Territory without regard to rule of law divided the subject matter into 3 plots and allocated them to other persons including the Defendant judgment debtor. The Appeal Court affirmed the judgment of the Trial Court on the 19th day of January, 2011, recognising the Plaintiff in that matter as the legitimate owner of plot 505 which was divided by the Honourable Minister.

9. However, on the 18th of April, 2011, one U.L.O Consultants Limited filed Suit No FCT/HC/CV/4594/11 and joined the Plaintiff/Judgement Creditor in the original suit as Defendant claiming ownership of Plot No 1953 which is part of Plot 505 which the Minister divided and allocated. In the interim, the Supreme Court struck out a motion for stay of execution of the judgment of the Appeal Court affirming the Plaintiff in the original matter as the legitimate owner based on which a warrant of possession was issued.

10. The Applicant further submitted that said the U.L.O Consultants Limited and HATLAB Ice Cream- one of the parties allocated part of the divided disputed land, having failed in their bids up to the Supreme Court to overturn the decision of the Trial Court, wrote a petition against the Applicant to the National Judicial Council, (NJC) dated 9th February, 2017 and same was referred to the Applicant for comments.

11. The Applicant continued that he was invited by the National Judicial Council (NJC) to appear before an investigation committee where he made his presentation. That the Investigation Committee despite the overwhelming evidence of abuse of Court processes by the Petitioners, having not properly evaluated the evidence reached an unfair and unjust conclusion and recommended that the Applicant be issued a warning letter, which was announced on television and it occupied all the media space; print, electronic and the internet. Subsequently on the 26th of March, 2018 the Applicant received a warning letter from the NJC through the Hon. Chief Judge of the High Court of the Federal Capital Territory while placing him on its watch list for 9 months.

12. The Applicant asserted that he has never in his 36 years of service been found wanting in the discharge of his duties thus the conduct of the NJC amounts to victimisation which exposed him to needless public ridicule.

13. Additionally, the Applicant contended that the Committee which investigated the petition was not properly constituted when it heard and arrived at its decision. This is because the investigating committee was constituted as a two (2) member tribunal namely Hon Justice Kassim Zannah and Hon Justice Abdullahi Yusuf with Mrs Balogun A.M (Mrs) as the secretary. The Committee deliberated twice before concluding the matter. At the first hearing on the 23rd October 2017 all the members were present but on the second hearing on the 9th of January 2018, while Hon Justice Abdullahi Yusuf was absent the only member left took evidence and concluded the deliberation.

14. The Applicant submitted that the hearing is a fundamental breach of the Rule of law, a violation of his right to a fair trial and therefore a nullity. He therefore seeks the following reliefs:

1. A declaration that the letter of warning, Annexure U and Annexure UU issued and published to the world press by the agent of the Respondent (NJC) constituted grave and grievous perversions of justice that has mentally tortured, traumatized and demoralized the applicant; destroyed his integrity, respect, honour and good name built over four(4) decades of very excellent services to the Federal Republic of Nigeria, in that the verdict of the investigation Committee published to the world press by agent of the Respondent (NJC) Annexure UU is different and more libellous than the actual verdict of the NJC handed over to the applicant(Annexure U) and this constitutes an infringement to the reputation of the applicant by the NJC as the agent of the Respondent.

2. A declaration that the agent of the Respondent was not expected to entertain the petition from U.L.O Consultants limited, a contemnor, a party who had violently violated the principles of Lis pendens as evidence by annexure S1, S2 and has illegally procured annexure T from another court of same (coordinate) jurisdiction thereby exposing the Nigerian judiciary to public ridicule and contempt.

3. A declaration that the Respondent ought not to have entertained the petition because it is subjudice as same had been made an issue in the appeal filed by the petitioner currently pending before the Court of Appeal Abuja. FCT Division.

4. A Declaration that the NJC, an agent of the Responent erred in law by reaching the decision that the applicant did not give U.L.O. Consultants Limited,( a contemnor) and a party who engaged in illegal act a fair hearing before the execution of Supreme Court judgement in the face of annexure (K) despite all the

evidence put before the investigation committee by the Applicant and a further declaration that the right of fair hearing of the Applicant had been infringed upon when the NJC as agent of the Respondent closed its eyes on the defences put forward by the applicant before reaching its perverse verdict. **Annexure U & UU**

5. A declaration that by virtue of sections 287(1) of the 1999 constitution as amended and the Supreme Court decisions in Okonji V Mudiaga odje(1985)10,SC, 267 and Odi V Osafile (1985) 1, NWLR, 9(Pt,1)17,SC the applicant is bound to enforce the Supreme Court judgement annexure I dated 16th day of January 2017 which is superior and take precedence over and above the ruling delivered by the Applicant (annexure G) and indeed takes precedent over every other pending appeal in the court of Appeal.

6. A declaration that the right of the applicant to adjudicate on all cases before him without fear or favour has been infringed upon by National Judicial Council (NJC) as the perverse verdict of the NJC Annexure U and Annexure UU issued and published by NJC to the world press amounts to intimidation and harassment of the applicant for abiding by the Rule of Law and due process in his judicial duty; and consequently an ORDER OF COURT setting aside annexure U and annexure UU for constituting public display of official power, gross abuse of power and reckless abuse of power.

7. A declaration that the right of the Applicant to be tried by an independent, impartial unprejudiced and properly constituted panel has been infringed upon and further that the findings and recommendations of the committee is a nullity having not been properly constituted to sit; to hear and receive evidence on the 9th of January 2018 by reason of the absence of one of the two members of the investigation committee in the person of Hon Justice Abdullahi Yusuf.

8. An Order of the Court enforcing the Applicant's fundamental rights against torture to human person as guaranteed under Article 3 of the UDHR; Article 5 of the Charter and Article 7 of the ICCPR.

9. An Order directing the Respondent to pay to the applicant the sum of eight hundred and fifty five million, Six hundred and twenty five thousand Naira only (N855,625,000) being general damages.

10. An Order directing the Respondent to pay to the applicant the sum of twelve million, two hundred and thirty thousand seven hundred and fifty naira (N12, 230,750) only being the cost of this suit.

11. An Order directing the Respondent to issue a formal apology to the Applicant which should be published in 3 national languages namely. The Guardian, The Nation and the Punch also in the 3 televisions stations; The Channels, NTA and AIT.

**15. *Preliminary objection of the Respondent.***

The Respondent ahead of its defence, filed a Preliminary Objection to the effect that:

a) The Court lacks the jurisdiction to entertain the suit same not a subject matter within the contemplation of Article 9 of the Supplementary Protocol A/SP.1/01/05 same being tortuous in nature.

b) The Court not being an appellate Court is precluded from making any pronouncement on the decision of the tribunal.

c) There is no reasonable cause of action disclosed against the Respondent.

**16. *The Applicant's response to the Preliminary Objection***

The applicant refuted all the grounds of objection and maintained that Article 9 of the Supplementary Protocol 2005empowers the Court to hear the application further reiterates that the irregular composition of the Committee violates his right to fair hearing.

**17. *Statement of Defence of the Respondent.***

The Applicant having been granted leave to amend his initiating application, leave was also granted the Respondent to amend their defence. The facts and reliefs narrated hereunder reflects the amended defence upon which the Court will make its pronouncement.

18. In its statement of Defence of 14th August, 2018, the Respondent denied the Applicants claim in its entirety and puts the Applicant to the strictest proof thereof. The Defendant avers that the Applicant was not denied fair hearing as he accepted he was served the said petition and given time to respond and indeed he appeared before the committee with of his counsel from the legal firm of Adegboyega Awomolo (SAN);

19. With regards to the composition of the committee, the Responded asserted that contrary to the allegation of the Applicant that the panel was composed of 2 judges and a secretary, the committee was a 4 person panel made of 3 Judges and a secretary. In supporting this averment, they submitted the report of the

committee (annexure C) addressed to the Chief Justice which contains the names of the members as follows; Hon Justice Kassim Zannah, Hon Justice Abdullahi Yusuf, Mrs R. I. Inga Council member with Mrs Balogun A.M (Mrs) as the secretary

20. The Respondent therefore urged the Court to dismiss the application as frivolous, speculative, vexatious, baseless and incompetent and an abuse of court process.

**21.** ***Analysis of the Court on the preliminary objection of the Respondent.***

The Court in the course of the deliberation, heard the parties on the preliminary objection of the Respondent and dismissed the objection but reserved its reasons to the Judgment which is hereunder produced. Based on the objection, the issues for determination are as follows;

a) Whether the Court has jurisdiction to hear this matter.

b) Whether the Court can review decisions of National Courts.

c) Whether a reasonable cause of action has been disclosed against the Respondent.

***22. Whether the Court has jurisdiction to hear this application.***

The Respondent claimed the court has no jurisdiction to hear this matter on the grounds that the Applicant's complaint borders on defamation and not human rights. The Court has in several cases held that the mere allegation of human rights violation is enough to confer jurisdiction on and its jurisdiction is established once the facts brought before it relate to human rights violation and where the main purpose of the application is for the Court to find that there is an occurrence of such violation in a Member State. See *ALHAJI MUHAMMED IBRAHIM HASSAN v. GOVERNOR OF GOMBE STATE & ANOR JUDGMENT NO ECW/CCJ/RUL/07/12*, **AND** *EL HAJI MAME ABDOU GAYE v. THE REPUBLIC OF SENEGAL JUDMENT NO ECW/CCJ/JUD/03/12 @ pg. 9*

23. The facts of this case are premised on the allegation that the Committee that sat on the petition against the Applicant was irregular in its composition as such a violation of the Applicant's right to fair hearing contrary to Article 7 of the Charter and further that the publication of the warning letter in most media space caused him anguish and pain and such violates his right of freedom from mental torture contrary to Article 5 of the Charter. Since the allegation of the Applicant

is on human rights violation, following from the reasoning in the decisions above referred the Court holds that it has the jurisdiction to entertain the present action.

***24. Whether the Court can review the decision of the National Courts/Tribunals.***

The Respondent challenged the jurisdiction of the Court on the ground that the court in incompetent to adjudicate on a matter already pronounced upon by a National Court as it will be presiding on same as an appellate court**.**

25. The Court reiterates that its jurisdiction has been clearly spelt out in Article 9(4) of the 2005 Supplementary Protocol with the powers to hear allegation of violation of human rights that occur in Member States. Being a creation of Statute, jurisdiction cannot be assumed or ousted by implication. It must be expressly conferred. To this end, the Court is bound to exercise its powers within its scope of jurisdiction.

26. Though this Court has jurisdiction over human rights violation that occur in Member States of ECOWAS, it has consistently held that it does not have the jurisdiction to act as an appellate court over decisions of domestic courts of Member States. This has been established in a plethora of decisions including the case of *AGRILAND CO. LTD v. THE REPUBLIC OF COTE D' IVOIRE JUDGMENT NO* ECW/CCJ/JUD/07/15 @ pg. 14. This court again held that it *has no mandate to examine decisions made by the domestic courts of Member States, much less to interpret the provisions of their domestic law*;

27. Also in *DR. MAHAMAT SEID ABAZENE v. THE REPUBLIC OF MALI & 2 ORS JUDGMENT NO.* ECW/CCJ/JUD/02/10 the Court held that the Community Court of Justice, ECOWAS, *is not an Appeal Court before which cases decided by the Courts in Member States could still be brought*.

28. In *CHEICK ABDOULAYE MBENGUE V. REP OF MALI ECW/CCJ/APP/08/11 @ pg. 12,* the court recalled its consistently held case law and declined jurisdiction on any application brought seeking to overturn the decision of the domestic courts of ECOWAS of Member States. It was held that the court is neither an appeal court nor a court of cassation of the domestic courts of ECOWAS Member states.

29. However, this jurisdiction must not be interpreted in an absolute manner as clearly put in the case of *MR. KHALIFA ABABACAR SALL & 5 ORS V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/17/18* @ page 27. Where the Court held that

"*…it is not a court of appeal or of cassation of the decisions of the national courts, and such decisions cannot hinder its intervention when it comes to facts within its jurisdiction, namely a violation of a fundamental right. Only the previous referral to another international court, with like jurisdiction, can frustrate its regular referral. However, although it is not inclined to examine national judicial decisions, its jurisdiction must not be interpreted that in an absolute manner.***"**

30. This position has been reiterated in several jurisprudence of the Court, but has been succinctly put in the case of OCEAN KING NIGERIA LTD V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/07/11-REV @ page 11**,** the Court held that

*"…though it has jurisdiction over human rights violation that occur in Member States of ECOWAS, it does not have the jurisdiction to act as appellate courts of the domestic courts of Member States. Thus, when human rights applications are brought before the Court, it will inquire into the human rights allegations but will resist any invitation to act as an appellate court to the domestic courts of Member States as it clearly does not have that jurisdiction*."

31. See also the case of *HIS LORDSHIP JUSTICE PAUL UUTER DERRY & 2 ORS v. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 @ Pg. 28* the court reiterated *that it is not an appellate court and will only admit cases from national courts where human rights violations were alleged in the course of the proceedings.*

32. This issue was finally put to rest when the court held that;

*"… It has severally drawn a distinction between its lack of jurisdiction to examine the decisions of national courts and its jurisdiction to hear cases of human rights abuses arising therefrom. The Court has consistently held that it cannot sit on appeal over decisions of national Courts of Member States."* See *FINANCE INVESTMENT & DEVELOPMENT CORPORATION (FIDC) V. REPUBLIC OF LIBERIA ECW/CCJ/JUD/23/18 @ pg 11.*

This exercise of the Court's mandate is not to pronounce on the propriety or otherwise of the substance of the decision rendered by the Member State but to examine the processes leading to the decision with the view to finding whether any protected substantive or procedural rights of the Applicant were violated. Such a mandate should not be construed either in form or substance as amounting to exercise of appellate function by this Court as being strenuously contended by the Respondent

33. In the instant case, the Applicant alleged that the hearing of the disciplinary committee set up to investigate an allegation of misconduct against him disregarded the principle of fair hearing particularly as the composition was irregular. Having alleged the violation of human right, the Court is within its competence to adjudicate on the decision as regards its compliance with the right to fair hearing guaranteed under Article 7 of the Charter. The objection of the Respondent in this regard is therefore dismissed.

***34. Whether the facts presented by the Applicant disclose a reasonable cause of action against the Respondent***

The Respondent also claimed there is no cause of action as against it requiring the court to consider. The Applicant on his own part replied that he was denied fair hearing during a disciplinary procedure presided over by the NJC same premised on a petition by a party dissatisfied with a judgement he delivered. Furthermore, the Committee which was improperly constituted and thus incompetent concluded and a warning letter was issued to him in addition to placing him on the judicial watch list. That this impugned his reputation and breached his right to fair trial.

35. In addressing this issue, the Court in several of its decisions has defined cause of action as follow;

*"A matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is a right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable"*. See *INCORPORATED TRUSTEES OF FISCAL & CIVIL RIGHTS ENLIGHTENMENT FOUNDATION V. FED REP OF NIGERIA & 2 ORS ECW/CCJ/JUD/18/1* ***AND*** *REV. FR. SOLOMON MFA & 11 ORS v. FEDERAL REPUBLIC OF NIGERIA & 5 ORS JUDGMENT NO ECW/CCJ/JUD/06/19 @ Pg.*

36. The court further expatiated on this principles when it held that;

*"A cause of action is the heart of any complaint, and it is gleaned from the pleadings that initiate a lawsuit. Without a proper and adequately stated cause of action a Plaintiff's case may be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitles the Plaintiff to relief. All the elements of each cause of action must be detailed in the application" See EBERE ANTHONIA AMADI & 3 ORS v. THE FEDERAL GOVERNMENT OF NIGERIA JUDGMENT NO ECW/CCJ/JUD/22/19 @ Pg. 10*

37. It follows from the above that the existence or otherwise of a cause of action is gleaned from the facts pleaded by an Applicant. Thus based on the facts before the court, it is clear that there are issues that the court will need to determine one way or the other which includes whether or not the Applicant's right to fair hearing has been violated and whether as alleged, his trial was fraught with irregularities to wit non -compliance with rules on the composition of the committee which has the potential to violate his right to fair hearing.

38. The Court is convinced that facts above is conclusive that the Applicant has established a cause of action and so holds.

## MERIT

***39. Issue for determination.***

Based on the facts before the Court, the following issues for determination were formulated;

1. Whether the Applicant's right to freedom from torture has been violated by the Respondent.

2. Whether the Applicants right to fair hearing was violated by the Respondent.

3. Whether the Applicant is entitled to the reliefs sought.

**40.** ***Whether the Respondent violated the Applicant's right to freedom from mental torture***

41. Applicant's case is that following the deliberation on the petition against him by the NJC on the petition of judicial misconduct against him, he was issued a warning and placed on the watch list as an erring judicial officer. Further that the subsequent publication of the conduct in the media exposed him to public ridicule, odium and opprobrium and he received calls from both within and out of Nigeria from well-wishers expressing concern. The Applicants concluded that the anguish and pain occasioned by the Respondent's publication amounts to mental torture

42. The Court takes judicial notice of the fact that we receive many applications from Complainants seeking relief for violation of freedom from torture, particularly for mental torture for acts of the Respondent that allegedly cause them pain and suffering, anguish and other emotional distress, with tendency to ascribe any and all such pain and suffering as mental torture which to the Court's consternation is more often than not misplaced and often held unfounded.

43. Torture can be simply be referred to as inhumane acts causing severe pain or suffering, or serious injury to the body or to mental or physical health by a public officer with intent amongst others to obtain confession, or to punish the victim. The legal definition with its full complement will be espoused later.

44. For much of history torture was used quite commonly, and without huge outcry. Civilisations such as the Egyptians, the Persians, the Greeks and the Romans all used torture. Even the Church regarded it as an acceptable part of their armoury. Torture was used as part of many legal systems in the West until the early 19th century. Torture has been used as a punishment, to intimidate or control people, to get information or just to gratify sadistic impulses. Governments have used torture to keep themselves in power, to enforce their particular political philosophy, to remove opposition and to implement particular policies.

45. Since the middle of the last century there has generally been a general outcry against Torture. The Foreign Office web site says *"Torture is one of the most abhorrent violations of human rights and human dignity*,"

Mark Danner, an American writer and professor at Berkeley Graduate School expressed his disgust thus; *Torture takes over someone's nervous system. Torture takes over what they feel. Torture takes over and penetrates into their mind and into their body. It's not only illegal, it's immoral.*

Lord Brown a British judge describes "*torture as an unqualified evil. It can never be justified. Rather he must be always be punished*."

46. The outcry regard torture as wrong for several reasons: it is cruel, it treats people as means rather than ends. It is so wrong that the UN Convention Against Torture allows no exceptions, even in circumstances such as war or while fighting terrorism. Equally evidence obtained through torture is not admissible in Courts of law. Unfortunately, torture is still widely practised in the world. According to Amnesty International there were reports of torture or ill-treatment by state officials in more than 150 countries on the period 1997 to mid-2000.

47. Following various outcry and because of the gravity of torture, it was elevated to jus cogens, as one of the norms of international law that cannot be derogated from. The first international instrument which guarantees freedom from torture was therefore enshrined in 1948 in the Universal Declaration of Human Rights (UDHR) which provided in simple term that; *No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment* (see Article 5)

Thereafter, the right to freedom from torture was enshrined in many human rights instruments with more expansive terms which seek to protect all individuals from being intentionally subjected to 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.

48. Some of these include; The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), The African Charter on Human and Peoples Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic and Socio-Cultural Rights, European Convention on Human Rights, the Inter-American Convention against Torture, Common Article 3 of the 4 Geneva Convention amongst others.

49. Amongst the above instruments, the CAT is very instructive as it provides the most precise and widely-cited definition of torture under international law. Article 1 of CAT is hereunder reproduced and it defines torture as;

*"any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

50. The prohibition of torture is enshrined under Article 5 of the African Charter.While the Charter does not define the meaning of the word "torture", the trust of the Article is the guarrantee of the protection of both the dignity of the human person, and the physical and mental integrity of the individual. It is noteworthy that the international instruments earlier referred are essentially similar to the provisions of the African Charter in their intention that is, the prohibition of the use of torture. Article 5 of The Charter 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*."

51. In analysing any allegation of torture, same is usually guided by the definition of CAT which contemplates the following; 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.

52. Common acts that have the potential to be classified as physical torture include beating, electric shocks, stretching, submersion, suffocation, burns, rape and sexual assault. On the other hand, Mental or psychological forms of torture, which very often have the most long-lasting consequences for victims, are those that cause disruptions of the senses or personality, without causing physical pain or leaving any visible physical mark. These include; mock executions, mock amputations, sleep deprivation; solitary confinement; fear and humiliation; severe sexual and cultural humiliation, forced nudity, exposure to cold temperatures, light deprivation.

53. The subject of torture is being of global concern has been dealt with exhaustively in the jurisprudence of international human rights courts and tribunals, such as the ECOWAS Court of Justice, the African Commission on Human and Peoples' Rights, the United Nations Committee against Torture, the Inter-American Court of human rights and the European Court of Human Rights. In determining this issue, we will rely on decisions of these international courts and tribunals as they pertain to physical torture and mental torture.

***54. The ECOWAS Court of Justice***.

a) In a case where an applicant was held in the prison in what is known as the 'violin' position with very constrained movement and in total darkness, this Court held that

"*While this act of confining the Applicants in isolation in a small cell, with little or no chance of movement or contact with anybody for twelve (12) days, is without a doubt torture, a detention in a completely dark room for days will also necessarily cause* ***mental*** *pain which may lead to a person affected to been disillusioned as he/she will have no notion of day or night*." *See MONGOUNGA & Ors Vs REPUBLIC OF TOGO* ECW/CCJ/JUD/32/19.

b) In another instant where the Applicant alleged physical torture during his detention by the Military prison Makurdi- Nigeria, the Court held that; "*torture is strictly prohibited pursuant to the Charter ……..the prohibition of torture forms part of the binding norms of international law which must not be transgressed by*

*the State*." *See PTE ALIMI AKEEM Vs FEDERAL REPUBLIC OF NIGERIA.* ECW/CCJ/JUD/01/14.

c) In another case the Respondent was alleged to have carried out gruesome acts where the Applicant was deliberately handcuffed, tied to a rifle that was suspended between two chairs, before beating him with police baton and setting a fire under his body in order to burn him like a piece of meat. Following this action and while the Applicant was trying to set himself free, he fell into the fire, had two fracture in his fore-arm and burns on his back which required surgery as well as medical treatment over a long period. The Court held that;

"*There is no doubt that this situation, as described above, by the Applicant was likely to have inflicted upon his person, pains, sufferings, physical and mental anguish, all in the bid to intimidate or obtaining information from him( because they suspected him to be the author of a theft".)*

*Thus, it should be concluded that the behaviour of Applicant's aggressors, within the premises of the Gendarmerie, falls within the understanding of the definition of "torture" as provided under Article 1 of the UN Convention against Torture, cruel, inhuman and degrading treatments or other punishments of 1984, thus constituting a violation of the right not to be subjected to torture, cruel, inhuman and degrading treatments or other punishments, as guaranteed under Articles 1 and 5 of the African Charter on Human Rights, 7 and 10 (1) of the International Covenant on Civil and Political Rights, and 5 of the Universal Declaration of Human Rights, as mentioned above." See ALHOUSSEINE CAMARA VS REOUBLIC OF GUINEA ECW/CCJ/DUD/18/19*

***55. The African Commission on Human & Peoples Rights***.

The African Commission articulated the alleged acts of the Respondent in the case herein under referred and accordingly decided they amount to torture both physical and mental. Below are the list of actions perpetrated by the Respondent against the victim.

1. He was subjected to prolonged electric shocks in the mouth, genitals, fingers, toes and other parts of the body.

2. A chemical substance was applied onto his body.

3. He was forced to drink his own blood and urine apart from being urinated upon by his tormentors while they chanted 'this is humiliation, this is humiliation.'

4. That consequent to his incarceration, he suffered severe physical injuries and psychological trauma resultant from the torture

5. That he received treatment for physical injuries and psychological trauma from Parirenyatwa, Avenues and Dandaro Hospital and clinics in Zimbabwe

6. He submitted medical evidence to support these allegations

7. He further alleged that when he fled to South Africa, he was still suffering from physical injuries, severe depression, nightmares, temporary impotence so much so that he had to receive further treatment and counseling for trauma at the Centre for Studies of Violence and Reconciliation.

8. The Respondent State did not deny or argue this point, as their representatives conceded that they could not say what kind of torture the victim suffered in police custody, and could not deny that it in fact occurred. See *Gabriel Shumba vs Zimbabwe*, No 288/04.

56. The Commission held that the Respondent State had violated the right of the Victim not to be tortured and ill-treated as recognized in Article 5 of the African Charter. While the Commission declared a holistic violation of torture but a fine analysis of the above action will reveal a mixture of physical and contactless actions which can be classified as physical or mental torture. Obviously actions 1&2 are characteristic of physical torture while action 3 falls within the category of mental torture.

***57. The United Nations Committee Against Torture***

This Committee is the UN specialised mechanism with the role of monitoring and supervising the implementation by States parties of their obligations under the treaty and also empowered to deliberate on allegations of human rights in the UN Member States. It found against the State of Bosnia and Herzegovina that rape and other acts of sexual violence constitute torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), and ordered the State to pay "fair and adequate compensation" and provide free medical and psychological care to the victim. *See Committee Against Torture, Mrs. A v. Bosnia and Herzegovina,* Communication No. 854/2017,UN Doc. CAT/C/67/D/854/2017.

***58. The Inter-American Court on Human Rights.***

a) In addressing the component of torture, the Court opined in the case of *Maritza Urrutia V Guatamela* that:

*"…. the elements of the concept of torture established in Article 2 of the Inter-American Convention against Torture (which is pari-materia with Article 5 of the African Charter)**Emphasis ours** include methods to obliterate the personality of the victim in order to attain certain objectives, such as obtaining information from a person; or intimidation or punishment, which may be inflicted through physical violence or through acts that produce severe mental or moral suffering in the victim."*

59. The fact of the case is that Maritza Urrutia was abducted and tortured by members of the Guatemalan Army due to her involvement in the political organization Guerrilla Army of the Poor. Her abductors pressured her for certain information, they threatened to kill her and that they had her son in a room, they showed her photographs of corpses that had been destroyed and mutilated at the war front, and told her that this would happen to her if she did not collaborate.

60. The Inter-American Court after analysing the facts of this case concluded that;

"*It has been proved that Maritza Urrutia was subjected to acts of mental violence by being exposed intentionally to a context of intense suffering and anguish, according to the practice that prevailed at that time. The Court also considers that the acts alleged in this case were prepared and inflicted deliberately to obliterate the victim's personality and demoralize her, which constitutes a form of mental torture, in violation of Article 5(1) and 5(2) of the Convention to the detriment of Maritza Urrutia*"

b) Further in another case, the Inter-American Court held that;

"*It should be pointed out that, according to international standards for protection, torture can be inflicted not only via physical violence, but also through acts that produce severe physical, psychological or moral suffering in the victim. The Court also considers that said acts were planned and inflicted deliberately upon Mr. Cantoral-Benavides for at least two purposes. Prior to his conviction, the purpose was to wear down his psychological resistance and force him to incriminate himself or to confess to certain illegal activities. After he was convicted, the purpose was to subject him to other types of punishment, in addition to imprisonment. Cantoral-Benavides v Peru, IACHR Series C no 69, [2000] IACHR 6, IHRL 1452 (IACHR 2000).*

This case illustrates that the purpose for the infliction of ill-treatment is not restricted to extortion of confession, but can include punishment of a victim which in this case is to gratify sadistic impulses.

c) The Inter-American Court in further exposition of acts amounting to torture found in the case hereunder that

" *the victims who were taken into illegal custody, beaten, and then killed and that the beatings received, the pain of knowing they were condemned to die for no reason whatsoever, and the torture of having to dig their own graves was part of the moral damage suffered by the victims who died. Also the one victim who did not die immediately also suffered the moral injury of bearing "the pain of his wounds being infested by maggots and of seeing the bodies of his companions being devoured by vultures"* See Aloeboetoe Case, (Reparations), 15 Inter-Am. Ct. H.R. (ser. C) para. 51 (1993

The Court therefore awarded compensation to the estate of the deceased victims for their moral injuries classifying same as mental torture.

***61. European Court of Human Rights.***

In the case *Selçuk and Asker v. Turkey* (24 April 1998, *Reports* 1998-II) the applicants complained that soldiers from Kulp, deliberately burned their homes in İslamköy on 16 June 1993 and, ten days later, returned to burn the mill partly owned by Mrs Selçuk. They forcibly entered and searched, and instructed them to remove their possessions. However, while inside and trying to save their furniture and belongings, the soldiers set fire to the house and had they not escaped through a door to the barn at the back of the house, they would have been asphyxiated. Furthermore villagers who attempted to extinguish the fire were prevented from doing so by the soldiers. Consequently their house, barn and all of their property, including their food stocks and poplar trees, were destroyed as they watched helplessly.

62. The Court held that having regard to the manner in which the applicants' homes had been destroyed, and namely to the fact that the exercise had been premeditated and carried out contemptuously and without respect for the feelings of the applicants, whose protests had been ignored concluded that it may therefore be reasonably assumed the security forces burnt the applicants' homes and possessions with a view to causing them mental suffering, which has enabled the Court to find a violation of Article 3 on that account (Article 3 is pari-materia with article 5 of the Charter).

63. In another case, a village came under an indiscriminate attack when military planes fired bombs over it destroying homes, possessions and killing the relatives of some of the Applicants. The Government defended the act as necessary to

prevent terrorist attacks and suppress the criminal activities of illegal armed groups and in view of the impossibility of using ground troops in the area of the village, military officials in command of counter-terrorist activities took a decision to launch a pinpoint missile strike by air forces on the location of illegal armed groups near the village in question.

64. Interestingly in canvassing their claim for mental torture under Article 3, the Applicants referred to the decision of the Court in *Selçuk and Asker* above urging the Court to note the similarities and rule accordingly. However the Court held

*".....in this connection, it notes firstly that, as far as the destruction of the applicants' possessions including their housing was concerned, the present case is distinguishable from the Turkish cases referred to by the applicants in particular, in the case of Selçuk and Asker*"

In conclusion it held that

*"....the Court has no evidence to be able to reach the same conclusion. It is true that, as has been found above, the attack of 12 September 1999 was not adequately planned and controlled (see paragraph 149 above) but this attack can hardly be said to have had as its purpose subjecting the applicants to inhuman treatment, and in particular, causing them moral suffering. The Court accepts that the applicants may have suffered considerable distress as a result of the destruction of their homes and property in the attack of 12 September 1999. However, in the light of the foregoing, and also bearing in mind that it has already found a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on that account, the Court is unable to find a violation of Article 3 of the Convention in the circumstances of the present case, in so far as the applicants' complaint about the destruction of their homes and possessions is concerned*." *See ESMUKHAMETOV & ors v RUSSIA. 24 April 1998- reports 1998-11.*

65. The salient points evinced by these two cases are that, firstly the necessity of the intention component of torture as evidence by the dismissal of one and the admittance of another based on the presence of an intention or otherwise. Secondly, while the majority of the decided cases above referred are allegation of torture that occurred in correctional places, police stations, and other places of detention, these two cases are indicative that they need not be.

66. The sum total of the analysis above shows that the following if combined constitute torture:

- Inflicting severe physical or mental pain or suffering
- Doing so deliberately

For any of the following reasons

- To obtain information or a confession from the person being tortured or from someone else
- To punish that person for something they, or another person, has done or is suspected of having done
- To intimidate or coerce that person or another person
- For any reason 'based on discrimination'

67. The relevant points in understanding the nature of torture are that the act complained of need not be physical with accompanying visible signs, it admits of other acts with the capacity to affect the mental faculties of the victim by causing amongst others severe mental delusion coupled mostly with fear, anguish and suffering. Additionally, such act must be inflicted by a public officer acting in an official capacity and carrying on same with the required intention. The *situ* of the act is of no consequence.

68. In the instant case to address the allegation of torture by the Applicant, the Court recalls that he alleged that following the decision to issue him a warning and as well as put him on a judicial watch list and its wide publication, the Applicant said he suffered grave and grievous perversion of justice that had mentally tortured him, traumatized and demoralized him and these amounts to violation of his freedom from torture particularly mental torture.

69. The Court having imputed the facts as pleaded by the Applicant to the components of torture listed above, notes that they do not support the allegation of torture. As a start there is no indication that the alleged pain and suffering was intentionally inflicted by the Respondent, nor that same was inflicted for specific purpose(s) such as to obtain information, to punish, or to intimidate, or for any reason based on discrimination; neither is there evidence to support that the act (the publication), was carried out by or at the instigation of, or with the consent or acquiescence of State authorities.

70. In this wise, the court comes to the inevitable conclusion that the act of the Respondent in publishing the warning letter does not meet the criteria for torture and thus hold that the right of the Applicant to be free from torture was not violated by the Respondent.

***71. Whether the Applicant's right to fair hearing was violated by the Respondent;***

The crux of the Applicant's case is that the Committee that sat to deliberate on the petition against him was not properly constituted when it heard and arrived at its decision. He alleged that the investigating committee was originally constituted as a two (2) member tribunal namely; Hon Justice Kassim Zannah and Hon Justice Abdullahi Yusuf with Mrs Balogun A.M (Mrs) as the secretary. The Committee deliberated twice before concluding the matter. On the 23rd October 2017 both members were present but on the 9th of January 2018, though Hon Justice Abdullahi Yusuf was absent the only member left, heard parties, took evidence and concluded the deliberation. Based on above he concluded that the hearing is a fundamental breach of the Rule of law, a violation of his right to a fair trial and therefore a nullity

72. The Respondent on the other hand denied the allegation and maintained that not only was the Applicant given an opportunity to be heard by inviting him to answer to the allegation against him, he indeed appeared before the committee with a counsel of his choice. Regarding the composition of the panel, they refuted the allegation of the Applicant as to numbers and filed annexure C to show that the Committee was made up of four (4) members the secretary inclusive. Namely Hon Justice Kassim Zannah, Hon Justice Abdullahi Yusuf, Mrs R. I. Inga Council member with Mrs Balogun A.M (Mrs) as the secretary

**Analysis of the Court**.

73. The cardinal principles of fair hearing require that a person whose interests are to be affected by a decision (whether adjudicative or administrative) receive a fair and unbiased hearing before the decision is made. Even scripturally, God did not pass sentence on Adam before he was called upon to make his defence. Failure to comply with the requirements of procedural fairness risk having the decision declared invalid by a court or tribunal, not because the decision itself was wrong, but because the decision-making process was wrong in some way. This was amplified by the Court when it held that;

*"...the principle of fair hearing as encapsulated in Article 7 of the African Charter on Human and Peoples Rights is based on the rule that an individual should not be penalised by decisions affecting his rights or legitimate expectations without being given prior notice of the case, a fair opportunity to*

*answer and/or opportunity to present their own case" See MOHAMMED EL TAYYIB BAH v. THE RBLIC OF SIERRA LEONE JUDGMENT NO ECW/CCJ/JUD/11/15*.

74. In capturing these fundamentals, Article 7 of the charter that deals with fair hearing provides thus:

*"Every individual shall have the right to have his cause heard. This comprises:*
*1. 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;*

*2. The right to be presumed innocent until proved guilty by a competent court or tribunal;*

*3. The right to defence, including the right to be defended by counsel of his choice;*

*4. The right to be tried within a reasonable time by an impartial court or tribunal".*

75. The totality of these provisions relied upon by the Applicant is to ensure that an accused person or a defendant is heard in his/her own case, that he/she is presumed innocent until otherwise established, is allowed legal representation, and is able to appeal to a higher court when dissatisfied with the decision and the hearing is concluded within a reasonable time with the overriding safeguard that the court/tribunal is impartial and competent.

76. The facts as presented by the Applicant himself show that all the safeguards above listed save one were complied with by the Respondent in the course of the hearing. He was given an opportunity to be heard and was indeed heard, premised on the fact that he was presumed innocent; he was represented by counsel of his choice and the Applicant was satisfied with the time within which the hearing was conducted as he did not allege any tardiness on the part of the Committee.

77. However, the crux of the Applicant's case is that his right to fair hearing was violated because the Committee was incompetent same being irregular as regards the numbers of the members that deliberated on the last day of the hearing. Specifically that while Hon Justice Kassim Zannah and Hon Justice Abdullahi Yusuf took part on the first day - 23rd October 2017 however Hon Justice Abdullahi Yusuf was absent on the 9th of January 2018, being the last deliberation, and only Hon Justice Kassim Zannah heard the parties and concluded the deliberation which finalised the investigation.

78. This Court captured the imperatives of these safeguards when it held that;

"*Article 7 (1) clearly states that every individual shall have the right to have his cause heard and this comprises among other things the right to be presumed innocent until proven guilty by* ***a competent*** *Court or tribunal, (****Emphasis ours)*** *the right to defense, including the right to be defended by counsel of his choice and the right to be tried within a reasonable time by an impartial Court or tribunal.*" See *CHIEF EBRIMAH MANNEH v. THE REPUBLIC of THE GAMBIA.* ECW/CCJ/APP/04/07, CCJ p. 191, para. 21.

79. This same understanding is reflected in the decision of the African Commission which ruled that*:*

*"….the right to be heard requires that the complainant has unfettered access to a court of* ***competen****t jurisdiction to hear his cause. It also requires that the matter be brought before a court with the* ***competent*** *jurisdiction to hear the case." Emphasis ours* See Communication *No. 313/05 Kenneth Good v. Botswana*

80. The issue to be determined therefore is whether the Committee is competent within the context of Article 7 of The Charter. It is a general principle of law that the burden of proving the existence or non- existence of a fact is on the party who asserts. Confirming same this court held that;

*"…as a general rule, the burden of proof lies on the Plaintiff. If that burden is met, the burden then shifts to the Defendant, who now has to plead and prove any defence by a preponderance of evidence". In FESTUS A.O. OGWUCHE v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/02/18*

81. In the instant case, the Applicant did not adduce any evidence to support his allegation on the irregular composition of the Court, but he put the Respondent on notice to produce the record of proceedings of the investigation. The internationally recognised rule of Evidence is that to the extent that it is impossible or impracticable for the party to have recourse to a relevant document which is in the custody of the adverse party and also to the extent that the said adverse party has been put on notice to produce but failed, the party serving the notice is entitled to adduce secondary evidence of the document in question. See *THE REGISTERED TRUSTEES of JAMAM'AH FOUNDATION Vs FEDERAL REPUBLIC OF NGERIA No. ECW/CCJ/JUD/04/20*

82. The court notes that the Applicant not been the originator of the said record of proceedings and thus not the natural custodian of same, neither are they public documents per se to which he can apply for certification puts him in an impossible

position to adduce even the secondary evidence. This entitles the Applicant to a waiver or release in line with the Court's ruling when it held that:

*"This burden will however shift where the party has sufficiently adduced evidence to establish the fact or where there is a legal presumption or a waiver or a release.*" See *LIEUTENANT COLONEL SILAS JOCK SANTOI v. FEDERAL REPUBLIC OF NIGERIA; ECW/CCJ/JUG/01/19 @ Pg.* 16

83. In this circumstance, the burden shifts to the Respondent who in any case put up a defence by tendering annexure C (the final report of the Committee submitted to the Chief Justice).This position aligns with an earlier decision of the Court where it held that

*"....the claimant has the responsibility for adducing evidence on every point necessary to prove his case. In practical terms, the burden does not always lie on the claimant, where a defence is put forward the defendant bears the burden of proving the elements necessary to establish the defence". See MOUKHTAR IBRAHIM v. GOVERNMENT OF JIGAWA STATE & 2ORS ECW/CCJ/JUD/12/14*

84. The court will now subject the said Annexure C to both the admissibility and probative tests to determine its relevance to the Respondent's defence. The Respondent filed annexure C to rebut the allegation of the irregularity of the membership of the Committee. Indeed Annexure C contains the names of the three Judges nominated to hear the petition. It also contains the reasoning and the recommendations of the Committee. The Applicant however challenged annexure C on grounds that it is unsigned and undated and therefore not admissible in support of the Respondent's case.

85. In addressing this issue the Court posits that the effect of an unsigned document is that it lacks authenticity, devoid of any probative value and therefore inadmissible. *In MICHEL GBAGBO v. REPUBLIC OF COTE D'IVOIRE ECW/CCJ/03/13* this court held that "*where a document is tendered without the signature of the initiator and the signature is so much a vital condition for the validity of the document, the document lacks legal value*."

86. Additionally, the provision of *the Judicial Discipline Regulations, 2017* with regards to reports of investigations is further pertinent in addressing the legality of the said annexure C. *Section 23(4) thereof provides thus*

*"...the report shall be accompanied by a statement of the* ***vote*** *by which it was adopted and* ***signed*** *by the Chairman and all members of the Committee together*

*with any dissenting or separate statements of Committee members*" ***Emphasis ours.***

87. This regulation contemplates two (2) actions: Firstly, the report must indicate a statement of the vote of each member. Secondly, the report must also be signed by all members of the Committee. The Court had earlier addressed the implication of the absence of signature on the Report. With regards to the votes, a reading of the said Annexure C shows that it was not accompanied by any statement of votes of members as required by the said regulations.

88. Furthermore, Section 20 of the Judicial Discipline Regulations, 2017 provides that *an investigation Committee shall be composed of not less than three and not more than five Members of the Council.*

89. As it stands, Annexure C is not only inconsistent with the universal law of Evidence on admissibility of documents but it fails to be in conformity with the provisions of the Regulations under which the Committee was set up. The committee shot its self on both legs so to say. The consequence of this breach is that the Respondent has not discharged the burden of proving the regularity and by extension competency of the Committee. The assertion of the Applicant that only one member presided over the deliberation on the last day is therefore taken as proved. A proceeding where one of its member is absent and therefore unable to partake in the deliberation, to listen to witnesses, watch their demeanour yet sits to render an adverse decision against the Applicant is not only a mistrial but a fundamental defect in the proceedings which renders it a nullity.

90. The Court will therefore not hesitate to declare that the said Annexure C is a worthless piece of paper devoid of any evidentiary value and therefore is inadmissible to support the defence of the Respondent. Consequently the allegation that only one member of the Committee sat to hear the case on 9th of January 2018 same being uncontroverted, establishes as a fact the irregularity of the Committee with regards to its numbers and a conclusive proof of its incompetence which renders the decision emanating from it a nullity. In that wise, the Court aligns itself with the previous decision of this court where it held that

*"It is a well establish principles of law that a Court is competent when it is properly constituted as regards* ***numbers*** *and qualification of members of the bench and no member is disqualified for one reason or another……."*
*AFOLABI OLAJIDE Vs FRN (2004) ECW/CCJ/04* page 65 paragraphs 32 (1-3)

91. The Court is equally persuaded by the decision of the Supreme Court of Nigeria wherein it upheld the decision of the Court of Appeal that declared a nullity, a judgement delivered by a judge who did not sit with the others on the 6th of February 2019 to hear the proceeding in a Governorship election. The apex Court was of the opinion that his absence at one of the sittings certainly affected the competence of the tribunal stating further that;

*"....any defect in the composition of a tribunal is a nullity no matter how thoroughly or properly it was concluded, also the sitting or participation by members in the proceedings must always be maintained and consistent throughout the proceedings right from the beginning to the end of the proceedings. Where for any reason a judge is absent or indisposed the proceedings must be adjourned" ADELEKE vs OYETOLA 2020 6 NWLR 449*

92. Having found that the recommendation of the Committee is a nullity, same therefore has no legal validity and can confer no right nor impose any obligation on anybody. The Court therefore holds that the issuance of a warning letter and placing the Applicant on the judicial watch list having being rendered by an incompetent tribunal is a violation of his right to fair hearing contrary to Article 7 of the Charter.

***93. Whether the Applicant is entitled to the reliefs sought.***

The general principle of law is that where there is injury, there must be a remedy (Ubi Jus Ibi Remedium). This right to a remedy is one of the fundamental principles of International Law enshrined in various International Treaties such as the ICCPR Article 2(3), ICERD Article 6, and CAT Article 14 and also affirmed by various international and regional courts.

94. It is important to note that while violation of human rights attracts remedy however not all reliefs sought can be granted as some may be outside the mandate of the court. Furthermore even where there is an established violation as in the instant case, it is still paramount to link the violation to the harm or alleged prejudice/harm, in other words there must be a proof of a causative link. Causation encompasses the immediate impact of the injury e.g. death leads to funeral expenses, dismissal results in loss of income etc. This was further espoused by the apt illustration hereunder by The Inter-American Court in *ALOEBOETOE et al v SURINAME 15 Inter-Am. Ct. H.R. (ser. C) para. 51 (1993*

*".....every human act produces diverse consequences, some proximate and others remote. An old adage puts it as follows: causa causae est causa causati. Imagine*

*the effect of a stone cast into a lake. It will cause a concentric circles to ripple over the water, moving further and further away and becoming even more imperceptible. Thus it is that all human actions cause remote and distant effect. To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible since that action caused the effect that multiplied to a degree that cannot be measured*".

95. At this point, in addressing the reparation due if any, it is imperative to also evaluate the causative link between them and the acts of the Respondent. For ease of reference same is again reproduced hereunder.

1. A declaration that the letter of warring, Annexure U and Annexure UU issued and published to the world press by the agent of the defendant (NJC) constituted grave and grievous perversions of justice that has mentally tortured, traumatized and demoralized the applicant; destroyed his integrity, respect, honour and good name built over four(4) decades of very excellent services to the Federal Republic of Nigeria, in that the verdict of the investigation Committee published to the world press by agent of the defendant (NJC) Annexure UU is different and more libellous than the actual verdict of the NJC handed over to the applicant(Annexure U) and this constitutes an infringement to the reputation of the applicant by the NJC as the agent of the defendant.

2. A declaration that the agent of the defendant was not expected to entertain the petition from U.L.O Consultants limited, a contemnor, a party who had violently violated the principles of Lis pendens as evidence by annexure S1, S2 and has illegally procured annexure T from another court of same (coordinate) jurisdiction thereby exposing the Nigerian judiciary to public ridicule and contempt.

3. A declaration that the defendant ought not to have entertained the petition because it is subjudice as same had been made an issue in the appeal filed by the petitioner currently pending before the Court of Appeal Abuja. FCT Division.

4. A Declaration that the NJC, an agent of the defendant erred in law by reaching the decision that the applicant did not give U.L.O. Consultants Limited,( a contemnor) an a party who engaged in illegal act a fair hearing before the execution of Supreme Court judgement in the face of annexure (K) despite all the evidence put before the investigation committee by the Applicant and a further declaration that the right of fair hearing of the Applicant had been infringed upon

when the NJC as agent of the defendant closed its eyes on the defences put forward by the applicant before reaching its perverse verdict. **Annexure U & UU**

5. A declaration that by virtue of sections 287(1) of the 1999 constitution as amended and the Supreme Court decisions in Okonji V Mudiaga odje (1985)10,SC, 267 and Odi V Osafile (1985) 1, NWLR, 9(Pt,1)17,SC the applicant is bound to enforce the Supreme Court judgement annexure I dated 16th day of January 2017 which is superior and take precedence over and above the ruling delivered by the Applicant (annexure G) and indeed takes precedent over every other pending appeal in the court of Appeal.

6. A declaration that the right of the applicant to adjudicate on all cases before him without fear or favour has been infringed upon by National Judicial Council (NJC) as the perverse verdict of the NJC Annexure U and Annexure UU issued and published by NJC to the world press amounts to intimidation and harassment of the applicant for abiding by the Rule of Law and due process in his judicial duty; and consequently an order of Court setting aside annexure U and annexure UU for constituting public display of official power, gross abuse of power and reckless abuse of power.

7. A declaration that the right of the Applicant to be tried by an independent, impartial unprejudiced and properly constituted panel has been infringed upon and further that the findings and recommendations of the committee is a nullity having not been properly constituted to sit; to hear and receive evidence on the 9th of January 2018 by reason of the absence of one of the two members of the investigation committee in the person of Hon Justice Abdullahi Yusuf.

8. An Order of the Court enforcing the Applicant's fundamental rights against torture to human person as guaranteed under Article 3 of the UDHR; Article 5 of the Charter and Article 7 of the ICCPR.

9. An Order directing the defendant to pay to the applicant the sum of eight hundred and fifty five million, Six hundred and twenty five thousand Naira only (N855,625,000) being general damages.

10. An Order directing the defendant to pay to the applicant the sum of twelve million, two hundred and thirty thousand seven hundred and fifty naira (N12, 230,750) only being the cost of this suit.

11. An Order directing the Defendant to issue a formal apology to the Applicant which should be published in 3 national languages namely. The

Guardian, The Nation and the Punch also in the 3 televisions stations; The Channels, NTA and AIT.

97. From the above declarations and orders sought by the Applicant, the Court notes that the totality of declarations 2, 3,4,5,6, prayed the court to make pronouncements on the appropriateness or otherwise of admitting petitions, the basis of reaching a decision, and compelling the Respondent to enforce judgment of the Apex court. These interventions are outside the competence of the Court as making them will amount to sitting on appeal over the decision of the NJC, a fact which the Court has reiterated in numerous decision. Consequently the court dismisses reliefs 2, 3,4,5,6 same being outside its jurisdiction.

*98. Compensation for infliction of torture*

The Applicant claimed that the warning letter issued to him and the publication of same had traumatized and demoralized him, destroyed his integrity, respect, honour and good name built over four decades of very excellent service to the Federal Republic of Nigeria. He therefore sought an order of court to enforce his right against torture. The Court having held earlier that the alleged pain and suffering arising from the publication of the warning letter does not constitute torture, consequently dismisses reliefs 1 & 8 above refereed.

*99. Compensation for violation of right to fair hearing*

The Applicant alleged violation of his right to fair hearing by the Respondent for which he claimed a monetary compensation in the sum of eight hundred and fifty five million, Six hundred and twenty five thousand Naira only (N855,625,000) as general damages. The Court recalls that it had earlier found that the warning letter issued to the Applicant by an incompetent Committee is a violation of his right to fair hearing by the Respondent. While its trite law that any violation of human rights attracts reparation which can *inter alia* be via *restituto integrum*, monetary compensation as special or general damages or just satisfaction, nevertheless the harm, loss or prejudice emanating from the said violation must be established to enable the award of the appropriate reparation. *In KARIM MEISSA WADE V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/19/13 @* pg.28, The Court held

'*that reparation of harm may only be ordered upon the condition that the harm in question is established to have really occurred, and that there is found to have existed a link of cau/se and effect between the offence committed and the harm caused'*.

100. In the instant case, to qualify for an award of reparation, the Applicant must prove the prejudice suffered which was occasioned by the decision of the Committee, for example that based on the decision, he was dismissed or suspended from work, or his salaries and emoluments were unpaid. The Court was not presented with any facts evidencing any harm, injury or prejudice arising from said violation. The Court is therefore constrained from awarding the sum claimed in the sum of eight hundred and fifty five million, Six hundred and twenty five thousand Naira only (N855,625,000) for general damages.

110. Moreover in the event that the court contemplates a monetary award, it is important to state that the object of award is not to enrich the party. This court has clearly put this straight in *EBERE ANTHONIA AMADI & 3 ORS v. THE FEDERAL GOVERNMENT OF NIGERIA ECW/CCJ/JUD/22/19 @ Pg 14* where it held that;

*".....its principal object of an award in human rights violation is to vindicate the injured feelings of the victim and to restore his rights....."*

111. Consequently the Court holds that the Applicant while not entitled to the amount claimed, will be awarded only nominal damages which is usually awarded where a violation has been proved but the Applicant has not established the loss suffered. The Court is persuaded by the decision in the case of *Wiston Churchill Vs Louis Adamic* where a publishers-Harpers Bros had written that the British Prime Minister had been drunk at a dinner at the White House, the jury found that even though a violation was established, the prime minister did not suffer loss to his reputation and therefore awarded the sum of one English Shillings (25 cents).

112. In the instant case, in view of the fact that the Applicant did not established the loss he suffered, the Court therefore awards the sum of N50 (fifty Naira only) as a symbolic gesture in recognition of the fact that there was indeed a violation of his right.

*113. Just Satisfaction*

The Court hasten to state that in addition to monetary damages, a declaratory relief in the form of just satisfaction is also a reparation which at the most basic level, recognises a judgement in favour of a victim as in itself a form of satisfaction. In this regard The Inter-American Court of human right held thus

*"As for the measures of satisfaction and the guarrantee of non-occurrence that the victim's representatives and the Commission are seeking, the Court believes*

*that the judgement itself is a form of reparation" See Mtikila v Tanzania & Cantoral-Benavides v Peru.*

See also the case of *Commission natuionale des droits de l'Homme et des liberte vs Chad No* 74/92, where the African Commission provided no reparation beyond the judgement.

The Court therefore declares that this judgement which finds the Respondent in violation of the Applicant's right to fair hearing is in itself a just satisfaction.

*114. Order for a formal apology by the Respondent.*

One of the reliefs sought by the Applicant is an order directing the Respondent to issue an apology to him and same to be published in three newspapers and three television stations. The Court finds no essence in this relief and is dismissed.

*115, Award of Cost*

With Regards to cost, the Applicants claimed the sum of twelve million, two hundred and thirty thousand seven hundred and fifty naira (N12, 230,750) only being the cost of this suit. However, no particulars was submitted to support same. The Chief Registrar is directed to assess any cost payable,

## DECISION

116. The Court after examining the written submissions, and having heard parties in open Court and for the reasons canvassed above, decides as follows:

1. Declares that the respondent did not violate the Applicant's freedom from torture consequently reliefs I and 8 are hereby dismissed.

2. Declares that reliefs 2, 3, 4, 5 and 6 are outside the competence of the Court as making the orders will amount to sitting on appeal over the decision of the NJC. Consequently same are hereby dismissed.

3. Declares the letter of warning issued to the Applicant emanating from an incompetent Committee violates his right to fair hearing.

4. Declares that this judgement in itself is a just satisfaction.

4. Orders the Respondent to pay the sum of 50 Naira (fifty Naira only) as nominal damages for the violation of the Applicant's right to fair hearing.

5. Declines the relief to order the Respondent to issue an apology to Applicant.

6. Directs the Chief Registrar to access the cost due

Thus pronounced and signed on this 14th Day of July 2020 at the Community Court of Justice, ECOWAS, Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon Justice Edward Amoako ASANTE - Presiding

HON. Justice Dupe ATOKI -Member/ Rapporteur.

Hon Justice Keikura BANGURA - Member

**ASSISTED BY**

Mr. Tony ANENE-MAIDOH - Chief Registrar