

COMMUNITY COURT OF JUSTICE,  
ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,  
CEDEAO



No. 10 DAR ES SALAAM CRESCENT,  
OFF AMINU KANO CRESCENT,  
WUSE II, ABUJA-NIGERIA.

PMB 567 GARKI, ABUJA  
TEL/FAX:234-9-6708210/09-5240781

Website: [WWW.courtecowas.org](http://WWW.courtecowas.org)

IN THE COMMUNITY COURT OF JUSTICE  
OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)  
HOLDEN AT ABUJA, NIGERIA

ON WEDNESDAY, OCTOBER 14TH, 2015

SUIT NUMBER: **ECW/CCJ/APP/04/2015**

JUDGMENT NUMBER: **ECW/CCJ/JUD/19/15**

BETWEEN:

HOPE DEMOCRATIC PARTY, and  
ALHAJI HARUNA YAHAYA SHABA.....PLANTFFS

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL OF THE FEDERATION  
AND MINISTER OF JUSTICE
3. DR. GOODLUCK JONATHAN
4. PEOPLES DEMOCRATIC PARTY
5. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION
6. INSPECTOR GENERAL OF POLICE

DEFENDANTS

**COURT'S JUDGMENT**

COMPOSITION OF THE COURT

- |                                       |           |
|---------------------------------------|-----------|
| 1. Hon. Justice Friday Chijioke NWOKE | Presiding |
| 2. Hon. Justice Micah Wilkins WRIGHT  | Member    |
| 3. Hon. Justice Alioune SALL          | Member    |

Assisted by Maitre Athanase ATANNON, Esq. –

Registrar

## **2. COUNSEL FOR THE PARTIES**

### For the Plaintiffs:

Chief A. A. Owuru  
Okechukwu Ehogu ESQ  
I.I. Emmanuel ESQ Plot  
43, 1<sup>st</sup> Avenue  
Gwarimpa – Abuja

### For the Defendants:

#### **1<sup>st</sup> and 2nd Defendants**

Taiwo Abidogun, ESQ  
T. A. Gazali  
U. A. Lawal  
I. I. Hassan Esq.  
Civil Litigation & Public Order Department  
Federal Ministry of Justice  
Abuja

#### **The 3<sup>rd</sup> and 4<sup>th</sup> Defendants**

Professor Joash Ojo Amupitan, SAN, with  
Femi Alemede, Esq  
Suite No. 33, 2<sup>nd</sup> Floor  
Yashua Plaza, Bozum Close  
Wuse II, Abuja FCT

#### **5<sup>th</sup> Defendant**

Chief Adegboyega S. Awomolo, SAN  
Akinyosoye Arosanyin, Esq,  
And others  
Plot 182, 444 Crescent,  
CITEC Villas, Gwarimpa  
Abuja, FCT - Nigeria

**6th Defendant**

Nwodibo Ekechuwu, esq

Legal Section

Force Criminal Intelligence and Investigation Department (FCIID)

Area 10, Garki, Abuja

**3. SUBJECT MATTER OF THE PROCEEDINGS**

3.1. The 3<sup>rd</sup> Defendants open violation of the laws and presiding over the raising of over N21.27 Billion as Presidential Campaign Fund on 20<sup>th</sup> December, 2014 over and above the N1 Billion prescribed by law as Presidential Campaign Expenditures as ceiling, is an act of political intimidation and a violation of the laws and rights of the Plaintiffs, corrupting and manipulating the February 14, 2015 presidential elections against the Plaintiffs' interest and participation.

3.2. Plaintiffs' right to equality before the law and participation in government through freely chosen representatives to protect its political interest in government in accordance with the provisions of the law is being grossly violated as the 3<sup>rd</sup> Defendant N21.27 Billion Presidential Fund raiser above the N1 Billion expenditure allowed by law not being investigated, confiscated and prosecuted as required by the Nigerian Electoral Laws.

3.3. The non-prosecution, conviction and disqualification of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, who knowingly acted in subversion and violation of the Electoral Laws and monetizing the presidential campaign leading to reports of vote buying, corruption of the polity and electoral officials, violates Plaintiffs' rights to equal participation and likely election of its candidates at the February 14, 2015 presidential election in Nigeria.

3.4. The Defendants' acceptance and use of the sum of N21.27 Billion above the stipulated One Billion Naira is unlawful and wrong and an act of political intimidation and violation of Plaintiffs' rights to compete on equal ground.

3.5. The Plaintiffs and their supporters have been subjected by the Defendants to unimaginable political intimidation/exclusion, psychological trauma victimization and humiliation which affected their participation at the February 14, 2015 presidential elections, and right to compete in getting their candidates freely elected at that presidential election on equal and level playing grounds.

3.6. The restitution and payment of US\$300 Million damages to the Plaintiffs as Exemplary Damages against the Defendants for the losses suffered over the violation of their rights.

3.7. The Plaintiffs and their supporters have been subjected by the Defendants to unimaginable political intimidation/exclusion, psychological trauma victimization and humiliation which affected their participation at the February 14, 2015 presidential elections, and right to compete in getting their candidates freely elected at that presidential election on equal and level playing grounds.

3.8. This Court compelling the confiscation and deposition into Court the sum of N21.27 Billion Presidential Campaign Fund as illegally accepted by and in possession of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and due sanctions thereof.

#### **4. SUMMARY OF PLEAS IN LAWS ON WHICH APPLICATION IS BASED**

4.1. The Plaintiffs are entitled and have the rights to be allowed to freely choose or have their candidate at the presidential elections to be freely chosen in accordance with the provisions of the law, devoid of any form of political intimidation, undue advantage by the ruling political party and their presidential candidate at that election.

4.2. That acts of political intimidation and usurpation of all state apparatus in favor of a sitting President and a nominated candidate at a president election is a violation of the Plaintiffs right to participate in that election on ground of equality before the laws of the land.

4.3. That acts of encouraging political intimidation and non-investigation and prosecutions of the ruling party's presidential candidates acceptance and possession of N21.27 Billion over and above the prescribed N1 Billion in contravention of the Electoral Laws is a violation of the Plaintiffs' right to freely contest and be freely chosen in accordance with the laws at the said presidential election.

4.4. Human Rights of citizens of member states are to be protected and enforced and are entitled to commensurate damages thereof.

4.5. Rights to participate in Government are a right guaranteed by the regional laws and African Charter on Human and Peoples' Rights.

4.6. No candidate at any election, no matter the status is allowed to place himself or his political party over and above the laws to the disadvantage of the other candidates as inflicted on the Plaintiffs by the Defendants.

4.7. The law requires that candidates at elections are governed by the same laws on equal basis so as to preserve their rights of equality before the law. See Section 91, 93, 100 (2) of the Electoral Act 2010, Sections 38(2) of companies of allied Matters Act (CAMA). The 1999 Constitution, Section 11(b).

See Article 3, 13 and 19 African Charter on Human and Peoples' Right.

## **6. FACTS AND PROCEDURE**

### **6.1. NARRATION OF FACTS BY THE PLAINTIFFS**

6.1.1. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are a registered political party in Nigeria and Vice-Presidential candidate for the February 14, 2015 presidential election.

6.1.2. The Plaintiffs have constitutional right in Nigeria to sponsor candidates and contest elections at all levels including the presidential election of February 14, 2015.

6.1.3. The Plaintiffs aver that their rights as guaranteed by the provision of the African Charter on Human and Peoples' Rights to equality before the laws and participate freely in government through freely chosen representatives in accordance with the laws has been grossly violated by the Defendants since the 5<sup>th</sup> Defendant Notice of Election on February 14, 2015 general elections including the presidential election scheduled for February 14, 2015.

6.1.4. The 1<sup>st</sup> Defendant is a member state of the Economic Community of West African States who has subscribed to protect and ensure due compliance and enforcement of the provisions of the African Charter. While the 2<sup>nd</sup> Defendant is the chief law officer in Nigeria charged with the duties of prosecuting offenders and violators of the laws in Nigeria in collaboration with the 6<sup>th</sup> Defendant as investigating authority.

6.1.5. The 3<sup>rd</sup> Defendant is the present sitting elected President of Nigeria and the nominated presidential candidate of the 4<sup>th</sup> Defendant registered political party in Nigeria in the February 14, 2015 presidential election as scheduled.

6.1.6. The 5<sup>th</sup> Defendant is the electoral umpire and agency of Government charged with the responsibility of conducting elections and monitoring compliance of electoral laws by registered political parties in Nigeria.

6.1.7. On the 20<sup>th</sup> December, 2014, the 3<sup>rd</sup> Defendant as leader of 4<sup>th</sup> Defendant organized and held a fund raising dinner for the presidential election campaign in the nation seat of power called Aso Villa Banquette Hall, which was televised live across the nation and beyond, where he knowingly and with the due connivance with other Defendants received anonymous monetary donations from guests present who where majorly government contractors, Governors of States and Executives of Government parastatals and agencies, donations totalling N21.27 Billion for his campaign towards the February 14, 2015 Presidential election.

6.1.8. The names of such illegal donors to the 3<sup>rd</sup> Defendant Campaign Funds included N50 Million from a purported Governors' Forum by Governor Isa Yuguda, NDDC N5 Million, Mrs. Bola Shagaya friends of the First Lady N5 Billion, Mr. Tunde Ayeni N2 Billion, Gas Sector N5 Billion, Transport and Aviation Sector N1 Billion, Real Estate N4 Billion, Food and Agriculture N500 Million, Construction Sector N310 Million, Road Construction N250 Million, Sifax Group and Shelter Development Limited N250 Million.

6.1.9. The Plaintiffs aver that the 1999 Constitution, Electoral and extant laws forbid the acceptance of any anonymous monetary donation or gift of any kind, and any other donations exceeding N1 Million from individuals and N1 Billion expenditure for presidential candidates.

6.1.10. The Plaintiffs further state that the said 3<sup>rd</sup> Defendant President Fund Raising Dinner was designed to openly assault the sensibilities of and cow intended voters into submission and intimidates the impoverish general public and run the Plaintiffs politically out of the contest when it exceeded the stipulated ceiling of N1 Billion for each presidential candidate at that election including the Plaintiffs.

6.1.11. The Plaintiffs' state that the 3<sup>rd</sup> Defendant Presidential Candidate Fund Raising of N21.27 Billion violated the rights of the Plaintiffs of equality before the law and to freely choose representative in a level playing field for all the presidential candidates at the election in accordance with the provision of the law.

6.1.12. The Defendants deployed this unwholesome violation to the disadvantage and detriment of the Plaintiffs as reports of vote buying and obscene television adverts and bill boards of 3<sup>rd</sup> Defendant far exceeding N15 Billion worth is unleashed to intimidate and manipulate the February 14, 2015 presidential election in which the Plaintiffs are participants.

6.1.13. The law requires the 1<sup>st</sup> Defendant Member State, the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants to investigate and inquire into the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' violation and desecration of the laws and prosecute and convict them appropriately in accordance with the laws.

6.1.14. The Defendants have conspired to violate all known laws of the land in their quest to create unequal access to and standing of candidates before the in the ensuring electoral process and contest of the scheduled presidential election in February 14, 2015 to the Plaintiffs' disadvantaged and eventual losses at the said presidential election as scheduled.

6.1.15. The Plaintiffs have suffered irreparable and immeasurably as their supporters and sponsors have been intimidated and scared off by the Defendants' brazen violations of the laws and rights of the Plaintiffs. The Defendants have in addition deployed and appropriated State institutions and enlisted officers of government agencies into the 3<sup>rd</sup> Defendant's Presidential Campaign Committees.

6.1.16. The Defendants obligations to observe, protect and enforce the compliance to the regional laws and protocol relating to the Plaintiffs human rights had been relegated, assaulted, violated and stripped bare to the humiliation and detriment of Plaintiffs right to participate on equal footing in the presidential election to enable voters in Nigeria to freely choose representatives to participate in the Government of Nigeria.

6.1.17. The Defendants have ensured and allowed the Courts in Nigeria to be under lock and keys since the 2<sup>nd</sup> of January, 2015 following Judicial Workers strike due to the continued impunity of the Defendants violating and neglecting the principles of the rule of law and separation of power in Nigeria, which prevents and denies the Plaintiffs' access to justice over Defendants rights abuses against them at election period as it only favors the Defendants' plan to manipulate the presidential election in their favor if not restrained and made to face sanctions in the interest of the regional growth, democratically and economically.

6.1.18. The Plaintiffs further state that they are being humiliated out of the February 14, 2015n presidential contest before the election date by the Defendants sheer crude methods and violation of their rights to freely participate following the Defendants impunity of receiving publicly N21.27 Billion as against the laws without commiserate prosecution and conviction and or disqualification as required by the laws in Nigeria against the offending 3<sup>rd</sup> and 4<sup>th</sup> Defendants by appropriate State authorities.

6.1.19. The Defendants desperation and activities engendering violence and intimidation of the Plaintiffs opponent in the polity in spite of the peace accord as brokered by the respected former Secretary General of the United Nations, Kofi Annan, have remained unabated as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants of the ruling political party in Nigeria have not relented in deploying in clear abuse of powers, all state apparatus including security operatives and agencies of the Nigerian Government to partisan position to the detriment of the Plaintiffs in the absence of a level playing field towards the presidential election.

6.1.20. The Plaintiffs avers that the Defendants have by acts of intimidation and violent disposition towards the electioneering process engendering insecurity thereby preventing and scaring off Plaintiffs' contestants at the presidential election of February 14, 2015 and making it difficult for the Plaintiffs to freely choose their representatives and participate in the Government of Nigeria.

6.1.21. The Plaintiffs will at the hearing and trial of the case rely on and show evidence in proof of their case of restitution and damages over losses of the gross violation of their right to freely contest at the February 14<sup>th</sup> 2015 presidential election as occasioned by the Defendants.



6.1.22. The Plaintiff states that this court has the powers and jurisdiction to entertain and grant the reliefs sought herein.

#### FORM OF ORDER (RELIEFS) SOUGHT BY APPLICANT

6.1.23. A Declaration that the 3<sup>rd</sup> Defendants open violation of the Laws and presiding over the raising of over N21.27 Billion as Presidential Campaign Fund on the 20<sup>th</sup> December, 2014 over and above the N1 Billion prescribed by law as Presidential Campaign Expenditures as ceiling, is an act of political intimidation and a violation of the laws and rights of the Plaintiffs, corrupting and manipulating the February 14, 2015 presidential elections against the Plaintiffs' interest and participation.

6.1.24. A Declaration that Plaintiffs right to equality before the laws and participation in Government through freely chosen representatives to protect its political interest in Government in accordance with the provisions of the law is being grossly violated as the 3<sup>rd</sup> Defendant N21.27 Billion Presidential Fund raiser above the N1 Billion expenditure allowed by law not being investigated, confiscated and prosecuted as required by the Nigeria Electoral Laws.

6.1.25. A Declaration that the non-prosecution, conviction and disqualification of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, who knowingly acted in subversion and violation of the Electoral Laws and monetizing the presidential campaign leading to reports of vote buying, corruption of the polity and Electoral Officials, violates Plaintiffs' rights to equal participation and likely election of its candidates at the February 14, 2015 presidential election in Nigeria.

6.1.26. A Declaration that the Defendants' acceptance and use of the sum of N21.27 Billion above the stipulated One Billion Naira is unlawful and wrong and an act of political intimidation and violation of Plaintiffs' rights to compete on equal ground.

6.1.27. A Declaration that the Plaintiffs and their supporters have been subjected by the Defendants to unimaginable political intimidation/exclusion, psychological trauma, victimization and humiliation which affected their participation at the February 14, 2015 presidential elections, and right to compete in getting their candidates freely elected at that presidential election on equal and level playing grounds.

6.1.28. An Order directing the restitution and payment of US\$300 Million damages to the Plaintiffs as Exemplary Damages against the Defendants for the losses suffered over the violation of their rights.

6.1.29. An Order of this Court compelling the confiscation and deposition into Court the sum of N21.27 Billion Presidential Campaign Fund as illegally accepted by and in possession of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and due sanctions thereof.

## **6.2. PROCEDURE**

6.2.1. The initiating Application (Document number 1) was lodged in this Court on January 23, 2015 and was accordingly served on the Defendants.

6.2.2. The Defendants filed their respective Statements of Defense in response to the Originating Application, raising several very important issues of both law and fact. In addition to their Statements of Defense, the Defendants respectively filed Preliminary Objections to the suit of the Applicants, challenging this Court's jurisdiction and competency to entertain this suit, as well as questioning the Applicant's own ability to bring this suit, and requesting this Court to dismiss this suit.

6.2.3. It is a general principle of law that all courts, including the ECOWAS Community Court of Justice, when their competency or jurisdiction is called into question, must stop everything and determine its own competency or legal authority to hear the particular case. This case presents no exception to this fundamental principle of law.

6.2.4. "The issue of jurisdiction is serious and exceptional in all matters so much that it cannot even be compromised by parties or the court. Parties cannot individually or by consent or agreement confer a right on an issue bordering on jurisdiction. The competence of a court to adjudicate upon a matter is a legal and constitutional prerequisite without which a court is a lame duck. Courts are creatures of statutes and their jurisdiction is confined, limited and circumscribed by the statutes which created them. A court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes." **EFCC vs. Ekeocha (2008) 14 NWLR (pt.1106) 161 CA, at 178.**

6.2.5. Jurisdiction is fundamental to any judicial proceeding. It must be clearly shown to exist at the commencement of or during the proceedings otherwise such proceedings no matter how well conducted and any judgment arising therefrom no matter how well considered or beautifully written will be a nullity and a waste of time...” **Edet vs. State (2008) 14 NWLR (pt. 1106) 101 CA at pages 66-67 para. GB ratio 4.**

6.2.6. Therefore, for purposes of this Ruling/Judgment, we shall dwell on only the legal issue of jurisdiction and or competency of this Court and of the ability of the Applicant to bring this suit against these Defendants. The outcome of this Ruling will lead the Court to determine if we can hear or entertain this suit and also the Applicant’s status and ability to bring this suit. This then will enable us to determine whether or not the human rights of the Applicant were indeed violated by any conduct (acts or omission) of these Defendants, either individually or collectively.

### **6.3. OBJECTIONS BY THE 4<sup>th</sup> DEFENDANT**

6.3.1. That the case of the Plaintiffs should be dismissed in its entirety, same being frivolous, ill-conceived and an abuse of the process of this Honorable Court.

6.3.2. The Court should decline jurisdiction in this matter as none of the claims could be brought within Article 9 of the Supplementary Protocol of the Court.

6.3.3. That the Court should decline jurisdiction in this matter because the real issue in controversy is between the Plaintiffs and the Peoples Democratic Party, 4<sup>th</sup> Defendant, which is an individual party and not a State Party or against the Community or its Institution. Or, in the alternative,

6.3.4. An Order striking out the name of the 4<sup>th</sup> Defendant from this suit on the ground that the Court has no jurisdiction over it not being a State Party.

### **6.4. PRELIMINARY OBJECTIONS OF THE 6<sup>th</sup> DEFENDANT TO THE PLAINTIFF’S ORIGINATING APPLICATION**

6.4.1. That the grounds upon which this Defense is made, the Plaintiffs have woefully failed to establish any statutory duty which the 6<sup>th</sup> Defendant has refused or neglected to perform in the mode prescribed by law.

6.4.2. The 6<sup>th</sup> Defendant contends that contrary to the averment in Paragraph 3 of the Plaintiffs' Summary of Facts, the 6<sup>th</sup> Defendant never violated the Plaintiffs' human rights to equality before the law and participation in government, through freely chosen representatives in accordance with the laws, since the 5<sup>th</sup> Defendant's Notice of Election on February 14, 2015 or at any time at all.

6.4.3. Contrary to averment in paragraph 7 of the Plaintiffs' Summary of Facts, the 6<sup>th</sup> Defendant never connived with any of the other Defendants or anybody at all to receive anonymous monetary donations from guests present, and puts the Plaintiffs to strictest proof thereof.

6.4.4. The 6<sup>th</sup> Defendant avers that the issues raised in paragraphs 11 and 12 of the Plaintiffs' Summary of Facts are within their peculiar knowledge.

6.4.5. The 6<sup>th</sup> Defendant contends in reference to paragraph 13 of the Plaintiffs' Summary of Facts that the Plaintiffs never reported to him any violation and desecration of the laws against the 3<sup>rd</sup> and 4<sup>th</sup> Defendants that would have warranted investigation, prosecution and conviction, in accordance with law.

6.4.6. That the 6<sup>th</sup> Defendant denies entirely the averments in Plaintiffs' Summary of Facts in paragraph 15, 16, 17, 18, 19 & 20 and puts the Plaintiffs' to the strictest proof thereof.

6.4.7. The 6<sup>th</sup> Defendant contends contrary to paragraph 21 of the Plaintiffs' Summary of Facts that he has not occasioned any losses by the Plaintiffs and has not violated their rights to freely contest the February 14, 2015 presidential election or any election and are therefore not entitled to any restitution and damages and urge this Honorable Court to so hold.

6.4.8. The 6<sup>th</sup> Defendant contends that this Court does not have the powers and jurisdiction to entertain and grant the reliefs sought herein.

### **Orders Sought**

6.4.8. An Order of this Honorable Court striking out the name of the 6<sup>th</sup> Defendant herein on grounds of Misjoinder and that this Honorable Court lacks the jurisdiction to hear and determine this suit as presently constituted against the 6<sup>th</sup> Defendant.

6.4.9. And for such further Orders as this Honorable Court may deem fit to make in the circumstances of the case.

### **Summary of Plea in Law**

6.4.10. The Applicants in brining this matter before this Court have failed to exhaust the local remedies available under Articles 50 and 56(5) of the African Charter on Human and Peoples' Right which is the International norm under which this Action is brought before this Court

6.4.11. This Court lacks jurisdiction to entertain this matter. This Honorable Court made it clear in *ESSIEN V. REPUBLIC OF GAMBIA, NO.1(2009) CCJELR (PT.2) (PP. 15 -16) para 45 -5.*

6.4.12. The citizens of Nigeria, including the Plaintiffs have a duty to report cases of commission of crime to the Police for investigation.

### **6.5. PRELIMINARY OBJECTIONS OF THE 4<sup>TH</sup> DEFENDANT**

6.5.1. That this Honorable Court lacks the jurisdiction or competence to entertain the suit on the ground that the real issue in controversy is between The Plaintiffs and the Peoples Democratic Party (4<sup>th</sup> Defendant/Applicant) which is an individual party and not a State Party and the action is not against the Community or its Institution.

#### **PLEAS OF FACT AND LAW RELIED UPON**

6.5.2. On 20<sup>th</sup> December, 2014, the 4<sup>th</sup> Defendant/Respondent organized a fund raising dinner for the building of its corporate headquarters in Abuja and for its operational expenses. The Plaintiffs/Defendants brought this action seeking for a Declaration that the fund raising dinner organized by the 4<sup>th</sup> Defendant/Respondent was in breach of section 91(2 – 7) of the Electoral Act of 2010 (as amended) and that their rights to equality under Article 3 of the African Charter on Human and Peoples' Rights were violated. They further claim the sum of \$300 Million as Exemplary Damages against the Defendants for losses suffered as a result of the violation of their rights.

6.5.3. The 4<sup>th</sup> Defendant/Applicant denies any violation of the rights of the Plaintiffs/Defendants and is also contending that the parties before the Court are not subject to the jurisdiction of the Community Court of Justice of ECOWAS under Article 9 (4) of the Protocol Relating to the Court of Justice as amended by Protocol A/SP.1/01/15 and seeks for the dismissal of this case in line with Article 88 of the Rules of Procedure of Court of Justice of ECOWAS.

#### **ORDER SOUGHT BY THE 4<sup>TH</sup> DEFENDANT/APPLICANT**

6.5.4. An Order striking out this suit for want of jurisdiction because the real issue in controversy is between the Plaintiffs and the Peoples Democratic Party (4<sup>th</sup> Defendant/Applicant) which is an individual party and not a State Party or against the Community or its Institution, or in the alternative.

6.5.5. An Order striking out the name of the 4<sup>th</sup> Defendant/Applicant from this suit on ground that the Court has no jurisdiction over it not being a State Party.

6.5.6. For such further Order(s) as this Honorable Court may deem fit to make in the circumstance.

#### **6.6. PRELIMINARY OBJECTIONS OF THE 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS**

6.6.1. The Community Court of Justice of ECOWAS lacks the requisite jurisdiction to hear this matter. Plaintiffs' suit relates to an alleged breach of the Nigerian Electoral Act 2010 as amended by the 3<sup>rd</sup> Defendant which prohibits donations to a candidate beyond One Billion Naira (N100, 000,000.00); a matter not within the jurisdiction of this Honorable Court to entertain and / or determine.

6.6.2. Lack of cause of action against 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Objector. The entirety of the Plaintiffs Notice of Registration of Application discloses no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Objectors.

6.6.3. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Objectors while arguing this Preliminary Objection, shall rely on all Court processes as filed in this suit by the Plaintiffs.

## ORDER SOUGHT

6.6.4. An Order of this Honorable Court striking out this suit for want of jurisdiction

6.6.5. An Order of this Honorable Court striking out the name of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Objectors from this suit.

## **6.7. PLAINTIFFS REPLY TO THE 4<sup>TH</sup> DEFENDANT'S DEFENSE AND 6<sup>TH</sup> DEFENDANT'S OBJECTION**

6.7.1. The Plaintiffs avers that paragraphs 3 – 31 and Order sought in the 4<sup>th</sup> Defendant's Statement of Defense are false and untrue.

6.7.2. The Plaintiffs' case is squarely about the abuse of power on the part of the 3<sup>rd</sup> Defendants in using the symbol, State House of Government and Seat of Power to organize a Presidential Fund Raising Dinner, where Government departments, contractors and agencies were coerced to donate N21.27Billion of Tax payers money in violation of the law and right of the Plaintiffs to participate in the Government to the detriment of the aspiration and electioneering campaign of the Plaintiffs towards the 2015 presidential elections in Nigeria.

6.7.3. The Plaintiffs' case is supported by the corroboration of the evidence as shown by the 4<sup>th</sup> Defendant attached exhibits on the purported and redesigned invitation card and purported programme of event of the 20<sup>th</sup>December, 2014 shown to have as venue, the Banquet Hall, State House, Aso Rock Villa, Abuja for a supposed Peoples Democratic Party Fund Raising Dinner, using the State House, which the 3<sup>rd</sup> Defendant as the President is said to be an invitee to the State House sitting on the High Table as Chief which statement the Plaintiffs aver is untrue.

6.7.4. The 4<sup>th</sup> Defendant has not denied that the 3<sup>rd</sup> Defendant is the leader of the Party (4<sup>th</sup> Defendant) and is the Presidential Candidate of the 4<sup>th</sup> Defendant in the 2015 presidential election who used the Banquet Hall of the State House to organize, after being duly nominated as a Presidential Candidate the same month, a general fund raising dinner for party office building, election for local government and other offices not yet in sight, other than the pressing immediate and urgent presidential election, as there was no other Presidential Election Fund Raising Dinner shown to have been organized outside the 20<sup>th</sup> December, 2014 event held in the Banquet Hall of the State House raising N21.27 Billion.

6.7.5. The Plaintiffs maintain that the Presidential Fund Raising Dinner of the 3<sup>rd</sup> Defendant was covered live by television and reporters of print and electronic media.

6.7.6. That contrary to the 4<sup>th</sup> Defendant averment in Paragraph 3 of the Statement of Defense, the 5<sup>th</sup> Defendant was forced by the 3<sup>rd</sup> Defendant to postpone the scheduled February 14, 2014 presidential election to 28<sup>th</sup> March, 2015 using his appointed aides, the National Security Adviser and the Chief of Defense Staff (security chiefs) who blackmailed the 5<sup>th</sup> Defendant of their inability to guarantee security for the election when even international election observers and preparation for elections on the part of other contestants including the Plaintiffs were concluded. The forced postponement of the February 14, 2014 presidential election as scheduled was to enable the 3<sup>rd</sup> Defendant the manipulation of the election of 2015 in his favor to the detriment of the Plaintiffs.

6.7.7. The Plaintiffs will at the trial show further evidence that the 3<sup>rd</sup> Defendant has since the forced postponement of elections been engaged in clandestine move of bribing religious leader of CAN, traditional rulers and corrupting and monetizing the polity to the humiliation and detriment of the Plaintiffs.

6.7.8. The Plaintiffs case against the 3<sup>rd</sup> Defendant as both the Presidential Candidate of the 4<sup>th</sup> Defendant who as sitting President and Commander – In – Chief of the Armed Forces, controls and epitomizes the authority of state, Nigeria, the authority he now abuses to the detriment of the Plaintiffs who are sponsoring Political Party and Presidential candidates at the 2015 presidential election.

6.7.9. The 3<sup>rd</sup> Defendant's political intimidation against the interest and aspiration of the Plaintiffs to freely contest the 2015 Presidential election has cost the Plaintiffs the confidence of their followers, supporters and voting populace who are scared off by the uncompromising, bullish and savage attitude of the 3<sup>rd</sup> Defendant and 4<sup>th</sup> Defendant to the prospect of losing the presidential election as they violate all known electoral laws in the land even as they seek to truncate the presidential election as scheduled by the 5<sup>th</sup> Defendant and create uncertainties to the detriment of the Plaintiffs.



6.7.10. The 3<sup>rd</sup> and the 4<sup>th</sup> Defendants have encouraged hate advertisement and documentaries against members of the opposition including the Plaintiffs and courted religious and ethnic division in Nigeria to ensure they do not lose the 2015 presidential election which has heated the entire polity and caused fear amongst the voting populace to the Plaintiffs detriment, outside the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants inability to contain and flush out insurgents in the Northern part of Nigeria to date, now affecting the Presidential election to the Plaintiffs detriment.

6.7.11. The Plaintiffs losses over the 3<sup>rd</sup> Defendant continued engineering of political uncertainties over the rescheduled Presidential elections and insecurity and inability to guarantee fair play and obedience to electoral laws are estimated well over \$150 Million, most of which the Plaintiffs borrowed to prosecute the Presidential election out of its funds.

6.7.12. The Plaintiffs' inclusion of the 4<sup>th</sup> Defendant in the present action is only as the 3<sup>rd</sup> Defendant's sponsoring political party. The 4<sup>th</sup> Defendant is only attempting to divert attention from its 3<sup>rd</sup> Defendant presidential candidate and the elected sitting President at the 2015 presidential election.

6.7.13. The 4<sup>th</sup> Defendant is not entitled to the Orders it seeks as they are ungrantable in the circumstances of this case as a relevant and necessary party to this suit.

6.7.14. The 6<sup>th</sup> Defendant is not entitled to the relieves sought in objection as they are also a necessary party to this suit who have a duty to ensure due obedience to law and order and provide needed security as the civil authority saddled with the duty to ensure a free, fair and orderly conduct of the presidential election in Nigeria and the observers of all the electoral laws to prevent any violation of the Plaintiffs' right to full participate and freely chose its representatives into government without any obstruction or intimidation of any kind which duty its has neglected, refused and failed to perform.

6.7.15. The Nigerian Judicial Workers strike was induced by the unwillingness of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants to allow due financial autonomy and the independence of the Judiciary in Nigeria.

6.7.16. The Plaintiffs will at trial contend that its case is fully made out and established against the Defendants.

## **6.8. PLAINTIFFS' REPLY TO THE 4<sup>TH</sup> AND 5<sup>TH</sup> DEFENDANTS PRELIMINARY APPLICATIONS**

6.8.1. This Application is based on the failure of the Nigerian State to appropriately uphold the rule of law and protect the rights of the Plaintiff from being violated and trampled upon and refused to allow the Plaintiff's right of equality before the law and to participate at electioneering processes that prevents their participation in the Government of Nigeria through due election of their representatives at such elections.

6.8.2. The use of the State House as the symbol of Government of Nigeria to organize a presidential fund raising dinner under any guise for the 3<sup>rd</sup> Defendant is a violation of the Plaintiffs' right to freely participate at the 2015 presidential election as the said raising of N21.27 Billion further violated the Plaintiffs' right to elect their representatives into the Government of Nigeria on the basis of equality of presidential candidates before the laws of the land.

6.8.3. The Application touching on the violation of rights of the Plaintiffs' presidential candidates and the 3<sup>rd</sup> Defendant as the personification of the Presidency in which Nigeria is the constituency as provided by law is a typical case involving the critical state actors of which the presidential aspirations and rights of the Plaintiffs and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who represents the State as the major violators of the Plaintiffs human rights as guaranteed by the African Charter are the real issues at stake.

6.8.4. It is undisputed fact that a fund raising dinner held in a State House after the nomination of the 3<sup>rd</sup> Defendant who is the 4<sup>th</sup> Defendant's presidential candidate at the 2015 presidential elections has no other implication other than an abuse of use of the State Power in violation of the rights of the Plaintiffs and intimidations to scare off a balance competition and the voting populace in their favor to the Plaintiffs' detriment.

6.8.5. The abuse of the use of the state power to intimidate the Plaintiffs right to freely participate in that election is complete with the listing of state agencies, contractors and parastatals to donate to the 3<sup>rd</sup> Defendant rival Plaintiffs' presidential candidate at the 2015 presidential election using the State House Banquet Hall in full glare of the world and live to intimidate the Plaintiffs out of the presidential contest as scheduled.

6.8.6. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who symbolize the State are the ones sued as the principal violators and abusers of the state powers and who reside at the State House by virtue of their election thereto and not the 4<sup>th</sup> defendant who is joined as a nominal party and sponsoring political party of the 3<sup>rd</sup> Defendant candidacy at the 2015 presidential election.

6.8.7. This case is not between the Plaintiffs and the 4<sup>th</sup> or 5<sup>th</sup> Defendants as none of them live in the State House and could have had access to the State House to organize any fund and could have had access to the State House to organize any fund raising dinner without the invitation and authority of the 3<sup>rd</sup> Defendant presidential candidate and the other way round as no political party is allowed to use the State House for fundraising more so at election time without intending to intimidate and violating the rights of the other opponents including the Plaintiffs to participate on the basis of equality before the law.

6.8.8. This is a typical case of violation of human rights with the principal (3<sup>rd</sup> ) Defendant state actors as principal violator to humiliate the Plaintiffs opponent at the scheduled 2015 presidential election in Nigeria amongst other violation traceable to him.

### **The Grounds of Objection**

6.8.9. The grounds of preliminary objection are clearly misconceived and should be discountenanced as lacking in merit and only diversionary to the real issue for adjudication by this Honorable Court.

6.8.10. The decision of the Court in **Social and Economic Right Action Centre (serac) and another vs. Nigeria (2001) AHRLR 60 (ACHPR 2001)** and similar such cases have sought to reinforce member state citizens access to justice for the protection of human and people's rights in the African context.

6.8.11. The problem of Africa being one of leadership and abuse of powers by elected leaders resulting to flagrant violation of human rights and rights of citizen of member states to freely participate in the government of their States and countries, more so on acknowledged violation of Plaintiffs' right by the 3<sup>rd</sup> Defendant notable State actor.

6.8.12. The Defendants cited case of **Peter David vs. Ambassador Ralph Uweche (2010) CCJELR 213** is not applicable in the instant case as the facts and parties are not related. This is between affected individuals and the State and its elected representative as principal State actor.

### **On the Court's Jurisdiction**

6.8.13. The Community Court of Justice established by Article 15 of the ECOWAS treaty is the main judicial organ of the Community

6.8.14. The Supplementary Protocol (AP/SP.1/01/05) modified the ECOWAS Treaty and conferred on the Court competence to determine cases of human rights violation that occur in any member state of the Community.

6.8.15. The Protocol on Democracy and Good Governance imposes on the States the obligation to apply the African Charter on Human and Peoples' Rights as well as other international instruments in their respective States.

6.8.16. There is no doubt about the Court jurisdiction over the 1<sup>st</sup> Defendant, Nigeria by virtue of its being a signatory to the ECOWAS Treaty and other Community Instrument including the Protocol on Democracy and Good Governance to adjudicate any case of alleged violation of human rights for which it should be held accountable.

6.8.17. The act of violation of Plaintiffs' human rights by the sitting President and presidential candidate in Nigeria using the State House is an act of the State liable to due adjudication by this Court and due sanction, more so, where an illegal donation of N21.27 Billion was accepted and kept by 3<sup>rd</sup> Defendant in the State House thus deliberately monetizing the polity with the report of alleged bribing of clerics-religious leaders of CAN and Traditional Rulers and other vote buying accusations to the detriment of the Plaintiffs.

6.8.18. Plaintiffs urge this Honorable Court to dismiss the 4<sup>th</sup> and 5<sup>th</sup> Defendants' Preliminary Objection with heavy cost and proceed to expeditiously hear the Plaintiffs' case as presented before it.

## **6.9. PLAINTIFFS' RESPONSE TO THE 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS PRELIMINARY APPLICATIONS**

6.9.1. That the Court lacks jurisdiction because it is erroneously assumed by them that the Plaintiffs' suit borders on a purported breach of the Nigerian Electoral Act, 2010 without any reference to the stated violation of Articles 3 and 13 of the African Charter on Human and Peoples' Rights.

6.9.2. That there is a lack of course of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants contrary to paragraphs 7 and 16 of the Originating Application touching on their connivance and encouragement in the acts of violation of the Plaintiffs' rights and their obvious failure to ensure due compliance with regional protocols and treaties entered into by them.

6.9.3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are in complete misapprehension of the Plaintiffs' case and so is their Preliminary Application/Objections.

### **Plaintiffs' Case As Stated**

6.9.4. The Plaintiffs' case is clearly predicated on the wanton violation of Article 3 and 13 of the African Charter on Human and Peoples' Rights, which provides as follows:

#### **Article 3:**

- A). Every individual shall be equal before the law,
- B). Every individual shall be entitled to equal protection of the law;

#### **Article 13:**

Every citizen shall have the right to participate freely in the Government of his country either directly or through freely chosen representatives in accordance with the provisions of the law.

Every citizen shall have the rights to equal access to the public service of his country.

Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

6.9.5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants wrongly imagined that the Electoral Act as a municipal law can be isolated from the International Laws where its breach results to acknowledged Human Rights violations by the state actors.

### **Plaintiffs' Legal Argument**

6.9.6. It is a well-established law in the Nigerian legal jurisprudence, that any municipal law which is in conflict with the Charter is void. (see **ELEGUSHI VS. ATTORNEY GENERAL, FEDERATION (2000) FWLP, pt.1 pg. 89.**

6.9.7. Therefore as a corollary, any State act in conflict with civilized standards as guaranteed by the African Charter on Human and Peoples Rights (ratification and enforcement) Act of which Nigeria is a signatory is liable to adjudication by Regional and International Courts as established to which Nigerian Government and its State actors and agencies are bound and answerable to.

6.9.8. In this respect, we commend to this Court the reference to Article 4 of the Revised Treaty of ECOWAS, under which the 1<sup>st</sup> Defendant signatory State pledged allegiance to the Principles of recognition, promotion and protection of human and peoples' right in accordance with provisions of the African Charter on Human and Peoples' Rights.

6.9.9. The erroneous impression the 1<sup>st</sup> and 2<sup>nd</sup> Defendants want to convey is that the act under review is a local issue, when it acknowledged it was committed by the principal State actors who appropriated the Nigerian House, (Aso Villa) and permitted and caused to be organized an illegal and obscene fund raising donation of over N21 Billion as a presidential candidate of the 4<sup>th</sup> Defendant, which act we submit violates not just the Nigerian Electoral Laws, which is an off shoot of the African Charter but in specific terms, Article 13 and 3 of the African Charter on Human and Peoples' Right of which Nigeria is a notable signatory.

6.9.10. We submit that the Defendants humiliated and intimidated the Plaintiffs and violated the Plaintiffs right to equal access and use of public property was further violated when at such fund raising dinner caused to be organized by the 3<sup>rd</sup> Defendant had as donors, Government agencies, Government Contractors and elected Governors and other with tax payers funds illegally donated to the 3<sup>rd</sup> Defendant, which acts violated the human rights of the Plaintiff as presidential candidates to the equality before the law as guaranteed by the African Charter.

## **The Court's Power Of Inquiry**

6.9.11. This Court is invited to inquire into whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have not violated the rights of the Plaintiffs as guaranteed by the regional protocols and treaties as entered into by the signatory state Nigeria and by its principal state actors, its agents and organs.

6.9.12. This Court, like its international counterpart including the ICJ is imbued with enormous powers to ensure entrenched enforcement, for some form of political rectitude among signatory nations in the areas of abuse of power and violation of member citizens' human rights and not to be viewed lightly as a mere routine Court only for police and immigration rights violation purposes only and neglecting the more serious issues of the abuse of the undue appropriation of State apparatus and properties to disadvantage and violation of rights of opposing/opponent political parties at the time of elections as exemplified in this case leading to serious violation of the Plaintiffs human rights and the African Charter and Regional Protocols.

6.9.13. The Regional Protocol on Good Governance, specifically, is completely violated by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Member State and principal agents and State actors.

**6.9.14. Conclusion:** Plaintiffs urge this Court to dismiss the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Preliminary Objections with heavy costs and proceed to expeditiously hear the Plaintiffs case as presented before this Honorable Court.

## **7. ISSUES PRESENTED FOR DETERMINATION**

**7.0.** The above claims and counterclaims of the parties have raised some very important and interesting issues, but we are however left with the foundational question to be answered by this Court, as follows: "Whether or not this Honorable Court has the jurisdiction to hear this suit?"

In order to answer this question, there are however, sub-issues which border on this main issue:

7.1. Whether or not this Court has in personam jurisdiction over the Defendants?

7.2. Whether or not the Community Court has jurisdiction to entertain a suit filed by an individual against another individual or against a corporate entity, not a Member State of ECOWAS?

7.3. Whether or not the Plaintiffs' suit discloses a cause of action against the Defendants?

## **8. DISCUSSIONS**

8.1. The first issue we shall consider herein is whether or not this Court has in personam jurisdiction over the Defendants? We say NO.

8.1.1. Just for the sake of emphases and due to the importance of the question of jurisdiction, we shall reproduce what we earlier declared in this Ruling/Judgment, that "the issue of jurisdiction is serious and exceptional in all matters so much that it cannot even be compromised by parties or the court. Parties cannot individually or by consent or agreement confer a right on an issue bordering on jurisdiction. The competence of a court to adjudicate upon a matter is a legal and constitutional prerequisite without which a court is a lame duck. Courts are creatures of statutes and their jurisdiction is confined, limited and circumscribed by the statutes which created them. A court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes." **EFCC vs. Ekeocha (2008) 14 NWLR (pt.1106) 161 CA, at 178, supra.**

8.1.2. Jurisdiction is fundamental to any judicial proceeding. It must be clearly shown to exist at the commencement of or during the proceedings otherwise such proceedings no matter how well conducted and any judgment arising therefrom no matter how well considered or beautifully written will be a nullity and a waste of time..." **Edet vs. State (2008) 14 NWLR (pt. 1106) 101 CA at pages 66-67 para. GB ratio 4, supra.**

8.1.3. The Revised Treaty of ECOWAS establishing the Community Court of Justice provides that the Court shall have the jurisdiction to hear cases brought against Member States of ECOWAS and Community Institutions. **Haruna Warkani & 3 Ors v. ECOWAS Commission & Anor; See also, Supplementary Protocol (A/SP.1/01/05) Community Court of Justice, Article 9; Jurisdiction of the Court.**



## **Jurisdiction Over The Defendants**

8.1.4. Going further, we shall examine each of the Defendants to determine their being subject to the jurisdiction of this Court, or the case falling within its competency. We observe:

(a.) The 1<sup>st</sup> Defendant is the Federal Republic of Nigeria. We find that the Federal Republic of Nigeria is a Member State of ECOWAS and as such is a proper party against whom suits can be brought for violating the human rights of the Applicant.

8.1.5. In the instant case, the allegations of violation do not state what specific action the Federal Republic of Nigeria committed or omitted. The originating Application states the following against the 1<sup>st</sup> Defendant:

“The 1<sup>st</sup> Defendant is a Member State of the Economic Community of West African States who subscribed to protect and ensure due compliance and enforcement of the provisions of the African Charter.”  
**See count four of the complaint.**

8.1.6. Further as to the 1<sup>st</sup> Defendant, the Plaintiffs state:

“The law requires the 1<sup>st</sup> Defendant member state, the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants to investigate and inquire into the 3<sup>rd</sup> and 4<sup>th</sup> Defendants violation and desecration of the laws and prosecute and convict them appropriately in accordance with the laws.” **See count 13 of the complaint.**

8.1.7. The complaint merely states who the 1<sup>st</sup> Defendant is and what its functions and duties include as a sovereign state. In count 13, supra, the Plaintiffs say the 1<sup>st</sup> Defendant did not investigate, prosecute and convict those persons the Plaintiffs accused of illegally raising funds for their political activities. The Complaint however does not state that the Plaintiffs lodged their complaint and the 1<sup>st</sup> Defendant refused, failed and neglected to investigate the said complaint. Neither did the Plaintiffs say they reported the illegal fund-raising to any competent authority of the 1<sup>st</sup> Defendant and that such persons did not act; nor do they say whether they were prevented from pursuing their complaint, and if so, by whom, and what next step they took to pursue their rights.

8.1.8. So, the Court finds that the 1<sup>st</sup> Defendant is a proper party before this Court, but we do not find any wrong doing committed by the said 1<sup>st</sup> Defendant; accordingly, the complaint is dismissed as to the 1<sup>st</sup> Defendant for being frivolous, speculative and uncertain, and vague and indistinct.

8.1.9. The 2<sup>nd</sup> Defendant: Attorney General of the Federation –

The complaint states: “The 2<sup>nd</sup> Defendant is the chief law officer in Nigeria charged with duties of prosecuting offenders and violators of the laws in Nigeria in collaboration with the 6<sup>th</sup> Defendant as investigating authority.” **See count four of the complaint.**

8.1.10. Further as to the 2<sup>nd</sup> Defendant, the Plaintiffs state:

“The law requires the 1<sup>st</sup> Defendant member state, the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants to investigate and inquire into the 3<sup>rd</sup> and 4<sup>th</sup> Defendants violation and desecration of the laws and prosecute and convict them appropriately in accordance with the laws.” **See count 13 of the complaint.**

8.1.11. We note that these are the only references to the 2<sup>nd</sup> Defendant. As we stated in regards to the 1<sup>st</sup> Defendant, the Plaintiffs do not state that they reported any crime or other action to the 2<sup>nd</sup> Defendant or any other Defendant for that matter, and that such person (Defendant) failed to take any action toward the complaint nor do the Plaintiffs say what if anything or who prevented them from lodging and or pursuing their complaint of criminality.

8.1.12. The second observation we make here is that the 2<sup>nd</sup> Defendant is a functionary of the Government, that is, a cabinet minister in the government. In such an instance, he is not amenable to the jurisdiction of the Community Court of Justice. See, Center for Democracy and Development and Center for Defense of Human Rights and Democracy, Plaintiffs, vs. Mamadou Tandja and the Republic of Niger, Defendants, as reported in 2011 CCJELR 105.

8.1.13. The 3<sup>rd</sup> Defendant: Dr. Goodluck Jonathan –

The complaint states: “The 3<sup>rd</sup> Defendant is the sitting elected President of Nigeria and the nominated presidential candidate of the 4<sup>th</sup> Defendant, a registered political party in Nigeria in the February 14, 2015 presidential election as scheduled.” **See count 5 of the complaint.**

8.1.14. Further as to the 3<sup>rd</sup> Defendant, the complaint states in counts 7 – 11, as follows:

“7. On the 20<sup>th</sup> December, 2014, the 3<sup>rd</sup> Defendant as leader of 4<sup>th</sup> Defendant organized and held a Fund Raising Dinner for the Presidential election Campaign in the nation seat of power called Aso Villa Banquette Hall, which was televised live across the Nation and beyond, where he knowingly and with the due connivance with other Defendants received anonymous monetary donations and from guests present who were majorly government contractors, Governors of states and Executives of Government parastatals and agencies donations totally N21.27 Billion for his campaign towards the February 14, 2015 Presidential election.

“8. The names of such illegal donors to the 3<sup>rd</sup> Defendant Campaign Funds included N50 Million from a purported Governors’ Forum by Governor Isa Yuguda, NDDC N5 Million, Mrs. Bola Shagaya friends of the First Lady N5 Billion, Mr. Tunde Ayeni N2 Billion, Gas Sector N5 Billion, Transport and aviation Sector N1 Billion, Real Estate N4 Billion, Food and Agriculture N500 Million, Construction Sector N310 Million, Road Construction N250 Million, Sifax Group and shelter Development Limited N250 Million.

“9. The Plaintiffs aver that the 1999 Constitution, Electoral and extant laws forbids the acceptance of any anonymous monetary donation or gift of any kind. And any other donations exceeding N1 Million from individuals and N1 Billion expenditure for Presidential candidates.

“10. The Plaintiffs further state that the said 3<sup>rd</sup> Defendant President Fund Raising Dinner was designed to openly assault the sensibilities of and cow intended voters into submission and intimidates the impoverish general public and run the Plaintiffs politically out of the contest when it exceeded the stipulated ceiling of N1 Billion for each Presidential candidates at that election including the Plaintiffs.

“11. The Plaintiffs’ state that the 3<sup>rd</sup> Defendant Presidential candidate Fund Raising of N21.27 Billion violated the rights of the Plaintiffs of equality before the law and to freely choose representative in a level playing field for all the Presidential candidates at the election in accordance with the provision of the law.”

8.1.15. All these are allegations of the conduct of an individual, and we have already declared that this Court does not exercise jurisdiction over the persons of individuals. Therefore, the complaint as to this individual is hereby dismissed; that he is the President is irrelevant as to the admissibility of this case against an individual.

8.1.16. The 4<sup>th</sup> Defendant: People’s Democratic Party –

The complaint states: “The 3<sup>rd</sup> Defendant is the sitting elected President of Nigeria and the nominated presidential candidate of the 4<sup>th</sup> Defendant, a registered political party in Nigeria in the February 14, 2015 presidential election as scheduled.” **See count 5 of the complaint.**

8.1.17. As can be seen regarding the 4<sup>th</sup> Defendant, the Complaint only mentions *in passing* that the 4<sup>th</sup> Defendant is a registered political party in Nigeria in the February 14, 2015 presidential elections. It does not say anything further as to what specific act the 4<sup>th</sup> Defendant committed, which constituted a violation of the Plaintiffs’ human rights. Of course, the more substantial issue is that the 4<sup>th</sup> Defendant is not a Member State of ECOWAS and as such not amenable to the jurisdiction of the Community Court of Justice. This legal inhibition thus renders this suit inadmissible, and therefore we are compelled to dismiss this case as to the 4<sup>th</sup> Defendant. **Chief Frank Ukor v. Rachad Laleye and Alinnor ECW/CCJ/APP/01/04; Moussa Leo Keita v. Republic of Mali, ECW/CCJ/APP/05/06.**

8.1.18. Next, we go to the 5<sup>th</sup> Defendant: The Independent National Electoral Commission. The complaint states in count 6 that:

“6. The 5<sup>th</sup> Defendant is the Electoral umpire and agency of Government charge with the responsibility of conducting elections and monitoring compliance of electoral laws by registered Political Parties in Nigeria.”

8.1.19. Again, and as stated in respect of other Defendants, the complaint does not state in clear terms what acts of the 5<sup>th</sup> Defendant in keeping with its mandate spelled out above constituted a violation of the human rights of the Plaintiffs, which are cognizable before this Court.

8.1.20. Further, as stated in respect of other Defendants, the Plaintiffs have not said that they reported any violation of their human rights to the 5<sup>th</sup> Defendant and the said 5<sup>th</sup> Defendant, within the context of its mandate, failed, refused and or neglected to investigate Plaintiffs' complaint, and if Plaintiffs did not report such conduct, what prevented them from doing so.

8.1.21. The other important point to raise is that the 5<sup>th</sup> Defendant is a functionary of the government and not a member of ECOWAS, and hence not subject to the jurisdiction of the Community Court of Justice. Accordingly, and as with other Defendants, this case is inadmissible as to the 5<sup>th</sup> Defendant and is hereby dismissed.

8.1.22. Finally, we come to the 6<sup>th</sup> Defendant: Inspector General of Police – As to the 6<sup>th</sup> Defendant, the Plaintiffs state in their complaint that:

“The law requires the 1<sup>st</sup> Defendant member state, the 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants to investigate and inquire into the 3<sup>rd</sup> and 4<sup>th</sup> Defendants violation and desecration of the laws and prosecute and convict them appropriately in accordance with the laws.” **See count 13 of the complaint.**

8.1.23. The only thing the Plaintiffs did here is to state who the 6<sup>th</sup> Defendant is and what it or he is supposed to do. The Plaintiffs have not said that they reported any criminality to the Police for which the Police failed, refused and or neglected to investigate; the Plaintiffs also did not say what (if any) prevented them from reporting such misconducts to the Police. Nothing specific is stated as to the conduct of the Police for which the Police have been sued in this Court.

8.1.24. More importantly, the Police are a state entity or organ and not a Member State of ECOWAS, and hence not amenable to the Community Court of Justice. This case is thus rendered inadmissible and is hereby accordingly dismissed as to the 6<sup>th</sup> Defendant.

## **COMPETENCY OF PLAINTIFFS TO BRING SUIT**

8.1.25. Another aspect of the competency of this Court to hear this case relates to the Plaintiffs ability to bring this suit. We note that the 1<sup>st</sup> Plaintiff is a political party engaging in local political activities in Nigeria. Under the jurisprudence, this Court lacks the authority to hear matters brought by organizations such as political parties. The only aspect of the competency of this Court an individual applicant

can come to this Court under is its human rights mandate; thus, the question is, what human rights does the 1<sup>st</sup> Plaintiff possess for and which the violation thereof would be cognizable before this Court? In our view, there is none; and as such, this case is rendered inadmissible as to the 1<sup>st</sup> Plaintiff.

8.1.26. This leaves only the 2<sup>nd</sup> Plaintiff before the Court as a party plaintiff. Our task now is to see what human rights of the 2<sup>nd</sup> Plaintiff were violated by the Defendants. The Plaintiff states his own case as him being intimidated by the actions of the Defendants in carrying out a fund-raising program where the Defendants raised over 21.27 Billion Naira, and this act of raising such huge amount constitutes a violation of his human right to equality before the law. First of all, this is a question of fact to be established, and if so established, then, the determination made as to whether the raising of funds by one political party violates the human rights of other political players in the electioneering process. But before getting to this fact-finding determination, the Defendants have raised the legal hurdle of lack of jurisdiction to hear the case, which enjoins this Court to stop and determine the legal issue first and if answered in the direction of the Plaintiff, then go into the factual aspect.

8.1.27. The Court takes note that the Plaintiff has based his suit on violations of his right to vie for political office under provisions of the Nigerian Electoral Laws. This Court has held that it will not interfere with matters of enforcement of domestic laws of member States. Thus the Court “declared that it had no jurisdiction to examine the constitutionality or legality of acts which come under the domestic norms and laws of the authorities of Member States (vis-à-vis violation of provisions of the African Charter on Human and Peoples’ Rights as raised by the Plaintiffs) and that the Plaintiffs had no locus standi to bring the case before the ECOWAS Court of Justice.” “The Court also declared the Application filed against Mamadou Tandja, a natural person, as inadmissible, and the claims brought by the Plaintiffs, as frivolous.” **Center for Democracy and Development and Center for Defense of Human Rights and Democracy, Plaintiffs, vs. Mamadou Tandja and the Republic of Niger, Defendants, supra.**

8.1.28. Thus, in answering issue number one, the 4<sup>th</sup> Defendant relied on **Article 9 (4) of the Supplementary Protocol of (2005) of ECOWAS as amended by Protocol A/SP.1/01/15**. Also, the case: **Peter David vs. Ambassador Ralph Uwechue, 2010 CCJELR 213**, and the Court concurs with the 4<sup>th</sup> Defendant.

#### **4<sup>th</sup> DEFENDANT/APPLICANT'S WRITTEN BRIEF IN SUPPORT OF THE PRELIMINARY OBJECTION**

8.1.29. The subject matter of this suit is in respect of a fund raising dinner organized by the 4<sup>th</sup> Defendant/Applicant in Abuja on 20<sup>th</sup> December 2014 for the building of its corporate headquarters in Abuja and for its operational expenses. The fund raising dinner was solely organized by the 4<sup>th</sup> Defendant / Applicant and not the Federal Republic of Nigeria and as such the dispute arising thereto is not one between the Plaintiffs and the state Party but is between the Plaintiffs and the Peoples Democratic Party who are individuals and not subject to the jurisdiction of the ECOWAS Court of Justice.

8.1.30. The Plaintiffs/Defendants alleged that the amount realized at the fund raising (N21.27 Billion) exceed the maximum limit of One Billion Naira election expenses allowed under Section 91 (2 – 7) of the Electoral Act 2010 (as amended) for a Presidential candidate and that donors exceeded the limit of One Million Naira donation per individual or entity. They also alleged political intimidation, planned manipulation of the February 14, 2015 Presidential election, vote buying and corruption of electoral officers against the 3<sup>rd</sup> Defendant/Respondent and 4<sup>th</sup> Defendant/Applicant. They further contended that State apparatus and media have been used to the advantage of the 3<sup>rd</sup> Defendant/Respondent against other political parties and that the 3<sup>rd</sup> Defendant/Respondent had expended N15 Billion in television adverts, bill boards and votes buying. Plaintiffs thereby alleged that their rights to equality under Article 3 of the African Charter on Human and Peoples' Rights have been infringed upon.

8.1.31. The 4<sup>th</sup> Defendant/Applicant is contending that the issues raised by the Plaintiffs/Defendants do not fall within the jurisdiction of the Community Court of Justice under Article 9(4) of the Protocol Relating to the Court of Justice as amended by Protocol A/SP.1/01/15 because the subject matter of this case is between individuals and not among State actors. Further, since the alleged violation of the Plaintiffs rights were committed by individuals and not State actors, the ECOWAS Court being an International Court does not have jurisdiction over matters involving individuals. 4<sup>th</sup> Defendant/Applicant therefore sought for the Court's intervention, through this Preliminary Objection, in accordance with Article 88 of the Rules of Procedure of Court of Justice of ECOWAS.

## **1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS WRITTEN ADDRESS IN SUPPORT OF NOTICE PRELIMINARY OBJECTION**

8.1.32. The Preliminary Objection is challenging the competency of this Honorable Court for lack of jurisdiction to try this suit on the basis that the said suit is predicated on alleged breach of the Nigerian municipal law that is the Electoral Act of 2010 as Amended which is not actionable before this Honorable Court. And the Plaintiffs' claim discloses no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Objectors.

8.1.33. In arguing issue number one, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants rely on the following laws: **Article 9 of the Supplementary Protocol [A/SP.1/01/05] amending the Protocol [A/P1/7/91] of the Community Court of Justice, ECOWAS Article 9 (a – g) and (2 – 8). Inakoju Vs. Adeleke (2007) All FWLR [PT353] p 3 @87; also, The Registered Trustees of the Social Economic Rights and Accountability Project [SERAP] and Federal Republic of Nigeria on page 201, paragraph 1.**

8.1.34. In arguing issue number two 1<sup>st</sup> and 2<sup>nd</sup> Defendants rely on the following laws: **Adekoya Vs. Federal Housing Authority (2008) 11 NWLR (PT. 1099)539 at 551, paras, D – F**; also in **Fred Egbe Vs. Hon. Justice J. A. Adefarasin (1987) 1 NWLR (PT.47) 1 at 20.**

8.1.35. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants concluded that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are neither necessary nor proper parties in this suit as there is nothing claimed against them in this suit. There is neither factual nor documentary evidence to support any claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the Plaintiffs' suit.

## **9. CONCLUSION**

9.1. In argument before this Court, the Court asked the counsel for the Plaintiffs if, given the trend of events as they turned out eventually, whether he had considered discontinuing this suit since indeed the incumbent president and his political party, against whom the Plaintiffs had complained for violating his human rights to contest the 2015 presidential elections on a level playing field, had in fact lost the elections and conceded defeat to his main rival. Counsel responded in the negative, saying that he wanted this Court to rule on the issue so as to serve as a deterrent to other would-be violators of the elections law on fairness and equality before the law.



9.2. This Court takes recourse to its previous decision in the Mamadou Tandja case, supra, at pages 118-117, which we herein quote verbatim:

“B. AN ACTION HAVING BECOME DEVOID OF PURPOSE

“33. At the hearing of 3<sup>rd</sup> December 2010, the lawyer for the Republic of Niger asked the Court to terminate the proceedings, for according to him, the Application had become devoid of purpose, considering the developments in the political situation in Niger, which had surpassed those stages. He thus maintained that the claims of the Plaintiffs can no more be granted. Indeed, he contended that the referendum the Plaintiffs wanted debarred had been conducted and that the Constitution had been adopted and promulgated; that subsequently, a coup d’etat had occurred; that the authorities of Niger’s transition have drawn up a programme for restoring democracy, after adopting and promulgating a new Constitution.”

“34. As for the Plaintiffs, they declared that they wanted their applications to be maintained, on the grounds that the decision of the Court will contribute towards dissuading other leaders who may have the intention of tampering with the Constitution of their country, so as to perpetuate themselves in power.”

“35. The Court notes that on 18<sup>th</sup> February 2010, a coup d’etat occurred in Niger following which a Supreme Council for the Restoration of Democracy (CSR) and institutions for transition were put in place for a return to constitutional rule in Niger. The said Council established a programme in three dimensions. For the implementation of the programmes under the first dimension, an independent National Electoral Commission proposed an Elections Calendar, according to which elections leading to the return to civil rule would be organized.”

“By the said calendar, elections shall take place from 31<sup>st</sup> October, 2010 to 6<sup>th</sup> April, 2011. These shall include a Constitutional Referendum, local legislative and presidential elections. As for programmes under the second dimension, a Commission for Good Governance, and the Fight against Financial Crimes was created in May 2010. Finally, for the programmes under the third dimension, a Council for Reconciliation and Consolidation of Democracy was equally created.”

“36. The Court notes that, with regard to the implementation of the programme of restoration of democracy, local elections were organized on 8<sup>th</sup> January 2011; legislative elections followed on 31<sup>st</sup> January 2011, while Mr. Mahamadou Issifou of the le Parti Nigerien pour la Democratie et le Socialisme (PNDS) was elected President of the Republic of Niger, following a two-round Presidential election held on 31<sup>st</sup> January 2011 and 12<sup>th</sup> March 2011. He was sworn in on 7<sup>th</sup> April 2011.”

“37. With regard to these latter events which occurred, and as exposed above, the Court concludes that the Plaintiffs’ claims seeking various orders of injunction to restrain Mr. Mamadou Tandja from organizing the criticized referendum, modifying the Constitution and quelling protestation marches have become devoid of purpose, pursuant to Article 88(2) of its Rules cited above.”

9.3. The facts in this cited case are wholly analogous to those in this instant case. We note that the case was filed against President Goodluck Jonathan and his People’s Democratic Party for having conducted a fundraising rally in violation of the Electoral Laws of Nigeria by exceeding the maximum amount which can be raised by a political party. The complaint was that this gave the President and his ruling party an undue advantage to the detriment of the Plaintiffs and other candidates in the 2015 elections. The trend of events has shown that President Goodluck Jonathan did not win the elections and has already conceded defeat to his rival Gen. Mohammedu Buhari; in fact, Gen. Buhari has already been inaugurated into office as President of the Federal Republic of Nigeria.

9.4. Therefore, just as this Court determined in the *Mamadou Tandja* case, this present case is devoid of purpose since President Goodluck Jonathan and his PDP did not win the elections, hence this instant case has lost its meaning and is hereby ruled to be devoid of purpose, and hence dismissible.

9.5. Be it reminded that since our handling of this case is still on issues of law raised by the Defendants in opposition to this case, we reiterate that by this Ruling, the Court does not go to or comment on the merits of the complaints as laid in the Originating Application in that once the Court’s jurisdiction is questioned, the Court must first examine and determine that it has jurisdiction before it can reach the merits of the controversy before it.

9.6. Therefore in light of the fact that the Plaintiffs sued individuals and persons not within the competency of this Court's personal jurisdiction, and also because this Court exercises jurisdiction over persons who are State Parties to the ECOWAS Treaty, or who are members of ECOWAS, or ECOWAS Institutions, this Court is legally stripped of the right and authority to go into the substance of the allegations of the complaint because any action taken by the Court without authority/jurisdiction, is legally void, hence the case has to end at this preliminary stage without discussing the merits.

9.7. In other words, if this Court was not prevented by the limitations of the Treaty and Protocol and case law in terms of its jurisdiction over certain categories of persons, then we would have had to conduct a hearing and take evidence to determine whether any conduct of the Defendants, either individually or collectively, violated any human rights of the Plaintiffs.

9.8. In short, the substance of the Defendants' contention is that the claims of these Plaintiffs are brought against the wrong persons as Defendants; and secondly, that the complaint does not state a cause of action against the Federal Republic of Nigeria, who is the only person sued, who is a proper party before this Court. The Court finds that this suit is vexatious and was brought for the mere purpose of harassing and embarrassing the Defendants.

## **10. DECISION**

The Court, adjudicating in a public sitting, after hearing both parties, in last resort, after deliberating in accordance with the law;

### **As to Motions for Extension of Time,**

10.1. Declares that all the Motions for Extension of Time are granted.

### **As to Eligibility/Competency of Plaintiffs**

10.2. Declares that the 1<sup>st</sup> Plaintiff is not competent to bring suits before the ECOWAS Community Court of Justice.

**As to Defendants being Proper Parties Defendant before the ECOWAS Community Court of Justice**

10.3.(a.) On the competency of this Court to entertain this suit because it is brought against persons who are not subject to the jurisdiction of this Court, it is hereby declared that the Defendants' Motions for Preliminary Objections are granted for the reasons stated herein. Accordingly, the claims against them severally and jointly are denied and the case dismissed; that 2<sup>nd</sup> through 6<sup>th</sup> Defendants not being competent parties Defendants before the ECOWAS Community Court of Justice, the case against these Defendants is ruled inadmissible against them, and they are dropped as improper parties before this Court, and the case accordingly dismissed severally and jointly.

10.3.(b.) Declares that the 1<sup>st</sup> Defendant is the only proper party Defendant in this case, but that the Plaintiffs have not alleged and proven any violation, misconduct or wrongdoing committed against the Plaintiffs by the said 1<sup>st</sup> Defendant, and as such, there being no proper cause of action against the 1<sup>st</sup> Defendant, the case is rendered inadmissible and is hereby dismissed and the claims denied.

**As to the case being devoid of purpose**

10.4. As stated supra, just as this Court determined in the Mamadou Tandja case, this present case is devoid of purpose since President Goodluck Jonathan and his PDP did not win the elections, hence this instant case has lost its meaning and is hereby ruled to be devoid of purpose, and rendered dismissible, and hereby dismissed.

**As to costs**

The Court rules that there shall be no costs assessed for or against the parties.

**Thus made, adjudged and pronounced in a public hearing at Abuja, this 14<sup>th</sup> day of October, A.D.2015 by the Court of Justice of the Economic Community of West African States.**

**THE FOLLOWING JUDGES HAVE SIGNED THIS JUDGMENT**

Hon. Justice Friday Chijioke NWOKE –	Presiding
Hon. Justice Micah Wilkins WRIGHT –	Member
Hon. Justice Alioune SALL –	Member
Assisted by Maitre Athanase ATANNON, Esq.–	Registrar