

COMMUNITY COURT OF JUSTICE, ECOWAS  
COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO



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

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

HOLDEN IN ABUJA, NIGERIA  
This Monday, the 11<sup>th</sup> day of June, 2012

SUIT NO: ECW/CCJ/APP/05/11

ECW/CCJ/JUD/10 /12

BETWEEN

SIKIRU ALADE

- APPLICANT/PLAINTIFF

AND

THE FEDERAL REPUBLIC OF NIGERIA

- DEFENDANTS/RESPONDENTS

BEFORE THEIR LORDSHIPS

HON. JUSTICE HANSINE .N. DONLI

- PRESIDING

HON. JUSTICE .M. BENFEITO RAMOS

- MEMBER

HON. JUSTICE ELIAM .M. POTEY

- MEMBER

Assisted by TONY ANENE-MAIDOH Esq.

- CHIEF REGISTRAR

REPRESENTATION

APPLICANT:

1. D. GLOKLAJE

DEFENDANT:

1. GODSWILL .N. IWUAJUKU

## **JUDGMENT**

### **PARTIES**

1. The applicant /plaintiff is Sikiru Alade, a citizen of Nigeria who in his application alleged that he was and still is in detention at Kirikiri Maximum Prison, Lagos.
2. The defendant is the Federal Republic of Nigeria, a Member State of ECOWAS, with an address at the office of the Honourable Attorney General of the Federation, Ministry of Justice, Abuja, Nigeria.

### **FACTS OF THE CASE**

3. The applicant lodged an amended application at the Registry of the Court on the 24<sup>th</sup> day of June, 2011, wherein he stated that on the 9<sup>th</sup> of March, 2003, he was arrested in Lagos by a plain cloth person who claimed to be a police officer. He stated that the said policeman forcefully dragged him to the Ketu Police Station and detained him until the 5<sup>th</sup> of May, 2003 when he was arraigned before the Magistrate Court, Yaba Lagos, Nigeria for an alleged crime of Armed Robbery. That after the arraignment he was detained and ordered to be remanded in prison custody under a procedure in the Nigeria criminal justice system known as "Holding Charge". Hence he filed an application for violation of human rights pursuant to Article 9(4) of Protocol A/P1/7/91 as amended for the reliefs stated hereunder;

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- a. A declaration that indeterminate detention without trial under the holding charge constitutes a violation of the right to fair trial within reasonable time, presumption of innocence and right to personal liberty guaranteed under the African Charter on Human and People's Rights.

- b. A declaration that the unlawful and excessive detention under the holding charge procedure since 15<sup>th</sup> May, 2003 violates the plaintiff's right under the African Charter.
  - c. A declaration that the continued detention of plaintiff by the defendant is a violation of the plaintiff's right to personal liberty provided under Article 6 of the African Charter.
  - d. An order compelling the defendant to release the plaintiff immediately.
  - e. An Order for General damages for Twenty Million Naira (N20,000,000) for the plaintiff against the defendant for unlawful detention of the plaintiff.
  - f. Pecuniary damages of loss of earnings, in a sum to be determined.
  - g. An Order that the defendant pay the plaintiff cost of this action, in accordance with Article 66 of the Court's Rules of procedure.
4. The defendant filed his amended statement of defence with no annexure attached at the Court's registry on the 21<sup>st</sup> September, 2011 and raised the issue of jurisdiction of the Court, lack of credible evidence, and failure of the Plaintiff to discharge the burden of proof placed on him and asked the Court to dismiss the suit in its entirety based on the aforementioned reasons.
5. After the matter was adjourned for judgment, the Applicant filed an application for leave to introduce fresh evidence in respect of the detention, such as, the certified true copy of the holding charge and letters to the Comptroller of Prison to produce the detention warrant of the said applicant.
6. The defendant opposed the motion introducing further evidence after the case has been closed for judgment. There was no material fact or

facts to substantiate the objection apart from the lateness of the application and the introduction of the Holding Charge and the notice to the Comptroller of Prison, Kiri-kiri Maximum Prison, Lagos to produce the warrant of detention. In view of Article 87 (5) of the Rules of procedure of this Court, the Court made an order that decision is reserved for the final judgment.

7. The question is: Is it appropriate to allow a motion introducing documentary evidence substantiating the main application after the parties have closed their arguments and adjourned for judgment?
8. It is trite that pleadings may be amended which introduced material fact which are not in dispute at any stage before judgment is pronounced. What this motion sought to do is akin to the statement stated above that pleadings may be amended and documents not in dispute introduced before judgment. This Court grants the reliefs sought and state herein that the matters introducing the motion shall be considered in this suit to determine whether the detention of the applicant in this case in Kiri-kiri Maximum Prison from 2003 to date without trial amounts to a violation of human rights of the applicant.

#### **LEGAL ARGUMENTS BY THE PARTIES**

9. Learned Counsel to the Applicant submitted that the right of the applicant was violated by his continuous detention for nine (9) years without trial. Learned counsel for the Plaintiff/applicant submitted that the right of the Plaintiff was violated upon as stated in the application and further contended that the detention in the manner described in the application was contrary to Article 1,2,3,4,5,6,7,8 and 26 of the African Charter on Human and People's Rights and Articles 2(3) sub (1) and (2)

and 10(1) and (2) of the International Covenant on Civil and Political Rights.

10. By way of specification, he submitted that the Plaintiff/applicant was detained under a holding Charge procedure by the magistrate and he was remanded thereafter in prison since 2003 to date and that such detention was a violation of the Plaintiff's/applicant's human rights pursuant to Articles Six (6) and Seven (7) of the African Charter on Human and People's Rights and urge the Court to adjudge such detention as illegal, null and void. He relied on the new evidence introduced in their motion whereby they relied on exhibits OAI (letter to the Comptroller) and OA2- Applicant's- two letters dated 21<sup>st</sup> February, 2012 addressed to the Deputy-Comptroller, Kiri-kiri Maximum Prison by the firm of Smith Worth Partners who are the solicitors to the applicant.
11. He further relied on exhibit OA3 to wit, charge no C/61/2003 against the applicant, on which he was arraigned before the Yaba Magistrate Court Lagos and the order made by the said Magistrate Court on 16<sup>th</sup> May, 2003 that the applicant should be remanded in Kiri-kiri Maximum Prison, Lagos. Also attached to the affidavit is exhibit OA4- which is, the Court Order.
12. He also relied on a sworn affidavit by the applicant himself on 2<sup>nd</sup> February, 2012 in Kiri-kiri Maximum Security Prison before Mr. Kamar Raji-a Notary Public marked as exhibit OA5. He submitted in addition in the alternative that the court should note the Deputy Comptroller's failure to produce the detention warrant in respect of the applicant who is in Kiri-kiri Maximum Security Prison. He urged the Court to hold that the Plaintiff/applicant had proved his case as contained in the application to enable this Court to make an order releasing the applicant from detention. The defendant however, argued vehemently in response

to the main application and the motion filed after the adjournment for judgment that the plaintiff had failed to show convincingly that he the plaintiff/applicant is in detention at Kiri-kiri Maximum Security Prison, Lagos.

13. He further submitted that the counter affidavit which they filed denied the allegation of the plaintiff that he is in Kiri-kiri Prison. He contended that even in the face of the further evidence filed after the adjournment date for judgment, there was no sufficient proof. He urged the Court not to attach any probative value to the annexure marked as exhibit showing that the plaintiff is in Kiri-kiri Maximum Security Prison. He submitted that it is settled law when documents are annexed to application before any court, the Court ought to look at such document and when a plaintiff intends to amend his pleadings, he is required to follow the laid down procedure for amendment. He submitted that the motion brought by the applicant to put forward documents of this nature invariably portrayed the applicant as trying cunningly to amend his pleading.
14. He contended that the Applicant ought to have applied to the Court to amend his pleadings instead of adopting this approach. He relied on the case of AZAZI V. ADHEKEGBA (2008) ALL FWLR (Part 484) p.1548 No.2, and contended that the prayers in the motion precluded the defendant from properly joining issues with the plaintiff on the set of facts introduced by the plaintiff.
15. He submitted that the plaintiff/applicant has failed to exercise the ~~option of approaching the national Court to seek for his release from~~ custody since it is elementary law under the Nigerian Criminal Law that where an accused is charged to court, he or she is entitled to bail if such an application is brought before a Court of competent jurisdiction. He submitted that the plaintiff has been caught by the term "laches" and

relied on the case of Chukwu V. Amadi (2009) ALL FWLR Part 472 page 1193 No.4 where the court stated thus:

*"laches denote an equitable principle by which a court denies relief to a claimant who has unreasonably delayed or negligent in his claim"*

16. He therefore contended that the plaintiff did not exhaust all the available remedies provided before approaching this court. He submitted also that the plaintiff is trying to furnish the court with the said annexure in order to persuade the Court to make an order in vain.
17. He contended that the plaintiff is inviting the court to sit as an appellate court on an order made by a court of competent jurisdiction. He also submitted that he who asserts must prove, therefore the burden lies on the plaintiff to prove that he is in detention and that the only way to really ascertain that the plaintiff is in custody is by adducing credible evidence through the production of the warrant of detention from the prison service. He therefore urged the court not to attach any probative value to the annexure to the motion on notice and to dismiss the suit in its entirety for want of credible evidence.
18. In reply, the learned counsel to the plaintiff submitted that it was the defendant that had contended in their amended statement of defence that the plaintiff was no longer in detention as the facts of the plaintiff's detention was not established. He relied on the sworn affidavit by the plaintiff himself before a notary public inside the Kiri-kiri Maximum Security Prison to prove that the plaintiff is still in detention. He submitted that the reason for the motion and the production of the exhibit concerning the holding charge and the plaintiff being in detention was pursuant to the directive under Article 41(1) and (2) and Article 57(1) of the Rules of the Court which the court applied and directed the parties to show precisely whether or not the plaintiff is in

custody. He submitted that the motion was then filed with the annexure showing that the plaintiff was indeed in custody.

19. He submitted further that the defendant has not disputed the fact that the plaintiff's counsel wrote to the prison authority as shown in exhibits OA1 and OA2 attached to the affidavit in support of the motion and that the defendant did not counter the assertion of the plaintiff in paragraph six (6) of the affidavit in respect of exhibit OA1 and OA2 respectively.
20. In respect of accessing the national court to exhaust local remedy before approaching this court, learned counsel referred to pages 4-7 of his amended application to submit that the applicant need not have any recourse to any domestic remedy before filing this application in accordance with the provision of the Protocol of this court. He urged the Court to grant all the reliefs sought by the plaintiff/applicant in this case.

#### **CONSIDERATION AND DETERMINATION OF THE COURT**

##### **Jurisdiction**

21. It is foremost in terms of importance in the argument of learned Counsel of the parties to consider and determine the issue of whether the Court has jurisdiction on the matter presented by the Plaintiff/applicant. As always jurisdiction of the court is of paramount importance because where a court lacks jurisdiction, no matter how well conducted a case may be it will fall to nothingness.
22. There are plethora of authorities by the jurisprudence of this court on the importance of jurisdiction and how some should be handled with utmost care. Some of these authorities are:

1. Afolabi vs. FRN; reported in (2008) CCJELR (Pt 1 ) 1 paragraphs 31-33 page 16; Mr Moussa Leo Keita v The Republic of Mali Reported in (2004-2009) CCJELR page 63 paragraphs 32-33 page 74;
2. Alhaji Hammani Tidjani vs. FRN & 4 ors (2004-2009) CCJELR page 77;
3. Professor Etim Moses Essien vs. The Republic of the Gambia & University of the Gambia (2004-2009) CCJELR page 95 at 99 paragraph 4; and
4. Chief Frank C. Ukor vs. Mr Rachad Laleye & Anor (2004-2009) CCJELR page 131 at 145 paragraph 27.

23. The application of the plaintiff/applicant is on the premise that he was detained on a holding charge in Kiri-kiri Maximum Prison, since 2003 to date without trial. Does the fact fall under the premise of Article 9(4) of the Protocol of the court as amended? Article 9 (4) of the Protocol as amended provides:

*"The Court has jurisdiction to determine cases of violation of human rights that occur in any member state"*

24. The said protocol did not categorize or provide catalogued of the human rights that fall under the schedules of rights recognized by the same Protocol which the Court should apply. However, Article 4 (g) of the Revised Treaty of ECOWAS provides for the recognition, promotion and protection of human rights as adumbrated in the African Charter on Human and Peoples Rights. All these provisions on rights of persons in the African Charter on Human and Peoples Rights therein are rights applicable under Article 9(4) of the Protocol of the Court as amended.
25. The rights in the said African Charter are not the only rights that the violation of same will fall under Article 9(4) of the Protocol of the Court as amended. Those UN Conventions and Charter on Human Rights acceded to by Member States of ECOWAS are recognizable rights that

the violation of which would fall within the ambit of Article 9(4) of the Protocol of the Court, just to mention a few.

26. Learned Counsel to the Plaintiff/ Applicant referred to the provisions of the Charter in question for the success of the application. For clarity and appreciation, Article 6 of the African Charter on Human and Peoples Rights provide:

*"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained"*

27. The court holds therefore that an infringement on a person's liberty as alleged by the Plaintiff/applicant as stated above would fall neatly under Article 9(4) of the Protocol of the Court. On that basis, the Court finds that the ingredients of the complaint in the Application have met the requirement pursuant to the said Article 9(4) of the Protocol. Further to this is the fact that when the allegations in the application of the Plaintiff are dissected and examined the outcome brings out clearly that the acts alleged are violation of human rights pursuant to Article 9(4) of the Protocol of the Court.

28. However, the defendants' argument of lack of competence raised some issues that touches on the exhaustion of local remedies albeit, whether the Court is an appellate Court as to hear matters or deal with the application of the Plaintiff complaining of the order of a magistrate court of competent jurisdiction, remanding the Applicant in Kiri-kiri Prison Apapa, Lagos and or whether the application is seeking for bail rather than the reliefs sought for. Let us take the issues herein.

### Exhaustion of Local Remedies

29. The Rule on exhaustion of local Remedies is a long aged one which enjoins a party accessing the jurisdiction of an international court to first and foremost access the national courts for his case to be heard to conclusion of the same. In the case of the *Interhandel* case (Switzerland v. United States (judgment of 21 March 1959, the International Court of Justice, observed that the obligation to exhaust domestic remedies forms part of the customary international law, recognized as such in its case law. Therefore the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law.
30. It is also to be found in other international human rights treaties: the international covenant on civil and Political Rights and the Optional Protocol thereto, the American Convention on Human Rights, and the African Charter on Human and Peoples Rights. As was observed that the State may waive the requirement of exhaustion without there being an established international practice on this point, in view of the provisions of its Protocol as amended vide its Supplementary Protocol of 2005. However Article 10 (d) of the Protocol as amended provides that individuals may access this court for relief for violation of their human rights on condition that the party is not anonymous nor the application be made whilst the same matter has been instituted before another International Court for adjudication.
31. The provision of Article 10(d) above puts it quite succinctly clear that the access to this Court is not subject to exhaustion of local remedies as envisaged by the customary international law on the point. The said

Supplementary Protocol of the Court is an exception to the general rule. As this Court observed in *Moukhtari Bello versus Jigawa State and others* suit No. ECW/CCJ/APP/02/11 that while International customary Law is *lex generale* the provisions of the Protocol as amended by the Supplementary Protocol is *lex specialis* and therefore the *lex specialis* applies as an exception to the *generale*. We find the observation postulated by this Court in the above stated case, worthy of application herein and adopt same.

32. The provision of the African Charter on Human and Peoples Rights with incorporating the international customary Rule on exhaustion of local Remedies is a general rule. This Court has stated in numerous authorities that individuals are at liberty to choose wherever they elect to file their causes or matters pertaining to violations of their human rights once the matters imbibed the international law or community texts therein.
33. The defendants' counsel further raised the question of whether this court is competent to act as an appellate court over the order of detention made by a competent court to wit, the Yaba Magistrate Court.
34. This Court had observed several times in decisions that it does not compose itself as an appellate Court over the decisions of the National Courts as emphasized in the case of *Moussa Leo Keita versus the Republic of Mali* – ECW/CCJ/JUD/03/07 and reported in 2004-2009CCJELR 63 where the question was asked whether the court can re-examine decisions made by the courts of Member States? This Court held as reported on page 75 that ' *However, the Court rather deduces from the decision made by the Supreme Court of Mali that, what we have at hand is a case of damages suffered by the Applicant as it regards his artefacts and for which he was granted reparation. The*

*Court also holds that the said reparation granted by the Supreme Court of Mali which may not have been to the satisfaction of the applicant constitutes a different issue. In any case the Court has already responded that it has no jurisdiction to adjudicate upon decisions made by the domestic courts of Member States of the Community.'*

35. We endorse the said opinion and stand firmly by it but emphasized that there is a thin divide of not reviewing the decision but hearing the matters that flow from the decisions which allegedly pose the questions of violations of human rights particularly in this case where upon a holding charge the applicant/plaintiff is detained with no trial would be said to be different from the order itself.
36. The question of a holding charge became relevant in this matter raised by the defendants' counsel that we found this definition which is of interest in Black's Law Dictionary Deluxe Ninth Edition page 800, thus: '(1949) *A criminal charge of some minor offense filed to keep the accused in custody while prosecutors take time to build a bigger case and prepare more serious charge.*'
37. The process that resulted to a holding charge and the order made thereon is not the issue that was emphasized but whether the flow from the order which allegedly violated the human rights of the plaintiff/applicant and whether same allegation can be said to fall within the purview of Article 9(4) of the Protocol should be a matter for this Court.
38. Another point canvassed by the defendants is in respect of the amendment of the pleadings at the stage the applicant brought same for consideration and granting same. The Court agrees with defendants that the motion to put forward more documentary evidence in support of the

claim appears to be late as the case had been adjourned for judgment but rather than go with the objection of the defence which is rather technical the substantial justice angle of the matter is preferred. The power to amend pleadings like all other judicial powers must be exercised judicially and judiciously. In furtherance to the above, this court holds fast to the trite position of our judicial system that the courts must eschew technicalities at all times and determine to do substantial justice. Articles 32-33 of the Rules of this Court support the exercise of the Court's discretion that at any stage of the proceedings before judgment is pronounced, pleadings may be amended on reasonable cause or in the interest of justice.

39. Article 15 of Protocol A/P1/7/91 is in further support of the exercise of the discretion of the Court which Counsel to the plaintiff relied upon to file the said motion at such a late time in the proceedings and basing same to the request made by the Court on the date of the judgment. Article 15 of the said Protocol provides:

*"At any time, the Court may request the parties to produce any documents and provide any information or explanation which it may deem useful. Formal note shall be taken of any refusal."*

40. Learned Counsel to the defendant referred to Article 87 of the Rules of the Court and emphasized on the same as supporting his argument and stance as opposed to the case of the plaintiff. For proper appreciation of the import of Article 87 of the Rules there is the need to highlight the relevant paragraph of the Rule. Article 87(5) of the Rules is in four-folds namely these-

- a) That the application is interlocutory;
- b) That both parties must be heard on it;

- c) That the Court after hearing decides or reserves the decision for the final judgment;
- d) That the substance of the application touches the substantive case.

41. It is trite law that the provision above is interlocutory and meant for the purpose of the preservation of the substantive matter or Res. The Court cannot rule out the fact that by the above provision, it was therefore in order to make an order to ensure that the final decision on the substantive matter or the Res is preserved to the end of the trial.
42. An interlocutory action should not be allowed when same is subsumed with the facts of the substantive case and that is trite position of law. Consequently in the instant case, the application which may have the semblance of an amendment would be granted and it is granted. The evidence introduced therein shall be considered in this judgment by the application of Article 87(5) of the Rules of procedure of this Court which shall resolve the whole case in its entirety one way or the other in the Judgment. For emphasis, Article 87(5) of the Rules provides that "the Court shall after hearing the parties decide on the application or reserve the decision for the final judgment. If the Court refuses the application or reserves its decision, the President shall prescribe new time limits for the further steps in the proceedings."
43. Learned Counsel for the defendant also relied on the case of Azazi v. Adhekegba, supra, that they would be precluded from properly joining issues with the plaintiff on these sets of introduced facts in the annexures. Learned Counsel furthermore based his argument on the doctrine of laches as observed in the case of Chukwu v. Amadi, supra, that there was unreasonable delay or that the plaintiff was negligent in bringing his claim. The Court found no such inordinate delay to seek for

the relief both for the motion and the main application which has an allegation of violation of human rights that is continuing and the question of negligence cannot apply under limitation of action under Article 9(3) of the Protocol as amended.

44. This Court takes the justifiable stance that the amendment during the pendency of an adjournment for judgment in a case would be in order and since the parties in this case have been heard in the matter with all the essentials of the rules on fair hearing in Article 7 of the African Charter on Human and Peoples Rights duly observed, the issues and submissions should be determined in the main judgment herewith. The observations in the case of *Azazi v. Adhekegba*, supra, are not on all fours with the present situation in this case. So also the further reliance on the doctrine of laches as observed in the case of *Chukwu v. Amadi*, supra. We find that principle inapplicable and that no unreasonable delay or negligence as submitted by Counsel to the defendant.
45. Having shown that the motion filed and argued by the Applicant was in order and that the Court met the requirements of Article 7 of the African Charter on Human and Peoples' Rights in that the parties were given fair hearing and the defendant had opportunity to join issues with the plaintiff, the next point is the question of the annexures attached to the said motion which are material to the case.
46. As earlier stated herein that Article 15 of the Protocol permits such admission of documentary evidence, the fact that same were annexed to an affidavit and that the annexures were secondary evidence require consideration. It is well stated position of law that where secondary evidence are admitted without objection or with the consent of the parties or have been used by the adverse party, or relevant in material particular, the Court would rightly rely upon them for its decision. Some

authorities of National Courts support this stand point and by the application of Article 38(1) of the Statute of International Court of Justice which is applicable pursuant to Article 19 (1) of our Protocol as amended are apt. This authority is Esonwune Nwadike and another versus Martin Nwadike and 5 ors 1987 4 NWLR (PART 65) 394, where documents annexed to affidavit evidence were deemed admitted by virtue of section 76 of the Evidence Act. We think the observations made therein are relevant and are the same with the observation of this Court in this instance.

47. In the case mentioned above, the documents which were photocopies of secondary evidence within the meaning of section 94(a) of the evidence Act were relied upon and the defendants did not dispute the existence or their authenticity as exhibited by the plaintiff and the defendant referred to them and quoted and used extracts from them in their counter affidavits. That court opined that that being so, the exhibits are deemed to have been admitted by the defendants under section 74 of the Evidence Act. In the present situation herein, the documents annexed to the motion are not only material but relevant to the fact as to whether the applicant was remanded in prison custody or not and whether he is still in detention right now. The obvious position the Court hereby adopts is that these documents are relevant and material for examination.

#### **ONUS OF PROOF**

48. ~~It is pertinent to note that the presentation of the case by the plaintiff~~ and the reply of defendants in material particular describe whether the parties have made out their claim or defence as the case may be. The plaintiff has a duty to place all material facts to establish the reliefs he seeks for in the present case with credibility which would convince the

members of the court or present arguments that would cause the court to be persuaded to decide on either for the plaintiff or defendant. Even though in National courts the statement above is coined as burden of proof which may include the burden of proof, burden of persuasion the consideration of the same produce the same result. The burden of proof under the English law and in French law, the phrase 'la charge de la preuve' connotes obligation to prove. In the book 'evidence before the International Court of Justice by Anna Riddell and Brendan Plant it was stated on the burden of proof thus:

*' the principal difference between the two legal traditions is that the former divides the burden of proof into two issues, one procedural and one substantive, whereas the civil law is concerned only with the substantive.'*

49. However in trying to analyze the evidence presented by the parties in this case it must be clearly stated that the concept of burden of proof and burden of evidence though may be interwoven are more recognized in domestic law and would not be quite appropriate for application in an international law court setting like this Court. In ELSI case at page 86 of the said Riddell and Plant's observations, the emphasis was to the effect that,

*"Applicant's case ...must be objectively and realistically seen as crossing a bright line of proof. Its case must be made by a preponderance of the evidence...And the hard conclusion then is that unless Applicant can carry the twin burdens of proof and persuasion; can win every single point to its case; and can establish the necessary causal link between each one: the applicants cause of action does not hold water."*

In B Cheng –General principles of Law as applied by International Courts and Tribunals OUP London 1953 p.329, he said, " It means that a party having the burden to proof must not only bring evidence in

*support of his allegations, but must also convince the Tribunal of their truth, lest they be disregarded for want, or insufficiency, of proof."*

50. With all these principles of law on burden of proof, burden of evidence and burden of persuasion, enunciated and quoted above, this Court holds fast to the notion that every material allegation of the claim must be justified by credible evidence and the defence should also sufficiently satisfy every defence and put forward what would rebut the claim or take the risk of putting nothing at all if the claim by their estimation is weak and unproven. Where insufficient facts are placed to meet the requirements above by the plaintiff, the claim would have failed.
51. On the question of probative value or weight to be attached to the documents annexed to the affidavit to the motion depends on the circumstances of this case and as earlier explained above. The defendant contended that the plaintiff should prove that he is in prison custody because the detention warrant was not produced. Considering the fact that the defence did not controvert the said documentary evidence, same are admissible and probative value of high standards would be attached to them and acted upon them. Can such detention be then within the confines of the law?
52. In the present case, in establishing its case the plaintiff produced documents' to show that the plaintiff was taken to Kirikiri prison in 2003 upon a holding charge by a Magistrate Court and has remained in the said prison till date. He the plaintiff swore to an affidavit before a notary public in Kirikiri prison stating that he was detained therein in 2003 till date. His Counsel further relied on the notice to produce the detention warrant served on the Deputy Comptroller of Prison of the defendant who did not react to same. In a situation where a notice to produce was served on the officer of the defendant to produce a vital document like

the detention warrant, it would be deduced that the withholding of the warrant is indicative of the fact that same would have been unfavorable if produced. Article 6 of the said African Charter on Human and Peoples' Rights provides that every individual shall have the Rights to liberty and to the security of his person and that no one may be deprived of his freedom except for reasons and conditions previously laid down by law, in particular no one may be arbitrarily arrested or detained.

53. What amounts to detention laid down by law or arbitrary detention depends on the circumstances of the case. In the present case the plaintiff was detained on exhibit OA3 to wit, charge no C/61/2003 against the applicant, Mr Sikiru Alade on which he was arraigned before the Yaba Magistrate Court Lagos and the order made by the said Magistrate Court on 16<sup>th</sup> May, 2003 that the applicant should be remanded in Kiri-kiri Maximum Prison, Lagos and the court's order as exhibit OA4.
54. Also a sworn affidavit by Sikiru Alade- the applicant himself on 2<sup>nd</sup> February, 2012 in Kiri-kiri Maximum Security Prison before Mr. Kamar Raji-a Notary Public marked as exhibit OA5. The notice to produce the detention warrant served on the Deputy Comptroller of the defendant and his failure to produce the said detention warrant in respect of the applicant that he is in Kiri-kiri Maximum Security Prison are all pieces of evidence of the truth of the detention. These circumstances are sufficient to persuade us to hold that indeed the plaintiff is in the said prison Lagos.
55. Where deprivation of liberty continues for some time, the grounds that originally warranted detention may subsequently cease to exist. We state that even though the original detention was by a competent court, the Magistrate court on a holding charge and by its definition as stated supra

herein, the Magistrate who made the order remanding plaintiff in Kirikiri maximum prison was not competent to try the allegation on the charge sheet, and the holding charge ceased to be effective in law because of that influx of time. Furthermore it is the position in law that the said process was not meant to keep the plaintiff perpetually in custody but to be tried by an appropriate court thereby making the process legal and competent.

56. No Court would allow such prolong detention to continue without abating same. For that reason, the said detention is hereby adjudged illegal and this Court holds that the plaintiff has satisfied the requirements of proof, as per his claim, that his human right was violated upon pursuant to Article 9(4) of the Protocol of this Court as amended by the Supplementary Protocol of 2005.
57. In the circumstance, the facts of this case have been shown as stated above that the defendants violated the human rights of the plaintiff as adjudged above in this case as per the reasons stated therein.

#### **DAMAGES/COMPENSATION**

58. In respect to the award of damages in paragraph 2 of the pleadings, it is well established principle of law that damages are generally awarded to place the claimant in the position he/she would have been, had the friction complained of not taken place. As always it is trite that remedies are payable in international Law where the Court has found for the plaintiff who complained that his human rights has been violated upon by the defendant. In 'Remedies in International Human Rights' by Dinah Shelton page 214, she observed that 'the primary function of corrective justice is to rectify the harm done to a victim of wrongdoing and corrective justice generally aims at restitution or compensation for

loss, assuming that when victims are made whole, wrongdoers are sanctioned and deterred from engaging in future misconduct’.

59. As such the award of damages in monetary terms is designed to compensate plaintiffs for harm they have suffered, intended to make the victim as well off as he or she would have been if the injury had never occurred. The process therefore focuses on fairness to the victim and the wrongdoer.
60. In this instant case, the applicant made a claim for a lump sum payment of N20, 000,000 against the defendant and for the unlawful detention of the plaintiff and an order for pecuniary damages of loss of earnings in the sum to be determined; and an order that they shall pay the plaintiff cost of action in accordance with Article 66 of the Rules of procedure of this court. The last relief but one was not quantified or specified but rather speculative.
61. The last being as a matter of course in accordance with Article 66 of the Rules poses no difficulty but, the one on pecuniary finds no justification whatsoever either in the pleadings initially filed and the amended pleadings or in the one made in the motion granted by the court, which introduced exhibits OA1 and OA2, OA3, OA4 and OA5 respectively.
62. After having examined the evidence in this regard, the Court holds that detention from 2003 to 2004 in Kiri-kiri Maximum Prison Apapa Lagos on a holding charge without trial is manifestly a violation of the Plaintiff/Applicant's human rights as provided in Article 9(4) of the Protocol of the Court and Articles 6 and 7 of the African Charter on Human and Peoples Rights.

63. Consequently, the Court holds that there was violation of the human rights of the Plaintiff/Applicant by the defendant and therefore it is adjudged accordingly to the specification below:

From	2003 ----- 2004	N300, 000
From	2004 ----- 2005	N300, 000
From	2005 ----- 2006	N300, 000
From	2006 ----- 2007	N300, 000
From	2007 ----- 2008	N300, 000
From	2008 ----- 2009	N300, 000
From	2009 ----- 2010	N300, 000
From	2010 ----- 2011	N300, 000
From	2011 ----- 2012	N300, 000,

Computing the amount for each year and the number of years will bring to a total of the damages to the sum of N2.700 000.

64. **DECISION**

1. Whereas the plaintiff alleged that his human rights was violated by the defendants in that he was charged on a holding charge without trial and remanded in Kirikiri maximum prison from 16 May,2003 to 2012, a period of nine years awaiting trial ;
2. Whereas the defendants by their statement of defence denied that the plaintiff is in kirikiri prison since no warrant of detention has been produced and the Holding charge showed that he was ordered in prison custody by a competent court-the Yaba Magistrate Court Lagos;
3. Whereas the defence raised by the defendant were examined and found not to be credible and jettisoned by the

Court in every aspect of the defence albeit, non production of credible evidence particularly the detention warrant;

4. Whereas the duty to establish the claim is upon the plaintiff to show that he was arrested and detained in prison from 2003 to date and that he had established same by credible evidence that he was detained in KiriKiri prison Apapa, Lagos and he is still in detention till date;

5. Whereas the Court adjudged the defendant as having committed the violations of human rights against the plaintiff pursuant to Article 9(4) of the Protocol as amended, on the dates and period specified above and the Court adjudged same compensation in the sum of two million and seven hundred thousand naira only and payable to the plaintiff against the defendants;

6. Whereas the plaintiff has sufficiently as stated in this judgment discharged the burden on him, he is accordingly entitled to the relief sought including that of his discharge/release from kirikiri maximum prison forthwith and this Court so orders.

7. The applicant is hereby discharged from detention accordingly.

#### 65. COSTS

Where a party is successful and awarded damages as specified above, he is entitled to cost if asked for as specified in article 66 of the Rules of this Court. In the circumstances, the court awards cost in the sum of N50,000 for the plaintiff against the defendants accordingly.

The Judgment is Read in Public in accordance with the Rules  
of this Court.

Dated 11<sup>th</sup> June, 2012

HON. JUSTICE HANSINE N. DONLI  
PRESIDING JUDGE

HON. JUSTICE M. BENEFEITO RAMOS  
MEMBER

HON. JUSTICE ELIAM M. POTEY  
MEMBER

*Hansine N. Donli*  
*M. Benefeito Ramos*  
*Eliam M. Potey*

*Hansine N. Donli*  
HON. JUSTICE HANSINE DONLI  
PRESIDING JUDGE

*Tony Anene Maidoh*  
TONY ANENE MAIDOH  
CHIEF REGISTRAR

