



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

SUIT N°: ECW/CCJ/APP/24/15

JUDGMENT N°: ECW/CCJ/JUD/04/17

BETWEEN:

Wing Commander Danladi Angulu Kwasu

} Applicant

AND

Republic of Nigeria

} Respondent

1. BEFORE THEIR LORDSHIPS:

- | | |
|--|-------------|
| 2- Hon. Justice Friday Chijioke Nwoke | – Presiding |
| 3- Hon. Justice Jerome Traore | – Member |
| 4- Hon. Justice Hameye Founé Mahalmadane | – Member |

Assisted by:

Athanase Atannon

-Deputy Chief Registrar

2. Representation of the Parties;

Plaintiff

Abubakar Marshall

Defendant

Uzoewulu Chika

O.M.Ogundiji.

3. SUBJECT MATTER OF THE PROCEEDINGS:

Violation of the Right to life guaranteed by Articles 1, 2, 3, 4, 5, 18 and 23 of the African Charter on Human and Peoples' Rights.

4. DOCUMENT SUBMITTED,

- i. Witness depositions of one Haliru Ali
- ii. Nigeria Defence Academy Parent/ Guardian Consent Form.
- iii. Letter from the Nigeria Defence Academy dated 2/5/15 titled "Notice of Casualty: NDA/ 10037 OFFICER CADET EZ KWASU and Addressed to Wing Commander Danladi D. Kwasu (RTD) (letter of Condolence).
- iv. Daily Trust Newspaper of July 11, 2015 P. 53
- v. Medical certificate of cause of Death issued by Nigerian Defence Academy with respect to E.Z. Kwasu (19 years) Dated 5/ 5/ 2015

5. FACTS AND PROCEDURE:

1. Facts as presented by the Plaintiff:

The Applicant in this Application is Danladi Angulu Kwasu, the father of the deceased (the subject matter of this action), a Nigerian and a Community Citizen residing in Kaduna Nigeria. The Defendant is the Federal Republic of Nigeria, a member State of the Economic Community of West African States (ECOWAS).

The Applicant avers that his son late Cadet El Shaddai Zishindung Kwasu (NDA/ 10037) was admitted by the Nigerian Defence Academy (NDA) an Institution run by the Defendant in September 2014 as a member of the 66th Regular Course.

As part of the training, on the 30th of April, 2015, the NDA caused the deceased and his mates to participate in a camping exercise which included swimming.

He further avers that the deceased who did not know how to swim, was pushed into the water of the Kangimi Dam in the outskirts of Kaduna Nigeria without the provision of life jacket and without any other measure being taken to ensure the safety of anyone inside the water. There were also no life guard or divers that could go into the water to save life in case of emergency.

It is the case of the Applicant that his son (the deceased) who was pushed into the water despite protestation got drowned and that it took the NDA over 3

hours before bringing him out from the water via the services of a local diver who used a fish hook to pull him by the mouth like a fish dragging him out of the water dead.

Following this incident, the Applicant brought this action before the Community Court of Justice seeking the following reliefs;

1. **A DECLARATION** that the killing of the Applicant's son by the agents of the Defendant through drowning is illegal and a violation of Articles, 1, 3, 4, 5, 18 and 23 of the African Charter on Human and Peoples' Rights.
2. **A DECLARATION** that the failure of the Defendant to investigate and prosecute those involved in the killing of the Applicant's son is illegal as it violates 33 of the 1999 Constitution of the Federal Republic of Nigeria as well as Article 4 of the African Charter on Human and Peoples' Rights
3. **AN ORDER** directing the Defendant to investigate and prosecute the individuals involved in the negligent killing of the Applicants son forthwith.
4. **An ORDER** directing the Defendants to pay the sum of USD 10 million to the Applicant as compensation for the unlawful killing of his son.

5(ii) THE DEFENDANTS CASE:

In their statement of Defence, the Defendants denied all the allegations especially paragraphs 4, 5 and 6 of the Applicant's narration of facts and required the Applicants to prove same.

More specifically the Defendant avers that the Applicant signed and declared in the consent form (Annexed in the Application) provided by the NDA upon the deceased application for admission that:

- a. Upon invitation by the NDA his son shall attend the Armed Forces Selection Board interview.
- b. He shall not claim any compensation or relief for any injury or death, which may occur in the course of test/ exercise conducted by the said Armed Forces Selection Board.
- c. He shall not enter into any correspondence with the NDA on the outcome of the Armed Forces Selection Board.
- d. The Applicant consented to the training of his son by the NDA if he is selected by the Armed Forces Selection Board.
- e. The Applicant shall not claim any compensation or relief for any injury or death which may occur in the course of his son's training and subsequently on successful completion of training when he is in service as commissioned officer; and
- f. The Applicant understood that his son shall be subject to the Armed Forces Act as amended. The Defendant also aver that the Applicant having consented to the conditions of training and services at the NDA, cannot complain and ask for compensation. Furthermore, the Defendant contends that the Applicant's son is just one of the students for the watermanship exercise and

that adequate measures were put in place to prevent any form of injury or death during the course of the training. The Defendant also avers that they were not negligent in providing adequate measures to prevent occurrence of injury and death during the course of the training.

In consequence thereof, the Defendant sought an order of this Honourable Court dismissing the Application for lack of cause of action and merit.

Thus, issues were joined by the Parties and the Suit slated for hearing. When the matter came up for hearing on the 6th of December, 2016, the Applicant brought an Application to call witnesses (**DOC No 6**) the Applicant and one Haliru but could not be heard on account of the Defendant having just been served in Court, The Applicant had earlier brought an Application to amend their originating Application (**DOC No 4**) which was granted on the 11th of October, 2016.

The motion on notice to call witnesses (**DOC No6**) was granted on the 17th of May, 2017. The Court also heard the case on the same day.

In his testimony (PW1) who identified himself as Haliru Ali and speaks Hausa, testified that he is from Rugogi Dam in Kaduna –Nigeria. He also testified that he is a fisherman, He also testified that the NDA usually contract his father (now late) to come as a diver in the course of their camping exercise. He took over from his father. That on the 30th of April 2015, NDA officials informed him they intended to hold a training. He opened the gate to the dam

for them and left for his house, on their instructions. Later the NDA people came to his house and informed him that one of them fell into the water and asked him to come and rescue him. According to him he took four of his colleagues and went to the dam. we searched for two hours but couldn't find the victim. The officials of NDA asked them to try the tactics they use in catching fish in doing the rescue. He and his colleagues went home fetched a hook and inserted it in the water and finally brought out the victim who was already dead. At the time the victim was brought out he was wearing only a pant.

Following this incident, the NDA officials now asked us to be on standby to rescue those not wearing life jacket and we did till the training was over.

On cross examination by the Defense Counsel, he stated that the distance between his house and the dam is about 30 (thirty) minutes' walk. He also stated that when the "NDA people train", they use to push people into the water, if they are afraid of going in voluntarily.

He however stated that he was not there when the deceased was pushed into the water.

The Second Plaintiff witness (PW2), Commander Danladi Kwasu (the Applicant). The witness who affirmed to speak the truth testified that he lives at No.5 Calvary Street Mando Kaduna. He is a retired Airforce officer with 24 years of meritorious service and presently a member of the Kaduna State

House of Assembly. He testified also that the deceased is his first son admitted to the NDA in 2014. He stated he was aware that he will attend camp, having gone through same. He stated that when one goes for watermanship training, he must be trained on how to swim.

One does not go into the deep without life jacket. That divers are always around during such exercise in case of any failure. To him this is the standard international practice. He consented to the training knowing that safety measures are usually provided for the training. That that is the minimum standard. He said that I was informed of the death of my son through the phone by the Director Administration of the NDA, one Commodore Yakubu Wambai. After the call, they carried on as if nothing happened. He testified that he had to call the authorities to tell them that they offered no explanation as to how his son died nor availed him the opportunity of seeing his corpse, and that if they don't, he will not consent to the burial. They sent two officers who took him to the mortuary .When he saw the corpse it has a wound in the mouth and the two officer explained that they did not have the means of rescuing him and fishermen were called to use a hook.

He further testified that certain documents attached to his application were photocopies because his house was burnt down and he lost the originals.

The Defendant's Counsel raised objection to their admissibility on the grounds that there was no affidavit supporting the claim that the originals have burnt and there is no pleading to that effect.

The Applicant's Counsel countered that the objection was unfounded since the foundation has been laid. The Court thereafter reserved ruling till the final judgment. For the avoidance of doubt, these documents include:

- i. Death Certificate on the deceased
- ii. The photocopy of Trust Newspaper of July 11, 2015
- iii. Letter of condolence from the NDA.

On cross examination, the Defendant admitted signing the consent form to enable his son the (deceased) participate in the military training having himself understood what it means to undergo military training.

On further questions by the Court, the witness testified that his son was 19 years and 1 month when he died. He was tall but slim and healthy. He also stated that his aim for bringing this action is to stop the death of other persons resulting from the carelessness of the Nigeria Army, an Institution of the Defendant.

6.1 ANALYSIS BY THE COURT.

This is a claim by the Applicant against the Defendant for the death of his son as a result of the acts and omission of the agents of the Defendant. The facts of this case are straight forward. The Applicant's son one EL Shaddai Zishindung Kwasu(now

deceased) was enlisted for training as a cadet officer by the Nigeria Defence Academy(NDA) an institution of the Defendant established to train officers who intend pursuing a career in the Armed Forces.

As part of the training, the NDA took the Applicant's son and his mates to a camping exercise which included participation in swimming. The Applicant's son did not know how to swim but was pushed into the water at Kanginni Dam in Kaduna – Nigeria without any measures being taken for his safety. The deceased was forcibly pushed into the water despite protests from him that he couldn't swim. The deceased as a result lost his life by drowning.

Following the incident, it took the help of local divers by the use of fish hook three hours to bring out the corpse of the deceased from the water. The Applicant being aggrieved brought this action seeking the reliefs already stated above. In support of his claim the Applicant argued that:

- i. The right to life is a fundamental right guaranteed by the Constitution of the Defendant as well as Article 4 of the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.
- ii. The Defendant is under obligation by Article 1 of the African Charter to recognize, protect the rights guaranteed by the Charter.
- iii. The failure of the NDA to provide safety measures like life jacket, life guard or diver prior to letting the Applicants' son into water at Kanginni

Dam, which ultimately resulted in his death is illegal and a violation of Articles 2, 3, 4, 5, 18 and 23 of the African Charter. To Him, by its negligence, the Defendant herein has thus infringed on the right to life of the deceased, the dignity of his person as well as his security.

- iv. The effect of the African Charter is that States will be responsible if they act without due care and diligence in preventing the violation of the right to life or for failure to investigate and punish acts violating the rights enshrined and must also pay adequate compensation. To further buttress his argument reliance was placed on the case of **Amnesty International Vs. Sudan (2000) AHLR 297** (a decision of the African Commission on Human and Peoples' Rights) where it was held that the Government has a responsibility to protect all people residing under its jurisdiction and even when the Country is going through Civil War, the State must take all possible measures to ensure that its Citizens are treated in accordance with International Humanitarian Law. See also; **Malawi African Association & ors Vs. Mauritania (2000) AHLR 149 at 164-165.**
- v. That the duty of due diligence in International law extends to the obligation of a State to prevent human rights violations and where they occur, to investigate, prosecute and punish the perpetrators and failure to this incurs the responsibility of the State. The State is also obliged to provide effective remedies to victims of human rights violations and

/or their Dependents. See: **Mulezi Vs. Democratic Republic of Congo (2004) AHLR 3**, where the Respondent State was directed to conduct through investigation into the killing of the complainant's wife, and to bring to justice those responsible for these violations, and pay appropriate compensation for these violations. See: **Sankara Vs. Burkina Faso (2006) AHLR 23**.

- vi. Victims of arbitrary killings are entitled to adequate compensation from the State where the violation was committed, this is aside from conducting, prompt, transparent and effective investigations and punish the offenders. This Court was referred to its decision in **Karou Vs. Republic of Niger (2010) CCJ L R (PT3)1** where it held that Hadijatou Mani Karaou was a victim of slavery and that the Republic of Niger is to blame for the inaction of its administrative and judicial authorities.
- vii. The case of **Dorcas Afolalu Vs. Federal Republic of Nigeria (unreported) Suit No: ECW/CCJ/APP/04/12** which according to him is at all fours with this case, this Court awarded compensation and directed the prosecution of those involved in the violence that led to the death of the deceased. The Applicant concluded that “ having regard to the inexplicable negligence of the Defendant, the brutal and callous manner of the death of his 19 years old son of the Applicant by drowning, following the failure of the Defendant to provide safety measures the removal of the body of the deceased like a fish by a local diver, the

refusal of the Defendant to investigate and arrest those responsible for the tragic incident, the Honourable Court ought to award colossal damages to the “Applicant”.

In their own submissions, the Defendant submitted as follows;

- i. That the right to life is the most fundamental of all human rights since other rights can only be exercised by a person who is alive, See: **Forum of Conscience Vs. Sierra Leone (2000) AHLR 293.**
- ii. That the right to life is guaranteed by Article 4 of the African Charter
- iii. That S.2 of the Nigeria Defence Academy Act Cap N. 101 LFN 1990 provides that “*The Academy shall provide each officer cadet with the knowledge skills and values necessary to meet the requirements of a military officer through military academic and character development*”. The law also provides processes for enlistment and training as a member of the Armed Forces of the Defendant.
- iv. That the provisions emphasizes the importance of training the Applicant’s son (now deceased) was subjected to as was done to every other cadet officer in the Academy.
- v. That the Applicant and his son (now deceased) having consented to enlistment into the Academy, cannot be heard complaining and claiming damages for an alleged negligence, and this robbed the Court of jurisdiction as it has no jurisdiction to try allegations of negligence. He

referred the Court to Article 9 of the Supplementary Protocol (A/SP/01/05) and Article 10(d) thereof.

- vi. That following the express and unequivocal consent of the Plaintiff (Applicant) to the training of his son, he cannot maintain an action in the tort of negligence. The defence of volenti non – fit injuria applies.
- vii. That being an action in tort, the Court lacks jurisdiction to entertain the same as it has nothing to do with the violation of human rights.

In conclusion, the Defendant urged the Court to decline jurisdiction for lack of cause of action and merit and to discountenance the witness depositions on oath as being baseless inconsistent and failing short of the requirement of law on oath taking.

6.2. ISSUES FOR DETERMINATION:

From the facts and pleas in law relied by the Applicant and the Defendant, the following issues calls for determination:

- i. Whether the Court has jurisdiction to entertain this suit
- ii. Whether from the totality of the evidence offered, there are reasonable grounds to support the claim.
- iii. What orders if any can this Honourable Court make in the circumstances.

These issues will now be considered seriatim;

- I. Whether the Court has jurisdiction to entertain this suit.**

The facts of this case are not substantially in dispute. First the Applicants' son applied and was admitted into the Nigerian Defence Academy, an Institution of the Defendant for the training of officers of its Armed Forces. The Applicant and his son entered into an undertaking not to bring any action against the Institution in the event of death or injury to the Applicant's son during or after the course of the training. The training involved a camp which included watermanship (i.e. training in water).

On the 30th of April 2015, the deceased and other cadets went to one Kanginni Dam in Kaduna State Nigeria where in the course of the exercise the deceased was drowned. The Applicant alleged that his son would not have died if safety measures were provided for the exercise and that it was due to the negligence of the Defendant's Institution that led to the loss of life thereby violating Article 4 of the African Charter on Human and Peoples Rights.

He therefore brought this action claiming compensation for the death of his son and other ancillary orders. The Defendant questioned the jurisdiction of this Court on two major grounds;

- i. That the action is founded on the tort of negligence and not on violation of fundamental human rights.
- ii. That the consent given by the Applicant and his son to the Nigerian Defence Academy amounts to a defence of *volenti non- fit injuria*,

and having consented to the training is a bar to an action against the Defendant.

For the avoidance of doubt, the jurisdiction of this Court is clearly spelt out by Article 9 of Supplementary Protocol (A/ SP.1/01/ 05) as follows:

The Court has jurisdiction to determine cases of violation of human right that occur in any Member State.

In the originating Application, the Applicant has clearly stated that Articles 1, 3, 4,5,18 and 43 of the African Charter on Human and Peoples' Rights, has been violated by the Defendant in relation to him as a result of the death of his son, caused by the acts or omission of the Defendant's agent.

The Defendant on the other hand has argued that the case is founded on the tort of negligence since it was alleged that it was the negligence of the Defendant that resulted in the death of the deceased.

This Court has consistently guarded its human rights mandate. In **Hissen Habre Vs. Republic of Senegal (2010) CCJ LR 20**, it held that in order to determine whether or not it has jurisdiction to entertain a matter, it has to examine;

- a. If the issues submitted before it deals with a right which has been enshrined for the benefit of the human person;

- b. Whether it arises from international or Community obligations of the State complained of, as rights to be promoted, observed, protected and enjoyed.
- c. Whether it is the violation of that right which is being alleged.

Similarly, in **Bakare Sarre Vs. Mali (2011) CCJ LR P. 57**, this Court equally emphasized that once the human rights allegedly violated involves international or community obligation of a member State, it will exercise jurisdiction over the case. See also **Serap Vs. Federal Republic of Nigeria (2014)**. **Sikiru Alade Vs. Federal Republic of Nigeria (2010) (unreported)** and the recent case of **Sambo Dasuki Vs. Federal Republic of Nigeria (2016) (unreported)**.

From the facts of this case the Applicant has alleged that the right to life of his son was violated. Article 4 of the African Charter provides as follows:

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.

It is obvious that the Applicant has identified a right which has been enshrined for the benefit of the human person. It is equally obvious that the Defendant as a signatory to the African Charter has undertaken to promote observe, protect the rights of persons within its jurisdiction.

It is equally true that what is being complained of is the violation of these rights. It does not matter the animus behind the violation, what matters is the substance and not the form it took.

Accordingly, applying these principles to the facts of the Applicant's claim, it is evident that it falls within the ambit of the Courts jurisdiction. The objection of the Defendant on this Court lacks merit and deserves to be discountenance as is hereby dismissed.

The Defendant has also raised the defence of consent or *volenti non- fit injuria* as a bar to this claim. This cannot be correct. *Volenti non –fit injuria* or simply put a person who consents to the harm done to him cannot be seen to complain. This Court having stated that it has jurisdiction, cannot bar itself from exercising it on the basis of a private law defence in tort. This is not a tort claim but a human rights litigation.

Even if the Applicant and the deceased to undertaking the training with no claim against the Defendant's Institution this did not exonerate the Defendants from exercising due care and diligence in the course of any exercise involving the deceased.

Assuming but not conceding that the defence is available to the Defendant, it is a matter to be considered in the substantive suit and not at the preliminary stage.

This can be no exclusionary clause in a human rights action consent to training coupled with the undertaken nor to maintain an action in the event of an injury is not an invitation to murder, suicide or any other malfeasance. The law must impute due care and diligence on the part of the training Institution only to the extent that it did not breach this duty of care, if not so such blanket protection will be catastrophic to society. Accordingly, the defence of consent must also fail.

II. Whether from the totality of offered there are reasonable grounds to support the claim.

This Application is anchored on the breach of Articles 1, 2, 3, 4, 5, 18 and 23 of the African Charter on Human and Peoples' Rights.

It is necessary at this juncture to outline the provisions of these Articles.

Article 1:

The member States of the Organization of African Unity (now African Union), parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative and other measures to give effect to them.

Article 2.

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any statuses.

Article 3.

- 1. Every individual shall be equal before the law*
- 2. Every individual shall be entitled to equal protection of the law.*

Article 4.

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Articles 5, 18 and 23 are ancillary are not necessary for the determination of this suit.

From the totality of the claim, the Applicant's claim is essentially predicated on the Defendant's violation of the right to life of the deceased (the Applicant's son). To answer the question raised by issue no 2, it is necessary to examine the law and the facts relating to the nature and scope of the right to life and the principles governing them and juxtapose it with the facts and evidence adduced within the ambit of the case.

In doing so, the Court shall adopt as its own, the principles of Responsibility underlying unlawful killing in International law usually referred to as "*General Comments No 3 on the African Charter on Human and Peoples' Rights to life*" Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4-18th November, 2015 at Banjul, The Gambia (Underlining ours).

i. The right to life covers issues including extra- judicial killings by State agents. The right to life is protected in the core- regional and universal human rights instrument including the African Charter on Human and Peoples' Rights (Article 4). Disregard for civilian loss of life may also involve violations of the right to life. The right to life has been widely recognized as a fundamental right without which other rights cannot be implemented or realized. It is the fulcrum of all other rights. It is non – derogable and applies to all persons at all times including institutions of Government.

- ii. The Charter imposes responsibility on State parties to prevent arbitrary deprivations of life caused by its own agents as well as protect individuals and groups from such deprivation at the hands of others.
- iii. The African Commission on Human Rights comment No 3 on Article 4 proceeds from the understanding that the Charter envisages the protection not only of the to life in the narrow sense but of dignified life requiring a broad interpretation of States responsibility to protect life.
- iv. The right to life is universally recognized as a fundamental right recognized by Article 4 of the Charter and all other global instruments. It is part of customary international law and general principles of law aside from treaty rules. It is *jus cogens* norms binding at all times. It is also recognized by all national legal systems.
- v. This right is subject to a broad interpretation and States are under obligation to develop and implement legal and practical framework to respect, protect, promote and enforce the right to life. This include the obligation to take steps to prevent arbitrary deprivation of life and to conduct thorough and transparent investigations into any such deprivation that might have occurred and hold responsible to account and providing for effective remedy and reparation for

victim(s) including in appropriate circumstances the immediate family and Defendant States are responsible for the violations of this right by all their organs (Executive, Legislative and Judiciary) as well as all other public or governmental authorities at all levels.

Derogations is not permissible even in times of emergency, including in situation of armed conflict or in response to threats such as terrorism. In terms of the scope of the terms “arbitrary deprivation of life, the following principles have emerged:

- a. The deprivation of life is arbitrary, if it is not permitted under international law or under protective domestic legislation. In interpreting arbitrariness, regard must be had to such considerations as appropriateness, justice, predictability, reasonableness, necessity and proportionality. Any violation arising from a violation of the procedural or substantive safeguards in the African Charter including on the basis of discriminating grounds or practices is arbitrary and thus unlawful.
- b. The failure of the State to transparently take all necessary measures, to investigate suspicious deaths and all killing by State agents and to identify and hold accountable individuals or groups responsible for violations of the right to life constitutes a violation by the State of that right. This is even more the case

where there is tolerance of a culture of impunity. All investigation must be prompt, impartial, thorough and transparent.

- c. Other issues to be considered include in appropriate cases, accountability, investigation and where necessary appropriate criminal prosecution. Accountability also encompasses measures such as reparation, ensuring non –repetition, disciplinary action, making the truth known, institutional review and where applicable reform.
- d. Finally, reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be treated with respect and appropriate measures should be taken to ensure their safety.

These are in a nutshell the principles to be adopted by a Court in appropriate cases regarding a complaint of the violation of the right to life. Transparency must be part of accountability. In the determination of this case the Court adopts the principles enunciated above as its own. Juxtaposing the facts of this case with the law enunciated above, what will be the result?

First, it is not in dispute that the Applicant's son was admitted by the Nigeria Defence Academy, an Institution of the Defendant for training for a career in its

armed forces. Part of the training was an exercise in watermanship for which the deceased with other Colleagues were taken to a dam in Kaduna State.

The Applicant alleged that the officials of the Nigerian Defence Academy (NDA) did not provide safety measures like life jacket or divers in case of an emergency. The deceased had never swam before and was reluctant to undertake the exercise but was pushed into the river by the officers. There is evidence supporting this allegation by PW1 (Haliru Ali) who stated that where a cadet is afraid of getting into the river he was usually pushed into it. Although the Defendant's stated that safety gadgets were provided they could not substantiate that by evidence. More so, there is uncontradicted evidence that when the corpse of the deceased was removed from the water he was only wearing an underpant.

Uncontroverted evidence also showed that the Plaintiffs' son died of drowning due to the negligence of the officials of the Defendant. It is unreasonable to push a person into a deep water in the circumstances that it is evident he cannot swim. This is an unwarranted and unreasonable conduct by the Defendant. Accordingly, there is a casual link between the death of the deceased and the act or omission of the officials of the Defendant. Thus the refusal, neglect or omission of the officials to provide safety equipment for the training that led to the death of the deceased and that was a foreseeable consequence. The officials of the Defendants ought to have taken all possible measures to ensure the safety of the Applicants son, and this they failed to do. This in itself is sufficient on a preponderance of evidence to elicit the

international responsibility of the Defendant. See: Amnesty international & ors Vs. Sudan (Supra) International Law admits the duty of due diligence which enjoins States to take action to prevent violations of human rights of persons within its territory. This obligation cannot be derogated from nor even by any purported agreement or consent. All actions of institutions or officials of States are imputed to a State as its own conduct. (See Art 4) International Law Commission (Draft Articles on States Reasonability).

Accordingly, it is clear that the right to life of the deceased cadet El Shaddai, Zinshindung Zishiri Kwasu was violated by the acts of the officials of the Defendant. The Defendant merely made a general denial of the allegations and relied heavily on the consent purportedly given by the Plaintiff and the deceased to the NDA for the training and not to bring any claim in the event of injury or death. As earlier noted there is no contracting out of a public right and the consent did not take away the duty imposed by law on the Defendant to act with due care and diligence in ensuring that the right to life of the deceased is not violated. To decide otherwise will be to encourage acts of impunity as is manifest from the acts of the officials of the Defendants.

It is sad that following the death of the Applicant's son, the officials of the Defendant's carried on as if nothing has happened. Apart from the letter of titled Notice of Casualty, addressed to the Applicant nothing else was done by the Defendants respecting the deceased. One would have expected that the Defendant

should have investigated the circumstances of the death with a view to preventing future occurrence and /or prosecuting and punishing officials who may be found wanting in their conduct relating to the loss of life of the Applicant's son. This equally amounts to a violation of the international obligations of the Defendant under the African Charter. See *Mulezi Vs. Democratic Republic of Congo* (Supra).

It is equally axiomatic that no steps were taken to assuage the feelings of the Applicant by way of reparation for the loss he suffered. Above all, it is undignifying to have removed the corpse of the deceased by means of a hook.

The rule is simple:

“Every internationally wrongful act of a State entails the international responsibility of that State”

Aside from the above, the internationally wrongful act must be attributable to the State under international law and also constitute a breach of an international obligation of that States. The Consequence of the breach of an international obligation entails a duty to make a full reparation for the injuries caused.

In this direction, the Defendant is a party to the African Charter, the Charter recognizes and protects the right to life of all human beings including the deceased in this case. The circumstances leading to the loss of life of the Applicants' son was due to the acts and /or omission of the officials of the NDA, an institution of the Defendant for failure to take steps to preserve the loss of the life of the deceased

from drowning. In this direction, the Defendant is under a duty in international law to make full reparation for the unlawful death of the Applicant's son.

The Court holds that the case of violation of right for life of the Applicant's son, has been made out against by the Defendant.

iii. **What Orders the Court can make in the Circumstances:**

This question raised here appears to have been answered in the preceding sections. Where there is a right in law, there must be remedy. Having found this claim admissible and proved on a preponderance of evidence, the Applicant is entitled to the orders sought. From the totality of evidence available, the following are established;

- i. The Defendant violated the right to life of the deceased by its official making the deceased undertake the watermanship training without providing him with the equipment necessary to save him from drowning and arbitrarily pushing him into deep water when they knew he could not swim.
- ii. The Defendant following the death of the Applicant's son failed to investigate, prosecute and where necessary punish the officials responsible for this tragic and unlawful incident.
- iii. The Defendant failed or neglected to take necessary steps to compensate the family of the deceased till date.

DECISION:

The Court adjudicating in a public sitting after hearing the parties in last resort after deliberating according to law:

i. AS TO JURISDICTION;

Declares the case admissible and it has jurisdiction to entertain same.

ii. AS TO THE MERITS

DECLARES:

- i. That the killing of the Applicant's son, Cadet EL Shaddai Zishindung Kwasi by the officials of the Nigerian Defence Academy (NDA), an Institution of the Defendant and thus, its agent, through drowning at Kangimi Dam in Kaduna Nigeria on the 30th of --2015 is illegal and amounts to unlawful killing, arbitrary deprivation of life and thus a violation of Article 4 of the African Charter on Human and Peoples' Rights.
- ii. That the failure of the Defendant to investigate and prosecute those involved in the killing of the Applicant's son is illegal and a violation of Article 4 of the African Charter on Human and Peoples' Rights.

DIRECTS:

i. The Defendants to investigate the circumstances surrounding the arbitrary deprivation of the right to life of the Applicant's son with a view to prosecuting and punishing the individuals involved in the deceased's death on the 30th of April 2015,

AND

ORDERS

The Defendants to pay the sum of **\$75,000.00 (Seventy five thousand United States Dollars)** to the Applicant as compensation for the arbitrary and unlawful deprivation of the right to life of the Applicant son.

AS TO COSTS

Cost are awarded against the Defendants as assessed by the Registry of this Court.

Dated at Abuja this 10th day of October, 2017.

AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES;

1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
2. Hon. Justice Jerome Traore ----- Member
3. Hon Justice Hameye Foune Mahalmadane -----Member

Assisted by:

Athanase Attanon ----- Deputy Chief Registrar