



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

SUIT N°: ECW/CCJ/APP/27/14

JUDGMENT N°: ECW/CCJ/JUD/05/17

BETWEEN:

Benson Oluwa Okomba



Plaintiff

AND

Republic of Benin



Defendant

JUDGEMENT OF THE COURT.

COMPOSITION OF COURT:

1. BEFORE THEIR LORDSHIPS:

- | | |
|---------------------------------------|-------------|
| 2- Hon. Justice Friday Chijioke Nwoke | – Presiding |
| 3- Hon. Justice Yaya Boiro | – Member |
| 4- Hon. Justice Alioune Sall | – Member |

Assisted by:

Athanase Atannon

-Deputy Chief Registrar

COUNSEL TO THE PARTIES

Plaintiff:

Uchenna Allison Ojiabo

Suite 79 Trinity House

Plot 943 Cadastral Zone BO6

Mabushi, Abuja- Nigeria

Defendant:

- i. Luciano Hounkponou
- ii. Wilfred Kounou
Ministry of Justice
Cotonou,
Benin Republic.

Subject Matter of the proceedings:

- i. Violation of the Plaintiff's right to dignity, respect and integrity of his person as a free citizen of Nigeria and ECOWAS as enshrined in Article 2 and 4 of the African Charter on Human and Peoples' Rights.
- ii. Act of torture and inhuman treatment meted out to the Plaintiff by the Defendant contrary to Plaintiff's rights as enshrined in Article 5 of the African Charter on Human and Peoples' Rights'.
- iii. Violation of the Plaintiffs' right to freedom of movement of his person as recognized by Article 12 of the African Charter on Human and Peoples' Rights and Article 32 of the Revised Treaty of Economic

Community of West African States and the Protocol on free movement of persons and Goods.

- iv. Violation of the Plaintiff's right to liberty and security of his person enshrined in Article 6 of the African Charter on Human and Peoples' Rights.
- v. Breach of duty and State Covenant as enshrined in Article 1 of African Charter on Human and Peoples' Rights, Article 3(d) of the Supplementary Protocol A/ SP.1/01/ 05. Amending the Protocol Relating to the Community Court of Justice and Article 4(g) of the Revised Treaty of ECOWAS by the Defendant.

FACTS

The plaintiff is a citizen of the Federal Republic of Nigeria, a member State of the Economic Community of West African States. A trader on part-time basis at Wuse Market, Abuja and also a student of Gremio De Y Modistas Valentia, Spain.

The Defendant is a Member State and signatory to the African Charter on Human and Peoples' Rights.

The Plaintiff avers that on the 14th March 2014, on his return to Nigeria from Lome, he was stopped for a routine check by the Defendants' police officers at Hillacondji border. After submitting his passport to the officers for the routine check, the Defendants' Police officers demanded a gratification in the sum of 300 CFA before

his passport can be returned to him. He offered to pay the sum in Naira equivalent as he did not have up to the required sum in CFA.

On failing to fulfill their demands, about four officers jointly gave him a beating of a life time using their boots to pound on his chest until he began to vomit blood. He sustained injuries and cuts on the head, hands, elbow, shoulder, eyes, lungs, ribs, chest and stomach.

After he was beaten, the most senior officer who was at the scene ordered that they should throw him into a lonely shallow cell and seize his passport. He was locked in a cell and detained for several hours without food or water and in a pool of his own blood. This detention lasted for about five hours before he was released and his passport was returned stamped to enable him proceed on his journey.

When he arrived the Seme border that night, he reported the incident to the Nigerian Immigration Services and the Officers of the Nigerian Immigration cleaned him up and administered first-aid on him. An officer Mr. Oswald Okon Edet was appointed by the Chief Inspector of Immigration to see to his welfare and accompany him back to Cotonou to formally report the incident.

On arriving his home in Abuja, he presented himself at the Kubwa General Hospital, Abuja where he received treatment. Since the incident happened, he has suffered and has continued to suffer from post-psychosomatic trauma. This resulted to sleepless nights and horrible nightmares of the horror he endured from the Defendants

officers. Even after his return to school in Valencia, he was mandated to continue treatment for chest pain and psychosomatic trauma.

The Plaintiff further states that he reported this incident via a letter of complaint to the Nigerian Ministry of Foreign Affairs, the Nigerian Ambassador to the Republic of Benin Cotonou, the International Police (INTERPOL) dated 14/04/2014, 24/06/2014 and 12/05/2014 respectively. No conclusive investigation or response has emanated from any quarters up till date.

Upon request for a detailed report of investigations from the INTERPOL dated 28/08/2014 and 07/07/2014 by the Plaintiff's Counsel, the INTERPOL issued a report dated 17/11/2014 to his Counsel.

The Plaintiff alleged that in the report, the Defendants Officers admitted culpability and guilt to the INTERPOL and have vehemently refused to write a report on the incident.

Plaintiff submits that he has paid the sum of **₦3,000,000.00** (Three Million Naira) to his Counsel as legal fee in pursuit to this suit.

Where upon the Plaintiff filed this Application seeking the following reliefs:

1. **A DECLARATION** that the assault, detention, degrading treatment and torture meted on the person of the Plaintiff by the officers of the Defendant on 14/03/2014 is a gross abuse of Plaintiff's fundamental rights contrary to

rights enshrined and protected by the African Charter on Human and Peoples' Rights and the Revised Treaty of ECOWAS.

2. **A DECLARATION** that the seizure of the Plaintiff's passport and demand for gratification of 300 CFA before the Plaintiff could be allowed to proceed on his journey which resulted to Plaintiff's detention by officers of the Defendant is unlawful and a violation of Plaintiff's rights to free movement of his person as protected in Article 12 of the African Charter on Human and Peoples' Rights, Article 32 of the Revised Treaty of ECOWAS and the Protocol of the Revised Treaty of ECOWAS relating to movement of persons.
3. **A DECLARATION** that the Defendant by this gross abuse of the Plaintiff rights, has breached its duty and violated its solemn covenant to uphold the laws which the Defendant swore to in the African Charter on Human and Peoples' Rights and the Revised Treaty of ECOWAS.
4. The sum of **N25,000,000.00** (Twenty-five Million Naira) only as compensation to the Plaintiff by the Defendant for physical, emotional and psychological trauma suffered and still suffered by the Plaintiff.²⁰
5. 10% interest of the judgement sum from the date of judgement until same is liquidated.
6. The sum of **N3,000,000.00** (Three Million Naira) only as the cost of funding investigation and this law suit.
7. A written apology from the Defendant to the Plaintiff.

The Defendant in response to the Plaintiff's application states that, the officers on duty on the said date requested the Plaintiff to present an identification at the checkpoint, he refused to be checked claiming that he is an ECOWAS citizen and based on the provisions on free movement of persons and goods he does not need to present any identification.

That the Plaintiff rather than submitting his identification resorted to shouting and tried to force his way into its territory. That a security officer who heard what was going on quietly led the Plaintiff to the office of the Head of the Brigade and requested that he should instead show his passport to the Head of the Brigade but still the Plaintiff refused to submit it.

The Head of Brigade advised the Plaintiff to lodge a complaint with the border police instead of engaging the security officers in a "brawl". The Plaintiff then submitted his passport to the Brigade head who ordered that his passport be stamped and returned to the Plaintiff to continue with his journey.

That the Plaintiff left the border post in a good state of health both physically and mentally. That they were surprised when they received a notice that the Plaintiff lodged a complaint against its officers claiming that he was given a beating of a life time and his passport seized by the security officers.

After they received the complaint through the INTERPOL, the Beninois police cooperated in carrying out the investigation. In the course of the investigation, both

the Police officers at the border and their superiors made their submissions as to the fact of the case.

The Plaintiff filed a response to the Defendants' statement of defence denying the submissions therein and averred that he has over the years passed the borders of Hillacondji to the Republic of Togo without any problem or refusal to submit himself to the border control. That he went through the border post on his way to Togo two days earlier and it is very strange to say the least that while on his way back on the 14th march 2014, he refused to submit himself to the same boarder control in the Defendants' territory.

ISSUES FOR DETERMINATION

It appears from the totality of the issues raised the following questions call for determination;

1. Whether from the totality of evidence adduced in this case, the Plaintiff has established a breach of his fundamental rights as alleged.
2. Whether the Defendant has carried out effective investigation on the alleged violation of the Plaintiff's Rights
3. Whether the Applicant is entitled to the reliefs sought.

These issues will now be examined seriatim.

Whether from the totality of evidence adduced in this case, the plaintiff has established a breach of his fundamental rights as alleged.

The Plaintiff's case in a nutshell is that, on his way to Nigeria from Togo through the borders of the Defendant, the officers of the Defendant violated his rights to dignity, freedom from degrading treatment and torture wherein, they jointly assaulted him using their boots to pound on his chest until he began to vomit blood for failure to meet their demand for the sum of 300 CFA as gratification before he can pass through the border.

The Defendant in response denies the allegations and states that no physical pain was inflicted on the Plaintiff by the Police officers. They contend that a treatment is said to be inhuman, when it is applied with premeditation for a long period, and if it causes body injuries, actual pain or physical and mental torture, which in the instant case are not justified as the said medical certificate the Plaintiff presented was issued four days after the incident occurred. The Defendant therefore, puts the Plaintiff to the strictest proof of the said allegations. The Defendant equally called oral evidence in which the allegations were denied.

On allegation of physical assault:

Article 5 of the African Charter on Human and Peoples' Rights provides:

“Every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

The Plaintiff alleges acts constituting torture wherein the Defendant's officers jointly assaulted him using their boots to pound on his chest until he began to vomit blood. There is therefore need to clarify the distinction between torture and physical assault. A party alleging torture must prove a high minimum of severity to fall within the meaning of 'torture' under Article 5 of the African Charter. On the other hand, physical assault falls within other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.

In AV, the United Kingdom judgment of 23 September 1998, Reports 1998, European Court of Human Rights in considering whether a violation meets the requirement of Article 3 of the European Convention which is similar to Article 5 of the African Charter held that:

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.

In Loayza-Tamayo V. Peru Judgment of September 17, 1997, the Inter-American Court of Human Rights held that the violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and

psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation.

It is a general principle of law that he who asserts a claim, must prove same.

The rule on burden of proof determines which party is responsible for putting forth evidence and the level of evidence which must be provided in order for their claim to succeed.

In most cases, the burden of proving the fact of a claim or allegation rests on the Plaintiff who is required to present a persuading evidence to support those allegations.

In Falana & anor V. Republic of Benin & 2 Ors Judgment No: ECW/CCJ/JUD/02/12 unreported, this Court held that “as always, the onus of proof is on a party who asserts a fact and who will fail if that fact fails to attain that standard of proof that will persuade the Court to believe the statement of the claim”.

In Rangammal⁹ V. Kuppuswami and Ors, Civil Appeal No. 562 of 2003, the Court held that the burden of proof lies on the person who asserts the fact and not on the person who denies the fact to be true. The responsibility of the Defendant to prove a fact to be true would start only when the authenticity of the fact is proved by the Plaintiff.

In the instant case, the Plaintiff in a bid to establish his case attached supporting documents to his Initiating Application as evidence of his averment to prove that he was physically assaulted but not tortured as alleged.

The Plaintiff attached photographs and medical reports both from Nigeria and Valencia showing he sustained lacerating injuries on his body from the physical assault inflicted on him. He also attached Photocopies of his Nigerian passport duly stamped by the officers at the border indicating that he had passed through the borders of the Defendant on the said date. He further attached a Police investigating report signed by the Assistant-Commissioner of Police (INTERPOL) confirming that from the preliminary enquiry conducted by the team, the Plaintiff was “assaulted” by officers from the Beninois National Police.

In light of the above, the evidence adduced by the Plaintiff shows that the officers of the Defendant inflicted physical on him notwithstanding the Defendant’s denial. The Plaintiff has however not established his claim on torture.

In the witness testimony of DW 1 Mr. Yahoo Lafia Boni, Head of the special brigade who was present on the day the incident occurred, admitted that the Plaintiff was brought into his office by one of his Staff though he denied beating the Plaintiff. The onus now lies on the Defendant to disprove that the injuries sustained by the Plaintiff were not caused by the officers at the border. It appears that Mr. Boni could not have known whether his offices inflicted any beating on the Plaintiff because he was not at the scene.

In **Sikiru Alade V. Fed Rep. of Nigeria Judgment No: ECW/CCJ/JUD/10/12** unreported, this Court holds fast to the notion that every material allegation of claim must be justified by credible evidence and the defence should also sufficiently satisfy

every defence and put forward what will rebut the claim or take the risk of not putting any evidence at all if the claim by their estimation is weak and unproven.

It is worthy of note, that on the day the incident occurred, the Plaintiff entered the Defendant's territory in good health. This the Defendant admitted in the testimony of DW 1. Subsequently after the Plaintiff departed from the territory of the Defendant, the medical examination revealed that he sustained injuries caused by physical assault.

In **Rudyak V. Ukraine (Application no. 40514/06) 4 September 2014**, the European Court of Human Right in its judgment held that: *where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of the cause of the injury, this would not only ensure the Applicant's right are respected but would also enable the respondent Government to discharge their burden of providing a plausible explanation of those injuries. Failing which a clear issue arises under Article 3 of the Convention.*

Though the Defendant attached an investigation report where it narrated what transpired between the Plaintiff and the officers at the border, it failed to describe with specificity what led to the alleged assault on the Plaintiff or lead sufficient evidence to disprove the Plaintiff's claim. More so, it did not present any evidence suggesting that at the time the Plaintiff left its border, he was in a good condition of health.

The Defendant also challenged the authenticity of the medical certificate presented by the Plaintiff. The mere fact that medical examination was carried out four days after the incident occurred does not invalidate the report.

In view of the above, and considering the injuries inflicted on the Plaintiff which the Defendant gave no convincing evidence in rebuttal, the Plaintiff has established facts of his allegation of physical pain inflicted on him which amounts to assault and not torture by the officers of the Defendant.

ii. On allegation of Unlawful Detention

The Plaintiff alleged that he was detained at the border in a small room used as cell for about five hours without food or water. That after he was released, he arrived Seme-border late at night and reported the incident to the Nigerian Immigration service. This assertion was denied by the Defendant.

The Defendant contends that the Plaintiff was only retained at the police post in Hillacondji when he refused to submit his travel documents for checking and as a means of calming him down.

Article 6 of the African Charter on Human and Peoples' Rights', Article 9(1) of the International Covenant on Civil and Political Rights as well as Article 3 of the Universal declaration of Human Rights guarantees person's right to liberty and security.

The above mentioned human rights treaties, provides that deprivation of liberty within a State must in all cases be carried out in accordance with the law.

It is pertinent to distinguish between a lawful detention and an arbitrary detention. For a detention to be considered lawful, it must be compatible with international law as well as domestic law. More especially, the grounds and procedure established by the national law must conform to international law. Arbitrary detention on the other hand is a detention not in conformity with the national or international law and which occurs without a legitimate or reasonable ground. What amounts to lawful detention or arbitrary detention depends on the circumstances of each case.

In **Guzzardi V. Italy** (*Application no. 7367/76*) judgment Strasbourg November 1980 the European Court of Human Rights held that in order to determine whether someone has been "**deprived of his liberty**" within the meaning of Article 5, the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question.

In **Badini Salfo V. The Republic of Burkina Faso** ECW/CCJ/JUD/13/12 unreported, this court defined an arbitrary detention as any form of curtailment of individual liberty that occurs without a legitimate or reasonable ground, and is in violation of the conditions set out under the law.

Also, in **Saadi v. the United Kingdom Application No. 13229/03 Judgment 2008** the ECHR held that, detention would not be arbitrary if it meets four conditions: (1) carried out in good faith; (2) closely connected to the purpose of preventing unauthorized entry to the country; (3) the place and conditions of detention were appropriate bearing in mind that the detainee was an asylum seeker rather than a suspected criminal; (4) the length of the detention did not exceed that reasonably required for the purpose pursued.

In the present case, the Defendant contends that by virtue of Article 82 (3) of its code of penal procedure, the identity of every person entering into its territory must be controlled, with the view to prevent breach of public peace, especially the security of persons and goods.

The Defendant however admitted that it retained the Plaintiff in compliance with procedural formalities. This assertion is unclear as to rebut the Plaintiff's claims.

The Defendant has not led sufficient evidence to disprove the Plaintiff's allegations. Neither have they shown that at the time the Plaintiff was stopped at the border for routine check, they suspected him of any criminal activity that warranted his detention at the border. The Plaintiff on the other hand did not prove that the said detention was arbitrary. The onus now lies on the plaintiff to prove that the duration and manner which it was carried out was arbitrary.

In *Gahramanov v. Azerbaijan* (application no. 26291/06), the Court considered that *the period during which the applicant had been compelled to stay at the airport had not exceeded the time strictly necessary for fulfilling the relevant administrative formalities in order to clarify his situation. Indeed, his detention had not lasted more than a few hours and he had been allowed to leave the airport immediately after the checks had been carried out. Therefore, the Court concluded that his detention had not amounted to a deprivation of liberty within the meaning of Article 5 § 1 (right to liberty and security).*

In light of the above, though the plaintiff was detained, is there evidence to support arbitrary detention? We think so. The said detention could not have been a necessary means of obtaining the said passport. Once there a detention, the burden is on the Defendant to establish that it was not arbitrary. The law presumes that it is unlawful and arbitrary unless the contrary is proved. It is not lawful to detain a person for the purpose of his showing his travel documents or to calm him down. In this circumstances, the Plaintiff was leaving the Country after having passed through the same border two days earlier, May be the position would have been different if he was entering the Country; in which case it would have been reasonable to deny him entry or detain him.

Unreasonably, detention for purposes of calming down or obtaining travel documents is not within the purview of the ECOWAS Protocol on free movement.

Accordingly, the Plaintiffs detention amounts to deprivation of his liberty within the meaning of Article 6 of the African Charter.

On allegation of seizure of passport and demand for gratification:

The Plaintiff further alleged that the Defendants Officers demanded a gratification of 300 CFA before he could be allowed to proceed on his journey. His inability to meet their demands, led to the seizure of his passport. This the Defendant also denied.

Seizure is defined under the **Black's Law Dictionary 9th Edition** as “the act or an instance of taking possession of a person or property by legal right or process, especially, in constitutional law, a confiscation or arrest that may interfere with a reasonable expectation of privacy.”

Article 14 of the African Charter on Human and Peoples' Rights' provides:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Right to property generally implies that an owner is entitled to no interference in the enjoyment of his property, in particular, by the government.

The above provision on right to property is not absolute under any international instrument. However, the right may be interfered with in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 10 para 1&2 of the Harvard Draft before the senate committee on foreign relations on executives, E, G and H, 84th Congress and session, 15 (1956), para 3(a) defined ‘a “taking of property” as not only an outright taking of property but also any such unreasonable interference with the use, enjoyment, or disposal of property as to justify an inference that the owner thereof, will not be able to use, enjoy or dispose of the property within a reason period of time after the inception of such interference.’

The Plaintiff has not shown that the alleged seizure or taking of his passport is a continued one to amount to a deprivation of his right to property. More so, the plaintiff affirmed that the said passport was returned to him that same day to proceed on his journey. The alleged seizure complained of is therefore provisional as it did not prevent the Plaintiff from enjoying and using his property as he pleased of which he remained the owner.

It is observed that the Plaintiff has over the years passed through the borders of the Defendant and his passport in all instances duly stamped. Two days before the incident occurred, the Plaintiff equally passed through the same border without any problems with the officers at the post. It is difficult to ascertain what will warrant

the Plaintiffs refusal to the Defendants routine check at the border which he has been plying over the years. It is assumed that someone who has passed through the same route for the past eight years is conversant with the border formalities. The general denial by the Defendant on the alleged demand for gratification without more, is not sufficient to disprove the Plaintiff's claim.

Consequently, this Court infers that, the circumstances leading to the temporal seizure of the Plaintiff's passport which the Defendant did not give a reasonable justification to, is as a result of the Plaintiff's refusal to pay the gratification sum to the Defendant's Officers.

1a. WHETHER THE DEFENDANT HAS CARRIED OUT EFFECTIVE INVESTIGATION ON THE ALLEDGED VIOLATION OF THE PLAINTIFF'S RIGHTS

The Plaintiff contends that the violation of his rights by the officer of the Defendant is a breach of duty and state covenant by the Defendant as enshrined in Article 1 of the African Charter on Human and Peoples rights and Article 3(d) of the Supplementary Protocol.

The rules of state responsibility applies to international human rights law.

Article 122 of the UN Draft Article on Responsibility of States for Internationally wrongful acts, adopted by the ILC at its 53rd session and submitted to the UN General Assembly provides:

1. Every internationally wrongful act of a state entails the internal responsibility of that State.
2. There is an internationally wrongful act of a state when conduct consisting of an action or omission.
 - (a) Is attributable to the State under internal law and
 - (b) Constitutes a breach of an international obligation of the State.

In the instant case, there is no dispute on the fact that the police officers who stopped the Plaintiff at the border for a routine check are agents of the Defendant. This was admitted by the Defendant in its defence. Also the capacity in which they carried their actions is not in issue.

In **Tidjane Konte v. Republic of Ghana** Judgment No. ECW/CCJ/JUD/11/14 unreported, the court held that *"The State remains the sole obligator to respect, protect and fulfill human rights under the Treaty and placed reliance on Article 6 of the Report of the 53rd Session of International Law Commission which provides "the conduct of an organ of State shall be considered as an act of that State under International Law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of international or subordinate position in the organisation of the State"*.

In **MOUKHTAR IBRAHIM AMINU V GOVERNMENT OF JIGAWA STATE & 3 ORS**, this Court held that "the question as to whether there has been an

internationally wrongful act depends first, on the requirements of obligation which is said to have been breached, and secondly, whether the state party or the organs or agents or officials committed the breach which the state party should be held responsible of the action.”

In line with the above, it is well-established that the conduct of any organ of a state is regarded as act of that state.

The Plaintiff contends that the Defendant did not conduct an effective investigation as the investigation report annexed to the Defendant defence reveals that the statement of the two police officers involved in the incident were taken at exactly the same time. A report can only be considered detailed and impartial if parties involved are interviewed separately. Where both parties involved in the incident are interviewed at the same time, the whole essence of the investigation is defeated as there would be a corroboration in the narrations.

There are no general rules as to what constitutes an effective investigation. In a case of an alleged ill-treatment as in the present case, it is the responsibility of a State to take necessary steps to conduct an effective official investigation. This investigation must be carried out impartially and promptly and must consist of a comprehensive report of all the submissions of the parties involved in the case which must be deduced separately, the conduct/manner, the place and time the investigation was carried out.

The Defendant failed to show that they have effectively investigated the alleged assault and demand of 300 CFA sum by its officials.

The alleged incident occurred on the 14th of November 2014, despite series of communications issued to the authorities of the Defendant by Plaintiff and the INTERPOL Nigeria respectively, they failed to respond or send a report on the incident.

The Plaintiff submits that the Defendant conducted its investigation on the 11th day of March 2015, over 10 months of its becoming aware of the incident and 4 months during the pendency of this suit. This shows lack of diligence by the Defendant in the discharge of its duties. The Defendant did not controvert or challenge this allegation. Fact uncontroverted are therefore deemed admitted.

In **FERNANDEZ ORTEGA ET.AL V. MEXICO. INTER.AM CT.HR (SER C) No.215 (Aug 2010)**, the court noted that the State had the burden to provide conclusive information to disprove the alleged facts and having provided no evidence in contradiction of the plaintiff's claim has failed to discharge that burden and so found the state responsible.

It is the obligation of every state to carry out an impartial, prompt and effective investigation once an incident occurs within its territory. In this case, this has not been done.

In **Assenov V. Bulgaria, (1998) EHRR 1998-VIII. §102**.The Court noted that an investigation should “*be capable of leading to the identification and punishment of those*

responsible”. Without such a duty to investigate, the Court noted that “the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity”.

The Human Rights Committee, in its General Comment No. 20 on article 7 of the ICCPR prohibiting torture and cruel, inhumane and degrading treatment stated that:

“It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”.

In view of the above, the Defendant is responsible for the act of its officials which led to the violation of the Plaintiff rights as found above.

- i. In conclusion, it is obvious that the Plaintiff did not establish that he was tortured but assaulted contrary to established principles of law.
- ii. He was temporarily deprived of his liberty in the circumstances unjustified by law and his property (his Passport) was also temporarily seized. Consequently, the Court is of the opinion that the claim of the Plaintiff partially succeeds in part.

DECISION:

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

- i. DECLARES:**

That the Plaintiffs right to physical integrity was violated by the Defendant that;

- ii. The Defendant arbitrarily violated the Plaintiffs' right to his personal liberty through his having been unlawfully detained and assaulted by the Defendants on the 14th of March, 2014.
- iii. That the seizure of the Plaintiffs' Passport by the Defendant on 14th March, 2014 amounts to a violation of his right to property violated by the Defendants.

ORDERS:

The Defendants to pay the sum of **XOF 8,000,000.00** (Eight Million FCFA) as compensation for physical, emotional and psychological trauma suffered by the Plaintiff.

AS TO COSTS

Cost is as assessed by the Registry in favour of the Plaintiff.

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 Yaya Boiro ----- Member
- 3. Hon Justice Alioune Sall -----Member

Assisted by:

Athanase Attanon ----- Deputy Chief Registrar