



**IN THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES**

HOLDEN IN ABUJA

SUIT NO: **ECW/CCJ/APP/07/16**

JUDGMENT NO: **ECW/CCJ/JUD/21/18**

BETWEEN:

1. HEMBADOON CHIA
2. MWUESE CHIA
3. CHINYERE CHIA
4. MSUUR CHIA
5. NGUEMO CHIA
6. ERDOO CHIA
7. MNENA CHIA
8. SEEDON CHIA

----- APPLICANTS

(For themselves and on behalf of JUDE CHIA, NENGESE CHIA, ZACHARIAH CHIA, LUMUNNEN CHIA, KATOR CHIA, FAVOUR CHIA, VEREM CHIA, NGUHER CHIA, DESMOND CHIA Children of Ikyase Chia (Deceased) who are minors)

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL AND MINISTER OF JUSTICE, -----DEFENDANTS
FEDERAL REPUBLIC OF NIGERIA

BEFORE THEIR LORDSHIPS:

1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
2. Hon. Justice Yaya Boiro ----- Member
3. Hon. Justice Alioune Sall ----- Member

Assisted by -----

2 REPRESENTATION OF THE PARTIES

1. THE APPLICANT:

Professor Agbo J. Madaki , Amaechi Chukwuma and
Blessing E. Eyibio

2 RESPONDENT:

Michael Chukwebuka Ago (State Counsel)

C.E. Enechukwu

3 SUBJECT MATTER OF THE PROCEEDINGS

- (i) Violation of the right to life and dignity of the person of Ikyase Chia (deceased) as guaranteed by Article 4 of the African Charter on Human and Peoples' Rights.
- (ii) Violation of the Right to education of 5 – 8th Applicants right (as well as that of the others listed as minors) as guaranteed by Article 17(1) of the African Charter on Human Peoples' Right

1. FACTS AS PRESENTED BY THE APPLICANTS:

The Applicants who described themselves as community citizens and citizens of Federal Republic of Nigeria (the Defendant) brought this action for the violation of the right to life of their bread winner Ikyase Chia (now deceased) and the right to education of inter alia the 5th --- 8th Applicants and other children listed as minors in the originating application. They averred as follows:

1. That on the 14th of August, 2015 they accompanied their father Ikyase Chia (the deceased) to a mortuary in Gboko, Benue State Nigeria to remove the corpse of their grand father Late Pa Shiorbo Chia for burial when members of the Nigeria Police Force (the Security apparatus of the Respondents burst into the place.
2. That the agents of the Nigerian Police arrested the deceased, beat him up and put him in their Hilux.
3. Furthermore, they handcuffed the deceased (who was curious as to why he was being arrested) and dragged him to their unmarked vehicle and sped off; after shooting sporadically into the air to scare off any intruder
4. The brothers of the deceased, Tarzaa Shiorbo, Teryila Shiorbo who were at the scene of the arrest used their vehicle to trail the Police Officers.
5. That while the Police Vehicle, Ikyase Chia was seated in between four (4) Police Officers who were fully armed with AK 47 Rifles.
6. That when the officers got to a village called Abiem near Makurdi the Benue State Capital, they stopped at one lonely junction and ordered Ikyase Chia out of the vehicle
7. That as Ikyase Chia was struggling to stand and go down from the Vehicle, one of the officers forcefully dragged him out and thereafter started beating him, kicking and hitting him with the head of his gun
8. That two other officers joined in the beating and kicking of Ikyase Chia and when Ikyase Chia fell down, they heard two gun shots before the Police officers bundled him in an unconscious state in the pool of blood to their (police) vehicle again; covered him with fresh leaves and drove off to Benue State Police Command Headquarters, Makurdi.
9. That Tarza and Teryila who had been trailing the police also continued without the police knowing until they got to the Police Headquarters Makurdi
10. That when some of the applicants and other family members went to the Police Headquarters to ask for their father's whereabouts, the police to their greatest surprise refused to attend to them or disclose the whereabouts of Ikyase Chia.
11. That it was later the applicants got a clue from a Good Samaritan at the Police Station which led to the discovery of the corpse of Ikyase Chia in the morgue at the Federal Medical Centre Makurdi.

12. That the applicants found as of facts that it was one Inspector Yankyaa who deposited the corpse on the same 14th August 2015 at 7:30pm Nigerian time
13. That the body of Ikyase Chia is still lying in the Mortuary at the Federal Medical Centre, Makurdi up to the time of filing this application.
14. That when the police realized that the family of the deceased had got information about the killing and the deposition of the corpse in the morgue at the Federal Medical Centre, the police started making some surreptitious moves to remove and quickly bury the corpse
15. That when the applicants got wind of the clandestine moves of the police to remove the corpse, the applicants filed an application before the Chief Magistrate Court sitting in Makurdi in application NO CMC/40c/ 15 praying for an order for the release of the body of Ikyase Chia to his family
16. That the order sought in that application in the absence of any opposition by the police and the Federal Medical Centre, (FMC) Makurdi (who were both respondents in the application) was consequently granted by the court.
17. That when the corpse was released to the applicants, the applicants sought and obtained an order for Coroner's Inquest as to the cause of the death and a report of the the post-mortem examination of the body of Ikyase Chia in respect thereof was conducted at the Federal Medical Centre Makurdi.
18. That the police has refused to investigate and or inform the applicants herein the reason for the arrest and eventual killing of the deceased.
19. That the Applicants through their counsel wrote a letter of complaint and demand to the police for payment of compensation to the deceased family but the Police has refused and or neglected to meet their demand
20. That IKyase Chia until his death was a trader/business man dealing on agricultural produce from which he had provided for his family.
21. That the deceased was a respected community leader
22. That IKyase Chia (deceased) was 46 years before his death, married to four (4) wives (i.e 1st –4th applicants herein) and thirteen (13) children (i.e. 5th – 8th applicants and the others listed as minors herein) who were of school age and were in various schools at the time of his untimely death

23. That 5th – 8th applicants have not been in school since resumption of schools as there was no means of paying their school fees
24. That the death of IKyase Chia has made it practically impossible for the family to continue to guarantee the educational needs/rights of the children; thus they are currently being forced to drop out of school

The Applicants therefore pray the court for the following;

1. A DECLARATION that the physical assault and gruesome murder of Ikyase Chia on 14th August 2015 by Officer of the Nigeria Police was arbitrary, illegal, unlawful and constitutes a gross violation of the deceased rights to life and respect to dignity of his person as guaranteed and protected under Article 4 and 5 of the African Charter on Human and Peoples' Rights.
2. A DECLARATION that the 5th – 8th applicants as well as the applicants described as minors have rights to education which the killing of IKyase Chia (who was their father and sole sponsor of their education) by the police violated the said applicants' rights as protected under Article 17(1) of the African Charter on Human and Peoples' Rights
3. A declaration that the failure of the defendants to investigate, discipline and prosecute the police officers involved in the unlawful arrest and killing of IKyase in the circumstances of this case is violation of the applicants' rights as enshrined in the African Charter on Human and Peoples Rights
4. AN Order for an independent inquiry into the killing of Ikyase Chia and publication of a letter of apology to the plaintiffs in two National Dailies.
5. AN ORDER directing the defendants to pay the sum of N500,000,00 (five Hundred Million Naira) only to the applicants as compensation for violation of the deceased rights to life and dignity of his person
6. AN ORDER directing the defendants to pay to the children of the deceased represented by the applicants the sum of N1,000,000,000 (one Billion Naira) only as compensation for the loss of the sole sponsor of their education to guaranteed their education and enjoyment of their right to education.

DEFENDANTS CASE

The Defendants filed an Amended statement of Defence dated 27th January, 2017 and averred as follows;

1. That the necessary parties are not before the court and as such, the matter is not properly constituted and cannot be effectively and effectually be determined.
2. That the late Ikyase Chia was reasonably suspected to have committed the offences of criminal conspiracy, Armed Robbery and culpable homicide, but escaped while other members of his gang were arrested.
3. That on 27th December, 2014 a team of operation Zenda Patrol led by Inspector Sabastine Agbadu while on patrol along Gboko Jorkyundan road in Konshisha Local Government Area were attacked by a gang of Armed Robbers led by the IKyase Chia, the deceased.
4. That on receipt of the case, the scene of crime was visited and through information, a team of operation Zenda Patrol were drafted to the area and who in return arrested some suspects while their gang leader Ikyase Chia and one other escaped
5. That on 21/07/2015, one Mfenyi Akpurm Demanyi who was at large was arrested, he confessed that he knew Ikyase Chia and that he was his gang leader and that he had gone on robbery operation with him about 5 times. He further stated that they took part in the robbery operation on 27/12/2014 along Jorkyundan, Gboko Road in Konshisha Local Government Area. That the arms they used for their robbery belonged to late Ikyase Chia.
6. That on 14/08/201 information was received that the wanted robber Ikyase Chia was seen at Akpaghar village in Gboko Local Government Area. Sequel to the information, a team of operation Zenda led by Inspector Moses Iyo were drafted to the area who went and arrested the suspect, late Ikyase Chia.
7. That on their way coming with the suspect to the police Headquarters, the suspect, who was at the back of the Police Patrol Vehicle with armed men, between Awajir and Achoho village, jumped down from the moving Police Patrol vehicle and took to his heels in a fast effort to escape custody, in a

bid to re-arrest him, as the last option, the suspect was fired on his leg by the police and he was re-arrested

8. That the suspect was brought to the Police Headquarters and was immediately taken to the clinic for treatment, while receiving treatment, the suspect Ikyase Chia died and the Doctor on duty Certified him dead.
9. That the matter was transferred from Divisional Police Headquarters Tse-Agberagba in Konshisha Local Government to Inspector Benjamin Yankyaa of State CID, Police headquarters, Makurdi Benue State for discreet investigation
10. The Defendants also deny paragraphs 26, 27, 28, to 37 of the plaintiffs statement of facts. In further answer, the Defendants state that late Ikyase Chia was never a trader, nor a businessman, nor a community leader, nor a respected member of his community, nor the Secretary of his Ward party. Late Ikyase Chia was only known as a notorious robber, a bandit and a disdain
11. The Defendants further aver that the 1st Defendant, in collaboration with its 36 component states and its Federal Capital Territory Administration, offer free basic education to all Nigerian citizens, including the children of late Ikyase Chia. Their respective rights to education are specifically protected and are still provided

In conclusion, the Defendants submit that the Plaintiffs have not provided this court with any proof of violation of their human Right as guaranteed under the Nigerian Constitution as well as the African Charter on Human and Peoples Right. Thus, the plaintiffs have failed to show international Human Rights Laws or treaties violated by the Defendants and in the absence of any such violation, urged the court to declare the Plaintiffs Application as inadmissible and dismiss same.

Wherefore the Defendants sought the following Orders from the court

- (a) A declaration that the shooting of the deceased (late Ikyase Chia) on his left leg while he was escaping from lawful arrest/custody, being the only option to effect his re-arrest, cannot by section 33(2) (a—c) of the Nigerian Constitution and the African Charter, be classified as an unjustifiable or arbitrary action, in view of the facts and circumstances of this case

(b) A declaration that the 1st Defendant did not contravene its obligation to provide education to its citizens nor denied any of the children of late Ikyase Chia their right to education under the African Charter .

(c) A declaration that the shooting of late Ikyase Chia on his left leg, in order to effect his re-arrest, does not by the provisions of the African Charter and Nigerian Constitution, amount to Unlawful or arbitrary act.

(d) An Order dismissing the Plaintiffs suit in its entirety

(e) An Order awarding cost against the Plaintiffs on behalf of the Defendants.

ANALYSIS BY THE COURT

This application is brought by the Plaintiffs for themselves and on behalf of the children of Ikyase Chia (Deceased), community citizens of Jov-Ikyundan village in Konshisha Local Government Area of Benue State Nigeria.

The 1st - 4th Applicants are wives of Ikyase Chia (deceased); the 5th-8th Applicants are children of the deceased.

The 1st Defendant is the Federal Republic of Nigeria, a Member State of the Community and the 2nd Defendant is the Attorney General of the Federation and Minister of Justice of the 1st Defendant.

The Plaintiffs aver that, on 14th August 2015, at about 3pm they accompanied their father Ikyase Chia to the mortuary to remove the corpse of their late grandfather for burial. Some members of the Nigerian Police from Benue state command, in a hilux vehicle drove into the place, grabbed their father and started beating him. They dragged him into one of their waiting vehicles, handcuffed him and pushed him into an unmarked vehicle and left after shooting severally into the air. This arrest was carried out without a warrant and no reason for the arrest was given to Ikyase Chia or any member of the family who were present during the raid.

The Plaintiffs aver that the brothers of Ikyase Chia trailed the police vehicle until they got to Abiem village near Makurdi and the Police officers forcefully dragged

Ikyase Chia out of the vehicle and started beating him with the head of their guns and the next thing they heard, were two gun shots. They saw the police officers bundling Ikyase Chia into their van in an unconscious state and in a pool of blood, the officers covered him with fresh leaves and drove off to Benue State Police Command Headquarters Makurdi.

They continued trailing the Police officers until they got to the police headquarters. When the Police officers discovered that they were being followed, they went to the Plaintiffs' village and laid siege for some days, they ransacked their houses and brutally beat some of the victim's relatives.

The Plaintiffs state that they went to the police headquarters to ask for their father's whereabouts and the Police officers refused to attend to them. Later they got information from a Good Samaritan that their father has been deposited in a morgue at the Federal Medical Center Makurdi by one Inspector Yankyaa and the officers are concealing to remove the corpse. They immediately filed an application before the Chief Magistrate Court for an order for the release of the corpse to their family and the order was granted.

That upon inquiries on the unlawful killing of their father, they got an information that the Benue State Ministry of Justice advised that the deceased be interrogated based on the report by one Zaki Nduul Agwar. Rather than the Police officers interrogating the deceased, they decided to kill him.

That they wrote a Letter of complaint through their Attorney demanding compensation for the unlawful killing of their father, but the Defendants refused and or neglected to meet their demands and no proper investigation into the case was has been carried out till date.

That the deceased was 46 years old before his death, married to four (4) wives and had thirteen (13) children. Since his death, it has become impossible for the family

to continue with the educational needs of his children; thus they are currently forced to drop out of school.

That the unlawful deprivation of their father's right to life by the Nigerian Police has left an attendant effect on the rights to education of the 5th-8th Plaintiffs as guaranteed by Article 17(1) of the African Charter on Human and Peoples Rights.

The Plaintiffs therefore prays for the following orders:

1. **A DECLARATION** that the physical assault and gruesome murder of Ikyase Chia on 14th August 2015 by officers of the Nigerian police led by Inspector Benjamin Yankyaa was arbitrary, illegal, unlawful and constitute a gross violation of the deceased rights to life and respect to dignity of person as guaranteed and protected under Articles 4 and 5 of the African Charter on Human and Peoples' Rights.
2. **A DECLARATION** that the 5th-8th Applicants as well as the Applicants described as minors have rights to education which the killing of Ikyase Chia (who was the father and sole sponsor of their education) by the police violated the said applicant's rights as protected under Article 17(1) of the African Charter on Human and Peoples' Rights.
3. **A DECLARATION** that the failure of the Defendants to investigate, discipline and prosecute the police officers involved in the unlawful arrest and killing of Ikyase Chia in the circumstances of this case is a violation of the applicants' rights as enshrined in the African Charter on Human and Peoples Rights.
4. **AN ORDER** for an independent inquiry into the killing of Ikyase Chia and publication of a letter of apology to the Applicants in two National Dailies.

5. **AN ORDER** directing the defendants to pay the sum of N500, 000,000 (Five Hundred Million Naira) only to the plaintiffs as compensation for violation of the deceased right to life and dignity of his person.
6. **AN ORDER** directing the defendants to pay to the children of the deceased represented by the plaintiffs the sum N1,000,000,000 (One Billion Naira) only as compensation for the loss of the sole sponsor of their education to ameliorate their suffering and guarantee their education.

The Defendants in response to the Plaintiffs application filed an amended statement of defence and aver that the necessary parties are not before the Court as this Court cannot effectively, effectually and completely determine this matter.

That the late Ikyase Chia, upon his life time was reasonably suspected to have committed offences of criminal conspiracy, armed robbery and culpable homicide.

That on 27/12/2014, the deceased (Ikyase Chia) and his gang members carried out an attack on a team of Operation Zenda Patrol wherein one Sgt. Mohammed Ahmed died and Corporal Thaddeus Gogo sustained a bullet injury. Some suspects of the gang were arrested, while their gang leader (Ikyase Chia) and one other, escaped at large.

On 21/07/2015, one Mfenyi Demanyi who was at large was arrested. He confessed that he knew Ikyase Chia who was their gang leader, and he had gone on robbery operations with him on several occasions this includes the robbery which took place on the 27/12/14. That the arms they used for their robbery on the said date belonged to late Ikyase Chia. That during the robbery operation, a police vehicle arrived the scene, they immediately ran into the nearby bush and Ikyase Chia opened fire on the police vehicle which resulted to the death of a police officer. That the said Mfenyi Demanyi upon his return to his state was arrested and subsequently charged to Court.

Information was received of late Ikyase Chia's presence in town, later he was apprehended by the operation zenda team. On taking him to the police station, the deceased jumped down from a moving patrol vehicle in a quick effort to escape custody and as a result, he was shot on his left leg, re-arrested.

That the late Ikase Chia was brought to the Police Headquarters and immediately taken to the clinic for treatment. While receiving treatment, he died and the doctors on duty certified him dead.

That the leader of the said operation zenda, made statement to the police on the incident that culminated to the death of Ikyase chia and subsequently, investigation of the matter was further transferred from the division headquarters Konshisha local government to Inspector Benjamin Yankyaa of state CID, police headquarters.-

The Defendant denies paragraphs 26, 27, 28 to 37 of the Plaintiffs' statement of facts and further states that the late Ikyase Chia was never a trader, nor a businessman, nor a community leader, nor a respected member of his community, nor the secretary of his ward party. Late Ikyase was only a notorious robber, a bandit and a disdain.

The Defendants further aver that the 1st Defendant, in collaboration with its 36 States and its Federal Capital Territory Administration, offer freed basic education to all Nigerian Citizens, including the children of late Ikyase Chia. Their respective rights to education are specifically protected and are still provided. Following the joinder of issues, the following calls for determination:

ISSUES FOR DETERMINATION

1. WHETHER THE 1ST DEFENDANT IS A PROPER PARTY IN THIS SUIT
2. WHETHER FROM THE TOTALITY OF EVIDENCE ADDUCED, THE DEFENDANT IS IN VIOLATION OF THE PLAINTIFFS' RIGHTS AS ALLEGED

3. WHETHER OR NOT AN EFFECTIVE INVESTIGATION WAS CARRIED OUT BY THE DEFENDANT ON THE ALLEGED UNLAWFUL KILLING OF THE DECEASED
4. WHETHER THE PLAINTIFFS ARE ENTITLED TO COMPENSATION.

(1) **WHETHER THE 1ST DEFENDANT IS A PROPER PARTY IN THIS SUIT**

The Defendants' contend that the necessary parties are not before the Court as the alleged killing of late Ikyase Chia was carried out by the officers of the Nigerian Police force and neither the Inspector General of Police nor the Nigerian Police force is made a party in this suit.

Where issues of proper or necessary parties to a suit are raised, it is vital to ascertain at the earliest stage whether or not the necessary/proper parties are before the court as the outcome may oust the jurisdiction of the Court.

*Necessary parties are those who not only have interest in the matter, but in whose absence the proceedings cannot be fairly and effectively dealt with. See **Green V. Green (1987) 3 NWLR (Pt. 61) p. 480.***

In **LSBPC V. Purification Tech (Nig) Ltd (2013) 7 NWLR (P. 1352) p. 82 113**, Necessary party is defined as someone whose presence is essential for the effectual and complete determination of the issues before the Court. He is a party, in the absence of whom the whole claim cannot be effectually and completely determined.

The 1st Defendant is the Federal Republic of Nigeria, a signatory to the ECOWAS Treaty and the African Charter on Human and Peoples' Right while the 2nd Defendant is the Attorney General of the Federation.

This Court has decided in a plethora of cases that only Member States signatory to the Treaty can be sued before it.

In **SERAP & 10 ORS V. FEDERAL REPUBLIC OF NIGERIA & 4 ORS ECW/CCJ/JUD/16/14** Unreported, the Court held that, *since the 1st Defendant, the Federal Republic of Nigeria, is a contracting party of ECOWAS Revised Treaty and related protocols, as well as to African Charter and other human rights treaties invoked by the plaintiffs. In fact, by signing and ratifying those instruments, the Federal Republic of Nigeria solemnly accepted the jurisdiction of the Court over complaints lodged against it for alleged violation of human rights that occurs within its borders, no matter which entity is seen as responsible before the municipal law.*

In **SERAP V. Federal Republic of Nigeria 2010 CCJELR Pg. 252 para 71-72** this Court reiterated its case-law that only Member States and Community Institutions can be sued before it for alleged violation of Human Rights, as laid down in **PETER DAVID V. AMBASSADOR RALPH UWECHU** wherein the court held that: “..... *As a matter of fact, the international regime of human rights imposes obligation on states. All mechanisms established thereof are directed to the engagement of State Responsibility for its commitment or failure toward those international instruments. From what has been said, the conclusion to be drawn is that for the dispute between individuals on alleged violation of human rights as enshrined in the African Charter on Human and Peoples Rights, the natural and proper venue before which the case may be pleaded is the domestic court of the State party where the violation occurred. It is only when at the national level, there is no appropriate and effective forum for seeking redress against individuals, that the victim of such offences may bring an action before an international court, not against the individuals, rather against the signatory State for failure to ensure the protection and respect for the Human Rights allegedly violated. Within ECOWAS Community, apart from Member States, other entities that can be brought to this Court for alleged violation of Human Rights are the institutions of the Community*

because, since they cannot, as a rule, be sued before domestic jurisdiction, the only avenue left to victims for seeking redress for grievance against those institutions is the Community Court of Justice”.

It is a well established rule of international law that, the conduct of any organ of a State is regarded as the act of that State. State responsibility means that the act committed by an organ, agents and State officials should be attributed to the state party. A state cannot take refuge on the notion that the act or omissions were not carried out by its agents in their official capacity or that the organ or official acted contrary to orders, or exceed its authority under internal law

In Tidjani Konte V. Republic of Ghana Judgment No. ECW/CCJ/JUD/11/14 unreported, the court observed 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".*

The Nigerian Police and its officers are agents of the 1st Defendant who carried out the alleged act in their official capacity. Therefore, the 1st Defendant being responsible for the acts of its agents is a proper party in this suit. The 2nd Defendant not being a signatory to the ECOWAS Treaty is not a proper party and should be struck out.

(ii) **WHETHER FROM THE TOTALITY OF EVIDENCE ADDUCED, THE DEFENDANT IS IN VIOLATION OF THE PLAINTIFFS' RIGHTS AS ALLEGED**

The application before the Court borders on the alleged failure of the Defendant to protect the fundamental right to life and dignity of human person of one Ikyase Chia (Deceased) the Plaintiffs' sole benefactor.

The Defendant on the other hand contends that the late Ikyase Chia, during his life time was reasonably suspected to have committed offences of criminal conspiracy, armed robbery and culpable homicide and has been on the run. That upon receipt of information of his presence in town, the police arrested him and on their way to the police station, Ikyase Chia attempted to escape, as a result, he was shot and re-arrested and taken to the hospital where he later died. There was no evidence to substantiate this claim.

The right to challenge the unlawfulness or arbitrariness of deprivation of life is set out in a number of core International Human Rights instruments.

Article 4 African Charter on Human and Peoples' Rights provides:

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

Article 6(1) International Covenant on Civil and Political Rights provides:

"Every human being has the inherent right to life. This right shall be protected by law; no one shall be arbitrarily deprived of his life".

Section 33(1) of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, provides that "every person has a right to life, and no one shall be deprived

intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria;

The English Magna Carta of 1215, which is one of the earliest national statute prohibiting deprivation of liberty, provides that “no free man shall be taken or imprisoned, or deposed of his free hold, or liberties, or free customs, or be outlawed, or exiled, or be otherwise destroyed; nor will we pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land”.

In **MAKARATZIS v. GREECE** (*Application no. 50385/99*) **JUDGMENT 20 December 2004** the European Court in its decision referring to Article 2 (1) of the European convention which is *pari-materia* to Article 4 of the African Charter, enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction.

The right to life is protected in all universal and regional core human rights instruments including , the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, The African Charter on Human and People’s Rights, The European Convention on Human Rights and The Inter-American Convention on Human Rights. Although expressed in different words and phrases, the intent is the same.

The right to life is often claimed (and rightly so) to be the most important of all human rights because it is a pre-condition for the enjoyment of other rights. The right is not to be interpreted narrowly. It concerns the entitlement of individuals to be free from acts or omissions intended or expected to cause their unnatural or premature death as well as enjoy life with dignity.

Article 6 of the International Convention on Civil and Political Rights (ICCPR) provides as follows:

Every human being has inherent rights to life. This right shall not be arbitrarily deprived of his life.

Similarly, Article 4 of the African Charter provides that:

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 rights.

Deprivation of life involves deliberate or other foreseeable and preventable life terminating harm or injury caused by an act or omission.

However, it must be noted that the right to life is not absolute. By requiring that deprivations of life must not be arbitrary Article 6(1) of the ICCPR and 4 of the African Charter implicitly recognizes that some deprivations of life be non-arbitrary and thus legal.

The right to life is to be protected by law. In other words, States must establish a legal framework to ensure the full enjoyment of the right to life by all individuals. The duty extends to obligations to take appropriate legal measures to protect life from all foreseeable threats including threat from government agents, private persons and other entities.

The African Commission on Human and Peoples' Rights in Comment No. 3 relating to the nature and scope to the right to life encapsulated the jurisprudence in the following words:

The right to life covers issues including extra-judicial killings by State agents. The right to life is protected in core regional and universal human rights instruments including the African Charter on Human and Peoples' Rights (Art 4). Disregard for civilian loss of life may also involve violation of the right to life.

The Commission *inter alia* opines that the right covers protection of life not in the narrow sense but includes dignified life requiring in a broad interpretation of State

responsibility to protect life. This responsibility requires a broad interpretation which includes, the obligation to prevent arbitrary deprivation of the right to life, transparent investigation into such deprivation that might have occurred and hold responsible to account and provide effective remedy and reparation for victim (s) including in appropriate circumstances the immediate family.

The Defendant State is also responsible for the violation of right by all their agents (executive, legislative and judiciary) as well as other public or governmental authorities of all levels. The test as to determine the legality of a deprivation is lawful or not in international law is the test of arbitrariness.

This principle has been recognized by this Court including in the recent case of Wing Commander Danladi Angulu Kwasu v. Federal Republic of Nigeria (Suit No. ECW/CCJ/APP/24/15) judgement delivered on the 10th of October, 2017.

As earlier noted, right to life is undoubtedly the pivotal point in the concept of the protection of human rights. However, it is not an absolute right. The above provisions which safeguard the right to life, also set out circumstances where deprivation of life may be justified. These circumstances must be strictly construed in light of the fundamental nature of this right which the State is under the obligation to protect.

The crux of the present application axes on the alleged arrest, physical assault and unlawful murder of the Plaintiffs' sole benefactor by the officers of the Defendant wherein the Plaintiffs alleged that the said officers arrested their father (Ikyase Chia) without any reason or explanation and arbitrarily murdered him.

It is a general rule that burden of proof lies on the party who seeks to support his case by a particular fact of which he is supposed to be cognizant.

In Elsi's case, R Lilich Newyork (1992) 77, the international Tribunal stated on burden of proof as follows:

That the applicant's case must be objectively and realistically seen crossing a 'bright line' proof. Its case must be made by preponderance of evidence and should be able to persuade the court to tilt in their favor. Therefore, the burden of proof is weightier and is recognized as the twin burdens of proof and persuasion.

In **PETROSTAR (NIGERIA) LIMITED V. BLACKBERRY NIGERIA LIMITED & 1 OR CCJELR (2011)**, the court in its consideration reiterated the cardinal principle of law that "he who alleges must prove". Therefore, where a party asserts a fact, he must produce evidence to substantiate the claim.

The Plaintiffs in the present case, attached supporting documents to their application as evidence to prove that the officers of the Defendant on the 14th August, 2015 unlawfully killed their father Ikyase Chia.

The Plaintiffs attached a picture of the corpse, certified True Copy of a Court order directing the release of the corpse to the Plaintiffs, the coroner's ordinance report, post-mortem report, a copy of a letter addressed to the Inspector-General of Police complaining of the killing of Ikyase Chia by members of the police force marked as exhibits A, B, D, E and F respectively and a witness deposition on oath.

The Defendant in response to the Plaintiffs' claim argued that the deceased (Ikyase Chia) was shot while trying to escape from a lawful arrest for armed robbery and culpable homicide which he was reasonably suspected to have committed. They attached supporting documents as evidence to prove that during Ikyase Chia's life he was a notorious wanted criminal. A written statement of witnesses, medical report and post mortem examination report was attached in corroboration of their averment that the deceased was shot in the leg after he jumped down from a moving police patrol vehicle while trying to escape. Thus the death of the deceased as a result of the acts of the Defendant is not in controversy.

The Defendant further maintained that the police officers carried out the act in accordance with the cardinal law and placed reliance on the provision of Force Order

237 of the Rules that guide the use of firearms by Police particularly section 3(d) and (e) which provides that:..... *a police officer may use firearms if he cannot by any other means arrest a person being in lawful custody who escapes and takes to flight in order to avoid re-arrest,..... And if he cannot by any other means arrest a person who takes to flight in order to avoid arrest, provided the offence is such that the accused may be punished with death or imprisonment for seven (7) years or more.*”

The Defendant in support of its claim, claimed that Ikyase Chia was a suspected armed robber who has been on the run for the murder of one Sergeant Mohammed Ahmed.

However, they could not adduce evidence suggesting that he was an armed robber. Even if he was the Defendant will still be liable for violation of his right to life if the circumstances under which he was killed was unlawful.

The requirement under international law as well as domestic law on the use of force by State agents is that, if possible, non-violent means should be used to resolve an incident before. The use of force is a last resort and must be absolutely necessary.

In **McCann and Others v United Kingdom (1995) 21 EHRR 97** the European Court held that force can only be used where it is no more than absolutely necessary. Any use of force must be reasonable in the circumstances. This means that:

- The use of force must be absolutely necessary for a purpose permitted by law, such as self-defence, defence of another, to prevent crime, or to effect a lawful arrest – **force should be the last resort.**
- The amount of force used must also be reasonable and proportionate and the degree of force used must be the minimum required in the circumstances to achieve the lawful objective, otherwise, it is likely that the use of force will be excessive and unlawful.

Article 9 of the UN Basic Principle on the use of force and firearms provides:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

In the instant case, the Defendant in response to the Plaintiffs claim admitted that the police officers had prior information of the Deceased presence in town before proceeding to arrest him. That upon taking the deceased to the police station, he jumped down from a moving vehicle and in a bid to stop him from escaping, he was shot on his leg.

In planning an operation to arrest a suspected criminal who has been on the run, it is presumed that under normal circumstances the officers proceeding to effect the arrest will go fully prepared with all the necessary gadgets. Also, where the arrest has been effected, a reasonable man will think that the officers will bound the suspect with hand and leg cuffs to retrain movement or any form of escape. It is believed that these measures were put in place after the Deceased was arrested.

The question still remains, how then did the deceased who was cuffed and bound in the midst of police officers jump down from a moving vehicle and even run so fast to necessitate the use of force?

The Defendant justified the use of firearms on the Deceased and referred to the provisions of Force Order 237 of the rules guiding the use of firearms.

The Court notes that, by virtue of force order 237 of the Rules guiding the use of firearms a Police officer may use firearms if he cannot by any other means arrest a person in lawful custody who escapes or takes to flight in order to re-arrest the person. Section 7 of the said Force Order 237 expressly states that firearms must only be used as last resort.

As noted above, the Deceased was arrested and put in a vehicle with armed police men. The circumstances of his arrest suggests the need for the application of restraining gadgets by the Defendant's agents. It is therefore beyond our imagination how in the circumstances the deceased can jump out of a moving vehicle and outrun the unencumbered police officers so as to warrant the use of firearms on him. We therefore find the Defendant's allegation on escape untenable, consider same an afterthought and reject same accordingly.

The Defendant has not sufficiently led evidence to convince the court they exhausted all other means before resorting to the use of firearms.

In ERGI V. TURKEY (66/1997/850/1057) judgment of 28th July 1998, the European Court of Human Rights held that:

In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2. In keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.

The next question to be determined is whether the deceased was given prompt medical attention.

The Defendant argued that the Deceased was promptly attended to at the force medical clinic before he gave up. They annexed a medical report to substantiate this assertion. However, the said medical report falls short of the standard of a comprehensive report.

The purport of a comprehensive police report is to ascertain the veracity of the chain of events which led to the reported incident with a view of having an in-depth information on the actual state of affairs.

In the instant case, the said report did not indicate the exact time the incident occurred or any evidence showing that the Deceased was given a prompt medical attention. The post mortem report attached clearly states that the primary cause of death was hemorrhage as a result of gunshot. It is however difficult to rule out delay on the part of the officers and the medical team in promptly attending to the deceased knowing fully well that excessive bleeding may lead to death.

In addition, the Court observes that there are contradicting versions as to the circumstances which led to the death of Ikyase Chia. During cross examination P.W 2 said that he saw the police officers shoot Ikyase Chia on his shoulder and chest and covered him with leaves before bundling him back on the Hilux vehicle. This statement however contradicts his written statement on oath wherein he claimed that he saw the police officers forcefully drag Ikyase Chia out of the vehicle and started beating him and the next thing they heard were two gun shots. The testimony of PW 2, raises a doubt as to whether he is a witness of truth and the Court will place little or no weight on it.

The law is trite that where a witness gives oral testimony, such testimony cannot contradict or discredit any documentary evidence in relation to the same matter as the latter is more reliable and authentic. Documentary evidence is the plank or basis upon which an oral evidence is assessed. As a general principle of law, oral evidence must clearly agree with the documentary evidence tendered as exhibit which however, cannot be varied, altered or interfered or even amended in any way by oral evidence except to throw more light on it. However, this is of no consequence in view of the fact that the death of the deceased from injuries from gunshot wounds on him by the agents of the Defendant is not in doubt.

Notwithstanding that there is a contradiction in the statement of the P.W 2 it is evident from the facts adduced, that Ikyase Chia lost his life as a result of a deliberate action of the agents of the Defendant. The Defendant on the other hand has not

sufficiently adduced material evidence to support their averment as to the circumstances that led to the death of Ikyase Chia nor have they proved that plans were put in place to control the situation.

It is worthy of note that, the plank upon which the Defendant relied on as the basis for the arrest of the deceased is a statement which identified Ikyase Terseer as the gang leader of the syndicate that allegedly killed one Sgt. Mohammed Ahmed. Whereas, the deceased in this case is known and identified as Ikayse Chia and not Ikyase Terseer. The fact that they bear the same forenames raises doubt as to whether they are same person.

In view of the above, the Court holds there has been a violation of Article 4 of the African Charter on Human and Peoples' Rights.

On the 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 Plaintiffs alleged that physical assault was inflicted on the deceased before he was killed.

PW 2 in his deposition on oath stated that after the police officers arrested the deceased, he trailed the Police vehicle to the point where the officers stopped at a nearby village. That he saw the officers drag the deceased from the vehicle and jointly beat, kick and hit him with the head of their guns. Thereafter, he heard two gun shots and the police officers bundled the deceased into their vehicle in an unconscious state in a pool of blood.

This allegation also supported by the oral testimony of the Plaintiffs' eye witnesses was not contradicted by the Defence who merely presented witnesses who were not present at the scene of the event. It is trite law that where an allegation is not countered especially where the Plaintiff led evidence in that regard it will suffice as proof.

This court has repeatedly stated that it will not act on mere allegation of violation but each allegation must be substantiated with some concrete facts as the case may require.

In **Assima Kokou Innocent & 6 Ors V. Rep. of Togo (2013)** unreported this court held that "before it concludes on the issue of occurrence of human rights' violation, the concrete proof of the fact upon which the applicants base their claims must be established with a high degree of certainty, or at least, there must be a high possibility of the claim appearing to be true, upon scrutiny. In this regard mere allegations do not suffice to elicit the conviction of the court.

The testimony of PW 2, as earlier noted, raises a doubt as to whether he is a witness of truth. On one hand he claimed to have seen the police officers forcefully drag the Deceased out of the vehicle, and the officers jointly beat, kick and hit the deceased with the head of their guns and the next thing he heard were two gun shots. On the other hand, PW 2 stated in his testimony that the deceased was shot on the chest and shoulder. Furthermore, the post mortem report attached to their application reveals categorically that the deceased did not sustain any lacerating injuries on his body but a severe hemorrhage on the left limb as a result of gunshot. The question now is, how then did PW 2 arrive at the allegation of physical assault inflicted on the deceased whereas the post mortem report states otherwise?

The Court is of the opinion that the testimony of PW 2 was concocted and reflects no truth. Therefore, no weight may be attached thereof. However, the mere fact that the witness did not exactly state exactly which part of the body the bullet penetrated

Is not fatal to the claim.

In view of the foregoing, the Court holds, that the Plaintiffs have sufficiently proved the allegation of physical assault inflicted on the Deceased by the Officers of the Defendant to substantiate their claim. Consequently, this assertion fails.

On Right to Education

The Plaintiffs contend that the unlawful killing of Ikyase Chia by the agents of the Defendant has become a threat to the continued enjoyment of the right to education of his children the 5th-8th Applicants as well as the Applicants described as minors as guaranteed by Article 17(1) of the African Charter.

In response, the Defendant contends that from the entire facts adduced, there is no evidence in support of the Plaintiffs' claim that they contravened their obligation to provide education to its citizen nor denied any of the children of late Ikyase chia their right to education. Furthermore, that the Defendant, have in collaboration with its 36 States and the Federal Capital Territory Administration, offered free basic education to all Nigerian Citizens, including the children of late Ikyase Chia.

Everyone has the right to education and this right is guaranteed under the international and regional human rights laws. Article 17(1) of the African Charter on Human and Peoples' Rights provides for the Right to education.

The Plaintiffs allegation is based on the unlawful killing of Ikyase Chia by the Nigeria Police which has adversely affected the right to education of the deceased children. That before the death of Ikyase Chia, the 5th-8th Plaintiffs were in various schools and his untimely death has made it practically impossible for the family to continue funding the educational needs of his children thereby forcing them to drop out of school.

The Plaintiffs in the instant case have not shown that the 5th-8th Plaintiffs as well as the minors were attending any school in Nigeria prior to the death of the deceased.

They failed to produce any evidence emanating from the school where the deceased children were attending or prove that the alleged loss of education was as a result of the unlawful death of their father.

In the case of “**Street Children**” (**Villagrán Morales et al.**) v. **Guatemala Judgment of May 26, 2001** the Court stressed that *certain conditions must be met in order to constitute a damage and the resulting right to reparation; these include the existence of a relationship of effective, regular financial support between the victim and the claimant and the possibility of realistically presuming that this support would have continued if the victim had not died.*

Consequently, the Court holds that there has been no violation of Article 17(1) of the African Charter as Plaintiffs have failed to lead sufficient evidence to substantiate their claim.

WHETHER OR NOT AN EFFECTIVE INVESTIGATION WAS CARRIED OUT BY THE DEFENDANT ON THE ALLEGED UNLAWFUL KILLING OF THE DECEASED

The Plaintiffs contend that the Defendant failed to carry out effective investigation into the unlawful killing of their father Ikyase Chia and discipline the police officers who were involved in the case.

A State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out serious investigation of violations committed within its jurisdiction to identify those responsible, impose appropriate punishment and ensure the victim’s adequate compensation. This obligation requires that states maintain mechanisms and procedures through which investigations can be initiated.

In the instant case, it is not in dispute that the police officers who arrested and unlawfully killed Ikyase Chia were agents of the Defendant. The capacity in which this act was carried out is also not in dispute having been admitted by the Defendant in its defence. It is trite that facts admitted needs no further proof.

The Inter-American Court of Human Rights in **Velasquez Rodriguez V. Honduras, Series C, No. 4, para. 170 (1988)** said:

"Under International Law a State is responsible for the acts of its agents undertaken in their official capacity and for their omission, even when those agents act outside the sphere of their authority or violate internal law".

In **Tidjani Konte V. Republic of Ghana Supra** this 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 organization of the State".

In view of the above, it is well established that the conduct of any organ of the state carried out whether in their official capacity or not is the act of the State.

The Defendant attached written statements by the officer who led the team in the arrest as well as the investigating officer. However, they failed to attach a comprehensive report prepared by an independent officer stating the circumstances that led to the death of Ikyase Chia. Furthermore, no evidence to show that interviews or interrogations were carried out on all the officers who took part in the operation on the said day.

In a case of use of lethal force by State agents as in the present case, a prompt investigation is critical to ascertain whether the officers intentionally shot the deceased or it was “absolutely necessary” to have shot him while trying to escape a lawful arrest. The investigation should be carried out promptly by an impartial and duly authorized person 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, place and time the investigation was carried out must equally be put into consideration.

The Defendant failed to show that an impartial and prompt investigation was carried out with the view to ascertain the circumstances leading the death of the deceased. They have also not shown reasonable steps taken to secure evidence to prove that the act was not intentional but necessary in the circumstance.

In **MAKARATZIS v. GREECE** supra the European Court held that *investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness.*

In view of the above, the Defendant have failed to effectively carry out an impartial and prompt investigation into the unlawful killing of the deceased by its agents.

In all the duty of a State in international law relating to the right to life extends to investigation of the circumstances regarding an arbitrary deprivation of life with a view to arresting and prosecuting those responsible and thus the Defendant has failed to do.

WHETHER THE PLAINTIFFS ARE ENTITLED TO MONETARY COMPENSATION

A range of international and regional human rights treaties and declarative instruments contain an explicit right to compensation for human right violations.

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to equal and effective access to justice, adequate, effective and prompt reparation for harm suffered and access to relevant information concerning violations and reparation mechanisms.

Article 8 of the Universal Declaration of Human Rights states:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"

It is a general principle of law that any violation of an international obligation that has produced damage entails the obligation to make reparations.

In **Hadijatou Mani Karaou V The Republic of Niger**, (2004-2009 CCJELR 217 @ 242): *the court having found that the Republic of Niger failed to protect the plaintiffs right in regards to the practice of slavery as a result of which the plaintiff suffered undeniable physical, psychological and moral harm, held that she is entitled to an all-inclusive relief in reparation for the harm suffered and awarded 10,000,000 francs CFA.*

In the **Inter-American Court of Human Rights Case of the "Street Children" (VillagránMorales et al.) v. Guatemala** supra the Court held:

"Reparation of the damage resulting from the violation of an international obligation requires, whenever possible, full restitution which consist in the re-establishment of the previous situation. The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with its obligation to make reparation- all aspects of which (scope, nature, forms and determination of the beneficiaries) are regulated by international law.

In the instant case, the Plaintiffs in instituting this suit, are seeking redress for the unjustified and unlawful death of their sole benefactor by the agents of the Defendant.

The Court notes that the Applicants have without a shred of doubt, suffered a great loss as a result of the unjustified and unreasonable actions of the agents of the

Defendant. Having examined the case in its entirety, the Court finds the Defendant liable having failed to give a reasonable justification as to the circumstances leading to the death of the deceased.

In view of the above, and considering the circumstances surrounding the case, the Court awards monetary compensation to the Plaintiffs against the Defendant for the unlawful killing of their sole benefactor.

A finding of unlawful or arbitrary killing on the part of State agents without more entails the responsibility of the State. Thus dependents of the deceased are entitled to compensation where a claim of unlawful or arbitrary deprivation of life is established as in this case.

Accordingly the Plaintiffs aside from other ancillary remedies are entitled to monetary compensation for the violation of the right to life of their benefactors.

DECISION:

The court adjudicating in a Public sitting after hearing the Parties in the last resort; after deliberating according to law

DECLARES:

- (i) That the killing on the 14th of August 2015 of Ikyase Chia by the agents of the Defendant is arbitrary, unlawful and illegal and constitutes a gross violation of his right to life and respect to dignity of his Person as enshrined in Article 4 and 5 of the African Charter on Human and Peoples' Rights.
- (ii) That the failure of the Defendant to investigate, and prosecute Persons connected with the said unlawful killing of Ikyasa Chia is a violation of the rights of the Applicants as well as abdication of the Defendant's obligation under the African Charter on Human and Peoples Rights.

ORDERS:

The Defendant to pay the sum of =N=50,000,000 (**Fifty Million Naira**) to Applicants as compensation for the unlawful killing of Chia, their sole benefactor by the agents of the Defendants.

AS TO COSTS:

Cost is awarded to the Applicants against the Defendant and such costs to be assessed by the Registry of the Court.

Dated at Abuja this **3rd day of 2018.**

The following Judges have signed the judgment.

- 1. Hon. Justice Friday Chijioke Nwoke ----- Presiding
- 2. Hon. Justice Yaya Boiro ----- Member
- 3. Hon. Justice Alioune Sall ----- Member

Assisted by Athanase Atannon ----- Assistant Chief Registrar