



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

ON WEDNESDAY, THE 6TH DAY OF FEBRUARY, 2019

SUIT NO: ECW/CCJ/APP/24/17

JUDGMENT NO: ECW/CCJ/JUD/ 03/19

BETWEEN

DEXTER OIL LIMITED.....APPLICANT

AND

REPUBLIC OF LIBERIARESPONDENT

COMPOSITION OF THE COURT

| | |
|-----------------------------------|---------------------------|
| Hon. Justice Edward Amoako ASANTE | - Presiding |
| Hon. Justice Dupe ATOKI | - Member/Judge Rapporteur |
| Hon. Justice Keikura BANGURA | - Member |

Assisted by

| | |
|-------------------|-------------------|
| Tony ANENE-MAIDOH | - Chief Registrar |
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REPRESENTATION TO THE PARTIES

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|-------------------------|----------------------|
| 1. Celestus Okwu Ejezie | - For the Applicant |
| 1. J. Daku Mulbah | - For the Respondent |
| 2. Garfor Tate | - For the Respondent |
| 3. Lafayette B. Gouldar | - For the Respondent |

JUDGMENT

This is the judgment of the Court and Parties were both heard in the open Court.

PARTIES

1. The Applicant is Dexter Oil Limited, a company duly incorporated under the Laws of the Republic of Liberia with its registered address as 1st Floor, Milton & Richards Bldg., 152 Carey Street, Monrovia, Liberia. The shareholders and Directors are Community citizens of Nigerian Nationality.
2. Respondent is the Republic of Liberia, a member State of ECOWAS and a signatory to the African Charter on Human and Peoples' Rights and other International Human Rights instruments.

Summary of Facts

3. The Applicant by an originating process lodged with the Registry on the 28th June, 2017 applied for the enforcement of its Human Rights to own property valued as Three Million United States Dollars (USD 3,000,000.00) allegedly violated by the Respondent. Applicant complains about the unjustifiable detention of its property by the Respondent on the allegation of "suspicious transaction" of lodgement of money in its bank accounts.
4. Applicant alleges refusal and or neglect of the Respondent to release the said sum of money despite repeated demands, thereby constituting a violation of its right to possession and enjoyment of property, guaranteed by Article 14 of the African Charter on Human and Peoples' Rights, Article 4(g) of Revised Treaty of ECOWAS domesticated by the Respondent and the Constitution of the Republic of Liberia.
5. Respondent claims contrary to Applicant's averment that, the Applicant after its registration did not carry out a single business activity in Liberia. Instead, Dexter Oil Limited came to Liberia with the sole purpose of establishing two shell companies, which they eventually used as vehicles to launder money from the Republic of Nigeria through bank accounts established at the First International Bank Liberia Limited.

6. Respondent alleges that the money the Applicant is laying claim to is a product of suspicious transactions contrary to the monetary policy of the government of Liberia and further claims that, Applicant was invited to provide information to the authorities to prove that the transaction was legitimate but, the applicant has not been able to furnish any proof till date.

7. The Respondent further claims that another Company Amni Petroleum Limited has written to the Central Bank of Liberia to ask for the reparation of the same money on the grounds that it was erroneously transferred to the account of the Applicant. Respondent insists that it has not violated the right of the Applicant to own Property.

The Applicant's case:

8. The Applicant avers that it engaged in oil and gas business in Liberia and in the course of its business activities, an inflow of Three Million Dollars (US\$3,000,000.00) was deposited into its account with First International Bank Liberia Limited and the Respondent through its Central Bank confiscated the funds on the allegation that it was a "suspicious transaction". The Applicant states that when it demanded for the release of the said funds, the Central Bank of Liberia informed it that an investigation was being carried out into the suspicious transaction and needed time to conclude same.

9. The Applicant maintains that despite several demands made for the release of the funds, the Respondent continued to delay the release. The Applicant then wrote to the Respondent vide a letter dated 5th April, 2016 and copied the Liberian Senate demanding for the release of its funds. That by a letter dated 5th December, 2016, PricewaterhouseCoopers (Ghana) Limited, a Resolution Agent appointed by the Respondent's Central Bank wrote to the Applicant informing them that Central Bank had taken over First International Bank Liberia and requested the Applicant to lodge its claim with full supporting documents to PricewaterhouseCoopers (Ghana) Limited. The Applicant asserts that its Chief Executive Officer received a response from PricewaterhouseCoopers (Ghana) limited acknowledging that they have received and validated their claims with respect to the amount due to them.

10. Further to this, Respondent avers that the Liberian Senate Committee Chairman on Concessions and Investment and the Chairman of Senate Committee on Foreign Affairs upon its petition to the Senate wrote several

letters to the Executive Governor of the Respondent's Central Bank imploring the release of its funds. That after waiting for years for the conclusion of the alleged investigation by the Central Bank of Liberia, its Solicitor vide a letter dated 20th March, 2017 wrote to the Respondent's Central Bank requesting for the final position on the matter. In response, the Central Bank wrote a letter dated 3rd April, 2017 stating that the CBL had transferred the suspicious activity report of the Applicant to the Financial Intelligence Unit to handle the case.

11. The Applicant further maintained that till date, the Respondent's Central Bank has failed to inform them of the conclusion of the said "suspicious activity" investigation or release its funds. That the continued withholding of its funds by the Respondent's bank has affected their business activities as its Directors who provided the confiscated funds as their capital are now indebted to banks and individuals in Nigeria.

12. In conclusion, the Applicant avers that prior to this application, the interest rate charged by banks and other financial institutions in both Liberia and Nigeria are running for about 21% per annum and they are entitled to a refund of the sum of Three million Dollars (US\$3,000,000.00) with accrued interest at the rate of 21% per annum by the Respondent.

Pleas in law as filed by the Applicant:

13. The Applicant formulated an issue for determination by the Honourable Court as 'whether in the circumstances of this application, the Applicant is not entitled to a refund from the Respondent of the sum of Three Million Dollars (US\$3,000,000.00) with accrued interest?'

14. The Applicant argues that Article 4(g) of the Revised Treaty of ECOWAS recognizes the promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights (ACHPR). Article 14 of the African Charter on Human and Peoples' Rights provides that:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of the Community and in accordance with the provisions of appropriate laws".

15. The Applicant insists that the above provision of the African Charter on Human and Peoples' Rights guarantees right to its property and forbids any

encroachment on same except in the public interest where provided by law. Applicant further argues that it has access to the Court to institute this action pursuant to Articles 10 (C) & (D) of the 2005 supplementary Protocol on the Community Court of Justice, ECOWAS.

16. Applicant further states that Articles 11, 20(a) and 21(b) of the Respondent's 1986 Constitution also respectively guarantee the Applicant's right of acquiring, possessing and protecting property; forbids the deprivation or seizure of a person's property except where permitted by law. Article 22(a) of the Republic of Liberia 1986 Constitution provides that:

"Every person shall have the right to own property alone as well as in association with another."

17. Notwithstanding the above provisions of the Respondent's Constitution, the Respondent has failed and/or refused to accord this guaranteed right to the Applicant. This is undeniably a breach of the Applicant's right to own property.

18. The Applicant submits that, it is trite law that the reference to a person or individual in the above provisions is not restricted to living human beings but extends to corporate legal personalities. Applicant argues that this Honourable Court has held in Suit No. **ECW/CCJ/APP/02/09 – The National Coordinating Group of Departmental Representatives of Cocoa-Coffee Sector (CNDD) v. Republic of Cote D'ivoire (2004-2009) CCJELR 311 at 321** that:

"Legal persons can institute proceedings before a legal adjudicating body, for violation of rights guaranteed by instruments relating to human rights."

19. Applicant relies on Articles 50 and 54(2) of the Revised Treaty of the ECOWAS and argues that, the Respondent is enjoined to promote trade and investment among Community Citizens with a view to achieving economic integration of the region and the continued detention of the Applicants' funds is antithetical to these provisions. The Applicant further contends that Respondent has not provided any justification for the detention of the said funds, as mere and unsubstantiated suspicion is not sufficient for the act of the Respondent in denying the Applicant of the use of its funds. Applicant relies on the authority of The Nigerian Supreme Court in **Milton Ohwovoriole SAN v. Federal Republic of Nigeria (2003) FWLR (Pt. 141) 2019** where it was held that:

“Suspicion, however well placed does not amount to prima facie evidence.”

20. The Applicant argues that the Nigerian Court of Appeal has also held in **Eronini v. Eronini (2013) 14 NWLR (Pt.1373) 32** that:

“It is trite that the Court will frown upon any manifestation of arbitrary power assumed by any person or authority over the life and property of another even if that other is suspected of having breached some law or regulation.”

21. The Applicant contends that the action of the Respondent in withholding the Applicant’s funds for a prolonged period of time on the basis of mere suspicion is tantamount to an arbitrary exercise of power. Applicant further relies on Article 7(1) (b) of the African Charter on Human and Peoples’ Rights which guarantees to an accused “the right to be presumed innocent until proven guilty by a competent court or tribunal.” In line with the adversarial system of criminal jurisprudence, it is not for an accused to prove his innocence as that will negative the above quoted provision of the African Charter on Human and Peoples’ Rights, that the accused is presumed innocent until proved otherwise. This right of an accused person is also guaranteed by Article 21 (h) of the Respondent’s 1986 Constitution.

22. The Applicant argues that in the absence of the Applicant’s trial and conviction for being found in possession of funds from suspicious transactions, if there is any offence like that in the Liberian Criminal Code, the continued withholding of the Applicant’s funds by the Respondent is a breach of the provisions of the African Charter on Human and Peoples’ Rights, the Revised Treaty of ECOWAS and the Respondent’s Constitution. Applicant argues that Article 21(f) of the Respondent’s Constitution forbids preventive detention and enjoins the Respondent to charge a matter to Court within 48 hours of effecting an arrest and detention. The Applicants’ funds have been detained for over 48 hours.

23. The Applicant says that its business has been grounded by the said unjustifiable act of the Respondent which has occasioned untold losses to the Applicant. Given the fact that at all times material to this application, the interest rate charged by banks and other financial institutions in both Liberia and Nigeria for lending funds for commercial activities are not less than 21% per annum, the

Honourable Court is urged to direct the Respondent to refund the said funds to the Applicant together with interest at that rate. In conclusion, the Applicant urges this Honourable Court to hold that the Applicant is entitled to the refund of its Three Million Dollars (US\$3,000,000.00) from the Respondent with interest at the rate of 21% per annum from 1st November, 2013 till the date of the actual refund.

24. The Applicant therefore seeks the following reliefs:

a) A declaration that the continued withholding by the Respondent of the sum of Three Million Dollars (US\$3,000,000.00) property of the Applicants as suspicious transaction in the circumstances of this application is in breach of the rights to possession and ownership of property guaranteed by the African Charter of Human and Peoples' Rights, Revised Treaty of ECOWAS and the Respondent's Constitution and therefore null and void.

b) An order directing the Respondent to release forthwith to the Applicant the Money with interest at the rate of 21% per annum from 1/11/13 until final liquidation.

c) Cost of Fifty Thousand Dollars (US\$ 50,000.00) in favour of the Applicants.

The Respondent's case

25. On 21st August 2017, the Respondent lodged its defence and states that the Applicant (Dexter Oil) and Ritrak Supply & Trade Company limited were both incorporated under the laws of Liberia to engage in the business of exploration of liquid and gaseous hydrocarbons and importation/sales of various petroleum products, trading in oil and every type of petroleum products. That after the registration of the said companies, the Applicant did not carry out a single business activity from the date of its registration till date and based on the review of records at the Ministry of Labour, Immigration, finance and social security, the Applicant and its affiliate company Ritrak, maintain no physical presence/office or have any employees in Liberia neither have they paid any taxes in respect of any business activities undertaken by them in Liberia.

26. The Respondent alleges that after the registration of the Applicant and its affiliate company Ritrak, one Mr Chukwuemeka Ekwunife opened two accounts for the companies and designated himself as the sole signatory of both accounts. Respondent further alleges that after the establishment of both accounts, and

between August 2012-May 2013 a period of ten (10) months, the Applicant's account was credited by inward transfers totalling USD14, 101,326.00 from Nigeria, UAE and Switzerland, whilst outward transfers totalling USD17, 095,299.00 were made during the same period to accounts in India, Singapore, United Kingdom, Nigeria, UAE, France and Switzerland.

27. Further Claim by the Respondent is that a total of USD 3,206,448.00 was transferred from the Ritrak account to that of the Applicant (Dexter Oil). Ritrak's account was credited by inward transfer of US\$53,140,002.00 from Nigeria, and outward transfers amounting to USD50, 010,518.00 to Kenya, Singapore, United Kingdom, Taiwan, and Egypt; a total of US\$77,000 was transferred from the account of Dexter Oil to that of Ritrak account.

28. It is the Respondent's case that in August 2013, the Regulation and Supervision Department of the Central Bank of Liberia (CBL) launched a special investigation into the suspicious activities of the Applicant and its affiliate company and the investigation revealed that the "Know your Customer" requirement/regulations were not adhered to by the management of the First International Bank and that the Applicant's activities were indeed suspicious. Respondent alleges that on the 24th October 2013, Three Million Dollars (US\$3,000,000.00) was again transferred by a company in Nigeria called Amni International Petroleum Development Company Limited to the Applicant's account and the new management of the First International Bank promptly filed with the Central Bank a Suspicious Activity Report (SAR) and placed a freeze on the account.

29. According to the Respondent the Central Bank wrote to First International Bank requesting that it advised its client the Applicant that the said fund had been placed under the category of suspicious transaction under Liberian Law and consequently the Applicant is required to provide information of its business turnover, the location of its offices in Liberia, evidence of tax payment in Liberia or elsewhere and evidence of its corporate structure etc. That since the request was made to the Applicant through its bank; no information was provided by the Applicant or by the Bank to clarify the suspicion. The First International Bank informed the CBL that they could not locate Mr Chukwuemeka Ekwunife who was the sole signatory to the account and the immigration record showed that the said Mr Chukwuemeka Ekwunife had left the country since 21st December 2012 and had not returned.

30. The Respondent claims that on 5th December 2013, Amni International Petroleum Development Company Ltd. wrote to the Central Bank requesting a recall of the Three Million Dollars (US\$3,000,000.00) transferred to the Applicant's on the ground that the transfer was made in error and that the transfer was meant for another entity by the name Quest Drilling. Respondent further alleges that Mr Chukwuemeka Ekwunife who is the sole signatory to the account did not make any contact with the Central Bank after the account was frozen to ascertain the reason why his account was frozen until April 5th 2016, when he addressed a letter to the Acting Executive Governor of the Central Bank of Liberia requesting the release of the fund which Amni Ltd. is also laying claims to as its money.

31. The Respondent contends that its recent review of the immigration records indicated that Mr Chukwuemeka Ekwunife re-entered Liberia on April 22nd 2016 and contacted some members of the Liberian Senate clearly in violation of their Constitution to intervene in the matter. Respondent alleges that upon its investigations, it discovered that Mr Chukwuemeka Ekwunife was indicted and he is being prosecuted by the Economic and Financial Crimes Commission (EFCC) of the Federal Republic of Nigeria for an alleged theft of Four Hundred and Thirty-Two Million, One Hundred Thousand Naira. (N432, 100,000.00).

32. The Respondent claims that the Liberian Government is currently carrying out an investigation in respect of the Applicant and its shareholders which involves transactions (laundering) between different countries; including the Federal Republic of Nigeria and amongst many other countries and saying more in this case would jeopardize the investigation.

Pleas in law as filed by the Respondent:

33. The Respondent canvasses the competence of the Court to hear cases involving human rights violations and relies on the authorities of decided cases to substantiate its argument. In the case of **Moussa Leo Keita V. The Republic of Mali, ECW/CCJ/JUD/03/07** this Court affirmed its competence to adjudicate on matters involving the violation of human rights within its Member States. However, the Court also held that:

“The Applicant must show proof indicative of a characteristic violation of a fundamental right; and “in the absence of any such violation, the application must be declared inadmissible”.

The Court further held that:

“The rights enshrined in the African Charter on Human and Peoples’ Rights have been so described so as to bring out clearly their content, import, and extent of enjoyment, so that any act of their violation may be qualified as a “Human Right Violation.”

Also see **Hope Democratic Party and Alhaji Haruna Yahaya Shaba V. The Federal Republic of Nigeria & 5 others, ECW/CCJ/JUD/19/15; and Dr. Malachi Z. York V. The Republic of Liberia, ECW/CCJ/JUD/5/16.**

34. The Respondent argues that, in the instant case, though the Applicant relies on several provisions of International Instruments, the Applicant failed to show how those provisions are applicable to its case and to prove that the freeze on Applicant’s account was arbitrary and not as a result of a previously laid down rule on Suspicious Activities. The Respondent further contends that Applicant has also failed to show why the freeze on the account should be lifted, why the money should be paid to Applicant in light of Amni International’s claim and Applicant’s failure to show the legitimate source(s) of all the money transferred through the two accounts which was unilaterally operated by Mr Ekwunife who has been indicted for theft of hundreds of millions of Naira by the Government of Nigeria.

35. The Respondent further argues that the Applicant’s money was not being held arbitrarily by relying on the authority of the case **Hans Capehart Williams V. The Republic of Liberia and 4 others ECW/CCJ/JUD/25/15** in which this court defined **“arbitrary act”** to mean:

“Something done without fair, solid, and substantial cause or without cause based upon the law. An act is therefore arbitrary when it is not done in accordance with the principles of law.”

36. The respondent therefore seeks the following reliefs:

- a. A declaration that the application is inadmissible as it fails to state or demonstrate any act or conduct on the part of the Respondent that is indicative of a characteristic violation of a fundamental human right of the Applicant.
- b. Costs of One Hundred and Fifty Thousand Dollars (US\$150,000.00) be awarded the Respondent for the unnecessary resources the Applicant has caused the Respondent to employ.

LEGAL ANALYSIS OF THE COURT:

37. At the Court Session held in Abuja on the 10th December, 2018, both parties were represented by Counsel. Applicant withdrew the Motion for an Order to join the Intervener (Mr Chukwuemeka Ekwunife) as the 1st Applicant in the Amendment of the originating process. In view of the new panel of Judges, Counsel to the parties adopted all previous processes; and the case was adjourned to 22nd January 2019 for Judgment.

38. It follows from the withdrawal of the application for an order to join an intervener and that of the amendment of the originating application by the Applicant that, the case is between Dexter Oil Limited a company and The Republic of Liberia a Member State of ECOWAS. After a careful review of the submissions of the parties, the court distilled the following issues for determination:

ISSUES FOR DETERMINATION

- 1. Whether the subject matter of the case is on the violation of the Human Rights of the Applicant.**
- 2. Whether the Applicant is a proper person to access the Court under Articles 10 (C) and 10 (d) of the 1991 Protocol on the Court as amended by Supplementary Protocol 2005.**
- 3. Whether the Applicant's Right to Property has been violated.**

1. Whether the subject matter of the case is on the violation of the Human Rights of the Applicant.

39. It is trite that jurisdiction is conferred by statute and by the rules and procedures relating to the establishment of the Court. Article 9 (4) of the 1991 Protocol on the Court as amended by Supplementary Protocol 2005 of the Community Court of Justice, ECOWAS, prescribes:

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

40. The Applicant alleges a violation of its right to property by the Respondent through the unlawful confiscation of the sum of Three Million Dollars

(US\$3,000,000.00) which was deposited into its company account with First International Bank Liberia Limited.

41. The Respondent on the other hand contends that after the registration of the Applicant, it did not carry out a single business activity in Liberia from when it was register till date. Instead, the Applicant and its affiliate company Ritrak Bank accounts were between August 2012-May 2013 a period of ten (10) months, credited by inward transfers totalling USD14, 101,326.00 from Nigeria, UAE and Switzerland, whilst outward transfers totalling USD17, 095,299.00 were carried out during the same period to accounts to India, Singapore, United Kingdom, Nigeria, UAE, France and Switzerland. The Inflow and outflow of funds without any visible business activity, made the Central Bank of Liberia launched a special investigation and the investigation reveals suspicious activities in the Applicant's account. On the 24th October 2013, Three Million Dollars (US\$3,000,000.00) was again transferred into the Applicant's account which prompted the freezing of the said account.

42. The Applicant in response to the Respondent's defence argues that the transactions which gave rise to the transfers were legitimate and its account with First International Bank was duly opened after satisfying all legal requirements. The crux of the Applicant's application is predicated on an alleged seizure of the sum of Three Million Dollars (US\$3,000,000.00) by the Respondent on grounds of allegation of suspicious activities in the Applicant's account. The Applicant maintained that in so doing and without legal justification, the act of the Respondent's bank amounts to a violation of their right to property; under Article 14 of the African Charter on Human and Peoples' Rights which states that:

"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."

43. In **Hissein Habre v. Senegal (2010) (CCJELR) pg. 65** the Court held that:

"to decide whether or not it has jurisdiction to hear a case, it has to examine if the issue submitted deals with the rights enshrined for the benefit of the human person and arising from the international or community obligation of the state as human rights to be observed,

promoted, protected and enjoyed and whether the alleged violations was committed by the member state of the community.”

44. Similarly, in **Mamadou Tandja (2010) CCJELR pg. 109 & Bakare Sarre & 28 Ors v. Mali (2011) (CCJELR) pg. 57** the court held that:

“Once a human rights violation which involves international or community obligations of a member state is alleged, it will exercise its jurisdiction over the case.”

45. In view of the facts above, this case comes under the purview of Article 9 (4) of the 1991 Protocol on the Court as amended by Supplementary Protocol 2005 of the Community Court of Justice, ECOWAS as it alleges violation of human rights. The Court therefore holds that it has jurisdiction to hear this case.

2. Whether the Applicant is a proper person to access the Court under Articles 10 (C) and 10 (d) of the 1991 Protocol of the Court as amended by the Supplementary Protocol 2005.

46. In considering the jurisdiction of the Court, it is imperative that if the court finds that the subject matter is an alleged Human Rights violation, it must also consider whether the parties are proper parties before it. The Supplementary Protocol 2005 has made provision for both individual and legal persons, for example corporate bodies to access the court, as well as the circumstances under which they can so do. The Court will be guided by Article 10 (C) and 10 (d) of the Supplementary Protocol 2005 of the Court , under which the applicant brought the action wherein it proffered strong arguments that, it is entitled to access the Court against the Respondent who it claims is a proper party under those provisions.

47. Article 10(C) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005 provides:

“Access to the Court is open to individuals and corporate bodies in proceedings for the determination of an act or inaction of a community official which violates the rights of the individuals or corporate bodies.”

48. It follows from Article 10 (C) above that the proper party should either be an individual or a corporate body bringing an action against a Community Official for an act or omission which violates their rights. From the available record before the Court, Dexter Oil Limited is a corporate body duly registered under

the extant law of the Republic of Liberia to operate as a Company with interest in the Oil sector and therefore has a right to bring an action against a community official under this provision. The question to be resolved is whether the Respondent is a community official. Who then is a Community official?

49. The 7th edition of Black's Law Dictionary, published by Bryan A. Garner defines the term "**Official**" as:

"A person holding or saddled with the responsibilities of public office or a person authorised to act on behalf of a corporation or organization, especially in the capacity of a subordinate."

50. Article 9 (2) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005 of the ECOWAS Court reads as follows:

"The Court shall have the power to determine any non- contractual liability of the Community and may order the Community to pay damages or make reparation for the official acts or omissions of any Community institution or Community officials in the performance of official duties or functions."

51. In the absence of any statute defining a Community Official, it can be described as an employee of any ECOWAS Institution who occupies a position of responsibility, whose actions or omissions in the exercise of official functions on behalf of the Institution may attract vicarious liability. The above description of a Community Official is consistent with the decision of this Court in the case of **Peter David v. Ambassador Ralph Uwechue, ECW/CCJ/RUL/03/10 @55** where the court held that:

"The instant action can also be considered as an action for extra- contractual liability against an official of the Community, who at the time of the incident was the Special Representative of the Executive Secretary of the ECOWAS in Cote d'Ivoire."

52. It follows a Community Official can amongst others either be the head or officers of any ECOWAS institution. A member state is definitely not contemplated in Article 10 (C) as cited above. Supporting the above interpretation is the decision of this Court in the case of **Linas International NIG. LTD v. Ambassador of Mali, Embassy of Mali & the Republic of Mali EWC/CCJ/JUD/02/09 @ 19**; which is on all fours with the instant matter. In that

case, the Plaintiff, a corporate body brought an action against the above stated Defendants which includes a Member State under Article 10 (C) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005 on the Community Court of Justice, ECOWAS, and the Court held that:

“The third Defendant is the State of Mali who is a Member of the Community. It is not a corporate body and is neither invested with any public office of the community. It cannot therefore be likened to an official of the Community. It appears clearly from the foregoing that the three Defendants are not officials of the community.”

53. The Court after a careful analysis of the Provisions of the Protocol relied upon by the Applicant comes to the conclusion that an action cannot be sustained against the Respondent; Member State based on Article 10 (c) on the 1991 Protocol of the Court as amended by the Supplementary Protocol 2005 on the Community Court of Justice, ECOWAS. The Republic of Liberia, is not a Community Official and therefore, not a proper party before this Court against whom an action can be instituted against under Article 10 (C) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005 and the Court so holds.

54. The second provision under which the Applicant instituted this action is Article 10 (d) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005 which reads as follows:

“Access is open to individuals on application for relief for violation of their human rights; the submission of application for which shall:

- i) not be anonymous; nor*
- ii) be made whilst the same matter has been instituted before another International Court for adjudication;*

55. On the Provision of Article 10 (d) which must also be read in context as prescribed in the text that, individuals can maintain action on violations of human rights if the application is not anonymous and not before another International Court. Dexter Oil limited is not an individual within the context of this Article but a corporate body and duly registered under the laws of Liberia to operate a business concern. It follows on a **strict** interpretation of the English text of Article 10 (d) that Applicant not being an individual has no capacity to

institute action against the Respondent (a member state) for violation of Human Rights.

56. The above strict interpretation of Article 10 (d) of the English text continues to reflect the opinion of the Court in the majority of cases that have been decided, however in very few cases, the Court has ruled that Article 10 (d) of the French text accommodates both individual and legal persons. Therefore, in applying article 10(d) of the Protocol as amended, the Court has arrived at divergent decisions in respect of who can access the Court. This may be attributable to the slight difference between English and French texts of the Article.

57. The English texts provide that access to the Court is open to the following:

*Individuals on application for relief for violation of their human rights;
the submission of application for which shall:*

1, not be anonymous; nor

*ii. be made whilst the same matter has been instituted before another
International Court for Adjudication;*

58. On the other hand, the French text of the same Article provides as follows:

Peuvent saisir la Cour:

*d) **toute personne victime** de violations des droits de l' homme; l demande
soumise a cet effet:*

i) ne sera pas anonyme;

*ii) ne sera pas portee devant la Cour de Justice de la Communate lorsqu'
elle a deja ete portee devant une autre Cour international competente.*

59. The English text of Article 10(d) of the Protocol on the Court as amended clearly gives access to individuals for human rights violations cases. Whilst, the French texts gives access to **toute personne victime**. They do not exactly mean the same thing. Whereas individual means natural persons, **toute personne victime**, means every person that is a victim, which has been interpreted as natural or legal persons in the French version of the text.

60. In interpreting these provisions, the Court has come to divergent decisions. In 2009, the ECOWAS Court of Justice in its judgment in **THE NATIONAL CO-**

ORDINATING GROUP OF DEPARTMENTAL REPRESENTATIVES OF THE COCOA-COFFEE SECTOR (CNDD) v. REPUBLIC OF COTE D’IVOIRE, (2004 – 2009) CCJELR, 311, held that:

“Legal persons be it associations or limited liability companies, can institute actions for human right violations.”

61. It relied on Article 10(d) (the French version) of the 1991 Protocol of the Court as amended by the Supplementary Protocol 2005 and very heavily on the decisions of other Regional Courts. It cited cases of other regional courts, where associations and limited liability companies have successfully maintained actions for human rights violations in respect of rights guaranteed by instruments relating to human rights. The Court has also held that an individual or a corporate body can be a Plaintiff in a Human rights case but must be a victim of Human Rights abuse. The Court’s emphasis is on being a **“Victim”** an essential requirement. In **CENTER FOR DEMOCRACY AND DEVELOPMENT (CDD) AND ANOR V. MAMOUDU TANDJA & ANOR, (2011) CCJELR, 103**, the Court held as follows:

*27. In the exercise of its jurisdiction on human rights protection, the Court shall ensure that all the conditions for bringing the case before it are fulfilled. In such circumstances, the Court shall entertain cases filled by “individuals on application for relief for violation of their human rights”, as stipulated in paragraph (d) of the new Article 10 of the Protocol on the Community Court of Justice as amended by Protocol A/SP.1/01/05 of 19th January 2005, which provides that “Access to the Court is open to.....Individuals on application for relief for violation of their human rights”. Pursuant to this article, cases shall be brought before the Court by **natural or legal persons** endowed, within the framework of their national laws, with the required legal capacity and who, in addition, shall justify their condition of being a victim”*

62. In **ALHAJI MUHAMMED IBRAHIM HASSAN V. GOV OF GOMBE STATE, (2012) CCJELR, 81**, the Court held as follows;

46. “Paragraph (d) of new Article 10 of the Protocol on the Community Court of Justice as amended by Protocol A/SP.1/01/05 of 19 January 2005 provides: “Access to the Court is open to ... individuals on application for relief for violation of their human rights”. By virtue of this

*Article, for every action relating to human rights protection, cases before the Court must be filed by an individual or a corporate body who fulfils the requirement of **being a victim**. (See Judgment No.ECW/CCJ/JUD/05/11 of May 2011 in Suit No. ECW/CCJ/APP/07/09, CDD and CDHRD v. Mamadou Tandja v. Niger, paragraphs 27 and 28). As far as the texts of the Court are concerned, it is the essential criterion which enables one to declare whether an application for human rights violation is admissible, even though not an exclusive criterion.”*

63. In contrast to the above decisions, in 2010, 2011, 2012, 2013, 2014 and 2015, the Court gave decisions in which it held that, “**individual**” in Article 10(d) refers only to natural persons to the exclusion of other legal persons and that no corporate body can bring a human rights case as a Plaintiff, as an alleged victim of human rights abuse. In other words, that Article 10(d) of the Protocol on the Court as amended is not open to corporate bodies as victims of human rights abuse since it is only open to human beings.

64. In **SERAP v. PRESIDENT OF FEDERAL REPUBLIC OF NIGERIA (2010) CCJELR, 231**, this court held as follows:

“Despite the campaign launched by advocacy organizations towards new developments, the bare truth, however, is that the process of codification of international Law has not yet arrived at a point that allows the claim against corporations to be brought before International Courts. Any attempts to do so have been dismissed on the basis that the Companies are not parties to the treaties that the international courts are empowered to enforce. This understanding is widely shared among regional courts with jurisdiction over Human Rights.

That being the current situation at the international level, the only available alternative left to those seeking for justice against corporations has been domestic jurisdictions.”

65. Similarly in **STACREST INVESTMENT LTD v. PRESIDENT ECOWAS COMMISSION, (2011) CCJELR, 165** the Court expressly held:

“That no action could lie against a corporate body in human rights cases before this Court. By parity of reasoning, the converse of the decision just cited is equally true and that is, no corporate body can bring a human rights case before this Court as a Plaintiff as an alleged victim of

human rights abuse. Thus the provisions of the ACHPR do not avail the Plaintiff in this Court in so far as they complain about human rights abuse against them as a Company”

66. This Court also In **OCEAN KING NIG. LTD v. REPUBLIC OF SENEGAL, (2011) CCJELR 139**, held as follows in paragraph 48 and 49 of the judgment:

“It is noteworthy that whilst Article 10(c) gave the right of access to individuals and corporate bodies, Article 10(d) gave the right of access in human rights violation causes to only individuals.

49. That leads the Court to find out the meaning of individuals within the context of Article 10 of the Protocol. The Court thinks individuals within the context of Article 10 of the Protocol refers to only human beings and no more. This is so because Article 10(c) mentioned individuals and corporate bodies. What that means is that the legislation sought to distinguish between human beings and other legal entities.”

67. The Court went further to clarify in **THE INCORPORATED TRUSTEES OF THE MIYETTI ALLAH KAUTAL HORE SOCIO-CULTURAL ASSOCIATION v. FEDERAL REPUBLIC OF NIGERIA, (2012) CCJELR, 171** that:

“Thus there is a clear distinction between these two classes of cases, one in which the corporate body sues as the victim and the other in which it sues on behalf of the victim, the victim here being identified as a human being. In the former situation the corporate body has no locus or capacity to sue, but in the latter situation it has.”

68. The time is ripe to revisit the interpretation of **“Tout Personne Victime”** as decided in the above cases in order to reconcile the divergent jurisprudence and come out with a well-reasoned decision on the issues for the guidance of the parties, lawyers appearing before the Court and Scholars.

69. Whereas, the English text of article 10(d) clearly states **individuals (natural persons)**, the French texts of the same Article states **tout personne victime” (every person that is a victim)**. **Personne** in the French text includes an individual who is a physical person and a corporate body which is a juristic person. The key word however is that the **personne must be a victim of human rights violation.**

70. It is the opinion of this Court that, if Article 10 (c) (English and French Texts) categorically includes both individual and corporate bodies, same would have been repeated in 10 (d) if that was the intention of the drafters of the law. The Court therefore affirms that it is not the intention of the statute to accommodate corporate legal person in Article 10 (d) of both versions of the text.

71. In order to harmonise the prior inconsistent decision of the Court as highlighted above, this Court in the exercise of its inherent power hereby departs from all decision wherein corporate body are accommodated under Article 10 (d) of the 1991 Protocol on the Court as amended by the Supplementary Protocol 2005; and affirms only **individuals** have access for Human Rights violation except in internationally accepted conditions.

72. The Court having decided that Article 10 (d) anticipates only natural person, it is nonetheless not unmindful of its jurisprudence and that of other International Courts creating exception and granting corporate bodies' access to ground an action of violation of their fundamental Rights against a member state. Human rights imply the rights that belong to all human beings irrespective of their nationality, race, caste, creed and gender amongst others; like right to life, right to health and right against torture, inhuman and degrading treatment which are specific to a human being. On the other hand right of a corporate body, are rights that are fundamental and necessary for the existence of a corporate body which a legal entity can enjoy and be deprived of; for example right to freedom of speech as the corporation is entitled to speak about its product; right to property as the corporation generates profit in shares and, or cash and is entitled to the quiet enjoyment of same. The established exceptions under which corporate bodies can ground an action are; rights that are fundamental rights not dependant on human rights and they include right to fair hearing, right to property and right to freedom of expression.

73. In **OCEAN KING NIGERIA LIMITED V. REPUBLIC OF SENEGAL ECW/CCJ/JUD/07/11**; the Court held that:

“The right to fair hearing is not dependent on human rights and the Defendant owes an obligation to every ECOWAS citizen or entity to ensure fair hearing within its territory, failing which this Court will have the right to entertain an application by an aggrieved party even if it is based on the Court’s inherent jurisdiction.”

74. Similarly, The European Court of Human Rights ruled in **GORRAIZ LIZARRAGA & ORS V. SPAIN (Application no. 62543/00 judgment Strasbourg April, 2004)**; that **Legal entity can be a victim** under Article 6 of the Convention which protects the right to fair hearing. ; in that case, an association alleged the violation of Article 6 (1), the Court decided that the Applicants association may be considered a victim because they are claiming a violation of the right to fair hearing on behalf of their members and the Court held that:

*“Associations also qualify for protection under Article 6 (1) if they seek recognition of specific rights and interests of their members or even of particular rights to which they have a **claim as a legal person**, such as the right of the public to information and to take part in decisions regarding the environment.”*

75. The European Court of Human Rights in **GROPPERA RADIO AG AND OTHERS V SWITZERLAND (Application no. 10890/84 judgment Strasbourg 28 March 1990, Groppera Radio AG)**; held that **corporate bodies can ground action for violations of Freedom of Expression**; a limited liability company incorporated under Swiss law and other Applicants, brought an action against Switzerland contending that the ban on cable retransmission in Switzerland of their broadcasts from Italy infringed their right to impart information. Whereas the government on the other hand argued that the Applicants were not “victim” within the meaning under Article 25(1) of the Convention. The Court noted that:

“By ‘victim’, Article 25(1) means the person directly affected by the act or omission which is in issue,”

76. With regards to the right to Property, in **CHUDE MBA V. REPUBLIC OF GHANA ECW/CCJ/JUD/10/13**, this court held with regards to Article 14 of the ACHPR that:

“Unlike other provisions of the Charter, the text just quoted above does not specify whether or not the right to property is only guaranteed to individuals or people. It is has therefore not excluded legal persons, which includes corporations. Therefore, Corporations may also benefit from the right to property as guaranteed by Article 14 above and as recognized by the National Laws of Members States and by the Council

of Europe through protocol 1 to the European Convention of Human Rights. ”

77. Having found that the right to property is one of the exceptions that grounds a corporate legal entity the right to bring a claim under Article 10 (d), and in the light of the fact that one of the reliefs sought by the Applicant is the right to property, the Court finds that the Applicant can validly maintain an action for the alleged violation of its right to property.

3. Whether the Applicant’s Right to Property has been violated.

78. The crux of the Applicant’s application is predicated on an alleged seizure of the sum of Three Million US Dollars (US\$ 3,000.000.00) by the Respondent on grounds of allegation of suspicious activities in the Applicants’ account. The Applicant’s maintained that in so doing and without legal justification, the act of the Respondent’s bank amounts to a violation of its right to property. The African Charter on Human and Peoples’ Rights guarantees the right to property. Article 14 of ACHPR states:

“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”

79. Property can be defined as a possession that people can lay claim to upon provision of legal title, proof of ownership or any document conferring the right of ownership. In **CENTRO EUROPA 7 S.R.L. AND DI STEFANO v. ITALY (Application no. 38433/09) JUDGMENT STRASBOURG 7 June 2012**, the ECHR held that:

“In considering the provisions of Article 1 of Protocol No. 1 of the European Court of Human Rights (which is in pari materia with Article 14 of the African Charter), the concept of property or possession is very broadly interpreted. It covers a range of economic interests which include: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to pension, the right to exercise a profession, a landlord’s entitlement to rent, the economic interests connected with the running of a business.”

80. It follows from the above that, money being an economic interest connected with the running of a business can be classified as property which can be owned

by an individual or corporate bodies. it is conclusive therefore that the sum of Three Million Dollars (US\$3,000,000.00) credited into Dexter Oil Limited Bank account with the First International Bank Liberia, is the property of Dexter Oil Limited. It will be recalled that the Applicant insists that the said cash deposited into its accounts via bank transfer from a Nigerian bank is Dexter Oil's Property and claims that, the freeze order and refusal by the respondent to release the said sum of money is a violation of its rights to own property.

81. The Respondent provided documentary evidence to the Court to dispute the ownership claim of the Applicant by a way of letters of demand by AMNI International Petroleum Development Limited, another corporate legal entity laying claim to the same money on the grounds that it was erroneously transferred to the Applicant and demands a reparation of the money. The Applicant on the other hand, did not controvert these claims but rather maintains that, it explains the source.

82. On the face of it, the money can be said to be the Property of Dexter Oil Limited, however it is trite that the basic requirements that confers the right of property is the ability to establish or proof ownership by the title deeds and other documentary evidence. Since the ownership of the said property is under contention, the inability of the Applicant to prove ownership robs the company of any proprietary right to the disputed sum of money. Even where the Applicants claim of ownership is substantiated, it is trite that the right to property in Article 14 of the ACHPR is not absolute as it may:

" 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".

The above exception accommodates interference of peaceful enjoyment of property in the appropriate conditions.

83. In **GOGITIDZE AND OTHERS v. GEORGIA** (*Application no. 36862/05*) **STRASBOURG 12 May 2015, the ECHR**, held that:

"An essential condition for interference to be deemed compatible with Article 1 of Protocol No. 1 (which is in pari-materia to Article 14 of the ACHPR) is that, it should be lawful: the second paragraph recognises that States have the right to control the use of property by enforcing

“laws”. Furthermore, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions”.

Having regard to the above analysis, it is imperative to determine whether or not the continued act of the Respondent in confiscating the Applicants funds on reasonable suspicion is in the public interest and in accordance with the law.

84. The Respondent contends that after the registration of the said companies, the Applicant did not carry out a single business activity from the date of its registration till date, instead it operated accounts in which between August 2012-May 2013 a period of ten (10) months, the Applicant’s account was credited by inward transfers totalling USD14, 101,326.00 from Nigeria, UAE and Switzerland, whilst outward transfers totalling USD17, 095,299.00 were made during the same period to accounts to India, Singapore, United Kingdom, Nigeria, UAE, France and Switzerland.

85. Furthermore, the Respondent contends that with the deposit of the Three Million Dollars (US\$3,000,000.00), it became important to place the Applicant account under alert as suspicious transfer with the possibility of money laundering activities. The respondent action is thus to prevent money laundering.

86. Respondent further contends that Applicant failed to comply with the National law specifically, Section 2 (5) of the Anti-money laundering and combating the financing of Terrorism (AML/CFT) Regulations, also the Tax law on remittance of tax and in addition failed to provide evidence of legitimate business activities carried out within the jurisdiction of the Respondent as required by law.

87. It is the opinion of this court that Respondent action of placing a freeze on the account of the Applicant is in accordance with the law and also serves a legitimate aim of protecting the public interest but, the Court notes that the Respondent has the duty to carry out a very prompt and effective investigation.

88. The duty for diligent, prompt and effective investigation is incumbent upon a state and it is not negotiable to avoid infringement upon the rights of citizens even in the face of a seemingly justified action in accordance with the law. For an investigation to qualify as effective, the Respondent must show that it took all reasonable steps available to them to secure the evidence concerning the incident timeously.

89. In **Velasquez Rodriguez v. Honduras, judgment July 29, 1988, Inter-AM. Ct.H.R (Ser. C) No. 4 (1988)** case, the Inter American Court stressed that:

“The obligation to investigate must be fulfilled in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the state as its own legal duty not as a step taken by private interest that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. Obligation to investigate is an obligation means rather than result. Therefore once state authorities are aware of an incident, they should without delay institute an impartial and effective means to unravel the truth.”

90. Following from the above, in the circumstances of the instant case, there should be some form of a more effective investigation than done in the past five years. In the light of the Respondent’s submission before this Court, the entire investigation is characterised by inadequate and imprecise record of the steps that were taken and therefore falls short of a proper, thorough, adequate and effective investigation required by the duty incumbent upon a state to carry out diligent and prompt investigation.

91. The Court having reviewed all evidence holds that the onus of proof of legitimacy of the said \$3Million lies on the Applicant and having failed to do so, is not entitled to the claim of violation of right to property and the Court so holds.

92. It is therefore the opinion of the Court, that the Respondent has been tardy in conducting prompt and effective investigations in breach of its obligations and

this is condemned by the Court. However the Court is unable to make any consequential orders in favour of the Applicant because it is not unmindful of its above decision that the Applicant has not discharged the onus of proof of the legitimacy of the \$3Million in question and that the Respondent is entitled to freeze the account of the Applicant in accordance with its national laws with the legitimate aim of protecting public interest.

93. This Court after examining the processes filed by the parties; and after hearing counsel in the open Court herein, and for the reasons canvassed above, decides as follows:

DECISION:

- The Court has jurisdiction to adjudicate on this case as the claim is on violation of Human Rights.
- That the suit cannot be maintained against the Respondent as a Member State under Article 10 (c) of the text.
- The Applicant is a Proper party under Article 10 (d) to the extent of the internationally recognised exception.
- Applicant right to property has not been violated by the Defendant.
- The case is hereby dismissed and parties should bear their own cost.

Thus pronounced and signed on this 6th day of February, 2019 in the Community Court of Justice, ECOWAS Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

- | | |
|-----------------------------------|---------------------------|
| Hon. Justice Edward Amoako ASANTE | - Presiding |
| Hon. Justice Dupe ATOKI | - Member/Judge Rapporteur |
| Hon. Justice Keikura BANGURA | - Member |
| Assisted by | |
| Tony ANENE-MAIDOH | - Chief Registrar |