

**IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST
AFRICAN STATES
HOLDEN IN ABUJA, NIGERIA**

BETWEEN

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| <ol style="list-style-type: none">1. Sia Momoh, as the next-of-kin of decedent Aiah Momoh2. Ahmed Ibrahim Saa Bockarie3. Safea Gbanie4. Maker Jagetay5. Ibrahim Tamba Lamin, in his own capacity and as the next-of-kin of decedent Almamy Lamin6. Finda Kamanda7. Alie Kabia,8. Marginalized Affected Property Owners, a Company Limited by Guarantee organized under the Laws of Sierra Leone, on behalf of its entire membership | APPLICANTS |
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AND

Republic of Sierra Leone

DEFENDANT

APPLICATION FOR DEFAULT JUDGMENT

I. NAME AND ADDRESS OF THE APPLICANTS AND COUNSEL, AND MEANS OF SERVICE

All Applicants are domiciled in Koidu City, Kono District, Republic of Sierra Leone.

Applicants are represented by a consortium of attorneys from the Public Interest Lawyering Initiative for West Africa. Service on all Applicants may be effected on their chief counsel, **Chernor Mamoud Benedict Jalloh** (domiciled at C&J Partners, 1 Jalloh Terrace Estate, Makeni-Kabala Highway, Panlap, Makeni, Republic of Sierra Leone, Tel : (00232) 76 901637), by e-mail at benedictcmj@gmail.com, and **Jonathan Kaufman** of Advocates for Community Alternatives (domiciled at 341 W24th St., Apt 21C, New York, NY 10011, United States, Tel : (00233) 555550377), by e-mail at jonathan@advocatesforalternatives.org.

Applicants are also represented by **Daniel Fofanah, Esq.**, of the Network Movement for Justice and Development, Sierra Leone; **Prince Chima Williams, Esq.**, of Chima Williams & Associates, Benin City Nigeria; **Gloria Eguono Aigbadon, Esq.**, Nigeria; **Ifeyinwa Nwabueze, Esq.**, of Justice & Empowerment Initiatives, Lagos, Nigeria; **Maître Idrissa Tchernaka** of the Réseau pour la Promotion des Droits Humains et la Bonne Gouvernance, Niamey, Niger; **Maître Pépé Antoine Lama** of Les Même Droits pour Tous, Guinea; **Cllr. Alfred Lahai Gbabai Brownell Sr.** of Green Advocates International, Liberia; **Maître Geneviève Aïssata Diallo** of the Association des Femmes Juristes de Côte d'Ivoire, Abidjan, Côte d'Ivoire; **Maître Rashidi Ibitowa** of Associé SCPA les Oscars, Abidjan, Côte d'Ivoire; and **Maître Djibril Welle** of Cabinet Welle, Dakar, Senegal.

II. DESIGNATION OF THE DEFENDANT

Defendant is **The Republic of Sierra Leone**, a member State of ECOWAS and party to the revised treaty of the Economic Community of West African States, to the Protocol of the ECOWAS Court of Justice and the Supplementary Protocol, represented by the **Attorney General and Minister of Justice of Sierra Leone**.

III. APPLICATION BROUGHT PURSUANT TO

- Article 90 of the Rules of Procedure

IV. PROCEDURAL POSTURE

1. The Applicants lodged the application initiating proceedings in this matter on with the Court on August 29, 2019.
2. The Defendant was duly served with the Applicant's originating process.
3. The Defendant has never filed a defense or any other pleading, motion, or application in this matter.
4. The time stipulated in Article 35 of the Rules of Procedure elapsed more than six months ago.

V. LEGAL ARGUMENT

A. The conditions for an application for judgment by default are satisfied.

1. The Applicants hereby submit this application for a judgment by default in the above-captioned action, pursuant to Article 90(1) of the Rules of Procedure.
2. Article 90 provides that an applicant may apply for a judgment by default where the "defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed . . . [.]"
3. Pursuant to Article 35 of the Rules of Procedure, the defendant shall lodge its defense within one month of service of the application, unless the time limit is extended by the President of the Court upon a reasoned application by the defendant.
4. Despite the fact that more than six months have passed since the application was lodged, the Defendant has neither filed a defense nor applied for an extension of the time limit.
5. In fact, as far as the Applicants are aware, the Defendant has never responded in any way to the application in this matter.
6. While Plaintiffs are unaware of the exact date on which the application was served on the Republic of Sierra Leone, we submit that, given the fact that more than five months have passed since the time limit prescribed by the Court elapsed, the condition established in Article 90(1) of the Rules of Procedure is satisfied.

B. This Court should grant the application for judgment by default.

7. Article 90(4) of the Rules of Procedure stipulates that before giving judgment by default, the Court should consider the following: *(a) Whether the application initiating proceedings is admissible; (b) Whether the appropriate formalities have been complied with, and (c) Whether the application appears well founded.*

i. Admissibility

8. In considering an application for judgment by default in *Private Barnabas Eli v. Nigeria*, this Court determined the admissibility of the application based on whether “the subject matter is within the competence of the court . . . the parties can access the court and . . . they have the requisite standing.”¹

a. Jurisdiction

9. According to this Court’s jurisprudence, “[s]imply invoking human rights violation in a case suffices to establish the jurisdiction of the Court over that case.”²
10. The fact that the originating application in this case alleges numerous violations of human rights as articulated in the African Charter for Human and People’s Rights and other international human rights instruments, thus suffices for this case to fall under the human rights jurisdiction granted by Article 9(4) of the Protocol of the Court (as amended by Article 3 of the Supplementary Protocol A/SP.1/01/05).
11. As in *Eli v. Nigeria*,³ this Court therefore has the requisite competence to determine the application.

b. Standing and Access to the Court

12. Article 10(d) of the Protocol of the Court (as amended by Article 4 of the Supplementary Protocol) provides that individuals may apply for relief for violation of their human rights, provided that the application is not anonymous and the matter has not been instituted before any other international court.
13. Seven of the eight Applicants in this case are named individuals, and their claims have never been presented to any other international court. These claims described in the application are based on their own personal experience and are not asserted on behalf of others.
14. Therefore, the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Applicants have met the requirements for *locus standi* and access to the Court.⁴
15. The 8th Applicant, MAPO, is a legal Association organized under the laws of Sierra Leone, composed of members of Gbense and Tankoro Chiefdoms in the Republic of Sierra Leone, all of whom have personally suffered the violations of human rights alleged in the originating application.⁵
16. In Annex C2 to their originating application, the Applicants provided a document signed by the entire membership of MAPO, authorizing MAPO to take legal action including an application to ECOWAS, to pursue a remedy on their behalf for the violations they had suffered.

¹ ECW/CCJ/JUD/29/19 ¶¶ 24-31 (ECOWAS Oct. 11, 2019) (Annex A1 at A12-14).

² *See id.* at ¶ 26 (citing *Kareem Meissa Wade v. Senegal*, ECW/CCJ/JUD/19/13, ¶ 95(3)) (Annex A1 at A13).

³ *See id.* at ¶ 28 (Annex A1 at A13).

⁴ *See also id.* at ¶¶ 29-31 (Annex A1 at A13-14).

⁵ *See* Statute of Incorporation of Marginalized Affected Property Owners (MAPO), attached hereto as Annex B1.

17. This Court has approved the doctrine of *action popularis* as a means of vindicating a “public right worthy of protecting” and has frequently accepted human rights applications submitted by non-governmental organizations.⁶
18. This Court has also recognized that Associations with legal personality have *locus standi* to present claims for and on behalf of their members.⁷
19. This Court has also recognized that an Association may file human rights claims when the very *raison d’être* of the Association is to seek the vindication of the specific rights detailed in the application on behalf of its members.⁸
20. Because MAPO is seeking to vindicate public rights worthy of protecting, on behalf of and with the authorization of its own membership, and was formed precisely for the purpose of taking legal action for the defense and vindication of these rights, the 8th Applicant has *locus standi* and the right of access to this Court.

ii. Formalities

21. In considering whether the requisite formalities have been respected, this Court generally considers whether the Defendant was duly served with the initiating application and had the opportunity to defend.⁹
22. In the instant case, Applicants submitted their initiating application on 29 August 2019, following all applicable Rules of Procedure and Practice Direction as to form and substance. The application was accepted by the Court Registrar.
23. While the Applicants are not aware of the exact date on which the application was served, they know that it was served because Counsel for the Applicants, Mr. Jalloh, received a phone call from the Attorney-General’s office soon after the filing of the originating application, informing him that the application had been received.
24. Defendant thus has had ample time and opportunity to mount a defense, and the requisite formalities have been met.

iii. Whether the allegations are well founded

25. The Applicants’ factual allegations are detailed, internally consistent, and – to this point – uncontroverted. The sworn statements of nearly two dozen affected individuals and eye-witnesses are substantiated by contemporaneous articles from reputable international news sources, photographs, medical records, reports from illustrious international human rights organizations, academic research, correspondence with government agencies, national and international legal materials, official government reports, and analytical studies prepared by the World Bank and an international consultancy.
26. The mass of evidence supporting the Applicants’ claims is additionally impressive given the significant barriers to collecting and preserving documentary evidence pertaining to events that took place over the course of more than ten years in an area of rural Sierra Leone that is desperately impoverished, was a central flashpoint in a decade-long civil war, was devastated

⁶ See, e.g., *SERAP v. Nigeria & Universal Basic Education Commission*, Suit No. ECW/CCJ/APP/08/08, Ruling on Preliminary Objection by the Second Defendant ¶¶ 31-34 (ECOWAS Oct. 27, 2009) (Annex A2 at A51-52); *Federation of African Journalists v. The Gambia*, ECW/CCJ/JUD/04/18 at 15-17 (ECOWAS Feb. 13, 2018) (Annex A3 at A69-71).

⁷ See *FAJ v. The Gambia* at 17 (Annex A3 at A71).

⁸ See, e.g., *SYNECOCI & Autres c. Côte d’Ivoire*, ECW/CCJ/JUD/07/18 at 5 (ECOWAS Feb. 19, 2018) (Annex A4 at A118).

⁹ See *Eli v. Nigeria* ¶¶ 33-35 (citing *Chude Mba v. Ghana*, N°ECW/CCJ/JUD/10/13) (Annex A1 at A15).

by the Ebola crisis, and, for much of the time period covered by this complaint, lacked even the rudiments of a functioning local government system such as a High Court, or a Lands Commission.

27. Moreover, many of the Applicants have been forcibly displaced from their homes, a process during which they could easily have lost documentation on the abuses they have suffered despite efforts to preserve it.
28. This Court has noted that, without relieving applicants of the burden to establish their allegations, burden of proof is “not a static concept and must be circumscribed by the circumstances of each case.” Based on this understanding, the Court granted some latitude to a victim of torture who had escaped into exile and therefore could offer only limited proof of his ordeal.¹⁰
29. The Applicants therefore submit that they have met the burden proof that can be expected of them given the circumstances of the case, and the allegations contained in the application are well founded.

VI. RELIEF REQUESTED

For the reasons set forth above, the Court should grant the Applicants the following:

1. An Order entering a default judgment in this suit in favour of the Applicants, against the Respondent State for failure to file a defence to the suit;
2. An Order deeming that a default judgment has been entered in favour of the Applicants in this suit;
3. An Order that costs should be borne by the Defendant State
4. Any such order or further orders as this Court may deem fit and proper to make in this circumstance.

Signed this 2nd day of June, 2020, at Palermo, Italy



Chernor Mamoud Benedict Jalloh
Lead Counsel for the Applicants

¹⁰ See *EAJ v. Guinea* at 54-55 (Annex A3 at A108-109).