



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

In the Matter of

**MR ISAAC OLAMIKAN & ANOR V FEDERAL REPUBLIC OF
NIGERIA**

Application No: ECW/CCJ/APP/31/21 Judgment No: ECW/CCJ/JUD/43/23

JUDGMENT

ABUJA

24 November 2023

MR. ISAAC OLAMIKAN
MRS EDOGHOGHO UGBEREASE

-APPLICANTS

V.

FEDERAL REPUBLIC OF NIGERIA

- RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE

- Presiding

Hon. Justice Dupe ATOKI

- Member/ Judge Rapporteur

Hon. Justice Sengu Mohammed KOROMA

- Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar

REPRESENTATION OF PARTIES:

President Aigbokhan, Esq
R.A Otuakhena, Esq.

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Counsel for the Applicants

Maimuna Lami Shiru (Mrs.)
B.J Oladipo (Mrs.)

}

Counsel for the Respondent



I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as “the Court”) delivered virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicants are citizens of Nigeria, the 1st Applicant is an online journalist while the 2nd Applicant is a community journalist both engage in the practice of journalism for the promotion of freedom of expression, opinion, and access to information (hereinafter referred to as the “Applicants”).
3. The Respondent is the Republic of Nigeria, a Member State of the Economic Community of West African States (ECOWAS), signatory to the ECOWAS Treaty and to the African Charter on Human and Peoples’ Rights and other international human rights instruments (hereinafter referred to as the “Respondent”).

III. INTRODUCTION

4. This Application is premised on the allegation that certain provisions of the Press Council Act of Nigeria 1992 is discriminatory against the Applicants and violates their right to non-discrimination and freedom of press contrary to Articles 2 and 9 of the Charter respectively. Additionally, their unlawful arrest and detention whilst carrying out their lawful profession as journalists is in violation of the right to freedom of the press to seek, receive and impart information and right to liberty contrary to Articles 9 and 6 of the African Charter.

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed by the Applicant on 14 June 2021 and the same was served on the Respondent on 18 June 2021.
6. The Respondent upon being served with the initiating application filed Motion on Notice for Extension of Time within which to file its Preliminary

Objection & Statement of Defense dated 30 August 2021 and served on the Applicants on 10 November 2021

7. The Respondent filed a Statement of Defense on 30 August 2021 and the same was served on the Applicants on 10 November 2021.
8. On 5 May 2023 during sitting, the Court informed parties of the reconstitution of the panel and sought the parties' consent to proceed with the matter based on processes earlier filed. Parties having consented to the reconstitution, the Court thereafter heard the Applicants' matter on its merit. The Respondent was absent but the Registry produced evidence of service. The court thereafter adjourned the matter for judgment.

V. APPLICANT'S CASE

a) Summary of facts

9. The case of the Applicants is that Section 37 of the Nigeria Press Council Act 1992 which defines *journalists as any being not less than 18 years of age engaged in the collection, processing and dissemination of information for use in the press and who has been accredited by the Nigeria Press Council* is discriminatory against them.
10. Additionally, that sections 19 (a) which requires a person to be registered as journalist to have attended a course of training recognized by the Nigeria Press Council is also discriminatory. Equally alleged to be discriminatory is Section 27 that stipulates that to be qualified as an editor, a minimum age limit of 25 years and registration as member of Nigeria Union of Journalists with a working experience as a journalist in a reputable newspaper house, electronic news medium or news agency is required.
11. They submit that these requirements as provided for in Sections 19(1)a ,27 and 37 of the Press Council Act of 1992 fail to recognize public interest media, such as the rights of online and citizen journalists, and therefore are discriminatory and violates their rights guaranteed under Articles 2 and 9(1) of the African Charter.

12. On another note, the Applicants allege that the 1st Applicant was arrested and detained by agents of the Respondent on 2 September 2008, while he was on a facility tour of the Orotogun Gas Plant in Delta State of Nigeria, operated by Shell Petroleum Development Company, to investigate the current state of gas flaring at the plant. That he was allegedly arrested because he recorded some facilities which the Respondent claimed had grave national security implications.
13. The 2nd Applicant on the other hand was arrested and detained for breach of peace and obstruction of justice for taking a photograph of one Augusta- an accused person within the Court's premises without express permission. She was subsequently charged to court but was discharged and acquitted.
14. The Applicants maintain that their unlawful arrest and detention is a violation of their rights as provided for in the African Charter and other international human rights instruments.

a) Pleas in law

15. The Applicants rely on the following laws:

- a) Article 33 of the Rules of the ECOWAS Community Court of Justice
- b) ii. Rule 11 of the ECOWAS Court Protocol ("The Protocol")
- c) iii. Article 59 of the ECOWAS Revised Treaty ("The Protocol").
- d) iv. Article 19 of the Universal Declaration of Human Rights (UDHR).
- e) v. Section 19(a) & 27 of the Press Council Act of Nigeria of 1992.
- f) vi. Articles 6, 7(1), (1) & (2), 13(2) 19, 29(2) & (4) of the African Charter on Human and Peoples' Rights.
- g) vii. Article 8(1) and 10(2) of the Declaration of Principles on Freedom of Expression in Africa (2002)
- h) viii. Discrimination (Employment and Occupational) Convention of 1957
- i) ix. Articles 2, 10, and 19 of the International Covenant on Civil and Political Rights of 1966

j) x. Section 22 and 36 of the Constitution of the Federal Republic of Nigeria 1999

b) Reliefs sought:

16. The Applicants pray the Court to grant the following reliefs:

a). **A declaration** sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992 be declared void on the ground that it fails to recognize public interest media viz; rights of online and citizen journalists as guaranteed in Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, Article 2, 10 and 19 of the International Covenant on Civil and Political Right of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002)

b). **A declaration** that Defendant's requirement of 25 years and 18 years of age qualification for the job of editor and practice of journalism in Nigeria as provided for in sections 19 (3) (b) and 37 of the Press Council Act of 1992 is not based on equal opportunities and a violation of the Plaintiffs' rights under Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, articles 2, 10 and 19 of the International Convention on Civil and Political Rights of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002)

c). **A declaration** that the statutory obligation of having attended a course of training on journalism for one to be recognized by the Council as a journalist as provided in Sections 19 (1) (a) (3) and 27 of the Press Council Act of 1992 is in violation of the Plaintiffs' rights under Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, Articles 2, 10 and 19 of the International Convention on Civil and Political Rights of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002).



- d). **A declaration** that, by the continued enforcement of sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992, the Defendant is in breach of its obligation under the Revised ECOWAS Treaty, the African Charter on Human and Peoples Rights and Declaration of Principle on Freedom of Expression in Africa (2002)
- e) **A declaration** that unlawfully arresting and detaining the plaintiffs while gathering and investigating information violates the provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights of 1966, African Charter on Human and Peoples' Rights and Declaration of Principle on Freedom of Expression in Africa (2002).
- f) **An order** compelling the Defendant to amend the provisions of sections 19 (1) (a) (3) (b), 27, and 7 of the Press Council Act of Nigeria of 1992 in line with global practices and to promote free, pluralistic and professional journalism.
- g) **A perpetual injunction** restraining the Defendant from further giving effect to the provisions of sections 19 (1) (a) (3) (b), 27, and 37 of the Press Council Act of Nigeria of 1992.
- h) **Compensatory damages** to the Plaintiffs to the tune of N1, 000, 000 USD for discrimination, wrongful detention, and malicious prosecution of the 1st and 2nd Plaintiffs against the defendants jointly and severally.
- i) **Other consequential order(s)** as this honourable court may deem fit to grant in the circumstance.

VI. RESPONDENT'S CASE

a) Summary of facts.

17. The Respondent's case is that the 2nd Applicant operated illegally since he refused to attend accredited courses for journalism in Nigeria as stipulated

by Section 19(1) (a-d) of the Nigeria Press Council Act. Regarding the 1st Applicant, they submit that he had been deregistered as a journalist and is therefore not qualified to be a journalist.

18. In defense of the contested sections of the Press Act, the Respondent state that journalism is a sensitive profession that must be regulated to prevent the negative effects which can be detrimental to the youth and threaten national security.
19. Additionally, they state that adequate understanding of the subject matter of journalism is important and justifies the requirement for aspirants to have at least a bachelor's degree in either journalism or mass communication and a post graduate degree in these relevant fields as required in the Press Act.
20. Comparatively, they state that as applicable to other professions where criteria set by the regulatory body are required for admission, any aspirant must meet the eligibility criteria to register as a journalist as provided in the Press Act.
21. The Respondent further state that the right to information and expression are not absolute as there are limits imposed in accordance with the law necessary for the protection of the rights and reputation of others, protection of national security or public order, public health, or morals.
22. They submit that the Applicants have failed to present tenable evidence before the Court to substantiate their assertions neither are the reliefs sought supported by evidence.
23. The Respondent in their defense, deny unlawfully arresting or detaining the Applicants and puts them to the strictest proof.

b) Pleas in law

24. The Respondent rely on the following laws:



- i. Articles 6 and 9(2) of the African Charter on Human and Peoples' Rights.
- ii. Article 13 of Protocol A/P1/7/91.
- iii. Article 9(4) of the 1991 Protocol and 10(d) of the Supplementary Protocol of the Court of Justice.
- iv. Sections 22 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- v. Section 131 of Nigerian Evidence Act, 2011.

c) Reliefs sought

25. They urge the Court to dismiss the Application with deterring costs same being frivolous, baseless, and incompetent and an abuse of the Court's process.

VII. JURISDICTION.

26. In accordance with the provisions of Article 9(4) of Protocol A/P1/7/91 on the Community Court of Justice (Protocol), which provides, "*The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State,*" the Court holds that since the Application is premised on the alleged violation of Articles 2 and 9 of the African Charter on Human and People's Rights, the Court has jurisdiction to adjudicate on the Application.

VIII ADMISSIBILITY

27. The Court holds that the Application is admissible as it is in compliance with Article 10 (d) (i) and (ii) of the Protocol, having found that the Applicants is an individual seeking relief for the violation of their human rights and Application is neither anonymous nor made whilst the same matter is been instituted before another similar international court for adjudication.

IX MERITS

28. The Applicants' claim is premised on a two-fold allegation that the Press Council Act violates their rights provided for by Articles 2 and 9 of the African Charter. Also, that their unlawful detention under separate situations violates their rights under international human right instruments. The Court will analyse these allegations serially.

Alleged violation of Articles 2 and 9 of the African Charter.

29. The Applicants allege that several provisions in the Nigeria Press Council Act prohibit and place serious restrictions on the practice of journalism. For example, Section 37 of the Press Council Act, puts the minimum age to practice journalism as 18 years of age, while to be qualified as an editor, requires a minimum of 25 years of age. Sections 19(a) and 27 of the Act imposes educational qualifications and compulsory courses of attendance and training before a person can be recognized and allowed to practice as a journalist.
30. They equally claim that these restrictions constitute great impediments to the exercise of their right of expression and practice of journalism and urge the Court to declare the Act void on the ground that it fails to recognize public interest media viz rights of online and citizen journalism, as such are discriminatory and violates their rights guaranteed under Articles 2 and 9 of the African Charter. They therefore sought an order of the Court to compel the Respondent to amend the provisions of sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992 in line with global practices and to promote free, pluralistic and professional journalism.
31. In response, the Respondent state that journalism, being a sensitive profession, must be regulated to prevent its negative effects, which can be detrimental to the youth and threaten national security. Also as applicable to other professions that impose eligibility requirements, the Applicants must equally meet the eligibility criteria prescribed by the Press Act to qualify as a journalist. Thus in the instant case, the Applicants are expected to have at least a bachelor degree in either journalism or mass communication and post graduate degree in these relevant fields.
32. They deny that the sections of the Press Act in dispute are discriminatory and urge the Court to dismiss the Application.

Analysis of the Court

33. Pursuant to the Applicants' reliefs, the Court has formulated the following issues for determination:

- i. Whether the Court has jurisdiction to review national laws of a Member State in the instant case, Press Act of Nigeria 1992, and
- ii. If so, whether the alleged regulations of the practice of journalism as contained in Sections 19 (1) (a) (3) (b), 27, and 37 of the Press Act are discriminatory and violate the right to non- discrimination under Article 2 of the African Charter.
- iii. Whether sections 9(1), 27 and 37 of the Press Act violates the right to freedom of expression and are in contravention of Article 9 of the African Charter.

i. Whether the Court has jurisdiction to review national laws of a member state in the instant case, Press Act of Nigeria 1992.

34. As a general rule, the Court is empowered under Article 9 (4) and 10(d) of the Supplementary Protocol to hear cases of human rights violations, which have occurred in the territories of Member States. Accordingly, the Court has in practice distanced itself from being an interloper with respect to the constitutionality of Member States' action, legislation or legality of decisions of competent courts. The powers conferred on the Court, in the 2005 Supplementary Protocol are clear and should not be misconstrued as the jurisdiction to exercise control over the constitutionality of laws of Member States which is the preserve of domestic constitutional courts.

35. The general rule is that the Court will not sit on appeal in any decision of a national court nor examine a national legislation. See the case of MOUSSA LEO KEITA V THE STATE OF MALI ; (2004-2009) CCJELR Pg 63 SEE ALSO HON DR JERRY UGWUOKE V FEDERAL REPUBLIC OF NIGERIA (2004-2009) CCJELR @ pg. 39.

36. Where however it decides to examine a domestic law, it will not do so in *abstracto* but to the extent of the alleged violation. In other words, in exercise

of this power, it will invoke its jurisdiction to examine whether the specific section of the law in question is indeed a violation of the alleged human rights. It's role is not to examine Community Member States' laws in abstracto, but rather to ensure protection of people's rights when they are victims of violations of those rights and that it must do so by examining concrete cases brought before it. FEDERATION OF AFRICAN JOURNALISTS AND 4 OTHERS V THE REPUBLIC OF THE GAMBIA SUIT NO: ECW/CCJ/APP/36/15. JUDGMENT NO: ECW/CCJ/JUD/04/18. SEE HADIJATOU MANI KORAOU V THE REPUBLIC OF NIGER, (2004-2009) CCJELR PG 217

37. Having reiterated the Courts' competence on human rights cases, it therefore implies that this Court in exercising its jurisdiction has the powers to go into the root of the violation i.e. those laws, which the Applicants are contesting to establish whether or not they are contrary to the provisions of international human right laws. Consequently, in view of its jurisprudence, this Court reaffirms its competence to examine the laws upon which the allegations are based.
38. In the light of the above, the Applicants having alleged that some sections of the Press Act of Nigeria 1992 have occasioned the violation of their human rights as provided in Articles 2 and 9 of the Charter, the Court holds that it has the power to examine the Press Act of Nigeria to determine their compliance or otherwise with the African Charter and other International Human Rights instruments to which the Respondent is signatory.
39. The first issue for determination having been resolved in the affirmative, the Court will now proceed to examine the merits of the case as follows:

ii. Whether the alleged sections 9(1), 27 and 37 of the Press Act are discriminatory and are in contravention of of Articles 2 of the African Charter.

Sections 19 (1) (a) of the Press Act of Nigeria on accredited training provides as follows;

40. *“Subject to the rules under this Act, a person shall be entitled to be fully registered under this Act if:*
- a) he has attended a course of training recognised by the Council so acquired with the cognate experience recognised by the Council: or*
 - b) The course was conducted at an institution so approved or partly at one such institution and partly at another or others; or*
 - c) He holds a qualification so approved; or*
 - d) He holds a certificate of experience issued in pursuance of section 24 of this Act”*

Section 27 of the Press Act of Nigeria provides for the appointment as an editor.

41. *“A person shall be qualified for appointment as an editor if:*
- a) He has attained the age of 25 years*
 - b) He is a registered member of the Nigerian Union of Journalists; and*
 - c) The name of a body corporate which owns or intends to publish the newspaper, magazine, or journal*
 - d) A copy of the certificate of incorporation; and*
 - e) Such other information as the Council may, from time to time, require.”*

42. Section 37 defines a journalist as

“Any person (not being less than eighteen years of age) engaged in the collection, processing and dissemination of information for use in the press ...”

43. The summary of these sections of the Press Act is to the effect that an applicant seeking admission into the journalism profession must have attained a minimum age of eighteen years old, and has undertaken the required accredited courses at an institution approved by the Council. For appointment as an editor, a minimum age of 25 years is required and a registration as a member of the Nigerian Union of Journalists with the name of a body corporate which owns or intends to publish the newspaper, magazine, or journal where he/she intends to practice.

44. In seeking above declaratory relief, the crux of the Applicants' case is that they are on-line practitioners who have been discriminated against and

prevented from practicing their profession of dissemination of information. They allege that as online practitioners, the contested sections of the Press Act deprive them of practicing in the mainstream media as online reporters and are not recognised as journalist.

45. Furthermore, the Applicants' complain that the minimum of 25 years of age requirement to be qualified as an editor and 18 years to be qualified as a journalist, is not based on the recognition of equal opportunity for all. That by creating an age limit for editorial position, the legislature has discriminated against young persons with no legitimate aim in mind.

Analysis of the Court.

46. In determining whether the alleged Sections 9(1), 27 and 37 of the Press Act are discriminatory and are in contravention of Article 2 of the African Charter, it is important to first examine the import of discrimination in the light of Article 2 of the Charter which provides thus:

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

47. Non-discrimination constitutes a basic principle relating to the protection of human rights. Thus Article 2 of the African Charter, obliges each State Party to respect and ensure all persons within its territory enjoy the rights recognised in Charter without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social or social origin, fortune, birth or any status.
48. While the term 'discrimination' is not used in Article 2 of the Charter, the spirit of the letter accommodates the term which should be understood to imply any distinction, exclusion, restriction, or preference which is based on race, color, sex, language, religion, political or other opinion, national or social or social origin, fortune, birth or any status and which has the purpose of or effect of nullifying the recognition, enjoyment, or exercise by all persons on an equal footing , of all rights. See HUMAN RIGHTS COMMITTEE

GENERAL COMMENT NO 18: NON-DISCRIMINATION 1989 PARAGRAPHS 6 & 7

49. Where discrimination is alleged, it implies that the Applicant is treated differently from others in similar situation due to their age, sex, religion, ethnicity amongst others. Indeed for an action of discrimination to succeed, there must be established a difference of treatment in an identical or similar case". JUSTICE PAUL UTER DERRY & 2 ORS V. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 PG. 32.
50. This was further elaborated by the African Commission on Human and Peoples Rights (African Commission) when it held that the principle of discrimination is violated if: a) equal cases are treated in a different manner b) a difference in treatment does not have an objective and reasonable justification, and c) there is no proportionality between the aim sought and the means employed. See *KENNETH GOOD V BOTSWANA COMMUNICATION 313/05 PARAS 218-219*.
51. To succeed in the instant case, the Applicant is required to prove that the said sections of the Press Act places them at a disadvantaged position as against other members of the profession.
52. As earlier reasoned in relation to the preceding alleged discriminatory sections of the law, an applicant is not allowed to merely plead that a law is discriminatory on a vague basis. It behooves on such a person to juxtapose the effect of the said law on him with others in similar situation. The first Applicant merely averred in paragraph 25 of DOC 1 that "*the Defendant's legal framework discriminate and exclude qualified applicants like the plaintiffs from practicing on the basis of age and publishing frontiers*"
53. Considering that the requirement contested is of general application to all practitioners who aspire to the post of an editor, the Applicants have not shown how a limit of a minimum of 25 years required to be qualified as an editor and 18 years for entry as a journalist is prejudicial to them as Applicants in this case, putting them in a disadvantaged situation. The Applicants being online practitioners have not submitted evidence that

having attained the age of 25, their application to be considered for the post of an editor was denied while those from the mainstream media were approved, a fortiori the requirement of minimum age of 18 years.

54. The Court understands that the Applicants are concerned about the age limit of 25 years which they believe is too far gone in age, cutting off younger aspirants who are ready to assume that profession. In determining the allegation of discrimination, the Court will not be drawn into the arena to decide whether a particular law meets the necessity test as postulated by the Applicant. The eye of the Court must not be taken off the ball of determining whether the alleged laws are discriminatory. To the extent that the Applicants have approached the Court to determine whether the referenced sections of the Press Act is discriminatory or otherwise, the Court will not go on a frolic of its own to make pronouncement on the legality, legitimacy, necessity or lack of equal opportunity of the contested sections of the Press Act.
55. The Court reiterates that the main ingredient required to succeed in an allegation of discrimination is proof of different treatment in an identical or similar case. The Applicants have not demonstrated that they are caught up and thus victims of these age requirements. The Court finds that that the facts placed before the Court by the Applicants is devoid of this differential ingredient.
56. Consequently, the Applicants having failed to substantiate the allegation that Articles 19 (3) b and 37 of the Press Act that requires an aspirant to be a minimum of 18 years old and an editor to be no less than 25 years old is discriminatory against them, the Court holds that the Applicants' right as provided in Article 2 has not been violated.

iii. Whether sections 9(1), 27 and 37 of the Press Act violates the right to freedom of expression and are in contravention of Article 9 of the African Charter.

57. Article 9 of the African Charter provides that :
"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

58. Based on the above provision of Article 9 of the Charter, the Applicants are seeking a declaration that the statutory obligation of having to attend a course of training on journalism to be recognized by the Council as a journalist (Sections 19 (1) (a)3), the requirement of 25 years of age to qualify as an editor (Section 27), the requirement of 18 years of age to practice journalism (Section 37) all of the Press Council Act of 1992 are in violation of the their rights to freedom of expression provided by Article 9 of the African Charter.
59. Specifically, they are seeking a declaration that Sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992 be declared void on the ground that it fails to recognize public interest media viz; rights of online and citizen journalists as guaranteed in Article 9(1) of the African Charter.
60. Consequently, they urge the Court to grant an order compelling the Respondent to amend the provisions of sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1999.
61. To substantiate this claim, they argue that the media has an inalienable right to disseminate information to members of the public which must not be whittled down by legal requirements. They submit that Journalism is continuously evolving to include input from media institutions, private individuals and a range of organizations that seek, receive, and impart information and ideas of all kinds, online as well as offline in the exercise of freedom of opinion and expression in accordance with international and national instruments, thereby contributing to the shaping of public debate. Thus for the interest of all shades of journalists to be guaranteed, national laws must conform with the provisions of international human rights laws.
62. They further urge the Court to draw inspiration from the decision of the African Commission on Human and Peoples Rights which was inspired by the opinion of the Inter-America Court on Human Rights that found that compulsory accreditation is the same as compulsory licensing and is a

restriction of the freedom to practice the journalism profession see SCANLEN & HOLDERNESS V ZIMBABWE (COMM NO 297/05), PARAS 92-93.

63. Adding that whilst regulation is acceptable where it aims at the identification of journalist, the maintenance of ethical standards, competence and the betterment of the welfare of the Journalists, its aim should be for the purposes of betterment of the profession rather than its control, since control by its nature infringes the right to express oneself.
64. They also insist that a requirement of accreditation to a media house and proof of support of a media house to successfully apply for accreditation amounts to restriction on the practice of journalism and free flow of information.
65. The Applicants submit that while they recognise that freedom of expression is not absolute, it is their opinion that these contested Sections cannot be placed within the exceptions contemplated by law.
66. In conclusion, they urge the Court to order the Respondent to review the contested Sections of the Press Act and bring them in compliance with global practices that promote free, pluralistic and professional journalism.
67. The Respondent on the other hand justifies the regulation of journalism and states that journalism is one of the sensitive professions that should not and must not be handled with levity by any reasonable government. They affirm that while media is an invaluable means of disseminating information to the public however, if there is no monitoring, the negative effect of social media can be detrimental not only to the teeming youth but can pose a serious threat to the security of the entire country.
68. This, they submit informs the need for applicants to the journalism profession to have at least a Bachelor's degree in either journalism or mass communication and a post graduate degree in these fields. They concluded that the contested sections are not in contravention of the Charter.



Analysis of the Court.

69. Ahead of examining the allegations of the Applicants, the Court reiterates that freedom of expression, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art or through any other form of communication or medium, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
70. Freedom of expression is a fundamental right protected under the African Charter and other international human rights laws and standards. The respect, protection and fulfilment of this right is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights.
71. States Parties to the African Charter are therefore obliged to create an enabling environment for the exercise of freedom of expression, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression.
72. Based on the arguments of both parties, the Court is called to determine whether entry requirements for the practice of journalism in the form of compulsory membership, age limit and/or minimum educational requirements for the practice of journalism constitute unlawful restrictions of freedom of expression. To determine this issue, it is important to first understand the nature and practice of journalism today.
73. The media landscape has undergone a profound transformation in recent years, driven by the rapid evolution of new media and technology. Traditional forms of journalism, characterized by print newspapers and broadcast news, have given way to a dynamic online news and information system. This shift has altered the way news is disseminated, redefined how news content is produced, and introduced new actors into news reporting and commentary on topical issues.

74. Social media, in particular, has emerged as a powerful force, allowing individuals to become both consumers and producers of news. User-generated content has become an integral part of the social media landscape. This has created the phenomenon of citizen journalists, individuals who with the power of their smartphones and social media, capture and share news events as they unfold.
75. Beyond citizen journalists, there is also the new world of influencers and content creators. These individuals, often with large social media followings, leverage their platforms to share news, commentary, and analysis on social issues. While they may not qualify as journalists in the traditional sense, these personalities have become influential voices in shaping public opinion and discourse.
76. Thus, even though traditional news outlets continue to operate, there has been a proliferation of alternative sources of information such as blogs, podcasts, and online news portals. These platforms cater to niche audiences and provide more personalized and specialized news experience. In effect, the traditional gatekeepers of information are no longer the sole source of news, information, and commentary on current events.
77. This evolution of the media space warrants a reconceptualization of journalism, its practice, and practitioners. It is evident that in our changed media environment, journalism can no longer be limited to traditional news reporting by newspapers and broadcast outlets (TV or radio), manned solely by trained professional journalists. Many 'new media' practitioners, such as bloggers, vloggers, and podcasters, would be excluded. Consequently, old notions of how regulatory standards interact with journalism must also be revised.
78. In recognition of these new realities, the Human Rights Committee, in its *General Comment No. 34: Article 19 of ICCPR, Freedom of Opinions and Expression 2010* (para 44), stated that 'journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts,

as well as bloggers and others who engage in forms of self-publication in print, on the internet, or elsewhere.'

79. The conceptualisation of journalism as a 'function' within society instead of a profession is significant. First, it recognises, that with the aid of technology and new media platforms, many individuals can also report or comment on current events, a role that was traditionally performed by trained journalists. But secondly and more importantly, there is no overriding reason for journalistic activity to be restricted to its traditional actors. Freedom of expression guarantees the rights of **all** persons to publish information and express their opinions on any matter. For that reason, gathering information on current events and disseminating it or providing commentaries on such events for public consumption cannot be the sole preserve of the 'traditional journalist'.
80. Thus, because freedom of expression is guaranteed for all persons, the professional journalist has no greater rights than any other person who may decide to report on newsworthy events or provide commentary on such events through social media posts, blogs, podcasts, or other means. For this reason, a requirement that a person who wishes to engage in a *journalistic activity* must meet compulsory membership or education requirements will impermissibly restrict freedom of speech.
81. This view finds support in opinions of several international human rights bodies amongst which are the following;
 - i. The Inter-American Commission on Human Rights in its Declaration of Principles On Freedom of Expression, adopted 19 October 2000 - Principle 6 provides thus: "*Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression.*"

- ii. The Council of Europe Committee of Ministers' *Explanatory Memorandum on Recommendation No R (00)7 on the rights of journalists not to disclose their sources of information* states that "It is generally understood that the right to freedom of expression implies free access to the journalistic profession, i.e. the absence of the requirement of an official admission by state organs or administrations. This principle is reflected in Principle 11 (b) of Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension, which requires that, even in situations of conflict and tension, "the exercise of journalism and journalistic freedoms is not made dependent on accreditation".
- iii. "The imposition of compulsory membership or licensing requirement as a pre-requisite for individuals to engage in journalistic activity, or the imposition of generic bans on the activities of such persons is incompatible with the right of freedom of expression." *General Comment No. 34: Article 19 of ICCPR, Freedom of Expression 2010*, para 43 & 44).
82. Having said that, it is imperative at this point to examine each of the contested sections of the Press Act to determine whether they are indeed restrictive of the freedom of expression guaranteed by Article 9 of the African Charter.

Section 37 of the Press Act defines a journalist as "Any person (not being less than eighteen years of age) engaged in the collection, processing and dissemination of information for use in the press ..."

83. The Applicants argue that Article 9 of the Charter guarantees this right for all without age limit. The understanding of the Court in this regard is in sync with the argument of the Applicants. For this purpose, a reproduction of Article 9 of the Charter is in order.
- "1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

84. Indeed, the ordinary interpretation of this Article permits *every individual (Emphasis ours)* that is old enough to read and write to express and receive information. Any contrary interpretation will defeat the spirit of the law that opens the space for free flow of information to anyone capable of doing so. The Court is of the considered opinion that a prescription of age to carry out this function creates a great disservice and rubs the up and coming youths who have the capacity and wherewithal the opportunity to gather information and express opinion for the general benefit of humanity.
85. The Court in reaching this finding, draws a great inspiration from young activists in their early teens who have attained world recognition through a free and unrestricted opportunity to gather information and express opinion generating free information flow. In this regard, the Court takes judicial notice of the formidable achievements of Malala Yousafzai, an Afghanistan girl born in 1997, who at age 11 wrote a blog under her pseudonym *Gul Makai* for the BBC Urdu which detailed her life during the Taliban's occupation of Swat. At the age of 17, she became the 2014, Nobel Prize laureate and is on record as the world's youngest recipient of the award. https://en.wikipedia.org/wiki/Nobel_Peace_Prize.
86. Her advocacy on right of education for women and children has grown into an international movement. The 2013, 2014 and 2015 issues of *Time* magazine featured her as one of the most influential people globally. In 2017 she was awarded honorary Canadian citizenship and became the youngest person to address the House of Commons of Canada. https://en.wikipedia.org/wiki/Malala_Yousafzai
87. There is no better illustration of the beauty and value added of a free space for the expression of opinions within the current online media frontiers *viz a viz* the drawback of curtailment of freedom of expression through age restriction than the story of Malala. For all intent and purposes, the activity of Malala conforms with that of a journalist defined by the section 37 of the Press Act of Nigeria as *any person (not being less than eighteen years of age) engaged in the collection, processing and dissemination of information for use in the press*”

88. The Court is convinced that the feat accomplished by Malala at 17 years in freely expressing her opinions through an open and unrestricted space would have been a dream killed, buried and unfulfilled if she lived in Nigeria (the Respondent). The Court is therefore fully convinced that any age restriction on the expression of opinion is restrictive and interferes with the enjoyment of that right.
89. Consequently, the Court holds that Section 37 of the Press Act of Nigeria violates the right to freedom of expression guaranteed by Article 9 of the African Charter

Sections 19 (1) (a) of the Press Act of Nigeria on accredited training provides that; *“Subject to the rules under this Act, a person shall be entitled to be fully registered under this Act if:*

- e) he has attended a course of training recognised by the Council so acquired with the cognate experience recognised by the Council: or*
- f) The course was conducted at an institution so approved or partly at one such institution and partly at another or others; or*
- g) He holds a qualification so approved; or*
- h) He holds a certificate of experience issued in pursuance of section 24 of this Act”*

90. This section imposes a minimum educational qualification to practice journalism including at least a Bachelor's degree in either journalism or mass communication and a post graduate degree which the Respondent justified as a leverage for better job opportunities. Furthermore, while acknowledging that the media is an invaluable means of disseminating information to the public, they are of the opinion that in the absence of proper monitoring, the negative effect of social media can be detrimental not only to the teeming youth but can pose a serious threat to the security of the entire country and her continual existence. Also that such regulation is in tandem with other profession where eligibility requirements are prescribed to practice such profession.





91. In essence, they argue that compulsory membership and educational requirements are needed so as to have an identifiable body of media practitioners who can be held to professional standards as in the case for example of lawyers or doctors are.
92. The difficulty with that argument, as pointed out by the Inter-American Court, is that unlike journalism, the practice of law or medicine is not a guaranteed human right. (See *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Inter-American Court, Advisory Opinion OC-5/85 of 13 November 1985, para 73.
93. On the other hand, all the activities entailed in journalism are covered under the guaranteed right of all persons to freedom of expression. Accordingly, as the Inter-American Court further observed: *'The practice of professional journalism cannot be differentiated from freedom of expression. On the contrary, both are obviously intertwined, for the professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular, and paid manner.'* (*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Inter-American Court, Advisory Opinion OC-5/85 of 13 November 1985, para 74).
94. The Court, is inclined to refer again to the accomplishment of Malala matched against her educational background in determining the relevance of structured education or training from accredited institution as a prerequisite to the practice of journalism. Information available show that Malala completed her secondary school education at Edgbaston High School, Birmingham in England from 2013 to 2017. She graduated at Lady Margaret Hall, Oxford university, with a Bachelor of Arts degree in Philosophy, Politics and Economics (PPE) in 2020. https://en.wikipedia.org/wiki/Malala_Yousafzai.

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95. In essence she was 16 years old when she started her secondary education and finished at 20 years, thereafter obtained a degree at age 23. Before attending secondary school, her blog written when she was 11 years old threw her into limelight and further into the world sought-after league of Noble laureate at 17, all before she attained the age of 18 set by the Nigerian Press Act as the entry age for journalists. Whither then is the import of a degree in a related field to practice journalism as required by the Press Act?
96. Many young teenagers across the world yet to obtain a degree of any sort have displayed dexterity, ingenuity, professionalism in gathering information and expressing opinion, changing the landscape of information flow and advancing the cause of humanity for good. The justification of the Respondent in imposing a minimum educational requirement to practice journalism falls flat in the face of the current achievements by young lesser educated persons like Malala, Greta Thunberg (the 20 year old Swedish climate change activist, who started her activism at the age of 15) and many others. https://en.wikipedia.org/wiki/Greta_Thunberg
97. The Court is of the considered opinion that such requirement as inscribed in the contested sections of the Nigeria Press Act create a huge clog in the wheels of the fast moving pace of information flow in the current online and offline media space. Traditional gatekeeping paradigms, like requiring a minimum educational qualification and/or compulsory membership in a registered media organization, is no longer apt.
98. In this context, the Court has no hesitation in finding that Section 19(1) of the Press Act of Nigeria 1992 imposing minimum educational requirement for the practice of journalism is restrictive and interferers with the right of freedom of expression guaranteed by Article 9 of the African Charter.

Section 27 of the Press Act of Nigeria provides for the appointment as an editor.

“A person shall be qualified for appointment as an editor if:

f) He has attained the age of 25 years

g) He is a registered member of the Nigerian Union of Journalists; and



- h) The name of a body corporate which owns or intends to publish the newspaper, magazine, or journal*
- i) A copy of the certificate of incorporation; and*
- j) Such other information as the Council may, from time to time, require."*

99. A careful reading of the relevant provisions of the Act shows that the requirements for registration as a journalist or an editor are applied conjunctively. To be registered as a journalist or editor, both the minimum age requirement and the educational or membership requirements must be met together. Because these requirements are applied conjunctively, Applicants must prove both the age requirement and the educational or membership requirements for the relevant registration application under the Act.
100. In other words, the fact that an applicant for journalism may already be 18 for the purpose of registration as a journalist or 25 for the purpose of registration as an editor does not mean that they are not affected by that requirement of the law. The likely harm in this case is the burden imposed on them to prove the age requirement along with the other requirements before they may be registered to engage in journalistic activities. Should they fail to do so, they incur a penalty, which is the denial of their right to engage in journalistic activities, all of which are guaranteed as a right to freedom of expression.
101. The Court holds that the requirement to qualify as an editor including a 25 year old limit, registration with the Nigerian Union of Journalist amongst others is restrictive on the enjoyment of the rights to freedom of expression guaranteed by Article 9 of the African Charter.
102. In concluding its examination on this allegation, The Court aligns with the decision of the African Commission when it addressed the issue of licensing or compulsory registration or accreditation of journalists which is similar to the instant application. The Applicants in that case, challenged Zimbabwe's Access to Information and Protection of Privacy Act (AIPPA) on grounds that it violated freedom of expression under Article 9(2) of the African



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Charter. Sections 79(1) and 80 (1) of the AIPPA provided respectively as follow;

79(1) No journalist shall exercise the rights provided in Section 78 in Zimbabwe without being accredited by the [Media and Information Commission].

80(1) No person other than an accredited journalist shall practice as a journalist nor be employed as such or in any manner hold himself out as a journalist. No person who has ceased to be an accredited journalist as a result of the deletion of his name from the roll, or who has been suspended from practising as a journalist, shall, while his name is so deleted, or is so suspended, continue to practice directly or indirectly as a journalist, whether by himself or in partnership or association with any other person, nor shall he, except with the written consent of the Commission, be employed in any capacity whatsoever connected with the journalistic profession.

103. The Commission concluded that compulsory accreditation of journalists has been held at both national and international levels to be a hindrance to the effective enjoyment of the right to freedom of expression. Accordingly, it held that the compulsory accreditation under the AIPPA without which one could not practice journalism in Zimbabwe, was a violation of Article 9(2) of the African Charter. See *SCANLEN & HOLDERNESS V ZIMBABWE* (COMM NO 297/05), PARA 92.

104. In view of all the analysis, the Court is of the opinion that the totality of the provisions in Articles 9(1), 27, 37, of the Nigeria Press Act undoubtedly have a negative effect on the exercise of freedom of expression. As expressed by the Commission with inspiration from the Inter-American Court's advisory opinion of which the Court aligns, "*There are no good grounds for official involvement in the registration of journalists. It creates considerable scope for politically motivated action by the authorities. The regulation of the media should be a matter for self-regulation by journalists themselves through their professional organisations, or associations.*" If there should be any form of regulation at all, "*it should be a matter for self-regulation by journalists themselves through their professional organisations, or*



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associations” for purposes of identification, maintenance of ethical standards and promotion of journalists’ welfare. (*SCANLEN & HOLDERNESS V ZIMBABWE*, PARAS 92 & 97).

105. The Court therefore holds that Articles 9(1), 27, 37, of the Nigeria Press Act is a restriction of the Applicants’ rights, under Article 9 of the African Charter.

Permissible limitations in the enjoyment of the right to freedom of expression.

106. Having held that the contested sections of the Press Act is restrictive and interferes with the right to freedom of expression and opinion guaranteed by Article 9 of the Charter, however, the Court is not unmindful of the fact that this guarantee is not absolute as a restriction is permissible in accordance with the law, see Article 9(2). While the right to freedom of expression is vital to our ability to convey opinions, convictions, and beliefs, and to meaningfully participate in democracy, the state may however, ‘limit’ the right to freedom of expression on certain grounds, such as national security, public order, public health, and public morals. In other words, a restriction on journalists and other actors in the media space is accepted as long as it is in accordance with the law.

107. Article 9(2) of the African Charter provides that “*Every individual shall have the right to express and disseminate his opinion within the law*” (*emphasis ours*). The African Commission in its quest to elaborate on Principles that anchor the rights to freedom of expression in conformity with Article 9 of the African Charter established the DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA ADOPTED in 2019. The Declaration forms part of the soft-law corpus of Article 9 norm aimed at supporting the State in the understanding of their obligation to create an enabling environment for the exercise of freedom of expression.

108. The Declaration expounded the conditions for justifiable limitations in the enjoyment of the right to freedom of expression. Principle 9 of the

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Declaration provides that States may only limit the exercise of the rights to freedom of expression if the limitation:

1. is prescribed by law,
2. serves a legitimate aim;
3. is a necessary and proportionate means to achieve the stated aim in a democratic society.

109. These permissible restrictions are also recognised by other international human rights bodies. Article 19(3) of International Convention on Civil and Political Rights which has been elaborated by *General Comment No. 34: Article 19 of ICCPR, Freedom of Expression* 2010 paragraphs 21-35; Article 10(2) of the European Convention of Human Rights elaborated in the Guide on Article 10 of the European Convention on Human Rights (Freedom of expression), which are all in pari-materia with the Declaration on Freedom of Expression formulated by the African Commission.

110. The Court will now proceed to examine these conditions to determine whether the restrictions imposed by the contested sections of the Press Act meet the threshold of the Declaration and can thus be justified.

Prescribed by law/ In accordance with the law.

111. The requirement for limitations regarding freedom of information and expression to be 'provided by law' is an important guarantee of the rule of law. It includes a formal requirement of legality - that is, that there be a legal basis for restrictions same having being prescribed by law. In that regards, Principle 9(2) of the Declaration provides that any law limiting the rights to freedom of expression and access to information must be a) clear, precise, accessible and foreseeable; b) is overseen by an independent body in a manner that is not arbitrary or discriminatory; and c) effectively safeguards against abuse including through the provision of a right of appeal to independent and impartial courts.

112. It is not in contest that the restrictions in this matter are prescribed by law. Indeed that is the basis of this Application. The Applicants identified and pleaded the sections, namely sections 19 (1) (a), 27, and 37 of the Nigeria

Press Act of Nigeria 1992. The Respondent having not controverted this averment, the Court therefore finds that the alleged restriction being premised on a national legislation is prescribed by law and meets the thresholds provided by Art 9(2) of the Declarations.

Serves a legitimate purpose.

113. The legitimacy test ensures that the purpose for which the government restricts the right to freedom of expression is real and important. Thus a restriction that is prescribed by law must also serve a legitimate purpose. The legitimate purpose of a restriction or interference with a guaranteed right and in this case on journalist is usually premised on public order, the rights and reputation of others, a serious threat to national security or morality See PRINCIPLE 9(3) OF THE DECLARATION. Instances of restrictions on the dissemination of specific content for example- pornographic, an incitement to violence is justifiable as serving a legitimate purpose.
114. The Respondent submitted that the requirements of compulsory membership and educational requirements are necessary in order to have an identifiable body of media practitioners who can be held to professional standards as in other professions like to lawyers or doctors. In essence, the legitimate aim pursued by the Respondent is to obtain a professional standards in tandem with other professions which have entry requirement for admission.
115. The Court has expressed its views that this approach is untenable in view of the fact that freedom of expression is a guaranteed right as against other professions. A restriction in this wise will undermine the right to information, and limit sources of information available to the public to choose from, by eliminating the content of new actors in the media landscape. This cannot under any circumstance be seen as a legitimate aim.
116. The Court is of the opinion and consequently holds that contested sections 19(1) a, 27 & 37 of the Press Act that impose an age limit, compulsory accreditation and minimum educational qualification do not present a demonstrable legitimate aim in mind especially in the current media frontiers.





The necessity test

117. To justify an interference in a guaranteed right, the Respondent must equally show that it is a necessary and proportionate means to achieve the stated aim in a democratic society. In that regard, Principle 9(4) of the Declaration provides that for a restriction to be necessary and proportionate, the limitation shall:
- a. originate from a pressing and substantial need that is relevant and sufficient;
 - b. have a direct and immediate connection to the expression and disclosure of information, and be the least restrictive means of achieving the stated aim;
 - c. be such that the benefit of protecting the stated interest outweighs the harm to the expression and disclosure of information, including with respect to the sanctions authorised.
118. The purport of “legitimate purpose” was well captured by the African Court when it held that *“the reasons for possible limitation must be based on legitimate public interest and the disadvantages of the limitation must be strictly proportionate to and absolutely necessary for the benefits to be gained”*. LOHE ISSA KONATE v. BURKINA FASO APP NO. 004/2013.
119. On the sub-issue of proportionality, the African Commission enunciated some guidelines to determine whether, by the action of the state, a fair balance has been struck between the protection of the rights and freedoms of the individual and the interests of the society as a whole. In determining whether an action is proportionate, the Commission postulated the following questions:
- a. Was there sufficient reason supporting the action?
 - b. Was there a less restrictive alternative?
 - c. Was the decision-making process procedurally fair?
 - d. Were there any safeguards against abuse?
 - e. Does the action destroy the very essence of the Charter rights in issue?

ZIMBABWE LAWYERS FOR HUMAN RIGHTS AND ANOTHER V ZIMBABWE (2009) AHRLR 235 PARAGRAPH 176 AS FOLLOWS:

120. The facts presented by the Respondent have not demonstrated any justification that indicates that the restrictions are necessary, proportionate or the known least restrictive measures. The Court therefore holds that the restrictions do not meet the necessity test.
121. The Court hastens to state that the three conditions of prescription by law, legitimacy and necessity tests are cumulative, a failure of one is a demise of all. Consequently, in the instant case, the restrictions on the practice of journalism, though permissible due to its prescription by law but having failed the legitimacy and necessity tests, the Court finds that restrictions are inconsistent with the Charter.
122. The Court in concluding its examination and findings on this Application, stresses that the law is a living and dynamic creation, adopted to regulate the affairs of man who inherently is an embodiment of constant change. Consequently, the Law must also continually remain in tandem with the current reality of man.
123. In this regard, the Court fully aligns with and finds an apt conclusion of this matter in the words of Lord Denning when he said *“If we never do anything which has not been done before, nothing will change; the entire world will move on whilst the law remains the same and that will be bad for both the world and the law.* See *PACKER v PACKER* [1953] 2 ALL E.R.
124. In consonance with the charge of Lord Denning, the Court finds that the media space has evolved into a vibrant fast evolving digital frontier such that the Press Act of Nigeria as it is currently constituted is out of tune with all the dynamic platforms for expression of opinion that presently exist. The traditional media must encompass the new media and the law must enable it. Therefore, a review of the Press Law is apt, otherwise the world will pass it by in its stagnation.
125. The Court therefore holds that Sections 19(1) a, 27 & 37 of the Press Act of Nigeria 1992 are in contravention of Article 9 of the African Charter.

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b.) On the allegation that the unlawful arrest and detention violates the African Charter.

126. The Applicants are also seeking a declaration that unlawfully arresting and detaining them while gathering and investigating information violates the provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights of 1966, African Charter on Human and Peoples' Rights and Declaration of Principle on Freedom of Expression in Africa (2002).
127. Both Applicants allege that their individual arrest and detention was unlawful. The First Applicant for failing to obtain authorization for the tour of a facility and the second Applicant for taking photos at the Court premises.
128. The applicable law on the right to liberty is Article 6 of the African Charter, which provides as follows: *"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."*
129. The import of this provision is that the right to liberty is guaranteed, but it is not absolute, as it can be interfered with in accordance with the provision of the laws. The Court has in a plethora of decisions held that arrest/detention made within the confines of the appropriate domestic law and other relevant international instruments cannot be said to be arbitrary. NOEL MIAN DIALLO V. NIGERIA & ANOR JUDGMENT NO ECW/CCJ/JUD/14/19 @ PG. 12 & 13.
130. In this regard, The Court will now proceed to analyse seriatim the facts presented by each Applicants to determine whether their alleged arrest and detention was unlawful as claimed.

On the alleged unlawful arrest of the first Applicant.

131. The 1st Applicant allege that he was arrested by agents of the Respondent on 2 September 2008, while he was on a facility tour of the Orotogun Gas Plant operated by Shell Petroleum Development Company, to investigate the

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current state of gas flaring at the plant. The Respondent on the other hand whilst confirming the arrest, state that he was arrested for making recordings of some facilities without any clearance from appropriate quarters which may cause grave national security implications. That in any case, he was released on the evening of the same day.

132. Exhibit B- a newspaper report confirm in more details that the 1st Applicant was arrested on September 2nd 2008 by the officers of the Joint Task Force (JTF) in Warri Delta State but was released that night and ordered to report to the office of the JTF in Warri at 9.am on September 3rd. However, there is no further information whether the First Applicant reported as ordered or that he was detained or charged to Court.

133. In examining the facts narrated by the 1st Applicant on his arrest, the Court notes that the whole scenario upon which the allegation is based was narrated in only 2 short paragraphs of the Initiating Application that is 13 and 14.

Parag 13 – *“The 1st Plaintiff was also arrested by the agents of the defendant on 2nd day of September 2008 while he was on facility tour of the Otorogun Gas Plant operated by Shell Petroleum Development Company to see the current state of gas flaring at the plant. The men who embarrass us are directly under the Chief of Defence Staff. Evidence of the report of the arrest is attached as Exhibit B”*

Parag 14 – *“The men of the Defendant claimed that the 1st Plaintiff and his team may have electronically recorded some facilities which have grave national security implications.”*

134. Based on these averments, the Applicant is seeking a declaration that his unlawful arrest and detention violates the provisions of the African Charter and other international human rights instruments. This information does not address how the safeguards of arrest were violated. For instance, that the arrest was carried out outside the purview of the law, that is, arrest was by unauthorized persons, without proper reason, without a warrant of arrest and without following a prescribed procedure for lawful arrest.



135. In fact the narration did not indicate who carried out the arrest. This was only gleaned by the Court from Annexure B - the attached newspaper- which disclosed that the 1st Applicant was arrested by men of the JTF (a team of combined security personnel on security patrol of the Niger-delta area).
136. The Court restate that the watch word for the validity of any arrest is lawfulness and reasonableness. In other words, the powers of arrest must not only be provided for under the law but the grounds upon which it is exercised must be reasonable, otherwise it becomes arbitrary. MR. GODSWILL TOMMY UDOH V FEDERAL REPUBLIC OF NIGERIA (2016) CCJELR@ pg. 621.
137. A claim of unlawful/arbitrary arrest must therefore establish these facts. The Court notes that the 1st Applicant has not placed before the Court any evidence either factual or legal to support the allegation that his arrest by men of the JFT is not in accordance with the Law and is therefore unlawful.
138. It trite that in the course of a trial, the party making the allegations must prove it. The constitution and demonstration of the evidence therefore falls on the concerned parties. They must use all the legal means and provide evidence to support their claims. Such evidence must be convincing to establish a connection between them and the claimed facts. MS ROSE BREIVOGEL & ANOR V FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/05/22.
139. Consequently, the Court finds that the 1st Applicant has not substantiated the allegation of his unlawful arrest and holds that his right to liberty has not been violated by the Respondent.

On the alleged unlawful detention of the first Applicant.

140. The 1st Applicant also claim that his unlawful detention is a violation of his right under the Charter. As earlier noted supra 114 in the case of the arrest of the 1st Applicant, the facts supporting the alleged detention is even scantier. The only averment alleging the detention of the 1st Applicant was not pleaded in the initiating Application but was found in exhibit B where it reported that “*they were later released in the night and ordered to report*



back at the JTF office in Warri at 9 am on September 3” The Court recalls that the arrest was alleged to have taken place on September 2.

Analysis of the Court.

141. Since the arrest was based on the alleged failure to obtain an authorization to inspect a gas plant, it is assumed that the attendant detention is equally premised on the non- authorization to inspect the gas plant.
142. An arbitrary detention is any form of curtailment of individual liberty that occurs without a legitimate or reasonable ground, and is in violation of the conditions set out under the law. *BADINI SALFO V. THE REPUBLIC OF BURKINA FASO (2012) CCJELR @ pg. 281.* Therefore for a detention to be adjudged unlawful being arbitrary, it must establish that procedural guidelines have been breached amongst which is that it occurred without a legitimate or reasonable ground, and is in violation of the conditions set out under the law.
143. The Court is not presented with any evidence that the 1st Applicant had an authorization to inspect the facility which would have made the alleged detention unreasonable, or that it was unduly prolonged or that the reasons for the detention was not prescribed by law.
144. The Court is of the opinion that it is absurd for the 1st Applicant to seek a relief for the violation of his right to liberty on the basis of a scanty averments devoid of any facts that corroborate the alleged detention. The Court does not make declarations in regard to assertions or intentions, but indeed in regard to legal acts or concrete actions which cause prejudice to human rights. As such, it cannot infer transgression of rights from mere statements; the Court expects every party submitting an application before it to establish that the violation of the right being claimed is real, concrete and actual. In other words, any averment concerning rights violation must be accompanied by facts and must be corroborated by precise indications of violations pertaining directly to recognised human rights. *MAMADOU BABA DIAWARA V. REPUBLIC OF MALI (2015) CCJELR @ pg. 411.*

145. The fundamental rule of evidence regarding burden of proof is that the party alleging the existence of facts must lead evidence in affirmation of those facts. It is trite that he who alleges must prove. The burden of proof in civil cases rests on the party that will lose if no evidence is led. Proof of facts alleged is either by production of documents oral testimony or production of material for examination by the Court. The court has stressed that merely stating allegations without more does not discharge the burden placed on the Applicants to prove their case. GABRIEL INYANG & ANOR V THE FEDERAL REPUBLIC OF NIGERIA, ECW/CCJ/JUD/20/18 unreported.

146. Accordingly, the Court holds that the allegation that the detention of the 1st Applicant is unlawful is unsubstantiated and therefore holds that the Respondent did not violate the 1st Applicant's right to liberty guaranteed by the African Charter.

On the alleged unlawful arrest and detention of the 2nd Applicant.

147. The 2nd Applicant alleged she was arrested and detained for some hours for taking pictures at a Court premises - a conduct according to the Respondent that is capable of disruption public peace and order. She was however released the same day but arraigned days later and charged before a Magistrate Court for a crime of disruption public peace and order contrary to section 126 (1) &(2) of the Criminal Code of Federal Republic of Nigeria.

148. In her ruling, the Magistrate who presided over the hearing, discharged and acquitted the 2nd Applicant as in her opinion, taking pictures under the circumstances in question cannot be said have a potential to disturb public peace. The 2nd Applicant is therefore seeking a declaration that her unlawful arrest and detention violates her rights as provided by the Charter.

Analysis of the Court.

149. As earlier stated supra 133, an arbitrary detention is any form of curtailment of individual liberty that occurs without a legitimate or reasonable ground, and is in violation of the conditions set out under the law. In other words it does not repose on a legal basis. HADIJATOU MANI KORAOU V. REPUBLIC



OF NIGER (2004-2009) CCJELR @ pg. 217 and BODJONA AKOUSSOULELOU PASCAL V. THE REPUBLIC OF TOGO (2015) CCJELR @ pg. 103.

150. It is clear from the pleading as well as the admittance of the 2nd Applicant that she was arrested and charged for an offence of disturbing public peace contrary to section 126(1) & (2) of the Criminal Code which is the national law that deals with criminal matters in the southern part of Nigeria. Therefore the arrest was within the remit of the law. The Court has in a plethora of decisions held that arrest/detention made within the confines of the appropriate domestic law and other relevant international instruments cannot be said to be arbitrary. NOEL MIAN DIALLO V. NIGERIA & ANOR JUDGMENT NO ECW/CCJ/JUD/14/19 PAGE 12 & 13.
151. The Court is of the opinion that the arrest of the 2nd Applicant which measure was taken within the framework of a judicial procedure on grounds of offences provided for and punished by the Criminal Code of Nigeria, is not arbitrary. ECW/CCJ/JUD/08/13 ASSIMA KOKOU INNOCENT & ORS V. REPUBLIC OF TOGO (2013) CCJELR @ pg. 187
152. Since the detention of the Applicant had a legal basis, it cannot be described as unlawful or arbitrary. An arrest made on legal grounds cannot be said to be arbitrary. EL HAJI MAME ABDOU GAYE v. THE REPUBLIC OF SENEGAL 2012 CCJELR @ pg. 19
153. The Court is of the opinion that it is not within its remit to adjudge whether the charges for which the Applicant was arrested and detained were established or not, so as not to run the risk of usurping the powers of the domestic courts of the member state in question, which would be contrary to the established and consistently held case law of the honorable Court. The jurisdiction of the Court simply lies in examining whether the arrest and related detention of the Applicant had a legal basis. MR. KPATCHA GNASSINGBE & ORS V REP OF TOGO (2013) CCJELR @ pg. 141

154. Having found that the arrest of the 2nd Applicant is not bereft of legal basis, the Court holds that her arrest and detention is lawful and is not in violation of Article 6 of the African Charter.

X. REPARATION

155. Reparations for a wrongful act is an important principle of international law, which requires a State which has been found liable for a human rights violation, to restore the victim to the status he/she would have been had his/her rights not been violated. This is done by giving effective remedies, including compensation and restitution to the victim.

156. A State must make full reparation for any injury caused by an illegal act for which it is internationally responsible. Reparation consists of full restitution of the original situation if possible or compensation where that is not possible or satisfactory that is, acknowledgement of or an apology for the breach, may contribute immensely to resolving wounds from the violation. MOUKHTAR IBRAHIM V. GOVERNMENT OF JIGAWA STATE & 2 ORS (2014) CCJELR @ pg.147 See also HAMMA HIYA & ANOR V REPUBLIC OF MALI JUDGMENT NO. ECW/CCJ/JUD/05/21 PARAGRAPH 64.

157. The Applicants pray the Court to grant the following reliefs:

a). A **declaration** sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992 be declared void on the ground that it fails to recognize public interest media viz; rights of online and citizen journalists as guaranteed in Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, Article 2, 10 and 19 of the International Covenant on Civil and Political Right of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002)

b). A **declaration** that Defendant's requirement of 25 years and 18 years of age qualification for the job of editor and practice of journalism in Nigeria as provided for in sections 19 (3) (b) and 37 of the Press Council Act of 1992 is not based on equal opportunities and a violation of the Plaintiffs' rights under



Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, articles 2, 10 and 19 of the International Convention on Civil and Political Rights of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002)


c). **A declaration** that the statutory obligation of having attended a course of training on journalism for one to be recognized by the Council as a journalist as provided in Sections 19 (1) (a) (3) and 27 of the Press Council Act of 1992 is in violation of the Plaintiffs' rights under Article 9(1) and (2) of the African Charter on Human and Peoples Rights; Articles 19 of the Universal Declaration of Human Rights, Articles 2, 10 and 19 of the International Convention on Civil and Political Rights of 1966 and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002)

d). **A declaration** that, by the continued enforcement of sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992, the Defendant is in breach of its obligation under the Revised ECOWAS Treaty, the African Charter on Human and Peoples Rights and Declaration of Principle on Freedom of Expression in Africa (2002)

e) **A declaration** that unlawfully arresting and detaining the plaintiffs while gathering and investigating information violates the provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights of 1966, African Charter on Human and Peoples' Rights and Declaration of Principle on Freedom of Expression in Africa (2002).

f) **AN Order** compelling the Defendant to amend the provisions of sections 19 (1) (a) (3) (b), 27, and 7 of the Press Council Act of Nigeria of 1992 in line with global practices and to promote free, pluralistic and professional journalism.

g) **A perpetual injunction** restraining the Defendant from further giving effect to the provisions of sections 19 (1) (a) (3) (b), 27, and 37 of the Press Council Act of Nigeria of 1992.



- h) Compensatory damages to the Plaintiffs to the tune of N1,000,000 USD for discrimination, wrongful detention, and malicious prosecution of the 1st and 2nd Plaintiffs against the defendants jointly and severally.**
- i) Other consequential order(s) as this honourable court may deem fit to grant in the circumstance.**

Analysis of the Court

- 158. *On violation of Article 2 of the African Charter:* The Applicants' claim is for a declaration that the contested sections 19 (1) (a) (3) (b), 27, and 7 of the Press law of Nigeria 1992 is discriminatory as it is not based on equal opportunities. Having ruled that the allegation is unsubstantiated, the relief sought by the Applicants is hereby dismissed.
- 159. *On violation of Article 9 of the African Charter:* The Court having found merit in the claim that the contested sections 19 (1) (a) (3) (b), 27, and 7 of the Press law of Nigeria 1992 is in violation of the charter, grants the declaratory relief so sought a), c) & d) above. Consequently, The Court grants an order compelling the Defendant to amend the provisions of sections of the Press Council Act of Nigeria of 1992 in line with global practices and to promote free, pluralistic and professional journalism. The Applicants did not seek any pecuniary damages, therefore none is awarded.
- 160. *On the violation of Article 6 of the African Charter,* The Court having held that the Applicants have not substantiated the allegation, the claim for one million USD as compensation is accordingly dismissed.

XI. OPERATIVE CLAUSE

For the reasons stated above, the Court sitting in public after hearing both parties:

As to jurisdiction:

- i. Declares that the Court has jurisdiction to adjudicate on the Application.**

As to admissibility:



- ii. **Declares** that the Application is admissible.

As to merits:

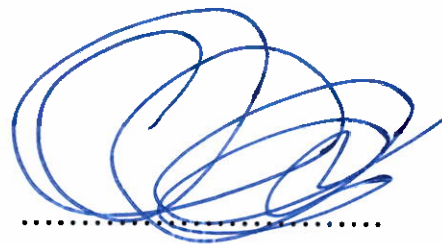
- iii. **Declares that** Sections 19 (1) (a), 27, and 37 of the Press Council Act of Nigeria of 1992 fails to recognize public interest media viz; rights of online and citizen journalists as guaranteed in Article 9(1) of the African Charter on Human and Peoples Rights; and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002);
- iv. **Declares that** Sections 19 (1) (a) (3) and 27 of the Press Council Act of 1992 is in violation of Article 9 of the African Charter on Human and Peoples Rights; and Article 8 (1) and 10 (2) of the Declaration of Principle on Freedom of Expression in Africa (2002);
- v. **Declares that** the arrest and detention of the 1st Applicant while gathering and investigating information was not unlawful and did not violate the provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights of 1966, African Charter on Human and Peoples' Rights;
- vi. **Declares that** the arrest and detention of the 2nd Applicant was lawful and is not in violation the provisions of the Universal Declaration of Human Rights, International Convention on Civil and Political Rights of 1966, African Charter on Human and Peoples' Rights;
- vii. **Orders** the Respondent to amend the provisions of Sections 19 (1) (a) (3) (b), 27, and 7 of the Press Council Act of Nigeria of 1992 in line with its obligation under Article 1 of the African Charter.
and bring them in line with global practices and to promote free, pluralistic and professional journalism and

As to costs:

- viii. **Orders** both Parties to bear their own costs.



Hon. Justice Edward Amoako ASANTE – Presiding



Hon. Justice Dupe ATOKI – Judge Rapporteur



Hon. Justice Sengu Mohammed KOROMA - Member



Dr. Yaouza OURO-SAMA - Chief Registrar



Done in Abuja this 24th Day of November 2023 in English and translated into French and Portuguese.

