

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

**SUIT NO: ECW/CCJ/APP/17/14**

**BETWEEN**

<b>1) DOROTHY CHIOMA NJEMANZE 2) EDU ENE OROKO 3) JUSTINA ETIM 4) AMARACHI JESSYFORD</b>	}	<b>PLAINTIFFS</b>
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**AND**

**FEDERAL REPUBLIC OF NIGERIA..... DEFENDANT**

**RESPONDENT'S STATEMENT OF DEFENCE AGAINST PLAINTIFFS'  
ORIGINATING APPLICATION PURSUANT TO ARTICLE 35 OF THE RULES OF  
THE COMMUNITY COURT OF JUSTICE**

**1. NAMES AND ADDRESSES OF THE DEFENDANT**

**The Federal Republic of Nigeria**  
C/o Hon. Attorney General of the Federation  
Federal Ministry of Justice,  
Shehu Shagari Way  
Maitama, Abuja

**2.00 STATEMENT OF FACTS BY THE DEFENDANT**

- 2.01 SAVE AND EXCEPT as hereinafter expressly admitted the Defendant denies each and every allegation of facts contained in the Plaintiffs' Statement of fact as if same is set out and traversed seriatim.
- 2.02 The Defendant denies paragraphs 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 of the Plaintiffs' Statement of facts and puts the Plaintiffs to the strictest proof thereof.
- 2.03 In response to paragraphs 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14 and 4.15 of the Plaintiffs' Statement of facts and Defendant States that the Nigerian Police, the Abuja Environmental Protection Board (hereinafter referred to as

AEPB) and the Nigerian Army are statutory bodies established for the purpose of enforcement of law and order in Nigeria.

- 2.04 In further response to paragraphs 4.1 to 4.15 of the Plaintiffs statement of facts, the Defendant states that no persons were arrested and/or detained by the Nigerian Police, Nigerian Military or men of the AEPB as alleged by the Plaintiffs therein.
- 2.05 The Defendant states that if at all the alleged three girls were arrested by the Nigerian Police and men of the AEPB, neither the 1<sup>st</sup> nor the 2<sup>nd</sup> to the 4<sup>th</sup> plaintiffs were, among them; the Plaintiffs therefore lack the legal capacity to bring a complaint before the Community Court of Justice on those grounds.
- 2.06 The Defendant denies paragraphs 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 4.27, 4.28, 4.29 and 4.30, of the Plaintiffs' Statement of facts and puts the Plaintiffs to the strictest proof thereof.
- 2.07 In response to paragraphs 4.18 to 4.30 of the Plaintiffs' statement of facts, the Defendants states that the facts averred therein are false.
- 2.08 The 1<sup>st</sup> Plaintiff's story as contained in paragraphs 4.16 to 4.30 is a cooked up story with the sole aim of attracting the sympathy of the Community Court of Justice.
- 2.09 The Defendant in further response to the Plaintiffs Statement of facts, states that the 1<sup>st</sup> plaintiff had at no time had the alleged experience with either the Nigerian police, Nigeria Army or the men of AEPB.
- 2.10 The Defendant states that the 1<sup>st</sup> Plaintiff is hiding under the canopy of human right activism to campaign for the legalisation of prostitution in public places in the Federal capital Territory.
- 2.11 The Defendant states that the 1<sup>st</sup> plaintiff is actively involved in the coordination and conduct of the trade or business of professional commercial sex workers (prostitution) in the FCT.
- 2.13 The Government of the Federal Republic of Nigeria, the FCT administration and indeed the international bodies in Africa are against commercial sex work popularly called "**ashawo**" in Nigeria, as same constitutes nuisance and a violation of the moral values of our African society.
- 2.14 In particular response to paragraph 4.18, the Defendant states that the person described as a Man 'O war by the Plaintiffs is not an agent of the Defendant. The Plaintiffs cannot hold the Defendant liable for the act(s) of any man in the street.
- 2.15 In further response to paragraph 4.18, the Defendant states that the Plaintiffs (prostitutes) dress naked or half naked by the road side soliciting for men to both uninterested and interested members of the public including innocent infants.
- 2.16 The Defendant denies paragraphs 4.31 to 4.33 of the Plaintiffs' statement of facts and puts the Plaintiffs to the strictest proof thereof.
- 2.17 The Defendant in response to paragraphs 4.31-4.33 states that only an insane or an idle person can be in the street at 12 midnight in the name of collecting signatures.
- 2.18 The Defendant states that the 1<sup>st</sup> Plaintiff is an active commercial sex worker who at all times clashes with the authorities who are performing their duty sanitizing the FCT of sex workers in public places.
- 2.19 The Defendant denies paragraphs 4.34 to 54 of the Plaintiffs statement of facts and puts the plaintiffs to the strictest proof thereof.



- 2.20 In particular response to paragraph 4.53 of the Plaintiffs' statement of facts, the Defendant states that the 1<sup>st</sup> Plaintiff is not only a prostitute but a coordinator of a group of prostitutes in the FCT and its environ.
- 2.21 The 1<sup>st</sup> plaintiff by paragraph 4.53 of the Plaintiffs Statement of facts has admitted being a prostitute and agreed to mobilise other prostitutes like her at the instance of the House committee Chairperson on public petition when they met.
- 2.22 The Defendant denies paragraphs 4.55, 4.56, 4.57, 4.58, 4.59, 4.60, 4.61, 4.62, 4.63, 4.64, 4.65, 4.66, 4.67, 4.68, 4.69, 4.70, 4.71 and 4.72 and puts the Plaintiffs to the strictest proof thereof.
- 2.23 The Defendants states that the 2<sup>nd</sup> Plaintiff was never arrested at any point by the men of AEPB, the Nigeria police, the Nigerian Army nor any of the security agencies or any (person working for the Defendants).
- 2.24 The Defendant states that there is such record of arrest, detention and or prosecution of the 2<sup>nd</sup> plaintiff as such persons (suspected Prostitutes) AEPB were handed over to the police and prosecuted in line with the laws of the country in furtherance to the directive of the FCT administration.
- 2.25 The Defendant states that no record whatsoever exist to show that the 2<sup>nd</sup> Plaintiff or any of her imaginary friends (Muna, Mubo and Iveren) were arrested and detained by men of the Nigerian Police, Nigerian Army or of AEPB.
- 2.26 The Defendant states that in line with the directives of the FCT administration to keep Abuja and its environ free from public prostitution, the FCT administration has empowered the AEPB in collaboration with the Nigerian Police to arrest, detain and prosecute any woman soliciting/offering herself for sexual service at night at any public place in the FCT.
- 2.27 The Defendant states that the 2<sup>nd</sup> Plaintiff is one of such lucky prostitutes (commercial sex workers) that escaped arrest and prosecution thereby joining force with her cohorts to scuttle the effort of the FCT administration to keep Abuja free from activities of Commercial sex workers.
- 2.28 The Defendant states that the 2<sup>nd</sup> Plaintiff's alleged incident of violation, allegedly occurred on 9<sup>th</sup> January, 2010 but this present suit was only filed on the 18<sup>th</sup> of September, 2014 more than 3 year after the alleged event took place. The 2<sup>nd</sup> Plaintiff's cause of action died on the 10<sup>th</sup> day of January, 2013 and cannot be entertained by this court.
- 2.29 The Defendant denies paragraphs 4.73-4.85 of the Plaintiff's statement of facts and puts the plaintiff to the strictest proof thereof.
- 2.30 The 3<sup>rd</sup> Plaintiff was not at any time arrested by either the men of ACPB, the Nigerian Police or the Nigerian Army at anytime.
- 2.31 The 3<sup>rd</sup> Plaintiff is one of those commercial sex workers that use touts who patronise them to attack the men of AEPB and hinder them from performing their legal functions.
- 2.32 The 3<sup>rd</sup> Plaintiff is not a law abiding citizen of Nigeria; it is required of Law abiding citizen of Nigeria not to resist arrest but dutifully follow any Law enforcement agent to wherever he/she is required to go and make her statement without fighting or struggling.



- 2.33 The Defendant states that the facts stated by the 3<sup>rd</sup> Plaintiff are false and are fabricated by the 3<sup>rd</sup> Plaintiff to enable her get clearance from the court to give her a passport to continue her illicit commercial sex work at public places.
- 2.34 The Defendant States that the name used by the 3<sup>rd</sup> plaintiff in the statement of fact as her friends are non-existent and imaginary.
- 2.35 The Defendant states that there is no such incidence of rape, and stabbing of a mechanic reported in any police station in FCT.
- 2.36 The Defendant denies paragraphs 4.86 to 4.93 of the Plaintiffs' statement of facts and puts the Plaintiffs to the strictest proof thereof.
- 2.37 The facts stated by the 4<sup>th</sup> Plaintiff are false as the 4<sup>th</sup> plaintiff was never at any point in time arrested by neither men of AEPB, the Nigerian Police nor the Nigerian Army within the time she alleged and there is no record of arrest, detention and or prosecution of the 4<sup>th</sup> Plaintiff or any of her alleged friends at Gwarinpa Police Station.
- 2.38 The 4<sup>th</sup> Plaintiff did not report her alleged unlawful arrest/ detention to the commissioner of police FCT, the Inspector General of Police or the Human Right Commission.
- 2.39 The Defendant states that the Plaintiff s are individuals whose only common interest is their campaign for freedom to carry on their business of prostitution anywhere they deem fit.
- 2.40 The Plaintiffs belong to the cadre of Prostitutes popularly called "**Big Aunty**" who gather and coordinate other young girls involved in the business of commercial sex work.
- 2.41 The Plaintiffs belong to the class of prostitutes (commercial sex workers) that are fully established in Abuja and with their weight of connection always cajole other young girls in need of help into prostitution for their own benefit.
- 2.42 The Plaintiffs are afraid that if prostitution is finally and completely eradicated, they may be put out of business and they are doing everything within their powers including filing of this suit to stop the FCT administration from achieving its set goal of eradicating public prostitution in Abuja.
- 2.43 The Defendant states that the point/places where the plaintiffs alleged that they were arrested such as **Ademola Adetokumbo Crescent**, and **Gwarimpa**, are notorious places in FCT used by both nationals and foreign nationals; to propagate the activities of the Plaintiffs(prostitutes), and such places have painted a bad image of the Country.
- 2.44 The Defendant states that the *modus operandi* (mode of operation) common among street prostitutes are:
- a. Standing by "**Mai Suya**" Joints (*barbecued meat vendors*);
  - b. Walking across the road and back to the same point without going anywhere with the sole intention of attracting the attention of men;
  - c. Standing by the road side under street light waiting for customers.
  - d. dressing half naked with skimpy skirts or bump shorts, displaying their bodies to attract men
  - e. Standing by the road between the hours of 8pm- 3.00 am, harassing men and calling out to their customers



- f. obstruct the way of men who are on their legitimate businesses just to appeal to the men to patronize their sex business.
- 2.45 The Defendant states that by the admission of the 1<sup>st</sup> Plaintiff that the Chairperson House Committee on Public Petitions had asked her to coordinate other prostitutes and the way the plaintiffs alleged that they were arrested it is clear that the plaintiffs belong to a syndicate of organised prostitutes.
- 2.46 The Defendant states that Prostitution is injurious to the image of Nigeria and West Africa at Large and cannot be encouraged under the canopy of human right protection.
- 2.47 The Defendant States that People like the plaintiffs who have made themselves “**Big Aunties**” and Coordinators of young girl in the business of prostitution will greatly be affected if finally the FCT Administration succeeds in stamping out prostitution, hence the effort of the plaintiffs stop this crusade.
- 2.48 The Defendant states that there is no international convention, Domestic Law or Culture in Nigeria that recognises Prostitution as a legitimate business; it is actually a criminal offence to indulge in prostitution in public place.
- 2.49 The Defendant states that the activities of the Plaintiffs (Prostitutes) are injurious to the moral life of the FCT in particular and the society at large.
- 2.50 The Defendant states that Prostitution is a crime under the Nigerian law, particularly the Penal Code, applicable to the FCT.

### **3.00 DEFENDANT’S PLEA OF LAW**

#### **SUMMARY OF LAW**

- 1. ARTICLES 4, 6, 18, 22,24 , 27, 29 and 61 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS**
- 2. ARTICLE 35 OF THE RULES OF THE COMMUNITY COURT OF JUSTICE, ECOWAS**
- 3. SECTIONS 35 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999**
- 4. PARAGRAPHS 5 AND 7 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS**
- 5. SECTION 405(2)d OF THE PENAL CODE CAP P3 LAW OF THE FEDERATION OF NIGERIA, 2004**



6. **ARTICLE 9(3) OF THE SUPPLEMENTARY PROTOCOL OF COMMUNITY COURT OF JUSTICE, 2005**

7. **ARTICLE 29(2) UNIVERSAL DECLARATION OF HUMAN RIGHTS**

3.00 **ISSUES FOR DETERMINATION:**

- 1) *Whether the arrest, detention and prosecution of the prostitutes (plaintiffs) is justified under the African Charter on Human and Peoples' Right?*
- 2) *Whether the application of the Plaintiffs is admissible in view of the fact that they are asking the court to grant them the freedom to violate an extant law of a member state?*
- 3) *Whether The Claim Of The 2<sup>nd</sup> Plaintiff Is Statute Barred?*

**ISSUE ONE:**

*Whether the arrest, detention and prosecution of the prostitutes (plaintiffs) is justified under the African Charter on Human and Peoples' Right?*

4.00 The competence of the Community Court of Justice in application filed by individuals arises from **Article 9(4) of the 1991 Protocol and 10(d) of the supplementary protocol on the Court of Justice**. They provide:

*Article 9(4) : The Court has jurisdiction to determine cases of violation of human rights that occur in any member state.*

*Article 10(d): Access to the Court is open to individuals on application for relief for violations of their human rights.*

These provisions enable an individual to access the court directly on human rights issues and to give the court the competence to entertain such applications.

4.01 The application of the plaintiffs is primarily premised on **Article 6 of the African Charter on Human and peoples' Rights**, which reads 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". (Emphasis added)*

4.02 **Article 4(g) of the Revised Treaty of the Economic Community of West African States (ECOWAS)** provides for the recognition, promotion and protection of human and people's rights in accordance with the provisions of African Charter on Human



and Peoples' Right. The effect of Article 6 of the African Charter on Human and Peoples' Right as stated above is that no one shall have his right to liberty limited or restricted unless it is in accord with a law previously laid down. In other words, the law under which a person is arrested, detained and/or prosecuted must have been valid and in force, before or at the time of such arrest, detention and/or prosecution.

- 4.03** The plaintiffs alleged that their rights under **Article 6 of the African Charter on Human and People's Right** have been violated and therefore seek this court to intervene pursuant to **Article 9(4) of the Supplementary Protocol, 2005**.
- 4.04** This court in the case of **ALHAJI HAMMANI TIDJANI V. THE FEDERAL REPUBLIC OF NIGERIA & 4 ORS, SUIT NO: ECW/CCJ/APP/01/06**, held that the combined effect of **Article 9(4) of the Protocol of the Court as amended, Article 4(g) of the Revised Treaty and Article 6 of the African Charter on Human and Peoples' Right** is that the plaintiff must invoke the court's jurisdiction by:
- 1 Establishing that there is a right recognized by Article 6 of the African Charter on Human and People's Right;
  - 2 That this right has been violated by the Defendant;
  - 3 That there is no action pending before another international court in respect of the alleged breach of his right.
  - 4 That there was no previously laid down law that led to the alleged breach or abuse of his rights.
- 4.05** We submit with utmost humility that the rights provided for under Article 6 are not absolute but subject to the consideration and obedience to law previously laid down which the applicant is subject to. That is to say that where the alleged violation of the Plaintiffs' right was done as a result of the plaintiffs' breach of an existing law, the Plaintiff cannot seek this court to invoke Article 6 in their favour.
- 4.06** Furthermore, the use of the word "**May**" in the said Article 6 suggests that the rights provided for under Article 6 can be abridged in certain cases especially for the purpose of the enforcement of an existing law.
- 4.07** We submit that under Nigerian Law, the **Penal Code CAP P3, LAWS OF THE FEDERATION OF NIGERIA(LFN), 2004**, any act of prostitution in public places is prohibited. **Section 405(1) d of the said Penal code** which is extant law applicable in the Federal Capital Territory (FCT) provide thus:

*"The term "Idle person" shall include-  
(d) any common prostitute having in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution"*

**Section 40** further provides thus:

*"Whoever is convicted as being an idle person shall be punishable with imprisonment for the term which may extend in the case of a person falling within the provisions of paragraph (a), (b), (c), (d) or (e) of the subsection (1) of section 405,....."*



**4.08** In the instant case, the plaintiffs alleged that men of Abuja Environmental Protection Board (AEPB), Nigerian Police and Nigerian Army arrested, detained and assaulted them, as such violated their rights provided under Article 6 of the African Charter on Human and Peoples' Right.

**4.09** We submit that the jurisdiction of this court cannot be invoked by the plaintiffs because the condition precedent has not been satisfied. The effect of Article 6 of the African Charter is that whoever comes to equity must come with clean hands. We submit that the plaintiffs who are professional prostitutes have not come to this court with clean hands and as a result, this court does not have jurisdiction to entertain their claims. We submit that the plaintiffs do not have the right of action in this suit, the effect of which robs the court the necessary jurisdiction to entertain their claim. We refer this court to the case of **EFCC V. EKEOCHA (2008)14 NWLR (PT. 1106) 161 CA** where the court of Appeal held at page 178, in paragraph B-E; H ratio 6 as follows;

*“The issue of jurisdiction is serious and exceptional in all matters so much that it cannot even be compromised by parties or the court. Parties cannot individually or by consent or agreement confer jurisdiction on a court when there is none. Also, no party can waive his right on an issue bordering on jurisdiction. The competence of a court to adjudicate upon a matter is a legal and constitutional prerequisite without which a court is a lame duck. Court are creatures of statutes and their jurisdiction is confined, limited and circumscribed by the statutes which created them a court cannot in essence give itself or expand its jurisdictional horizon by misappropriating or misconstruing statutes..”*

Similarly the court held in the case of **EDET V. STATE (2008)14 NWLR (PT. 1106) 101 CA** at pages 66-67 para. G-B ratio 4 as follows:

*“Jurisdiction is fundamental to any judicial proceeding. It must be clearly shown to exist at the commencement of or during the proceedings otherwise such proceedings no matter how well conducted and any judgment arising therefrom no matter how well considered or beautifully written will be a nullity and a waste of time...”*

We urge this Honourable court to strike out the Plaintiffs' suit for want of jurisdiction and competence.

## **5.00 ISSUE TWO:**

*Whether the application of the Plaintiffs is admissible in view of the fact that they are asking the court to grant them the freedom to violate a previously existing law of a member state?*



- 5.01** The fundamental human rights of the individuals have been guaranteed by various human rights instruments. Among the core rights guaranteed by these various human rights instruments including the African Charter on Human and peoples' Rights are the right to life and integrity of the person, personal liberty, freedom from torture and other inhuman and degrading treatment and the right to political or any other opinion.
- 5.02** Article 2 of the African Charter on human and Peoples' Rights affirms the recognition and protection of basic rights of the individual. Article 2 states that:

*“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”*

- 5.03** Article 6 of the African Charter on Human and Peoples' Rights clearly states that the individual shall have the right to his liberty and personal freedom, with the proviso that rights may only be limited or restricted for reasons and conditions previously laid down by law. It is clear from the provisions of Article 6 of the African Charter on Human and Peoples' Rights that there is a presumption of innocence in favour of the liberty of the individual. Therefore, any infringement on the liberty of the individual must clearly be in conformity with reasons and conditions previously laid down by law, otherwise, such deprivation or limitation of the liberty of the individual cannot be sustained.
- 5.04** We submit in line with Article 6 above that once it is established that the infringement on the liberty of the individual is in conformity with reasons and conditions previously laid down by law, this court's jurisdiction cannot be invoked to challenge such infringement.
- 5.05** **Section 405 (1)d of the Penal Code CAP P3 LAWS OF THE FEDERATION OF NIGERIA** provides as follows:

*“The term “Idle person” shall include-  
(d) any common prostitute having in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution”*

**Section 406** of the Penal Code makes prostitution in public places an offence punishable with imprisonment for a term of three months or with fine which may extend to one Hundred Naira or with both.

- 5.06** We submit that the Penal Code is a law in force in Nigeria which the Plaintiffs in this case are subject to. If Article 6 of the African Charter makes the conformity to a previously laid down law, a condition precedent to the enforcement of the right thereof, then the jurisdiction of this court cannot be invoked by any person whose rights have



been violated in conformity to that law. See the case of **ALHAJI HAMMANI TIDJANI V. FEDERAL REPUBLIC OF NIGERIA (supra) P. 86**

- 5.07** In the instant case, the plaintiffs seek to invoke the jurisdiction of this court to declare that the arrest, detention and/or prosecution of the prostitutes (Plaintiffs) is a violation of their right to freedom of movement, personal integrity, torture, and from discrimination. We submit that assuming but not conceding that the plaintiffs' were arrested and detained by men of Abuja Environmental Protection Board (AEPB), the Nigerian Police and Nigerian Army, or any agent of the Government, the said arrest and/or detention was done in conformity with a previously laid down law in Nigeria which is **Section 405 (1) d and 406 of the Penal Code, CAP P3 LFN, 2004.**
- 5.08** We submit that the plaintiffs cannot by this suit invoke the jurisdiction of this court to declare lawful, the unlawful activities of the plaintiffs, which would be contrary to the spirit of Article 6 of the African Charter on Human and Peoples' Right. We further submit that similar to Article 6 of the African Charter on Human and Peoples' Right, other articles of the same African charter, the Universal Declaration of Human Rights and the 1999 Constitution provide limitations to the rights of individuals. Let us proceed to examine these provisions.
- 5.09** **Article 29(2)** of the Universal Declaration of Human Rights provides as follows:
- “In the exercise of his rights and freedom, everyone shall be subject only to such limitation, as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the requirements of morality, public order and general welfare in democratic society”.*
- 5.10** We submit in line with the above provisions of **Article 29(2)** of the Universal Declaration of Human Rights that the Fundamental rights of individual is subject to such limitation determined by existing law which is targeted towards protecting the rights of other persons, public morality, public order and general welfare of a democratic society. The business of prostitution is contrary to the provision of section **405(1) d of the Penal Code, CAP P3 LFN, 2004** which targets the protection of the rights of uninterested persons who make use of the public place. The law also targets the protection of public morality and order and the general welfare of a democratic society. We submit that the business of prostitution constitutes nuisance in the sight of the morally disciplined individuals whose rights not to be exposed to being solicited for such indecent sexual activities, this court has the duty to protect.
- 5.11** We submit that the wordings of Article 29(2) above suggests that the jurisdiction of this Honourable Court to entertaining application pursuant to violation of Human rights is subject to the applicant's conformity with such limitations prescribed by the law. We



therefore submit that the plaintiffs in the instant case are bound by the limitation placed on them by the law prohibiting prostitution in public places.

**5.12 Paragraphs 5 & 7 of the preamble to the African Charter on Human and Peoples' Rights provides as follows:**

*“Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights;*

.....

*“considering that the enjoyment of rights and freedom also implies the performance of duties on the part of everyone”.*

**5.13** We submit that the above provision of the preamble to the African Charter on Human and Peoples’ Rights suggests that the rights provided for under the African charter, including the right to personal dignity/integrity, freedom of movement, from discrimination and from torture etc. were made in due consideration of our historical traditions and values of African Civilization and the duties on the part of the individual persons. It is a notorious knowledge that the act of prostitution is repugnant to the values of the African Society. If the African Charter on Human and Peoples rights considered the values of the African Society while providing for the rights thereof, this court is duty bound to ensure conformity and obedience to such values before exercising its jurisdiction to entertain application for enforcement of rights so provided for thereof.

**5.14** We also submit that this Court cannot proceed to entertain the enforcement of the rights of the plaintiffs in this case because if due consideration is had to the African values and the duty of every individual person, the Court will find that the business of prostitution is repugnant to the African Charter let alone prostituting in public places like **Ademola Adetokumbo Crescent, Wuse II, FCT, Abuja**. We urge the Court to hold that what the Plaintiffs perceive as violation of their rights is justified under the African Charter on Human and Peoples Rights.

**5.15 Article 4 of the African Charter on Human and Peoples Rights provides thus:**

*“Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrary deprived of this right (emphasis provided)*

We submit that the use of the word “*may*” in the above provision suggest that the right is not absolute and that its abridgement can be justified in certain cases. We urge this court to hold that the right as provided under Article 4 above is not absolute in relation to the plaintiffs in this matter, who are professional sex workers.



5.16 Article 18 (1) and (2) of the African Charter on Human and Peoples' Rights provides as follows:

***(1) The family shall be the natural unit and basis of the society. It shall be protected by the state which shall take care of the physical health and moral.***

***(2) The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.***

We submit with respect that in line with the above provision of Article 18 (1) and (2) cited above, the men of Abuja Environmental Protection Board with the assistance of the Nigerian Police and the Nigerian Army have the legal duty to assist the family which the African Charter considers as the basic unit of the society in ensuring that the customs, morals and traditional African values are obeyed. We submit therefore that the Plaintiffs (Prostitutes) are liable to be arrested, detained and or prosecuted by the Abuja Environmental Protection Board and we urge My Lords to so hold. The activities of the Abuja Environmental Protection Board are recognized by the African Charter on Human and Peoples Rights by the above provision of Article 18. It is the duty of the Government through its agents to ensure that African values are obeyed.

5.17 My Lords **Article 24** of the African Charter on Human and Peoples' Rights provides as follows:

***“All people shall have the right to general satisfactory environment favourable to their development.”***

It is our submission that the Plaintiffs' activities constitute an unfavourable environment for the uninterested members of the public whom the plaintiffs fragrantly display their sexual appeals to. That is to say that the activities of the plaintiffs (Prostitutes) in public place of Ademola Adetokumbo Crescent, Wuse 2, Abuja and Gwarimpa, constitutes a violation of the rights of other people under Article 24 of the African Charter on Human and Peoples rights. We urge the Court to hold that the plaintiffs (Prostitutes) constitute a nuisance in public places within Abuja.

5.18 Article 27 (2) of the African Charter on Human and Peoples' Rights provides as follows:

***“(2) The rights and freedom of each individual shall be exercised with due regard to the rights of others collective security, morality and common interest.”***

We submit that Article 27(2) of the African Charter on Human and Peoples' Rights has same effect on the activities of the plaintiffs (Prostitution) as Article 24 of the African Charter and we urge the Court to hold that the exercise of the Plaintiffs' rights to freedom of movement is subject to their respect for the rights of other people to a decent environment.



5.19 **Article 29 (7)** of African Charter on Human and Peoples Rights provides that, the individual shall have the duty:

*“To preserve and strengthen positive African Cultural values in his relation with other members of the society, in the spirit of tolerance, dialogue, and consultation and in general, to contribute to the promotion of the moral well being of society”*

It is our submission in line with Article 29 (7) of the African Charter that it is the duty of the individuals to preserve and strengthen African Cultural values. We further submit that the act of solicitation by prostitutes in public places is in contravention of this duty. We urge this court to hold that the Plaintiffs (Prostitutes) cannot rely on the African Charter on Human and Peoples’ Rights to enforce their rights in contravention of the duties impose on them by the same Charter.

5.20 **Article 61** African Chapter on Human and Peoples’ Rights provided as follows:

*“The commission shall also take into consideration as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the organization of African Unity, African practices consistence with international norms on human and peoples’ rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.”*

It is our submission that the above provision of Article 61 prohibits this court from allowing its jurisdiction to be invoked in order to entertain proceedings for enforcement of fundamental right without regard to customs generally accepted as law, or African Practices etc.

We submit that by virtue of Article 61 of the Charter, this court does not have the jurisdiction to declare that the rights of the plaintiffs have been violated, such rights ( if any ) having been abridged in attempt to make them conform with the law and the values of African Practices and we urge the court to so hold.

#### 6.00 **BURDEN OF PROVING THE CASE:**

It is a general rule in law that during trial the party that makes allegations must provide the evidence. The onus of constituting and demonstrating evidence is therefore upon the litigating parties. They must use all the legal means available and furnish the points of evidence which go to support their claims. The evidence must be convincing in order to establish a link with the alleged facts. See the case of **DAUDA GARBA V. REPUBLIC OF BENIN (2010) CCJELR PAGE 12.**

It is a well established legal principle that the party claiming a right must show evidence of that right, by all means. The rule that burden of proof rests on he who asserts the affirmative and not on he who denies is an ancient rule founded on consideration of common sense and should not be departed from without strong



reasons. In civil matters, as in the instant case, where a party is claiming violation of right, that party must show evidence of the said violation of right in relation to him or her as required by law. See **KODILINYE V. ODU 2 WACA 336**. See also the case of **CONSLATINE LINE V. IMPERIAL SMELTING CORPORATION (1942) AC 134 AT 174**.

- 6.01 We submit that in the instant case the burden of proving violation of right lies on the plaintiffs. The plaintiffs have the duty to show convincing evidence from which the rational mind will deduce no conclusion other than that the rights of the plaintiffs were violated. If this court looks at the statement of facts put forward by the plaintiffs in this court, this court will find that the plaintiffs do not have any evidence to prove the allegation of violation. All the stories told by the plaintiffs can only appeal to the heart, but this court only looks at evidence that appeals to the rational mind. The Plaintiffs allege that they were “raped” but provided no evidence to substantiate this; as for instance medical report or police report. Allegation of rape is a criminal matter which is ordinarily not actionable in this court.
- 6.02 We submit that the plaintiffs admitted that they are prostitutes in paragraph 4: 53 of their statement of facts and paragraph 55 of the 1<sup>st</sup> Plaintiff’s statement on Oath. The plaintiffs stated that “ the chairperson of the House Committee on Public Petitions called for a “**ceasefire**” and advised **AEPB** and **SAPCLN** representatives at the hearing to stop the abductions immediately pending the outcome of the hearing and further advised the 1<sup>st</sup> plaintiff to ‘mobilise’ other “**PROSTITUTES**” to stay off the street pending same”. The plaintiff did not refute the reference to her and her followers as prostitutes anywhere whatsoever. We submit that evidence uncontroverted is admitted.
- 6.03 The law is trite that an admission by a party requires no rebuttal by the opposing party. We submit that where a party admits a particular fact in an affidavit,(or against interest) the court has the duty to accept the fact contained therein as the truth of the fact referred to. We refer this court to the cases of **ONYEKWELU V. I.N.E.C (2008)14 NWLR (PT. 1107) 317 CA; ADAMS V. A.G FEDERATION (2006)11 NWLR (PT.991) 341 CA; ADELEKE V. O.S.H.A 92006)16 NWLR (PT.1006)608 CA**. It is our humble submission by virtue of the decisions of the court in the above judicial authorities that the court is duty bound to accept the admission made by the Plaintiffs in paragraph 55 of the 1<sup>st</sup> Plaintiff’s statement on Oath as the truth of the fact of prostitution.
- 6.04 We submit that the plaintiffs’ stories are fabricated stories aimed at misleading this court to give them the freedom to sell sex in the street. We urge this court to hold that the plaintiffs have not shown that their fundamental rights have been violated in relation to them.

## 7.00 ISSUE THREE



#### 7.01 *Whether the claim of the 2<sup>nd</sup> plaintiff is statute barred?*

Article 9(3) of the Protocol, an action founded on Human Rights violation shall not be brought after the expiration of three (3) years from the date on which the cause of action occurred. The word used in the provision is ‘shall’ . The Black’s Law Dictionary, six edition, page 1375 defines the word as follows:

*“As used in statutes, contracts or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term ‘shall’ is a word of command, and one which has always or which must be given a compulsory meaning as denoting obligation. The word in ordinary usage means ‘ must’ and is inconsistent with a concept of direction”.*

We refer this court to the case of **WOHEREM V. EMERUWA (2004) 13 NWLR (PT 890) PG 398 @ 415 PARAS F–H**. The Supreme Court per **IGUH J.S.C** stated inter alia thus:

*“ .... A cause of action matures or arises on a date or from the time when a breach of any duty or act occurs which warrants the person thereby injured or the victim who is adversely affected by such breach to take a Court action in assertion or protection of his legal right that has been breached. The duration of a right or cause of action which is conferred on an injured party is necessarily limited and does not last till eternity. It lapses after the date the statute of limitation proclaims that no such legal action or proceedings may lawfully be taken or commenced by an injured party...”*

See also **FEMI FALANA & ANOTHER V. REPUBLIC OF BNIN CCJ**

Where the word of the statute is clear and unambiguous, the court is duty bound to follow the literal meaning. We submit that the only meaning this court can deduce from the wording of Article 9(3) is that any action by an applicant for the violation of his right must be brought within 3 years of the occurrence of the cause of action. We submit that in the instant case, the alleged cause of action of the 2<sup>nd</sup> plaintiff arose on the 9<sup>th</sup> of January, 2010. The cause of action of the 2<sup>nd</sup> plaintiff became statute barred on the 10<sup>th</sup> of January, 2013 and this court cannot proceed to entertain her claim.

#### 8.00 RELIEFS SOUGHT BY THE DEFENDANT:

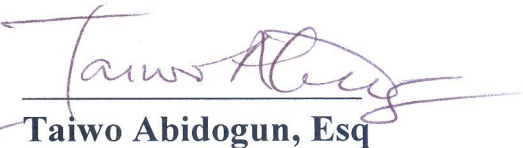


1. AN ORDER of the court dismissing the Plaintiffs suit for being speculative, frivolous, vexatious and wanting in merit.

9.00 **NATURE OF EVIDENCE TO BE USED BY THE DEFENDANT:**

9.01 The defendant shall apply for a witness summons for a staff of AEPB to testify for the Defendant.

Dated 6<sup>th</sup> of March 2015.



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