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## **Communication 653/17**

**Desmond Nunugwo**

**v**

**Nigeria**

*Adopted by the  
African Commission on Human and Peoples' Rights  
during the 65<sup>th</sup> Ordinary Session held from 21 October to 10 November 2019  
Banjul, The Gambia*



.....  
**Commissioner Solomon Ayele Dersso**  
**Chairperson of the African Commission**  
**on Human and Peoples' Rights**




.....  
**Ms. Lindiwe Khumalo**  
**Ag. Secretary to the African Commission on**  
**Human and Peoples' Rights**

## Decision of the African Commission on Human and Peoples' Rights on Admissibility

Communication 653/17 – Desmond Nunugwo v. Federal Republic of Nigeria

### Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat), received a Complaint on 25 February 2017 on behalf of Mr Desmond Nunugwo (the Victim), from Rose Breivogel and Elizabeth Baumerich (the Complainants), who are represented by Rechtsanwalt Holger Hembach of Hembach Legal (the Representative).
2. The Complaint is submitted against the Federal Republic of Nigeria (the Respondent State), State Party to the African Charter on Human and Peoples' Rights (the African Charter).<sup>1</sup>
3. The Complainants submit that they are the Victim's sisters, and that they currently reside in Germany. The Complainants state that the Victim was born in Lagos, Nigeria, in 1965. They further state that the Victim was Chief Protocol Officer at the Ministry of Defence of the Respondent State, and died "in the night of 9/10 June 2016 after being taken into custody and interrogated by officials of the Economic and Financial Crimes Commission (EFCC)."
4. The Complainants allege that on 9 June 2016, the Victim went to his attorney's office to obtain legal advice on a private matter. They further allege that at approximately 5 p.m., operatives of EFCC entered the law office and took the Victim to the premises of EFCC in Abuja. The Complainants add that "it appears that he was questioned".
5. The Complainants aver that about six (6) hours after his detention, the Victim was taken to an undisclosed hospital, where he died shortly after. The Complainants add that the Victim was 51 years old and that he had been in perfect health condition before his detention.
6. The Complainants submit that the EFCC issued a press release after the Victim's death, stating that the Victim "had fraudulently obtained 91 Million Nigerian Naira (approximately 3, 143, 619 USD) from an acquaintance by leading her to believe that he could invest it in a profitable way in Dubai." The Complainants further submit that the press release contends that the Victim had confessed to having received the money from his acquaintance and transferring 30 Million Nigerian Naira to an account in Norway.

<sup>1</sup> The Federal Republic of Nigeria ratified the African Charter on 22 June 1983.



7. The Complainants allege that the press release also states that an investigation into the circumstances of the Victim's death would be launched, but they add that as at the time of submission of the Complaint, "no effective and independent investigation has been carried out."
8. The Complainants state that the Victim's cause of death has not been established, no autopsy has been performed, the officers conducting the interviews have not been identified and questioned, no indictment has been lodged, no arrests have been made and no information on the circumstances of the Victim's death has been made available to his family.
9. The Complainants contend that family members of the Victim and legal representatives engaged by the family, have on multiple occasions drawn the attention of authorities, including the EFCC Chairperson, the divisional police station, the Minister of Justice and Attorney General of the Respondent State and the Nigerian Embassy in Germany, to the unclear circumstances surrounding the Victim's death and the need to investigate the matter.
10. The Complainants aver that the EFCC has not responded to two (2) letters dated 27 June 2016 and 11 August 2016; the divisional police station has also not responded to a letter urging the conduct of an investigation; and the Nigerian Embassy in Germany informed the Complainants that it would pass the letter to the appropriate bodies.
11. The Complainants submit that upon further inquiry at the police station, they were informed that the Victim died of natural causes, without any further explanation.
12. The Complainants further submit that following their complaint, a representative of the Ministry of Justice and Attorney General had assured them that an independent probe into the Victim's death would be carried out. The Complainants state that upon follow-up letters by their legal representative as well as Amnesty International in Nigeria, which seized itself of the matter, the Ministry of Justice ultimately referred the case back to local police. The Complainants add that local police "consulted on matters regarding the case with the EFCC, the very body suspected of being responsible for Mr Nunugwo's death."
13. The Complainants allege that while there has been some discussion on experts suitable to conduct the post mortem and the way to proceed, there is virtually no progress in the investigation, and no serious steps have been taken to clarify the circumstances of the Victim's death.
14. The Complainants state that the widow of the Victim appeared on a television reality show aimed at bringing human rights issues to the attention of the public, in which she related how she became aware of the death of the Victim through a press release issued by the EFCC. The Complainants further submit



evidence of questions regarding the Victim's death in the custody of the EFCC being put to the Acting Chairman of the EFCC on the occasion of a hearing in the Senate of the Respondent State on 15 March 2017, to which he was unable to offer an explanation or present any tangible outcomes of the investigation.

15. The Complainants submit that on 24 March 2017, a representative of the Victim's family wrote to the President of the Senate, informing him about the Victim's death, the steps taken by his family to ensure an effective investigation and the failure of the authorities to act. They state that on 29 March 2017, Senator Benjamin Uwajumogu drew the attention of the Senate to this petition, and that after urging the Senate to look into the matter, it was referred to the Committee on Ethics, Privileges and Public Petitions. The Complainants submit that they are not aware of any outcome in this regard.

#### Articles alleged to have been violated

16. The Complainants alleges violation of Articles 1, 4, 5, 6, and 7 of the African Charter.

#### Prayers

17. The Complainants request the African Commission on Human and Peoples' Rights (the African Commission) to find a violation of the above-stated provisions of the African Charter.

#### Procedure

18. The Secretariat received the Complaint on 25 February 2017 and acknowledged receipt of the same by letter dated 3 April 2017.
19. The Commission considered the Complaint during its 60<sup>th</sup> Ordinary Session and decided to be seized of it. The seizure decision was transmitted to the Parties on 13 June 2017 and the Complainants were requested to submit on the Admissibility of the case within two (2) months.
20. By letter and Note Verbale dated 25 August 2017 the Secretariat informed the Parties that the Commission deferred consideration of the Communication during its 22<sup>nd</sup> Extra-Ordinary Session.
21. The Complainants' submissions on Admissibility dated 11 August 2017 were received at the Secretariat on 22 September 2017 and transmitted to the Respondent State by Note Verbale dated 24 November 2017, requesting the Respondent State to submit on Admissibility within sixty (60) days from notification the re



22. By letter and Note Verbale dated 07 June 2018 the Parties were informed that the Respondent State had been granted an additional thirty (30) days within which to submit on Admissibility.
23. By letters and Notes Verbales dated 18 September 2018 and 16 November 2018 the Parties were informed that the timeline for submission by the Respondent State had expired.
24. By letters and Note Verbales dated 08 March 2019 and 06 June 2019, the Parties were informed that consideration of the Communication was deferred to a later Session.

## **Admissibility**

### **The Complainants' Submissions on Admissibility**

25. The Complainants submit that the Communication is admissible, as all the requirements under Article 56 of the African Charter have been met.
26. The Complainants submit that the requirement under Article 56(1) is fulfilled, as the Complaint indicates the authors, contains their names, places of residence, date of birth, professions and relation to the deceased Victim.
27. The Complainants aver that the Communication is compatible with the African Charter, as the Complainants invoke a violation of the right to life and personal integrity (Article 4), the prohibition of torture (Article 5), the right to liberty and security (Article 6), the presumption of innocence (Article 7) and the obligations of State Parties under Article 1 to adopt legislative or other measures to give effect to the rights under the Charter.
28. The Complainants further submit that the Communication is neither written in disparaging nor insulting language, and merely contains an account of the events which have taken place following the arrest of the Victim.
29. The Complaints further submit that the Complaint is not exclusively based on news disseminated through the mass media, as the Complainants are the sisters of the Victim and have personal knowledge of the circumstances of his death. The Complainants aver that the Victim's family hired a lawyer to represent them before the Nigerian authorities and to ensure that light is shed on the circumstances surrounding the Victim's arrest and demise. They submit that they are regularly informed through the lawyer about all developments regarding their case, and consequently, their Complaint is based on their personal knowledge of the matter.
30. The Complainants further aver that domestic legal remedies have been exhausted. They submit that the Victim was taken into custody by operatives



of the EFCC, and that despite being in perfect health prior to his arrest, he suddenly died a few hours after he was detained. They submit that it was incumbent on the Nigerian authorities to carry out a swift and thorough investigation into the circumstances that led to the Victim's death, and that they have failed to comply with this obligation.

31. The Complainants state that members of the Victim's family have pointed out to the authorities that the circumstances of his death have to be investigated, but his cause of death has not been established to date, the person responsible for his death had not been identified and no light has been shed on the events leading to his passing.
32. The Complainants reiterate the facts as captured in paragraphs 9 to 12 above, adding that no autopsy had been carried out to the date of submission of the admissibility submissions that the Victim's body remains in the morgue and his family is unable to give him a proper burial and obtain closure. The Complainants submit that the Victim's family cannot be expected to take any further legal step in order to exhaust domestic legal remedies, as it is incumbent on the State to carry out an effective investigation if a person dies in State custody. The Complainants refer to the large body of case law which underscores this obligation on states,<sup>2</sup> submitting that the Respondent State cannot dodge this obligation by referring the Complainants to take further legal steps on their own. The Complainants also submit that the procedure of domestic legal remedies is unduly prolonged.
33. The Complainants aver that the Complaint was submitted within a reasonable time frame, in that they waited several months to give the Nigerian authorities time to investigate the matter. In addition, they submit that they also went to the Attorney General and the Senate of Nigeria. However, they submit that when it became clear that the authorities are not going to shed light on the circumstances leading to the Victim's death, they submitted the complaint to the African Commission. The Complainants submit that they neither submitted their complaint prematurely nor did they hesitate too long before submitting the complaint. In conclusion, the Complainants state that the case has not been settled.

#### **The Respondent State's Submissions on Admissibility**

34. Despite the fact that the Commission requested the Respondent State to submit its arguments and evidence on admissibility in accordance with Rule 105 (2), as well as granting an extension in this regard, no response has been received. In such cases the Commission has held that in the absence of a response from the

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<sup>2</sup> European Court of Human Rights in *Fanziyeva v Russia*; *Shumkova v. Russia*; *Slimani v. France*; *Muradyan v. Armenia*; *Makaratzis v Greece*; *Kelly and Others v The United Kingdom*; *Ionita v Romania*; also the Inter-American Court of Human Rights, *The Case of the Santo Domingo Massacre v. Colombia*.



Respondent State, it must decide on the submissions provided by the Complainant.<sup>3</sup>

### Analysis of the African Commission on Admissibility

35. The Commission recalls that Article 56 of the African Charter sets out seven requirements that a Communication brought under Article 55 of the African Charter must satisfy in order to be admissible, which apply conjunctively and cumulatively.<sup>4</sup>
36. In relation to the requirement in Article 56 (1) of the African Charter, which provides that Communications should indicate their authors even if the latter requests anonymity, the Complainants submit that this requirement is fulfilled, as the Complaint indicates the authors, contains their names, places of residence, date of birth, professions and relation to the deceased Victim. The Commission confirms that the identity and address of the Complainants is indicated in the Communication, and accordingly finds that the Communication satisfies Article 56 (1) of the African Charter.
37. Article 56 (2) requires that the Communication must be compatible with the Charter of the OAU or the African Charter. The Complainants aver that the Communication is compatible with the African Charter, as it invokes a violation of the right to life and personal integrity (Article 4), the prohibition of torture (Article 5), the right to liberty and security (Article 6), the presumption of innocence (Article 7) and the obligations of State Parties under Article 1.
38. The Commission confirms that the Respondent State is a State Party to the African Charter, having ratified the Charter on 22 June 1983. Additionally, as the alleged violation took place in 2016, the Commission finds that the Complaint was brought after ratification. In relation to the requirement that the Communication must allege *prima facie* violations of rights protected by the African Charter, the Commission takes note of the submission by the Complainants relating to the specific provisions of the Charter alleged to have been violated, and finds that these do indicate a *prima facie* violation. The Commission thus finds that the Communication complies with the requirements under Article 56 (2).
39. Article 56 (3) requires that a Communication must not be "written in disparaging or insulting language directed against the State concerned and its institutions or to the OAU (now African Union)." The Complainants submit that the Communication is neither written in disparaging nor insulting language, and merely contains an account of the events which have taken place following the arrest of the Victim. The Commission has in reading the

<sup>3</sup> See Communication 25/89, 47/90, 56/91, 100/93 (1995) ACHPR, para 40. See also Communication 60/91, Communication 159/1996, Communication 276/03 and Communication 292/04.

<sup>4</sup> See Communication 304/2005 - FIDH & Others v. Senegal (2006) ACHPR, para 38.



Complaint not come across anything which would amount to disparaging or insulting language. The Commission therefore finds that the requirement in Article 56 (3) has been met.

40. Article 56 (4) of the Charter requires that the Communication must not be based exclusively on news disseminated through the mass media. The Complainants submit that the Complaint is not exclusively based on news disseminated through the mass media, as the Complainants are the sisters of the Victim and have personal knowledge of his death. The Complainants further aver that the Victim's family hired a lawyer to represent them before the Nigerian authorities, who regularly informs them about all developments regarding their case, and consequently, their Complaint is based on their personal knowledge of the matter. Based on this submission, the Commission finds that the requirement in Article 56 (4) has been met.
41. Article 56 (5) requires that Complaints should be submitted after exhausting local remedies, if any, unless it is obvious that that this procedure is unduly prolonged. It is an established principle of the jurisprudence of the Commission that the requirement for the exhaustion of remedies applies only where such remedies are "available, effective and sufficient to redress the alleged violation."<sup>5</sup>
42. The Complainants aver in paragraphs 26 to 28 above, that the requirements under Article 56 (5) have been met, as (a) it was incumbent on the Nigerian authorities to carry out a swift and thorough investigation into the circumstances that led to the Victim's death, and that they have failed to comply with this obligation, including that no autopsy had been carried out to date; (b) the Victim's family cannot be expected to take any further legal step in order to exhaust domestic legal remedies, as the obligation rests with the State to carry out an effective investigation if a person dies in state custody; and (c) members of the Victim's family have repeatedly requested the authorities to comply with their obligation to investigate, to no avail. The Complainants also submit that the procedure of domestic legal remedies is unduly prolonged.
43. The Complainants in their submissions on the Complaint in paragraphs 6, 7, 9, 10 and 12 above, provide the various ways in which they have attempted to bring the case to the attention of the relevant authorities of the Respondent State, including correspondences and consultations with the EFCC

<sup>5</sup> Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31. Communication 87/93: Constitutional Rights Project (in respect of Zamani Lakwot and six others) v Nigeria, 22 March 1995, 'adequate and effective'. Communication 71/92: Rencontre africaine pour la défense des droits de l'Homme (RADDHO) / Zambia, 31 October 1997, para 6. Communication 318/06 - Open Society Justice Initiative v. Côte d'Ivoire, 27 May 2016, para 40. Communication 435/12 - Eyob B. Asemie v the Kingdom of Lesotho, 13 February 2015, para 63. Communication 284/03 Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe/Republic of Zimbabwe, 3 April 2009, para 81. African Commission on Human and Peoples' Rights v. Republic of Kenya, App. No. 006/2012, 26 May 2017, para 93.



Chairperson, the divisional police station, the Minister of Justice and Attorney General of the Respondent State and the Nigerian Embassy in Germany. In addition, it is submitted that the EFCC in a press release also made reference to the death of the Victim and indicated that it would be investigated.

44. The Complainants in this regard submit that to date, "no effective and independent investigation has been carried out", noting in particular that the Victim's cause of death has not been established, no autopsy has been performed, the officers conducting the interviews have not been identified and questioned, no indictment has been lodged, no arrests have been made and no information on the circumstances of the Victim's death has been made available to his family. In addition, they state that no responses were received to letters to the EFCC and divisional police station, that the Ministry of Justice referred the case back to the local police, who "consulted on matters regarding the case with the EFCC, the very body suspected of being responsible for Mr Nunugwo's death."<sup>6</sup> The Complainants also allege that while there has been some discussion on experts suitable to conduct the post mortem and the way to proceed, there is virtually no progress in the investigation.
45. Whereas the State had clearly failed in its duty to investigate, the Commission should in addition be satisfied that the Complainants had exhausted all local remedies available to vindicate their rights through the national judicial processes. The fact that the State knew or should have known of the violation is not enough to relieve the Complainants of fulfilling this requirement. Local remedies in this regard should be exhausted in respect of the alleged rights violations which are brought before the Commission. Thus it should be determined whether there are any judicial remedies at domestic level which could have been pursued by the Complainants to compel the State and its responsible authorities to take the steps to undertake the requisite investigation and facilitate access to justice for the rights allegedly violated. The purpose of requiring the exhaustion of domestic remedies is to affirm the primacy of the national courts, where remedies are faster attainable and more readily enforceable, with regional mechanisms fulfilling a complementary role where national judicial remedies are unavailable, ineffective or insufficient.
46. In the present case the Complainants have failed to indicate that they had taken any such steps, and neither did they indicate that they approached local courts, nor that it was impossible to do so. In this regard, the Commission takes note from general information on the Nigerian legal system that the high courts of Nigeria have inherent jurisdiction to supervise the proceedings and decisions of a person or body of persons charged with the performance of a public duty, by way of judicial review of administrative decisions, as provided for under Order 34 of the Federal High Court Rules 2009; and also that by virtue of the Fundamental Rights (Enforcement) Procedure Rules and the African Charter

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<sup>6</sup>See para 12 above.



on Human and Peoples' Rights (Ratification and Enforcement) Act, 1990, human rights actions could have been instituted. The Complainant has neither referred to these possible procedures, nor steps taken in respect of the same, or why they may not be available or sufficient. For these reasons, the Commission finds that the Complainant had failed to meet the requirement under Article 56 (5).

47. Article 56 (6) of the African Charter provides that the Commission shall consider Communications which "are submitted within a reasonable period from the time domestic remedies are exhausted or from the date the Commission is seized of the matter." The Commission held that this requirement "is quite related to the principle of the exhaustion of local remedies in accordance with article 56(5)," and that where domestic remedies have not been exhausted, time has not begun to run such as to afford the Complainant the opportunity to bring a Complaint.<sup>7</sup> As domestic remedies have not been exhausted in the present case, the reasonable time period cannot be computed, and the Commission finds that the admissibility requirement under Article 56 (6) of the African Charter is not met.
48. The Complainants indicate that in compliance with Article 56 (7), the Complaint has not been settled before any other international forum. The Commission thus finds that the requirement under Article 56 (7) has been complied with.
49. For the reasons set out above, the Commission finds that Article 56 (1), (2), (3), (4) and (7) have been met, but that the Complainant has failed to meet the criteria for Article 56 (5) and (6).

#### Decision of the African Commission on Admissibility

50. In view of the above, the African Commission on Human and Peoples' Rights decides to:
- i. Declare the Communication inadmissible for failure to comply with Article 56 (5) and (6) of the African Charter; and
  - ii. Notify its decision to the parties in accordance with Rule 107 (3) of its Rules of Procedure.

Done in Banjul, The Gambia, at the 65th Ordinary Session, held from 21 October to 10 November 2019

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<sup>7</sup> Communication 322/2006 - Tsatsu Tsikata v. Republic of Ghana, para 51-53

