



**Institute for Legal Research and Advocacy for Justice (ILRAJ)**

**INSTITUTE FOR LEGAL RESEARCH AND ADVOCACY FOR JUSTICE**

**(ILRAJ)**

**EDMOND LABIB MICHAEL**

**INTER-COLLEGIATE MOOT COURT COMPETITION**

**FREETOWN, SEPTEMBER 2021**

**HYPOTHETICAL CASE**

**Before the Community Court of Justice, ECOWAS**

**in the case between**

**Isata Zuma – 1<sup>st</sup> Petitioner**

**Lloyd Mburu – 2<sup>nd</sup> Petitioner**

**and**

**The Republic of Tikonko**



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### **STATEMENT OF FACT**

1. The Petitioners are professional journalists and are the Editor and Senior Reporter respectively of the Shekpendeh Newspaper, an English daily published in the Republic of Tikonko, which is part of the Economic Community of West African States (ECOWAS).
2. On Monday 21st September 2020, a story was published captioned "Jammeh paid Tikonko in Diamonds - says Report." The story reads in part as follows:-

*"President Laurent Jammeh of the People's Democratic Republic of Wakanda has given a large consignment of Diamonds to the Government of Tikonko as payment for "services rendered" by the latter during the struggle against the former military dictator Jonas Ojukwu.*

*According to the latest issue of London-based Peckham Guardian, the commander of Tikonko Revenue Authority (TRA) Anti-Smuggling Unit (ASU), Col. Andrew Baptiste, played a crucial role in transferring the diamond consignment from the People's Democratic Republic of Wakanda to Tikonko.*

*The Chief of ASU, the newspaper reported, used to provide accommodation to Jammeh when the latter was still shopping for international support against the Ojukwu government as a rebel.*

*Baptiste was reported in Shekpendeh in June this year to have gone to Jammeh's Wakanda to help recruit, train and build up a force to support the new government curb smuggling of, especially diamonds.*

*When contacted, the Director of Public Relations in Bank of Tikonko, Alpha Mengistu, refused to make any comment. He instead told The Shekpendeh to wait until he gets a briefing from his bosses.*

*Bank of Tikonko is the institution that monitors the movement of diamonds in Tikonko and where the country's diamonds reserves are kept.*

*However, when The Shekpendeh contacted former Chief spy and currently Minister of State for Local Government, Col. Kelvin Sall, he said the government has never received any payment from Jammeh.*

*We have not received any payment from Jammeh. Payment for what?' The Colonel asked. 'These people of Peckham Guardian are just gossiping and rumourmongering.'"*

3. The story was published in the print edition of Shekpendeh as well as their website, Facebook page and Twitter account. It was widely distributed on WhatsApp and telegram. Many other newspapers in the region reproduced the story.
4. As a result of this publication, the petitioners were arrested and detained for 13 days. After their first night in detention, they were denied the right of access to lawyers and their family members after the security forces found out they were passing messages through them to the Journalist Association and opposition members of Parliament.
5. The 1<sup>st</sup> Petitioner alleged that she was tortured and sexually abused by members of the Tikonko Police. The Police denied this and evidence from the Police doctor supported their denial.



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6. The 2<sup>nd</sup> Petitioner was held in solitary confinement for ten days after he was caught sending a message on a cell phone to a Minister in a neighbouring of Zamunda asking him to get the President of Zamunda to intervene on his behalf. It is a well-known fact that the Presidents of Zamunda and Tikonko are sworn enemies. The Police interpreted his request for intervention as an act of subversion.
7. On 26th October 2020, the petitioners were charged with the following counts:
  - a. knowingly publishing false and defamatory libel contrary to section 26 (1) of the Public Order Act
  - b. defamatory libel contrary to section 27 of the Public Order Act.
  - c. Publication of false news contrary to section 32 (1) of the Public Order Act.
  - d. Publication of false news contrary to section 32 (2) of the Public Order Act.
  - e. Publication of false news contrary to section 32 (3) of the Public Order Act.
8. The 2<sup>nd</sup> Petitioner was additionally charged with subversion.
9. The petitioners were found guilty of the charges by the High Court but were acquitted on appeal. After their acquittal, they decided to pursue this case in the ECOWAS Court.
10. The Petitioners asked the Court to adjudge and declare inter alia that their human rights had been violated, including their freedom of speech, freedom from arbitrary arrest and detention.
11. That the decision of the State to criminally prosecute them for publishing an article captioned "JAMMEH PAID TIKONKO IN DIAMONDS - SAYS REPORT" published in the Shekpendeh of 21st September is, an act by any person or authority which is inconsistent with or in contravention of all the human rights conventions signed by Tikonko.
12. They argued that it is a defence to a charge of publication of a false statement, rumour or report, 'if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably believe that it was true.'
13. They further argued that their story did not cause fear and alarm to the public and/or disturb public peace.
14. The Respondent argued that the case was inadmissible and that the Petitioners did not have locus, that Court lacked jurisdiction and that the Petitioners should have taken their case of the Constitutional Court of Tikonko. They further argued that human rights were not absolute and that the State has a duty to protect the public interest. The enjoyment of the rights and freedoms shall not prejudice the fundamental or other human rights and freedoms of others or the public interest and that their detention was lawful to allow for a proper and thorough investigation.

The case has been set for hearing based on urgency for November 2021. Prepare memorials on behalf of the Petitioner and the Republic of Tikonko. In each instance, dealing with the following issues

1. Whether the case brought against the Republic of Tinoko concerning the issues raised above by the Petitioners falls within the jurisdiction of the ECOWAS community court of justice?



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2. Whether the case against the Republic of Tinoko concerning the issues raised above by the Petitioners is admissible before the ECOWAS Community Court of Justice?
3. Whether The Republic of Tinoko violated its human rights obligations under the ECOWAS treaty and regional and international human rights legal instruments?
4. What are the appropriate remedial orders?

#### **Nota Bene**

For the purposes of this case, please note that Tikonko copied verbatim the 1991 Constitution of Sierra Leone and its Public Order and Cybercrime laws are the same.

Tikonko is an active member of the United Nations (UN), African Union (AU), Economic Community of West African States (ECOWAS), Mano River Union (MRU), Commonwealth of Nations, African Development Bank, and Organisation of Islamic Cooperation. The country has signed and ratified the following international instruments: the International Covenant on Civil and Political Rights (ICCPR) (in 1997); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (in 1997); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (in 1989); the African Charter on Human and Peoples' Rights (African Charter) (in 1987); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) (in 2004); Treaty of the Economic Community of West African States (Lagos Treaty) (in 1975) and the ECOWAS Revised Treaty (Cotonou) (in 1994); Protocol A/P1/7/91 on the Community Court of Justice (Abuja Protocol) (in 2000). the Supplementary Protocol A/SP.1/01/05 amending the Preamble and Articles 1. 2. 9. 22 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4, Paragraph 1 of the English version of the said Protocol (in 2007); and the AU Charter on Democracy, Elections and Governance (in 2009). Supplementary Protocol A/SP.1/12/ 01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (in 2004). On the 29th of January 2016, Tikoko signed the African Union Convention on Cyber Security and Personal Data Protection and enacted the Cybercrime Act No. 1 2020 (Appendix C). The ICESCR is reflected in Chapter 2 of the Tikonko 1992 Constitution, but it is not justiciable under Section 14 of the said Constitution, whereas fundamental rights enshrined in the ICCPR are entrenched in Chapter 3. Tikonko is also a party to several international environmental legislative frameworks, such as the UN Framework Convention on Climate Change and the Paris Agreement in 2015. As a result, the Parliament of Tikonko enacted the Environment Protection Agency Act 2008 (appendix D) to strengthen existing environmental laws (Appendix E).