

Enforcing the Right to Life of Victims of Extrajudicial Killings

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The fundamental right to life is enshrined in Section 33 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It provides that "every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."

Section 46 (1) of the same Constitution also provides that "any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress." Similarly, the Fundamental Rights (Enforcement Procedure) Rules, 2009 (FREP Rules) enjoins any person alleges that any fundamental right to which he is entitled has been, is being or likely to be infringed to approach a High in the State where it occurs for redress.

Hitherto – during the era of the 1979 version of the FREP Rules – in view of the wordings of the enforcement provisions set out above, which incorporate phrases like 'any person who alleges', 'in relation to him', 'to which he is entitled', the law seemed to lean more towards the position that it is only the direct victim of human rights violation that has the competence and capacity to approach the court for redress. The principle of locus standi was therefore employed to shut out third parties from suing on behalf of victims of human rights violations, who may otherwise be unable to sue personally – such as victims of incommunicado incarceration, enforced disappearance, and extra-judicial killing. However, the position of the law has now changed with the advent of the 2009 FREP Rules, which enjoins the courts not to strike out any fundamental rights enforcement application for want of locus standi, but instead to encourage and welcome public interest litigations. The said 2009 FREP Rules also provides in its Preamble that human rights activists, advocates or groups as well as any non-governmental organisation, may institute human rights application on behalf of any potential applicant. It further stipulates that in human rights litigation, the applicant may include:

- anyone acting in his own interest;
- anyone acting on behalf of another person;
- anyone acting as a member of, or in the interest of a group or class of persons;
- association acting in the interest of its members or other individuals or group; and
- association acting in the interest of its members or other individuals or groups.

The question now is whether a dead person

still has the right to life, or whether that right is not foreclosed by reason of death? Commonsense would answer the question in the affirmative, for otherwise the right to life will be meaningless and devoid of any substance whatsoever. Come to think of it, it is by the act of unlawful killing of another that the right to life is said to be violated. If the right to enforce cannot crystallise when the right to life is violated by unlawful killing, the implication is that there is no such right, and the provision of Section 33 of the 1999 Constitution and other regional and international instruments safeguarding the right to life will become absolutely lacking in content. Indeed the Supreme Court had, even during the restrictive regime of the 1979 FREP Rules answered the above legal question with a definitive affirmation in the case of **NOSIRU BELLO v AG, OYO STATE** (1986) 5 NWLR Pt. 45 pg. 828

In that case, which apparently set the stage for the introduction of the auspicious and broad scope for human rights enforcement, a person who was convicted of armed robbery and sentenced to death but had filed a Notice of Appeal, was executed before the hearing of his appeal. His relatives claimed damages for wrongful and premature termination of his life. The Supreme Court held inter alia that the unlawful termination of his life by the Oyo State Government before his appeal could be heard was a contravention of his right to life enshrined in Section 30 (1) of the 1979 Constitution. Karibi-Whyte, JSC in that Judgment held that "action will lie for the violation of the right to life in S.30 by or on behalf of any person who has an interest in the continued existence of the deceased".

In the fairly recent decision of the Federal High Court, Lagos Judicial Division in the case of **SHOBAYO v COP, LAGOS** (Suit No. ID/760m/2008) the Applicant – wife of a deceased victim of police impunity – brought an enforcement application praying the court for a declaration that the arrest, detention, torture and killing of her husband by some police officers was unlawful and unconstitutional being contrary to the fundamental rights guaranteed under Sections 33, 34, 35 & 41 of the 1999 Constitution. Oyewole, J. (as he then was) in his judgment delivered on 15/1/2010 held that "insisting that only the citizen subject of an infringement can approach the court when such a right is violated could create an absurdity. This would imply the non-realisation of a fundamental right expressly created by the Constitution. This is more so in relation to the right to life when already contravened for in this case, the citizen victim of the deprivation would have been dead. Restricting redress for violation of the fundamental right to life is antithetical to the letters of the Constitution and to avoid this anomaly, the next of kin of such deceased citizen must be permitted to enforce the right so allegedly deprived. The

depositions before the court indicate that the Applicant was the wife and next of kin of the deceased, who reportedly died in custody of the Respondent. Denying her the right to maintain the action would create a situation never contemplated by the framers of the Constitution, as an unenforceable right would thus have been created. The Applicant without contradiction was the wife of the deceased, a relationship not too distant to fathom. That she will be affected by the deprivation of the life of her husband goes without saying. The wife of a deceased whose right was supposedly violated would naturally be affected by the violation and comes within the purview of persons affected by the infraction, who could, pursuant to Section 46 (1) of the Constitution, approach the court for redress".

The Court of Appeal, Lagos division (per Amina Augie, JCA) in a very recent decision delivered on 28/7/2015 in the case of **OMONYAHUY & ORS. v IGP & ORS.** (2015) LPELR 25581 relied heavily on the foregoing cases to hold that "it appears that we have charted a way to the answer to our question – the constitutional right to life of a dead man can be enforced by his dependents. In arriving at this answer that is in line with modern-day pronouncements, I will say that I was swayed by the mischief rule of statutory interpretation, which is the oldest of the rules.... Under the mischief rule, the Court's role is to suppress the mischief the Act is aimed at and advance the remedy.....In this case, I believe that the 2009 FREP Rules was enacted to cure shortcomings in the 1979 FREP Rules, and decisions under FREP Rules that were enacted 30 years apart cannot be the same, as the law is not static, it moves and pulsates with every generation as different cultures unfold, and as criminal elements find new ways to terrorise and torment citizens. I am strengthened in this view by the Preamble to the 2009 FREP Rules, which sets out the overriding objectives of the Rules that are far-reaching, and geared towards moving with modern trends in human rights actions". The above case resulted from the unlawful killing of two young men by a police officer under the pretense that they were armed robbers at a checkpoint along LASU/Igando expressway, Lagos on 15/12/2012.

In the case of **ORJIEH v THE NIGERIAN ARMY & ORS** (cited and relied upon by the Court of Appeal in the above Omonyahuy's case), the Applicant prayed the Federal High Court, Lagos for a declaration that the fatal shooting and killing of her husband by a soldier, was a gross violation of the deceased fundamental right to life and dignity of his human person contrary to Sections 33(1) and 34 (1) (a) of the 1999 CFRN and Articles 4 & 5 of the African Charter on Human & Peoples' Rights (Ratification & Enforcement) Act, LFN 2004 and therefore unconstitutional and illegal.



Inspector General of Police, Solomon Arase

In a judgment delivered on 20/2/2013 per M.B. Idris, J. the Court held, inter alia, that: "In the instant case, the Applicant's husband's rights were breached with wanton impunity. Clearly, the 7th Respondent acted with the belief that his action cannot be questioned by anyone. Indeed, till date, none of the Respondents took any action and none of them has apologised to the Applicant. The shooting of the deceased, who was unarmed while pursuing his daily activities, was unjustified by any of the exceptions and therefore, constitutes a substantial violation of the Constitution. The right to life imposes on an individual the obligation not to deprive another intentionally of his right to life....." The judge therefore entered judgment in favour of the Applicant, and awarded her N300 million as general and/or exemplary damages/compensation for the breach of her deceased husband's fundamental right to life and dignity of his human person.

The right to life is the most important human right; it is the foundational human right because every other human right depends on it. See Communication 295/04: Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe (decided by the African Commission on Human & Peoples' Right at its 51st Ordinary Session from 18th April to 2nd May, 2012). In that Communication, the African Commission recognised the right to life as the foremost human right, and affirmed the capacity and competence of the next of kin or relations of unlawfully killed victims to enforce the right to life of such victims, and to obtain adequate compensation for the unlawful deprivation of the lives of their loved ones.

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