

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

SUIT NO

BETWEEN

- 1. Nigerian Coalition for the International Criminal Court (NCICC)**
- 2. Legal Defence & Assistance Project Ltd/Gte**
- 3. Women Advocate Research and Documentation Center } PLAINTIFFS**

AND

THE FEDERAL REPUBLIC OF NIGERIA} DEFENDANT

ORIGINATING SUMMONS

Let the ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF NIGERIA, OF FEDERAL MINISTRY OF JUSTICE, ABUJA, within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application of THE PLAINTIFFS of NO. 4 MANZINI STREET, WUSE ZONE 4 ABUJA, who claims for the determination of the following question:

1. Whether Nigeria has a legal obligation under Article 89 of the Rome Statute of the International Criminal Court and Article 26 of the Vienna Convention on the Laws of Treaties to arrest any person indicted by the Trial Chambers of the International Criminal Court who enters its national territory and to surrender such person to the Court.
2. If the answer to the above question is in the affirmative, whether the government of Nigeria is under legal obligation to arrest and surrender President of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir to the Trial Chamber of the International Criminal Court if he enters the territory of Nigeria because he was indicted in 2009 by the International Criminal Court for crimes against the Rome Statute of the International Criminal Court in Darfur.
3. Whether this honourable court can issue an arrest warrant against President Omar Al Bashir on the basis on the indictment and arrest warrants by the International criminal court?

AND THE PLAINTIFF CLAIM AS FOLLOWS:

1. AN ORDER compelling the President of the Federal Republic of Nigeria to arrest the President of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir immediately he

arrives Nigeria's national territory and surrender him forthwith to the Trial Chamber of the International Criminal Court in The Hague, Netherland.

2. AN ORDER issuing a provisional warrant of arrest against the President of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir immediately he arrive Nigeria's National territory, pursuant to the warrant of arrest issued by the ICC dated 4th March, 2009 and a second warrant of arrest issued by the ICC dated 12th of July, 2010.
3. And for such further other orders as this honourable court may deem fit to make in the circumstances.

AND THE GROUNDS UPON WHICH THE RELIEFS ARE SOUGHT ARE AS FOLLOWS:

1. The International Criminal Court ("ICC") ON 4th of March, 2009 considered that there are reasonable grounds to believe that OMAR HASSAN AHMAD AL BASHIR, a male, who is a national of the state of Sudan, born on 1st January 1944 in Hoshe Bannaga, Shendi Governorate, president of the Republic of Sudan since his appointment by the RCC-NS on 16th October, 1993 and elected as such successively since 1st April, 1996, is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrators, under Article 25(3)(a) of the Rome statute of the International Criminal Court for:
 - i. Intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities as a war crime, within the meaning of Article 8(2)(e)(i) of the Rome statute;
 - ii. Pillage as a war crime, within the meaning of Article 8(2)(e)(i)(v) of the Rome statute;
 - iii. Murder as a crime within the meaning of Article 7(1)(a) of the Rome statute;
 - iv. Extermination as a crime against humanity within the meaning of Article 7(1)(b) of the Rome statute;
 - v. Forcible transfer as a crime against humanity, within the meaning of Article 7(1)(d) of the Rome statute;
 - vi. Torture as a crime against humanity within the meaning of Article 7(1)(f) of the Rome statute;
 - vii. Rape as a crime against humanity, within the meaning of Article 7(1)(g) of the Rome statute.
2. The ICC on 12th July, 2010 further considered that there are reasonable grounds to believe that Omar Al Bashir is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator, under Article 25(3)(a) of the Rome statute for:
 - i. Genocide by killing, within the meaning of Article 6(a) of the Rome statute;
 - ii. Genocide by causing serious bodily or mental harm, within the meaning of Article 6(b) of the Rome statute;

- iii. Genocide deliberately inflicting conditions of life calculated to bring about physical destruction, within the meaning of Article 6(c) of the Rome statute.
3. In consequence, the ICC issued a warrant of Arrest against the said Omar Al Bashir on 4th March, 2009 and a second warrant of arrest on 12th July, 2010.
4. The ICC considered at the time of issuing each of the warrants of arrest under Article 58(1) of the Rome statute, of Omar Al Bashir appeared necessary to:
 - i. That he will appear before the ICC;
 - ii. That he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Rome statute; and
 - iii. That he will not continue with the commission of the above-mentioned crimes.

DATED this _____ day of _____ 2013

Chino Obiagwu, Esq.
Obiageli Theodore Nwankwo Mrs
Dr Abiola Akiyode
Plaintiffs' counsel
Nigeria Coalition for the International
Criminal Court,
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FOR SERVICE ON:

THE DEFENDANT
ATTORNEY GENERAL OF THE FEDERATION
FEDERAL MINISTRY OF JUSTICE, MAITAMA ABUJA.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO

BETWEEN

- 1. Nigerian Coalition for the International Criminal Court (NCICC)**
- 2. Legal Defence & Assistance Project Ltd/Gte**
- 3. Women Advocate Research and Documentation Center} PLAINTIFFS**

AND

THE FEDERAL REPUBLIC OF NIGERIA} DEFENDANT

AFFIDAVIT IN SUPPORT

I, Esther Balami, program Officer, Female, Christian, Nigerian citizen of 4 Manzini Street, Zone 4 Wuse, Abuja Nigeria, do hereby make oath and state as follows:

1. That I am a program officer with the Nigerian Coalition for the International Criminal Court (NCICC), by virtue of which position I am conversant with the facts of this case.
2. That I depose to this affidavit with the consent of the Appellant/Applicant and that of my employer.
3. That the facts contained in this affidavit are facts within my personal knowledge and those made available to me by the Applicants, the Applicants' principal counsel, Mr Chino Edmund Obiagwu, which I verily believe to be true.
4. That International Criminal Court (ICC), created by Article 1 of the statute of the ICC also known as the Rome statute of the ICC, is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes and crimes of aggression.
5. That NCICC is a non-profit organization registered with the Corporate Affairs Commission.
6. That NCICC is a coalition of civil society organizations, human rights defenders and activists who are committed to, amongst other things, encourage the Federal Government of Nigeria to fulfil and respect its treaty obligations under the statute including cooperation with the ICC.

7. That Legal Defence and Assistance project Ltd/Gte and Women Advocate Research and Documentation Center are non-profit organizations registered with the Corporate Affairs Commission.
8. That Nigeria ratified the Rome statute on September 27, 2001.
9. That in 2009, the President of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir, was indicted and held criminally responsible under Article 25(3)(a) of the Rome Statute of the ICC by the ICC for genocide, war crimes and crimes against humanity.
10. That the president of Sudan, Omar Hassan Ahmad Al-Bashir has an outstanding arrest warrant issued by the ICC on 4th March, 2009, and a second arrest warrant on 12th July, 2010.
11. That the International Criminal Court (“ICC”) ON 4th of March, 2009 considered that there are reasonable grounds to believe that OMAR HASSAN AHMAD AL BASHIR, a male, who is a national of the state of Sudan, born on 1st January 1944 in Hoshe Bannaga, Shendi Governorate, president of the Republic of Sudan since his appointment by the RCC-NS on 16th October, 1993 and elected as such successively since 1st April, 1996, is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrators, under Article 25(3)(a) of the Rome statute of the International Criminal Court for:
 - a. Intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities as a war crime, within the meaning of Article 8(2)(e)(i) of the Rome statute;
 - b. Pillage as a war crime, within the meaning of Article 8(2)(e)(i)(v) of the Rome statute;
 - c. Murder as a crime within the meaning of Article 7(1)(a) of the Rome statute;
 - d. Extermination as a crime against humanity within the meaning of Article 7(1)(b) of the Rome statute;
 - e. Forcible transfer as a crime against humanity, within the meaning of Article 7(1)(d) of the Rome statute;
 - f. Torture as a crime against humanity within the meaning of Article 7(1)(f) of the Rome statute;
 - g. Rape as a crime against humanity, within the meaning of Article 7(1)(g) of the Rome statute.
12. That the ICC on 12th July, 2010 further considered that there are reasonable grounds to believe that Omar Al Bashir is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator, under Article 25(3)(a) of the Rome statute for:
 - i. Genocide by killing, within the meaning of Article 6(a) of the Rome statute;
 - ii. Genocide by causing serious bodily or mental harm, within the meaning of Article 6(b) of the Rome statute;
 - iii. Genocide deliberately inflicting conditions of life calculated to bring about physical destruction, within the meaning of Article 6(c) of the Rome statute.

13. That in consequence, the ICC issued a warrant of Arrest against the said Omar Al Bashir on 4th March, 2009 and a second warrant of arrest on 12th July, 2010. The warrant of arrest dated 4th March, 2009 and 12th July 2010 are hereby pleaded and marked as **Exhibits A and B** respectively.
14. That the ICC considered at the time of issuing each of the warrants of arrest under Article 58(1) of the Rome statute, of Omar Al Bashir appeared necessary to:
- i. That he will appear before the ICC;
 - ii. That he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Rome statute; and
 - iii. That he will not continue with the commission of the above-mentioned crimes.
15. That when the president of Sudan, Omar Hassan Ahmad Al-Bashir visited Kenya (who is also a state party to the Rome statute of the ICC), the Kenyan High Court issued a provisional warrant of arrest against him. The provisional warrant of arrest by the Kenyan High court is hereby pleaded and marked as **Exhibit C**.
16. That NCICC has received credible information indicating that the president of the Republic of Sudan is among the 30 African Heads of State to participate in the international HIV/AIDS Conference in Abuja, Nigeria starting on the 15th of July, 2013.
17. That Nigeria, being a state party to the Rome Statute of the ICC and pursuant to Article 89(1) and 91 of the Rome Statute and Article 26 of the Vienna Convention on the Laws of Treaties, has a legal obligation to cooperate with the ICC and the international community to enforce the warrant of arrest and surrender the President of Sudan, Omar Hassan Ahmad Al-Bashir, immediately he arrives Nigeria's national territory and surrender him to the trial chamber of the ICC in the Hague, Netherland.
18. That I depose to this affidavit in good faith and in accordance with the relevant Oath Laws.

D E P O N E N T

Sworn to at the Federal High Court, Abuja

This _____ day of _____ 2013

BEFORE ME

**COMMISSIONER FOR OATHS
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO

BETWEEN

- 1. Nigeria Coalition for the International Criminal Court (NCICC)**
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- 3. Women Advocate Research and Documentation Center} PLAINTIFFS**

AND

THE FEDERAL REPUBLIC OF NIGERIA} DEFENDANT

WRITTEN ADDRESS

INTRODUCTION

This originating summons is brought to compel the Nigerian government to respect its obligation under the Rome Statute and enforce the warrant of arrest against the president of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir, by the International Court of Justice immediately he arrives Nigeria's national territory and surrender him to the trial chamber of the ICC in the Hague, Netherland. The summons is supported by a 18 paragraph Affidavit which the plaintiff will rely on.

ISSUES FOR DETERMINATION

- 1. Whether Nigeria has a legal obligation under Article 89 of the Rome Statute of the International Criminal Court and Article 26 of the Vienna Convention on the Laws of Treaties to arrest any person indicted by the Trial Chambers of the International Criminal Court who enters its national territory and to surrender such person to the Court.*
- 2. If the answer to the above question is in the affirmative, whether the government of Nigeria is under legal obligation to arrest and surrender President Omar Al Bashir of Sudan to the Trial Chamber of the International Criminal Court if he enters the territory of Nigeria because he was indicted in 2009 by the International Criminal Court for crimes against the Rome Statute of the ICC in Darfur.*
- 3. Whether this honourable court can issue an arrest warrant against President Omar Al Bashir on the basis on the indictment and arrest warrants by the International criminal court?*

ARGUMENT ON ISSUES

My Lord, we seek your Lordship's indulgence to argue the three issues together.

We submit respectfully that with respect to Nigeria's legal obligation to surrender any person indicted by the trial chambers of the International Criminal Court, Nigeria is a state party to the Rome statute of the International Criminal Court and therefore, has a legal obligation to enforce the provisions of the statute and cooperate with the International Criminal Court and the international community. This is because Nigeria signed the Rome statute on June 1st 2000 and ratified on 27th September, 2001 and as a state party to the Rome statute establishing the ICC, the Nigerian government is under the obligation to enforce any warrant of arrest and surrender any person who has been indicted by the International Criminal Court. Article 89 of the Rome statute provides that

"The court may transmit a request for the arrest and surrender of a person.....to any state on the territory of which that person may be found and shall request the cooperation of the state in the arrest and surrender of such a person. States parties shall, in accordance with the provisions of this part and the procedure under their national law, comply with requests for arrest and surrender"

In addition to this, the Vienna Convention on the Laws of Treaties States, 2008 provides that a treaty must be performed in good faith by the states who are party to it. Article 26 provides that

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

Article 11 of the Vienna Convention also provides that the consent of a state to be bound by a treaty may be expressed by ratification. As stated above, Nigeria ratified the Rome statute of the International Criminal Court on 27th September, 2001, and therefore, consented to be bound by the treaty of the ICC.

With submit with respect to Nigeria's legal obligation to arrest and surrender President Omar Al Bashir of Sudan to the Trial Chamber of the International Criminal Court if he enters the territory of Nigeria because he was indicted in 2009 by the International Criminal Court for crimes against the Rome Statute of the ICC, Article 59 of the Rome statute provides that

"a state party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of part 9".

Article 18 of the Vienna Convention also provides that a state is obliged to refrain from acts that would defeat the object and purpose of a treaty when it has expressed consent to be bound by such treaty. The purpose of the Rome statute establishing the ICC is to prosecute war crimes, genocide and crimes against humanity. The president of the Republic of Sudan, Omar Hassan Ahmad Al-Bashir has been convicted by the ICC and failure by the Nigerian government to surrender him will defeat the purpose of the treaty which they have ratified.

Although Article 1 of the Vienna Convention states that the present convention shall apply to treaties between states, Article 3, 4 and 5 states that the convention shall apply to international treaties which are not within the scope of the present convention.

We therefore submit with respect to the first and second questions that Nigeria has legal obligation to arrest and surrender President Al Bashir to the ICC while he is in its national territory.

We respect to the second question as to whether this honourable court can issue warrant of arrest against President Al Bashir in pursuant to the arrest warrants of the ICC, we submit that your Lordship has the judicial powers to implement the legal obligations of Nigeria state under the law when called upon to do so. National warrants of arrest are judicial instruments that can only be issued by a competent court and Nigeria having ratified the Rome statute of the ICC, this court has the duty to issue a national warrant of arrest in implementing the warrant of the ICC.

We respectfully draw your Lordship's attention to the ruling of your learned brother of the Kenyan High court when called upon in 2012 to issue a provisional warrant of arrest against President Al Bashir. The court issue the order in the case of *The Kenya Section of the International Commission of Jurists v Attorney General* in unreported suit No Miscellaneous criminal application No 685 of 2010 delivered on 23rd day of January 2012. We urge your lordship to follow this laudable precedent and to make the order sought herein

We most respectfully submit.

Dated this _____ day of _____ 2013.

—

Chino Obiagwu, Esq.
Obiageli Theodore Nwankwo Mrs
Dr Abiola Akiyode
Plaintiffs' counsel

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FOR SERVICE ON:

THE DEFENDANT

ATTORNEY GENERAL OF THE FEDERATION

FEDERAL MINISTRY OF JUSTICE, MAITAMA ABUJA