



Odafe and Others v. Attorney-General and Others

Suit No. FHC/PH/CS/680/2003; (2004) AHRLR 205 (NgHC 2004)

Country: Nigeria

Region: Africa

Year: 2004

Court: High Court, Port Harcourt Division

Health Topics: Health care and health services, HIV/AIDS, Infectious diseases, Prisons

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to health, Right to life

Facts

The Applicants were detainees living with HIV. They had been awaiting trial for up to four years. The Applicants claimed that their continuous detention and segregation from the general prison population was a violation of their rights to dignity of the human person and freedom from discrimination in sections 34(1)(a) and 42(1) of the Constitution. They further claimed they had a right to proper medical treatment while in prison under the Prisons Act, the Prisons Regulation Law and the United Nations Standard Minimum Rules for the Treatment of Prisoners. Lastly, they claimed that the failure to provide them proper medical attention amounted to inhuman and degrading treatment in violation of section 34 and section 42 of the Constitution, and article 5 of the African Charter on Human and Peoples' Rights (the African Charter).

Decision and Reasoning

The Court agreed with the plaintiffs that they had a right to receive medical treatment for HIV while in detention. The Court first noted that every detained individual is entitled to a fair hearing. It further held that regardless of whether Applicants are arraigned in court, each has a right under the Prison Act "to be treated for any serious illness once certified" and to be removed to a hospital for treatment upon the recommendation of a medical officer. As to whether AIDS was a "serious illness," the Court declared that the word "serious" was "an understatement" and that HIV was the "greatest threat to public health in their country." The Court further noted that the Applicants could not seek medical treatment themselves as they were detained in state custody. The Court observed that article 16 of the African Charter, which has been incorporated into Nigerian law, placed the duty on the Respondents to provide the medical treatment.

The Court noted that the constitutional right to be free from discrimination did not cover discrimination based on illness, virus or disease. The Court further stated that since HIV was very contagious, it was not "surprise[ing] that the prisons officials are discriminating against the applicants."

The Court held that failure to provide the Applicants medical treatment during their continuous detention amounted to torture. The Court declared that torture includes "mental torture where the person's mental orientation is disturbed" and that the "average person diagnosed with HIV/AIDS ... will be greatly disturbed and will live in perpetual fear of the enemy attack."

The Court held that it had not been presented with expert medical evidence as to the nature of HIV. It could therefore not determine whether the lack of medical treatment would result in the Applicants' death.

Decision Excerpts

"[33.] Justice Niki Tibi JCA observed that torture could mean mental torture where the person's mental orientation is disturbed so that he cannot think and do things rationally as a rational human being. Applying this definition to the present case it is my respectful view that an average person diagnosed with HIV/AIDS ... will be greatly disturbed and will live in perpetual fear of the enemy attack. The second and third respondents are under a duty to provide medical help for applicants. Article 16 of African Charter Cap 10 which is part of our law recognises that fact and has so enshrined that '[e]very individual shall have the right to enjoy the best attainable state of physical and mental health'."

"[37.] The applicants ... have a right to life; however, the fact is that the applicants are in the custody of the second to fourth respondents awaiting trial and suffering from illness. The second to fourth respondents are

under a duty to provide medical attention for them; failure to do so is non-compliance of the provisions of section 8 of the Prison Act and article 16 of the African Charter on Human and Peoples' Rights. The nature and detailed consequences of the virus are not placed before the Court for me to arrive at the conclusion that the non-compliance is an infringement of their right to life. In other words, that if treatment is provided they will live, if not provided they will die. This is for an expert in the medical area concerned to tell the Court and there is no expert evidence before me. From the foregoing I conclude as follows: The government of this country has incorporated the African Charter on Human and Peoples' Rights Cap 10 as part of the law of the country. The Court of Appeal in *Ubani v Director SSS* 1999 11 NWLR pt 129 held that African Charter is applicable in this country. The Charter entrenched the socio-economic rights of a person."

Copyright © 2015 www.GlobalHealthRights.org