

# **Bakassi Penninsula: Why the law allows a must hand-over**

*By Joe-Kyari Gadzama*

## Introduction

**O**N July 31, 2008, the Federal High Court (Coram: Honourable Justice M.G. Umar) sitting in Abuja ordered the Federal Government of Nigeria to maintain status quo over the hand-over of Southern Bakassi to the Republic of Cameroun which was scheduled to take place on August 14, 2008. It is against this backdrop that the following appraisal became imperative.

## Background facts:

In Suit No. FHC/ABJ/M/143/08 instituted by eight applicants for themselves and on behalf of all the citizens, indigenes and families of Bakassi Local Council Area of Cross River State, affected by the Greentree Agreement between the Federal Republic of Nigeria and the Republic of Cameroun, they claimed several reliefs against the Federal Government, ranging from declarations and damages to orders restraining the Government of the Federation and of Cross River State from handing over the Southern part of Bakassi Peninsula to Cameroun.

It should be noted that at the time the applicants were granted leave to enforce their fundamental human rights under Sections 43 and 44 of the 1999 Constitution, they sought for other prayers which the trial court refused. The following were the prayers they sought for but were refused by the court:

- That the first and second respondents shall not ratify the "Greentree Agreement" between Nigeria and Cameroun in respect of Bakassi Local Council Area of Cross River State of Nigeria;
- That the first, second and third respondents should not cede the remaining part of Bakassi Local Council Area (not yet ceded in line with the "Greentree Agreement", that is, Abana and Atabong Zones) to Cameroun;
- That the fourth, fifth, sixth and ninth respondents should not remit funds due monthly from the Federation Account and or the Consolidated Revenue Fund to Cross River State and Local Council Joint Account in respect of Bakassi Local Council Area of Cross River State, but put same into an interest-yielding account to be maintained by the Central Bank, while funds already remitted should not be paid to officials of the "New Bakassi" Local Council or otherwise dissipated, but put in an interest-yielding account and communicated to the Registrar of the Court; and
- The respondents jointly and severally should not relocate the administrative Headquarters of Bakassi Local Council Area from Abana to any other place.

The court, in granting an application for adjournment, directed all the parties to maintain status quo pending the hearing and determination of all applications and objections filed before it, and adjourned the matter to October 20, 2008, for hearing. The order granted by the Lower Court are as follows:

- That parties should maintain a status quo as at today pending the hearing and determination of all applications filed before this court,
- That this case is adjourned to October 20, 2008 for hearing.

## Public international law perspective:

It is axiomatic that the crux of the dispute before the court is the implementation of the decision of the International Court of Justice (ICJ) given on October 10, 2002, wherein the International Court awarded the area, the subject matter in dispute, to the Republic of Cameroun.

The decision of the ICJ is binding inter partes. It is strictly enforceable against the losing parties to the dispute because they must have consented to be bound by the decision of the court before the court can assume jurisdiction.

It is also obvious that Nigeria submitted to the jurisdiction of the ICJ and she is, therefore, bound by its decision. Can Nigeria now refuse to be bound by the decision or derogate from the terms of its enforcement?

In its judgment, the International Court directed the Secretary-General of the United Nations to set up a machinery that will supervise the peaceful implementation of the court's judgment and that gave rise to the Greentree Agreement. So it can validly be said that the Greentree Agreement that was drawn up under the auspices of the United Nations and witnessed by some Member-States in the Security Council was done in compliance or enforcement of the judgment of the International Court.

The implication of disobedience of the decision of the International Court of Justice:

Under Article 94 paragraph 2 of the United Nations Charter of June 26, 1945, if any state or party to a case before the International Court of Justice fails to perform the obligations incumbent upon it under a judgment delivered by the court, the Security Council may upon application by the other state or party to the case, make recommendations or decide upon measures to be taken to give effect to the judgment. These measures may include economic sanctions and trade restrictions or even forcible action for the purpose of enforcing the judgment.

The Greentree Agreement:

It is not in dispute that former President, Chief Olusegun Obasanjo, had the powers just like any other President of another country to enter into a treaty that binds Nigeria under Public International Law. The Greentree Agreement, therefore, remains a valid treaty between the Federal Republic of Nigeria and the Republic of Cameroun.

In the agreement, Nigeria recognised the sovereignty of Cameroun over the Bakasssi Peninsula in accordance with the judgment of the International Court of Justice and committed itself to the land and maritime boundary as delineated by the ICJ. The agreement was just for modalities for a peaceful transfer of Bakassi to Cameroun.

It is also noteworthy that a treaty in force is binding upon the parties and must be performed by them in good faith in accordance with the Vienna Convention on the Law of Treaties, 1969.

The place of a municipal court in international law:

If a decision of a national or municipal court or a legislative measure frustrates any international obligation, such decision or measure constitutes evidence of a breach of a treaty or a rule of customary international law. That is why it is a difficult task to reconcile the ruling of the Federal High Court, Abuja delivered on July 31, 2008, with the commitments of the Nigerian government to the Greentree Agreement, which was drawn up in compliance with the direction of the International Court of Justice.

That ruling can be viewed by the international community as a deliberate attempt by the Nigerian government to frustrate the logical and full implementation of the decision of the International Court of Justice.

National or municipal courts have the power to void local legislations on the ground that they are contrary to international law but they cannot void a decision of the International Court of Justice as given per incuriam because it cannot be validly enforced without breach of a local legislation. This is the opinion of Judge Lauterpacht in the Norwegian Loan Case ICJ Reports (1957), pp. 40-41.

The Permanent Court of Arbitration, the Permanent Court of International Justice, and the International Court of Justice have produced a consistent jurisprudence. See the Wimbledon

(1923), P.C.I.J., Ser. A, no.1, p.29; Mavrommatis, (1925) P.C.I.J., Ser. A, no.5; German Interests in Polish Upper Silesia (1926), P.C.I.J., Ser. A, no.7, p.19; Chorzow Factory (Merits) (1928), P.C.I.J., Ser. A, no.17, pp.33, 34; Jurisdiction of the Courts of Danzig ) (1928), P.C.I.J., Ser. B, no.15, pp.26, 27; Free Zones Case (1929), P.C.I.J., Ser. A, no.24, p.12; the Fisheries Case, I.C.J. Reports (1951), p.116 at p.132; the Nottebohm case, I.C.J. Reports (1955), p.4 pp.20-1; the Guardianship case, I.C.J. Reports (1958), p.55 at p.67.

In the Free Zones case, the permanent court observed:

"...It is certain that France cannot rely on her own legislation to limit the scope of her international obligations...."

And the advisory opinion in the Greco-Bulgarian Communities case (1930), P.C.I.J., Ser.B, no.17, p.23 contains the statement:

"It is a generally accepted principle of international law that in the relations between powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty".

The same principle applies where the provisions of a constitution are relied upon. In the words of the Permanent Court:

"It should... be observed that...a state cannot adduce as against another state its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force. Applying these principles to the current case, it results that the question of the treatment of Polish nationals or other persons of Polish origin or speech must be settled exclusively on the basis of the rules of international law and the treaty provisions in force between Poland and Danzig". See the case of Polish Nationals in Danzig (1931), P.C.I.J., Ser.A/B, no.44, p.24.

Arising from the nature of treaty obligations and from customary international law, there is a general duty on states to bring internal law into conformity with obligations under international law. See Exchange of Greek and Turkish Populations (1925), P.C.I.J., Ser.B, no.10, p.20.

In accordance with the ICJ's judgment, the Republic of Cameroun has acquired title over the Bakassi Peninsula. If she is now confronted with a prohibitive ruling of the Federal High Court, Abuja, she is bound to plead and plead successfully too that it has obtained adequate remedies before the ICJ, and so a re-visit of that issue in a municipal or national court undoubtedly is unacceptable.

The law is well settled that a state cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law. This principle is enshrined in Article 27 of the Vienna Convention on the Law of Treaties, 1969. The acts of the legislature and other sources of internal rules and decision-making are not to be regarded as acts of some third party for which the state is not responsible, and any other principle would facilitate evasion of obligations. The Nigerian Judiciary is part and parcel of the Federal Republic of Nigeria and, therefore, cannot review the judgment, pronouncement or decision of the ICJ, just as the Camerounian Judiciary cannot do so. After all, the delineation of international boundaries is a matter beyond the jurisdiction of domestic courts.

Therefore, the ruling of the Federal High Court sitting in Abuja is a product of an internal organ and incapable of compelling the Nigerian government to renege on her international obligation to transfer the territory known as Southern Bakassi to the Camerounian government on August 14, 2008.

Conclusion

The substratum of the matter is compliance with not only the ICJ's judgment but also the Greentree Treaty. Therefore, the Federal Government is at liberty to handover the Bakassi Peninsula on August 14, 2008 or on any other convenient date.

The hand-over should take place in view of Nigeria's desire for mutual respect among the comity of nations, particularly bearing in mind her rightful and genuine desire to be a member of the Security Council of the United Nations.

Also, it must be specifically noted that the consequences of not handing over are unimaginable and go beyond the issue of denting our reputation and standing in the international community.

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