



THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

ABEL FATON v. WEST AFRICAN POWER POOL (WAPP)
Application No: ECW/CCJ/APP/29/19; Judgment No. ECW/CCJ/JUD/24/21

JUDGMENT

ABUJA

7 JULY 2021



THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

ABEL FATON v. WEST AFRICAN POWER POOL (WAPP)
Application No: ECW/CCJ/APP/29/19; Judgment No. ECW/CCJ/JUD/24/21

JUDGMENT

ABUJA

7 JULY 2021

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

MR. ABEL FATON

APPLICANT

AND

WEST AFRICAN POWER POOL (WAPP)

RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako **ASANTE** - Presiding/ Judge Rapporteur
Hon. Justice Gberi-Be **OUATTARA** - Member
Hon. Justice Januaria T. Silva Moreira **COSTA** - Member

ASSISTED BY:

Dr. Athanase **ATANNON** - Deputy Chief Registrar

REPRESENTATION OF PARTIES:

Dr. Raymond **DOSSA**

Mr. Djidjouè **GBOYOU**

Counsel for Applicant

Mr. Raoul Placide **HOUNGBEDJI**

Counsel for Respondent



I. JUDGMENT:

1. This is the judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES:

2. The Applicant, Abel Faton is a citizen of the Republic of Benin and former cleaner at the West African Power Pool (WAPP).
3. The Respondent is West African Power Pool (WAPP), a specialized agency of the Economic Community of West African States (ECOWAS) created by A/DEC/5/12/99 of the Conference of Heads of State and Government, with Headquarters in Cotonou-Republic of Benin.
4. The Respondent is responsible for promoting and developing electricity generation and transmission, infrastructure, coordinating electricity exchanges among its Member States.

III. INTRODUCTION

5. This Application resulted from an alleged termination of a fixed-term contract of employment relationship between the Applicant and the Respondent that was renewed several times.

Handwritten signature in blue ink, appearing to read "Faton", with a circular stamp or mark below it.

6. It is the case of the Applicant that, during his period of employment with the Respondent, he received less than the minimum wage for his category and that he was unfairly dismissed following an accusation of theft of cash against him, which was nevertheless dismissed by the Cotonou Court of First Instance.
7. He is claiming special and general damages from the Respondent covering under-paid salaries, salary arrears, leave allowance, severance pay and compensation for wrongful dismissal.

IV. PROCEDURE BEFORE THE COURT

8. The Originating Application in French was filed at the registry of the Court on the 24 June 2019 and was served on the Respondent on 27 June 2019.
9. On the request of the Respondent for an extension of time to file its defence, the Court granted an additional thirty (30) days to file the defence, which was effectively filed at the registry on the 15 August 2019, and served on the Applicant on the 2 September 2019.
10. The Applicant's reply dated 22 November 2019, was received at the Registry on 4 February 2020 and served on the Respondent on 7 February 2020.
11. The Respondent filed a rejoinder on 13 March 2020 and was served on the Applicant on 15 June 2020.





12. At the end of the written phase of the procedure, the case was heard on the 11 March 2021 where adversarial arguments between counsel for the parties were made on the merit of the case. The case was then adjourned for judgment on the 30 June 2021.

V. APPLICANT'S CASE

a) Summary of facts

13. The Applicant states that he was recruited after a job interview as a Maintenance Officer (Cleaner) in the support staff category of the Respondent effective 3 June 2013 which said contract was renewed six (6) times, the last renewal dated 31 July 2015; when he received a contract due to expire on the 31 January 2016.

14. He contends that the WAPP Staff Regulations provide for a well-defined salary scale for every staff member and the Applicant who held the position of a Cleaner belonged to the category of auxiliary or support staff M1-1 with the basic monthly salary of One Hundred and Eighty-six thousand (186,000) CFA F in the old salary scale and Two hundred and four thousand, Six hundred (204,600) CFA F with the new salary scale in force since 1 January 2015 pursuant to Resolution No. 165/RES.06/11/14 on the application of adjustments approved by the ECOWAS Commission for the benefit of the staff of its institutions.

15. The Applicant repeats the immediate preceding paragraph and contends further that from June 2013 to March 2014, he was paid CFAF 100,000 per month, in violation of the Respondent's salary scale which sets the basic salary of its support staff at CFAF 186,000.

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'J. J. J.' and the initials are 'J. J. J.'.

16. He alleged that the under payment of salaries unjustly held by the Respondent over the period of ten (10) months amounted to Eight hundred and Sixty Thousand (860,000) CFA F.
17. Again, the Applicant is alleging that he was denied payment of his annual leave compensatory allowance for thirty-four (34) month period, being Eighty-Five (85) days of annual vacation to be determined according to the salary scale in force during the period of his employment i.e. fifty (50) days before 1 January 2015 with the old salary scale at 186,000 CFA F per month and thirty five (35) days after 1 January 2015 with the new scale at 204,600 CFA F per month.
18. According to the Applicant, his fixed term contract having been renewed more than four times, was automatically converted into an open ended contract which the Respondent refused to acknowledge.
19. The Applicant alleges that on the 14 December 2015, while in the employment of the Respondent, one Ms. Marie Aye, the Respondent's Administrative Officer suspected him of an alleged theft case of an undisclosed cash at the headquarters (Secretariat) of the Respondent.
20. Following the allegation of stealing against him, the Applicant says that he was taken to the INTERPOL Police Station in Tokplegbe, and in the process of interrogating him, he was beaten and locked up for seven days by the Police. That as a result of the beating, he had one of his testicles severely injured. He again claims that he was incarcerated in the civil prison of Cotonou from the 21 January 2015 until he was acquitted by the court on the 5 February 2016.
21. According to the Applicant, sometime in the mid-February 2016, the Respondent's Accountant called to pay him a Separation Allowance to cover his health expenses relative to the treatment of injuries sustained at the Tokplegbe Police Station.

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'Hend' and there are some scribbles below it.

22. On the 15 March 2016, the Applicant says he asked the Human Resources Officer for guidance on his case and he was advised to write a letter to the management of the Respondent, which he did immediately.
23. A month later, in April 2016, the Applicant claims he again contacted the Human Resources Officer to inquire about his case, and he was informed that the Respondent was conducting an investigation to determine any liabilities.
24. As he was not receiving any response, on the Friday 27 May 2016, the Applicant again called the Human Resources Officer who implored him to be patient and wait for the results of the investigation and the decision of the authorities of the Respondent on the matter.
25. The Applicant is contending that the refusal of the Respondent to respond to his letter coupled with unsatisfactory explanation given by the Human Resource Officer clearly indicate that the Respondent has dismissed him from its employment, which to him is very unfair and wrongful.
26. The Applicant states that in accordance with the internal dispute resolution mechanisms provided for in Article 87 of the Staff Regulations, he wrote on the 31 July 2017 to complain to the Secretary General and the members of the Executive Board of the Respondent but to no avail.
27. The Applicant states that he was compelled by the failure of the Respondent to attend to his case to engage and entrust the case to his counsel who also referred the matter to the Secretary General of the Respondent by a mail dated 18 December 2017, which did not receive any favourable outcome.
28. The Applicant is contending that the termination of his contract by the Respondent without any assigned reasons and in the absence of notice coupled with the non-payment of proper compensation makes the termination wrongful.

Handwritten signature in blue ink, appearing to read 'L. H. ...', with a circular scribble below it.

b. Pleas in Law

29. The Applicant relies on the following laws:

- i. Articles 15 of the African Charter on Human and Peoples Rights (African Charter);
- ii. Articles 12(a), 17(f), 18, 31(c) & (e), 43(a) and 63 of the WAPP Staff Regulations;
- iii. Articles 2 of International Labour Organisation (ILO) Convention No. 100 on Equal Remuneration of 1951;
- iv. ILO Convention No. 111 on Discrimination in Employment and Occupation of 28 June 1958

c) Reliefs Sought

30. The Applicant seeks the following reliefs from the Court:

- i. Declare the application admissible;*
- ii. Order the Respondent to provide the salary scale in force since 1 January 2015 for a comprehensive assessment of its salaries and various entitlements;*
- iii. Order the Respondent's Secretariat to provide the Applicant's Certificate of employment and pay slips with his grades.*
- iv. Order the Respondent to reimburse the Applicant his various pension and social security contributions, to be determined on the basis of the salary scale in force during his period of employment;*
- v. Order the Respondent to organise a medical examination to establish the rupture of the Applicant's right testicle, in order to draw all the consequences;*

31. In respect of monetary claims, the Applicant prays the Court to order the Respondent to pay the Applicant the following:

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'H. H. H.' and the initials are 'H. H.'.

- i. *The sum of eight hundred and sixty thousand (860,000) CFA Francs, as underpayment of salary unjustly deducted between June 2013 and March 2014;*
- ii. *The sum of five hundred and forty-six thousand eight hundred and fifty (546,850) FCFA, as compensation for annual leave;*
- iii. *The sum of nine million eight hundred and twenty thousand eight hundred (9,820,800) FCFA (amount to be completed), as payment of salary from the time of his forced removal to the pronouncement of the decision of the on the unfair dismissal;*
- iv. *The sum of three million nine hundred and sixty-nine thousand two hundred and forty (3,969,240) CFA francs as severance pay (amount to be completed);*
- v. *The sum of ten million (10,000,000) CFA francs as compensation for the material and moral damage suffered as a result of the unfair dismissal as well as the loss of income, which is detrimental to the psychology of both the applicant and his family.*

32. Alternatively, the Applicant seeks the following reliefs:

- i. *Order the full payment of his claims under a fine of 200,000 FCFA per day of delay as from the notification of the decision to be made;*
- ii. *Order the Respondent to pay the applicant, in full compensation for the damage suffered as a result of the discrimination he was subjected to and his unfair dismissal, the sum of twenty-five million one hundred and ninety-six thousand eight hundred and ninety (25,196,890) CFA francs for all causes of damage combined (amount to be completed);*
- iii. *Order the Respondent to pay all the costs and reimbursement of the legal fees and expenses incurred by the applicant in the present proceedings.*




VI. RESPONDENTS' CASE

a) Summary of facts

33. In its statement of defence, the Respondent states that its governance structure is divided into four including the General Secretariat which enjoys privileges and immunities stemming mainly from the Headquarters Agreement signed with the Government of the Republic of Benin on 25 July 2006.

34. The Respondent states that by a letter dated 27 May 2013 with the subject "*Employment Contract*", its Secretariat recruited the Applicant in the non-permanent staff (temporary staff) category as a Maintenance Officer with effective 03 June 2013 on a salary of One Hundred Thousand (100,000) CFA francs, all benefits included (annexed as *Exhibit 1: EEEOA / SG / DAF / ma letter of 27 May 2013*).

35. The Applicant had a cordial working relationship with the Respondent and his contract was renewed six times by the Respondent on the respective dates of 6 September 2013, 12 February 2014, 1 April 2014, 31 September 2014, 2 February 2015 and 31 July 2015 (*annexed as Exhibits 3 – 8*)

36. According to the Respondent, in December 2015, one Mr. Harouna Coulibaly, an Environmental Expert of the Respondent stationed at its headquarters reported of a missing cash amount of three million five hundred thousand FCFA (3,500,000 FCFA) from his office.

37. Following a complaint by Mr. Coulibaly to the Police, a flagrante delicto investigation was carried out by the Toklegbe Police Station, resulting in the arrest of several suspects, including the Applicant.

Handwritten signature in blue ink, possibly reading "H. Coulibaly", and a circular stamp or mark below it.

38. The respondent alleged that the Police investigation implicated the Applicant and he was subsequently remanded in Police custody under a warrant within the legal time frame to be processed and arraigned by the Public Prosecutor of Cotonou before the criminal judge of the Cotonou Court of First Instance who sits in Chamber over flagrant offences.
39. The Respondent says that indeed the Applicant was arraigned before court and after the arguments before the correctional judge, the judge ruled on the 5 February 2016 to discharge him on grounds of lack of sufficient evidence with the benefit of the doubt.
40. The Respondent is contending that the Applicant was not acquitted but was discharged for lack of evidence meaning he was not exonerated of the accusation of theft.
41. The Respondent states that following the theft incidence, its relationship with the Applicant was tainted with suspicion and as a result, the Secretariat took the decision not to renew the contract of the Applicant which had expired on the 31 January 2016.
42. The Respondent added that on 17 March 2016, the Applicant was paid his separation allowance in accordance with the stipulations of the contract between the parties.
43. The Respondent adds that by letter referenced CRD/AS/01461/12/17 dated 18 December, 2017, lawyers of the Applicant wrote on his instructions to the Respondent demanding payment of a sum of Two million three hundred and sixteen thousand and fifty (2,316,050) in respect of alleged violation of the rights of the Applicant and prejudices suffered.

Handwritten signatures and initials in blue ink, including a circular stamp and the name 'Hew'.

44. On 29 January 2018, the Respondent, by way of exculpatory letter referenced EEEOA/2018/SG /CJ/kab/020 responded to the letter of the Applicant's counsel explaining and indicating the reasons for the Respondent's inability to pay any additional compensation to the Applicant. According to the Respondent, it was against this background that the Applicant instituted the present suit.

45. The Respondent denies under-paying the Applicant salaries when he was in its employment as a temporary worker and further contends that he was not entitled to any benefits aside those agreed and stipulated in his contract of employment.

46. The Respondent vehemently discounted the Applicant's argument that his temporary employment was constructively converted to an open ended contract when it was renewed more than three times.

b) Pleas in law

47. The Respondent's defence is anchored on Articles 9(c), 10, 17(f), and 18 of the its Staff Regulations.

c) Reliefs sought

48. The Respondent seeks the following reliefs:

- i. *Find that the Respondent enjoys privileges and immunities;*
- ii. *Find that the Respondent employment relationship is governed by WAPP General Secretariat Staff Regulations;*

The image shows three handwritten signatures or initials in blue ink. On the left is a circular scribble. In the middle is a vertical line with a loop at the top. On the right is a cursive signature that appears to read 'H. H. H.' or similar.

- iii. *Find that the Applicant belonged to the category of non-permanent staff of the Respondent;*
- iv. *Find that the Applicant had a temporary contract; and*
- v. *Find that the remuneration of the Applicant was fixed in accordance with the provisions of the Regulations relating to non-permanent staff.*


49. Consequently the Respondent is asking the Court to:

- i. *Adjudge and declare that only the Staff Regulations of WAPP General Secretariat is applicable in its working relationship with its staff;*
- ii. *Adjudge and declare that the Applicant did not suffer any discriminatory treatment in salary treatment;*
- iii. *Adjudge and declare that non-permanent WAPP staffs do not receive any additional compensation, benefits, allowances, etc...*
- iv. *Adjudge and declare that the Applicant was not dismissed;*
- v. *Dismiss all the claims of the Applicant; and*
- vi. *Order the Applicant to bear the costs of this action.*

50. The Applicant and the Respondent filed Reply and Rejoinder respectively. The contents of the two processes are mainly legal arguments to substantiate their respective narration of facts and shall be referred to where necessary in the Court's analysis.

VII. JURISDICTION

51. The Applicant's Originating Application reveals that he approached this Court in his capacity as a public servant of Economic Community of West African



States (ECOWAS) hereinafter referred to as “the Community”. Under Article 9 of the 1991 Protocol (A/P1/7/91) as amended by the 2005 Supplementary Protocol (A/SP.1/01/05), the competencies of this Court are clearly provided.

52. Article 9 (1) (f) of the said Protocol, which is material to this case provides that *“the Court has competence to adjudicate on any dispute relating to the Community and its officials”*. In this capacity, the Court serves as an ECOWAS Public Service Court for the Community and its officials.

53. Since the Applicant instituted the present suit in his capacity as a public servant of the Community against the Respondent as Community institution, the competence of this Court in dealing with this matter is established and the Court so holds.

VIII. ADMISSIBILITY

54. On access to the Court, Article 10 of the 1991 Protocol (A/P1/7/91) as amended by the 2005 Supplementary Protocol (A/SP.1/01/05), gives access to both natural and juristic persons in certain circumstances. Article 10 (e) being the relevant provision to this suit, provides that access to the Court is open to:

“Staff of any Community institution, after the Staff Member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations”.

55. Suffice it to state that in the instant suit, the applicable rules and regulations contemplated by Article 10 (e) (supra) will be the WAPP Staff Regulations which provides in part under Article 87(b) that *“The employee should follow the procedure prescribed here (in the Regulations) for bringing the complaint to*

Handwritten signature and initials in blue ink at the bottom right of the page.

Management's attention". Emphasis mine. This means that before any staff of the Respondent can initiate proceedings before this Court, he or she must have exhausted all appeal processes provided for and available to him or her.

56. In the present case, the Applicant claims to have received a severance payment, which implies dismissal after his court case. At the request of the Human Resources Officer, he consulted the Respondent's management in April 2016 on the appropriate course of action. As he did not receive any follow-up, he called the Human Resources Officer again, but she asked him to wait until the results of the investigation were made available.
57. On the 31 July 2017, in accordance with Article 87 of the Staff Regulations, the Applicant activated the internal dispute resolution mechanism by writing to the Secretary General of the Respondent for his grievances to be redressed but the Secretary General did not reply to his letter. Though the Secretary General refuted this claim and stated that he wrote to the Applicant, the Court notes that no committee was set up to decide on the appeal as submitted.
58. In the case of *MR. BABATUNDE ADEYEMO v. SYSTÈME D'ECHANGES D'ENERGIE ECW/CCJ/JUD/30/19* (Unreported) the Court found that Mr. Babatundé had exhausted all the remedies provided for in the WAPP Staff Regulations despite the silence of the administration to all his appeals. The Court, therefore, in the instant case holds that the Applicant is deemed to have exhausted the internal dispute resolution mechanisms upon failure of the Respondent to set up a Committee to address his concerns.
59. Therefore, having exhausted all the appeal processes available to the Applicant without resolution of his grievances, the Applicant's case is admissible for adjudication and the Court so holds.

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'S. S. S.' and the initials are 'S.S.S.'.

IX. MERITS

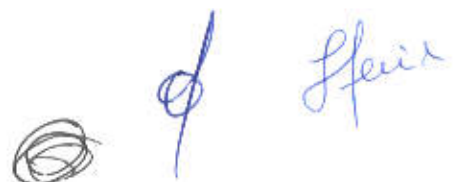
60. The Applicant's claim raises the following issues which shall be analysed and determined in seriatim:

- i. Allegation of discriminatory treatment of the Applicant by the Respondent;
- ii. Allegation of breaches of contractual obligations by the Respondent;
- iii. Allegation of multiple renewal of a temporary contract resulting into an open-ended contract; and
- iv. Allegation of wrongful dismissal.

a. *On the allegation of discriminatory treatment*

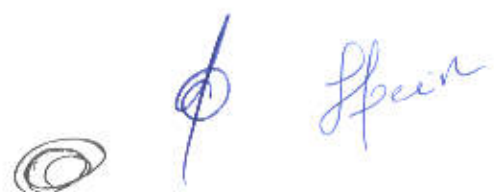
61. The Applicant claims that he was a victim of discrimination on the grounds that he occupied the post of Maintenance Officer, a position, he says, falls into at least the category of auxiliary or support staff M1-1 and whose basic monthly remuneration is One Hundred and Eighty-Six Thousand (186,000 CFA francs) in the old salary scale and Two Hundred and Four Thousand Six Hundred (204,600 CFA francs) with the new salary scale in force since 1 January 2015 by virtue of Resolution No. 165/RES.06/11/14 on the application of adjustments approved by the ECOWAS Commission for the staff of its institutions.

62. However, he contends that he only received the monthly sum of One Hundred Thousand (100,000) FCFA between June 2013 and March 2014, resulting in a shortfall of Eight Hundred and Sixty Thousand (860,000) FCFA over a period



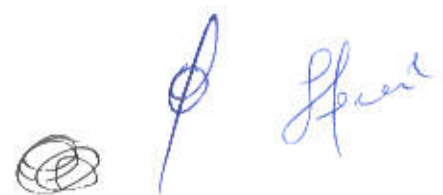
of ten (10) months. He submits that this situation amount to violation of not only WAPP Staff Regulations but also Article 15 of the African Charter and similar provisions in the Universal Declaration of Human Rights and the ILO Conventions 100 and 111.

63. The Applicant states that one Mr. Abdoulaye CHOUAMINOU, the Mail Officer of the Respondent, continued to receive his basic salary between the period when he was a temporary member of staff and the period of his confirmation as a permanent member of staff. He therefore deduced that permanent and contract staff of the same or corresponding category receive the same basic salary.
64. In response, the Respondent refutes any discriminatory treatment and submits that the Applicant was recruited under a fixed-term contract that was renewed several times, with a very clear indication of his monthly salary. Furthermore, the Applicant worked in the employment of the Respondent in the category of non-permanent staff and not in the category of auxiliary or support staff as he tries to posit.
65. The Respondent contends that Article 10 of the WAPP Staff Regulations which provides for "*grades and steps*", contrary to the claim of the Applicant is not applicable to him since such classification is not relevant to non-permanent staff. The "*grades and steps*" are for the exclusive benefit of permanent staff.
66. Again, the Respondent, in discounting the claim of the Applicant to certain entitlements and benefits, recalls Article 9(c) of WAPP Staff Regulations, which provides that "*Non-permanent staffs do not receive additional*

Handwritten signature and initials in blue ink. The signature appears to be 'Spain' and there are some initials or scribbles to the left.

compensation, benefits, allowances etc.” which are for the enjoyment of only permanent staff.


67. The Applicant’s employment contract dated 27 May 2013 (*Exhibit – 1*), issued to him by the Respondent and which he duly accepted, was produced in evidence by him. The Court notes that the Applicant was recruited as a Cleaner for a three (3) months which suffered several renewals but at all material times in his contract with the Respondent, it was succinctly provided that his monthly salary was One Hundred Thousand (100,000) FCFA including all benefits.
68. It is pertinent to note relative to the instant case that, like all wage discriminations, it is a legal fact usually contained in an employment contract, and in order to successfully invoke and challenge the condition of wage on the basis of discrimination, it is incumbent upon the Applicant to provide tangible proof that another member of staff was receiving a higher salary than that paid to him at the end of each month for the same work.
69. The above legal position was the *ratio decidendi* in the case of *JUSTICE PAUL UUTER DERRY & 2 ORS v. THE REPUBLIC OF GHANA JUDGMENT NO ECW/CCJ/JUD/17/19 @ Pg. 32. (Unreported)* where the Court held that “*For an action of discrimination to succeed, there must be established a difference of treatment in an identical or similar case*”. The Applicant’s reference to one Mr. Abdoulaye CHOUAMINOU, the Mail Officer of the Respondent woefully falls short of discharging the onus on him since there is no proof that Mr. Abdoulaye was recruited in the same staff category of the Applicant. Work of a Mail Officer and a Cleaner differ in diverse ways and may attract different remunerations.



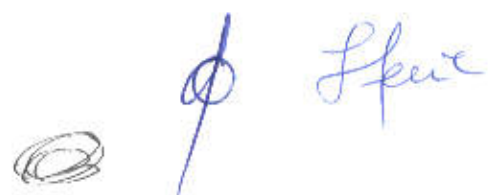
70. Sanctity of contract is a general idea that once parties duly enter into a contract, they must honor their obligations under that contract. Undoubtedly, the Applicant was employed by the Respondent not as a permanent staff member but for a one-off job of three months (which suffered several renewals on same terms) for which the conditions of employment, particularly salary were well specified and agreed upon by the parties.
71. The Applicant having been employed as non-permanent staff, cannot arrogate to himself status of auxiliary or support staff with grades and steps as he has erroneously done to ground his claim of discrimination. To this extent, the Court agrees with the Respondent that, in principle, grades and steps are classifications reserved for permanent staff who can evolve and move up the career ladder to which they belong and not non-permanent staff like the Applicant.
72. The Applicant's contract of employment is the law of the parties and since its terms clearly defines the conditions and capacity in which he was hired by the Respondent, the Court is unable to find any discriminatory treatment meted out to him by the Respondent on the account of his employment.
73. Consequently, the Court holds that all the claims of the Applicant hinged on the alleged discriminatory treatment, including the sum of Eight Hundred and Sixty Thousand (860,000 FCFA) are dismissed.

b. On the violation of the Staff Regulations and contractual obligations by the Respondent.

74. The Applicant, relying on the provisions of Article 43 (a) of the WAPP Staff Regulations which state: "*Staff members accrue annual leave at the rate of*

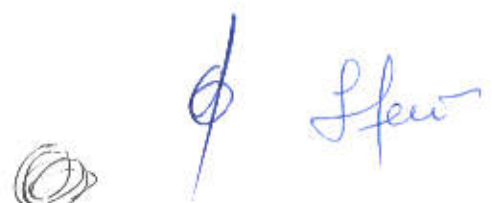
Handwritten signature and initials in blue ink, appearing to be "Hend" or similar, with a circular mark below it.

- thirty (30) working days per year of active service*", seeks an order to compel the Respondent to pay, for his benefit, the sum of FCFA five hundred and forty-six thousand, eight hundred and fifty (546,850 FCFA) as compensation for paid leave on the ground that he did not enjoy his annual leave as an employee of the Respondent for a period of thirty-four (34) months accruing a cumulated Eighty-five (85 days) of annual vacation.
75. The Respondent vehemently discounted the argument of the Applicant and submitted that Article 43(a) referred to by the Applicant is not applicable to him because he is a non-permanent staff member.
76. The Court observes that it is clearly stated in the Applicant's contract of employment that his fixed salary of One Hundred Thousand (100,000) FCFA includes all benefits. Also, Article 9 (c) of the WAPP Staff Regulations states that *"Non-permanent staff do not receive any additional compensation, benefits, allowance, etc..."*
77. For the reason that the Applicant is a non-permanent staff coupled with the express provision of the WAPP Staff Regulation which excludes his category of staff from the enjoyment of the benefit being claimed, the Court holds that the claim for the sum of Five Hundred and Forty-Six Thousand Eight hundred and Fifty (546,850 CFA francs) as payment of compensatory leave allowance during his employment fails and same is dismissed.
78. The Applicant contends that from the date of the fourth renewal of his temporary contract of three (3) months, i.e. 2 February 2015, he could no longer be considered as a temporary contract staff. He supported his claim with Article 17 (f) of the WAPP Staff Regulations which states: *"An appointment is considered to be temporary where the relevant letter of appointment*

Handwritten signature and scribble in blue ink at the bottom right of the page.

*expressly states that the period of employment shall not exceed six months
These appointments may be renewed three times for periods not exceeding six
months each time...*"

79. In addition, the Applicant states that the failure to expressly state in his employment contract, notice period for termination of his appointment and details of probationary period, offends Article 18 of the WAPP Staff Regulations and must result in the reclassification of his contract from a temporary one to a permanent one.
80. In response, the Respondent recalls its status as an ECOWAS institution enjoying privileges and immunities under the Headquarters Agreement signed between it and the Government of Benin on 25 July 2006. As such, the Respondent employs three categories of staff as specified in Article 9 of its Staff Regulations, namely: permanent international staff, permanent local staff (auxiliary or support staff) and non-permanent staff.
81. The Applicant, vide a temporary contract, was employed in the non-permanent staff category of the Respondent. Having been employed as a temporary staff, he could not benefit from an indefinite contract for the obvious reason that the Respondent's Staff Regulations do not allow it and better still, permanent staff members under a fixed-term contract are recruited according to a regimented qualification criteria and a rigorous procedure which is not the case for the non-permanent Staff members.
82. The Court observes that the Applicant is relying on the provisions of Articles 17(f) and 18 of the Respondent's Staff Regulations to call for reclassification of his contract from temporary contract to a permanent contract which provide as follows:

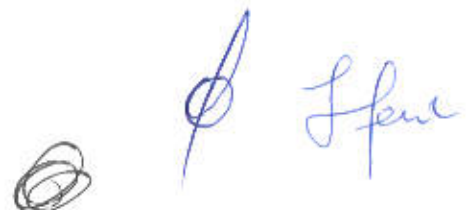
Handwritten signature and scribble in blue ink at the bottom right of the page.

Article 17(f) *"An appointment is considered to be temporary where the relevant letter of appointment expressly states that the period of employment shall not exceed six months. Such appointments may be renewed three times for periods not exceeding six months each..."*

Article 18 *"At the end of the recruitment procedures, the Secretary General will issue Letter of Appointment to selected candidates which, upon acceptance and signing by the candidate, will constitute a binding employment contract and clearly state: the nature of appointment, the date of assumption of duty (Effective date); the duration of appointment, notice required to terminate the appointment; details of probation period; (see below); salary and benefits, specifically indicating the starting salary, and; any special conditions which may be applicable".*

83. Clearly, Article 17 of the WAPP Regulation limits the number of authorised renewals of a temporary contract not exceeding six months to three. It presupposed that after the third renewal of his appointment, the Applicant ought to have been denied any further renewal but the General Secretariat of the Respondent favourably granted him additional renewals. This act of the Secretariat cannot be faulted and construed to mean that the temporary employment of the Applicant, by virtue of that act, had been converted to a permanent employment.

84. It is globally accepted practice that, based on the notion of protecting the employee in labour law, the principle of *"interpretation in favor of the employee"*, which is a special form of interpretation meant to protect the

Handwritten signature and scribble in blue ink at the bottom right of the page.

employee who is weak against the employer, is resorted to in cases of both administrative and judicial decisions.

85. It is, therefore, imperative to act in the light of this principle in interpreting Article 17 of the WAPP Staff Regulations, particularly how it was applied to the concrete case of the Applicant by the Secretariat in achieving a beneficial results to him.
86. Based on the foregoing analysis, the Court holds that, contrary to the Applicant's assertion, Article 17(f) makes absolutely no mention that the temporary contract of a non-permanent staff member may be transformed into a contract of indefinite duration. Again, the favourable application of the Article to the concrete situation of the Applicant by the Respondent's Secretariat is in line with best international practices where workers are afforded the best protection of their sources of livelihood. Consequently, the claim of the Applicant for reclassification of his contract of employment under this heading is not sustainable and hereby dismissed.
87. The Court equally observes that, from the tenor of Article 18 (supra), and contrary to the Applicant's understanding of same, the Court finds that it applies only to employment contracts of the Respondent which are subject to a probationary period and not temporary contracts which may not exceed maximum duration of six (06) months. In such lesser duration contracts, terms of probation and notice for termination, though implied, are not expressly stated even where they are applicable.

d. On the allegation of wrongful/unfair dismissal

88. The Applicant, arguing that he was in the employment of the Respondent when he was wrongfully dismissed, is claiming pension and social security

Handwritten signature and scribble in blue ink at the bottom right of the page.

contributions, salary for the period of eviction, termination allowance and finally, damages.

89. It is on records that on 31 January 2016, the Applicant's last renewed temporary contract with the Respondent expired. He had stopped working few months earlier, due to the criminal proceedings against him. However, the Applicant contends that he was not notified of any decision not to renew his contract and therefore his temporary contract was deemed to be a contract of indefinite duration like some of his colleagues, or at least to have his contract tacitly renewed for three (3) months in view of his long period of unblemished service of more than three (3) years.
90. According to the Applicant, instead of renewing his contract on the 31 January 2016 or 1 February at the latest, the Respondent did not carry out that substantive formality of renewal or non-renewal either on these dates or at any later date to date, but took a verbal decision, the date of which remains unknown and cannot be proven to dismiss him.
91. The Respondent submits that the Applicant was never dismissed. He was apprehended and detained on 21 January 2016 for theft of cash from another staff member of the Respondent and was released on 5 February 2016. While incarcerated, he was unable to report for duty until his contract expired on 31 January 2016.
92. The burden of proof required of a person alleging wrongful termination of his employment was stated in the case of *DR. ROSE MBATOMON AKO v. WEST AFRICAN MONETARY AGENCY & 5 ORS (2013) CCJELR 1 @ pg. 13 para. 32* as follows:



“It is a trite law that a party who alleges a wrongful termination of his contract of employment is bound to show or prove that he indeed had an employment with the Defendant. He must plead or show by giving credible evidence that he had an employment that was terminated by the Defendant. Once this burden is discharged by the Plaintiff in keeping with the principle of law that he who asserts must prove, the Plaintiff is further required by law both in his pleadings and by credible evidence to show how the defendant wrongfully terminated his appointment. At the complete discharge of this burden by the Plaintiff the burden shifts to the Defendant to disprove the assertion”.

93. The Court takes judicial notice of the last temporary contract dated 31 July 2015 which took effect on 1 August 2015 and expired on 31 January 2016. To this extent, the Court observes that the nature of such a contract cannot have the object or effect of guaranteeing the Applicant a permanent employment or the tacit renewal of his temporary contract. The duration of a temporary contract ends on its expiry date.
94. The Applicant, therefore, failed to prove that he indeed had an employment with the Respondent which was wrongfully terminated. Consequently, the Applicant, who stopped working at the end of his contract with the Respondent, cannot claim to have been dismissed and the Court so holds.
95. A court will only compensate an employee whose rights have been violated by the employer, inter alia, by not following due process in terminating his appointment. In the instant case, since the Applicant was not in the employment of the Respondent to have been a victim of dismissal by the latter, all the claims of the Applicant hinged on the alleged wrongful dismissal,

Handwritten signature and scribble in blue ink at the bottom right of the page.

including pension and social security contributions, arrears in salary, termination allowance and finally damages fail and same dismissed.

X. COSTS

96. The Applicant prayed the Court for costs of the proceedings urging the Court for an order directing the Respondent to pay to him the filing costs and legal fees as a result of this legal action. The Respondent also prays the Court to order the Applicant to bear the costs of this action.
97. Article 66 (1) of the Rules of Court provides, "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"
98. In addition, Article 66(2) of the Rules of Court provide, "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*"
99. Without prejudice to the Rules of Court on costs, the Court under its inherent jurisdiction, wields a discretion to determine costs in certain circumstances. To this extent, having regard to the circumstances of this case involving an employee and his former employer, the Court will exercise its discretion to waive costs against the Applicant as the losing party, and orders parties to bear their respective costs.

XI. OPERATIVE CLAUSE

For the reasons stated above the Court sitting in public after hearing both parties:

On jurisdiction

- i. **Declares** that it has competence to adjudicate on the Application;

The page concludes with two handwritten signatures in blue ink. The signature on the left is a stylized, circular scribble. The signature on the right is more legible, appearing to read 'Heur'.

On admissibility

ii. **Declares** that the Application is admissible;

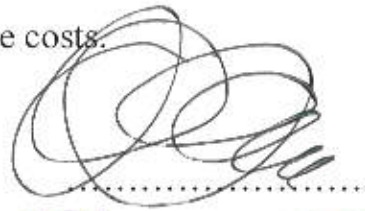
On merits

iii. **Dismisses** all the claims of the Applicant against the Respondent;

On Costs:

iv. **Orders** the parties to bear their respective costs.

Hon. Justice Edward Amoako **ASANTE**



Hon. Justice Gberi-Be **OUATTARA**



Hon. Justice Januaria T. Silva Moreira **COSTA**



Dr. Athanase **ATONNON** Deputy Chief Registrar



Done in Abuja, this 7th Day of July 2021 in English and translated into French and Portuguese.

