



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

In the Case

SUNDAY CHARLES UGWUABA v. REPUBLIC OF SENEGAL

Application No. ECW/CCJ/APP/27/17/SUPP-

Judgment No. ECW/CCJ/JUD/16/22

JUDGMENT

ACCRA

On March 28, 2022

Application No. ECW/CCJ/APP/27/17/SUPP.
JUDGMENT No. ECW/CCJ/JUD/16/2022

BETWEEN:

SUNDAY CHARLES UGWUABA **APPLICANT**

And

REPUBLIC OF SENEGAL **RESPONDENT**

COMPOSITION OF THE COURT

Hon. Justice Dupe ATOKI.....Presiding

Hon. Justice Justice Keikura BANGURAMember

Hon. Justice Januária T. S. Moreira COSTA....Member/Rapporteur Judge

ASSISTED BY:

Aboubacar DIAKITE.....Registrar

I. REPRESENTATION OF PARTIES

Femi Falana, SAN**Counsel for the Applicant**

Maitre Papa Moussa Felix Sow.....**Counsel for the Respondent**

II. COURT'S JUDGMENT

1. This is the Court's Judgment read in a virtually public hearing, pursuant Article 8 (1) of the 2020 Practical Instructions on Electronic Case Management and Virtual Sessions of the Court.

III. DESCRIPTION OF THE PARTIES

2. The Applicant is a Nigerian citizen, residing in The Gambia.

3. The Respondent is the Republic of Senegal, an ECOWAS Member State and signatory to the African Charter on Human and Peoples' Rights.

IV. INTRODUCTION

4. In the instant case, the Applicant prayed the Court to extend the time limit within which he can apply for an additional judgment in Case No. ECW/CCJ/APP/27/17, between SUNDAY CHARLES UGWUABA vs. REPUBLIC OF SENEGAL, in which a judgment was rendered on June 28, 2019, and praying the Court to supplement the judgment rendered in the aforementioned proceedings by mandating the Respondent to pay the Applicant general compensation for violation of the fundamental right to freedom of movement of persons, goods and services, taking into

consideration that even though the Court found that the Applicant's right was violated by the Respondent, no compensation was awarded in his favor.

V. PROCEEDING BEFORE THE COURT

5. The application initiating proceedings (Doc 1) was lodged at the Registry of this Court on February 13, 2020 and served on the Respondent State on March 10, 2020.

6. On May 20, 2020, the Respondent submitted its defense (doc. 2) which was served on the Applicant on June 5, 2020 to which the Applicant made not comment.

7. The hearing of the parties was held on September 20, 2021, in which only the representative of the Applicant attended and sought an adjournment to submit a new application, which was granted, being postponed the hearing to October 14, 2021.

8. On October 5, 2021 the Applicant filed an application to support its original application (*Affidavit in Support of Motion on Notice*) (doc. 3) which was served on the Respondent on November 29, 2021.

9. October 11 was appointed for a hearing of the parties, in which only the Applicant's representative attended, who submitted his application for an extension of time limit for the application for a supplementary judgment.

10. The Court granted the Applicant's representative the floor to make his submissions on the merits of the Supplementary Judgment application, which was adjourned because it was observed that the Applicant's counsel

appeared at the session in a moving vehicle which led the hearing to adjourned to November 30, 2021.

11. On January 25, 2022, a new hearing was held, which was attended only by the Applicant's representative, who made his oral submissions.

12. The decision was adjourned to March 28, 2022.

VI. APPLICANT'S CASE

a. Summary of Facts:

13. This Court delivered a judgment in the case ECW/CCJ/APP/27/17 between SUNDAY CHARLES UGWUABA v. REPUBLIC OF SENEGAL on June 28, 2019.

14. In the said judgment, this Court, at page 29, declared that the conduct of the Respondent's official who prevented the Applicant from entering the Republic of Senegal constituted a violation of the Applicant's right to free movement of persons, goods and services as guaranteed by Articles 13 of the Universal Declaration of Human Rights

15. That although the Court found that the Applicant's right was violated by the Respondent, no compensation was awarded in favor of the Applicant, in accordance with the principle stated in *Ashby v. White* (1703) 14 St Tr 695, 92 ER 126.

16. That no pronouncement was made about the type of compensation relating to damages for violation of the Applicant's right.

17. That Article 63 (1) provides that, without prejudice to the provisions relating to the interpretation of judgments, the Court may, of its own motion or at the request of a party, within one month after the delivery of a judgment, rectify clerical errors, miscalculations and obvious slip therein.

18. Similarly, Article 63 (2) provides that the parties whom the Chief Registrar shall duly notify (of the judgment), may submit a statement of written observations within a time limit established by the President.

19. This Article 64 (1) provides that where the Court omits in a decision on a particular typology of compensation or on costs, any party may, within one month after notification of the judgment, request the Court to supplement its decision.

b. Pleas in Law:

20. The Applicant cited Articles 63 (1), (2) and 64 (1) of the Court's Rules and Regulations.

c. Reliefs Sought:

35. The Applicant concluded seeking from the Court:

I. An Extension of the time limit within which the Applicant may apply for an additional judgment in the case ECW/CCJ/APP/27/17 between SUNDAY CHARLES UGWUABA vs. REPUBLIC OF SENEGAL in which a judgment was rendered on June 28, 2019.

II. That it should supplement the judgment in Case No. ECW/CCJ/APP/27/17 between SUNDAY CHARLES UGWUABA v. REPUBLIC OF SENEGAL delivered on Wednesday, June 28, 2019, mandating the Respondent to pay the Applicant general compensation for violation of the fundamental right to freedom of movement of persons, goods and services.

III. And any other orders as this Court may deem proper and appropriate in the circumstance of the instant case.

VII. DEFENDANT'S CASE

a. Summary of Facts:

22. In its judgment delivered on 28 June 2019, the Court held that “*The Respondent, the State of Senegal, violated the human right of the Applicant, SUNDAY CHARLES UGWUABA, to the free movement of persons, goods and services*”, but “*The causal link between the alleged damage by the Applicant and the border closure has not been established*”.

23. Accordingly, the Court dismissed SUNDAY CHARLES UGWUABA's claims for damages.

24. That the Court has not failed to rule on the Applicant's claims for damages and that he is merely seeking the Court to annul its judgment.

25. That it is clear that Mr. Sunday's proceedings are not only unfounded, but are also frivolous and are again incurring costs for the State of Senegal.

Preliminary Objection

26. The Respondent pleaded the inadmissibility of the instant application on the following grounds:

Inadmissibility of the application under Article 63 of the Rules:

27. Article 63 concerns the interpretation of the judgments rendered, clerical or calculation errors or obvious slip that can be rectified.

28. The time limit for filing an application with the Court is one month from the date the judgment is rendered.

29. The judgment was rendered on June 28, 2019 and the application was filed on March 9, 2020.

30. The application is not only inadmissible, but its object is in no way related to the cases provided for in Article 63 of the Rules.

Inadmissibility of the application under Article 64 of the Rules:

31. Article 64 of the Rules refers to the case where the Court did not rule on any of the issues under discussion or on costs.

32. The said application must be filed within one month of notification of the judgment.

33. The State of Senegal was notified of the judgment on December 5, 2019 and Mr. Sunday, through his lawyer, was notified, within the same period.

34. If in any case, Article 74 (6) of the Rules applies in this case:

35. Mr. Sunday refuses to mention the date of notification, which is important in determining whether his application is admissible.

36. Since Mr. Sunday filed his application on March 9, 2020 and failed to provide any evidence that he filed his action within the one-month period prescribed by the notice, his action should be declared inadmissible.

b. Pleas in Law:

37. The Respondent based its pleas on Articles 63, 64, 69 and 74 (6) of the Rules of the Court.

c. Reliefs Sought:

38. The Respondent concluded seeking from the Court:

As to the form to:

i. Declare Mr. Sunday's application inadmissible

As to merit to:

ii. Dismiss the application as unfounded;

iii. Order the Applicant to pay the State of Senegal the sum of 50,000,000 CFA Francs as recoverable costs.

iv. Order the Applicant to pay the costs of the proceedings.

VIII – THE PROCEDURE BEFORE THE COURT

The application for extension of time limit

39. In the application initiating proceedings, dated February 13, 2020, the Applicant sought an extension of the time limit for filing the supplementary judgment application under consideration.

40. On October 5, 2021, the Applicant filed an application to support his original application (*Affidavit in Support of Motion on Notice*) (doc. 3).

41. The Court, in the interest of justice, granted the application for extension of time limit for the application for supplemental judgment and considered it as having been filed and served within the time limit, as it appears from the Verbatim of the hearing held on October 11, 2021, and pursuant to the last part of Article 64(2) of the Rules where it is stated that “(...) *The time limit laid down in paragraphs 1 and 2 of this Article may be extended by the President on a reasoned application by the party.*”

IX. JURISDICTION

42. In the instant case, the Applicant relies on Articles 63 and 64 of the Rules of the Court to pray the Court to supplement the judgment rendered in Case No. ECW/CCJ/APP/27/17, dated June 28, 2019, so as to order the

Respondent to pay the Applicant general compensation for violation of the fundamental right to freedom of movement of persons, goods and services.

The Applicant contends that there was an omission of statement that the Court should now remedy, pursuant to the aforementioned articles.

44. Having the Court declared itself entertaining jurisdiction to judge the case pursuant to Article 9 (4) of Additional Protocol A/SP.1/01/05 on the Court of Justice of the Community, and the same is maintained either to rectify clerical or calculation errors or obvious slips, or to remedy any omission of judgment that may exist in the decision that puts an end to a case, in accordance with the provisions of Articles 63 and 64 of the Rules of the Court.

45. Consequently, the Court understands that it entertains jurisdiction to rule over the instant case.

IX. ADMISSIBILITY

46. The Respondent in its response invoked the inadmissibility of the Applicant's application in light of the invoked Articles 63 and 64 of the Court's Rules, arguing that, in addition to the application having been filed after the legal deadline provided for in said Article 64, its subject matter is in no way related to the cases provided for in Article 63 of the said Rules.

47. It is therefore necessary to verify the admissibility of the Applicant's application.

48. Article 63 of the Court's Rules of Procedure states that: “*Without prejudice to the provisions relating to the interpretation of judgments the Court may, of its own motion or on application by a party **made within one month after the delivery of a judgment**, rectify clerical mistakes, errors in calculation and obvious slips in it.*”

(...)”

47. Furthermore, Article 64 of the Rules of the Court further states that: “*Where the Court omits to give a decision on a specific head of claim or on costs, any party may **within a month after service of the judgment** apply to the Court to supplement its judgment.*

(2) (...)”

(3) *After these observations have been lodged, the Court shall decide both on the admissibility and on the substance of the application.*”

50. This means that, in both situations, the legal time limit required for the admissibility of applications is thirty days, although this time limit may be extended pursuant to Article 64(2) of the Rules of Court.

51. In the instant case, the Judgment having been rendered on June 28, 2019, the Applicant filed the application in question on February 13, 2020, the date on which it was registered at the Registry of this Court, i.e., more than 7 months after the rendering of the Judgment and more than six (6) months after the expiration of the legal deadline of one month to do so.

52. However, in the original application, the Applicant sought an extension of the time limit to file the application in question, which was granted by the Court.

53. Therefore, the extension of the time limit granted by the Court, rendered the original application timely and the application to remedy the failure to issue a statement, admissible.

IX- MERIT

The application on the Court's judgment on the issue of compensation

54. The Applicant submits that in the Judgment rendered in Case No. ECW/CCJ/APP/27/17 and dated 28 June 2019, this Court, at page 29, while finding that the conduct of the Respondent's official who prevented the Applicant from entering the Republic of Senegal constituted a violation of the Applicant's right to free movement of persons, goods and services as guaranteed by Articles 13 of the Universal Declaration of Human Rights, no compensation was awarded in favor of the Applicant in accordance with the principle enunciated in *Ashby v. White* (1703) 14 St Tr 695, 92 ER 126.

55. He further submits that no pronouncement has been made about the type of compensation relating to damages for violation of the Applicant's right.

56. He therefore prays the Court to supplement the Judgment in Case No. ECW/CCJ/APP/27/17 between SUNDAY CHARLES UGWUABA v. REPUBLIC OF SENEGAL delivered on Wednesday, June 28, 2019, mandating the Respondent to pay the Applicant general compensation for violation of the fundamental right to freedom of movement of persons, goods and services.

57. The Respondent, on its turn, in its response, pleads that in the judgment delivered on 28 June 2019, the Court held that: "***The Respondent, the State of Senegal, violated the human right of the Applicant, SUNDAY CHARLES UGWUABA, to the free movement of persons, goods and***

services”, but “The causal link between the alleged damage by the Applicant and the border closure has not been established.”

58. That thus, the Court dismissed SUNDAY CHARLES UGWUABA's claims for damages.

59. That the Court did not fail to rule on Mr. Sunday's claims and that he only seeking the Court to annul its decision.

The Court’s Analysis

60. As we have seen, Article 64 of the Rules of the Court, by establishing that: *“Where the Court omits to give a decision on a specific head of claim or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgment”*, authorizes the Court to remedy, in the Decision rendered, the omission of pronouncement it has committed on any question that has been raised for discussion by the parties.

61. In the instant case, it remains to be seen whether the court effectively failed to rule on the damages claimed by the Applicant.

62. The Applicant, by way of redress has sought in the original claim (the subject of the judgment at issue) that the Court issue:

“(B) AN ORDER obliging the Respondent to pay to the applicant the sum of thirty-eight million, four hundred and fifty-four thousand, seventy-two Naira (₦38,454,072.00) only, being this the normal sale price of said goods in Nigeria after deduction of value obtained by the sale of the perished goods.

(C) AN ORDER obliging the Respondent to pay the applicant the sum of \$19,030, being this the additional cost of feeding and rental of the trucks for an additional period of 33 days.

OR

(D) AN ORDER obliging the Respondent to pay the sum of D2,558,400.00 (two million, five hundred and fifty-eight thousand and four hundred dalasis), being this the cost of acquisition of the goods after deduction of the sum of D468,000 raised by the sale of the perished fish and a sum of \$36,330 (thirty-six thousand three hundred and thirty dollars), being this the cost of feeding and hiring the trucks for 63 days.

(E) AN ORDER obliging the Respondent to pay a sum of ₦5,000,000 (five million Naira) only, the legal fees paid by the applicant for the trial of this case.

(F) AN ORDER granting the applicant a sum of \$100,000,000 (one hundred million US dollars) as general and exemplary compensations for psychological trauma, shock and loss of health due to the action of the defendant.

63. Therefore, the Applicant sought alternative reliefs for compensation, which the Court analyzed and concluded that the Applicant, on the one hand, did not demonstrate the existence of a causal link between the material damage claimed and the event committed by the Respondent (closure of the land border) and, on the other hand, that it offered no evidence to support the other non-pecuniary or moral damage he claimed, and consequently rejected the Applicant's claims. (See pages 31 to 36 of the Judgment)

64. This means that in relation to the Reparations sought by the Applicant, the Court has ruled on all the questions put to it.

65. Consequently, the Court understands that there is no omission of pronouncement in the Judgment rendered, which, pursuant to Article 64 of the Rules, now should be incumbent upon the Court to remedy.

66. Thus, this Court concludes that the Applicants' claim must be considered unfounded.

X - THE COSTS:

67. The decision ending the proceedings shall rule on the costs as provided in Article 66 (1) of the Rules of the Court).

68. Paragraph 2 of the same article states that “*the unsuccessful party will bear the costs, if so decided*”.

69. In the instant case, the Respondent seeks an order that the Applicant pay it 50,000,000 CFA francs as recoverable costs as well as the costs of the proceedings.

70 - The Applicant did not comment on this relief sought.

71. Therefore, by virtue of Article 66(2), the Applicant must bear the costs of the proceedings.

72. However, the Respondent does not demonstrate how it reached the amount of recoverable costs petitioned for and has offered no evidence in this regard.

73. Thus, the Court cannot determine liability for costs in the amount sought by the Respondent.

XIV – OPERATIVE CLAUSE

74. For these reasons, the Court held a public hearing and having heard both parties:

With regards to the form:

- i. Declares that it entertains jurisdiction to examine the applications submitted for its consideration.
- ii. Declares the application admissible.

As to merit:

- iii. Declares the Applicant’s claim unfounded and consequently dismisses it.

On the costs:

- iv. The Applicant shall bear the costs of the proceedings, and the Chief Registrar shall be responsible for their settlement.

Signed by:

Hon. Justice Dupe ATOKI- Presiding_____

Hon. Justice Keikura BANGURA - Member _____

Hon. Justice Januária T.S.M.COSTA- Member/Rapporteur_____

Assisted by:

Aboubacar DIAKITE-Registrar_____

75. Done in Accra, on the 28th of March 2022, in Portuguese and translated into English and French.