



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

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

In the matter of

KOMLAN RAYMOND KOUDO

V.

ECOWAS PARLIAMENT

Application No. ECW/CCJ/APP/42/20/INT

Judgment No. EECW/CCJ/JUD/24/24

JUDGMENT

ABUJA

On June 6th, 2024

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APPLICATION No. ECW/CCJ/APP/42/20/INT

JUDGMENT No. ECW/CCJ/JUD/24/24

BETWEEN

KOMLAN RAYMOND KOUDO

APPLICANT

And

ECOWAS PARLIAMENT

DEFENDANT

COMPOSITION OF THE COURT:

Hon. Justice Dupe **ATOKI**

- Presiding

Hon. Justice Sengu Mohamed **KOROMA**

-Member

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Judge-
Rapporteur

ASSISTED BY:

Dr. Yaouza **OURO-SAMA**

- Chief Registrar

REPRESENTATION OF THE PARTIES

BOLAJI O. SAMSON

- Counsel to the Applicant

ECOWAS PARLIAMENT

- Counsel for the Defendant

I. JUDGMENT

“1. This is the Court’s Judgment read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant, Komlan Raymundo Koudo, is a national of Senegal, a Member State of ECOWAS and a signatory to the African Charter on Human and Peoples' Rights.

3. The Defendant is the ECOWAS Parliament, an Institution of the Economic Community of West African States (ECOWAS), established by virtue of Articles 6 and 13 of the ECOWAS Revised Treaty.

III. INTRODUCTION

4. In the instant case, the Applicant, a Senegalese citizen, and former official of the ECOWAS Parliament, avers that in Case No. ECW/CCJ/APP/42/20 Judgment No. 39/21, he requested payment of his entitlements on 30/09/2020 through the ECOWAS Court. The Court issued its judgment on 27/10/2021, but the Defendant refused to comply. After being served with the judgment, it paid \$30,348.83 on 30/05/2022, far from the \$3,297,904.00 owed.

IV. PROCEEDINGS BEFORE THE COURT

5. The originating application (doc.1), and an application for an expedited procedure, were registered at the court Registry on 17 June 2022.

6. On July 5, 2022, the Defendant Institution, the ECOWAS Parliament, was duly served, but did not present its defense.

7. On November 10, 2023, the Applicant filed an application for a default judgment (doc. 3), which was served on the Defendant, but the latter said nothing.

8. After deliberation, the judgment of the case was adjourned to 6th June 2024.

V. APPLICANT'S CASE

a. Summary of Facts:

9. On September 30, 2020, the Applicant applied to this Court for payment of his rights.

10. After hearing both parties, the Court of Justice delivered its judgment on October 27, 2021, in which it ordered the Defendant to pay the Applicant his rights as follows:

“(a) Calculate, in accordance with the regulations in force and with the appropriate interest and pay the Applicant his wages for the months of mid-March, April, May and June 2017.

b) Calculate, in accordance with the regulations in force and with the appropriate interest, and pay to the Applicant his accommodation allowances for the months of mid-March, April, May and June 2017;

c) Calculate, in accordance with the regulations in force and with the appropriate interest, and pay the Applicant his separation allowance equal to 12.5% of his annual basic salary;

d) Calculate, in accordance with the regulations in force and with the appropriate interest, and pay the Applicant a compensatory vacation allowance of ninety (90) working days.”

11. The Court also ordered the Defendant to “pay interest of 5.5% on all sums owed to the Applicant, from the dates on which he was entitled to them until the date of payment”.

12. Despite this Court's judgment, the Defendant refused to comply with the Court's orders.

13. The Applicant, through his lawyers, sent a final letter which was served on the Defendant on January 6, 2022. Despite this letter, the Defendant/Debtor refused to comply with the court's judgment.

14. The Applicant made an effort to enforce this judgment in a national court but was unsuccessful.

15. The Applicant's lawyers wrote and served a final letter to the Defendant on May 13, 2022.

16. On May 30, 2022, the Applicant's lawyers were notified of a letter, in which the Defendant paid the sum of \$30,348.83 only as the Applicant's entitlement, in accordance with the judgment of this honorable Court.

17. Contrary to the calculation of the amount paid by the Defendant, the amount owed to the Applicant on May 24, 2022, is calculated at \$3,297,904.00.

18. The amount paid by the Defendant does not correspond to the correct amount owed to the Applicant.

b. Pleas in Law

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19. The applicant did not state his pleas in law. However, the powers of the Court of Justice to interpret its judgments, as well as the procedure that governs it, can be found, respectively, in:

- i. Article 23 of the ECOWAS Protocol A/P.1/7/91; and
- ii. Article 95 of the Rules of Procedure of the ECOWAS Court of Justice.

c. Reliefs Sought

20. The Applicant concludes, seeking from the Court:

- i. AN ORDER of this Court interpreting the judgment delivered in the case of Komlan Raymond Koudo v. ECOWAS Parliament - Application No. ECW/CCJ/APP/42/20 Judgment No. 39/21, to give effect to it, specifying the amount to be paid by the Defendant to the Applicant, according to the right and interest accrued until May 24, 2022, when the Defendant paid a sum of \$30,348.83 (Thirty Thousand Three Hundred Forty-Eight Dollars and Eighty-Three Cents).
- ii. AN ORDER of this Court granting authorization to the Applicant to apply to a competent national court for enforcement of the judgment and an order of this Honorable Court in this case against the Defendant.
- iii. ANY OTHER MEASURES that the ECOWAS Court of Justice deems appropriate to adopt under the circumstances.

VI. DEFENDANT'S CASE

21. The Defendant, although duly served on 5th July 2022, did not present its defense.

VII. PROCEEDINGS BEFORE THE COURT

Application for Expedited Procedures

22. By (doc 2), dated June 17, 2022, the Applicant submitted an application to this court for expedited procedures.

23. To this end, he claimed that he would suffer more difficulties if this application was rejected, subjecting the substantial and originating application to the usual procedure.

24. He argued that it is in the interests of justice for the application for interpretation of the judgment to be heard quickly, under a expedited procedure by this Court, and that it is in the interest of the Court to grant that application.

25. The Defendant said nothing with regards to this application.

The Court's Analysis

26. Article 59 of the Rules of the Court of Justice states that:

"1. On application by the applicant or the defendant, the President may exceptionally decide, on the basis of the facts before him and after hearing the other party, that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules, where the particular urgency of the case requires the Court shall give its ruling with the minimum of delay.

2. An application for a case to be decided under an expedited procedure shall be made by a separate document lodged at the same time as the application initiating the proceedings or the defense, as the case may be.

3. Under the expedited procedure, the originating application and the defense may be supplemented by a reply and a rejoinder only if the President considers this to be necessary.

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4. *An intervener may lodge a statement in intervention only if the President considers this to be necessary.*

5. *Once the defense has been lodged or, if the decision to adjudicate under an expedited procedure is not made until after that pleading has been lodged, once that decision has been taken, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties.*

6. *He may postpone the date of the hearing where the organization of measures of inquiry or of other preparatory measures so requires.*

7. *Without prejudice to rules, the parties may supplement their arguments and offer further evidence in the course of the oral procedure. They must, however, give reasons for the delay in offering such further evidence.*

8. *The Court shall give its ruling after hearing the parties."*

27. Pursuant to Article 59 of the Rules of Procedure of the Court of Justice, the application for an expedited procedure must be made in a separate document when the application initiating the proceedings or defense is lodged. The Court must rule on the matter in order to determine, for the parties, whether it is necessary to supplement the pleadings with a reply and rejoinder or whether a statement of intervention may be filed, if appropriate. The purpose of accelerated procedure is to enable the Court to deliver a decision as quickly as possible when the particular urgency of the case so requires. For this purpose, the date of the hearing can be set as soon as the defense pleadings have been filed.

28. In the instant case, the originating application was filed on June 17, 2022, accompanied by the application for expedited procedure, contained in a separate document, as required by the Rules.

29. The Defendant was served on July 5, 2022, and said nothing.

30. What determines the application for an expedited procedure is the particular urgency of the case. In the instant case, the Applicant does not give a single reason why his claim should be heard under the expedited procedure. In fact, saying that he will suffer more financial hardship if the case is judged in its normal course does not fulfill that legal requirement in the slightest way, when it is certain that in the case in point, the delay in the decision could always be compensated for by the payment of interest on arrears.

31. On the other hand, the Court has the information it needs to deliver its judgment on the merits of the case. In principle, the decision to grant or reject the application for expedited procedure is adopted by the Court of Justice before the ruling on the merits.

32. Now that the court is in a position to rule on the merits of the case, the application for an expedited procedure is pointless, since there is no need to rule on it, and so the Court declares.

Motion for judgment by default

33. The Defendant did not submit any defense in response to the Applicant's application, despite having been duly served by the Court.

Application for judgment by default

34. Following the Defendant's failure to file a defense, the Applicant, pursuant to Article 90 of the Rules of Procedure, filed an application for judgment by default, seeking from the Court the following:

i. AN ORDER of this Court interpreting the judgment delivered in the case of Komlan Raymond Koudo v. ECOWAS Parliament - Application No. ECW/CCJ/APP/42/20 Judgment No. 39/21 to give effect to it, specifying the

amount to be paid by the Defendant to the Applicant, according to the right and interest accrued until May 24, 2022, when the Defendant paid a sum of \$30,348.83 (Thirty Thousand Three Hundred Forty-Eight Dollars and Eighty-Three Cents).

ii. AN ORDER of this Court granting authorization to the Applicant to apply to a competent municipal court for enforcement of the judgment and an order of this Honorable Court in this case against the Defendant.

iii. ANY OTHER MEASURES that the ECOWAS Court of Justice deems appropriate to adopt under the circumstances.

The Court's Analysis of the Application for Judgment by Default

35. As the Defendant failed to present its defense, the Applicant sought a judgment by default, under the terms of Article 90 of the Rules, which reads as follows:

Article 90 (1) "If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defense to the application in the proper form within the time prescribed, the applicant may apply for judgment by default."

Article 90 (4) "Before giving judgment by default the Court shall, after considering the circumstances of the case consider: (a) Whether the application initiating proceedings is admissible, (b) Whether the appropriate formalities have been complied with, and (c) Whether the application appears well founded."

36. The requirements laid down in Article 90(4) relate to questions of jurisdiction, admissibility and evidence, which must be addressed before the merits of the application initiating proceedings can be examined (see the case

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of *MOHAMED EL TAYIB BAH v. REPUBLIC SIERRA LEONE ECW/CCJ/JUD/11/15*
PAGE 193).

37. The facts presented to the Court show that the Applicant filed its application initiating proceedings with the Court Registry on June 17, 2022, and on the same date submitted an application for expedited procedure. The Defendant was served on July 5, 2022.

38. Pursuant to Article 35 of the Court's Rules of Procedure, the Defendant has 30 days from receipt of the application to submit its defense.

39. The Court has no record of any defense up to the date of the hearing of this case. The situation provided for in Article 90(1) of the Rules of Court has materialized, so the Applicant's application for the Court to deliver judgment by default is pertinent.

40. However, when an application is made for judgment to be given by default, it is the Court's duty, under Article 90(2), to ensure that all the reliefs sought fall within its jurisdiction and that the application is admissible.

41. This means that the criteria of jurisdiction and admissibility must be checked before the judgment by default is delivered.

42. The Court observes, however, that the fact that an applicant seeks judgment by default does not automatically mean that the action will be upheld, with the applicant winning the case, since the Court must examine of its own motion the questions of jurisdiction, admissibility and evidence, before examining the merits of the legal proceedings (vide *MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/11/15*) (*SUPRA*).

VIII. ON THE JURISDICTION

43. In view of the above, the Court will first address the issue of jurisdiction.

44. Article 23 of ECOWAS Protocol A/P.1/7/91 on the Community Court of Justice, ECOWAS provides that *“If the meaning or scope of a decision or advisory opinion is in doubt, the Court shall construe it on application by any party or any Institution of the Community establishing an interest therein”*.

45. Under Article 23 of ECOWAS Protocol A/P.1/7/91, the Court's power to interpret its judgments is intended to dispel any doubts that may arise as to the meaning or scope of passages in the judgment, and not to enforce the judgment.

46. To determine whether it has jurisdiction to rule on an application, the Court relies not only on its texts, but also on the application submitted by the applicant and the reliefs sought. For the Court to assume jurisdiction over any matter, it has to make sure that it is competent with regard to the subject matter, the parties before it and even the reliefs sought. (*See the case of WOMEN AGAINST VIOLENCE EXPLOITATION IN SOCIETY (WAVES) AGAINST SERRA LEONE, JUDGMENT No. ECW/CCJ/JUD/37/19 ON PAGE11*).

47. With regard to the first relief sought by the Applicant, he prayed the Court to interpret the Judgment of the Court in the case of Komlan Raymond Koudo v. ECOWAS Parliament - Case No. ECW/CCJ/APP/42/20 Judgment No. 39/21, delivered by the Court on October 27, 2021.

48. Since the Applicant was a party to the original proceedings in relation to the judgment whose interpretation he seeks, the Court has jurisdiction to, pursuant to Article 23, interpret Judgment No. 39/21 in Case No. ECW/CCJ/JUD/39/21

49. The second relief sought by the Applicant in the instant case is for an *“Order of this Court granting permission to the Applicant of the*

judgment/creditor to apply to a competent municipal court for enforcement of the judgment and order of this Honorable Court...”

50. The purpose of this measure is to enforce the Court's judgment delivered on the originating application.

51. This Court has ruled in a multitude of cases that the execution of its judgments does not fall within its jurisdiction (see *CHUDE MBA AGAINST THE REPUBLIC OF GANA & 15 OTHERS, ACCORD No. ECW/CCJ/JUD/30/18*), in which the Court considered that “*the matter over which the Court has jurisdiction clearly does not include the execution of its judgments*”.

52. And the authority to enforce the Court's decisions cannot be given to a municipal court, because according to the 2005 Additional Protocol, this power was granted to the National Competent Authority.

53. Indeed, in the case of *DJIBRIL YIPENE BASSOLE & ANOR v. THE STATE OF BURKINA FASO: JUDGMENT No. ECW/CCJ/JUD/25/16* page 617, this Court made it clear, with regard to the enforcement of its decisions, that it has always been guided by certain legal provisions which, moreover, govern its case law, namely:

i) Article 15 (4) of the ECOWAS Treaty, which states that:

“The decisions of the Court of Justice shall be binding on the Member States, on the Institutions of the Community and on individuals and corporate bodies.”

ii) Article 24 of the 2005 Additional Protocol on the ECOWAS Court of Justice, which states, among other things, that:

“(1)... Execution of any decision of the Court shall be ... according to the rules of civil procedure of that Member State.

(2) *All Member States shall determine the competent national authority for the purpose of recipient and processing of execution and notify the Court accordingly.*”

54. On the basis of the aforementioned legal provisions, it is clear that the enforcement of the decisions of the ECOWAS Court of Justice is the exclusive prerogative of the ECOWAS Member States, hence the absence of an enforcement provision reserved for the Court, with regard to its own decisions (see *MAMADOU TANDJA C GÉNÉRAL SALOU DJIBO & UN AUTRE ECW/CCJ/APP/05/09 - ECW/CCJ/JUD/05/10, Collection of Case Law 2010, paragraph 20*).

55. From the combined provisions of Articles 15(4) and 77(1) of the ECOWAS Revised Treaty, it is crystal clear that the enforcement of the judgment of the ECOWAS Court of Justice is not an option, but an obligation for the Member States and the Institutions of the Community, which must demonstrate, through measures taken by them, their willingness to guarantee the enforcement of such decisions. (See *KARIM MEISSA WADE v. REPUBLIC OF SENEGAL ECW/CCJ/JUD/19/13, p.25*).

56. Thus, any refusal or resistance by a Member State or Institution to the execution of a decision rendered against it by the Court in the context of a human rights litigation process constitutes a failure by that State or Institution to comply with one of its obligations under the Treaty, as well as other rules governing ECOWAS, and a Member State is exposed to legal and political sanctions, as provided for in Articles 5 to 21 of Additional Act A/SA of February 13, 2012, on the Sanctions Regime against that Member State of the ECOWAS Community.

57. The Court therefore has no jurisdiction to grant the second relief sought by the Applicant.

IX. ADMISSIBILITY

58. Having determined that the Court has jurisdiction to entertain the instant application, the Court must examine whether the application meets the requirements for admissibility of application for interpretation of the Court's judgment.

59. It should be noted that at the level of international courts it is well established that, before proceeding to interpret a part of a judgment at the request of one of the parties, the Court must determine whether such a request is admissible in the light of the statute and rules of the Court and the general principles of law governing the interpretation of judgments.

60. Following the judgment in *BARRY ABDOULAYE SADIO & others v. THE REPUBLIC OF GUINEA*, Judgment No. ECW/CCJ/JUD/5623, the Court recalls that, under Article 20 (2) of its Protocol, decisions given by the Court are final and immediately enforceable, subject only to the Court's power to re-examine or review its decisions under the conditions specified in Article 27 of its Protocol. Therefore, since the Court's judgments are final and cannot be appealed, they are immediately binding on the parties and become *res judicata* once they have been delivered.

61. The Court is aware, however, that there may be cases in which its judgment, although final, may contain manifest errors of writing or calculation, and therefore, under Article 63 of its Rules of Procedure, it may, of its own motion, correct such errors or do so at the request of one of the parties, within one month of the delivery of the judgment.

62. In order to maintain its character as a procedure intended only to clarify the meaning or scope of what the Court has already decided in order to facilitate enforcement, the generally accepted principle is that an application

for interpretation should focus on the operative provisions of the judgment and the essential reasons supporting them. (See *Italy v. European Commission*, CJEU, Case C-496/09 INT (July 11, 2013), paragraph 8 and *Georges Constant Amoussou v. Benin* [2015] CCJELR 165, paragraph IV.10).

63. It is a general principle of law that an application for interpretation of a judgment must relate primarily to the exact part of the judgment. This seems to be the position of the Court of Justice of the European Union (CJEU) in its decision of April 20, 2010, *aff.c.114 / 08 P (R) int, Pellegrini/Commission. Europe 2010, pers. 198, obs.*

64. An application for interpretation of a judgment must aim to reduce any obscurities or ambiguities affecting the meaning and scope of a judgment of the Court in relation to the claim it is to rule on; such an application must specifically address the point of the judgment to be interpreted and its essential reasons (see *MR GEORGES CONSTANT AMOUSSOU v. THE REPUBLIC OF BENIN ECW/CCJ/JUD/09/15 pg. 12*).

65. Furthermore, the Rules of Procedure of the African Court are, for example, clear when they say that an application for interpretation “(...) shall state the point(s) in the operative provisions of the judgment on which interpretation is sought”. (*Rules of the African Court, Article 77(2)*).

66. This is because the underlying purpose of such applications, as is evident from the African Court Rules, is to clarify any points of ambiguity in the operative provisions of the decision to ensure that it can be enforced without difficulty. Therefore, the African Court considered that an essential condition for the admissibility of an application for interpretation of a decision is when “the objective is to facilitate the execution of the decision”. (*Action pour la Protection de Droits de l'Homme (APDH) v. Cote d'Ivoire (interpretation)* [2017] 2 AfCLR 141, paragraph 13).

67. Article 95 of the Rules of Procedure of the Court of Justice provides that:

“An application for interpretation of a judgment under Article 23 of the Protocol shall be made in accordance with Articles 32 and 33 of these Rules.

In addition it shall specify:

(a) The judgment in question;

(b) The passages of which interpretation is sought.”

68. In the above-mentioned case of *BARRY ABDOULAYE SADIO & 3 OTHERS v. THE REPUBLIC OF GUINEA*, JUDGMENT No. ECW/CCJ/JUD/56/23, the Court of Justice laid down the following principles which should guide the admissibility of an application for interpretation of a judgment:

(a) The application must relate to a provision or a paragraph of the judgment and to its grounds or supporting reasons, and must specify the particular words, phrases or passages which are in doubt.

b) The purpose of the application shall be to clarify any ambiguities or obscurities in such words, phrases or passages in order to facilitate the execution or application of the decision.

(c) Having regard to the principles of finality of judgments and authority of res judicata, the purpose of the application must not be to invite the Court to re-examine or give a fresh ruling on the case or to revise, amend or supplement, in whole or in part, the judgment already delivered.

69. The Applicant's application specifies that the judgment to be interpreted is the judgment of the Court in the case of *Komlan Raymond Koudo v. The ECOWAS Parliament*, SUIT No. ECW/CCJ/APP/42/20, Judgment No. 39/21.

70. However, the Applicant does not indicate to the Court the words, phrases, specific passages, section or paragraph of the Judgment that are obscure or ambiguous that should be clarified in order to facilitate the understanding and execution of the Judgment being interpreted. The court cannot deduce, from the application for interpretation made to it and the other passages of that application, what the Applicant really wants to be interpreted.

71. It should be noted that this is an obligation incumbent on the Applicant, and the Court, having found such an omission, cannot replace the Applicant in this task. In fact, if it did, it would be re-examining and re-deciding a case, which would always be illegal.

72. As this is an onus that falls on the Applicant, the consequences of non-compliance *sibi imputet*.

73. Accordingly, the application, with regards to the first relief sought (interpretation of Judgment No 39/21 in Case ECW/CCJ/JUD39/21) does not fulfill the conditions for admissibility of requests for interpretation of a judgment of the Court of Justice and is therefore inadmissible.

X. EXPENSES

74. The Court of Justice recalls Article 66 (1) of its Rules of Procedure, which provides that “*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings*”.

75. Moreover, Article 66 (2) provides that “*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*”

76. However, the Applicant did not seek that the Defendant be ordered to pay costs and the Defendant did not contest the case. Thus, each party will bear its own costs, as shall be settled by the Registrar.

XI. OPERATIVE CLAUSE

77. For such reasons, the Court held a public hearing and having heard the Applicant:

On the Jurisdiction:

- i. **Declares that** it has no jurisdiction to order a municipal court to enforce Judgment No. 39/21 delivered by this Court in Case No. ECW/CCJ/JUD/39/21.
- ii. **Declares itself** competent to interpret Judgment No. 39/21 in Case No. ECW/CCJ/JUD/39/21.

On the Admissibility:

- iii. **Declares inadmissible** the application for interpretation of Judgment 39/21, delivered by this Court in Case No. ECW/CCJ/JUD/39/21.

On the Costs:

- vi) Each party shall bear its own costs relating to this case.

Signed by:

Hon. Justice Dupe **ATOKI** - Presiding.....

Hon. Justice Sengu Mohamed **KOROMA** - Member

Hon. Justice Ricardo C. M. **GONÇALVES** - Rapporteur

Dr. Yaouza **OURO-SAMA** -



Chief Registrar

Done in Abuja, on the 6th day of June 2024, in Portuguese and translated into French and English.