

COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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

In the Matter of

**COUNSELLOR KABINEH MUHAMMAD JA'NEH V REPUBLIC OF
LIBERIA & ANOR**

Application No. ECW/CCJ/APP/33/19/REV Judgment No. ECW/CCJ/JUD/13/21

JUDGMENT

ABUJA

4 JUNE 2021

COUNSELLOR KABINEH MUHAMMAD JA'NEH - APPLICANT

v.

REPUBLIC OF LIBERIA & ANOR - RESPONDENTS

COMPOSITION OF THE COURT:


Hon. Justice Gberi-Be OUATTARA - Presiding
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur
Hon. Justice Januaría T. Silva Morcira COSTA - Member

ASSISTED BY:

Mr. Tony ANENE- MAIDOH - Chief Registrar

REPRESENTATION OF PARTIES:

Femi FALANA (SAN)
Femi ADEDEJI, Esq
Cllr. Emmanuel B. JAMES
Cllr. J. Laveli SUPUWOOD
Cllr. L. Koboi JOHNSON



Counsel for Applicant

Cllr. Sayma Syrenius Cephus
Cllr. Lafayette B GOULD, Sr.



Counsel for the Respondent



I. JUDGMENT

1. This is the judgment of the Court delivered 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 is Counsellor Kabineh Muhammad Ja'neh a citizen and a retired Associate Justice of the Supreme Court of the Republic of Liberia and a Community citizen (Hereinafter referred to as the "Applicant").
3. The first Respondent is the Republic of Liberia, a Member State of the Community and State Party to the African Charter on Human and Peoples' Rights. (Hereinafter referred to as the "Respondent").
4. The second Respondent is Judge Yussif D. Kabba a citizen of the Republic of Liberia and a Community citizen.

III. INTRODUCTION

5. This is an Application for Review of **Judgment Number: ECW/CCJ/JUD/28/20 Kabineh Muhammad Ja'neh v Republic of Liberia**, delivered on 10 November 2020 wherein the Respondent was found in violation of the Applicant's rights to fair hearing and to work



arising from his removal from office as Associate Justice of the Supreme Court of Liberia by the Senate of the Republic of Liberia.

IV. PROCEDURE BEFORE THE COURT

6. The Respondent filed the Application for Review of Judgment of the Court on 1 February 2021 and same was served on the Applicant.
7. The Respondent also filed a Motion for Preliminary Objection on 1 February 2021, which was also served on the Applicant.
8. The Applicant filed his responses to the Respondent's Application for Review of the Judgment of the Court and its submission opposing the Preliminary Objection of the Respondent on 5 March 2021. These processes were served on the Respondent on 8 March 2021.
9. The Court heard the Parties' oral submissions on 18 March 2021 and adjourned the case for judgment to 4 June 2021.

V. RESPONDENT'S CASE

a) Summary of facts

10. The Respondent's Application is based on Judgment No **ECW/CCJ/JUD/28/20 Kabineh Muhammad Ja'neh v Republic of Liberia**, delivered on 10 November 2020 (hereinafter referred to as the "said Judgment"). The Applicant therein claimed that his rights were violated as a result of his impeachment by



the Honourable House of Representatives and subsequent removal from office by the Senate of the Republic of Liberia as Associate Justice of the Supreme Court of the Republic of Liberia, following a trial in which he was represented.

11. The Respondent contested the Applicant's claim and sought the Court to dismiss same claiming that the Court lacked jurisdiction to adjudicate on the matter which are political in nature and equally lacked the competence to interpret and apply domestic laws of Member States, as this would amount to the Court assuming the role of an appellate body over political actions.

12. After its deliberations on the submission of the Parties, the Court delivered its judgment on 10 November 2021, in which it found the Respondent in violation of the Applicant's right to a fair hearing and the right to work. The Court then ordered the Respondent to restore all the Applicant's withheld entitlements including salaries, allowances and pension benefits from the day of his indictment; reinstate the Applicant to the position of Associate Justice of the Supreme Court or in the alternative, grant him the right to resign from office with the full pension benefits; and pay him the sum of two hundred thousand US Dollars (\$200,000), as reparation for the moral prejudice caused to the Applicant.

13. The Respondent in the instant Application for Revision of the said Judgment filed on 1 February 2021, submits that the entire Judgment of the Court should be set aside on the grounds that it violates the legislative sovereignty of the Respondent. Additionally, that the Court erred severally in its application of facts and law in the said Judgment. These grounds were



captured in 52 paragraphs of the Application for review. The summary of the facts emanating from these grounds are as follows:

- 1) That the judgment violates the legislative sovereignty of the Respondent;
- 2) The Court assumed the role of an appellate court by examining and reviewing the impeachment decisions of the National Legislature of the Respondent;
- 3) The Court lacked jurisdiction to examine an impeachment procedure which is political and not human rights related.

b) Pleas in law

14. The Respondent relies on Article 92 of the Rules of Court which states, "*An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge.*"

c) Reliefs sought

15. The Respondent seeks the following orders:

- i. A declaration that the Court committed a reversible error when it ruled awarding damages of US\$200,000 to the Applicant which were not supported by any evidence or specifically pleaded, testified to, confirmed



and reconfirmed on mere violation of the Applicant's "self-esteem." (sic), for the fact that the said claim was never raised by the Applicant in his entire Application;

- ii. A declaration that court committed reversible error when it sought to interpret Articles 43 and 29 of the Respondent's Constitution of 1986; an authority it lacks under the Protocol establishing the Court, and several opinions rendered by it;
- iii. A declaration that the Court committed serious reversible error when it arrogated unto itself the authority of an appellate body to reverse the decision rendered by the Legislature of a Member State after it had constitutionally conducted an impeachment proceedings against the Applicant and had him subsequently removed from office;
- iv. In *MUSA LEO KEITA V MALI* (2004-2009), the Court declared that it had no jurisdiction to adjudicate on a judgment delivered by the Court of a Member State. Similarly, in *SIKIRU ALADE V FEDERAL REPUBLIC OF NIGERIA* (2012), the Court said that it does not present itself as an appellate court over decisions of national courts. As stated above, this Court lacks jurisdiction to sit on appeal over decisions of National Courts or tribunals.

VI. APPLICANT'S CASE

a) Summary of facts

16. It is the contention of the Applicant that the Respondent is seeking to relitigate the case before this Court as the following submissions made in the initiating application were also made in Application for Review:



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- i. The Respondent challenged the jurisdiction of the Court;
- ii. The Respondent stated that the Court has no power to adjudicate on cases that involve political questions or decisions that will require the Court to meddle in internal politics of a Member State;
- iii. That the action and decision by the Liberian Legislature in impeaching the Applicant, his trial and subsequent removal from office is not reviewable by the Court;
- iv. That by adjudicating on the matter, the Court has assumed the role of an appellate judicial body over the Liberian Legislature and Supreme Court in contravention of the Protocol on the Court.

17. Furthermore, the Applicant argues that disagreeing with the judgment of the Court or any tribunal of justice is no legal basis to compel a review of, or setting aside of the said judgment.

18. The Respondent has also not cited any law that is applicable to its Application to justify its entertainment by the Court.

19. Furthermore, the Applicant averred that to warrant a review of a judgment rendered by the Court, the Application must be in conformity with Article 25 of the 1991 Protocol on the Court. This requires that the party seeking a review must demonstrate that certain facts or set of facts of a decisive factor were inadvertently overlooked by the party seeking review of the Court's



judgment, which if then considered would have produced a different outcome in the judgment. The Applicant submits that since the Respondent has not shown that such facts of a decisive nature has come to its knowledge, its Application is baseless and should be dismissed.

20. In concluding, the Applicant submits that the Application for review of the judgment should be dismissed.

b) Pleas in law

21. The Applicant relies on the following laws:

- i. Articles 63 and 64 of the Rules of Court;
- ii. Article 25 of the Protocol A/P1/7/91 on the Community Court of Justice;
- iii. Article 4 of the Revised Treaty of ECOWAS;

c) Reliefs sought

22. The Applicant urges the Court to decline jurisdiction to hear the Application, as it is not in accordance with the Rules of Court.

VII. JURISDICTION

23. The Court holds that it has jurisdiction to adjudicate on this Application in accordance with Article 25 (1) of the Protocol (A/P1/7/91) on the Community Court of Justice (the Protocol), which provides as follows:

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“An Application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence.”

VIII. APPLICATION FOR PRELIMINARY OBJECTION

a) Summary of facts

24. The Respondent filed an Application raising a Preliminary Objection and seeking an order of the Court to recuse the Hon Justice Amoako Asante from adjudicating on the pending Application for Revision and in future cases where the Government of the Respondent is involved as a party.

25. The Preliminary Objection is premised on a number of alleged debasing comments made by the Hon Justice Amoako Asante against the Respondent sequel to the delivery of the said Judgment during an interview on the radio programme of the Voice of America (VOA)

26. Below are some of the alleged offending comments ascribed to the said Judge during the radio interview;

- i. The Judge is alleged to have accused the Respondent of woefully *“dismissing judges who will not dance to its tone”*.

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ii. *"...reading political meanings into it, we didn't want this kind of impunity to happen for politicians to have their way cause the position of judges should be insulated all the times, such that politicians should not have the pendant (sic) of removing them at any time they wish, because maybe they may not be singing their songs."*


iii. *"...the Liberian Government has shown a certain posture that it does not actually respect the court's judgment."*

iv. *"We will keep fighting and keep publicizing as you have done; now it's on VOA, its going all over the place... Liberian Government is doing this; they are removing judges and all that."*

27. While the Respondent averred that these comments do not represent the opinion of the Court as contained in the said Judgment, it is their opinion that they were made as a result of Hon Justice Asante's personal or political considerations, gratuitous emotions exclusively planned, designed and unleashed against the Respondent.

28. The Respondent is convinced that the comments are prejudicial, demeaning and compromises the principle of impartiality on the part of Hon Justice Asante in matters concerning the Respondent before this Court. Furthermore since the alleged statements were not grounded on issues of law raised by the Parties but politically motivated, his neutrality is put in question.

29. Flowing from above, the Respondent is apprehensive that the Hon Justice Asante will avert fair hearing were he to sit on the review application. While

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confirming that there is no precedent in the Court where a judge has been asked to recuse himself, the Respondent is of the opinion that the Court will not be wrong in ordering a recusal of Hon Justice Asante as a result of the statements credited to him on the VOA.

30. The Respondent nevertheless prays the Court to declare the Hon Justice Asante unfit to preside over the Application for Review or on any matter wherein the Respondent is a party.

b) Pleas in law

31. The Respondent relies on Article 87 (1-5) of the Rules of the Court.

c. Reliefs sought

32. The Respondent prays the Court to grant the following orders:

- i. That the Hon Justice Asante recuses himself from any and all cases brought before this Honourable Court in which the Republic of Liberia is a party including but not limited to the pending Application for Judgment Review;
- ii. That the Hon Justice Asante be made to retract the said comments so as not to jeopardize the international image of this court and take further corrective actions to refrain from all and any further media interview only intended to humiliate the Republic of Liberia;

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- iii. That the Court should issue any order, or mandate indicating that the opinion expressed on the VOA does not represent the official position of the court in the case of **Kabinch Muhammad Ja'neh v Republic of Liberia, ECW/CCJ/JUD/28/20**.
- iv. That this Court will grant unto the Respondent all and any further relief although not specifically sought but which will be adequate and proper enough not just to restore the credibility of this court but also to repair the damage which Justice Asante's comments have caused this court.

IX. APPLICANT'S RESPONSE TO RESPONDENT'S PRELIMINARY OBJECTION

a) Summary of submission

33. The Applicant in its response to the Preliminary Objection contends that the comments made by the Hon Justice Asante were not conclusive evidence of conflicts of interest to warrant a recusal of the Hon Justice Asante from sitting to review the judgment ECW/CCJ/JUD/28/20 delivered by the Court on 10 November 2020.

34. Specifically, the Applicant oppose the Respondent's Preliminary objection on the following grounds:

- a. The Application was not supported by any Rule of the Court;
- b. The Application is not objectively justified;
- c. A recusal will amount to an abdication of duty and a violation of the solemn oath of office

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d. The Application is not supported by any evidence that there will be future bias by the Hon Justice Asante.

35. In concluding, the Applicant states that the Application for Review has not complied with the provisions of Article 93(1-3) of the Rules of Court and specifically the Respondent did not state the nature and character of evidence to support its motion for recusal of Hon Justice Asante.

36. The Applicant urges the Court to dismiss the Application as being unmeritorious.

b) Pleas in law

37. The Applicant relies on Chapter V, Section 2, Article 93(1-3) of the Rules of Court.

Analysis of the Court on the Preliminary Objection

38. The Respondent in its Preliminary Objection seeks an order of the Court for the recusal of Hon Justice Asante from all future cases wherein the Respondent is a party, including the pending Application for review of the Court's judgment in **Cllr Kabineh Muhammad Ja'neh V Republic of Liberia (supra)**, on the grounds that the comments he allegedly made during an interview with the Voice of America (VOA) were biased and prejudicial to the interest of the Respondent and incompatible with the objects of this Court.


39. The Applicant on its part, states that the contention of the Respondent is baseless and should be dismissed.

40. Articles 87 and 88(1) of the Rules of Court which deal with Preliminary Objection provides as follows:

87. 1. *"A party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application by a separate document.*

2. *The Application must state the pleas of fact and law relied on and the form of order sought by the applicant and any supporting documents must be annexed to it.*

3. *As soon as the application has been lodged, the President shall prescribe a period within which the opposite party may lodge a document containing a statement of the form of order sought by that party and its pleas in law.*

4. *Unless the Court decides otherwise, the remainder of the proceedings shall be oral.*

5. *The Court shall, after hearing the parties decide on the application or reserve its decision for the final judgment. If the Court refuses the application or reverses its decision, the President shall prescribe new time limits for the further steps in the proceedings."*

88. 1) *where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly*



inadmissible, the Court may, by reasoned order, after hearing the parties and without taking further steps in the proceedings, give a decision.

41. The Preliminary Objection of the Respondent is raised under circumstances that are as intriguing as it is strange. This has prompted the Court to expound the fundamentals of a Preliminary Objection hereunder to enable a proper understanding of its constituents.

42. The Encyclopedic Dictionary of International Law (3rd Edition), defines a Preliminary objection as follows “*Any objection by the respondent to the jurisdiction of the [International] Court [of Justice] or to the admissibility of the application, or other objection the decision upon which is requested...*”

43. A publication of the International Court of Justice also described a Preliminary Objection as follows:

“A preliminary objection is a formal step by which a respondent raises a question which it contends should be dealt with separately, before any other issue in the proceedings is examined. This is usually, perhaps indeed necessarily, on the basis that that question is preliminary in nature; and that as a result, its resolution (in the sense contended for by the party raising it) will make examination of the rest of the case unnecessary and inappropriate. These objections are a procedural means of challenging the existence of the Court's jurisdiction in a particular case. Jurisdictional issues are however not the only matters which may be the subject of such objections: two other categories are generally recognized: objections to admissibility, and

a catch-all category of 'objections of a preliminary character'". See CHAPTER 14, PRELIMINARY OBJECTIONS "THE INTERNATIONAL COURT OF JUSTICE" BY HUGH THIRLWAY, OXFORD SCHOLARLY AUTHORITIES ON INTERNATIONAL LAW [OSAIL], AND PUBLISHED OCTOBER 2016.

44. Simply put, a Preliminary Objection in the context of international law, is an objection raised by an adverse party, usually the Respondent, with the aim of drawing the attention of the Court to an irregularity in the application, or failure by the Applicant to follow appropriate procedures in the substantive suit filed before the Court. A Preliminary Objection may challenge the jurisdiction of the Court, admissibility of an application or non-compliance with procedures laid down by the Rules of the Court. When a Preliminary objection is upheld, a further consideration of the merits of the substantive application becomes otiose.
45. In the context of this Court, Article 88 (1) of the Rules is instructive as it provides for competence of the Court and the admissibility of applications brought before it. For ease of understanding it is hereunder recapitulated;

*88(1) where it is clear that the Court has no **jurisdiction** to take cognizance of an action or where the action is manifestly **inadmissible**, the Court may, by reasoned order, after hearing the parties and without taking further steps in the proceedings, give a decision. **Emphasis ours***



46. The above provision clearly clarifies that the jurisdiction of the Court and admissibility of the initiating application are the basis upon which a Preliminary Objection can be raised. Further, where such objection is upheld, the application can be terminated without further action by the Court.

47. In essence, the contemplation of a Preliminary Objection is that there exists a procedural deficiency in the substantive suit that needs to be dealt with by the Court before proceeding on the merits of the case. A Preliminary objection though tied to a substantive application, does not go into the substance of the case.

48. Flowing from above, two elements are implicated in an application for a decision on a Preliminary Objection; 1) It must relate to a deficiency in the substantive suit, which will terminate same and 2) It must be raised by the opposing party to the suit.

49. The Court will briefly recount the facts upon which this Preliminary Objection is based to enable a full understanding of the concern of the Court in that regard.

50. The crux of the Application is premised on Judgment No ECW/CCJ/JUD/28/20 Cllr. Kabinch Muhammad Ja'neh v Republic of Liberia delivered on 10 November 2020, where the Court found that the Respondent was in violation of Articles 7 and 15 of the Charter having not given the Applicant an opportunity to be heard and unlawfully terminating his appointment.


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51. Flowing from this, the Respondent filed the instant two Applications; one for review of the said Judgement and the other a Preliminary Objection brought under Article 87 of the Rules of Court contesting the transparency/impartiality of Hon Justice Edward Amoako Asante and seeking an order of this Court to recuse him from sitting on the current Application for Review and any other matter involving the Respondent for reasons of bias.

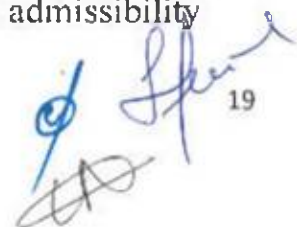
52. Having recalled the summary of the case, the Court will now situate the facts with the above fundamentals to ascertain the appropriateness of the Preliminary Objection.

a) The Preliminary Objection must relate to a deficiency in the substantive suit

53. This element presupposes two things: i) that an Applicant has filed an application for determination by the Court and ii) a deficiency in its competence and admissibility is challenged by the Respondent.

54. Indeed the Respondent filed an application for review of Judgment No ECW/CCJ/JUD/28/20 under Articles 25 of the Protocol of the Court and sought the reliefs listed in paragraph 15 above.

55. Such application having been filed, the Preliminary Objection has met the first component of (i) above. With regards to the second requiring the objection to relate to a deficiency in the substantive suit, the objection is expected to identify in clear terms the specific area of non-compliance of the application with regards to Jurisdiction of the Court and its admissibility



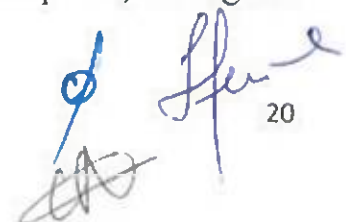
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56. As earlier indicated, the substantive suit is an application for the review of the said judgment. Articles 92 and 93 of the Rules details the conditions precedent to the review of a judgement including discovery of a fact of a nature that is of a decisive factor. The Respondent did not address any of these conditions, rather an extraneous matter of the recusal of a Judge is the subject matter and prayer of the Preliminary Objection.

57. As elaborated supra, a Preliminary Objection is intended to stop at the earliest stage the continuation of the substantive suit and where upheld, naturally brings the suit to an end. In this wise the Court has sought to no avail such logical conclusion in the instant Preliminary Objection wherein it prayed the dismissal of the substantive suit.

58. The Court notes that no interrogative effect on the substantive suit has been established as the Preliminary Objection is not tied to any deficiency in the procedure for the Application for Review in terms of compliance with the provisions for review, neither was the competence of the Court nor admissibility of the Application called to question. The Respondent is therefore seeking the Court to examine the Preliminary Objection *in abstracto*.

59. While the Court notes that the Preliminary Objection directed at the recusal of Hon Justice Edward Amaoko Asante from the panel that will adjudicate on the Review application may have procedural consequences on the substantive suit in terms of a possible re-composition of the panel, having not



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identified any deficiency therein, thus no adverse effect necessitating the discontinuation of the said suit has been established. Whichever way the Court rules on this instant preliminary objection, it remains unaffected and the Court is obliged to proceed with its determination on merit.

60. The Court therefore finds that the Preliminary Objection is incompetent same not tied to any deficiency in the Application for Review.

b) The Preliminary Objection must be raised by an opposing party

61. As earlier indicated, a Preliminary Objection connotes a protest raised against the continuation of a legal action. Such protest without gainsaying must naturally come from the opposing party to an initial application, while the Applicant equally naturally guards against its discontinuation.

62. In the instant case, the party who filed the Application for Review of the said Judgment (though termed *Respondent* flowing from the initial Application) is also the one who filed the Preliminary Objection which did not seek the discontinuation of the substantive suit as envisaged in the fundamentals of a Preliminary Objection. This is clearly an absurdity and incompatible with the oppositional nature of an objection in litigation.

63. The totality of this Preliminary Objection both in its objective and character is strange to the Rules of the Court. Indeed the Respondent acknowledges this anomaly when it said,

 
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“Respondent says, that while it would be obliged to accept the fact that there may be no precedent in this court where a Justice have been asked to recuse him/herself, or have recused him/herself from sitting on a matter where there exists a conflict of interest based on his/her personal opinion on the matter...”

64. While the Court is not oblivious of the right of a party to seek a recusal of a Judge for proven reasons of bias, it is however perplexed at the strategy of the Respondent in this wise. The implication of this curious strategy in seeking an order for the recusal of a judge via a Preliminary Objection under Article 87 of the Rules is in the opinion of the Court a vain adventure.

65. As earlier ruled, the character of the instant Preliminary Objection is unknown to the law of this Court, and the initiating party is equally an anomaly. The Court being unable to situate the instant Preliminary Objection within the contemplation of Article 87/88 of the Rules of Court under which it was raised, holds that the Preliminary Objection seeking an order of Court to recuse Hon Justice Amoako Asante from adjudicating on the review Application is inadmissible and is hereby dismissed and all reliefs sought thereof denied.



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**X. APPLICATION FOR REVIEW OF JUDGMENT NO
ECW/CCJ/APP/JUD/28/20 KABINEH MUHAMMAD JA'NEH V
REPUBLIC OF LIBERIA**

Analysis of the Court

66. The Respondent in its Application for Review of the said Judgment, submits that the entire Judgment of the Court should be overruled and set aside same being reflective of several gross error of judgment of law and facts by the Court.

67. The Applicant on the other hand, contends that the Respondent is seeking to relitigate the case. Furthermore, that the Application for Review is not in compliance with the provision of Article 25 of the Protocol on the Court, which provides that an application for revision must show that certain facts of a decisive nature were inadvertently overlooked in the judgment sought to be reviewed.

68. Article 25 of the Protocol (A/P1/7/91) on the Court, which is relevant to this application for review of judgement provides as follows;

1 "An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown


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to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision and declaring the application admissible on this ground."

69. Additionally, Articles 92 and 93 of the Rules of the Court provides for conditions under which such application can be made as follows;

92. "An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge."

93(1). "Articles 32 and 33 of these Rules shall apply to an application for revision.

2. In addition such an application shall:

a) Specify the judgment contested;

b) Indicate the points on which the judgment is contested;

c) Set out the facts on which the application is based;

d) Indicate the nature of evidence to show that there are facts justifying revision of the judgment, and that the time limit laid down in Article 92 has been observed.

3. The application must be made against all parties to the case in which the contested judgment was given."


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70. It must be noted that the conditions for revision are cumulative, as a default in one would render the application inadmissible.

71. The Court will now examine the grounds upon which the application for review is based to determine its compliance with above provisions and will be guided by its summary of the conditions in Article 25 of the Protocol and Articles 92 and 93 of the Rules as stated below:

"The first condition to be met in order to succeed with a review application is that the application must have been filed within five years of the date on which the judgment that is being sought to be reviewed was delivered... The second condition that has to be satisfied... is that the party applying for a review must file his application within three months of his discovering the fact/facts upon which his application is based... The final condition is that the application for review must be premised on the discovery of some fact/facts that is/are of a decisive nature, which fact/facts was/were unknown to the Court or the party claiming revision provided that such ignorance was not due to negligence." MUSA SAIDYKHAN V. THE REPUBLIC OF THE GAMBIA RULING NO ECW/CCJ/APP/RUL/03/12 (2012) CCJLR PARAGRAPHS 14, 15 & 16, PAGES 64 & 65.

72. With regards to the first timeline requirement of filing the application within 5 years of the date of the judgment in question, the Court finds compliance as the judgment was delivered on 10 November 2020 while the Application was filed on 1 February 2021.

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73. The second timeline requirement provides that the application be filed within three months of the discovery of the fact/facts unknown at the time the decision was made. Ahead of making a finding on compliance under this head, the Court needs to first examine the facts pleaded to support the review application to determine if they meet the conditions set out in Article 25(2) of the Protocol as regards discovery of a new fact. Indeed the said Article obliges the Court to open the proceedings of the Court by a decision expressly recording the existence of the new fact and this was recapitulated when it held that;

“The conditions of an application for revision such as provided for in Article 25 of the Protocol A/P/P1/7/91 are related to the discovery by the Applicant of a new fact, of a nature as to exert a decisive influence on the decision, the ignorance of this fact not being due to the negligence of the Applicant MRS TOKUNBO LIJADU OYEMADE V. COUNCIL OF MINISTERS & 4 ORS ECW/CCJ/JUD/02/08/REV (SUPRA).

74. At this point, the Court will restate albeit in brief the various facts canvassed by the Respondent in support of their application for review. The Respondent pleaded its grounds for review in 52 paragraphs most of which are based on alleged error of reasoning of the Court. A few of such grounds pleaded in the Respondent's Application for judgment review are referenced as follows;

- a) Paragraph 13- *“Further, Respondent submits that the court committed a palpable error when it grossly ignored the fact*



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that the jurisdiction of a court is conferred by law and not by consent... ”

- b) Paragraph 18- *“Respondent submits that the court committed reversible error when it said in para. 56 “...the court adjudged that “in view of its jurisprudence, this court has the competence to examine the laws upon which the allegations are based to ascertain whether the laws and punitive measures are regular or in violation of the applicants’ rights...”*
- c) Paragraph 22- *“The court committed a serious reversible error when it ignored the fact that the African Charter relied upon is an integral part of the domestic laws of Liberia having been ratified and ceded to , and therefore is subordinate to the supreme organic law, the 1986 Constitution...”*
- d) Paragraph 26- *“The court committed a palpable error by interpreting Article 43 of the Respondent’s 1986 Constitution when it recounts: “The 1986 Liberian Constitution provides under Article 43 as follows...”*
- e) Paragraph 33- *“Further, Respondent says the court committed an egregious palpable error when it relied on the case: Justice Joseph Wowo v Republic of Gambia (2019) ECW/CCJ/JUD/09/19; Ocean v Turkey – 4622/99- Grand Chamber judgment (2005) ECHR 282 (12 May 2005) (para 115), and Hos Lordship Justice Paul Uter Dery & 2 ORS v*

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Republic of Ghana (2016), ECW/CCJ/JUD/17/19, (para 116) are all criminal cases whose facts and circumstances are not analogous to an impeachment trial which is the exclusive preserve of the Respondent's bicameral legislature...."

f) Paragraph 37- *"The Court committed a serious reversible error and therefore the entire judgment is flawed and should be overruled and set aside as if it has never been rendered on grounds that Article 7 of the African Charter specifically subsections (b) (c) and (d) which the court relied upon..."*

g) Paragraph 43- *"Respondent submits that the court erred when it said in para. 145 that Respondent alleged failure to controvert "allegations of irregularities catalogued by the applicant" and described same as "worrying" which is not true, renders the entire judgment questionable and prejudicial..."*

75. While the pleadings in an application is instructive to the analysis of the allegations made, the reliefs sought determines the orders that the Court is called upon to make. In this wise, the orders sought by the Respondent hereunder reproduced;

- i. A declaration that the Court committed a reversible error when it ruled awarding damages of US\$200,000 to the Applicant which were not supported by any evidence or specifically pleaded, testified to, confirmed and reconfirmed on mere violation of the Applicant's


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“self-esteemed.” (sic), for the fact that the said claim was never raised by the Applicant in his entire Application;

- ii. A declaration that court committed reversible error when it sought to interpret Articles 43 and 29 of the Respondent’s Constitution of 1986; an authority it lacks under the Protocol establishing the Court, and several opinions rendered by it;
- iii. A declaration that the Court committed serious reversible error when it arrogated unto itself the authority of an appellate body to reverse the decision rendered by the Legislature of a Member State after it had constitutionally conducted an impeachment proceedings against the Applicant and had him subsequently removed from office;
- iv. In MUSA LEO KEITA V MALI (2004-2009), the Court declared that it had no jurisdiction to adjudicate on a judgment delivered by the Court of a Member State. Similarly, in SIKIRU ALADE V FEDERAL REPUBLIC OF NIGERIA (2012), the Court said that it does not present itself as an appellate court over decisions of national courts. As stated above, this Court lacks jurisdiction to sit on appeal over decisions of National Courts or tribunals.

76. An analysis of the various facts pleaded, and reliefs sought by the Respondent do not reflect the discovery of new facts. The reliefs claimed are not for orders to review the said judgment based on the discovery of a new fact. Rather they are reliefs for an order of review based on allegation of errors of opinion, interpretation of law and facts by the Court extracted from the said


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contested judgement. Contrary to the Protocol, they cannot therefore be deemed *of a nature as to exert a decisive influence on the decision.*

77. The discovery of a new fact(s) as provided in Article 25(2) is the crux of an application for review of Judgment as it enables the opening up of the judgment in the interest of justice. It should however be noted that even where such discovery has been established, such fact must have the potential to render the decision a miscarriage of justice if not reviewed accordingly. The Court put this succinctly when it held that;

“The existence of new facts presupposes that the person requesting the revision may not have been informed of these facts, but also that these facts should be of a nature as to exert a decisive influence on the decision made by the Court.” MRS TOKUNBO LIJADU OYEMADE V. COUNCIL OF MINISTERS & 4 ORS ECW/CCJ/JUD/02/08/REV (UNREPORTED) PAGE 18.

78. The above fundamentals were clarified in the reasoning of the Court in a case whose grounds for review are on all fours with the instant;

“A careful reading of Article 25 of Protocol A/P1/7/91 reveals clearly that facts contemplated by the said Article are facts that were in existence at the time of the decision but were unknown to both the Court and the party claiming revision. It also reveals that the facts in question are facts that could have had a decisive influence on the judgment. Can a judgment of the Court be said to be a fact that could have had a decisive influence on that same judgment? The answer is obviously in the negative. Again, can one say a judgment of the Court is a fact that was in existence

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before that same judgment was delivered? The answer is certainly not in the affirmative. " DR. ROSE MBATOMON AKO v. THE WEST AFRICAN MONETARY AGENCY & 5 ORS. ECW/CCJ/JUD/28/15.

79. The Court therefore finds that the facts in support of the Application for review of the said judgment same being known to the Respondent at the time of the decision is not in conformity with the provisions of Article 25 of the Protocol of the Court as it relates to the discovery of a new fact.

80. On a related point of review and appeal mechanism, the Court notes that all the facts pleaded to support the judgment review are plausible grounds of appeal in a National Court where the decisions thereof are subject to an appeal. Such facts cannot support an application for review under the relevant provision of the Rules of this Court. The Court has in a plethora of decisions clarified the import of a review mechanism as against an appeal process. In this regard the Court has stated thus,

"The review mechanism provides a very limited opportunity for parties who make significant findings of fact which were unknown to them and to the Court at the time the decision of the Court was made without any negligence on the part of the party claiming revision. It is not an avenue for parties to challenge the conclusions of fact or law made by the Court in arriving at its decision (emphasis added).....It is elementary law that issues of misconstructions/misapplications of law are issues of law and have nothing to do with facts at all. Article 25 (1)



explicitly states that reviews are founded on the discovery of facts of a decisive nature and not on issues of law. Issues of law are grounds of appeal and not review." OCEAN KING NIGERIA LTD V. REPUBLIC OF SENEGAL. ECW/CCJ/JUD/07/11-REV (UNREPORTED) PAGES 7 AND 12.

81. Furthermore, the Court held that:

"It is trite learning that if a judgment is erroneous it is a good ground for appeal but not a review as contemplated by Article 25 of Protocol A/P. 1/7/91 and Article 92 of the Rules of this Court." MUSA SAIDYKHAN v. THE REPUBLIC OF THE GAMBIA RULING NO ECW/CCJ/RUI/03/12 (2012) CCJELR PARAGRAPH 18, PAGE 65.

82. While the facts pleaded have been adjudged as appeal materials, the Court has not shied away from insisting that the ECOWAS Court as currently constituted has no appellate jurisdiction and will not exercise that power in respect of its decisions, which are final. The Court is a first and last resort for litigants. In this regard the Court held as follows:

"This Court has no appellate jurisdiction and thereby cannot subject its decisions to reversal; this is a trial court from which there is no appeal." DR. ROSE MBATOMON AKO v. THE WEST AFRICAN MONETARY AGENCY & 5 ORS ECW/CCJ/JUD/28/15 (UNREPORTED) PAGE 12.

83. Furthermore, the Court has also held that,



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"Article 19(2) of Protocol A/P 1/7/91 makes it clear that judgments of this Court are final and binding, subject to the provisions of a review. The decisions of this Court are thus not subject to appeal." MUSA SAIDYKHAN v. THE REPUBLIC OF THE GAMBIA (SUPRA). See also DR. ROSE MBATOMON AKO v. THE WEST AFRICAN MONETARY AGENCY & 5 ORS (SUPRA).

84. From the facts above it is obvious that the disclosure of new fact requirement was not met thus the compliance with the time line of three months upon discovery of the new facts becomes futile. In any case as stated supra, the conditions for revision are cumulative, as a default in one would render the application inadmissible. This was captured by the Court thus;

"The revision of a court's decision is an exceptional procedure and subject to strict interpretation. The Court ensures first of all that the conditions of admissibility provided for revision are fulfilled before everything else. The default of one of the conditions renders the application inadmissible independently of the appreciation of the other conditions." MRS TOKUNBO LIJADU OYEMADE V. COUNCIL OF MINISTERS & 4 ORS ECW/CCJ/JUD/02/08/REV (UNREPORTED) PAGE 13.

85. The Court therefore has no hesitation in holding that the Application by the Respondent for the review of Judgment No ECW/CCJ/JUD/20/20 Cllr. Kabineh Muhammad Ja'neh v Republic of Liberia, having not disclosed a fact of a nature as to be of a decisive factor in the decision, is not admissible and the claims sought therein are denied.



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86. Consequently, the declarations and orders made in the said judgment No ECW/CCJ/JUD/20/20 Cllr. Kabineh Muhammad Ja'neh v Republic of Liberia delivered on 10 November 2020 stand and shall be enforced forthwith without any further delay.

XI. COSTS

87. The Court notes that none of the Parties made any claim for costs of the proceedings before the Court. In this regard, Article 66(11) of the Rules provides, "*If costs are not claimed, the parties shall bear their own costs.*" The Court hereby orders each party to bear its own costs.

XII. OPERATIVE CLAUSE

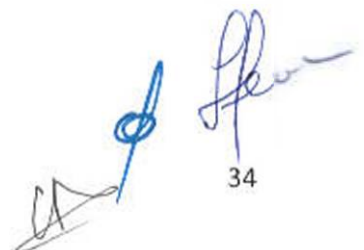
88. For the reasons stated above, the Court sitting in public after hearing both Parties.

As to jurisdiction:

- i. **Declares** that it has jurisdiction.

As to admissibility:

- ii. **Dismisses** the Preliminary Objection of the Respondent on the Recusal of Hon Justice Amoako Asante.



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iii. **Dismisses** the Application of the Respondent for review of Judgment No ECW/CCJ/JUD/20/20 Cllr Kabineh Muhammad Ja'neh v Republic of Liberia delivered on 10 November 2020.

As to Compliance

iv. **Orders** the Respondent to comply forthwith without any further delay, with the orders made in Judgment No ECW/CCJ/JUD/28/20 Kabineh Muhammad Ja'neh v Republic of Liberia, delivered on 10 November 2020.

As to costs

v. **Orders** both Parties to bear their own costs.

Hon. Justice Gberi-Be OUATTARA- Presiding

Hon. Justice Dupe ATOKI – Judge Rapporteur

Hon. Justice Januaria T. Silva Moreira COSTA-Member

Mr. Tony ANENE- MAIDOH - Chief Registrar

Done in Abuja, this 4th Day of June 2021 in English and translated into French and Portuguese.

