COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

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

In the Matter of

KOMLAN RAYMOND KOUDO V ECOWAS PARLIAMENT

Application No: ECW/CCJ/APP/42/20 Judgment No: 39/21

JUDGMENT

ABIDJAN

27 October 2021

KOMLAN RAYMOND KOUDO - APPLICANT

V.

ECOWAS PARLIAMENT - RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE - Presiding
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur
Hon. Justice Januária T. Silva Moreira COSTA - Member

ASSISTED BY:

Mr. Aboubacar Djibo DIAKITE - Registrar

REPRESENTATION OF PARTIES:

Me Isaac CHARIA - Counsel for Applicant

Samhouna ASSOUMAN - Counsel for the Respondent

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as "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, Mr Komlan Raymond Koudo is a community citizen and a former member of staff of the ECOWAS Parliament, who was initially appointed as a Webmaster and subsequently as a Communications Advisor to the then President of the ECOWAS Parliament. He is resident in the Republic of Senegal (and hereinafter referred to as "Applicant").

3. The Respondent 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 (and hereinafter referred to as "Respondent").

III. INTRODUCTION

4. The Application is premised on a dispute between the Applicant and the Respondent regarding the alleged non-payment of the Applicant's three months' salaries during his service and other allowances following the termination of his contract with the Respondent. This Application is brought pursuant to Article 9 (f) of the Protocol on the Community Court of Justice 1991 (as amended by the Supplementary Protocol 2005).

IV. PROCEDURE BEFORE THE COURT

5. The Initiating Application was filed on 30 September 2020 and same was served on the Respondent on 8 October 2020.

6. The Respondent filed its Statement of Defence to the Application and attachments thereto on 26 October 2020. This was served on the Applicant on the same day.

7. The Applicant filed his reply to the Respondent's Statement of Defence on 6 November 2020, which was served on the Respondent on the same day.

8. The Court heard the Parties' oral submissions on 22 September 2021 and adjourned the case for judgment on 27 October 2021.

V. APPLICANT'S CASE

a) Summary of facts

9. The Applicant was appointed as a webmaster at the ECOWAS Parliament under a contract of one year commencing on 16 March 2016 at an agreed basic salary of UA19, 769 per annum. At the end of his contract, it was renewed for a further period of six and a half months from 16 March 2017 to 30 September 2017.

10. While the renewed period was still subsisting, he was appointed as a Communications Advisor to the President within the General Secretariat of the ECOWAS Parliament on a fixed term contract from 3 July 2017 to 3 February 2020. The effect is that he worked as a webmaster for only three months of the renewed contract.

11. The Applicant allege that he was not paid for these three months for reasons that the Financial Controller refused to grant its approval for the payment of the Applicant's salary because the extension was not in compliance with recruitment procedures. Further, the said salary was traded off to offset various advances granted to him for missions amounting to twenty five thousand, six hundred and ninety four (25,694) US Dollars which were not regularised by the Applicant.

12. At the end of his contract as Communications Adviser on 3 February 2020, the Applicant wrote to the Respondent claiming the following inclusive of the unpaid three month's salaries:

    i. 8,750,000CFA F – representing three and a half months' salary arrears for the period of mid-March, April, May and June 2017 when he was a Webmaster;
    ii. 2,750,000CFA F – representing three and half months of arrears of accommodation as a webmaster for the period of mid-March, April, May and June 2017;
    iii. 11, 410,000 CFA F as separation allowance, that is, 12.5% of the annual basic salary per year of service as Webmaster and Communications Adviser as provided for in the ECOWAS Staff Regulations at the end of the employment contract;
    iv. 9,500,000 CFA F as leave allowance for 90 working days;
    v. 2,500,000 CFA F as installation allowance provided for in Article 35 of the ECOWAS Staff Regulations, which was not paid to the Applicant at the start of his first contract;

vi. 9,000,000 CFA F as resettlement allowance provided for in Article 35 of the ECOWAS Staff Regulations, which was not paid to the Applicant.

b) Pleas in law

13. The Applicant relies on the following laws:

i. Article 35 of the ECOWAS Staff Regulations;

ii. Article 9 of the Protocol on the Community Court of Justice 1991 (Protocol).

Reliefs sought

14. The Applicant seeks the following reliefs:

i. An order for the Respondent to pay him the sum of forty three million, nine hundred and ten thousand (43,910,000) CFA Francs made up of the claims mentioned in paragraph 12 supra with interest thereon, in accordance with the ECOWAS Staff Regulations;

ii. An Order that the Respondent compensates him for everyday of delay in the payment of unpaid salaries to the tune of twenty five thousand (25,000) Euros or sixteen million, three hundred and thirty nine thousand, one hundred and sixty six hundred CFA Francs and fifty cents (16, 339,166.50CFA F).

VI. RESPONDENT'S CASE

a) Summary of facts

15. The Respondent confirmed that the Applicant was offered a one year fixed term contract to serve as Webmaster at the ECOWAS Parliament on 7 March

2016 and he assumed duty on 1 April 2016. That on 15 August 2016, the Applicant and twenty two other contract staff members were notified that their contract would end on 31 March 2017 and also informed that the contract was not renewable.

16. However, despite this notification, on 31 March 2017, the Applicant's contract was extended for six and a half months. Following the extension, the Office of the Financial Controller refused to grant its approval for the payment of the Applicant's salary because the extension was not in compliance with recruitment procedures. According to the Office of the Controller in order to *"maintain fairness and transparency, he (the applicant) should be treated in the same way as other staff members whose contracts have not been renewed on expiry due to non-compliance with recruitment procedures."*

17. That while the extended period was still in existence, on 12 June 2017, the Applicant was offered a fixed term appointment as Communications Advisor to the President of the Parliament. The Respondent submits that at different times he was granted various advances amounting to twenty five thousand, six hundred and ninety four (25,694) US Dollars as mission advances and other expenses during official travel/missions. These advances were not regularised by the Applicant before his contract ended on 3 February 2020, despite being notified to do so before the expiration of his contract.

18. The Respondent averred that on 10 June 2020, the Applicant's counsel sent a demand notice to the Respondent to pay their client within fifteen days of notice to the Respondent, the sum of forty four million, eight hundred and twenty thousand (44,820,000) CFA Francs.

19. That in response to the correspondence, the Respondent by a letter dated 10 July 2020, acknowledged that the Applicant was entitled to receive payment of his arrears of wages and compensation as follows:

    i. Three months' salaries representing the salaries not received during the period he worked as Webmaster in April, May and June 2017;
    ii. Housing allowance corresponding to the above three months;
    iii. Payment of severance allowance equal to 12.5% of the annual basic salary;
    iv. Compensatory allowance for the balance of paid leave up to ninety (90) working days.

20. However, the Respondent also informed the Applicant in the said correspondence that a failure to regularise the advances of twenty five thousand, six hundred and ninety four (25,694) US Dollars and return of the Community's assets and property in his possession within one month will result in the deduction of same from any amount due to the Applicant.

21. Nonetheless the Applicant refused to do so invoking Article 53 of the Staff Regulations while maintaining that the restitution of the Community's assets was conditional on the settlement his dues.

b) Pleas in law

22. The Respondent relies on Article 9(1) of the Supplementary Protocol (A/Sp.1/01/05) amending the Protocol relating to the Community Court of Justice 2005 (Supplementary Protocol).

c) Reliefs sought

23. The reliefs sought by the Respondent are as follows:

i. A declaration that the Application is inadmissible for lacking in legal basis;
ii. A finding that the installation allowance claimed by the Applicant was paid to him;
iii. A finding that the Applicant is not entitled to the resettlement allowance claimed because he has not served the Community for at least for years;
iv. A declaration that there is no payment of damages;
v. A declaration that the Respondent is justified in deducting the amount of advances received and not regularised by the Applicant before liquidating the balance of the Applicant's account;
vi. An Order that the Applicant bears the costs.

VII. JURISDICTION

24. The Respondent in its submission regarding jurisdiction contends that Article 9 of the Protocol of 1991 under which the Applicant brought the instant Application does not confer jurisdiction on the Court to such disputes as it has now been repealed and replaced with the Supplementary Protocol of 2005.

25. The Applicant in his response states that Article 9 of the Protocol explicitly gives competence to the Court to rule between ECOWAS Institutions and their officials. That the repeal of Article 9 of the Protocol only reinforces the competence of the Court to adjudicate on the dispute between the Applicant and Respondent.

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26. The opening paragraph of Article 3 of the Supplementary Protocol states that *"Article 9 of the Protocol relating to the Community Court of Justice is hereby deleted and substituted by the following new provisions: ..."* These new provisions is subtitled *Article 9: Jurisdiction of the Court* and under subsection 1 it states: *The Court has competence to adjudicate on any dispute relating to* several situations categorised under *a) –g)*... (f) refers to the *Community and its officials.*

27. This Application is brought under 9 of the 1991 protocol of the Court. The Respondent's contention is that the said Article 9 has been repealed and replaced with the Supplementary Protocol of 2005. Indeed the Respondent is correct in their averment of its repeal and substitution but wrong in their interpretation of the effect of such repeal and substitution. This is because the Article 9 of the 2005 Supplementary Protocol as currently constituted did not only substitute the provisions of the 1991 Protocol but also expanded it to accommodate new mandates. Therefore a reference to Article 9 of the 1991 Protocol should be read to mean the current Article 9 of the 2005 Supplementary Protocol as substituted and expanded. Consequently, all current provisions under Article 9 of the 2005 ought to be referred to as Article 9 of 1991 Protocol **as amended by the 2005 Supplementary Protocol.** *(Emphasis ours).*

28. Though the instant Application was brought under Article 9 of the Protocol on the Community Court of Justice 1991 *simplicita*, the implication of the preamble to the 2005 Protocol as earlier espoused should not be lost. In that

wise, the Court is obliged to examine whether the allegations of the Applicant grounds the Court with jurisdiction under the said Article 9.

29. Article 9 (1) (f) of the 2005 Protocol confers jurisdiction on the Court to resolve disputes between the Community and its Officials. The dispute in the instant case is between the ECOWAS Parliament and the Applicant. The ECOWAS Community is composed of many institutions amongst which is the Parliament. (*Article 6 &13 of the Revised Treaty 1975)*. The Applicant having being established as staff member of the Parliament is unquestionably an official of the Parliament and a fortiori the Community.

30. The Court is therefore satisfied that Article 9 (1)(f) of the 1991 Protocol (as amended by the 2005 Supplementary Protocol) is the appropriate provision in this matter. In any case, it is established that an Applicant's failure to cite the specific provision of the Charter or enabling law alleged to have been violated is not fatal. What is important is that the Applicant alleged a violation of human rights enshrined in the Charter. *WILFRED ONYANGO NGANYI V UNITED REPUBLIC OF TANZANIA (MERITS) (2016) 1 AfCLR 507; FRANK DAVID OMARY AND OTHERS V. TANZANIA (ADMISIBILITY) (2014) 1 AfCLR 358.*

31. The Court therefore finds that it has jurisdiction to adjudicate on this Application on the ground that it involves a dispute between the Community and its official albeit a former employee. The dispute between the Applicant and the Respondent having arisen during the period the contract of employment subsisted, falls within the competence of the Court to adjudicate thereon.

32. In light of this analysis, the Court holds that it is competent to entertain the Application pursuant to Article 9(1) (f) of the Protocol (as amended by the Supplementary Protocol). The Respondent's objection to the jurisdiction of the Court is hereby dismissed.

VIII. ADMISSIBILITY

33. The admissibility of the Court as it relates to disputes between Community Institutions and its officials is stipulated in Article 10(e) of the Protocol (as amended by the Supplementary Protocol), which provides as follows: *"Access to the Court is open to ...Staff of any Community Institution, after the Staff Member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations."*

34. The Court notes in the submission of the Parties that there were attempts at settlement of the dispute through correspondences between the Applicant and the Respondent during the subsistence of his employment contract and via his counsel after the termination of his contract of employment (Exhibits 6 and 7 of Document 1, 2 and 3 and Exhibits 9, 10, 11 and 12 of Document 3). The Court notes that these efforts yielded no positive results.

35. The Court therefore concludes that the Application has been rightly brought before the Court for adjudication since internal attempts to resolve the dispute failed and is hereby declared admissible for the same reason.

IX. MERITS

36. It is the contention of the Applicant that despite working from 7 March 2017 to June 2017 as Webmaster, the Respondent refused to pay him salaries for the said periods and therefore claims the following:

i. 8,750,000CFA F – representing three and a half months' salary arrears for the period of mid-March, April, May and June 2017 when he was a Webmaster;

ii. 2,750,000CFA F – representing three and half months of arrears of accommodation as a webmaster for the period of mid-March, April, May and June 2017;

iii. 11, 410,000 CFA F as separation allowance, that is, 12.5% of the annual basic salary per year of service as Webmaster and Communications Adviser as provided for in the ECOWAS Staff Regulations at the end of the employment contract;

iv. 9,500,000 CFA F as leave allowance for 90 working days;

v. 2,500,000 CFA F as installation allowance provided for in Article 35 of the ECOWAS Staff Regulations, which was not paid to the Applicant at the start of his first contract;

vi. 9,000,000 CFA F as resettlement allowance provided for in Article 35 of the ECOWAS Staff Regulations, which was not paid to the Applicant.

37. Based on the facts and documented presented to the Court, it will proceed to examine same to make a determination on each of the Applicant's claim.

With regards to the non-Payment of three months' salaries and allowances

38. The Applicant states that he worked meticulously during the period of his contract as a Webmaster for one year, which enabled him to be granted an extension of six and a half months, which he accepted in order to finish a project he started. That for three and half months out of the six and half months that he worked, he was not paid any salary, though he repeatedly demanded payment after the extension of his contract. The non-payment of his salary also resulted in arrears of housing allowance during the same period of mid-March, April, May and June 2017.

39. In response, the Respondent states that the Office of the Financial Controller faulted the process of the extension of the Applicant's tenure as being in contravention of the extant Rules of the ECOWAS on recruitment, hence its refusal to approve the payment of his salaries for those months (Exhibit 5 Doc 2).

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40. In examining an allegation of a breach of contract, it is imperative for the Court to evaluate the obligations agreed to by parties and determine whether a breach indeed occurred and also the party responsible thereof.

41. The instant case is an employment contract wherein the Applicant was employed by the Respondent in March 2016 as a Webmaster on a contract of one year, which was subsequently renewed for six and a half months from 16 March 2017 to 30 September 2017. The inherent obligation under such circumstances is that the agreed terms of the contract are endorsed by both

parties in a deed/letter more often than not prepared by the employer. It is definitely absurd for the employee to prepare such document. The Court is satisfied that in this case, it was prepared by the Respondent, the validity of which was queried by its Financial Controller for being inconsistent with the extant Regulations of the ECOWAS.

42. In addition to this obligation, the terms of the employment letter (Exhibit 1 Doc 3) obliges the Respondent to pay an annual salary of 19, 769 UA to the Applicant. The payment of salary is usually contingent on the terms of contract which normally include satisfactory performance and conduct in accordance with the extant rules of the employer amongst others. The Court has not been presented with any evidence of infraction of any of the extant regulations of the Respondent; neither any evidence that supports that the Applicant was found wanting in the performance of his obligations under the contract. Indeed being satisfied with his work, the Respondent renewed his contract (Exhibit 2 Doc 3). The renewal was then faulted for procedural irregularities leading to the refusal to pay the salaries for the months in question.

43. In the light of the facts before it, the Court finds that with regards to the obligations and performance thereof, the Applicant is in good standing. The Respondent on the other hand, failed to perform its obligation to pay the salaries as agreed. The reason is as surprising as it is incongruous. This reason is premised on the discovery by the Financial Controller that the renewal of the tenure dated 31 March 2017 falls short of the procedural requirement of the Staff Regulations of the Respondent which in their opinion justified the denial of the Applicant's salaries.

44. The terms of a contract is sacrosanct and are unequivocally enforceable to the extent that all parties are in conformity with their obligations therein. A party in breach will be obliged to remedy the wrong as appropriate. However, such party cannot be heard to defend a claim arising thereof by relying on its own wrongdoing or illegality. This is clearly supported by the widely recognized maxim: ***Nemo auditur propriam turpitudinem allegans*** which translate in English language as no one shall be heard to invoke his own guilt.

45. This maxim also referred to as the *illegality defense* is underpinned by the principle that a person should not be allowed to use the justice system to benefit from their wrongdoing. A claim or counter claim which fouls the principle will not be enforced as the law should not condone illegality. See *TINSLEY v MIILIGAN (1994) 1 AC 340.*

46. In the instant case, the irregularities alleged being a wrong emanating from the Respondent, should not be allowed to ground a defense for breaching the contract of employment and refusing to honour their obligation under contract to pay the salaries properly earned. No wrong can be credited to the Applicant as he has no duty to draft the employment letter therefore no obligation to ensure it meets the due process required. This lies solely with the Respondent. Having failed to ensure that the process leading to the extension of the Applicant's tenure is in line with its own extant rules, it is precluded for relying on that wrong to justify the breach of the contract as regards its obligation to pay salaries due. A party to a contract will not be allowed to rely on his own wrong in order to end it. Any contrary conclusion will amount to allowing the Respondent to benefit from their wrong. The Court always rejects those who seek to use their own depravity as a means to avoid justice.

47. For all intent and purposes, The Court is satisfied that the Applicant has earned his pay for work done and ought not to be so denied. See *JUSTICE PAUL UUTER DERY & 2 ORS V REPUBLIC OF GHANA ECW/CCJ/JUD/17/19 PARAGRAPH 81.* It is in that wise that the Court finds that the Respondent is in breach of their agreement as contained in Exhibit 1 Document 3, to pay the Applicant an annual salary of 19, 769 UA, when it failed to pay the Applicant's salary for three months.

48. The Respondent also adduced another reason for denying the Applicant the said salaries and premised same on the fact that the Applicant failed to retire/refund advances made to him in furtherance of some approved missions. That by the extant Regulations of which he is aware of, the Respondent is entitled to deduct the unretired advances from any funds to his credit. Therefore the contested three months salaries were deployed to offset the outstanding sum of twenty five thousand, six hundred and ninety four (25,694) US Dollars.

49. The Applicant contended the validity of such deduction on the basis that he is not a statutory appointee within the meaning of Article 53 of the Staff Regulations and that he did not benefit from local transport and airport taxes afforded to these persons.

50. The Court having found that the Respondent is not allowed to retain the said salaries same being an unlawful act, a justification of swapping it to pay an outstanding debt owed by the Applicant does not avail them. It is unconscionable to effect a potential rightful action through an illegal method.

51. Indeed no action can survive on illegality as once an act is declared unlawful, all subsequent action deriving from it are equally unlawful and must fall face to the ground. This is in line with the maxim ***Ex turpi Causa Non Oritur Actio,*** translated in English to mean - "no cause of action may be founded on an immoral or illegal act". See *REVILL V NEWBERY [1996] QB 567, 576 per Neill LJ.* In that regard Lord Mansfield held that *" The objection that a contract is immoral or illegal as between the plaintiff and the defendant , sounds at all times very ill in the mouth of the defendant.....no court will lend its aid to a man who founds his cause of action on an illegal or immoral act..."* See *HOLMAN V JOHNSON (1775) 1 COWP 342 @343.*

52. The summary of the above is that no right which arises from an illegal act, contract or transaction will be enforced by a Court of law. Regarding the instant case, as earlier held the retention of the said salaries having been declared unlawful, the subsequent retention to trade off same with the indebtedness of the Applicant has no root and cannot lean on the earlier retention to take root. It is dead and dead and cannot be founded on any legal right.

53. The Court therefore comes to the inevitable conclusion that the further retention of the said salaries by the Respondent is illegal and is therefore in breach of the employment contract signed with the Applicant.

54. In reaching this decision, the Court sees no reason to make a finding on the claim of the Applicant that the Rules under which the Respondent acted to swap his salary was not applicable to his cadre. The Court is more concerned

with the legality of the retention of the salaries which it has earlier held as unlawful.

55. The Court therefore condemns both the acts of the Respondent in refusing to pay the Applicant the three months salaries in question and in further repression in trading off the salaries for an alleged indebtedness to the Respondent.

On the regularisation of the advances paid to the Applicant for missions

56. Having stated that the Respondent erred in withholding the Applicant's three and half months' salaries and further holding on to same on the ground that he did not regularise the advances paid to him for approved missions, the Court will nevertheless examine whether indeed the Applicant is obliged to retire the advances as claimed by the Respondent.

57. It is the Respondent's claim that a total sum of twenty five thousand six hundred and ninety four (25,694) US Dollars was paid to the Applicant as advances for missions he undertook during the time of his service at the Respondent details of which are contained in Exhibit 6 Doc 2.

58. That in accordance with the texts in force and best accounting practices an advance is meant to be regularised by a staff by supporting documents on return from a mission. In addition the President of the Commission who is the chief authorizing officer of the Community budget has through an Inter-institutional Memorandum recalled the need for prompt regularization of advances of missions and meeting expenses received by members of staff

(Exhibit 12 Document 2). Despite reminders to the Applicant he refused to retire his advances.

59. That prior to bringing the Respondent before the Court, attempts were made to ensure that the Applicant regularise the advances before being paid his salaries and allowances, however these attempts failed.

60. The Applicant justifies his refusal to regularise advances made to him during his term of service on the grounds that as a professional staff, he is not required to regularise advances based on the provisions of Article 53 of the ECOWAS staff regulations. He also claims that he did not receive transportation expenses and airport taxes, as this is preserved for only statutory appointees.

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61. Article 62(e) of the ECOWAS Staff Regulations provides as follows: *"A staff member separating from the services of the Community for any reason shall be required to reimburse any sums he/she may be owing, and repair any financial loss suffered by the Community as a result of his/her negligence or his/her having violated any regulation, rule or administrative instruction."*

62. This is further supplemented by Exhibit 12 Document 2 an Inter-Institutional Memorandum issued by the President of ECOWAS Commission dated 18 October 2018, directing the implementation of a new procedure for all staff members to properly account for all travel and meeting advances within one week of return from a mission. The memorandum further directed as follows:

"Failing to comply, all unretired expenses accumulating for a period of two weeks after the end of the mission, must be deducted from the staff member's salary at the end of the month."

63. The import of above Regulations is to ensure that all advances are properly utilized and retired at the end of the mission for which they were approved. It therefore behooves on the Applicant to retire any advances so received. In support of the claim of advances made to the Applicant, the Respondent submitted Exhibit 6 Document 2. This is a computer printout from the Directorate of Administration and Finance which indicates the advances paid to the Applicant at different dates between 25 November 2016 to 13 June 2019 as including advances for per diem allowances, car hire etc. The Applicant did not controvert the printout, but only responded that under Article 53 of the Regulations he is not obligated to retire not being a statutory appointee.

64. Article 53 (c) of the ECOWAS Staff Regulations on mission advances and retirement of advances provides as follows: "*Staff members other than statutory appointees, who are not on mission to attend statutory meetings of Commissions, Board meetings of the EBID Group, Council of Ministers or the Authority, shall be entitled to an advance to cover local transportation expenses and airport taxes.*"

65. The provision of the said Article 53 is in relation to advances for local transportation and airport taxes for non-statutory staff members. Meanwhile the advances referred to by the Respondent as contained in Exhibit 6 Doc 2 is in connection with per diem allowances, car hire etc. Therefore the Court is of the opinion that this particular defense does not avail the Applicant.

66. The Court is of the considered opinion that best accounting practices makes it expedient that cash advances to cover expenses during a mission must of necessity be retired with proof confirming the use appropriately in line with the approval for the funds. This is the basis of Article 62(e) of the Staff Regulation and the Memorandum from the President as contained in Exhibit 6 Doc 2.

67. The Court notes that while the Memorandum from the President of the Commission it is not a living law, nevertheless, the President in his capacity as such has the powers to develop practice directives to give life to Regulations of the ECOWAS, in this case the Staff Regulations and particularly Article 62(e) thereof.

68. The President is obviously not unmindful of the Provision of Article 62(e) that obliges staff to liquidate all debts prior to severance from service which on a the strict application has the potential to justify all staff waiting till the end of their tenure to either regularize advances or risk deduction of same from funds available to their credit.

69. Were that allowed, unless the ECOWAS Institutions have bottomless resources, they will sooner or later run a ground. The express declaration in the preamble to the Memorandum indicates the need to prevent such accumulation of unretired advances at the point of severance by the staffs.

70. While the Applicant is obliged to regularize all advances within a week of the end of the approved mission, the higher obligation rests on the Respondent who having the power to impose sanction after two weeks of non-compliance,

rather choose to wait at the departure gate to accost the Applicant. The authority of the Respondent to so do while not being contested by the Court, is however of the opinion that such defense should be sour in their mouth more so that they had the opportunity to seamlessly ensure due regularization at a much earlier period.

71. To the extent that the Memorandum from the President was to give life to Article 62(e) of the Staff Regulations, it ought to be implemented. The Court is dismayed by the complete disobedience of the Respondent to the Memorandum of the President of the Commission, which required the deduction of unretired advances from a staff member's salary at the end of the month when same has accumulated for over two weeks after a mission.

72. The Court is more astounded considering that the Applicant continued to be granted advances year in year out despite failing to retire previous advances. Indeed in the last three years of the Applicant's service, he was granted advances for five missions, with no records of deductions made by the Respondent from his salary in compliance with the said Memorandum.

73. Therefore, the Court is unable to lay the fault fully at the feet of the Applicant as the Respondent is equally negligent in the implementation of the President's Memorandum which was meant to avert accumulated unretired advances, a situation in which the Parties currently find themselves.

74. In view of paragraph 62(e) of the Regulations which mandates all members of staff separating from service of the Community to reimburse any sums he/she may be owning, the Court holds that the Applicant shall regularise the

advances identified in Exhibit 6 Doc 2 amounting to twenty five thousand six hundred and ninety four (25,694) US Dollars.

75. Having said that, the Court recalls that the reason for the Applicant's failure to regularise the advances was not due to negligence or outright disregard to the Rules but was in protest against the retention of the three and half months' salary due to him. In view of the fact that the Court has found that the retention of the said salaries was unlawful, it is inclined to avail the Applicant the opportunity to proceed to regularise the said advances, following which the Respondent will then be obliged to pay him the outstanding salaries and allowances. The Court so holds.

With regards to installation allowance

76. The Applicant's claim is that by virtue of Article 35 of the ECOWAS Staff Regulations he is entitled to installation allowance in the sum of (2,500,000) CFA Francs (two million, five hundred thousand). This he asserted was not paid to him at the beginning of his first contract as only the sum of (1, 536, 627) CFA Francs (one million, five hundred and thirty six thousand, six hundred and twenty seven) was paid to him

77. The Respondent on its part stated that contrary to the Applicant's claim was paid installation allowance upon assumption of duties and supports its assertion with documents in Exhibits 10 Document 2.

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78. The Court being a Court of record places reliance on the documents pleaded in support of the Parties' claims. The Applicant on his part submitted a copy of a cheque, issued to him in the sum (1,536,627) CFA Francs of (one million, five hundred and thirty six thousand, six hundred and twenty seven) dated 22 April 2016 (Exhibit 14 Doc 3).

79. The Respondent on the other hand relies on three documents in Exhibit 10 Doc 2 as follows: i) a copy of the earlier referred cheque of 1,536,627 CFA Francs (one million, five hundred and thirty six thousand, six hundred and twenty seven) dated 22 April 2016; ii) a payment list signed by the Applicant that he received installation allowance in the sum of 1,536,627 CFA Francs (one million, five hundred and thirty six thousand, six hundred and twenty seven) dated 10 May 2016; and iii) a memo to the Director of Administration and Finance from the Human Resources Officer requesting for approval of the payment of installation allowance of 1, 536, 627) CFA Francs (one million, five hundred and thirty six thousand, six hundred and twenty seven) to the Applicant dated 8 April 2016. These documentary evidence being uncontroverted by the Parties are deemed as admitted. See *PETROSTAR NIGERIA LIMITED V. BLACKBERRY NIG LIMITED & ANOR ECW/CCJ/JUD/05/11 PAGE. 13.*

80. The Applicant's claim is that he is entitled to the sum of two million, five hundred thousand (2,500,000) CFA Francs. The Court finds it strange that after receiving a cheque of 1,536,627 CFA Francs as installation allowance and signing for same, the Applicant claims that he was not paid. As it stands the Court is unsure if his claim is that he was not paid at all or he was underpaid.

81. It is undisputable that the Applicant received the sum of 1, 536, 627 CFA Francs (one million, five hundred and thirty six thousand, six hundred and twenty-seven) as installation allowance. Nonetheless, the Court will still proceed to determine if he was paid the approved amount.

82. Article 35(a) is of significance and it provides thus: "*All professional staff shall be paid an installation allowance upon arrival at their duty station to cover the extra expenditure of settling in. The allowance shall amount to one (1) month of the staff member's salary.*"

83. Under this Article 35(a) of the Staff Regulations the installation allowance payable is one (1) month of the staff member's salary. The letter of offer of employment puts the annual salary offered to the Applicant as a P2 step 1 officer as 19, 769 UA per annum, which when divided into twelve months in a year amounts to 1,647.40 UA per month. The pay slip of the Applicant (Exhibit 8 Doc 3), shows that his basic monthly salary is 1,647. 40 UA, exclusive of other allowances. His basic salary is the parameter for the payment of installation allowance and not his net salary/earnings which include post adjustment, spouse, child dependency, transport, contract and communication allowances.

84. The Court observes that his monthly net salary/earnings including the above stated allowances amount to two thousand seven hundred and forty UA, which when converted to CFA Francs is two million, five hundred and fifty six thousand, one hundred and thirty six CFA Francs and sixty eight cents (2,556,136.68). The Court also deduces from the said pay slip that the exchange rate of UA to CFA Francs is 932.8.

85. Based on a simple calculation, premised on the exchange rate of UA to CFA Francs applied in his pay slip, the monthly salary of (1,647. 40) UA converts to(1,536,627) CFA Francs. The copy of the cheque issued in The Applicant's name indicates that this amount was paid to the Applicant on 22 April 2016 (Exhibit 10 Doc 2) and same was acknowledged by him as installation allowance on 10 May 2016 (Exhibit 10 Doc 2). The Applicant is therefore precluded from claiming he was not paid installation allowance.

86. Based on the above, the Court is satisfied that the Applicant was paid his dues on installation allowance on resumption of duties. Therefore the Applicant's claim in this regard is hereby dismissed.

With regard to resettlement allowance

87. It is the submission of the Applicant that due to his commitment in carrying out his duties as a Webmaster, at the expiration of his one year term, his contract was extended for six and a half months. Afterwards, he was elevated to the position of Communications Advisor to the President of the Parliament, which ended on 3 February 2020. He claims that during this period he was not linked to any incident leading to dismissal for serious misconduct and he did not resign from his appointment. That he is therefore entitled to resettlement allowance in accordance with Article 35(b) of the Staff Regulations.

88. He justifies this claim by the fact that the duration of his service, from the time he was employed on 7 March 2016 as Webmaster to the expiration of his contract as Communications Adviser on 3 February 2020, adds up to four years of service with the Respondent. Thus meeting the conditions for receiving a resettlement allowance in accordance with the Regulations.

89. The Respondent on its part argues that having assumed duties 1 April 2016, the Applicant is not entitled to resettlement allowance for the reason that he served for a period of less than four years.

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90. The Court in analysing this head is guided by the provision of Article 35(b) of the ECOWAS Staff Regulations which provides thus: *"All statutory appointees and professional staff shall be paid a resettlement allowance of three (3) months' salary on their separation from ECOWAS, provided they were not summarily dismissed, did not resign and have served the organization for at least four (4) years.*

91. The import of the above provision is clear, that is, all statutory appointees and professional staff shall receive a resettlement allowance from the Community upon their disengagement from an institution of the Community, so long as they meet three conditions as follows: i) they were not dismissed from service, ii) they did not resign and iii) they must have served for a duration of at least four years.

92. In the instant case, records before the Court indicate that the Applicant stopped working on the day his contract ended, that is, 3 February 2020. It is therefore clear that he was neither dismissed nor did he resign prior to that day. This signifies that the first two conditions above. The issue in contention which the Court must now determine is the third condition which is whether he spent four years in service of the Respondent.

93. The Applicant claims that his appointment took effect from the date of the letter of appointment dated 7 March 2016. Contrariwise, the Respondent argues that the appointment took effect from the date he assumed duties, which is 1 April 2016. The issue to decide is which date signifies the commencement of work by the Applicant and in that wise the Court will hereunder examine the relevant documents.

94. The offer letter titled "*Offer of fixed-term appointment on a contractual basis to the post of P2 Webmaster*" states in paragraph 1 as follows: *"I am pleased to propose and offer you a fixed-term contract appointment for the position of Webmaster P2 with the Secretariat General of the ECOWAS Parliament, pursuant to the following terms and conditions of service. Your appointment takes effect from March 16, 2016"* Additionally, paragraph 6 of the same letter states that *"You have a period of one month to indicate your acceptance or not of this offer"*

95. It is obvious that the contents of the letter is an offer of appointment by the Respondent (offeror), which is open to acceptance or rejection by the Applicant (offeree) and to be effected within a month from the date therein . Where an offer is not accepted in the manner and time prescribed, a valid contract cannot be presumed. Per Lord Denning in *ENTORES V MILES FAR EAST CORP [1955] 2 QB 327* that if a man shouts an offer to another man across a river but the reply is not heard because of a plane flying overhead, there is no contract. The offeree must wait and then shout back his acceptance so that the offeror can hear it.

96. It is however trite law that acceptance of an offer of contract may be implied by conduct, this means that acceptance may not be directly in writing but inferred from conduct or acts indicating the offeree's agreement to the offer. *BROGDEN V METROPOLITAN RAILWAY (1877) 2 APP. CAS. 666.* In the instant case, though the Applicant did not accept the offer in writing, but proceeded to assume duty on 1 April 2016 within the deadline given (Exhibit 2 Document 2), his conduct evidenced by the certificate of assumption suffices as proof as acceptance of the offer.

97. It is in that wise that the Court is satisfied that the Applicant commenced work and his employment started to run from the 1of April 2016 when he assumed duties and not 7 March 2016 as stipulated in the letter of appointment.

98. Having come to this conclusion, the calculation of the date of the Applicant's assumption of duty as a Webmaster from 1 April 2016 till the end of his contract as a Communications Adviser at the Office of the President on 3 February 2020 totals three years, ten months and two days. This is short of the four years of service cap provided by the said Article 35(b) of the ECOWAS Staff Regulations. Furthermore, even if the effective date of employment was 7 March 2016 as claimed by the Applicant, it would still have been short of the four years by one month and three days.

99. In light of this analysis, the resettlement allowance being payable on the completion of four years' service, the Court holds that the Applicant is not entitled to the resettlement allowance as claimed, and hereby dismisses his claim for same.

X. REPARATIONS

100. Reparations for wrongful acts is an essential component in the administration of justice, as it provides remedies to the victim as a measure to return him/her to the position he/she would have been had the wrong not been done to him/her. This Court previously held that reparations are a 'victim centric remedy' focused on repairing harm caused as a result of wrongdoings. Apart from repairing, reparation also tends to compensate victims for the loss suffered. *TIDJANE KONTE & ANOR V. REPUBLIC OF GHANA ECW/CCJ/JUD/11/14 PAGE 17.*

101. The Applicant made claims for reparation as stated in paragraph12 above and in making orders to that effect, the Court notes the Respondent acknowledged in its correspondence with the Applicant via his counsel dated 10 July 2020 (Exhibit 8 Doc 2) that the Applicant was indeed entitled to the following payments:

1. Three months' salaries representing the salaries not received during the period he worked as webmaster in April, May and June 2017;
2. Housing allowance corresponding to the above three months;
3. Payment of severance allowance equal to 12.5% of the annual basic salary;
4. Compensatory allowance for the balance of paid leave up to ninety (90) working days.

102. The Court will now proceed to order the appropriate reparation in the ensuing paragraphs:

On three and a half months' salaries

103. The Applicant is claiming salaries earned for three and half months, that is, from mid-March, April, May and June 2017 amounting to 8,750,000 CFA Francs.

104. The Court observes that the first contract expired on 16 March 2017 and a notification to that effect was issued to the Applicant (Exhibit 3 Doc 2). In addition, the contract was renewed by a letter dated 31 March 2017 (Exhibit 4 Doc 3). However, paragraph 2 of the letter states as follows: *"I am pleased to extend your contract for the post of Webmaster P2, for a period of six and a half months, from March 16, 2017 to September 30, 2017."*

105. Additionally, the letter of appointment to the post of Communications Advisor states in paragraph 2 as follows: "*The present appointment replaces your current appointment and takes effect from 3 July 2017."*

106. This therefore implies that the Applicant was not paid his salaries from 16 March 2017 when his contract was renewed till 3 July 2017 when his appointment as Communications Advisor took effect. Consequently, the Court finds that he is owed salaries from 16 March 2017 to 2 July 2017, amounting to three and a half months as against three months averred by the Respondent.

107. Consequently, the Court orders that the Respondent to pay the Applicant salaries amounting to three and a half months starting from 16 March 2017 to July 2 2017, in line with the terms of the Appointment letter.

On arrears of three and half month's accommodation allowance

108. The Applicant claims that when his salary was withheld, three and a half months of his accommodation allowance amounting to 2,750,000 CFA Francs was also withheld as a result, and claims the payment of same.

109. The Respondent accepted liability for accommodation arrears for three months based on their assessment that they owe the Applicant only three months' salaries. However the Court having held that the salaries for three and half months were outstanding, it goes without saying that the accommodation allowance paid monthly must also cover the months for which salaries were not paid.

110. The Court therefore orders the Respondent to calculate the amount due in line with the extant Regulation and pay the Applicant the accrued accommodation allowance for three and half months from 16 March 2017 to July 2 2017.

On separation allowance

111. The Applicant claims that the sum of 11, 410,000 CFA Francs as unpaid separation allowance that 12.5% of the annual basic salary per year of service as Webmaster and Communications Adviser as stipulated in the ECOWAS Staff Regulations ought to be paid at the end of the employment contract.

112. The Court notes that the Respondent also accepted liability for the payment of the Applicant's separation allowance of 12.5% of his annual basic salary while he was a Webmaster and Communications Advisor.

113. Consequently the Court orders the Respondent to calculate the amount due in line with the extant Regulation and pay the Applicant the accrued separation allowance.

On leave allowance

114. The Applicant claims the sum of 9,500,000 CFA F as leave allowance for 90 working days while he was in the service of the Respondent. This was also acknowledged by the Respondent as unpaid.

115. Having accepted liability, the Court orders the Respondent to calculate the amount due in line with the extant Regulation and pay the Applicant the accrued leave allowance.

On Installation allowance

116. Having held that the Respondent paid the Applicant his installation allowance on assumption of duties in accordance with the Staff Regulations, his claims in this wise is hereby dismissed.

On Resettlement allowance

117. As the Court earlier held, the Applicant is not entitled to resettlement allowance having served for a period less than four years stipulated in the Staff Regulations. His claim for same is therefore dismissed.

On interest payable for delay of payments post judgment

118. The Applicant prays the Court to order the Respondent to pay the sum of twenty five thousand (25,000) Euros or sixteen million, three hundred and thirty nine thousand, one hundred and sixty six hundred CFA Francs and fifty

cents (16, 339,166.50 CFA F) for every day in which the payments are delayed by the Respondent.

119. It is trite that a litigant is entitled to the prompt enjoyment of a judgment in his favour. The order of this Court is for the payment of various sums that have been denied the Applicant whilst in the service of the Respondent. Whilst the Court finds the amount claimed to be unreasonably excessive, nevertheless in order to prevent further prejudice to the Applicant from delay in payment of his dues, the Court holds as follows; The Respondent shall pay a percentage interest based on the prevailing savings rate applicable in the ECOWAS Bank for Investment and Development for every day in which the amounts awarded was due, beginning from the dates the Applicant was entitled to same till date of payment.

On retirement of advances

120. Having held that the Applicant is obliged to retire the advances paid to him as computed in Exhibit 6 Doc 2 amounting to twenty five thousand, six hundred and ninety four (25,694) US Dollars, the Applicant is thus ordered to regularise the said amount within thirty days from receipt of this judgment. Failing which the Respondent shall deduct the unretired sum from all payments due and to which the Court has granted the Applicant.

121. In order to ensure proper understanding of the holding of the Court and guarantee its systematic enforcement, the summary is hereunder produced.

i) The Applicant is ordered to regularise the various advances within thirty days from the receipt of this judgment.

ii) Where upon expiration of the said thirty days, the Applicant satisfactorily regularises the said advances, the Respondent is ordered to pay the Applicant all sums granted by the Court with immediate effect.

iii) Where the Applicant fails to comply with the order to regularise the advances within thirty days, the Respondent is entitled to deduct same from the funds in his credit and pay the Applicant the balance if any with immediate effect.

iv) All sums due to the Applicant either after regularization or deduction as the case may be, must be paid with interest from the dates the Applicant was entitled to same to date of payment.

XI. COSTS

122. The Applicant did not make any submission regarding costs. The Respondent prays the Court to order the Applicant to bear the costs.

123. In line with Article 66(4) of the Rules of Court, the Court orders each Party to bear its own costs.

XII. OPERATIVE CLAUSE

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

As to jurisdiction:

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

As to admissibility:

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

As to reparations:

iii. **Orders** the Applicant to regularise the unretired advances within thirty days from the receipt of this judgment;

iv. **Orders** the Respondent in the event of failure to regularise the advances, to deduct from the Applicant's credit including all interests payable, the said unretired advances only upon the expiration of thirty days following the receipt of this judgment;

v. **Orders** the Respondent upon such regularization as follows:

a) To calculate in line with extant Regulations and appropriate interest and pay the Applicant his salaries for the months of mid-March, April, May and June 2017;

b) To calculate in line with extant Regulations and appropriate interest and pay the Applicant his accommodation allowances for the months of mid-March, April, May and June 2017;

c) To calculate in line with extant Regulations and appropriate interest and pay the Applicant his separation allowance equal to 12.5% of his annual basic salary;

d) To calculate in line with extant Regulations and appropriate interest and pay the Applicant compensatory leave allowance of ninety (90) working days.

vi. **Orders** the Respondent to pay an interest of 5.5% on all sums due to the Applicant from the dates he was entitled to same to the date of payment;

vii. **Dismisses** the Applicant's claims for installation allowance;

viii. **Dismisses** the Applicant's claims for resettlement allowance;

ix. **Dismisses** all other claims of the Applicant;

x. **Dismisses** all other claims of the Respondent;

As to costs

xi. **Orders** the Parties to bear their own costs;

As to compliance and reporting

xii. **Orders** the Respondent to submit to the Court within two (2) month of the date of the notification of this judgment, a report on the measures taken to implement the orders set-forth herein.

Hon. Justice Edward Amoako **ASANTE** - Presiding .....

Hon. Justice Dupe **ATOKI** – Judge Rapporteur .....

Hon. Justice Januária T. Silva Moreira **COSTA** - Member .....

Mr. Aboubacar Djibo **DIAKITE** - Registrar .....

Done in Abidjan, Cote d'Ivoire this 27th Day of October 2021 in English and translated into French and Portuguese.