

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

In the Matter of

MR. NNAMDI F.C. CHUKWU v. PRESIDENT OF ECOWAS COMMISSION & ANOR.
Application No: ECW/CCJ /APP/21/20; Ruling No. ECW/CCJ/RUD/01/22

RULING

ABUJA

2 FEBRUARY 2022

**THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA**

Application No: ECW/CCJ /APP/21/20; Ruling No. ECW/CCJ/RUD/01/22

MR. NNAMDI F.C. CHUKWU

APPLICANT

AND

**PRESIDENT OF ECOWAS COMMISSION & ANOR.
RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Edward Amoako ASANTE	- Presiding/ Judge Rapporteur
Hon. Justice Keikura BANGURA	- Member
Hon. Justice Januaria T. Silva Moreira COSTA	- Member

ASSISTED BY:

Dr. Athanase ATONNON	- Deputy Chief Registrar
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REPRESENTATION OF PARTIES:

Ikechukwu IKOGWE Esq	Counsel for Applicant
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Masi Afam OSIGWE Esq.	Counsel for Respondent
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I. RULING

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

II. DESCRIPTION OF THE PARTIES

2. The Applicant is a staff of the ECOWAS Commission and serves as the Head of Division of the Commission's Finance Department.
3. The 1st Respondent is the overall Head of the Institution of ECOWAS Commission.
4. The 2nd Respondent is the Institution of the Economic Community of West African States.

III. INTRODUCTION

Subject-Matter of the Proceedings

5. The Applicant was a staff of the Ecowas Commission who was at the material time on grade P5/2. He was demoted to grade P4/1 upon his conviction for fraud by a Disciplinary Board constituted by the Respondents pursuant to the dictates of the ECOWAS Staff Regulations, being the principal legal text governing the employment relationship between the parties. Upon an appeal, he was put on grade P5/1, which is still a demotion.
6. The Applicant alleges that his demotion was unlawful, unwarranted and capricious on the basis of an invalid, null and void conviction for fraud by the Respondents' improperly constituted Disciplinary Board in violation of the provisions of Articles 67 (b), 69 (a) and (b) and 70 (c) of the ECOWAS

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Staff Regulations as well as Article 7 (1) (b) of the African Charter on Human and Peoples Rights.

7. On the basis of the alleged invalid conviction for fraud, the Applicant claims that the Respondents have violated his rights categorised as follows:
 - i. Right to be presumed innocent until proved guilty by a competent Court or Tribunal as enshrined in Article 7 (1) (b) of the African Charter;
 - ii. Right to have his cause heard (right to an appeal) as enshrined in Article 73(b) of The ECOWAS Staff Regulations;
 - iii. Defamation of the Applicant;
 - iv. Right as a professional staff to the due process of the Commission's texts and institutions as guaranteed him under Articles 63, 67 & 73(b) of the ECOWAS Staff Regulations.

IV. PROCEDURE BEFORE THE COURT

7. The Initiating Application dated 18 May 2020 was filed at the registry of the Court on the 01 June 2020 and served on the Respondent on 04 June 2020.
8. On the 8 July 2020, the Respondents filed Notice of Preliminary Objection together with their Statement of Defence which were served on the same day.
9. The Applicant's Reply to the Statement of Defence by the Respondents was filed on the 09 September 2020 and served on 15 September 2020.
10. The Applicant filed Application for Extension of Time to file his Response to the Notice of Preliminary Objection together with the substantive Response on the 19 October 2020 and both were served on the Respondents on 22 October 2020.

11. ON 28 October 2020, the Respondents filed a Rejoinder to the Reply of the Applicant to their Statement of Defence and was served on the same day on the Applicant.
12. The 1st Court Session was held on 20 September 2021 where all parties were represented by counsel in Court. The Applicant's motion to regularise part of his pleadings was granted by the Court. The Respondents' Counsel moved and adopted their Preliminary Objection and adumbrated upon it. The Applicant's Counsel responded and the case was then adjourned for ruling on the Preliminary Objection.

IV. APPLICANT'S CASE

a. Summary of facts

13. The Applicant claims he became a permanent staff of the ECOWAS Commission since 9th September, 1989 and has been serving meritoriously without any disciplinary procedure in his thirty (30) years of service at the ECOWAS Commission.
14. According to the Applicant, he was redeployed to the office of the Special Representative in Mali to function as Adviser on Administrative and Financial Matters.
15. He states that during his period in Mali, the Financial Controller of ECOWAS Commission had in a report indicted the Special Representative [hereinafter referred to as SR] in Mali, Mr. Cheaka Toure, for financial infractions for which the SR was queried by the 1st Respondent.
16. In his response to the query dated 13th April 2015 and in a Confidential Report to the 1st Respondent, the SR alleged that the Applicant orchestrated the facts of the allegations of infractions against him and further accused the Applicant and other staff of the alleged financial infractions over which he the SR was indicted.

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17. It is the case of the Applicant that after he had submitted a response to a query, he was notified on the 10th March 2017 of the setting up of a Disciplinary Board to consider the allegations made against him.
18. The Applicant states further that his initial protest against some of the panel members of the Disciplinary Board set up for his case was disregarded and after its work, through a letter dated 27th April 2017, he was informed of the Board's decision to demote him from Grade Level P5/2 to P4/1.
19. The Applicant alleges that his demotion was unlawful, unwarranted and capricious on the basis of an invalid, null and void conviction for fraud by the Respondents' improperly constituted Disciplinary Board in violation of the provisions of Articles 67 (b), 69 (a) and (b) and 70 (c) of the ECOWAS Staff Regulations as well as Article 7 (1) (b) of the African Charter on Human and Peoples Rights.
20. Pursuant to the "*Right of Appeal*" provisions of Article 73 of the ECOWAS Staff Regulations, the Applicant states that he lodged an appeal against the said verdict of the Disciplinary Board with the 1st Respondent on the 22nd May 2017 which was met with refusal so he lodged a further appeal with the Council of Ministers through the Administration and Finance Commission (hereinafter referred to as "**AFC**") on the 6th of June 2017.
21. According to the Applicant, considering the merit of the appeal, the AFC referred the matter to the Council of Ministers for adjudication as indicated in Paragraphs 110-112 of the Minutes of the 22nd AFC Meeting which held in Abuja from 13th to 20th November, 2017 but the Respondents in violation of the AFC's decision, removed from the Agenda of the Seventy-Ninth Ordinary Session of the Council of Ministers in Abuja which held from 13th to 14th December, 2017.
22. The Applicant averred that in his Memo dated 21st February 2018, he again appealed to the President for the reversal of his demotion whereupon the President set up an Ad Hoc Committee on Litigation to look into the matter

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consequent upon which he was invited by the Committee vide Memorandum dated 22nd November 2018. He made presentations to the Committee about his grievances.

23. Finding merit in his presentation, the Ad Hoc Committee set aside his demotion to Grade Level P4/1 whereupon he received a Memo dated 6th June, 2019 from the 1st Respondent notifying him of his placement on Grade P5/1.
24. Again, dissatisfied with the decision contained in the 1st Respondent's letter dated 6th June 2019, the Applicant, vide his Internal Memo dated 17th June, 2019, further appealed to the 1st Respondent through the Commissioner for Finance for the reversal of his demotion. Notwithstanding this appeal, the demotion was not reversed necessitating the lawyers of the Applicant writing to the Respondents on the 4th September, 2019 urging inter alia the reversal of the unwarranted verdict of by the Disciplinary Board against the Applicant as well as his demotion but to no avail.
25. The Applicant alleges that he has exhausted all the internal mechanisms of dispute resolution within the ECOWAS Commission to no avail hence he was compelled to institute this suit in accordance with the provisions of Article 73 of The ECOWAS Staff Regulations.

b. Pleas in Law

26. The Applicant relies on the following laws:
 - a. ECOWAS Staff Regulation particularly Articles 1, 2, 67, 69 and 73;
and
 - b. Articles 7 of the African Charter on Human and Peoples Rights (African Charter).

c. Reliefs Sought by the Applicant

27. For the reasons above, the Applicant is seeking from the Court;

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- (a) **A DECLARATION** that the findings of the Investigation Team set up by the Respondents as contained in its Report of the Fact-Finding Mission To ECOWAS Special Representative in Mali from 25 to 30 May 2015 disproved the allegations of the Special Representative against the Applicant as contained in his confidential Memo to the President of the Commission dated 13th April, 2015 and 15th April, 2015.
- (b) **A DECLARATION** that the Disciplinary Board set up by the Respondents to investigate the alleged offence of Fraud contained in Article 70(c)(ii) of The ECOWAS Staff Regulations is contrary to the clear provisions of Article 67(b) of The ECOWAS Staff Regulations which provides for a Joint Disciplinary Advisory Board and is therefore incompetent and lacked the jurisdiction to entertain the matter let alone recommend or impose sanction.
- (c) **A DECLARATION** that, assuming without conceding, that the Disciplinary Board was competent, its composition fell short of the standard of neutrality, equity and fairness in so far as its membership consisted also of the membership of the Investigation Team whose impartiality could not be guaranteed.
- (d) **A DECLARATION** that the so-called Disciplinary Board not being a Court of Law lacked the competence and jurisdiction to adjudicate on and convict the Applicant for the serious offence of fraud.
- (e) **A DECLARATION** that the verdict by the Disciplinary Board that the Applicant was guilty of fraud as contained in the Letter of Demotion dated 27/4/2019 violated the provisions of Article 7 (1) (b) of the African Charter on Human and Peoples Rights which entrenched the Applicant's fundamental right to be presumed innocent until proved guilty by a competent Court or tribunal and therefore the said pronouncement of guilty of fraud is invalid, illegal, null, void and of no effect whatsoever.
- (f) **A DECLARATION** that no concrete evidence was adduced before the Investigation Team and the so-called Disciplinary Board to prove that the Applicant infringed the Financial Regulations or ECOWAS Tender Code.
- (g) **A DECLARATION** that there was no proof of any intent by the Applicant to defraud neither was it proved that the Applicant gratified himself monetarily or materially in the transactions in question.

- (h) *A **DECLARATION** that the decision by the Respondents through the Disciplinary Board's that the Applicant was guilty of fraud is unlawful, invalid, null, void and of no effect whatsoever.*
- (i) *A **DECLARATION** that the verdict by the Respondents' Disciplinary Board that the Applicant was guilty of fraud amounts to **DEFAMATION**.*
- (j) ***AN ORDER** compelling the Respondents to pay to the Applicant the sum of Twenty Five Million United States Dollars (US\$25 Million) as punitive and exemplary damages for **DEFAMATION**.*
- (k) *A **DECLARATION** that the Kangaroo trials, conviction and demotion occasioned on the Applicant through the Respondents' Kangaroo and incompetent Disciplinary Board occasioned on the Applicant psychological agony and **MENTAL DISTRESS**.*
- (l) ***AN ORDER** compelling the Respondents to pay to the Applicant the sum of Twenty Five Million U.S. Dollars (US\$25 Million) as punitive exemplary damages for **MENTAL DISTRESS**.*
- (m) ***AN ORDER** setting aside the verdict of the Respondents' Disciplinary Board that the Applicant was guilty of fraud, the decision being unlawful, invalid, null, void and ineffectual.*
- (n) *A **DECLARATION** that the Respondents' removal of the Applicant's appeal to the Council of Ministers from the Agenda of the Seventy Ninth Ordinary Session of the said Council of Ministers in Abuja from 13th to 14th December, 2017 violated the Applicant's fundamental Right of Appeal as enshrined in Article 73(b) of the ECOWAS Regulations and Article 7(1) (a) of The African Charter on Human and Peoples Rights.*
- (o) ***AN ORDER** compelling the Respondents to pay to the Applicant the sum of Five Million Dollars (US\$ 5 Million) as punitive damage for the infringement of his fundamental Right of Appeal.*
- (p) *A **DECLARATION** that the purported demotion of the Applicant to Grade level P4/1 and subsequently to Grade Level P5/1 is unlawful, unwarranted, invalid, whimsical, null, void and of no effect whatsoever.*
- (q) ***AN ORDER** setting aside the said demotions and compelling the Defendants to reinstate the Applicant to his deserved status of Grade Level P5/2.*
- (r) ***AN ORDER** compelling the Respondents to pay to the Applicant all the arrears of wages, allowances, entitlements and to accord to him all the rights and privileges accruable to him as Grade Level P5/2 officer including capacity building and trainings.*

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- (s) *AN ORDER compelling the Respondents to tender to the Applicant a written apology for his unwarranted and unlawful conviction and demotion for fraud and retract in clear and unequivocal terms the pronouncement that he is guilty of fraud and publish the said retraction at conspicuous places within the Commission's Secretariat including the Respondents' Notice Boards.*
- (t) *AN ORDER compelling the Respondents to remove and expunge from the Applicant's Personnel and Personal Files all the documents and records relating to his undue indictment, purported conviction for fraud and demotion and to ensure that the Applicant's impeccable records of service at the ECOWAS Commission remain unblemished.*
- (u) *Costs of suit as assessed by this Honourable Court.*

V. RESPONDENTS' CASE

a. Summary of Facts

27. The Respondents' case is that the Applicant, as an employee of the 2nd Respondent was implicated by an official report at his work place and was subsequently invited to appear before a Disciplinary Board constituted in line with the provisions of the ECOWAS Staff Regulations to defend the allegations against him.
28. The Respondents state further that before the Board, he was tried for various allegations on violation of procurement processes bordering on the ECOWAS Tenders Code and the Financial Regulation, to wit:
- i. *Signing checks in his capacity as the Public Contracting Officer which resulted to the payment of works without informing or securing the prior consent of the Special Representatives;*
 - ii. *Authorizing and paying for transactions in the absence of the Special Representative (without prior or retrospective approval);*

- iii. *Despite disbursements made by the accounting section under him, some companies are still demanding payments for service rendered e.g. Alu Vitre Doumbia, Metallux etc.;*
 - iv. *Payment for services whose effectiveness is questionable;*
 - v. *Overvaluing purchases; and*
 - vi. *Breaching procurement contract by unilaterally smuggling in the name of a company, Alu Vitre Doumbia, as well as unilaterally awarding a contract to it even though it neither submitted a bid nor was it evaluated or recommended for the award of contract, instead of Construc-Alu, which was recommended for the award of the contract.*
29. After the Board's work, its report was submitted to the Respondents which disclosed that the Applicant was given a hearing before the Board before he was found liable for (a) violation of the ECOWAS tender code and administrative procedures; (b) complicity in signing checks which resulted to the payment of works without informing the Special Representative in Mali; (c) complicity in the organisation and award of contracts without the knowledge of the Special Representative.
30. According to the Respondents, the infractions the Applicant was convicted for amounted to fraud which is a gross misconduct punishable by suspension, demotion and or dismissal at the discretion of the Respondents in accordance with the ECOWAS Staff Regulations as recommended by the Committee.
31. In his appearance before the Disciplinary Board, the Applicant was equally unable to show cause why disciplinary actions should not be taken against him for violating the terms and conditions of his employment and thereby entitling the Respondents to mete out disciplinary action against him by demotion communicated to him in a letter dated 27th April 2017.

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31. The Applicant appealed to 1st Respondent against the decision which demoted him from Grade Level P5/2 to P4/1 and upon the rejection of his appeal by the 1st Respondent, he notified the Respondents of his desire to appeal to the Council of Ministers of the Community which was duly facilitated by the Administration and Finance Commission.
32. Contrary to the claim by the Applicant, the Respondents state that they discharged their responsibility by duly forwarding the Applicant's appeal to the Council of Ministers of the Community, which body regulates its proceedings and decides on matters it wishes to entertain at its different sessions independent of the Respondents.
33. The Respondents state that they did not in any way whatsoever prevent or interfere with the hearing of the Applicant's appeal by the Council of Ministers, nor did they remove it from the agenda and maintain that the appeal is yet to deliberate on by the Council.
34. Despite the pendency of his appeal to the Council of Ministers, the Applicant again appealed to the Respondents to review their decision contained in 1st Respondent's letter dated April 27, 2017 which demoted him to Grade Level P5/2 to P4/1.
35. In the light of the Applicant's fresh appeal, the Respondents subsequently set up the Ad- Hoc Committee on Litigation to review their decision to demote the Applicant and the latter submitted to as well as made representations (appeared) to the Ad- Hoc Committee on Litigation sittings. After its sittings and hearings, the Ad- Hoc Committee made its findings affirming the allegations against the Applicant and recommended that he be demoted from Grade Level P5/2 to P5/1.
36. By a Memo dated 6th June 2019, captioned "*Notification of Placement on Grade 5(1)*", the Respondents modified the Applicant's demotion from Grade Level P5/2 to P4/1 as contained in the letter dated 27th April, 2017 and accepted the recommendation that he should be demoted from Grade

Level P5/2 to P5/1 in reliance on the Applicant's representations by conduct that he no longer wishes to pursue his appeal to the Council of Ministers of the Community.

37. It is the contention of the Respondents that by making representations to as well as appearing before the Ad- Hoc Committee on Litigation, they relied on the Applicant's representations by conduct that he was no longer interested in pursuing his appeal to the Council of Ministers against the decision contained in the 1st Respondent's letter dated April 27, 2017 which demoted him to Grade Level P5/2 to P4/1.
38. By a letter dated 17th June 2019, the Applicant appealed to the 1st Respondent against the sanction contained in the Memo dated 6th June 2019 which modified his demotion from Grade Level P5/2 to P4/1 which said appeal did not received any response from the Respondents.
39. According to the Respondent, they saw no merits in that appeal and did not bother to response to same.

b. Pleas in Law

40. The Respondents are relying on the following pleas in law:
 - i. Articles 9 & 10 of the Supplementary Protocol of 2005 on the Court and
 - ii. Article 73 of the ECOWAS Staff Regulations.

c. Reliefs sought by the Respondents

41. The Respondents prayed the Court for:
 - a. ***A DECLARATION*** that the Court is not competent to entertain the reliefs sought in Orders A, B, C, D, F, G, H, I, M, P and T by the Applicant as the cause of action arose between 25-30 May, 2005 when the Respondents the Report of the Fact-Finding Mission to ECOWAS Special Representative was issued and April 27, 2017 when the Respondents notified the Applicant by the

letter dated April 27, 2017 (with Reference No. ECW/HR/PEC/27.04.2017/01 that he had been demoted from Grade Level P5/2 to P4/1, as the same is statute-barred having being commenced more than three years after the cause of action arose.

- b. A **DECLARATION** that the Court is not competent to entertain relief sought by the Applicant with respect to the Respondents' memo/letter dated June 6, 2019 referenced ECW/PDT/-staff/06-06/19/ya captioned "Notification of Placement on Grade 5(1)", as the same is statute-barred as a result of his failure to appeal against its rejection by Respondents to the Council of Ministers of the Community, within another thirty (30) days commencing on July 17, 2019, thereby robbing this honourable court of the jurisdiction to entertain same.
- c. A **DECLARATION** that in line with Regulation 73(b) of ECOWAS Staff Regulation, once the Respondents have rejected an appeal or is deemed to have rejected an appeal as a result of failure to communicate a reversal within thirty days, the affected staff of 2nd Respondent must appeal against the decision to the Council of Ministers, failing which he cannot maintain an action in this Court.
- d. A **DECLARATION** that Applicant is estopped from insisting or founding any cause of action on his appeal to the Council of Ministers against the 1st Respondent's letter dated April 27, 2017 (with Reference No. ECW/HR/PEC/27.04.2017/01 which demoted him to Grade Level P5/2 to P4/1, consequent upon his representations by conduct to Respondents in appearing before Ad- Hoc Committee on Litigation, that he was no longer interested in pursuing the appeal to the Council of Ministers of the Community.

ALTERNATIVELY, THE RESPONDENTS seek the following relief against the Applicant:

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- e. A **DECLARATION** that once the Respondents have rejected an appeal and forwarded the same or lodged same to the Council of Ministers of the Community through the Administration and Finance Committee, they thereby become *functus officio* and can no longer review the matter or reverse their decision.*
- A. A **DECLARATION** that the Respondents lacked the power to subsequently set up the Ad- Hoc Committee on Litigation to review their decision to demote the Applicant from Grade Level P5/2 to P4/1 contained in their letter dated April 27, 2017 consequent upon the forwarding of Applicant's appeal to Council of Ministers of the Community by the Administration and Finance Committee.*
- B. AN **ORDER** of this honourable Court declaring the setting up, sittings, findings and recommendations of the Ad- Hoc Committee on Litigation which reviewed the decision of the Respondents demoting Applicant as contained in 2nd Respondent's letter dated April 27, 2017, null and void as the actions were carried out during the pendency of Applicant's appeal to the Council of Ministers of the Community.*
- C. AN **ORDER OF** this honourable court setting aside the decision of the Respondents contained in their Memo dated June 6, 2019 referenced ECW/PDT/-staff/06-06/19/ya captioned "Notification of Placement on Grade 5(1)", which modified Plaintiff's demotion from Grade Level P5/2 to P4/1 as contained in the letter dated April 27, 2017.*
- D. AN **ORDER OF** this honourable court declining jurisdiction to entertain this suit, until after the Council of Ministers of the Community hears Applicant's appeal to it.*

VI. JURISDICTION

- a. **ECOWAS Public Service Court***

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42. The Court notices that the Applicant in his initiating application, sought to ground his action in dual capacities i.e. as a victim of human right violation and as a victim of unfair treatment in his capacity as a staff of ECOWAS Institution which must be distinguished by the Court from the onset.
43. There was a paradigm shift in the mandate of the Court in 2005, following the adoption of its Supplementary Protocol, which amended the initial Protocol on the Court. The Supplementary Protocol expanded the jurisdiction of the Court to include its mandate as ECOWAS Public Service Court and mandate as a human rights court. It must be emphasized that these two mandates of the Court are distinguishable.
44. Article 9 (1) (f) of the 1991 Protocol as amended by the 2005 Supplementary Protocol gives the Court competence to adjudicate on any dispute between the Community and its officials. Article 10(e) of the Supplementary Protocol and Article 73 of the 2005 ECOWAS Staff Regulations grant access to the Court to a staff of any Community Institution, after the staff member has exhausted all internal administrative processes available to the staff under the ECOWAS Staff Rules and Regulations.
45. In the case of *DR. MUHAMMAD SANI BELLO v. ECOWAS COMMISSION, JUDGMENT NO. ECW/CCJ/JUD/27/18 (Unreported)* when the Applicant grounded his application on both ECOWAS Staff Regulation and human rights instruments, the Court distinguished its mandate as an ECOWAS Public Service Court from its mandate as a human rights court in the following words:

"However, the Court believes that, from the onset, it is useful for it to enunciate the framework within which it will examine the instant case. This framework is how to examine a case filed pursuant to the conditions as

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enunciated under Article 10 (e) of the 2005 Supplementary Protocol on the Court, which provides that: “(...) 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”.

46. The Court continued that from the above provisions,

“it is clear that the instant case is not directly related to human rights violation, even if on the one hand, part of the initiating Application refers to this, and, on the other hand, the Court in examining the instant case could find some failures that are likely to be defined as “disregard for human rights.” Indeed, a human rights violation case is only filed against a Member State, whereas in the instant case, which relates to the termination of a work contract, only the Community can be taken to court.”

47. It is in the light of the above that the Court shall approach the determination of this action under its mandate as ECOWAS public service court and not as a human right court; the Applicant having established his status as a staff of the ECOWAS Commission, an institution of the Community and having come under Article 10(e) of the Supplementary Protocol on the Court.

b. Preliminary Objection

48. The Respondents filed a Notice of Preliminary Objection wherein he raised objection to the jurisdiction of the Court in entertaining the present suit on multiple grounds which can be conveniently placed under two broad headings i.e. the Applicant’s suit is statute barred and same is premature for non-exhaustion of available internal mechanisms. The Applicant filed a reply and vehemently opposed the objection.

c. *That the Applicant's suit is statute barred*

i. Arguments of the Respondents

49. The Respondents grounded the first leg of their objection on Article 9 (3) of the 2005 ECOWAS Supplementary Protocol on the Court (A/SP.1/01/05) which provides that "*any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose*".
50. The Respondents argued that this matter is statute barred having been instituted more than three (3) years after the cause of action arose. According to them the facts that gave rise to this cause of action arose on the 27th day of April, 2017 when the Applicant was notified of his demotion from Grade Level P5/2 to P4/1. Having instituted this matter on 1st June, 2020, the Respondents claim the matter is beyond the three year period permitted by the Rules for action to be instituted against the Community Institution.

ii. Arguments of the Applicant

51. The Applicant on the other hand refutes the argument of the Respondents and contends that the action is not statute barred as he was required by Article 73 of the ECOWAS Staff Regulations to exhaust all internal mechanisms for redress before he could approach the Court, which according to him, he did even though the Respondents violated his right by frustrating his appeal to the Council of Ministers.
52. The Applicant further submits that the Respondents later affirmed his demotion from P5/2 to P5/1 via the Memorandum dated 6th June, 2019 and that by so doing his right of action or cause of action crystallised on 6th June, 2019 whereupon he activated same by instituting the instant action before this Honourable Court.

iii. Analysis by the Court

53. It is pertinent at this preliminary stage to distinguish between two concepts as used by both the Applicant and Respondents, i.e. 'cause of action' and 'right of action'.
54. Clearly, Article 9(3) of the Supplementary Protocol (supra) unlike in human rights cases against Member States of the Community, bars any action against a Community Institution after three years from the date when the "right of action" arose. Right of action is defined in the 7th Edition of the Black's Law Dictionary as "*the right to bring a specific case to court. A right that can be enforced by legal action; a chose in action*". While a 'cause of action' is defined as "*a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person*".
55. On the 'cause of action', see the case of *REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT v. THE FEDERAL REPUBLIC OF NIGERIA & ANOR. JUDGMENT N^o: ECW/CCJ/JUD/19/16. (Unreported)* where this Court held as follows:

"A cause of action is the heart of the complaint, which is the pleading that initiates a lawsuit. Without an adequately stated cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that title the plaintiff's to relief. All the elements of each cause of action must be detailed in the application. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts. It is a set of facts sufficient to justify a right to sue."

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56. From the above definitions of the two terms by the Black's Law Dictionary, 'cause of action' and 'right of action' are not the same. While *cause of action* consist of facts or situations that give a party the right to sue, 'right of action' on the other hand connotes the right or empowerment to bring an action.
57. Article 9(3) of the Supplementary Protocol (supra) clearly states, "*the right to bring an action*" and not '*the cause of action*'. Even though it must be reiterated that in some circumstances, the cause of action and the right of action coincide and become inseparable, from the facts as presented by the parties in the instant case, the intendment of Article 9(3) is the time when the action was ripped to be instituted before this Court and not when the situation or facts that gave rise to the action took place.
58. In the case of *DOROTHY CHIOMA NJEMANZE & 3 ORS v. FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO. ECW/CCJ/JUD/08/17 (Unreported)* the Court held that:
- "the right of action used in Article 9 (3) of the Protocol means the right to bring a specific case to a Court or Tribunal. That right is dependent on whether as of the date the action is brought to Court, all the necessary facts available and any prerequisite legal or factual situation have been satisfied".*
59. It is on the basis of the aforementioned authorities that the Applicant is urging the Court to refuse the Respondents' preliminary objection under this head and agree with him that since he was enjoined by Article 73 of the ECOWAS Staff Regulations to utilise the available internal mechanisms for the resolution of his grievances against the Respondents, he could not have disregarded the dictates of the said Article of the

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Regulations which more or less is a condition precedent before asserting his rights at this Court.

60. Undoubtedly, this Court has no justification to depart from its jurisprudence based on the statutory position to the effect that, under Article 73 of the ECOWAS Staff Regulations, any aggrieved staff of a Community Institution can approach this Court only upon having exhausted all the internal mechanisms for the redress of his disputes with the institution or its official.
61. Indeed the records of the case is replete with evidence that the Applicant resorted to the appeal processes under Article 73 of the ECOWAS Staff Regulation to the point when the AFC recommended his appeal to be considered by the Council of Ministers. However, the Council's inaction on his case, which he attributes to an orchestrated sabotage on the part of the Respondents, led to a fresh appeal lodged with the 1st Respondent and which formed the basis of the establishment of an Ad Hoc Committee culminated in the modification of his demotion from P5/2 to P5/1 in a letter dated 6th June 2019.
62. Again the Applicant dissatisfied with the modification of his demotion, appealed to the 1st Respondent in a letter dated 17th June 2019 against the sanction contained in the Memo dated 6th June 2019 which modified his demotion from Grade Level P5/2 to P5/1 which said appeal did not received any response from the Respondents.
63. The Court observes from the totality of evidence before it that the subject matter of the Applicant's suit is all inclusive process which covers his purported trial before the Disciplinary Board, his initial sanction of demotion from P5/2 to P4/1, all the imitated appeal processes at his

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instance, his involvement in the proceedings of the Ad Hoc Litigation Committee, the modification of his demotion from P4/1 to P5/1 and his appeal contained in the letter dated 17th June 2019.

64. It is therefore inappropriate to single out one event of the entire process for the purpose of computation of time limitation as sought to be done by the Respondents. In its equitable sense, any valid computation of time ought to be reckoned from the last event within the process, at which point in time one can conveniently say that his right of action accrued.
65. Consequently, this Court is unable to grant the Respondents' preliminary objection under the heading that the Applicant's suit is statute barred. The Respondents' objection under the heading therefore fails and same is dismissed.

d. That the Applicant action is premature for non-exhaustion of internal mechanisms

i. Arguments by the Respondents

66. The Respondents in the second leg of their objection stated that the Applicant has not exhausted the internal remedies opened to him before instituting this action as required by the ECOWAS Staff Regulations.
67. It is the contention of the Respondents that by appearing before the Ad-Hoc Committee on Litigation and making representations, they relied on the Applicant's representations by conduct that he was no longer interested in pursuing his appeal to the Council of Ministers against the decision

contained in the 1st Respondent's letter dated 27th April 2017 which demoted him to Grade Level P5/2 to P4/1.

68. On the premise of the above argument, the Respondents submit that all the appeal processes predating the setting up of the Ad Hoc Committee on Litigation were deemed jettisoned by the Applicant. More so when after the decision of the Ad Hoc Committee had been communicated to him in the Memo dated 6th June 2019 which modified his demotion from Grade Level P5/2 to P4/1, the Applicant by a letter dated 17th June 2019, appealed to the 1st Respondent against the said modified sanction which was rejected.
69. It is further submitted that after thirty days of the receipt by the Respondents of the Applicant's fresh appeal dated 17th June 2019 against sanctions imposed on him by the Respondents by their letter dated 6th June 2019, the appeal was deemed rejected by the Respondents, thereby entitling him to appeal to the Council of Ministers through the Staff Representatives or the Head of Administration who shall present a memorandum in this connection to the Administration and Finance Commission, within another period of thirty (30) days from July 17, 2019.
70. However, according to the Respondents, the Applicant failed, refused and or neglected to appeal to the Council of Ministers within the prescribed period of thirty (30) days from 17th July 2019 of the non-receipt of any response from the Respondents.
71. It is therefore the case of the Respondents that the Applicant's right of action or appeal against the sanctions imposed on him by the Respondents in their letter dated 6th June 2019, became extinguished consequent upon his failure, refusal and or neglect to timeously appeal to the Council of Ministers.

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ii. Arguments by the Applicant

72. The Applicant on the other hand argues that he had exhausted all the internal appeal avenues open to him by bringing his complaint to the head of his institution before same was channelled to the Council of Ministers through the AFC.
73. To the Applicant, contrary to the aforementioned argument of the Respondents, the letter dated 6th June 2019 does not constitute a separate or fresh cause of action but is intertwined with and is a continuation of the decision of the Respondents' Disciplinary Board to demote the Applicant on the basis of an unlawful conviction for fraud. In other words, the Respondents' letter of 6th June 2019 is the outcome of their review of the earlier decisions of the said Disciplinary Board.
74. The Applicant states that he did lodge an appeal against the verdict of the Disciplinary Board on his demotion from Grade Level P5/2 to P4/1 and subsequently P51. Whereas the AFC recommended that the Respondents should forward the Applicant's appeal to the Council of Ministers, they instead constituted an Ad Hoc Committee on Litigation to look into the grievances of the Applicant. This culminated in the Respondents' decision to place him on Grade Level P5/1 (rather than P5/2) as conveyed to him vide the letter dated 6th June 2019 which in effect upheld the decision of the Disciplinary Board that the Applicant was "guilty of fraud".

iii. Analysis by the Court

75. In addressing the instant preliminary objection, it is pertinent that the relevant provisions of the Article 73 of the ECOWAS Staff Regulations are reproduced as follows:

“Any member of staff who wishes to appeal against sanctions imposed on him/her must first write a letter to the Head of Institution, requesting a review of his/her case. The letter shall be sent by registered mail within thirty (30) days of receiving notification of the decision, where the staff member’s duty station is outside the Headquarters. If the Head of Institution maintains the decision, or if the Staff member receives no response within thirty (30) days, s/he shall have another period of thirty (30) days within which to bring the matter to the notice of the Council of Ministers. This shall be done through the Staff Representatives or Head of Administration who shall present a memorandum in this connection to the Administration and Finance Commission. All actions shall be suspended on the decision to apply sanctions once the right of appeal is invoked”.

76. Flowing from the above statutory provision, it has been the position of this Court that where the Staff Regulations provide for exhaustion of internal appeal channels in the event of any complaint against a Community Institution, the Applicant is expected to exhaust the avenues open to him or her before he or she can approach the Court. See the case of *MR BABATUNDE ADEYEMO v. SYSTEME D'ECHANGE D'ENERGIE ELECTRIQUE OUEST AFRICAINE (EEEEAO) & 2 ORS. Judgment No. ECW/CCJ/JUD/30/19(Unreported)*.
77. In the same case above, the Court also referred to the case of *PARLIAMENT OF ECONOMIC COMMUNITY OF WEST AFRICAN STATES v. THE COUNCIL OF MINISTERS OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES & ANOR. (2004-2009) CCJELR 29* where the Court held the position that where exhaustion of internal remedies is a requirement, it then has to be exhausted before

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approaching the Court. That exhaustion of internal remedy is a sine qua non to instituting an action against a Community or any of its institution by a staff.

78. The Court observes that, deciding whether or not the Applicant exhausted the internal mechanisms available to him under the ECOWAS Staff Regulations is inextricably linked to the establishment of whether or not his fresh appeal to the 1st Respondent consequent upon which the Ad Hoc Committee on Litigation was set up constructively truncated his previous appeal before the Council of Ministers. In other words, what is the effect of the Applicant's conduct and participation in the activities of the Ad Hoc Committee on Litigation on his previous appeal which was at the time pending before the Council of Ministers?
79. The above question is very crucial, in the sense that if it is established that the Applicant's previous appeal process was constructively truncated by his involvement in the activities of the Ad Hoc Committee, it implies that he reinvented the wheel of the appeal processes which demand that after the rejection of his appeal against the modification of his demotion by the Ad Hoc Committee, he was obliged to have proceeded to further appeal to the Council of Ministers before approaching this Court.
80. In addressing the above question, the Respondents forcefully argue that the Applicant having admitted appealing for a review as well as participating in a review process before the Ad Hoc Committee, cannot turn around and insist on the subsistence of the earlier decision of April 27, 2017. According to them, this is in tandem with the settled equitable principle of estoppel which partly dictates that a court cannot allow a party to approbate and reprobate at the same time. In other words, justice frowns on

inequitable behaviour of a party to blow hot and cold which finds expression in latin maxim "*allegans contraria non est audiendus.*"

81. In an article published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020), Thomas Cottier, Jörg Paul Müller writes that "*In public international law, the doctrine of estoppel protects legitimate expectations of subjects of international law induced by the conduct of another subject. The term stems from common and Anglo-American law, without being identical with the different forms found in domestic law. It is supported by the protection of good faith (bona fide) in the traditions of civil law*".
82. The 7th Edition of the BLACK' LAW DICTIONARY defines estoppel as a "*bar or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law*".
83. Indeed the record of the case is replete with evidence that the Applicant resorted to the appeal processes under Article 73 of the ECOWAS Staff Regulation to the point when the AFC recommended his appeal to be considered by the Council of Ministers. However, the Council's inaction on his case, which he attributes to an orchestrated sabotage on the part of the Respondents, led to a fresh appeal lodged with the 1st Respondent and which formed the basis of the establishment of an Ad Hoc Committee on Litigation culminated in the modification of his demotion from P5/2 to P5/1 in a letter dated 6th June 2019.
84. Abandonment of appeal includes both the intention to abandon and the external act by which the intention is carried into effect. In determining

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whether the Applicant abandoned his initial appeal, his intention could be constructively inferred from his conduct, for there cannot be an intention to carry on with his initial appeal when the Applicant appealed for review as well as participated in the review process of the subject matter of the appeal, by the Respondents.

85. The records point to the fact that it was the Applicant who set the law in motion by further appealing against his demotion contained in 1st Respondent's letter dated 27th April 2017, despite the pendency of his appeal to the Council of Ministers. As such, the Applicant cannot be heard to say that the Respondents would have awaited the determination of the Appeal rather than constitute the Ad Hoc Committee on Litigation to consider his grievances.
86. In estoppel as espoused earlier in this judgment, the representation relied on to create estoppel can be direct, in writing, oral or by conduct. To this end, the conduct of the Applicant relative to his subsequent appeal to the 1st Respondent vitiated his earlier appeal to the Council and by so doing, being not satisfied with the decision of the Ad-Hoc Committee, he was mandated to resort to the Council before coming to the Court and by failing to do so, he is deemed not to have exhausted the internal mechanism open to him.
87. Article 73 of the Staff Regulation is elucidating in terms that unless an appeal is made to the Council of Ministers of the Community within thirty (30) days of the rejection of an appeal by the Head of Institution (i.e. where it maintains the decision, or if the staff member receives no response within thirty (30), the jurisdiction of this Court cannot be invoked.
88. The Court therefore holds that, from the totality of facts and the arguments thus far advanced by the parties, the Applicant has by his conduct

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extinguished his appeal before the Council by his fresh appeal to the 1st Respondent and being dissatisfied with the decision of the Ad-Hoc Committee, he was required to have appealed to the Council before his suit in this Court.

89. Consequently, having failed to appeal to the Council of Ministers before instituting the instant suit, renders the suit incompetent and premature for failing to satisfy a condition precedent and the Court lacks jurisdiction to entertain same.
90. Therefore the Respondents' contention that the Applicant's action is premature for non-exhaustion of internal mechanisms is hereby sustained and the preliminary objection under this heading is accordingly upheld.

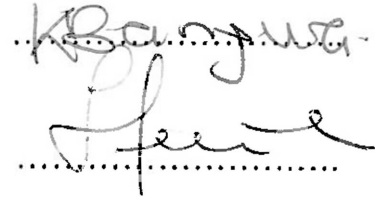
VII. OPERATIVE CLAUSE

91. For the reasons stated above the Court sitting in public after hearing both parties on the Preliminary Objection against jurisdiction brought by the Respondents:
 - i. **Declares** that the Application is not statute barred.
 - ii. **Dismisses** the Preliminary Objection of the Respondents that the Application is statute barred.
 - iii. **Declares** that the Application is premature and incompetent for want of exhaustion of internal mechanism.
 - iv. **Grants** the Respondents' Preliminary Objection that the Application is premature and incompetent.
 - v. The Application is therefore struck out.

Hon. Justice Edward Amoako **ASANTE**




Hon. Justice Keikura **BANGURA**



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

Assisted By:

Dr. Athanase **ATANNON** Deputy Chief Registrar



Done in Abuja, this 2nd Day of February 2022 in English and translated into French and Portuguese.

