



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

In the Case

FRANCIS ELIE GNIMAGNON and 9 OTHERS

V.

THE ECOWAS COMMISSION

Application No. ECW/CCJ/APP/46/19 - Judgment No. EECW/CCJ/JUD/15/2022

JUDGMENT

ACCRA

On March 28, 2022

APPLICATION NO. ECW/CCJ/APP/46/20

JUDGMENT No ECW/CCJ/JUD/15/2022

BETWEEN

- 1) Mr. Francis Elie GNIMAGNON
- 2) Mr. SOGOYOU Cossi
- 3) Mr. Vinagnon ZANNOUBO
- 4) Mr. BILGHO TED Rodrigue
- 5) Mr. SOW Idrissa
- 6) Mr. ALCIDES BARTOLOMEU SILVA
- 7) Ms. SARA SEIDI SAIEGH
- 8) Ms. EDNENSA MENDY
- 9) Mr. MAIGA Abdoulawahidou,
- 10) Mr. Ghislain AGBOZO APPLICANTS

And

THE ECOWAS COMMISSION DEFENDANT

COMPOSITION OF THE COURT

Hon. Justice Edward Amoako ASANTEPresiding

Hon. Justice Gberi-Be OUATTARA.....Member

Hon. Justice Januária T. Silva Moreira COSTA..... Member/Rapporteur

ASSISTED BY:

Aboubacar DIAKITE.....Registrar

I. REPRESENTATION OF PARTIES

Maitre Sadikou ALAO Counsel for the Applicants

The ECOWAS Commission For the Defendant

II. COURT’S JUDGMENT

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

III. DESCRIPTION OF THE PARTIES

2. The first Applicant is Mr. Francis Elie GNIMAGNON, Colonel and former Program Officer for Administration and Finance (P5 Level) at the ECOWAS Mission Planning and Management Unit in Abuja, of Beninese nationality, resident and domiciled in COTONOU.

3. The second Applicant is Mr. SOGOYOU Cossi, Colonel and former Communication Program Officer of the Mission Planning and Management Unit (MPCM), P4 Level, ECOWAS in Abuja, of Togolese nationality, resident and domiciled in Lome.

4. The third Applicant is Mr. Vinagnon ZANNOUBO, Colonel and former Senior Broadcast Program Officer (P5 Level) of the ECOWAS Standby Force Staff in Abuja, of Beninese nationality, resident and domiciled in COTONOU.

5. The fourth Applicant is Mr. BILGHO TED Rodrigue, former Assistant Judge at the ECOWAS Court of Justice in Abuja, of Burkinabé nationality, resident and domiciled in Ouagadougou.

6. The fifth Applicant is Mr. SOW Idrissa, former Assistant Judge at the ECOWAS Court of Justice in Abuja, of Senegalese nationality, residing and domiciled at 20 in the city des Magistrats, keur Damel, Dakar, Senegal.

7. The sixth Applicant is Mr. ALCIDES BARTOLOMEU SILVA, former Research Officer at the ECOWAS Court of Justice in Abuja, of Guinean Bissau nationality, residing and domiciled at Rua General Omar Torijos, 29-B, Bissau.

8. The seventh Applicant is Mrs. SARA SEIDI SAIEGH, former Interpreter at the ECOWAS Court of Justice in Abuja, of Guinean Bissau nationality, residing and domiciled at Brains and Hammers Estate, Life Camp II, Second Avenue Flat C11, Abuja, NIGERIA.

9. The eighth Applicant is Mrs, EDNENSA MENDY ANDRELINO, a former Interpreter of the ECOWAS Court of Justice in Abuja, of Guinean Bissau nationality, residing and domiciled at Brains and Hammers Estate, Life Camp II, Second Avenue, Flat C7, Abuja, NIGERIA.

10. The ninth Applicant is Mr. MAIGA Abdoulawahidou, former Assistant Judge at the ECOWAS Court of Justice in Abuja, of Malian nationality, resident and domiciled in Bamako, route de Koulikoro, immeuble Station Shell, BP: 9095.

11. The tenth Applicant is Mr. Ghislain AGBOZO, former Assistant Judge at the ECOWAS Court of Justice in Abuja, of Beninese nationality, resident and domiciled in Abomey-Calavi.

12. The Defendant, the Commission, is the Institution of the Economic Community of West African States, represented by its President.

IV. INTRODUCTION

13. In the instant case, the Applicants, who served in the ECOWAS Institutions and whose contracts have ended, claim payment of certain allowances: Mr. GNIMAGNON Francis Elie claims payment of his separation allowance; Mr. SOGOYOU Cossi claims payment of separation allowance for the first 7 years and 3 months, and a separation allowance and gratuity for the extension of his contract of one year provided for in the contract; Mr. ZANNOUGBO, in turn, claims the separation and resettlement allowance; Mr. Ghislain AGBOZO claims, in addition to the separation allowance, the reassessment of his incorrectly calculated paid vacation entitlements and the other former professional staff, Assistant Judges, Interpreters and Research Officer at the ECOWAS Court of Justice; Mr(s) BILGHO TED Rodrigue, SOW Idrissa, ALCIDES BARTOLOMEU SILVA, SARA SEIDI SAIEGH, EDNENSA MENDY Andrelino, MAIGA Abdoulawahidou claim payment of their separation allowances.

V. PROCEDURE BEFORE THE COURT

14. The Originating Application (doc. 1) accompanied by twelve (12) Exhibits, was lodged at the Registry of this Court on 9th November, 2020.

15. The Defendant, the ECOWAS Commission, was duly served on 11/11/2020, but did not contest.

16. 28 October 2021 was appointed for the hearing of the parties, only the Applicants' representative attended the hearing, at which he was heard and made his oral submissions.

17. The judgment of the case was adjourned to 28th March, 2022.

VI. APPLICANT'S CASE

a) Summary of Facts

18. The Applicants were recruited by the Commission to serve ECOWAS, some, as military and security forces on ECOWAS missions and others, as Assistants to Community Judges, Interpreters and Investigating Officer of the Court of Justice;

19. Upon termination of the contracts of the Assistants to Community Judges, Interpreters and Research Agent, the various rights provided for in the Staff Regulations, respectively in Articles 32a; 35b; 35d and 62c, were calculated by the competent departments of Administration and Human Resources in benefit of the Applicants;

20. Interestingly, the Chief Accountant of the Community Institution did not deign to pay them the separation allowance, although it was calculated in their benefit by the Administration;

21. That also, certain former military personnel claim payment of their separation, relocation and gratuity allowances;

22. The rights of Mr. Ghislain AGBOZO, former assistant judge of the Court of Justice, were miscalculated by the said Administration. His numerous appeals and multiple warnings for rectification purposes remained unanswered;

23. The individual situation of Applicants will be presented on a case-by-case basis as follows:

24 Mr **GNIMAGNON Francis Elie**;

25. He was recruited by contract of employment No. ECW/REL/1/ADM/356/KK of ECOWAS, dated August 2, 2004, as an Administration and Finance Program Officer in the Mission Planning and Management Unit of the ECOWAS Commission; (Exhibit No. 1-a)

26. He performed from August 30, 2004, the date of entry into force of the said contract, with conscientiousness and professionalism, all missions and tasks relating to his service until October 22, 2013, the date on which the ECOWAS Commissioner responsible for Administration and Finance notified him of the end of his contract by letter No. ECW/PER/01/01-00124-P/22-10/aca; (Exhibit No. 1-b)

27. Wherefore, Mr. GNIMAGNON Francis Elie has rendered nine (9) years 3 months of service to ECOWAS;

28. All his allowances were paid to him by the ECOWAS Directorate of Administration and Human Resources, with the exception of the separation allowance;

29. The value of said separation allowance corresponds to the number of years of service, multiplied by the employee's monthly base salary;

30. The monthly base salary of Mr. GNIMAGNON Francis Elie is UA 2,800.59, i.e., two million six hundred and twelve thousand two hundred and seventy six FCFA (2,612,276); (Exhibit No. 1-c).

31. That ECOWAS, therefore, owes Mr. GNIMAGNON, as part of the separation allowance, the sum of twenty-three million five hundred and ten thousand four hundred and eighty-four FCFA (23,510,484).

32. **Mr SOGOYOU Cossi:**

33. He was recruited by contract of employment No. ECW/REL/15/ADM/356/KK of the ECOWAS Commission, dated August 2, 2004, as a Communications Program Officer in the Mission Management Unit (CPGM) for the ECOWAS Commission; (Exhibit No. 2 a).

34. He performed, from August 30, 2004, the effective date of the said contract, with conscientiousness and professionalism, all missions and tasks pertaining to his position, with a one-year extension covering the period from January 1 to December 31, 2012, the termination date of the contract; (Exhibit No. 2 bc).

35. Mr. SOGOYOU Cossi's base salary is 2,215,303 FCFA;

36. Mr. SOGOYOU served ECOWAS for eight (8) years three (3) months;

37. All his allowances were paid to him by the ECOWAS Directorate of Financial Administration, with the exception of the separation allowance in relation to his first contract for a period of seven (7) years and three (3) months;

38. As for the extension of his contract that runs from January 1 to December 31, 2012, he is entitled to the separation allowance and the 12.5% gratuity provided for in the contract;

39. Mr. SOGOYOU Cossi's separation allowance representing eight (8) months of base salary, corresponds to the sum of seventeen million seven hundred and twenty-two thousand four hundred and twenty-one FCFA (17,722,421);

40. In addition to this amount, ECOWAS still owing Mr. SOGOYOU an outstanding amount for the extension year of his contract from January 1 to December 31, 2012, the gratuity allowance at 12.5% of

the annual base salary provided for in the contract (letter ECW/REL/15ADM/356/KK dated July 17, 2012); (see Exhibit No. 2-b);

41. Mr. SOGOYOU Cossi's gratuity allowance amounts to the sum of two million eight hundred and sixty-eight thousand one hundred and five FCFA (2,868,105).

42. That in total, ECOWAS continues to owe Mr. SOGOYOU Cossi the sum of twenty million five hundred and ninety thousand five hundred and twenty-six FCFA (20,590,526);

43. Mr ZANNOUBO Vinagnon:

44. He was recruited by contract of employment No. ECW/HR/PER-00236-P of the ECOWAS Commission, dated February 08, 2008, as a Senior Broadcast Program Officer for the ECOWAS Standby Force (ESF) Headquarters in Abuja; (Exhibit No. 3 -a).

45. Mr. ZANNOUBO Vinagnon assumed service on April 2, 2008, conscientiously and professionally performing all missions and tasks pertaining to his position until December 12, 2013, when the President of the ECOWAS Commission communicated to him the end of his contract by letter No. ECW/REL/01/C-PAPS-ESF/TFQ/22/13; (Exhibit No. 3-b).

46. Mr. ZANNOUBO Vinagnon has rendered five (5) years and nine (09) months of service to ECOWAS;

47. His base salary was UC 2,800.59, i.e., two million six hundred and twelve thousand two hundred and seventy-six 2,612,276 FCFA; (Exhibit No. 3c).

48. That at the end of his contract, Mr. ZANNOUBO Vinagnon approached the ECOWAS authorities for payment of the resettlement and separation allowance, provided for respectively in articles 35b and 35d of the ECOWAS Staff Regulations;

49. The resettlement allowance corresponding to three (3) months of base salary is valued at the sum of seven million eight hundred and thirty-six thousand eight hundred and twenty-eight FCFA (7,836,828);

50. That having spent five (5) years 9 months, or approximately six years in the service of the Community Institution, Mr. ZANNOUBO Vinagnon's separation allowance, corresponds to six months' salary and is valued at the sum of fifteen million six hundred and seventy-three six hundred and fifty-six FCFA (15,673,656);

51. That in total, Mr. ZANNOUBO Vinagnon had demanded from ECOWAS a payment of the total sum of twenty-three million Five hundred and ten thousand four hundred and eighty-four FCFA (23,510,484);

52. That his appeal to hierarchical superior for the payment of his allowances did not proceed;

53. Mr BILGHO Palakwindé Ted Rodrigue:

54. He was recruited on September 8 (eight), 2014 as an Assistant Judge of the ECOWAS Court of Justice, his service ended on June eighteen (18), 2018; (Exhibit No. 4-b)

55. Mr. BILGHO Palakwindé Ted Rodrigue served the institution for three (3) years and ten (10) months;

56. The amount of 27,650,490 FCFA (twenty-seven million six hundred and fifty thousand four hundred and ninety FCFA) was

retained, confirmed by the Chief Accounting Officer, approved by the Director of Administration and Finance on July 26, 2018; (Exhibit No. 4a-c)

57. The President of the ECOWAS Court of Justice, the hierarchical authority of the former Assistant Judges, approved the said financial item; (see Exhibit No. 4-b)

58. The allowances were paid with the exception of the separation allowance;

59. Mr. BILGHO's base salary is UA 1,977 (Unit of Account).

60. The separation allowance of Mr. BILGHO Palakwindé Ted Rodrigue amounts to the sum of five million five hundred and thirty-two thousand one hundred and ninety-three comma sixty-three FCFA (5,532,193.63);

61. Mr SOW Idrissa:

62. He served the ECOWAS Court as an Assistant Judge from February 23, 2015 to June 18, 2018; (Exhibit No. 5-c);

63. He spent more than three (3) years four (4) months in the service of the Institution;

64. His base salary is 1977 U.C;

65. He is therefore entitled to the separation allowance, the value of which is equivalent to three months of base salary, corresponding to the sum of five million five hundred and thirty-two thousand one hundred and ninety-three point sixty-three FCFA (5,532,193.63)

66. Mr ALCIDES Bartolomeu SILVA:

67. He was hired in service of the ECOWAS Court, as a Research Assistant, on December 15, 2014, he left service on June 18, 2018, thus having spent three (3) years and 7 months in the service of the Community Institution; (Exhibit No. 6-c).

68. His entitlements have been calculated and approved by the various competent authorities of the Financial Administration in accordance with the Staff Regulations;

69. Only the separation allowance was not paid to him;

70. Mr. ALCIDES SILVA's base salary of is UA 2,374.92 (Exhibit N° 6-b)

71. Mr. ALCIDES claims payment of the said allowance, which amounts to the sum of six million six hundred and forty-five thousand, six hundred and seventy-four, point sixty-nine FCFA (6,645,674.69);

72. All his appeals to the competent authorities were unsuccessful;

73. Mrs Sara Seidi SAIEGH

74. She was recruited as an interpreter at the ECOWAS Court of Justice on December 1, 2014 and completed her mission on June 18, 2018 (Exhibit No. 7-d)

75. Her entitlements have been calculated and approved by all competent authorities of the institution in an amount of twenty-six million four hundred and thirty-one thousand six hundred and sixty FCFA (26,431,660); (Exhibit No. 7a-b).

76. After the collective of former Assistant Judges of the ECOWAS Court appealed to the relevant authorities, Ms. SARA Seidi SAIEGH was paid, by check No. 00000005 dated September 25, 2018, in the

amount of seventeen million five hundred and seventy thousand seven hundred and sixty-three FCFA (17,570,763); (Exhibit No. 7-c).

77. Ms. Sara Seidi SAIEGH base salary is 2,374.92 UA (Exhibit No. 7-b).

78. Ms. SARA SEIDI SAIEGH is entitled to the separation allowance that has not been paid to her, the amount of which corresponds to three months of base salary, i.e., the sum of six million, six hundred forty-five thousand, six hundred seventy-four, point sixty-nine FCFA (6,645,674.69);

79. Mrs EDNENSA MENDY Andreino:

80. She was recruited as an interpreter at the ECOWAS Court on December 1, 2014 and completed her function on June 18, 2018; (Exhibit No. 8-c).

81. Her rights are calculated and approved by all competent authorities of the Institution in an amount of twenty-eight million four hundred and forty-five thousand five hundred and one FCFA (28,445,501) (Exhibit No. 8a-b).

82. After the collective of former Assistant Judges of the ECOWAS Court appealed to the competent authorities, Mrs. EDNENSA MENDY Andreino was partially payed, by check No. 00000011 dated October 05, 2018, in the amount of 21,799,818 (twenty-one million seven hundred and ninety-nine eight hundred and eighteen FCFA) (Exhibit No. 8-d).

83. She served the Court of Justice for a period of three (3) years seven (07) months;

84. Mrs. EDNENSA MENDY Andrelino's base salary is 2,374.92 UA; (Room No. 8-b).

ECOWAS still owes the separation allowances to Mrs. EDNENSA MENDY in the sum of six million six hundred and forty-five thousand six hundred and seventy-four, point sixty-nine FCFA (6,645,674.69);

86. Mr. MAIGA Abdoulawahidou:

87. He was recruited to serve ECOWAS Court as an Assistant Judge, on 15th September, 2014, and completed his mission on 18th June, 2018 (Exhibit No. 9-b).

88. His rights are calculated and approved by all competent authorities of the Institution in an amount of twenty-five million five hundred and fifty-four thousand nine hundred and sixty-two FCFA (25,554,962) (Exhibit No. 9a-c).

89. The said entitlements were paid to him with the exception of the separation allowance;

90. He served the Court of Justice for three (3) years ten (10) months;

91. Mr. MAIGA Abdoulawahidou's base salary is 1,977 UA (Exhibit No. 9-c).

92. Mr. MAIGA Abdoulawahidou is claiming payment of the said allowance, the amount of which corresponds to three months' salary, i.e., five million five hundred thirty-two thousand one hundred ninety-three point sixty-three FCFA (5,532,193.63);

93. Mr Ghislain AGBOZO:

94. He was recruited as an Assistant Judge, in May 2009, and served until October 31, 2013, i.e., four (4) years and 7 months in the service of the Court of Justice (Exhibit No. 10-a).

95. Mr. Ghislain AGBOZO's base salary is 1,977 UA; (Exhibit No. 10-a).

96. Mr. AGBOZO's separation allowance corresponds to four months of base salary, amounting to seven million three hundred seventy-six thousand, two hundred fifty-eight, point seventeen FCFA (7,376,258.17).

97. In addition, his corresponding entitlements for accrued leave days were miscalculated (Exhibit No. 10-b point A).

98. That on the salary corresponding to the accrued leave is sixty-nine (69) working days of vacation, which corresponds to 90 days of annual leave instead of the sixty-five (65) working days used in the calculation of entitlements by the ECOWAS administration (see Exhibit No. 10-b point A);

99. That the 90 days of annual leave earns him 5,931 UA instead of 3,558.60 UA for the 65 days of work withheld by the Chief Accountant in violation of his rights;

100. That ECOWAS still owes him 2,372.4 UA corresponding to the days due calculated less, i.e., the sum of two million two hundred and twelve thousand eight hundred and seventy-seven, point forty-five FCFA (2,212,877.45);

101. That Mr. Ghislain AGBOZO addressed several appeals to the ECOWAS authorities with a view to obtaining payment of his entitlements (see Exhibit 10-c).

102. That all his appeals went unanswered;

103. That in total, ECOWAS continues to owe the Applicant the sum of nine million five hundred and eighty-nine thousand, one hundred and thirty-five, point sixty-two FCFA (9,589,135.62);

104. That at the time the Applicants left ECOWAS, the value of 1 UA = 932.759 FCFA.

105. That since the Applicants' departure from the ECOWAS service, they have, by various means, approached the hierarchical authorities for payment of their dues, but without any success;

106. That even before approaching ECOWAS Court of Justice as provided for under the provisions of the ECOWAS Treaty Conventions, Protocols and Directives, the Applicants took the trouble to gracefully approach the Administration and Finance Committee, the Auditor General, the Chairman of the Ad Hoc Committee, the President of the Court of Justice and the President of the Commission, but no follow-up was given to their approaches (Exhibits X and Y).

107. That their employment contracts, in addition to their clauses, are also subject to the provisions of the Staff Regulations.

108. That the various attempts of amicable solution, sought by the Applicants by addressing appeals to the ECOWAS authorities, have been unsuccessful.

109. That the delay in the payment of their entitlements has caused them enormous losses;

110. That in fact the Applicants former retired employees, had planned, once the gratuities were paid on time, to invest in banks, to obtain financial interest at the legal rates.

111. That similarly, the Applicants, former employees of the ECOWAS Court of Justice, have suffered losses due to the observed delay in payment and they seek redress.

112. That the Applicants are well grounded in claiming default interest.

113. That the damages they suffered open up the right to the payment of compensation;

114. That under the terms of the employment contract, the Defendant's years-long failure to pay the allowances claimed is attributable to the Employer who must assume its responsibility.

115. That by choosing not to pay the due allowances, ECOWAS Commission has committed a fault which has made the financial situation of the Applicants more vulnerable with regard to their family responsibilities and the situation of some already retired.

116. That the failure to pay the allowances created in the Applicants a lack of support for their health, which also created a huge psychological distress.

117. They conclude that the conditions are met to order the Defendant to pay them damages.

118. That the former co-workers of Judges previously collectively claimed payment, addressing respectively to the Commissioner for Human Resources, the President of the Court of Justice and the President of the ECOWAS Commission, but unfortunately without success (Exhibit X).

119. Similarly, former ECOWAS military officers have also approached the ECOWAS authorities for the payment of their allowances, without success (Exhibit Y).

b. Pleas in Law

120. The Applicants relied their claims on Articles 9, 35 paragraphs b), d) of the ECOWAS Staff Regulations; Article 9 paragraph 1-b of the Supplementary Protocol (A/SP.1/01/05); Articles 1344-1 and 1382 of the Civil Code in force in Benin.

c) Reliefs Sought

121. The Applicant concludes, seeking from the Court:

AS TO THE FORM:

- i. To declare that it entertains jurisdiction;
- ii. To accept the Applicants' action as admissible;

AS TO MERIT TO:

- iii. Declare it to be well-founded;
- iv. Find that the Applicants were recruited by various contracts to serve ECOWAS, according to the referenced documents;
- v. Find that the Applicants have effectively served ECOWAS within the time frames indicated, as the case may be, as seen in the tables contained in the documents gathered;
- vi. Find that the Staff Regulations provide for resettlement and separation allowances in favor of the Applicants;
- vii. Find that the non-payment of the said gratuity constitutes a violation of the Staff Regulations and Community law;
- viii. Find that since 2013, that is, already seven (7) years that Mr. Elie Francis GNIMAGNON, Mr. Vinagnon ZANNOUBO and Mr. SOGOYOU Cossi,

all former professional officials of ECOWAS, have not obtained payment of the said allowances;

ix. Find that Mr. AGBOZO, a former employee of the Court of Justice has been away from the institution since 2013, that is, for seven (7) years;

x. Find that Mr BILGHO Rodrigue, Mr. SOW Idrissa, Mr. ALCIDES Silva, Ms. EDENSA Andreino, MAIGA Abdoulawahidou and Ms. SARAH Saiegh, former employees of the Court of Justice, have been waiting for the said payment since 2018, that is, for two (2) already;

xi. Find that Mr. Ghislain AGBOZO's entitlements, regarding accrued leave days, were miscalculated;

xii. Find that the various pre-payment appeals addressed by the Applicants to the ECOWAS authorities were not pursued;

xiii. Find that the delay in payment of the Applicants' entitlements causes them damages and consequently they deserve compensation;

CONSEQUENTLY

xiv. Declare and determine that the Applicants are beneficiaries of the application of Articles 35b and 35d of the Staff Regulations;

xv. Declare and determine that the rights to be revalued and those claimed by Mr. Ghislain AGBOZO correspond to the sum of nine million five hundred and eighty-nine thousand one hundred and thirty-five, comma sixty-two FCFA (9,589,135.62);

xvi. Declare and determine that the Applicants have suffered material and moral damages due to the delay in the payment of their various entitlements, and order the ECOWAS Commission to pay:

xvii. To Mr. Elie Francis GNIMAGNON the sum of twenty-three million five hundred and ten thousand four hundred and eighty-four FCFA

(23,510,484) as main reparation, ten million FCFA (10,000,000) as default interest and five million FCFA (5,000,000) for damages;

xviii. To Mr. SOGOYO Cossi, the sum of twenty million five hundred and ninety thousand five hundred and twenty-six FCFA (20,590,526) as main reparation, ten million FCFA (10,000,000) as default interest, and five million FCFA (5,000,000) for damages;

xix. To Mr. ZANNOUBO Vinagnon the sum of Twenty-three million Five hundred and ten thousand four hundred and eighty-four FCFA (23,510,484) as main reparation, ten million FCFA (10,000,000) as default interest, and five million FCFA (5,000,000) for damages;

xx. To Mr. BILGHO Palakwindé Ted Rodrigue the sum of five million five hundred and thirty-two thousand one hundred and ninety-three point sixty-three FCFA (5,532,193.63) as main reparation, five million FCFA (5,000,000) as default interest, and Two Million FCFA (2,000,000) for damages;

xxi. To Mr. SOW Idrissa the sum of five million five hundred and thirty-two thousand one hundred and ninety-three point sixty-three FCFA (5,532,193.63) as main reparation, five million FCFA (5,000,000) as default interest, and two million FCFA (2,000,000) for damages;

xxii. To Mr. ALCIDES Bartolomeu SILVA, the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA (6,645,674.69) as main reparation, five million FCFA (5,000,000) as default interest and two million FCFA (2,000,000) for damages;

xxiii. To Ms. SARA Seidi SAIEGH the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA

(6,645,674.69) as main reparation, five million FCFA (5,000,000) as default interest, and two million FCFA (2,000,000) for damages;

xxiv. To Ms. EDNENSA MENDY the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA (6,645,674.69) as main reparation, five million FCFA (5,000,000) as default interest, and two million FCFA (2,000,000) for damages;

xxv. To Mr. MAIGA Abdoulawahidou the sum of five million five hundred and thirty-two thousand one hundred and ninety-three point sixty-three FCFA (5,532,193.63) as main reparation, five million FCFA (5,000,000) as default interest, and two million FCFA (2,000,000) for damages;

xxvi. To Mr Ghislain AGBOZO the sum of nine million five hundred and eighty-nine thousand one hundred and thirty-five point sixty-two FCFA (9,589,135.62) as main reparation, seven million FCFA (7,000,000) as default interest, and five million FCFA (5,000,000) for damages;

xxvii. Order the immediate payment of the said rights claimed for in benefit of the Applicants;

xxviii. Order the ECOWAS Commission to pay the costs.

VI - DEFENDANT'S CASE

The Defendant has not objected.

VIII – JURISDICTION

123. As is the case law of this court, it is from the analysis of the application initiating proceedings submitted by the Applicants that the Court verifies whether the matter falls within its jurisdiction.

124. Therefore, in order to determine whether this Court has jurisdiction, account must be taken of the legal texts governing its jurisdiction, as well as the nature of the question brought before it by the Applicant, based on the facts as alleged by the Applicant. (See its Judgment No. ECW/CCJ/JUD/03/11, of March 17, 2011, delivered in the case, *BAKARY SARRE AND 28 ORS V. REPUBLIC OF MALI* in CCJ, RL, 2013, p. 349, §51. **and** ECW/CCJ/JUD/10/13 of 6 November 2013 and *CHUDE MBA V. REPUBLIC OF GHANA*, in CCJ, RL, 2011, p. 67, §25.

125. In the instant case, it is apparent from the alleged facts that the Applicants were in an employment relationship with the Defendant, as they state in their application initiating proceedings that they were employed by the Defendant and that under their contracts, they performed their duties in various ECOWAS institutions for the periods indicated, until the expiry of their contracts and that the Defendant did not pay them all the rights to which they were entitled as a result of the termination of their contracts, in particular the separation allowance, reinstatement allowance or accrued leave.

126. Therefore, the issue before the Court in the present action arises from liabilities arising from an employment relationship, established between each of the Applicants and the Defendant.

127. Thus, it follows from Article 9(f) of Protocol A/P1/7/91 on the Court as amended by Additional Protocol A/SP.1/01/05, that *the Court has*

competence to adjudicate on any dispute relating to the following: “Analysis of disputes between the Community and its officials.”

128. On the other hand, Article 73 of the ECOWAS Staff Regulations provides that “(...) *at any stage of the case, the Community Court of Justice is the final court of appeal*”.

129. Therefore, in view of the grounds invoked and based on the aforementioned norms, this Court concludes that it has jurisdiction to adjudicate the instant cause.

IX – ADMISSIBILITY

130. The admissibility of the instant case must be verified from the application of Article 10 (e) of the Protocol on the Court, A/P1/7/91, in the wording given by Additional Protocol A/SP.1/01/05 of 2005, which states that:

“Staff of any Community Institution, after the Staff Member has exhausted all appeal processes available to the officer under the ECOWAS Staff Regulations.”

131. And from Article 73 of the ECOWAS Staff Regulations it follows that:

“Differences between a staff member and his/her supervisor shall be settled as early as possible and in the simplest and most respectful way. If a staff member and supervisor cannot resolve a difference after a good-faith effort, they shall refer the problem to the next highest supervisor for resolution, and escalate the grievance upwards if it cannot be resolved at lower levels, until it reaches the Head of Institution. Throughout the process, the Head of

Administration and Human Resources shall be kept informed and consulted at all stages.”

“If these regular informal management methods are still not found to be satisfactory then formal mechanisms shall be put into place. In all circumstances, the final court of appeal shall be the Community Court of Justice. Staff members may only appeal their case to Council once they have demonstrated that they have first made diligent and good faith efforts to seek resolution through all the other steps listed.”

132. In the instant case, the Applicants allege and demonstrate by documents that they made use of internal remedies by means of letters addressed to the hierarchical authorities, namely the Administration and Finance Committee, the Auditor General, the President of the *ad hoc* Commission, the President of the Court of Justice and the President of the Commission, (See Exhibits X and Y) complaining about the non-payment of their dues.

133. The failure to demonstrate any response to these communications is, in this case, irrelevant, and the Court therefore considers that the Applicants have exhausted the internal administrative remedies, provided for in Article 73 of the Staff Regulations, and the requirements authorizing them to have access to this Court are met, and the cause is admissible.

X - MERITS

134. On the burden of proof:

135. It must be observed that the general principle of proof imposes the burden of proof on the party making the claims.

136. It is certain that this rule is reversed when there is presumption of law, dispensation or discharge of the burden of proof, situations in which this same burden falls on the opposite party.

137. Thus, in a proceeding where the party to whom the burden of proof is to be imposed complies with it, such party shall enjoy the benefit of the presumption and, as such, it will be for the counterpart to counteract the evidence produced.

138. As provided in Article 32 (4) of the Rules, the Defendant, having been duly served with the application initiating proceedings by the Applicants, failed to file its defense and did not appear at the hearing, opting for a complete default.

139. As a result, the facts alleged by the Applicants, namely, the claim of non-payment of their dues, was not challenged.

140. It is known that the general rule imposes the burden of proof on the Applicant, who must demonstrate the facts s/he alleges.

141. However, in the case of an action based on breach of contract, of a labor nature, as is the case here, there is a presumption of truthfulness in favor of the employee or servant claiming the payment of unpaid salary installments. Therefore, it would be up to the Contractor, in this case the Defendant, to take the necessary steps to prove its compliance.

142. Having failed to do so, in this case, it must be admitted that Defendant failed to make the payments now claimed by Applicants.

143. Therefore, the dispute submitted to this Court is summarized in the non-payment by the Defendant of amounts referred to by the Applicants and due by way of allowances arising from the termination of their respective contracts.

144. The Applicants have been waiting for several years (at least 2) for payment of what they are owed and now claim.

145. Thus, *it is necessary to verify whether, upon termination of their respective contracts, the Applicants are entitled to the allowances for which they now claim payment.*

The applicable legal regime.

146. Article 1(1) and (2) of the “*PRINCIPES REGISSANT LES CONDITIONS ET SERVISSE DU PERSONNEL*” provides that:

1 – *“These principles, defined by the Economic Community of West African States (ECOWAS), in application of Article 10 (3) (f) of the Revised Treaty, establish the general principles governing the conditions of the staff employment, their rights, obligations and privileges.*

2 – *They apply to all members of the staff of the Institutions of the Community, except those whose constitutive texts establish the contrary;”*

147. Also, from Article 2 of the ECOWAS Staff Regulations, it is stated that: *“The provisions of these Regulations shall apply to all staff members of ECOWAS as defined in Article 3 hereafter.”*

148. And from Article 3 it follows that: *“The following expressions in these Regulations shall have the following meanings:*

“Professional Staff” means an internationally recruited staff member from a Member State who is not a statutory appointee, holding university degrees or equivalent professional qualification, appointed by the Head of Institution

on the recommendation of the Advisory Committee on Appointment and Promotion of Professional Staff in the Institution, and who is involved in the execution of the duties assigned to the ECOWAS institutions.”

149. And its Article 9, while classifying Community personnel, places the *professional staff* in group 1 and among those who are recruited at the International level.

150. This category “*professional staff*” may be recruited for permanent or temporary position, that is, by fixed or indefinite duration contract, as provided in Articles 12 to 15 of the Regulation.

151. From the documents in the casefile, it is clear that the Applicants were all recruited under fixed-term contracts and held the professional category of level P3 to P4 (See Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10) and that the respective contractual clauses and the ECOWAS Staff Regulations are therefore applicable to them.

152. Article 7 of the *PRINCIPES REGISSANT LES CONDITIONS ET SERVICE DU PERSONNEL*: with epigraph “**Cessation de service**” in its paragraph (a) states that: “*La cessation de service peut resulter (...) de l’a expiration de la durée d’un poste conformément aux termes convenus (...)*”

153. Chapter VI of the Staff Regulations, in its articles 30 to 37, regulates the “**REMUNERATIONS AND BENEFITS**.”

154. And, specifically, Article 35 concerns the installation and resettlement allowances (paragraphs a) and b) and separation allowances (paragraphs c) and d).

155. Let us look at the situation of the Applicants:

156. The first three Applicants, Mr **GNIMAGNON Francis Elie**, Mr. **SOGOYOU Cossi** and Mr. **ZANNOUBO Vinagnon** were recruited by employment contracts No. ECW/REL/1/ADM/356/KK and ECW/REL/15/ADM/356/KK, and No. ECW/HR/PER-00236-P of the ECOWAS Commission, dated August 2, 2004, and February 8, 2008, respectively.

157. The first Applicant, Mr **GNIMAGNON Francis Elie**, performed his duties from August 30, 2004, until October 22, 2013, (Exhibit No. 1-b) while the second Applicant, Mr **SOGOYOU Cossi**, performed his duties from August 30, 2004, with an extension of one year covering the period from January 1 to December 31, 2012, the date his contract ended; (Exhibit No. 2 bc) and the third Applicant, Mr. **ZANNOUBO Vinagnon**, performed his duties from 2 April 2008 until December 12, 2013, (Exhibit No. 3-b).

158. Therefore, the first Applicant, served ECOWAS for nine (9) years 3 months, the second Applicant, for eight (8) years three (3) months and the third Applicant for five (5) years and nine (09) months;

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The Reliefs Sought by the Applicants

a. Resettlement allowance

159. The Applicant Mr **ZANNOUBO Vinagnon** claims that upon termination of his contract, he was not paid the **resettlement allowances**.

160. As stated in the mentioned article 35 (b) “*Une prime de réinstallation est versée aux fonctionnaires statutaires et au personnel professionnel qui quittent les services de la communauté, à condition que le départ ne soit pas lié à une mesure de renvoi pour faute grave ou à une démission. Les bénéficiaires doivent en outre avoir servi la communauté pendant au moins quatre (4) . Le montante de cette prime est égal à tros (3) mois de salaire.*

161. As stated by this Court in Case No. *KOMLAN RAYMOND KOUDO V ECOWAS PARLIAMENT*, **Judgment No. ECW/CCJ/JUD/39/21** in Case No. *ECW/CCJ/APP/42/20*:

“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” (see §89)

162. In the instant case is the Applicant Mr. **ZANNOUBO Vinagnon** who claims payment of *resettlement allowance*.

163. Therefore, it must be ascertained whether the situation of this Applicant meets the legal requirements for access to such an allowance.

164. From the evidence offered and attached to the case-file, it is shown that this Applicant began his duties on April 2, 2008 and that he was neither dismissed nor did he resign until the date of the communication of the termination of his contract (See Exhibit 3 a and b) which occurred on December 12, 2013.

165. Therefore, this Applicant was in office for five (5) years and nine (09) months, that is, for more than 4 years.

166. In view of these facts, the Court concludes that, in relation to the aforementioned Applicant, the requirements demanded for access to the resettlement allowance, contained in article 35, paragraph b) of the Regulation, are, in this case, fulfilled.

167. This means that the Applicant **ZANNOUBO** Vinagnon is entitled to receive the resettlement allowance claimed herein and that the non-payment of this allowance to the Applicant is in violation of the aforementioned Article 35(b) of the Regulations.

b. On the Separation Allowance

168. It is stated in Article 35 (c) and (d) of the Staff Regulations that:

*(c) Statutory Appointees shall be entitled to a **gratuity** for each year of service, at a rate to be determined by the Council of Ministers on the recommendation of the Administration and Finance Commission. The payment shall be effected **on separation from service.***

(d) All staff members excluding Statutory Appointees shall be entitled to one (1) month's salary for every year of service rendered to the community up to a maximum of twelve (12) years upon separation.”

169. This paragraph (d) spells out the extension of the entitlement to the *separation allowance* to all staff members, to be calculated as provided therein.

170. It should also be noted that Chapter XI – Separation from Service in paragraph (c) of its Article 62 (c) under the heading “ENTITLEMENTS AND FINANCIAL OBLIGATIONS UPON SEPARATION FROM SERVICE” states that: “*A contract staff member shall be paid a gratuity of 12.5% of his/her basic annual salary for each year of service at the time of separation from service.*” (See the English version of the mentioned Rules).

171. Thus, making a systematic interpretation of the cited Article 35 (c) and (d), and of Article 62 (c), it is clear that the separation allowance contains two components and that the condition for access to it is the “*separation from service*” of the statutory or professional staff.

172. And because the ECOWAS Staff Regulations does not define the concept “*separation from service*”, i.e., the moment or the temporal limit in which it occurs, it must be admitted that it occurs, with the termination of the contract.

173. It thus means that the termination of the contract determines the access to such benefit, as long as the professional agent in question was not, immediately, engaged in a new contract with the Community.

174. No other conditions have been set for access to such a benefit, unlike, for example, in the European Union.

175. In this regard, the European Union Civil Service Tribunal stated in case F-59/15 between *FX v. COMMISSION EUROPÉENNE*, that:

(...) le droit à l'allocation de départ, prévu par l'article 39 du RAA au bénéfice des agents temporaires, n'est pas un droit qui naît automatiquement au moment de la résiliation ou de l'expiration du contrat d'engagement de

l'agent concerné. Au contraire, comme le prévoit le libellé de cet article, le droit à l'allocation de départ est ouvert aux agents concernés « dans les conditions prévues au titre V, chapitre 3, du statut et à l'annexe VIII du statut », parmi lesquelles figurent les conditions fixées spécifiquement par l'article 12, paragraphe 2, de cette annexe (voir, en ce sens, arrêt du 22 mai 2012, AU/Commission,F-109/10, EU:F:2012:66, point 24). (vide §29)

Il convient également de préciser que l'article 12, paragraphe 2, de l'annexe VIII du statut figure parmi les dispositions du chapitre 2 de cette annexe, relatives au régime de pension de l'Union européenne, et non parmi les dispositions relatives à la rémunération des fonctionnaires ou agents de l'Union européenne ou à leurs indemnités, telles que figurant en particulier à l'annexe VII du statut. Dans cette même optique, l'article 39 du RAA se trouve au chapitre 6 du RAA, intitulé « Sécurité sociale », et non parmi les dispositions relatives aux indemnités prévues par le RAA lors de la fin de l'engagement des agents concernés (voir, en ce sens, arrêt du 27 octobre 2009, Bauch/Commission,F-61/07, EU:F:2009:144, points 53 et 54).

Or, l'article 39 du RAA et l'article 12, paragraphe 2, de l'annexe VIII du statut, lus ensemble à la lumière des dispositions pertinentes du régime de pension dont ils relèvent, ne peuvent être interprétés que dans le sens selon lequel l'agent temporaire a droit à une allocation de départ lorsque, n'étant plus titulaire d'un contrat d'engagement suite à la résiliation ou à l'expiration de celui-ci et n'ayant pas l'intention d'exercer au sein de l'Union européenne d'autres fonctions, il ne satisfait toutefois pas, à ce moment-là, aux conditions nécessaires pour pouvoir bénéficier d'une pension d'ancienneté immédiate ou différée ni aux conditions mentionnées à l'article 12, paragraphe 1, sous b), i) à iv), de l'annexe VIII du statut.

Ainsi, l'allocation de départ ne constitue pas une indemnité de fin d'engagement à laquelle l'agent concerné aurait droit, d'office, au moment

de la résiliation ou de l'expiration de son contrat, mais une mesure pécuniaire s'inscrivant dans le cadre de dispositions statutaires en matière de sécurité sociale.

Dès lors, la résiliation ou l'expiration d'un contrat d'agent temporaire ne saurait automatiquement ouvrir, à elle seule, le droit à une allocation de départ.” (See § 29 to 33)

176. In the same judgment, that court found that: *“la notion de cessation «définitive» des fonctions figurant à l'article 12, paragraphe 2, de l'annexe VIII du statut, appliquée par analogie au cas d'un agent temporaire, ne peut être interprétée qu'au cas par cas, selon les circonstances de l'espèce, précisément dans le but d'éviter, dans toute la mesure du possible, le versement d'une allocation de départ au bénéfice d'un agent de l'Union européenne qui, au moment d'en faire la demande, sait pertinemment, alors que son contrat d'engagement est arrivé à son terme, qu'il pourrait être « remis en activité » auprès des services de l'Union européenne, ayant, par exemple, postulé, entretemps, à un autre emploi vacant dans un des services de l'Union européenne. Dans cette perspective, le versement automatique de l'allocation de départ en raison de la simple résiliation ou expiration du contrat d'engagement de l'agent non seulement serait contraire au but de cette disposition, relevant du domaine statutaire de la sécurité sociale, mais également au principe général de bonne administration des finances de l'Union européenne (voir, en ce sens, arrêt du 9 octobre 2007, Bellantone/Cour des comptes, F-85/06, EU:F:2007:171, points 67 et 72).a*

177. The legal regime provided in the ECOWAS Staff Regulations differs from that established in the European Union system.

178. in the latter system, the “*allocation du départ*” is included in the provisions on the European Union pension scheme and not in the provisions on the remuneration of officials or servants of the European Union or their allowances, the purpose of which is to guarantee the member of the temporary staff an allowance on termination or expiry of his contract of employment who does not wish to carry out any other duties in the European Union and who does not at that time fulfill the conditions for immediate or deferred retirement pension or the conditions referred to in Article 12(1)(b)(i) to (iv) of Exhibit VIII of the Staff Regulations.

179. Contrarily, in the ECOWAS Staff Regulations, this separation allowance falls under “*Entitlements and Financial Obligations upon Separation from Service*”.

180. However, it cannot be denied that the arrangements under these two systems converge in requiring the “*permanent termination*” or “*permanent departure*” of the official as a criterion for access to the separation allowance.

181. The lack of payment of this separation allowance was claimed by all the Applicants.

182. The first Applicant, GNIMAGNON Francis Elie, claims that all his allowances were paid to him by the ECOWAS Directorate of Administration and Human Resources, with the exception of the separation allowance.

183. The second Applicant, Mr. **SOGOYOU Cossi**, submits that the **separation allowance** is due to him in respect of his first contract for a period of seven (7) years and three (3) months; and further as to the extension of his contract running from January 1 to December 31, 2012, he is further entitled to the **separation allowance and the gratuity** of 12.5% provided for in the contract;

184. The third Applicant, Mr. **ZANNOUBO Vinagnon**, claims that upon termination of his contract, he was not paid his resettlement **and separation allowances**.

185. As to the remaining seven Applicants, (4) **BILGHO Palakwindé Ted Rodrigue**; (5) **SOW Idrissa**; (6) **ALCIDES Bartolomeu SILVA**; (7) **Sara Seidi SAIEGH**; (8) **EDNENSA MENDY Andreino**; and (9) **MAIGA Abdoulawahidou and 10- Mr Ghislain AGBOZO**, all of whom have demonstrated that they were employed and were in office until the date of termination of their respective contracts, and that all their rights resulting therefrom have been settled, but that they were nevertheless not paid **the separation allowance** provided for in Article 35(d) of the Staff Regulations.

186. As is apparent from the documents gathered, all of the Applicants performed their duties under and up to the termination of their respective contracts.

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In the execution of a contract, the parties must proceed in good faith, until its termination, taking into consideration, first of all, the respective contractual clauses as well as the legislation applicable to it.

188. And acting in good faith is an obligation of public policy, as this Court noted in the case *CLAUDE AKOTEGNON v. COMISSION DE LA CEDEAO*, Judgment no. ECW/CCKJ/JUD/19/18, by stating that: “(...) *a failli à une obligation d'ordre public qui est celle d'agir de bonne foi et avec celerité dans l'exécution de toute convention légalement formée, (...)*”

189. The termination of the Applicants' contracts gave them access to the separation allowance provided for therein, in accordance with Article 35(d) of the Staff Regulations.

190. Moreover, it is the same termination of contract, which, by application of Articles 32, 35 and 62 of the Staff Regulations, authorized the payment to all Applicants of the rights legally and contractually provided for.

191. Among the duties assessed and paid to the Applicants there is one of the components of the separation allowance, the “separation allowance”, provided for in Article 62(c), in an amount equivalent to “*12.5% of annual basic salary for each year of service as gratuity*”. (see Exhibits 2 c), 4 to 9)

192. Therefore, the settlement and payment of the separation allowance provided for in Article 35(d) are neither conditioned nor within the discretion of the contracting entity, since they derive from a regulatory and therefore binding rule.

193. Nor can it be held that the benefits under Articles 35(d) and 62(c) are not cumulative or due.

194. It is sufficient to have regard to the terms of the settlement agreement which ended the dispute between *COLONEL MOCTAR NDOYE v. COMMISSION*, ECW/CCJ/JUD/03/20, Case No. ECW/CCJ/APP/07/17, to find that, under points III and IV of the terms of the agreement, the Defendant settled and paid to this Applicant, amounts corresponding to the “departure allowance” and the “separation allowance”.

195. On the other hand, this Court, whenever it has found a situation of termination of contract of community agents, has ordered the Defendant to pay the separation allowance. (See cases *CLAUDE AKOTEGNON v. COMMISSION OF ECOWAS*, and *JEAN PIERRE EZIN v. COMMISSION*, ECW/CCJ/JUD/18/18).

196. It should be recalled that the ECOWAS Staff Regulations apply to “(...) *all staff members of the ECOWAS institutions, except where the constitution of said institution otherwise provides.*”

197. The exception provided in this rule does not apply to Applicants.

198. Therefore, the aforementioned rule of Article 35(d) of the Regulation is applicable to them, in compliance with the principle of equal treatment before the law, in relation to the other members of the community staff, who, in an identical situation, were recognized, settled and paid the separation allowance, as demonstrated above.

199. Thus, the Court concludes that the Defendant, by failing to pay the separation allowance to the Applicants, has violated Article 35(d), in breach of its contractual obligation, without any justification.

Allowance for “separation” provided for in Article 62(c) of the Staff Regulations.

200. The Applicant, Mr. SOGOYOU Cossi, further claims that regarding the extension of his contract which runs from January 1 to December 31, 2012, he is still entitled to **gratuity** of 12.5% provided for in the contract;

201. Indeed, the letter that renewed his initial contract states the following:
“(2) *Your appointment which is for a period of twelve (12) months, takes effect from 1st January to 31st December 2012*”

202. And in point 5 it reads: “*In Line with Council Decision C/DEC.8/92 on the conditions of service for contract officers of the ECOWAS Institutions, other benefits accruable to you are the following:*

(...)

d) 12,5 of annual basic salary for each year of service as gratuity payable at the end of the contract.”

203. The Applicant concerned has enclosed the document (Exhibit 2c) which states that on 1st February 2012 the payment of his benefits was ordered in respect of his initial contract which ran from 3rd September 2004 to 31st December 2011. At that time the 12.5% of his annual base salary corresponding to the period of 7 years and three months, which lasted the initial contract, was settled and paid.

204. He claims he was not paid the same allowance corresponding to the extension period from 1st January to 31st December, 2012.

205. Article 62(c) of the Staff Regulations provides that: “*A contract staff member shall be paid a gratuity of 12.5% of his/her basic annual salary for each year of service at the time of separation from service.*”

206. Therefore, upon the definitive termination of his contract, the Applicant was owed the aforementioned **separation allowance**, for the period of one year during the extension, in accordance with both Clause 5 d) of the concluded contract and Article 62 c) of the Staff Regulations.

207. Thus, the same conclusion is reached by this Court with respect to the non-payment of this **separation allowance** of “12.5% of annual basic salary for each year of service as gratuity” claimed by Mr. SOGOYOU Cossi, for the year of extension of his contract, insofar as such refusal of payment violates clause 5 d) of the contract and Article 62 c) of the Staff Regulations and no basis was found which could legitimately justify the refusal to pay such benefit to the concerned Applicant.

Accrued leave

208. The Applicant Mr. **Ghislain AGBOZO** claimed that there was an error in the calculation of his **accrued leave** and that despite his complaint this error was not corrected.

209. It must be examined whether it has been shown that there was error in the calculation of **accrued leave**, as alleged by the concerned Applicant.

210. He held that the salary corresponding to his accrued leave days are sixty-nine **(69) working days**, which correspond to 90 days of annual leave, instead of the **sixty and five (65) working days** used in the calculation of the entitlement by the ECOWAS administration as shown in Exhibit No. 10-b paragraph A);

211. That the 90 days of annual leave earns him 5,931 AU instead of 3,558.60 AU for the 65 days of work withheld by the Chief Accountant in violation of his rights;

212. Article 38 (a) of the Staff Regulations Provides that: “*Staff members accrue annual leave at the rate of thirty (30) working days per year of active service.*”

213. And paragraph (d) of the same article states that: “*A maximum of 90 working days of unused annual leave may be carried over from one leave-year to the next. Any excess will be deducted at the end of the leave-year without compensation.*”

214. In turn, it is stated in Article 62 a) of the same Staff Regulations that: “*A staff member who, at the time of separation from service has accrued annual leave, shall, in accordance with the provisions of Article 38 of these Regulations, be paid in lieu thereof, a sum of money equal to his/her salary or wages for the period of such accrued leave up to a maximum of ninety (90) working days.*”

215. In the instant case, Applicant **Ghislain AGBOZO**, merely claims that there was an error in the calculation of his accrued leave, claiming that it should be computed at its maximum legal limit.

216. However, it was up to the Applicant to demonstrate the number of days of his leave that were accrued.

217. For in this regard the burden of proof was on the Applicant insofar as it was not impossible for him to obtain from the administrative services a statement proving the number of days of his accrued leave.

218. Therefore, the Court finds that the Applicant's argument is not sufficient to conclude that the administrative and financial services erred in calculating the number of accrued leave days in his favor.

219. Consequently, the Court concludes that for lack of evidence, the Applicant's claim in this regard cannot stand.

XII – REPARATION

220. It should be noted, by way of conclusion that this Court found that, the Applicants were recruited in the category of professional staff and under fixed-term contracts; they performed their duties until the termination of their contracts.

221. With the termination of the respective contracts, their benefits have been settled, but not paid:

1. The **resettlement allowance** provided for in Article 35(b) and equivalent to 3 months of his salary, to Applicant **ZANNOUBO Vinagnon** in the amount of FCFA 7,836,828;
2. The **separation allowance** provided in Article 35(d) to each of the Applicants, for the duration of their respective contracts, as follows:

- **GNIMAGNON Francis Elie**, corresponding to the period of nine (9) years and three (3) months he was in the Defendant's service, in the aggregate amount of FCFA 23,510,484;
- **SOGOYOU Cossi**, corresponding to the period of eight (8) years and three (3) months he was in the Defendant's service, in the aggregate amount of FCFA 17,722,421;
- **ZANNOUBO Vinagnon**, corresponds to the period of 5 years and nine months during which he was in the Defendant's service, in the aggregate amount of FCFA 15,673,656;
- **BILGHO Palakwindé Ted Rodrigue**, corresponds to the period of three (3) years and four (4) months he was in the Defendant's service, in the aggregate amount of FCFA 5,532,193.63;
- **SOW Idrissa**, corresponding to the period of three (3) years and four (4) months he was in the Defendant's service, in the aggregate amount of FCFA 5,532,193.63;
- **ALCIDES Bartolomeu SILVA**, corresponding to the period of three (3) years and seven (7) months during which he was in the Defendant's service, in the aggregate amount of FCFA 6,645,674.69;
- **SARA Seidi SAEIGH**, corresponding to the period of three (3) years and seven (7) months during which she was in the Defendant's service, in the aggregate amount of FCFA 6,645,674.69;
- **EDNENSA MENDY Andreino**, corresponding to the period of three (3) years and seven (7) months she was in the Defendant's service, in the aggregate amount of FCFA 6,645,674.69;
- **MAIGA Abdoulawahidou**, corresponding to the period of three (3) years and ten (10) months he was in the Defendant's service, in the aggregate amount of FCFA 5,532,193.63;

- **GHISLAIN AGBOZO**, corresponding to the period of four (4) years and seven (7) months he was in the Defendant's service, in the aggregate amount of FCFA 7,376,258.17;

3. The **separation** allowance of 12.5% of his annual base salary, to Applicant **SOGOYOU Cossi** for the period of one year during the extension of his contract, in the amount of FCFA 2,868,105

The Court found that by failing to pay such benefits, the Defendant violated articles 35 b) and d) and 62 c) of the Staff Regulations.

On the claimed damages

222. The Applicants claim that the delay in the payments of their benefits has caused them enormous losses, and they are therefore entitled to compensation and grounds for claiming default interest.

223. They maintained that the Applicants, former retired employees, had planned, once the gratuities were paid on time, to invest in banks to obtain financial interest at the legal rates.

224. That similarly the Applicants, former employees of the ECOWAS Court of Justice have suffered losses, due to the delay in payment and seek redress.

225. That the Applicants are well grounded in claiming default interest.

226. That such damages open up the right to payment of compensation.

227. The Court concluded that the failure to pay the claimed allowances, for years, is attributable to the Contractor who must assume its responsibility.

228. That by choosing not to pay the allowances due, the ECOWAS Commission has committed a fault which has made the financial situation of the Applicants more vulnerable with regard to their family responsibilities and the situation of some, already retired.

229. That the failure to pay the allowances created in the Applicants a lack of support for their health, which also created a huge psychological distress.

230. They conclude that the conditions are met to order the Defendant to pay damages in FCFA 5,000,000 for the first three Applicants and for the Applicant Gislain AGBOZO, and 2,000,000 for the remaining Applicants, without specifying the grounds for the settlement of such amounts.

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231. Indeed, as this court pointed out in the cited case *KOMLAN RAYMOND KOUDO v. ECOWAS PARLIAMENT*: “*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.*”

232. However, the Court considers that the Applicants’ argument is generic in that it does not specify the material or moral damages actually suffered by them, nor the causal link between such damages and the delay in payment of the aforementioned benefits owed to them by the Defendant.

233. Therefore, the Court concludes that the assumptions of the Defendant’s civil liability have not been established by the Applicants, and therefore, their claim is unfounded and should be dismissed.

Default interest

234. The Applicants sought that the Defendant be ordered to pay default interest for the delay in payment of their rights, in the amounts they have settled as follows: 10,000,000 FCFA for the first 3 Applicants; FCFA 7,000,000 for Applicant Gislain AGBOZO and FCFA 5,000,000 for each of the remaining Applicants.

235. However, the Applicants do not clarify how they reached the amounts they claim by way of default interest.

236. It is a generally accepted principle that the breach of contract will result in the party at fault being obligated to compensate the counterparty by paying compensatory interest, calculated at the legal or conventional rate.

237. In the instant case, being a breach of financial obligations arising from contracts - in this case of a labor nature -, the Court considers that the Defendant must compensate the Applicants, for its failure, through the payment of default interest, to be calculated based on the interest rate used for savings, by the ECOWAS Bank for Investment and Development, from the date of the Defendant's notice, until actual payment.

XIII – COSTS

238. The Applicants sought that the Defendant, the ECOWAS Commission, be ordered to pay the entire costs.

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

240. Paragraph 2 of the same Article states that “*The unsuccessful party is ordered to pay the costs if so decided.*”

241. Thus, in light of the above provisions, the Court considers that the Defendant, as the losing party, will bear the costs of the proceeding, and the Chief Registrar is responsible for the settlement of the cost.

XIV – OPERATIVE CLAUSE

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

As to jurisdiction:

i. **Declares** that it entertains jurisdiction to examine the cause.

As to admissibility:

ii. **Declares** that the application is admissible.

As to merit:

iii. Declares that the Applicants are beneficiaries of the application of Articles 35 d) and d) and 62 c) of the ECOWAS Staff Regulations.

AS TO REPARATION

iv. Orders the Defendant to pay, by way of resettlement allowance:

- To Applicant ZANNOUBO Vinagnon, the amount of seven million, eight hundred thirty-six thousand, eight hundred twenty-eight FCFA (7,836,828);

v. Orders the Defendant to pay, by way of separation allowance, to the following Applicants:

1. Mr. Elie Francis GNIMAGNON, the sum of twenty-three million five hundred and ten thousand four hundred and eighty-four FCFA (23,510,484);

2. Mr. SOGOYO Cossi, the sum of seventeen million, seven hundred and twenty-two thousand, four hundred and twenty-one FCFA (17,722,421);
3. Mr. ZANNOUBO Vinagnon, the sum of fifteen million, six hundred and seventy-three thousand, six hundred and fifty-six FCFA (15.673.656);
4. Mr. BILGHO Palakwindé Ted Rodrigue, the sum of five million five hundred and thirty-two thousand, one hundred and ninety-three point sixty-three FCFA (5,532,193.63);
5. Mr. SOW Idrissa, the sum of five million five hundred and thirty-two thousand, one hundred and ninety-three point sixty-three FCFA (5,532,193.63);
6. Mr. ALCIDES Bartolomeu SILVA, the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA (6,645,674.69);
7. Ms. SARA Seidi SAIEGH the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA (6,645,674.69);
8. Ms. EDNENSA MENDY the sum of six million six hundred and forty-five thousand six hundred and seventy-four point sixty-nine FCFA (6,645,674.69);
9. Mr. MAIGA Abdoulawahidou the sum of five million, five hundred and thirty-two thousand, one hundred and ninety-three point sixty-three FCFA (5,532,193.63);
10. Mr. Ghislain AGBOZO the sum of seven million three hundred and seventy-six thousand, two hundred and fifty-eight point seventeen FCFA (7,376,258.17).

11. Orders the Defendant to pay as separation allowance 12.5% of his annual base salary:

- To Applicant **SOGOYOU Cossi**, the amount of two million, eight hundred and sixty-eight thousand, one hundred and five FCFA (2,868,105);

vi. Orders the Defendant to pay default interest, to be calculated, on the amounts due to each of the Applicants, at the interest rate charged on savings by the *ECOWAS Bank for Investment and Development*, counting from 30 days from the date on which the Defendant was served with the instant action until the payment is effected.

vii. Dismisses Applicant Gislain AGBOZO's claim about the alleged error in the calculation of accrued leave.

XIV.COSTS

viii. Pursuant to Article 66 (2) of the Rules of the Court, the Respondent bears the costs of the proceedings, which must be settled by the Chief Registrar.

XV.COMPLIANCE AND REPORTING

ix. Orders that the Defendant to submit to the Court, within two (2) months from the date of notification of the present judgment, a report on the measures taken to implement the orders herein imposed.

Signed by:

Hon. Justice Edward Amoako ASANTE - Presiding _____

Hon. Justice Gberi-Be OUATARA – Member _____

Hon. Justice Januária T.S.M. COSTA - Member/Rapporteur _____

Assisted by:

Aboubacar DIAKITE..... Registrar

243.Done in Abuja, on the 28th day of March 2022, in Portuguese and translated into French and English.