

STOP
N°01/2023
FROM 22 JUNE 2023

CLAIMS FOR PAYMENT OF SALARY
DIFFERENTIALS, BONUSES AND
ALLOWANCES

Mr ADA Seydou,
Mrs COULIBALY née KONE Karidia,
Mrs TRAORE née SY Marème,
Mrs N'DIATE née DAO Djénébou

C/

The Economic Union Commission
et Moaétaire Ouest Africaine (UEMOA)

Composition of the Court :

Mr Mahawa Sémou DIOUF, **Chairman** ;

Mrs. Joséphine **Suzanne** EBAH
TOURE, Judge-Rapporteur ;

M. **Ladislau Clemente FERNANDO**
EMBASSA, Judge ;

Mr **Abdourahamane** Gayakoye **SABI**,
Judge;

Mr Jules CHABI MOUKA, Judge ;

Mr Kalifa BAGUE, Advocate General ;

Me Hamidou **YAMEOGO**,
Registrar
audience.

EXTRACT FROM THE MINUTES OF THE REGISTRY

COURT OF JUSTICE OF THE WEST AFRICAN
ECONOMIC AND MONETARY UNION (WAEMU)

PUBLIC HEARING ON 22 JUNE 2023

The Court of Justice of the WAEMU, meeting in ordinary public session on the twenty-second (22nd) of June two thousand and eighty-three (2023), in which were seated :

Mr Mahawa Sémou DIOUF, President; Ms Joséphine Suzanne EBAH TOURE, Judge-Rapporteur;

Mr. **Ladislau Clemente FERNANDO**
EMBASSA, Judge ;

Mr Abdourahamane Gayakoye SABI, Judge; Mr Jules CHABI MOUKA, Judge;

In the presence of Mr Kalifa BAGUE, Advocate General;

With the assistance of Maître Hamidou YAMEOGO, Court Clerk.

has rendered the following judgment: Between :

Mr and Mrs ADA Seydou, retired driver, registration number 91; COULIBALY née KONE Karidia, Assistant of direction à **r e t i r e d**, Matricule 232; TRAORE née SY Marème, Head of Secretariat, retired, Matricule 197; N'DIAYE née DAO Djénébou, Protocol Officer, retired, Matricule 107 ; all of them of nationality Burkinabè, residing in Ouagadougou (Burkina Faso), Quartiers Karpala, Ouidi, Dassasgo and Nioko I, for whom domicile is elected in the chambers of Maître Mamadou SOMBIE, Lawyer at the at the Court, residing at in Ouagadougou, Quartier Gounghin, 2^e eÉtage Immeuble TAPSOBA Sana Raphaël, 01 BP 4665, Tel: 78 06 99 99 / 70 51 78 80 Ouagadougou 01; Plaintiff, on the one hand ;

AND

The Commission of the West African Economic and Monetary Union (UEMOA), having its registered office in Ouagadougou (Burkina Faso), 380 Avenue du Pr Joseph KI-ZERBO, 01 BP 543 Ouagadougou 01(Burkina Faso), Tel.+226 25 31 88 73 to 76, represented by Mr Oumarou YAYE, Conseiller Juridique du Président de la Commission, agent de la Commission de l'UEMOA, assisted by Maître Issa SAMA, âVOCät à la Cour, residing at Ouagadougou, 06 BP 10302 Ouagadougou 06, Tél (00226) 25 37 78.
78 ;

Defendant, on the other hand ;

THE COURT

VU YES
Oui

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dated
10
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29
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2003;

Additional
Protocol
1 on the
supervis

ory bodies of the WAEMU;

Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court of Justice of the WAEMU;

Additional Act n°01/2023/CCEG/UEMOA of 10 January 2023 renewing the term of office and appointing members of the Court of Justice of UEMOA;

Regulation n°01/96/CM of 05 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU, in particular article 29 paragraph 2;

Regulation No. 01/2022/CJ of 15 April 2022 repealing and replacing Regulation No. 01/2012/CJ of 21 December 2012 on the Administrative Rules of the WAEMU Court of Justice;

Minutes No 2023-01/AP/01 of 1 February 2023 relating to the swearing-in of the members of the WAEMU Court of Justice;

Minutes No 2023-02/AI/01 of 1^{er} February 2023 concerning the appointment of the President of the Court and the distribution of functions within the Court;

Minutes n°2023-03/AP/02 of 02 February 2023 relating to the installation of the President of the WAEMU Court of Justice;

Application No 21R004 of 12 August 2021, for payment, between Mr ADA Seydou and three (03) others and the WAEMU Commission;

file documents ;

Order n°30/2023/CJ of 09 June 2023 on the composition of the plenary session to sit in open court on 22 June 2023;

summonses of the parties;

the Judge-Rapporteur in his report ;

Counsel for the applicant, in his oral observations ;

counsel for the defendant, in his oral observations; the aVOcat général

in his conclusions ,

Having deliberated in accordance with Community law :

1. THE FACTS

Considering that the applicants ADA Seydou, COULIBALY née KONE Karidia, TRAORE née SY Marème, N'DIAYE née DAO Djénébou state, through their counsel Maître SOMBIE, lawyer at the Ouagadougou Bar, that they were recruited by the WAEMU Commission on 03 March 1997, 02 January 2002, 02 January 2001 and 13 September 1999 respectively and held the aforementioned positions until their retirement on 31 December 2017 for the first, 27 March 2017 for the second, 25 October 2017 for the third and 16 September 2019 for the last;

That they maintain that from 1^e ' April 2009 until their retirement, their employer, the WAEMU Commission, paid their salaries, bonuses and allowances in breach of the decisions and regulations issued by it,

They explain that, following Decision No. 0233/2009/PCOM/WAEMU of 10 April 2009 reclassifying staff to the new salary scale of UEMOA, an error was made in the processing of their pay slips, from the period from 1^{er} to 30 April 2009, preventing their seniority bonus from being taken into account from the date indicated until their retirement;

They add that Implementing Regulation No 002/2009/COM/WAEMU of 09 April 2009, adopting a new salary scale for WAEMU staff, has not been applied in compliance with the conclusions of the meeting of the WAEMU Council of Ministers of 19 December 2008, which provides for the remuneration of WAEMU staff in accordance with the salary scale applied to that of ECOWAS;

That they stress that, in the implementation of the said Regulation, Article 1^{er}, which should serve as a reference for the determination of the basic salary of staff in the general and auxiliary services of the WAEMU, has been applied only in favour of civil servants;

That they note that, despite their representations and initiatives to the Commission's administration to extend the application of the clauses of the said Regulations to staff in the general and auxiliary services, nothing was done until their retirement;

They conclude that by letter dated 29 March 2021, they unsuccessfully referred their complaints to the Chairman of the Joint Consultative Committee on 07 April 2021;

It. CLAIMS AND PLEAS OF THE PARTIES

A. Pleas in law and main arguments of the applicant

Considering that the applicants, through their counsel, Maître Mamadou SOMBIE, request the Court to

- Reject the plea of lack of jurisdiction raised by the WAEMU Commission;
- Reject the plea of inadmissibility alleging that their action is time-barred; allow their appeal;
- Order the UEMOA Commission to pay the sums resulting from the financial losses incurred in respect of their salaries, allowances, bonuses and promotions indexed to the ECOWAS salary scale and broken down as follows:

Principal activity .

N° order	Full name	Salary differential	Seniority bonus	Reminder of progress	Total
1	ADA Seydou	44,292,143 FCFA	FCFA 3,196,102	FCFA 4,654,470	52,142,714 FCFA
2	COULIBALY née KONE Karidia	134,130,781 FCFA	FCFA 3,761,671	FCFA 6,546,587	139,529,098 FCFA
3	TRAORE née SY Marène	47,541,441 FCFA	FCFA 2,649,763	FCFA 4,277,619	54,468,823 FCFA
4	N'DIAYE née DAO Djénébou	6 7,424,211 FCFA	FCFA 4,852,848	FCFA 5,628,690	77,905,749 FCFA
TOTALGENERAL				324 046 384 FCFA	

In the alternative .

Considering that the applicants claim from the WAEMU Commission :

Payment of education grants for their children from ¹ April 2009;

- Payment of pension contributions to the Caisse de retraite par répartition avec épargne (GRRAE) ;

Payment of the sum of ten million (10,000,000) CFA francs per person, in respect of non-material damage suffered;

Finally, they request that the Commission be ordered to pay the costs incurred in the amount of five hundred thousand (500,000) CFA francs;

Considering that in their request, dated 30 July 2021, and in the reply, dated 08 November 2021, the applicants criticise the WAEMU Commission for not aligning their salaries with the new salary scale, referring to that of ECOWAS, and this, in accordance with Implementing Regulation No 002/2009/COM/WAEMU, of 09 April 2009, adopting a new salary scale for WAEMU staff;

That they maintain that this attitude on the part of the Commission constitutes a violation of its own texts, having caused them financial losses in terms of their salaries, allowances, bonuses and promotions;

They added that they had suffered moral prejudice and frustration because their employer had not made the sums claimed available to them, even though they were entitled to them;

In their written pleadings dated 08 November 2021, they seek dismissal of the defendant's plea of lack of jurisdiction on the grounds that, on the one hand, Article 140 of Regulation No 07/2010/CM/UEMOA on the Staff Regulations of UEMOA does not prohibit a retired employee from bringing an action against his former employer and that, on the other hand, this text makes no distinction between an active employee and a retired employee;

That they consider that, as the Law has neither prohibited nor distinguished, the Court of Appeal has jurisdiction to hear their claims;

Considering that as regards the plea of inadmissibility based on the foreclosure raised by the WAEMU Commission, they request that it be dismissed on the grounds that they only became aware of Implementing Regulation No. 002/2009/COM/WAEMU of 09 April 2009 at the beginning of February 2021, well after their retirement;

They state that they obtained a copy of the Implementing Regulations at the end of February 2021 before unsuccessfully referring the matter to the Chairman of the Joint Consultative Committee on 07 April 2021 in a collective letter dated 29 March 2021;

That they add that from 07 April 2021 to 07 July 2021 more than three (3) months passed without the decision-making authority responding to their complaints, which amounts to an implied decision of rejection;

That they conclude that their application is admissible;

B. Pleas in law and main arguments of the defendant

Whereas in its statements of defence and rejoinder, dated 12 October and 08 December 2021 respectively, the Commission, through its agent, assisted by Maitre Issa SAMA, a'vOCat, of the Ouagadougou Bar, raises the following points the Court of Appeal does not have jurisdiction, relying on the provisions of Articles 1, 4, 59, 101, 136 and 140 of Regulation No. 07/2010/CM/WAEMU of 1 October 2010 on the status of WAEMU staff ;

That, according to the defendant, the *Staff Regulations govern the agent qoe/ qUe soif the place where they carry out their duties (art. 4) ;*

It submits that, according to Article 1^{er} referred to above, "**person**" means "**all persons in the service of the bodies of the Union**" (paragraph 5), the term "staff member" referring to an official or contractual agent in one of the positions (active employment, secondment, availability) provided for in the Staff Regulations. Consequently, a retired official or contract staff member is not a staff member;

It therefore considers that, as the applicants are former UEMOA staff members, they no longer have the status of staff members to bring a case before the Cour de céans in accordance with Article 140(1) of the Staff Regulations, which expressly states that: "**the Cour cfejustice Ile l'UEMOA shall have jurisdiction to hear any**

dispute *between the Union and a staff member...*". as confirmed by art. 136 of the same regulation, which states that "***the staff member***

may, in accordance with the hierarchical procedure, be referred to the Consultative Committee

Paritaire...” ;

It emphasises that the Court's jurisdiction would be justified if the complaints in question had been brought to the Commission's attention in advance, prior to its retirement.

Considering that the Commission adds that the application is inadmissible on the basis of the same Article 140 of the Regulations which provides that referral to the Joint Advisory Committee, within a period of two (02) months, is a compulsory prerequisite for the admissibility of a staff member's appeal to the WAEMU Court of Justice and this, as from

- From the date of publication of the decision ;
The date of notification to the official concerned ;
- From the day on which the person concerned became aware of it ;
- The date on which the time limit for responding expires if the appeal relates to an implied rejection decision;

It explains that, in the case in point, the decisions to award the salaries contested by the plaintiffs take effect as soon as each civil servant or employee receives his or her salary;

Or it considers, therefore, that the event giving rise to the present dispute is this monthly settlement of the salaries due to the appellants, who had, on each occasion, two (02) months in which to bring the dispute before the Joint Consultative Committee;

That the Commission notes that the referral to the Joint Consultative Committee by the applicants, in a letter dated 29 March 2021 and addressed to the Chairman of the said Committee on 07 April 2021, is belated and inoperative as it relates to claims of

2009 to 28 March 2017 for COULIBALY/ KONE Karidia,

2009 to 26 October 2017 for TRAORE/SY Marème,

- 2009 to 31 December 2017 for ADA Seydou,

2009 to 17 September 2019 for N'DIAYE/DAO Djénébou ;

That the Commission also considers the applicants' claims to be unfounded in their action;

That with regard to the alignment of salaries on the ECOWAS salary scale, and contrary to the allegations of the applicants, the WAEMU Council of Ministers did not decide to apply the ECOWAS salary scale to WAEMU during its deliberations on the 2009 budget of the organs;

It points out that the Council of Ministers decided instead to apply to WAEMU staff a salary scale based on that of ECOWAS;

That, on this basis, the WAEMU Commission has renewed, for the General Services (G) and Auxiliary Services (M) categories, which include the applicants, the same amounts as the salary scale applicable to ECOWAS staff in 2009;

That it considers that, having applied the recommendations of the Council of

Ministers concerning the adoption of a scale based on that of ECOWAS, it is therefore incumbent on the Commission to

the applicants to prove that the 2009 salary scale does not refer to the ECOWAS salary scale of the time

It adds that the persons concerned, at the time of their definitive termination of employment, all signed, without reservation, receipts in full and final settlement of all accounts, which renders this claim unfounded;

That the defendant considers, therefore, that the applicants cannot plead any non-material damage;

Whereas the Commission requests that all the applicants' claims be rejected as unfounded;

In its rejoinder, dated 08 December 2021, the Commission reiterates its previous submissions on the admissibility and merits of the plea of lack of jurisdiction and inadmissibility of the application;

On the last point, it maintains that the content of the applicants' correspondence dated 29 March 2021 addressed to the Chairman of the Joint Consultative Committee demonstrates that they were indeed aware of Implementing Regulation No. 002/2009/COM/WAEMU of 09 April 2009 adopting a new salary scale for WAEMU staff;

It points out that the following statement emerges expressly from this correspondence placed in the file by the applicants themselves: "*Mr President, President SOUMARE was made aware of these anomalies by Mr Seydou ADA, driver and our representative. He immediately contacted Commissioner BARCOLA, Director of the Commission's Secretariat, whom he asked to regularise the situation. The latter called on the Director of Human Resources, Mr KOUNHOUNDE, who acknowledged that it was an error that needed to be corrected. He promised to take charge of correcting these errors and to keep us informed. In the meantime, and despite our repeated reminders, nothing was done until we retired*". (Cf. doc. N°1) ;

It therefore concludes that, since the applicants referred the matter to the Commission's Joint Advisory Committee by letter dated 29 March 2021, they have exposed their referral to the statute of limitations;

III. DISCUSSION

A. Jurisdiction of the Court

Whereas the question of the jurisdiction of the Court of First Instance was raised, in *limine litis*, by the Commission, on the ground that the applicants, being retired members of staff, are no longer entitled to bring proceedings before the Community judicature;

Considering that Article 140 paragraph 1 of Regulation N°07/2010/CM/UEMOA of 1 October 2010 on the Staff Regulations of the Union provides that: "***The Court shall cle Justice de l'UEMOA est compétente, poc/r connaître clef /it*ge opposant l'Union à l'agent...*** " ;

That Article 15 al. 4 of Regulation n°01/96 of 05 July 1996 laying down the rules of procedure of the WAEMU Court of Justice expressly provides that: "***The Court shall rule on any dispute between the organs of the Union and their agents under the conditions laid down in the statute of the peçonnef***";

Whereas the aforementioned texts refer to employees, without making any distinction between active employees or retired employees;

Considering that to exclude a category of agents, as requested by the defendant, on the pretext that they are eligible for retirement, leads to depriving them of the right to appeal and is in contradiction with the provisions of Article 3, du titre 1er du Traité de l'Union Economique et Monétaire Ouest Africaine qui prévoient que " *l'Union respect dans son action, les cfoifs l'ondamentaux énoncés dans la Oéc/laration Universelle des Droits de l'homme de 1948 et la Charte Africaine des Droits de l'Homme et des Peop/es de 1981* ".

It is common ground that international civil service law has established the right to appeal to a judge as a general principle of law;

It should be added that in various judgments (SACKHO Abdourahman no. 02/1998, DIENG Ababacar no. 03/1998, SANDWIDI Elie no. 01/2020, Jean Yves SINZOGAN no. 05/201) the Court of Appeal has made the right to appeal a fundamental right, respect for which is guaranteed by the Treaty on European Union;

That it is therefore appropriate to declare that the court of first instance has jurisdiction to hear the case;

B. Admissibility of the action

Considering that the applicants seek the rejection of the objection of inadmissibility on the grounds of foreclosure raised by the Commission on the grounds that they only became aware of Implementing Regulation No 002/COM/WAEMU of 09 April 2009 at the beginning of February 2021, well after their retirement;

They state that they duly referred the matter to the Chairman of the Joint Consultative Committee on 07 April 2021, in a letter dated 29 March 2011, i.e. less than two (2) months after this knowledge was acquired;

Considering, for its part, that the Commission submits that the present application is inadmissible
action for foreclosure because occurred in violation
of Regulation n°07/2010/CM/UEMOA dated 1st October 2010 on the
status of the staff of the
UEMOA, which provides for mandatory referral to the Joint Consultative Committee within the
of two (2) months;

It notes that the claimants lodged a complaint with the Joint Consultative Committee on 07 April 2021, i.e. more than two (2) months after their respective salaries had been paid;

Whereas Article 136 of the above-mentioned Regulation n°07/2010/CM/UEMOA states that. "*A staff member may refer the matter to the joint consultative committee, in accordance with the hierarchical order, concerning a decision of the appointing authority adversely affecting him, either until the appointing authority has taken a decision or until it has taken a measure imposed by this Regulation. The application must be submitted within one month. This period runs from counting :*

- *from the date of publication in the case of general measures;*
- *of the day of notification of the decision to the addressee and, in any case, at the latest on the day on which the person concerned learns of it, if it is a measure of an incivicfc/e/ nature;*

- *of the date of expiry of the time limit for reply, /when the res/amafion relates to an unlawful rejection decision, within the meaning of article 139 below";*

Whereas Article 140 of the same Regulation provides that "the *Cour de justice* shall have jurisdiction to hear *any* dispute between *the Union* and the agent.

However, the appeal will be lodged with the *Court* only :

- if the *advisory* committee has already been *seized* c/one complaint;
- *if this complaint* has resulted in an *explicit or implicit* decision to reject, in part or *in whole*, *the appointing* authority.

The appeal must be *lodged* with the Cot/r within *two months* of *either*:

- *the date of publication of the* decision;
- the date of its notification to the fonctionnaire concerned;
- *of the day* on which *the interested party* became aware of it;
- *of the expiry date* of the response, /if the appeal relates to *an unlawful decision to reject*";

It follows that referral to the Joint Consultative Committee is an obligatory prerequisite for referral to the Court of Justice;

That, in the present case, the applicants, who are challenging the liquidation of their respective salaries of

- 2009 to 28 March 2017 for COULIBALY/KONE Karidia ;
- 2009 to 26 October 2017 for TRAORE/SY Marème;
- 2009 to 31 December 2017 for ADA Seydou,
- 2009 to 17 September 2019 for N'DIAYE/DAO Djénébou ;

did not refer the matter to the Joint Committee until 07 April 2021, in correspondence dated 29 March 2021, i.e. more than two months after their salaries had been paid;

It also follows from this correspondence, which was produced by the Council, that they were well aware of the Implementing Rules in question, well before their respective retirements;

The correspondence states that the applicants had made unofficial and verbal representations to the former EU authorities between 2011 and 2017;

Accordingly, applicants who have not referred the matter to the Joint Consultative Committee within the legal time limits cannot validly refer the matter to the Court;

They should be declared inadmissible in their action on the grounds of foreclosure;

IV. ON EXPENSES

Whereas Article 60(2) of the Rules of Procedure of the Court of Justice provides that "the unsuccessful party shall be ordered to *pay the costs*";

Whereas, in the present case, the applicants are unsuccessful in the proceedings; whereas they should be ordered to pay the costs;

FOR THESE REASONS :

Ruling publicly, contradictory, in matters of function at first and last instance :

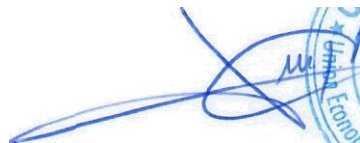
- Declares itself competent ;
- Declares ADA Seydou, COULIBALY née KONE Karidia, TRAORE née SY Marème and N'DIAYE née DAO Djénébou inadmissible in their action for payment of differential wages, bonuses, allowances, non-material damage and costs incurred;
- Order them to pay the costs.

Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.

And signed by the Chairman and the Registrar.

Illegible signatures follow.
Ouagadougou, 22 June 2023

For the
Registrar The
Deputy Registrar

A handwritten signature in blue ink is written over a circular official stamp. The stamp contains the text "COURT OF JUSTICE" and "COIBOR" around its perimeter.

Hamidou YAMEOGO