

EXTRACT FROM THE REGISTRAR'S MINUTES

court of justice of the UEMOA

session of 19 DECEMBER 2012

STOP

N-03/2012

From 19 December 2012

The Court of Justice of UEMOA, sitting in ordinary session, with :

Dame KODJOH Idovys Carine d.p. DESSOU

- Mr Ousmane DIAKITE, President of the Court,

- Mrs Ramata FOFANA,

- Mr Hamidou Salifou KANE,

Judges, a.s.s.

**La Caisse de Retraite par Répartition avec Epargne de l'Union Monétaire
Ouest Africaine (CRRAE - UMOA)**

in the presence of M. Dabré GBANDJABA, 1st

Advocate General;

with the assistance of Master Fanvongo SORO,

Registrar; delivered the following judgment:

Présents :

**Mr Ousmane DIAKITE, Chairman
MADAME Ramata FOFANA, Judge
H. Hamidou Salifou KANE, Judge
M. Dabré Gbandjaba, 1st Avocat général
Me Fanvongo SORO, Greffier**

EHTRE :

Mrs KODJOH Idovys Carine épouse DESSOU, of Benin nationality, residing at Abidjan (Côte d'Ivoire), Riviera palmeraie ; having elected domicile for the purposes hereof in the chambers of SCPA Touré - Amani - YAO 8 Associés, Avocats à la Cour d'Appel d'Abidjan, Cocody II Plateaux, Boulevard Latrille, derrière la nouvelle agence SGBCI, Immeuble KINDALO, 1^{ER} étage, porte n° 910, 28 BP 1018 Abidjan 28, tél : 22 41 36 69/ 22 41 36 70 :

Recours en indemnisation

d'une part ;

La Caisse de Retraite par Répartition avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE - UMOA), head office, Abidjan, Boulevard Botreau Roussel, 01 BP 2056 Abidjan 01, tél (225) 20 25 35 00 ; represented by Mr Siriki KONE, Acting Managing Director, with counsel, Société Civile Professionnelle d'Avocats N'GOAN, ASMAN et Associés, Avocats à la Cour d'appel d'Abidjan, residing at 37 rue de la canebière - Cocody, 01 BP 3361 Abidjan 01 tel (225) 22 40 47 00

on the other hand ;

THE COURT :

HAVING REGARD TO the application dated 1 November 2009, received and registered at the Registry on 03 December 2009;

HAVING REGARD TO letter No 026/2009 dated 15 December 2009 serving the said request on the Director General of CRRAE - UMOA;

Having regard to letter ^{n°} 02/2009 dated 15 December 2009 serving the said request on the Governor of the BCEAO ;

HAVING REGARD TO the statement of defence dated 08 January 2010 received at the Registry on 20 January 2010 from SCPA N'GOAN, ASMAN et Associés, on behalf of CRRAE - UMOA;

HAVING REGARD TO the statement of defence dated 15 February 2010 received at the Registry on 18 February 2010 from SCPA TOURE - AMANI - YAO et Associés, on behalf of the applicant;

HAVING REGARD TO the rejoinder of SCPA N'GOAN, ASMAN & Associés dated 12 March 2010, received at the Registry on 17 March 2010;

HAVING REGARD TO the other documents on file ;

VU the Treaty of the West African Economic and Monetary Union dated 10 January 1994, in particular Article 38 ;

HAVING REGARD TO the Additional Protocol on the supervisory bodies of the WAEMU ;

HAVING REGARD TO Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ,

HAVING REGARD TO Regulation No. 01/96IClvT of 5 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU;

HAVING REGARD TO Regulation No. 01/2010/CDJ of 02 February 2010 repealing and replacing Regulation No. 01/2000ICDJ of 06 June 2000 on the Administrative Rules of the WAEMU Court of Justice;

HAVING REGARD TO Additional Act n°03/CCEG/UEMOA of 20 January 2007 on the renewal, appointment and termination of the mandates of members of the Court of Justice of UEMOA;

Vie Minutes No 01/2010 of 13 April 2010 on the appointment of the President and the
we allocation of functions within the Court of Justice of the WAEMU;
d at

HAVING REGARD TO Order No 26/2012/CJ on the composition of the plenary session of
the WAEMU Court of Justice;

WITNESS Mr Hamidou Salifou KANE, rapporteur, in his report

or Mr Dabré GBANDJABA, 1^{er} Advocate General, in his submissions;

Having deliberated in accordance with Community law ;

A ersdu le présent arrêt .

Considering that by application dated 10 November 2009, registered at the Court Registry on 03 December 2009, under number 07/2009, MME KODJOH Idovys Carine, married name DESSOU born on 19 October 1972 in Lokossa (Republic of Benin) of Beninese nationality, residing in Abidjan (Republic of Côte d'Ivoire), previously Executive Assistant at CRRAE-UMOA ; O1 BP 3802 Abidjan 01, has, through its Counsel SCPA TOURE- YAO- AMANI et Associés. avocats à la Cour d'appel d'Abidjan, lodged an application for referral to the Court in respect of a dispute between a staff member and an Organ of the Union, in this case the Caisse de Retraite par Répartition avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA) located in Abidjan - Republic of Côte d'Ivoire.

1. FACTS AND PROCEDURE

Whereas the facts of the case as set out by the applicant are as follows:

Following successful recruitment tests, Ms KODJOH Idovys Carine, married name DESSOU, was recruited on 10 June 2009 to CRRAE-UMOA for an indefinite period preceded by a trial period of six (6) months.

Prior to her recruitment, she resigned from Société Béninoise d'Energie Electrique (SBEE), where she had worked for ten (10) years.

On 1^e July 2009, she took up her post at the CRRAE, where she was introduced to all staff on 2 July 2009 and actually started work on 03 July. After feeling unwell on 08 July, she went to hospital where the attending physician prescribed two (2) days off work from Tuesday 08 to Friday 10 July 2009, the date on which her employer gave her a letter terminating her probationary period with effect from 11 July 2009.

In this letter, CRRAE states that "following your entry into service on 1^{er} July 2009, and in view of the shortcomings noted in your performance since that date, we regret to inform you that we are terminating your employment contract with effect from 11 July 2009".

On 11 September 2009, the applicant submitted this letter to the Governor of the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO) for censure on the grounds that it was manifestly abusive;

That this hierarchical appeal remained unanswered for more than two (2) months, hence the referral by the applicant to the UEN-WAEMU Court of Justice in order to obtain compensation for the abuse of rights by the CRRAE-UMOA;

That it requests the Court to order CRRAE-UMOA to pay it the sum of FCFA 35,000,000 in damages;

Considering that CRRAE, the defendant, maintains that from 1 to 4 June 2009, tests for the recruitment of managerial staff were organised, at the end of which Ms DESSOU was selected as Executive Assistant on the basis of a fixed-term employment contract, with a trial period of six (6) months.

Ms DESSOU joined the CRRAE's Operations and Research Department on 1^{er} July 2009;

However, from the very first days of her employment, several incidents occurred, in particular during the handover on 2 July with the outgoing Executive Assistant, when Ms DESSOU showed signs of fatigue which, at the end of the day, led to dizziness, causing the handover to be interrupted; on 06 July, due to the same symptoms, she was rushed by a CRRAE agent to the medical office of the BCEAO's main branch; finally, on 08 July, Mrs DESSOU was transported to the medical office of the BCEAO's main branch.

urgently by his line manager, to the "Groupe Médical du Plateau" clinic, where he was given a two (2) day medical leave.

Considering that the CRRAE-UMOA considered that due to the particular constraints linked to the positions at the CRRAE which require a high level of availability and taking into account the health situation of Mrs DESSOU, it preferred to terminate the employment relationship with the applicant;

A letter dated 10 July 2009 was sent to her, notifying her of the end of her probationary period;

Considering that Mrs DESSOU considered this termination to be unfair, she referred the matter to the UEMOA Court of Justice in the above-mentioned application;

That this request was served on the Director General of CRRAE-UMOA and the Governor of BCEAO in Dakar (Senegal)

Considering that the proceedings were closed following the Closing Order dated 09 June 2010.

2. SUBMISSIONS OF THE PARTIES

Considering that the applicant, assisted by SCPA TOURE -YAO-AMANI et Associés, lawyers at the Court, Cocody II Plateaux - Abidjan, requests the Court to declare her action admissible and well-founded and, on the merits, to order CRRAE-UMOA to pay her the sum of thirty-five (35) million CFA francs by way of damages;

Whereas CRRAE-UMOA is assisted by SCPA NGOAN-ASMAN et Associés, avocats à la Cour 37, rue de la Canebière, Cocody - Abidjan, claim that the Court should declare that it does not have jurisdiction to hear the case and should refer Mrs DESSOU to appeal and, in the alternative, declare Mrs DESSOU to be unfounded.

3. IN FORM AND PRINCIPAL

Jurisdiction of the Court

Considering that Article 52 of CRRAE-UMOA's Articles of Association adopted on 18 January 2006 in Abidjan provides that: "Any dispute relating to the interpretation or application of the present Articles of Association shall be submitted to CRRAE-UMOA.

Statutes or Scheme management rules, must be submitted to the Fund prior to any legal action (52.1); that the claim is examined by a Commission for Amicable Redress, the composition and operating procedures of which are determined by the Board of Directors (52.2); that in examining the observations or complaints submitted to it, the preliminary appeals committee may, if necessary, call on the services of a legal counsel or any other expert competent in the matter (52.3); that the preliminary appeals committee rules and notifies its decision to the parties concerned (52.4), that in the event of disagreement, the claimant may bring the dispute before the competent court in the place where the Fund has its registered office (52.5)";

Considering that the Articles of Association of CRRAE-UMOA, in particular Article 52.5, provide for a clause attributing exclusive jurisdiction to the courts of the place where the headquarters of the Fund are located, in this case the courts of Abidjan in the Republic of Côte d'Ivoire;

Consequently, the Court, without there being any need to examine the other pleas in law, must declare that it has no jurisdiction pursuant to the said Article and refer the applicant to a higher tribunal;

Article 61 of the Rules of Procedure of the Court should be applied and the applicant ordered to pay the costs;

For these reasons :

The Court, adjudicating **publicly and** adversarially in **civil** service matters community :

- Se zfé/are incompeténefe *en application* de l'**article 53** des sfafzzfs Ile la *CRRAE- UMOA* comporYanf one **ciause** attziôzzfrve de compétence ;
- Refers **the reqt/éranfe** to *better provide for itself,*'
- f.a concfamne atzx d'épens.

Signed by the Chairman and the Registrar;

illegible signatures follow,

For certified delivery, Ouagadougou, 15 February

2013

The
Registrar


Fanonso SORO

