

**JUDGMENT  
N°001/2018  
14 MARCH 2018**

**EXTRACT FROM THE MINUTES OF THE  
REGISTRY OF THE COURT OF JUSTICE  
OF THE WEST AFRICAN ECONOMIC  
AND MONETARY UNION (WAEMU)**

**PUBLIC HEARING OF 14 MARCH 2018**

The Court of Justice of the WAEMU, meeting in ordinary public session on the fourteenth day of March in the year two thousand and eighteen, in which were seated :

Mr Salifou SAMPINBOGO, Chairman ;

Mr Mahawa Sémou DIOUF, Mr Daniel Amagoin TESSOUGUE, Mr Euloge AKPO, Mr Augusto MENDES, Judges ;

in the presence of Ms Eliane Victoire ALLAGBADA JACOB, Advocate General;

with the assistance of Mr Boubakar TAWEYE MAIDANDA, Registrar ;

has rendered the following judgment:

**BETWEEN :**

**Mr KABORE W. Charles**, acting on behalf of the of its council, Cabinet of Maître TIENDREBEOGO Daniel, Tel : (00226) 70 25 40 65/(00226) 25 31 29 95 ; 02 BP : 5382 Ouagadougou 02-Burkina Faso, Avocat à la Cour,

**Applicant, on the one hand ;**

**AND**

**Caisse de Retraite par Répartition avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA)**, whose legal counsel is 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; Fax: (225) 22.40.47.19,

**Defendant, on the other hand ;**

*Action for annulment of a decision relating to the Community civil service*

**Mr KABORE W. Charles**

*C/*

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

**Composition of the Court :**

- **Mr Salifou SAMPINBOGO, Chairman**
- **Mr Mahawa Sémou DIOUF, Judge**
- **Mr Daniel Amagoin TESSOUGUE, Judge**
- **Mr Euloge AKPO, Judge, Rapporteur**
- **Mr Augusto MENDES, Judge**
  
- **Ms Eliane Victoire ALLAGBADA JACOB, Advocate General**
  
- **Me Boubakar TAWEYE MAIDANDA, Registrar**

# **THE COURT**

**HAVING REGARD TO** the Treaty of the West African Economic and Monetary Union dated 10 January 1994, as amended on 29 January 2003;

**HAVING REGARD TO** Additional Protocol No. 1 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. 01/96/CM of 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;

**HAVING REGARD TO** Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU ;

**HAVING REGARD TO** Minute No. 01/2016/CJ of 25 May 2016 on the appointment of the President of the Court and the distribution of functions within the Court;

**HAVING REGARD TO** Minutes No 02/2016/CJ of 26 May 2016 relating to the swearing-in and installation of the members of the WAEMU Court of Justice;

**HAVING REGARD TO** Order N°28/2017/CJ on the composition of the plenary panel due to sit in ordinary public session on 14 February 2018;

**HAVING REGARD TO** the summonses of the parties ;

**HAVING REGARD TO** the application qualified as initial dated 13 January 2014 and the application qualified as regularised dated 10 February 2015, respectively registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (UEMOA), on 13 January 2015, under number 15 R 001 and on 05 March 2015, under number 15 R001.2, by which Mr W. Charles KABORE, through his counsel, Maître Daniel TIENDREBEOGO, Avocat à la Cour, residing at Ouagadougou, avenue Loudun, 01 BP 1497 Ouagadougou 01, lodged an appeal for the annulment of the decision not to confirm Mr KABORE W. Charles as financial controller of the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA), the subject of correspondence No DG/012/11/2014 dated 13 November 2014 ;

**HEARD** the Judge-Rapporteur in his report;

**HEARD** counsel for Mr W. Charles KABORE in his oral observations;

**HEARD** the oral observations of the Board of the Caisse de Retraite par Répartition

Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA);

**HAVING** heard the Opinion of the Advocate General;

**Having deliberated in accordance with Community law :**

**I- FACTS AND PROCEDURE**

Considering that by petitions for annulment of the decision of his non-confirmation as financial controller of the **Caisse de Répartition avec Appel à l'Epargne de l'UMOA (CRRAE-UMOA)** registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (UEMOA), on 13 January 2015, under number 15 R 001 and on 05 March 2015, under number 15 R001.2, Mr W. Charles KABORE, through his counsel, Maître Daniel TIENDREBEOGO, Avocat à la Cour, states that, recruited to CRRAE-UMOA as Financial Controller, on 27 March 2014, he is subject to an open-ended contract with a trial period of six (06) months renewable once;

That in execution of this contract, which took effect from 02 June 2014, a letter of assignment, defining the objectives to be assigned to him, was notified to Mr W. Charles KABORE, on 1<sup>er</sup> July 2014;

That, on the other hand, during the probationary period, by correspondence no. DG/012/11/2014 dated 13 November 2014, the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA) notified him of its decision not to appoint him to his post, at the end of the probationary period, setting the date of his definitive departure from the fund at 30 November 2014 ;

That on 28 November 2014, he lodged an informal appeal with the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA) which was rejected by correspondence No DG/013/11/2014 dated 28 November 2014 ;

That is why it has referred the matter to the WAEMU Court of Justice for the purpose of :

### **IN THE FORM :**

- Declare yourself competent;
- Declare admissible the action for annulment of the decision not to confirm the applicant as financial controller of the CRRAE-UMOA dated 13 November 2014;

### **IN THE BACKGROUND :**

- Annul the decision not to confirm the applicant as financial controller of the CRRAE-UMOA dated 13 November 2014 for formal defect in that the procedure for validating the financial controller was violated ;
  - Failing that, annul the decision not to confirm the applicant as financial controller of the CRRAE-UMOA dated 13 November 2014 for failure to objectively assess the services provided by the applicant during the probationary phase;
- Order as to costs.

## **II- THE PLEAS IN LAW OF THE PARTIES**

Considering that in support of his appeal, in his regularised application dated 10 February 2015, Mr W. Charles KABORE argues that the procedure for confirmation as financial controller was not complied with, on the grounds that he received the correspondence terminating his probationary employment contract on 14 November 2014, whereas it was only on 19 November 2014 that, for the first time, he was entitled to the contents of his appraisal sheet;

That, however, in accordance with the provisions of Articles 22 and 28.1 of the Fund's Articles of Association, the activity of a financial controller is normally subject to periodic evaluation by an audit committee which assesses the independence, skills and performance of the financial controller; That the evaluation gives rise to the drawing up of a report which is communicated, during an interview with his hierarchical superiors, to the financial controller who may submit his observations in writing through the hierarchical channels;

That the staff member is thus informed of his performance in relation to the objectives assigned to him; That the confirmation of the Financial Controller by the Chairman of the Board of Directors depends on his assessment of the appraisal report previously appraised by the Board of Directors;

In addition, Mr W. Charles KABORE demonstrates that the Chairman of the Board of Directors justified his non-incorporation into the fund's workforce by an inconclusive assessment of his performance and the relevant provisions of the staff regulations;

It considers that these are inaccurate and misleading reasons, based on a non-objective assessment, for two reasons;

That, firstly, after the one-month immersion period within the departments of CRRAE-UMOA, he submitted a report to his superiors, together with a programme of activities and the design of audit tools; That the internal audit tools he designed were not the subject of any particular observations that might call into question their quality;

Secondly, it has carried out three audit assignments, in accordance with the terms of reference (ToR) approved by the caisse's management, the reports of which have been produced and communicated to interested parties; It has not received the slightest comment from its superiors regarding either the quality or the completeness of the work carried out; A decision of the Chairman of the Board of Directors is taken to apply the recommendations of the treasury audit;

Considering that, in reply, in its statement of defence dated 02 March 2015, the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA) raises in limine litis, the lack of jurisdiction of the Court of Justice of the West African Economic and Monetary Union to hear the present dispute between it and one of its "ex-agents";

In support of its claim, it acknowledges that the Court of First Instance may only hear disputes between the Union and its servants or disputes between the organs of the Union and their servants, in accordance with the provisions of Article 16 of the Protocol.

Addendum No. 1 on the supervisory bodies of the WAEMU and Article 15(4) of the Rules of Procedure of the Court of Justice;

Considering that, in its view, CRRAE-UMOA is created by BCEAO and BOAD and is not one of the organs of the Union, listed exhaustively in Article 16 of the WAEMU Treaty of 10 January 1994 and Article 1<sup>er</sup> of Regulation No 10/2001/CM/UEMOA on the financial regulations of the organs of the West African Economic and Monetary Union;

It concludes that it cannot be otherwise, unless the BCEAO and the BOAD are given the capacity to amend or supplement the Union Treaty of their own accord;

Considering that in its statement of defence dated 16 August 2015, the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA), concludes that the applicant's claim should be dismissed for two reasons:

Firstly, Article 18 of CRRAE-UMOA's Staff Regulations provides that: "During the probationary period, the parties have the mutual right to terminate the contract without notice or compensation";

That it follows that CRRAE-UMOA is under no legal obligation to justify its decision not to grant tenure; That during the probationary period, its freedom to terminate, which is de jure, is exempt from any compensation;

Secondly, the decision not to appoint a staff member after a probationary period is not subject to the annual appraisal procedure laid down for established staff members by Article 22 of the Staff Regulations; the appraisal of a Financial Controller's skills is not a matter for the Audit Committee but for the Director General; the administrative management of staff is the sole responsibility of the Directorate General;

It follows that in terminating Mr W. Charles KABORE's probationary period, CRRAE-UMOA did not commit any abuse;

Considering that the applicant replied to these rebuttals, in his brief dated 25 May 2015, to indicate that the present case does indeed fall within the scope of the

jurisdiction of the Court of Justice of the West African Economic and Monetary Union;

Considering that in support of his argument, Mr W. Charles KABORE invokes the provisions of Article 16 of Additional Protocol No. 1 relating to the supervisory bodies of WAEMU and Article 1.4 of regulation n°07/2010/CM/UEMOA relating to the staff regulations of UEMOA stating that "the bodies of UEMOA hereinafter designated: the Commission; the Court of Justice; the Court of Auditors; the Interparliamentary Committee; the Regional Consular Chamber; the Labour and Social Dialogue Council; any body that may be created, pursuant to the provisions of article 40 of the Treaty of UEMOA";

Considering that Mr W. Charles KABORE adds that according to article 6 of its statutes, CRRAE-UMOA is founded by BCEAO and BOAD which are specialised institutions of the Commission; That in accordance with the provisions of articles 13.3 and 13.4 of the said statutes, the Chairman and Vice-Chairman of the Board of Directors of CRRAE-UMOA are appointed by the Governor of BCEAO and the President of BOAD;

Considering that in its rejoinder and in its memorandum dated 18 June 2015, the Caisse de Retraite par Répartition Avec Epargne de l'Union Monétaire Ouest Africaine (CRRAE-UMOA) asserts that there is no need to debate the merits of the dispute and merely reiterates a few points from its previous argument.

### **III- OF THE DISCUSSION**

#### **III.1 ON COMPETENCE**

Considering that the CRRAE-UMOA raises in limine litis the lack of jurisdiction of the court of first instance on the grounds that it is created by the BCEAO and the BOAD and is not one of the organs of the Union, exhaustively listed by article 16 of the Treaty of the UEMOA of 10 January 1994 and article 1<sup>er</sup> of the Regulation n° 10/2001/CM/UEMOA on the financial regulations of the organs of the West African Economic and Monetary Union;



Whereas, in accordance with Article 15-4 of its Rules of Procedure  
"The Court shall rule on any dispute between the bodies of the Union and their servants under the conditions laid down in the Staff Regulations;

Considering that the rules of jurisdiction are of public order and may be raised at any stage of the proceedings, even of the court's own motion;

That the Articles of Association of CRRAE-UMOA, in particular Article 52, provide for a clause conferring exclusive jurisdiction on the courts of the place where the Fund has its registered office, in this case the courts of Abidjan in the Republic of Côte d'Ivoire; that, consequently, the Court, without needing to examine the other pleas in law, must declare that it does not have jurisdiction pursuant to the said Article and refer the applicant to a higher court;

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

**P A R C E S M O T I F S**

**Ruling publicly and in adversarial proceedings at first and last instance in matters relating to the Community civil service;**

- **Declares itself incompetent;**
- **Refers Mr W. Charles KABORE, the applicant, to appeal;**
- **Order him 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, 03 October 2018**

**The Deputy Registrar**

**Hamidou YAMEOGO**

