

**JUDGMENT  
NO.  
003/2018  
OF 13 JUNE 2018**

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

**PUBLIC HEARING OF 13 JUNE 2018**

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

*Actions for annulment, reinstatement  
and payment*

Mr Charles Gbêtossessi  
NOUATIN

C/

The WAEMU Commission

Mrs Joséphine Suzanne EBAH TOURE,  
President ;

Mr Salifou SAMPINBOGO, Mr Mahawa Sémou DIOUF, Mr Daniel Amagoin TESSOUGUE, Judges and Mr Augusto MENDES, Judge-Rapporteur; in the presence of Mr Yaya Bawa ABDOULAYE, Advocate General;

with the assistance of Mr Hamidou YAMEOGO,  
Deputy Registrar;

has rendered the following judgment:

**Composition of the Court :**

- Mrs Joséphine Suzanne EBAH TOURE, President ;
- Mr Salifou SAMPINBOGO, Judge ;
- Mr Mahawa Sémou DIOUF, Judge ;
- Mr Daniel Amagoin TESSOUGUE, Judge ;
- Mr Augusto MENDES, Judge-Rapporteur ;
- Mr Yaya Bawa ABDOULAYE, First Advocate General ;
- Mr Hamidou YAMEOGO, Court Clerk.

**BETWEEN :**

Mr Charles Gbêtossessi NOUATIN, born on 04 November 1964 in Porto-Novo (Republic of Benin), former Economist Planner Manager at UEMOA, resident in Ouagadougou, acting through his Counsel Maître Neya Ali, Avocat à la Cour à Ouagadougou, Secteur 14, Rue Tueffo Amoro, porte 346, 06 BP 10228 Ouagadougou (Burkina Faso), Tel: 25.36.36.17, Fax : +25.36.25.81, Email : [cabaline@fasonet.bf](mailto:cabaline@fasonet.bf)

**Plaintiff, on the one hand ;**

**AND**

The Commission of the West African Economic and Monetary Union (UEMOA) 01 BP 543 Ouagadougou ( Burkina F a s o ) , Tel: +226.25.31.88.73-76, Fax: +226.31.88.72 represented by Mr Eugène KPOTA, Director of Legal Affairs of the Commission; assisted by Maître Harouna SAWADOGO, Avocat à la Cour, Ouagadougou-Burkina Faso ;

**Defendant, on the other hand ;**

## **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 T O** Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ;

**HAVING REGARD T O** Regulation No. 01/96/CM of 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;

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

**HAVING REGARD t o** 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 T O** 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 t o** Order No. 17/2018/CJ on the composition of the plenary panel due to sit in ordinary public session on 09 May 2018;

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

**HAVING REGARD TO** the application registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (WAEMU) on 04 November 2013, under number 13 R003 and served on the President of the WAEMU Commission on 05 November 2013;

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

**HEARD** the oral observations of Mr Charles Gbêtossessi NOUATIN;

**ORDERED** the Council of the WAEMU Commission, in its oral observations ;

**HEARD** The First Advocate General in his Opinion ;

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

## **I. FACTS AND PROCEDURE**

Under a fixed-term employment contract dated 04 April 2011, due to expire on 31 December 2012, Mr Charles Gbêtossessi NOUATIN was recruited by the WAEMU Commission as an economist.

By letter, N° 0829/DSAF/DRH, dated 10 October 2012, the Commissioner in charge of the Department of Administrative and Financial Services (DSAF) informed him that his contract, which expires on 31 December 2012, would not be renewed.

In a letter dated 8 May 2013, Mr Charles Gbêtossessi NOUATIN asked the President of the WAEMU Commission, the appointing authority, to restore what he considered to be his rights, but his request remained unanswered.

On 06 September 2013, he referred the matter to the UEMOA Joint Consultative Committee, requesting a stay of execution of the aforementioned letter terminating his contract. He also asked to be reinstated or, failing that, for his rights to be settled and paid.

Having received no response, he brought the present action before the Court of Appeal, for the same purposes, through a petition filed by his lawyer, Maître Ali NEYA, a member of the Burkina Faso Bar.

The application was registered at the Court Registry on 04 November 2013, under N°13 R003 and served on the President of the WAEMU Commission on 05 November 2013.

The WAEMU Commission, by correspondence No. 10954, dated 19 November 2013, appointed Mr Eugène KPOTA, Technical Adviser to the President of the Commission, in charge of legal affairs, as Agent and appointed Maître Harouna SAWADOGO, to defend its interests. By another letter dated 07 February 2017, the WAEMU Commission appointed Mr Ibrahima SAMBE as Agent, replacing Mr Eugène KPOTA.

After the formalities of the written phase had been completed, the President of the Court, by Order No 007/2014/CJ of 17 March 2014, closed the written procedure and appointed a Judge-Rapporteur by Order No 008/2014/CJ of 17 March 2014. The latter order will be revoked and replaced by Order No 009/2016/CJ of 7 September 2016, appointing a new Judge-Rapporteur.

## **II- CLAIMS AND PLEAS OF THE PARTIES**

### **A. The applicant's claims and pleas in law**

As to form, the applicant submits that his application is admissible because it was lodged within the time limit provided for in Article 140 of Regulation 07/2010/CM/UEMOA of 1<sup>er</sup> October 2010 on the Staff Regulations of UEMOA and because it complied with the provisions of Articles 134 and 135 of the same text.

On the merits, he points out that the decision not to renew the contract was signed by the Commissioner in charge of the Department of Administrative and Financial Services (DSAF), without any delegation from the Chairman of the Commission, who is the appointing authority.

He also points out that it was by delegation from the President of the Commission that the same Commissioner had issued the memorandum assigning him to the Directorate of Agriculture and Food Security, in particular memorandum No. 269-2010/PCCOM/WAEMU of 25 June 2010; the Commissioner's signature being preceded by the words ***"for the President of the Commission and by delegation"***.

He therefore considers that the DSAF Commissioner acted without the authority or power to make such a decision.

In the alternative, the applicant alleges the irregularity of the "decision" of 10 October 2012 by invoking Article 44 of Regulation No. 07/2010 of 1<sup>er</sup> October 2010 laying down the Staff Regulations of the European Union, which entitles him to communication of his personal file and the right to an interview to defend his case, especially as no reason based on the interests of the service was invoked by the Commission to justify the decision terminating his contract.

He concludes that the Commissioner's decision is irregular and must be annulled. He therefore seeks payment of :

- eight million (8,000,000) CFA francs towards the cost of moving from Benin to Burkina Faso;
- twenty million (20,000,000) CFA francs in mission e x p e n s e s ;
- two million four hundred thousand (2,400,000) CFA francs as final departure expenses ;

- ninety-four million one hundred and fifteen thousand eight hundred and forty-four (94,115,844) CFA francs in respect of salary differentials;
- Twelve million three hundred and thirty-seven thousand eight hundred and forty (12,337,840) CFA francs in holiday pay;
- twenty-four million, six hundred and seventy-five thousand, six hundred and eighty (24,675,680) CFA francs for the annual premium to support his children's schooling;
- one hundred and five million (105,000,000) CFA francs for training costs;
- three hundred and sixty-nine million five hundred and thirty-five thousand two hundred (369,535,200) CFA francs in respect of losses suffered ;
- six hundred and sixteen thousand eight hundred and ninety-two (616,892) CFA francs as end-of-contract indemnity;
- five million (5,000,000) CFA francs in procedural costs.

The applicant also made the following claims.

He is demanding that a work certificate be issued, subject to a fine of five hundred thousand (500,000) CFA francs per day of delay, and that the WAEMU Commission be ordered to pay the costs.

He is requesting that the WAEMU Commission be ordered to complete the legal formalities for the payment to him of the capital due under the insurance policy on the basis of Articles 127 and 128 of Regulation No 07/2010/CM/UEMOA on the WAEMU Staff Regulations and Article 9 of the Employment Contract.

Finally, he is requesting that UEMOA be ordered to regularise his situation by paying in full all the sums that should have been paid in respect of contributions to social security and welfare schemes for the period from 1<sup>er</sup> October 2010 to 31 December 2012 on the basis of Article 50 of Regulation No 07/2010/CM/UEMOA of 1<sup>er</sup> October 2010 on the Staff Regulations of UEMOA.

In his reply to the defendant's arguments, the applicant seeks dismissal of the defendant's claims against him on the grounds of foreclosure and inadmissibility due to the nature of the act in question.

With regard to foreclosure, the applicant points out that the reason put forward by the Commission is debatable, because following the dispute that arose between him and his employer, he, by

request of 07 May 2013, referred the matter to the appointing authority, which had (2) two months to react. He considered that the silence he received was tantamount to an implicit decision to reject his request, which meant that he still had two (2) months to refer the matter to the UEMOA Joint Consultative Committee, which he did on 06 September 2013, requesting a stay of execution and his reinstatement or the payment of fees for improper breach of contract.

The Advisory Committee, which had one (1) month to react, remained silent, even though it still had two (2) months to refer the matter to the Court. He concluded that it had therefore complied with the forms and time limits prescribed by Community law. In short, for the applicant, the dispute arose from the mishandling of the application of 07 May 2013.

As for the plea relating to the nature of the document, the claimant concludes that Article 140 of Regulation No. 07 of 1<sup>er</sup> October 2010 does not lay down any condition of admissibility in relation to the form that it must take.

#### **B. Defendant's claims and pleas in law**

In its pleadings, the defendant invariably submits that the claimant's action is inadmissible and that all his claims, with the exception of the severance pay, should be dismissed.

**In concluding that the action was inadmissible**, the defendant put forward two arguments based on foreclosure and the nature of the disputed act.

It considers that the claimant is precluded from acting out of time, both during the pre-litigation phase and the litigation phase.

It points out that the applicant referred the matter to the Joint Consultative Committee eight (8) months after receiving correspondence from the DSAF Commissioner, whereas the provisions of Article 136 of the aforementioned Regulation No 07/2010 stipulate a time limit of two (2) months for referral to the Joint Committee.

She asks the Court to find that Mr NOUATIN's first written reaction to the challenge to the content of letter No 0829 of 10 October 2012 was late and that he is therefore precluded.

It also invokes the provisions of Article 140 of the aforementioned Rules of Procedure in order to ask the Court to declare the application inadmissible, since the two-month time limit for referral is well past.

With regard to the letter whose annulment is sought, the defendant relies on the provisions of Article 8(2) of Additional Protocol No 1 relating to the supervisory bodies of the WAEMU and Article 15 of the Rules of Procedure of the Court to maintain that it is not subject to appeal.

With regard to Article 8(2), which provides that ***"the actions provided for in this Article must be brought within two months of the publication of the act, of its notification to the applicant or, failing that, of the day on which the latter became aware of it"***, the defendant states that this debate can only take place in the context of an action to assess the legality of acts of the Union's organs.

Thus, an individual may only submit a Regulation, Directive or Decision issued by a Body against which he or she has an objection to the censure of the court of first instance by means of an application for assessment of legality.

He argues that the correspondence sent to Mr Nouatin does not constitute a Community act in the same way as a regulation, directive or decision.

She also pointed out that the applicant had not shown how the letter informing him of the expiry of the fixed-term contract was prejudicial to him.

In her view, this correspondence neither creates nor modifies a given legal situation, but simply records the advent of a legal situation agreed between the parties.

**In dismissing the applicant's claims**, the Commission rejected the alleged incompetence of the person who signed the correspondence and the alleged irregularity of the correspondence.

The defendant stresses that the **alleged incompetence of the person who signed the correspondence** shows that the applicant is unaware of the rules governing the functioning of the Commission; that, pursuant to the provisions of Article 8 of Decision No 021/2013/PCOM/UEMOA of 31 January 2013, establishing and organising the Commission, the Commissioner in charge of the Department of Administrative and Financial Services has the general task of supervising and coordinating the actions of the said Commission in the area of human resources. It concludes that this plea is unfounded.

**On the complaint alleging the irregularity of correspondence N° 0829/DSAF of 10 October 2012**, the defendant points out that it is well known doctrine that a fixed-term employment contract is one that is concluded for a period of time to which the parties have fixed a term and the occurrence of which automatically entails its termination. He added that it is customary, as the term approaches, for the employer to inform the employee in writing of its decision to extend the contractual relationship beyond the fixed term or to terminate a contract that includes a clause authorising renewal; such an elegant approach can in no way be equated with an unfair termination.

Furthermore, it considers that no legal provision, let alone a contractual one, obliged the WAEMU Commission to inform the applicant of the reasons for the non-renewal of his fixed-term contract.

In response to the applicant's claim that he had not been given access to his personal file, she pointed out that during the performance of his contract, he was free to access his file, but only at his request.

Therefore, any omission on its part in this respect cannot be qualified as an irregularity likely to vitiate the termination of their contractual relationship, which has now come to an end.

As regards the pecuniary claims, the defendant requests that they be rejected on the basis of the following observations.

**With regard to the costs of removal and final departure**, the defendant states that the provisions relied on by the applicant to claim these costs do not apply to him. It explains that under the terms of Article 38 of Regulation No. 07/2010/CM/UEMOA on the Staff Regulations of UEMOA, ***"the cost of transporting the official and members of the family between the place of residence and the place of employment, as well as the cost of transporting luggage and furniture, upon recruitment shall be borne by the Union, in accordance with the terms and conditions specified in a Regulation implementing this Regulation"*** does not apply to a contract agent. Thus, as he was not an official, the applicant could not claim such expenses.

**With regard to mission expenses**, the defendant points out that it is improbable that Mr NOUATIN carried out missions on behalf of the WAEMU Commission without first having received the related expenses. He points out that this is all the more



indisputable given that before any mission, an order of

mission in due form, followed by the collection of mission expenses and allowances. He concluded that it was up to the claimant, who did not provide any proof, to justify this claim.

**With regard to training costs**, which the applicant claims by invoking Article 12 of Decision No 179-2002-PC of 05 March 2002 adopting the nomenclature of the general budget of the WAEMU Bodies, the defendant states that this claim must be rejected, as it is not supported by any documentary evidence.

**With regard to the salary differential**, the defendant points out that this is a purely gratuitous assertion that is not supported by a coherent legal demonstration or justified by a textual basis.

**As regards the costs of paid leave and transport during leave**, the defendant states that the provisions relied on by the applicant, in particular Articles 73 et seq. of the WAEMU Staff Regulations, do not apply to him, as he is not a civil servant.

**With regard to social security contributions**, the defendant points out that, like all staff members of the WAEMU Commission, the claimant benefited from insurance taken out with the ALLIANZ BURKINA FASO insurance company; he states that it is the responsibility of that company to liquidate and pay his social security contributions, if he so requests the insurer.

**With regard to the damages claimed by the applicant**, the defendant states that they have no legal basis, as no wrongful act is attributable to the Commission.

The defendant does not contest **the end-of-career indemnity** and reiterates its willingness to pay it.

### **III- DISCUSSION**

#### **A. Jurisdiction of the Court**

Since this is an action falling within the category of disputes between the Union and its servants within the meaning of Article 16 of Additional Protocol No 1 on the Supervisory Bodies, Article 27 of Additional Act No 10/96 of 10 May 1996 on the Statute of the Court of Justice, Article 15(4) of Regulation No 01/96 of 5 July 1996 on the Statute of the Court of Justice and Article 16 of Additional Protocol No 1 on the Staff Regulations of the European Communities, the Court of First Instance has jurisdiction to hear and determine any action which it may hear or determine.

In accordance with the Rules of Procedure of the Court, as well as Article 140 of Regulation No. 07/2010 on the Staff Regulations of the WAEMU, the Court has jurisdiction.

### **B. Admissibility of the action**

The defendant seeks to have the applicant's action declared inadmissible on the grounds, firstly, that the applicant is precluded from bringing an action and, secondly, that the contested measure cannot be appealed on the basis of an action for assessment of legality.

**With regard to the time limit** put forward by the defendant, it is clear from the documents in the file that the member of staff referred the matter to the Appointing Authority by request dated 7 May 2013, asking it to take a decision in his regard, supposedly within a maximum of two months, i.e. by 08 July 2013 at the latest.

In the face of the authority's silence, which was interpreted as an implicit decision to reject, the applicant referred the matter to the Joint Consultative Committee on 6 September 2013, i.e. within the two-month period from 08 July 2013, the date on which the implicit decision to reject could be presumed.

When the Joint Committee failed to respond, he then brought his case before the Court on 4 November 2013, i.e. within the two-month period prescribed by law for bringing the matter to litigation.

It follows from these facts that the provisions of Articles 134 et seq. of Regulation 07/2010/CM/UEMOA of 1<sup>er</sup> October 2010 on the UEMOA Staff Regulations were complied with by the applicant.

Consequently, the applicant's plea of foreclosure must be rejected.

**With regard to the plea that the act at issue is not subject to review** on the basis of an action for assessment of legality, it should be noted that, contrary to the defendant's allegations, the application does not seek to assess the legality of an act of a Community body but relates rather to a staff dispute, provided for, as indicated above, by Article 16 of Additional Protocol No. 1 on the Supervisory Bodies, Article 27 of Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court of Justice of the WAEMU, Article 15.4 of Regulation n°01/96 of 5 July 1996 on the Rules of Procedure of the Court, as well as Article 140 of Regulation n°07/2010 of 1<sup>er</sup> October 2010 on the Staff Regulations of the WAEMU.

Consequently, this plea must be rejected.

## **C. Background**

### **1. The application for annulment and reinstatement**

The applicant seeks the annulment of correspondence No 0829/DSAF/DRH of 10 October 2012 and his reinstatement in the Commission's staff, because:

- the Commissioner in charge of the Department of Administrative and Financial Services (DSAF) is not empowered to sign the aforementioned act,
- his personal file has not been communicated to him,
- a preliminary interview to defend his case did not take place.

The facts show that the contractual relationship between Mr Charles G. NOUATIN and the WAEMU Commission is based on a fixed-term contract, the term of which was fixed by agreement between the parties at 31 December 2012.

Correspondence No 0829/DSAF/DRH of 10 October 2012 from the Commissioner DSAF recalling the end of the contractual relationship neither creates nor modifies any legal situation whatsoever. Moreover, the applicant does not demonstrate pertinently in what way the said letter is unlawful.

It follows from the organisational text of the Commission's services that the lack of capacity of the signatory of the letter, invoked by the applicant, cannot validly be invoked against the signatory of the disputed act, all the more so as such an option falls within its field of competence.

Secondly, the applicant does not invoke any regulatory or contractual provision in support of the right to communication of his personal file and the right to a prior interview.

Finally, as this was a fixed-term contract, the employer's notification that it would not be renewed was perfectly legal and in no way constituted an abuse. In view of the foregoing, no fault or abuse can be imputed to the Commission. There are therefore no grounds for annulling letter No 0829/DSAF/DRH dated 10 October 2012 from Commissioner DSAF, nor for ordering the reinstatement of the applicant in the staff of the WAEMU Commission.

## **2. Payment claims**

### **2.1. Removal and final departure expenses - Paid leave and transport expenses during leave**

In support of his claim for removal and permanent departure expenses, the applicant invokes Articles 61, 63, 66, 67 and 77 of the WAEMU Staff Regulations.

In support of his claim for paid leave and transport expenses, he invokes Articles 73 and 74 of the WAEMU Staff Regulations.

Articles 42 and 43 of the Staff Regulations list a number of contractual clauses that are supposed to be included in the contracts binding the Union to its contract agents.

Bound by the provisions of Articles 42 and 43 of the WAEMU Staff Regulations, the Court cannot, in the absence of contractual grounds for the applicant's claims, respond favourably to them.

### **2.2. Mission expenses**

The applicant does not provide formal proof that the mission expenses are owed to him by the Commission.

In the absence of any justification for this claim, it should be declared unfounded.

### **2.3. Training costs**

The applicant does not invoke any relevant provision and does not produce any evidence in support of this claim.

In the absence of any justification for this claim, it should be declared unfounded.

### **2.4. Salary differential**

The claimant does not invoke any relevant provision in support of his claim, nor does he produce any documentary evidence.

In the absence of any justification for this claim, it should be declared unfounded.

## **2.5. End-of-contract indemnity**

The applicant claims the sum of six hundred and sixteen thousand eight hundred and ninety-two (616,892) FCFA francs by way of compensation at the end of the contract. As the defendant has reiterated its willingness to pay, the Court should take note of the defendant's willingness to pay.

## **2.6. Damages and interest**

No fault or abuse is attributable to the Commission, as has been demonstrated. Consequently, the Commission cannot be held liable.

The claim for damages should be dismissed as unfounded.

## **2.7. Social security contributions**

It is clear from the documents in the file that the applicant benefited from insurance taken out with the ALLIANZ BURKINA FASO insurance company. It is therefore the responsibility of this company to liquidate and pay the applicant's social security contributions.

With regard to this claim, the applicant should be referred to a better court.

## **3. Costs**

The applicant is claiming five million (5,000,000) CFA in costs.

The defendant asks the Court to order the applicant to pay the costs. Under Article 60(2) of the Rules of Procedure of the Court, **"any unsuccessful party shall be ordered to pay the costs"**.

In the present case, the applicant is unsuccessful in its claims and pleas.

Accordingly, he should be ordered to pay the costs, having regard to the provisions of Article 61 of the Rules of Procedure of the Court, according to which **"in proceedings between the Union and its servants, the costs incurred by the organs of the Union shall be borne by them, without prejudice to Article 60(5)"**.

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

Ruling publicly, adversely in matters of Community law, at first and last instance;

**In form :**

- Declares itself competent ;
- Declares the action

admissible; **Merits :**

- Declares that the applicant's employment certificate and termination indemnity will be made available to him;
- Refers the claimant back to the Court for further proceedings in respect of his claim for reimbursement of contributions to the social security scheme and of the capital sum in respect of insurance ;
- Declares that there are no grounds for annulling letter No 0829/DSAF/DRH, dated 10 October 2012;
- Dismisses the applicant's application for reinstatement;
- Dismisses the applicant's claims for payment;
- Order the applicant to pay the costs;
- That the costs incurred by the Commission shall be borne by it.

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

And signed by the President and the Deputy Registrar.

*Illegible signatures follow.*  
Ouagadougou, 13 June 2018

For the Registrar  
The Deputy  
Registrar

**Hamidou YAMEOGO**