

**EXTRACT FROM THE MINUTES OF THE
REGISTRY**

UEMOA COURT OF JUSTICE

PUBLIC HEARING OF 16 JANUARY 2013

**JUDGMENT NO.
01/2013**

THE UEMOA COURT OF JUSTICE

meeting in ordinary session at which were seated :

Case :

**El Hadji ABOUBACAR
C/
State of Niger**

- **Mr. Ousmane DIAKITE,
President of the Court,**
- **Mrs Ramata FOFANA,**
- **Mr Hamidou Salifou Kane,**
Assessing judges,

in the presence of **Ms Seynabou Ndiaye
DIAKHATE**, Advocate General

Present:

- **Ousmane Diakité, Chairman,**
- **Abraham D. ZIZINDOHOUE**
- **Konan Jérôme ALLOU**

with assistance of **Maître Fanvongo
SORO**, Registrar

RULING ON THE CASE

BETWEEN

El Hadji Tidjani ABOUBACAR, represented by Maître Alexis Koffi AQUEREBURU, a lawyer registered at the Togo Bar, whose registered office is at the Alice building, 777 avenue Kléber DADJO, Lomé; with an address for service at the law firm of YAGNEBOU et YANOGO, 02 BP 5765 Ouagadougou 2;

AND

THE STATE OF NIGER, represented by Maître Mossi BOUBACAR, Attorney at Law, BP 2312 Niamey (Niger);

COMPENSATION CLAIMS

Having regard to the application dated 30 May 2011, submitted by Maître Alexis Koffi AQUEREBURU, a lawyer at the Togolese Bar, on behalf of El Hadji Tidjani ABOUBACAR ;

Having regard to the letter dated 26 September 2011 serving the said application on the State of Niger;

Having regard to the other documents produced and attached to the file;

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

Having regard to Additional Protocol I on the supervisory bodies of the WAEMU ;

Having regard to Additional Act n° 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU ;

Having regard to Regulation n° 01/96/CM of 5 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU ;

Having regard to Regulation No 01/2010/CJ of 2 February 2010 repealing and replacing Regulation No 01/2000/CDJ of 6 June 2000 on the Administrative Rules of the Court of Justice of the WAEMU ;

Having regard to Additional Act n° 03/CCEG/UEMOA of 20 January 2007 renewing the term of office, appointing and ending the terms of office of members of the Court of Justice of UEMOA ;

Having regard to Additional Act n° 01/CCEG/UEMOA of 12 March 2012 renewing the term of office of a member of the Court of Justice of UEMOA ;

Having regard to Minutes No 01/2010 of 13 April 2010 on the appointment of the President and the allocation of functions within the Court of Justice of the WAEMU ;

Having regard to Order No 001 /CJ of 11 January 2013 composing the full Court to hear the case;

Having heard Mr Ousmane DIAKITE, Chairman-Rapporteur, in his report ;

Having heard the Opinion of the Advocate General, Ms Seynabou Ndiaye DIAKHATE;

Having deliberated in accordance with Community law :

Has delivered the following

judgment: I - FACTS AND

PROCEDURE

Considering that by application dated 30 May 2011, registered at the Registry of the Court of Justice on 03 June 2011 under number 11R004 and served on the State of Niger, in the person of the Minister in charge of the Economy and Finance by letter of the Registrar of the Court of Justice of the WAEMU of 26 September 2011, Maître Alexis Koffi AQUEREBURU, a lawyer at the Togolese Bar, has lodged an appeal in the name and on behalf of El Hadji Tidjani ABOUBACAR, seeking an order that the State of Niger pay him the sum of one billion two hundred million (1 200 000 000) francs in return for demonetised banknotes remaining in his possession;

The applicant points out that the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), pursuant to a decision of 17 August 2004 taken in implementation of a previous decision of the Council of Ministers of the Union Economique et Monétaire Ouest Africaine (UEMOA), demonetised the 1992 range of UEMOA banknotes;

Following an initial period running from 15 to 31 December 2004, an exceptional extension running from 17 January to 18 February 2005 was decided, the banking authorities having estimated that there were still fifty billion (50,000,000,000) francs uncollected, 70% of which were in small-denomination notes held by low-income people

living in rural areas who had not been able to get rid of their notes;

That the applicant considers that, in view of his absence from the country during those two periods, he was unable to exchange his demonetised notes amounting to one billion two hundred million (1,200,000,000) francs;

Pursuant to Article 8 of the BCEAO's Articles of Association, which obliges the BCEAO to pay the equivalent value of monetary signs to the State in which the banknotes were issued in the event of demonetisation, the State of Niger received the equivalent value of demonetised banknotes held by Nigerien citizens, as evidenced by the letter dated 14 December 2006 sent to the Minister of the Economy and Finance by the Vice-Governor of the BCEAO;

It concludes that the State of NIGER had an overriding obligation to exchange the demonetised banknotes, the equivalent value of which was credited to the Public Treasury opened in the books of the BCEAO.

Considering that following the filing of the application, Order No. 12/2011 was issued on 13 June 2011 to set the amount of the security to be paid by El Hadji Tidjani ABOUBACAR pursuant to Article 26 paragraph 6 of Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice at fifty thousand (50,000) francs;

Considering that the payment of this deposit was made on 04 July 2011, as attested by the provisional receipt from the court registry placed on file;

Whereas the application was also served on the State of NIGER on 26 September 2011 by letter S. n°30/2011.

Considering that by another letter of 1^{er} November 2011, received at the Registry on 04 November and registered under number 028, the State of Niger informed the Court of the appointment of Mr Mossi BOUBACAR to defend its interests in the case brought by El Hadji Tidjani ABOUBACAR ;

Considering that by Order No. 023/2011/CJ issued on 27 December 2011 by the judge acting for the President of the Court of

First Instance of the

Mossi Boubacar was granted an additional period of one month to file his statement of defence;

Considering that by letter received at the clerk's office on 10 January 2012 under number 11R-4.2 accompanied by an offer of settlement from El Hadji Tidjani ABOUBACAR (number 11R-4.3), Mr Harouna ABDYOU, Attorney at Law at the Niamey Bar, constituted himself on behalf of the applicant;

Considering that by letter number 2012 - 010/CJ/OD/clk of 23 January 2012 from the President of the Court of Justice, the settlement offer was transmitted to the State of NIGER for appraisal;

Considering that in response to this settlement offer, the State of Niger, by letter no. 000174/DGI/CF/DL dated 09 March 2012 opted for the normal continuation of the legal process underway before the WAEMU Court of Justice;

Considering that by Order No 008/2012/CJ of 22 June 2012, the President of the Court of Justice ordered the application of Article 78 paragraph 1 of Regulation No. 01/96 on the Rules of Procedure of the Court of Justice of the WAEMU to the present proceedings ;

Whereas by a further order No 021/2012/CJ of 27 September 2012, the President of the Court appointed a Judge-Rapporteur;

II - ARGUMENTS OF THE PARTIES

Considering that El Hadji Tidjani ABOUBACAR considers that by judgment No. ECW/CCJ/JUD/01/011 of 09 February 2011, the Court of Justice of the Economic Community of West African States (ECOWAS), previously seised of the present case on the ground of violation of human rights, declared that it was of the opinion that although its material jurisdiction was relevant, it must decline it in view of the exclusive jurisdiction of the Court of Justice of the WAEMU over the facts of the case;

Considering that El Hadji Tidjani ABOUBACAR thus invokes the text on which the judgment of the ECOWAS Court of Justice is based, i.e. Article 15 paragraph 5 of Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice;

It follows that the WAEMU Court of Justice must order the State of NIGER to simply exchange the demonetised banknotes in its possession;

Considering that the State of Niger has not, apart from its response to the settlement offer, responded to the notices served on it and has therefore not brought any arguments to the Court's attention;

III - GROUNDS FOR THE JUDGMENT

Considering that Article 15 paragraph 5 of Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice provides: "The Court of Justice alone shall have jurisdiction to declare non-contractual liability engaged and to order the Union to pay compensation for damage caused either by material acts or by normative acts of the organs of the Union or its agents in the exercise or on the occasion of the exercise of their functions...";

Considering that Article 15 paragraph 5 of Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU referred to above only provides for non-contractual liability and an order for the Union to pay compensation for damage caused before the Court of Justice of the WAEMU, for material acts, or normative acts of the organs of the Union or its agents in the exercise or on the occasion of the exercise of their functions;

Considering that the action brought by El Hadji Tidjani ABOUBACAR is directed against the State of NIGER which, although a member State of the WAEMU, is not an organ of the WAEMU;

It follows that the applicant's claims do not fall within the scope of the powers conferred on the Community judicature, in particular by the provisions of the text referred to;

That, consequently, the WAEMU Court of Justice must declare that it does not have jurisdiction and refer El Hadji Tidjani ABOUBACAR back to appeal;

FOR THESE REASONS :

The Court, adjudicating publicly and adversarially in matters of non-contractual liability :

- Receives the application of El Hadji Tidjani ABOUBACAR ;
- Declares itself incompetent, sends El Hadji Tidjani ABOUBACAR back to appeal and orders him to pay the costs.

And have signed the Chairman and the Registrar, Following the illegible signatures,
For a certified copy, Ouagadougou, 10 May 2013

The Registrar,

Fanvongo SORO