

**EXTRACT FROM THE MINUTES OF THE  
REGISTRY**

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

-----  
**PUBLIC HEARING**

**JUDGME  
NT NO.  
02/2013  
OF 18 DECEMBER 2013**

**EIGHTEEN (18) DECEMBER TWO THOUSAND AND  
THIRTEEN (2013)**

**The Court of Justice of the WAEMU, meeting in ordinary session on eighteen (18) December two thousand and thirteen (2013), in which were seated :**

*Action for compensation*

**ZAN Bienvenu**  
(Me Batibié BENAO)

**Against**

**The WAEMU Commission**  
(Me Harouna SAWADOGO)

- **Mr Daniel Lopes FERREIRA**, President of the Court, Chairman ;
- **Mr Ousmane DIAKITE** ;
- and Mrs **Léontine Marie Florence ZOMBRE ZIDA** , Members ;
- in the presence of **Ms Seynabou NDIAYE DIAKHATE**, First Advocate General;
- with the assistance of **Maître Fanvongo SORO**, Registrar;

**has rendered the following judgment:**

**BETWEEN :**

**Mr Bienvenu ZAN**, former Accountant at the WAEMU Commission, of Beninese nationality, residing at the office of his counsel, Maître Batibié BENAO, Attorney-at-Law registered at the Bar of Burkina Faso, 01 BP 6042 Ouagadougou, Tel. 50 31 05 64/50, Fax 50 31 05 65,

**Applicant, on the one hand ;**

**AND**

**The Commission of the West African Economic and Monetary Union (UEMOA), 380 Av. du Pr Joseph KI-ZERBO 01 BP 543 Ouagadougou 01 Burkina Faso, Tel (+226) 50**

**31 88 73 to 76**, having as Agent Mr Eugène KPOTA and as Counsel Mr Harouna SAWADOGO, Lawyer registered at the Bar of Burkina Faso, 01 BP 4091 Ouagadougou 01,

**Defendant, on the other hand ;**

## **THE COURT :**

**HAVING REGARD TO** the request by Mr Bienvenu ZAN, dated eight (08) October two thousand and ten (2010);

**HAVING REGARD TO** the statement of defence of the WAEMU Commission dated seventeen (17) January 2011;

**HAVING REGARD TO** the other documents produced and attached to the file;

**VU** the WAEMU Treaty;

**VU** Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

**HAVING REGARD TO** Additional Act n°10/96 of ten (10) May one thousand nine hundred and ninety-six (1996) on the Statutes of the WAEMU Court of Justice;

**HAVING REGARD TO** Regulation n°01/95/CM of the first (1<sup>er</sup>) August one thousand nine hundred and ninety-five (1995) on the Staff Regulations of UEMOA Officials;

**HAVING REGARD TO** Regulation n°01/96/CM of five (05) July one thousand nine hundred and ninety-six (1996) on the Rules of Procedure of the WAEMU Court of Justice;

**HAVING REGARD TO** Regulation No. 01/2012/CJ of twenty-one (21) December two thousand and twelve (2012) on the Administrative Rules of the Court of Justice of the WAEMU ;

**HAVING REGARD TO** Order No 29/2013/CJ of eleven (11) November two thousand and thirteen (2013) appointing the members of the full Court to sit at the ordinary public hearing on eighteen (18) December two thousand and thirteen (2013);

**HAVING REGARD TO** the summonses sent to the parties ;

**WITNESS** Mrs Léontine Marie Florence ZOMBRE ZIDA, Judge-Rapporteur, in her report;

**ORDERED** Maître Batibié BENAÛ in his oral observations;

**WITNESS** Mr Eugène KPOTA, Agent of the Commission, in his oral observations;

**ORDERED** the oral observations of Harouna SAWADOGO;

**HAVING** heard the Opinion of Ms Seynabou NDIAYE DIAKHATE, First Advocate General;

Having deliberated in accordance with Community law ;

## **I. FACTS AND PROCEDURE**

**Considering** that by application dated eight (08) October two thousand and ten (2010), registered at the Registry of the Court of Justice of the West African Economic and Monetary Union (WAEMU) under number 007/2010 on the same day, Mr Bienvenu ZAN, through his counsel, Maître Batibié BENAÛ, lawyer at the Court of Appeal of Ouagadougou, lodged an action for compensation against decision n°0039/2010/PCOM of the President of the WAEMU Commission dismissing him;

In support of his claim, he states that having been recruited as an accountant by decision no. 034/99/PC/WAEMU of nine (09) February 1999 of the WAEMU Commission, he has successively held several positions:

- assigned to the permanent secretariat of the WAEMU Interparliamentary Committee in Bamako, Mali, in August 2006;
- imprest account manager for payment of operating expenses, to the WAEMU Interparliamentary Committee from February two thousand and seven (2007) to twenty-two (22) June two thousand and nine (2009);

**Considering** that, following an accounting audit on the management of the funds of the said Interparliamentary Committee covering the financial years from two thousand and seven (2007) to two thousand and nine (2009), dated twenty-five (25) June two thousand and nine (2009), irregularities were detected, in particular a cash deficit of one million nine hundred and fifty-nine thousand five hundred (1 959 500) CFA francs, which was charged to the Committee

**Considering** that these facts led successively to the dismissal of Mr Bienvenu ZAN on twenty-two (22) June two thousand and nine (2009) and his replacement by an interim administrator and his transfer to the Funds and Budget Directorate of the Commission by memorandum No. 268/2009/DSAF/DRH of eighteen (18) August two thousand and nine (2009);

**That** he will be subject to a provisional suspension accompanied by a total deprivation of his salary from fourteen (14) October two thousand and nine (2009) to five (05) March two thousand and ten (2010);

**That** after his hearing before the UEMOA Advisory Disciplinary Committee in the presence of Maître Y. Georges SOME, his legal counsel, at its meeting of eleven (11) and twelve (12) January two thousand and ten (2010), this body proposed the dismissal of Mr Bienvenu ZAN as a sanction, as confirmed in the minutes of the said Committee of twelve (12) January two thousand and ten (2010);

**Considering** that by decision n°0039/2010/PCOM/WAEMU of three (03) March two thousand and ten (2010), the President of the Commission dismissed Mr Bienvenu ZAN for serious misconduct with effect from fourteen (14) January two thousand and ten (2010);

**Considering** that Mr Bienvenu ZAN maintains in support of his claims that this decision to dismiss him violated the provisions of Articles 74, 76, 80 and 86 of Regulation n°01/95/CM of the first (1<sup>er</sup> ) August one thousand nine hundred and ninety-five (1995) on the Staff Regulations of Officials of the WAEMU in that:

- on the one hand, the Commission did not provide him with "a complete file" to enable him to defend himself before the Disciplinary Board and,
- secondly, that the proposal for dismissal submitted by the Commissioner in charge of the Administrative and Financial Services Department is unlawful in that it falls within the remit of the Director of Human Resources;

Lastly, he asserts that the contested decision is based on an inaccurate assessment of the facts and lacks serious grounds, the faults of which he is accused being simple errors in making entries inherent in any accountant's function;

**Considering** that, on the basis of the aforementioned pleas in law, the applicant in his submissions asks the WAEMU Court of Justice to :

- declare the application admissible in form;
- declare his dismissal unfair on the merits and ;
- order the Commission to pay :
  - two million eight hundred and sixty-four thousand four hundred and forty-four (2,864,444) CFA francs in respect of salaries for the period from fourteen (14) January two thousand and ten (2010) to five (05) March two thousand and ten (2010);
  - Two million seven hundred and eighteen thousand four hundred and sixty-two (2,718,462) CFA francs in respect of salaries for October, November and December 2009;
  - three million two hundred and sixty-two thousand one hundred and fifty-five (3,262,155) CFA francs as compensation in lieu of notice;
  - fifty-one million four hundred and twenty-one thousand eight hundred and sixty-eight (51,421,868) CFA francs in damages;
- order the Commission to pay all the costs;

**Considering** that through the intermediary of its agent, Mr Eugène KPOTA assisted by his counsel, Maitre Harouna SAVADOGO, the WAEMU Commission in its statement of defence points out that the dismissal of Mr Bienvenu ZAN is regular both in form and substance in that it followed the entire process laid down by articles 76 , 80 and 86 of Regulation n°01/95/CM of the first (1<sup>er</sup> ) August one thousand nine hundred and ninety-five (1995) on the Staff Regulations of Officials of the WAEMU;

**That** it alleges in fact that, contrary to the arguments and pleas raised by the applicant, his rights of defence were in no way violated, insofar as Mr Bienvenu ZAN was assisted by his lawyer throughout the Disciplinary Board as prescribed by the aforementioned Article 78 in fine of Regulation No 01 of the Staff Regulations of Officials of the WAEMU;

**That**, moreover, contrary to Mr Bienvenu ZAN's arguments, the DSAF's proposal to dismiss him falls within his remit in accordance with Article 76 of the Staff Regulations;

The WAEMU Commission claims that the Court should :

- declare the dismissal of Mr Bienvenu ZAN to be lawful;
- dismiss all its pleas and claims;
- Dismiss all his pecuniary claims;
- and order it to pay the costs of the proceedings.

## **II. THE COURT'S REASONING**

### **A) IN THE SHAPE**

#### **1) Jurisdiction of the WAEMU Court of Justice**

Whereas Mr Bienvenu ZAN and the UEMOA Commission do not contest the jurisdiction of the UEMOA Court of Justice to hear the present action, since the matter before it falls within its jurisdiction as specified by Articles :

- 16 of Additional Protocol No. 01 on the supervisory bodies of the WAEMU ;
- 27 of the Additional Act n°10/96 of ten (10) May one thousand nine hundred and ninety-six (1996) on the Statutes of the Court of Justice of the WAEMU ;
- 15, paragraph 4 of Regulation n° 01/96/CM of five (05) July one thousand nine hundred and ninety-six (1996) on the Rules of Procedure of the Court of Justice of the WAEMU ;
- 112 du Règlement n°01/95/CM du premier (1<sup>er</sup> ) août mil neuf cent quatre-vingt-quinze (1995) portant Statut des Fonctionnaires de l'UEMOA ;

**Considering** that the Court's jurisdiction in this case is enshrined in Article 16 of Additional Protocol No. 01 relating to the supervisory bodies of WAEMU and Article 112 of Regulation No. 01/95/CM of 1 (1<sup>er</sup> ) August 1995 on the Staff Regulations of Officials of WAEMU;

**That**, without further comment, the jurisdiction of the Court to hear the action for compensation for unfair dismissal brought by Mr Bienvenu ZAN against the WAEMU Commission is established;

## **2) Admissibility of the claim for compensation**

**Considering** that it is important to emphasise at the outset that the facts submitted for the Court's assessment took place between two thousand and nine (2009) and fourteen (14) January two thousand and ten (2010);

**That** in this respect, it is essential to specify that it is Regulation No 01/95/CM on the Staff Regulations of Officials of the WAEMU which remains applicable in the present action, even though it has been repealed and replaced by Regulation No 07/2010/CM on the Staff Regulations of Officials of the WAEMU in force since the tenth (10) of October two thousand and ten (2010);

**Considering** that Mr Bienvenu ZAN lodged an administrative appeal with the Joint Arbitration Advisory Committee on six (06) April two thousand and ten (2010) with a view to obtaining the annulment of the dismissal decision recommended by the Disciplinary Advisory Committee;

**That** the said Committee having remained silent for more than four (04) months after the referral of the applicant, the said silence is interpreted as an implicit rejection within the meaning of Article 111 paragraph 1 of Regulation No. 01/95/CM of the Staff Regulations of Officials of the WAEMU;

**That** Mr Bienvenu ZAN, by lodging the present contentious appeal with the Court of Justice on eight (08) October two thousand and ten (2010), the deadline of two (02) months imposed by Article 112 of the aforementioned Regulation N°01/95/CM, remains within the clear time limits of the procedure based on the "*Dies ad quem and the Dies a quo*";

**Considering** furthermore that Mr Bienvenu ZAN has paid the deposit of thirty thousand (30 000) CFA francs, pursuant to Articles 31 of the Additional Act and 26 paragraph 6 of the Rules of Procedure of the WAEMU Court of Justice as well as Order No 14/2010 of twenty-six (26) January two thousand and ten (2010) of the President of the said Court;

**That** the action for compensation for unfair dismissal brought by Mr Bienvenu ZAN should therefore be declared admissible in form;

### **B) AT THE BOTTOM**

#### **1) Infringement of Articles 76 and 86 of Regulation No 01/95/CM of 1<sup>er</sup> October 1995 on the Staff Regulations of Officials of the WAEMU.**

**Considering** that Mr Bienvenu ZAN contests the legality of the proposal for his dismissal made by the Commissioner in charge of the Department of Administrative and Financial Services (DSAF) in that it violates the aforementioned Article 76;

**That**, on the other hand, the WAEMU Commission considers that the said suggestion falls within the remit of the said Commissioner and not of the Director of Human Resources as the applicant claims;

**Considering** that it follows from the said provision that *"second-degree penalties are imposed by the appointing authority, on a proposal from the authority responsible for human resources management and after consulting the Disciplinary Advisory Committee"*;

**Considering** that the proposal to dismiss Mr Bienvenu ZAN was made by the Commissioner in charge of the Department of Administrative and Financial Services as specified in letter n°09139/DSAF/DRH dated thirty (30) December two thousand and nine (2009);

**Whereas** Mr Bienvenu ZAN contests the competence of the said Commissioner in this field and alleges that the said proposal should have emanated from the Director of Human Resources who remains the authority vested with the management of human resources within the WAEMU Commission, within the meaning of the aforementioned Article 76;

**Considering**, however, that an analysis of decision n°0157/2007/PCOM/UEMOA of twenty three (23) February two thousand and seven (2007) on the Creation and Organisation of the Services of the WAEMU Commission and decision n°0343/2008/PCOM/UEMOA of twenty six (26) December two thousand and eight (2008) on the Organisation of the Department of Administrative and Financial Services, the Director of Human Resources is placed under the authority of the Commissioner in charge of the Department of Administrative and Financial Services (DSAF);

**Whereas** the way in which the said Department (DSAF) operates shows that the Director of Human Resources is merely a collaborator of the Commissioner who holds the real power with regard to proposals for decisions concerning the Commission's staff;

Article 9 of the aforementioned Decision no. 0343 also states that *"the Director of Human Resources is responsible for the smooth running of all departments within the Directorate. In this capacity, he/she :*

- *directs and coordinates the activities of these departments;*
- *initiates studies and drafts Community texts falling within the Directorate's remit ;*

**That** therefore, in the case of a second-level disciplinary sanction, the proposal for dismissal to the appointing authority can only come from the Commissioner who has hierarchical supremacy over the Director of Human Resources;

**That** the Commissioner in charge of the Administrative and Financial Services Department was therefore right to propose Mr ZAN's dismissal to the President of the Commission;

**Considering**, on the other hand, that Mr Bienvenu ZAN was indeed heard by the Advisory Disciplinary Committee of the WAEMU Commission in the presence of his lawyer, Mr Georges Y. SOME, as attested by the minutes of the aforementioned committee of 12 December 2006.

(12) January two thousand and ten (2010) ;

**That** the Court rejects this plea of violation of the rights of the defence raised by the applicant as unfounded;

**Considering** that with regard to the violation of Article 86 of the WAEMU Staff Regulations which states that "*dismissal must comply with the rules laid down in the aforementioned Article 76*", an analysis of the content of Article 76 shows that the Commission complied with the said rules, which are: the hearing of the employee, the defence of his case before the Disciplinary Advisory Committee in the presence of his counsel, in this case Mr SOME Y. Georges, an ex gratia administrative appeal before the Joint Arbitration Committee; the hearing of the employee before the Disciplinary Advisory Committee in the presence of his counsel, in this case Mr SOME Y. Georges, an ex gratia administrative appeal before the Joint Arbitration Committee; the hearing of the employee before the Disciplinary Advisory Committee in the presence of his counsel, in this case Mr SOME Y. Georges. Georges, the administrative appeal before the Joint Arbitration Committee;

**That** the Court dismisses this plea raised by Mr Bienvenu ZAN as unfounded and declares that the formalities prescribed for dismissal were duly carried out by the WAEMU Commission;

**2) Infringement of Article 78 in fine of Regulation No 01/95/CM of 1<sup>er</sup> August 1995 on the Staff Regulations of Officials of the WAEMU.**

**Considering** that the rights of the defence within the framework of the WAEMU Community civil service are governed by Article 78 paragraph 3 of the above-mentioned Regulation n°01/95 which provides that "*the official has the right to communication of his file. He may present his defence before the Committee and be assisted, where appropriate, by counsel*";

**Considering** that, with regard to the plea based on this limitation period, the official must be given access to his file and be assisted by counsel, if necessary, when he appears before the Disciplinary Advisory Board ;

**That** in the present case, it follows from an analysis of the minutes of the meeting of the Advisory Disciplinary Committee of seven (07) and eleven (11) January two thousand and ten (2010), that Mr Bienvenu ZAN benefited from the assistance of counsel, in this case Maître Y. Georges SOME, Lawyer at the Ouagadougou Court of Appeal, who defended his case;

**That**, moreover, Mr Bienvenu ZAN stated at the said disciplinary meetings that he had The applicant's *claim* that he *had "received a complete file"* containing all the documents needed to defend himself is contrary to the argument put forward by the same applicant;

Whereas the audit in question is an internal audit of the accounts covering the financial years from two thousand and seven (2007) to two thousand and nine (2009);

**Considering** that the purpose of this mission was to verify the conformity of the cash situation of the Inter-Parliamentary Committee with the financial rules established by the UEMOA Commission, for which Mr Bienvenu ZAN was the Administrator;

**That** these accounting verification checks did not require the physical presence of Mr



Bienvenu ZAN, let alone his assistance, as the Management Audit could be a spontaneous unilateral operation to verify and check the applicant's accounts and the availability of accounts;

**That** the Court rejects this other defence raised by Mr Bienvenu ZAN as being inoperative;

**3) <sup>er</sup>Infringement of Article 80 of Regulation No 01/95/CM of 1 August 1995 on the Staff Regulations of Officials of the WAEMU.**

Whereas Article 80 of the above-mentioned Regulations, the application of which is the subject of controversy, provides: *"In serious cases or cases requiring particular urgency, the competent authority may, before the matter is referred to the Committee or before the Committee has given its opinion, order the temporary suspension of an official, which may be accompanied by partial or total deprivation of salary for a period not exceeding three months..."*;

**That** this rule must be analysed from two (02) angles: the angle of the appropriateness of the provisional suspension on the one hand, and the angle of the duration of the said suspension on the other;

Whereas, as regards the circumstances in which a staff member is suspended, the competent authority may invoke either the urgency of the precautionary measures to be taken or the seriousness of the acts of which the staff member is accused in order to pronounce a provisional suspension, the duration of which may not exceed three (03) months;

As regards the first aspect of the said article, the Commission, having characterised the facts attributed to Mr ZAN as sufficiently serious, based its decision on the seriousness of the facts requiring precautionary measures to be taken to preserve the interests of the Inter-Parliamentary Committee and not on the urgency required;

**Considering** that the assessment of the seriousness of the breaches found by the Disciplinary Committee against Mr Bienvenu ZAN and the choice of sanction fall within the discretionary power of the President of the WAEMU Commission, the only authority vested with the power of appointment;

**That** in the present case, Mr Bienvenu ZAN has not produced any factual or legal evidence capable of establishing that this assessment would be unrelated to the misconduct of which he is accused or that the sanction imposed would be disproportionate to the said misconduct;

As regards the first aspect of Article 80, therefore, there was no irregularity capable of calling into question the seriousness of the professional misconduct committed by the applicant;

**Considering**, on the other hand, that the suspension imposed on Mr Bienvenu ZAN lasted from October two thousand and nine (2009) to five (05) March two thousand and ten (2010), i.e. longer than the period of three (03) months prescribed by the same Article 80; the said suspension is irregular;

Furthermore, the Commission did not contest the fact that the legal time limit had been exceeded, stating that it had paid the employee his salary for the excess period of suspension;

Although the proof of the said payment is not apparent from any of the documents provided by the Commission, the said payment cannot exonerate or exempt the Commission from the infringement of the legal duration of the suspension which it itself prescribed in its Rules;

**That**, in the present case, the Court declares the duration of the suspension imposed on Mr Bienvenu ZAN to be irregular;

**Considering** that, in this respect, Mr Bienvenu ZAN claims compensation for the damage suffered as a result of the Commission exceeding the legal duration of his suspension, by payment of his salary covering the period from fourteen (14) January two thousand and ten (2010) to five (05) March two thousand and ten (2010);

**That** proof of the said payment was not provided by the WAEMU Commission either in the documents filed during the written procedure or during the oral phase of the proceedings dated twenty-seven (27) November two thousand and thirteen (2013);

**That** this plea raised by Mr Bienvenu ZAN should be accepted as well-founded and that the WAEMU Commission should be ordered to pay the applicant the sum of two million eight hundred and sixty-four thousand four hundred and forty-four (2 864 444) CFA francs representing remuneration for the additional period of suspension and covering the period from fourteen (14) January to five (05) March two thousand and ten (2010);

#### **4) The nature of Mr Bienvenu ZAN's dismissal**

**Considering** that by decision n°0039/2010/PCOM/UEMOA of three (03) March two thousand and ten (2010), the President of the WAEMU Commission terminated the applicant's employment contract in the following terms: *"With effect from 14 January 2010, Mr Bienvenu ZAN Matricule 143, accountant in the Funds and Budget Department of the WAEMU Commission is dismissed for serious professional misconduct consisting of acts of indelicacy"*;

**Considering** that Mr ZAN maintains that the reasons given by the Commission for dismissing him are neither real nor serious ;

**Considering** that it follows from article 72 paragraph b) of Regulation n°01/95/CM on the status of UEMOA civil servants that the dismissal of a worker with or without notice, with or without indemnity constitutes a second degree sanction, provided that the rules prescribed on the matter are respected, in particular articles 71, 76, 85, 86 and 89 of the aforementioned Regulation n°01/95 ;

An analysis of the said provisions shows that any UEMOA civil servant or agent may be dismissed for professional misconduct;

**That** in the case in point, Mr Bienvenu ZAN is accused of serious professional misconduct characterised by exceeding the deadlines for payment of the balance of the funds of special advances, duplication of payments, manual transport of the balance of the costs of meetings away from the registered office, payment of expenditure without justification, taking into account the costs of meetings away from the registered office, etc., and by the fact that he is

not a member of the Board of Directors.

charge of unjustified expenses, duplication of payment of per diem and accommodation expenses, exceeding the dates for submitting supporting documents, an initial cash shortfall of one million nine hundred and fifty-nine thousand five hundred (1,959,500) CFA francs;

Whereas Mr Bienvenu ZAN acknowledged these facts, both in his written observations in reply to the audit report and during his appearance before the Disciplinary Committee, but considers that they are merely material errors inherent in any accountant's function;

**Considering** that the long professional experience of Mr Bienvenu ZAN in his capacity as accountant cannot mitigate his shortcomings, which he describes as *"simple errors"* and thus exempt him from the rigour required in his capacity as administrator, especially as these errors have accumulated over three (03) years, from two thousand and seven (2007) to two thousand and nine (2009);

**That** Mr Bienvenu ZAN, having failed to demonstrate the rigour and vigilance required in the performance of his duties, has breached the professional obligations arising from his position as accountant, causing the Commission to incur financial losses;

**Considering** that Mr Bienvenu ZAN, in his capacity as accountant, has shown a lack of rigour and carelessness constituting serious professional misconduct making it impossible for him to remain a member of the Commission;

**Considering** that the misconduct of which Mr Bienvenu ZAN is accused is well-founded and constitutes serious professional misconduct;

**That** the Commission was right to dismiss him, since the grounds relied on were real and serious, and the relevant procedure had not been vitiated by any irregularity;

## **5) Financial claims**

### **a) Compensation in lieu of notice and redundancy pay**

**Whereas** Mr Bienvenu ZAN requests that the WAEMU Commission be ordered to pay him compensation in lieu of notice, since the Commission did not observe the required notice period for dismissal;

**Whereas**, however, Article 72 in fine allows the employer to dismiss his employee with or without notice, with or without compensation in accordance with the regulations governing the application of the WAEMU Staff Regulations;

**Considering** that Article 85 in fine is along the same lines as Article 72 in fine of Regulation n°01/95/CM on the Staff Regulations of UEMOA Officials by specifying that *"dismissal in the event of gross misconduct may take place without notice"*;

Article 90 in fine of Regulation 01/95 states that redundancy pay is not payable if the dismissal is due to gross misconduct on the part of the staff member;

**That** as the acts of which Mr Bienvenu ZAN is accused have been qualified as serious professional misconduct by the WAEMU Commission, he cannot claim either compensation in lieu of notice or redundancy pay in view of the conditions for granting such compensation;

According to article 85 paragraph 3 of Regulation n°01/95/CM on the status of WAEMU civil servants, *"in the event of gross misconduct, dismissal may take place without notice"* and article 90 in fine, *"dismissal compensation is not due when dismissal is motivated by gross misconduct on the part of the civil servant"*;

**That**, consequently, Mr Bienvenu ZAN's claim for payment of both compensation in lieu of notice and redundancy pay should be dismissed, as he does not meet the conditions for granting such compensation required by the aforementioned texts;

#### **b) Damages**

**Considering** that Mr Bienvenu ZAN is claiming payment from the WAEMU Commission of the sum of fifty-one million four hundred and twenty-one thousand eight hundred and sixty-eight (51 421 868) CFA francs as compensation for the moral and financial prejudice he has suffered as a result of his dismissal, which he deems to have been unfair;

**That** the WAEMU Commission, on the other hand, rejects such a claim, the dismissal of the applicant being legitimate, serious and having complied with the prescribed forms;

**Considering** that, as Mr Bienvenu ZAN's dismissal was not vitiated by any abuse, he cannot claim any compensation whatsoever;

Mr Bienvenu ZAN's claim for damages should therefore be dismissed as unfounded;

#### **c) Costs**

Whereas each of the two (02) parties to the present proceedings requests that the Court of Justice order the opposing party to pay all the costs of the proceedings;

**Considering** that the case in point concerns a dispute between the WAEMU Commission and its agent Mr Bienvenu ZAN, the costs of which are governed by Article 61 of Regulation No 1/96/CM laying down the Rules of Procedure of the WAEMU Court of Justice;

**That** Article 61 of the Rules of Procedure of the Court of Justice, which requires the Body to bear the costs incurred in such a case, should be applied by ordering the WAEMU Commission to pay all the costs of these proceedings;

## **FOR THESE REASONS :**

The Court, adjudicating publicly and in adversarial proceedings, in matters of Community law, in the employment dispute between Mr Bienvenu ZAN and the WAEMU Commission:

- **IN THE FORM :**

- **declares itself competent ;**
- **declares Mr Bienvenu ZAN's action for compensation on the grounds of dismissal admissible;**

- **IN THE BACKGROUND :**

- **declares the dismissal of Mr Bienvenu ZAN to be lawful;**
- **Orders the WAEMU Commission to pay Mr Bienvenu ZAN the sum of two million eight hundred and sixty-four thousand four hundred and forty-four (2 864 444) CFA francs, corresponding to the remuneration for the additional period of suspension if the said sum has not already been paid by the WAEMU Commission;**
- **dismisses Mr Bienvenu ZAN's claim for compensation in lieu of notice, redundancy pay and damages as unfounded;**
- **orders the WAEMU Commission to pay all the costs of the proceedings.**

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

Signed by the Chairman and the Registrar.

**For certified delivery,**

**Ouagadougou, 17 December 2014**

**The Registrar**

**Fanvongo SORO**