

**N-022/2011**

From 30 NOVEMBER  
2011

**EXTRACT FROM THE REGISTRAR'S MINUTES**

***cOv 'De zvErJce De L've/vOa - OUaGaDOvGOv***  
***(BURKINA FASO)***

**ORDER**

**M. El Hadji Abdou SAKHO**

1. **The Conference of  
Heads of State and  
Government of the  
WAEMU**
- 2, **The  
UEMOA**

The year two thousand and eleven, and Wednesday, 30 November,

The President of the Court of Justice of the West African  
Economic and Monetary Union,

sitting in chambers at the seat of the said Court, following Mr El  
Hadji Abdou Sakho's application for a stay of execution;

assisted by Maître Fanvongo SORO, Registrar of the

Court, **made the following order:**

Between

Mr El Hadji Abdou SAKHO, WAEMU Commissioner, of  
Senegalese nationality, residing in Ouagadougou, with an address  
for service at the Chambers of Maître Boukounta DIALLO, Avocat  
à la Cour, 5, Place de l'indépendance - Immeuble Air Afrique - 3<sup>ème</sup>  
Etage, Dakar, Senegal, appearing in person and assisted at this  
hearing by SCPA OUATTARA Sory Anna et SALEMBERE Paulin,  
06 BP 9032 OUAGADOUGOU 06, of the one part;

And

1. The Conference of Heads of State and Government of the  
West African Economic and Monetary Union (WAEMU) ;
2. **UEMOA Commission**, 380, Rue du Professeur Joseph KI-  
ZERBO ;

Defendants, both having as Agent Mr Eugène KPOTA, Acting  
Director of Cabinet of the President of the WAEMU Commission,  
and as Counsel Mr Harouna SAWADOGO, Avocat à la Cour,  
Barreau du Burkina Faso, 01 BP 4091 Ouagadougou 01, of the  
other part;

**The Chairman of the Couy :**

HAVING REGARD TO the Treaty of 10 January 1994 creating the West African Economic and Monetary Union;

having regard to Additional Protocol I on the WAEMU Supervisory Bodies ;

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


VU Regulation No. 01/96/CM of 5 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU;

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

HAVING REGARD TO Additional Act No. 03/CCEG/WAEMU of 20 January 2007 renewing the terms of office, appointing and terminating the terms of office of the members of the Court of Justice of the WAEMU ;

HAVING REGARD T O Minutes No 001/2010/CJ of 13 April 2010 on the appointment of the President and the allocation of functions within the WAEMU Court of Justice;

HAVING REGARD TO the Applications dated 15 and 25 November 2011 respectively for annulment and stay of execution of Additional Act No 06/2011/CCEG/UEMOA of 21 October 2011, registered successively at the Registry on 17 and 28 November 2011;



VU Order No 019/2011/CJ of 29 November 2011 ordering the Registrar to serve on the defendants the application received on 28 November 2011 for a stay of execution and setting a time-limit for the defendants to submit their observations;

the oral observations of Mr Eugène KPOTA, Agent of the Commission and of the Conference of Heads of State and Government of WAEMU together with the submissions made at the hearing by Mr Harouna SAWADOGO, Avocat au Barreau du Burkina Faso;

the emergency ;

VU

Hereby makes this order:

Whereas Mr El Hadji Abdou SAKHO, Commissioner of the WAEMU, of Senegalese nationality, residing in Ouagadougou and electing domicile at the office of his aforementioned counsel, through the intermediary of Mr Boukounta DIALLO, Avocat à la Cour, member of the Senegalese Bar, by application of 15 November 2011, registered at the Registry on 17 November 2011 under No. 11 R006, brought an action before the WAEMU Court of Justice, seeking the annulment of Additional Act No 06/2011/CCEG/UEMOA dated 21 November 2011 appointing Mr Cheikhe Hadjibou SOUMARE to the Commission of the West African Economic and Monetary Union as Commissioner, in replacement of the applicant;

Whereas by a further application dated 25 November 2011, registered at the Court Registry on 28 November 2011 under No. 11 R006.1, Mr El Hadji Abdou SAKHO, again through Mr Boukounta DIALLO, brought an action for a stay of execution of the Additional Act whose annulment is sought;

Considering that by letter dated 29 November 2011 the Registrar of the Court notified the Commission and the Conference of Heads of State and Government of WAEMU of the application for a stay of execution as well as Order No 019/2011/CJ of the same date fixing a time-limit of ten days for the above-mentioned defendants to submit their observations;

That the Commission and the Conference of Heads of State and Government, through Mr Eugène KPOTA, their Agent, indicated that they were not opposed to the organisation of an interim hearing, reserving the right to present oral observations at that hearing;

That on the instructions of the President, the Registrar of the Gour invited the applicant to appear before the Court to attend the summary hearing on this day, 30 November 2011.

Considering that, in support of his application for a stay of execution, the applicant alleges that Mr Cheikhe Hadjibou SOUMARE, appointed President of the Commission and soon to be sworn in, will have to perform acts on behalf of the Union or at least on behalf of the body which he is supposed to represent; and that these acts will be of such importance with considerable economic consequences that it would not be easy to envisage for a single second their annulment, which would entail the annulment of the additional act contested in the main proceedings;

That, therefore, the urgency of granting the stay will also enable the Court to avoid the difficulties of implementing retroactivity which would result from a judgment of annulment, which the Community judicature will obviously have to pronounce, having regard to the unlawful nature of the contested measure;

Considering that at the summary proceedings hearing on 30 November 2011, the applicant appeared, assisted by Mr OUATTARA Sory Anna and Mr SALAMBERE Paulin, both lawyers at the Court, at the Burkina Faso Bar;

That the aforementioned counsel have declared themselves to be constituted in the name of Mr. Boukounta DIALLO, Attorney-at-Law, member of the Senegalese Bar;

**Considering that the applicant, assisted by his counsel, reiterated the grounds of defence raised in the action for annulment, adding that the reason for the application for a stay of execution is the imminence of the swearing-in of Mr Cheikhe Hadjibou SOUMARE as Commissioner; that any swearing-in by the latter would cause serious harm both to the applicant and to the Union as a whole;**

Considering that in reply, the defendants, through Mr Eugène KPOTA, appointed Agent to represent the Commission and the Conference of Heads of State and Government, assisted by Mr Harouna SAWADOGO, Lawyer appointed for this purpose, submit that the case law relied on by the applicants in seeking the stay, in this case the case law of APaire Eugène YAÏ v. The Conference of Heads of State and Government and the Commission, does not provide a basis for a successful application in this case; they go on to point out that the alleged case-law relates to a case of replacement of a Commissioner in full term of office, whereas in the present case, it concerns the appointment of a Commissioner as President, so that failure to implement the Additional Act at issue will result in a general freeze on the activities of the entire Union; that, moreover, they continue, the applicant has not proved any damage that he would suffer if the application for a stay were to be dismissed; that, finally, as the applicant's arguments encroach on the merits, it should be observed that the application for a stay is malicious, as the applicant clearly wishes to prevent Mr. Cheikhe Hadjibou SOUL from exercising his right of appeal. Cheikhe Hadjibou SOUMARE from being sworn in and from taking up his duties as President of the Commission; they therefore conclude that the conditions for the stay are not fulfilled and that it should be dismissed;

Considering that the act whose suspension is requested is Additional Act No.  
06/2011/CCEG/UEMOA of 21 orthon '7011 += ! " \_ ' "

d'Etat et de Government which appointed as Commissioner Mr Cheikhe Hadjibou SOUMARE, replacing Mr El Hadji Abdou SAKHO;

**Considering** that by application dated 15 November 2011 Mr El Hadji Abdou SAKHO applied to the Court of Cassation for the annulment of the above-mentioned Additional Act; that in parallel with this procedure, the above-mentioned applicant lodged an application for a stay of execution of the contested act;

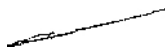
Considering that the request for a stay thus formulated must be declared admissible pursuant to Article 72 of Regulation No. 01/96/CM of 05 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU;

**Whereas**, however, it is settled doctrine and case law that, in addition to proving the urgency and imminence of a danger, the applicant for an interim injunction must establish that the damage incurred is irreparable;

**Considering** that notwithstanding the urgency that appears to underpin the request for a stay, the irreparable nature of the alleged damage is far from proven;

Moreover, the pleas put forward before the summary proceedings court are always subject to the judge's sovereign assessment;

That, in the circumstances of the case, the application for a stay of execution of Additional Act No 06/2011/CCEG/UEMOA of 21 October 2011 cannot succeed.



## **FOR THESE REASONS :**

Ruling on a provisional basis, in its chambers, in an interlocutory hearing;

Declares and orders :

1. That the application for a stay of execution by Mr El Hadji Abdou SAKHO is fecevable;
2. In view of the foregoing, however, there are no grounds, as they stand, for granting this application for suspension of the operation of Additional Act No 06/2011/CCEG/UEMOA of 21 October 2011.

Reserve the costs.

And signed by the Chairman and the Registrar.

Illegible signatures follow,

For a certified copy, Ouagadougou, 16 January 2012

The Registrar



Fanvonqo SORO