

N° 01  
14 July 1997

**UEMOA COURT OF JUSTICE - OUAGADOUGOU**  
**(BURKINA FASO)**

**ORDER**

**EXTRACT FROM THE MINUTES OF**  
**THE REGISTRY OF THE COURT**  
**OF JUSTICE**

In the year one thousand nine hundred and ninety-seven, And on Monday the fourteenth of July,

**MR SERGE LAUBHOUE**  
(Mes DABIRE-SORGHO and TOE)

The President of the Court of Justice of the European Union West African Economic and Monetary Court, sitting in chambers at the seat of the said Court,

C/

After hearing the opinion of the First Advocate General, Mr Arégba POLO,

**UEMOA COMMISSION**  
(Mr Alioune SENHOR)

Assisted by Mr OUATTARA Peyomon Raphaël, Registrar of the Court of Appeal,

Made the following order:

**BETWEEN**

Mr. LAUBHOUE Serge, residing at Ouagadougou quartier Zone du Bois, Financial Economist, making election of domicile at the Chambers of Mr DABIRE, Mr SORGHO and Mr TOE, Attorneys before the National Courts of Burkina Faso, Secteur 15, 01 BP. 1926 Ouagadougou;

on the one hand ;

**AND**

The WAEMU Commission, located at Avenue Agostino Néto, Ouagadougou, with the President of the said Commission as its legal representative;

Assisted in the case by Mr Alioune SENHOR, Legal Adviser, appointed Agent by letter of 1<sup>er</sup> July 1997 from Mr Laouali BARAOU, Commissioner acting for the President of the Commission, letter

registered at the Registry of the Court of Justice on 2 July 1997 under No 01.

on the other hand ;

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We, Yves Donatien YEHOUESSI, President of the Court of Justice of the West African Economic and Monetary Union,

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

HAVING REGARD TO Additional Protocol No. 1 on \_\_\_\_\_ on the \_\_\_\_\_ of the WAEMU ;

**2.**

HAVING REGARD TO Additional Act No. 1/95 of 27 January 1995 appointing the members of the Court of Justice;

HAVING REGARD TO Minutes No. 01 of 27 January 1995 concerning the election of the President of the Court of Justice and the allocation of the duties of Judges and Advocates General;

HAVING REGARD TO Additional Act n° 10/96 of 10 May 1996 on the Statutes of the WAEMU Court of Justice;

HAVING REGARD TO Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice;

HAVING REGARD TO Regulation n° 01/95/CM dated 1<sup>er</sup> August 1995 on the Staff Regulations of WAEMU Officials;

HAVING REGARD TO Mr LAUBHOUET Serge's application, registered at the Registry on 30 April 1997 under No 02 ;

HAVING REGARD TO the defendant's statement of case lodged at the Registry on 10 July 1997 under No 06 ;

The Advocate General has been heard.

Whereas by application dated 28 April 1997, registered at the Court Registry on 30 April 1997 under no. 002/97, Mr LAUBHOUET Serge, represented by Maîtres DABIRE, SORGHO and TOE, Avocats à la Cour in Ouagadougou, brought an action before the Court of Justice for a stay of execution of a decision of the Court of Justice of the European Communities of the European Communities of 28 April 1997 in the case of Mr

LAUBHOUE ET Serge, represented by Maîtres DABIRE,  
SORGHO and TOE, Avocats à la Cour in  
Ouagadougou.

of the WAEMU Commission; that it is set out therein that Mr LAUBHOUEY Serge was recruited to the WAEMU Commission as an Internal Auditor by decision of 19 February 1996; that his appointment was not to be made permanent until after a probationary period of twelve months;

He was appointed Internal Auditor of the WAEMU Commission by decision no. 105/96/PCOM of 24 October 1996;

That on 27 February 1997, his duties were terminated ;

That after the rejection of his appeal by the President of the WAEMU Commission, Mr LAUBHOUEY, by application dated 24 April 1997, brought an action before the Court for a declaration that his dismissal was unfair.

Considering that, in support of his application for a stay of execution, the applicant cites the urgent need to limit the "very prejudicial consequences, particularly in social terms, of the contested decision", consequences linked to the deprivation, without notice, of the resources enabling him to meet his family expenses and honour his bank debts;

That he bases his application on the provisions of Articles 72 et seq. of the Rules of Procedure of the WAEMU Court of Justice.

Whereas under the terms of Article 72(1) of the Rules of Procedure of the Court of Justice "Any application for suspension of operation of an act of an institution shall be admissible only if the applicant has challenged that act in an action before the Court".

### 3.

Considering that the act for which a stay of execution is requested is letter no. 97-047.SP/PC dated 27 February 1997 terminating the duties of Mr. LAUBHOUEY Serge.

Considering that, by application dated 24 April 1997, the applicant submitted a request to the Court for the purpose of "declaring Decision No 97-047/SP/PC of 27 February 1997 to be unlawful, ordering his reinstatement and upholding the claims for compensation for various losses suffered".

Whereas the application for a stay of execution is preceded by an application by the same applicant to the Court challenging the same act;

That the condition of admissibility prescribed by the aforementioned Article 72 has been met; that the application for a stay of execution is therefore admissible in form.

### **ON RESOURCES**

Considering that it is settled doctrine and case law that the granting of a stay of execution is subject to the fulfilment of two essential conditions: firstly, there must be a risk that the execution of the contested decision will entail consequences that are difficult to repair, and secondly, the pleas in law set out in the application must appear, in the light of the investigation of the case, to be serious and of such a nature as to justify the annulment of the contested decision.

Considering that at the stage of the main proceedings, the seriousness of the grounds that could justify annulment of the contested decision cannot yet be assessed; that, moreover, enforcement of the decision is not likely to entail consequences that would be difficult to repair with regard to the applicant's claims, which are essentially pecuniary in nature.

Considering, finally, that the decision to dismiss Mr LAUBHOUET Serge has already been implemented and has therefore taken full effect;

That, in any event, the granting of a suspended sentence is a matter for the Judge's sovereign discretion, depending on the case, even if the conditions are met;

That in the present case, there is no reason to grant the request;

### **For these reasons**

#### **order that :**

- 1) Mr LAUBHOUET Serge's application is admissible in form;
- 2) there are no grounds for granting a stay of execution of dismissal decision No. 97-047/SP/PC of 27 February 1997.

This order has been signed by us and the Registrar.

Then follow the illegible signatures

For a true copy of the original delivered for the first  
time to Mes. DABIRE, SORGHO and TOE)

Ouagadougou, 17 July 1997

**The Registrar**