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3 December 2004

COUR DE JUSTICE DE L'UEMOA - OUAGADOUGOU
(BURKINA FASO)

ORDER

The year two thousand and four
and Friday three December

Mr Eugène- YAf
(Maître Issouf BAADHIO)

C/

- 1. La Conférence des Chefs
d'état et du Gouvernement de
l'UEMOA**
- 2. UEMOA Commission (Maître
Harouna SAWADOGO and Maître
Abdoul Wahab BERHTE)**

The President of the Court of Justice of the West African
Economic and Monetary Union, sitting in his chambers at
the seat of the said Court, following Mr Eugène YAf's
application for a stay of execution;

Assisted by Mr Raphaël Péyomon OUATTARA,
Registrar of the Court ;

Made the following order:

BETWEEN

Mr Eugène YAf, UEMOA Commissioner, of Ivory Coast
nationality, residing in Ouagadougou, with **an address for service
at the Chambers of Maître Issouf BAADHIO,
Avocat à la Cour, 01 BP. 2100 OUAGADOUGOU 01,**

on the one hand ;

AND

1. The Conference of Heads of State and Government of
WAEMU, represented by its Legal Representative,
2. The UEMOA Commission, whose registered office is at
Ouagadougou, 01 BP 543, in the person of its Legal
Representative, Mr Soumaila CISSE, its President,
represented by Mr Eugène KPOTA, Agent of the said
Commission, assisted by Maître Harouna SAWADOGO,
Avocat à la Cour, 01 BP. 4091 Ouagadougou 01,
Burkina Faso and Maître Abdoul Wahab BERHTE,
Avocat à la Cour BP. 8025 BAMAKO, Mali,

on the other hand ;

We, Yves Donatien YEHOUESSÎ, President of the Court of Justice of the West African Economic and Monetary Union (UEMOA)'

Having regard to the Treaty of the West African Economic and Monetary Union dated 10 January 1994;

Having regard to Additional Protocol No. I relating to 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 Additional Act n° 01/2001 renewing the term of office, appointing and ending the term of office of Members of the WAEMU Court of Justice and Additional Act n° 02/2001 appointing Mrs Paulette Badjo EZOUEHU as a Member of the Court of Justice;

Having regard to Minutes No 01/2004 on the appointment of the President and the allocation of functions within the WAEMU Court of Justice;

Having regard to Regulation No. 01/2000/CDJ of 6 June 2000 repealing and replacing Regulation No. 1/96/CDJ on the Administrative Rules of the Court of Justice of the WAEMU;

Having regard to the application of Mr Eugène YAÏ, registered at the Court Registry on 22 November 2004 under No 04/04 ,

Having regard to the statement of defence of 30 November 2004 of the law firm Harouna SAWADOGO, representing the defendants;

Having regard to the applicant's reply of 2 December 2004; Having heard

Maître Zaliatiou AOUBA in place of Maître Harouna SAWADOGO; Having

heard Maître Abdoul Wahab BERTHE in his oral observations;

Heard the oral observations of Mr Eugène KPOTA, Agent of the WAEMU Commission;

Maîtres Idrissa A. BA and Seydou TRAORE, substituting for Maître Issouf BAADHIO, in their oral observations;

Having regard to the pleadings ;

Having deliberated in accordance with WAEMU Community law ;



Considering that by application dated 22 November 2004, registered at the Registry of the Mr Eugène YAi, represented by Maître Issouf BAADHIO, avocat à la Cour à Ouagadougou, with an address for service at the law firm of Mr YAi, lodged an application with the Court of Justice of the West African Economic and Monetary Union (UEMOA) on the same day under No 04/04, brought an application before the Court of Justice of the West African Economic and Monetary Union (WAEMU) for a stay of execution of Additional Act No 05/2004 of 15 November 2004 appointing Mr Jérôme BRO GREBE as a Member of the WAEMU Commission in his stead, an additional act adopted by the Conference of Heads of State and Government;

Whereas it is set out in the said application that the applicant brought an action before the Court of Justice for annulment of the abovementioned Additional Act; that action, dated 22 November 2004, was registered at the Court Registry on the same day under No 03/04.

That the applicant submits that the act in question constitutes, in his view, a revocation of his mandate as WAEMU Commissioner in breach of Articles 17, 18, 19, 27 and 30 of the WAEMU Treaty on the grounds that :

- he has not resigned as Commissioner;
no proceedings have been brought before the Court to have him removed from office;
- the Additional Act is contrary to all the provisions of the texts governing the appointment and termination of the term of office of Commissioners;

That it considers that the future of its mandate and the sustainability of the Commission's structures are in urgent jeopardy;

It continues that if Additional Act No 06/2004 were to be given full and complete effect in its implementation, it would permanently and irrevocably undermine the office of Commissioner and the Community institutions of the WAEMU and would render the independence of Commissioners meaningless, which would be contrary to the oath they took before the Court of Justice before taking up their duties;

He also maintains that if this Additional Act were to be executed as it stands, it would have irreversible consequences on his prerogatives as Commissioner; finally, the act in question constitutes in itself a threat to the durability of the institutions and a manifestly unlawful disturbance against him and his family;

That the applicant concludes that there is an urgent need to deprive Additional Act No. 06/2004 of legal effect and to restore his rights without delay by ordering a stay of execution in accordance with Articles 72 et seq. of Regulation No. 01/96/CM on the Rules of Procedure of the WAEMU Court of Justice.

Whereas, by a statement of defence dated 30 November 2004, the defence of the Conference of Heads of State and Government of the WAEMU and of the Commission of the WAEMU claims, principally and as a matter of form, that the Court of Justice does not have jurisdiction to order a stay of execution of the Additional Act at issue and, in the alternative and as a matter of substance, that the application for a stay of execution should be dismissed as ill-founded;

In support of its conclusions, it claims that an analysis of Articles 19 of the WAEMU Treaty, 8 of Additional Protocol No I, 27 of the Statutes of the Court of Justice and 15 of the Rules of Procedure of the WAEMU Court of Justice shows that the additional acts of the Conference of Heads of State and Government of the WAEMU are not subject to review by the WAEMU Court of Justice;

Considering that by reply dated 02 December 2004 the applicant submits that the arguments of the defendants both on the jurisdiction of the Court of Justice and on the application for suspension of operation of Additional Act No 06/2004 should be rejected.

Whereas before us, at the hearing held in our chambers, the parties had the following to say develop the arguments set out in their respective written submissions, while emphasising certain points of law.

That the plaintiff therefore seeks dismissal of the defendants' pleadings relating to the Court of Justice's lack of jurisdiction, which in its view in fact constitute a plea of lack of jurisdiction that should have been raised in limine litis; this is disputed by the defendants, who assert that their statement of defence did indeed conclude in the main proceedings and in form that the Court of Justice lacked jurisdiction to order a stay of execution of the act complained of.

9 ON THE JURISDICTION OF THE PRESIDENT OF THE COURT OF JUSTICE OF UEMOA TO HEAR THE APPLICATION FOR A STAY OF EXECUTION.

Considering that under the terms of Article 1^{er} of Additional Protocol No. I relating to the supervisory bodies of the WAEMU "The Court of Justice shall ensure that the law is observed in the interpretation and application of the Treaty of the Union"; that as such the Court of Justice, a judicial supervisory body, has the fundamental task of ensuring that Community acts referred to it are in conformity with the WAEMU Treaty;

Article 18 of Additional Protocol I provides that "Actions brought before the Court of Justice shall not have suspensory effect. However, the Court of Justice may order a stay of execution of acts contested before it".

That Article 72 of the Rules of Procedure of the Court of Justice makes the procedure relating to a stay of execution a special procedure falling within the jurisdiction of the President of the Court.

That the judge, in his capacity as a judge of summary proceedings, i.e. urgent proceedings, can take essentially provisional measures without prejudicing the merits of the case and avoiding emptying the main proceedings of their substance.

That to follow the defendants would be to defeat the provisions of paragraph 3 of article 72 of the Rules of Procedure and, as a result, the activities of the UEMOA Commission have come to a standstill.

That, accordingly, the defendants' pleas that the Court of Justice lacks jurisdiction should be dismissed and we should be declared to have jurisdiction;

IN THE MATTER OF THE APPLICATION FOR STAY OF EXECUTION OF ADDITIONAL ACT No 06/2004

Considering that Mr Eugène YAI's request complies with Article 72 of the Rules of Procedure of the Court of Justice in that it was made following the action for annulment brought by him on 22 November 2004 before the Court of Justice;

That it is therefore admissible in form.

Considering that it is settled case law that the granting of a stay of execution is subject to the fulfilment of two essential conditions - firstly, that the execution of the contested decision is likely to entail consequences that are difficult to repair, and secondly, that the pleas in law set out in the application appear, in the state of the case, to be serious and of such a nature as to justify the annulment of the contested decision;

Considering that the arguments put forward by the applicant concerning the consequences of implementing the Additional Act in question are relevant and well-founded insofar as Article 4 of the said Act provides for its entry into force as from the date of its signature;

That the immediate installation of the new Commissioner risks rendering the main action devoid of purpose; that, moreover, the newly installed Commissioner will be required to adopt legal acts which will prove to be without legal effect if the contested additional act is annulled
This situation of instability and legal uncertainty is likely to have consequences for the credibility of the Community institution as a whole that are difficult to repair;

Considering moreover that the pleas in law set out in the application are serious in view of the importance of the forthcoming decision on the substance of the dispute, which raises the problem of assessing the legality of an act adopted by the highest authority of the Union, the Conference of Heads of State and Government, on the one hand, and the consequences of that act on the operation of an important body of the Union, the Commission, and on the professional career of the applicant, on the other;

That there are urgent and serious grounds for implementing the Additional Act in question:

Considering that, in any event, the granting of a stay of execution is a matter for the judge's sovereign assessment of whether the conditions of urgency and the serious nature of the main action have been met.

In the case referred to us, we must grant Mr Eugène YAÏ's request and order a stay of execution of Additional Act No 06/2004 of 15 November 2004.

That in accordance with article 73 of the Rules of Procedure of the Court of Justice, Mr Eugène YAÏ must pay a deposit of 25 000 (twenty five thousand) CFA francs to the Court Registry, in return for a receipt.

For these reasons

In form declare that we have jurisdiction to hear the application for a stay of execution of the implementation of additional act no. 06/2004 of 15 november 2004 ;

In the background:

Receive Mr Eugène YAÏ's request;

Order the suspension of the operation of the said additional act pending the end of the proceedings.

main proceedings ;

Order Mr Eugène YAÏ to pay into the Registry of the Court of Justice, against receipt, a deposit of 25 000 (twenty five thousand) FCFA in accordance with Article 73 of the Rules of Procedure of the Court of Justice;

Costs reserved;

And we have signed with the Clerk. —



The image shows a handwritten signature in black ink over a blue circular stamp. The stamp contains the text "Union Eeonon" at the top, "Le Pri" on the right, and "Cour de J" at the bottom.