

N° 03
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 Ababacar DIENG
Social Union

The President of the Court of Justice of the European Economic and
Monétaire (Me. Mamadou SAVADOGO), sitting in chambers at
the seat of the said Court,

C/

UEMOA COMMISSION
(Mr Alioune SENHOR)

After hearing the opinion of the First Advocate General, Mr Arégba
POLO,
Assisted by Mr OUATTARA Peyomon Raphaël, Registrar of
the Court,

Made the following order:

BETWEEN

Mr Ababacar DIENG, residing in Ouagadougou, electing domicile
at the office of Me. Mamadou SAVADOGO, Avocat auprès des
juridictions nationales du Burkina Faso, 01 BP. 6042
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^{er} July 1997 from Mr Laouali
BARAOU, Commissioner acting for the President of the
Commission, registered at the Registry of the Court of Justice on
2 July 1997 under No 03.

on the other hand ;

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 _____ of _____ 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 No. 1/95/CM of 1^{er} August 1995 on the Staff Regulations of Officials of the WAEMU;

HAVING REGARD TO Mr Ababacar DIENG's application, registered at the Registry on 9 June 1997 under No 6 ;

Having regard to the defendant's statement of case filed at the Registry on 10 July 1997 under No 05 ;

The Advocate General has been heard.

Whereas by application dated 6 June 1997, registered at the Court Registry under No 006/97, Mr Ababacar DIENG, represented by Maître Mamadou SAVADOGO, Avocat à la Cour, Ouagadougou, brought an action before the Court of Justice for a stay of execution of a decision of the WAEMU Commission; that Mr Ababacar DIENG, by application dated 6 June 1997, brought an action for annulment of Decision No 97-046/SP/PC of 27 February 1997 by which the President of the WAEMU Commission terminated his probationary period; that there is now an urgent need to stay the execution of the decision, especially as his family, being foreign nationals, has no resources or assistance in Burkina Faso; that he bases his application on Article 44 of Additional Act No. 10/96 and Article 72 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".

Considering that decision no. 97-047/SP/PC of 27 February 1997 terminating the functions of Mr Ababacar DIENG, the execution of which is requested to be suspended, is the subject of an appeal in

annulment before the Court dated 6 June 1997 and entered in the Register of Applications under no. 005/97; that the admissibility requirement laid down 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.

3.

Considering that, as the main proceedings stand, the seriousness of the grounds that could justify annulment of the contested decision cannot yet be assessed objectively; that, moreover, implementation of the decision is not such as to entail consequences that would be difficult to repair in the light of the applicant's claims and the grounds put forward in support of them.

Considering finally that the decision to dismiss Mr Ababacar DIENG has already been executed and has therefore produced its full effect; that in any event the granting of a stay is a matter for the sovereign judgement of the Judge who assesses each case on its merits, even if the conditions are met; that in the case in point, there is no reason to grant the request;

For these reasons

order that :

- 1) Mr Ababacar DIENG's application is admissible in form;
- 2) there are no grounds for granting a stay of execution of dismissal decision no. 97-046/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 Me.
Mamadou SAVADOGO

Ouagadougou, 17 July 1997

The Registrar

