

THE PRESIDENT



**ORDER N-06/2022/CJ
on 24 March 2022**

The year two thousand and
twenty-two; And on the
twenty-fourth of March ;

We, Salifou SAMPINBOGO, Acting Judge of the President of the Court of Justice of the West African Economic and Monetary Union (WAEMU), sitting in our chambers at the seat of the said Court, further to the request of the State of Mali for a "*stay of execution of the sanctions adopted against the State of Mali by the Conference of Heads of State and Government of the WAEMU on 09 January 2022 in Accra, Ghana*";

Assisted by **Maître Hamidou YAMEOGO**, Deputy Registrar; We
have made the following order:

Between

The State of Mali, represented by Mr Badou Hasseye TRAORE, acting in his capacity as Directeur Général du Contentieux de l'Etat, Centre Commercial, Rue 351, Porte 373 Bamako Koura, BP 234, Tel: 00223 20 21 67 10 / 20 21 67 11, Bamako (Mali), Email: traorebadou60Ugmail.com, with counsel:

- Maître Moustapha S. M. CISSE, residing at Kalaban Koura, Route de Garantiguibougou, near the old terminus, Rue 447, porte 51, BPE 630, Commune V of the District of Bamako, Tel. 00223 20 28 70 06 /00223 66 74 80 02, email: moustaphasmfiyahoo.fr ;
- Maître Ousmane Mama TRAORE, ACI 2000 Hamdallaye derrière Centre INPS Commune IV, BP 2629 Bamako (Mali), Tel: 00223 66 75 92 72 / Tel. 66 75 03 22 / 76 08 00 44, email: traore.ousmane39Ñyahoo.fr, ousmanemainatraore@gmail.com ;

- Maître Amadou T. DIARRA, Immeuble Madiou SIMPARA, Route de Koulikoro after la Malienne de l'Automobile, Tel: 00223 77 64 00 78, email: atdiarraK@yahoo.fr ;
- Maître Cheick O. KONARE, Rue de l'Hôtel Atlantique near Stade du 26 mars, Tel: 00223 76 36 93 93, email: maitrecok@yahoo.fr ;
- Maître Fatoumata SIDIBE DIARRA, Cabinet d'Avocats FSD Conseils, Immeuble Conseil Malien des Chargeurs Hamdallaye ACI 2000, Commune IV, BPE 2912, Bamako (Mali), Tel: 00223 20 29 41 04 / 00223 74 03 03 03, email: accueilFsdconseils.com, maitreKfsdconseils.com ;
- Maître Abdourahamane Ben Mamata TOURE, Magnambougou, Corniche, near the "Superette Corniche", Tel: 00223 70 82 99 20, Bamako (Mali) BPE 2383, email: drabenmatfivahoo.fr ,

All Lawyers at the Mali Bar, electing domicile for the present and their consequences in the office of Maître Moustapha S. M. CISSE, residing at Kalaban Koura, Route de Garantiguibougou, near the former terminus, Rue 447, porte 51, BPE 630, Commune V of the District of Bamako, Tel. 00223 20 28 70 06 /00223 66 74 80 02, email: moustaphasmfi@yahoo.fr ;

Plaintiff,

on the one hand ;

And

The Conference of Heads of State and Government of the West African Economic and Monetary Union (UEMOA), in the person of its legal representative, 380, Avenue du Professeur Joseph KI-ZERBO, 01 BP 543 Ouagadougou 01 Burkina Faso, tel. +226 25 31 88 72, having as its agent Mr Oumarou Yaye, Legal Adviser to the President of the Commission and as its counsel Maitre Issa Sama, Barrister registered at the Bar of Burkina Faso, residing at Ouagadougou, 06 BP 10302 Ouagadougou 06, Tel. (00226) 25 37 78 78 ;

Defendant,

on the other hand ;

We, Salifou SAMPINBOGO, Acting Judge of the President of the Court of Justice of the West African Economic and Monetary Union (WAEMU);

VU the Treaty of 10 January 1994 creating the West African Economic and Monetary Union, as amended on 29 January 2003;

VU Additional Protocol I on the supervisory bodies of the WAEMU, in particular Article 19 ;

HAVING REGARD T O Additional Act No. 10/96 of 10 May 1996 on the Statutes of the Court of Justice of the WAEMU, in particular Article 44 ;

VU Regulation No 01/96/CM of 5 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU, in particular Articles 72 et seq;

VU Regulation No 01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU,

HAVING REGARD TO Minutes No 02/2016/CJ of 26 May 2016 relating to the swearing-in and installation of the members of the WAEMU Court of Justice;

HAVING REGARD TO Minute No. 2019-08/AI/02 of 28 May 2019 on the appointment of the President of the Court and the distribution of functions within the Court;

HAVING REGARD T O minutes n°2019-09/AP/07 of 03 June 2019 relating to the installation of the President of the WAEMU Court of Justice;

VU minute no. 2021-02/AP/02 of 25 February 2021 relating to the swearing-in of a Member of the WAEMU Court of Justice;

VU minute no. 2022-02/AP/01 of 09 February 2022 relating to the swearing-in of a Member of the WAEMU Court of Justice;

VU Decision n°001-2022/CDI of 16 March 2022 on the interim appointment of the President of the WAEMU Court of Justice;

HAVING REGARD TO the application by the State of Mali, registered at the Registry of the WAEMU Court of Justice on 15 February 2022 under No 22 R 001, seeking an assessment of the legality of the '*decision on sanctions adopted against the State of Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 09 January 2022 in Accra, Ghana*'. '

HAVING REGARD to the application by the State of Mali, registered at the Registry of the WAEMU Court of Justice on 15 February 2022 under No. 22 R 001.1, for a 'stay of execution of the *sanctions against the State of Mali by the Conference of Heads of State and Government of WAEMU on 09 January 2022, in Accra, Ghana*'.

HAVING REGARD to Order n°04/2022/CJ of 15 February 2022 setting a time limit for the legal representative of the WAEMU Conference of Heads of State and Government to present his observations on the application for a stay of execution;

HAVING REGARD TO letter no. 22 R 001 of 16 February 2022 serving the request for assessment of the legality of the "*decision on sanctions adopted against the State of Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 09 January 2022 in Accra, Ghana*". ,

HAVING REGARD TO letter no. 22 R 001.3 of 16 February 2022 serving the application for a stay of execution;

HAVING REGARD TO the statement in response of the Conference of Heads of State and Government of WAEMU filed with the Registry of the Court on 14 March 2022 under No 22 R 001.6 ;

HAVING REGARD TO the other documents in the file;

Considering that, by application registered at the Court Registry on 15 February 2022 under No 22 R 001, the State of Mali, through its Agent and Counsel, brought an action before the Court of Justice of the WAEMU for a ruling on the legality of the "*décision portant sanctions adoptées contre l'Etat du Mali par la Conférence des Chefs d'Etat et de Gouvernement de l'Union économique et Monétaire Ouest Africaine (UEMOA) le 09 janvier 2022 à Accra au GHANA*". ,'

Whereas by another application, registered at the Registry of the Court on 15 February 2022 under No. 22 R 001.1, the State of Mali, through its Agent and Counsel, brought an application for "*a stay of execution of the sanctions adopted against the State of Mali by the Conference of Heads of State and Government of WAEMU on 09 January 2022, in Accra, Ghana*",

Considering that by letter of 16 February 2022, the Registrar of the Court notified the legal representative of the Conference of Heads of State and Government of the WAEMU of the request for an assessment of the legality of the *"decision bearing Snnc/ios adopted against the State of Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 09 January 2022 in Accra, Ghana"*,

Considering that by another letter of 16 February 2022, the Registrar of the Court notified the legal representative of the Conference of Heads of State and Government of WAEMU of the application for a stay of execution, together with Order No. 04/2022/CI of 16 February 2022 of the President of the Court, setting at thirty (30) days the time limit for the presentation of observations on the application for a stay of execution,

Considering that the observations of the legal representative of the Conference of Heads of State and Government of WAEMU were filed with the Registry of the Court of Appeal on 14 March 2022 under No. 22 R 001.6 ;

Considering that, in its request for a stay, the State of Mali maintains that the Conference of Heads of State and Government of WAEMU adopted sanctions against it during its extraordinary session held in Accra on 09 January 2022, formulated as follows in its final communiqué: *"The Heads of State and Government decide to endorse the sanctions adopted by the Conference of Heads of State and Government of ECOWAS during its extraordinary sessions of 12 September 2021 and 07 November 2021. The Heads of State and Government impose additional vigorous sanctions, in particular economic and financial sanctions.*

The Conference remains in solidarity with any sanctions taken by the ECOWAS Assembly of Heads of State and Government at its extraordinary summit on 09 January 2022.

It also suspends Mali from WAEMU bodies and institutions.

It also suspends financial assistance to Mali from WAEMU financing institutions.

The Conference instructs the Community institutions to apply these sanctions immediately;

In addition, he states that by this decision, the supreme organ of UEMOA has endorsed all the sanctions imposed by ECOWAS against Mali prior to 09 January 2022 and ratified all the additional sanctions imposed by decision MSC.A/DEC.1/01/22 of 09 January 2022 of the ECOWAS Heads of State and Government, which are as follows:

" 1. The recall for consultations by ECOWAS Member States of their Ambassadors accredited to the Republic of Mali;

2. The closure of land and air borders between ECOWAS Member States and Mali, with the exception of security-related or humanitarian operations by the United Nations system, international forces including MINUSMA, and the exceptions set out in paragraph three below.

3. The suspension of all commercial and financial transactions between ECOWAS member states and Mali, with the exception of those involving the following products:

- i. FMCG products or foodstuffs for which the list of chapters and tariff lines is attached;
- ii. Pharmaceutical products (Chapter 30 of the ECOWAS CET version 2022) ;
- iii. Medical materials and equipment (Chapter 90 of the ECOWAS CET, version 2022);
- iv. Materials and equipment intended to combat COVID-19 as listed in the reference classification in the HS classification of medical supplies related to COVID-19 ;
- v. Petroleum products (lines 27.10 and 27.11 of the 2022 version of the ECOWAS CET) ;

V3. Electricity.

4. The freezing of assets of the Republic of Mali domiciled in banks Central Banks and Commercial Banks of all ECOWAS Member States;

5. The freezing of the assets of public and semi-public companies of the Republic of Mali domiciled in commercial banks in all ECOWAS Member States;

6. The suspension of all financial assistance and transactions in favour of Mali by ECOWAS financing institutions, particularly EBID and BOAD;

That the State of Mali indicate that this situation in fact reveals a manifest desire on the part of the Conference of Heads of State and Government of WAEMU to interfere in the internal politics of one of its Member States, thereby deviating from its objectives under the WAMU and WAEMU Treaties;

That the WAEMU Conference of Heads of State and Government has endorsed the sanctions taken by the Economic Community of West African States (ECOWAS) without any legal basis;

That this is why it is requesting a stay of execution of the decision to impose sanctions by the Conference of Heads of State and Government of the WAEMU, on the grounds that the sanctions imposed on it by the Conference appear to be illegal and unjustified both in form and in substance;

That the holding of the Conference of Heads of State and Government in Accra, Ghana, was in flagrant violation of the provisions of Article 114 of the WAEMU Treaty governing the venue of the Conference;

That it further contends that the Conference is incompetent to impose the sanctions contained in the decision of 9 January 2022 since neither the revised WAEMU Treaty nor the WAMU Treaty confers on the Conference the power to impose political, diplomatic, economic and financial sanctions on a Member State of the Union following the example of those imposed on Mali; that only the Council has the power to take such measures as may be necessary to safeguard the interests of the Union in accordance with a well-defined procedure; that before any sanctions are taken, the breaches identified must first be referred to the Court of Justice of the Union in accordance with Article 113 of the Treaty and Articles 5 and 6 of Additional Protocol No. 1;

That, in this respect, the applicant states that the decision of 9 January 2022 is the result of a manifest irregularity, the substance of which is sufficiently developed in the main action for assessment of legality and for annulment lodged with the Cour de céans ;

That, furthermore, the State of Mali elaborates on the consequences of the sanctions imposed by the Conference of Heads of State and Government of the WAEMU, maintaining that they are extremely burdensome for Mali and damaging in more ways than one in that they constitute a brake on the free movement of capital, goods, services and people, They are also an effective weapon for economically and financially suffocating Mali, a landlocked country with no access to the coast, whose trade depends to a large extent on the ports of its neighbouring WAEMU member countries, with which it can no longer trade even though several international conventions guarantee it this right; that it is facing international terrorism with its deadly ideology, which has led to a situation of insecurity in the country for almost a decade;

That therefore, he claims to have suffered certain, immediate and difficult to repair damage and that there is undoubtedly an absolute urgency to suspend the sanctions decided against him,

Considering that, in its response, the defence of the Conference of Heads of State and Government of WAEMU submits that the stay of execution should be "rejected outright as ill-founded", arguing that the State of Mali is making a manifestly abusive and dilatory application on the grounds, firstly, that the act adopted on 9 January 2022 by the Conference of Heads of State and Government, since it is not a decision within the meaning of Article 19 of the WAEMU Treaty, cannot be challenged by a Member State on the basis of an application for assessment of legality and, secondly, that, since it is not a decision within the meaning of Article 19 of the WAEMU Treaty, it cannot be challenged by a Member State on the basis of an application for assessment of legality, not being a decision within the meaning of Article 19 of the WAEMU Treaty, cannot be challenged by a Member State on the basis of an application for assessment of legality and, secondly, that "the adoption of the act enshrining the final communiqué of the extraordinary session of 9 January 2022 is fully justified" by the existence of exceptional circumstances;

It also states that, in the face of this exceptional situation which led to the adoption of exceptional measures, the urgency and harmful consequences claimed by the State of Mali cannot be sustained;

Furthermore, the Conference of Heads of State and Government of UEMOA maintains that it merely took note of the decisions already taken by the Conference of Heads of State and Government of ECOWAS and declared its solidarity with those to be taken by the same body; moreover, the alleged harmful consequences will not disappear as long as the acts taken by ECOWAS, to which all the Member States belong, remain in force;

I. 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 of Additional Protocol No. 1 on the organs of WAEMU, *"the CoIM of Justice shall ensure that the law is respected in the interpretation and application of the Treaty of the Union"*,

In this respect, the Court of Justice, as a judicial review 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 No. 1 states that *"Actions brought before the Court of Justice shall not have suspensory effect. The Court may, however, order the suspension of operation of acts challenged before it"*,

Article 44 of the Additional Act to the Statute of the WAEMU Court of Justice states that *"the President of the Court, or where appropriate the judge replacing him, may decide by summary procedure by order on confusions seeking a stay of proceedings"*,

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

Thus, as a judge of summary proceedings, i.e. urgent proceedings, the Chairman or his substitute may take measures of an essentially provisional nature without prejudging the merits of the case and avoid emptying the proceedings of their substance,

That, consequently, we should be declared competent;

II. ON THE ADMISSIBILITY OF THE STATE'S APPLICATION FOR A STAY OF EXECUTION OF THE INJUNCTION

MALI

Considering that under the terms of Article 72(1) of the Rules of Procedure of the Court of Justice "*An application for a stay of execution 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 under the terms of Article 72(1) of the Rules of Procedure of the Court of Justice "An application for a stay of execution 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 the sanctions taken on 9 January 2022, in extraordinary session, by the Conference of Heads of State and of Government, whose execution is requested to be suspended, are the subject of an action for annulment brought before the Court on 15 February 2022 under No. 22 R 001 ,

Accordingly, the application for a stay of proceedings by the State of Mali complies with Article 72 of the Rules of Procedure of the Court of Justice in that it was made following its action for annulment brought before the Court of Justice against an act of a Community body;

It is therefore admissible in form;

III. ON THE GROUNDS FOR THE STAY

Considering that, under Article 72(2) of the Rules of Procedure of the Court of Justice and the settled case-law of the Cour de Céans, the decision ordering interim measures is subject to the existence of circumstances establishing urgency and of pleas of fact and law justifying prima facie the grant of the interim measures sought;

Moreover, the urgency of an application for interim measures must be assessed in relation to the need to give a provisional ruling in order to avoid serious and irreparable harm to the party seeking interim measures;

Considering that it appears from the file that the Conference of Heads of State and Government of WAEMU in its extraordinary session of 9 January 2022 has, among other sanctions, suspended Mali from the organs and institutions of WAEMU, suspended financial assistance in favour of Mali by the financing institutions of WAEMU and instructed the Community institutions for the immediate application of the said sanctions;

Since these sanctions were applied immediately by the various bodies and institutions of the WAEMU, the arguments put forward by the State of Mali on the consequences of enforcing the sanctions against it are therefore relevant and well-founded insofar as their application is likely to have consequences that would be difficult to repair in terms of their social, economic and financial impact;

Considering, moreover, **that** the pleas in law set out in the application appear serious in view of the importance of the forthcoming decision on the merits of the dispute, which poses a problem of assessing the legality of an act taken by the WAEMU High Authority, the Conference of Heads of State and Government, on the one hand, and the consequences of that act on the functioning of a Member State and the stability of the Union, in relation to the objectives of a union based on the rule of law, on the other;

That urgency and serious grounds have been established for suspending the implementation of the sanctions decided by the WAEMU Conference of Heads of State and Government;

Considering that, in any event, it is settled case-law that it is for the interlocutory judge to assess the factors making it possible to establish, in the circumstances of each case, whether immediate enforcement of the decision in respect of which suspension is sought would be such as to entail for the applicant a risk of damage which could not be made good, even if the decision were to be annulled in the main proceedings;

That it is therefore appropriate, in the circumstances, to order a stay of execution of the sanctions imposed by the WAEMU Conference of Heads of State and Government at its extraordinary session held in Accra on 9 January 2022 and set out in its final communiqué;

FOR THESE REASONS

We hereby declare that ;

Declare the application for a stay of execution lodged by the State of Mali admissible in form;

Order a stay of execution of the sanctions pronounced by the Conference of Heads of State and Government of the WAEMU at its extraordinary session held in Accra on 9 January 2022 and set out in its final communiqué;

Costs reserved;

Let's just say it will be referred to us if necessary.

Done at our offices, 24 March 2022

Illegible signatures follow.

Ouagadougou, 24 March 2022

For the Registrar
e G effie Ad it



Hamidou YAMEOGO * " 010*1*