JUDGMEN
T NO.
03/2024
FROM 08 MAY 2024

RECOURSE TO FOR THE PURPOSES OF A WRIT OF EXECUTION FOR DIFFICULTIES IN ENFORCING A SEIZURE OF DEBT, AN ORDER THAT THE GARNISHEE PAY THE COSTS OF THE SEIZURE AND DAMAGES FOR THE LOSS SUFFERED.

Mr DIAWARA Oumar

C/

Central Bank of West African States (BCEAO)

***Composition of the Court* :**

- **M. Mahawa Sémou DIOUF, Chairman ;**
- **Mr Abdourahamane GAYAKOYE SABI, Judge ;**
- **Mr Jules CHABI MOUKA, Judge-Rapporteur ;**
- **Mr Kalifa BAGUE, Advocate General ;**
- **Mr Hamidou YAMEOGO, Court Clerk.**

COURT OF JUSTICE OF THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)

PUBLIC HEARING ON 08 MAY 2024

The Court of Justice of the WAEMU, meeting in ordinary public session on eight (08) May two thousand and twenty four (2024), in which were seated :

Mr Mahawa Sémou DIOUF, Chairman; Mr Abdourahamane GAYAKOYE SABI, Judge Jules CHABI MOUKA, Judge-Rapporteur ;

In the presence of Mr Kalifa BAGUE, Advocate General;

With the assistance of Maître Hamidou YAMEOGO, Court Clerk ;

has rendered the following contradictory judgment:

BETWEEN :

Mr DIAWARA Oumar, company director of Congolese nationality domiciled in Abidjan in the Republic of Côte d'Ivoire, assisted by Maître Géraldine ODEHOURI-KOUDOU and Maitre Esther Désirée DAGBO, lawyers at the Abidjan bar.
Applicant, on the one hand ;

AND

Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), assisted by SCPA Mame Adama GUEYE et associés, of the Dakar Bar, and SCPA SAWADOGO et SAWADOGO, of the Dakar Bar**.**
Ouagadougou bar.
Defendant, on the other hand ;

THE COURT

HAVING REGARD TO the Treaty of the West African Economic and Monetary Union (WAEMU) of 10 January 1994, as amended on 20 January 2007;

HAVING REGARD TO Additional Protocol No. 1 on the supervisory bodies of the WAEMU ;

HAVING REGARD T O Additional Act n° 10/96 on the Statutes of the Court of Justice of the WAEMU dated 05 July 1996;

Having regard t o Additional Act n°01/2023/CCEG/UEMOA of 10 January 2023 renewing the term of office and appointing members of the Court of Justice of UEMOA;

HAVING REGARD **T O** Regulation n°01/96/CM of 05 July 1996 on the Rules of Procedure of the WAEMU Court of Justice;

HAVING REGARD **T O** Regulation n°01/2022/CJ of 15 April 2022 repealing and replacing Regulation n°01/2012/CJ of 21 December 2012 on the Administrative Rules of the Court of Justice of the WAEMU ;

HAVING REGARD TO Minutes No 2023-01/AP/01 of 1er February 2023 relating to the swearing-in of the members of the WAEMU Court of Justice;

VU Minutes No. 2023-02/AI/01 of 1er February 2023 concerning the appointment of the President of the Court and the distribution of functions within the Court ;

HAVING REGARD TO Minutes n°2023-03/AP/02 of 02 February 2023 relating to the installation of the President of the WAEMU Court of Justice;

HAVING REGARD TO the application dated 22 March 2022, registered at the Court Registry on 24 March 2022 under number 22 R003 and served on 05 April 2022 on the Central Bank of West African States (BCEAO), assisted by Maître Géraldine ODEHOURI-KOUDOU and Maitre Esther Désirée DAGBO, lawyers at the Abidjan Bar;

HAVING REGARD TO the documents in the file ;

HAVING REGARD TO the summonses of the parties;

HEARD the Judge-Rapporteur, in his report ;

ORDERED Counsel for the applicant, in its oral observations; **ORÏ**

Counsel for the defendant, in his oral observations; **ORDERED**

the Advocate General, in his Opinion;

Having deliberated in accordance with Community law :

I. FACTS

Considering that by judgment no. 34 dated 22 October 2021, the Court of Justice of the Economic Community of West African States (ECOWAS) handed down a decision ordering the Republic of Côte d'Ivoire to pay Oumar DIAWARA the sum of one billion two hundred and ninety-two million six hundred and eighty-six thousand eight hundred and sixty-four (1,292,686,864) FCFA as compensation for the violation of his rights;

That in execution of the aforementioned decision, Oumar DIAWARA intended to proceed with the seizure and allocation of the assets of the State of Côte d'Ivoire located in the books of the BCEAO head office in Dakar, Senegal, on the basis of the uniform business law of the Organisation for the Harmonisation of Business Law in Africa (OHADA). To this end, bailiffs officiating in Dakar served a writ of attachment on 09 February 2022 on the Central Bank of West African States;

In response, the State of Côte d'Ivoire summoned the applicant and BCEAO by bailiff's writ dated 10 March 2022 to appear before the Summary Jurisdiction Judge of the Dakar Court of First Instance (Tribunal de Grande Instance Hors Classe de Dakar) to hear an order for the release of the seizures made on 09 February 2022, the said procedure still being in progress at the date of the application;

That the applicant contends that he wishes to hold BCEAO personally liable for payment of the costs of the seizure and for payment of damages pursuant to Article 156 of the OHADA Uniform Act on the Organisation of Simplified Debt Recovery and Enforcement Procedures;

II. PROCEDURE AND CLAIMS OF THE PARTIES

A. Pleas in law and main arguments of the applicant

Considering that the applicant, Oumar DIAWARA, explains that the proposed seizure of the assets of the State of Côte d'Ivoire in the books of the BCEAO is intended to pay his claim enshrined in the enforcement order dated 04 February 2022 issued by the Registry of the ECOWAS Court of Justice and subsequent documents of service and summons which have acquired the force and authority of res judicata and the amount of which is fixed after deduction of interest at the sum of one billion two hundred and ninety-two million six hundred and eighty-six thousand eight hundred and sixty-four (1.ninety-two million six hundred and ninety-six thousand eight hundred and sixty-four (1.292.686.864) FCFA ;

That for the purposes of this operation and in order to comply with the requirements of OHADA Community law, the bailiff served BCEAO with the following documents:

- The minutes of attachment of receivables drawn up against the State of Côte d'Ivoire and dated 09 February 2022, served at 3.52 p.m. on BCEAO in its capacity as garnishee;

- The notice of seizure to the State of Côte d'Ivoire dated 16 February 2022;

- Judgment No. 34/21 of 22 October 2021, handed down by the Court of Justice of the Community of West African States, served at the same time to the BCEAO at the time of this seizure;

- The document serving the said judgment on the State of Côte d'Ivoire, dated 28 October 2022, drawn up by Maître Kouakou KOUASSI, Commissaire de Justice in Abidjan, a copy of which has been left with BCEAO;

- The summons to pay, served at the same address on 12 November 2022, sent to BCEAO ;

That it is in these conditions that this report of seizure allocation was served to the aforementioned bank with the documents relating thereto, between the hands of Thierno BALDE of the mail service, who received copies and signed on the originals;

Considering that the applicant goes on to explain that from the notification of this seizure to the date hereof, i.e. more than forty (40) days, BCEAO has remained silent. This clearly compromises the success of the seizure and gives the State of Côte d'Ivoire time to initiate all sorts of dilatory proceedings to prevent the execution of this judgment, given that the seizure in question was duly notified to that State on 16 February 2022;

It follows that, following receipt, BCEAO had to declare immediately the extent of its obligations towards Côte d'Ivoire, and immediately make unavailable the sums that it holds on behalf of the Ivorian State up to the amount of those appearing in the seizure deed and whose confinement had been requested by the bailiff on behalf of the applicant;

In the absence of this instant declaration, BCEAO had a period of five (05) days in which to proceed as such, i.e. the time required for the document to pass from the hands of the agent who had received it to the hands of the agent authorised to carry out this type of transaction;

Once this period has elapsed, BCEAO shall be held liable for the difficulty of enforcement and shall be ordered to pay the costs of the attachment, as provided for in Article 156 of the Uniform Act, which states that: "*The garnishee shall be required to declare to the creditor the extent of his obligations towards the debtor as well as any terms and conditions that may affect them and, where applicable, any assignments of claims, delegations or prior attachments. He must provide copies of supporting documents. These declarations and communications must be made immediately to the bailiff or process-server and mentioned in the writ of attachment or, at the latest, within five days if the writ is not served personally. Any inaccurate, incomplete or late declaration exposes the garnishee to being ordered to pay for the causes of the seizure, without prejudice to an order to pay damages";*

However, being aware that the BCEAO can only be sued before the WAEMU Court of Justice due to its status which only allows it to be sued before the Community courts, the applicant therefore brought the matter before the Court to set out his claims in the face of the BCEAO's resistance;

That this seizure against the Ivorian State is well-founded in that it derogates from the jurisdictional immunities enjoyed by States and their property under Article 19 of the United Nations Convention on Jurisdictional Immunities of States and their Property and Article 30 of the Uniform Act on Simplified Collection and Enforcement Procedures;

Article 19 sets out three alternative, i.e. optional and non-cumulative, conditions to justify the seizure of property belonging to a State:

1- *The State has expressly consented to the application of such enforcement measures;*

2- *The State has reserved or allocated property to satisfy the request which is the subject of this procedure;*

3- *The assets are specifically used or intended to be used by the State other than for non-commercial public service purposes and are located on the territory of the State of the forum, provided that the post-judgment measures of constraint relate only to assets that have a link with the entity against which the proceedings have been initiated;*

Considering that the applicant further explains that, as far as the seizure is concerned, it is the first condition that he took advantage of to seize the assets of the Ivorian State, because of its membership of an international convention, which is none other than the ECOWAS Treaty ; that by signing the ECOWAS Treaty and becoming a member of that community, the Ivorian State had voluntarily alienated part of its sovereignty and in particular its jurisdictional immunity and agreed to submit to the enforcement of the decisions of the Court of Justice of that community;

That is why Article 19 (2) of the Protocol relating to the Court and Article 15 (4) of the revised ECOWAS Treaty clearly specify the scope of the binding nature of decisions with regard to Member States, Community institutions and natural and legal persons;

Similarly, Article 30 of the OHADA Uniform Act referred to above is also inoperative because of the Ivorian State's express acceptance that the measures for enforcing the decisions of the ECOWAS Court of Justice should be applied to it;

That the UEMOA community judge will note that articles 38, 81, 154, in fine and 156 of the OHADA Uniform Act on the organisation of simplified recovery procedures, enshrine in this type of case the principle of the personal liability of the garnishee, in this case the BCEAO, for payment of the causes of the seizure for conduct likely to impede enforcement;

That this fault resulting from the violation of OHADA Community law, also constitutes a violation of the obligations to which the bodies of the UEMOA are subject to the respect of the business law governing this sub-regional area whose positive law applicable in the matter, is not contrary to OHADA law;

Considering, moreover, that the applicant maintains that this personal liability attributable to this organ of the Union, thus makes it possible to obtain its condemnation before the Court of Justice in accordance with Article 15 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, which provides that *the Court of Justice hears disputes relating to compensation for damage caused by the organs of the Union or by agents of the latter in the performance of their duties;*

Moreover, the constant case law of the Court of Appeal shows the level of liability of the BCEAO in the event of damage caused to others *(CJUEMOA, judgment no. 02/2012 of 19 December 2012, Case MOUNDOUKPE Sidonie* Sodabi *C v BCEAO; judgment no. 05/2021 of 09 June 2021, Case Jean Yves SINZOGAN C v BCEAO);*

In the present case, the Court of Appeal should note from a reading of OHADA Community law and established case law that the BCEAO unquestionably infringed the law by failing to communicate information and by delaying in declaring the extent of its commitment to the State of Côte d'Ivoire;

That this situation presupposes, of course, that the central bank refuses to submit to this seizure in order to thwart the enforcement initiated by the claimant;

That the Community judicature will then have to rule on the difficulty of enforcement in order to remedy this injustice committed by its body, of which it is the sole judge;

The OHADA community judge is also very strict with regard to litigants under his jurisdiction on this aspect, insofar as he clearly indicates that the wrongful attitude of the garnishee exposes him to the sanctions provided for in the Uniform Act *(CCJA, judgment no. 003/2014, of 30 January 2014, Société Générale d'Informatique et Télécommunications, known as SOGITEL C / Banque Commerciale du Chari, known as BCC);*

That having remained silent to date to declare the extent of its obligations towards Côte d'Ivoire, the latter must be required by the Community judge not only to pay for the causes of the seizure in place and stead of Côte d'Ivoire, the amount of which is assessed at one billion two hundred and ninety-two million six hundred and ninety-six thousand eight hundred and sixty-four (1,292,686,864) CFA francs;

That the Community Judge shall attach to this order to pay the costs of the seizure, a penalty of five million (5,000,000) CFA francs per day of delay;

Finally, counsel for the applicant maintains that there is no doubt that the right to compensation for any damage caused to another person is an internationally recognised right and a sacrosanct principle of justice enabling the judge to re-establish, through this mechanism, the balance in societal relations;

That in the present case, in view of the elements developed above, it is clear that Oumar DIAWARA has suffered immeasurable damage, both moral and material, as a result of the obstacle placed in his way by BCEAO, preventing him from enjoying his rights;

That BCEAO should be held liable for the damage caused to the applicant and ordered to pay the sum of two hundred and fifty million (250,000,000) CFA francs as compensation for the damage suffered and for all the damage caused to the applicant;

Considering that, in line with this approach, the applicant has asked the Court to declare his action admissible, to declare that it has jurisdiction on the merits, to declare his application well-founded and to uphold it;

By reply dated 09 June 2022, Oumar DIAWARA submits, on the one hand, that BCEAO's statement of defence is inadmissible for breach of the provisions of Article 29 of Regulation No. 1/96/CM on the Rules of Procedure of the WAEMU Court of Justice, which provides that "*(...), the defendant shall submit a statement of defence. This statement shall contain the full name and address of the defendant, the arguments of fact and law relied upon, the defendant's submissions and the evidence*". The applicant explains that, on reading the statement of defence, there is no indication whatsoever that the defendant is obliged to mention its domicile, in this case the address of BCEAO's head office;

Similarly, the defendant's counsel, who were supposed to make up for this omission, did not comply with this reference either, in that the address of their respective professional domiciles was not indicated on the statement of defence. In addition, SCPA SAWADOGO & SAWADOGO was mentioned at the top of BCEAO's statement of defence as its defence counsel, even though no representative of that firm signed the document.

In these circumstances, the applicant considers that the Court should find a breach of this provision for failure to mention the defendant's domicile in the statement of defence and consequently declare the statement of defence inadmissible;

That, on the other hand, as regards the plea of lack of jurisdiction as to subject-matter raised by the BCEAO, the applicant replies that the BCEAO is attempting to give a limited interpretation or a restrictive reading of the jurisdiction of the Court of Justice of the WAEMU, by referring only to the provisions of Article 14 of Regulation No 1/96/CM, which establish the general principle of the jurisdiction of the Court as the body responsible for ensuring the interpretation and application of the WAEMU Treaty;

Over and above this general principle, it is clear from Article 15 of the Rules of Procedure that the Court has jurisdiction to hear numerous actions, including :

- Action for failure to fulfil obligations, against Member States' failure to fulfil their obligations under the Treaty ;
- Actions to review the legality of binding Community acts ;
- Full competition litigation ;
- Union staff appeals ;
- Non-contractual liability claims ;
- Preliminary rulings ;
- Arbitration clauses.

It follows that the idea embodied in point 5 of that article is that the Court, in order to ensure effective judicial control over the institutions of the Community and its servants, *"may hold the Union or one of its organs liable"* for damage caused by the conduct of those organs or its servants in the exercise or on the occasion of their duties;

That this extra-contractual liability implies that an organ of the Union responsible for damage, harm or any fault whatsoever, be ordered to make good such damage, harm or fault in order to ensure the safety of the citizens of the Member States or of persons outside the Union; that in the present case, the BCEAO is without context an institution of the WAEMU subject only to the control of the Court;

That it intervened as a garnishee in the case between Oumar DIAWARA and the State of Côte d'Ivoire concerning the seizure of the assets of the said defendant State from its hands; That it is therefore because of its involvement in this capacity and its wrongful acts in the performance of its duties, characterised by the failure to give an express positive or negative response within the legal time limits or to declare the extent of its obligations to the State of Côte d'Ivoire, that its extra-contractual liability was incurred in the form of difficulties in performance and payment of the damage suffered by Oumar DIAWARA;

In view of the foregoing, Oumar DIAWARA's action falls well within the material jurisdiction of the Court, which has the power to determine such liability by the mere fact of being aware of disputes relating to compensation for damage caused by its organs;

That, moreover, the applicant explains that, because of the provisions of Article 28 of the WAEMU Treaty and Article 7 of the BCEAO Statute, BCEAO cannot appear before a national court; That this situation implies that the status enjoyed by BCEAO does not allow it to be tried or to defend itself in any matter before a national court, so that the provisions of Article 49 of the Uniform Act cannot be invoked against it in exceptional circumstances; That this is a legal derogation, which does not prevent it from being held liable before another court recognised as having material jurisdiction in the event of a breach of OHADA Community law;

In addition, since it is subject only to the jurisdiction of the Court of Justice of the European Union, it is not excluded that the latter may invoke the provisions of another treaty in order to establish its non-contractual liability;

That, moreover, the immunities enjoyed by the BCEAO cannot be invoked before the Community courts, which alone have jurisdiction to exercise judicial control over its organs, institutions and agents, and then to hear disputes between the said organs or agents themselves and/or with third parties, whether natural or legal persons, in accordance with Article 27 of the Statute of the WAEMU Court and Additional Protocol No. 1 relating to the supervisory organs of the WAEMU. (See Opinion No. 01/2011 of 30 October 2011);

Furthermore, the competence or power attributed to national courts and to the Common Court of Justice and Arbitration to interpret and apply OHADA law does not deprive the WAEMU Court of Justice of the right to invoke the provisions of the Uniform Act or to interpret them in order to establish the liability of one of its organs or one of its agents, provided that such invocation does not contradict the provisions of the WAEMU Treaty;

Lastly, the applicant considers that the WAEMU Court of Justice should reject the BCEAO's plea that the application is ill-founded. He argues that BCEAO is giving a limited reading to the law, especially as the provisions of Article 5.2 of the Protocol on the Privileges and Immunities of the Central Bank state that the seizure of accounts opened in the books of BCEAO may be validly authorised or carried out with the agreement of the Governor or his representative. This implies that the seizure may be legally justified if it has been authorised. However, contrary to BCEAO's allegations, it is clear that BCEAO had consented to the said seizure since there had been no express refusal by the Governor or his representative. This led the State of Côte d'Ivoire to bring an action for the nullity and release of the seizure before the interim relief judge of the Dakar High Court;

That the BCEAO itself, in its capacity as garnishee, disregarded its privileges and immunities and voluntarily appeared before the same interim relief judge to request the release of the seizure;

B. Pleas in law and main arguments of the defendant

Considering that in its statement of defence dated 03 May 2022, BCEAO, represented by its counsel, raises principally, as a matter of form, the lack of jurisdiction of the Court of Appeal on the basis of the following provisions:

- art. 1er of Additional Protocol No. 1 on the supervisory bodies of the WAEMU;
- art. 1er of Supplementary Act No. 10/96 on the Statute of the Court of Justice of the WAEMU;
- art. 14 of Regulation No. 1/96/CM on the Rules of Procedure of the WAEMU Court of Justice, which states that the Court of Justice is responsible for ensuring that the law is observed in the interpretation and application of the WAEMU Treaty;

That the defendant considers that, in the present case, Oumar DIAWARA's defence is based on Articles 13 and 14 of the OHADA Treaty, which provide that :

***Article 13*: "Disputes relating to the application of Uniform Acts shall be settled at first instance and on appeal by the courts of the Contracting States";**

***Article 14*: "The Common Court of Justice and Arbitration shall ensure the common interpretation and application of the Treaty as well as the regulations adopted for its application, the Uniform Acts and the decisions.**

The Court may be consulted by any State Party or by the Council of Ministers on any matter falling within the scope of the preceding paragraph. The same right to request the advisory opinion of the Court shall be accorded to national courts to which a matter has been referred under Article 13 above.

The Court of Cassation shall rule on decisions handed down by the appeal courts of the Contracting States in all cases raising questions relating to the application of the Uniform Acts and the regulations provided for in this Treaty, with the exception of decisions imposing criminal penalties.

It shall rule under the same conditions on non-appealable decisions given by any court of the States Parties in the same disputes.

In the event of cassation, it shall consider and rule on the merits of the case;

That BCEAO deduces from the aforementioned articles that the application of the provisions of the Uniform Acts (in this case the Uniform Act Organising Simplified Recovery Procedures and Enforcement Measures) is subject to the jurisdiction of the national courts of the States parties, ruling at first instance and on appeal. In the event of an appeal, the Common Court of Justice and Arbitration (CCJA) has jurisdiction;

It concludes that the UEMOA Court of Justice, whose substantive jurisdiction is limited to the interpretation and application of the UEMOA Treaty, clearly cannot hear cases concerning the OHADA Uniform Acts governed by a separate Treaty, namely the OHADA Treaty;

Secondly, BCEAO considers that the provisions of Article 49 of the Uniform Act Organising Simplified Recovery and Enforcement Procedures (AUPRSVE) also support the plea that the WAEMU Community court lacks jurisdiction. Article 49 of the AUPRSVE provides that :

"The court with jurisdiction to rule on any dispute or application relating to a compulsory execution measure or protective attachment shall be the President of the court ruling on urgent matters or the Magistrate delegated by him.

Its decision may be appealed within 15 days of its pronouncement. Both the time limit for appeal and the exercise of this right of appeal do not have suspensive effect, unless the President of the competent court gives a specially reasoned decision to the contrary.

That the defendant asserts that the action brought by Oumar DIAWARA (creditor) seeking to obtain a writ of execution against the Banque Centrale des Etats de l'Afrique de l'Ouest is a difficulty of enforcement, within the meaning of the provisions of Article 49 AUFRSVE, which manifestly falls outside the jurisdiction of the WAEMU court.

It therefore concludes that the UEMOA Court of Justice cannot hear cases relating to Uniform Acts and, specifically, acts relating to enforcement procedures, pursuant to Articles 13 and 14 of the OHADA Treaty and Article 49 of the AUPSRVE; hence the manifest lack of jurisdiction of the UEMOA Court of Justice to hear the application;

In addition, and contrary to the applicant's allegations, BCEAO cannot be ordered to pay the costs of the seizure on the basis of an alleged breach of Article 156 of the AUPSRVE; Article 5(5.2) of the Protocol on the Privileges and Immunities of the Central Bank, annexed to the Treaty of the West African Monetary Union (WAMU), dated 20 January 2007, provides that :

"The execution of procedural acts, including the seizure of private property, may only take place on the premises of the Central Bank under the conditions approved by the Governor or his representative. The seizure of accounts opened in the books of the BCEAO may only be carried out with the express agreement of the Governor or his representative";

That this provision of the Protocol expressly prohibits the execution of procedural acts on the premises of the BCEAO and the unseizability of the accounts of Member States opened in the books of the BCEAO, a monetary institution;

It asserts that the seizures made at the request of Oumar DIAWARA were carried out in clear breach of the Protocol on the Privileges and Immunities of the BCEAO, in particular the principle of the non-seizability of assets held in its books, since no authorisation from the Governor or his representative was submitted to the proceedings; that the said irregular and invalid seizures cannot and must not serve as a basis for any action for payment;

Lastly, BCEAO maintains that the fact that it failed to respond to the executing bailiff following the attachment of receivables on 09 February 2022 cannot constitute any fault such as to give rise to its liability and order it to pay the costs of the attachment, pursuant to Articles 38 and 156 of the AUPSRVE;

On reading the Treaty of the West African Monetary Union and the Articles of Association of the BCEAO, in particular its objectives and missions, the issuing institute cannot be equated with a credit institution (traditional banks) having the status of a garnishee. By garnishee, we mean a legal or natural person who holds sums of money belonging to the debtor and could possibly be subject to seizure and appropriation by the creditor. This is not the case with BCEAO, in view of the aforementioned texts and the privileges and immunities granted to the issuing institution;

It therefore concludes that the lower court does not have jurisdiction and that the applicant's claims are unfounded and asks that they be dismissed outright;

Considering that in its rejoinder dated 14 July 2022, BCEAO first of all submits that the applicant's pleas in law should be dismissed, arguing that contrary to the plaintiff's allegations, Article 29 of Regulation No. 1/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU does not provide for the inadmissibility of a statement in response in the event of omission to mention the address of the defendant or its counsel; that in procedural law, a plea of inadmissibility must be formally provided for by law, which is not the case here; that the purpose of mentioning the address of a party to the proceedings or its Counsel is to enable the Registry of the Court of Appeal to communicate the pleadings and documents produced; this was duly done in this case and the applicant did not suffer any prejudice as a result;

Next, BCEAO considers that the plea alleging that SCPA SAWADOGO & SAWADOGO did not sign the statement of defence is inoperative because the said statement of defence was indeed signed by the law firm Mame Adama GUEYE & Associés, which also defends BCEAO's interests on a principal basis. In any event, the defendant asks the Court to reject the objection of inadmissibility as unfounded and to declare its statement of defence admissible;

Finally, the defendant asserts that contrary to the applicant's claims, the Central Bank of West African States is not the West African Economic and Monetary Union (UNION). Rather, it is an organ of the Union in the same way as the West African Development Bank (BOAD). Point 5 of Article 15 of the Regulations refers to the non-contractual liability of the Union (West African Economic and Monetary Union) and not to the liability of the Union's Organs;

That the BCEAO further asserts that it has never waived its immunity from execution and the privilege deriving from the inviolability of its premises, as evidenced, moreover, by Article 8 of the Protocol relating to the immunity of the BCEAO from jurisdiction and execution, which provides that: "*The Central Bank shall enjoy immunity from jurisdiction and execution in all matters, unless it expressly waives such immunity in a particular case, as notified by the Governor or his Representative*".
";

It considers that the present proceedings are neither justified in fact nor in law insofar as the applicant has not raised any serious arguments in support of its allegations; that, in the final analysis, this is a manifestly abusive and vexatious action in that it is seriously damaging to the image of the Institut d'émission and has exposed it, without the slightest valid reason, to procedural costs; that is why it is asking the Court to order Oumar DIAWARA to pay it the sum of five hundred million (500.000.000) FCFA as damages for abusive and vexatious proceedings.

III. DISCUSSIONS ON COMPETENCE

Considering that, under the terms of his application and the documents in the case file, the applicant sought to engage the extra-contractual liability of the WAEMU arising from the wrongful action of one of its bodies, in this case the BCEAO, in its capacity as garnishee in the procedure for the attachment of debts against the State of Côte d'Ivoire, initiated in accordance with the procedural rules of the OHADA Uniform Acts, in particular the Uniform Act Organising Simplified Collection Procedures and Enforcement Measures;

That, in the present case, the assessment of the jurisdiction of the Court requires prior clarification of two contentious points, in particular, the status of the BCEAO as an organ of the WAEMU, on the one hand, and the capacity of the Court to interpret the application of the OHADA Uniform Acts in terms of a dispute relating thereto, on the other;

Considering that, according to article 1 of the WAEMU Treaty, "Union organ" means the various organs referred to in article 16 of the said Treaty, in particular the Conference of Heads of State and Government, the Council of Ministers, the Commission, the Parliament, the Court of Justice and the Court of Auditors;

In addition to these initial bodies, the case law of the Court has added others, in particular the BCEAO and the BOAD, considering that: "*the UMOA and UEMOA Treaties created a single Union called UEMOA with an institutional system comprising bodies including the BCEAO and the BOAD, which were given the status of specialised institutions in view of their specific functional characteristics.*

Despite these characteristics and the autonomy granted to them (Article 41 of the WAEMU Treaty), they nonetheless participate in "achieving the objectives of the Union. The conduct of their monetary function in no way impedes their status as bodies governed by the provisions of Additional Protocol No. 1 relating to the Supervisory Bodies of the WAEMU, Additional Act 10/96 on the Statute of the Court of Justice of the WAEMU and Regulation 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU (See Judgment No. 03/2017 of 28 March 2017: Jean Yves SINZOGAN C / BCEAO)";

Ultimately, through its jurisprudential tradition *(Opinion No. 1/2011 of 30 October 2011 of the Court of Justice of the WAEMU; Judgment No. 2 of 19 December 2012: Sidonie and Léon KOUGBLENOU C / BCEAO),* the Court has always recognized its jurisdiction to hear disputes involving Bodies other than those mentioned by name in Article 16 of the Treaty, in this case the specialized autonomous institutions of the Union;

It follows that the BCEAO is certainly an organ of the WAEMU, with all the legal consequences that this may entail;

Considering, however, that it is necessary in the present case to assess the capacity of the Court of Appeal or its competence to interpret the application of the OHADA Uniform Acts in the context of a dispute relating thereto;

That in this sense, it should be recalled that the Constitutive Treaty of the WAEMU of 10 January 1994 gave birth to a Community legal order from which emanate jurisdictional bodies including the Court of Justice established by the provisions of Article 38 of the Revised Treaty; the general jurisdiction of the Court of Justice of the WAEMU is enshrined in Articles 1 of Additional Protocol No 1 and 14 of Regulation No 1/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU; these articles provide respectively that *The Court of Justice shall ensure that the law is observed in the interpretation and application of the Union Treaty", "The Court shall ensure that the law is observed in the interpretation and application of the Union Treaty"*;

It follows from this dedicated mission that the Court :

- Controls the legality of the acts of WAEMU bodies and institutions and sanctions any violations;

- Ensures that the Member States comply with their obligations under the Treaties and other secondary legislation;

- Interprets Union law at the request of the Member States, national bodies and judges;

That the jurisdiction conferred on the Court by the abovementioned provisions extends to all disputes arising out of the interpretation and application of the Treaty and other Community texts;

Considering in the present case that the applicant Oumar DIAWARA referred to the Court of Appeal an "*action for the purpose of assigning a difficulty in enforcing an attachment of receivables, ordering the BCEAO, the garnishee, to pay for the causes of the attachment and to pay damages for the prejudice suffered"*; it follows that this difficulty in enforcement arises from the seizure by the applicant of receivables from the accounts of the Ivorian State held at the BCEAO, pursuant to the provisions of Article 156 of the OHADA Uniform Act on the organisation of simplified recovery procedures and enforcement measures;

That in fact, by judgment No. 34 dated 22 October 2021, the ECOWAS Court of Justice ordered the Republic of Côte d'Ivoire to pay the applicant the sum of one billion two hundred and ninety-two million six hundred and eighty-six thousand eight hundred and sixty-four (1,292,686.864) FCFA as compensation for the violation of his rights; as the State of Côte d'Ivoire did not voluntarily pay the amount of the judgment, the applicant undertook the forced execution of the aforementioned judgment by means of a seizure of claims on the accounts of the State of Côte d'Ivoire held at the BCEAO in its capacity as a WAEMU body;

That in pursuing his claim, the claimant chose to bring parallel extra-contractual liability proceedings against BCEAO, relying on Article
15.5 of the Rules of Procedure of the Court of Justice of the European Communities, which provides: "*The Court of Justice shall have exclusive jurisdiction to declare non-contractual liability and to order the Union to pay compensation for damage caused either by material acts or by legislative acts of the organs of the Union or of its servants in the course of or in connection with the performance of their* duties";

It follows from the aforementioned provisions that an action for extra-contractual liability may be brought exclusively against the Union on two grounds:

1- Compensation for damage caused by the conduct of Union bodies or servants in the performance of their duties ;

2- Compensation for damage caused by legislative acts of Union bodies ;

Thus, by maintaining that "*the UEMOA Court of Justice, in order to ensure effective judicial control over the institutions of the Community and its agents, may engage the responsibility of the Union or one of its organs*", the applicant has misinterpreted the aforementioned Article 15.5;

Considering that from an analysis of the procedural documents and the texts serving as the legal basis for the recovery of the claim in question, it is clear from the provisions of Article 13 of the OHADA founding Treaty that : "***litigation relating to the application of the Uniform Acts shall be settled at first instance and on appeal by the courts of the Contracting States***"; this provision is supplemented by article 14 of the same Treaty which states: "***the Common Court of Justice and Arbitration shall ensure the common interpretation and application of the Treaty as well as the regulations adopted for its application, the Uniform Acts and the decisions.***

The Court may be consulted by any State Party or by the Council of Ministers on any matter falling within the scope of the preceding paragraph. The same right to request the advisory opinion of the Court shall be accorded to national courts seised pursuant to Article 13 above.

When an appeal is lodged with the Court of Cassation, the Court shall rule on decisions handed down by the appeal courts of the Contracting States in all cases raising questions relating to the application of the Uniform Acts and the regulations provided for in this Treaty, with the exception of decisions imposing criminal sanctions.

It shall rule under the same conditions on non-appealable decisions handed down by any courts of the States Parties in the same disputes.

In the event of cassation, it shall consider and rule on the merits of the case;

Considering that, in addition, with regard to enforcement measures undertaken under OHADA law, Article 49 of the Uniform Act Organising Simplified Collection Procedures and Enforcement Measures (AUPSRVE) provides that: "***The competent court to rule on any dispute or any application relating to a forced enforcement measure or a protective attachment is the President of the court ruling on urgent matters or the Magistrate delegated by him.***

Its decision may be appealed within 15 days of its pronouncement. Both the time limit for appeal and the exercise of this right of appeal do not have suspensive effect, unless the President of the competent court gives a specially reasoned decision to the contrary";

That, moreover, it is apparent from the assessment of the pleadings and the aforementioned texts that the litigation relating to the enforcement of a seizure and attachment of debts undertaken by the claimant was also initiated, in accordance with the procedural rules of OHADA law, before the Senegalese courts; that, accordingly, the progress and outcome of this litigation are dependent on the rules and procedures laid down by the provisions of the Treaty and the aforementioned OHADA Uniform Acts;

Furthermore, it is established in the judicial file that the applicant has referred to the Court an enforcement measure which, within the meaning of Article 49 of the OHADA Uniform Act Organising Simplified Collection Procedures and Enforcement Measures, undoubtedly falls within the exclusive jurisdiction of the enforcement court; it follows that only that court is empowered to interpret the application of the procedural rules laid down by the OHADA Uniform Acts in the appropriate way and, where appropriate, to sanction breaches thereof;

That, as it stands, there is no legal basis for the Court of Justice of the WAEMU to assess the misconduct of a WAEMU Organ in the light of the instruments of the OHADA Uniform Acts, especially since the WAEMU and OHADA each have an autonomous legal system, so that the interpretation of the OHADA Uniform Acts does not fall within the jurisdiction of the Court of Justice of the WAEMU;

In the light of the foregoing, it must be said that the applicant is wrong to assert the jurisdiction of the Court of Appeal;

Consequently, the Court should declare that it does not have jurisdiction.

IV. Costs

Considering that the appellant has been unsuccessful in his plea as to the jurisdiction of the court below; pursuant to the provisions of Article 60 paragraph 1er of the Rules of Procedure of the Court of Justice below, any unsuccessful party shall be ordered to pay the costs;

That, however, in view of the complexity of the proceedings and the issues at stake, it is appropriate in exceptional circumstances to order, in accordance with the provisions of Article 60 paragraph 3 of the same Rules, that each party shall bear its own costs.

FOR THESE REASONS

The Court, sitting in open court, having heard both parties, at first and last instance, in matters of non-contractual liability under Community law :

ONLY IN FORM:

- **Declares itself incompetent;**
- **Orders that each party shall bear its own costs in accordance with the provisions of Article 60 paragraph 3 of the Rules of Procedure.**

Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.

And have signed :

The Registrar **President** **For the Deputy The Deputy Registrar**

Mahawa Sémou DIOUF **Hamidou YAMEOGO**