

**JUDGME
NT NO.
01/2024**

FROM 17 JANUARY 2024

CLAIMS FOR DAMAGES

**MR KEUTEY NICOU EMMANUEL
MR N'GROH YEDE AUGUSTIN
MR DOUHE ROLAND
MR SEHI BI BENIE GUSTAVE
Mr YAPO KOFFO ALBERT
And Ms BOUADOU MARTHE**

C/

**The Central Bank of West African
States (BCEAO)**

Composition of the Court :

- **M. Mahawa Sémou DIOUF, Chairman, Rapporteur ;**
- **Mrs Joséphine Suzanne EBAH TOURE, Judge ;**
- **Mr Ladislau Clemente FERNANDO EMBASSA, Judge ;**
- **Mr Abdourahamane GAYAKOYE SABI, Judge ;**
- **Mr Jules CHABI MOUKA, Judge ;**
- **M. Kuami Gameli LODONOU, First Advocate General ;**
- **Mr Hamidou YAMEOGO, Court Clerk.**

**COURT OF JUSTICE OF THE ECONOMIC UNION
AND MONETARY UNION OF WEST AFRICA
(UEMOA)**

PUBLIC HEARING ON 17 JANUARY 2024

The Court of Justice of the WAEMU, meeting in ordinary public session on seventeen (17) January two thousand and eighty-four (2024), in which were seated :

**Mr Mahawa Sémou DIOUF, Chairman, Rapporteur ;
Mrs Joséphine Suzanne EBAH TOURE, Judge; Mr Ladislau Clemente FERNANDO EMBASSA, Judge; Mr Abdourahamane Gayakoye SABI, Judge; Mr Jules CHABI MOUKA, Judge;**

At in the presence of Mr Kuami Gameli LODONOU, First Advocate General;

With the assistance of Maître Hamidou YAMEOGO, Court Clerk.

has rendered the following judgment: Between :

Messrs KUETÉY Nicoue Emmanuel, N'GROH Yede Augustin, DOUHE Roland, SEHI Bi Benie Gustave, YAPO Koffi Albert and Mrs KOUASSI Marthe épouse BOUADOU, all former employees of the Central Bank of West African States (BCEAO), electing domicile at the Office of Maître N'DRY CLAVER KOUADIO Avocat près la Cour d'appel d'Abidjan, Cocody Riviera Golf, Résidence les Elias II, Immeuble Agave, 3^{ème} étage, porte 2232 - Tél : (+225) 22 43 54 20 - Fax : (+225) 22 43 40 01 - Email : knc@cabinetcn.com;

Plaintiffs, on the one hand ;

AND

Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), whose registered office is located at Avenue Abdoulaye FADIGA, BP 3108 Dakar (SENEGAL), Dakar (Senegal), represented by its Governor, who elects domicile at SCPA N'GOAN, ASMAN & Associés, Avocat inscrit au barreau de Côte d'Ivoire, Av. Alphonse Daudet, Imm. Aniaman 10^è étage, 01 BP 3361 Abidjan 01-. Tel: 27 20 21 90 00 ;

Defendant, on the other hand ;

THE COURT

- VU** the Treaty of the West African Economic and Monetary Union dated 10 January 1994, as amended on 29 January 2003;
- VU** Additional Protocol I on the WAEMU Supervisory Bodies;
- VU** Additional Act No. 10/96 of 10 May 1996 on the Statute of the Court of Justice of the WAEMU;
- VU** 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;

- VU** Regulation n°01/96/CM of 05 July 1996 on the Rules of Procedure of the Court of Justice of the WAEMU, in particular article 29 paragraph 2;
- VU** 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;
- VU** Minutes No 2023-01/AP/01 of 1^{er} February 2023 relating to the swearing-in of the members of the WAEMU Court of Justice;
- VU** Minutes No. 2023-02/AI/01 of 1^{er} February 2023 concerning the appointment of the President of the Court and the distribution of functions within the Court;
- VU** Minutes n°2023-03/AP/02 of 02 February 2023 relating to the installation of the President of the WAEMU Court of Justice;
- VU** Application No 21 R001 of 02 March 2021, for damages, between Mr KUETÉY Nicoué Emmanuel and five (05) others and the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO);
- VU** file documents ;
- VU** Order No 50/2023/CJ of 22 December 2023 on the composition of the plenary session to sit in open court on 17 January 2024;

- SE** summonses of the parties;

- EN** the Judge-Rapporteur in his report ;

- YE** Counsel for the applicant, in his oral observations ;

- S** Counsel for the defendant, in his oral observations; the First

- YE** Advocate General, in his Opinion;

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Having deliberated in accordance with Community law :

I- FACTS AND PROCEDURE

Whereas by application dated 2 March 2021, registered the same day at the Registry of the Court of Justice of the West African Economic and Monetary Union (UEMOA), under number 21R001, Messrs KUETÉY Nicoue Emmanuel, N'GROH Yede Augustin, DOUHE Roland, SEHI Bi Benie Gustave, YAPO Koffi Albert and Mrs KOUASSI Marthe épouse BOUADOU, all former employees of the Central Bank of West African States (BCEAO), electing domicile at the chambers of Maître Kouadio N'DRY Claver, attorney-at-law at the Côte d'Ivoire Bar, have applied to the said Court to have the decisions to dismiss them, **dated 23 November 2011**, censured and to order their former employer, BCEAO, to pay damages in compensation for the harm caused by their dismissal;

Whereas the Registrar of the Court of Justice, by letter of 3 March 2021, notified the application to the Governor of the BCEAO, who lodged a defence and a rejoinder, received at the Court Registry on 9 April 2021 and 17 June 2021 respectively;

Whereas, in reply, the applicant lodged a statement with the Court Registry on 14 May 2021;

Whereas, pursuant to the provisions of Article 31(2) of the Rules of Procedure of the Court of Justice and at the request of the applicants, the President of the Court issued Order No 27/2021/CJ of 23 August 2021, setting a time limit for the submission of observations on the new plea;

Considering that, by further pleading, the applicants lodged written observations, registered at the Court Registry on 15 September 2021, on the plea concerning the inadmissibility of the applicants' action;

Considering that, in accordance with Order No 005/2021/CJ of 4 March 2021 setting the security deposit and pursuant to Article 26(6) of the Rules of Procedure of the WAEMU Court of Justice, the applicants have paid an amount of fifty thousand (50 000) CFA francs, as attested by the receipt dated 12 March 2021;

Considering that the applicants, Mrs KOUASSI Marthe married BOUADOU and Messrs KUETÉY Nicoue Emmanuel, N'GROH Yede Augustin, DOUHE Roland, SEHI Bi Benie Gustave, YAPO Koffi Albert, all former employees of the Banque Centrale des Etats de l'Afrique de l'Ouest, maintain that they were taken on under open-ended contracts at the national management of BCEAO in Côte d'Ivoire;

They state that they were forced to comply with Decree No. 2011-29 of 25 January 2011 on the requisition of BCEAO's national management, national agencies and national staff, and were subsequently dismissed on the grounds that they had disregarded the measure issued by BCEAO to close its offices in the Republic of Côte d'Ivoire, and that they had received bonuses from the Ivorian administration;

That it is their decisions to dismiss them for personal reasons, without notice or compensation, that are the subject of the present application;

That the applicants applied to the Governor of the BCEAO through the hierarchical channel to have their dismissals annulled, but all their applications were rejected on 12 December 2021;

They have therefore brought the present action and claim:

"In form :

Declare that it has jurisdiction to hear the application;

Declare that the action brought by the applicants is admissible; On the merits,

To say that they are

well-founded

- **To declare that the dismissals are unfair;**
- **Order BCEAO to pay each claimant various termination fees and damages as follows:**

- KUETHEY Nicoue Emmanuel

Compensation in lieu of notice: FCFA 5,931,750

Severance pay: FCFA 22,461,492

Damages for invalid employment certificate: FCFA 5,931,750 Damages for unfair dismissal: FCFA 978,738,750

- YAPO Koffi Albert

Compensation in lieu of notice: FCFA 4,037,505

Severance pay: FCFA 12,811,470

Damages for non-compliant work certificate: FCFA 4,037,505 Damages for unfair dismissal: FCFA 426,769,875

- N'GROH Yede Augustin

Compensation in lieu of notice: FCFA 5,869,650

Severance pay: FCFA 28,282,272

Damages for non-compliant work certificate: FCFA 5,869,650 Damages for unfair dismissal: FCFA 880,447,500

- SEHI Bi Benie Gustave

Compensation in lieu of notice: FCFA 6,795,735

Severance pay: FCFA 15,958,395

Damages for non-compliant work certificate: FCFA 6,795,735 Damages for unfair dismissal: FCFA 509,680,125

- DOUHE Roland

Compensation in lieu of notice: FCFA 7,019,565

Severance pay: FCFA 31,583,061

Damages for non-compliant work certificate: 7,019,565 FCFA Damages for unfair dismissal: 947,641,275 FCFA

- KOUASSI Marthe BOUADOU

Compensation in lieu of notice: FCFA 5,087,940

Severance pay: FCFA 8,952,038

Damages for non-compliant work certificate: FCFA 5,087,940 Damages for unfair dismissal: FCFA 279,836,700;

II- ARGUMENTS OF THE PARTIES

Whereas, in support of their appeal, **KUETEY and the 5 others** have made submissions on the jurisdiction of the Court, the admissibility of the appeal and, finally, on the merits;

They argue that, pursuant to the provisions of Article 16 of Additional Protocol No 1 relating to the supervisory bodies of WAEMU, **"The Court of Justice shall hear disputes between the Union and its agents"**;

They also add that, according to Article 15(4) of the Rules of Procedure of the Court of Justice, **"the Court shall have jurisdiction in any dispute between the organs of the Union and their servants under the conditions laid down in the Staff Regulations"** and that, consequently, since the BCEAO is an autonomous specialised institution of the Union, the Court has jurisdiction to rule on their action;

That the applicants also invoke the provisions of Article 26 of the Rules of Procedure of the Court of Justice in order to argue that their action is admissible, before pleading, on the merits, that their dismissals were unfair;

As to the merits, they maintain that the letters dismissing the applicants were signed by a director who was not competent to do so since, according to Article 65 of the Staff Regulations, **"The Governor is competent to assign Central Bank staff, admit them to retirement and dismiss them, if necessary"**;

They **should** therefore consider that their dismissals are null and void because they were made by a person who is neither qualified nor competent to make decisions in this area;

That the applicants also plead that the accusations of insubordination and lack of loyalty are unfounded; that they maintain that they were obliged to respect and comply fully with the requisition law. They also argue that the closure decision that serves as the basis for the insubordination charge is nothing more than a simple letter written on plain paper without any indication that it was issued by the employer.

Bank, neither apparent formalism nor an apparent or hidden sign of the banking institution;

With regard to the receipt of bonuses, they state that the BCEAO's interpretation is tendentious and the ground based on the violation of Article 7.1 is inoperative since they were required to do their usual job and did not intend to make themselves available to another hidden employer with the intention of receiving double remuneration;

As regards the payment of compensation and damages, the applicants seek compensation in lieu of notice, pursuant to Article 77 of the BCEAO Staff Regulations, as well as compensation for dismissal pursuant to Article 78 of the same text;

That they also claim damages for non-compliant work certificates insofar as the certificates issued to them do not mention the dates of the successive jobs held, as required by article 92 of the Staff Regulations, and finally damages for unfair dismissal;

In their replies, they maintain that BCEAO's presentation of the facts only very imperfectly reflects reality;

They pointed out that the Director of Human Resources could not sign the letters of dismissal pursuant to Article 64 of the Central Bank's Articles of Association insofar as matters relating to the management and organisation of members of staff fell within the remit of the Governor and no delegation of authority had been established;

They further explain that BCEAO does not provide evidence of the transmission to its national branches of Decision No. 027 (bis) closing the branches of the national branch in Côte d'Ivoire;

Lastly, the applicants argue that the bonuses they received do not constitute a breach of Article 7.1 of the Code of Ethics and Professional Conduct, which enshrines the obligation of exclusivity of their services;

In their observations on the new plea developed by BCEAO in its rejoinder, Kuetey et al argue that the Bank has invoked the statute of limitations, even though there is no text providing for this in the case in point, that moreover no time limit is provided for referring the matter to the Court of Justice and that as regards the reasonable time limit, they have not remained inactive since they first took amicable steps and then referred the matter to the ECOWAS Court of Justice, which handed down a decision in 2018;

Considering that, faced with these objections, **BCEAO**, represented by SCPA NGOAN, ASMAN, et associés, in its statement of defence, raised in limine litis the objection that the Court of Justice lacked jurisdiction, in the alternative that the action was inadmissible and, in the further alternative, that the application was ill-founded;

In its rejoinder, BCEAO pointed out that the applicants' action was out of time and consequently requested that the Court of Appeal declare their action inadmissible;

III- DISCUSSION

Jurisdiction of the Court

Considering that it should be stressed that the Court of Justice benefits from a competence of attribution whose fields are exhaustively fixed by the Community texts, in particular the Additional Protocol N°1 relating to the control bodies of the UEMOA, the Additional Act n° 10/96 of 10 May 1996 relating to the Statutes of the Court of Justice of the UEMOA and the Regulation n° 01/96/CM of 05 July 1996 relating to the Rules of procedure of the Court of Justice of the UEMOA;

Articles 16 of the Additional Protocol, 27 of the Additional Act establishing the Statutes and 15-4 of the Rules of Procedure state that the WAEMU Court of Justice shall hear disputes between the Union and its agents;

It should be recalled that the WAMU and WAEMU Treaties created a single Union called WAEMU with an institutional system comprising bodies including the BCEAO and the BOAD, which were granted the status of specialised institutions, given their specific functional characteristics;

However, despite these characteristics and the autonomy granted to them by Article 41 of the WAEMU Treaty, they nonetheless participate in "achieving the objectives of the Union";

That 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 Statutes 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;

According to these provisions, the Court of Justice shall rule on any dispute between the bodies of the Union and their servants under the conditions laid down in the Staff Regulations;

It follows, therefore, from the foregoing that the Court of Justice of the WAEMU has exclusive jurisdiction to hear the applicants' action;

Admissibility of the action

Considering that the admissibility of the present action should be assessed in the light of the provisions of Article 16 of Additional Protocol No. 1 relating to the supervisory bodies of the WAEMU, Article 27-5 of Additional Act No. 10/96 on the Statute of the Court of Justice and the Staff Regulations of the BCEAO, which alone are applicable in the present case;

However, although none of these texts specifies the time limit for BCEAO employees to bring an action, in the event of a dispute between them and their employer, the action may be declared admissible if it is initiated within a relatively short period of time after notification of the opposing party's reply, in this case within a reasonable period of time;

Considering that it should be noted that almost ten (10) years elapsed between the dismissal decisions and the application lodged with the Court of Appeal;

It should be noted that, despite all the events invoked by the applicants, namely the referral to the Mediator of the Republic and certain Ivorian authorities, which neither suspends nor interrupts the procedural deadlines, and the decision of the ECOWAS Court of Justice in 2018, the possibility of admitting their appeal would call into question legal certainty and would make it possible to lodge an appeal without any time limit;

The concept of a reasonable period of time implies that situations consolidated by the passage of time cannot be called into question indefinitely; this reasonable period of time must therefore be assessed on the basis of the circumstances of each case, in particular the nature of the case, its degree of complexity and the conduct of the party complaining about the length of the proceedings;

That it is left to the sovereign appreciation of the judges, who decide on the basis of concrete circumstances on a case-by-case basis, carrying out a detailed analysis of the elements of the case;

That, consequently, the elements raised by the applicants to initiate their actions after a decade of proceedings are not such as to justify the lateness of the application;

That it is therefore appropriate to declare inadmissible the application lodged by Messrs KUETÉY Nicoue Emmanuel, N'GROH Yede Augustin, DOUHE Roland, SEHI Bi Benie Gustave, YAPO Koffi Albert and Mrs KOUASSI Marthe épouse BOUADOU against the dismissal decisions dated 23 November 2011 concerning them, on the grounds that they were lodged well beyond the reasonable time limit;

Costs

Considering that under the terms of Article 60 para. 1^{er} of the Rules of Procedure of the Court, "*A decision as to costs shall be made in the judgment or order bringing the proceedings to an end*";

That, in addition, under the terms of article 60 al.2 of the Rules of Procedure of the Court, "*Any unsuccessful party shall be ordered to pay the costs*";

That Mr KUETÉY Nicoue Emmanuel, Mr N'GROH Yede Augustin, Mr DOUHE Roland, Mr SEHI Bi Benie Gustave, Mr YAPO Koffi Albert and Mrs KOUASSI Marthe épouse BOUADOU be ordered to pay the costs;

ON THESE GROUNDS,

Ruling publicly and adversely, at first and last instance, in matters of Community law ;

IN THE FORM :

- **Declares itself competent ;**
- **Declares inadmissible** the application lodged by Messrs KUETÉY Nicoue Emmanuel, N'GROH Yede Augustin, DOUHE Roland, SEHI Bi Benie Gustave, YAPO Koffi Albert and Mrs KOUASSI Marthe married BOUADOU against the decisions to dismiss them dated 23 November 2011;
- **Order them to pay the costs.**
- **Thus made, judged and pronounced in public hearing in Ouagadougou on the day, month and year above.**

And have signed :

The

Registrar

PresidentThe

Mahawa Sémou DIOUF

Hamidou YAMEOGO