

**EXTRACT FROM THE MINUTES OF THE
REGISTRY**

UEMOA COURT OF JUSTICE

PUBLIC HEARING OF 30 APRIL 2014

**STOP N°11
RP 001.12
OF 30 APRIL 2014**

*Reference for a preliminary ruling
from the Cour de cassation du
Burkina Faso.*

Parties to the main proceedings :

TRAORE Thierry Michel

A

SALIFOU Mohamed

The Court of Justice of the WAEMU, meeting in ordinary session on thirty (30) April two thousand and fourteen (2014), in which were seated :

- M. Ousmane DIAKITE, Deputy President of the Court, President ;
- Mr Maty ELHADJI MOUSSA, and
- Ms MATTO LOMA CISSE, Judges, Members; in

the presence of :

- Ms Seynabou NDIAYE DIAKHATE, First Advocate General ;

with the assistance of Maître Hamidou YAMEOGO, Deputy Registrar ;

in response to the reference for a preliminary ruling made by the **Cour de Cassation du Burkina Faso** by judgment avant dire- No 01 of six (06) January two thousand and eleven (2011), in the main proceedings between :

Maître TRAORE Thierry Michel, Avocat à la Cour, BP 2973, Tel (00226) 20 98 21 66 Bobo Dioulasso

**on the one
hand ;**

A

SALIFOU Mohamed, IT Specialist, 09 BP 776 Ouagadougou 09 Tel. 50 30 70 41/70 31 31 76

of the other

part; has delivered the judgment set out

below:

THE COURT :

HAVING REGARD TO the preliminary ruling No 01 of six (06) January two thousand and eleven (2011), by which the Burkina Faso Court of Cassation, pursuant to Article 12 of Additional Protocol No 1, referred the matter to the WAEMU Court of Justice;

HAVING REGARD TO the letters of twenty-five (25) May two thousand and eleven (2011) from the Registrar of the Court, notifying the Member States, the organs of WAEMU and the parties to the main proceedings of the preliminary ruling of six (06) January two thousand and eleven (2011);

HAVING REGARD TO the written observations dated seventeen (17) June two thousand and eleven (2011) of the Minister of the Economy and Finance of the Republic of Côte d'Ivoire;

HAVING REGARD TO the other documents produced and attached to the file;

HAVING REGARD TO the WAEMU Treaty, in particular Article 38 ;

HAVING REGARD TO Additional Protocol No. 1 on the supervisory bodies of the WAEMU, in particular Articles 1, 12, 13 and 20 ;

HAVING REGARD TO Additional Act No. 10/96 on the Statutes of the Court of Justice of the WAEMU ;

HAVING REGARD TO Regulation No. 01/96/CM on the Rules of Procedure of the Court of Justice of the WAEMU ;

HAVING REGARD TO Order No 11/2014/CJ of seventeen (17) April two thousand and fourteen (2014) appointing the members of the full court to sit at the ordinary public hearing on thirty (30) April two thousand and

fourteen (2014);

YES Mr Ousmane DIAKITE, Judge - rapporteur, in his report;

YES Ms Seynabou NDIAYE DIAKHATE, First Advocate General, in her
Opinion ;

Having deliberated in accordance with Community law :

By preliminary ruling No 01 of six (06) January two thousand and eleven (2011), received at the Court of Justice of the WAEMU on twenty-two (22) March of the same year and registered under No 11RP002, the Court of Cassation of Burkina Faso has, pursuant to Article 12 of Additional Protocol No 1, referred the matter to the WAEMU Court of Justice for an opinion on the meaning and scope that it intends to give to the indicative scales of costs and lawyers' fees in the light of Article 88 of the WAEMU Treaty of the tenth session of the General Assembly.

(10) January one thousand nine hundred and ninety-four (1994) and Regulation n° 02/2002/CM/UEMOA of twenty-three (23) May two thousand and two (2002) relating to anti-competitive practices within UEMOA.

This opinion is sought in the context of the dispute between Maître TRAORE Thierry Michel and Mr SALIFOU Mohamed, following the latter's appeal on points of law against an order issued by the Bobo-Dioulasso Court of Appeal on disputed fees under number 03/2007 of fifteen (15) February two thousand and seven (2007).

By letters dated twenty-five (25) May two thousand and eleven (2011), the Registrar of the Court notified the Member States, the WAEMU Commission and the parties to the main proceedings of the preliminary ruling No 01 of six (06) January two thousand and eleven (2011) pursuant to Article 11 of Regulation No 01/2010/CJ on the Administrative Rules of the Court of Justice of the WAEMU.

By letter dated seventeen (17) June 2011, the Côte d'Ivoire Minister of the Economy and Finance responded to the said notification.

By separate orders issued on seventeen (17) December two thousand and twelve (2012) under numbers 029/2012/CJ and 030/2012/CJ, the President of the Court appointed the Judge-Rapporteur and noted the end of the written procedure.

I. FACTS RELATING TO THE MAIN DISPUTE

Maître TRAORE T. Michel managed the interests of Mr SALIFOU Mohamed in the context of debt recovery proceedings in a company liquidation procedure.

After payment of the sum of two million seven hundred and ninety-six thousand (2,796,000) CFA francs to his client, Maître TRAORE Thierry Michel deducted the sum of nine hundred and sixty-six thousand eight hundred and ninety-two (966,892) CFA francs in respect of lawyers' fees and expenses, even though, according to his client, they had verbally agreed on the sum of two hundred thousand (200,000) CFA francs to cover the said fees and expenses.

Mr SALIFOU Mohamed therefore lodged a complaint with the President of the Bar Association who, by order no. 2006/033/BAT/BK of fourteen (14) September two thousand and six (2006), on the grounds that the work carried out in the context of this case had not given rise to any legal proceedings and that Maître TRAORE Thierry Michel could not justify any difficulty, fixed the costs of opening the case at seventy-five thousand (75,000) CFA francs, the basic fees at one hundred thousand (100,000) CFA francs and the result fees at 20% and ordered Maître TRAORE Thierry Michel to pay Mr SALIFOU Mohamed the sum of two hundred and six thousand five hundred (206,500) CFA francs.

This order n°2006/033/BAT/BK of fourteen (14) September two thousand and six (2006) of the President of the Bar Association has been appealed. On this

appeal, by order no. 03/2007 of fifteen (15) February two thousand and seven (2007), the First President of the Bobo-Dioulasso Court of Appeal upheld the contested order on the grounds, among others, that the validity of the indicative price list of twenty (20) December two thousand and three (2003) must be assessed in relation to Community competition legislation, in particular article 88 of the WAEMU Treaty and Regulation no. 02/2002/CM/UEMOA of twenty-three (23) May two thousand and two (2002) relating to anti-competitive practices within the Union, and that on this basis, by holding a general meeting to set a scale, even an indicative one, of fees and expenses, the lawyers engaged in a prohibited practice.

Mr Thierry Michel TRAORE appealed against this order in accordance with the provisions of articles 69 to 75 of law 16-2000- AN of twenty-three (23) May two thousand (2000) regulating the legal profession and 75 to 78 of the Code of Civil Procedure.

II. WRITTEN OBSERVATIONS SUBMITTED TO THE COURT

Only the State of Côte d'Ivoire responded to the notification sent to the Member States, the WAEMU Commission and the parties to the main dispute, stating that it had taken note of the notification and that it did not consider it appropriate to comment on the case.

III. LEGAL FRAMEWORK OF THE QUESTION

According to the preliminary ruling of the Court of Cassation of Burkina Faso, no. 01 of the year two thousand and eleven (2011), it is clear from the grounds of appeal that Maître TRAORE Thierry Michel criticises the decision of the Bobo-Dioulasso Court of Appeal for having misapplied the law, in that it dismissed the aforementioned plaintiff's claim for damages.

dismisses its appeal on the grounds that the indicative scales of lawyers' fees and costs cannot be valid in the light of national and Community provisions prohibiting anti-competitive practices in the WAEMU area, even though the said scales are derived from texts regulating the legal profession, the exercise of which is clearly incompatible with commercial activities, which are the prerogative of competition law; it also alleges infringement of Article 29 of the Code of Civil Procedure of Burkina Faso.

Thus, the appeal seeks to criticise the interpretation made by the Bobo-Dioulasso appeal judge of Law n°15/94/ADP of five (05) May nineteen hundred and ninety-four (1994) on the organisation of competition in Burkina Faso, Article 88 of the UEMOA Treaty of ten (10) January nineteen hundred and ninety-four (1994) and Regulation n°02/2002/CM/UEMOA of twenty-three (23) May two thousand and two (2002) relating to anti-competitive practices within UEMOA.

Consequently, the Court of Cassation considers that the case in question raises a question of interpretation and application of the Treaty on European Union and of an act adopted by its organs, in this case the Regulation referred to above; Hence the decision of the Court of Cassation of Burkina Faso, in a preliminary ruling, to stay proceedings and to seek the opinion of the Community court on the meaning and scope it intends to give to the indicative scales of court costs and lawyers' fees in the light of the Community texts referred to above, namely Article 88 of the Treaty and the Regulation on anti-competitive practices of the West African Economic and Monetary Union.

IV. REPLY OF THE COURT TO THE REQUEST OF THE COURT OF CASSATION OF BURKINA FASO

Whereas, pursuant in particular to Article 12 of Additional Protocol No. 1 on the supervisory bodies of the WAEMU, the Cour de Cassation of Burkina Faso, as the court of last instance, was obliged to refer to the Community courts when a problem of interpretation of the Union Treaty or of the legality and interpretation of an act adopted by the organs of the Union is submitted to it;

That even if the Court of Appeal cannot assess the legality or validity of a national regulation, in this case the text fixing the scales of legal costs and lawyers' fees, it remains competent to rule on the question of whether or not the said scales fall within the scope of Community competition law, in particular through the provisions of Article 88 of the Treaty on European Union and Regulation No 02/2002/CM/UEMOA of twenty-three (23) May two thousand and two (2002);

Whereas Article 88 of the Treaty on European Union reads as follows :

"One (1) year after the entry into force of this Treaty, the following shall be prohibited ipso jure :

- a) agreements, associations and concerted practices between undertakings which have as their object or effect the restriction or distortion of competition within the Union ;*
- b) any practices by one or more undertakings which amount to an abuse of a dominant position within the common market or in a significant part of it ;*
- c) public aid likely to distort competition by favouring certain undertakings or the production of certain goods" ;*

Considering that WAEMU competition law plays a part in the organisation of the Community's common market by creating a climate of healthy competition between public and private companies, not forgetting consumer protection;

Competition law therefore applies primarily to undertakings and secondarily to consumers and to the Member States, particularly with regard to their relations with public undertakings;

Therefore, the question is whether the relationship between a litigant and his lawyer falls within this concept of a business within the meaning of WAEMU Community law;

Considering that a company within the meaning of competition law covers the concepts of commercial activity, economic activity and social activity;

Consequently, the services of a lawyer, which are statutorily excluded from the commercial sphere, do not fall within the scope of an undertaking covered by competition law;

Whereas the Court of Justice of the European Union cannot rule on the validity or otherwise of the scales of court costs and lawyers' fees in so far as they were established on the basis of a national rule of Burkina Faso;

Lastly, as the preliminary ruling is a procedural issue, it is for the Cour de Cassation du Burkina Faso to rule on costs in accordance with the provisions of Article 86 in fine of the Court's Rules of Procedure.

FOR THESE REASONS :

The Court, ruling on the question referred to it for a preliminary ruling by the Cour de cassation of Burkina Faso by judgment of the Court of Appeal of Burkina Faso no. 01 of 6 June 2001, has given a judgment on the following question

(06) January two thousand and eleven (2011) :

- **declare inadmissible the question put on the interpretation of the order fixing lawyers' fees and expenses and all the national rules raised to that effect;**
- **states, however, that the provisions of Article 88 of the WAEMU Treaty and of Regulation No 02/2002/CM/UEMOA of twenty-three (23) May two thousand and two (2002) relating to anti-competitive practices within the Union do not apply to indicative scales of lawyers' fees and costs;**
- **orders the Cour de Cassation du Burkina Faso to pay the costs of the preliminary ruling proceedings.**

Thus made, judged and pronounced in public hearing in Ouagadougou on the days, months and year above.

Signed by the Chairman and the Registrar.

For certified delivery Ouagadougou,

12 May 2014

The Registrar,

Fanvongo SORO