



**COMMUNITY COURT OF JUSTICE, ECOWAS**  
**COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO**  
**TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO**

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC  
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)**

In the Matter of

**MR MOMODU KHALIFA CHAM V COMMISSION OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)  
AND THE PRESIDENT ECOWAS COMMISSION**

*Application No: ECW/CCJ/APP/23/2022; Judgment No. ECW/CCJ/JUD/27/24*

**JUDGMENT**

**ABUJA**

**10<sup>TH</sup> JULY 2024**

**JUDGMENT NO. ECW/CCJ/JUD/27/24**

**MR. MOMODU KHALIPHA CHAM**

**- APPLICANT**

**1. COMMISSION OF THE ECONOMIC COMMUNITY  
OF WEST AFRICAN STATES**

**-RESPONDENTS**

**2. THE PRESIDENT OF THE COMMISSION OF  
THE ECONOMIC COMMUNITY OF WEST  
AFRICAN STATES**

**COMPOSITION OF THE COURT**

Hon. Justice Gberi-Be Ouattara

-Presiding Judge

Hon. Justice Dupe Atoki

-Member/ Judge Rapporteur

Hon. Justice Sengu Mohamed Koroma

- Member

**ASSISTED BY:**

Dr. Yaouza OURO-SAMA

- Chief Registrar

**REPRESENTATION OF PARTIES**

Isyaku Balarabe Muhammed, Esq.

- Counsel for the APPLICANT

SCPA Kanga-Olaye & Associates,

- Counsel for the RESPONDENTS

## **I. JUDGMENT**

1. This is the judgment of the Community Court of Justice, ECOWAS (herein after referred to as the Court), delivered virtually in open Court pursuant to Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

## **II. INTRODUCTION**

2. The subject matter of this application is premised on an alleged unlawful suspension and subsequent dismissal of the Applicant by the 2<sup>nd</sup> Respondent from the service of the 1<sup>st</sup> Respondent.

## **III. PROCEDURE BEFORE THE COURT**

3. The initiating application was filed on 12 February 2022 and served on the Respondents electronically on 17 May 2022.
4. An application for expedited procedure was filed on 12 February and served on the Respondents electronically on 17 May 2022.
5. The statement of defence was filed on 07 December 2022 and served on the Applicant electronically on 24 January 2023.
6. Motion for extension of time for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to file their joint statement of defence was filed on 07 June 2023 and served on the Applicant electronically on the same date.
7. 1<sup>st</sup> and 2<sup>nd</sup> Respondents joint statement of defence was filed on 07 June 2023 and served on the Applicant on the same date electronically.
8. Applicant's reply to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents statement of defence was filed on 26 February 2024 and served on 27 February 2024 electronically.
9. The Court sat virtually on 18 May 2023, 9 June 2023, 30 January 2024, 29 February 2024, and 22 April 2024 respectively.
10. On 9 June 2023, during the virtual Court session, the Court needed clarity as to the actual representation of the Respondents as two separate legal Counsel appeared in Court for the Respondents. The matter was

adjourned to 29 September 2023 for hearing and verification of legal representation.

11. On 22 April 2024, at the virtual Court session, the Court noted that the conflicting representation of the Respondents had been resolved and the matter was heard on the merits. The Applicant applied to withdraw Document 2 (notice for extension of time) and rely on documents 1, 3 & 4. Both parties presented their cases and made adumbrations. In response, Applicant relied on document 7 and made his submissions referring the Court to two (2) annexes. The Court adjourned the case for Judgment.

#### **IV APPLICANT'S CASE**

##### **a) Summary of facts**

12. The Applicant was employed as a Procurement Officer with the Inter-Governmental Action Group against Money Laundering and Terrorism Financing (GIABA), in Dakar, an Institution of the 1<sup>st</sup> Respondent. He alleged that on 11 July 2019, he was suspended from service and afterwards dismissed by the 2<sup>nd</sup> Respondent without strict compliance with the mandatory provisions of the ECOWAS Staff Regulations.

13. The Applicant states that his suspension was based on irregularities arising from a forensic audit report relating to the purchase of IT equipment in the course of his active service.

14. The Applicant contends that prior to his suspension, he was not issued any query to avail him the opportunity to respond before the decision to suspend him was taken. Also, that for over a year after his suspension, no panel has been set up to investigate the incident and the allegations meted against him.

15. On 28 September 2020, the Applicant received a query from the 1<sup>st</sup> Respondent requesting for clarification regarding some irregularities detected by the said forensic audit in connection with calls for tender at GIABA. The Applicant responded to the query on 16 October 2020,

stating that neither did the query indict him of any infraction nor was the Forensic Audit Report made available to him.

16. Sometime around 19 October 2020, the 2nd Respondent vide a memo invited the Applicant to the ECOWAS Joint Disciplinary Board meeting to consider the said indictment by the forensic audit on financial irregularities or fraud levelled against him.
17. On 11 November 2020 when it was rescheduled, the Applicant appeared before the Board where he was given a charge sheet containing the offences levelled against him and required to answer to them on the spot. It is the contention of the Applicant that the issuance of a charge sheet at that time deprived him of adequate time and facilities to enable him respond to the allegations contained therein. Furthermore, during the sitting, no witness was called to testify and or demonstrate how he was involved in the said fraudulent activities at GIABA and he was not given any opportunity to ask questions to prove his innocence.
18. Applicant alleged that a total of seven (7) members of staff of GIABA were suspended on suspicion of conspiracy to commit financial irregularities. However, three (3) out of the said seven (7) were exonerated from the allegations without any basis for the discriminatory findings indicting the Applicant who was jointly charged for the same offence with the trio.
19. Applicant further alleged that he was not notified personally of his suspension but to his surprise, shock, and embarrassment, he received calls from colleagues and key stakeholders commiserating with him over his suspension from the services of the 1<sup>st</sup> Respondent while he was on a special assignment.
20. On 26 January 2021, Applicant was issued a letter of dismissal by the 2<sup>nd</sup> Respondent pursuant to the recommendation of the Ecowas Joint Disciplinary Board.



21. He concluded that upon his dismissal, his salaries and emoluments were withheld by the 2<sup>nd</sup> Respondent in violation of the provisions of the ECOWAS Staff Regulations.

22. However on 15 March 2021, Applicant invoked his right of Appeal under Articles 27 and 73 of the ECOWAS Staff Regulations by requesting a Staff Representative to send a Memorandum of Appeal through the Administrative and Finance Commission to the Council of Ministers. That despite having knowledge of the appeal, the 2<sup>nd</sup> Respondent proceeded to suspend the Applicant's salaries, allowances, and other emoluments.

**b) Pleas in law**

23. The Applicant relied on the following laws:

- A. Article 33 of the Rules of the Community Court of Justice.
- B. Article 10 of the Supplementary Protocol A/SP.1/01/05 amending the Protocol (A/P1/7/91) relating to the Community Court of Justice.
- C. Articles 1, 2, 3, 4 and 5 of the African Charter on Human and People Rights.
- D. Articles 2, 3, 8, 12 and 25 the Universal Declaration of Human Rights (1984)
- E. Articles 2, 3, 6 and 26 of the International Covenant on Civil and Political Rights.
- F. Article 9(f) of the Supplementary Protocol (A/SP/01/05) amending The Protocol (A/P1/7/91) relating to Community Court of Justice
- G. Articles 2, 3, 5, 10, 11 And 12 of the International Covenant of Economic, Social and Cultural Rights.
- H. Articles 63, 67, and 73 of the Revised Ecowas Staff Regulations.

**c) Reliefs sought.**

24. The Applicant seeks the following reliefs from the Court.

- A. A declaration that the dismissal of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is arbitrary, null and void same having violated the provisions of the ECOWAS Staff Regulations, the African Charter on



Human and Peoples Rights and other applicable International Protocols the Respondents are bound by.

- B. A declaration that the stoppage of the Applicant's salary before the exhaustion of the Appeal process is arbitrary, unlawful, null and void and contrary to the provisions of Article 68 (b) of the ECOWAS Staff Regulations.
- C. An order of this Honourable Court setting aside the dismissal of the Applicant forthwith for being arbitrary, null and void and violative of the provisions of the ECOWAS Staff Regulations and the African Charter on Human and Peoples rights and other international instruments.
- D. An order of Mandatory Injunction restraining the Respondents and or his agents from advertising the Applicant's Post of Procurement Officer contrary to Article 73(b) of the ECOWAS staff regulations pending the hearing and determination of his appeal before this Honourable Court.
- E. An order of this Honourable Court directing the Respondents to pay forthwith to the Applicant his salary arrears and all other entitlements from January 2021 till date.
- F. An order of this Honourable Court directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to reinstate the Applicant back to his position as a Procurement Officer
- G. An order of this Honourable Court restraining the Respondents from violating the rights of the Applicant in any manner whatsoever without due process of law.
- H. An order of this Honourable Court directing the Respondent to pay to the Applicant the sum of \$100,000. 00 (One Hundred Thousand Dollars) only as cost of prosecuting this suit.

- I. And any other order or orders this Community Court of Justice might make in the circumstance of this case.

## V RESPONDENTS CASE

### a) Summary of facts

25. The Respondents vide a joint statement of defence denied each and every material allegation contained in the Applicant's statement of claim. In addition, the Respondents state that the suspension of the Applicant was based on the independent forensic expert report with respect to the activities of the Applicant when he held the position of procurement officer in GIABA.
26. Contrary to the Applicant's assertion, the Respondents state that the Applicant was duly issued a query on 28 September 2020 as admitted by him, to answer to the allegation of fraud. That the said query contained in full the allegations against the Applicant as indicated in the forensic audit report.
27. The Respondents maintained that they are not mandated by the Ecowas Staff Regulations to set up any panel to investigate allegations that have been duly investigated and audited.
28. That in line with the Ecowas Staff Regulations, the Applicant was duly invited via a letter dated 28 October 2020 to the ECOWAS Joint Disciplinary Board to defend himself from the allegations of the forensic audit report. Respondents further state that the Applicant was given ample opportunity to defend himself.
29. Concerning the other persons that were indicted, Respondents state that each of them including the Applicant were given detailed reasons for the sanctions imposed on them after answering to their respective charges. Therefore, the decision to dismiss is in line with the nature and seriousness of the offences committed.



30. The Respondents affirm that the Applicant was duly notified of his suspension. Furthermore, the Head of the Institution of the 1st Respondent in compliance with Article 71 (d) of the ECOWAS Staff Regulations gave reasons for the Applicant's dismissal. That the dismissal of the Applicant in the circumstance was appropriate as the allegations against him involved gross misconduct, embezzlement, theft, fraud, and abuse of trust detrimental to the interest of the community.
31. That in view of the said acts, the Respondents are empowered by the Staff Regulations to dismiss the Applicant summarily because the offence committed by the Applicant attracts the 3<sup>rd</sup> degree sanction leading to a summary dismissal with or without pension. To this extent, the Respondents state that the dismissal of the Applicant was in total compliance with the ECOWAS Staff Regulations.
32. In conclusion, they assert that contrary to the Applicant's assertion, the ECOWAS Joint Disciplinary Board was duly constituted with a Chairman, Secretary, and members in line with Article 67 of the ECOWAS Staff Regulations.

b) Pleas in law

33. The Respondents have relied on the following in support of their defence:

- Article 69 (e) of the ECOWAS Staff Regulations.
- Article 70 (c) of the ECOWAS Staff Regulations.
- Article 71 (c) of the ECOWAS Staff Regulations.

c) Reliefs sought

34. The Respondents are praying for the following reliefs from the Court:

- a. A declaration that the Respondents complied totally with the provisions of the conditions of service as contained in the Applicant's letter of appointment and the ECOWAS Staff Regulations in the dismissal of the Applicant from its employment.
- b. An order of this honourable Court dismissing this suit in its entirety as same is gold digging, premature, lacks in merit, abuse of process

of this Honourable Court and same should be discouraged in strong terms by this Honourable Court.

## VI. JURISDICTION

35. The present application is grounded on the alleged non-compliance by the Respondents with the provisions of the ECOWAS Staff Regulations in the dismissal of the Applicant from its service and alleged violations of the Applicant's human rights under the African Charter and other International Human Rights Instruments.
36. The Court observes that the case of the Applicant has been submitted in a dual capacity. On the one hand as a Staff of the ECOWAS subject to the ECOWAS Staff Regulations, and on the other hand as a community citizen on account of human rights violations that occur within the territory of a Member State of the ECOWAS.
37. Article 9 (1) (f) of the Supplementary Protocol of the Court (2005) is relevant in regard to the first capacity of the Applicant as a staff of the ECOWAS and it provides as follows: *"The Court has the competence to adjudicate on any dispute relating to the following: (f) The Community and its officials."*
38. In the light of this provision, the Court deems it necessary to provide a clear understanding of the "Community" and "Community Officials" in the context which it is used.
39. "Community" is defined as the Economic Community of West African States, and it includes the fund for Co-operation, Compensation and Development and all other Institutions. See Article 4 of the ECOWAS Revised Treaty 1975.
40. "Community Officials" on the other hand are members of staff of the Community entitled to privileges and immunities. They are the professional international civil servants as defined in the Staff Regulations of the Community, and such other persons as the Executive Secretary may designate from time to time. See Article 7 of the GENERAL CONVENTION ON PRIVILEGES AND IMMUNITIES OF THE ECOWAS.

41. The combined effect of Article 9 (1) (f) of the Supplementary Protocol above referred and the definitions clearly outlined settles the jurisdiction of the Court in relation to the capacity of the Respondent and the Applicant same falling within the designation of the Community and Community officials respectively.
42. The Court therefore declares it has jurisdiction to entertain this application in that context.
43. With respect to his second capacity, Article 9 (4) of the Supplementary Protocol of the Court (2005) is instructive. It states in clear terms that: *“The court has the jurisdiction to determine cases of violation of human rights that occur in any Member State.”*
44. The Court notes that its human rights jurisdiction is limited to human rights violations that occur within the territory of any Member State. It does not extend to any violations allegedly perpetrated by a Community Institution. That being said, the provisions of Article 9 (4) above should not be given an extraneous interpretation to include violations that were carried out by institutions of the Community.
45. The Court has distinguished its mandate as an ECOWAS Public Service Court from its Human Rights Court stating that in employment-related matters among community institutions and their staff, the Court maintains its mandate as a Public Service Court and not a Human Rights Court. That being said, the Court cannot position itself as a human rights arbiter in an employer/employee relationship. The Respondents are not a Member State to be brought before the Court on Human rights violations. See SULEIMAN MUHAMMED V ECOWAS COMMISSION & ANOR ECW/CCJ/JUD/03/22 pg. 13, para 47. See also NNAMDI F C CHUKWU V THE ECOWAS COMMISSION & ANOR ECW/CCJ/JUD/01/22, and DR. MUHAMMAD SANI BELLO V ECOWAS COMMISSION ECW/CCJ/JUD/27/18.

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## VII. ADMISSIBILITY.

46. Having determined that the Court has jurisdiction, it must further ascertain whether the parties have the locus standi and the capacity to bring the dispute before it. In that regard, Article 10 (e) is instructive as it states that: *“Access is open to staff of any Community institution, after the staff member has exhausted all the appeal processes available to the officer under the ECOWAS Staff Rules Regulations.*

47. The Court notes that the status of the Applicant as a staff of a Community Institution is not in contention. The Court will now ascertain whether the Applicant has exhausted all the appeal processes as required by the latter portion of Article 10 (e) above.

48. In this regard, it is important to reproduce the relevant portions of Article 73 (b) of the ECOWAS Staff Regulations in relation to appeal process.

*“Any staff member who wishes to appeal against sanctions imposed on him/her must first write a letter to the Head of Institution, requesting a review of his/her case. (...). If the Head of Institution maintains the decision, or if the staff member receives no response within thirty (30) days, s/he shall have another period of thirty (30) days within which to bring the matter to the notice of the Council of Ministers. This shall be done through the Staff Representative or the Head of Administration who shall present a memorandum in this connection to the Administration and Finance Commission. (...)*

49. Based on the uncontroverted facts and evidence presented before the Court in this regards, the Applicant being dissatisfied with his dismissal took the following steps:

- The Applicant vide a letter dated 26 January 2021 appealed to the Head of Institution against his dismissal. (Annexure 6)
- On 22 February 2021, the Head of Institution dismissed his appeal and confirmed the Applicant’s dismissal (Annexure 7).
- The Applicant through its Staff Representative appealed to the Council of Ministers through Finance and Administration Committee vide a letter dated 18 March 2021 (Annexure 8).



- The Council of Ministers considered the appeal of the Applicant and reached its decision at their meeting held from 16<sup>th</sup>-17<sup>th</sup> June 2021. (Annexure 10)

50. Going by this sequence, the Court is of the considered opinion that the Applicant has exhausted all the internal appeal processes as required by Article 10 (e) of the Supplementary Protocol (2005) and Article 73 of the ECOWAS Staff Regulations (2005).

51. The application is therefore declared admissible.

## VIII. MERITS

52. Having regard to the pleadings of the Applicant including the reliefs sought, the Court is invited to make two substantive legal determinations concerning the alleged violations of the ECOWAS Staff Regulations;

a) Whether the dismissal of the Applicant from the service of the Respondent is in compliance with the ECOWAS Staff Regulations.

b) Whether the suspension of the Applicant's salary before the exhaustion of the Appeal process is in compliance with the provisions of Article 68 (b) of the ECOWAS Staff Regulations.

*a. Whether the dismissal of the Applicant from the service of the Respondent is in compliance with the ECOWAS Staff Regulations.*

53. The Applicant claims that he was dismissed from service by the 2<sup>nd</sup> Respondent without strict compliance with the mandatory provisions of the ECOWAS Staff Regulations. The said dismissal was prompted by a Forensic audit report of Ernst & Young which identified some irregularities relating to the purchase of IT equipment in GIABA between the years 2012 and 2013, where the Applicant held the post of a procurement officer.

54. Furthermore, the Applicant allege that he was not availed of the said forensic report thereby preventing him from understanding the nature of the charges against him and opportunity to prepare a defense. In addition, the Applicant claimed that the query issued to him on the 20<sup>th</sup> of

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*[Handwritten signature]*

September 2020 was generic in nature and the content therein did not personally indict him of any offense.

55. The Respondents on their part confirmed the dismissal of the Applicant based on the report of Ernst & Young- an independent forensic expert engaged to investigate the activities of the procurement unit of GIABA where the Applicant was a procurement officer. They however insist that contrary to the Applicant's allegation, he was duly issued a query to respond to the allegation of fraud leveled against him. That the said query contained in full the allegations against the Applicant as indicated in the forensic report computed by the said Ernst & Young.

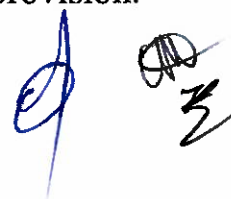
56. They concluded that at the Disciplinary Board which was constituted in line with the Staff Regulations, the allegations attributed to the Applicant was read to him and given an opportunity to defend himself. Having been unable to exonerate himself from the said allegations, and in view of the facts that the alleged offenses attract a 3<sup>rd</sup> degree sanction, he was summarily dismissed as provided by the ECOWAS Staff Regulations.

#### *Analysis of the Court*

57. The crux of the issue presented for the determination of the Court is the regularity or otherwise of the Applicant's dismissal from service. The Court will now examine the procedure adopted in dismissing the Applicant to ascertain whether, the steps taken were in line with the provisions of the Staff Regulations.

58. In that regards, Article 69 (e) of the ECOWAS Staff Regulations is instructive and provides that "... where the evidence of an offence is irrefutable, the Head of Institution may summarily dismiss a staff member..." This was also reflected in the letter of employment issued to the Applicant which states: "*A staff member's appointment may be terminated in accordance with the Staff Regulations and in such a case, the Director General will give you three months written notice. Such notice may be dispensed with in the event of summary dismissal for serious misconduct.*"

59. Two issues call for determination from this provision.



- i. Whether the offence is irrefutable,
- ii. Whether the process of summary dismissal was complied with.

*Whether the offence is irrefutable*

60. The Respondent maintained that it exercised its power to summarily dismiss the Applicant having considered the seriousness of the offence and the overwhelming evidence which they considered irrefutable.
61. The said dismissal was on grounds of gross misconduct, embezzlement, theft, fraud, and abuse of trust detrimental to the interest of the community. These offences they state fall within the third-degree offences under Article 71 (c) of the ECOWAS Staff Regulations.
62. An offence is said to be irrefutable when the offence is indisputable and cannot be disproven. This implies that the evidence or facts supporting the offence are so strong and clear that there is no room for doubt.
63. For an offence to be considered irrefutable therefore, an employee must have been subjected to a disciplinary procedure and afforded an opportunity to prepare and defend himself and after due consideration, the verdict of the disciplinary committee will determine the irrefutable nature of his offence or otherwise.
64. From the facts and evidence presented, it is observed that prior to the said dismissal, the Applicant was subjected to a disciplinary procedure which according to the Respondent found him guilty of the said offences after which the decision to summarily dismiss him was reached.
65. Flowing from the above, the Court is of the considered opinion that an offence can only be ascribed to the Applicant as irrefutable where it has been established that the guarantees of a fair process have been accorded him having been subjected to an adversarial process. This position would be determined by the Court in the course of its analysis in line with the facts and evidence made available to it.

ii) *Whether the Summary Dismissal of the Applicant complied with the ECOWAS Staff Regulations.*

66. It is a trite rule of employment that where it becomes necessary to terminate an employment relationship, the service of an agreed minimum period of notice to the other party is mandatory except where payment in lieu of notice is agreed upon. It is in that regards that the *The International Labour Organization (ILO) Termination of Employment Convention* provides that: *“A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof.....”* ARTICLE 11 ILO PROVISION C158 - TERMINATION OF EMPLOYMENT CONVENTION, 1982 (NO. 158).

67. In contrast to an ordinary dismissal where an employee will be entitled to either a statutory or contractual period of notice, summary dismissal entails the immediate termination of employment of an employee without notice, or pay in lieu of notice due to his behaviour, the basis of which is gross misconduct. To warrant a summary dismissal therefore, it is enough that the conduct of the employee is of such grave and weighty character as to undermine the relationship of confidence that exists between the employee himself and his employer.

68. It is in that regards that Article 71(c) prescribes summary dismissal with or without pension for offences listed in Article 70(c) which are classified as (third degree). *The following offences shall attract the sanctions set out in Article 71 (c) of these Regulations (third degree):*

- i. *Embezzlement, theft, abuse of trust detrimental to the interests of the Community;*
- ii. *Fraud, bribery;*
- iii. *Assault and battery on the person of a colleague or superior officer;*
- iv *Fighting within the premises of the Institution.*

69. As claimed by the Respondent, the forensic report of Ernest & Young indicted the Applicant of gross misconduct, embezzlement, theft, fraud, and abuse of trust detrimental to the interest of the community in the procurement of IT equipment at GIABA where he was a procurement



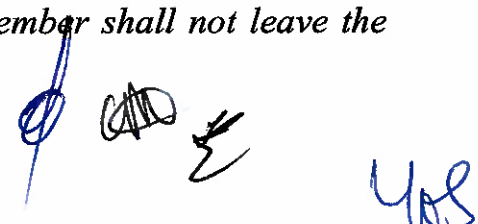
officer. Undoubtedly these allegations fall under Article 70(c) i & ii (supra) classified as third-degree offenses and punishable by a summary dismissal.

70. Consequently, in view of the fact that the alleged offences for which the Applicant was charged are third degree offenses which attract the punishment of summary dismissal, the said summary dismissal is therefore appropriate. Having said that, the Court will now proceed to examine the process engaged in the summary dismissal to confirm its compliance or otherwise with the extant Regulations.

71. It is important to understand that summary dismissal must not be equated to instant dismissal or dismissal 'on the spot'. There is need to ensure that a fair process as would any other disciplinary matter and established lawful grounds for dismissal was taken before the decision to dismiss. In particular, a thorough investigation and full disciplinary hearing giving the employee the opportunity to defend the allegations made against him before deciding on dismissal is imperative.

72. In this regard, the Staff Regulations devotes Article 69 to disciplinary procedures and the relevant portions are hereunder reproduced:

*e. Where the Head of Institution is of the opinion that a serious offence has been committed, including those enumerated in Article 70 (c) of these Regulations, and that the continued maintenance of the staff member in situ may be inimical to the interests of the Community or the investigation of the case, the Head of Institution may suspend the staff member, pending such time as a final decision is taken. The suspension shall not normally occasion cessation of salary, nor shall the action affect the staff member's rights, or be considered to be a disciplinary measure. Suspension with half pay may be imposed if the offence is grave and if there is reasonable evidence of guilt in the opinion of the Head of Institution. Where the evidence of an offence is irrefutable, the Head of Institution may summarily dismiss a staff member. The staff member shall not leave the region of*



*his/her duty station throughout the period of any suspension, without approval from the Head of Institution.*

- f. The Head of Institution shall notify the Committee of the matter and a meeting of the Committee shall be convened by its Chair.*
- g. The accusations levelled against the staff member and his/her reply, as well as all other relevant papers shall be communicated to the members of the Committee and to the staff member concerned. All parties shall be given adequate time to acquaint themselves therewith, bearing in mind however the need for the Committee to act with utmost dispatch. Confidential papers shall be communicated to the Chair of the Committee.*
- h. The deliberations of the Committee shall be considered valid in respect of disciplinary matters only where all of its members, including the Staff Representative, are present.*
- i. The procedure shall consist in a presentation of the accusations, the facts of the matter, denials, regulations, either written or oral, or both*
- j. The staff member may use the services of a lawyer, at his/her own expense, or may be assisted by another staff member of his/her choice who shall not be a member of the Committee.*
- k. The Committee may hear the deposition of the staff member concerned, his/her lawyer or the staff member s/he chooses to assist him/her. The Committee may also listen to all other persons whose contributions may help to uncover the truth.*
- l. The staff member concerned, and the members of the Committee shall be notified of the Head of Institution's decision within fourteen (14) days of his/her submission of the report. The staff member may exercise his/her right of recourse and contest the decision of the Head of Institution.*

73. The jurisprudence of the Court has overtime reiterated the significance of a fair process in the conduct of a disciplinary procedure. In so doing, the Court has identified breaches of Article 69 (e) of the Staff Regulations in situations where an Applicant was never issued a query nor invited to state his own side of the story, nor requested to furnish facts concerning his implication in the case before a disciplinary action was meted on him. In this wise, the Court opined that all these facts constitute serious failure in regard to the disciplinary measures as provided for under the ECOWAS Community Instruments. As essential as it is, in sanctioning an erring member of staff, the adversarial principle was violated, as is evidently clear, and in a repeated manner..... See MUHAMMED SANI BELLO V. ECOWAS COMMISSION supra @ Pg. 8

74. Additionally, the ILO also support these procedures when it held that; *“Once irregularities have been identified, the individual must be informed of the allegations of irregularities with sufficient precision to enable him to respond adequately; he should then be given an opportunity to respond, in particular to defend himself against the allegations, and to make such further response as the circumstances require prior to any conclusions being reached.”* SEE THE INTERNATIONAL LABOUR ORGANIZATION ILO TRIBUNAL MR J. D. W. VS THE INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) JUDGMENT NO. 2605 102ND SESSION OF FEBRUARY 2007. PG.5 PARA 11.

75. Thus, the position of the law is that an employee that has been dismissed summarily must have undergone a fair process which is crucial and forms the fulcrum of the procedure for a dismissal. In this wise, for a summary dismissal to be justified, due process must not be precluded. The requirement of conducting an investigation, giving the employee notice of the findings and a corresponding opportunity to respond, convening a disciplinary meeting, taking a decision and duly notifying the affected persons are key aspects that cannot be dispensed with in a summary dismissal.

76. In this regard, the Applicant allege that the process of his summary dismissal was not in compliance with the provisions of the Staff Regulations and allege the following irregularities amongst others;

- i. That the query served on him did not indicate any irregularity specific to him.
- ii. He was not availed a copy the forensic audit report to enable him know the nature of the allegations leveled against him
- iii. That he only became aware of the charges specific to him when they were read to him at the disciplinary board held on the 11<sup>th</sup> day of November where he was required to respond on the spot thus depriving him of adequate time and facilities to enable him respond to the said allegations.

77. The Court will now proceed to address these allegations seriatim.

*a) That the query did not disclose any irregularity specific to him:*

78. The case of the Applicant is that on 28<sup>th</sup> September 2020, he was issued a query that did not disclose any irregularity specific to him. The relevant content of the said query is hereunder reproduced: *“Query for irregularities committed in procurement processes at GIABA, as revealed by Forensic Audit”. “...the Ernst and Young Audit Firm identified cases of financial fraud and offences perpetrated within GIABA in the procurement of computer hardware in 2012 and 2013. Such irregularities include:*

- *Fraud on procurement documents;*
- *Use of shell companies and forged documents;*
- *Purchase made using LPOs, with no written contact between GIABA and the supposedly selected bidders;*
- *Use of fraudulent and often antedated accounting documents;*
- *Cash payments made to fictitious suppliers, amounting to US \$ 2,025,686 in spite of the Financial Controller’s refusal to approve the payment vouchers;*
- *Entry of such cash disbursements in the accounting books as expenditure items instead of advances.*

79. The Respondents on the other hand insist that the Applicant was properly notified of the financial irregularities against him by citing the above referred memo of 28<sup>th</sup> September 2020 wherein he was required to respond to the allegation in writing within a particular time.

80. From the reading of the query, it is clear that the findings of the report as referred to in the said query are generic and cannot be said to be specific to the Applicant. Whereas the said query contained a general and background information of the said irregularities, it did not specifically state the specific allegation which indicts the Applicant to which a response is required.
81. As a matter of course, a query should primarily contain a clear and specific information regarding the concern at hand with a specific arrogation of blame to the person to whom it is addressed and, in this case, the Applicant.
82. The essence of clear and unambiguous notice of allegations in situations such as this was articulated in the ECOWAS Staff Regulations under Article 69 (g) as follows; *“The accusations levelled against the staff member and his/her reply as well as all other relevant papers shall be communicated to the members of the Committee and to the staff member concerned. All parties shall be given adequate time to acquaint themselves therewith (...)*
83. The (ILO) puts this obligation concisely when it held that: *once irregularities have been identified, the individual must be informed of the allegations of irregularities with sufficient precision (emphasis ours) to enable him to respond adequately.....”*. See THE INTERNATIONAL LABOUR ORGANIZATION ILO TRIBUNAL MR. J. D. W. AGAINST THE INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) JUDGMENT NO. 2605 102ND SESSION OF FEBRUARY 2007. PG.5 PARA 11.
84. It is no gainsaying that a query with content such as the 28<sup>th</sup> September 2020 cannot be said to be sufficiently precise to enable the Applicant understand the allegations and prepare for a defense.
85. In the opinion of the Court, the said query having failed to speak specifically to the Applicant is not only vague, but impersonal and potentially confusing. Such generic or non-specific communication may not elicit the desired responses and would invariably lead to incorrect assumptions.

86. Though the Applicant responded to the said generic query, he expresses his reservation in the preamble of the response when he said:

*“Before I respond to the query, I wish to state that I was not provided with the Forensic Audit Report nor was I given the opportunity to have access to my official email and documents to fully respond to the allegations, taking into account the fact that the incident in issue happened nine years ago. Nevertheless, I wish to respond to the query.”*

See Annexure 3

87. The fundamentals of due process in a dismissal matter is the right of the employee to be informed of the allegation leveled against him. The Respondent having not provided the Court with any evidence to show that the referred query was specific enough to notify the Applicant of the specific allegations against him is in clear violation of the tenets of due process as to constitute a violation of Article 69 (g) of the Staff Regulations.

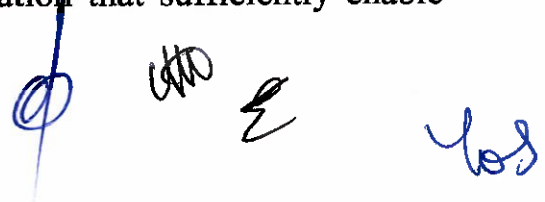
88. The Court therefore finds that the query of the 28<sup>th</sup> September issued to the Applicant, not being specific to the Applicant cannot be said to be in compliance with the procedural safeguard of adequate disclosure of charges/allegation in an adversarial proceedings.

89. The Court therefore holds that the query having failed the adequate disclosure test is in violation of Article 69(g) of the Staff Regulations.

*b) Regarding the failure to provide the Applicant the Forensic Audit Report.*

90. Contrary to the Applicant’s contention that he had no opportunity to read the forensic report, it must be stated that an employer is not obligated to provide the employee with a full report of its investigation. What is required is for the relevant information and findings to be available to the employee to enable him understand the basis of the allegations against him and effectively respond to same.

91. Indeed the Respondents may have legitimate reasons for not disclosing certain details of the investigation such as protecting the confidentiality of witnesses or sensitive information. In this regard, where the relevant information on the findings of the investigation that sufficiently enable



the understanding of the allegation(s) is made available to the Applicant, the full forensic audit report can be dispensed with.

92. Having said that, the Court regards the Applicant's complaint of not having access to the forensic report as tantamount to a complaint of not being aware of the allegation leveled against him. The Applicant in requesting for the report is seeking to know the specific allegation against him as contained in the report. The Court will therefore not ignore the exercise of the inherent right of the Applicant to know the alleged charges though demanded in an improper manner.

93. Nevertheless, having reached a finding on non-disclosure of specific allegation supra-89, the Court holds that further denial of the forensic report compounds the obligation and makes it imperative.

*c) Regarding the presentation of charges specific to the Applicant at the Disciplinary Board meeting*

94. It is the case of the Applicant that it was when he appeared before the Disciplinary Committee on the 11<sup>th</sup> day of November 2020 and that he became aware of the specific charges. He alleged that he was given a charge sheet containing the offence leveled against him and required to respond on the spot. That process he opined deprived him of adequate time and facilities to enable him respond to the said allegations thus contravening Article 69 (g) of the Staff Regulations.

95. He submitted Annexure 6 containing the charges specific which were read to him and is hereunder reproduced:

- a. He signed the purchase order for the Gambia.*
- b. He co-signed the Bid Evaluation Report in respect of all thirteen Member States for the procurement of the hardware.*
- c. He declared that he was pressured into signing some of the Bid Evaluation Reports and that he was not involved in the orders.*

96. This fact was also corroborated by the Report of the meeting of the Disciplinary Board (annexure 6) conducted from 9-12 November 2020 which indicated the following methodology used:



- *To call each concerned staff and read the allegation of the Audit to him/her.*
- *Accord him/her the opportunity to respond verbally to each of the allegations.*
- *Provide opportunities to their representatives as and when they deem it necessary.*
- *The Committee to ask questions and seek clarifications as and when necessary.*
- *Bring all concerned staff together for confrontation, to confirm or invalidate various statements made against each other.*
- *Deliberate on all responses provided by each concerned staff and their representatives and make recommendations to Management.*

97. The fundamentals of due process in an investigation of this nature is for the accused person prior to the investigation to be availed of the notice of the specific allegations against him and given reasonable time to acquaint him/herself with the charges and also time to prepare his/her defense. SEE DR. ROSE MBATOMON AKO V WEST AFRICAN MONETARY AGENCY & 4 ORS ECW/CCJ/JUD/01/13 CCJELR pg. 15. See also. MUHAMMED SANI BELLO V. ECOWAS COMMISSION ECW/CCJ/JUD/27/18 @ PG. 8.

98. Indeed, Article 69 (g) of the ECOWAS Staff Rules emphasized this essence when it provided that *“The accusations levelled against the staff member and his/her reply as well as all other relevant papers shall be communicated to the members of the Committee and to the staff member concerned. All parties shall be given adequate time to acquaint themselves therewith ... **Emphasis ours.***

99. From this viewpoint, the ordinary interpretation of the phrase *shall be communicated* (Supra) can only anticipate that such communication must be made before the hearing of the Committee. This is more so in view of the provision immediately following this phrase; thus, *All parties shall be given adequate time to acquaint themselves therewith.* Undoubtedly, the Article expects the accusations, reply and other relevant papers to be communicated to all parties including the Applicant before the hearing by the Committee and be given enough time to adequately prepare for the defense.



100. The only document in evidence in this regard is the generic query of 28<sup>th</sup> September 2020. The Court is not presented with any other correspondence that contain details of specific allegations addressed and served on the Applicant with all relevant documents ahead of the meeting of the Disciplinary Board as required by Article 69 (g) of the Staff Regulations.
101. Indeed as contended by the Applicant, a fact which remains uncontroverted, the charges specific to him only came to his knowledge when they were read to him during the hearing of the Disciplinary Board.
102. The principle of fair hearing is based on the rule that an individual should not be penalized by decisions affecting his rights or legitimate expectations without being given prior notice of the case, a fair opportunity to answer and/or opportunity to present their own case. The fact that a decision affects rights or interest of a person is sufficient to subject the decision to the procedures required by natural justice. See MOHAMMED EL TAYYIB BAH v. THE REPUBLIC OF SIERRA LEONE ECW/CCJ/JUD/11/15 @ pg.11.
103. The Court notes in general terms that, in matters related to disciplinary procedures, the principle of natural justice requires that an employee who is facing disciplinary charges must be provided with basic information and procedural safeguards to ensure a fair hearing. In this wise, the accused person should be given notice of the charges against him in advance of the disciplinary meeting. This notice should include detailed information about the specific allegations made, the relevant facts and evidence supporting those allegations, and the potential consequences of the disciplinary action.
104. These obligations were fully captured by the ILO when it held that, “*A decision as serious as one imposing a disciplinary measure will be lawful only provided that the rights of the staff members concerned to a fully adversarial procedure have been scrupulously respected. Charges must be precisely worded and notified sufficiently early (Emphasis ours) to enable the staff member concerned to defend his case, particularly by establishing evidence and gathering testimonies which he believes are likely to refute the charges in the eyes of the disciplinary body and of the deciding authority,*

*according to the nature of the charges against him.* SEE ILO JUDGMENT NO. 2496 100TH SESSION MR R. D. B AGAINST EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL AGENCY) PGH 7 @ PG. 5 FEBRUARY 2006.

105. The jurisprudence of this Court is in consonance with these principles as the Court attaches importance to the fact that an employee should be entitled to an impartial decision-making process in any pre-termination procedure and with due regard to procedural safeguards. Viewed from this perspective, the Court sees it as a huge procedural irregularity for an employee to be terminated without the guarantees of the adversarial principles, particularly the *audi alteram partem*. See EDOH KOKOU V ECOWAS COMMISSION ECW/CCJ/JUD/03/10 @ pg. 13.

106. The fundamentals of due process in a dismissal matter from the various Articles of the Staff Regulations, relevant international provisions and jurisprudence of the Court is the right of the employee to be informed of the allegation (s) leveled against him, for the information to be specific, and be early enough to enable sufficient time to prepare the defense.

107. In the opinion of the Court, the act of reading a charge with the expectation of an on-the-spot response without prior notice of such charge or an opportunity to prepare a defence, is akin to springing up surprises on the Applicant in a disciplinary meeting. This is obviously a breach of procedural safeguard under the Staff Regulations.

108. Flowing from the pleadings of the parties and the examination of the Applicant's allegation that his dismissal contravenes Article 69 (g) of the Staff Regulations, the following uncontroverted facts emerge; i) the query served on the Applicant did not disclose allegations specific to him .ii) the charges specific to him were officially read to him on the day of his hearing of the Joint Disciplinary Board iii) he was expected to defend the said specific allegation on the spot without adequate time to prepare his defence or call a lawyer as provided by Article 69 (j), iv) the necessary documents which constitute important elements of the proceedings were not made available to the Applicant to enable him to prepare a proper defence. Viewed holistically, the Court finds that the act

of the Respondent clearly constitutes a breach of procedural safeguards in adversarial proceedings and therefore lacks due process.

109. The Court therefore holds that the summary dismissal of the Applicant by the 2<sup>nd</sup> Respondent constitutes a breach of Article 69 of the ECOWAS Staff Regulations.

*Whether the cessation of the Applicant's salary and other emoluments before the exhaustion of the appeal process is in compliance with the provisions of Article 68 (b) of the ECOWAS Staff Regulations*

110. It is the case of the Applicant that having invoked his right of appeal in accordance with Articles 27 and 73 of the ECOWAS Staff Regulations by sending a Memorandum of Appeal through the Staff Representative to the Administrative and Finance Commission to the Council of Ministers, the 2<sup>nd</sup> Respondent still proceeded to suspend his salaries, allowances, and other emoluments.

111. In response, the Respondents maintained that the dismissal of the Applicant was at the initiative of the employer which results in the definitive termination of all reciprocal obligations of the parties in that, the employee no longer performs work duties and therefore no longer receives remuneration. That on this basis, it is entirely logical that the employee's work stoppage should result in cessation of the collection of wages and allowances.

*Analysis of the Court*

112. Article 27 of the Staff Regulations provides that: "*Staff members may appeal any decision taken by management concerning career-related questions in accordance with procedures in Article 73 of these Regulations.*"
113. Article 73 (b) of the Staff Regulations provides: "*Any member of staff who wishes to appeal against sanctions imposed on him/her must first write a letter to the Head of Institution, requesting a review of his/her case. The letter shall be sent by registered mail within thirty (30) days of receiving notification of the decision, where the staff member's duty*"

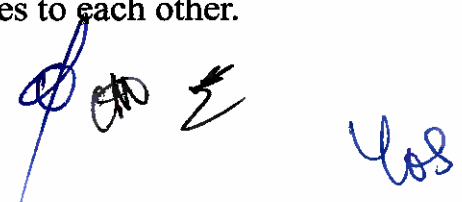
*station is outside the headquarters. If the Head of Institution maintains the decision, or if the staff member receives no response within thirty (30) days, s/he shall have another period of thirty (30) days within which to bring the matter to the notice of the Council of Ministers. This shall be done through the Staff Representative or the Head of Administration who shall present a memorandum in this connection to the Administration and Finance Commission. All sanctions shall be suspended on the decision to apply sanctions once the right of appeal is invoked.”*

114. As evidence of compliance with the above provisions restricting appeal to the Council only when there is a demonstration that diligent and good faith efforts to seek resolution through all the other steps listed in the Regulation have been made, the Applicant narrated the steps he took in that regards as follows:

- The Applicant vide a letter dated 26 January 2021 (Annexure 6) appealed to the Head of Institution against his dismissal.
- On 22 February 2021, the Head of Institution dismissed his appeal and confirmed the Applicant’s dismissal (Annexure 7).
- The Applicant through its Staff Representative appealed to the Council of Ministers through the Finance and Administration Commission vide a letter dated 18 March 2021 (Annexure 8).

115. Based on the above compliance, the Applicant’s case is that the Respondents unlawfully stopped his salaries despite the invocation of his right of appeal which required a halt on all sanctions connected thereto, pending the outcome of the appeal. The Respondents on the other hand, is of the opinion that the appeal concerns all disciplinary sanctions except dismissal.

116. To this end, the Respondents supported their position with the decisions of this Court in EDOH KOKOU V ECOWAS COMMISSION ECW/CCJ/JUD/03/10 and JEAN PIERRE EZIN V ECOWAS COMMISSION ECW/CCJ/JUD/18/18. In that regards, the Respondent maintained that the combined reading of these decisions show that the appeal referred to in Article 73 of the Staff Regulations concerns all disciplinary actions except dismissal, adding that dismissal is an unequivocal measure of the definitive cessation of the obligations of the parties to each other.



117. The Applicant's response to the Respondents' argument is the interpretation of the word "ALL" in the last portion of Article 73(b) which says: "*All sanctions shall be suspended on the decision to apply sanctions once the right of appeal is invoked*" means total and whole therefore "all action shall be suspended" means whole action shall be suspended whether pending or subsequent. He supported his argument with the decisions of this Court in the case of EXECUTIVE SECRETARY OF ECOWAS V MRS TOKUNBO LIJADU OYEMADE ECW/CCJ/JUD/03/06.

*Analysis of the Court*

118. The issue the Court is called to determine is the appropriate meaning of the word 'all' which has become the operative expression in the phrase in question. As submitted by the Applicant, "all" is defined to mean *referring to the whole of a group or thing* SCC English dictionary (Harper Collins Publisher, 1992) @page 28. Indeed, the Court aligns with this definition and hold that it means all and does not mean some, unless there is a compelling complex context to place such limitation.

119. Having said that, and to be able to reach the appropriate interpretation of the phrase "all action shall be suspended," the Court will proceed to examine the mischief to which the phrase is meant to cure.

120. Article 73 gives an aggrieved staff the opportunity to invoke a process where the contested decision is given a second hearing subject to compliance with certain procedure. To the extent that the appeal process has been appropriately invoked, all actions shall be suspended on the decision to apply sanction.

121. The Court at this time needs to examine the actions taken and the sanctions applied to determine whether the two can be separated as canvassed by the Respondent. The facts before the Court show that at the conclusion of the deliberation of the Disciplinary Board, the Applicant was dismissed and consequently payment of his salary and emoluments were discontinued. The Court is of the opinion that the dismissal and the

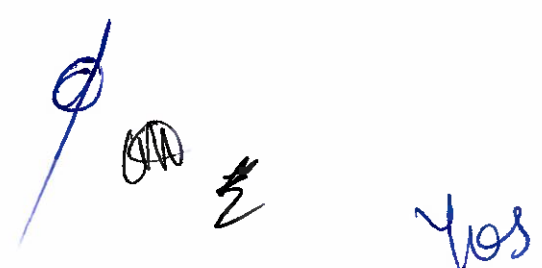
cessation of salary is a one seamless action which does not accommodate a separation as canvassed by the Respondent.

122. Furthermore, the Court is of the opinion that the intendment of the drafters of the Regulation in not only providing an appeal process, but putting on hold earlier decisions detrimental to the Applicant to ensure that the right of the Applicant as staff is not in any way circumscribed until the determination by the Council. That is the mischief which was intended to be cured. Therefore status quo ante is expected to remain. All actions taken prior to the invocation of the right of appeal are automatically suspended until the determination of the appeal. See EXECUTIVE SECRETARY OF ECOWAS & 2 ORS V. TOKUNBO LIJADU OYEMADE ECW/CCJ/JUD/03/06 @ pg. 25.

123. The Document available to the Court indicate that the Council at its 86<sup>th</sup> Ordinary Session held between the 16<sup>th</sup>- 17<sup>th</sup> of June 2021, considered the appeal of the Applicant and dismissed same where it found that: *“In view of the foregoing, Mr. Momodou Cham acted knowingly from which his liability is established and his appeal must be dismissed for lack of new facts.”* (See Annexure 10 Doc 4)

124. Based on the decision of Council above therefore, the Court is of the considered opinion that the dismissal and cessation of the salaries and emoluments of the Applicant from the date of his dismissal that is 19<sup>th</sup> January 2021 to 17<sup>th</sup> June 2021 the date in which Council reached its decision is unlawful.

125. This view was amply captured in a similar application where the Court interpreted the provision of Article 73(b) of the Staff Regulations in respect to the right of appeal and held as follows: *The use of the right of appeal by the Applicant suspends the implementation of the decision being challenged. Moreover, the appeal has the ability of temporarily paralysing/halting/stultifying the effects of the decision under dispute till the final settlement of the dispute under the purview of the Council of Ministers.* See EXECUTIVE SECRETARY OF ECOWAS V MRS.TOKUNBO LIJADU OYEMADE. Pg 19 PARA 53-54

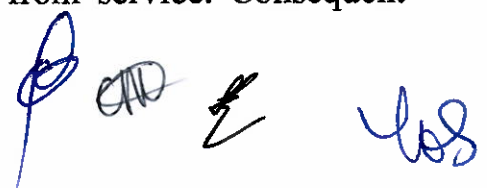


Handwritten signatures and initials in blue ink, including a large signature, a circular stamp, and the word 'Yes' written in cursive.

126. The position of the Court in the decision above clearly captures the circumstance of the instant application thus the Court has no reason to differ from its earlier decision.
127. In view of the foregoing and considering that the Applicant's actions are in conformity with the provision of Article 73 (b), the Court finds that the provision that "all sanctions shall be suspended on the decision to apply sanctions once the right of appeal is invoked." applies to the dismissal and becomes immediately operative upon the invocation of the appeal.
128. The Court therefore holds that cessation of the salaries and other emoluments of the Applicant after the invocation of his right of appeal constitute a violation of the provision of Article 73 (b) of the Staff Regulations.

#### **IX. REPARATION**

129. The purport of reparations is to acknowledge a harm that has been done and provide appropriate reliefs to victims. In the case of an unlawful dismissal as in the present case, the main aim is to address the harm caused to the employee who has been wrongfully terminated. In this regard, the overarching aim of reparation is to make the wronged employee whole as much as possible and to ensure that justice is served.
130. In other words the Court will compensate a party whose rights have been violated by the employer, either by not following due process in terminating the appointment of an employee who is under a statutory term of employment or an employment of statutory flavour. See DR. ROSE MBATOMON AKO V WEST AFRICAN MONETARY AGENCY & 5 ORS CCJELR (2013) @ pg. 2
131. The Court has found that the Respondents are in violation of the procedural safeguards under the ECOWAS Staff Regulations having failed to comply with the provisions of the said Regulations in reaching a decision to summarily dismiss the Applicant from service. Consequent



upon this, the Respondent is under an obligation to provide reparations accordingly.

132. In the light of the foregoing, the Court will now proceed to examine the reliefs sought by the Applicant hereunder reproduced to determine whether he is entitled to them as prayed:

- a. **A DECLARATION** that the dismissal of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is arbitrary, null and void same having violated the provisions of the ECOWAS Staff Regulations, the African Charter on Human and Peoples Rights and other applicable International Protocols the Respondents are bound by.
- b. **A DECLARATION** that the stoppage of the Applicant's salary before the exhaustion of the Appeal process is arbitrary, unlawful, null and void and contrary to the provisions of Article 68 (b) of the ECOWAS Staff Regulations.
- c. **AN ORDER** of this Honourable Court setting aside the dismissal of the Applicant forthwith for being arbitrary, null and void and violative of the provisions of the ECOWAS Staff Regulations and the African Charter on Human and Peoples rights and other international instruments.
- d. **AN ORDER** of Mandatory Injunction restraining the Respondents and or his agents from advertising the Applicant's Post of Procurement Officer contrary to Article 73(b) of the ECOWAS staff regulations pending the hearing and determination of his appeal before this Honourable Court.
- e. **AN ORDER** of this Honourable Court directing the Respondents to pay forthwith to the Applicant his salary arrears and all other entitlements from January 2021 till date.
- f. **AN ORDER** of this Honourable Court directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to reinstate the Applicant back to his position as a Procurement Officer
- g. **AN ORDER** of this Honourable Court RESTRAINING the Respondents from violating the rights of the Applicant in any manner whatsoever without due process of law.





- h. **AN ORDER** of this Honourable Court directing the Respondent to pay to the Applicant the sum of \$100,000. 00 (One Hundred Thousand Dollars) only as cost of prosecuting this suit.
- i. **AND ANY OTHER ORDER OR ORDERS** this Community Court of Justice might make in the circumstance of this case.

133. Relief one is seeking a declaration of the Court that the Applicant's dismissal by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is arbitrary, null and void same having violated the provisions of the ECOWAS Staff Regulations.

134. The Court having found that the procedure leading to the summary dismissal of the Applicant was marred by irregularities, declares that the dismissal of the Applicant by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is unlawful same having violated the extant provisions of the ECOWAS Staff Regulations.

135. With regards the second relief, the Court having found that the cessation of the salaries and entitlements of the Applicant was inconsistent with Article 73 (b) of the Staff Regulations declares that the cessation of the Applicants salaries and emoluments prior to the exhaustion of the appeal process is unlawful, null and void and in contravention of Article 73 (b) of the ECOWAS Staff Regulations.

136. The Court notes that the third relief sought by the Applicant seeking an order to set aside his dismissal is a precursor to reinstatement. In that regard, the Court will analyze this relief alongside that of reinstatement.

137. Relief four is for an order of mandatory injunction restraining the Respondents and or his agents from advertising the Applicant's post of Procurement Officer. The grant of mandatory injunctions is at its discretion albeit to be exercised with extreme caution. In granting these injunctions therefore, the Court will consider the specifics of each case. With respect to the case at hand, records shows that the unlawful termination occurred on 19<sup>th</sup> January 2021, three (3) years ago.

138. The Court is not in a position to grant this relief especially giving the length of time the Applicant has been dismissed. The relief is therefore dismissed.
139. Regarding the prayer to set aside the dismissal of the Applicant which the Court had indicated will be addressed alongside the relief to reinstate, the Court notes that the two reliefs are interconnected to the extent that when a dismissal is set aside, it automatically connotes the reinstatement of the Applicant to his status quo ante prior to the dismissal. It is therefore imperative to first lay the guiding principles on reparation for an employee wrongfully dismissed. As in all cases where a harm, wrong or violation of rights has been established, a reparation becomes imperative. This can take the form of restitution in integrum, compensation, amongst others.
140. In cases of unlawful dismissal, the employee as a victim is entitled to be reinstated to his previous position under same terms before the dismissal was effected. However, Courts tend not to order reinstatement after a wrongful termination. This is because they are aware that ordering the losing party in a lawsuit to perform specific duties, such as rehiring a worker, has a history of ending poorly as both parties more often than not have lost trust in each other their relationship having broken down.
141. This informed the principle that “a willing employee cannot be forced on an unwilling employer”. Thus no servant, however willing can be imposed by the Court on an unwilling master, even when the master’s behaviour is wrong except in exceptional circumstances. See DR. ROSE MBATOMON AKO V WEST AFRICAN MONETARY AGENCY & 5 ORS CCJELR (2013) @ pg.15, pgh 43.
142. This principle which has enjoined international acceptance has become the bedrock of the jurisprudence of this Court as it has consistently denied any relief for reinstatement even in the face of an unlawful termination of employment. See SULEIMAN MUHAMMED HUSSAINI V ECOWAS COMMISSION & ANOR ECW/CCJ/JUD/03/22, see also MUHAMMED SANI BELLO V ECOWAS COMMISSION ECW/CCJ/JUD/27/18 and DR ROSE MBATOMON AKO V WAMA ECW/CCJ/JUD/02/13.

143. It is worth noting that while the Court has more often than not considered that an order for reinstatement is not the most appropriate remedy the employee in this situation is nevertheless entitled to other appropriate forms of reparation including a claim for compensation.
144. Based on the above analysis, the relief for the reinstatement of the Applicant is hereby denied.
145. Having settled the relief for reinstatement, the Court is now well placed to address the relief for an order to set aside the dismissal of the Applicant. As earlier indicated, setting aside the dismissal is opening the door to reinstatement as such order is worthless without a corresponding order to reinstate. The Court having closed the door for reinstatement, granting the instant relief will be an order in futility.
146. The relief for an order to set aside the dismissal is therefore dismissed.
147. On the fifth relief, which is seeking an order of the Court to direct the Respondents to pay to the Applicant his salary arrears and all other entitlements from January 2021 till date, it is important to segment the dates to enable appropriate reparation. The Court has already declared that the cessation of the Applicant's salaries and emoluments from January 2021, during the appeal process, to June 26, 2021, was unlawful. Consequently, he is entitled to the cumulative amount from January 2021 when he was wrongfully dismissed to June 2021 when the decision of the Council of Ministers was reached confirming his dismissal. The Court so holds.
148. Under the 5<sup>th</sup> relief for an order for the payment of his salaries and emolument from January 2021 till date, in view of the finding of unlawful cessation of his salary during the appeal period and the order to pay him the salaries due to him up to June 2021, the outstanding period for which the Court must make a determination is from July 2021 till date.
149. In view of the fact that the Court has dismissed the Applicant's relief for reinstatement, but having held that his dismissal is unlawful,

compensation in lieu of reinstatement is therefore apt. The purpose of monetary damages is to make the Applicant whole: to compensate for what was lost because of the employer's actions. This element of damages includes the pay that would have been received if the Applicant had not been dismissed by the employer as well as any earned and unpaid wages,

150. The ILO is specific in this regard and stipulates that if reinstatement is not feasible, there should be adequate award of compensation to the worker. The idea of this compensation is to reflect the damage suffered, which might include lost wages, benefits and other losses resulting from the dismissal. SEE ILO C158 - TERMINATION OF EMPLOYMENT CONVENTION, 1982 (NO. 158) ARTICLE 10.

151. Consequently, compensation in this regards is benchmarked on wages or salaries such that an employee is able to receive compensation for lost income.

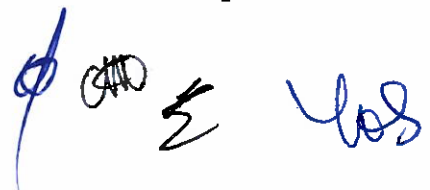
152. The relief under consideration is for payment of salaries from June 2021 till date which will span a period of over three years. While an employer is required to compensate an employee who has been wrongfully dismissed, such obligation does not lie ad infinitum. The employee equally has an obligation to mitigate his/her loss by seeking for a new employment.

153. The Court is therefore of the considered opinion that the Applicant's basic salary from July 2021 to December 2021, covering a period of six (6) calendar months is appropriate compensation for his unlawful dismissal.

154. On the relief urging the Court to restrain the Respondents from violating the rights of the Applicant, the Court declares that the said relief is mute and of no consequence.

155. On the cost of prosecuting this suit, the Applicant prays the Court to direct the Respondents to pay to him the sum of \$100,000. 00 (One Hundred Thousand Dollars) only as cost of prosecuting this suit.

156. It is undisputable that the Court is vested with the duty to assess costs under its rules. Even where the amount of costs claimed is specified,



the Court by a directive to the Registry will still determine all recoverable costs in line with Article 69 of the Rules of Court. See HEIRS OF IBRAHIM MAINASSARA BARE V REPUBLIC OF NIGER. ECW/CCJ/MPP/32/21 @ Pg. 18 para. 44.

157. Court therefore directs the Registry to determine all recoverable cost with respect to prosecuting this suit.

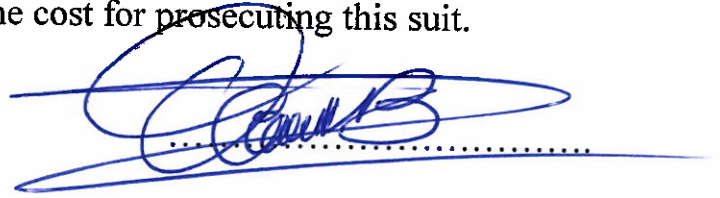
## X. OPERATIVE CLAUSE

158. For the reasons stated above, the Court sitting in public after hearing both parties on the merits:

- i. **Declares** that it has jurisdiction to entertain this application.
- ii. **Declares** that the application is admissible.
- iii. **Declares** that the dismissal of the Applicant was unlawful, same not being in compliance with the provisions of Article 69 of the ECOWAS Staff Regulations.
- iv. **Declares** that the act of the cessation of the Applicant's salary before the exhaustion of the appeal process is arbitrary, unlawful, null and void and contrary to the provisions of Article 73 (b) of the ECOWAS Staff Regulations.
- v. **Declines** the order for mandatory injunction restraining the Respondents from advertising the Applicant's position as Procurement Officer.
- vi. **Declines** the order for the Respondents to refrain from any act which will constitute the violation of the rights of the Applicant.
- vii. **Declines** to direct the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to reinstate the Applicant to his position as a Procurement Officer
- viii. **Orders** the Respondents to pay to the Applicant forthwith his salary arrears and all other entitlements from January 2021 to June 2021 covering the period of the determination of his appeal by the Council of Ministers.

- ix. **Orders** the payment by the Respondent to the Applicant his salaries and emoluments from July-December 2021 as compensation for the unlawful dismissal.
- x. **Orders** the registry to calculate the cost for prosecuting this suit.

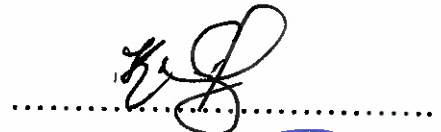
Hon. Justice Gberi-Be Ouattara



Hon. Justice Dupe Atoki/Judge Rapporteur



Hon. Justice Sengu Mohamed Koroma



Dr. Yaouza OURO-SAMA-Chief Registrar



Done in Abuja this 10<sup>th</sup> day of July 2024 in English and translated into French and Portuguese.

