



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

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

In the Matter of

**MRS DOROTHY ETIM V THE PRESIDENT OF THE COMMISSION OF
THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, THE
COMMISSION OF THE ECONOMIC COMMUNITY OF WEST AFRICAN
STATES**

Application No: ECW/CCJ/APP/44/21 Judgment NO. ECW/CCJ/JUD/03/24

JUDGMENT

ABUJA

Date: 30th January, 2024

JUDGMENT NO. ECW/CCJ/JUD/03/24

MRS. DOROTHY ETIM

- APPLICANT

V.

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

**2. THE COMMISISON OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES**

- RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Dupe ATOKI

- Presiding

Hon. Justice Sengu Mohamed KOROMA

- Member/Rapporteur

Hon. Justice Claudio Monteiro GONCALVES

- Member

ASSISTED BY:

DR. Yaouza OURO-SAMA

- Chief Registrar



REPRESENTATION OF PARTIES:

O.J. ABOJE (Esq.)

- Counsel for the APPLICANT

Mazi Afam OSIGWE, SAN.

- Counsel for the Respondent



I. JUDGMENT

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

II. DESCRIPTION OF THE PARTIES

2. The Applicant is Mrs. Dorothy Etim, former Staff of the Commission of the Economic Community of West African States and a citizen of the Federal Republic of Nigeria.
3. The Respondents are the President of the Economic Community of West African State and the Commission of the Economic Community of West African States.

III. INTRODUCTION

4. The subject-matter of the proceedings borders on the Applicant's allegations relating to the violation of certain provisions of the ECOWAS Staff Regulations by the Respondent.

IV. PROCEDURE BEFORE THE COURT

5. The Applicant filed an Initiating Application on 3rd August 2021, in the Registry of the Court.
6. The Respondent filed a Notice of Preliminary Objection and Statement of Defence on 14th September 2021, in the Registry of the Court.



7. On 10th May 2023, the Applicant filed her Response to the Respondents' Notice of Preliminary Objection.
8. The Court held a virtual session on 12th May 2023 in which both parties were represented by Counsel. The Respondent's Counsel prayed for an adjournment to enable them peruse the last document filed by the Applicant. The Court granted the adjournment.
9. On 17th May 2023, the Respondent filed its Reply on Points of Law to the Applicant's Response to the Notice of Preliminary Objection.
10. The Court held a virtual session on 23rd October 2023, in which both parties were represented by Counsel in Court. The Court heard the Respondent on its Notice of Preliminary Objection gave the Applicant the opportunity to respond to same, after which it reserved its ruling to the final judgment. It then proceeded to hear the parties on the merits of the case and adjourned for judgment.

V. APPLICANT'S CASE

a) *Summary of facts*

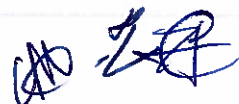
11. The Applicant presents herself as a former staff of the Commission of the Economic Community of West African States (ECOWAS). She claims to have initially been posted to serve as a Youth Corp from 2001 to 2002 at the Commission of ECOWAS, and subsequently gained employment after her service as a Registry Clerk in 2007 under a fixed term contract. The Applicant claims that she was promoted to Data Entry Officer in that same year and the employment was renewed until 2014 when she was promoted to Administrative Assistant (Reception) GA/1. The latter position was held by the Applicant until her alleged wrongful dismissal by the Respondents.
12. The Applicant claims that as an employee, she was entitled to Education Grant of \$3500 (Three Thousand Five Hundred United States Dollars) for each child

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per school session. Therefore, she applied for same on 29th July 2015, for her four children; but failed to receive a response to her application from the Respondents. She claims that she was invited by the Principal of her children's school on 6th August 2015, who intimated her that certain personnel claiming to be from the Respondents' office including one Alozie Agomuo, had approached the school inquiring whether her children were enrolled there. The Principal replied that the school did not reveal information on any child to strangers or visitors without written request identifying the said visitors. The visitors returned later without identification but with a letter from the Respondent seeking the information they wanted. The Principal informed her that, in order to send the visitors away, told them that her children were not enrolled in the school.

13. The Applicant avers that the personnel who had visited the school maliciously informed her that the Second Respondent received a curriculum vitae from someone who has a similar name with one of the Applicant's children when that person applied for a job which made them make enquiries at the school. However, the school had confirmed that the children of the Applicant were not students therein and Mr. Agomuo alleged that the Applicant had forged the documents she submitted for education grant.
14. Following this, the Applicant claims to have lodged a complaint on 3rd September 2015, on what had transpired between her and Mr. Agomuo pursuant to Article 73 of the ECOWAS Staff Regulations but did not receive any response.
15. The Applicant also claims that the Respondents served her a letter of dismissal on 8th September 2015 which was authored by Mr. Steven Nartey (Commissioner of Administration) not the Commissioner for Human Resources. The crux of the Applicant's complaint is that she was neither issued

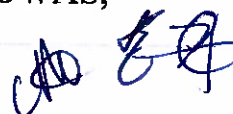


a query as specified under Articles 69 and 71 of the ECOWAS Staff Regulations nor was she called upon to make representations to exculpate herself before a Disciplinary Committee.

16. The Applicant submits that since she was dismissed on the allegation of fraud and forgery, which are felonious infractions, she should have been given the opportunity to defend herself.
17. It is the claim of the Applicant that since her dismissal, she has made various oral and written representations to the Respondents since 2015 in a bid to clear her name. One of such representations was a letter to the Vice President of the 2nd Respondent dated 27th November 2017 to which the Applicant had a response in November 2018. This response affirmed the Respondents decision to dismiss the Applicant and advised that she can seek other means of redress.
18. In consequence of the foregoing, the Applicant is praying for several reliefs from the Court.

b) Pleas in Law

19. The Applicant is relying the following pleas in law:
 - a. Articles 6 & 11 of the Universal Declaration of Human Rights;
 - b. Articles 7 (1) & 7 (2) of the African Charter on Human and Peoples Rights;
 - c. Section 36 (1) (2) (a) and 36 (5) of the Constitution of the Federal Republic of Nigeria 1999(as amended);
 - d. Article 11 (1) & (2) of the Protocol on the Community Court of Justice (A/P1/7/91);
 - e. Articles 3 (1) (a) (c) (e) (f) (g), (2), (3), (4) , (7); AND 10 (C) to (E) of the Supplementary Protocol (A/SP/1/01/05) Amending the Protocol (A/P1/7/91) of the Community Court of Justice ECOWAS;



- f. Articles 33 of the Rules of the Community Court of Justice ECOWAS
- g. The inherent jurisdiction of the Court.

c) Reliefs Sought by the Applicant

20. For the reasons stated above, the Applicant is seeking the following reliefs from the Court:

- i. A declaration of Court that the cause of action of the Applicant as revealed in the Statement of Claim before the Court is founded on abuse of office, illegality, bad faith and the malicious conduct of the Respondents and their employees against the Applicant and as such same cannot be affected by any limitation law or protocol or rule limiting the time within which an action can be instituted by the Applicant to seek redress.
- ii. A declaration of Court that that part of Article 69(e) of the ECOWAS Staff Regulations of the 1st and 2nd Respondent which provides thus “.... *Where the evidence of an offence is irrefutable, the Head of the Institution may summarily dismiss a staff member.....*” Which grants the Respondent whether by themselves or through their surrogates, employees, hired hands or howsoever the discretion and/or power to summarily dismiss an employee from the employment of the 2nd Respondent particularly the Applicant thereat and under Article 71(c) is illegal, null, void and of no effect, whatsoever, as it violates due process, violates the Applicant’s right to fair hearing, violates the spirit and intendment of the entirety of Articles 67, 69(a to d) and that part of 69(e) not highlighted in this claim and Article 69(f to n) in the ECOWAS Staff Regulations; violates the Applicant’s rights under the African Charter on Human and Peoples’ Rights to which member States

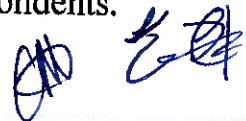


of the ECOWAS are signatory to; violates the Fundamental Rights of the Applicant under Chapter IV of the Constitution of the Federal Republic of Nigeria and under the Universal Declaration of Human Rights.

- iii. A declaration of Court that the failure, neglect and/or refusal of the 1st and/or the 2nd Respondent to launch an investigation into the conduct of one Alozie Agomuo (Payroll Officer of the Directorate of Human Resources of the 1st and 2nd Respondent complained of by the Applicant in her letter to the 1st and 2nd Respondents dated the 3/9/2015 but received by the Respondents on the 7/9/2015 before issuing the Applicant with a letter of dismissal of the 8/9/2015 clearly reveals abuse of office, bad faith and malice against the Applicant by the Respondents.
- iv. A declaration of Court that the dismissal of the Applicant as conveyed to her in the letter of dismissal made by the 1st and 2nd Respondents on the 8th September, 2015 under Articles 69(e) and 71(c) of the ECOWAS Staff Regulations without observing and according to the Plaintiff any iota of fair hearing is wrongful, illegal, malicious, barbaric, oppressive, high-handed and unwarranted.
- v. A declaration of Court that the 1st and 2nd Respondents whether by themselves, by their surrogates, employees, hired hands, Commissioner of Human Resources, Alozie Agomuo or howsoever known cannot be the allegers/accusers that the Plaintiff committed 'fraudulent acts of submitting forged documents', the investigators of the allegation(s) and the arbiters on the allegation and applying punishment.
- vi. A declaration of court that the Applicant is entitled to be served a query and be afforded adequate time and facility to respond to the query,



- entitled to appear before a Disciplinary Board/Panel/Committee in conformity and whose composition, qualifications and procedure are as specified in Article 67 and 69 of the ECOWAS Staff Regulations.
- vii. A declaration of Court that by the failure, neglect and/or refusal of the Respondents to respond to the various appeals of the Applicant to the Respondents to look into the matter of her dismissal and have same overturned right from the very week of the dismissal by the Respondent, the Respondents deliberately and callously aimed to constrain the Applicant from approaching a Court until the month of November 2018 when she was served a letter from the Vice President of the 1st and 2nd Respondents made in January 2018 informing her that her case has been reviewed and the Applicant's dismissal cannot be revisited.
 - viii. A declaration of Court that but for the Applicant's wrongful dismissal from the Respondents' employment, the Plaintiff could have still been in full employment and that the Plaintiff is still in the employment of the Respondents and entitled to all salaries, emoluments, grants, entitlement and privileges due to the office in which she is employed in the Respondents.
 - ix. An order of Court pronouncing, declaring and making null, void and of no effect, whatsoever, the letter of dismissal of the 1st and 2nd Respondents served on the Applicant 8th September, 2015 which wrongfully dismissed the Applicant from employment.
 - x. An order of Court setting aside the 1st and 2nd Respondents' letter of dismissal made on the 8th September 2015 dismissing the Applicant from the employment of the 1st and/or the 2nd Respondents.

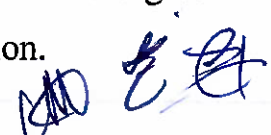


- xii. An order of Court directing the Respondents to forthwith pay to the Applicant all her salaries, emoluments, entitlements, Housing Allowance, Education Grant as have accrued.
- xiii. An order of Court awarding the sum of N300,000,000.00 (Three Hundred Million Naira) only against the Defendants as exemplary damages for violating the Applicant's right to fair hearing and attaching the Applicant with an aura of criminality.
- xiii. COST of the action inclusive of the Professional Fee of the Applicant's lawyer in the sum of N20,000,000.00 (Twenty Million Naira) only to be paid by the Respondents.

VI. RESPONDENTS' CASE

a) *Summary of facts*

21. The Respondents filed a Notice of Preliminary Objection on grounds of failure to exhaust all appeal processes before accessing the Court, failure to follow the due process as laid down in the ECOWAS Staff Regulations and lack of jurisdiction in relation to the claims of violation of fundamental human rights.
22. With regards to the Preliminary Objection, the Respondents claim that access to the Community Court by a Staff can be accessed after all appeal processes have been exhausted, as provided for in the ECOWAS Staff Rules and Regulations. It is contended that the Applicant did not Appeal through the steps mandated by the ECOWAS Staff Rules and Regulations. Furthermore, the Respondents claim that the dismissal was made in exercise of its power under Articles 69 (e) and 71 (c) of the ECOWAS Staff Regulations. It is also contended that the cause of action is statute barred as the action accrued on 8th September 2015 and the claim was filed in the Court on 29th July 2021. Based on these grounds the Respondents are seeking an order to dismiss the application.



Yes

23. The Respondents also files a Statement of Defense relying on the aforesaid grounds and seeking several reliefs.

b) Pleas in Law

24. The Respondents are relying the following pleas in law:

- a. Articles 87 & 88 of the Rules of the Community Court of Justice, ECOWAS;
- b. Articles 73 (b) of the ECOWAS Staff Regulations;
- c. And the inherent jurisdiction of the Court.

c) Reliefs sought

25. The Respondents are seeking the following reliefs from the Court:

- i. An order dismissing this suit against the Respondents as the Applicant's right of action against the respondent has become extinguished (i.e. statute barred) thereby robbing this Honorable Court of jurisdiction to entertain this suit.
- ii. An order of this Honorable Court dismissing the Applicant's suit as there is no decision of the Council of Ministers of the Community in relation to her summary dismissal from the employment by the Respondents, to justify an appeal to this Honorable Court.
- iii. An order of this Honorable Court dismissing the Applicant's claim for the violation of her fundamental right under Chapter IV of the Constitution of the Federal Republic of Nigeria, as the same cannot be maintained in this Honorable Court.
- iv. And for such further or other orders(s) as this Court may deem fit to make in the circumstances.

VII. JURISDICTION



Yes

26. It is trite law that a Court considers its competence to determine a claim before considering the merits thereto. Furthermore, where the Respondents have lodged a Preliminary Objection which borders on preliminary issues that may upend the merits of the case, it behooves the Court to dispense with the said objection for with.

Respondents' Case

27. The Respondents Preliminary Objection is grounded in its reliefs which are as follows:

- a. An order dismissing the suit against the Respondents as the Applicants right of action against the Respondents has become extinguished (i.e. statute barred) thereby robbing this Honorable Court of jurisdiction to entertain this suit.
- b. An order of this Honorable Court dismissing the Applicant's suit as there is no decision of the Council of Ministers of the Community in relation to her summary dismissal from employment by the Respondents, to justify an appeal to this Honorable Court.
- c. An order of the Honorable Court dismissing the Applicant's claim for the violation of her fundamental right under Chapter IV of the Constitution of the Federal Republic of Nigeria, as the same cannot be maintained in this Honorable Court.
- d. And for such further order(s) as this Court may deem fit to make in the circumstance.

Applicant's opposition to the Preliminary Objection

28. The Applicant urges the Court not to determine the case at the stage of the Preliminary Objection as it will not only short circuit the case but the porous and bedeviled submissions of the Respondents are liable to be overruled and



struck out. Further, the Applicant claims that contrary to the Respondents' claim that the application is statute barred, the question for determination is whether the action is statute barred under Article 10 (e) of the Supplementary Protocol on the Court. Particularly as the Respondents' act of wrongful dismissal was *ultra vires* and only the Court can give recourse to the Applicant.


29. The Applicant also rebuts the Preliminary Objection of the Respondents and poses the question as to whether the reliefs sought before the Court are not rights recognizable as grounds for which it can grant reliefs.

30. Lastly, the Applicant maintains that the Respondent acted *ultra vires* outside the provisions of the ECOWAS Staff Regulations and the fact that this application is premised on the Courts jurisdiction under Articles 9 (1) & (4) of the Protocol on the Court (A/P1/7/91) clothes the Court with the competence to hear and determine the claim.

Analysis of the Court

31. Before proceeding to rule on the Preliminary Objection, the Court shall *suo moto* dismiss the case against the President of the Commission as it would be duplicitous to sue both the President of the Commission and the Commission itself. The Commission has a distinct legal personality.

32. The Court notes that the claims before it have been brought by a former employee of the Community under Article 9 (1) & (4) and 10 (e) of the Protocol of the Court (*supra*). The crux of the claim is that the decision of the Respondents to summarily dismiss the Applicant by way of letter without investigation is wrongful and denies her of her right to a fair hearing. The Respondent on the other hand argues that the claim of the Applicant is statute barred as she failed to appeal the decision to summarily dismiss her by letter to the Council of Ministers within thirty (30) days. This is provided for in



paragraph 3 (a) of the Respondent's Defense to wit "*Unless an appeal is made to the Council of Ministers within thirty (30) days of the rejection of an appeal by the Head of Institution ...or if the staff member receives no response within thirty days, the jurisdiction of the Court cannot be invoked (sic).*"

33. The Court recalls that both parties affirm that the cause of action arose on 8th September 2015, and the present action was commenced in this Court on 3rd August 2021.

34. The Court notes the submission of the Respondent, that the claims for violation of the fundamental rights of the Applicant under Chapter IV of the Constitution of the Federal Republic of Nigeria cannot be maintained by this Court.

35. The Court in its determination of the objections raised and the opposition put forward by the Applicant, holds that all the claims brought under the Constitution of the Federal Republic of Nigeria cannot be maintained based on the following reasoning. The jurisprudence of the Court in HANS CAPEHART WILLIAMS SR. & 1 OR V REPUBLIC OF LIBERIA & 4 ORS (2015) CCJELR at page 471 held that "*It is only a Member State under this arrangement that can be sued as Defendant. Individuals of any category or creed are not recognized as Defendants in a human rights action before the Court.*" For good measure the Court relies on a more recent jurisprudence to further elucidate the reasoning behind States being the only proper parties for claims of human rights violation. In MARIE MOLMOU & 114 ORS V REPUBLIC OF GUINEA (2016) CCJELR at page 349 the Court held that "*...only States may be cited as defendants in proceedings for human rights violation. This principle is easily explicable: the international instruments, international by definition, as invoked by those bringing the action, do remain instruments binding only on States; the States concerned are the only entities which signed those instruments, and thereafter, either ratified them or declared*



allegiance to them. Such instruments cannot therefore, by definition, be invoked against any other entities than the States concerned, for they shall not be binding on those other entities.”

36. In the present case, the Court rejects the claim for human rights violation brought by the Applicant under Chapter VI of the Constitution of the Federal Republic of Nigeria against the Respondents herein. As already stated, this is due to settled law that all claims for human rights violation brought before this Court must be against the proper parties who are States not institutions within the Community.
37. In addressing the jurisdictional objection raised by the Respondent regarding the statute of limitation: three years under Article 9 (3) of the Supplementary Protocol (supra), the Court recalls the submissions of the Applicant that she was summarily dismissed on 8th September 2015, and that she wrote to the Vice President of the Respondents on 7th June 2017 but the said letter was received on 15th June 2017. This letter contained an appeal against the decision to summarily dismiss the Applicant especially as she was not accorded the opportunity to defend herself. The Court notes a response to this letter dated 16th January 2018 which upheld the decision to summarily dismiss the Applicant.
38. The Court in determining whether the claims are statute barred notes that the Applicant initiated the action in this Court by way of an Initiating Application on 3rd August 2021. Article 9 (3) of the Supplementary Protocol (supra) reads: *“Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date of the right of action.”* In this instance the cause of action arose in 2015 but the action was instituted at the Court in 2021 which puts it well beyond the limit permitted. In *OBINNA UMEH & 6 ORS V FEDERAL REPUBLIC OF NIGERIA* JUDGMENT NO: ECW/CCJ/JUD/10/20 at page 12 the Court held that “when

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a statute of limitation prescribes a period within which an action must be initiated, legal proceedings cannot be properly and validly instituted after the expiration of the prescribed period."

39. The Court must point out that finality must be brought to disputes either by settlement by a Court/Tribunal/Judicial body, or resolution through alternative means; when this fails or it is not explored, the law generally ensures that the dispute is determined by the effluxion of time. In this instance, the Court is guided by Article 9 (3) of the Supplementary Protocol which sets the limit for the determination of claims brought against a Community Institution or any Member of the Community. The only exception being claims for violations of human rights, in this instance the claim is for damages for wrongful dismissal. This Court articulated this position in CHIEF AMBROSE OSUAN V FEDERAL REPUBLIC OF NIGERIA & ANOR, JUDGMENT NO: ECW/CCJ/JUD/29/18 at page 7 where it stated that: *"One thing is clear, the Court is bound by Article 9 (3) and the only exception is gross violation which is of a continuing nature to justify a departure from the statute. Given that the Plaintiff has a right which he claims to have been violated, his failure to seek redress over a period of ninety-eight years makes his claim bad in law. In the circumstances the claim by the Plaintiff is out of time and this Court cannot therefore entertain such an application as it is statute barred."*
40. Having established by the facts and evidence before the Court, that the claims for unlawful dismissal does not fall within the exception articulated in the CHIEF AMBROSE OSUAN case (supra), and that the Applicant cannot sustain an action for violation of human rights against an Institution of ECOWAS. This Court holds that this action is statute barred. In consequence, the Preliminary Objection is upheld.



VIII. OPERATIVE CLAUSE

For the reasons stated above the Court sitting in public after hearing both parties:

As to jurisdiction:

- i. Declares that it lacks jurisdiction and upholds the Preliminary Objection.
- ii. **Dismisses** all other claims.

Hon. Justice Dupe **ATOKI**

Hon, Justice Sengu Mohamed **KOROMA/Rapporteur**

Hon. Justice Claudio Monteiro **GONCALVES**

Dr. Yaouza **OURO-SAMA** – Chief Registrar

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Done in Abuja, this 30th day of January, 2023 in English and translated into French and Portuguese.

