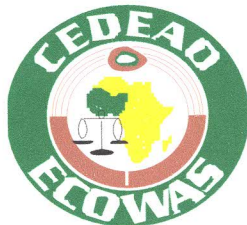


COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE
CEDEAO



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

COMMUNITY COURT OF JUSTICE, ECOWAS

GENERAL LIST: No. ECW/CCJ/APP/05/05

JUDGMENT No ECW/CCJ/APP/05/07

Monday, 29 October 2007

Between

PROFESSOR ETIM MOSES ESSIEN:

Applicant

And

1. THE REPUBLIC OF GAMBIA:
2. UNIVERSITY OF GAMBIA:

1st Defendant
2nd Defendant

COMPOSITION OF THE COURT

1. Hon. Justice Hansine N. DONLI
2. Hon. Justice Aminata Mallé SANOGO
3. Hon. Justice Anthony A. BENIN
4. Hon. Justice Awa Daboya NANA
5. Hon. Justice El-Mansour TALL

PRESIDING
MEMBER
MEMBER
MEMBER
MEMBER

Assisted by Tony Aneneh-MAIDOH Esq

CHIEF REGISTRAR

JUDGMENT OF THE COURT

1. The Applicant, Professor Etim Moses, is a citizen of the Community, of Nigerian nationality. The 1st Defendant, the Republic of Gambia, is a Member State of the Community. The 2nd Defendant is a University of the said Member State.
2. The Applicant, who resides at Estate Housing D 58, Ewet, Uyo, Akwa Ibom State, Nigeria, is represented by his Counsel, James Kanyi P. Albert & Co., Suite B58, Abuja Shopping Mall, Zone 3, Wuse.
3. The Defendants were represented by their Counsel, Dr. O. J. A. Olulana (DCIL) and Miss Nyalomy Sarr (SC), as well as the Attorney-General and the Department of State for Justice, Marina Parack, Banjul, Gambia.
4. The Applicant complained of the violation of his human rights. The Defendants raised a Preliminary Objection of inadmissibility of the action, for lack of competence of the Court. The Court adjudicated and joined the preliminary plea on the competence of the Court to the merits of the case, in accordance with Article 87 of the Rules of Procedure.

PRESENTATION OF THE FACTS AND PROCEDURE

5. The Applicant, who was a Lecturer at the University of Gambia, filed his Application on 18 November 2005 at the Registry of the Community Court of Justice. He states therein that by a letter referenced FCTC/GTA/ASD/GAB/77 dated 24 September 2001, he was recruited by the Commonwealth Secretariat, through the Commonwealth Fund for Technical Co-operation (FCTC), as a Technical Consultant, on a two-year lectureship contract at the University of Gambia, for the State of Gambia. The said employment consisted of giving lectures at the Medical School of the above university. The Applicant accepted the employment and exercised his function from 7 February 2002 to 4 February 2004.
6. As his contract was coming to an end, the Defendants approached the Applicant and proposed to him to continue with his services,

promising him the renewal of his contract by the Commonwealth Secretariat.

7. The Applicant thus continued to exercise his functions to the benefit of the University of Gambia without being paid, and this situation persisted till the 13th day of October 2004, when he addressed a letter to the University of Gambia claiming his salary arrears.
8. The University of Gambia then replied that the steps taken towards the renewal of his contract by the Commonwealth did not succeed, and as such, his salaries could not be paid to him upon the Commonwealth salary scale, but rather on the scale applicable to the University Lecturers, i.e. in Dalasis (the Gambian currency).
9. The Applicant stood against it, and the University of Gambia terminated his employment by notifying him of the non-renewal of his contract as from 26 January 2005.
10. On 14 February 2005, the University of Gambia wrote a letter to the Applicant concerning the settlement of the salary arrears, calculated in Dalasis, plus an amount of US\$ 6,000 representing an additional salary.
11. The Applicant received the amount of US\$ 6,000 and rejected the sums of money in Dalasis. On 18 November 2005, he filed his Application at the Community Court of Justice, seeking from the Court the following orders:
 - (a) A declaration that the action and conduct of the Republic of Gambia and the University of Gambia, in engaging him (the Applicant) for the services of a Technical Consultant, from 5 February 2004 to January 26 2005 (1 year), without equal salary for the said services, amounts to economic exploitation and a violation of his right of being paid for equal work.
 - (b) A declaration that the Applicant is entitled to equal payment for equal work or services rendered to the Republic of Gambia and the University of Gambia, during the period from 5 February 2004 to 26 January 2005, upon the same terms and conditions as he was recruited by the Commonwealth Secretariat.

- (c) A declaration that the action and conduct of the University of Gambia as described in the facts of the case, violate Articles 5 and 15 of the African Charter on Human and Peoples' Rights, as well as Article 23(2) and (3) of the 1948 Universal Declaration of Human Rights, both texts having been signed and acceded to by the Republic of Gambia.
- (d) The issuing of an order of payment to the Republic of Gambia and the University of Gambia compelling them, by obligation, to pay to the Applicant such sums as claimed in Pounds Sterling or Dollars, plus the sum of US\$ 100,000.00 in damages and US\$ 10,000 in judicial processing fee.

12. The Defendants raised a Preliminary Objection, contending as follows:

- (a) That the Application is inadmissible, for having omitted to summon the Commonwealth Secretariat as a party to the Case.
- (b) That the Application is inadmissible before the Court, on the grounds that the Applicant omitted to exhaust the local remedies as stipulated in Article 56(5) of the African Charter on Human and Peoples' Rights.
- (c) That the Application is inadmissible, on the grounds that the Applicant's claim is based on non-renewable contract of employment, counter-offers and offers based on *quantum meruit*, which do not constitute fundamental rights positively established by statute or by contract.
- (e) That the Court lacks jurisdiction to adjudicate upon the Case, because the facts thereof do not constitute a Human Right violation

13. In its Interim Ruling No.1 of 14 March 2007, the Court decided on the Preliminary Objection, by declaring it inadmissible upon its first two points, and joined the preliminary plea to the merits as regards the 3rd and 4th points. This was done in accordance with Article 87 of the Rules of Procedure.

Indeed, the Court ruled as follows:

1. "The Preliminary Objection raised by the Defendants regarding non-exhaustion of local remedies has no relationship with the procedure for accessing the Court; hence, it is inadmissible."
2. "Whereas the Defendants argued that the Court is devoid of its competence to determine this case without the joinder of the Commonwealth Secretariat; the Court decides that it is competent to hear the substantive case on its merit despite the non joinder of the Commonwealth Secretariat and that the Commonwealth Secretariat is not a necessary party which must be joined by the Plaintiff".
3. "Whereas the Defendants argue that the main application was not properly instituted under the Human Rights violations and that the complaints of the Plaintiff are not justiciable as human rights violations, the Court decides that the issues stated herein touch on the substantive case which by Article 87 (5) of the Rules of Procedure of this Court shall be taken in the substantive action".
14. When the Case was called for hearing on the merits, the Defendants and their lawyers did not appear in court. They however wrote a letter, dated 26 April 2007, to the President of the ECOWAS Commission to express their displeasure with the Decision made by the Community Court of Justice, and to request the President of the Commission to intervene, in order for them to file an appeal.
15. Following this letter, the Court, in an Interim Ruling No.2, indicated for the purposes of the Defendants, that at the current stage of its procedural texts, provision has not been made for appealing against its decided cases, except the possibility of requesting for a revision.

The Court recalled *in extenso* the provisions of Article 15 paragraph 4 and Article 76 paragraph 2 of the Revised Treaty, and Article 19 paragraph 2 of the 1991 Protocol on the Court, where it is set out as follows:

Article 15(4) of the Revised Treaty: *Judgments of the Court of Justice shall be binding on the Member States, the Institutions of the Community and on individuals and corporate bodies.*

Article 76(2) of the Revised Treaty: *Failing this, either party or any other Member State or the Authority may refer the matter to Court of the Community whose decision shall be final and shall not be subject to appeal.*

Article 19(2) of the 1991 Protocol on the Court: *Decisions of the Court shall be read in open court and shall state the reasons on which they are based. Subject to the provisions on review contained in this Protocol, such decisions shall be final and immediately enforceable.*

16. Then the Court adjourned the Case to a later date, June 18 2007, to reserve further proceedings and ask the Court Registry to effect service of notice on the Defendants in due and lawful manner. Even though properly served, the Defendants did not appear in court, but wrote a second letter, dated 25 May 2007, to the President of ECOWAS Commission with a copy to the Court, in which they stated that "... the Defendants will not participate in any court session of the Community Court of Justice, until the issue of competence is effectively resolved by the institution of an independent Appeal Court; the Respondents (i.e. the Defendants) will neither participate in the session scheduled for 18 June 2007 nor any other, until the Commission finds a solution to this problem."
17. At its court hearing of 18 June 2007, the Court actually took note of the non-appearance of the Defendants, and in taking the contents of the above-cited letter into consideration, the Court deliberated on the Case, after a last hearing of the Applicant.
18. The Case now comes before the Court for final decision on the merits, and upon the issues underlying the arguments submitted by the Parties.

RECAPITULATION OF THE ARGUMENTS OF THE PARTIES

19. The Applicant alleges the violation of his fundamental rights by the Defendants. He maintains that he has been economically exploited by the Defendants on the grounds that he carried out the same services as before, for the Commonwealth Secretariat, for a period of one year (1 year) without being paid with the same value

of money. That this conduct on the part of the Defendants constitutes a violation of his right to equal salary for equal work. The Applicant cites in support, Article 15 (5) of the African Charter on Human and Peoples' Rights, and Article 23 of the 1948 Universal Declaration of Human Rights by the United Nations.

20. Besides, the Applicant indicates that since the Defendants did not advance any argument of testimony in defence, the Court must decide in favour of his claims, which do not suffer from any counter arguments by the Defendants. The Applicant urges the Court to grant his requests as contained in his Application, in regard to paragraph 13 of the 1998 Declaration of the International Conference of Teheran (Iran) on Human Rights, as well as, the Preamble of the International Pact relating to Civil Rights, and the Pact relating to Economic, Social and Cultural Rights of 1966 – both of which derive from the 1948 Universal Declaration of Human Rights.
21. The Defendants, on their part, challenge the competence of the Court in the instant Case. They contend that the rights claimed by the Applicant are not positively conferred by statute or by contract, and that what is at stake is an issue of salary claims, for which the Applicant had already received part payment, and that as a result, his claims vitiate his action. The Defendants further state that the Applicant's claims are in respect of *quantum meruit* and not in terms of rights positively set out in a contract. And that on this ground, one is not dealing with a human right violation, so the Court is without jurisdiction to adjudicate on the Case.
22. From the foregoing, particularly, as regards the facts and arguments advanced by the Parties, the Court will have to answer the following questions:
 - a. Has the Applicant been exploited economically by the Defendants?
 - b. Have the Applicant's rights to equal work for equal salary been violated?
 - c. Are the rights being claimed by the Applicant positively established by contract or statute?
 - d. Does the Court of Justice of ECOWAS have jurisdiction to adjudicate on the Case?

THE COURT'S ANALYSIS

Issue 1: Has the Applicant been exploited economically by the Defendants?

23. Article 5 of the African Charter on Human and Peoples' Rights provides:

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

One derives from this provision, the following concepts: human dignity; legal status; slavery; slave trade; physical or psychological torture; cruel, inhuman or degrading treatment.

24. In basing his Application on the concept of economic exploitation, the Applicant does not demonstrate in what sense his human dignity has been damaged. The Court does not see how he has lost his legal status, and much less can the Court find any elements of torture whatever. Indeed, as a general rule, and in labour law, we talk of economic exploitation "when an individual, who is normally engaged on a remunerated work, is not remunerated at all, or if he is, the remuneration he receives is below the real value of the work done" (Definition taken from *Le Nouveau Petit Robert*, 2008 edition; See page 984).

25. Do the facts in the instant Case agree with this definition? The work in question, done by the Applicant and to the benefit of the Defendants, from February 2004 to January 2005, was indeed remunerated, but only in a currency different from that for the same work done as before, certainly to the benefit of the same Defendants, which was hitherto remunerated by the Commonwealth. The fundamental question here is why the remuneration changed whereas the beneficiaries of the work done remained the same. It is simply because the relationship for executing the same job changed while, indeed, the Defendants, in being the beneficiaries of the work done, were not the *direct* debtors of the contract with the Commonwealth. They are the debtors for the case in contention, and in this case, the fact that they offered the payment in a currency different from that of the

