

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



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

In the Matter of

JONAS KUGBLENU ADUNKPE
(APPLICANT)

v

1. COUNCIL OF MINISTERS, ECOWAS
2. PRESIDENT OF THE ECOWAS COMMISSION
3. COMMISSIONER OF ADMINISTRATION AND
FINANCE, ECOWAS COMMISSION

(RESPONDENTS)

Application No. ECW/CCJ/APP/38/22; *Judgt* No. ECW/CCJ/JUD/09/25

JUDGMENT

ABUJA

28 FEBRUARY 2025

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

Application No. ECW/CCJ/APP/38/22; Judgt No. ECW/CCJ/JUD/09/25

BETWEEN

JONAS KUGBLENU ADUNKPE - APPLICANT

AND

1. COUNCIL OF MINISTERS, ECOWAS
2. PRESIDENT OF THE ECOWAS COMMISSION
3. COMMISSIONER OF ADMINISTRATION AND FINANCE,
ECOWAS COMMISSION

-RESPONDENTS

COMPOSITION OF THE COURT:

Hon. Justice Sengu M. KOROMA	- Presiding
Hon. Justice Gberi-Be OUATTARA	- Member
Hon. Justice Edward Amoako ASANTE	- Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA	- Chief Registrar
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REPRESENTATION OF PARTIES:

C.A. Makpu, Esq	- Counsel for APPLICANT
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Dr Frank Ike Chude	-Counsel for RESPONDENT
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I. JUDGMENT

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

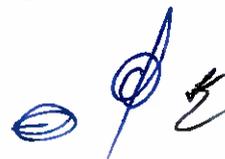
II. DESCRIPTION OF THE PARTIES

2. Applicant, Mr. Jonas Kugblenu Adunkpe, is a former staff of the ECOWAS Commission resident at Masaka, Karu Local Government Area of Nasarawa State in the Federal Republic of Nigeria.
3. First Respondent, the Council of Ministers, is an organ of ECOWAS charged with the responsibility of overseeing the functioning and development of the Community.
4. Second Respondent, President of the Commission, is the institutional head of the ECOWAS Commission.
5. Third Respondent, the Commissioner for Administration and Finance, is the principal officer in charge of administration and finance at the ECOWAS Commission.

III. INTRODUCTION

Subject Matter of the Proceedings

6. Applicant, a former staff member of the ECOWAS Commission who officially retired on 31 August 2020, claims that after being unfairly denied promotion on many occasions during his years of service, he



was granted an “exceptional promotion” in January 2017 from grade G5 Step 2 to G7 Step 1. However, after some months in his new position, his salary payments were reverted to G5 Step 2 levels, and all efforts he made to resolve the issue before his retirement proved futile. By this action therefore, the Applicant claims a breach of his contract of service relating to promotions and requests, among other things, the payment of all arrears of salaries and entitlements due to him.

IV. PROCEDURE BEFORE THE COURT

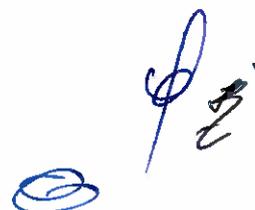
7. The Applicant initiated the substantive case by an Application dated 15 August 2022 and filed at the Registry of the Court on 16 August 2022. The Application was electronically served on the Respondent the next day on 17 August 2022.
8. On 2 February 2023, Applicant filed an application to seek leave of the Court to argue his case. The process was served on Respondent the same day.
9. On 19 June 2023, Respondents filed an application for extension of time within which to file their defence together with the prepared Statement of Defence. Both documents were electronically served on the Applicant on 20 June 2023.
10. On 1 August 2023, Applicant filed a Reply on points of law to Respondents’ application for extension of time as well as a Reply to Respondents’ Statement of Defence. Both processes were served on the Respondents on 24 August 2023.



11. On 25 September 2023, Respondents filed an application for Extension of Time to file a Statement of Defence and other Court processes. It was served electronically on the Applicant the next day.
12. On 30 November 2023, Applicant filed an application for leave to amend his Initiating Application. He also lodged his prepared Amended Initiating Application. The processes were electronically served on the Respondents on 1 December 2023.
13. On 24 January 2024, Respondents filed a Counter-Affidavit to the Applicant's application seeking leave to amend his Initiating Application.
14. At a session of the Court on 29 January 2024 during which all parties were absent and not represented by Counsel, the Court adjourned the matter to 28 March 2024.
15. At the session of the Court held on 7 May 2024, Applicant was absent while Respondents were represented by Counsel. Counsel for Respondents requested that the Court strike out the case for want of prosecution. However, following the Court's direction that Respondents present submissions on their own case, Counsel for the Respondent's urged the Court to dismiss Applicant's request for leave to amend his Initiating Application. The Court adjourned for deliberation and ruling.



16. On 13 May 2024, Counsel for Applicant filed with the Registry a Letter of Compassionate Appeal requesting the Court to grant him the opportunity to move the application for leave to amend the Initiating Application.
17. At a hearing on 10 July 2024 during which all the parties were represented, the Court delivered its ruling granting the Applicant's request to amend his initiating Application. The Court deemed the already filed Amended Initiating Application as properly filed and served. It directed Respondents to equally amend their Statement of Defence within 30 days if they so wished.
18. On 31 July 2024, Respondents filed their joint amended Statement of Defence which was served the same day on the Applicant.
19. On 9 August 2024, Applicant filed a Reply to the Respondents' amended Statement of Defence. It was electronically served on the Respondents the same day.
20. At the session of the Court on 25 September 2024 during which all parties were represented, the Court heard the oral submissions of the Applicant and Respondents on the merits of the case and adjourned for deliberation and judgment.



V. APPLICANT'S CASE

(a) Summary of Facts

21. Applicant states that he joined the service of the ECOWAS Commission as a telex operator in 1990 and was put on a rank of G3 Step 2. After working for about 14 years, he was promoted in 2004 to G4 Step 1 and redeployed to the Procurement Division of the Directorate of General Administration.
22. Applicant says that in 2011 during a general promotion exercise, he was wrongfully denied promotion from G4 to G5 on a very callous ground that his educational certificates could not be found in his official records with the Human Resources Department. It was not until 2014 that the promotion that was due him in 2011 was eventually given and he was upgraded from G4 to G5 Step 1.
23. Applicant states that after being unfairly denied promotion on many occasions during his 30 years of service, he was granted an "exceptional promotion" from grade G5 Step 2 to G7 Step 1, effective from 1 January 2017 on the recommendations of an Advisory Committee that was appointed to look into the injustice that he and others had suffered.
24. Applicant says he enjoyed the salary level for his new position until November 2017, when his salary payments were abruptly reverted to G5 Step 3 levels. He made various efforts by way of protest letters and complaints to get the issue resolved, but he was rebuffed and treated with contempt.

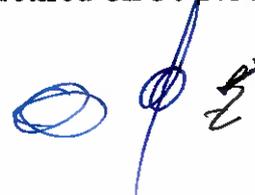


25. By a letter dated 27 August 2019, Applicant says that he was informed that his mandatory retirement from the service of the Respondents was due on 31 August 2020. However, due to his hard work and specialty, he was re-engaged to assist the ECOWAS Commission for three months after his retirement.

26. Applicant says that contrary to his expectations, the Respondents did not address his several complaints about the reversal of his salaries and entitlement to G5 Step 3 before he finally left the service of the Respondents at the end of November 2020. Therefore, after his retirement, he sought the services of a lawyer and brought the present Application against the Respondents.

27. Applicant states that following his legal action, the Acting Director of Legal Affairs of the ECOWAS Commission wrote a memo to the President of the Commission recommending a settlement with the Applicant, citing the strength of his case. The Commissioner for Internal Services also wrote a similar memo advising settlement. Based on these recommendations, Applicant says that his account was credited with 36,171,532 CFA francs on 4 August 2023, representing 36 months of salary arrears and entitlements due to him, although this was done without his consent.

28. Applicant contends that he was owed a total of 37 months of salary arrears and entitlements, not the 36-month arrears that were paid. Additionally, he argues that since he was promoted from G5 Step 2 to G7 Step 1 effective 1 January 2017 and retired on 30 November 2020



(after a three-month contract extension), he was supposed to have retired on G7 Step 4.

29. Applicant therefore requested, and the Court granted him leave, to amend his Initiating Application in order to claim: (a) the one month of salary arrears and entitlements owed to him, (b) 35 months of unpaid balance on his pension between December 2020 and October 2023, and (c) continued payment of his pension on grade G7 Step 4.

(b) Pleas in Law

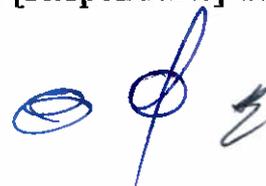
30. For his case, Applicant pleads the following points of law:

- i. That the Respondents' failure or refusal to promote the Applicant or review his salary when due constituted a gross violation of Articles 29(e) and 65 of the ECOWAS Staff Regulations, a breach of the Applicant's contract of employment, discrimination, and an unfair labour practice.
- ii. That the Respondents acted arbitrarily and capriciously when they abruptly and unilaterally reverted the payment of the Applicant's salaries, allowances and other entitlements from G7 Step 1 to G5 Step 3 without any recourse to him or allegation of any wrongdoing.

(c) Reliefs Sought

31. Based on his amended Initiating Application, the Applicant seeks the following reliefs against the Respondents:

- i. A declaration that the action of the [Respondents] in refusing to promote the Applicant and or review his salaries as at when due and without any fault of the Applicant was a gross violation of Articles 29 (e) & 65 of the ECOWAS Staff Regulation thereby breaching the Applicant's terms of contract of his employment with [the Respondents].
- ii. A declaration that the action of the [Respondents] in refusing to promote the Applicant as at when due along with his contemporaries was grossly discriminatory and amounts to unfair labour practice.
- iii. A declaration that the action of the [Respondents] which abruptly and unilaterally reverted the [Applicant's] salaries, allowances and other entitlements from G7 Step 1 to G5 Step 3 from 1 November 2017 till his retirement on 30 November 2020 without due process and without giving him any reason or explanation whatsoever was illegal and constitute a gross violation of his fundamental rights.
- iv. A declaration that the [Respondents] acted arbitrarily and capriciously and in breach of the Applicant's fundamental rights to fair hearing when the [Respondents] abruptly and



unilaterally reverted the Payment of his salaries, allowances and other entitlements from G7 Step 1 to G5 Step 3 from 1 November 2017 till his retirement on 30 November 2020 without giving him notice or reason of any wrongdoing and without affording the Applicant the opportunity to defend himself before such reversal.

- v. An order of this Honourable court setting aside the arbitrary decision of the [Respondents] which abruptly and unilaterally reversed the Applicant's salaries, allowances and other entitlement from G7 Step 1 to G5 Step 3 from 1 November 2017 till his retirement on 30 November 2020.
- vi. An order directing the [Respondents] to pay the Applicant the accumulated arrears of his pension as follows: The difference between G5/3 and G7/4 for a period of 35 months = $983,705\text{FRSCFA} - 391,119\text{FRSCFA} \times 35 \text{ months} = 592,586 \text{FRSCFA} \times 35 \text{ months} = 12,705,460 \text{FRSCFA}$ which the Applicant now claim as accumulated pension arrears from November 2020 to October 2023 and thereafter at 983,705 FRSCA monthly.
- vii. An order of this Honourable Court directing the [Respondents] to pay to the Applicant the accumulated differences in arrears of salaries, allowances and other entitlements between G7 Step 1 and G5 Step 3 from 1st November 2020 to 30th November 2020 a period of 1 month.

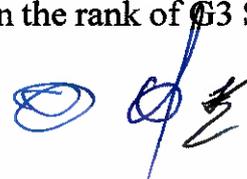


- viii. An order directing the [Respondents] to pay the sum of Two Hundred and Fifty Million Naira (N250,000,000.00) to the Applicant for delays and or loss of promotions and breach of the Applicant's terms of contract of employment with the [Respondents].
- ix. An order of general damages in the sum of Two Hundred and Fifty Million Naira (N250,000,000.00) only for the unimaginable embarrassment, great inconveniences, emotional stress, psychological torture, aggravated pains and long sufferings resulting from breach of the Applicant's fundamental rights.
- x. An order for 25% interest per annum from 1st day of November 2017 till date of judgment and 10% interest per annum from the date of judgment until the said judgment sum is liquidated.
- xi. An order for the payment of the sum of N2,500,000.00 as Solicitor's fees.

VI. RESPONDENT'S CASE

(a) Summary of Facts

32. Respondents admit that Applicant was employed by the ECOWAS Commission in 1990 as a telex operator on the rank of G3 Step 2. That



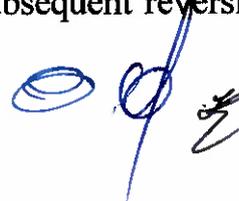
a after 14 years of service, he was promoted to G4 Step 1 in 2004 and redeployed to the Procurement Division of the Commission.

33. They however deny the Applicant's allegation that he was wrongfully denied promotion in the 2011 general promotion exercise. Instead, the Respondents attribute the failure to promote the Applicant at the time to inadvertent human errors or omissions. That after a thorough assessment of the situation by a Committee appointed by the Respondents in 2017, the Applicant was duly promoted from G5 Step 2 to G7 Step 1 and all his accrued salaries and entitlements were paid to him.

34. Respondents also admit the Applicant's claim that there was a reversal of his salaries and entitlements from G7 Step 1 levels to G5 Step 3. However, they explain that this was due to administrative checks on the records of the Applicant, and that the stoppage of payment of salaries and allowances on G7 Step 1 occurred in November 2017 and not the dates claimed by the Applicant.

35. Respondents further admit that the Commission wrote to the Applicant in August 2019 to inform him about his mandatory retirement which was due on 31 August 2020, and that post-retirement, the Applicant was engaged to assist with work in the Procurement Division for a further three months.

36. Respondents confirm that the Applicant wrote letters to various officials in the Commission including the President to present his grievance regarding his promotion and subsequent reversion to grade



G5 Step 3, but contend that the Applicant never petitioned the Council of Ministers, the First Respondent.

37. According to Respondents, the Applicant engaged a lawyer who wrote to the President of the Commission after the Applicant retired. The Director of Legal Affairs of the Commission responded favourably to the letter of the Applicant's lawyer and assured the Applicant that his accrued entitlements would soon be paid.

38. Respondents admit that following a delay in payment of the Applicant's entitlement and after a reminder to the Director of Legal Affairs, the Applicant filed the present suit before the Court. That after an assessment of the strength of the Applicant's case, the Director of Legal Affairs recommended, to the President of the Commission, a negotiated settlement with the Applicant.

39. Respondents say that following negotiations with the Applicant, it was agreed that the Applicant should be paid the sum of 36, 171, 532 CFA as a full and final settlement of the Applicant's claims against the Respondents. The said amount was then credited to the Applicant's bank account with his consent and knowledge.

40. Respondents, therefore, deny the Applicant's claim that the payment to his bank account was made without his knowledge. They further contend that the amount paid represented the total accrued salaries and other entitlements for a 36-month period following his promotion from G5 Step 2 to G7 Step 1 in January 2017.



41. Therefore, Respondents assert that the Applicant is not owed any further amount in particular, the extra one month of accrued salary and entitlements which the Applicant is seeking. Furthermore, the Applicant's claim that he should have retired and received pensions at the G7 Step 4 level, based on his promotion to G7 Step 1 in 2017 and his retirement on 30 November 2020, is incorrect, as promotions are not automatic but contingent on passing the required assessments.

(b) Pleas in Law

42. Respondents submit the following pleas in law:

- i. That Applicant did not exhaust all the internal administrative procedures as required by Article 10(e) of the Protocol of the Court and Article 73(a) of the 2005 ECOWAS Staff Regulations before filing his suit at the Court.
- ii. That under the relevant provisions of the ECOWAS Staff Regulations, promotions and step increments are not automatic but based on assessed meritorious performance.
- iii. That the Respondents have the power to withhold salaries of an employed based on unsatisfactory performance.
- iv. That the Applicant has not proved his claim for damages or legal fees.



(c) Reliefs Sought

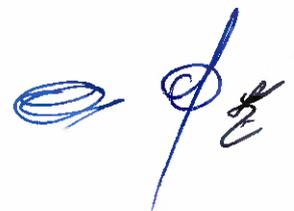
43. The Respondents seek the following reliefs:

- i. A declaration that the Court lacks jurisdiction to entertain this case the Applicant having failed to exhaust the necessary appeal processes as provided in Article 73 (a) of the ECOWAS Staff Regulations.
- ii. A declaration that the suit of the Applicant as presently constituted is an abuse of Court process.
- iii. An order dismissing this suit in its entirety for being abuse of court process, want of jurisdiction, lacking in merit, speculative and premature.

VII. JURISDICTION OF THE COURT

44. The Court begins by noting that, as part of their defence, the Respondents have objected to its jurisdiction on the grounds that the Applicant failed to exhaust all administrative procedures, including recourse to the Council of Ministers, before filing his case, as required under Article 10(e) of the Protocol of the Court and Article 73(a) of the ECOWAS Staff Regulations.

45. It is to be noted, however, that the question of exhausting internal administrative remedies is an admissibility issue, not a jurisdictional one. (See *Kabore Henri v ECOWAS Commission*



[ECW/CCJ/JUD/25/23], paras 50-57). The Court will therefore address the Respondent's objection under its admissibility analysis.

46. Regarding its jurisdiction over this matter, the Court recalls Article 9(1)(f) of the Protocol of the Court which states: "The Court has competence to adjudicate any dispute relating to the following: (f) the Community and its officials."

47. In *Kabore Henri v ECOWAS Commission* [ECW/CCJ/JUD/25/23] (para 33), the Court held that the conditions that must exist for it to exercise its jurisdiction under this provision are (a) the existence of a dispute, and (b) the parties to the dispute being the Community and one or more officials of the Community. Relying on the ICJ's decision in *The Gambia v. Myanmar (Preliminary Objections) (Judgment of 22 July 2022)*, para 63, the Court held in the *Kabore* case that a dispute is a "disagreement on a point of law or fact, a conflict of legal views or of interests between parties" and is manifested by the two sides holding "clearly opposite views concerning the question of the performance or non-performance of certain (international) obligations."

48. Regarding who the "Community" is, the Court has held that it refers to the international legal person, ECOWAS, created under the ECOWAS Revised Treaty 1993 or "any of its constituent organs or agencies through which it carries out its mandate." (*Kabore* case, para 38). Correspondingly, an official of the Community is any person "whether a paid official or not, and whether permanently employed or not, who is charged by the Community or its institutions with carrying out or

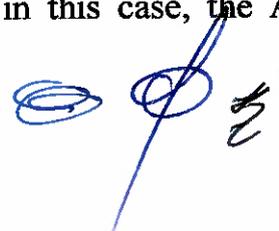


helping to carry out one of the Community's functions, and therefore, through whom the Community acts." (*Kabore* case, para 44).

49. In the present case, the Court observes that the Applicant and Respondents have clear legal and factual disagreements about whether the Applicant was wrongfully denied promotions, whether the Applicant is still owed an extra month of accrued salaries and entitlements, and whether the Applicant is supposed to have retired at G7 Step 4. There is, therefore, a dispute between the parties within the meaning of Article 9(1)(f) of the Protocol of the Court.

50. On whether the dispute is between the Community and an official of the Community, the Court notes that the ECOWAS Commission where the Applicant was employed is an organ or institution through which ECOWAS carries out its mandate. It follows that a dispute involving the ECOWAS Commission is a dispute with the Community.

51. Regarding the Applicant's status, it is not in dispute that he was a paid staff of the Commission from 1990 to 2020, and worked in various roles to help carry out the functions of the Community. Although he is now retired, the Court does not think that this changes his legal status as an official of the Community for purposes of Article 9(1)(f) of the Protocol of the Court. A contrary interpretation would create an absurd result depriving the Court of jurisdiction over disputes the underlying facts of which occurred during an official's employment or engagement with a Community institution, but which was not resolved before the official's separation from service. For instance, in this case, the Applicant's

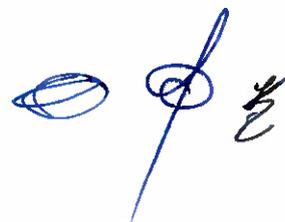


dispute with the ECOWAS Commission crystallized well before he retired, as evidenced by the many letters of complaints he wrote requesting that his grievances be addressed. Also, despite his retirement, the Applicant still has some residual relationship with the Community relating to his pension benefits or entitlements, one of the matters raised in the Application. Consequently, the Court holds that the Applicant is an official of the Community for purposes of Article 9(1)(f) of the Protocol of the Court, and the fact of his separation from service by way of retirement has not altered that status.

52. For the above reasons, the Court concludes that the conditions necessary for the activation of the Court's jurisdiction under Article 9(1)(f) of the Court's Protocol are satisfied. First, there exists a dispute between the Applicant and the Respondents, which the Court has been invited to determine. Second, the dispute is between the Community and a community official as required under Article 9(1)(f) of the Protocol of the Court. The Court, therefore, has jurisdiction.

VIII. ADMISSIBILITY OF THE APPLICATION

53. Article 10(e) of the Protocol of the Court governs the admissibility of applications invoking the Court's mandate as the Community Public Service Tribunal under Article 9(1)(f) of the Protocol. It provides that access to the Court is open to "staff of any Community institution, after the staff member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations."



(a) Respondents' objection to admissibility

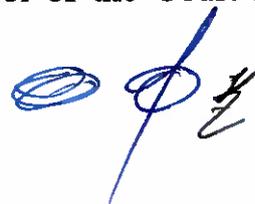
54. In this case, the Respondents contend that under the 2005 ECOWAS Staff Regulations which governed the Applicant's conditions of service, the internal administrative remedies that an aggrieved staff member should exhaust include a petition to the Council of Ministers. However, although the Applicant wrote to the President of the Commission about his grievances, he failed to petition the Council of Ministers after his complaint was not resolved. Therefore, his application to the Court is inadmissible.

(b) Applicant's response to Respondents' objection to admissibility

55. The Applicant makes two counterarguments. First, the Applicant argues that the formal appeal to the Council of Ministers, as provided in Article 73(a) of the 2005 ECOWAS Staff Regulations, applies only to current staff of the Respondents. Since he has retired from the Commission, he contends that he is not bound by this requirement. Secondly, the Applicant asserts that, in any case, an appeal to the Council of Ministers is not a prerequisite for accessing the Court's jurisdiction, as it is optional rather than mandatory due to the use of the word "may" in Article 73(a) of the 2005 ECOWAS Staff Regulations.

(c) Analysis of the Court

56. The Court recalls that the issue of exhausting relevant administrative remedies or appeals under Article 73 of the 2005 ECOWAS Staff Regulations before invoking the Court's jurisdiction pursuant to Articles 9(1)(f) and 10(e) of the Protocol of the Court has already

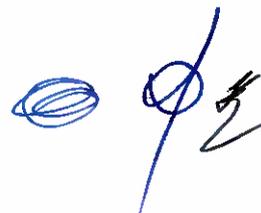


received judicial pronouncement. In the *Kabore* case, the Court stated at paragraph 58 as follows:

58... Article 73 of the 2005 ECOWAS Staff Regulations spells out the relevant administrative procedures that he had to exhaust before seizing the Court's jurisdiction...Under that provision, an aggrieved person must exhaust the internal grievance procedures within the relevant ECOWAS Institution including by making a representation to the Head of the Institution if the matter is not resolved by supervisors below the Head of Institution. If after escalation to the Head of the Institution, the matter is still not resolved, the aggrieved person may then appeal to the Council of Ministers, with a final right of appeal to this Court.

57. The Applicant's argument is that the above described procedure does not apply to him because he is no longer a staff of the ECOWAS Commission. Secondly, he says that the Council of Ministers' intervention is not mandatory, as Article 73(a) states that an aggrieved staff member "*may* make a formal appeal to the Council of Ministers."

58. The Court considers the Applicant's argument—that he is not required to seek the intervention of the Council of Ministers because he is no longer a staff member—to be untenable and self-defeating. If taken to its logical conclusion, this argument would imply that, in the first place, the Court has no jurisdiction over him, and he lacks access to the Court. This is because the Court's jurisdiction, as the Community Service Tribunal, extends only to disputes between the Community and its officials, and only such officials or staff may access the Court. (See Articles 9(1)(f) and 10(e) of the Protocol of the Court).



59. However, as explained in the Court's analysis of jurisdiction above, Article 9(1)(f) of the Court's Protocol cannot be interpreted as completely excluding former staff or officials from the Court's jurisdiction. Such an interpretation, as the Court has noted, would lead to an absurd result, effectively blocking access to the Court for former or retired staff whose dispute with the Community arises from their employment relationship or other engagement with a Community institution, particularly when the dispute may have arisen before they ceased to be staff. Therefore, if a former staff member, as in the present case, can invoke the Court's jurisdiction under Article 9(1)(f) of the Court's Protocol, then they must also comply with the requirement to exhaust the relevant administrative remedies or appeals, as set out in Article 10(e) of the same Protocol.

60. The Court now turns to Applicant's contention that the use of "may" in Article 73(a) of the 2005 Staff Regulations implies that recourse to the Council of Ministers is not a mandatory requirement before a staff member or official of the Community can bring a case before the Court.

61. The Court notes that, generally, the use of the auxiliary "may" in a legal text denotes discretion or permissive choice to act or not, while "shall" indicates duty or obligation. However, a legal instrument must be read as a whole to understand its meaning and purpose. Thus, in the *Korea—Dairy* case (WT/DS98/AB/R), the Appellate Body of the World Trade Organisation stated that "it is the duty of any treaty interpreter to read all applicable provisions of a treaty in a way that gives meaning to all of them harmoniously" (*Korea—Dairy*, para 81). It follows that one

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cannot simply isolate a single word and base the interpretation of the entire text on it. For this reason, despite the use of the word “may,” a legal text can be interpreted to impose an obligation on the legal subject, taking into account the entire context.

62. Undoubtedly, Article 73(a) of the 2005 Staff Regulations provides that when a staff member has a grievance about their service conditions, including performance evaluation or promotion, and “has exhausted all opportunities within the Institution, including final consideration by the Head of Institution and appropriate involvement by the Head of Administration, [he or she] *may* make a formal appeal to the Council of Ministers.” Taken alone, the last clause of this provision makes an appeal to the Council of Ministers optional.

63. However, the introductory paragraphs of Article 73 include the following sentence: **“In all circumstances, the final court of appeal shall be the Community Court of Justice.”** In the Court’s view, this means that the Court must be the final resort in disputes between the Community and its officials or staff. Accordingly, all available administrative avenues of redress must be exhausted before presenting a case to the Court. If there is an administrative procedure that remains to be explored by the Applicant at the time of filing the application, then the Court was not the last resort when its jurisdiction was invoked. Therefore, the Court holds that, despite the use of the word “may” in Article 73(a), a staff member may only present their case to the Court after exhausting all administrative procedures, including an appeal to the Council of Ministers.

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Handwritten blue ink signature, appearing to be 'YOS'.

64. This conclusion is consistent with the Court's earlier interpretation of Article 73 of the 2005 Staff Regulations in the *Kabore* case (para. 58), where it held that a staff member aggrieved by a matter relating to their conditions of service must first exhaust internal administrative procedures within the relevant institution, including a review by the Head of Institution, and, if the matter is not resolved, seek the intervention of the Council of Ministers before invoking the Court's jurisdiction.

65. The Court would also note that its interpretation of Article 73(a) of the 2005 Staff Regulations in the present case is reinforced by Article 10(e) of the Court's Protocol. That provision of the Protocol of the Court states emphatically that "access to the Court is open to...staff of any Community institution, after the staff member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations." Thus, even if the Court were to accept the Applicant's interpretation that recourse to the Council of Ministers is optional rather than mandatory, it was still an "**appeal process available**" to him that needed to be exhausted under Article 10(e) of the Protocol of the Court.

66. The main issue in the Applicant's dispute with the Respondents was the reversion of his salary and entitlements in 2017 from G7 Step 1, to which he had been promoted, back to G5 Step 3 levels. The Court notes that he wrote several letters to bring the matter to the attention of various officers of the ECOWAS Commission, including the President, in an effort to resolve it. However, by his own admission, the matter



remained unresolved until his retirement, and he never availed himself of the opportunity to appeal to the Council of Ministers, as provided for in Article 73 of the 2005 ECOWAS Staff Regulations, which governed his conditions of service until his retirement in November 2020.

67. Given his failure to appeal to the Council of Ministers despite all the time and opportunity he had to do so, the Court is compelled to conclude that the Applicant did not exhaust all the administrative appeal procedures available to him before filing his case before the Court. In the circumstances, the Court holds that the Application is inadmissible.

IX. OPERATIVE CLAUSE

68. For the foregoing reasons, the Court sitting in public and after hearing the parties:

On jurisdiction

- i. Declares that the Court has jurisdiction over the Initiating Application.

On admissibility

- ii. Finds that the Applicant has failed to fully exhaust the administrative remedies required under Article 10(e) of the Court's Protocol and therefore dismisses the Application as inadmissible.



On costs

- iii. Decides that each party shall bear their own costs pursuant to Article 66(11) of the Rules of the Court

Done at Abuja this 28th day of February 2025 in English and translated into French and Portuguese.

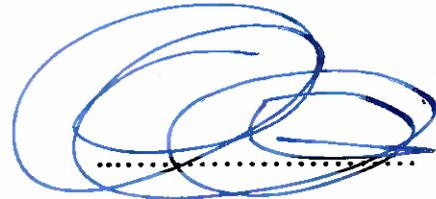
Hon. Justice Sengu M. **KOROMA**
Presiding Judge



Hon. Justice Gberi-Be **OUATTARA**
Panel Member



Hon. Justice Edward Amoako **ASANTE**
Judge Rapporteur



ASSISTED BY:

Dr. Yaouza **OURO-SAMA** (Chief Registrar)

