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

In the mater of

REPUBLIC OF TOGO

V.

ADAM LATIF & 13 OTHERS

Application No. ECW/CCJ/APP/09/22/OPP

Judgment No. **ECW/CCJ/JUD/36/25**

JUDGMENT

ABUJA

On 3rd July 2025

APPLICATION No. ECW/CCJ/APP/09/22/OPP;

JUDGMENT No. ECW/CCJ/JUD/36/25

BETWEEN

REPUBLIC OF TOGO — **APPLICANT**

AND

1. **ADAM Latif,**
2. **ALIAGBO Marzouk**
3. **ALLES Atti**
4. **BANAVEI Bala**
5. **BOUKARI Djobo**
6. **FOFANA Nafiou**
7. **ISSA Saliou**
8. **ISSA Issifou**
9. **KARROU Wawine**
10. **KONDOUAFIA Tchasama**
11. **MOHAMED Soulémane**
12. **YACOUBOU Bilali**
13. **YAYA Soulémane**
14. **YOUSSIF Ali**

— DEFENDANTS

COMPOSITION OF THE COURT PANEL

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Presiding / Judge Rapporteur

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

Hon. Justice Edward Amoako **ASANTE** - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF THE PARTIES:

Maître Tchitchao TCHALIM - Counsel for the APPLICANT

Maître Darius Titékpo-Mawu Kokou ATSOO
Me. Raphaël N. KPANDE-ADZARE - Counsel for the DEFENDANTS
Maître Elom Koffi KPADE

I. JUDGMENT

1. This is the 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. The Applicant is the Republic of Togo, a Member State of the Economic Community of West African States (ECOWAS).
3. The Defendants are ADAM Latif, ALIAGBO Marzouk, ALLES Atti, BANAVEI Bala, BOUKARI Djobo, FOFANA Nafiou, ISSA Issifou, ISSA Saliou, KARROU Wawine, KONDOUHFIA Tchasama, MOHAMED Soulémane, YACOUBOU Bilali, YAYA Soulémane and YOUSSIF Ali. They were Applicants in the previous case between the two parties and are Togolese citizens.

III. INTRODUCTION

4. On November 30, 2023, the ECOWAS Court of Justice delivered ***Judgment No. ECW/CCJ/JUD/45/23*** in the case between ADAM Latif and others and the Republic of Togo. Having lost the case, the Republic of Togo took the view that the judgment had been delivered in breach of the texts governing the functioning of the Court, namely the Rules of the Court and Protocol A/P.1/7/91 on the Community Court of Justice. In this

context, it filed an application to set aside, in which it put forward various pleas in law and sought, among other things, the total annulment of the contested judgment.

5. On the other hand, the Defendants in their defense raised, in the first instance, the plea of inadmissibility of the claim on the grounds of untimeliness. In the alternative, they argued that the application should be dismissed as unfounded and prayed the court to reject it on the merits if the objection was not upheld.

IV. PROCEEDINGS BEFORE THE COURT

6. The initial application (doc. 1) was registered at the Registry of this Court on January 9, 2024, concerning the application to set aside ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023. The Defendants were duly served on the same day.
7. A preliminary objection of inadmissibility of the application to set aside ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023 (doc. 2), as well as a defence (doc. 3) were registered at the Registry of this Court on February 12 and 13, 2024, both dated February 8, 2024. These were served on the Applicant on 13th February 2024.
8. The reply (doc.4) was lodged at the Registry of this Court on 13th March 2025. This was duly served on the Applicant on the same day.
9. At the virtual hearing held on 12th March 2025 to hear the parties on the merits of the case, in which both parties were represented and made their oral submissions. The judgment was adjourned to the 3rd July 2025.

V. THE APPLICANT'S CASE

a. Summary of Facts

10. The Applicant states, in the initial application registered at the Court Registry on January 9, 2024, that on March 23, 2023, it was served with an application dated January 10, 2022, brought before the ECOWAS Court of Justice by ADAM Latif and others, in which human rights violations were alleged. In the context of that action, the then

Applicants, now Defendants in the instant case, sought, among other things, that the Republic of Togo be ordered to pay various damages.

11. In that application, the Defendants claimed that their rights were violated in the context of criminal proceedings brought against them for crimes such as attacking state security, criminal conspiracy and other offenses, following the particularly violent public demonstrations they organized between 2017 and 2018.

12. Following the service, the Applicant avers that it sought an extension of two (2) months to submit its reply, having attached to the application, dated March 29, 2023, the formal appointment of a lawyer (Annexure 3).

13. It adds that, following this application, it filed successively: a plea *in limine litis*, on April 25, 2023, arguing the inadmissibility of the initial application of January 10, 2022 (Annexure 4); a statement of full defense on form and substance, on May 30, 2023 (Annex 5); a reply to the Defendants' response on the issue of inadmissibility, on June 22, 2023 (Annexure 6); and an additional reply dated July 5, 2023 (Annexure 7).

14. It also claims that the Defendants in the instant case received all their pleadings and have even submitted a rejoinder.

15. It notes that a hearing on the merits of the case took place on September 25, 2023. It also claims that, despite both parties having been heard and having presented their oral arguments, the Court, in an act that it describes as disorganized and contrary to the Rules of Procedure, did not proceed with the case and postponed the deliberation *sine die*, in a context that the Applicant considers confusing and indicative of an abuse of procedure. It adds that, even more unusually, on September 27, 2023, the Defendants filed a new application praying the Court to deliver judgment by default against the Republic of Togo (Annexure 11), despite the closure of the hearing and the fact that both parties had already exchanged written submissions.

16. The Applicant maintains that the Defendants' application for judgment by default is based on their alleged failure to submit their declaration of defense in time, with the aim of having their claims granted in full, without, however, attaching any supporting documents or prior decisions that would justify such a claim.

17. It reports that it responded to this application with a reply filed on October 10, 2023, in which it argued that it was legally inadmissible and concluded that it should be dismissed *ab initio*.

18. And that on October 17, 2023, the Court held a new hearing to consider the application of September 27, 2023, and that, after oral arguments by the parties, the case was adjourned for a decision on December 4, 2023.

19. However, it claims that the Court closed its deliberations on November 30, 2023, and the Applicant was notified of ***Judgment No. ECW/CCJ/JUD/45/23*** on December 5, 2023.

20. The Applicant concludes that it is against that judgment that it has lodged this application to set aside, seeking that it be annulled in its entirety.

b. Pleas in Law

21. The Applicant relied on the following legal provisions:
    i. Protocol of 1991, in particular Article 19(2).
    ii. Rules of Court, in particular Article 60(g), 87, 88 and 90.

c. Reliefs Sought

22. The Applicant prays the Court to:

With regards to the form to:

i. Declare the application admissible.

On the merit:

ii. That the Court recognizes that ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023, suffers from multiple violations of the relevant provisions of the Rules of the ECOWAS Court of Justice, Protocol A/P.1/7/91 and the general principles governing the functioning of the Court, namely:

iii. The omission of the name of the legal adviser appointed by the Togolese Republic, in violation of Article 60(g) of the Rules;

iv. The absence, in the operative clause of the judgment, of an express decision as to the inadmissibility and, in the alternative, the rejection of the pleadings presented by the Republic of Togo;

v. The omission, in the operative clause, of the decision on the admissibility and, subsequently, on the merits of the application for judgment by default filed on September 27, 2023, and/or the application of January 10, 2022, prior to the judgment against of the Republic of Togo, which was delivered irregularly and illegally;

vi. The failure to mention, in the operative clause of the judgment, the expression "judgment by default", despite the existence of an express request to that effect;

vii. The lack of adequate legal basis required by Article 60(g) of the Rules and Article 19(2) of the Protocol on the ECOWAS Court of Justice;

viii. Violation of Articles 87, 88 and 90 of the Rules of the Court.

Accordingly requests the Court to:

ix. Annul, in its entirety, ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023;

x. Decide afresh on the application to set aside filed, pursuant to Article 90(12) of the Rules, removing the omissions that occurred at the hearing on September 25, 2023;

xi. Declare itself competent to examine the admissibility of the application of January 10, 2022;

xii. Recognize, in accordance with the service of March 23, 2023, the regularity of the application of January 10, 2022, and declare admissible all the pleas put forward by the Republic of Togo, ruling them well-founded;

xiii. Declare the application of January 10, 2022 inadmissible and, in the alternative, unfounded, with consequent dismissal;

xiv. To dismiss as unfounded, or in any event inadmissible and in breach of Article 90 of the Rules, the application for judgment by default filed on September 27, 2023, and, in the alternative, to dismiss it;

xv. Order that, in the judgment to be delivered, the name of the Togolese Attorney General be expressly mentioned;

xvi. Indicate in the operative clause of the judgment that the 7th applicant has been removed from the case;

xvii. Grant the Republic of Togo all the claims, purposes and reliefs sought in the present application, as well as those presented in the substantive application, namely in the applications dated January 10, 2022, and December 27, 2023, including documents Nos. 3, 5, 7, 8, 9 and 11 respectively;

xviii. Order the Defendants to pay the costs of the proceedings.

VI. THE DEFENDANT'S CASE

a. Summary of Facts

23. The Defendants in the instant application to set aside a judgment filed a preliminary objection to the inadmissibility of the application and, cumulatively, a reply to it.

24. In their objection, they argued that the application to set aside judgment brought by the Republic of Togo was inadmissible because it had been lodged after the time limit laid down in Article 90(9) of the Court's Rules of Procedure.

25. In their reply, they state that, by application dated January 3, 2024, registered at the Registry of the Court on January 9, 2024, the Republic of Togo lodged an application to set aside ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023, delivered in the proceedings to which they are parties.

26. They claim that the grounds put forward by the Republic of Togo in its application to set aside judgment are completely unrelated to those which, according to the applicable rules, an Applicant in an application to set aside a judgment should put forward in order to demonstrate that it has complied with its procedural obligations

in a timely manner, pursuant in particular to Articles 34 and 35 of the Rules of the Court.

27. In this sense, they believe that the Republic of Togo refuses to recognize its own omission in the process that culminated in the delivery of the challenged judgment.

28. They recall that, by application dated January 10, 2022, registered at the Court Registry on January 31, 2022, under number ECW/CCJ/APP/09/22, they requested that the Republic of Togo be condemned for alleged violations of the right to protection against torture and cruel, inhuman or degrading treatment, as well as the right to the presumption of innocence and not to be subjected to arbitrary detention.

29. They argue that, by document dated January 31, 2022, entitled "Service of Application", and by letter dated February 1, 2022, the Registry of the Court served on the Defendant State the said application and the attached documents, requesting it to submit its defense within thirty (30) days of receipt of the service. (Annexures 1 and 2)

30. They maintain that, on January 21, 2023, more than a year after service of the initial application, the counsel for the Republic of Togo contacted the Court by email with the subject line "***Re-examination of Application No. ECW/CCJ/APP/09/22: Adam LATIF and others against the Republic of Togo***" (Annexure 3).

31. In response, the Registry of the Court, by communication dated February 22, 2023, confirmed that it had served on the parties the initial application of and the application to remove the 7th Applicant from the proceedings, adding, however, that it had not yet received any response from the Republic of Togo (Annexure 4).

32. On the basis of the service document dated January 31, 2022, the Defendants maintain that the Republic of Togo was duly served with the procedural documents.

33. They add that, according to the applicable procedural rules, any request for an extension of time to file pleadings that has been submitted after the initial *time limit* has elapsed is inadmissible. They also claim that, at the hearing on September 25, 2023, the Court did not grant the Republic of Togo's request, rejecting its pleadings

and objections as untimely, on the basis of Articles 34 and 35 of the Court's Rules of Procedure.

34. They explain that it was on the basis of that decision and pursuant to Article 90(1) of the Rules of the Court that they filed an application for judgment by default on September 28, 2023.

35. They point out that, at the hearing on October 17, 2023, the Court declared that all the formalities of service had been complied with and that the adversarial principle had been respected, since the pleadings were sent to the State, which only reacted more than a year after service, despite having had thirty days to do so.

36. They claim that the Republic of Togo contradicted itself at the hearing on September 25, 2023, by stating that it had never received service of the initiating application and its annexures, when it had already stated, in the request for an extension dated March 29, 2023 and registered on March 30, 2023, that it received the first electronic message on February 1, 2022, but was unable to access the documents due to technical difficulties.

37. They also invoke case law from the Court itself to maintain that any request for an extension of time must be submitted within the legal time limit, otherwise it will automatically be considered statute-barred, regardless of the grounds on which it is based. To this end, they cite ***Judgment No. ECW/CCJ/JUD/26/15*** of December 1, 2015, in the case of M***amadou Moustapha KAKALI against the Republic of Niger.***

38. They consider that the application to set aside judgment hereby lodged represents a disguised attempt by the Republic of Togo to resubmit the pleas and claims that had already been rejected in the main proceedings, seeking to turn them unduly into annexures to the present application.

39. They take the view that granting this request would set a dangerous precedent by allowing a defaulting party to reintroduce its pleadings on the basis of its own omissions, revealing a lack of knowledge of the Court's procedural rules and practices.

40. They claim that the Republic of Togo is seeking, by means of this appeal, to frustrate the enforcement of the Court's decision by relying on artificial arguments, whereas Article 90(6) of the Rules expressly provides that "*a judgment by default shall be enforceable*".

41. They add that the Court did not order a stay of execution of the judgment and that Article 62 of the Rules states that *"the judgment shall be binding from the day on which it is delivered"*.

42. They therefore conclude that the Republic of Togo is attempting, by means of an unfounded appeal, to circumvent the final and enforceable nature of the decision delivered by the Community Court.

b. Pleas in Law

43. The Defendants of the application to set aside judgment rely on Articles 34, 35 and 90 of the Rules of the Court, Article 3(8) of the Practice Directions on Electronic Case Management and Virtual Court Sessions and the Court's case-law.

c. Reliefs Sought

44. The Defendants pray the Court to:

i. Declare inadmissible the application of the Republic of Togo to set aside ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023;

ii. And consequently dismiss it;

iii. Declare that ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023, has full and complete effect.

VII. JURISDICTION

45. The issue of jurisdiction is vital to the hearing and determination of any matter before a court.

46. The Court has jurisdiction to hear the application to set aside judgment, in accordance with the provisions of Articles 90(8) et seq. of the Rules of the Court.

a) **As to the objection that the application is inadmissible because the time limit laid down in Article 90(9) of the Rules of the Court had been exceeded**

The Defendants' Case

47. In the instant case, the Defendants in the application to set aside judgment raised a plea of inadmissibility on the grounds that the application was filed after the legally established deadline.

48. To this end, they maintain that, pursuant to Article 90(9) of the Rules of the Court: *"The application to set aside the judgment must be made within one month from the date of service of the judgment"*. Therefore, considering that the Judgment was served on the Republic of Togo on December 5, 2023, they consider that the deadline for submitting the application to set aside the judgment expired on January 5, 2024. As the application was only registered on January 9, 2024, it would, according to the Defendants, exceed the deadline by four (4) days and should therefore be deemed untimely.

49. They add that, according to section 3.8 of the Practice Directions on Electronic Case Management and Virtual Court Sessions of May 22, 2020, "*The document shall be deemed to have been lodged once the designated Registry staff communicates confirmation to the party filing same, within the official working days and hours*". On the basis of this provision, they argue that simply sending the application electronically is not enough to determine the timeliness of the procedural act.

50. They also claim that, in accordance with the Court's own case-law, the Court has already declared inadmissible an application to set aside the judgment lodged out of time, in particular in the judgment in ***State of Senegal v. Liga Sénégalaise des Droits de l'Homme and others***, a circumstance which reinforces, according to the Defendants, the need for the Court to apply the same criterion in the instant case.

The Applicant's Case

51. The Applicant, the Republic of Togo, opposes the objection of inadmissibility raised by the Defendants, considering it manifestly unfounded.

52. To this end, it claims that it submitted its application to set aside the judgment by e-mail sent to the Court on January 3, 2024, i.e. two (2) days before the legal deadline, which expired on January 5, 2024 (Annexure 1). It adds that the Court Registry acknowledged receipt of the application on January 8, 2024, and at the same time requested the deletion of references to Annexure 13, which was not in the file (Annexure 2). The application was subsequently registered on January 9, 2024, after the Republic of Togo had settled it.

53. The Applicant believes that the Defendants are misinterpreting Article 3(8) of the Practice Directions to the Chief Registrar. It maintains that the formal registration of a case at the ECOWAS Court of Justice is not to be confused with the counting of legal time limits for the purposes of the timeliness of an act. In this sense, it believes that the presentation of the act should be considered as of the date of its receipt by the Court, regardless of any subsequent regularization, which is the correct interpretation and in line with the applicable text.

54. In this regard, it relies on Article 33(6) of the Rules of the Court of June 3, 2002, which allows the Registrar to invite the requesting party to regularize the request whenever it does not meet the required formal requirements. Thus, as soon as the application is received, it is assigned to an official at the Registry to check that its formal elements, including annexures, are in order.

55. It points out that this was precisely the reason why the Registry asked the Republic of Togo to regularize the list of documents accompanying the application to set aside the judgment.

56. It adds that, in a similar move towards formal correction, the Registry also asked the Defendants to rectify the title of their pleading, which had been incorrectly called "rejoinder" instead of "reply".

57. The Applicant recalls that, in periods prior to the digitalization of the case file, when the pleadings were sent by express mail, it was the date of arrival of the correspondence at the Court that was considered as the date of submission. Since the COVID-19 pandemic, this criterion has been maintained by analogy, and it is the date of receipt of the document by the Court, and not the date of registration, that counts for the purposes of compliance with the deadlines, even if regularization occurs later.

58. The Applicant points out that if the Court Registry were to consider the date of registration to be the date of submission of the procedural document, this would be tantamount to subjecting the procedural rights of the parties to the possible negligence, overwork or partiality of the officials in charge of the procedural process. It also points out the risk of manipulation, with the creation of false needs for regularization in order to favor one party or harm another, which, in its view, would compromise the integrity of the process and turn the functioning of the Court into a "Veritable jungle".

59. Finally, it points out that the Defendants themselves could have asked the Court, as they did previously in relation to the application for an extension of time submitted on March 29, 2023, for confirmation that the application had been sent by email on January 3, 2024, which corroborates the veracity and timeliness of its submission.

The Court's Analysis

60. It is for the Court to assess the merits of the objection of inadmissibility raised by the Defendants, based on the alleged untimeliness of the application to set aside the judgment. To this end, it is important to determine whether the application to set aside the ***Judgment No. ECW/CCJ/JUD/45/23***, of November 30, 2023, was filed within the legally prescribed time limit.

61. Pursuant to Article 90 of the Rules of the Court, "*Application may be made to set aside a judgment by default*", and paragraph 9 of the same article states that "*The application to set aside the judgment must be made within one month from the date*

of service of the judgment and must be lodged in the form prescribed by Articles 32 and 33 of these Rules". It follows from a combined reading of paragraphs 8 and 9 of the aforementioned article that the one-month period for lodging an application to set aside the judgment begins with the service of the judgment on the interested party.

62. In the instant case, the Court notes that ***Judgment No. ECW/CCJ/JUD/45/23***, delivered on November 30, 2023, in the case of ADAM Latif and others v. Republic of Togo, was served on the parties on December 5, 2023. From that date, the Republic of Togo, as the party against whom the judgment by default was delivered, had a period of thirty (30) days, i.e. until January 5, 2024, to file its application to set aside the judgment.

63. The Court refers to Articles 3(7) and 3(8) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, which stipulate the following:

a) *"The Chief Registrar shall designate appropriate Registry Staff who shall receive, acknowledge receipt and assess all documents forwarded electronically, for compliance with relevant provisions of the Rules of Court, and communicate the status of such document immediately to the Party intending to file."*

b) *"The document shall be deemed to have been lodged once the designated Registry staff communicates confirmation to the party filing same, within the official working days and hours."*

64. The Court points out that, under the aforementioned provisions, a procedural document is only considered to have been formally submitted once the competent official at the Registry has confirmed that it has been received and is in order, which implies validation after the document has simply been sent electronically.

65. Consequently, the Court dismisses the position defended by the Republic of Togo, according to which the date on which the email was sent, in this case January 3, 2024, should be taken as the date of submission. On the contrary, the relevant date is that of the confirmation of presentation by the Registry staff, in the terms expressly provided for in the Practice Directions.

66. The Court observes that to accept as the date of submission the mere date on which the document was sent by email would mean that the procedural time limit for subsequent acts would be considered to have started even before the formal verification of its conformity, which is contrary to the principles of procedural regularity.

67. Such an interpretation, in the Court's view, would be tantamount to admitting the communication of potentially irregular applications to the parties, compromising respect for the adversarial process and due process of law, since, once accepted, any document must be immediately communicated to the other parties.

68. In fact, the Court finds that the date of January 3, 2024, corresponding to the date on which the application was sent by the Republic of Togo, cannot be considered as the date of formal submission. The valid date is January 9, 2024, when the Court Registry confirmed the presentation after the required regularization.

69. Therefore, considering that the one-month deadline for submitting the application to set aside the judgment expired on January 5, 2024, it is concluded that the application submitted by the Applicant on January 9 was out of time, and the application must therefore be dismissed as inadmissible for breach of Article 90(9) of the Rules of the Court.

70. The Court recalls that it has already established case-law to the effect that failure to comply with the time-limits laid down in Article 90(9) constitutes sufficient grounds for the outright rejection of the application to set aside the judgment, as is clear from ***Judgment No. ECW/CCJ/JUD/07/17*** of October 11, 2017, in the case ***REPUBLIC OF GUINEA V. IBRAHIM SORY TOURE AND OTHERS***.

71. In view of the foregoing, the Court declares inadmissible as time-barred the application to set aside ***Judgment No. ECW/CCJ/JUD/45/23*** of November 30, 2023.

b) On the request to confirm judgment ECW/CCJ/JUG/45/23 of November 30, 2023

72. Since the Court has declared that the application to set aside the judgment lodged by the Republic of Togo against ***Judgment No. ECW/CCJ/JUD/45/23*** is inadmissible, it is important to confirm the referred judgment in its entirety and declare that it remains fully effective, producing all its legal effects.

VIII. ON THE COSTS:

73. The Applicant sought that the Defendants be ordered to pay all of the costs, while the Defendants sought that the Applicant be ordered to pay them in full.

74. It is provided under Article 66(2) that the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

75. Pursuant to Article 66(2) of the Rules of the Court, the Defendant is ordered to pay the costs of the proceedings, quantum to be assessed by the Registrar of the Court.

IX. OPERATIVE CLAUSE

76. For the reasons stated above, the Court sitting in public, after hearing both Parties:

As to Jurisdiction:

i. Declares that it has jurisdiction to hear the application to set aside ***judgment ECW/CCJ/JUD/45/23*** of November 30, 2023;

ii. However, it declares the application inadmissible on the grounds that the action is statute-barred;

iii. Confirms ***Judgment No. ECW/CCJ/JUG/45/23*** of November 30, 2023, and declares that it has full effect.

XIV. ON THE COSTS:

77. Orders the Applicant to bear the costs of the proceedings to be assessed by the Registrar of the Court.

Done in Abuja on the 3rd day of July 2025, in Portuguese and translated into English and French.

Signed by:

Hon. Justice Ricardo C. M. **GONÇALVES** - Presiding/Judge Rapporteur _____

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

Hon. Justice Edward Amoako **ASANTE** - Member _____

Dr. Yaouza OURO-SAMA - Chief Registrar _____

