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

In the matter of

LAT DIOP

V.

THE REPUBLIC OF SENEGAL

Application No:ECW/CCJ/APP/22/24;

Judgment No. ***ECW/CCJ/JUD /22/25***

JUDGMENT

ABUJA

9th of May 2025

APPLICATION No. ECW/CCJ/APP/22/24;

JUDGMENT NO. ECW/CCJ/JUD/22/25

BETWEEN

LAT DIOP	**APPLICANT**
AND	
REPUBLIC OF SENEGAL	**DEFENDANT**

COMPOSITION OF THE PANEL

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

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

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

ASSISTED BY:

Mr. Gaye Sowe - Registrar

REPRESENTATION OF THE PARTIES:

Maitre El Hadji Amadou SALL
Maitre El Hadji Moustapha Diouf
Maitre d' Oumar Youm
Maitre Antoine Mbengue
Maitre Moustapha Mbaye
Maitre Aboubakri DEH

- Counsel for the APPLICANT

Amadou Mbaye GUISSE
L'Agent Judiciaire de l'Etat

- Counsel for the DEFENDANT

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 Mr. Lat Diop, a citizen and former Minister of the Republic of Senegal, resident in Dakar, Senegal.
3. The Defendant is the Republic of Senegal, a Member State of the Economic Community of West African States (ECOWAS).

III. INTRODUCTION

4. This case concerns allegations that the Defendant violated the right of the Applicant to freedom of movement by preventing him from boarding a flight to leave Senegal on 28th August 2024.

IV. PROCEEDINGS BEFORE THE COURT

5. The application initiating proceedings (doc.1) was lodged at the Registry of this Court on September 25, 2024. The originating application was filed together with an application for expedited procedure (doc. 2). The Defendant was served with the two documents on the same day.
6. The statement of defense to the initial application (doc. 3), as well as a statement of defense to the application for expedited procedure (doc. 4), were lodged at the Registry of this Court on October 28, 2024. These were served on the Applicant on 31 October 2024.
7. At the virtual hearing held on November 21, 2024 to hear the parties on the merits of the case, both parties were represented and made their oral submissions.

V. THE APPLICANT'S CASE

a. Summary of Facts

8. The applicant's case is that on 28 August 2024, he was at the Blaise Djagne International Airport, Dakar, to board Air France Flight AF711. However, after the airline issued him a boarding pass and he completed other police formalities necessary to board the flight, police officers prevented him from boarding the flight.

9. According to the Applicant, similar restrictions on travelling were applied to other former Government ministers who had served in the Government of Senegal under former President Macky Sall's presidency.

10. He states that the decision to prevent him from boarding the flight was communicated to him verbally, without any written decision and without any formal procedure.

11. The Applicant avers that he was restricted from travelling based on a statement made by Prime Minister Ousmane Sonko, as well as related articles published in print and online media.

12. He further avers that he was prevented from travelling despite the fact that no prosecution or other legal proceedings had been opened against him.

b. Pleas in Law

13. The Applicant relied on the following legal provisions:

    i. Article 9 of the ECOWAS Revised Treaty;
    ii. Article 11 of the Protocol of the ECOWAS Court of Justice.
    iii. Article 12 of the African Charter on Human and Peoples' Rights.
    iv. Article 13 of the Universal Declaration of Human Rights (UDHR).
    v. Article 12 of the International Covenant on Civil and Political Rights (ICCPR).
    vi. Articles 8 and 14 of the Constitution of the Republic of Senegal.

vii. Articles 127 and 129 of the Senegalese Code of Criminal Procedure.

c. Reliefs Sought

14. The Applicant prayed the Court to grant the following reliefs:

i. To declare the present Application admissible;

ii. To find that there was a manifest and particularly serious violation of the Applicant's human rights;

iii. To declare and judge that the prohibition imposed on him, and served on him verbally, without any other form of procedure, is illegal;

iv. Consequently, to order the Republic of Senegal, outside of any procedure provided for by law, and legally notified, to stop opposing the free exercise by the Applicant of his freedom to come and go within the territory of the Republic of Senegal as well as outside the borders of the Republic;

v. Declare that the inconvenience suffered by the Applicant is serious and order the Republic of Senegal to compensate him for his loss by awarding him a sum of not less than 500 Million CFA Francs;

vi. Order the Republic of Senegal to bear the entire cost.

VI. THE DEFENDANT'S CASE

a. Summary of Facts

15. The Defendant denies the allegations of the Applicant and pleads that the allegations are based on assumptions and conjecture.

16. It points out that the Applicant has made allegations based on a purported statement of Prime Minister Ousmane Sonko but has not produced this statement before the Court.

17. The Defendant alleges that a lot of misinformation has been circulated about the Applicant since the installation of the new government in Senegal to the extent that

the Applicant himself had to release a video statement to the public to deny claims that he had embezzled public funds, and had been banned from leaving Senegal.

18. The Defendant pleads that it did not restrict the movement of the Applicant, and that the Applicant has passed through the border police at least ten times without ever being questioned.

19. Moreover, the Applicant was allowed to continue using his Senegalese diplomatic passport even after he ceased to hold office as a Minister of the Republic, and no action was taken by the Defendant to withdraw the Applicant's travel documents.

20. It was not until 26 September 2024 that the Applicant was placed under a committal order following a criminal investigation into acts of embezzlement of public funds, money laundering and extortion, based on a complaint charged against him for alleged acts of extortion he carried out when he was the Director of the National Lottery of Senegal.

b. Pleas in Law

21. The Defendant cites no pleas in law.

v. Reliefs Sought

22. The Defendant prays the Court to:

i. Decide as of right on the admissibility of the action of Mr. Lat Diop;
ii. Find that there is no violation of the rights of the Applicant, Mr Lat Diop;
iii. Dismiss all of the claims of the Applicant as unfounded;
iv. Order Mr. Lat Diop to bear the entire costs.

VII. JURISDICTION

23. The issue of jurisdiction is vital to the hearing and determination of any matter before a court. Whether raised by the parties or not, the Court can, *suo motu*, raise the issue and deal with it before going into the substantive matter. Otherwise,

anything done without competence becomes null and void. *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) V. SIERRA LEONE, ECW/CCJ/JUD/37/19, Pg.11*

24. Article 9 (4) of the Protocol A/P.1/7/91 on the Court, as amended by the Supplementary Protocol A/SP.1/01/05 of 2005, provides that the Court has jurisdiction to determine cases on the violation of human rights that occur in any Member State.
25. A mere allegation of a violation of human rights in the territory of a Member State is sufficient, *prima facie*, to vest the Court with jurisdiction. *OUSAINOE DARBOE & 31 ORS v. THE REPUBLIC OF GAMBIA ECW/CCJ/JUD/01/20, pg. 12.*
26. The instant is based on allegations that the Defendant has violated the right of the Applicant to freedom of movement under the provision of the African Charter on Human and Peoples' Rights, the ICCPR, and the UDHR.
27. The Court therefore holds that it is vested with jurisdiction to hear the instant case.

VIII. ADMISSIBILITY

28. The Court must now examine whether the case meets the admissibility criteria as set out in Article 10 (d) of the Protocol A/P.1/7/91 on the Court, as amended by the Supplementary Protocol A/SP.1/01/05 of 2005. The said article provides for access to the Court to "*Individuals on application for relief for violation of their human rights; the submission of application for which shall: i). Not be anonymous; nor ii). Be made whilst the same matter has been instituted before another International Court for adjudication;*"
29. Thus,an application whose subject matter concerns human rights violation, shall only be admissible when three criteria are met: the Applicant's status as "victim" must be established, the non-anonymity of the application, and the absence of lis pendens before another international Court or Tribunal. See *DANIEL AGADA OKOH & 42 ORS. v. FEDERAL REPUBLIC OF NIGER ECW/CCJ/JUD/04/21 @ pg. 16, para. 37.*

30. In the instant case, the Applicant is not anonymous, and there is no indication that the case has been submitted to another international Court for adjudication.
31. The Applicant alleges that the Defendant violated his right to freedom of movement by preventing him from traveling freely outside the borders of Senegal. The Defendant denies restricting the Applicant's travel on the 28th of August 2024 but admits placing the restriction on the Applicant's travels effective the 26th of September 2024 and justifies its actions on the grounds of an ongoing criminal prosecution against the Applicant.
32. As a direct victim of the alleged human rights violation, as outlined in the Application, the Applicant has sufficiently satisfied the requirement of victim status for the case to proceed to a determination on the merits.
33. The Court, therefore, finds that this case meets the admissibility criteria and is admissible.

IX. PROCEEDINGS BEFORE THE COURT

Application for Expedited Procedure

34. The Applicant filed an Application for the Court to grant him an expedited procedure, stating that it is urgent to put an end to the clear violation of his human rights.
35. The Defendant, on the other hand, opposes the Application for an expedited procedure on the ground that the Applicant has not demonstrated any particular urgency that necessitates the expedited procedure.
36. The Defendant relies on the Court's jurisprudence to the effect that an Applicant seeking an expedited procedure must put facts before the Court that characterize the existence of an imminent and irreversible peril that could justify a prompt decision. *IDRISSA MAIGA v. REPUBLIC OF MALI, ECW/CCJ/ORD/06/12; IBRAHIMA KASSORY FOFANA v. REPUBLIC OF GUINEA, ECW/CCJ/JUD/35/23.*

37. The Defendant thus prays the Court not to grant the Application for an expedited procedure.

The Court's Analysis

38. Article 59 of the Rules of Court states that:

> "*On application by the Applicant or the Defendant, the President may exceptionally decide, on the basis of the facts before him and after hearing the other party, that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules, where the particular urgency of the case requires the Court shall give its ruling with the minimum of delay.*"

39. A request for expedited procedure is granted when the particular urgency of a case requires that the court adjudicate within the shortest possible time. Since the case is now to be decided on its merits, the Court is of the view that the urgency which warranted the expedited procedure is no longer existent. There are no grounds to decide on the issue. See *SOW BERTIN AGBA v. REP OF TOGO ECW/CCJ/JUD/04/13 pg. 6.*

X. MERITS

40. Having held that the Court has jurisdiction in this case and that the case is admissible, the Court will proceed to examine the case's merits to determine whether the Applicant's claims are well founded.

a. Alleged violation of the right to freedom of movement

41. The Applicant alleges that on 28 August 2024, he was prevented by police officers from boarding an Air France Flight 711 at the Blaise Djagne International Airport in Dakar, Senegal.

42. He avers that the decision to prevent him from boarding the flight was communicated verbally, and no formal procedures had occurred.
43. This, he avers, is despite the fact that he was not facing any investigation or prosecution proceedings.
44. He further alleges that his movement was restricted because of statements made by the Prime Minister of the Republic of Senegal, Ousmane Sonko, imputing political manipulation against him.
45. He submits that the Defendant's action violates his right to freedom of movement under Article 12 of the African Charter on Human and Peoples' Rights, Article 12 of the ICCPR, and Article 13 of the UDHR.
46. In support of his claims, the Applicant has submitted before the Court a copy of his ECOWAS Identity Card, issued by the Republic of Senegal. He has also gathered a copy of a boarding pass issued by Air France for Flight AF711 on 27 August 2024 for a flight on 28 August 2024.
47. In addition, the Applicant has annexed to his Application a page of his passport with the stamp of the Senegalese Border Police, as well as an online press article by PressAfrik dated 28 August 2024, with the header "*Interdiction de sortie du territoire: Lat Diop livre sa version des faits"* literally translated as "*Ban on leaving the territory: Lat Diop gives his version of events*".
48. The Defendant denies the Applicant's allegations and submits that it did not restrict the Applicant's movement, adding that the Applicant has passed through the border police at least ten times without ever being questioned.
49. The Defendant further submitted that the Applicant had been allowed to continue using his diplomatic passport even after leaving office as a Minister of the Republic, and his travel documents were still been in his custody without any interference.
50. The Defendant argues that the Applicant's case is based on assumptions and conjecture and not supported by evidence.

51. However, the Defendant submitted that it was only on 26 September 2024 that the Applicant was placed under a committal order following a criminal investigation into acts of embezzlement of public funds, money laundering and extortion based on a complaint against him for alleged acts of extortion he carried out when he was the Director of the National Lottery of Senegal.
52. The Defendant supports its case by annexing to its Statement of Defense a video statement issued by the Applicant and published online. The Defendant also submitted a document purporting to show the times that the Applicant has freely passed through the Senegalese Border Police from 24 July 2018 to 28 August 2024.
53. In addition, the Defendant submitted a report of a first interrogation of the Applicant before the President of the College of Investigating Judges of the Financial Judicial Pool, dated 26 September 2024, as well as a report of the Criminal Investigation Division, dated 26 September 2024.

The Court's Analysis

54. Article 12 (2) of the African Charter on Human and Peoples' Rights provides that "*[e]very individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law to protect national security, law and order, public health or morality*". The ICCPR has a similar provision in its Article 12 (2).
55. The right to freedom of movement, including the right to freely leave one's country, is not absolute and can be subject to restrictions as provided for in the second part of Article 12 (2) of the African Charter. In this vein, Article 27 (2) of the African Charter on Human and Peoples' Rights also provides that "*[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest*".
56. Limitations to individual human rights must be imposed by law for a legitimate purpose and must be strictly necessary and proportional to achieve the aim for which they are imposed. See *GENERAL COMMENT NO. 5 ON THE AFRICAN*

CHARTER ON HUMAN AND PEOPLES' RIGHTS: RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE, ARTICLE 12 (1), adopted by the African Commission on Human and Peoples' Rights, at para 14. See also *GENERAL COMMENT NO. 27: ARTICLE 12 (FREEDOM OF MOVEMENT), adopted by the Human Rights Committee, at para 11.*

57. This Court has affirmed that the right to freedom of movement is fundamental, and any restriction must satisfy conditions of legality, necessity, and proportionality. The Court emphasized that restrictions must be based on clear legal grounds and cannot be arbitrary or discriminatory. See *MESSRS ABDOULAYE BALDE & ORS v. REP OF SENEGAL (2013) CCJELR 75.*

58. Thus, any restrictions imposed by the Defendant on the Applicant's freedom of movement, particularly the right to leave his country, must be imposed by law, pursue a legitimate aim, and be necessary and proportional to achieve that aim.

59. In addition, the principle of proportionality must be respected in the law that frames the restrictions and by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of the right to freedom of movement are expeditious and that reasons for applying restrictive measures are provided. See *GENERAL COMMENT NO. 27: ARTICLE 12 (FREEDOM OF MOVEMENT), adopted by the Human Rights Committee, at para 15.*

60. In this case, the Applicant has argued that police officers prevented him from leaving the country. He submits that the police officers only verbally told him that he would not be allowed to leave the country and that no formal procedures took place before he was prevented from traveling.

61. For the Applicant to convince the Court that his right to freedom of movement was violated, he must provide evidence to the Court that is consistent with his claims and that is persuasive to the Court. See *SOCIETÉ CISSE TECHNOLOGIE v. STATE OF MALI, ECW/CCJ/JUD/23/2021, at p.37, para.126; NOSA EHANIRE OSAGHAE & 3 ORS v. REPUBLIC OF NIGERIA ECW/CCJ/JUD/03/17, pg. 28.*

62. The general principle of evidence is that he who alleges has the burden of proof. Once the party with the burden of proof fulfills it, it benefits from the presumption and as such, the burden of proof shifts to the other party. *MR. CHUDE MBA v. REPUBLIC OF GHANA ECW/CCJ/JUD/10/13 @ pg. 25.*

63. In this regard, the Court has to analyze the evidence submitted by the Applicant to see if it supports the Applicant's claims to a degree of persuasion.

64. Exhibit 1 of the Initiating Application is an ECOWAS Identity Card issued to the Applicant by the Republic of Senegal, providing his biographic details. It aims to prove the Applicant's existence and establish his biographic information.

65. Exhibit 2 is a boarding pass issued to the Applicant by Air France for Flight AF711 to enable him to be admitted on-board the flight on 28 August 2024. This amply supports the conclusion that the Applicant was scheduled to depart Dakar on Flight AF711 and had completed check-in formalities.

66. Exhibit 3 is a copy of the Applicant's passport page, which indicates a departure stamp on 28 August 2024.

67. Exhibit 4 is an online newspaper publication from PressAfrik, dated 28 August 2024, stating that the Applicant was prevented from leaving the country via the Blaise Djagne International Airport on 28 August 2024.

68. All these pieces of evidence submitted by the Applicant must be cumulatively evaluated to authenticate his claims of restricting his free movement. Exhibits 1 and 2 support the Applicant's claim that he was indeed at the airport ready to travel via Air France.

69. The probative value of Exhibit 3 is slightly tainted by the fact that no identifying details on the document show that it emanated from the Applicant's international passport. His passport number does not appear on it. It also does not clearly indicate at which airport it was stamped on 28 August 2024.

70. However, a close look at the Applicant's Exhibit 4 conclusively supports the claim that the Applicant was prevented from leaving Senegal via the Blaise Djagne International Airport on 28 August 2024. The Court finds that the contemporaneity

of the newspaper publication with the date that the Applicant claims he was prevented from traveling satisfactorily establishes a *prima facie* case that shifts the burden of proof to the Defendant. See *MR. CHUDE MBA v. REPUBLIC OF GANA, supra, pg. 25.*

71. Since the burden of proof was transferred to the Defendant, which had to prove that the Applicant had actually traveled on the date in question, it submitted as evidence several occasions on which the Applicant had traveled to and returned from Senegal. The Court curiously notes that Exhibit 2 of the Defendant's Statement of Defense, which is a document purporting to show the times that the Applicant has freely passed through the Senegalese Border Police from 24 July 2018 to 28 August 2024, states that the Applicant departed Senegal via Air France Flight AF711 on 28 August 2024. The Court is of the view that, though the Applicant vehemently denies that he was permitted to travel on the date in question, this piece of evidence corroborates his claim that he was at the airport on 28 August 2024 and that he was to fly on Flight AF711.

72. The factual dispute between the Parties is whether the Applicant traveled after getting his passport stamped by the Border Police or whether he was stopped from departing on the plane.

73. The Court also notes from Exhibit 5 of the Statement of Defense, which is a report of the Applicant's first interrogation before the Chief Judge of the College of Investigating Judges of the Financial Judicial Pool, dated 26 September 2024, that the Applicant was interrogated by Police Commissioner El Hadji Baity Sene on 21 September 2024. This implies that the Applicant was indeed in Senegal on 21 September 2024.

74. The Court, therefore, seeks to find out whether the Applicant traveled out of Senegal on 28 August 2024 but was interrogated in Senegal on 21 September 2024. The Court further raises the question when did the Applicant return to Senegal? The answers to these questions should have been included in the Defendant's schedule of the occasions on which the Applicant left and entered Senegal.

75. Strangely, Exhibit 2 submitted by the Defendant, while purporting to support the Defendant's claim that the Applicant indeed left Senegal freely on 28 August 2024, is deficient in that it does not indicate when the Applicant returned to Senegal, such that he was in Senegal by 21 September 2024.

76. The Court finds that the State has the prerogative to submit this evidence to prove that the Applicant was able to travel freely out of Senegal on 28 August 2024.

77. The Court notes that Exhibit 2 provides the many times, dating back to July 2018, that the Applicant has freely traveled out of and returned to Senegal. But these dates are not in issue before the Court. The fact under consideration before the Court is whether the Applicant was allowed to leave Senegal through the airport on 28 August 2024.

78. After carefully examining the evidence available to the Court from the submission of both Parties, the Court finds that the Applicant was prevented from traveling by agents of the Defendant on 28 August 2024.

79. Since the Defendant gives no legal justification for this restriction of the Applicant's freedom of movement, it follows that it is arbitrary and, thus, unlawful.

80. The Court, therefore, finds that the Defendant has violated the right to freedom of movement of the Applicant, pursuant to Art 12 (2) of the African Charter on Human and Peoples' Rights.

XI. REPARATION

81. It is a general principle of law that any violation of an international obligation that has produced damage entails the obligation to make reparations. See *HEMBADOON CHIA & 7 ORS v. FEDERAL REPUBLIC OF NIGERIA & ANOR ECW/CCJ/JUD/21/18, pg. 33.*

82. The kind of reparation to be granted by the Court depends on the circumstances of each case. *WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES) V. SIERRA LEONE, ECW/CCJ/JUD/37/19, pg. 29.*

83. Having found in this case that the Defendant has violated the Applicant's right to freedom of movement, the Court will assess the reliefs the Applicant sought to determine the appropriate reparations for the established violation.

84. The Court refers to paragraph 14, supra and declares that the relevant reliefs to be considered are reliefs *'i to v'*.

85. The Court has already found the Defendant in violation of the Applicant's right to free movement as prayed for in '*reliefs ii and iii*' of paragraph 14 of this judgment.

86. Regarding Applicant's '*relief iv*' under paragraph 14, supra, the Court orders that Applicant's right to freedom of movement is fundamental and must be respected at all times, and any restriction must satisfy conditions of legality, necessity, and proportionality in accordance with Article 12(2) of the African Charter on Human and Peoples' Right.

87. The Applicant seeks compensation for his loss by awarding him a sum of not less than 500 Million CFA Francs. The Court views financial compensation as essential in this case but cannot grant the Applicant's prayer for the stated amount. This is because the Court is unable to assess the economic losses of the Applicant as he did not provide any evidence of the purpose of the aborted travel, costs of his flight tickets and other probable associated traveling costs incurred.

88. However, considering that preparing for a flight involves unavoidable financial commitments and the inconvenience caused to the Applicant as a result of being prevented from traveling, the Court finds it appropriate, in this case, to award general financial compensation in the amount of six million CFA francs (XOF 6,000,000.00).

XII. ON THE COSTS:

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

90. 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.

91. 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.

XIII. OPERATIVE CLAUSE

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

As to Jurisdiction:

i. Declares that it has jurisdiction to determine this case;

As to admissibility:

ii. Declares that the case is admissible;

On the merit:

iii. Declares that the Defendant has violated the right of the Applicant to freedom of movement pursuant to Article 12(2) of the African Charter on Human and Peoples' Rights;

As to Orders:

iv. Orders the Defendant to cease all restrictions on the free movement of the Applicant as guaranteed in international law, subject to the provisions of the law and laid down procedures.

v. The Defendant is ordered to pay the Applicant general financial compensation in the amount of Six million CFA francs (XOF 5,000,000.00).

XIV. ON THE COSTS:

93. Orders the Defendant to bear the costs of the proceedings to be assessed by the Registrar of the Court.

Done in Abuja on the 9th of May 2025, in Portuguese and translated into English and French.

Signature:

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

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

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

Mr. Gaye Sowe – Registrar