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

In the Matter of

MARIAME KONE-TOURE

V.

ECOWAS COMMISSION

Application No: ECW/CCJ/APP/32/24

Judgment No. ECW/CCJ/JUD/26/25

JUDGMENT

LAGOS

13 May 2025

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

HOLDEN AT ABUJA, NIGERIA

Application No. **ECW/CCJ/APP/32/24**

Judgment No. **ECW/CCJ/JUD/26/25**

MARIAME KONE-TOURE	**APPLICANT**
AND	
ECOWAS COMMISSION	**RESPONDENT**

COMPOSITION OF THE COURT

Hon. Justice Sengu Mohamed KOROMA	Presiding
Hon. Justice Dupe ATOKI	Member / Judge Rapporteur
Hon. Justice Gberi-Be OUATTARA	Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA	- Chief Registrar

REPRESENTATION OF PARTIES:

Maître Sadikou Ayo Alao	- Counsel for the APPLICANT
SCPA-Kanga Olaye and Associates	-Counsel for the RESPONDENT

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 a Community citizen and Staff Member of ECOWAS.
3. The Respondent is the ECOWAS Commission, an institution of the Economic Community of West African States (ECOWAS).

III. INTRODUCTION

4. The subject matter of this case relates to allegations of the Applicant that she was not nominated at the interview and therefore unfairly denied a chance to be appointed as the Head of Administration at the ECOWAS Community Court of Justice.

IV. PROCEDURE BEFORE THE COURT

5. The case commenced with the filing of an Initiating Application, together with an Application for Provisional Measures on 06 December 2024. These were served on the Respondent on 12 December 2024.
6. On 14 January 2025, the Applicant filed Additional Notes, which was served on the Respondent on the same date.
7. The law firm of SCPA KANGA-OLAYE and Associates sent a letter to the Court on 16 January 2025, informing the Court that they have been appointed as Legal Counsel to the Respondent in this suit.
8. The Court also received a letter from Maître Sadikou Alao, Counsel to the Applicant, on 23 January 2025, and indicating receipt of the letter from Respondent's Counsel.
9. The Respondent filed its Statement of Defence on 04 February 2025, and this was served on the Applicant on the same day.
10. The Applicant filed a Reply to the Statement of Defence on 20 February 2025, which was served on the Respondent same day.
11. On 14 March 2025, the Court held a virtual hearing in the case. Both Parties were represented by Counsel in Court. The Court noted that the Applicant had filed an Application for Provisional Measures. The Applicant admitted that the Application for Provisional Measures was now devoid of purpose since the actions sought to be stopped had now been completed. Thus, the Applicant withdrew the Application

accordingly. The Parties made oral submissions on the merits of the case, and the case was adjourned for judgment.

V. APPLICANT'S CASE

i. Summary of Facts

12. The case of the Applicant is that at the beginning of May 2023, the ECOWAS Commission published an internal vacancy notice for the post of Head of Administration and Human Resources Division (P5) at the ECOWAS Court of Justice.

13. She stated that having been acting in the said position since February 2023, she submitted her application for the position on Wednesday, 17 May 2023.

14. The ECOWAS Management Succession Committee (MSC) met on 22 and 23 January 2024 to conduct interviews for two posts and the shortlisting for 23 other positions. The agenda for the meeting was amended to include shortlisting for the post of Head of the Court's Administration and Human Resources Division.

15. Following this amendment, shortlisting was carried out for the position of Head of the Court's Administration and Human Resources Division, but the Applicant was not shortlisted for the position, as well as four other Staff Members at the Court who had equally applied for the position.

16. On Thursday 25 January 2024, the President of the Court wrote to the President of the Commission and the other members of the Management Succession Committee to draw their attention to the amendment to the agenda of the Committee's meeting of 22 and 23 January 2024, stating that due process had not been followed and thus, the shortlisting was not in order.

17. On Tuesday 30 January 2024, the President of the Commission replied to the letter of 25 January 2024 from the President of the Court and maintained that the Committee had been properly constituted and that the amendment to the agenda decided in the presence of the Court's representative could not be considered improper. The Committee concluded that the shortlisting was not improper and upheld it.

18. The Applicant then sent an administrative appeal, dated Wednesday 20 March 2024, to the President of the Commission, requesting that her name be included on the shortlist, as she had been acting in the position since February 2023.

19. On 03 April 2024, the Applicant received a response from the Director of the Office of the President of the Commission stating that she could not be included in the list of persons to be interviewed unless she had been formally appointed to act in the position she had applied for. Meanwhile, the Applicant had not been so officially appointed even though she had been *de facto* acting in the position.

20. The Applicant sent another letter to the President of the ECOWAS Commission in April 2024 in which she complained about her exclusion from the recruitment process despite her record of service, the fact that she was *de facto* acting in the post where the recruitment was launched and the lack of objectivity in the work of the firm that evaluated the applications. She requested to be included in the list of those to be interviewed. She did not receive any response to this letter.

21. However, on Saturday 20 April 2024, the Head of Recruitment at the ECOWAS Human Resources Directorate sent an e-mail to the ECOWAS Court requesting the list of all staff members appointed in an interim capacity.

22. Thus, at the request of the Staff Representatives of the ECOWAS Court, the Vice-President of the Court, acting on behalf of the President, appointed the Applicant as Acting Head of the Administration and Human Resources Division, with effect from 1 February 2023.

23. Consequently, the Court's Director of Administration and Finance wrote to the Commission's Acting Director of Human Resources, referring to the e-mail of 20 April 2024 from Mr Samourou Daniogo, Head of Recruitment at the ECOWAS Human Resources Directorate, to inform him that the Applicant had been appointed Acting Head of the Administration and Human Resources Division and invited him to grant her the rights and privileges conceded, with regard to recruitment, by the Council of Ministers to members of staff acting in interim capacity concerning certain positions.

24. The Applicant finally received a letter of invitation from the Commission to take part in the interview on 8 May 2024 for the position of Head of the Court's Administration and Human Resources Division.

25. She was interviewed on that day by the Management Succession Committee, alongside five other internal candidates for the position.

26. On 11 October 2024, the President of the ECOWAS Commission signed a letter appointing Ms. Amie Savage to the position of Head of the Court's Administration and Human Resources Division, asking her to resume on or before 25 October 2024. But Ms. Savage only received the appointment letter on 29 October 2024 and accepted the offer on 30 October 2024. Ms. Savage resumed at the Court of Justice on 04 November 2024.

27. The Applicant submits that the appointment of Mrs Ami Ibrahim Savage was made following an unfair recruitment process which does not respect the objective criteria for appointment, namely: on the one hand, the criterion of efficiency required by the recruiting institution, namely the ECOWAS Court of Justice, in particular general knowledge of the Court and its current affairs, and on the other hand, equitable geographical distribution, which must be duly taken into account when recruiting to professional positions. She further submits that this is a violation of the provisions of Articles 4(1) and 9(2) (a) (f) of the Revised ECOWAS Staff Regulations 2022.

28. The Applicant states that the recommendation of only Mrs Ami Ibrahim SAVAGE by Management Succession Committee in their report of May 2024 for the position of Head of Administration and Human Resources is unfair and unequitable as it goes against past ECOWAS practices. In proving this unfairness, she states that following the interview conducted for the position of Principal Accountant (P5) at the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), though there was a difference of nine (9) points between the top two but both candidates were recommended by the Management Succession Committee in their report of May 2024.

29. Also, in respect of the position of Principal Auditor, Inspection, Investigation and Special Audit (P5), at the Office of the Auditor General of ECOWAS Institutions (OAG), there was a difference of almost 5 points between the top two candidates, yet they were both recommended. Moreover, these recommendations have been endorsed by the Commission.

30. However, in respect to her case, the Applicant alleges that even though there was only 3.6 points difference between Mrs Ami Ibrahim SAVAGE and herself, the Committee recommended only Mrs Ami Ibrahim SAVAGE instead of the three leading candidates, including the Applicant.

31. She claims that this is clearly a case of double standard on the part of the Committee, which is contrary to the principles and values of ECOWAS.

32. Thus, on 07 November 2024, the Applicant lodged an *ex gratia* appeal with the President of the ECOWAS Commission complaining about the recruitment process. Having received no response to this appeal, she has approached this Court seeking an annulment of the decision to appoint Mrs. Ami Savage to the position of Head of Administration and Human Resources at the ECOWAS Court of Justice.

b. Pleas in Law

33. The Applicant cites Articles 4(1) and 9(2) (a) (f) of the ECOWAS Staff Regulations.

c. Reliefs Sought

34. The Applicant seeks the following reliefs from the Court:

i. Note that Ms Mariame KONE-TOURE has been acting as Head of the Administration and Human Resources Department within the institution since 01 February 2023;

ii. To note that she took part in the interviews for the recruitment of the Court's new Head of Administration and Human Resources;

iii. Note that she came 3rd following the deliberations of the committee responsible for recruitment;

iv. Note that the difference between 1st and 3rd place was only 3.6 points;

v. To note that the Commission recommended only Madam Ami Ibrahim SAVAGE for the grade of P5/1, whereas the first three, including Madam Mariame KONE TOURE, could all have been recommended in accordance with the organisation's precedents;

vi. To note that this treatment is a double standard that violates the principles of equality, fairness and non-discrimination;

vii. To declare and adjudge that the correspondence from the President of the ECOWAS Commission Ref: ECW/PER/01-P/11-10/Ots/Ya of 11 October 2024 entitled "APPOINTMENT AS HEAD OF DIVISION, ADMINISTRATION AND HUMAN RESOURCES, ECOWAS COMMUNITY COURT OF JUSTICE (P5/1), violates the principles of equality and non-discrimination;

viii. To order the cancellation of the correspondence from the President of the ECOWAS Commission Ref: ECW/PER/01-P/11-10/Ots/Ya of 11 October 2024 on

"APPOINTMENT AS HEAD OF DIVISION, ADMINISTRATION AND HUMAN RESOURCES, ECOWAS COMMUNITY COURT OF JUSTICE (P5/1);

ix. To order the reconsideration of the report produced by the committee with a view to recommending the three candidates who came first in the selection process for the position of Head of the Administration and Human Resources Division, including Madam Mariame KONE TOURE.

VI. RESPONDENT'S CASE

a. Summary of Facts

35. The Respondent, as a start, argues that this case is not admissible before the Court as the Applicant has not exhausted administrative procedures as provided by Articles 69 and 70 of the ECOWAS Staff Regulations.

36. In the event the Court deems it admissible, they proffer the following arguments. They submit that the Applicant was selected and invited among other candidates to interview for the position of Head of the Administration and Human Resources Division at the ECOWAS Court of Justice. In line with Article 20 of the ECOWAS Staff Regulations, the Management Succession Committee convened to interview the candidates on 08 May 2024.

37. The Management Succession Committee is an inter-institutional body responsible for approving all appointments and promotions from P5 Managerial level to D2 level. It composes of the President of the ECOWAS Commission as Chairman; the Heads of ECOWAS Institutions as Members; the ECOWAS Commissioner for Human Resources as Secretary; and the Director of Legal Affairs as Advisor. Pursuant to Article 20 (3) of the Staff Regulations, the Management Succession Committee adopts its own internal regulations.

38. At the end of the interview the Applicant's performance fell below standard and the Committee did not recommend her for appointment. Having learnt of her poor performance at the interview, she proceeded to discredit the recruitment process, as well as the results.

39. In response to the Applicant's allegation that the Management Succession Committee employed double standards in disqualifying her for recommendation for the position applied for, the Respondent states that this claim is unfounded. They submit that the Committee has a discretion in its assessment and

recommendation of candidates, based on the several factors including most importantly the candidates' performance at the interview.

40. The Respondent further submits that the Applicant seeks to discredit the Management Succession Committee without providing proof of any specific irregularity or the violation of any Community legal texts.

41. In response to the Applicant's claim that the appointment of Ms. Savage violates the principle of equitable geographical distribution of posts among nationals of all Member States, the Respondent states that Article 18 (5) of the Revised ECOWAS Treaty provides that "*when appointing the professional staff of the Community, due account shall be taken, in addition to conditions of efficiency and technical competence, of an equitable geographical distribution of posts among nationals of all Member States*". Thus, the main recruitment criteria are efficiency and technical competence; and geographical distribution is only an accessory criterion.

42. Moreover, the ECOWAS recruitment policy provides for all posts to be filled by competitive examination, and the ECOWAS has not adopted a policy of employment quotas between Member States.

43. Furthermore, the assessment of the geographical distribution is among all ECOWAS institutions and cannot be done in piece-meal as the Applicant attempts to. In this vein, the Respondent states that more than six Member States have no Staff Member at the Court at P5 Grade-level.

44. Concerning the Applicant's argument about the late assumption of duty by Ms. Savage, the Respondent submits that this issue is of no moment for the Applicant and has no bearing on her rights allegedly violated.

b. Pleas in Law

45. The Respondent relies on the following pleas in law:
    i. Article 18 (5) of the Revised ECOWAS Treaty.
    ii. Articles 20, 69 and 70 of the ECOWAS Staff Regulations.

c. Reliefs Sought

46. The Respondent seeks the following reliefs:

i. Declare Mrs. Mariame Kone-Toure's action inadmissible for failure to comply with the dispute resolution procedure;
ii. Declare Mrs. Kone-Toure's action unfounded;
iii. Declare that the recruitment process for a P5/1 agent at the ECOWAS Court of Justice complies with the Revised Treaty and the relevant provisions of the ECOWAS Staff Regulations;
iv. Find that there has been no violation of the rules of fairness and equality;
v. Consequently, dismiss Mrs. Mariame Kone-Toure's claims; and
vi. Order her to pay all the costs of the proceedings.

VII. APPLICANT'S REPLY

47. The Applicant filed a reply to the effect that she satisfied the requirements of Article 69 of the Staff Regulations. She argues that the dispute resolution procedures in the Staff Regulations are inapplicable in her case, as the case is in respect of a decision of the President of the ECOWAS Commission who has no hierarchical superior to which a complaint may be made. Moreover, by virtue of those Articles, she would have to make a complaint to the Staff Conciliation and Dispute Resolution Committee at the Court of Justice, whereas the decision she complains about is not a decision made by officials of the Court.

48. The Applicant further alleges that certain words used in the Statement of Defence which accuse her of poor performance or under performance, denigrate her professional value and dignity, and are against the provisions of Article 4 (2)(a) of the ECOWAS Staff Regulations.

VIII. JURISDICTION

49. The jurisdiction of the Court in disputes concerning ECOWAS Staff matters is provided in Article 9(1) (f) of the Court's Protocol, as amended by the 2005 Supplementary Protocol which provides for the Court to have the competence to adjudicate on any dispute relating to the Community and its officials.

50. The Court notes that A "Community Official" is defined in Article 7(4) of the General Convention on Privileges and Immunities of the ECOWAS *as members of staff of the community entitled to privileges and immunities. They shall be the professional international civil servants as defined in the Staff Rules and*

Regulations of the Community, and such other persons as the Executive Secretary may designate from time to time.

51. The Applicant in this case is a staff of the Court of Justice, a Community Institution, and is thus a Community Official. The allegation is brought against a Community Institution, the ECOWAS Commission, and concerns a dispute relating to acts carried out in the course of employment of the Applicant. Therefore, the Court finds that this is a dispute between the Community and one of its officials. See JONAS KUGBLENU ADUNKPE v ECOWAS COUNCIL OF MINISTERS, ECW/CCJ/JUD/09/25 at paras 47 - 50; KABORE HENRI V ECOWAS COMMISSION, ECW/CCJ/JUD/25/23, paras 32 - 49.

52. The Court therefore holds that it has jurisdiction to determine this case in line with Article 9(1) (f) of the Court's Protocol as amended.

IX. ADMISSIBILITY

53. The Respondent in its Statement of Defence submits that this case is inadmissible before the Court, as the Applicant did not follow the dispute resolution procedures outlined in Articles 69 and 70 of the ECOWAS Staff Regulations.

54. The Applicant states in response that the instant case is an appeal against a decision of the President of the ECOWAS Commission, taken upon the recommendation of the Management Succession Committee. She argues that since the President of the ECOWAS Commission has no hierarchical superior, it is impossible to complain about his decision to a higher administrative authority.

55. Moreover, the President of the ECOWAS Commission is the only one who can receive complaints on the deliberations of the Management Succession Committee which he chairs. Having submitted her complaint to the President, she submits that her application is admissible.

56. She argues that the implementation of Article 69 of the Staff Regulations will require a complaint to a hierarchical superior, which is impossible, as in this case, the President of the Commission has no such superior.

57. She also makes the argument that it is incongruous to require her to submit a complaint to the Court's Committee on Staff Conciliation and Dispute Resolution since the decision on recruitment, which she complains about was not taken by an

official of the Court. Furthermore, the Committee of the Court does not have the power to receive and hear a complaint against the President of the Commission, or against the Management Succession Committee, whose decisions are the subject matter of this case.

58. In addition, she cannot complain to the Staff Conciliation and Dispute Resolution Committee of the ECOWAS Commission as she is not a Staff Member of the Commission.

59. Furthermore, she justified her inability to approach the Inter-Institutional Appeals Committee as the Committee's mandate only relates to complaints about disciplinary issues, while her complaint relates to recruitment irregularity.

60. The Applicant therefore concludes that Article 69 of the Staff Regulations is inapplicable to her case. Thus, by writing an *ex-gratia* appeal to the President of the ECOWAS Commission, she has exhausted all the available internal appeal processes as required by Article 10 (e) of the Supplementary Protocol of the Court, therefore she urged the Court to declare her application admissible.

Analysis of the Court

61. Article 69 (2) and (5) of the Revised ECOWAS Staff Regulations 2022 regulates the procedure for a Staff Member who wishes to challenge a decision taken against him /her. It provides that the Staff Member shall submit to his immediate supervisor within a month an application requesting the withdrawal of the contested decision. If the application is rejected, the Staff Member shall send a letter to the Head of Institution within one month. If unsatisfied with the decision of the Head of Institution, the Staff Member shall refer the matter to the Committee for Conciliation of Staff Claims and Dispute Resolution. If still not satisfied with the decision of the Committee, the Staff Member may refer the matter to the Joint Advisory Board for consideration.

62. By virtue of Article 69(4) of the Staff Regulations, the Committee for Conciliation of Staff Claims and Dispute Resolution shall be responsible for examining the Staff Member's claims and making recommendations to the Head of Institution. This Committee shall not examine disciplinary issues. For disciplinary issues, Article 70 of the Staff Regulations provides for an Inter-Institutional Appeals Committee to examine such.

63. However, Article 69 (3) of the Staff Regulations provides that the modalities for implementing the Article- i.e. dispute settlement provisions- shall be defined in the Manual of Procedures. In addition, Article 69 (4)(a)(iii) also provides that the modalities for implementing the Committee for Conciliation of Staff Claims and Dispute Resolution shall be defined in the Manual of Procedures.

64. Article 10(e) of the Court's Protocol, as amended by the 2005 Supplementary Protocol 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*".

65. The import of Article 10(e) of the Court's Protocol, as amended, is that the Staff Member is to exhaust all appeal processes available to her under the Staff Regulations.

66. The Court notes as claimed by the Applicant that she did not write an appeal to her immediate supervisor, or to the Committee on Conciliation of Staff Claims and Dispute Resolution before bringing her case before the Court. However, she wrote an appeal to the President of the ECOWAS Commission and addressed a similar appeal to the President of the Community Court of Justice.

67. The Court agrees with the argument of the Applicant that the President of the ECOWAS Commission is the only official who can receive complaints on the deliberations of the Management Succession Committee which he chairs. As rightly argued, it is inconceivable to expect her to submit a complaint to the Court's Committee on Staff Conciliation and Dispute Resolution on a recruitment decision not taken by the Court.

68. The Court holds that in submitting an appeal letter to the President of the Commission, the Applicant has exhausted the internal appeal processes available to her under the Staff Regulations.

69. This case is therefore declared admissible.

X. MERITS

70. The Applicant's case is that the recruitment process for the position of Head of Administration and Human Resources Division at the ECOWAS Court of Justice was unfair to her and violates the provisions of Articles 4(1) and 9 (2)(f) of the Revised ECOWAS Staff Regulations 2022.

71. She alleges that the recruitment process did not respect the objective criteria for appointment, i.e. technical efficiency, knowledge of the institution, and equitable geographical distribution.

72. Furthermore, she alleges that she was discriminated against, because for similar positions at GIABA and the OAG, all the top performing candidates at the interviews were recommended by the Management Succession Committee while in respect of the position she was interviewed for, only the candidate with the highest score was recommended for the position, despite the difference in their interview performance being minimal.

73. She also allege that the process did not respect the principle of equitable geographical distribution of positions at the Court of Justice as her State of origin, Cote d'Ivoire has no Member of Staff at the Court who is on Grade P5 while The Gambia, the State of origin of the Staff Member appointed for the position, already has two P5 Staff members at the Court.

74. Finally, she alleges that reference to her alleged poor performance by the Respondent denigrates her professional value and dignity contrary to Article 4 (2) (a) of the ECOWAS Staff Regulations.

75. The Respondent, in its response, states that the Applicant's claim of discrimination against her is unjustifiable. They submit that the Management Succession Committee has discretion as to who to recommend for positions based primarily on the technical efficiency of the candidates.

76. Furthermore, the Respondent submits that technical competence, and not the principle of equitable geographical distribution at ECOWAS Institutions, is the main criterion for ECOWAS staff appointments. Moreover, the ECOWAS recruitment policy is that all posts shall be filled by competitive examination, and ECOWAS has not adopted a policy of employment quotas between Member States.

77. In addition, the assessment of the geographical distribution is among all ECOWAS institutions and cannot be done in piece-meal as the Applicant attempts to. In this vein, the Respondent notes that more than six Member States have no Staff Member at the Court at P5 Grade-level. They therefore urged the allegation to be dismissed.

Analysis of the Court

78. The sum total of the allegation of the Applicant is as follows;
    i. Alleged violation of Article 4(1) of the ECOWAS Staff Regulations
    ii. Allege violation of 9 (2) (f) of the ECOWAS Staff Regulations
    iii. Allege poor performance denigrates her professional value and dignity contrary to Article 4 (2) (a) of the ECOWAS Staff Regulations.
79. To support her allegations that these provisions were violated in the recruitment process for the position of the Head of Administration and Human Resources Division at the Community Court of Justice, the Applicant must provide concrete evidence that backs up her claims.
80. The Court has held that it behoves the claimant making an allegation to support same with uncontroverted evidence. Claims without evidence, are viewed as mere statements without evidence to persuade this Court of its veracity. See MATTHEW ISABU V. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/41/22 @ pg.25 para 79; ADAMA VANDI v. STATE OF SIERRA LEONE ECW/CCJ/JUD/32/22 @pg. 13 Para 48.
81. Therefore, any Application that is unsupported by credible evidence will fail as not having been proved. See PHILEMON OBASOGIE ANOR. v. THE FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/35/22 @ Para 49.
82. The court will now examine each head of the allegation to determine whether the Applicant has proved her case.

Alleged violation of Article 4(1).

83. The Applicant allege that she was discriminated against as only one best performing candidate was recommended for the position in respect of the Court, while all the top performing candidates at GIABA and the OAG, were recommended by the Management Succession Committee despite the difference in performance being minimal.

84. This process she alleges violates Article 4(1) of the Revised ECOWAS Staff Regulations 2022 provides that: "*ECOWAS shall act in a just, fair and equitable manner in all circumstances and adhere to legal procedures in its relations with Staff Members. In the interest of equity, it shall not discriminate between individuals or groups of staff*".

85. In support of this allegation she narrated in pages 8 and 9 of her supplementary notes as follows: *"by way of illustration, in the same report of May 2024, for the position of Principal Accountant, GIABA: there was a 9-point difference between the candidates who came out on top after the interview: they were both recommended for appointment; for the position of Principal auditor, Inspection, Investigation and Special Audit, OAG (P5)' there was a gap of almost 5 points between the candidates who came first and second: they were both recommended for appointment. Furthermore, the President of the Commission and Chairman of the Management Succession Committee used the interview report for the position of Director Budget and Treasury as a basis for appointing the candidate who came second with 75.75 points, i.e. a difference of 14.50 points compared with the candidate who came first for the post of Director Financial Reporting and Grants, a position which had not even been published at the outset;"* Doc 3 page 9 *"But curiously enough, in the same report of May 2024, even though the difference in the final rankings between Madam Ami Ibrahim SAVAGE and the Applicant was only 3.6 points, the Committee, in its conclusions, recommended only Madam Ami Ibrahim SAVAGE, whereas it could have recommended the three leading candidates, including the Applicant;"* see Doc 3 Supplementary notes page 9

86. The above represents the Applicant's basis for her alleged discrimination by the Committee, which raised two issues of alleged discrimination against the Applicant.

    i. Different treatment with regards to the process of recommendation. The top two candidates were recommended for appointment in GIABA and OAG, while the Applicant who came third position was not recommended for appointment.
    ii. The candidate who came second position was appointed as the Director Budget and Treasury, while the Applicant who came third at the CCJ was not appointed.

87. The Court has on numerous occasions held that discrimination occurs when persons in the same situation are treated differently without any objective and

reasonable justification. Therefore, for an allegation of discrimination to succeed, the facts must show differential treatment in similar situation. See REGISTERED TRUSTEES OF EMPOWERMENT OF UNEMPLOYED YOUTHS' INITIATIVE V FEDERAL REPUBLIC OF NIGERIA & 2 ORS CCJ/JUD/37/22 @ pg 34 para 115.

88. In that regards, the court must first determine what amounts to similar situation in the instant Application. Does it encompass the situation in respect of the interview conducted in respect of other ECOWAS institutions, or is restricted to the conduct of the interview for the position of the Head of Administration and Human Resource of the Court, of which the Applicant was a candidate.

89. The appropriate response to the foregoing question is that the similar situation contemplated in this context refers to the conduct of interviews across the various institutions regulated by the same procedures and governing rules. As such, it is expected that a uniform set of criteria would be applied across these institutions.

90. The court is of the opinion that recommending only the best performing candidate for appointment in the Court to the exclusion of the Applicant while other institutions recommended more candidates within the minimum threshold of the required marks, has the potential to create a differential treatment. However, it has also maintained that a distinction in treatment is only potentially discriminatory when it consists of less favorable treatment of certain individuals compared to others in a similar situation, such differentiation does not, in itself, rise to the level of adverse discrimination in the absence of evidence that less qualified or lower-ranked candidates were appointed in her stead. Similarity of situations does not mean identical in all points. UNION SOCIALE LIBERALE (USL) V STATE OF SENEGAL ECW/CCJ/JUD/10/21 @ pg. 27 Para 83.

91. The mere fact of not being nominated does not translate into a violation of equal treatment unless it is shown that the selection process unjustly disregarded better-qualified candidates in favour of lesser ones. In this case, no such evidence has been presented to the Court.

92. Indeed, the Applicant has not provided sufficient proof of the facts underpinning her allegations of discrimination. What has been placed before the Court are mere references to the processes in other ECOWAS institutions where some unidentified candidates were recommended for appointment as well as the differentiating scores amongst them.

93. The narration of the Applicant in pages 8 and 9 of her supplementary notes in this regards is reproduced; *"by way of illustration, in the same report of May 2024, for the position of Principal Accountant, GIABA: there was a 9-point difference between the candidates who came out on top after the interview: they were both recommended for appointment; for the position of Principal auditor, Inspection, Investigation and Special Audit, OAG (P5)' there was a gap of almost 5 points between the candidates who came first and second: they were both recommended for appointment. Furthermore, the President of the Commission and Chairman of the Management Succession Committee used the interview report for the position of Director Budget and Treasury as a basis for appointing the candidate who came second with 75.75 points."*

94. It is trite that he who alleges must prove. In this regards the Applicant is required to support the alleged differential treatment in similar situation with concrete evidence to that effect. The narration above only reference two anonymous candidate in GIABA who were recommended without indicating who was eventually appointed, ditto the narration for OAG.

95. In the instant case, to succeed in the allegation of discrimination, considering that the Applicant identified both herself and the candidate appointed at the CCJ by name as well as their scores, the Court must therefore be presented with the names and marks scored by all the recommended candidates in GIABA and the OAG as well as the names and scores of the recommended candidates that were eventually appointed for the positions in those institutions. The Court is unable to examine the alleged differential treatment against the Applicant where the referenced candidates who were recommended and appointed are anonymous and without their corresponding scores.

96. To succeed in an allegation of discrimination, all facts relevant in respect of the Applicant and corresponding facts of other parties must be available to enable the Court and supported by comprehensive evidence to make a comparative analysis of the differential treatment similar situations.

97. The Court notes that the Applicant has some information on the marked she scored, difference in marks scored between herself and Ms Savage, and between the two top candidates of other institutions as well as the candidates who were recommended for appointment and actually appointed. While these facts do not substantiate her allegation of discrimination, the Court is of the opinion that the

Applicant had access to the reports of the Management Succession Committee who conducted the interview. Nevertheless, the Applicant "*invites the Court to ask the Chairman of the Management Succession Committee to provide it with the report referred to*" Doc 3 page 9. The Court believes that the report of the conduct of an interview herein referred is not a document open for public consumption yet the Applicant was able to access it to gather some information in support of her allegation of discrimination.

98. Having had the opportunity to access the report, the Court expects the Applicant to submit at the minimum, a copy of the relevant portion of the report based on which the Court may exercise its inherent powers to invite the Chairman to submit the original report to enable the authentication of the facts presented by the Applicant. Under this circumstances, it is therefore not the duty of the Court to invite the Chairman of the Committee to provide the said report.

99. The Court therefore declines to invite the Chairman of the Management Succession Committee to present the original report of the interview conducted in respect of the Applicant and other institutions of the ECOWAS herein named. Consequently, in the absence of a comprehensive and exhaustive evidence to enable the court carry out a comparative analysis of the alleged different treatment meted against the Applicant viz-a-viz the other candidates, the court is unable to determine that her non recommendation for appointment was disadvantageous to getting appointed as the head of Administration and Human Resources at the ECOWAS Court.

100. The Court is not unmindful of the Applicant's claim that she came third position in the interview conducted for the position at the Court, she however, alleges that a candidate in *Director Budget and Treasury* who came second in the position was appointed to that position. To succeed in allegations i and ii above, the Applicant must prove with credible evidence that candidates who scored third in the other named institutions were recommended for appointment. Also that candidates who came third in the said institution were appointed to head their various departments. Such proof will avail the Applicant the consideration of her allegation of discrimination being a different treatment in similar situation

101. The import of discharging the burden of proof which rests on whoever alleges cannot be overemphasised, and the court's decisions in this regards abounds. The Applicant must substantiate such claims with credible and convincing evidence

capable of persuading the Court. In that regards, where claims are alleged, it is imperative that proof necessary to sustain the claims are adduced. Thus, in the instance where uncontroverted proof has not been adduced to discharge the burden, the Court considers the claim before it as mere statements. See ABIODUN ILESANMI V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/05/24 Pg. 64. Pg. 18.

102. As it stands, all the facts alleged by the Applicant to support a discriminatory treatment amount to mere allegations unsupported by cogent evidence. Consequently, the Court is of the considered opinion that the Applicant has not convinced the Court that the failure of the Committee to recommend her and a fortiori her appointment as the head of the Administration and Human Resources Division (P5) at the ECOWAS Court of Justice amounts to discrimination.

103. Consequently, the allegation that the process of the interview by the SMC for the position of the Head of Administration and Human Resources at the CCJ violates Article 4(1) of the Staff Regulation of 2022 is unsubstantiated and is therefore dismissed.

On alleged violation of Article 9 (2) (f)

104. With regards to this allegation, the Applicant's claim is that the appointment of Ms. Savage violates the principle of equitable geographical distribution of posts among nationals of all Member States. The Court notes the data provided by the Applicant that her State of origin, Cote d'Ivoire has no Member of Staff on Grade P5, while The Gambia has two P5 Staff members at the Court.

105. She relied on Article 9 (2) (f) of ECOWAS Staff Members which provides that *"[w]ith regards to equally qualified applicants, preference shall be given to (i) internal candidates, (ii) gender balance and, (iii) nationals of Member States with the lowest staff representation in the Institution"*.

106. The Court equally notes the Respondent's argument that technical efficiency, and not the principle of equitable geographical distribution at ECOWAS Institutions, is the main criterion for ECOWAS staff appointments. Stating further that, moreover, the ECOWAS recruitment policy is that all posts shall be filled by competitive examination, and ECOWAS has not adopted a policy of employment quotas between Member States.

107. As submitted by the Respondent, the Court notes that Article 18 (5) of the ECOWAS Revised Treaty is instructive in the instant case. The Article provides that "*when appointing the professional staff of the Community, due account shall be taken, in addition to conditions of efficiency and technical competence, of an equitable geographical distribution of posts among nationals of all Member States*".

108. It is the considered view of the Court that as provided in Article 18(5), the main recruitment criteria are efficiency and technical competence; and geographical distribution is only an ancillary criterion relevant after the fact. Moreover, as argued by the Respondent, it is not on record that the ECOWAS has not adopted a policy of employment quotas between Member States. The Committee having found the Applicant falls short of necessary technical competence, the alleged failure of the Committee to consider the geographical distribution in the court in her favour does not avail her. The Court fully aligns itself with the argument and defence of the Respondent.

109. The allegation of the violation of Article 9 (2) (f) of the ECOWAS Staff Regulations relative to non-equitable geographical distribution of posts is therefore dismissed.

- *Alleged late Resumption of the selected candidate.*

110. On the allegation of the late resumption of Ms Savage, The Court finds that it bears no relevance to support the Applicant's case and is accordingly dismissed for lack of merit.

- *On the alleged Poor Performance of the Applicant.*

111. Regarding her alleged poor performance by the Respondent which she claims denigrates her professional value and dignity contrary to Article 4 (2) (a) of the ECOWAS Staff Regulations, the Court notes that the content of this Article is not recited in the Applicant's initiating application. However, a suo moto search conducted by the Court reveals that the said Article 4 (2) (a) of the ECOWAS Staff Regulations provides that: *In addition, ECOWAS shall protect all staff members from every form of threat, outrage, duress, assault and battery, insult or defamation to which he/she may be subjected as a result of, or during the performance of his/her duty.*

112. The Court notes the passionate argument of counsel to the Applicant at the hearing in defence of her integrity which he vehemently argued has been tarnished by the statement alleging her incompetency. The undisputed fact before the Court reveals

that the Applicant attended an interview for the position of the Head of Administration and Human Resources Division (P5) at the ECOWAS Court of Justice.

113. The facts alleged by the Applicant indicate that though she scored 70 marks she was not the candidate with the highest score. The report of the Management Succession Committee reflects this position based on which the Applicant was not appointed to the said position. The Court is unable to comprehend how the report of the interview which states that the Applicant's performance did not reflect the competences required for the post is an affront on her integrity. This is more so that the Applicant herself posited that *"……the interview serves essentially to assess the competence and qualifications of the candidates*" Doc 3; page 8.

114. The Court is of the opinion that the provision of Article 4 (2) (a) of the ECOWAS Staff Regulations cannot be implicated in the process of a recruitment exercise as the prohibited conducts indicated therein are expected to be inflicted "*as a result of or during the performance of his/her duty*". In other words the Article is meant to protect staff from conducts inimical to their safety or reputation suffered in the course of their duty. The process of interview of the Applicant cannot amount to the performance of her duty, which is the basis of the protection provided by the said Article.

115. Consequently, the Court holds that the report of the Applicant's poor performance by the Respondent which she claims denigrates her professional value and dignity contrary to Article 4 (2) (a) of the ECOWAS Staff Regulations lacks merit and is therefore dismissed.

116. The Court is of the considered opinion that all the Applicant's allegations are unsubstantiated having not presented evidence to support her case. She failed in all material particular to establish her case against the Respondent. The totality of the Applicant's claim fails same lacking in sufficient proof.

117. In all, the Court finds that all the allegations of the Applicants are unsubstantiated. Consequently, the Applicant's claims is dismissed in its entirety.

XI. COSTS

118. The Applicant did not pray for costs, but the Respondent prayed the Court to order the Applicant to pay his costs.

119. Article 66 (1) of the Rules of Court states that "*A decision as to costs shall be given in the final judgment or in the order, which closes the proceedings.*"

120. Furthermore, Article 66(2) of the Rules of Procedure provides that "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings*".

121. The Court orders that the parties shall bear their own costs of the proceedings.

XII. OPERATIVE CLAUSE

122. 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 the Application admissible.

As to Merits:

iii. Dismisses the Applicant's case in its entirety.

As to costs:

iv. Orders each Party to bear its own costs.

Hon. Justice Sengu Mohamed KOROMA Presiding .....

Hon. Justice Dupe ATOKI Member / Judge Rapporteur .....

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

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

Done in Lagos this 13th May 2025 in English and translated into French