THE COMMUNITY COURT OF JUSTICE OF THE

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

MR. GBENGA DAVID YAKUBU V ECOWAS COMMISSION

Application No: ECW/CCJ/APP/20/24 Judgment NO. ECW/CCJ/JUD/03/25

RULING

ABUJA

DATE: 7th July 2025.

MR. GBENGA DAVID **- APPLICANTS**

V.

ECOWAS COMMISSION **-RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Sengu Mohamed KOROMA -Presiding/Rapporteur
Hon. Justice Dupe ATOKI -Member
Hon. Justice Edward Amoako ASANTE -Member

ASSISTED BY:
Dr. Yaouza OURO-SAMA -Chief Registrar

REPRESENTATION OF PARTIES:

Ameh F. ADEJO (Esq.) - Counsel for the APPLICANT

A. H. ADEBAYO (Esq.) - Counsel for the RESPONDENT

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as *'the Court'*) delivered virtually in open Court pursuant to Article 8(1) of the Practice Direction on Electronic Case Management and Virtual Court Session, 2020.

II. DESCRIPTION OF THE PARTIES

2. The Applicant is Mr. Gbenga David, a former staff member of the ECOWAS Commission and a Nigerian citizen who resides at 786 Celeste Ln SW Atlanta, GA, United States of America.
3. The Respondent is the Commission of the Economic Community of West African States, an Institution serving as the Community's Secretariat.

III. INTRODUCTION

4. The subject-matter of the claim before the Court borders on the alleged failure of the Respondent to pay the terminal benefits of the Applicant after his voluntary resignation from the services of the Respondent in 2016, contrary to the terms and conditions of service contained in the Staff Regulations.

IV. PROCEDURE BEFORE THE COURT

5. The Applicant filed an Initiating Application on 24th July 2024 in the registry of the Court.
6. Following the lack of response from the Respondent, the Applicant filed an application for Judgment by Default on 8th November 2024.
7. On 28th April 2025, the Respondent filed an Objection against the Jurisdiction of the Court.

8. This was followed by the Applicant's response and written legal argument to the Objection raised by the Respondent, filed on 7th May 2025 in the registry of the Court.
9. On 9th May 2025, the Court heard both parties on the Preliminary Objection and adjourned for Ruling on the same.

V. APPLICANTS' CASE

a) Summary of facts

10. The Applicant claims that he was a former Staff member of the Respondent between August 2003 and September 2016. During that period, he worked in the Finance Department as a contract staff member and was subsequently made a permanent staff member before his resignation in 2016.
11. He contends that the Respondent has not paid his final entitlement since his resignation. It came to his knowledge that his entitlement was processed at one stage but not paid because of a purported uncleared balance in his account of $ 133,844.00. This was made known to him through a personal enquiry because the Respondent did not at any time inform him of the alleged negative balance in his account.
12. The Applicant alleges that at no time after his resignation did the Respondent make an effort to invite him, or cause an investigation into the said amount.
13. He explains that the amount was a purported balance from an advance of $133,884.00 lodged through his ledger by one Mr. John Addingi for a workshop in ABIDJAN (COTE D'IVOIRE) that was postponed.
14. The voucher was cashed by John Addingi in Abuja, while the Applicant was on a mission in Abidjan. That the transaction was confirmed via a letter dated 05/11/2009 and titled "*Withdrawal from domiciliary account no: 1042510100024602*" from the Commission addressed to the Manager,

ECOBANK Nigeria PLC in respect of a sum of $133,844.00 to be disbursed in cash to one ADDINGI JOHN, and which was done.

15. The mission to Abidjan was later postponed and rescheduled to November 2009. That subsequently, another payment voucher for the sum of $147,980.00 was issued in the name on one ORJI EMELE HOPE in respect of the same workshop that was rescheduled two (2) weeks after making a cash withdrawal of the first cheque.

16. He avers further that he had, before his resignation, addressed a letter to the Director of Finance at the Commission requesting the reversal of the said advance of $133,884.00 in his ledger. He also wrote several letters to the Commission requesting the reversal, but the Commission never yielded to his request.

17. Despite efforts made and correspondences sent by him to the Commission before and after he resigned, requesting that the matter be investigated and cleared, the Commission has failed to take any steps towards resolving and clearing the said advance, thus denying him his entitlements to date.

18. Following the Commission's reluctance to investigate and pay him his entitlements, he caused his Lawyer to write to the Commission to investigate the circumstances surrounding the non-payment of his final entitlement and, in the event of failing to do so, cause an action against the Commission in the Court to seek redress.

b) Pleas in law

19. The Applicant is relying on the following pleas in law:

i. Articles 4(1), (2)(d) of the ECOWAS Staff Regulation.

ii. Articles 52, 57, 58, 59-63, 65, 67, and 69 of the ECOWAS Staff Regulation.

c) Reliefs sought

20. The Applicant is seeking the following reliefs from the Court:

i. *A DECLARATION* that the Applicant is entitled to the comprehensive computation, declaration, and formal notification of his full entitlement for service with the Commission from August 2003 till his resignation in September 2016 and thereafter till date and until final judgment and payment of the entitlement.

ii. *AN ORDER* mandating the Respondent to make full and final payment of the Applicant's entitlement for service with the Commission from August 2003 till his resignation in September 2016 and thereafter till date and until final judgment and payment of the entitlement.

iii. *AN ORDER* that the Respondent pays interest on the total computed sum of the entitlements to the Claimant at the Central Bank of Nigeria (CBN) minimum rediscount rate (MRR) prevailing at the time of the judgment.

iv. *DAMAGES* of $250,000.00 (Two hundred and fifty thousand USD) being general damages against the Defendant for the breach of the regulation and causing the Plaintiff the stress, trauma, aspersion and denial of the Claimant of his right to enjoyment of his peaceful resignation and the use of his earned entitlement since his resignation in September 2016.

v. *AN ORDER* for the cost of this action for the sum of $10,000.00 (ten thousand USD)

VI. RESPONDENT'S CASE

a) Summary of facts

21. The Respondent contends the jurisdiction of the Court by filing a Preliminary Objection pursuant to Article 87 of the Rules of the Court on the following grounds:

i. *This action is statute-barred.*
ii. *The Applicant lacks locus standi to initiate and maintain this action*
iii. *There is no life issue to be determined by this honorable court.*
iv. *The suit or action is an abuse of the court process initiated to annoy and irritate the Defendant.*
v. *The court lacks the vires and requisite jurisdiction to hear and determine this suit.*

22. Arguing its case under the heading, lack of jurisdiction due to the statute of limitation, the Respondent submits that the Court lacks jurisdiction under Article 9(3) of the Supplementary Protocol A/SP/1/01/05, which bars any action brought more than three years after the right of action arose. It contends that the Applicant's alleged cause of action arose in 2016 when he claims his entitlements were not calculated following his voluntary resignation. As the initiating application was filed more than eight years later, it is submitted that the claim is statute-barred.

23. The Respondent relies on the Court's jurisprudence in the case of COL. MOHAMMED SAMBO DASUKI (Rtd.) V FEDERAL REPUBLIC OF NIGERIA (2016) CCJELR at page 531, where the Court reiterated that jurisdiction requires proper constitution, subject matter competence, and initiation by due process. More particularly the Respondent submits, in the case of ALHAJI (DR.) MAN M.B. JOOF V. ECOWAS COMMISSION (2016)

CCJELR at page 69, the Court struck out a similar employment-related claim for being filed beyond the three-year limitation period.

24. The Respondent argues further that the suit constitutes an abuse of the court process, as it is predicated on a claim without legal basis. The Applicant was dismissed for financial misconduct and thus lacks a valid claim to the reliefs sought.

25. Based on its submissions, the Respondent prays the Court to dismiss the application for being statute-barred, an abuse of court process, and beyond the Court's jurisdiction.

b) Relief sought

26. The Respondent contends that the Court is bereft of jurisdiction and prays that in the interest of justice, it will strike out and dismiss the case of the Applicant in its entirety.

VII. APPLICANT'S REPLY

27. The Applicant opposes the Respondent's Preliminary Objection on two main grounds: (1) the claim that the Applicant has no right of action due to termination from employment, and (2) the assertion that the action is statute-barred under Article 9(3) of the Supplementary Protocol A/SP/1/01/05.

28. In this regard, the Applicant submits that the objection is vexatious, constitutes an abuse of court process, and should be dismissed outright. The Applicant relies entirely on the statement of facts and argues that the Court has the jurisdiction to hear and determine the matter.

29. Regarding jurisdiction, the Applicant contends that the fact of termination is not conclusive and must be supported by evidence. In support of this, Applicant

tenders a letter of resignation dated 8 August 2016 and points out the absence of any counter-documentation from the Respondent rebutting this fact. Relying on the principle that acquiescence means consent, the Applicant urges the Court to accept the evidence of his resignation as valid.

30. The Applicant argues further that the cause of action did not arise in 2016, as alleged by the Respondent, but rather when the Respondent failed, refused, or neglected to pay his entitlements following persistent demands. It is submitted that a cause of action arises only upon breach of a legal right and not merely upon resignation or disengagement from service. The Applicant relies on LETANG V. COOPER (1965) 1 Q.B. 222 for the definition of a *"cause of action"* as a factual situation entitling a person to seek legal remedy.

31. The Applicant vehemently argues that the computation of time for limitation purposes must begin from the date when the Applicant's demand for payment was first refused. Hence, the Respondent's position, which calculates the limitation period from the date of resignation, is flawed, misconceived and erroneous.

32. Relying on the case of ALHAJI (DR.) MAN M. B. JOOF v. ECOWAS Commission (supra) the Applicant submits that, unlike in JOOF, he continued to correspond with the Respondent and requested rectification of entries on his employment records in pursuit of his entitlements. As such, the cause of action only crystalized upon the Respondent's refusal to comply with the demand, making the suit timely and properly before the Court.

33. The Applicant reiterates that the reliefs sought evidently establish the claim for payment of outstanding entitlements and that these are claims of a continuing nature that cannot be defeated by a rigid and premature application of the limitation rule.

34. In conclusion, the Applicant prays the Court to find that it has jurisdiction to entertain the suit and to dismiss the preliminary objection as flippant, unsubstantiated, and an abuse of the court process, thereby allowing the case to proceed to hearing on the merits.

VIII. PRELIMINARY OBJECTION

Analysis of the Court

35. The Court notes that the question before it is whether it is barred from determining the case by the effluxion of time. Having raised a contention on the same, the Respondent is seeking that the application be struck out as it is statute barred under Article 9 (3) of the Protocol of the Court (A/P1/7/91) as amended by the Supplementary Protocol (A/SP.1/01/05) which provides that "*Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.*"

36. The Court notes the Applicant's opposition to the Respondent's contention and would proceed to determine whether it has jurisdiction or whether the claim is statute barred. In this wise, the Court has formulated the question for determination as "*when does the Applicant's right of action begin for computation?*" The ancillary issue springing from a positive affirmation of this question is whether the Court has the competence to determine the claim, as a negative affirmation will jettison the claim.

37. It is imperative that the Court instructs the parties based on the argument regarding "*right of action*" which seems to be confused with "*cause of action.*" The Court considers that the argument conflates two distinct legal concepts: *cause of action* and *right of action*, a distinction that is fundamental to determining when the limitation period begins to run. In the first instance, the "*right of action*" is the right to bring a specific case to court, this right is enforced

by way of a legal action. The Court finds instruction in the case of GABRIEL INYANG & ANOR v FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/20/18 (Unreported) at page 9, where the Court held that *"a cause of action is a fact or combination of facts which establishes or gives a right of action."* Thus, it can be concluded that a cause of action is the set of facts or legal grounds that give rise to a claim, which entitles an applicant to seek judicial relief; this includes the legal wrong and the supporting facts.

38. On the other hand, the *right of action* is the legal capacity or entitlement to bring a claim to court based on a cause of action. In other words, the ability to enforce that cause of action through legal proceedings, which may only arise after specific events or conditions occur (e.g., denial of a request, exhaustion of internal remedies, or the finality of an administrative decision).

39. The Court finds it imperative to make this distinction as the subject matter of the claim borders on employment matters, where internal administrative processes or ongoing efforts to resolve a dispute amicably may delay the actual ripening of the right of action, even though the cause of action (e.g., resignation or disputed entitlement) may have occurred earlier. It is clear that one predates in the other in the instance of an employment claim.

40. The Court recalls that the provision in Article 9(3) (supra) states that an action can only be statute-barred three (3) years from the date when the right of action arose. It is evident from the provision that the two concepts are distinct thus, the literal rendition "*right of action*" cannot be used interchangeably.

41. The Court is mindful that to properly determine when the Applicant's *right of action* arose to know if his application is statute-barred or not, recourse must be made to Article 10(e) of the Protocol (supra) on access to the Court in cases of ECOWAS public service. The said provision states that:

"Access 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."

42. The Court therefore, will rely on its earlier definition of *right of action* i.e. when one can legally bring an action before the Court, and in this instance will read both Article 9 (3) and Articles 10 (e) of the Protocol (supra). This is imperative as a right of action will only be ripe when the provision of Article 10(e) is followed. The said provision is on access to Court by Staff on issues of public service of ECOWAS, and it states that all appeal processes available must be exhausted by the officer under the Rules and Regulations. The Court therefore finds that the time for calculating whether the action is statute barred or not commences from when an applicant has exhausted the appeal processes provided in the rules and not when the cause of action arose.

43. The Court instructs that the provision in Article 10(e) is law and not a policy. Hence, compliance is mandatory for Staff before exercising their right to institute a case against any of the ECOWAS institutions before Court. In the case of VALENTINE AYIKA v. REPUBLIC OF LIBERIA (2011) CCJELR at page 236 para 10. the Court clarified that: *"The expression used in Article 9 (3) of the Protocol is 'right of action' which means the right to bring a specific case to a court or tribunal. That right is dependent on whether, as of the day the action is brought to court, all the necessary facts are available and any prerequisite legal or factual situation has been satisfied."*

44. Consequently, in the instant case where the Applicant's cause of action arose in 2024 stemming from a demand letter of payment of his entitlement and followed by series of letters between 2009 and 2016, and between 25 February and 9 September 2022, were all made to resolve discrepancies in the record. It was the refusal to pay the said entitlement which arose in 2024 from a written demand by the Applicant that vested in him the *right of action.*

45. The Court notes from the facts and evidence before it that the Applicant's resignation in 2016 was voluntary and not directed by the Respondent. Since the claims of the failure to pay his entitlements is ongoing it follows that his *cause of action* commenced then but his *right of action* came into effect upon his fulfilment of Article 10 (e) of the Protocol (supra) which is the Respondent's refusal to comply with legitimate demands for payment.

46. As consequence of the foregoing analysis, the Court overrules the Preliminary Objection of the Respondent on the grounds of jurisdiction. The ancillary question of whether the Court can adjudicate the claim having overruled the Preliminary Objection is answered in the affirmative. The Court finds that the application is within the timeframe which vests it with the competence to adjudicate same.

47. Notwithstanding its findings, the Court recalls that apart from the issue of the case being statute-barred, the Respondent raised further grounds to support its Preliminary Objection. It stated that the Applicant:

    a) *lacks the locus standi to initiate this action,*
    b) *no triable issue presented by the Applicant, and*
    c) *that the application is an abuse of the Court process.*

48. Having considered the facts and evidence before it, the Court notes that the Respondent did not provide evidence to substantiate its objection in the above-listed grounds. It is mindful to caution that listing grounds without substantiating same do not entitle the Respondent to a relief and the same remain mere assertions. In the absence of evidence or facts to support the above assertions, the finds that the three grounds are struck out for lack of proof. Consequently, the Court overrules the Preliminary Objection in its entirety.

I. OPERATIVE CLAUSE

For the reasons stated above, the Court sitting in public after hearing both parties:

AS TO JURISDICTION

i. Declares that it has jurisdiction.

COSTS

ii. Orders all parties to bear their costs.

Hon. Justice Sengu Mohamed KOROMA/Judge Rapporteur .....

Hon. Justice Dupe ATOKI .....

Hon. Justice Edward Amoako ASANTE .....

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

Done in Abuja, this 7th day of July, 2025 in English and translated into French and Portuguese.

