THE COMMUNITY COURT OF JUSTICE OF THE

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

MR. KASSOUM COULUBALY KASSOUM V ECOWAS COMMISSION

Application No: ECW/CCJ/APP/24/24 Judgment NO. ECW/CCJ/JUD/46/25

JUDGMENT

ABUJA

DATE: 19th November 2025.

JUDGMENT NO. ECW/CCJ/JUD/46 /25

MR. KASSOUM COULIBALY KASSOUM **- APPLICANT**

V.

ECOWAS COMMISSION **-RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Sengu Mohamed KOROMA - Presiding/Judge Rapporteur

Hon. Justice Dupe ATOKI - Member

Hon. Justice Edward Amoako ASANTE - Member

ASSISTED BY:

Dr. Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

Maitre OUATTARA-SORY SALAMBERE - Counsel for the APPLICANTS

Maitre Kanga OLAYERASSOLIE -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 and in open Court under Article 8(1) of the Practice Direction on Electronic Case Management and Virtual Court Session, 2020.

II. DESCRIPTION OF THE PARTIES:

2. The Applicant, Mr. Kassoum COULIBALY Kassoum, is a Community Citizen from Burkina Faso, Ouagadougou, a Senior Officer of the Army, who served with the Department of Political Affairs, Peace and Security at the ECOWAS Commission as a contract staff between 2018 to 2022.
3. The Respondent is the ECOWAS Commission, an Institution of the Economic Community of West African States.

III. INTRODUCTION

4. The claim is an administrative one bordering on the alleged failure by the Respondent to regularize the Applicant's employment status from contract to permanent, in accordance with the recommendations contained in the Report of the 83rd Ordinary Session of the Council of Ministers of 19th December 2019. Furthermore, the Applicant is claiming lost wages from the Respondent for the contractual period.

IV. PROCEDURE BEFORE THE COURT

5. The Applicants filed their Initiating Application on 7th October 2024, in the Registry of the Court.
6. On 6th November 2024, the Respondent filed a Motion for the Extension of Time to file its Statement of Defense.
7. It later filed its Statement of Defense on 10th March 2025 in the Registry of the Court.

8. This elicited a Reply from the Applicant on 20th March 2025.
9. The Court held a virtual session on 13th May 2025, in which the parties were represented by Counsel. The Court granted leave for the parties to adopt their processes and adumbrate on the points of facts and law. At the close of argument, the Court withdrew the file for judgment.

V. APPLICANT'S CASE

a. Summary of facts

10. The Applicant, Mr. Kassoum COULIBALY, is a member of staff of the ECOWAS Commission, previously serving in the Department of Political Affairs, Peace, and Security. He asserts that he worked in the service of ECOWAS before being called to high office in his home country.
11. He states that he was recruited on 11th February 2018, at Grade P4.1, as Program Officer, Evaluation and Mission Support in the Peacekeeping and Regional Security Directorate, following a competitive process. His contract, according to him, provided for absorption as permanent ECOWAS staff in accordance with its terms (See Exhibit 1: Contract Letter).
12. Following his recruitment, the Applicant was placed on secondment to the ECOWAS Commission in line with the legislation of Burkina Faso.
13. The Applicant relies on the decision of the 83rd Ordinary Session of the ECOWAS Council of Ministers held in Abuja from 17–19 December 2019, which resolved to convert into permanent ECOWAS staff all contract staff recruited through a competitive process or within the framework of projects financed by technical partners, provided such contracts contained an absorption clause and the staff concerned obtained satisfactory performance evaluations (Exhibit 2: *Final Report of the 83rd Ordinary Session, 19 December 2019*).
14. Pursuant to this decision, an *Ad Hoc* Committee was established on 4th May 2020, by the then President of the Commission, mandated to affect the conversion of the affected staff within two weeks.

15. The Applicant avers that he met all the stipulated conditions for conversion, noting that his contract, executed in partnership with the European Union, contained an absorption clause, and that he was already serving in a statutory position of secondment.

16. However, the then President of the Commission introduced an additional requirement: that military personnel must formally resign from the Armed Forces of their respective States before being converted into permanent staff. The Applicant asserts that this condition was unilaterally imposed, had no legal basis, and was not duly communicated to him.

17. In response, the then Commissioner for Political Affairs, Peace and Security submitted a memorandum to the President, requesting the conversion of three staff members, including the Applicant, who came from the Armed Forces of Member States, to permanent staff. No response to the said Memorandum was received (Exhibit 3: Memo ECW/PAPS/O-CPAPS/19/09.06.2020).

18. Subsequently, to demonstrate that his home State had no objection, the Ministry of National Defence and Veterans of Burkina Faso formally recommended the Applicant's conversion to permanent staff, proposing him as Head of the Mission Support Component of the Department. This recommendation was ignored (Correspondence No. 2021-0064/MDNAC/SG dated 22nd January 2021).

19. By correspondence dated 31st January 2024, the Applicant lodged a hierarchical appeal with the President of the Commission, which elicited no response. After six months, on 13th June 2024, he further submitted his case to the Administrative and Finance Committee, the Council of Ministers, and the Authority of Heads of State. To date, no action has been taken (Exhibit 4: Correspondence).

20. In addition to the failure to convert him to permanent staff, the Commission, through its Human Resources Department, suspended his salary with effect from November 2022, despite his continued active service. The Applicant notes that although he had been appointed Minister in Burkina Faso, he had not assumed that office but rather requested and was granted leave by his ECOWAS superiors to travel to Burkina

Faso between 1st – 25th November 2022. Nevertheless, as soon as his ministerial appointment was announced, the Human Resources Department suspended his salary, even though he neither requested such suspension nor assumed the ministerial office. As a result, he did not receive his salary for November 2022 and for the first ten days of December 2022.

21. The Applicant protested this measure to the President of the Commission, but no corrective action was taken. He therefore contends that he has exhausted all available administrative remedies, necessitating recourse to this Court.

b. Pleas in law

22. The Applicants have relied on the following provisions in support of their claim:

a. Article 9 (f) of the Rules of Court

b. Article 10 (e) of the Rules of Court.

c. Reliefs sought

23. The Applicants are seeking the following reliefs from the Court:

As to form:

- Declares itself competent to hear the application as submitted by the Applicant, Mr. Kassoum COULIBALY.
- Declare that the Application is admissible.

As to merit:

- Find and declare illegal the decision of the President of the ECOWAS Commission demanding the formal resignation of Mr. Kassoum COULIBALY from the Armed Forces of Burkina Faso before his conversion into permanent ECOWAS staff.

- Order the ECOWAS Commission to comply with the decision taken by the Authority of Heads of State and Government during its 83rd session and convert Mr. Kassoum COULIBALY into permanent staff from the date on which the measure was applied by the ECOWAS Commission.
- Find that the suspension of the payment of the salaries of Mr. Kassoum COULIBALY by the ECOWAS Commission from November 2022 is unlawful and consequently, order it to pay him the sum of Four million, Nine hundred and forty-three thousand, Five hundred and Thirty-nine (4,943,539) CFA francs in respect of salaries for the period from 1 November 2022 to 11 December 2022.
- Order the ECOWAS Commission to pay Mr. Kassoum COULIBALY the sum of Sixty-five million One hundred and Ten thousand Twenty-seven (65,110,027) CFA F as salary arrears.
- Order the ECOWAS Commission to pay Mr. Kassoum COULIBALY the sum of One hundred million (100,000,000) CFA francs as damages for the moral damage suffered.
- Order the ECOWAS Commission to pay him the sum of Ten million (10 000 000) CFA francs as reimbursement of the costs incurred and not included in the costs.
- Order the ECOWAS Commission to bear the entire costs.

VI. RESPONDENT'S CASE

a. Summary of facts

24. The Respondent, the ECOWAS Commission, does not dispute that the Applicant served under contract within its Department of Political Affairs, Peace, and Security (PAPS). It explains, however, that the Applicant was engaged strictly on a fixed-term contract as *Strategic Evaluation and Doctrine Program Officer*, under the framework of a project financed by the European Union (EU). His first appointment letter, received on 5th December 2017, was set to determine on 13th October 2019.

25. The Respondent emphasizes that this letter of appointment explicitly provided that *"should ECOWAS decide to create the position in its organogram at the end of the European Union funding, the position will be filled following a competitive process in accordance with Article 12 of the Staff Regulations."* In other words, no automatic absorption was guaranteed. It states further that, following the expiry of the initial contract, the Applicant was granted a series of renewals: first a renewed fixed-term contract, then a subsequent extension, and finally, a one-year contract scheduled to expire on 10th February 2023.

26. The Respondent avers that, on 11th December 2022, the Applicant himself formally requested to be released from his contractual obligations to assume ministerial duties in Burkina Faso. With respect to the Applicant's reliance on the 83rd Ordinary Session of the Council of Ministers (December 2019), the Respondent confirms the deliberations but recalls the precise wording: *"contract staff recruited after a competition by ECOWAS or through donor-funded projects with an absorption clause at the end of the project, who have obtained positive assessments, should be recruited in 2020, provided that the positions exist on the approved chart of the organization."*

27. In implementation of this directive, the Respondent explains that an *Ad Hoc* Committee was constituted in 2020. In its conclusions delivered on 16th June 2020, the Committee declared that military personnel, including the Applicant, were ineligible for conversion, and thus reserved their files for further examination.

28. The Respondent justifies its refusal to convert the Applicant on the ground of his military status. As a Colonel Major in the Burkina Faso Army, he remained subject to a binding link of subordination to his home State. The Commission argues that the Applicant never proved that he had been released from this obligation, thereby failing to establish a status of proper secondment.

29. The Respondent stresses the incompatibility between permanent ECOWAS employment and military status. According to the Respondent, military officers remain absolutely attached to their national armed forces by a chain of command,

whereas ECOWAS requires the exclusive loyalty and subordination of its permanent staff. This incompatibility, it argues, informed the Committee's decision to convert only civilian contract staff.

30. The Respondent further insists that its stance is not discriminatory. As an illustration, it cites a precedent where another soldier successfully converted to permanent ECOWAS status, but only after opting for early retirement from his national army.

31. The Commission also argues that even in the event of proven secondment, the Applicant remained an active member of the Burkina Faso Army. To convert him would have created a situation of double employment with the attendant risk of interference from his State of origin. Such a situation, it submits, contravenes Article 20 of the Revised ECOWAS Treaty and Article 5.3(d) of the Staff Regulations.

32. The Respondent disputes the Applicant's reliance on the Report of the 83rd Session of the Council of Ministers, arguing that such a report is only recommendatory and has no binding legal effect. Citing Additional Protocol A/SA.3/01/10 of 16th February 2010, which amended Article 9 of the Treaty on the legal regime of Community Acts, the Respondent maintains that, absent a formal Decision or Regulation, the Council's report cannot serve as the legal basis for a claim.

33. On this basis, the Respondent insists that the President of the Commission was not bound by the Council's report or by the recommendations of the *Ad Hoc* Committee, since they do not constitute Community Acts. Rather, the President retained discretion to determine conversion cases, and in the Applicant's case, the conditions were not met.

34. The Respondent outlines the specific rejections of the Applicant's conversion file as follows:

- *May 2020: file declared non-convertible.*
- *November 2020: file rejected for lack of proof of discharge from the Burkina Faso Army.*

- *May 2022: file again rejected for lack of evidence of removal from the Armed Forces.*

35. The Respondent contends that the rules and measures adopted by the Council of Ministers, the Commission President, the Administrative and Finance Committee, or the *Ad Hoc* Committees, are essentially context-specific arrangements aimed at addressing exceptional recruitment situations. They cannot be treated as permanent entitlements.
36. Regarding the suspension of the Applicant's salary between 1st November and 11th December 2022, the Respondent recalls that following the military coup of 30th September 2022 in Burkina Faso, the Applicant was appointed Minister of Defence in the government formed on 25th October 2022.
37. The Respondent argues that from the time of his ministerial appointment, the Applicant effectively abandoned his ECOWAS duties, despite being under contract until 10th February 2023. On 11th November 2022, the Applicant wrote to ECOWAS requesting release from his contract and for confirmation to his government that he was not a permanent ECOWAS staff member.
38. On this basis, the Respondent contends that the Applicant's claim to salaries for November and early December 2022 is unfounded since he had already assumed ministerial functions in Burkina Faso and no longer rendered services to the Commission.
39. As to the claim for arrears arising from non-conversion between 2020 and May 2024, the Respondent maintains that permanent positions in ECOWAS are filled only through open competition in line with Article 9 of the Staff Regulations and Article 4(b) of the Revised Treaty. Conversion, it emphasizes, is an exceptional and derogatory measure linked to the recruitment freeze, subject to strict conditions. Given the Applicant's special military status, his file was postponed, consistent with the treatment of all other military staff.

40. Finally, the Respondent draws comparative practice from other international organizations, such as the United Nations and the African Union, where military officers serve only as contract staff, not permanent employees. On these grounds, the Commission urges the Court to dismiss the Applicant's claims in their entirety as baseless and unfounded.

b. Reliefs sought

41. The Respondent prays that the Court grant the following relief:

i. Rule on the admissibility of this application
ii. Declare as unfounded the claims of the Applicant
iii. Declare that the recruitment process for ECOWAS Staff members 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. Dismiss the case of the Applicant as unfounded
vi. Order the Applicant to pay the cost of this proceeding.

VII. APPLICANT'S REPLY

23. In reply to the Respondent's defence, the Applicant maintains that the arguments advanced call for clarification, particularly in relation to the Respondent's disregard of both the rules governing the ECOWAS Community Civil Service and the legal framework regulating military personnel in Burkina Faso. He specifically invokes Law No. 038-2016/AN on the General Status of Armed Forces Personnel, highlighting Chapter 8, Articles 125, 126, 144, 147, and 158, which regulate the status of military personnel on secondment.

24. The Applicant argues that the Respondent has ignored the clear legal consequences that flow from secondment under Burkinabè law. Under the law, a civil servant or military officer placed on secondment to an international organization in which Burkina Faso is a member ceases to perform duties within the national administration during the period of secondment. The Applicant emphasizes that once recruited by the ECOWAS Commission, he left his home State to assume his new appointment, ceased to exercise any function in Burkina Faso, and no longer received remuneration from his national administration.

25. The Applicant rejects the Respondent's claim of incompatibility between military status and permanent ECOWAS employment. He underscores that no ECOWAS text explicitly prohibits military officers from holding permanent posts. Furthermore, he stresses that he was recruited through a competitive, merit-based process, not seconded by his State as part of a rotational placement. Thus, the Respondent's argument that his national subordination disqualified him from permanent conversion is, in his view, unfounded.

26. The Applicant reiterates that his secondment legally released him from obligations to the Burkinabè State and vested him with the independence required to serve ECOWAS without interference. His continuing military status, he maintains, could not legitimately serve as a basis for refusing his conversion to permanent staff, particularly since he was operating solely under ECOWAS authority.

27. The Applicant further points to precedent: other military and uniformed personnel have, in fact, been converted into or directly recruited as permanent staff within ECOWAS without being required to resign or delist themselves from their national forces. In support of this, he stresses that under Burkina Faso's national law, holding a permanent position in an international organization is not conditioned on resignation from one's original employment body.

28. Finally, the Applicant justifies his claim for unpaid salaries. He notes that, at the time his salary was suspended, he remained under the authority and employment of the Respondent. His absence from duty during November 2022 was lawfully

covered by leave formally approved by the Commission. Accordingly, the withholding of his salary for the period 1st November to 11 December 2022 lacked legal basis and amounted to an unlawful administrative act.

VIII. JURISDICTION

29. The Court notes that the present Application raises two principal issues:

- First, the alleged failure of the Respondent to convert the Applicant from a contract staff member to a permanent staff member, notwithstanding the decision of the 83rd Ordinary Session of the Council of Ministers and the Applicant's assertion that he fulfilled all the required conditions; and
- Second, the stoppage of the Applicant's salary prior to the expiration of his contract, which he maintains was done unlawfully while he was still under the Respondent's employment, despite having been appointed as Minister in Burkina Faso.

30. It is not in dispute that the Applicant served in the Department of Political Affairs, Peace, and Security of the ECOWAS Commission from February 2018 until December 2022. The Respondent itself admits that the Applicant was engaged on successive fixed-term contracts under a European Union–funded project. The fact of his employment with ECOWAS is therefore not contested.

36. The Court recalls that its competence, regarding the nature of the present claim, is derived from Article 9(1)(f) of the Supplementary Protocol (2005) which provides as follows:

> *"The Court has the competence to adjudicate on any dispute relating to the following: (i) The Community and its officials."*

This provision, as interpreted in MR. JONAS KUGBLENU ADUNKPE V. COUNCIL OF MINISTERS, ECOWAS & ORS, JUDGMENT NO. ECW/CCJ/JUD/09/25, (Unreported) at paragraph 46, vests the Court with authority to adjudicate disputes between the Community institutions and their officials,

including those arising from conditions of employment, benefits, or administrative decisions affecting staff.

38. In applying this provision, the Court has consistently outlined two cumulative conditions which must be satisfied before jurisdiction can be exercised:

    - that there exists a dispute arising out of the relationship between the Community and an official; and
    - that the parties to the dispute are the Community (acting through its institutions or organs) on the one hand, and an official of the Community on the other hand.

    This two-pronged test has been reaffirmed in KABORE HENRI V. ECOWAS COMMISSION, JUDGMENT NO. ECW/CCJ/JUD/25/23 (Unreported) at paragraph 33.

39. With respect to the first condition, the Court notes that a clear dispute exists between the Applicant and the Respondent. The Applicant contends that his contract entitled him to conversion into permanent staff status, while the Respondent insists that his military status rendered him ineligible. The Applicant also contests the lawfulness of the suspension of his salary, while the Respondent argues that he had already assumed ministerial functions in Burkina Faso. These constitute genuine points of contention, squarely within the meaning of a "*dispute*" for purposes of Article 9(1)(f).

40. On the second condition, the Applicant was, at the time of the events giving rise to this Application, an official of the Community serving under contract with the ECOWAS Commission. The Respondent, for its part, is a Community Institution recognized under the Revised ECOWAS Treaty. The parties therefore fall within the legal categories envisaged by Article 9(1)(f).

41. The Court observes further that the legal characterization of "*Community officials*" has long been settled in its jurisprudence. In MOMODU KHALIFA CHAM V. ECOWAS COMMISSION & ANOR JUDGMENT NO: ECW/CCJ/JUD/27/24 (Unreported) at paragraph 40 and MARIAME KONÉ TOURÉ V. ECOWAS

COMMISSION JUDGMENT NO: ECW/CCJ/JUD/26/25 (Unreported at page 11, paragraphs 50–51, the Court reaffirmed that disputes concerning staff members of ECOWAS institutions, whether contract staff, permanent staff, or officials under secondment, fall within the ambit of Article 9(1)(f). This jurisprudence has created a consistent framework for resolving employment disputes within the Community public service.

42. Against this background, the Court finds that the Applicant, as a duly recruited staff member of the ECOWAS Commission, qualifies as an official of the Community, and the Respondent, as an organ of the Community, is properly amenable to suit. The two cumulative conditions having been met, the Court is satisfied that the Application falls within its competence.

43. Accordingly, the Court holds and hereby declares that it has jurisdiction to entertain the Application as presented, acting within its mandate as the ECOWAS Public Service Court.

IX. ADMISSIBILITY

44. Having affirmed its jurisdiction, the Court must now turn to the question of admissibility. It is trite that even where the Court has jurisdiction *ratione materiae* and *ratione personae,* an application will only be entertained if the Applicant has satisfied the procedural conditions set out in the governing instruments. The key issue for determination under this rubric is whether the Applicant complied with the internal appeal mechanisms provided under the ECOWAS Staff Regulations before approaching this, Court.

41. The Court is therefore, guided by Article 10(e) of the 2005 Supplementary Protocol, which stipulates that:

> *"Access is open to staff of any Community institution, after the staff member has exhausted all the appeal processes available to the officer under the ECOWAS Staff Regulation."*

This provision makes it a mandatory precondition that an official of the Community must first exhaust all internal remedies before seizing this Court with an employment-related dispute.

43. From the facts before the Court, the alleged violation concerning the Applicant's non-conversion to permanent staff arose from the conclusions of the *Ad Hoc* Committee of May 2020, which deferred or rejected the files of military staff. The Court notes, however, that the Applicant did not immediately initiate a challenge to this decision but only began to take formal steps, including hierarchical recourse, in 2024.

44. The Court is also mindful that a new ECOWAS Staff Regulation (C/REG.29/12/21) entered into force in December 2021, thereby repealing the earlier 2005 version. By implication, all staff-related complaints initiated after its entry into force fall to be governed by the procedures stipulated under the new Regulation. Where an alleged violation began under the old regime, but no formal appeal was pursued, the procedural framework of the new Regulation necessarily applies.

45. In this context, Article 69 of the 2021 Staff Regulation is central. It establishes a sequential mechanism for staff disputes, including:

- *(a) an Application for Review to the immediate supervisor within one month.*
- *(b) a Hierarchical Recourse to the Head of Institution if the supervisor rejects or fails to act within one month.*
- *(c) referral to the Committee for Conciliation of Staff Claims and Dispute Resolution, and eventually to the Joint Advisory Board, in the event of continued dissatisfaction.*

Crucially, Article 69(2)(c) specifies that neither the application for review nor the hierarchical recourse shall suspend the contested decision, while Article 69(2)(d) provides that absence of a response at either stage shall constitute rejection.

46. The Court notes that the Applicant lodged a hierarchical complaint directly with the President of the Commission on 31st January 2024, which went unanswered. A

further appeal dated 13th June 2024 also elicited no response. In addition, the Applicant copied his grievance to the Administrative and Finance Committee, the Council of Ministers, the Authority of Heads of State and Government, and the Committee for Conciliation of Staff Claims and Dispute Resolution. The Court notes that the Respondent does not dispute these correspondences.

47. The Court observes however, that the Committee for Conciliation and Dispute Resolution was duly apprised of the Applicant's grievance but took no steps to address it.

48. More fundamentally, however, the Court finds that the effective operation of Article 69 is contingent upon the adoption of a Manual of Procedure, as expressly provided in Article 69(3) of the 2021 Staff Regulation. The same requirement is reiterated in Article 69(4)(a)(iii) with respect to the modalities governing the Committee for Conciliation. The Court is mindful to reproduce Article 69 thus, for ease of reference:

> 1. *Staff members are entitled to fair treatment in all matters related to their employment. In the event of a dispute, the staff member shall have the right to defend himself/herself without fear of reprisals through the appropriate mechanisms provided for in this staff regulation.*
>
> 2. *Any staff member who wishes to appeal a decision taken against him/her shall have the right to proceed as follows:*
>
> a. *Application for Review: The Staff Member shall submit to his immediate supervisor within one (1) month, an application requesting the withdrawal of the contested decision. The supervisor shall have one (1) month from the date of referral by the staff member to act on the request. If the application is rejected, the staff member shall refer the matter to the Head of the Institution.*

b. *Hierarchical Recourse: The staff member shall send to the Head of Institution within one (1) month requesting a review and the withdrawal of the contested decision. The Head of Institution shall have one (1) month from the date of referral to act on the request. If the Head of the Institution confirms the decision, then the Staff Member shall refer the matter before the Committee for Conciliation of Staff Claims and Dispute Resolution.*

c. *In any event, neither the application for review nor the hierarchical recourse shall suspend the execution of the decision taken.*

d. *The absence of a response in both instances shall constitute a rejection to the application.*

5. In case of non-satisfaction, the staff member may now refer the matter to the Joint Advisory Board for consideration.

49. It is not contested that to date, no Manual of Procedure has been adopted by ECOWAS, thereby rendering the procedural mechanism under Article 69 incomplete and inoperative in practice.

50. In these circumstances, the Court considers that an Applicant cannot be expected to pursue internal remedies which, although prescribed in the abstract, are non-functional due to the absence of an implementing instrument. To insist on strict exhaustion would amount to a denial of effective remedy.

51. The Court notes that the Applicant nonetheless complied with the core requirement by addressing his complaint to the Head of Institution, namely, the President of the Commission. Having done so, and having received no response, he must be deemed to have exhausted the remedies practically available to him.

52. The Court recalls its decision in MARIAME KONÉ TOURÉ V. ECOWAS COMMISSION JUDGMENT NO: ECW/CCJ/JUD/26/25 (Unreported) at page 13,

paragraph 68 where it held that a staff member who lodges an appeal to the Head of the Institution in a recruitment-related dispute has satisfied the exhaustion requirement, given the absence of a functioning mechanism for further internal appeal.

53. Guided by this jurisprudence, the Court finds that the Applicant, by submitting his complaint to the President of the Commission and pursuing further correspondence with relevant organs, has taken all reasonable steps available under the existing framework to exhaust internal remedies.

54. Consequently, the Court declares the Application admissible.

X. MERITS

55. Having settled the preliminary matters of jurisdiction and admissibility, the Court now turns to the substantive merits of the Application. From the pleadings and evidence placed before it, three principal issues arise for determination:

    i. *Whether the requirement of resignation of military personnel prior to conversion into permanent employment within ECOWAS is valid and lawful; and*

    ii. *Whether the suspension of the Applicant's salary following his assumption of a political appointment in Burkina Faso, during the subsistence of his contractual relationship with ECOWAS, was legally justified.*

    iii. *Whether the termination of the Applicant's salary following his appointment is lawful*

56. These issues encapsulate the core of the present dispute. The first requires the Court to interrogate the legality of the Respondent's insistence on resignation from the national armed forces as a condition for conversion, considering both Community law and the Applicant's contractual framework. The second requires the Court to determine whether the stoppage of the Applicant's salary, notwithstanding his

approved leave and continuing contractual status, was in conformity with the law governing staff rights and obligations.

57. The Court will accordingly proceed to address these two issues *seriatim*, beginning with the question of conversion of the Applicant into permanent staff, before turning to the matter of the suspension of salary.

Requirement to Resign from National Military Service as a Prerequisite for Conversion to Permanent Staff

Applicant's case

58. The Applicant anchors his case on the decision of the 83rd Ordinary Session of the Council of Ministers, held in Abuja from 17–19 December 2019. He submits that the Council expressly resolved to convert into permanent ECOWAS staff all contract staff who had been recruited through a competitive process or under projects financed by technical partners, provided such contracts contained an absorption clause and the staff had received satisfactory performance evaluations.

59. The Applicant asserts that he met all the stipulated conditions but that the *Ad Hoc* Committee set up by the President of the Commission refused his conversion on the ground that military personnel had to resign from their Armed Forces before being eligible. He contends that this requirement had no legal basis, was not part of the Council's resolution, and was introduced unilaterally by the President of the Commission.

60. To reinforce his position, the Applicant relies on the laws of Burkina Faso, particularly those governing secondment of military personnel, which he claims permit service members to assume permanent employment in international organizations to which the State is party, without resigning from their national military corps. He therefore maintains that the Respondent's condition was unfounded and discriminatory.

Respondent's case

60. The Respondent counters that the Applicant, being a Colonel Major in the Burkina Faso Army, could not benefit from the conversion measure because of his ongoing subordination to his home State. It argues that members of the military are permanently bound to their country of origin, making it incompatible for them to hold permanent status in ECOWAS, where exclusive loyalty is required.

61. The Respondent further submits that even if the Applicant was formally on secondment, he remained a member of the Burkina Faso Army. His conversion would have created a situation of double employment and potential interference from his country of origin, contrary to Article 20 of the Revised ECOWAS Treaty and Article 5(3)(d) of the Staff Regulations.

62. In addition, the Respondent maintains that the Report of the 83rd Council Session is a recommendation without binding legal effect under Additional Protocol A/SA.3/01/10 of 16 February 2010, which amended Article 9 of the Treaty on the legal regime of Community Acts. In its view, absent a Decision or Regulation, the report cannot constitute a legal basis for a claim.

Analysis of the Court

63. The Court recalls that exclusive loyalty to the Community is a foundational principle of the Community civil service. This is reflected in Article 20 of the Revised Treaty of ECOWAS, which provides that staff of the Community owe their loyalty entirely and exclusively to ECOWAS, and shall neither seek nor accept instructions from any government or external authority. Member States are, in turn, obliged to respect this international character and refrain from seeking to influence staff in the performance of their duties.

64. The Court notes that complementing this principle, Article 5(3) of the Staff Regulations sets out detailed provisions on conflicts of interest, including prohibitions on external paid activities, political engagement incompatible with impartiality, acceptance of instructions from national governments, and other conduct inconsistent with independence. In this regard, the Court recalls the

Applicant argues that the requirement of resignation from national military service was not contained in either his contract or the Council's resolution and was introduced unilaterally by the Commission's President. The Respondent's argument in opposition is that the requirement was a necessary safeguard to ensure institutional integrity, prevent divided loyalties, and align with the spirit and letter of the Treaty and Staff Regulations.

65. The Court observes that neither Article 20 of the Treaty nor Article 5 of the Staff Regulations expressly stipulates that military personnel must resign from their national service before conversion. However, a contextual and purposive interpretation of these provisions reveals that their objective is to prevent any conflict of interest, whether actual or perceived, and to ensure that permanent staff give undivided allegiance to ECOWAS.

66. The Court is mindful to instruct that the absence of an express provision does not preclude the Respondent from implementing measures that serve this objective. If such measures are reasonable, objective, and non-discriminatory, they fall within the scope of the organization's administrative discretion. This approach is consistent with international administrative law. The ILO Administrative Tribunal (ILOAT) has affirmed in several judgments (see Judgment No. 4599, WHO, 1st February 2023) that executive heads of international organizations have broad discretion in defining conditions of service to protect organizational independence. Such discretion will not be interfered with unless shown to be arbitrary or unlawful.

67. The Court also notes comparative practice in other international organizations, such as the United Nations and the African Union, where military personnel typically serve as contract staff only and are not granted permanent status, precisely to avoid the risk of dual loyalty. Furthermore, the African Court on Human and Peoples' Rights has held that institutions are entitled to impose objective and reasonable conditions for employment, provided these are applied fairly and serve a legitimate purpose (AMADOU DEMBELE & ORS V. MALI, Application No. 023/2017, Judgment of 4th June 2024). By analogy, ECOWAS may legitimately require

military personnel to resign before conversion, to safeguard independence and neutrality.

68. Regarding the Council of Ministers' report, the Court affirms that under the current legal regime, only Regulations, Directives, and Decisions have binding force, while Recommendations remain non-binding (see Supplementary Act A/SA.3/01/10, and Government of GUINEA-BISSAU V. ECOWAS COMMISSION & ORS JUDGMENT NO: ECW/CCJ/JUD/33/22, (Unreported) at paragraphs. 184–185. The Court declares that the Applicant's reliance on the Council's report is therefore misplaced, as it lacks the character of a binding Community Act.

69. The Court considers, the establishment of the *Ad Hoc* Committee by the Commission President, and its subsequent exclusion of military personnel from conversion, represented a lawful exercise of administrative discretion aimed at implementing the Council's non-binding recommendation in a manner consistent with ECOWAS legal principles.

70. Accordingly, the Court holds that the Respondent's requirement that military personnel resign from their national armed forces before conversion to permanent status was a legitimate and lawful measure, grounded in the need to uphold institutional integrity, neutrality, and exclusive loyalty to the Community.

71. The Applicant's claim that the requirement was without legal basis therefore fails.

Application of Burkinabè Laws to Ground the Conversion of Employment Status

72. The Court notes that the Applicant places considerable reliance on the provisions of Burkinabè national legislation, which he argues permit military personnel to assume permanent employment in international organizations to which Burkina Faso is a party, without requiring resignation from the Armed Forces.

82. The Court also observes that this reliance is legally inconsequential unless it is demonstrated that the Respondent institution has expressly adopted such national legislation or is otherwise bound by it under a treaty or specific agreement. As a matter of general principle, international organizations such as the ECOWAS

Commission operate within an autonomous legal framework, independent of domestic laws of Member States. Unless expressly incorporated into Community law, domestic statutes do not bind the Respondent.

83. This principle is well settled in the jurisprudence of this Court. In DJIBRIL YIPÈNÈ BASSOLÉ V. BURKINA FASO (2016) CCJELR at page14, the Court affirmed that arguments premised solely on domestic legislation cannot ground claims within the Community framework. Therefore, the Court considers, in the present case, that even if Burkinabè law permits the Applicant to retain his military commission while serving in ECOWAS, the Respondent remains entitled to impose stricter standards designed to safeguard institutional integrity, prevent conflicts of interest, and guarantee the exclusive loyalty of its staff. The Court unequivocally opines that the Respondent cannot be compelled to give precedence to conditions of service of Member States when the integration of the community has already established and guaranteed the conditions of service under which it operates.

84. Moreover, the Court recalls the long-standing employment principle that an employee cannot be imposed on an unwilling employer. The fact that an applicant satisfies eligibility criteria or meets certain conditions does not create a legal obligation for an employer to confer or continue permanent employment. In DR. ROSE MBATOMON AKO V. WEST AFRICAN MONETARY AGENCY & 5 ORS (2013) CCJELR at page 19, paragraph 43, this Court held that an employer retains the prerogative to determine whether to continue an employment relationship, "*for good cause, bad cause, or no cause at all,*" save for exceptional statutory protections.

85. On this basis, the Court finds that the Applicant's reliance on Burkinabè domestic law has no probative value in establishing an entitlement to conversion. The Respondent's refusal to apply such laws is consistent with its institutional autonomy and international character. Consequently, the Court dismisses the claim hereunder.

On the legality of the termination of the Applicant's salary following political appointment

Applicant's case

89. The Applicant submits that during the subsistence of his contract, which was due to expire in February 2023, his salary was stopped for the period November to 11 December 2022. He argues that the suspension was unlawful, as he remained under contract and insists that he was only absent on approved leave, thereby entitling him to his full salary.

Respondent's case

90. The Respondent counters that it is a matter of public notoriety that the Applicant was appointed as Minister of Defence of Burkina Faso following the military coup of 30th September 2022. From the time of his appointment and assumption of ministerial functions, he effectively abandoned his duties with the Commission.
91. The Respondent adds that on 11th November 2022, the Applicant himself wrote requesting release from his contractual commitments and confirmation to his home country that he was not a permanent ECOWAS staff member. In the Respondent's view, this confirms that the Applicant had already disengaged from his ECOWAS functions. Consequently, it maintains that his claim for salary during that period is unfounded since he rendered no service to the Commission.

Analysis by the Court

92. The Court recalls that under Article 69 of the ECOWAS Staff Regulation (2021), disputes arising from employment, including salary complaints, must ordinarily be submitted first to the internal dispute resolution mechanism.
93. However, as earlier noted, the internal framework is inoperative due to the absence of a Manual of Procedure as envisaged by Article 69(3). In such circumstances, judicial recourse remains the Applicant's only effective remedy. The Court therefore proceeds to assess the merits of the claim.

94. The Applicant contends that he was on approved leave between 1st–25th November 2022 and that the salary stoppage therefore lacked justification. The Respondent does not deny the suspension but argues that he had already assumed ministerial functions in Burkina Faso.

95. The Court notes that the Applicant has discharged the initial burden of proving the existence of a contractual relationship by producing his employment contract and renewals. However, the critical issue is whether he was legitimately absent on leave or whether he had constructively abandoned his post.

96. To establish leave status, the Applicant bore the burden of producing evidence such as a written leave application, approval by the competent authority, and evidence of resumption. No such documentation has been placed before the Court.

97. It is a well-settled principle that he who asserts must prove. (See ADAMA VANDI V. STATE OF SIERRA LEONE JUDGMENT NO: ECW/CCJ/JUD/32/22 (Unreported) page 13, paragraph 48). The Court reiterates its consistent position in several decided cases that assertions unsupported by evidence carry no probative value and, as such, cannot sufficiently discharge the burden of proof.

98. This principle has been repeatedly applied by the Court, holding that mere allegations are not proof. (See MATTHEW ISABU V. FEDERAL REPUBLIC OF NIGERIA JUDGMENT NO: ECW/CCJ/JUD/41/22 (Unreported) at page 25, paragraph 79; PHILEMON OBASOGIE & ANOR V. FEDERAL REPUBLIC OF NIGERIA, JUDGMENT NO: ECW/CCJ/JUD/35/22 (Unreported at paragraph 49).

99. The Court finds that the absence of proof waters down the claim of the Applicant, as it is insufficient to sway the Court in his favour. In the context of international civil service, where formal records are essential, the Applicant cannot rely solely on bare assertions.

100. The Court notes that it is trite law that salary is consideration for work performed or readiness to perform work. Where an employee is unavailable to perform their functions without lawful justification, the principle of "*no work, no pay*" applies. Furthermore, Article 5(3)(a) of the Staff Regulations prohibits staff

members from undertaking any other paid professional activity without the prior authorization of the Head of Institution. The Applicant has presented no evidence that he obtained such authorization prior to assuming ministerial office. In the absence of authorization, the Applicant was in clear breach of the exclusivity obligation owed to ECOWAS. The jurisprudence of international tribunals affirms that violation of exclusivity clauses justifies suspension of entitlements. (See ILOAT Judgment No. 2862 (2010)).

101. The Court considers the Applicant's acceptance of ministerial office, without prior clearance, constituted constructive abandonment of his ECOWAS post. His later resignation does not cure this breach, nor does it retroactively entitle him to salary for a period when he was demonstrably unavailable to the Respondent.

102. The Court further notes that the Respondent did not acquiesce in his conduct. On the contrary, the prompt suspension of his salary was consistent with enforcement of staff obligations.

103. In view of these considerations, the Court finds that the Applicant's claim for payment of salary from November to 11 December 2022 is without merit. The Applicant has failed to establish entitlement, while the Respondent has shown justification in suspending payment in light of the Applicant's assumption of political office.

***

106. Having regard to the preceding, the Court concludes thus:

- The Applicant's reliance on Burkinabè law to ground entitlement to conversion is misplaced and without legal effect against the Respondent.
- The Applicant's claim for unpaid salaries from November to 11 December 2022 fails, for want of proof of leave authorization and due to his breach of exclusivity obligations.

XI. COSTS

73. 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.*"

89. 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*".

90. Given that the Respondent has applied for costs and the decision has gone in its favor, the Court awards costs to the Respondent, to be calculated by the Chief Registrar of the Court.

XII. OPERATIVE CLAUSE

91. 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:

i. Declares the Application admissible.

As to Merits:

ii. Finds that the Applicant's claims on non-conversion from contract to permanent staff as unsubstantiated

iii. Dismisses the Applicant's claims for payment of salary arrears as unjustified and unsubstantiated.

iv. Rejects all other reliefs sought

As to costs:

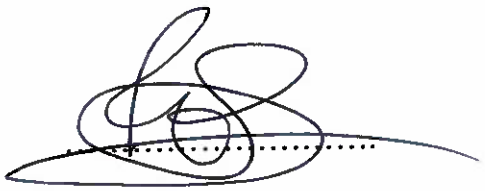
v. The Applicant is to pay the costs to the Respondent, to be calculated by the Chief Registrar.

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

Hon. Justice Dupe ATOKI .....

Hon. Justice Edward Amoako ASANTE .....

Dr. Yaouza OURO-SAMA - Chief Registrar



Done in Abuja, this 19th day of November, 2025 in English and translated into French and Portuguese.

