COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE,
CEDEAO
TRIBUNAL DE JUSTIÇA DA COMMUNIDADE,
CEDEAO

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IN THE COMMUNITY COURT OF JUSTICE
OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

ON WEDNESDAY, DECEMBER 02nd, 2015

SUIT NUMBER: **ECW/CCJ/APP/01/14/SUPP**
JUDGMENT NUMBER: **ECW/CCJ/JUD/28/15**

BETWEEN

1. DR. ROSE MBATOMON AKO APPLICANT

AND

1. The West African Monetary Agency
2. The Director General, WAMA
3. The President, ECOWAS Commission
4. The Chairman, Committee of Governors, ECOWAS Member Central Banks
5. Attorney General of the Republic of Sierra Leone
6. The Republic of Sierra Leone

……..RESPONDENTS

COURT'S JUDGMENT

1. COMPOSITION OF THE COURT

Hon. Justice Friday Chijioke NWOKE – Presiding
Hon. Justice Maria do Ceu Silva MONTEIRO - Member
Hon. Justice Jerome TRAORE - Member
Hon. Justice Micah Wilkins WRIGHT – Member
Hon. Justice Alioune SALL - Member

Assisted by Mr. Athanase ATANNON, Esq. - Registrar

2. COUNSEL FOR THE PARTIES AND ADDRESSES FOR SERVICE

For the Applicants:
Alexander Oketa Esq.
Alex Oketa Chambers
No. 1, Adebayo Adedeji Crescent
Off Ajose Adeogun Street
Behind BFS Plaza, Utako, Abuja

For the Respondents:

1st, 2nd, 5th and 6th Defendants/Respondents
L. M. Farmah, and
Osman I. Kanu
Law Officers' Department
Lamina Sankoh Street
Freetown, Sierra Leone

3. SUBJECT MATTER OF THE PROCEEDINGS

3.1. An application to supplement Judgment after review of ECW/CCJ/JUD/01/13 and subsequent judgment on the various applications emanating from the said judgment delivered on April 4, 2014 and served on the Plaintiff/Applicant herein on the 13th of June 2014.

3.2. The instant application is not a proceeding to set aside or stop the execution of the Judgment. It is an application by the Plaintiff/Applicant for this Hon. Court to deliver its omitted Ruling on Suit No. ECW/CCJ/APP/15/11/REV.2 dated 29th April 2013 and being application to review decision on its Judgment delivered on the 11th February 2013 based on observation of some discovered facts which came to the Applicant's knowledge only after delivery of said judgment and upon the receipt of the certified true copy on 13th February 2013.

4. ARTICLES RELIED ON

1. Articles 60 (h, j, k, and l), 64, 92, and 93 of the Rules of the Community Court of Justice, ECOWAS
2. Article 25 of the Protocol (A/P1/7/91 on the ECOWAS Community Court of Justice

5. DOCUMENTS SUBMITTED / NATURE OF EVIDENCE IN SUPPORT

1. The Protocol of the Community Court of Justice as amended
2. The Rules of the Community Court of Justice, ECOWAS
3. ECOWAS Revised Treaty

4. Supplementary Protocol A/SP.1/06/06 Amending the Revised Treaty
5. The African Charter on Human and People's Rights
6. Protocol A/P.1/7/93 Relating to the West African Monetary Agency (WAMA)
7. WAMA Conditions of Service for Professional Staff
8. ECOWAS Official Journal vol. 58 (CCJ) 3
9. Certified True Copy of Judgment of the Community Court ECW/CCJ/JUD/01/13 dated 11th February 2013
10. Certified True Copy of Judgment of the Community Court ECW/CCJ/JUD/03/10 dated 8th July 2010.

6. FACTS AND PROCEDURE

6.1. NARRATION OF FACTS BY THE APPLICANT

1. The Plaintiff was a staff of the 1st Defendant (an autonomous agency of ECOWAS). The Plaintiff was employed vide a letter from the 1st Defendant, dated 6th August, 2013.

2. The Plaintiff's appointment was thereafter terminated without Notice vide a letter from same 1st Defendant dated 26th February, 2009 without due process of law. The 1st Defendant relied on unproven allegations of gross incompetence and other sundry personal issues contained in secret documents unknown to the Plaintiff as grounds for termination of the Plaintiff's employment.

3. The Plaintiff was not aware of the existence of these secret documents and allegations and was never given a hearing let alone a fair one. The Defendants were the accusers and the judge at the same time.

4. The Plaintiff's hard earned reputation was grossly injured and irreparably shredded by the unsubstantiated allegation that the Plaintiff was an incompetent staff of the 1st Defendant. The Plaintiff has not recovered and cannot gain employment with this tattered reputation and her built up career in the financial world was irreparably damaged unjustly by the Defendants. The Plaintiff is a certified Banker and Financial Economist.

5. In addition to the wrongful termination of the Plaintiff's employment with the 1st Defendant, the Plaintiff was unlawfully ejected from her official residence about five months after the unlawful termination of employment and all her properties and personal effects unlawfully seized and detained in her residence.

6. Furthermore, the Defendants wrote Petition to the Police in Sierra Leone alleging that the Plaintiff was not a diplomat, but a criminal impersonator. The Plaintiff was publicly humiliated, arrested and detained along her movable properties by agents of the 5th and 6th Defendants.

7. The Plaintiff suffered serious damages, unnecessary expenses, untold hardship and mental trauma, ill health, gross violations of fundamental rights to privacy, dignity of human person and unlawful detention of the Plaintiff/Applicant's properties, internal displacement and public humiliation as a result of the wrongful acts of the Defendants.

8. The Plaintiff alleged that there were newly discovered fundamental contradictions in the judgment, which necessitated the Applicant's Application for review and supplemental judgment.

9. The Plaintiff avers that if these discovered contradictions were taken into consideration, they would be a decisive factor indeed and that if such facts had been taken at the time of the judgment, it would have affected the decision of the Court in favor of the Plaintiff/Applicant.

6.2. CONTRADICTIONS ALLEGED BY PLAINTIFF

1. The Plaintiff avers the first contradiction is that the Court considered Plaintiff's claims as being presented separately, while the Plaintiff avers that her claims were consolidated.

2. The second contradiction is the question whether other claims flow from a breach of terms of employment should not arise, because it is not supported or assumed by the Application before the Court.

3. The Plaintiff avers that the third contradiction is "of the judgment asking "are such claims legitimate?" clearly and simply portray instant negative connotations. *" The claims that flow directly from the termination of the contract and covered by the provisions of the WAMA Regulations are legitimate but where the claims are not within the flow of damages as a result of the termination.* See Paragraph 45 of COURT'S JUDGMENT"

4. The Plaintiff avers that the fourth contradiction is that the case decided was only for unlawful dismissal, despite the preponderance of contrary facts in the application of the same judgment. The Court indicated the Plaintiff cannot claim back her unlawfully seized properties and other claims to recover damages.

5. The Plaintiff avers that the fifth contradiction is that *"part of this claim by the Plaintiff had been paid to the Plaintiff through her GTB account" has no support in any documents before the Court and is a contradiction. The Court held inter alia thus: The above claims have been found to be outside the service period and therefore extraneous to the claims allowable in a contract of service after such contract had been terminated by the employer as in the instant case. We in line with trite law on such contracts disallow all the claims stated above in Paragraph 54 therein and hold that the claims failed to succeed.* See Paragraph 50 – 52 of COURT'S JUDGMENT"

6. The Plaintiff avers that the sixth contradiction is that "to basically apply the principle that the defendants are only liable for the wrongful dismissal in damages and nothing more when the Plaintiff with statutory cover is unlawfully dismissed has no basis in law and is thus a fundamental contradiction to be reviewed for supplemental judgment. *"For the hiring or renting hotel expenses after termination, this Court is of the opinion that such claims being outside the claimable claims, where a contract of service is terminated, the Plaintiff cannot succeed and we disallow same*. See Paragraph 55 of COURT'S JUDGMENT"

7. The Plaintiff avers that the seventh contradiction is that the Application before the Court did not in any way tie the claims for hiring or renting hotels expense to the unlawful termination of Plaintiff's contract. These claims were clearly and unambiguously tied to a separate illegality, i.e., the unlawful eviction of the Plaintiff from her residence where she had been a paying tenant.

8. The Plaintiff avers that the eighth contradiction is that the Court disallowed claims contrary to its own cited position of law under paragraph 59 on page 28 of the same Judgment and reiterated in the consolidated Ruling of 4th April 2014. By this position of the law, these claims stand proven since they were not disputed or in dispute by the Defendants. The Plaintiff further avers that the Court contradicted when it ruled thus: *"under head II of particulars of special damages, the Court notes with particular reference to per diem at $287.5 per day claimed by the Plaintiff from March 2009 till judgment that per diem are only earned by staff who travelled outside the host country of the first Defendant on an approved official assignment and cannot be earned outside the termination of appointment of the Plaintiff so therefore the claims stand as unproved.* See PARAGRAPH 56 OF COURT'S JUDGMENT."

9. The Plaintiff avers that the ninth contradiction is that in the Court's own cited position of the law under paragraph 59 on page 28 of the same Judgment and reiterated in the consolidated Ruling of 4th April 2014, when the Court ruled thus: *"a claim for defamation of character in that the Defendant portrayed the Plaintiff as incompetent and that she was reported as a criminal at the Police Office in Sierra Leone was defamation of character was not sufficiently proved. No evidence was adduced as to allegation and the proof thereof before this Court. The said claim therefore failed in its material particular.* See PARAGRAPH 60 OF COURT'S JUDGMENT."

10. The Plaintiff avers that the tenth contradiction is in the Court's own cited position of the law under paragraph 59 on page 28 of the same Judgment and reiterated in the consolidated Ruling of 4th April 2014. The Court in paragraph 62 of the Judgment ECW/CCJ/JUD/01/13 acknowledged "the Defendants made no challenge to the claim in their Pleadings. The Plaintiff contends that by this position of the Court, Plaintiff's claim stands proven since it was uncontroverted by the Defendants, but yet the Court ruled that the Plaintiff's claim was not sufficiently proven. Plaintiff contends that there was no further proof required since the Defendants did not controvert said claim. The Court ruled thus: *"all other claims by the Plaintiff fell outside her entitlements after the termination of her appointment except the above stated amounts.* See PARAGRAPH 65 OF COURT'S JUDGMENT."

11. The Plaintiff avers that the eleventh contradiction is that the Court's position here contradicts its own cited position of the law on its Ruling in Paragraph 63 of the same judgment and an earlier decision of the Court in a similar case of unlawful dismissal in respect of EDOH KOKOU vs. ECOWAS COMMISSION, ECW/CCJ/APP/05/09 and ECW/CCJ/JUD/03/10, delivered on 8th day of July, 2010. The same settled principles generally stipulate that *"an employee, who is unjustly dismissed from work protected by statute shall be entitled to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement and that when reinstatement is not practicable, the employee is entitled to separation pay"*. There is a contradiction herein that the award of claimed back wages, benefits and entitlements of the Plaintiff are omitted and the impression created that she is not entitled to same.

6.3. PROCEDURE

6.3.1. The initiating Application (Document number 1A) and a Summary, Document number 1B), were lodged in this Court on July 4, 2014.

6.3.2. The 1st and 2nd Respondents filed their Reply to the Plaintiff/Applicant's Application (Document number 2), on January 22, 2015.

6.3.3. There is no indication that the other Defendants/Respondents ever filed any responsive pleading to the Application or any other paper for that matter

6.4. CONTENTIONS or REPLY OF THE DEFENDANTS/RESPONDENTS (WEST AFRICAN MONETARY AGENCY)

The 1st and 2nd Defendants/Respondents react as follows on the above mentioned application, as follows:

1. The instant Application by the Plaintiff/Applicant/Judgment/Creditor is an abuse of Court process, a mirage, incompetent and inadmissible before this Honorable Court for the following reasons:
    a. Non compliance with Article 25 of the Protocol A/P1/7/91 and Article 92 of the Rules of the Community Court of Justice, ECOWAS;

b. In short, there are no new facts and therefore in contravention of Article 25 of the Protocol A/P1/7/91 of the Community Court of Justice.

c. Abuse of Court process by the filing of this Application on repetitive issues for interpretation and revision of the same Judgment without more.

2. Legal argument: the Defendants/Respondents cited Article 25 (1) of the Protocol A/P1/7/91of the Community Court of Justice provides: ***"an application for revision for a decision may be made only when it is based upon the discovery of some facts of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the court and also to the Party claiming revision, provided always that such ignorance was not due to negligence".***

3. Article 25(2) of the said Protocol provides: ***The proceeding for revision shall be opened by a decision of the Court expressly recording (a) the existence of the new fact, recognizing that it has such (b) a character as to lay the case open to revision and declaring (c) the application admissible on the ground.*** The Defendants/Respondents submit that the Plaintiff/Applicant has not revealed any new facts of such a nature as to be a decisive factor warranting any interpretation or to review Judgment of this Honorable Court.

4. The 1st and 2nd Defendants/Respondents submit and say that issues raised by the Plaintiff/Applicant are not new, but the same issues pleaded in her Pleadings and Judgment given on the same and therefore are not new or even of any decisive factor as required by Article 25.

5. The Defendants/Respondents submit that what the Plaintiff/Applicant is trying to achieve is a retrial of the same issues by virtue of this Application calling upon the Court to sit on an appeal of its own judgment.

6. It is the submission of the Defendants/Respondents that the failure to comply with a condition precedent to the institution of an action before this court makes the application incompetent and inadmissible. They maintained that the condition for revision is based entirely on the discovery of new and decisive facts which must not have been considered during the trial or the hearing of the suit and such ignorance was not out of negligence.

7. The 1st and 2nd Defendants/Respondents concluded by saying that it was at the Hearing, the Defendants/Respondents applied to this Honorable Court for the Plaintiff/Applicant to remove her properties from their residence to which she responded that she has no money to travel to Sierra Leone. Therefore for the Plaintiff/Applicant to now claim as a new fact that her properties are unlawfully detained is misleading to this Honorable Court.

7. ISSUES PRESENTED FOR DETERMINATION

7.1. On the 04th day of July, 2014, Applicant filed her Application praying this Court to deliver its Ruling on Omitted Suit No. ECW/CCJ/APP/15/11/REV.2 dated 29th April 2013 being application to review Judgment No. ECW/CCJ/JUD/01/13 and to Supplement Judgment No. ECW/CCJ/JUD/01/13 and Consolidated Ruling No.ECW/CCJ/JUD/01/13/REV., as follows, to wit:

7.1.1. Omitted Orders sought by the Applicant are as follows, to wit:

1. A declaration that the termination of the Plaintiff's Contract of Employment with the 1st Defendant being found to be unlawful, it is wrongful, irregular, illegal, invalid, inconsequential and null and void and of no effect whatsoever.

2. A declaration that the conduct of the Defendants in this case amount to a gross violation of the Plaintiff's human rights as guaranteed under Articles 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 18(3), 24, 25, 26, 27 and 28 of the African Charter on Human and Peoples' Rights, and a gross violation of Article 4(g, h and i) and in implementation of application of Article 10, No. 3(f) of the Revised Treaty of ECOWAS and the Protocol on Observance of Law and Justice.

3. An Order compelling the Defendants to forthwith release the Plaintiff/ Applicant's properties (household, electronic, educational, documentary commutations, etc) and those of International Charity – Jewels of God International Ministry, and to pay special damages totaling $349,552.

4. An Order compelling the Defendants to pay the Plaintiff the sum of One Hundred Thousand United States Dollars ($100,000.00) as general and aggravated Damages for unlawfully rejecting the Plaintiff and detaining her properties.

5. An Order compelling the Defendants to pay the Plaintiff the sum of $742,712 as due entitlements in back wages based on her expected retirement at 55 years. In the alternative, the Defendants to pay the Plaintiff claimed back wages and omitted uncontroverted entitlements till point of judicial finality, but currently estimated to be $437,241.55 as at July 2014 as due entitlements.

6. An Order of this Court compelling the Defendants herein to jointly and severally pay over to the Plaintiff the sum of Five Million United States Dollars ($5,000.000.00) as General Damages.

7. An Order of perpetual injunction restraining the Defendants, their agents, servants, assigns, privies, or howsoever called from further harassing, molesting, intimidating, arresting and /or detaining the Plaintiff.

8. An Order of mandatory injunction compelling the Defendants to put up a widely read publication/advertorial in the internet and a newspaper that enjoys wide readership in the Republic of Sierra Leone and the Federal Republic of Nigeria apologizing to the Plaintiff for violating her human rights. Interest in the following manner to wit:

- Interest on (3) and (5) above at 10% per annum
- Interest on (4) and (6) above at 25% per annum

5. A declaration that the Plaintiff is entitled to the Costs of One Hundred and Fifty Thousand United states Dollars ($150,000.00) against each of the Defendants herein jointly and severally.

7.2. On the other hand, as stated herein above, the Defendants contended that the issues raised by the Plaintiff/Applicant are not new, but the same issues pleaded in her Pleadings and Judgment already given on the same and therefore are not new or even of any decisive factor as required by Article 25. Further, the Defendants/Respondents submit that what the Plaintiff/Applicant is trying to achieve is a retrial of the same issues by virtue of this Application calling upon the Court to sit on an appeal of its own judgment, which is not legally provided for.

7.3. QUESTION

The above claims and counterclaims of the parties have raised some very important and interesting issues, but we are however left with the foundational question to be answered by this Court, as follows.

7.3.1. Whether or not the criteria set out in Article 25 of the Revised Treaty are applicable to the instant case and thus renders the Application of the Applicant admissible?

8. DISCUSSIONS

8.1. The sole legal question this Court shall answer is whether or not the criteria set out in Article 25 of the Revised Treaty are applicable to the instant case thus rendering the Application of the Applicant admissible? We answer in the negative.

8.1.1. Our decision in this case is and has to be anchored on the governing law on the subject of revision of judgments/rulings, namely: (1**.) Article 25(1) of the 1991 Protocol on the Community Court of Justice, (2.)Articles 92 and 93 of the Rules of the Court**, and of course,(3.) some case law.

Article 25(1) of the 1991 Protocol: "An application for revision of a decision may be made only when it is based upon a discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence."

Article 92 of the Rules of the Court: "An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge."

Article 93(2) of the Rules of Court: "In addition, the application for revision shall (a)…; (b)….;(c)…; (d) indicate the nature of the evidence to show that there are facts justifying revision of the judgment, and that the time limit laid down in Article 92 has been observed."

8.1.2. We will now use these laws and apply the facts of this case in our decision.

8.1.3. In the Originating Application and its Summary, both filed July 4, 2014, the Applicant has listed eleven (11) counts in which she outlined what she termed as Contradictions in this Court's previous Rulings/Judgments. See pages 9-15 (nine to fifteen) of the Originating Application – Document number 1A, and pages 2-4 (two to four) of the Summary – Document number 1B. Additionally, the Applicant has enumerated 9 (nine) counts containing what she has called Omitted Orders, which she now requests this Court to issue. See pages 22 – 23 (twenty-two – twenty-three) of the Originating Application – Doc. 1A and pages 6 - 7 (six-seven) of the Summary – Doc. 1B.

8.1.4. A careful review of the initial Application and all other documents requesting relief by the Applicant, it is observed that all these claims/issues were indeed raised and included in the submission made to the Court for its determination. The Court has passed on the issues and rendered Rulings/Judgments and made awards to the Applicant. It is observed that the subsequent filing of this instant Application is only to show that the Plaintiff is/was not satisfied with the Court decision and seeks to have the Court reverse/review its earlier decision and rule in the manner the Applicant would have the Court to do. This is reprehensible and unacceptable to say the least.

8.1.5. This Court does not sit in an appellate jurisdiction and thereby subject its decisions to review/reversal; this is a trial court, from which there is no appeal. The framers of the law determined that the Court, being made up of mortals as judges, would have the occasion to re-consider its decision if it believes that it has made some palpable error, but that is not a license for litigants to question the wisdom of the Court by challenging the decisions of the Court and pressurizing the Court to change its position simply because the party involved does not like or agree with a position which has been taken by the Court. That was not the purpose for which Article 25 was inserted in the Protocol on the Community Court of Justice.

8.1.6. More besides, there has to be an end to litigation; the Court cannot indulge litigants to importune the Court with endless litigation simply because they do not agree with the position adopted or assumed by the Court on an issue. It is not for the party to insist on the Court ruling in a certain way only to satisfy that party before the case can end.

8.1.7. Looking to the jurisprudence of this Court, the decision in this case is controlled by and finds total support in this Court's Ruling in the case, **Musa Saidykhan vs. The Republic of The Gambia, Case No. ECW/CCJ/APP/11/07, Ruling No. ECW/CCJ/APP/RUL/03/12, delivered 7th February 2012.** The legal issue, the legal reasoning, and the entire disposition of this case is wholly analogous to this instant case, because of which we shall quote the relevant portion the Court's Ruling in the cited case.

" 12. A critical reading of the provisions quoted above indicates that there are three conditions precedent to a successful application for review of a judgment/decision of this Court. The three conditions are as follows:

a. An application for review must be made within five years of the delivery of the judgment/decision which is sought to be reviewed.

b. The party applying for a review must file his application within three months of his discovering the fact/facts upon which his application is based.

c. An application for a review must be premised on the discovery of facts that are of a decisive nature, which facts were unknown to the Court or the party claiming revision provided that such ignorance was not due to negligence.

"13. Thus, for an application for review to succeed in this Court, the party making the application should satisfy all these three conditions precedent…"

The Court, in the cited case, applied each of the three criteria to the facts of the application for revision and came out with its findings and conclusion. The Court continued in the cited as follows:

"17. A careful reading of Article 25 of Protocol A/P1/7/91 reveals clearly that facts contemplated by the said Article are facts that were in existence at the time of the decision but were unknown to both the Court and the party claiming revision. It also reveals that the facts in question are facts that could have had a decisive influence on the judgment. Can a judgment of the Court be said to be a fact that could have had a decisive influence on that same judgment? The answer is obviously in the negative. Again, can one say a judgment of the Court is a fact that was in existence before that same judgment was delivered? The answer is certainly not in the affirmative."

"18. The defendant/applicant in claiming that the amount of damages awarded to the Plaintiff/respondent is excessive having regard to the evidence before the Court is simply claiming that the judgment is erroneous. It is trite learning that if a judgment is erroneous, it is a ground for appeal but not for review as contemplated by **Article 25 of Protocol A/P1/7/91 and Article 92 of the Rules of this Court**."

"Article 19(2) of Protocol A/P1/7/91 makes it clear that judgments of this Court are final and binding, subject to the provisions of a review. The decisions of this Court are thus not subject to appeal. The Court will not welcome any attempt to use the limited review process as an appeal process, and thereby circumvent the fact that these decisions are final." **See pages 4-7 of that Ruling.**

9. CONCLUSION

9.1. The provision of Article 25 of the Protocol on the Community Court of Justice is not a license for automatic review of decisions made by the Court; the Applicant must show clearly a mistake of law or of fact which was not then known to the Applicant which, if it had been known, would have led the Court to produce a different disposition of the case.

9.2. In this instant case, it is crystal clear that all issues raised in this new Application seeking the revision of the Court's earlier decisions, were all included from the very inception of the filing of this case and the Court considered the totality of the case and made a determination. We do not feel there is any legal reason to justify the reversal/ review of the Ruling/Judgment and alter the awards made by this Court. Therefore, the Application is not admissible and the claims sought should be denied, and the original judgments and rulings of this Court ordered enforced without any further delay.

9.3. Having said the above, there are a few observations the Court would like to make as we conclude this Judgment.

9.4. First and foremost, this case is a case for alleged violations of human rights and as such was brought under the human rights jurisdiction of this Court, as the Applicant herself cited and relied on the African Charter on Human and Peoples' Rights. Therefore, a complaint for human rights violation is properly brought against States parties to the Charter and not other kinds of persons.

9.5. In this instant case, let us look at who the Defendants are; those persons against whom the complaint has been filed are:

1. The West African Monetary Agency
2. The Director General, WAMA
3. The President, ECOWAS Commission
4. The Chairman, Committee of Governors, ECOWAS Member Central Banks
5. Attorney General of the Republic of Sierra Leone
6. The Republic of Sierra Leone

9.6. In principle, therefore, and in conformity with the jurisprudence of this Court, the Applicant, relying on the African Charter on Human and Peoples' Rights, should have brought her case against a State, in this case, the Republic of Sierra Leone, if at all said State was involved in the controversy of this case.

9.7. The Application being filed against all the entities who are not States, then the complaint should have been one for damages for acts or omissions of a Community Institution or Official in the performance of official duties or functions (Article 9(2) of the 2005 Protocol on the Community Court of Justice or for annulment of the measures taken against her by her employer (Article 10 (c) of the 2005 Protocol) and not for human rights violation because one cannot bring a complaint for human rights violation against the ECOWAS Commission and other Community Institutions, as these entities are not parties to the African Charter; only States are.

9.8. We herein mention ***only in passing*** that the initiating Application ought not to have been entertained by this Court in the form it was in to begin with, but our predecessors already admitted the case and even adjudicated upon it, however, it was important to point this out.

9.9. As we have stated earlier in this Judgment, there is or was absolutely no basis for this application for revision filed by the Applicant based on the governing laws for revision: **Article 25(1) of the 1991 Protocol, Article 92 of the Rules of the Court, and Article 93(2) of the Rules of Court.**

9.10. Further to this, the Application is also not in conformity with the provisions of these governing laws for the following reasons:

9.10.1. First, the Application does not show any evidence anywhere whether three months had not elapsed from the date the Applicant had knowledge of the alleged "NEW FACT."

9.10.2. Secondly, and more importantly, such new fact is not demonstrated. We observe that the Application goes back to requests made in the previous trial proceedings and appears to criticize the approach taken by the Court; but the said Application does not disclose any new fact which was unknown to both the Applicant and the Court at the time of the previous Judgment. In the words of the Applicant as found on pages 4 and 5 of her Application, she indicates what she considers the new fact:

> "…treated all the issues brought by the Plaintiff/Applicant as being tied to unlawful dismissal when they were not, rather than multifaceted and independent, but consolidated issues with common Defendants as separately identified, acknowledged and clearly summarized in paragraph 31 pages 1215 of the \judgment ECW/CCJ/JUD/01/13 is the surprising new fact that came to the knowledge of the Plaintiff/Applicant only after receipt of copy of subject judgment ECW/CCJ/JUD/01/13 on 13th February 2013."

9.11. As we have stated supra, this suit is nothing more than the Plaintiff's attempt to criticize the Court's Ruling which she seeks to have revised to conform to what she wants. In fact, if we look more closely, we realize that the Plaintiff is seeking justification from the Court on certain points and asking the Court to increase her monetary award. She in a clever way attempts to have this Court review the previous judgment in an appeal sitting, which we do not have the right, the power, the authority or the mandate to do, and certainly we do not have the will to engage in such dangerous precedent. She completely strays away from the main issue of NEW FACT.

9.12. The concept of "a new fact" which is of prime importance in a revision proceeding, is defined with rigor and restrictions, both before (a) International Courts and Tribunals other than the ECOWAS Court, and (b) before the ECOWAS Court itself.

9.13. (a) Before International Courts and Tribunals other than the ECOWAS Court

- The Administrative Tribunal of the United nations, in its Judgment on **Bulsara vs. The Secretary General of the United Nations, dated 5 December 1959**, held that applications seeking a decision different from what has already been delivered, or contesting the validity of such a judgment, are inadmissible for the purposes of revision where the discovery of a new fact is a requirement.

- The Administrative Tribunal of the World Bank, in its Judgment on **Van Gent vs IBRD, dated 6 September 1983**, decided that applications contesting a previous judgment, its validity or soundness, are inadmissible when brought as requests for revision.

- **The Treaty for Conciliation, Judicial Settlements and Arbitration signed on 7 July 1965 between United Kingdom of Great Britain and Northern Ireland and Switzerland, in its Article 35**, states that:
  "An application for revision of a judicial decision or arbitral award may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judicial decision or arbitral award was given, unknown to the International Court of Justice or the Arbitral Tribunal."

9.13 (b) Before the ECOWAS Court

- The Court held as follows in the Judgment of 17 November 2009 in the case, **Mrs. Tokumbo Lijadu Oyemade vs ECOWAS Council of Ministers and Others**:

  "The existence of new facts presupposes that the party requesting the revision may not have been informed of these facts, but also that these facts should be of a nature as to exert a decisive influence on the decision made by the Court (s45)….These allegations are however not backed by evidence. The newness of a fact cannot be understood in the sense of a mere allegation, but must repose on proven, real and verified facts…(s48)."

9.14. The Court thus concluded that the facts as presented by the Applicant, **Mrs. Tokumbo Lijadu Oyemade**, in her application for revision of Judgment **No. ECW/CCJ/APP/JUD/02/08 of 4 June 2008**, were not new facts. Nor could they have exerted any decisive influence on the decision already made by the Court (s49).

9.15. The Court decided in its Judgment of 3 June 2010 in the case, **Federal Republic of Nigeria and Others vs Djot Bayi Talbia**, that the Application for revision was deposited outside the time-limit, and adjudged that even if the Application had been submitted within the prescribed time frame, it still would not contain any new facts and could not exert any decisive influence on the decision made by the Court on 28 January 2009.

9.16. The Court held as follows in the Judgment of 12 March 2012 in the case, **Isabelle Manavi Amaganvi and Others vs Republic of Togo**:

> "…the Court finds that…it has adjudicated exhaustively upon the matter brought before it for determination (s16)…the Court declares that the presumed omission to adjudicate on the issue of reinstatement, as brought by the Applicants, has no grounds…(s19)."

9.17. The Court equally declared in its Judgment of 3 July 2009 in the case, **Mrs. Tokumbo Lijadu Oyemade, supra**, that it was not unaware of the content and meaning of the notice served by the Director of BCEAO of Niger at the moment it was delivering its judgment of 12 December 2012, which revision had been requested (s28), and that pursuant to Article 25(1) of the Protocol on the Court, the application for revision as submitted by the Republic of Niger was inadmissible (s29)."

10. DECISION

The Court, adjudicating in a public sitting, after hearing both parties, in last resort, after deliberating in accordance with the law;

- As to Admissibility of the Suit

10.1. Declares that the Application be ruled inadmissible and hence denied because the conditions-precedent to the invocation of the benefits of Article 25 of the Protocol have not been satisfied.

10.2. Further to the above, the Court finds and holds that there are no new issues of law or fact in this present Application which were not also included in the Originating Application which would warrant this Court reviewing, revising, and/or reversing its previous judgment and traversing the awards made in the previous judgment

As to Competency of the Parties

10.3. The Court, on its own motion, determines that it was totally unnecessary to have listed the President of the ECOWAS Commission and the Chairman of the Committee of Governors of ECOWAS member Central Banks as parties Respondent/Defendant, because they are not proper parties against whom complaints for human rights violations can be brought. Accordingly, the names of the 3rd and 4th Respondents/Defendants are hereby struck out and removed from this case and they are hence dropped as misjoined parties.

As to Costs

10.4. The Court rules that costs are and shall be assessed for the Defendants against the Plaintiff/Applicant in accordance with Article 66 of the Rules of this Court..

Thus made, adjudged and pronounced in a public hearing at Abuja, this 02nd day of December, A.D. 2015 by the Court of Justice of the Economic Community of West African States.

THE FOLLOWING JUDGES HAVE SIGNED THIS JUDGMENT

Hon. Justice Friday Chijioke NWOKE – Presiding
Hon. Justice Maria do Ceu Silva MONTEIRO - Member
Hon. Justice Jerome TRAORE - Member
Hon. Justice Micah Wilkins WRIGHT – Member
Hon. Justice Alioune SALL - Member

Assisted by Mr. Atanase ANTONNON, Esq. – Registrar