

COMMUNITY COURT OF JUSTICE,  
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,  
CEDEAO

TRIBUNAL DE JUSTICA DA COMUNIDADE,  
CEDEAO



No. 10 DAR ES SALAAM  
CRESCENT OFF AMINU KANO  
CRESCENT, WUSE II, ABUJA-  
NIGERIA. PMB 567 GARKI, ABUJA  
TEL: 234-9-78 22 801

Website: [www.courtecowas.org](http://www.courtecowas.org)

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

**HOLDEN AT ABUJA, IN NIGERIA**

**Monday, 4th March 2019**

*Between*

**KARIM MEISSA WADE**

**APPLICANT**

**Plaintiff Counsel:** Maîtres Ciré Clédor Ly,

Michel Boyon, Demba Ciré Bathily, Mohamed Seydou Diagne

*And*

**REPUBLIC OF SENEGAL**

**DEFENDANT**

**Defence Counsel:** Defendant was represented by Antoine Diome

(State Judicial Officer of Senegal), and Maîtres Yérim Thiam, Papa Moussa Felix Sow,

Samba Biteye, Bassirou Ngom, all lawyers registered with the Bar Association of Paris

**General List: No. ECW/CCJ/APP/55/18**

**Judgment No. ECW/CCJ/JUD/13/19**

**BEFORE THEIR LORDSHIPS**

**1. Hon. Justice Gbéri-bè Ouattara**

**Presiding**

**2. Hon. Justice Dupe Atoki**

**Member**

**3. Hon. Justice Keikura Bangura**

**Member**

**Assisted By: Maître Aboubacar Djibo Diakité**

**Registrar**

Delivers the following Judgment:

## **THE COURT,**

- Having regard to the 24 July 1993 Revised Treaty establishing the Economic Community of West African States (ECOWAS);
- Having regard to the 6 July 1991 and the 19 January 2005 Protocols on the ECOWAS Court of Justice;
- Having regard to the 3 June 2002 Rules of Procedure of Procedure of the Court;
- Having regard to the 10 December 1948 Universal Declaration of Human Rights;
- Having regard to the 27 June 1981 African Charter on Human and Peoples' Rights;
- Having regard to the International Covenant on Civil and Political Rights;
- Having regard to the Initiating Application of the above-cited Applicant, received at the Registry of the Court on 18 December 2018;
- Having regard to the Defence of the Republic of Senegal received at the Registry of the Court on 18 December 2018;
- Having heard each Party through their respective Counsel; and
- Upon deliberation in accordance with the law;

## **FACTS AND PROCEDURE**

By Application received at the Registry of the Honourable Court on 13 December 2018, Karim Meissa Wade, whose Counsel was constituted by Ciré Clédor Ly and three other barristers-at-law, brought his case before the ECOWAS Court of

Justice, for the purposes of pleading that it may please the Court to declare as follows:

That the Honourable Court has jurisdiction to adjudicate on the case;

That the Application is admissible;

That the Republic of Senegal violated Karim Meissa Wade's right to participate freely in the public affairs of his country;

To adjudge that the Applicant's right to vote is violated and that his right of eligibility to stand for election in the 24 February 2019 election is violated;

To order the Republic of Senegal to restore his name immediately on the electoral roll for the 24 February 2019 election and to issue him with a voter's card;

To adjudge that the Senegal Electoral Code as amended by Law No. 2018-22 of 4 July 2018 in its Article L57 of the Electoral Code is a violation of the right to free participation in elections;

To order the Republic of Senegal to remove all the obstacles to the Applicant's participation in the Presidential elections of 24 February 2019 originating from the said amendments to the law;

To find that Karim Meissa Wade's right to effective remedy before the law courts is violated;

To order the Republic of Senegal to strictly observe the international instruments binding on it in regard to respect for Karim Meissa Wade's rights; and

To ask the Republic of Senegal to bear the costs.

On the same day as his Initiating Application, Karim Meissa Wade filed before the Court an Application for Expedited Procedure, seeking the same remedies.

On 18 December 2018, the Republic of Mali, represented by the State Judicial Officer and assisted by Maître Yérim Thiam and four other lawyers, raised the question of prima facie incompetence of the Court.

Relying on his written pleadings and on the defence put up by his lawyers Maître Ciré Clédor Ly and three others, Karim Meissa Wade contended that since the date for the presidential elections in Senegal was fixed for 24 February 2019, in his capacity as the candidate for the opposition political party known as *Parti Démocratique Sénégalais* (PDS), on 16 April 2018, he went before the

Administrative Commission which sat at the Embassy of Senegal in Kuwait, the latter Commission having been empowered to receive Senegalese citizens in regard to election matters, to submit his application to have his name featured on the electoral roll, in compliance with Law No. 2018-476 of 20 February 2018 on Extraordinary Revision of the Electoral List; that the said Commission received and registered his application, and that on the same day, the Commission issued him with a receipt, with number 80651515. Karim Meissa Wade averred that before the revision exercise, he already had a voter's card and was legally registered on the electoral roll.

He further argued that whereas his registration on the electoral roll was consistent with the provisions of Article 4 (1) of the above-cited Law No. 2018-476 of 20 February 2018, he noticed that his name was among a list of persons whose registration on the electoral roll had been rejected on the ground that he was not entitled to be registered on the list he intended, in compliance with Article L.31 of the Electoral Code.

That on 2 July 2018, the central administrative units of the Ministry of Interior, through the agency of the Director of Training and Communication at the election headquarters, acknowledged that the decision to reject his registration on the electoral roll originated from them.

That on 4 July 2018, i.e. less than 48 hours after that decision, the Republic of Senegal promulgated Law No. 2018-22 on Revision of the Electoral Code, with a new Article L.57, in the terms of which for one to be eligible for the presidential election, one must be sponsored by a list of voters, and for one to be sponsored, one must be a qualified voter. That the law was published in Official Journal No. 7106 of the Republic of Senegal the following day, 5 July 2018.

He claims that with a view to contest the rejection of his application to be registered on the electoral roll, he, on 7 July 2018, filed an application before the *Tribunal d'Instance Hors Classe* (TIHC) of Dakar against the Minister of Interior, seeking restoration of his registration. That by Order No. 470 made on 23 July 2018 in first and last resort, the President of the said TIHC of Dakar declared that he had no jurisdiction to adjudicate upon the matter.

That on 2 August 2018, he filed an appeal before the Supreme Court seeking to quash the said Order No. 470. However, the Supreme Court, by Judgment No. 49 delivered on 30 August 2018, dismissed his appeal.

In blaming the Republic of Senegal, that by its actions, it had violated Article 13 (1), (2) of the African Charter on Human and Peoples' Rights, Articles 2, 14(1) and 25 of the International Covenant on Civil and Political Rights, Paragraph A.1 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Articles 34 and 35 of the Criminal Code of Senegal, Articles L.31 and L.57 of the Electoral Code of Senegal, Article 7 of the African Charter on Human and Peoples' Rights, Karim Meissa Wade brought his case before the Community Court of Justice, ECOWAS requesting the Court to declare sanctions against the Republic of Senegal for violation of his rights as enumerated above.

He thus requests that it may please the Court to make the following declarations:

That it has jurisdiction to hear the case;

That the Application is admissible;

That the Republic of Senegal violated his right to participate freely in the public affairs of his country;

To adjudge that the Applicant's right to vote is violated and that his right of eligibility to stand for election in the 24 February 2019 election is violated;

To order the Republic of Senegal to restore his name immediately on the electoral roll for the 24 February 2019 election and to issue him with a voter's card;

To adjudge that the Senegal Electoral Code as amended by Law No. 2018-22 of 4 July 2018 in its Article L57 of the Electoral Code is a violation of the right to free participation in elections;

To order the Republic of Senegal to remove all the obstacles to the Applicant's participation in the Presidential elections of 24 February 2019 originating from the said amendments to the law;

To find that Karim Meissa Wade's right to effective remedy before the law courts is violated;

To order the Republic of Senegal to strictly observe the international instruments binding on it in regard to respect for Karim Meissa Wade's rights; and

To ask the Republic of Senegal to bear the costs.

By a separate application dated 6 November 2018 and received at the Registry of the Community Court of Justice, ECOWAS on 13 November 2018, Karim Meissa Wade requested that his case be heard under expedited procedure.

To buttress his request for expedited procedure, he again claims that his application for his name to be put on the electoral roll for the presidential election of 24 February 2019 was rejected by the administrative units of the Ministry of Interior for the purposes of excluding him from the election, whereas he had already been recognised officially by the first national opposition party, the *Parti Démocratique Sénégalais* (PDS).

He further pleads that on 22 January 2018, the President of the Republic of Senegal fixed by law 24 February 2019 as the date for the next presidential elections; that the Constitutional Council shall publish the provisional list of candidates at least 35 days before the election date of 24 February 2019; that the final list of candidates will then be made public by the Constitutional Council after examining the complaints of those whose candidatures were rejected, following the publication of the provisional list; thus, he pleaded that there was obvious urgency for the ECOWAS Court to hear with minimum delay, under expedited procedure, the case of violation he had suffered. He maintains that under the prevailing conditions, if his substantive application should be heard under the ordinary procedure, his requests will have no interest and will turn out as devoid of purpose; he pleads that his request for expedited procedure is justified on the ground that the electoral process had already commenced.

In response, the Republic of Senegal, represented by the State Judicial Officer, and a Defence Counsel constituted by Maître Yérim Thiam and four others, asked the Court to dismiss the entire Application brought by Mr. Karim Meissa Wade as ill-founded and also ask him to bear the costs.

The Republic of Senegal contends that the subsidiary reconstitution of the electoral roll as instituted by Law No. 2016-27 of 19 August 2016 went hand-in-hand with the introduction of the ECOWAS electronic biometric card ushered by Law No. 2016-09 of 14 March 2016; that in the terms of the provisions of Article 4(1) of the law thus reconstituting the electoral roll: “Upon completion of the reconstitution exercise, only voters who had presented themselves physically and gone through the formality as well as those newly registered shall feature on the electoral roll”; that Mr. Karim Meissa Wade did not go to the accredited bodies mandated to carry out that exercise for him either in Senegal or abroad; consequently, his name no more featured on the electoral roll, in compliance

with the provisions of Article 4(1) cited above, and since his name no more appeared on the electoral roll, Mr. Karim Meissa Wade could not obtain the new ECOWAS electronic biometric voter's card.

That all the same, the extraordinary revision of the electoral roll for the presidential elections of 24 February 2019, decided via Law No. 2018-476 of 20 February 2018, notably gave the opportunity to all Senegalese whose names were still not found in the voter's register to apply to have their names registered;

That Mr. Karim Meissa Wade, like any other interested citizen, went before the administrative commission of the Senegalese Embassy in Kuwait and requested for the issuance of the ECOWAS identity card and the voter's card; that in the course of processing the data for the revised electoral roll, certain names were rejected and the application of Mr. Karim Meissa Wade for his name to be registered on the electoral roll was rejected on the basis of Article L31 of the Electoral Code; that in its Article 11(2), Law No. 2018-476 on the extraordinary revision of the electoral list for the purposes of the presidential election of 24 February 2019, provided that that the time limit for receiving complaints relating to the final list thus drawn up was fifteen (15) days starting from 3 July 2018 and that: "From 3 July 2018, to reclaim his rights, any voter omitted or a victim of a purely technical error of his registration, and in possession of his receipt, shall have fifteen (15) days to report the matter directly or through the CENA or the Presiding Judge in his area of jurisdiction, or through the Head of Diplomatic Mission or Consulate, if he resides outside Senegal".

That in the case of Mr. Karim Meissa Wade, who resides in Qatar, and who applied in Kuwait for his name to be registered on the electoral roll, he rather chose to bring his case before the *Tribunal d'Instance Hors Classe* (TIHC) of Dakar, whose jurisdiction covers the administrative zones of Dakar and Rufisque **only**, instead of complaining to His Excellency the Ambassador of Senegal in Kuwait.

That the said court therefore declined jurisdiction to hear the case in an order made on 23 July 2018, which decision he appealed by filing an application before the Administrative Chamber of the Supreme Court of Senegal, seeking to quash the earlier decision made by TIHC of Dakar; that his application was dismissed in a Supreme Court judgment dated 30 August 2018; that upon his application having been thrown out, he brought his case before the ECOWAS Court of Justice for violation of his right to vote, his right of eligibility to stand for elections, and his right to effective remedy.

Concerning the application for expedited procedure, the Republic of Senegal maintains that Mr. Karim Meissa Wade simply argues that since the electoral process had already begun, “any delay, very characteristic of the ordinary procedure of the Court, runs the risk of extinguishing the essence of his Application, and render his substantive request purposeless,” without demonstrating whether he was prevented in any way whatsoever from filing his application earlier than he did; the Republic of Senegal puts up the defence that the only urgency Mr. Karim Meissa Wade may be feeling, as hanging on him, is the one created by his own failings by deliberately choosing to ignore the opportunity open to him by the applicable Senegalese law to enable him put his name on the electoral register.

The Republic of Senegal therefore requests that the application for expedited procedure be rejected as ill-founded and Karim Meissa Wade be asked to bear all the costs.

At the hearing of 8 February 2019, the matter was heard under expedited proceedings.

## **ANALYSIS OF THE COURT**

### **REGARDING JURISDICTION OF THE COURT**

The Republic of Senegal argues that *prima facie*, the Court has no jurisdiction over the matter.

In the terms of the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 amending Protocol A/P.1/7/91 on the Community Court of Justice, the Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.

In compliance with these provisions, the Honourable Court has affirmed on numerous occasions that allegations of violation of human rights in an application suffice on their own for the purposes of upholding the jurisdiction of the Court without prejudging the veracity of the facts alleged; this was notably the decision made in *Les Etablissements VAMO and Pascal Kuekia v. Republic of Benin* (Judgment No. ECW/CCJ/JUD/12/15 of 20 April 2015), and *El Hadj Mame Abdou Gaye v. Republic of Senegal* (Judgment No. ECW/CCJ/JUD/01/12 of 26 January 2012).



The Applicant is necessarily required to invoke violation of his human rights; in that the Applicant must prove that the facts are indeed related to acts he considers prejudicial to his rights, before the jurisdiction of the ECOWAS Community Court of Justice may be upheld; reference may be made to *Jamal Oliver Kane v. Republic of Mali* (Judgment No. ECW/CCJ/JUD/10/17 of 16 October 2017).

In the case at hand, the Applicant invokes violation of his right to participate in the public affairs of his country, violation of his right to vote, and violation of his right of eligibility to stand for elections.

The Court observes that the personal rights listed out by the Applicant form part of the human rights whose protection is within the ambit of the powers of the Court; thus, the Court hereby declares that it is competent to adjudicate on and determine the allegations of human rights violation which the Applicant claims to have been a victim of, brought against the Republic of Senegal, a Member State of the Economic Community of West African States (ECOWAS).

#### REGARDING ADMISSIBILITY OF THE APPLICATION

In the terms of Article 10 (d) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005, access to the Court is open to individuals on application for relief for violation of their human rights.

The application thus submitted shall not be anonymous nor be made whilst the same matter has been instituted before another International Court for adjudication.

In the case at hand, the Court notes that Karim Meissa Wade has brought before it a claim that he is a victim of the violation of his rights.

Since the application is not anonymous and the applicant has not instituted the same proceedings before another International Court for adjudication, the Honourable Court declares that the application is admissible.

#### REGARDING VIOLATION OF HIS RIGHT TO PARTICIPATE FREELY IN THE PUBLIC AFFAIRS OF HIS COUNTRY

The Court admits that it is apparent from the provisions of Article 13 of the African Charter on Human and Peoples' Rights, that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

Every citizen has the right, and is entitled to, without any unreasonable discrimination or restriction:

To participate freely in the government of his country, either directly or through freely chosen representatives;

To access, vote and be voted for during periodic, transparent elections, in a universal and egalitarian suffrage of secret ballot, in expression of the free will of the voters.

In the instant case, Karim Meissa Wade avers that he is a victim of the violation of his right to vote and of his right of eligibility to stand for elections, because according to him, even though he had a voter's card, and his name had been registered on the electoral roll, by virtue of the extraordinary revision of the electoral list for the purposes of the presidential election of 24 February 2019, the central administrative units of the Ministry of Interior rejected his registration on the ground that the new Article L57 of the Electoral Code first required that every candidate for said presidential election shall first of all be a qualified voter; that he was thus denied his right as a voter and as a person eligible to stand for elections.

As pleaded by the Republic of Senegal however, it is apparent from the facts that it was in compliance with Article L31 of the Electoral Code that his application for registration on the electoral list was rejected; that Article L31 of the said Electoral Code provides that:

***"Shall not be registered on the electoral roll:***

***(1) persons convicted of crime;***

***(2) persons sentenced to non-custodial prison terms or to custodial prison terms exceeding one (1) month, with the option of a fine, for any of the following offences – theft, fraud, abuse of trust, drug trafficking, embezzlement and corruption in public office, bribery, undue influence peddling, counterfeiting, and in general terms, any offence liable to imprisonment for a term not less than five (5) years;***

**(3) persons sentenced to custodial prison terms exceeding three (3) months or to a non-custodial prison term exceeding six (6) months, for offences other than those enumerated in paragraph 2 above, subject to the provisions of Article L30;**

**(4) persons who have not put in any appearance in court;**

**(5) unredeemed bankrupt persons whose bankruptcy may have been declared in Senegalese courts, or whose bankruptcy may have been declared outside Senegal but enforceable in Senegal;**

**(6) persons whose right to vote may have been banned by a criminal court of general law;**

**(7) adult persons suffering from one form of incapacity or the other.”**

Now, Karim Meissa Wade had once been sentenced to a custodial prison term of six (6) months for illicit wealth and to a fine of One Hundred and Thirty-Eight Billion Two Hundred and Thirty-Nine Million Eighty-Six Thousand Three Hundred and Ninety-Six CFA Francs (CFA F 138,239,086,396).

In compliance with the text cited above, the Republic of Senegal refused to register his name on the electoral roll.

It is worthy to recall that in line with its case law, the ECOWAS Court of Justice has already held in its judgment of 13 July 2015 on *CDP v. Burkina Faso*, that a state may impose restrictions on access to suffrage.

Besides, on the international stage, in *Pakas v. Lithuania*, the Grand Chamber of the European Court of Human Rights, in its Judgment of 6 January 2011, declared that: **“In the Court's view, it is understandable that a State should consider a gross violation of the Constitution or a breach of the constitutional oath to be a particularly serious matter requiring firm action when committed by a person holding that office.** (Paragraph 104, Application No. 34932/04).

The Court finds that the refusal to put Karim Meissa Wade's name on the electoral roll whereas he was aspiring to occupy the highest function in the State, does constitute a restriction upon his right to vote, but such restriction was imposed in consonance with the law, notably Articles 34 and 35 of the Criminal Code and Article L31 of the Electoral Code of Senegal. The law is intended to repress outrightly certain lines of conduct if they should be committed by certain persons invested with public authority, entrusted with

public-service responsibilities or in whom an elective public mandate is vested; such denial of the exercise of the right to suffrage is implicitly embedded in various criminal charges which may not have to be expressly pronounced by the judge who decides such measures.

The restriction decided in the case in point is therefore legitimate and necessary.

Hence, the Applicant cannot legitimately claim that the application of the said Electoral Code by Republic of Senegal amounts to human rights violation.

#### REGARDING VIOLATION OF THE RIGHT TO EFFECTIVE REMEDY

Article 14(1) of the International Covenant on Civil and Political Rights provides that: ***“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”***

According to Article 2 of the same Covenant: ***“Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (...) (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; ...”***.

The Court notes that Article 11(2) of Law No. 2018-476 on the extraordinary revision of the electoral list for the purposes of the Presidential election of 24 February 2019, provides that: ***“From 3 July 2018, to reclaim his rights, any voter omitted or a victim of a purely technical error of his registration, and in possession of his receipt, shall have fifteen (15) days to report the matter directly or through the CENA or the Presiding Judge in his area of jurisdiction, or through the Head of Diplomatic Mission or Consulate, if he resides outside Senegal”***.

In the instant case, it is incontrovertible that the Applicant was resident in Qatar and applied in Kuwait for his name to be registered on the electoral roll at the Diplomatic Mission of Senegal in Kuwait. In compliance with the above-cited law, Karim Meissa Wade should have brought his application before the Head of the Diplomatic Mission in Kuwait to request for the restoration of his name on the electoral roll. By choosing to bring his application before the *Tribunal d'Instance Hors Classe* (TIHC) of Dakar, Karim Meissa Wade took the wrong judicial step in seeking justice. It was therefore well-founded that the *Tribunal d'Instance Hors Classe* (TIHC) of Dakar before which he came declared that it had no jurisdiction to adjudicate upon the matter he brought. Thereafter, the appeal he filed against the said order made by the TIHC was dismissed by the Administrative Chamber of the Supreme Court.

The foregoing thus demonstrates that the Applicant exercised the effective remedy available to him. The Republic of Senegal did not therefore violate the Applicant's right to effective remedy in so far as the text cited above made provision for persons who may have claims in regard to their registration on the electoral roll, to submit them.

#### **FOR THESE REASONS**

##### The Court,

Adjudicating in a public hearing, after hearing both Parties, in a matter on human rights violation, in first and last resort,

Declares that it has jurisdiction to adjudicate on the dispute;

Declares that the Application filed by Karim Meissa Wade is admissible;

Declares however that the said Application is ill-founded;

Dismisses the Application;

Asks the Applicant to bear the costs.

**AND THE FOLLOWING HEREBY APPEND THEIR SIGNATURES**

**1. Hon. Justice Gbéri-bè Ouattara** **Presiding**

**2. Hon. Justice Dupe Atoki** **Member**

**3. Hon. Justice Keikura Bangura** **Member**

**Assisted By: Maître Aboubacar Djibo Diakité** **Registrar**