

# **ECW/CCJ/JUD/01/08 Odafe Oserada v. ECOWAS Council of Ministers**

**Court of Justice of the Economic Community of West African States (ECOWAS)  
Community Court of Justice, ECOWAS**

**Friday, 16 May 2008**

***Between***

**Odafe Oserada: Applicant**

**Represented by Kolawole O. O. James  
(Appearing in Court)**

***And***

- 1. ECOWAS Council of Ministers: 1st Defendant**
- 2. ECOWAS Parliament: 2nd Defendant**
- 3. ECOWAS Commission: 3rd Defendant**

**(Absent from Court)**

**Before their Lordships**

- 1. Hon. Justice Aminata Malle-Sanogo - Presiding**
- 2. Hon. Justice Awa Nana Daboya - Member**
- 3. Hon. Justice El Mansour Tall - Member**

**Assisted by Tony Anene-Maidoh Esq. Chief Registrar**

## **Judgment of the Court**

- 1. The Applicant, Odafe Oserada Esq., a lawyer by profession, is a Community citizen of Nigerian nationality. The 1st Defendant, the Council of Ministers, the 2nd Defendant, the Community Parliament, and the 3rd Defendant, the ECOWAS Commission, are all Institutions of the Economic Community of West African States (ECOWAS).**
- 2. The Applicant, whose address is at Chicken House Estate, Plot 472, Djibouti Close, Off Adetokumbo Ademola Crescent, Wuse II, Abuja, Nigeria, is represented by Kolawole O. O. James, who appeared in**

court.

3. The Defendants, namely, the Council of Ministers, the Community Parliament, and the ECOWAS Commission, all of which are Institutions of the Economic Community of West African States (ECOWAS), neither appeared in court nor were they represented.

4. The Applicant complains of violation of the Revised Treaty, by the advertisement of the post of Secretary General of ECOWAS Parliament and by the decision allocating such post to the Republic of Guinea.

5. He requests for the annulment of Regulation C/REG.5/06/06 of the Council of Ministers allocating the post of Secretary General of ECOWAS Parliament to Guinea, and equally asks for the annulment of all acts resulting from the said Regulation.

## I. Presentation of the Facts and Procedure

6. The Applicant, who is a promoter of *Asher's Initiatives Limited/GTE*, filed his Application on 1 June 2007 at the Court Registry, for the purposes of asking the Court to declare as unlawful Regulation C/REG.5/06/06 made by the ECOWAS Council of Ministers, allocating the post of Secretary General of the Community Parliament to Guinea, previously held by Nigeria.

7. The following essential details do stand out from the said Regulation:

- The post of Secretary General of ECOWAS Parliament is allocated to the candidate presented by the Republic of Guinea;

- The Guinean candidate is appointed as an exceptional case to the category of statutory appointees for a term of office of four (4) years non renewable.

- Upon expiration of the tenure of the Guinean candidate appointed to the post of Secretary General of the Community Parliament, the said post shall be classified in the category of professional cadre on Director Grade (D2), and the filling of vacancy concerning this post shall be made by advertisement throughout all the Member States.

8. According to the Applicant, the post of Secretary General, within the structure of ECOWAS, falls into the category of professional cadre. He avers that the post of Secretary General is a permanent appointment on D2 professional status; and that it is not a statutory appointment offered on a rotational basis, and can therefore not be allocated to any particular Member State.

9. He relies on C/REG.20/12/99 abolishing the quota system of allocating posts within ECOWAS Institutions and asserts that by virtue of Article 12 (b) of the ECOWAS Staff Regulations, and Article 18(4) of the Revised Treaty, vacancies for permanent posts shall be filled by competitive recruitment procedure. For the Applicant, Guinea, with financial contribution of only 0.77% from the 2006 ECOWAS financial year, occupied two managerial positions within the institutions of ECOWAS, and that there is no justification for taking the post of Secretary General of the Parliament away from Nigeria and giving it to another country.

10. He adds that restricting the application to the nation of Guinea, as evidenced by the vacancy announcement of the post of Secretary General of ECOWAS Parliament in the 30th April 2007 edition of *This Day* newspaper, amounts to an act of injustice against him as a Community citizen, which deprives him and his immediate constituency of the right to apply for the post, and that the same applies to the other citizens and constituencies within the Community.

11. Considering that he is the Principal Partner of the law firm *Oserada and Oserada* (Asher's Chambers) and the promoter of *Asher's Initiatives LTD/GTE*, the Applicant avers that the Council Decision referred to above constitutes an impediment to the regional perspective of his company, and runs counter to the provisions of Article 3 of the Revised Treaty of ECOWAS, specifically in its paragraphs 2 (b), (c), (f), (g), (o), as well as Articles 18(5) and 5(1), (3) of the same Treaty. He equally cites the African Charter on Human and People's Rights in its Articles 13 (1), (2); 19; 22(1), (2) and Chapter A9 Laws of the Federation of Nigeria 2004 (Ratification and Enforcement Act).

**12.** He requests the Court to make the following declarations:

- That Regulation C/REG.5/06/06 made by the Council of Ministers, allocating the post of Secretary General of ECOWAS Parliament to Guinea, on the grounds of "exceptional case", is illegal;

- That the said Regulation violates Articles 5(1), (3) and 18(5) of the Revised Treaty, to which all the Member States are signatory;

- That the said advertisement published in the 30th April 2007 issue of *This Day* newspaper is unlawful and a violation of C/REG.20/12/99 Abolishing Quota within the Institutions of the Community, and a violation of Article 18(4) of the Revised Treaty.

**13.** He therefore seeks from the Court a mandatory order of injunction restraining the ECOWAS Parliament from filling its office of Secretary General of professional cadre D2, pending the final determination of the instant case by the Court, and to order further that the appointment to the post of Secretary General of ECOWAS Parliament be conducted in accordance with the provisions of the ECOWAS Staff Regulations. Ultimately, he asks for the award of N20, 000,000 (Twenty Million Naira) in damages.

## **Procedure**

**14.** The Applicant filed his Application at the Registry, in accordance with the provisions of Article 32 of the Rules of Procedure of the Court and its related articles. Notice of the Application was duly served on the Defendants on 5 December 2007 as evidenced by the acknowledgements of receipt pleaded in the case.

**15.** The case was called for hearing for the first time on 30 October 2007, and was adjourned to 28 November 2007, and then to 24 January 2008, to give a fairly reasonable opportunity for both parties to appear in court; the Defendants never appeared in court. Finally, the case was deliberated upon and judgment was fixed for today.

**16.** Article 35 of the Rules of the Court provides: "*Within one month after service on him of the application, the defendant shall lodge a defence; the time limit laid down in paragraph 1 of this Article may be extended by the President on a reasoned application by the defendant.*" Now, the Application was served on the Defendants on 5 December 2007. However, they never appeared in court nor considered it incumbent upon them to ask for an extension of time-limit from the President of the Court; the time-limit expired on 5 January 2008.

**17.** Consequently, it was considered valid and proper to adjourn the case to 24 January 2008 to be deliberated upon, for the decision to be made today.

**18.** The Application was filed and examined in accordance with the relevant provisions of the Rules of Procedure of the Court, the Defendants received the communication and notification of the proceedings instituted, together with the annexed exhibits, but did not ultimately explain their absence from court. It is therefore ripe to declare that the Defendants defaulted and the Court adjudicates in default with respect to the Defendants.

## **II. Presentation of the Pleas-in-law invoked by the Applicant**

**19.** The Applicant contends that Regulation C/REG.5/06/06 of the Council of Ministers allocating the post of Secretary General of ECOWAS Parliament as an "exceptional case" to Guinea is illegal and violates the provisions of the Revised Treaty in its Articles 3(2)-(a), (c); 4-(h), (k); 5(1), (3); 12(b); 18(a).

He equally maintains that the said Regulation violates the African Charter on Human and People's Rights in its Articles 2; 13(1), (2); 22(1), (2).

**20.** He adds that his rights, as protected by the various provisions referred to, have been violated by the fact that Regulation C/REG.5/06/06 of the Council of Ministers did not respect the equality of rights and

opportunities available to all Community citizens.

**21.** He requests the Court to declare that this Regulation is illegal; to make an order restraining the ECOWAS Parliament from proceeding to recruit a Secretary General, pending the determination of the proceedings brought before the Court; to order that the appointment to the office of Secretary General of ECOWAS Parliament be done in accordance with the provisions of the ECOWAS Staff Regulations; and finally, to order the Defendants to pay the sum of N20,000,000 (Twenty Million Naira) in damages.

**22.** From the foregoing, particularly as regards the facts and pleas-in-law invoked by the Applicant, the Court has to provide an answer to the principal question of whether the Applicant has any interest at stake.

#### **The Court's Analysis of Interest at Stake**

**23.** It can be deduced from the facts of the case and the pleas-in-law invoked that the instant case deals with appreciation of the legality of the Regulation complained of. In challenging the said Regulation, the Applicant relies on the provisions of Article 10(c) [sic] of the 19 January 2005 Supplementary Protocol on the Court, which provides: "... individuals and corporate bodies in proceedings for the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies..."

**24.** The Applicant relies on this Article to affirm that he has an interest at stake. He declares that his interest is derived from the fact that he is a Community citizen; that he is the promoter of a regional development project, through *Asher's Initiatives LTD/GTE*. He asserts that he had requested the participation of all the Member States of the Community in his company, which could have had a sure impact on the economic and industrial development of the sub-region, but then the allocation of the post of Secretary General to Guinea constituted a hindrance to the regional development perspective of his company, and that if he had been allowed to apply for the post, he would have secured that office and would have been capable of implementing the *Asher's Initiative LTD/GTE* Project, which, he claims, is a force to reckon with in the overall economic and energy development of the sub-region.

**25.** He concludes that an interest clearly exists for him and his company to seek the annulment of the Regulation in contention. He indicates that his interest in the instant case resides in the fact that he is the promoter of a regional development body, and that he had been deprived of the opportunity of seeing this regional body participate in Community development, as a result of the restriction of candidates to Guinean citizens only.

**26.** The question which arises is whether Regulation C/REG.5/06/06 harms the Applicant; if it does, then he would have an interest at stake.

**27.** Generally, and from a legal standpoint, the necessity for an applicant to provide justification of interest in a case is attested to by the adage that "Where there is no interest, there is no action", and also "An interest is the measuring rod for an action". In other words, an application is admissible only when the applicant justifies that he brings a case before a judge for the purposes of protecting an interest or defending an infringement of such. Such an interest must be direct, personal and certain.

**28.** Also, before examining the direct relationship between the contested Regulation and the situation of the Applicant, one needs to know, first of all, whether the said Regulation really affected him.

**29.** Indeed, the provision made under Article 10(c) of the 2005 Supplementary Protocol on the Court, in respect of bringing cases before the Court to contest the legality of an act of the Community, does concern the existence of an act or inaction of a Community official which violates the rights of the person requesting the annulment of such act. The complaint brought forward in the instant case, by the Applicant, boils down to stating that his company has been deprived of the opportunity of competing for a professional position - which does not constitute in any way whatsoever a direct harm done against him. Now, if there is any injury caused in not allowing his company to compete for the post, such injury can only be detrimental to the Community and not to the Applicant.

**30.** It is the accepted truth that allocating the post of Secretary General of ECOWAS Parliament to Guinea neither affected him in his legal status nor in his constituency. The alleged grievance is only hypothetical, no more no less, in the sense that the Applicant does not demonstrate the personal and direct benefit he would have derived from it. In other words, the Applicant does not demonstrate the existence of an injury he may have suffered, which could have arisen from the Regulation complained of; the mere fact of being the promoter of a regional project cannot on its own amount to the existence of an interest at stake in the instant case. Indeed, here, the interest at stake is to be derived from the professional qualification of the Applicant and from the link between such qualification and the post that the Applicant considers to have been deprived of competing for. Even then, the Applicant has not demonstrated any direct link between his

Development Project cited above and the office sought. In other words, the development project whose promoter he is not an essential element for the post of Secretary General of ECOWAS Parliament.

**31.** In the current circumstances, an announcement concerning vacancy of a post is accompanied by requirements of a job profile, which naturally excludes certain prospective candidates, in terms of nationality, university degree, academic qualification, work experience, age, etc. Yet, once again, it cannot reasonably be held that the promoter of a project will be the most qualified to occupy the post of Secretary General of ECOWAS Parliament, much less when he had not demonstrated, on his own, any interest in the said post; whereas legally speaking, an interest in a case must be personal, direct and certain.

**32.** It is imperative to note that in his Application, the Applicant does not demonstrate any of the features of having an interest at stake. His mere status as a Community citizen or promoter of a regional development company is not sufficient to concretely determine his interest in the case.

Consequently, the question arises as to whether his action is admissible.

#### **As to the Admissibility of the Action**

**33.** In order for an application seeking to contest the legality of an act to be deemed admissible, it is not sufficient for the act in question to affect the applicant in whatsoever manner that it may be; there should exist, as an additional condition, a sufficiently direct relationship of cause and effect. The act made by the Council of Ministers, i.e. the Regulation complained of, must affect the legal status of the Applicant. The principle according to which "any act adversely affecting the legal status of a person may be brought before the law courts" is trite law (see CJEC Reports 17 July 1959, p.275; CJEC Reports 17 March 1967, CBR Cement Works, Cases 8 - 11/66, p.93; ICCEC, 27 February 1992, *Vichy v. Commission*, Case T.19/91; 1992, II, p. 415).

**34.** Such direct relationship is however absent from the case brought. Furthermore, the Applicant must be directly and personally concerned by the act complained of. In other words, the Applicant must establish or demonstrate that the contested Regulation concerns him directly and personally. Here, there are two cumulative conditions and once any *one* of the two is not fulfilled, the Application is inadmissible.

**35.** In its Judgment of 15 July 1963, in *Case Concerning Plauman v. Commission* (see CJEC Reports, 1963, p.199), the Court of Justice of the European Communities (CJEC) held that those *personally* concerned are the persons who "are affected by the act, by reason of a situation of fact which typifies them vis-?-vis any other person, and marks them out individually in exactly the same manner as a recipient is marked out".

This statement which was adopted for the first time then, has since been applied several times to various subject-matters (See CJEC Reports - 29 March 1979, ISOC/Counsel Case 118/77; CJEC Reports 1979, p. 1277; CJEC Reports 231, February 1984, *Allied Corporation v. Commission*, Case 239/82, 1984, p. 10005; ICCEC 25 September 1997, *Shangai Bicycle Corporation v. Council*, Case T 170/94; CJEC Reports 1997, II, p. 1383).

#### **As to the other Pleas-in-law invoked by the Applicant**

**36.** Nowhere in the Application does the Applicant demonstrate his interest in the post. Nor does he show the extent to which the contested Regulation constitutes an act of injustice against his person or an obstruction to the interests of his constituency.

**37.** At any rate, the Regulation complained of, which was a measure adopted within the context of the administrative re-structuring of the ECOWAS Parliament, was enacted, not in the interest of individuals but that of the Community. From this standpoint, there are grounds to conclude that individuals have no interest at stake and therefore the action of the Applicant is inadmissible for lack of interest. Since the Applicant has no interest at stake, he cannot ask for an annulment of the contested Regulation, and the inadmissibility of his action, with respect to form, leads to the dismissal of all his other prayers, intentions and orders sought.

#### **Consequently**

**1.** Whereas the Court does not find in the facts and pleas-in-law invoked by the Applicant, elements amounting to a sure and certain injury done against him as an individual;

**2.** Whereas the Applicant does not portray his own professional competence in any way whatsoever; whereas such portrayal may have enabled him to possibly take up the post of Secretary General of ECOWAS Parliament;

**3.** Whereas finally, he was also unable to establish that the challenged Regulation affected him directly and

personally, and much less his company;

4. Whereas it is ripe, therefore, to declare that his action is inadmissible.

**As to cost**

Whereas in the terms of Article 66(2) of the Rules of the Court "*The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings*", it is ripe to adopt same.

**For these reasons**

The Community Court of Justice, ECOWAS,

Adjudicating publicly, in first and last resort, after hearing the Applicant, who was present in court, and in default of the Defendants, who were absent from court;

1. Having regard to the Revised Treaty of ECOWAS;
2. Having regard to the 1991 Protocol on the Court and the 19 January 2005 Supplementary Protocol on the Court;
3. Having regard to the 28 August 2002 Rules of Procedure of the Court;
4. Having regard to Regulations C/REG.5/06/06 and C/REG.8/06/07 of the Council of Ministers;

**Solely in terms of form**

Declares the action brought by Odafe Oserada Esq. inadmissible, for lack of interest.

**On merits**

Holds that there are no grounds for examining merits

**Resultantly**

Dismisses the Application brought by Odafe Oserada Esq., together with all his other prayers, intentions and claims.

**As to costs**

Asks the Applicant to bear the costs.

**Thus made, adjudged and pronounced publicly by the Community Court of Justice, ECOWAS, on the day, month and year above.**

**And the Members have appended their signatures as below:**

**Hon. Justice Aminata Malle-Sanogo - Presiding**

**Hon. Justice Awa Nana Daboya - Member**

**Hon. Justice El Mansour Tall - Member**

**Assisted by Tony Anene-Maidoh Esq. - Chief Registrar**

#\*Editor's Note: Article 10 of the Supplementary Protocol on the court, no. A/SP./1/01/05 does not have a sub-paragraph.