

COMMUNITY COURT OF JUSTICE,

No. 10 DAR ES SALAAM CRESCENT,

ECOWAS

OFF AMINU KANO CRESCENT,

COUR DE JUSTICE DE LA

WUSE II, ABUJA-NIGERIA.

COMMUNAUTE, CEDEAO



PMB 567 GARKI,

ABUJA

TEL/FAX:234-9-5241695/

COMMUNITY OF WEST AFRICAN STATES (ECOWAS).

HOLDEN AT ABUJA, NIGERIA,

ON FRIDAY 28th NOVEMBER 2008,

SUIT NO: ECW/CCJ/APP/01/07

JUDGMENT NO. ECW/CCJ/ 6/10/08

BETWEEN

1. QUDUS OBOLAHAN FOLAMI

1<sup>ST</sup> APPLICANT

2. PIYAHARA K. DIAMOUTENE

2<sup>ND</sup> APPLICANT

AND

1. COMMUNITY PARLIAMENT (ECOWAS)

1<sup>ST</sup> Defendant

2. DIRECTOR OF ADMINISTRATION AND FINANCE, COMMUNITY PARLIAMENT, ECOWAS.-

2<sup>ND</sup> Defendant

BEFORE THEIR LORDSHIPS

HON. JUSTICE HANSINE .N. DONLI

PRESIDING JUDGE

HON. JUSTICE AWA DABOYA NANA

MEMBER

HON. JUSTICE SOUMANA DIRAROU SIDIBE

MEMBER

Assisted by Aboubakar D. Diakite

Court Registrar

JUDGMENT

PARTIES

1. The Applicants were members of staff of the ECOWAS Parliament namely Qudus Gbolahan Folami and Piyahara U. K. Diamontene, represented by Learned Counsels, Mr. Rotimi Ojo, Linus A. Okere and Lekan Oladepo, of the Law Firm of Rotimi Ojo & Co.
2. The 1<sup>st</sup> defendant is the Community Parliament (ECOWAS) while the 2<sup>nd</sup> defendant is the Director of Administration and Finance of the Community Parliament (ECOWAS), equally represented by Learned Counsels, Mrs. Julia Utulu and Mr. James Idil of the Law Firm of Wali – Uwais & Co.

FACTS OF THE CASE

3. The Applicants were offered employments by the 1<sup>st</sup> defendant as shown by letter of employment of the 1<sup>st</sup> applicant dated the 2<sup>nd</sup> day of December, 2004 which took effect on 16<sup>th</sup> November 2004, with his letter of acceptance dated 17<sup>th</sup> December, 2004 on one hand; and the

letter of employment of the 2<sup>nd</sup> applicant dated 15<sup>th</sup> June, 2001 with his letter of acceptance dated 25<sup>th</sup> June 2001 on the other, respectively. They both accepted the said offers as Advisor on political and Economic Matters, and Special Assistant in the office of the Honorable Speaker of the ECOWAS Parliament and thus became staff of the Community Parliament, ECOWAS. The said letter of employment of the 1<sup>st</sup> Applicant stated that the duration of his employment would be until the incumbent speaker of the ECOWAS Parliament leaves office, while the 2<sup>nd</sup> Applicant's letter of employment was alleged to be of a permanent nature rather than a fixed term contract. The said letters also provided that in accordance with the terms of their employment, the ECOWAS Staff Regulations shall govern the said employments.

4. Notwithstanding the terms of the said contracts of employment, the 2<sup>nd</sup> defendant wrote the Applicants through an internal Memo dated the 25<sup>th</sup> November, 2005 to the effect that their contracts of employment had expired on the 15<sup>th</sup> day of November, 2005 which they alleged to be contrary to the terms of their contract of employment as the Honorable Speaker of the said ECOWAS Parliament had not left office as at that date. The 2<sup>nd</sup> Applicant contended that his appointment was of a permanent nature not tied to the tenure of the then incumbent Honorable Speaker. The 2<sup>nd</sup> defendant refused to pay the Applicants any further salaries and entitlements after the mid-month of November, 2005, and thereafter. The 1<sup>st</sup> Applicant then replied the said letter of the 2<sup>nd</sup> defendant by a letter dated 26<sup>th</sup> January, 2006



refuting the contents of the said letter (2<sup>nd</sup> defendant) and went on to request for an amicable settlement of the issues involved as stipulated by Article 73 of the ECOWAS Staff Regulations.

5. The 2<sup>nd</sup> defendant discountenanced the 1<sup>st</sup> Applicant's letter by stating in his reply dated 16<sup>th</sup> March, 2006 that the 1<sup>st</sup> Applicant's severance allowance of \$8,327 had been paid into his bank account at Standard Chartered Bank, Abuja which was unilaterally done and also requested the 1<sup>st</sup> Applicant to deliver up possession of his official residence known as Flat 5, Danube Close, Maitama, Abuja and the official residence of the 2<sup>nd</sup> applicant known as plot 2, Parakou Crescent, Wuse II, Abuja. The Applicants averred that the action of the 2<sup>nd</sup> defendant which in effect, was the wrongful termination of their contracts of employment between them and the 1<sup>st</sup> defendant was contrary to the ECOWAS staff regulations governing their contracts of employment. The 2<sup>nd</sup> defendant purporting to act for the 1<sup>st</sup> defendant had given the Applicants up to Friday the 14<sup>th</sup> of April, 2006 to give up possession of the said Flats. The 1<sup>st</sup> Applicant stated that he wrote a letter dated the 28<sup>th</sup> March, 2006 to the 2<sup>nd</sup> defendant being a notice of his intention to seek legal protection from this Honorable Court, since his suggestion for an amicable settlement offered in accordance with Article 73 of the ECOWAS Staff Regulations was disregarded by the defendants.



6. The Applicants stated that, they had exhausted the internal mechanism of the organization and they being in danger of being unlawfully ejected from their official residences while still being in the employment of the 1<sup>st</sup> defendant, filed the said applications on the 12<sup>th</sup> day of April, 2006 in the Community Court of Justice, ECOWAS against the defendants which were consolidated by an order of this Court.

#### Reliefs

7. The reliefs filed by the applicants are stated hereunder thus:
- (a) A declaration that the Applicants are still staff of the 1<sup>st</sup> defendant.
  - (b) A declaration that the letters dated 25<sup>th</sup> November, 2005 and 16<sup>th</sup> March, 2006 from the 2<sup>nd</sup> defendant to the Applicants were contrary to the terms of the contract of employment between the Applicants and the 1<sup>st</sup> defendant.
  - (c) An order of the Court, that the defendants pay the Applicants respectively their total sum of \$27,455.00 (twenty seven thousand four hundred and fifty five dollars) and \$27,087.49 (twenty seven thousand, eighty seven dollars and forty nine cents) being outstanding salaries and entitlements under the contract of employment since November, 2005.
  - (d) An order that the payment for the severance allowance wrongly paid to the applicants by the defendants be withdrawn or returned.



- (e) An order of this court for the continued payment of the salaries and entitlements of the applicants by the defendant in accordance with the ECOWAS Staff Regulations, as long as their contract of employment with the 1<sup>st</sup> defendant subsists.
- (f) An order of this court that the defendants withdraw their letters to the applicants dated 25<sup>th</sup> November, 2005 and 16<sup>th</sup> March, 2006 and particularly refrain from implementing their contents.
- (g) An order of this court that the defendants allow the applicants the peaceable and continued occupation of their official residential flats situate at plot 5, Danube Close, Maitama and plot 2, Parakou Crescent, Wuse II, Abuja respectively in accordance with the terms of their contract of employment and the ECOWAS Staff Regulations during the continuance of their employment with the 1<sup>st</sup> defendant.
- (h) An order that the 2<sup>nd</sup> applicant was duly employed by the Community Parliament ECOWAS and his Contract of employment still subsists.

i) An Order for \$10,000 (ten thousand dollars) as cost.

8 In reply, the Defendants also claimed the following reliefs as the defence of the action:

- (a) A declaration that upon the expiration of the tenure of the former speaker on 15<sup>th</sup> November, 2005, leading to his subsequent exit to Mali, as evidenced in the Memo of 18<sup>th</sup>



January, 2006 following the council of Ministers' meeting, the Applicants had ceased to be staff of the 1<sup>st</sup> defendant. Their terms of offer being tied to the former Speaker's tenure of office that was now under a new arrangement and salary pending the inauguration of a new Speaker.

(b) A declaration that the letters dated 25<sup>th</sup> November, 2005 and 16<sup>th</sup> March, 2006 respectively were validly issued to the applicants and are in consonance with the terms of appointment between the parties.

(c) (i) A declaration that the 1<sup>st</sup> Applicant is not being owed any outstanding salaries and entitlements, having received his salaries up till November 15, 2005 when the former Speaker's tenure ended, and also having collected all his accrued allowances and entitlements as requested in his letter of December 19, 2005 wherein he submitted his Diplomatic Passport and office keys being mindful of the end of the Speaker's tenure and that the court should discountenance his claim, in its entirety as the claim cannot stand.

(ii) A declaration that the 2<sup>nd</sup> Applicant is not being owed any outstanding salaries and entitlements, having received his salaries until November 15, 2005 when the former Speaker's tenure ended and also having collected all his



accrued allowances and entitlements. Counsel submitted that the act of seeking for employment as a permanent staff on grade level p4 showed that he knew that he did not have any stake in the 1<sup>st</sup> defendant, after the 15<sup>th</sup> of November, 2005, and urged the court to discountenance his claim in its entirety.

(d.) (i) The fourth relief was an order directing the 1<sup>st</sup> applicant to give up possession of the official apartment at plot 5, Danube Close, Maitama, Abuja with immediate effect, his contract having expired with the tenure of the former Speaker who has since returned to Mali on a ceremonial arrangement as he could not be an adviser to the Speaker in Mali.

(ii) An order directing the 2<sup>nd</sup> Applicant to give up possession of the official apartment at plot 2, Parakou Crescent, Wuse II, Abuja with immediate effect, in that his contract having expired with the tenure of the former Speaker who has since returned to Mali on a ceremonial arrangement as he could not be said to be a Personal Assistant to the Speaker in Mali.

(e) That he was not employed as a permanent staff of the community, and that as personal Assistant, his services cannot extend to the tenure of another Speaker, unless the incoming Speaker decides to re-appoint him.





(f) An Order dismissing the entire suits for being incompetent and lacking in merit before this Honorable Court and therefore an abuse of the Court process.

(g) Cost of \$10,000 (ten thousand dollars) each against the Applicants.

9. It is worth mentioning from the onset that the defendants' preliminary objection filed on the grounds that the applicants failed to exhaust the internal procedure as stated in Article 73 (b) of the Staff Rules, ECOWAS was unsuccessful and an order of striking out the preliminary objection was made on November 10, 2006. Hence, the case proceeded for hearing on the merit. The applicants who relied on their letters of appointments as evidencing the contractual relationship between them and the defendants made submissions through their counsel regarding the nature of the said terms of employment.

10. Learned Counsel to the Applicants, Rotimi Ojo J, Esq. made submissions that are in consonance with the pleadings, he submitted that where an employee complains that his employment has been wrongfully terminated, the onus of proving the said wrongful termination rest squarely on the Applicants who would fail if such facts are not placed before the Honourable Court, and relied on the case of **GATEWAY BANK Vs ABOSEDE (2003) 1 WKN page 138-147 ratio 1**, where the court stated that the said employee has the onus to place before the Court the terms of the contract of employment, prove in what



manner the said terms of the contract were breached by the employer. He further referred to the case of **AMODE Vs AMODE (1990) 5NWLR (pt150) 356** and **KATTO Vs CBN (1999)5 NWLR (pt. 607) pg 390** to submit that the contract of service is the bedrock upon which an aggrieved employee must rely upon in order to succeed or fail. He went further to submit that the position of the law is that, where there is a written or documented contract of service the court will not look outside the terms stipulated therein deciding the right and obligations of the parties ....”

11. He contended that in the instant case, the Applicants had discharged the above onus by tendering:

(i) Exhibits A1 & A12 being letters of their employment dated the 2<sup>nd</sup> December 2004 , for the 1<sup>st</sup> applicant and 15<sup>th</sup> June, 2001 for the 2<sup>nd</sup> applicant and both signed by the then Speaker of ECOWAS Parliament Professor, Ali Nuhoum Diallo respectively.

(ii) The ECOWAS Staff Regulations which governs their appointments Exhibit A2 and

(iii) Exhibit A14 which is the Memo dated 25<sup>th</sup> November, 2005 from the Director of Administration and Finance in the Parliament stating that their Job had come to an end.



12. He submitted that on the strength of the above 3 Exhibits, particularly Exhibit A2, their termination or severance of their employment was wrong in the sense that it violated the provisions offered as stipulated both in the said letters of employment and the ECOWAS Staff Regulations and referred the Court particularly to paragraphs 1, 2 and 6 of both Exhibits A1 & A12 where it was stated in the said letters of employment that their (Applicants) appointments were subject to the provisions of the ECOWAS Staff Rules and Regulations as may be amended from time to time as per paragraph 6, thus, *"Your appointment may be terminated in accordance with the Staff Regulations....."*

13. He submitted that it is trite that where there are procedural requirements stipulated for the termination of employment, such procedures must be followed, otherwise a termination carried out without fulfilling the requirement will be invalid and cited the case of *OLATUNBOSUN Vs. NIGER COUNCIL (1998) 3 NWLR (pt.80) page 25*, and urged the Court to hold, that the severance of employments of the Applicants were wrong and illegal, invalid, null and void and of no effect as the said termination or severance did not strictly follow Articles 59 and 60 of Exhibits A2 which is the conditions of service and Rules of procedures more particularly articles 15(b) and 59 of exhibit A2 dealing with the categories of appointment and termination of staff in the ECOWAS. He submitted that Exhibits. A3, A4 and A6 show that the issue of termination was addressed by the 2<sup>nd</sup> defendant and that the



exhibits, captioned 'HANDING OVER PROCESS, INVENTORY AND FORMAL HANDING OVER OF OFFICE KEYS AND LASTLY PAYMENT OF SEVERANCE ENTITLEMENT 'were pieces of evidence that the applicants were made to comply.

14. In reply Learned Counsel to the defendants, Mr. James Idill Esq., submitted that the claim of the 1<sup>st</sup> Applicant that his employment was unlawfully terminated is baseless in view of exhibits A3, A4 and A6, and cited the case of **FAMUROTI V AGBEKE (1991) 5 NWLR (pt 189) page 1**, to state that it is trite law that he who asserts must prove and relied on the court of appeal's decision in the case of **IYERE V BENDEL FEEDS & FLOURS MILL LTD (2001) FWLR (pt 37) pg 1166 at 1176** where it was held that whoever desires any court to give judgment as to any legal right or liability dependant on the existence of fact which he asserts must prove that these facts exist. Counsel contended that based on the above, the 1<sup>st</sup> Applicant has not been able to prove his claim of unlawful termination, and neither has the 2<sup>nd</sup> Applicant been able to do likewise. They submitted that what took place was the process of severance of the Applicants as provided under article 59(g) of the ECOWAS Staff Regulations, which provides that retirement and non-renewal of a fixed-term contract appointment shall not be considered as termination of appointment.

15. The defendants contended that as a follow-up to the issue of termination, that there was severance of the employments of the applicants in view of the tenure expiration of the Speaker. The



defendants stated that the Applicants were among the special aides of the Hon. Speaker Prof. Ali Nuhoum Diallo and being cabinet members of the speaker, their appointment expired upon the expiration of the tenure of the said Speaker on November 15, 2005, in line with the Protocol of the Parliament. They submitted that upon the said expiration, the speaker and members of his Bureau ceased to be members of the ECOWAS Parliament, which made the 2<sup>nd</sup> defendant to prepare for the payment of their severance benefits and allowances.

16. Learned Counsel submitted that the 2<sup>nd</sup> defendant stated in his testimony that he had instructions to prepare the said severance payment for the cabinet members from the 1<sup>st</sup> treasurer who was also a Bureau member and in charge of financial matters of such a nature. Learned Counsel submitted that it is trite that uncontroverted evidence amounts to an admission by the adversary of the facts, and thus the evidence of instructions passed to the 2<sup>nd</sup> defendant remains uncontroverted all through the case. The defendants contended that it was clear that the normal official routine of the Speaker ended on the 15<sup>th</sup> November 2005, thus the new transitional relationship did not include his aides or Advisors in office. He submitted that having paid the severance allowances, the Applicants are not in any way entitled to any outstanding salaries and entitlements under the contract of employment since November 2005 and further contended that upon the expiration and severance of employment, the Applicants were no



longer entitled to a lawful and continued occupation of their official flats.

17. In respect to the official accommodation that the defendants requested the applicants to give up, Learned Counsel submitted that it is trite law that an employee cannot remain in occupation of an official apartment where the employee/employer relationship has ceased. They cited the case of *F.C.D.A. V NWANNA* (1998) 4 NWLR (pt 544) 73 at 83-84 where the court of appeal held that there is no right for an employee to stay in a particular house belonging to the employer when such employment has ceased to exist. It went further to state that the right of accommodation vanishes at the termination of the contract of service notwithstanding any pending court action for the termination of the said contract and that the Applicants were validly severed and thus their rights of accommodation were determined on the 15<sup>th</sup> November 2005. On the issue that the Applicants' employment subsisted with the ECOWAS Parliament up till November 2006, the defendants stated that it is trite, that he who seeks equity must do equity, and he who comes to equity must come with clean hands. Defendants relied on the decision of the case of *UDE V NWARE* (1993) 2 NWLR (pt. 277) 638 @ 662 - 663, that by the operation of the rule of Estoppel, a man is not allowed to blow hot and cold, to affirm at one time and deny at the other, to approbate and reprobate.

18. As to the question of the instruction to sever the contracts of employment not coming from the Speaker, the proper hierarchy,



Learned Counsel submitted that the 2<sup>nd</sup> defendant had instruction emanating from the administrative ladder down to him to prepare the severance pay and entitlements of all the members of the cabinet of the Speaker in view of the pending expiration of tenure of the 1<sup>st</sup> Legislature on 15<sup>th</sup> November 2005. He stated that the 1<sup>st</sup> Applicant by Exhibit A5 listed certain claims owed him by the 1<sup>st</sup> defendant and that the said claims should be taken into account in respect of his severance pay, by adding same and cited the case of **GWANI V. EBULE (1990) 5 NWLR (pt. 149) 201 @ 217** to submit that silence in circumstances in which reply is obviously expected, raises an irrebuttable presumption, which was in view of the 1<sup>st</sup> Applicant's admission that when he was issued with Exh. A3, he did not do anything but only discussed with the Speaker who did nothing either.

19. The Defendants submitted that the Applicants' cases were depleted with inconsistencies in their conduct; and further stated that the 2<sup>nd</sup> Applicant was one of the five aides or Cabinet Staff of the Hon. Speaker, and that by virtue of the terms of their employment, their tenures were tied to that of the Speaker. They contended that the employment of the 2<sup>nd</sup> Applicant was not different from other aides and submitted that the *eiusdem generis* rule applies. Although his letter of appointment stated special assistant (p5) he testified that he was the personal assistant to the Speaker.

20. A letter of appointment is a vital document in respect of master servant relationship and such a document is required to govern the

parties to the contract of employment. Under the common law and other jurisdictions where the master has purportedly dismissed the servant, though not in accordance with the laid down procedure in the contract, the servant cannot treat the contract as subsisting but must proceed as if he has been wrongfully dismissed. For a wrongful dismissal in complete disregard of the terms of the contract of service is obviously a repudiation by the master and the servant's remedy is an action in damages except where the contract of employment has a statutory flavor. In *Francis v. Municipal Councillors of Kuala Lumpur* (1962) 1WLR 1411 at 1417, where the court held thus:

*"When there has been a purported termination of contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of a general principle of law that the Courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the court."*

21. It is a well established principle of law that a party who asserts must prove the facts he alleges and in the instant case where the applicants have placed the terms of their contracts of service or employment before the Court and alleged wrongful termination of their lawful





employment by relying on the said Article 89 Exhibit A11, the ECOWAS Regulations and Exhibit A3, the Memorandum dated 25<sup>th</sup> November from the Director of Administration and Finance, the law requires them to prove. The case of *Amode Vs Amode (Supra)* relied upon by learned counsel on the matter in question provides that where there is a written or documented contract of service, the court will not look outside the terms stipulated therein in deciding the right and obligation of the parties is applicable here.

22. The 1<sup>st</sup> Applicant urged the Court through his counsel that the procedural requirements stipulated for the termination of employment, must be followed otherwise a termination carried out without fulfilling the requirements will be invalid and he relied on *OLATUNBOSUN Vs NIGER COUNCIL (Supra)*. This Court must state that the applicants and the 1<sup>st</sup> defendant entered into the said agreement embodied in the two letters of appointments with their appendages in the form of letters of acceptance which set out the terms and conditions of the contracts. While the applicants stated that their contracts of employments were terminated by the 2<sup>nd</sup> defendant and that he had no authority to do so from the Speaker, the defendants stated that the contract was not terminated but flowed with the events which occurred that caused their contracts to be severed and therefore resulted in the payment of the severance allowance.

23. Now, the issue is whether there was a termination of contract and if yes, whether it was wrongful. The following documents are thus relevant:



(i) The employment letters Exhibits A1 & A12 provides that for the 1<sup>st</sup> Applicant, his appointment terminates when the incumbent Speaker leaves office. Also, that their appointments are subject to the provisions of the ECOWAS Staff Rules;

(ii) Exhibit A11 dealing with the decision of the Council of Ministers in respect of the continuation of the Speaker until the swearing in of a new parliament;

(iii) The ECOWAS Staff Regulations Exhibit A2;

(iv) The Memo dated 25<sup>th</sup> November 2005. Exhibit A3

24 On the 1<sup>st</sup> document Exhibits A1, it provides that the 1<sup>st</sup> Applicant's employment terminates when the incumbent Speaker leaves office, so it then follows that his termination or otherwise is hinged on the interpretation of the document, Exhibit A11. The 2<sup>nd</sup> Applicant's employment and the terms of his employment Exhibit A12 did not state exactly what was in the 1<sup>st</sup> applicant's letter of appointment but that he was attached to the current Speaker of ECOWAS Parliament and subject to his authority and to perform his duties as authorized by the Speaker. The wordings of the said letters of employment are akin to the wordings of the letters of employment of two other aides of the Speaker, exhibited in the instant case. These other aides have since left the employment of the Parliament as instructed and paid their severance allowances. The Court holds that the letters of employments are similar in the wordings but



only the case of the 2<sup>nd</sup> Applicant is put before this court for determination.

25. Under the law of contract, where a fixed contract has been entered into like in this case and the period lapses without being renewed, the contract of employment will be terminated at the end of the fixed period. In the case of *LADIPO V CHEVRON NIGERIA LTD (2005) 1 NWLR AT 279*, on how to terminate contract of employment in ordinary master and servant relationship, it was held that the appellant's services were no longer required and that the termination of his employment cannot be unlawful as contended by him.

26. It is trite law that in an ordinary master and servant relationship, the Court of law will generally not impose a servant upon a master. See the case of *EMENITE V OLEKA (Supra)* to the effect that the Court of law cannot impose same on the ECOWAS Parliament and that if the contract of employment is terminated wrongfully, all that is to be done is to award damages in lieu of notice as specified in the conditions of employment. The ECOWAS Staff Regulations stipulate how the employment of a staff can be terminated. The allegation of termination is based on the Memorandum dated 25<sup>th</sup> November 2005. Exhibit A3.

27. The points canvassed have been examined seriously on the said Memorandum, the said letter of employment and evidence adduced in order to prove unlawful termination. The Court holds that no matter the evidence that was led, it cannot give the document (Exhibit A3) a

different interpretation. It is true that the document would always speak for itself. Exhibits A3, A4 and A6 did not mention the word termination. It is therefore the view that there was no termination rather a severance in line with the contract of employment that stipulated the end thereof by stating that the appointment terminates when the incumbent Speaker leaves office. The various Memoranda of the Director of Administration and Finance to the applicants were entirely administrative in line with the usual function of handling the process of handing over and severance payment of affected staff.

#### **PERMANENT STAFF UNDER THE ECOWAS REGULATIONS.**

28. The documents for consideration in respect to the above are the letter of employment of the 2<sup>nd</sup> Applicant who contested that he was a permanent staff, Exhibit A12 and the ECOWAS Staff Regulations Exhibits A2. The 2<sup>nd</sup> Applicant submitted that by virtue of Article 16 of the ECOWAS Staff Regulations dealing with the form of a letter of appointment in ECOWAS, his appointment letter is silent on the said duration in line with Article 16 of the ECOWAS Rules. The 2<sup>nd</sup> applicant contended that if the said appointment was not of permanent nature and that if he was attached to the Speaker it would have stated so as in the case of the 1<sup>st</sup> applicant.

29. He also referred to Article 59 Exhibit A2 dealing with the notice required to terminate the appointment of a permanent Staff of the ECOWAS. The said Article 59 provides that in respect of a termination of a Staff member holding a permanent appointment, a three (3) months



written notice is given. On this note, the 2<sup>nd</sup> Applicant referred to paragraphs 6 & 7 of Exhibit A12 which stated that his appointment may be terminated in accordance with Staff Regulations for which he was required to give, three (3) months notice thereof and submitted that in line with the above he was a permanent Staff. He contended that being a permanent staff of the ECOWAS Parliament, his employment could not have been terminated as in the instant case, as it was contrary to exhibit A2 particularly Article (59) paragraphs 1-9.

30. On the other hand, the defendants submitted that it is not in dispute that the 2<sup>nd</sup> Applicant was one of the five aides or cabinet staff of the Speaker, but rather what is in dispute is that he alone was the only cabinet member with a different employment (Permanent), and that the *ejusdem generis* (of the same kind) rule applies as to the effect that where there is a category or class into which things of the same kind as those specified can be fitted then the one in dispute follows the like class rule. He submitted that to hold contrary would bring about a different status of the 2<sup>nd</sup> applicant considering that the other aides were usually considered and treated alike up to the point of tenure expiration, before he tried to distinguish his own appointment.

31. The Defendants contended that the 2<sup>nd</sup> applicant testified that he was one of the Speaker's aides as a Personal Assistant through his letter showed that he was employed as a Special Assistant to the Speaker. Counsel stated therefore that the 2<sup>nd</sup> Applicant was not the Special Assistant but the Personal Assistant as the former was one Chief Vincent

Gbemudu as given in evidence by the 2<sup>nd</sup> defendant and that it was the intention of Parliament, that the aides or attaché of the Speaker be personal to him. They stated that the 2<sup>nd</sup> Applicant knew that his tenure would expire on November 15<sup>th</sup> 2005 that was why he applied for the position of a permanent job in the Parliament. The 2<sup>nd</sup> defendant's evidence itemized the hierarchy of the Speaker's cabinet and stated that the 2<sup>nd</sup> Applicant was the Personal Assistant of the Speaker and that all members of the Speaker's Cabinet were all attached to the Speaker's office and their employment categorized under the fixed term employment expired in this case on the 15<sup>th</sup> November 2005.

32. The defendants relied on the dictum of the English case of **ASHBURY RAILWAY CARRIAGE & IRON Co. V. RICHIE (875) L.R.H.L. 543** to submit that the 2<sup>nd</sup> Applicant's office was restricted to that of aides to the Speaker just like others in his category, on the authority of *jusdem generis* principle.

33. The defendants submitted that the intention of the 2<sup>nd</sup> applicant to move to a lower permanent position was contrary to his purported letter of appointment and thus the natural sequence of events is a clear indication that he was never employed as a permanent staff *ab initio* by the 1<sup>st</sup> defendant and further stated that it is *frite in law*, that facts admitted need not be proved, which is to the effect that the 2<sup>nd</sup> Applicant's desire to move lower, was an express indication that he was a temporary staff. The defendants contended that the 2<sup>nd</sup> Applicant cannot at this point seek to impose himself on the 1<sup>st</sup> defendant by claiming to be a permanent staff and on this point Counsel relied on the



Supreme Court case of **CHUKWUMA V. SHELL PETROLEUM (1993) 4 NWLR, (pt 289) pg 569**, where the Court held that it will not impose an employee on an employer.

34. They further referred to the meaning of personal in the Chambers Dictionary which states, 'something tailored to the needs of a particular person'. Thus, the Speaker chose an assistant who would be tailored to his needs and not to be inherited by the 1<sup>st</sup> defendant at the end of his tenure.

35. The defendants stated that it is important to note, that throughout the entire issues of severance raised before the Speaker, the 2<sup>nd</sup> Applicant never objected to being among the aides of the Speaker whose employments were to be severed. The 2<sup>nd</sup> defendant said that after preparing their (aides) severance entitlements, he gave them (applicants) copies for their contributions, and that the 2<sup>nd</sup> Applicant did not object to the fact that all these events took place before January 2006.

36. The defendants relied on the Supreme Court decision in the case of **JOE IGA & ORS V EZEKIEL AMAKIRI & ORS 1976 11.sct.1 at 1213** to submit that the 2<sup>nd</sup> Applicant is estopped by his conduct that he exhibited in his previous actions from claiming that he was a permanent staff and stating his contract subsisted despite the evidence that the tenure of the Speaker had elapsed and referred to the case of **EZEMBA V IBENEME Supra**, where the Supreme Court held that a party should be consistent



in stating his case and that in the instant case, the inconsistency of the 2<sup>nd</sup> applicant in stating his position of employment is wrought with doubt. The Court endorsed the said principle of law as positioned in the above case that a party who intends to succeed in his case must be consistent in his evidence.

37. On the point as to inconsistencies of the evidence of the 2<sup>nd</sup> applicant, it was apparent that the 2<sup>nd</sup> applicant stated that he was employed as a personal assistant whereas the letter of appointment that he was relying on as to the permanency of his contract with the 1<sup>st</sup> defendant stated that he was employed as a Special Assistant thereby contradicting himself. However, even though this was an obvious contradiction which cannot be said to be material as to defeat the 2<sup>nd</sup> applicant's case, the Court finds that, the 2<sup>nd</sup> applicant made out his case that he was employed by the 1<sup>st</sup> Defendant which fact the defendants corroborated by the various payment vouchers shown. The point as to the proof of evidence in master servant relationship was stated in the case of **EZEMBA V IBENEME Supra.**

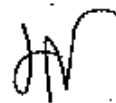
38. Having taken all the submissions into consideration, the Court took a very hard look at Exhibit A12 which harbors the answer to this issue of the permanency of his appointment. It is only when that meaning leads to some results which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other permissible meaning of the word or phrase as in the instant case. The said document requires no interpretation and therefore its contents should be





applied that where either party is required to give three months notice to terminate the contract, such action should be taken while the contract existed but that should not be the sole consideration that the contract of employment was a permanent one. Even in a fixed term contract the parties involved may decide to opt out of the agreement before the expiration date and in the instant case before the end of the fixed term and it is only then that the three months notice rule in the Staff Regulations will apply.

39. The defendants indicated the circumstances that made it clear that the employment of the 2<sup>nd</sup> Applicant could not have been a permanent one but on fixed term and mentioned the application the 2<sup>nd</sup> Applicant wrote requesting for a lower position in the Parliament while his letter of appointment attached him to the Speaker's Cabinet. These instances are very strong that the Court finds itself leaning towards the evidence that the 2<sup>nd</sup> Applicant was not employed as a permanent staff but on a fixed term which also tied him to the Speaker in that when the tenure of the Speaker comes to an end, as his personal staff, his contract also will extinguish. A person on grade level P.5 has better conditions than an officer on grade level P.4 which the 2<sup>nd</sup> applicant applied for while the former appointment was pending. On this note, the Court holds that the appointment of the 2<sup>nd</sup> applicant was that of a fixed contract which is determined when the then Speaker leaves office or when the tenure of the Speaker comes to an end.



## ADVISORY OPINION OF THE COURT

40. The Applicants in support of their applications against the defendants relied also on the advisory opinion of this court dated the 4<sup>th</sup> December, 2005 to the effect that the said Speaker though his tenure ended 15<sup>th</sup> November, 2005 continued in office until the coming in of a new Bureau of the ECOWAS Parliament pursuant to Article 7(2) (ii) of the Protocol and Article 23 (ii) of the Rules of Procedure of the said Parliament. Thus, it is trite, that an advisory opinion does not have the binding force like that of a judgment of a Court of competent jurisdiction.

41. The intention of an advisory opinion as stated in Article 10 of the Protocol of this Court is only to serve as an advice and guide and therefore does not have any binding force. The Institution advised may act on the advice given or elect not to act for some other reasons. However, the effect of an advisory opinion to this Court is not distinguishable from the authorities placed on precedent in respect of decisions and or advisory opinion. Like in the International Court of Justice, and this Court, in the application of its case law, the effect of its decision and advisory opinion are the same. This is in line with Article 19 (1) of the Protocol of the Court which enjoins the Court to apply Article 38(1) of the Statute of the International Court of Justice as follows:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:



a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the Parties agree thereto. "

42. In accordance with Article 59 of the Statute of International Court of Justice, the International court's judgments bind only the parties but its precedents are relied upon by the Court including its opinions.

43. One important aspect of an advisory opinion is that none of the parties that the opinion is given to, is ever obliged to accept or act upon it, no matter how worthy of respect and attention it may be. However, this Court is bound by its own advisory opinion. Therefore it is important to note here that the advisory opinion of the ECOWAS Court dated on the 4<sup>th</sup> day of December, 2005 was legally sound but not binding on the Council of Ministers which considered it at the 55<sup>th</sup> Session and decided not to apply it. Therefore the applicants cannot hold unto it to justify their claims.



## DECISION OF THE COUNCIL OF MINISTERS

44. The Applicants submitted that the decision of the Council of Ministers is binding on the Parliament as corroborated by DW1 and DW2 in their cross-examination. They went further to state that, it is also common knowledge that the Speaker could not carry out his duties in his capacity as Speaker without his aides. The Applicants stated that the Council of Ministers being aware of the end of the tenure of the Speaker deemed it wise to approve the continuity of his tenure as Speaker for the reasons best known to them and which is not within the power of any staff of the Parliament to challenge.

45. The Applicants contended that the movement of the Speaker from Nigeria to Mali did not stop him from being Speaker or attending activities, nor did it stop the Parliament from sitting at the instance of the Speaker. Counsel to the Applicants stated that the 1<sup>st</sup> Applicant was still a staff of the Community Parliament ECOWAS due to his letter of employment which stated that his appointment terminates when the incumbent Speaker leaves office. He referred the Court to the definition of 'Leave' in the Oxford Advanced Learner's Dictionary as it relates to "offices or Job" to mean "to stop belonging to a group. And thus by the provision of Article 86 of Exhibit A11, which stated that the Honorable Speaker, Professor Ali Nouhoum Diallo should continue as Speaker until the swearing in of a new Parliament. That the issue is not the amount of money being paid to the Speaker, but rather whether or not the Speaker continued in office. The learned counsel to the Applicants referred the



Court to the Oxford Advanced Learner's Dictionary at page 248 which defined the word 'continue' to mean, to remain in a particular job or condition.

46. The question to answer is when did the tenure of the Speaker come to an end? Exhibits A 11 being text of the 55<sup>th</sup> Session of the Council of Ministers, ECOWAS stated in its decision that the first Legislature of the ECOWAS Parliament came to an end on the 15<sup>th</sup> November 2005, and consequently concluded that the term of office of all Members of the Community Parliament without any exception, terminated on that date. However, it further stated in clear terms that the Hon. Prof Ali Nouhoum Diallo should continue as Speaker until the swearing in of a new Parliament, but that he should return to Mali, while the Executive Secretary was to involve him in activities of the Community on an allowance of \$2000.

47. The 1<sup>st</sup> Applicant testified that the decision of Council meant that the former Speaker continued as Speaker until the next legislature was inaugurated in November 2006 and therefore his employment continued until the said November, 2006 and his salaries having been withheld, converted the severance allowance paid to him as salaries and demanded the arrears of the said salaries up to that date. Counsel submitted that the payment of 2000 US Dollars not being pension nor gratuity or severance salary was an allowance meant for his continuity in office. The Applicants relied on Article 23(ii) of the Rules of Parliament which provides that the Speaker and the Bureau of Parliament



shall remain in office until a new Bureau is elected, and the new Bureau was only elected in November, 2006.

48. The Applicants submitted that if the Honorable Court holds that the Hon. Speaker continued in office which is in favour of their argument, and then the Court should equally hold that the issue of termination is equally tied to the above, and thus their allegation of wrongful termination should be upheld. They argued that the Speaker being the Head of institution did not terminate their appointments in November 2005. The 1<sup>st</sup> Applicant led evidence while testifying in Court that the Honorable Speaker was still enjoying his services while in Mali. Counsel to the Applicants submitted that it is trite law that unchallenged or uncontroverted evidence is deemed admitted, and urged the Honorable Court to admit the evidence of the 1<sup>st</sup> Applicant since it was unchallenged or uncontroverted. The Applicants stated that there was even evidence adduced by 2<sup>nd</sup> defendant (DW1) & DW2 which admitted to the effect that the Speaker was meant to continue in office vide exhibit A11. The unchallenged evidence of the 1<sup>st</sup> applicant regarding his giving services to the Speaker in Mali is accepted as uncontroverted and unchallenged but had no serious effect on the claim which in the main was on the issue of the tenure of the Speaker as to whether it was subsisting or not.

49. Learned counsel to the Applicants argued that since the 2<sup>nd</sup> defendant does not have powers to terminate the employments of the Applicants, and that since he was not given approval by the Speaker



then the Court should so hold that the 1<sup>st</sup> Applicant had his contract of employment still in force until November 2006 alongside the Speaker's, in compliance with the contents of Exhibit A11 Council's decision. He therefore submitted that these were enough to convince the Honorable Court that the ECOWAS Staff Rules and Regulations in respect of termination as contained in Articles 59 and 60 of Exhibit A2 were not adhered to and thus the Applicants termination or severance were wrongful, illegal, invalid, null and void and of no effect.

50. The defendants in opposition referred the Court to Article 6 of the ECOWAS Treaty which clearly outlined the various institutions of the ECOWAS Community in order of hierarchy. They also referred to Articles 7 (1) and 12(3) of same ECOWAS Treaty to state that the Authority of Heads of State is the Supreme Institution of the Community, while the later provision states that the Regulations of the Council of Ministers shall be binding on institutions under its authority. The defendants submitted that the 1<sup>st</sup> defendant was established by Article 13 of the Treaty with an enabling Protocol to state its activities and terms of office. Learned counsel to the defendants cited Article 7(2) of the said Protocol which states that representatives shall be elected for a period of five years from the day of swearing in. Their mandate shall without any exception, end on

51. They submitted that in line with the above, the 1<sup>st</sup> legislature under the leadership of Speaker Prof. Ali Nouhoum Diallo whose fifth (5<sup>th</sup>) year anniversary was the 15<sup>th</sup> of November, 2005 ended on the said date; thus



the Speaker and members of his Bureau ceased to be in office from the said November, 2005. The defendants contended that Article 7(2) of the Protocol could not be juxtaposed with Article 23(11) of the Rules of procedure of Parliament, ECOWAS because whereas the Rules are internally made by a serving Bureau itself, the former which is the Protocol, is a statutory provision. They went further to submit that whereas the rules are not even binding on the subsequent representatives, but the Protocol has the force of law.

52. They cited the Nigerian Supreme Court's decision in *OLORIEGBE Vs OMOJESHO (1993) 1 NWLR (Pt 270) 386* to submit that it is settled law that subordinate legislation is prima facie ultra vires if it is inconsistent with the substantive provisions of the statute by which the enabling power is conferred or any other Statutes.

53. The defendants contended that the Council of Ministers' decision as ratified by the authority of Heads of States, rather than adopting Article 23(11) of the said Rules, set out new clear terms of relationship which spelt out all the details as stated above and exhibit D6 being the Deputy Speaker's handing over of his official car in affirmation of the end of the Bureau's tenure, considering that they were not mentioned in the transitional arrangement.

54. The defendants went ahead to submit that it is only when an employment has a statutory flavour that a termination or dismissal can be said to be unlawful and the question of reinstatement may occur. Also,



that the Speakers office which hitherto had statutory flavour ceased to be coated with that statutory flavour at the end of the 1<sup>st</sup> legislature. They contended that the Applicants failed to show that their appointments had statutory flavour or special legal status.

55. Learned Counsel to the defendants submitted that the Speaker's new position was an *ex-grates* position which could not extend to his aides, otherwise how would the allowance of the Speaker be \$2,000 while that of the 1<sup>st</sup> & 2<sup>nd</sup> applicants be \$3,550 and \$3,400 respectively. They cited the case of *OLANIYAN Vs UNIVERSITY OF LAGOS (1981) 2 NWLR (pt.9) pg 997*, where the Supreme Court of Nigeria held that a party has no right to elevate an ordinary contract of master and servant to the status of one with statutory flavor just because he has a better deal. The defendants contended that the opinion of this Honorable Court as relied upon by the applicants is of no consequence as it was merely an *Ex-parte* opinion or at best an *obiter* that the Court gave and which by law is not binding on the parties. Learned counsel submitted that it is pertinent to note that an advisory opinion does not have the binding force like a judgment of the court.

56. The court was referred to the reservations to the Genocide Conventions' case; ICJ Report (1951) pp15 @ 19, which explained that an advisory opinion is "to guide the United Nations in respect of its own actions. They cited the Nigerian Supreme Court decision in the case of *Dantafa Vs Mohammed, 2000 FWLR, 889* which held that an opinion expressed by way of advice to the parties is not part of the reasons of the



decisions, and has nothing to do with the merits of the case. None of the parties is obliged to accept and act on the advice, and that the Courts sometimes embarrassing as it may be, may depart from its own advice, and does not need to feel bound in any way by such advice. On this note, Learned Counsel submitted that the Applicants were not justified in relying on Article 23(ii) of the Rules of Parliament and the advisory opinion of this Court as they were only calculated to attract the sympathy of the Court.

57. The crux of the matter as raised by both sides in their arguments is whether the Speaker, Hon. Prof Ali Nouhoum Diallo continued as Speaker until the inauguration of the next legislature in November, 2006, despite the said variations in his employment and the use of the word 'continue' in the said decision. The relevance of all these provisions comes to bear on the determination of the end of the tenure of appointment of the Speaker's mandate. Therefore, it is necessary for this Court to examine the Report of Council, exhibit A11 containing its decision. Thus, in line with the general rule or literal rule, if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. So this principle applies to interpretation of documents. But if any doubt arises from the terms employed by the legislature, or the maker of the document, it has always been held a safe means of collecting the intention, to call in aid, as to the cause of making the statute and to have recourse to the preamble etc. There is also a rule of

interpretation that allows for a departure from the literal rule when the application of the statutory words in the ordinary sense would be repugnant to or inconsistent with some other provisions in the statute or even when it would lead to what the Court considers as absurdity.

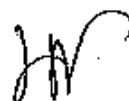
58. Given the facts of the case, particularly with reference to exhibit A 11 paragraph 86 to be precise, the said decision taken by the Council of Ministers, ECOWAS and ratified by the Authority of Heads of State, if given its natural and ordinary meaning would lead to absurdity, the absurdity needs to be cleared to give it a meaningful meaning. The absurdity in the instant case as discerned and found by this court is that whereas the Council pointed out that the tenure of the Legislature of the ECOWAS Parliament had come to an end in one stance, in another it stated that the Speaker should continue as Speaker until the next Legislature. The Court finds the two statements absurd. With the said absurdity, the use of the word 'continue' could not have been used in its literary sense in view of the fact that the Speaker was striped of all his rights as the Speaker, he used to be. As stated in paragraph 56 above, it is always the case that, where words of a statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. However, where any doubt arises as in this case from the terms employed by the legislature, it has always been held a safe means of collecting the intention of the makers of the statute or the document. On the issue of interpretation, see the case of *AFOLABI Vs FEDERAL REPUBLIC OF NIGERIA (2008) CCJLR (pt. 1) 1-189*. It is for the



above reason that in resolving the absurdity created in applying the decision of Council that the Court opted for a purposive approach to effectively resolve the said absurdity in a manner as was held by Lord Simon of Glaisdale in, *Maunsell v. Olins (1975) AC 373 at 385*, where the Judge observed that, 'the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradictions in which case some secondary ordinary sense may be preferred.....'

59. The said 1<sup>st</sup> legislature of the Parliament was dissolved as stated in Exhibit A 11, and endorsed by the Authority of Heads of State and where in the next paragraph of the decision the word-continue was used, there is definitely a contradiction or absurdity. Hence, to resolve the contradiction and absurdity resort must be made to the rules of interpretation as to whether the circumstances of the case and intention of the members of Council of Ministers meant continuity as described in the dictionary meaning of the said word.

60. Furthermore, the said Speaker wrote a letter to the Executive Secretary as to have the official interpretation of the said Council's decision. The reply by the Executive Secretary was tendered in evidence as exhibit D 5 where he stated the said variations but referred to his new status as an Elder's statesman. Thus, there was no reaction by the Speaker and the view that can be ascribed to that non reaction on his part is that he accepted the new arrangement and that his tenure came to an end on the 15<sup>th</sup> of December, 2005. The answer to the controversy



as to whether the tenure of Speaker which was seriously contested on both sides had expired or had ceased on the 15<sup>th</sup> November, 2005 is based on examining the advisory opinion of the Court and the decision of the Council of Ministers ECOWAS.

61. On these, both parties exhibited facts that are of common ground, that the Council of Ministers' decision as ratified by the authority of Heads of State and Government at the 55<sup>th</sup> Session held in Niamey- Republic of Niger in January 2006 and as stated in paragraph 86 of page 16 of the Report, Council stated that the Honorable Profession Ali Nouhoum Diallo should continue as Speaker until the swearing in of a new Parliament, however with terms of his appointment now varied.

62. The argument of the Applicants that it was the tenure of the Parliament and not that of the Speaker that came to an end on the said date cannot be acceptable, simply because one cannot be the Speaker without first being elected as member of the ECOWAS Parliament. The Rules of the ECOWAS parliament provides that:

*"The Speaker of the Parliament shall be elected by a two-third majority of members of the Parliament at the first round of voting, by an absolute majority of voting members at the following rounds at which only two candidates who obtained the highest number of votes can be presented."*



63. According to the defence, the Speaker owes survival to the existence of the Parliament. Where the tenure of the legislative arm ends, this automatically brings to an end the tenure of the Speaker and the members of his cabinet which includes the Applicants despite the transitional arrangements made in Article 7 (2) of the said Protocol and Article 23 (ii) of the Rules of Procedure. To this end, it is the position of the Court that the tenure of the Honorable Speaker ended on the 15<sup>th</sup> day of November, 2005, but should have continued by virtue of the provisions of article 7 (2) (ii) of the Protocol and article 23 (ii) of the Rules of Procedure but the decision of the Council of Ministers at the 55<sup>th</sup> Session in line with Articles 12(3) of the Revised Treaty, did not accept the advisory opinion of this Court and provided a new arrangement for the Speaker, as stated above. By Article 12 (3) of ECOWAS Treaty, the decision of Council must be given its due effect by this Court.

64. This Court holds that the decision of the Council of Ministers extended not the tenure of appointment of the Speaker but made a special provision as to a transitional arrangement in the instant case thereby ending his continuation as the Speaker in his former status. The said decision of Council having not amounted to extension of the tenure of appointment of the Speaker, the employment of the 1<sup>st</sup> applicant as stated in his letter of appointment came to an end on November 15, 2005 and the severance allowance having been paid or to be paid satisfied the requirements of the end of his employment and that of the 2<sup>nd</sup> applicant.



65. In line with the above view and the facts of this case the Court holds that, the tenure of the said Speaker ended on the 15<sup>th</sup> November 2005 as noted in the Report of the Council of Ministers after its 55<sup>th</sup> Session held in Niamey, Niger. This Court finds support on the phrase used in particular, 'continues as Speaker' which according to it, did not extend the tenure of the Speaker but made a new arrangement to enable the Speaker hand over to the new Legislature. The variations of the tenure of the Speaker are so strong and weighty, including the fact the Speaker was moved back to his home country Mali, and made not to perform the functions of the Head of Institution anymore and on an allowance of 2000 US Dollars per month instead of his Salary, and if that amount is compared to the salaries of the 1<sup>st</sup> and 2<sup>nd</sup> applicants, his personal aides would be on higher amounts of \$3,550 and \$3,400 respectively. These circumstances made the change in the status of the Speaker much substantially, that no use of any word could expand his status to mean otherwise than the end of his tenure.

66. Finally, where the tenure of the legislative arm ends, this automatically brings to an end the tenure of the Speaker and the members of his cabinet which includes the Applicants despite the transitional arrangements made in Article 7 (2) of the said Protocol and Article 23 (ii) of the Rules of Procedure. To this end, it is the position of the Court that the tenure of the Honorable Speaker ended on the 15<sup>th</sup> day of November, 2005, but should have continued by virtue of the provisions of Article 7 (2) (ii) of the Protocol and Article 23 (ii) of the Rules of Procedure.



67. The said rule was an internal rule made by the then serving Bureau which lapsed with the said legislature. Furthermore the said rule in fact derived its powers by virtue of its enabling Protocol which has the force of law by virtue of Article 13 of the ECOWAS Treaty. The Court agrees that the internal rule is subsidiary to the Protocol of the Parliament but that in the instant case the rule in question is in conformity with Article 7 (2) (ii) of the said Protocol and the principle of contradiction between the two as submitted by the Counsel to the defendants did not apply.

#### **COURT'S DECISION**

68. Having stated as above, It is the opinion of this Court that there was no continuity of the service of the Speaker that the applicants can cling unto as to enable their claims to succeed. On the reasons given above, the applicants' claims as stated hereunder failed:

a) The Court abides by the decision of Council of Ministers, ECOWAS to alter the continuity of the Speakers transitional tenure which ultimately affected the applicants' continuity of their services with the 1<sup>st</sup> defendant.

(b) A declaration that the letters dated 25<sup>th</sup> November, 2005 and 16<sup>th</sup> March, 2006 from the 2<sup>nd</sup> defendant to the Applicants were issued properly to the applicants.

(c) No order of the Court is made that the defendants pay the Applicants respectively the total sum of \$27,455.00 (twenty seven thousand four hundred and fifty five dollars) and \$27,087.49 (twenty seven thousand,



eighty seven dollars and forty nine cents) being outstanding salaries and entitlements under their contract of employment from 15<sup>th</sup> November 2005 to November, 2006.

(d) An order that the payment for the severance allowance made to the applicants by the defendants was in accordance with the Staff Regulations of ECOWAS.

(e) An order of this Court that no further payment of salaries and entitlements is made to the applicants by the defendants in accordance with the ECOWAS Staff Regulations, as long as their contracts of employment with the 1<sup>st</sup> defendant remain severed.

(f) An order of this court that the defendants shall not withdraw their letters to the applicants dated 25<sup>th</sup> November, 2005 and 16<sup>th</sup> March, 2006 and particularly to enforce the implementation of their contents.

(g) An order of this Court that the defendants shall take possession of the official premises provided for the applicants situated at plot 5, Danube Close, Maitama and plot 2, Parakou Crescent, Wuse II, Abuja respectively in accordance with the terms of their contracts of employment and the ECOWAS Staff Regulations in view of their severance with the 1<sup>st</sup> defendant.



(h) An order that the 2<sup>nd</sup> Applicant was duly employed by the Community Parliament ECOWAS as a special assistant / personal assistant to the former Speaker and that his contract of employment ceased to subsists.

69. The analysis and reasoning above have shown that the applications lodged in the Courts registry by the 1<sup>st</sup> and 2<sup>nd</sup> defendant lacked merit and it is accordingly dismissed.

**COSTS**

70. No order as to cost made. Each party shall bear its costs.

**THIS DECISION IS DELIVERED IN THE OPEN COURT IN THE PRESENCE OF THE PARTIES IN ACCORDANCE WITH THE RULES OF THIS COURT ON FRIDAY THE 28<sup>TH</sup> NOVEMBER, 2008.**

HON. JUSTICE HANSINE.N. DONLI

HON. JUSTICE AWA DABOYA NANA

HON. JUSTICE SOUMANA DIRAROU SIDIBE

Signed -

Signed

*H. N. Donli*  
PRESIDING JUDGE

MEMBER *A. Daboya*

MEMBER *S. Dirarou*

*H. N. Donli*  
PRESIDING JUDGE

*A. O. Adeniji*  
COURT REGISTRAR

C T C  
CERTIFIED TRUE COPY

*A. O. Adeniji* 28/11/2008  
Chief Registrar Date