

SUIT NO: ECW/CCJ/APP/02/06
JUDGMENT NO: ECW/CCJ/JUD/10/08

QUDUS GBOLAHAN FOLAMI, PIYAHARA K. DIAMOUTINE V COMMUNITY
PARLIAMENT (ECOWAS), DIRECTOR OF ADMINISTRATION AND FINANCE,
COMMUNITY PARLIAMENT, ECOWAS

JUDGMENT OF 28 NOVEMBER, 2008

*Termination of Appointment - Contract of employment -
Community Public Service - Effect of Advisory Opinion*

SUMMARY OF FACTS:

The Applicants are both Community Citizens and the 1st Defendant is an Institution of ECOWAS while the 2nd Defendant is the Director of Administration and Finance of the ECOWAS Parliament.

The Applicants were both employed in the cabinet of the Hon. Speaker of the ECOWAS Parliament. Mr. Qudus' (1st Applicant) letter of employment states that the duration of his employment would subsist until the incumbent Speaker of the ECOWAS Parliament leaves office whilst that of Mr. Piyahara (2nd Applicant) states that his appointment is permanent. Both letters of employment state that they shall be governed by the ECOWAS Staff Regulations.

The 2nd Defendant who is the Director of Administration and Finance through an internal memo dated the 25th of November, 2005 informed the Applicants that their contracts of employment had expired on the 15th of November, 2005 which was the official date for the expiration of the tenure of the Speaker. Thereafter, the Applicants' salaries were stopped.

The 2nd Applicant alleged that his appointment was not tied to the tenure of the Speaker of the parliament whilst the 1st Applicant replied through a memo alleging that the Speaker of the Parliament was still in office as of the 15th of November 2005

based on the recommendation of the Council of Ministers, which required that the Speaker should continue as an elder states man until a new Speaker is appointed. On the basis of this, the 1st Applicant alleged that his appointment had not yet expired. He sought for an amicable settlement as stipulated by Article 73 (a) of the ECOWAS Staff Regulations but was ignored.

Whereupon, the 2nd defendant instructed the Applicants to give up the possession of their official houses despite the Applicants' willingness to exhaust internal remedies.

ARGUMENTS OF PARTIES:

The Applicants argued that they were still Staff of the ECOWAS Parliament and that the termination of their appointments were contrary to the provisions of their terms of employment.

They also submitted that the outstanding salaries due to them since November, 2005 should be paid and their severance allowance which was wrongly paid should be withdrawn. Amongst other reliefs, the 2nd Applicant asked the Court to order that he was duly employed by the Community Parliament and that his contract still subsists.

In reply, the Defendants argued that the Applicants had ceased to be Staff of the Parliament upon the expiration of the tenure of the Speaker as stated in their terms of employment. Also, that the letters of termination issued by the 2nd Defendant were valid in accordance with the terms of appointment as Special aides of the Hon. Speaker.

The Defendants further argued that the Applicants were not being owed any outstanding salaries and entitlements and that the 2nd defendant acted upon instructions, being a member of the bureau in charge of financial matters. Counsel to the Defendants submitted that the act of seeking for employment as permanent Staff on grade level P4 showed that the 2nd Applicant knew that he did not have a stake with the ECOWAS Parliament after the 15th of November, 2005.

The Defendants asked the Court to make an order directing the Applicants to give up possession of their official apartments with immediate effect and to declare that the appointment of the 2nd Applicant as Personal Assistant to the Speaker came to an end upon the expiration of the tenure of the Speaker. Finally, the Defendants urged the Court to dismiss the suit in its entirety for lack of merit and which amounts to an abuse of the process of the Court.

LEGAL ISSUES:

1. Whether the applicants' appointments were wrongfully terminated.
2. Whether or not the second defendant has the authority to terminate applicant's appointment.
- 3 Whether the advisory opinion of the Court is binding on persons to whom it is directed.

DECISION OF THE COURT:

The Court decided that there was no continuity in the tenure of the Speaker that the Applicants can cling unto as to enable their claims to succeed. The Court therefore decided as follows:

1. That the intention of the 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 elect not to act on it. The advisory opinion of this Court dated 4th December 2005 though legally sound is not binding on the Council of Ministers.
2. The Court agrees with the decision of the Council of Ministers, ECOWAS to alter the continuity of the Speaker's transitional tenure which ultimately affected the Applicants' continuity of their services with the 1st Defendant.

3. That the letters of termination of appointment dated 25th November, 2005 and 16th March, 2006 from the 2nd defendant to the Applicants were issued properly.
4. That the payment of the severance allowance made to the Applicants by the Defendants was in accordance with the Staff Regulations of ECOWAS.
5. That no further payment of salaries and entitlements is to be made to the Applicants by the Defendants in accordance with the Staff Regulations, as long as their contracts of employment with the 1st Defendant remains severed.
6. That the Defendants shall not withdraw their letters to the applicants and particularly to enforce the implementation of their contents.
7. That the Defendants shall take possession of the official premises provided for the Applicants in accordance with the terms of contracts of employment.
8. That the 2nd 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 subsist.
9. No order as to cost, each party shall bear its cost.

The application was dismissed accordingly for lack of merit.