

COMMUNITY COURT OF JUSTICE,  
ECOWAS

COUR DE JUSTICE DE LA COMMUNAUTE,  
CEDEAO

TRIBUNAL DE JUSTIÇA DA COMUNIDADE,  
CEDEAO



No. 10 DAR ES SALAAM CRESCENT,  
OFF AMINU KANO CRESCENT,  
WUSE II, ABUJA-NIGERIA.

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

HOLDEN AT ABUJA, NIGERIA  
This 11<sup>th</sup> day of February, 2013

SUIT NO: ECW/CCJ/APP/15/11

JUDGEMENT NO: ECW/CCJ/JUD/01/13

BETWEEN

DR. ROSE MBATOMON AKO

- APPLICANT/PLAINTIFF

AND

1. WEST AFRICAN MONETARY AGENCY
2. THE DIRECTOR GENERAL, WAMA
3. THE PRESIDENT, ECOWAS COMMISSION
4. THE CHAIRMAN, COMMITTEE OF GOVERNORS  
ECOWAS MEMBER CENTRAL BANKS
5. ATTORNEY-GENERAL OF THE REPUBLIC OF SIERRA LEONE
6. THE REPUBLIC OF SIERRA LEONE

} DEFENDANTS/RESPONDENTS

**BEFORE THEIR LORDSHIPS**

HON. JUSTICE HANSINE .N. DONLI

- PRESIDING

HON. JUSTICE .M. BENFEITO RAMOS

- MEMBER

HON. JUSTICE ELIAM .M. POTY

- MEMBER

Assisted by ATHANASE ATANNON

- REGISTRAR

**REPRESENTATION**

APPLICANT:

1. KASIE OGBUANCA

DEFENDANTS:

1. L.M. FARMAH
2. OSMAN KANU

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A Doctorate degree in Economics majoring in financial, industrial and development economics with a history of excellence: Her primary school results also showed that she passed through that phase of education in a 1<sup>st</sup> position class with an academic record of excellence in Secondary School. She also had proven competence in several field including, banking business, academics, publishing several books and professional articles in several journals, teaching university students at undergraduate and graduate levels, served as a professional consultant to key sectors of the Nigerian economy and business, including the Capital market, the Security and exchange Commission and the Central Bank of Nigeria; served on several national assignments in the Federal Government of Nigeria.

4. She states that with these credentials she was appointed for that post and accepted same. She was given a one year probation period after which her appointment was made permanent. She stated that by her own estimation she worked efficiently with proficiency and competence in her assignment as the Director of Research and Operation.
  
5. She further stated that the 2<sup>nd</sup> Defendant served her an unexpected termination letter dated the 26<sup>th</sup> day of February 2009. The Plaintiff stated that her appointment was unlawfully terminated without any notice and without due process vide a letter dated 26<sup>th</sup> February 2009 signed by the 2<sup>nd</sup> Defendant, Professor Mohammed Ben Omar Ndiaye which was delivered to her at the close of business on Friday, the 27<sup>th</sup> day of February 2009. The letter indicated that the termination was with immediate effect and viewed same as contrary to the provisions of Articles 40 to 44, 47 to 49 of WAMA Conditions of Service for Professional Staff and Articles 69 of ECOWAS Staff Regulations.

6. She also mentioned that the 2<sup>nd</sup> Defendant who summoned her to his office for a terminal meeting confessed to her in the presence of a senior administrator and finance officer one SAFO and Mr Sigismond Mba-Offor that he had been under intense pressure both verbally and in writing to terminate her appointment since he became the Director of WAMA eight months to that date. She also stated that her letter of termination indicated that the pressure and approval for her severance of appointment came from the Governors of the Central Bank of Nigeria, Bank of Guinea and Bank of Sierra Leone.
  
7. Her main stance in stating the unlawfulness of the termination was the fact that she was not given fair hearing at any time about her short comings in performance of her duties prior to the said termination and contrary to the applicable conditions of service for professional Staff of WAMA and that the universal principles of natural justice, equity and good conscience was not observed. She further indicated that she was never summoned by any duly constituted panel or commission of enquiry to answer allegations of her incompetence before the termination.
  
8. Plaintiff also stated that the process adopted by the 2<sup>nd</sup> Defendant neither satisfied WAMA Regulations nor the ECOWAS Staff Regulations which enjoined the 1<sup>st</sup> Defendant to treat staff disputes speedily. Furthermore that the remote cause of her disagreement with the 2<sup>nd</sup> Defendant arose as a result of her request made to the 1<sup>st</sup> Defendant, the Committee of Governors for Justice on the persistence maladministration, humiliation and threats by the then Director General, which were completely ignored for over 2 years since 2006 without an acknowledgement of receipt of her request which later became the reasons cited in paragraph 1 page 2 of the termination letter of February 2009 as grounds of terminating her appointment without due process. She further stated that after receiving

the letter of the said unlawful termination of appointment she protested to the authorities of WAMA to follow due procedure as spelt out in the conditions of service and to ensure payment of all her outstanding entitlements and benefits. She was surprised that instead of adherence to the said conditions of service and request for due process to be followed, the 2<sup>nd</sup> Defendant ordered her to clear her office of personal effects within one week and her official residence within one month with no attempt to address the issue of her entitlement, benefits, and the immediate stoppage of her salaries.

9. She said she sought protection by petitioning the chairman of ECOWAS head of States seeking administrative intervention, but no positive response resulted from the said petition. She said having been unemployed and without salary in a foreign land, the 2<sup>nd</sup> Defendant in June notified her through a letter specified selected entitlement mainly her contributory providence fund that had been credited to her bank account. She was served with another letter to vacate the official residence, with no mention of her remaining entitlement and no funds provided to enable her move said properties by repatriation, to relocate her personal effect after six years in service with the 1<sup>st</sup> Defendant.
  
10. After the letter asking her to vacate her apartment, she was summoned to the Chief Magistrate Court twice in succession by the Director of Protocol of the Sierra Leone Foreign Ministry on behalf of the 1<sup>st</sup> Defendant in a matter of speedy ejection from her apartment which she successfully defended in the court in Sierra Leone and the matter was struck out. In the course of the process on the issue of ejection notice she was deprived of the use of the documents in her office.

11. She further stated that she was treated in a dehumanizing manner when further to this the electricity and water in her apartment was disconnected and she was left in total darkness without the means of water. She stated the fact that she had always paid her monthly deductions from her salary up to February 2009 when her last salary was paid to her. She said she was finally locked out of her official resident by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant on the 1<sup>st</sup> of August 2009 through the use of thugs when her final entitlement were yet to be paid and in so doing she was not given adequate opportunity to remove any of her considerable personal effects from the apartment and reported the incident to the Sierra Leone police Lumley Station. When it was not possible to convince the Defendants to rescind their actions she sought redress at the appropriate Court of Law in Sierra Leone through a counsel she engaged for the purpose.

12. While the case was pending in Sierra Leone she was forced to seek temporary shelter in Bintumani Hotel in Freetown on the 1<sup>st</sup> of August 2009 with no property but the cloths she wore when the incident happened. She emphasized that she was greatly traumatized physically, mentally and psychologically by the violations melted on her by the by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, even when the decision was in her favor the 1<sup>st</sup> Defendant denied her the fulfillments of the proceeds of the judgment which made her to borrow money to relocate to stay in hotel rooms in Abuja Nigeria from 2010, as it was the period when seeking redress in this Court commenced.

13. She further stated that she was summoned twice and publicly arrested on the road in her car, on account of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant filing claims against her at a Criminal Investigation Police department that she was criminally impersonating a diplomat in Freetown by the use of diplomatic car plate. The Sierra Leone Police investigated the allegations against her

and found no case against her and notified the 1<sup>st</sup> and 2<sup>nd</sup> Defendant accordingly.

14. She mentioned that all the orders of the High Court of Sierra Leone in her favor were ignored by the Defendant even the award of \$370,661.00 were unpaid. She raised the issue that the 3<sup>rd</sup> Defendant permitted the 1<sup>st</sup> Defendant to ignore the principles of Staff Employment as defined by Economic Community of West African States (ECOWAS) Article 10, Sub 3 (f) Revised Treaty. In respect of the course of action against the 5<sup>th</sup> and 6<sup>th</sup> Defendant she mentioned that they failed in their responsibilities to abide or honor the Headquarters agreement to protect staff within their country by allowing the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants to take unlawful actions and commit gross abuse of her human rights which are now before this Court.
15. She gave particulars for special damages including some admitted by the Defendant to a grand total of \$1,136,510.10 which she sought for. These specified items were made part of her pleadings and there were no reactions by the Defendants to some of them. On this basis she asked the court to grant all the reliefs sought for.

**SUMMARY OF STATEMENT OF DEFENCE ON BEHALF OF THE  
DEFENDANTS**

16. The 2<sup>nd</sup> Defendant conceded to all the facts pertaining to the appointment of the Plaintiff in the 1<sup>st</sup> Defendant's organization and her subsequent termination of the said appointment. The 2<sup>nd</sup> Defendant stated the grounds for the termination of Plaintiff's appointment which was particularized in their statement of defense as incompetence and inefficiency. He elaborated on the said grounds that led to the termination of the appointments on the fact that the Plaintiff's first intellectual contribution was a working

document the Plaintiff prepared in May 2004 titled "Harmonization of exchange rate policies in ECOWAS" which he said embarrassed the 2<sup>nd</sup> Defendant as a result it was withdrawn from circuit and was hastily assigned to one of the professionals in the Plaintiff's department to produce an alternative document for the meeting of the Committee of Governors in June 2004 at Dakar- Senegal.

17. He further stated that the Plaintiff's contribution to the study of Liberalization of the capital and financial account in ECOWAS was also a total failure on her part towards technical competence as the work was distributed among the Plaintiff's professional colleagues, the Plaintiff redrafted the portion relating to the Capital Market in Nigeria. The Plaintiff's professional colleagues having considered the conceptual and analytical limits of the paper, alerted the 2<sup>nd</sup> Defendant who ordered the said portion produced by the Plaintiff to be redrafted before it was presented to the meeting of the Committee of Governors in January, 2005.
18. The 2<sup>nd</sup> Defendant further stated that in June, 2006 he requested the Plaintiff to prepare a paper for contribution on restructuring of WAMA and the same result occurred as the previous work done by the Plaintiff relating to inefficient analysis and inconsistencies.
19. The 2<sup>nd</sup> Defendant further elaborated on the issue of incompetence and inefficiency of the Plaintiff to state that even a sister external institution such as WAMI (West African Monetary Institute) discovered the lack of competence and efficiency of the Plaintiff in her analysis. He also highlighted this point of her lack of competence and efficiency even where the 2<sup>nd</sup> Defendant disapproved the Plaintiff undertook moves to publish an Article on "Harmonization of Exchange Rates Mechanism in May 2004" he stated that this Article was rejected by WAMI Journal Editorial Board. The

reason for the rejection was contained in the Reviewer's comment on the paper submitted for publication in WAMI'S Journal which was communicated to the Plaintiff by letter Ref No. WAJMEI-COMMENTS/YTW/001-06-02 dated 20<sup>th</sup> February, 2007.

20. He stated that the concern towards the Plaintiff was her unethical, unprofessional and negative social behavior towards colleagues at times in conferences and meetings held with guests from other institutions. He made reference to instances recorded in WAMA'S Memorandum on the Plaintiff addressed to Dr. Paul A. Acquah Chairman Committee of Governors of the Central Bank ECOWAS member states. He gave no highlight of such unsocial misbehavior. He conceded that the Plaintiff was confirmed after her probationary period based on the presumption that the Plaintiff would improve her technical output and behavior towards colleagues. However the Plaintiff continued to unveil higher level of inefficiency in the institutional work and relationship with colleagues.
21. He stated that the 2<sup>nd</sup> Defendant consequently issued series of query letters and at each instance the response was a ground for another and highlighted three of such queries dated 8<sup>th</sup> June 2005 with heading "WARNING" the second dated 21<sup>st</sup> March, 2007 with heading "SUSPENSION FOR 8 WORKING DAYS" and the third was dated 16<sup>th</sup> April, 2007 with headings "QUERY-REQUEST FOR EXPLANATION".
22. He stated that during the Plaintiff's tenure of office as Director of Research and Operations, three Director-Generals including an Interim Director-General, each of whom had expressed dissatisfaction on the incompetence, inefficiency or bad social behavior of the Plaintiff. He stated that the substantive director 2004 to 2006 prepared an internal memo on the Plaintiff which gave detailed reports on the Plaintiff's incompetence and



inefficiency of the Plaintiff's social character. He stated that when he assumed office in 2004 the Plaintiff brought her incompetence in clear terms when she performed her function with gross disregard for authority and disrespect for other colleagues. Which lead to her services to the first Defendant to be terminated by letter dated 26<sup>th</sup> February, 2009.

23. He stated that the termination of the Plaintiff's appointment was provided for in Article 47 (b) of WAMA Condition of Service for Professional Staff. The Plaintiff was informed that all benefits payable to her will be paid and processed and paid in due course, as a result of that letter the Plaintiff became uncompromised with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that she refused to collaborate with the 2<sup>nd</sup> Defendant to hand over the property, including the official space she occupied.

24. The Defendant further averred that the benefits accruing to the Plaintiff at the end of her service with the 1<sup>st</sup> Defendant were a providence fund amounting to \$61,101.52 (Sixty-one Thousand one Hundred and One United State Dollars and Fifty two cents), three months salary in lieu of notice amounting to \$16,437.74 (Sixteen Thousand Four Hundred and thirty Seven United States Dollars and Seventy four Cents) and outstanding leave converted to cash amounting to \$11,207.55 (Eleven Thousand Two Hundred and Seven United State Dollars and Fifty-five Cents) and the Defendant denied the Plaintiff's allegation contained in paragraphs 27 and 56 of her narration of facts, admitting the payment of only the providence fund which she had already exhausted.

25. The 2<sup>nd</sup> Defendant stated that the total amount accrued to the Plaintiff came to \$88,746.81 (Eighty Eight Thousand Seven Hundred and Forty-Six United States Dollars and Eighty-one Cents) which was paid to the Plaintiff, taken from their Foreign Exchange Account No. HEA8000950 held at Sierra

Leone Commercial Bank Ltd. and transmitted to the Plaintiff by her Account No. 201304/2/1/0 held at the Guarantee Trust Bank as her entitlement benefit and the debit advice was sent to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants attached to their pleadings and submission to this Court

26. He stated that even after the payment of the said amount she continued to be in occupation of the apartment, Diplomatic Number Plates and Diplomatic Card among others despite that her services were no longer required by the 1<sup>st</sup> Defendant stating that the first Defendant having exhausted all means open to him, he finally informed the Ministry of Foreign Affairs in June 2009 to convince the Plaintiff to surrender office to the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant stated that after all efforts failed through negotiation and mediation the Defendant took the matter to the Magistrate Court for a speedy ejection trial which the Court struck out on the grounds that the director of Ministry of Foreign Affairs was absent from Court or from want of diligent prosecution.
27. It was at this point in time that the Plaintiff quickly instituted an action in the High Court of Sierra Leone stating loss of use of property, recovery of personal properties locked up and detained at her official residence, termination benefits, including medical bills outstanding since 2006, to salary difference between grade level D1 and D2 (official WAMA Director Grade), from 1<sup>st</sup> December until judgment; outstanding acting allowance as director general of WAMA, between the period of December 2005 and January 2006; salary for the period of June 2009 until judgment; damages for unlawful termination of employment with interest and costs.
28. The 2<sup>nd</sup> Defendant stated that the matter is still pending in the High Court of Sierra Leone and the present status is that it has been adjourned for ruling. He stated that the order made by the High Court of Sierra Leone is

for the Plaintiff to enter and recover her personal effects and the Defendants made no move to hinder the effectiveness of the order. The 2<sup>nd</sup> Defendant averred that the Plaintiff's refusal to move her belongings from the former resident had deprived the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from the use of the premises, contrary to Plaintiff's narration that the Defendant prevented her from moving her belongings from the premises. That no force was used to evict the Plaintiff as stated but proper legal procedure was followed to recover the said premises upon the termination of the contract of employment and the payment of entitlements and benefits to the Plaintiff. He further stated that the Plaintiff's service was terminated in accordance with the Terms and Conditions of Professional Staff Monetary Agency (WAMA).

29. He further expressed his concern that despite the payment of \$88,746.81 USD (Eighty Eight Thousand Seven Hundred and Forty-Six United States Dollars and Eighty-one Cents) to the Plaintiff she refused to surrender the Diplomatic Number Plate which belonged to the 1<sup>st</sup> Defendant and can only be used by employees of the 1<sup>st</sup> Defendant. He finally relied on Article 2 of the Protocol (A/P.1/7/93) relating to West African Monetary Agency, the Headquarter's Agreement between the Government of Sierra Leone and WAMA, Article 47 of WAMA Conditions of Service for Professional Staff Chapter 6 on Termination of Professional Staff.
30. He urged the Court to dismiss the case of the Plaintiff because all her entitlements had been transmitted to her through payment of same into her account in Guarantee Trust Bank.

#### **ANALYSIS AND DETERMINATION OF THE COURT**

31. The plaintiff relied on these head of claims as summarized from the reliefs sought:

- i) **A Declaration** that the purported termination of the plaintiff's contract of Employment with the 1<sup>st</sup> defendant by the Director-General of the 1<sup>st</sup> defendant and statutory Appointee of the #rd defendant via a letter dated 26<sup>th</sup> of February 2009, at the instance of the chairman of the 4<sup>th</sup> defendant, without complying with due process; is wrongful, irregular, illegal, invalid, inconsequential, null and void and of no effect whatsoever as such an act is a fundamental breach of contract of employment existing between the plaintiff and the 1<sup>st</sup> defendant herein.
- ii) **A Declaration** that the conducts of the defendants in this case amounts to a gross violation of the plaintiff's right to fair hearing, fair treatment; equal protection of law; respect for her life and the integrity of her person; respect for her dignity and recognition of her legal status; liberty and security of her person; property; work under equitable and satisfactory conditions; enjoyment of mental and physical health; under Articles 1,2,3,4,5,6,7,14,15,16,18(3),24,25,27,and 28 of the African Charter on Human and Peoples Rights and gross violation of Article 4(g, h,& I ) and in implementation of the application of Article 10(3)(f) of the Revised Treaty of ECOWAS and the protocol on observance of Law and Justice.
- iii) **An Order** compelling the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants herein to immediately pay over to the plaintiff, jointly and severally as **special damages** for the injuries suffered as a result of the actions of the defendants towards the plaintiff; including her arrears of salaries and allowances of about \$5,240.91 (WAUA 3,248) monthly, loss of use of premises, recovery of personal properties, breach of contract etc from the 1<sup>st</sup> Day of June, 2009 until date of judgment and estimated as at the end of June 2011

to total one Million, one thirty six Thousand, five hundred and ten United States Dollars, Ten Cents(\$1,136,510.10)

- iv) **An Order** compelling the defendants to jointly and severally pay over to the plaintiff the sum Fifty Million United States Dollars (\$50,000,000.00) as general damages for the great pain, physical suffering, emotional trauma, impairment of mental and physical suffering, since August 2009 to date, loss of time, loss property, loss of ways and means to make a living , loss of enjoyment of life, loss of reputation of the plaintiff, inhuman and degrading treatment the plaintiff was subjected to by the defendant contrary to Articles 4(g, h & I ) of the Revised Treaty of ECOWAS and Articles 1,2,3,4,5,6,7,14,15,16,18(3),24,25,27,and 28 of the African Charter on Human and Peoples Rights.
- v) **An Order** of this Honorable court compelling defendants herein to jointly and severally pay over to the plaintiff the sum of Five Million United States Dollars (\$5,000,000.00) as general damages for the defamation of the plaintiff's character when the 1<sup>st</sup> and 2<sup>nd</sup> defendants officially wrote false reports to the criminal investigation department of the Sierra Leone police, the Sierra Leone Telecommunications (Sierratel) and Road Transport Authority (SLRTA) amongst others, falsely claiming and/ or alleging the plaintiff is a criminal impersonator, incompetent, dishonest etc; to attack and denigrate the plaintiff's character and honor, to irreparably malign her hard earned good name and reputation and to cause the plaintiff and / or her properties to be severally and publicly arrested and/ or detained by the officials of the 6<sup>th</sup> defendant.
- vi) **An Order** of Mandatory Injunction compelling the defendants , their agents, servants Assigns, Privies, or whomsoever to

immediately release the entire plaintiff's properties (household, electronic, educational, documentary communication etc) and those of International Charity - Jewels of God International Ministry held in trust by the plaintiff at her residence situate at No. 2A Scan Drive, off Spur Road, Freetown unlawfully being detained and held by the defendants

**vii) An Order of Perpetual Injunction** restraining the defendants, their agents, servants, Assigns, Privies, or however called from further harassing, molesting, intimidating, arresting and /or detaining the plaintiff.

**viii) An Order of Mandatory Injunction** compelling the defendants to put up a widely read publication/ advertorial in the internet and a newspaper that enjoys wide readership in the Republic of Sierra Leone and the Federal Republic of Nigeria apologizing to the plaintiff for violating her human rights to fair hearing; fair treatment equal protection of law; respect for her life and the integrity of her person; respect for her dignity and recognition of her legal status; liberty and security of her person; property; work under equitable and satisfactory conditions; enjoyment of mental and physical health; protection against women discrimination.

**ix)** Interest on (c) above at 10% per annum

**x)** Interest on (d) and (e) above at 25% per annum

**x) Declaration** that the plaintiff is entitled to the costs of One Hundred and Fifty Thousand United States Dollars (\$ 150,000.00) against each of the defendants jointly and severally.

32. It is a trite principle of law that a party who alleges wrongful termination of his contract of employment is bound to show or prove

that he indeed had an employment with the Defendant. He must plead or show by giving credible evidence that he had an employment that was terminated by the Defendant.

33. Once this burden is discharged by the Plaintiff in keeping with the principle of law that he who asserts must prove, the Plaintiff is further required by law both in his pleadings and by credible evidence to show how the Defendant wrongfully terminated his appointment. At the complete discharge of this burden by the Plaintiff the burden of proof shifts to the Defendant to disprove the assertion of the Plaintiff and also show by credible evidence that due process was followed in the termination of the Plaintiff's employment, as parties to a contract of employment are bound by the terms of their contract especially where it is reduced in writing. The Court therefore would not interfere with the terms of contract agreed by parties to the contract neither would a third party be allowed to interfere with same in keeping with the principle of privity of contract.

#### **UNLAWFUL TERMINATION OF APPOINTMENT**

34. In line with this principle of law it is the finding of the Court that the Plaintiff has discharged the burden of proving that she was a staff of the 1<sup>st</sup> Defendant See Exhibit RMA 2 (the letter of appointment of the Plaintiff by the Defendant on the 6<sup>th</sup> day of August 2003 to the position of Director of Research). It was not in dispute neither was it contested by the Defendant that the Plaintiff was a staff of the 1<sup>st</sup> Defendant; therefore facts not contested are admitted and need no further proof. While Exhibit A3, the letter of termination shows that she had not delivered on her job as expected of her under the observation of the current Director-General Prof Mohammed Ben Omar Ndiaye, whereby he invoked Article 47(b) of the relevant condition of employment to terminate the appointment and by Exhibit A3, the Plaintiff was notified that her employment with the West African Monetary Agency (WAMA)

is terminated with effect from February 28, 2009 with payment of three months salary in lieu of notice.

35. Article 47(b) of Conditions of Service to Staff of WAMA, provides that "the contract of any staff can be terminated by the Director General if the Staff's service is found to be unsatisfactory.

36. In this regard, Articles xvii of the Articles of Agreement of the West African Monetary Agency (WAMA) provides as follows;

*"The Agency, being an institution of the community, shall be accorded the status, privileges and immunities of the Economic Community of West African States dated 22 April 1978"*

37. It must be stated without hesitation that the termination of appointment under Regulations of any institution of ECOWAS including West African Monetary Agency is under statutory obligation to follow the Regulations for terminating employment of Staff. It is apparent from the above provisions that the ECOWAS Staff Regulations is inapplicable to the circumstances of this case, since the Regulations of WAMA provides for procedure and measures for general conditions of employment and set forth the rights, obligations and privileges of its staff.

38. Articles 40, 41, 44 of WAMA conditions of Service which is applicable herein state that there shall be a Disciplinary Committee which shall investigate and recommend its findings to the Director General before action is taken against the employee of the Director General. It is stated that the Director-General takes the action to terminate the appointment of a staff member after the exhaustion of the conditions in Articles 40 and 41 upon the disciplinary committee's advice.



39. In the instant case, there was no such committee set up and the measures that preceded the termination were hazy and unclear. While it is apparent that the Defendant in this case failed to follow the above procedure in terminating the Plaintiff's appointment, apart from Exhibit DG3A, a WARNING letter issued on the Plaintiff on her gross incompetence in writing an article on conceptualizing an appropriate Exchange Rate Mechanism for the Economic Community of West African States (ECOWAS), however Exhibit DG3A was an unsigned document which goes to no issue.
40. It is found by the Court that Exhibit DG2 was duly signed which was a report by the Director General of the 1<sup>st</sup> Defendant, Yacouba Nabassoua to the Chairman, Committee of Governors of Central Bank of ECOWAS Member States on the insubordination of the Plaintiff. However the Court is unable to find the query issued by the Committee of Governors of Central Bank of ECOWAS Member States in respect of the allegations levied on the Plaintiff by the Director-m- General of the 1<sup>st</sup> Defendant before reaching a decision.
41. Exhibit DG3B headed "SUSPENSION FOR 8 WORKING DAYS" and dated 21<sup>st</sup> March, 2007 has nothing to do with competence but rather a complaint by the 1<sup>st</sup> Defendant of gross insubordination by the Plaintiff for which she was suspended for eight working days without pay or salary, in accordance with Article 40 of WAMA Regulations and Conditions of Service.
42. The Director-General failed to comply with Article 42 of the provisions of WAMA. However, where action has been taken wrongly or rightly, the entitlement of the employee involved, the applicant, where reinstatement is not the answer, all entitlements are to be made payable to the applicant as stated in the provisions of WAMA. Having not followed due process in

severing her employment from the services of the 1<sup>st</sup> Defendant, the court holds that there was violation of her rights as duly stated in the ECOWAS Staff Regulations and the Rules of WAMA.

43. It must be mentioned that a master has the right to determine the employment of his servant for good or bad cause or for no cause at all. Where there is such a wrongful dismissal or termination of appointment of service, legal authorities are numerous that the only remedy is a claim for damages for that wrongful dismissal or termination. This has always been based on the notion that no servant however willing, can be imposed by the court, on an unwilling master, even where the master's behavior is wrong except in exceptional circumstances as mentioned earlier. The employer is only liable for his wrongful act in damages and nothing more.
44. It follows that a Court would compensate a party whose rights have been violated by the employer, either by not following due process in terminating the appointment of an employee who is under a statutory term of employment or an employment of statutory flavor. In this regard what should be the nature of this compensation or measure of damages in the instant case? The Plaintiff has claimed various items which does not tie to the breach of contract of employment in question but are also for breaches for other violations of rights connected with the employment that was truncated by the Defendants, the employers. Do these other claims flow from such a breach of the terms of employment? Are such claims legitimate?
45. The claims that flow directly from the termination of the contract and covered by the provisions of the WAMA Regulations are legitimate but where the claims are not within the flow of damages as a result of the termination, it cannot be said that they are claimable. This Court thinks that

all those **items specified** by the Plaintiff if proved and within the compass of claimable **subject matter** in a contract of this nature should be adequate **compensation**. However the Defendants justified the fact that part of this **claim by the Plaintiff** had been paid to the Plaintiff through her GTB account in **the sum of \$88,746.74** United States Dollars. The Plaintiff claims a total **sum of \$1,136,510.10** United States Dollars as Special Damages stated **below:**

**PARTICULARS OF SPECIAL DAMAGES CLAIMED BY THE PLAINTIFF:**

**SCHEDULE LISTING PERTINENT ITEMS WITH CONCOMITANTS ENTITLEMENTS,**

**CLAIMS AND COSTS AS AT JUNE 2011**

**NOTES**

1. International Monetary Fund (IMF) Exchange Rates @ June 7, 2011		
(i) West African Unit of Account (WAUA) = IMF special Drawing Rights (SDR) =		\$1.613580
(ii) £ =		\$1.643000
2. Monthly Salary for 2003 – 2008 = WAUA 2, 763.96 ≈		\$4,459.87
3. Monthly Salary from 2009 = WAUA 3, 248.00 ≈		\$5,240.91

<u>ITEM#</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>USD EQUIVALENT</u>
<b>1. <u>With Respect To Termination Benefits:</u></b>			
(a) (i)	2006 Outstanding Medical Bills (in Dollars)	\$1,669.77	\$1,669.77
	(ii) 2006 Outstanding Medical Bill (in British Pounds) £1, 265.82		\$ 2,079.74
(b)	Salary Difference b/w grade level D1 & D2 @ WAUA 216.5		
	/month from Dec. '03 till judgment (= 91 months @ June '11) WAUA 19,701.50		\$31,789.95
(c)	2006 Outstanding Acting Allowance	WAUA 1,140.50	\$1,840.29
(d) (i)	Salary June '09-June '11 @ WAUA 3,248.00/month	WAUA 81,200.00	\$131,022.7
	(ii) 20% Provident Fund '09-June '11 @ WAUA 464.00/mo	WAUA 11,600.00	\$ 18,717.53
(e) (i)	2009 Home Leave – Return ticket to Abuja-Nigeria	\$1,200	\$1,200
	(ii) 2009 Home Leave-4 day travelling per diem@\$287,5/day	\$1,150	\$1,150
(f) (i)	Resettlement Allowance	\$56,201	\$56,201
	(ii) Repatriation of Personal Belongings & ticket to Abuja	\$15,700	\$15,700

\$261,370.98

Termination Benefits

\$26,137.1

\$287,508.1

Personal Termination:

\$244,950.0 dollars per day from Mar. '09 till judgment

Home '11)

\$244,950.0

Provident Fund

\$81,000.0

Subtotal:

\$325,950.0

3. With Respect To Unlawful Ejection and Loss of Use of Premises:

(a) Initial Displacement Hostel stay @\$73 for 124 days	\$9,052	\$9,052
(b) Displacement Rent on furnished apartment after hotel in '09	\$16,500	\$16,500
(c) Renewed Displacement Rent on furnished apartment in 2010	\$15,000	\$15,000
<u>Subtotal</u>		<u>\$40,552</u>

4. With Respect to Recovery of Personal Properties:

(a)** Security and Legal Documents for Landed Properties, Investments and Bank Deposits	-	-
(b)** Professional, Educational, Ministerial and Other Certificates and Documents	-	-
(c) Books Library (Professional Books in Economics, Finance, Mgt, Pastoral etc)		\$25,000
(d) Tape Library (Languages Training, Mgt Training, Pastoral Homilies, Music etc)		\$10,000
(e) Comprehensive Sets of ISOM Video Bible School Materials and Documents		\$11,000
(f) Computer, Printers and Accessories		\$5,000
(g) Assorted Office Equipments and other Consumables		\$2,000
(h) 19 Pieces Sets of Metal Office Furniture Donated by UNOISL to INGO-Jewels of God		\$15,000
(i) Over 50 Pieces Sets of Chairs & Tables Furniture for the ISOM Bible School		\$4,000
(j) Other Settee Chairs and Table		\$3,000
(k) Room A/C Cooling Systems and Fans		\$4,500
(l) Brand New Giant Refrigerator/Freezer, Hot/Cold Water Foundations & Bottles		\$3,500

(m) 4 Burner Gas Cooker/Oven, 2 Microwave Ovens & 4 Gas Cylinders	\$2,000
(n) Several Sets of Assorted Kitchen Utensils & Chinaware	\$4,000
(o) Various Sets of Electronics & Electricals (TV Sets, Musical Sets, Cameras etc)	\$5,000
(p) Mounted and Installed Communication Gadgets (Receivers, Dishes, Antennas etc)	\$4,000
(q) 10k VA Generator & Accessories Mounted and installed	\$7,000
(r) New Power Saw & Accessories	\$2,000
(s) Home Exercise Equipment & Household Maintenance Equipment	\$2,500
(t) Two Beds with Mattresses	\$1,500
(u) Various Sets of Beddings, Cosmetics and Toiletries	\$2,500
(v) Prescription Glasses, Accessories & Other Medications	\$1,500
(w) About 20 Suitcases	\$5,000
(x) Extensive Wardrobe (Formal, Informal & Traditional Wears & Accessories)	\$70,000
(y) Various Sets of Jewelry (Gold, Silver, Pearls Beads etc)	\$50,000
(z) Various Foodstuffs-Bags of Rice, Beans, Yam, Flour, Dried/Frozen Fish/Meat	\$1,000
(aa) Various Paintings, Pictures, Artwork and Decorations	\$2,500
(ab) Cash at Hand	\$3,500
(ac) Table and Cell Phones	\$2,000
(ad) Loss of Investments	\$60,000
<b><u>Subtotal:</u></b>	<b><u>\$309,000</u></b>

**Note\*\*Items Beyond Monetary Value Claims**

**5. With Respect to Costs:**

(a) Initial Legal Costs in Sierra Leone in 2009	\$3,500
(b) Legal Costs in Nigeria @ the Community Court in 2010	\$50,000
(c) Two visits to the ECOWAS Chairman's Office in Nigeria for Admin intervention and to try to forestall Legal Resolution in '09 (Air Tickets etc)	\$5,000
(d) Visits to the Community Court for Judicial Resolution (Air Tickets etc)	\$15,000
(e) Logistics	\$100,000
<b><u>Subtotal</u></b>	<b><u>\$173,500</u></b>
<b><u>Grand Total</u></b>	<b><u>\$1,136,510.10</u></b>

HL.1

46. However it must be emphasized that the court should not only look at those items specified by the Plaintiff but also whether the defense had responded to them as to water down the claim or make them doubtful. It is not in doubt that every material point canvassed in the Plaintiff's brief not countered in the respondent's defence is deemed to have been conceded to the Plaintiff. In this regard the court will consider whether the defense in their pleading and evidence show that the Plaintiff had been adequately compensated even in the face of the breach and what is contained in the document marked Exhibit DG8 and titled payment of provident fund and other entitlements dated 15 June 2009 with clarity.

47. The contents of Exhibit DG8 are as follows:

**ROSE MBATOMON AKO 01/12/2003-28/02/2009**

**A. ENTITLEMENT**

1. Provident Fund:

01/12/2003 to 31/12/2008	=	\$58,990.01
January 2009	=	1,068.54
February 2009	=	1,042.92
	=	<b>\$61,101.52</b>

2. Three (3) months salary in lieu of notice:

Total salary per month WAUA3, 248		
Plus employer's contribution of 20% of basic	=	WAUA 464
	=	WAUA 3,712
X 3 months = WAUA11, 136 @ \$1.47609	=	\$16,437.74

*Hnd*

3. Outstanding Leave Days converted to cash:

2007 leave outstanding	=	10 days
2008 leave outstanding	=	30 days
2009 leave prorated	=	5 days
	=	45 days

Therefore, 3712/Average of 22 working

Days x 45 days = WAUA

7,592.73 @ \$1.47609 = \$11,207.55

= \$88,746.81

**B. REPATRIATION COST**

1. One-way air ticket to Abuja (registered domicile) To be provided
2. Excess baggage allowance of 80kg up to Abuja @ \$5 per kg \$400.00
3. Air freight of 1000kg of personal effects to Abuja to be provided \$10,000.00

TOTAL CASH (A) + B) \$99,146.81

**C. OBLIGATIONS**

Submission of all WAMA property including Diplomatic card, Diplomatic Laissez Passer, Diplomatic Car plate number, and other office and house hold assets, as well as handing over of the official residence.

48. We have examined Exhibit DG8 by the defence and found that even though the amount of \$99,146.81 was stated in exhibit DG8 by the Defendant, only paid \$88,746.81 as stated in the same exhibit DG8 and dated 15 June 2009 as transferred to the Plaintiff.
49. Having considered the said defense in terms of what was accrued to the Plaintiff and the payments made to the Plaintiff's account, we found as of fact that the Plaintiff claimed more than was admittedly paid by the Defendant.

50. Under the particulars of special damages pleaded and claimed by the Plaintiff as at June 2011, we found under item 1, certain items on the Plaintiff's list of special damages which were absent from Defendants Exhibit DG8 titled payment of provident fund and entitlement of Dr Rose Mbatomon AKo. Items such as outstanding medical bills since 2006, salary difference (grade D1 and D2), acting allowance, salary June 2009 - June 2011, 20% providence fund June 2009, 2009 home leave, return ticket to Abuja, per diem from March 2009 till judgment, Resettlement Allowance, Repatriation of Personal Belonging, Replaced Provident Fund, hotel bills incurred as a result of ejection, rent on furnished apartment, with respect of recovery of personal properties and costs. Are these claims recognized and claimable where contract of service like in the instant case is terminated?

51. On the other claims made by the Plaintiff after the contract was terminated and examined by the Court against the background of conditions of service of WAMA, the following claims were so identified:

- a) Salary June '09 till '11 @ WAUA 3,248.00/month WAUA 81,200.00 USD equivalent \$131,022.7
- b) 20% Provident fund June '09 till '11 @ WAUA 464.00/mo WAUA 11,600.00 USD equivalent \$ 18,717.53
- c) 2009 Home Leave Return ticket to Abuja Nigeria \$1,200
- d) 2009 Home Leave 4 day traveling per diem @ \$287.5/day USD equivalent \$1,150
- e) Per diem @ \$287.5/day from March 09 till judgment (~852 days @ June '11) \$244,950.0
- f) With Respect to Unlawful Ejection and Loss of the Use of Premises; initial Displacement Hotel stay @ \$73 for 124 days at \$9,052, Displacement Rent on furnished apartment after hotel



in '09 at \$16,500, Renewed Displacement Rent on Furnished apartment in 2010 at \$15,000 summed at \$40,552.

g) With Respect to Costs; Initial legal cost in Sierra Leone in 2009 at \$3,500, Legal cost in Nigeria @ the Community Court in 2010 at \$50,000, Two Visits to the ECOWAS Chairman's Office in Nigeria for Admin intervention and to try to forestall Legal Resolution in '09 (Air Ticket, Hotel Bills etc) at \$5,000, Visits to the Community Court for Judicial Resolution (Air Tickets etc) at \$15,000, Logistics \$100,000 summed \$173,500.

52. The above claims have been found to be outside the service period and therefore extraneous to the claims allowable in a contract of service after such contract had been terminated by the employer as in the instant case. We in line with trite law on such contracts disallow all the claims stated above in paragraph 54 therein and hold that the claims failed to succeed.

53. In respect of the repatriation cost and allowance, it is shown in the pleadings of the Plaintiff the following claims to wit, the sum of \$15,700 as against the \$10,400 admitted by the Defendant since the Plaintiff did not show how she arrived at \$15,700 it suffices to state that the Plaintiff's assertions remain unproved and the sum conceded by the Defendant stands as \$10,400 and this Court holds that the amount as stated is proved for the Plaintiff against the Defendant.

As for the claims for Medicals and Resettlement allowance, we find proper justification or proof vis a vis the Condition of Service of WAMA for the plaintiff for the said head of claim to wit

(a) (i) 2006 Outstanding Medical Bills (in Dollars) **\$1,669.77**

(ii) 2006 Outstanding Medical Bill (in British Pounds) £1, 265.82= **\$ 2,079.74**

(b) Salary Difference b/w grade level D1 & D2 @ WAUA 216.5

/month from Dec. '03 till judgment ( $\approx$  91 months @ June '11) WAUA 19,701.50  
but this Court found that this claim cannot be calculated till judgment but till  
June 2009 when the plaintiff was paid her entitlements and the computation  
came to December 2003 to June 2009\_(67) months = \$28,995.8

c) 2006 Outstanding Acting Allowance WAUA 1,140.50 = \$1,840.29

54. Where claims for medicals were incurred during the subsistence of the contract of service, same would be payable even after the termination of the contract. This Court therefore holds therein that the Plaintiff having proved those heads of claims, they stand as proved to the tune of \$ 42, 741.16 US Dollars.
55. For the hiring or renting hotel expenses after the termination, this Court is of the opinion that such claims being outside the claimable claims, where a contract of service is terminated, the plaintiff cannot succeed and we disallow same.
56. Under head II of particulars of special damages, the Court notes with particular reference to per diem at \$287.5 per day claimed by the Plaintiff from March 2009 till judgment that per diem are only earned by staff who travelled outside the host country of the 1<sup>st</sup> Defendant on an approved official assignment and cannot be earned outside the termination of appointment of the Plaintiff so therefore the claims stand as unproved.
57. On the Issue of Replaced Provident Fund, it is unknown to the system, as it is shown in evidence that the provident fund allowable and earned by an employee was already paid to the Plaintiff by the Defendant as shown in this case. We find no proof as to the replaced provident fund claimed by the Plaintiff and the Court holds that the said head of claim also fails.

58. Having considered the said defense in terms of what was accrued to the Plaintiff and the payments made to the Plaintiff's account we found as of fact that the Plaintiff claimed more than was admittedly paid to her by the Defendant under the particulars of special damages pleaded by the Plaintiff.

59. It must be stated clearly that principles of pleadings all over the world is that matters pleaded by the Plaintiff and not in dispute or disputed by the Defendants, stand as proven. Where such is the case as in the instant case, no evidence is required in terms of proving special damages since the defence did not traversed same. The guiding principle is that it must be proved specially therefore an averment not specifically proved by the Plaintiff cannot hold any weight.

60. **CLAIM FOR DEFAMATION.**

On the claim for an Order of this Honorable court compelling defendants herein to jointly and severally pay over to the plaintiff the sum of **Five Million United States Dollars (\$5,000,000.00)** as **general damages** for the defamation of the plaintiff's character when the 1<sup>st</sup> and 2<sup>nd</sup> defendants officially wrote false reports to the criminal investigation department of the Sierra Leone police, the Sierra Leone Telecommunications (Sierratel) and Road Transport Authority (SLRTA) amongst others, falsely claiming and/ or alleging the plaintiff is a criminal impersonator, incompetent, dishonest etc; to attack and denigrate the plaintiff's character and honor, to irreparably malign her hard earned good name and reputation and to cause the plaintiff and / or her properties to be severally and publicly arrested and/ or detained by the officials of the 6<sup>th</sup> defendant, failed to meet the requirement of proof of the same. A claim for defamation of character in that the defendant portrayed the plaintiff as incompetent and that she was reported as a criminal at the police office in Sierra Leone was defamation of character was not sufficiently proved. No evidence was adduced as to

allegation and the proof thereof before this Court. The said claim therefore failed in its material particular.

61. We noticed that the applicant's employment with the Defendant-WAMA was terminated in 26<sup>th</sup> February 2009, but her entitlement in connection with the termination was paid into her GTB accounts on the 17<sup>th</sup> June 2009, the latter date being after 15<sup>th</sup> of that month would legally pass for a full month. When the months from the date of termination to the date of payment are calculated we found that the defendants left the plaintiff stranded for five months. Consequently, equity demands that the applicant should be compensated for the four months (February 2009 to June 2009). She was left to suffer without salary of three months in lieu of notice until in June 2009 and subsequent lack of salary. We therefore hold that the entitlement of **US\$88746.81** awarded herein to the plaintiff was inadequate and less the said four months' salary from February 2009 to June 2009 at **\$1068.54 totaling \$28,995.8 US Dollars**

#### **GENERAL DAMAGES**

62. The plaintiff claimed general damages of the sum of Fifty Million United States Dollars (**\$50,000,000.00**) as general damages for the great pain, physical suffering, emotional trauma, impairment of mental and physical suffering, since August 2009 to date, loss of time, loss property, loss of ways and means to make a living, loss of enjoyment of life, loss of reputation of the plaintiff, inhuman and degrading treatment the plaintiff was subjected to by the defendant contrary to Articles 4(g, h, & l) of the Revised Treaty of ECOWAS and Articles 1,2,3,4,5,6,7,14,15,16,18(3),24,25,27,and 28 of the African Charter on Human and Peoples Rights. The defendants made no challenge to the claim in their pleadings but we found same to be exorbitant, even though we are of the view that the plaintiff suffered from the unlawful manner her

appointment was terminated and assessed same herein in the sum of **\$30,000 US Dollars as general damages.**

#### **DECISION**

63. The Court has read and considered the facts of the case and all the issues raised therein by both Learned Counsel to the parties in this case. In effect the total award, the applicant was paid by the defendants was **\$88,746.81**; In addition to the above sum, the plaintiff is entitled to four months' salary amounting to US\$ to **\$28,995.8 US Dollars**, other claims relating to medicals bills to the tune of **\$ 42,741.16 US Dollars**, and general damages amounting to **\$30,000 US Dollars**, totaling the sum of **US\$101736.96**. Given that the Defendants have already paid the sum of **US\$88,746.81** to the Plaintiff, this Court decides that the sum of **\$101,736.96 US Dollars** is due to the plaintiff from the defendants jointly and severally for the unlawful termination of the contract and other claims accrued to the plaintiff during the pendency of the contract.

64. The Court noted that these claims were stated in the plaintiff's pleadings and the defendants did not counter them. Therefore they were taken as proved.

65. All other claims by the Plaintiff fell outside her entitlements after the termination of her appointment except the above stated amounts.

66. As for the award by the Court in Sierra Leone of **US\$243,500.00** (Two Hundred and Forty-Three Thousand, Five Hundred United State Dollars) in respect of the claim therein, we find such claim as extraneous matter and outside the claimable issues before this Court as same is outside the components of our jurisdiction.

67. On the whole, this Court awards compensation for the Plaintiff against the Defendants jointly and severally in the sum of **US\$101,736.96 Dollars**, accordingly.

Community Court for Judicial Resolution in 2009 (Air tickets etc) at \$15,000. However, after examination of the various cost, we find that the sums are either unjustified or / unreasonable and outside the competence of this Court. In the circumstance, the Court adjudges that the Plaintiff is entitled to the costs of this application to be borne by the Defendant in accordance with Article 66 of the Rules of this Court and awards the sum of US\$ 15,000.00.

The Judgment Read in Public in accordance with the Rules of this Court on this 11<sup>th</sup> February, 2013 at Abuja the Seat of the Court.

HON. JUSTICE HANSINE N. DONLI

HON. JUSTICE M. BENEFEITO RAMOS

HON. JUSTICE ELIAM M. POTEY

PRESIDING JUDGE *H.L.*

MEMBER *R.H.M.*

MEMBER *Shamir*

*H.L.*

HON. JUSTICE HANSINE DONLI

PRESIDING JUDGE

*Atannon*

ATHANASE ATANNON

REGISTRAR

