



**COMMUNITY COURT OF JUSTICE, ECOWAS  
ABUJA - NIGERIA**

General role: ECW/CCJ/APP/32/14

Judgment No. ECW/CCJ/JUD/10/15 of 23 April 2015 (Failure to adjudicate)

Mr Georges Constant AMOUSSOU: APPLICANT

Against

The Republic of Benin: DEFENDANT

**COMPOSITION OF THE COURT**

Hon. Judge Jerome Traore	Presiding
Hon. Judge F. Hamèye Mahalmadane	Judge Rapporteur
Hon. Judge Alioune Sall	Member
Assisted by Athanasius ATANNON	Registrar

## **THE COMMUNITY COURT OF JUSTICE**

delivered in the case of Mr AMOUSSOU Georges Constant against the Republic of Benin, omission to give ruling, the following decision:

### **I- PARTIES**

**I.1- APPLICANT:** Monsieur AMOUSSOU Georges Constant, former Prosecutor at the Court of Appeal of Cotonou, domiciled at carre No. 312-S Sègbèya, represented by Master Alfred POGNON, Yves KOSSOU, Dieudonné Mamert ASSOBA, all lawyers at the Court of Appeal of Cotonou with an address collectively at Master Yves KOSSOU firm located at Gauhi, Immeuble Meideros behind Diamond Bank, 06 BP 1416 Cotonou, tel: (229) 21 3124 18, Fax: 21 31 39 88, e-mail [koss\\_y@yahoo.fr](mailto:koss_y@yahoo.fr);

**I.2- DEFENDANT:** The Republic of Benin, legally represented by the Judicial Treasury Agent domiciled Treasury Benin, route de l'aéroport, Cotonou, with an address for the purposes of the case in Abuja Embassy of Benin in Nigeria, located at Plot No. 2579 (near Algon Guest House) Yedserram Street, Maitama, Abuja, defended by Mr. Hippolyte YEDE, whose firm is located at: Parcelle du T 'lot 2157, rue pavee du Benin marche, immeuble GBEDIGA, 03 BP: 338 Jericho Cotonou, tel / fax: +229 21 38 01 83; mobile: +229 90 93 55 07/97 80 55 60; fax: +229 21 38 01 84, e-mail [h.yede@yahoo.fr](mailto:h.yede@yahoo.fr), [cabinetavocatyede@yahoo.fr](mailto:cabinetavocatyede@yahoo.fr);

### **II- FACTS AND PROCEDURE**

**II.1-** AMOUSSOU Mr Georges Constant sued the Republic of Benin before this Court to hear the ruling on the main claims omitted in the judgment of 6 March 2014 made in the suit ECW/CCJ/APP/07/12;

**II. 2-**The applicant came before the Court by application dated 18 July 2014 but filed at the Registry on 23 September 2014;

**II.3-** The originating application was served on the defendant on 26 September 2014;

**II.4-** The Republic of Benin filed a statement of defence and a statement on the merit all on 31 October 2014, filed at the Registry on 12 November 2014;

**II.5-** The applicant responded with two statements, both dated 21 November 2014 filed in the Registry on 8 December 2014;

**II.6-** The suit was adopted and discussed at the external court session in Bissau (Guinea Bissau) of 23 March 2015. The parties were not present but wrote to request the judgment of the case based on written briefs;

**II.7-** The case was reserved for decision in Abuja, the seat of the Court on 23 April 2015;

### **III- ARGUMENTS AND CLAIMS**

**III.1-** The applicant claimed that on 25 April 2012, he came before this Court of Justice with two applications against the Republic of Benin, the first is to decide on the sanctioning of all violations of his rights in the course of criminal proceedings against him and the second to seek from the Court the use of expedited procedure, that is this procedure that was used for number ECW/CCJ/APP/97/12 which resulted in the judgment of 6 March 2014;

**III. 2-** He maintained that the service of the judgment was only made to him at his express request and this was several months after the presumptive date of its delivery, that some sluggishness had negatively influenced the consideration of facts and principles of law relied upon and justifies what might be called euphemistically as well described by Article 63 of the Rules as “clerical mistakes”, “obvious slips” which unfortunately cannot give more to correction and constraints to resort the omission to give rule procedure, that the present proceedings therefore has the task to implore reparations of omissions to give ruling committed during the delivery of the judgment dated 6 March 2014 specifically on:

- Arguments concerning the violation of his rights subject statement of conclusions dated 26 September 2013,
- The abbreviate application of the procedural delay introduced separately from the main application,
- The inadmissibility of the conclusion by the Republic of Benin dated 20, 21 and 22 November 2012;

III.3- To start with, he explained that on the issue of the lawfulness of his committal order dated 17 July 2010 and secondly that of the non observance of the rules of public order prior to any admission to a prison, were asked directly for the first time at the Court in the conclusions of 26 September 2013, that it is easy to note that neither in the summary of his claims, nor in the summary of facts nor in the summary of pleas in law raised in support of his claims, nor in his claims, did the Court find and discussed the absolute authentic documents establishing breaches in the committal order of 17 July 2010 and breaches in the mandatory observance of prior and essential formality of public order of registration of the title of detention in prison register, that at no time nor at any level of the judgment the Court was there a ruling on the public policy raised by the conclusions of 26 September 2013, that the procedure which led to the judgment subject of the omission to give ruling also manifestly failed to rule on the separate motion seeking that the judgment of the case be submitted to the expedited procedure, that **it is necessary** to emphasize that conclusions statements were exchanged by the Republic of Benin and himself, that the Court delivered its decision to that effect at the seat following the waiver expressly formulated by the Counsel to the Republic of Benin to answer to his reply, the Court has to correct either by notifying him of the judgment delivered on 30 October 2012 on the expedited procedure, or by ruling if secondarily that was not the case, that before the hearing on 30 October 2012 in which the Republic of Benin pleaded before the Court on the motion for expedited procedure by two letters from its lawyer Maître YEDE invited the Court to rule on documents stating unequivocally his intention not to be present for this argument, nor reply to rejoinder on the matter or on any other question of law, that as a result, the Republic of Benin decided to rescind its decision and submit the replies which it expressly abandoned, that he then presented three conclusions dated 20, 21 and 22 November 2012, that Mr ASSOGBA one of the counsel to the Republic of Benin specifically raised the inadmissibility of such conclusions and sought a ruling from the Court, that the latter joined the incident on the merit, the Court's response is crucial, that as such there is the need that the Court rule on this plea which it has failed to respond to in its judgment of 06 March 2014;

**III.4-**In support of his claims, he relied on the Protocol on the Community Court of Justice, in Article 29-4 (b) and the Rules of Court, in Articles 23 and 61;

**III.5-** He requested the this Court to:

- Declare the present application admissible;

- Award him the full benefit of its conclusions of 17 December 2012 requesting the inadmissibility of the conclusions by the Republic of Benin dated 20, 21 and 22 November 2012;
- Award him the full benefit of its conclusions of 26 September 2013;
- To adjudge and declare, in relation to the motion for expedited procedure dated 25 April 2012: If secondarily it was not considered, it is substantive and to grant it in the light of the conclusions of parties,  
Or if such is already the case so that it supports it, to kindly notify the parties;  
To take into consideration while ruling for legal purpose in respect of these proceedings;
- To find the arbitrary nature of his detention in the light of the content of the minutes of findings with bailiff summons dated 16 and 23 September 2013, to note that he requested the benefit of Article 9.5 of the International Covenant on civil and Political rights and on this grounds, requested that the Court award him financial compensation which it may wish to fix supremely the quantum for each day of arbitrary detention undergone since 12 July 2010 until the day of his actual release;
- Order the Republic of Benin to pay him full reparation;
- Also order the Republic of Benin to bear the entire costs.

**III. 6-** In response, the Republic of Benin filed in the Registry of the Court on 12 November 2014 a “statement of” and “substantive statement” both dated 31 October 2014;

**III.7-** The Republic of Benin claimed in the defence, that pursuant to Article 64 of the Rules of Court “Where the Court omits to give a decision on a specific head of claim or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgment...” that the application of Mr AMOUSSOU is dated 18 July 2014 eight (08) days after his **follow-up** letter to the Court and its receipt at the Registry is 23 September 2014 which is two (02) months later, that the application dated 18 July suggests that the applicant obtained service of judgment under appeal before that date if not he would have noticed that there is a omission to rule in the judgment, between 18 July 2014 date of application and 23 September 2014 date of receipt at the Registry it would be more than two (02) months in that this action no longer fits within the statutory period of one month from the date of service provided for in Article 32.3 of the Rules, having filed outside the deadline, the appeal of Mr Georges C. AMOUSSOU should be declared inadmissible;

**III.7-** In his “substantive statement” the Republic of Benin argued that the applicant refers to its conclusions dated 26 September 2013 and filed late in violation of the procedural rules of this Court and without justifying reasons for this delay, that in his conclusions that he has raised the inadmissibility of these new findings of the applicant, that the inadmissibility was already demonstrated in the most simple details, that otherwise he sought the rejection of the whole pleas developed in the conclusions of 26 September 2013, that in relation to the opening of the expedited procedure he took and addressed to the Court two (02) different observations, that the observations concerns the undated application and that concerning counter reply, that the applicant challenged the Court for not having ruled on his conclusions of 17 December 2012 in which he first raised the inadmissibility of the conclusions of the Republic of Benin dated 20, 21 and 22 November 2012 and secondly a reconciliation of date, that he showed to the applicant that no legal consequences can be drawn from the conclusions dated 17 December 2012 which he relies on unnecessarily, that it could be liable to undermine the authority of res judicata attached to the judgment of 6 March 2014;

**III.8-** The defendant requested this Court to:

- Declare all new claims or exhibits relied on or filed in this case by the applicant as inadmissible;
- Award him the benefit of the terms of his conclusions mentioned below:
  1. **Reply conclusions** dated 28 October 2013 filed at the Court on 4 November 2013;
  2. Comments on the undated application for expedited procedure of 24 July 2012;
  3. Observations on the reply against undated motion for expedited procedure on 22 November 2012;
  4. Reply comments on the last conclusions of inadmissibility by the Republic of Benin and **merging** of hearing date of 30 January 2013 filed at the Court on 11 February 2013;
- Confirm the authority of res judicata attached to judgment of 6 March 2014 delivered by this Court;
- Declare that the original application was submitted outside the time prescribed by Article 64 of the Rules of Court;
- Declare unfounded the appeal for omission to give ruling;

- Order the applicant to pay the entire costs;

#### **IV- MOTIVATION**

**IV.1-** By application dated 18 July 2014 Mr Georges Constant AMOUSSOU came before the Community Court of Justice, ECOWAS to rule on omissions on the head of claim in the judgment of 6 March 2014 made in the proceedings No. ECW/CCJ/APP/07/12 initiated against the Republic of Benin;

**IV.2-** The Republic of Benin, in its “statement of defence” dated 31 October 2014 filed simultaneously with the substantive brief at the Registry of the Court namely 12 November 2014, rejected the application by Mr Georges Constant AMOUSSOU;

**IV.3-** He explained that an appeal on omission must be filed within one month of service of the judgment of which rectification is sought, that Mr AMOUSSOU Georges Constant has not demonstrated that he came before the Court with his application within the above prescribed time, that therefore the judgment criticized by the applicant for not having ruled on some heads of claim has acquired the authority of res judicata;

**IV.4** He relied on Articles 32.3 and 64 of the Rules of this Court and concluded on the inadmissibility of the action by Mr AMOUSSOU;

**IV.5-** it results from these discussions that in 2012 the applicant applied to this Court with two applications against the Republic of Benin, for, first, to decide on the punishment for violations made on his rights in the course of criminal proceedings against him and the second to seek the court to consider his case in an expedited procedure, that this procedure registered as number ECW/CCJ/APP/97/12 has resulted in a decision dated 6 March 2014;

**IV.6** The examination of exhibits filed appears that neither the judgment of 6 March 2014, nor the act of service of this judgment were filed; But the applicant himself argued in his pleadings that the service of the judgment was made in reply to his express request for information made 10 July 2014 and that is several months after the presumptive date of its delivery;

**IV.7-** Article 64.1 of the Rules of the Community Court of Justice confines the action to redress an omission to give ruling on whether a single head of claim or on costs, within a months of service of the judgment being attacked;

**IV.8-** The applicant **argued** not to have been actually informed of the existence of the judgment dated 6 March 2014 until 10 July 2014 when he submitted to the Court a correspondence on the fate of the procedure, that “after having exercised his action by his request dated 18 July 2014, eight (08) days after his correspondence, he felt to be on time;

**IV.9-** Article 32.3 of the Rules provides: “All pleadings shall bear a date. In the reckoning of time limits for taking steps in proceedings, only the date of lodgement at the Registry shall be taken into account”.

**IV.10-** It then appears that for this case, the counting of the period for exercising the appeal had to start from the service of the judgment and to end on the date of registration of the appeal by the Registry;

**IV.11-** If the date of registration of Mr AMOUSSOU’s appeal by the Registry is not subject to any challenge, that of the service of the judgment remains unknown;

**IV.12-** But, obviously, for a judgment delivered on 6 March 2014, challenged by a motion dated 18 July 2014 but was only received in the Registry of the Court on 23 September 2014, the deadline set by the provisions of Article 64 of the Rules has expired for long;

**IV.13-** In fact, the date on which the application of Mr AMOUSSOU is supposed to have been written which is to say, 18 July 2014 (which supposes that service was made to him) to that of its registration at the Registry of this Court i.e. 23 September 2014, it took more than two (02) months that is more than the time limit allotted by Article 64 of the Rules for successful applications; It follows therefore that the debate surrounding the date of notification no longer serves any purpose;

**IV.14-** Moreover, it is for Mr AMOUSSOU to prove in compliance with the law that his appeal is admissible to act within the time prescribed by the Rule; He was unable and did not justify the benefit of the extension of time provided for in Article 64.2 of the Rule;



**IV.15-** In light of these developments, it appears that the appeal by Mr AMOUSSOU is out of time;

It follows therefore that the applicant is time-barred; it is appropriate in these circumstances to declare his application inadmissible;

**- As to the Costs**

**IV.22-** Article 66.2 of the Community Court of Justice, ECOWAS states that “The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party’s pleadings”.

In this case, the applicant's action will not prosper;

In addition, the Republic of Benin has expressly requested the order for costs;

Therefore it is applicable to order the applicant to bear the cost;

**FOR THESE REASONS**

The Court adjudicating in open Court and after hearing both parties pursuant to general principles of law, in first and last resort;

Receives the motion of inadmissibility raised by the Republic of Benin against Mr AMOUSSOU’s case;

Declare it well founded;

Declare that Mr AMOUSSOU inadmissible in his action;

Order the applicant to bear the cost;

**THUS DONE, ADJUDGED AND DELIVERED IN PUBLIC HEARING, AT THE SEAT OF THE COURT ABUJA, THIS DAY 23 APRIL 2015;**

SIGNED:

- Honourable Judge Jerome Traore,

- Honourable Judge Hamèye Founé Mahalmandane,

- Honourable Judge Alioune Sall,

Presiding,

Judge Rapporteur,

Member;

- Assisted by Mr Athanase ATANNON,

Registrar.