COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE, CEDEAO

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

In the Matter of

SULEIMAN MUHAMMAD HUSSAINI V ECOWAS COMMISSION & ANOR

Application No: ECW/CCJ/APP/22/19/REV Judgment No: ECW/CCJ/JUD/14/24

JUDGMENT

ABUJA

30 May 2024

SULEIMAN MUHAMMAD HUSSAINI **-JUDGEMENT**
CREDITOR/RESPONDENT

V

ECOWAS COMMISSION & ANOR **-JUDGMENT**
DEBTOR/APPLICANTS

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Be OUATTARA - Presiding
Hon. Justice Dupe ATOKI -Member/Judge Rapporteur
Hon. Justice Ricardo Claudio Monteiro GONÇALVES - Member

ASSISTED BY:

Dr Yaouza OURO-SAMA - Chief Registrar

REPRESENTATION OF PARTIES:

Kolawole Olowookere, Esq - Counsel for the Respondent

Eric Ibe, Esq -Counsel for the Applicants

I. JUDGMENT

1. This is the judgment of the Community Court of Justice, ECOWAS (hereinafter referred to as "the Court") delivered in open court.

II. DESCRIPTION OF THE PARTIES

2. Suleiman Muhammad Hussaini is a community citizen and a former employee of the ECOWAS Commission (hereinafter referred to as the Respondent)

3. The ECOWAS Commission and the President of the ECOWAS Commission, both an institution and an official of the Economic Community of West African State respectively (hereinafter referred to as the Applicants)

III. INTRODUCTION

4. This is an Application for review of judgment Number ECW/CCJ/JUD/03/22 between SULEIMAN MUHAMMAD HUSSAINI AND ECOWAS COMMISSION & ANOR delivered on 10 March 2022 based on the discovery of new facts which facts were previously unknown to the Applicants and the Honourable Court.

IV. PROCEDURE BEFORE THE COURT

5. The Applicants filed an Application for Revision of Judgment on 3 June 2022 and was served on the Respondent on 16 June 2022.

6. The Respondent filed a Motion for an Extension of Time to file his defense to the Application for Revision of Judgment on 30 August 2022 and the Motion was served on the Applicants on 30 August 2022.

7. The Respondent filed a defense to the Applicants' Application for Revision of Judgment on 30 August 2022 and was served on the Applicants on 30 August 2022.

8. The Respondent filed an Additional Annexures in support of his Defence to the Applicants' Application for Revision of Judgment on 9 October 2023 and was served on the Applicants on 11 October 2023.

9. The Respondent filed Further Additional Annexures in support of the Judgment Creditor's Defence to the Applicants' Application on 22 January 2024 and was served on the Applicants on 23 January 2024.

10. During the Court's hearing both parties were represented by Counsel in Court. The Respondent's Counsel moved its motion for Extension of Time and the application was granted by the Honourable Court. Subsequently, both parties were heard on the merit of the case and the matter was adjourned for judgment.

V. APPLICANTS' CASE

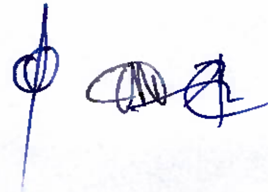
a) Summary of facts.

11. This is a post-judgment application where the Applicants are seeking a revision of judgment no ECW/CCJ/JUD/03/22 delivered on 10 March 2022 where the Court entered judgment against them for the wrongful termination of the employment of the Respondent who was employed as a Controller by the 1st Applicant.

12. The application is brought pursuant to Articles 92 and 93 of the Rules of Community Court of Justice (ECOWAS) based on which the Applicants are alleging the discovery of new facts which came to their knowledge after the said judgment was delivered.

13. The Applicants claim that it came to their notice on 5 May 2022, two months after the said judgment was delivered that the anti-graft agency of the Federal Republic of Nigeria, the Economic and Financial Crime Commission (EFCC) had indicted and charged the Respondent and others with criminal offences before the High Court, Federal Capital Territory, and the Federal High Court Abuja respectively. The details of which are Charge No. CR/310/18 between the Federal Republic of Nigeria V Muhammad Dangana & 3 ORS and FHC/ABJ/139/2018 between the Federal Republic of Nigeria V Muhammad Dangana & 5 ORS

14. The accused persons charged by the EFCC are: 1) Muhammed Dangana, 2) Mohammed Sani Bello, 3) Allieu Sesay, 4) Suleiman Muhammad Hussaini, and 5) Saleh Dangana. The 4th Defendant is the Respondent in the instant Application and was accused of criminal breach of public trust and diversion of public funds belonging to ECOWAS Commission and other counts along with other accused persons.



15. The Applicants submit that the Respondent was aware of charges against him since 2018 but failed to report same to the Head of Institution in accordance with the Staff Regulation, 2005 which requires that any staff member charged with any criminal offence other than a minor traffic violation or similar offence shall immediately report the case to the Head of Institution.

16. The Applicants in conclusion submit that the Respondent's indictment, criminal charges, and his deliberate refusal to disclose pending indictments constitute facts unknown to them and the Court when Judgment No. ECW/CCJ/JUD/03/22 was entered in his favour.

b) Pleas in law

17. The Applicants rely on the following laws:
    i. Articles 92 & 93 of the Rules of the Community Court of Justice, ECOWAS.
    ii. Articles 68(a)-(e) of the ECOWAS Staff Regulation, 2005.

c) Reliefs sought.

The Applicants seek the following reliefs from the Court:

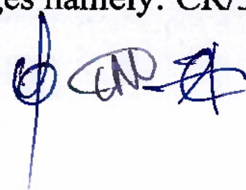
i. An Order suspending the payment of the Respondent's salaries and allowances, as earlier ordered to be paid to him, pending the conclusion of all the several criminal cases currently against him.

VI. RESPONDENT'S CASE

a) Summary of facts.

18. The Respondent filed a defense canvassing various arguments and urging the court to discountenance the Applicants' application on the ground that, the application for revision has not met the requirements of Articles 92 and 93 of the Rules of the Court of the Community Court of Justice, ECOWAS. These require that the Application must be brought before the court within three months (3) upon delivery of the said judgment and there must be a discovery of facts unknown to them at the time the contested judgment was delivered. Additionally, this new fact must be of a decisive nature and affected the decision of the court had it been known.

19. With regards to the alleged criminal charges against him by the EFCC, the Respondent states that the two criminal charges namely: CR/310/18 between



Federal Republic of Nigeria Vs. Muhammad Dangana & 3 ORS and FHC/ABJ/139/2018 between Federal Republic of Nigeria Vs. Muhammad Dangana & 4 Ors were false. This is in view of the fact that the Respondent's name was struck off the charge and the charges have since been amended leaving only Muhammad Dangana as sole defendant in both cases.

20. Additionally, the Respondent submits that the 2 criminal charges were not in existence as of 27 February 2018 when his employment was wrongfully terminated. The charges cannot therefore qualify as fresh or new facts upon which the Applicant is seeking a review of the said judgment.

21. The Respondent argues that reporting a situation that took place after the termination of his employment to the Head of Institution where he is no longer a staff is not in contemplation of the provision of the said staff regulation.

22. The Respondent whilst vehemently denying the claims of the Applicants as without any probative value reiterates his claim that the referred charges have been amended, the Respondent's name struck out, leaving Muhammad Dangana as the only person facing the said charges.

23. In conclusion, the Respondent submits that since he was not a party to the alleged criminal charge, they to all intent and purpose non-existent and needed no disclosure during the pendency of the original suit.

b) Pleas in law

24. The Respondent relied on the following laws:
    a. Articles 92 and 93 of the Rules of the Community Court, and
    b. Article 68 (a)-(e) of the ECOWAS Staff Regulation, 2005.

c) Reliefs sought.

25. The Respondent seeks the following reliefs:
    1) An order dismissing the Application for Review of Judgment No. ECW/CCJ/JUD/03/22 BETWEEN SULEIMAN MUHAMMAD HUSSAINI VS. ECOWAS COMMISSION AND ANOR for being unmeritorious.
    2) An Order granting damages of $1,000,000 USD (One Million Dollars) to the Judgment Creditor/Respondent for this frivolous application filed by the judgment Debtor/Applicant.

3) Cost of defending this Application at $50,000 (Fifty Thousand Dollars USD).
4) AND SUCH FURTHER or other Orders of the Court.

VII. JURISDICTION

26. In determining the jurisdiction of the Court in the instant case, it recalls that it had earlier assumed jurisdiction in the original case of Suleiman Muhammad Hussaini Vs ECOWAS Commission & Anor (ECW/CCJ/APP/22/19). The instant application being premised on the original case, its jurisdiction remains as same having been brought under Articles 92, 93, and 94 of the Rules of the Court.

27. The Court is guided by its previous decision in the case of Abu Dennis Uluebeka & Others v Nigeria (ECW/CCJ/JUD/36/21) Para 51 where the Court held ''...... having assumed its jurisdiction to judge the case under the terms of Article 9(4) of Additional Protocol A/SP.1/01/05 on the Court of Justice of the Community, the same remains in the case of Revision, in accordance with the provisions of Articles 92, 93 and 94, all of the Court's Rules of Procedure''

28. The Court therefore holds that it can exercise jurisdiction over the instant Application.

VIII. ADMISSIBILITY

i. *Principle Governing Admissibility of Application for Revision of Judgment.*

29. Whereas post-judgment application for review is an established practice of international courts by applying general principles of law governing the revision of judgments, their admissibility criteria differ from one court to another and are determined in light of the statute and rules of the individual courts. This Court will therefore proceed to assess the factual and legal basis of the Applicants' plea for revision to determine whether it is admissible under its rules and if so established, proceed to determine the revision on merit.

30. From the outset, it is pertinent to recall that Article 20(2) of the Protocol (A/P1/7/91) on the Court unequivocally gives finality to its judgments which are immediately enforceable, subject only to the power of the Court to review

or revise its decisions under the conditions specified in Article 25 of the same Protocol. As much as it calls into question the final character of judgments, the possibility of revision is an exceptional procedure.

31. Accordingly, since judgments of the Court are final and without appeal and are immediately binding on the parties, they are *res judicata* once delivered. The relationship of the procedure of revision of judgment with the concept of *res judicata* was highlighted by the Inter-American Court of Human Rights as follows:

    "There are innumerable references in legal writings to the remedy of revision as an exceptional recourse for preventing a res judicata from maintaining a patently unjust situation resulting from the discovery of a fact which, had it been known at the time the judgment was delivered, would have altered its outcome, or which would demonstrate the existence of a substantive defect in judgment. There are equally conditions that must be fulfilled for such an application to be admissible". (See the case of *GENIE LACAYO v. NICARAGUA* (Appeals of Revision of Judgment, Resolution of 13.09.1997, *I/A Ct. H.R., Series C, No. 45, p. 45, para. 9)*

32. Therefore, the admissibility of a request to revise a judgment of the Court must be subject to strict scrutiny. To this end, Article 25 of the Protocol on the Court sets out the legal framework for the application for revision of a judgment, a portion relevant to the instant case provides as follows:

    i. *An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when the decision was given, unknown to the Court, and also to the party claiming revision, provided always that the ignorance was not due to negligence;*
    ii. *The proceedings for revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision and declaring the application admissible on this ground;*
    iii. *The court may require prior compliance with the terms of the decision before it admits proceedings in revision and*

iv. *No application for revision, maybe after five years from the date of the decision*

33. Additionally, Article 92 of the Rules of the Court provides that *"An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge"*.

34. The combined effect of the Protocol and the Rules of Court referred supra raises four conditions for an application for revision of a judgment to be admissible: 1) The procedural timeline. 2) The discovery of unknown facts 3) fact to be of a decisive nature 4) ignorance not due to negligence.

1. *The procedural timeline.*

35. Article 25 of the Protocol prescribes that the application for revision must be lodged within five (5) years of the date of the judgment in question, and within three (3) months of the discovery of the fact(s) unknown at the time of the decision (Article 92 of the Rules of the Court). A close study of the Applicants' case and the documents submitted in support of it, as well as the defence adduced by the Respondent with its accompanying annexures, reveal as follows:

36. For the requirement that the application be lodged within five (5) years of the date of the judgment in question, the contested decision was delivered on the 10th of March, 2022 and the instant application was filed on the 3rd of June 2022.

37. With regards to the requirement that the Application for revision must be filed within three (3) months of the discovery of the fact/facts unknown at the time the decision was made, the unknown fact allegedly came to the knowledge of the Applicants on the 5th of May 2022 and the contested judgment was delivered on the 10th of March 2022.

38. Therefore, in the absence of any issue joined by the parties on that, the Court holds that the application has satisfied the timeline requirements of the lodgement of the application.

2. The discovery of fact unknown to the Court and the party at the time of the judgment

39. The first part of Article 25 of the Protocol of the Court provides that an application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when the decision was given, unknown to the party or the Court.

40. The Court will dwell on the requirement of a new fact before proceeding to the nature of the fact being a decisive factor. An unknown fact is obviously a new fact within the framework of the onus of proof of material evidence before a court. In order to contextualize the instant application and to put it into proper perspective for sound legal analysis, the imperatives of the phrase ***new facts or unknown fact*** ought to be addressed. In that regard, the view of the African Court as reproduced below is persuasive and will be adopted.

41. "*The Court notes that new facts of evidence refer to new discover(y) (ies) which were not known to the party bringing the case or of which that party could not with diligence have known at the time of filling the initial Application. The Court further considers that a fact or event that occurs after a judgment has been delivered is not a "new fact" within the meaning of Rule 78(1) of the Rules, regardless of its legal consequences. Consequently, a new fact must precede the delivery of the judgment.* SEE KOUADIO KOBENA FORY V REPUBLIC OF COTE D'IVOIRE, ACTHPR, APPLICATION NO. 034/2017, OF 2 DECEMBER 2021, PARA 3.

42. The Court notes that Article 78(1) rules of the African Court are pari-material with Article 25 of the 1991 Protocol Court.

43. In the instant case, the Applicants have approached the Court to revise its Judgment No. EWC/CCJ/JUD/03/22 on the grounds that two criminal charges were filed against the Respondent ie Charge No. CR/310/18 and

Charge No. FHC/ABJ/139/2018 were not known to them and the Court until the 5th day of May 2022, about two months after the judgment under revision was delivered on the 10th day of March 2022. They placed their ignorance of the new facts on the Respondent's failure to disclose same to the Head of the Institution in accordance with Article 68 ECOWAS Staff Regulation, 2005

44. In support of their revision request, the Applicants annexed a number of documents, including copies of the two charges, which are material to the analysis under this head viz;

45. ***Annexure 'A'*** is a Certified True Copy of a Criminal case with Charge No. FCT/HC/CR/310/2018 between the Federal Republic of Nigeria vs Muhammad Dangana & 3 Ors filed on 23rd August 2018, of which the Judgment Creditor/Respondent is one of the accused persons, pending at the High Court of the Federal Capital Territory, Abuja.

46. ***Annexure 'B'*** is a Certified True Copy of a Criminal case with Charge No. FCT/HC/CR/139/2018 between the Federal Republic of Nigeria Vs. Muhammad Dangana & 5 Ors., filed on 25th September 2019, in which the Judgment Creditor/Respondent is one of the accused persons, pending at the Federal High Court of Nigeria, Abuja Division.

47. The Respondent on the other hand urges the Court to dismiss the Application as his name was already struck off the charges as an accused person in both matters.

Analysis of the Court;

48. The Applicants have argued that the charges filed against the Respondent by EFCC are new facts and its non-disclosure justifies their ignorance and a revision of the Judgement in question. The converse argument by the Respondent is that the indictments were in operation post the termination of the Respondent as such cannot be a matter for disclosure by a staff who is no longer in the employment of the Applicant.

49. The Court deems it imperative to capture the summary of all the events as presented by parties in the chronological order that they took place while bringing to the fore some critical and vital facts that were not

visibly canvased, but which are instrumental to the determination of whether the alleged charges where unknown to the Applicants and therefore constitute new facts.

50. It is on record that this whole matter was instigated by the President of the ECOWAS Commission when he petitioned the EFCC seeking an investigation on some irregular financial transactions at the Commission. While the Court was not presented with a copy of the petition, the said petition was copiously referenced by Hon Justice Abubakar Idris Kutigi of the High Court FCT in his ruling on the criminal charges filed against Muhammed Dagana pursuant to the said petition. See Charge no FCT/HC/CR/310 /2018. Doc 5.

51. The relevant portion of the said ruling dated 19th April 2023 at pages 28-29, Doc 6SMH submitted by the Respondent is quoted as follows;
"Exhibit A, the petition written by the President of the Commission to the chairman of EFCC situating the infractions provided as follows, and I will here reproduce the petition at length.

IRREGULAR FINANCIAL TRANSACTIONS

Following two reports I received from my services, I feel the need to bring to your attention the following transactions that occurred and may be linked to corruption, fraud, and embezzlement of funds.

1. *An amount of fifteen (15) million Dollars has been divested on 10th August 2016 from the ECOWAS Staff Joint Pension Scheme's deposit in ECOBANK that was producing 3% interest to be put into the following account:*
   a) ECOBANK Account Number 1043001091 5Million
   b) UBA Account Number 3002131594 5Million
   c) Zenith Bank Account Number 5070541785 5Million
   The ECOBANK and Zenith Bank Accounts have not produced interest for the three elapsed months while the UBA account shows an interest of 1,133.86 for the period meaning a maximum annual interest rate of 0.14%
2. *In processing the payment of Community Levy Allowance in favour of the Ministry of Foreign Affairs (ECOWAS National Unit) 2.4 Million US Dollars have been transferred to a Bureau du Change named Rite Option for currency exchange (dollar to naira) at the rate of 313 that is 20% lower*

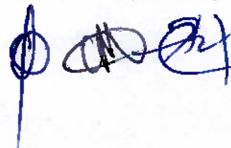
than the common rate offered by the other Bureaux s Change (375), in violation of the CBN Rules requesting constitutions like ECOWAS to process by auction in the financial market.

3. *The Nigerian Government's contribution to the ECOWAS 40the Anniversary Celebration was deposited in cash in an ECOWAS account opened in ECOBANK 1043006515 TO THE TUNE OF 116,550,000 Naira by an ECOWAS staff on the 8th May 2015. There is no document proving the origin and quantum of this sum.*
4. *ECOWAS residential property located at Katampe District (Abuja) was given back to the Government of Nigeria and there is suspicion that the transaction was triggered and managed by some ECOWAS officials who benefited from the operation and were granted some plots.*
5. *It is obvious from these operations processed by the same individuals in ECOWAS that the transactions are irregular and need to be investigated thoroughly.*
6. ***I will be personally interested on the outcome of your investigation in case it indicated ECOWAS staff or official.*** Emphasis ours
7. *Please accept, Dear Executive Chairman, my best regards.*

52. Based on this petition file on the 18th of January 2017, the EFCC commenced an investigation into the said allegation. Four ECOWAS staff were listed as the subject of the investigation namely Muhammed Dangana, Dr. Mohammed Sani Bello, Allieu Sesay, and Suleiman Muhammad Hussaini, the Respondent in the instant application.

53. In pursuant of its investigation and possible arraignment, the EFCC from the 21st of February 2017 started taking statements from all the above-listed staff but specifically the Respondent made statements, signed on the 1st, 5th, and 12th of April 2017 (Applicants' document unmarked)

54. Thereafter, the EFCC compiled the proof of evidence and identified 10 persons who will testify as prosecution witnesses while indicating the evidence to be provided. Of the 10 persons listed, three are senior staff of the ECOWAS namely PW6 - Dr. Alfred Braimah, PW7- Babacar Ndiaye, and PW7- 5 Bunu Lawan. On the 28th of March 2017, the three persons signed statements in relation to the said allegations, all disputing any complicity in the allegation: Docs A15, A13, and A14 respectively.



55. On the 27th of February 2018 whilst the investigation by the EFCC was still ongoing, the 2nd Applicant terminated the Respondent's employment at the ECOWAS Commission.

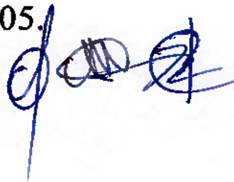
56. Having completed its investigation, the EFCC filed charges involving the Respondent in two separate Courts. One on the 23rd of August 2018 at the FCT High Court *No. FCT/HC/CR/310/2018 between the Federal Republic of Nigeria vs Muhammad Dangana & 3 Ors* and the other on the 25th September 2018 at the FCT Federal High Court charge *No. FCT/HC/CR/139/2018 between the Federal Republic of Nigeria vs. Muhammad Dangana & 5 Ors*. See Annexure A and B of the initiating Application of 2019 respectively.

57. Aggrieved by his dismissal, and having failed to receive appropriate response to his appeals, the Respondent approached this Court on the 13th of May 2019 seeking a declaration that the termination of his employment was unlawful on the grounds of non-compliance with the procedural requirements under the ECOWAS Staff Regulations 2005. The Applicant in the instant case who was then the Respondent filed a defence urging the Court to dismiss the Application case in its entirety for lacking in merit.

58. Following on the charges filed against the Respondent and having failed to locate him in order to arraign and charge him for the alleged offences, the Respondent on the 27th of September 2019 was withdrawn from the two referred charges while the amended charge has Dangana as the only defendant in the prosecution of the petition filed by the 2nd Applicant.

59. On the 10th of March 2022, having heard both parties, this Court delivered its judgment (ECW/CCJ/JUD/03/22) in favour of the Respondent then the Applicant.

60. The instant application by the Applicants filed on the 3rd of June 2022 for revision is therefore predicated on the said judgment. The ground adduced was the discovery of a new fact unknown to them and the Court at the time of the decision in the form of the criminal charges filed against the Respondent which he did not disclose in contravention of Article 68 of the ECOWAS Staff regulation 2005.



61. The Court took the liberty to narrate at great length all relevant facts placed before it and as earlier said in order to put the application for revision in proper perspective especially in determining its admissibility and particularly to capture all relevant facts that will aid the Court in reaching a determination as to whether the alleged charges were unknown to the Applicant before the said judgment and are therefore new facts.

62. It is imperative to note that the essence of revision of a judgment is to ensure that an injustice is not perpetrated due to the unawareness of the court and or the parties of facts that were unknown at the time of trial up to the decision and which if known would have a decisive effect of the judgment. Consequently, in the interest of justice, the party is allowed to approach the court and submit the said new facts for reconsideration by the Court.

63. The admissibility of this new fact is dependent on the proof that it was unknown and would not have been known even with diligence and also its ability to be relevant enough to affect the reasoning and the final decision of the court had hitherto taken.

64. In situating these requirements to the instant application, the court recalls that the Respondent had on 13 May 2019 approached the Court challenging the termination of his employment by the 2nd Applicant based on which the Court in judgment No. ECW/CCJ/JUD/03/22 decided that the termination violates the provisions of Article 68 of the Staff Regulation. The reason is that the investigation of the respondent by the EFCC for a financial infraction at the Commission for which the interim report was submitted does not amount to either an indictment or a conviction to qualify as any grounds listed for dismissal of staff.

65. In this regard, and in considering the admissibility of this application for revision, the new facts that must be adduced will be such that; 1) was unknown to the Applicant from the beginning to the end of the trial process, 2) ignorance of the facts but not due to negligence of the party 3) is such a nature as being decisive in affecting the decision of the court

66. The Court will now proceed to examine these conditions seriatim cognisant of the elaborate narration of the sequence of events presented supra

1) **Fact unknown /New facts:**

67. To succeed in an application for revision of a judgment, the Applicant must prove that the facts alleged are unknown to him/her at the time of judgment and are therefore new facts. The case of the applicants in this regard is that they came to the knowledge that criminal charges of financial infractions were filed against the Respondent only on the 5th of March 2022 after the judgment of the court delivered on the 10th of March 2022. To determine whether the facts claimed are unknown and therefore new to them as at the 5th of May 2022, a chronology of events, and the sequence of the dates they happened are very imperative. Thus, from the earlier detailed narration of facts, the following dates are deductible.

i. Sometime in 2017 but before the 4th of April, The President of the Commission petitioned the EFCC on 18th January 2017.
ii. Between 4th -14th of April 2017, the Respondent and others were invited by the EFCC and they made statement in respect of the petition of the 2nd Applicant of financial infraction at the Commission
iii. On 28th April 2017, 4 senior staff of the Commission designated as witnesses were invited, and they made statements exonerating themselves from the infraction.
iv. On 27th February 2018, the Respondent's employment was terminated by the 2nd Applicant.
v. On 23rd and 28th of August 2018, charges were filed against the Respondent and others at others at the Federal High Court, FCT and High Court Federal Capital Territory respectively for criminal breach of public trust and diversion of public funds belonging to the (ECOWAS) amongst others.
vi. On 13th May 2019, the Respondent filed an action at the ECOWAS Court challenging the termination of his employment.
vii. On 27th September 2019, the Respondent was withdrawn from the Charge filed leaving one Dangana as the only defendant.

viii. On 18th October 2019, Dangana was arraigned and charged by EFCC accompanied by screaming headlines in many media spaces traditional and online.

ix. On 10th March 2022, this Court delivered the contested Judgment in favour of the Respondent.

x. On 9th November 2023, Dangana was discharged and acquitted due to non-compliance with ECOWAS Staff Regulation.

xi. On 5th May 2022, the Applicants allegedly became aware of the charge filed against the Respondent on 28th August 2018

xii. On 14 June 2022, the Applicants filed the instant application for revision of the Judgment of this Court delivered on the 10th of March 2022.

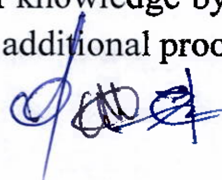
68. It is from this sequence of facts that the court must draw its conclusion whether as claimed, the charges filed against the Respondent at the national courts on the 23rd and 28th of August 2018 were hitherto unknown and only came to the knowledge the Applicants on 5th of May 2022 and are therefore **new facts.**

69. From the facts available to the Court, no evidence was submitted to counter the claim of the Applicants that they were not in actual knowledge of the said charges until March 2022. It is a general principle of law that facts pleaded, or averments deposed to in an affidavit, if not specifically challenged or controverted, are deemed admitted and require no further proof, except where the facts are obviously false to the knowledge of the Court. In other words, he who alleges must prove. Uncontroverted evidence is deemed admission. PETROSTAR NIGERIA LIMITED V. BLACKBERRY NIG LIMITED & ANOR ECW/CCJ/JUD/05/11 @ pg. 13.

70. To that extent, the claim of their ignorance of the charges remains uncontroverted. The Court therefore holds that charges filed against the Respondent on the 22nd and 28th of August were unknown to the Applicants as alleged.

2. ***Ignorance not due to negligence***

71. In the absence of concrete proof of knowledge by the Applicants of the charges against the Respondent, an additional proof that the ignorance of



the charges was not due to negligence must also be established. The Court must therefore proceed to determine whether or not the Applicants were negligent in that regard. For emphasis, the relevant part of Article 25 of the Protocol is reproduced hereunder:

An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when the decision was given, unknown to the Court and also to the party claiming revision, ***provided always that the ignorance was not due to negligence*** *Emphasis ours.*

72. Ahead of this analysis, it is imperative to underscore the import of the phrase *negligence*. In this regard, the Court recalls its earlier definition of negligence "as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It must be determined in all cases by reference to the situation and knowledge of the parties and all the attendant circumstances". VISION KAM-JAY INVESTMENT LIMITED V PRESIDENT OF THE ECOWAS COMMISSION & ANOR, ECW/CCJ/JUD/01/18 PG. 8.

73. In order to determine whether the Applicants were negligent or not, the court will travel the journey through the dates of events to determine whether even with diligence, they could not have known that charges had been filed against the Respondent long before the said judgment.

74. The 2nd Applicant petitioned the EFCC on the18th January 2017 on suspicious of irregular financial transactions at the ECOWAS Commission and requesting update on the investigation. Between 4th - 14th of April 2017, the four staffs of the Commission including the Respondent were invited by the EFCC to make statements in respect of the petition, a fact the 2nd Applicant cannot deny. In fact the invitation for investigation was one of the justification for the termination of the Respondent's employment in 2019.

75. Thereafter on the 28th of April 2017, four senior staff staffs of the Commission designated as witnesses were also invited by the EFCC to

make statements in connection with the said petition. A fact also that the Applicants cannot deny. From this point, the Applicants claim ignorance of all the events that took place thereafter until March 2023 when it came to their knowledge that charges were filed against the Respondent in 2018.

76. The Records before the Court show that the following events for which the Applicant are unaware took place after the four staff designated as witnesses made their statements.

77. On 28th August 2018 charges were filed against the Respondent and others based on the petition of the 2nd Applicant; on 27th of September 2019, at the hearing of the case and based on the application of the Prosecutor, charges against the Respondent were withdrawn; on 18th October 2019, Dogana, the only one of the initial four staff investigated was arraigned and charged for financial infraction based on the petition of the 2nd Applicant. The media publication of the arraignment of Dogana for financial offences arising from the petition of the 2nd Applicant was not invincible to concern members of the public. The prosecution of Dogana was a public trial making the information public to all member of the public.

78. It seems inconceivable that since 18th January 2017 when the 2nd Applicant filed a petition to the EFFC, no updates were suo moto as a matter of course provided by the EFFC to the Applicant on the state of the investigation. More bewildering is the fact that the 2nd Applicant did not inquire from EFCC for an update on the matter. The Court is safe to assume that no such inquiry was made as there is no submission in defence of their ignorance of the charges that same was made but denied by the EFCC.

79. The Court is of the opinion that the minimum proof of diligence which would have mitigated any allegation of negligence, was evidence that a request for the update on the petition made to the EFCC was denied.

80. Apart from any updates from the EFCC, information abound in the public realm on the progress of the investigation of the matter sufficient for the Applicants to harness and update themselves.

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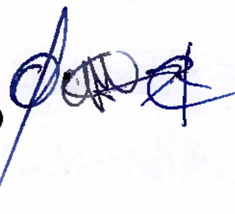
81. Records of the hearing of the cases at the National Federal Courts which are public documents show that after several unsuccessful attempts to arraign the Respondent and 3 others, the prosecutor withdrew the charges against the Respondent on the 27th of September 2019 leaving Dangana as the only staff of the ECOWAS Commission successfully charged on the 18th of October 2019 with financial infraction following the petition of the 2nd Applicant.

82. The online research has shown that there has been intense media coverage of the criminal proceedings against the Respondent in the review request so much so that it is unthinkable and unacceptable that the Applicants who were the complainants were not informed of the outcome of this procedure.

83. It is undisputed that the 2nd Applicant resides in Abuja, a cosmopolitan city, and the capital of Nigeria, and not in a remote village devoid of internet services and exposure to current affairs. Is there therefore a possibility that the 2nd Applicant in view of his interest in the matter could have missed the media spree that accompanied the publication of the charges or in the event he missed the publication that nobody brought the same to the attention?

84. The Court is of the opinion that the furor generated by media on the indictment of only Dangana was sufficient to bring to the Applicants' attention the fact that the Respondent was no longer a defendant in the alleged charges of 2018.

85. Overall, the Court is unable to conceal its concern as well as amazement at the Applicants' seeming lack of sincerity and selective identification of facts claimed to be unknown to them. Indeed, charges were initially filed against the Respondent in 2018. The charges were later withdrawn. Dangana was indicted and charged as the only defendant, several media coverage attended the indictment and charge of Dangana as the only defendant to the fraud occasioned at the Commission which was clearly invisible. Yet the Applicants chose to ignore all these updates on the matter but selected the Applicants' earlier charge in 2018, as a fact



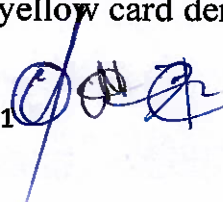
unknown to them which they allege came to their knowledge on 5th May 2022, 2 months after the said judgment.

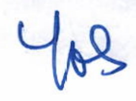
86. In all of these, the Applicants are not without a justification for their ignorance of the 2018 charges filed against the Respondent as they claim that this was due to the non-disclosure by the Respondent of the said charges to the head of the institution in accordance with Article 68 of the staff regulations. This claim has left the court in a state of complete bewilderment. The uncontroverted fact is that the 2nd Applicant terminated the employment of the Respondent on 27th of February 2018, the said charge was filed on 23rd August 2018, 6 months after the termination of the Respondent's employment. Yet the Applicants expect the Respondent in compliance with the Staff Regulations to have reported the charges that were filed against him even though he had ceased to be a staff of the Commission at the time they were filed.

87. It is absurd that a person who was dismissed wrongfully due to non-compliance with the staff Regulation is expected to comply with the staff regulation by disclosing certain facts that occurred well after the unlawful termination was effected. It is inconceivable that a dismissed staff no longer in the employment of an organization can continue to be laden with obligations meant for current staff.

88. In this regard, the Court hastens to conclude that the plea of non-disclosure of the charges by the Respondent is not a justification for the ignorance of the Applicants of the said charges and confirms the non-exercise of diligence by the Applicant.

89. It is glaring that the acts of the Applicants are characterized by negligence in the different aspects highlighted supra. It is trite that the law aids the vigilant, (Vigilantibus non dormientibus jura subvenium). The Applicants, who discovered an infraction in their organization, reported the same for investigation, and requested for a progress report but thereafter went to sleep without any diligent follow-up of the progress and chose to be oblivious of a wild media report of significant progress in the matter but suddenly woke up in 2022, seven years after filing the petition, ran to the court with a yellow card demanding a revision of the





judgment alleging the discovery of the charge against the Respondent effected in August 2018 cannot be aided by the Court.

90. It is axiomatic that the Applicants after filing the petition with EFC have shown complete negligence in even monitoring the progress of the investigation either from the EFCC, public Court records, or media publications. At the minimum, this is what a prudent and reasonable man would do.

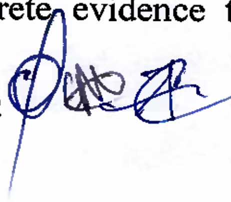
91. The totality of the conduct of the Applicants has not convinced the Court that they have demonstrated that with diligence they would still not have known that the Respondent was charged with a criminal offence in 2018. Consequently, the court holds that the entirety of the conduct of the Applicants exudes gross negligence, and the application falls short of the requirement in Article 25 of the Protocol.

92. In making its final determination on the admissibility of the instant Application, the Court aligns itself with the decision of the African Court when it held that, "the requirements for admissibility for an Application for review are cumulative. The absence of any one of them is sufficient to endanger the inadmissibility of the Application SEE FRANK DAVID OMARY & ORS V UNITED REPUBLIC OF TANZANIA; APPLICATION 001/2012 (REVIEW)

93. The Court equally aligns itself with the decision of the International Court of Justice where it observed that "an application for revision is admissible only if each of the conditions laid down is satisfied. If any of them is not met, the Application must be DISMISSED" EL SALVADOR/HONDURAS V NICARAGUA (INTERVENING) JUDGMENT OF 18 DECEMBER 2003, PAR. 20.

94. In view of the above, The Court recalls the provision of Article 25 of the Protocol which requires that an application for review must be based on the discovery of a fact hitherto unknown, however its ignorance must not be due to the negligence of the party.

95. The Court earlier held that the first requirement was satisfied having not been presented with any concrete evidence to convince it that the



Applicants had actual knowledge of the 2018 charges against the Respondent earlier than 5 May 2022 as alleged. However, with regards the second condition, the Court has held that the ignorance of the Applicants was due to their negligence. Consequently, in line with the above jurisprudence, the Court finds that the instant application does not meet the cumulative requirements of Article 25 of the Protocol.

96. In that regard, a further analysis as to whether the unknown facts are of a decisive factor is mute and will not be further pursued.

97. The Court therefore declares the Application inadmissible.

IX. OPERATIVE CLAUSE.

98. For the reasons stated above, the Court sitting in public:

As to jurisdiction:

i. **Declares** that it has jurisdiction.

As to admissibility:

ii. **Declares** that the Application is inadmissible.

Hon. Justice Gberi-Be Ouattara – Presiding Judge ....

Hon. Justice Dupe ATOKI – Judge Rapporteur ....

Hon. Justice Ricardo Claudio Monteiro GONÇALVES -Member ....

Dr Yaouza OURO-SAMA - Chief Registrar ....

Done in Abuja this 30th Day of May 2024 in English and translated into French and Portuguese.