

**COURT OF JUSTICE OF WEST AFRICAN ECONOMIC AND MONETARY UNION
UNION (WAEMU)**

EXTRACT FROM THE COURT RECORDS



AS SHARED BY THE PAN AFRICAN LAWYERS UNION (PALU)



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**ORDER No. 06/2022/CJ
of 24 March 2022**

On this Twenty-Fourth Day of March, The Year Two Thousand and Twenty-Two;

THE PRESIDENT,

I, **Salifou SAMPINBOGO**, Judge, Acting President of the Court of Justice of the West African Economic and Monetary Union (WAEMU), sitting in my chamber at the headquarters of the Court to hear Mali's application for a "*stay of execution of the sanctions imposed on Mali by WAEMU Conference of Heads of State and Government on 9 January 2022 in Accra, Ghana;*"

Assisted by **Advocate Hamidou YAMEOGO**, Deputy Registrar, issued the following Order

In the Matter of

The State of Mali, represented by Badou Hasseye TRAORE, Director General of State Litigation, Centre Commercial, Rue 351, Porte 373 Bamako Koura, BP 234, Tel. 00223 20 21 67 10 / 20 21 67 11, Bamako (Mali), Email: traorebadou60@gmail.com, assisted by:

- Advocate Moustapha S. M. CISSE, residing at Kalaban Koura, Route de Garantiguibougou, near the old terminus, Rue 447, door 51, BPE 630, Commune V of the District of Bamako, Tel: 00223 20 28 70 06 / 00223 66 74 80 02, email : moustaphasm@yahoo.fr,
- Advocate TRAORE, ACI 2000 Hamdallaye behind Centre INPS Commune IV, BP 2629 Bamako (Mali), Tel: 0022366759272/66750322/76080044, email: traore.ousmane39@yahoo.fr, ousmanemainatraore@gmail.com;
- Advocate Amadou T. DIARRA, Immeuble Madiou SIMPARA, Route de Koulikoro after the Malienne de l'Automobile, Tel: 00223 77 64 00 78, email: atdiarra@yahoo.fr
- Advocate Cheick O. KONARE, Rue de l'Hôtel Atlantique near Stade du 26 mars, Tel: 00223 76 36 93 93, email : maitrecok@yahoo.fr ;
- Advocate Fatoumata SIDIBE DIARRA, Cabinet d'Avocats FSD Conseils, Immeuble Conseil Malien des Chargeurs Hamdallaye ACI 2000, Commune IV, BPE 2912, Bamako (Mali), Tel: 00223 20 29 41 04 / 00223 74 03 03 03,



email : accueil@fsdconseils.com, maitre@fsdconseils.com

- Advocate Abdourahamane Ben Mamata TOURE, Magnambougou, Corniche, near “Superette Corniche,” Tel: 00223 70 82 99 20, Bamako (Mali) BPE 2383, email : drabenmat@yahoo.fr ,

All advocates of the Malian Bar, whose address for service, for the purpose of the present proceedings and the subsequent effects, is the office of Advocate Moustapha S. M. CISSE, residing at Kalaban Koura, Route de Garantiguibougou, near the former terminus, Rue 447, Door 51, BPE 630, Commune V of the District of Bamako, Tel: 00223 20 28 70 06 /00223 66,74 80 02, email : moustaphasm@yahoo.fr;

Applicant,

Versus

The Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU), represented by its legal counsel, located at 380, Avenue du Professeur Joseph KI-ZERBO, 01 BP 543 Ouagadougou 01 Burkina Faso, Tel. +(00226) 25 31 88 72, with Oumarou Yaye, Legal Adviser to the President of the Commission and Advocate Issa Sama as Counsel, an advocate of the Bar of Burkina Faso, residing in Ouagadougou, 06 BP 10302 Ouagadougou 06, Tel: (00226) 25 37 78 78 ;

Respondent,

I, Salifou SAMPINBOGO, Judge sitting as Acting President of the Court of Justice of the West African Economic and Monetary Union (WAEMU);

MINDFUL of the Treaty of 10 January 1994, establishing the West African Economic and Monetary Union as amended on 29 January 2003;

MINDFUL of Additional Protocol I on WAEMU Supervisory Organs, in particular Article 19 thereof;

MINDFUL of Additional Act No. 10/96 of 10 May 1996 on the Ruling of the WAEMU Court of Justice, in particular Article 44 thereof;

MINDFUL of Regulation No. 01/96/CM of 5 July 1996 on the Rules of Court of the WAEMU Court of Justice, in particular Articles 72 *et seq* thereof;

MINDFUL of Regulation No. 01/2012/CJ of 21 December 2012 on the Administrative Rules of the WAEMU Court of Justice,

MINDFUL of Minutes No. 02/2016/CJ of 26 May 2016 on the swearing-in and installation of members of the WAEMU Court of Justice;

MINDFUL of Minutes No. 2019-08/AI/02 of 28 May 2019 on the appointment of the President of the Court and on the assignment of functions within the Court;

MINDFUL of Minutes No. 2019-09/AP/07 of 3 June 2019 on the swearing-in of the President of the WAEMU Court of Justice;

MINDFUL of Minutes No. 2021-02/AP/02 of 25 February 2021 on the swearing-in of a Member of the WAEMU Court of Justice;

MINDFUL of Minutes No. 2022-02/AP/01 of 9 February 2022 on the swearing-in of a Member of the WAEMU Court of Justice;

MINDFUL of Decision No. 001-2022/CDI of 16 March 2022 on the Acting President of the WAEMU Court of Justice;

IN VIEW of Mali's Application filed at the Registry of the WAEMU Court of Justice on 15 February 2022 under No. 22 R 001, requesting the Court to assess the legality of the "*decision imposing sanctions on Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 9 January 2022 in Accra, Ghana* ,

IN VIEW of Mali's Application filed at the Registry of the WAEMU Court of

Justice on 15 February 2022 under No. 22 R 001.1, for a *stay of execution of the sanctions imposed on Mali by WAEMU Conference of Heads of State and Government on 9 January 2022, in Accra, Ghana;*”

IN VIEW of Oder No. 04/2022/CJ of 15 February 2022 setting the deadline for the legal representative of WAEMU Conference of Heads of State and Government to file his observations on the Application for a stay execution;

IN VIEW of letter No. 22 R 001 of 16 February 2022, serving the Application requesting the Court to assess the legality of the “*decision imposing sanctions on Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 9 January 2022 in Accra, Ghana;*”

IN VIEW of letter no. 22 R 001.3 of 16 February 2022 serving the Application for a stay of execution;

IN VIEW of the response by WAEMU Conference of Heads of State and Government filed at the Court Registry on 14 March 2022 under No. 22 R 001.6 ;

MINDFUL of other documents in the record;

Whereas by Application file at the Court Registry on 15 February 2022, under No. 22 R 001, Mali, through its Legal Officer and Counsel, requests the WAEMU Court of Justice to assess the legality of the “*decision imposing sanctions on Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 9 January 2022 in Accra, Ghana;*”

Whereas by another Application, filed at the Registry of the Court on 15 February 2022 under No. 22 R 001.1, Mali, through its Legal Officer and Counsel, sought “*a stay of execution of the sanctions imposed on Mali by WAEMU Conference of Heads of State and Government on 9 January 2022, in Accra, Ghana;*”

Whereas by letter of 16 February 2022, the Registrar of the Court notified the legal representative of WAEMU Conference of Heads of State and Government of the Application seeking an assessment of the legality of the *“decision imposing sanctions on Mali by the Conference of Heads of State and Government of the West African Economic and Monetary Union (WAEMU) on 9 January 2022 in Accra, Ghana;”*

Whereas by letter of 16 February 2022, the Registrar of the Court notified the legal representative of WAEMU Conference of Heads of State and Government of the Application for a stay of execution, together with Order No. 04/2022/CI of 16 February 2022 issued by the President of the Court, setting a 30-day time-limit to file observations on the said Application;

Whereas the observations of the legal representative of WAEMU Conference of Heads of State and Government were filed at the Registry of the Court on 14 March 2022 under No. 22 R 001.6;

Whereas in its Application for a stay of execution, Mali maintains that WAEMU Conference of Heads of State and Government imposed sanctions on it at its extraordinary session held in Accra on 9 January 2022, which reads as follows in its final communiqué: *“The Heads of State and Government decide to endorse the sanctions imposed by the ECOWAS Conference of Heads of State and Government at its extraordinary sessions of 12 September 2021 and 7 November 2021. The ECOWAS Heads of State and Government are imposing additional stiff sanctions, including economic and financial sanctions.*

The Conference stands in full support of sanctions that would be imposed by the ECOWAS Conference of Heads of State and Government at its extraordinary summit on 9 January 2022.

Moreover, it is suspending Mali from WAEMU organs and institutions.

It further suspends financial assistance to Mali from WAEMU financing institutions.

The Conference instructs the community institutions to apply these sanctions with immediate effect;

Furthermore, Mali submits that by this decision, WAEMU’s supreme organ endorsed all the sanctions prior to 9 January 2022 of ECOWAS imposed on Mali and ratified all additional sanctions imposed by decision MSC.A/DEC.1/01/22 of 9 January 2022 of ECOWAS Heads of State and Government, namely:

“1. Recall by ECOWAS Member States of their Ambassadors accredited to the Republic of Mali for consultations;

2. Closure of land and air borders between ECOWAS Member States and Mali, with the exception of security or humanitarian operations of the United Nations system, international forces including MINUSMA, as well as the exceptions set out in paragraph three below.
3. Suspension of all commercial and financial transactions between ECOWAS Member States and Mali, with the exception of those involving the following products:
 - i. Consumer products or foodstuffs, of which the list of chapters and tariff lines is attached;
 - ii. Pharmaceutical products (chapter 30 of the ECOWAS CET version 2022);
 - iii. Medical materials and equipment (Chapter 90 of the ECOWAS CET version 2022);
 - iv. Materials and equipment for COVID-19 control as listed in the HS classification reference for COVID-19 medical supplies;
 - v. Petroleum products (lines 27.10 and 27.11 of the ECOWAS CET version 2022) ;
 - vi. Electricity.
4. Freezing of Mali's assets in the Central Banks and Commercial Banks of all ECOWAS Member States;
5. Freezing of assets of public and semi-public companies of the Republic of Mali in commercial banks in all ECOWAS Member States;
6. Suspension of all financial assistance and transactions in favour of Mali by ECOWAS financing institutions, particularly EBID and BOAD;"

Mali asserts that the situation reflects a clear desire by WAEMU Conference of Heads of State and Government to interfere in the internal politics of one of its Member States, thus departing from its objectives under WAMU and WAEMU Treaties;

WAEMU Conference of Heads of State and Government has endorsed the sanctions imposed by the Economic Community of West African States (ECOWAS) without any legal basis;

Mali therefore requests a stay of execution of the decision of WAEMU Conference of Heads of State and Government on the grounds that the sanctions imposed by the Conference is illegal and unjustified both in form and in substance;

Mali argues that the holding of the Conference of Heads of State and Government in Accra, Ghana was done in blatant violation of Article 114 of WAEMU Treaty governing venue for the Conference;

It further argues that the Conference is not empowered to impose the sanctions contained in the decision of 9 January 2022 since neither the revised WAEMU Treaty nor the WAMU Treaty confers on the Conference the possibility of imposing political, diplomatic, economic and financial sanctions on a Member State of the Union like those imposed on Mali; that only the Council is empowered to take measures to safeguard the interests of the Union in accordance with a well-defined procedure; that before any sanction is imposed, the breaches noted must first be referred to the Union Court of Justice in accordance with Article 113 of the Treaty and Articles 5 and 6 of Additional Protocol No. 1;

In this respect, the Applicant claims that the decision of 9 January 2022 is the product of a gross defect. The merits of this claim are sufficiently demonstrated in the main Application for assessment of legality and for annulment lodged before this Court;

Mali dwelt on the consequences of the sanctions imposed by WAEMU Conference of Heads of State and Government, maintaining that they are particularly harsh on Mali and harmful in many respects, in that they disrupt free movement of capital, goods, services and persons, and are an operative weapon to stifle the economic and financial life of Mali, a landlocked country with no access to the coastline, whose trade depends largely on the seaports of its WAEMU member states with which it can no longer trade, even though several international covenants guarantee it this right. It avers that it is dealing with international terrorism with its deadly ideology which has led to insecurity in the country for nearly a decade;

Mali further asserts that the damage it suffers is clear, direct and difficult-to-remedy, and that there is obvious extreme urgency to lift the sanctions imposed on it;

Whereas in its Brief in Response, Counsel for WAEMU Conference of Heads of State and Government submits that the Application for a stay of execution should be dismissed outright as it lacks merits, arguing that Mali is pursuing a grossly improper and delaying tactics because, firstly, the Act adopted on 9 January 2022 by the Conference of Heads of State and Government is not a decision within the meaning of Article 19 of the WAEMU Treaty. It cannot therefore be challenged by a member State through an Application for assessment of legality; and secondly, “the adoption of the Act enshrining the final communiqué of the extraordinary session of 9 January 2022 is fully justified” by the existence of exceptional circumstances;

The Respondent further submits that in the light of such exceptional situation, which prompted the exceptional measures, the urgency and harmful consequences alleged by Mali cannot prosper.

Furthermore, the WAEMU Conference of Heads of State and Government maintains that it has only taken note of the decisions already taken by the ECOWAS Conference of Heads of State and Government and declares its support for those to be taken by the same body. Besides, the so-called harmful consequences will not cease as long as the Acts taken by ECOWAS, to which all the Member States belong, remain in force;

I. JURISDICTION OF THE PRESIDENT OF THE WAEMU COURT OF JUSTICE OF TO HEAR THE APPLICATION FOR A STAY OF EXECUTION

Whereas Article 1 of Additional Protocol No. 1 on the organs of WAEMU provides that ***“the Court of Justice shall ensure that the law is respected in the interpretation and application of the Treaty of the Union;”***

In this respect, the Court, an organ of jurisdictional authority, has a fundamental duty to ensure that Community acts referred to it comply with WAEMU Treaty;

Article 18 of Additional Protocol No. 1 states that ***“Actions brought before the Court of Justice shall not have suspensory effect. The Court may, however, order a stay of the execution of acts contested before it;”***

Article 44 of Additional Protocol on the Statute of the WAEMU Court of Justice states that ***“the President of the Court, or where appropriate, the judge who replaces him or her, may issue by urgent proceedings an Order on submissions seeking to obtain a stay of execution;”***

Article 72 of the Rules of Court of the WAEMU Court of Justice provides that the procedure for stay of execution is a special procedure that fall within the jurisdiction of the Court's President;

As a Judge of urgent matters, the President or his substitute may order measures that are essentially provisional without distorting the merits of the case and without rendering the case devoid of its essence,

Accordingly, it is necessary to declare that I have jurisdiction.

II. ADMISSIBILITY OF MALI'S APPLICATION FOR A STAY OF EXECUTION

Whereas under Article 72(1) of the Rules of Court, "*An Application for a stay of execution of an Act of an institution shall be admissible only if the applicant has contested that Act before the Court;*"

Whereas the sanctions imposed on 9 January 2022, in an extraordinary session, by the Conference of Heads of State and Government, regarding which a stay of execution is sought, are the subject of an application for annulment before the Court on 15 February 2022 under No. 22 R 001;

The Application for a stay of execution filed by Mali complies with Article 72 of the Rules of Court in that it filed following Mali's Application for annulment before the Court of Justice of an Act of a Community body;

Accordingly, it is admissible as to form;

III. GROUNDS FOR A STAY OF EXECUTION

Whereas, according to Article 72(2) of the Rules of Court and the settled case-law of this Court, an Order for provision measures is subject to the existence of circumstances establishing urgency and the existence of factual and legal grounds justifying, *prima facie*, the granting of the provisional measures sought;

Moreover, the urgency of a request for provisional measures must be assessed in relation to the need to give a provisional ruling to avoid serious and irreparable harm to the party seeking such provisional measures;

Whereas the record shows that WAEMU Conference of Heads of State and Government, at its extraordinary session of 9 January 2022, has, among other sanctions, suspended Mali from the organs and institutions of WAEMU, suspended financial assistance to Mali by the financing institutions of WAEMU and instructed community institutions to apply the said sanctions with immediate effect;

Since the sanctions were applied with immediate effect by the various WAEMU organs and institutions, the arguments put forward by Mali on the consequences of the sanctions imposed on it are therefore relevant and well-founded insofar as their enforcement is apt to have consequences that would be difficult to remedy in terms of social, economic and financial impact;

Whereas, moreover, the grounds of the Application have sufficient weight in view of the impending decision on the merits of the dispute, which raises the issue of assessing the legality of an act taken by the WAEMU High Authority, the Conference of Heads of State and Government, on the one hand, and the consequences of the act on the functioning of a Member State and the stability of the Union, in relation to the union law objectives, on the other hand;

Urgency and compelling grounds are sufficient to stay the execution of the sanctions imposed by WAEMU Conference of Heads of State and Government;

Whereas, in any event, according to settled case-law it is the duty of the provisional relief Judge to assess, in the circumstances of each case, the elements that establish whether an immediate enforcement of a decision whose stay is sought would cause an irreparable harm to the Applicant, even if the decision were to be annulled in the main proceedings;

Accordingly, it is necessary, as it stands, to order a stay of execution of the sanctions imposed by WAEMU Conference of Heads of State and Government at its extraordinary session held in Accra on 9 January 2022, which is contained in its final communiqué.

FOR THESE REASONS

I hereby:

Rule that I have jurisdiction;

Find the Application for a stay of execution admissible in form;

Order a stay of execution of the sanctions imposed by WAEMU Conference of Heads of State and Government at its extraordinary session held in Accra on 9 January 2022, as contained in its final communiqué;

The right to costs is reserved;

It will be referred to the Court if necessary.

Done in my Chamber, on this 24th
day of March 2022
Illegible signatures
For certified service
Ouagadougou, 24 March 2022

The Deputy Registrar
For the Registrar



Hamidou **YAMEOGO**