

SUPREME COURT

JUDICIAL BENCH

COMMON LAW DIVISION

File No .07/COM/CIV/2020
Appeal No BCA/5M/2021

Judgment No.25/COM
of 03/11/ 2022
BETWEEN

ALLO FRU John

And

- CHE John
- Maitre Joseph FONUYUY NJOYA

COURT DECISION:

The Court:

- Declines jurisdiction to hear and determine the matter;
- Remits the case and the parties to the Common Court of Justice and Arbitration (CCJA) for competence;
- Orders the appellant to bear the costs of these proceedings.
- Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;

Delivered by their Lordships:

Pauline Christine NGO MANDENG epse.....
NGUIDJOL.....PRESIDENT,
James George NGWENE.....JUDGE;
NYIAWUNG Alexander FOBELAH.....JUDGE;

In the presence of:

MBUA Alexander ASSANGA.....Advocate
General;
NYAMSI Emerentia.....REGISTRAR.

- REPUBLIC OF CAMEROON -

- IN THE NAME OF THE PEOPLE OF CAMEROON

In the year two thousand and twenty-two, and on the
03rd day of November;

The Common Law Division of the Judicial Bench
of the Supreme Court sitting in its Ordinary session
open to the public, delivered the following judgment:

IN THE MATTER

BETWEEN

ALLO FRU John. Appellant, represented by Mr. NANA
Wilson SUH, an advocate at BAMENDA;

ON THE ONE HAND

AND

1) CHE John, 2) MAITRE Joseph FONUYUY NJOYA
Respondents, represented by Barrister SUH
FUH Ben at BAMENDA;

In the presence of **MBUA Alexander ASSANGA**,
Advocate General at the Supreme Court;

ON THE OTHER HAND.

THE COURT

Mindful of sections 35 and 53 (2) of Law No 2006/016
of 29 December 2006 to lay down the organisation and
functioning of the Supreme Court;

Mindful of the written submissions of the
Procureur General at the Supreme Court, Mr.
Luc NDJODO;

Mindful of the memorandum of submissions filed, on 14th March 2016, by Barrister NANA Wilson SUH;

Considering the report of the Rapporteur, **Justice Pauline Christine NGO MANDENG epse NGUIDJOL** (JSC), Judge of the Common Law Division of the Supreme Court;

Considering that Mr. **MBUA Alexander ASSANGA**, Advocate General at the Supreme Court, representing the Legal Department, addressed the Court;

Considering that the instant judgment is being delivered in a public hearing after having deliberated on the matter in accordance with the law;

Hearing and determining the appeal, filed on 29th May 2012, at the Registry of the Court of Appeal of the North West Region, Barrister NANA Wilson SUH, acting for and on behalf of ALLO FRU John, appealed to the Supreme Court against judgment N^o. BCA/5M/2009, delivered on the merits in respect of the parties, on 05th October 2011 by the afore-mentioned Court, sitting in a Civil

matter between his client and 1) CHE John, 2) MAITRE Joseph FONUYU NJOYA;

The appeal was declared admitted by judgment No 267/EP, of 12th April 2018, delivered by the Panel of Joint Divisions of the Judicial Bench of Supreme Court;

On the Jurisdiction of the Supreme Court.

Sections 13, 14 and 15 of the *Treaty of 17 October 1993 on the Harmonization of Business Law in Africa* as amended by the *treaty of 17 October 2008 done at Quebec (Canada)* provides :

Section 13 : « *Disputes relating to the application of the Uniform Acts shall be settled at first instance and on appeal there from by national courts of States Parties.*»

Section 14 : « *The Common Court of Justice and Arbitration shall ensure the uniform interpretation and application of the Treaty, its rules of enforcement as well as Uniform Acts and decisions.*

Any State Party or the Council of Ministers may seek the advisory opinion of the

Court on any issue relating to the preceding paragraphs. National Courts may also seek the opinion of the Court in matters relating to the application of article 13 above.

When sitting as a court of final appeal, the Court shall rule on decisions delivered by the Courts of Appeal of States Parties on all matters relating to the Uniform Acts and rules provided for in this Treaty with the exception of decisions administering criminal sanctions.

The Court shall rule as above with regard to decisions delivered by the national courts of the States Parties in the same disputes, which are not appealable to the national Court of Appeal.

Where the Court quashes the decision of the national court, it shall reconsider the case on its merits.»

Section 15 : *« Appeals to the Common Court of Justice and Arbitration, as provided for in section 14 above, shall be brought either directly by one of the parties to the proceedings, or upon referral of the highest appellate court of a State Party before which issues relating to the application of the Uniform Acts have been brought.»*

In the instant case the appeal against the above judgment before this court raises the

following issues or questions for determination:

« *Whether Judgment No.*

BCA/5M/2009 which was being executed and which does not bear the executory formula constitutes a writ of execution as defined by section 33 of the OHADA Uniform Act on Simplified Procedures and Measures of Execution ».

Upon examining the documents in the case file, it is clear in judgment No BCA/5M/2009 of 05th of October 2011 that this matter raises issues relating to the validity of the writ of execution.

It is therefore a question relating to the application of sections 33, 91, 92 and 100 of the Uniform Act on Simplified Procedures and Measures of Execution as read with section 9(1) of Ordinance no. 72/21 of 19 October 1972 on Judicial Organisation.

This court declines jurisdiction and remits the matter and the parties to the Common Court of Justice and Arbitration (CCJA) for competence.

UPON THESE GROUNDS

- Declines¹ jurisdiction to hear and determine the matter;
- Remits the case and the parties to the Common Court of Justice and Arbitration (CCJA) for competence;
- Orders the appellant to bear the costs of these proceedings.

Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;

So has it been judged and pronounced by the Common Law Division of the Judicial Bench of Supreme Court in its ordinary session held on the third day of November two thousand and twenty-two composed of their Lordships;

Pauline Christine NGO MANDENG epse NGUIDJOL
.....PRESIDENT;
George James NGWENE.....JUDGE;
NYIAWUNG Alexander FOBELLAH.....JUDGE;

In the presence of MBUA Alexander
ASSANGA, Advocate General at the Supreme
Court, representing the Legal Department;

And with the assistance of Mrs NYAMSI
Emerentia Registrar;

In witness whereof, the judgment has been
signed by the President, the Judges, and the
Registrar;

THE PRESIDENT, THE JUDGES, THE REGISTRAR.