

# 010/11\_SO : Efoua Mbozo'o Samuel v. The Pan African Parliament (Separate Opinion - Fatsah Ouguerouz)

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## SEPARATE OPINION OF JUSTICE FATSAH OUGUERGOUZ

1. Like my colleagues, I am of the opinion that the application filed by Mr. Efoua Mbozo'o Samuel against the Pan-African Parliament must be dismissed. However, since this is a case of manifest lack of jurisdiction of the Court, I consider that the application should not have given rise to a ruling by the Court; it should have been dismissed *de plano* by a simple letter from the Registry (on this point, see my separate opinion attached to the 15 December 2009 Judgement in the case [Michelot Yogogombaye vs. Republic of Senegal](#), as well as my dissenting opinion attached to the recent decision in the case [Ekollo Moundi Alexandre vs. Republic of Cameroon and Federal Republic of Nigeria](#)).

2. Considering that Mr. Efoua Mbozo'o Samuel's Application has been considered judicially by the Court, it should, in any event, have been dismissed on a more explicit legal basis.

3. The reasons of the decision are contained in paragraph 6 which reads as follows:

"On the facts of this case and the prayers sought by the Applicant, it is clear that this application is exclusively grounded upon breach of employment contract in accordance with Article 13 (a) and (b) of the OAU Staff Regulations, for which the Court lacks jurisdiction in terms of [Article 3](#) of the Protocol. This is therefore a case which, in terms of the OAU Staff Regulations, is within the competence of the Ad hoc Administrative Tribunal of the African Union. Further, in accordance with [Article 29 \(1\) \(c\)](#) of its Protocol, the Court with jurisdiction over any appeals from this Ad hoc Administrative Tribunal is the African Court of Justice and Human Rights. The present Court therefore concludes that, manifestly it doesn't have the jurisdiction to hear the application."

4. The Court is thus first concerned with the material basis of the application, *i.e.* with the nature of the right allegedly violated, rather than with the entity against which the application is lodged. By so doing, the Court starts by examining the application first from the angle of its material jurisdiction and not, as it ought to, from that of its personal jurisdiction.

5. Indeed, the Court recalls the "terms of [Article 2](#) of the Protocol" to

## Contents

### Cases referred to in this decision

- [008/11 Ekollo Moundi Alexandre v. Cameroon and Nigeria](#)  
1 → Case
- [001/08 Michelot Yogogombaye v. Senegal](#)  
1 → Case