'THE REPUBLIC OF CAMEROON'
'IN THE NAME OF THE PEOPLE OF CAMEROON'

IN THE HIGH COURT OF MEZAM DIVISION
HOLDEN AT BAMENDA

BEFORE HER LORDSHIP JUSTICE ANNE AFONG

WITH TANJA ROMEO AS REGISTRAR - IN - ATTENDANCE

THIS 15TH DAY OF October 2012.

'INTERLOCUTORY RULING'

SUIT No. HCB/ 287M/ 2012

1. 1) TANGI SIMON TACHO
2. SWIRI ROSE SANINGONG
3. FORTIBUI HILARY NIBA
4. ATAMSON NGU VERONICA
   (Suing as Board of Directors (BOD) Members of Azire Cooperative Credit Union LTD AZICCUL) ---------- APPLICANTS

AND

Bih JUDITH TABIFOR

(Sued as President of Board of Directors (BOD) of Azire Coperative Credit Union (Azire Cooperative Credit Union Ltd (AZICCUL) ---------- RESPONDENT

PARTIES----------PRESENT ALL.

APPEARANCES; APPLICANT---- AMAZEE ESQ

AKUIADZI E ESQ

MULU TEKWI ESQ.

RESPONDENT---------- NJI GIDEON ESQ.

This is a motion on notice wherein the applicants are seeking the grant of the following orders;

1} AN ORDER TO PROHIBIT THE RESPONDENT FROM CONVENING AND PRESIDING OVER ANY BOARD OF DIRECTORS MEETINGS OF AZIRE COOPERATIVE CREDIT UNION (AZICCUL) WITH ILLEGALLY COOPTED MEMBERS PARTICIPATING.

2} AN ORDER COMMANDING THE RESPONDENT HEREIN TO REVOKE THE SUSPENSION OF THE 3RD AND 4TH APPLICANTS HEREIN AS MEMBERS OF THE BOARD OF DIRECTORS OF AZIRE COOPERATIVE CREDIT UNION (AZICCUL) AND TO REINSTATE THE 3RD AND 4TH APPLICANTS IN THAT CAPACITY.

3} AN ORDER TO NULLIFY ALL DECISIONS OF THE BOD OF AZICCUL SINCE THE 15TH OF SEPTEMBER 2012 TAKEN WITH THE PARTICIPATION OF ILLEGALLY CO-OPTED MEMEBERS.

AND FOR ANY OTHER ORDER (S) THAT THE COURT MAY DEEM FIT TO MAKE IN THE CIRCUMSTANCES.

In limine, counsel for the respondent raised a preliminary objection predicated upon the following grounds;

- That the court lacks jurisdiction to entertain this matter.
- That the applicants are not proper parties in law and equally lack the locus standi to bring this action by virtue of the BOD decision of the 10th May 2012. *See copy attached.*
- That the action has been improperly commenced. .

To substantiate these grounds of objection Barrister Mulu Tekwi submitted thus;

AS TO JURISDICTION

Counsel referred this court to section 79 of Law No 92/006 of 14th August 1992 relating to Cooperative Societies and Common Initiative Groups. The gentlemen stated that the face of the application before the court exhibits the fact that the applicants herein have violated the laid down provisions of the law. That it was incumbent on the latter to commence by writing to the competent Minister who may order for an inquiry. The report of which should be forwarded to the competent court. That having failed to follow this procedure the application is premature before the court at this stage.

The gentleman proceeded to inform the court that the supervisory body of AZICCUL remains the watch dog of the union, in consonance with sections 26 and 27 of the law afore cited . The supervisory committee counsel submitted comprises of Zamcho Clement, Fokwe John and Nshu Peter. To conclude Barrister Mulu reiterated the fact that the objection to this court's jurisdiction is essentially predicated upon article 79 of law section 79 of Law No 92/006 of 14th August 1992 relating to Cooperative Societies and Common Initiative Groups.

AS TO LOCUS STANDI

In relation to this ground of the objection counsel stated that the parties before this court lack the locus standi. To buttress this fact the latter submitted that only natural, juristic and artificial persons are vested with the capacity to sue and be sued. Expatiating further he stated that though AZZICUL is vested with juristic capacity, the Board of Directors is bereft of same. Counsel proceeded to refer the court to Nwadialo on Civil Procedure in Nigeria 2nd Edition wherein the Dictum in the case of Shitvus Legali was cited d in page 90 by the learned author to state the position of the law in relation to the aspect of the juristic capacity to sue. The gentleman urged this court to opine on the capacity of the respondent as the President of the Board of Directors to be proceeded against. He strenuously sought to establish the fact that the President of the Board of Directors lacked juristic capacity; rhetorically he questioned whether the position t itself can sue and be sued.

It was further stated that the proper representative of Co-operative Societies in all acts is the chairman as provided for in section 25 of Law No 92/ 006 relating to Cooperative Societies and Common Initiative Groups. This section counsel opined, culminated in the fact that the applicants herein can only represent the union with a power of attorney duly executed by the chairman. Counsel proceeded to submit that a party must establish a cause of action which is a prerequisite to instituting an action.

Though the issue of misjoinder of actions was not within the purview of the grounds of objection filed by counsel for the respondent; the former proceeded to state that the application of the 2nd and 3rd applicants are improperly joined in this action. That same should have constituted a separate cause of action. He also strenuously sought to establish the fact that the latter were suspended by a Unanimous decision of the Board of Directors.

Barrister Amazee on cue reiterated the lack of capacity of the parities, to buttress his submissions the learned gentleman referred this court to the Dictum in Foss AND Harbottle 18432 HA 461. On this issue counsel concluded that the sections of the Cooperative Law cited by Barrister Mulu culminates in the fact that the parties herein lack the capacity to sue.

AS TO MODE OF COMMENCEMENT

The gentleman on this aspect alluded to the fact that the action was commenced by a wrong law, he stated that Law No 2006/015 of the 29th December 2006 on Judicial Organization has been amended by law no **Law No** *2011/027* **of** *14th DEC 2011* **to Amend and Supplement Certain Provisions of Law No 2006/15 of 29 December 2006.** That the reference to an amended law is fatal to the action. He further opined that the application herein is for an order of Prohibition and or Mandamus which should have been preceded by an action seeking prior leave of court. Counsel very strenuously submitted that no law provides for an application for the orders sought without seeking the courts leave. In

relation to prayer 2, counsel submitted that this court is not vested with the powers to annul an administrative Act.

To conclude the submissions substantiating the objection counsel referred this court to the celebrated dictum in the case of Macfoy which was to the effect that 'something cannot stand on nothing.' He urged this court to dismiss the matter with punitive cost of three million fcfa.

In response Barrister Nji Gideon for the applicants stated that the main issue for this court's determination is the applicable law in relation to the institution before this court. Counsel rhetorically questioned whether the applicable law was the 1992 law on Cooperative Societies referred to by counsel for the respondents herein or the Uniform Act on Cooperative Societies which was enacted on the 15th day of December 2010. The learned gentleman stated that if this court is opined that the applicable law is the Uniform Act on Cooperative Societies, then the preliminary objection should be dismissed with a stroke of the pen.

Referring this court to the provisions of article 9 of the OHADA Treaty, counsel submitted that the Uniform Acts are applicable in Member States 90 days after their enactment, on this note he concluded the issue of the applicable law by stating that the Act of instance has been in force for a year.

MODE OF COMMENCEMENT

In relation to this ground of the objection counsel submitted that the action was predicated upon the law on Judicial Organization. He emphasized the fact that the relevant provisions of this law were not amended, particularly section 18 1c of same.

AS TO JURISDICTION

Counsel submitted that since the applicable law is the Uniform Act afore mentioned, the objection to this court's lack of jurisdiction is vacant since the Uniform Act which is the applicable law, abrogated the law of 1992.The gentleman concluded by stating that though the 1992 law which regulated the functions of cooperative societies has been abrogated, same law never did exclude the jurisdictions of the courts. On this note the learned gentleman urged the court to dismiss the preliminary objection for being dilatory and vexatious.

Thus the issues for this court's determination. Reiterating counsel for the applicant the primordial question is the determination of the applicable law. The gentlemen for the respondent submitted extensively on the provisions of the Law No 92/006 of 1992 relating to Co-operative Societies and Common Initiative Groups. Infact their entire objection was predicated upon this law as no reference was made to the recently enacted Uniform Act on

Co-operative Societies. Curiously counsel for the respondents did not offer any response on point of law in relation to the issues of the applicable law raised by Barrister Nji Gideon. It behooves this court to question whether the gentlemen for the respondents simply paid scant importance to the Regional Law or is it that the latter are not aware of any of the provisions therein; or should this court assume that what is not traversed is deemed admitted.
Barrister Nji Gideon for the applicants was also content to refer to the provisions of article 9 of the OHADA Treaty without citing any specific provisions in relation to the applicability of the Uniform Act on Cooperative Societies.

The provisions in relation to the applicability of the Uniform Act on Cooperative Societies and Common Initiative Groups are embodied in the Uniform Act itself ,a copy of which curiously no member of the very learned Bar brought to court. The fact that no section of same Uniform Act was alluded to corroborates the fact that the pertinent provisions of the Uniform Act on Cooperative Societies have not been examined by the very very learned gentlemen of both counsel for the applicant and the respondent.

It is severally stated that the law is at the breast of the court; this is very true. However all the laws are within the courts purview, while the laws in relation to the issues in contention are tendered to the court for adjudication by counsel. If counsel for the respondent is opined that the applicable law herein is the law of 1992, he should have submitted on the particular reasons for the derogation of the provisions of article 9 of the OHADA Treaty which is to the effect that all the Uniform Acts are enforceable within 90 days of enactment or precisely of publication in the OHADA Journal.

Having concluded that both gentlemen of counsel for the respondent and applicant have left the court to do their case in toto, now to the crux of the matter which is;

THE APPLICABLE LAW.

The applicable law shall determine the applicable substantive as well as adjective law thus it is apposite to examine same in limine. Law No 92/006 of 1992 relating to Co-operative Societies and Common Initiative Groups was the applicable law since 1992 governing all aspects of the groups aforementioned. Pursuant to the increase in the activities of these bodies which evolved from essentially agricultural to financial ventures; the need for harmonization of the regulations resulted in their adhesion to the Regional regulatory monetary bodies such as COBAC and CEMAC specifically provided for in Regulation number 01/02/CEMAC/UMAC/ COBAC 2002 in relation to the conditions of the exercise of the activity of micro finances within the central African Economic Monetary Region. The economic importance of Cooperative Societies resulted in the need for further a comprehensive legal framework within a harmonized contex. This culminated in an instrument which regulates all the aspects of the Cooperative Societies to wit the formation,

functioning, the management and the dissolution. Thus the enactment of the Uniform Act on Cooperative Societies and Common Initiative Groups on the 15th of December 2010.

Article 397 of the Uniform Act afore cited is to the effect that the present Act shall be enforceable within 90 days of the date of publication in the official journal of OHADA ,in consonance with the provisions of article 9 of the OHADA Treaty of the 17th of October 1993 as revised in October 1997 an amendment which has been duly ratified by Cameroon. Within the spirit of provision of the Treaty afore mentioned, this Uniform Act was applicable in Cameroon some three months after the 15th of December 2010.

WHY THE AMBUIGUITY?

This court reiterates the fact that counsel for the respondent unfortunately failed to enlighten this court as to the reasons for questioning the immediate application of this Act as provided for in **article 9** of the Treaty afore cited. Having ascertained that the provisions of **article 397** of the Act of instance culminate in the immediate applicability of this Uniform Act the abrogation in toto of the previously applicable 1992 law is implicit. In consideration of this analysis, the preliminary objection can be overruled at this point with a stroke of the pen to reiterate counsel for the applicant herein in his response to the objection.

However this court takes judicial notice of the turmoil which has been racking Cooperative Societies in relation to the applicability of this Uniform Act. It can only be imagined that the confusion is borne of the transitional provisions embodied in **article 396 of the Act of instance.** For reasons of absolute clarity and the fact that no English version of this Act is available, this court herein proceeds to cite the aforementioned article verbatim.

ARTICLE 396

This Uniform Act abrogates all legal dispositions which are contrary to the provisions of the present Act. With the exception of the transitional application within a period of two years from the date of enforcement of this Uniform Act, Cooperative societies, their unions , federations , confederations and their networks; who have not proceeded to harmonize their articles of association in line with the provisions of the present uniform act.

Do the provisions of the article afore cited imply that the Uniform Act of instance is not applicable pending the expiry of the two year transitional period? This is the issue for determination. Where the language of a statute is ambiguous, it is incumbent on the judge to interpret the law. The provisions of article 396 of the Uniform Act on Cooperative Societies are not really ambiguous, if read in isolation the proper method of construction would have been the employment of the literal method of construction which is characterized by a rigid adherence to the text. This would have reduced the issues to the construction of the phrase 'transitional period'. However the existent ambiguity emanates from the provisions of article 397 of the Act of instance which in pertinent part reads;

ARTICLE 397

This Uniform Act shall be applicable within 90 days of publication in the OHADA Official Journal, in consonance with the provisions of article 9 of the OHADA Treaty on the harmonization of business law in Africa signed at Port Louis on the 17th of October 1993 as amended at Quebec on the 17th of October 2008.

The provisions of the article afore cited necessitate the exegetical method of construction which looks beyond the words of the text in an attempt to examine the intention of the legislators. This process is essentially facilitated by precedence, unfortunately in the case of the Uniform Act of instance there is hardly any reported case law. However there are other Uniform Acts with parallel transitional provisions. This court shall proceed to examine the application of the analogous like provisions embodied in the Uniform Act on Commercial Companies and Economic Interest Groups and the Uniform Act on General Commercial Law 1998 since the 2010 amendment does not include these provisions for obvious reasons.

ARTICLE 1 UNIFORM ACT ON GENERAL COMMERCIAL LAW

Every trader, who is either a natural or a juristic person, including all commercial companies of which a State or a person governed by public law is a member, as well as every economic interest group, whose place of business or registered office is situated in the territory of one of the Contracting States to the Treaty on the Harmonization of Business Law in Africa, (hereinafter referred to as "Contracting States"), shall be subject to the provisions of this Uniform Act.

Besides, every trader shall be subject to the laws which are not contrary to the provisions of This Uniform Act applicable in the Contracting State of his place of business or registered office.

Individuals or legal persons, and economic interest groups, set up or being formed on the date of entry into force of this Uniform Act must harmonize the conditions under which they operate with this new legislation within a period of two years from the date of publication of this Uniform Act in the Official Gazette.

After this time limit, any concerned party may bring an action before the court of competent Jurisdiction for such regularization to be ordered, if necessary under financial compulsion.

The provisional transitions embodied in the Act afore mentioned incited a plethora of contentions over its actual date of application; herewith the aphorism of some of the Regional Courts;

Cour d.Appel de Port Gentil, Arrêt du 9 Décembre 1999 , Société Kossi c/Paroisse Saint –Paul DES Bois, Penant no 837, Septembre –décembre 2001 Ohadata J-02-45.

The very learned Judges held that in consonance with the provisions of article 10 of the OHADA Treaty of 1993, even commercial leases which were contracted before 1998 which is the year of enactment of the UAGCL were governed by the Act;

The maxim of the decision in **ARRET No 20 DU 17 JUIN 2002, is also a worthy touch stone.**
CCJA, ARRET No 20 DU 17 JUIN 2002, EACJI8c/G. Le Juris Ohada, no 3/2004 p.6 note Brou KOUAKOU Mathurin –Recueil de jurisprudence de la CCJA, no 3 janvier –juine 2004,p.6 Ohadata J-04-381.

The learned Judges opined that since article 18 of the UAGCL 1998 provides for the time bar of obligations between commercial operators after a period of five years. The lessor who did not institute a claim for rents which covered the period 1983 to 1994 was time barred to institute same action. The court further stated that the actions instituted in the year 1999 in relation to rents arrears due in the year 1999 were admissible.

An appreciation of the dictum in the rulings aforementioned unequivocally establishes the fact that the Uniform Act on General Commercial Law was applicable as of the date of enforcement or 90 days after publication in consonance with the provisions of article 9 of the Treaty; irrespective of the transitional period provided for in article 1 of the UAGCL. This position was also reaffirmed by the Regional appealte Court in Arret No 055/2005 of 15th December 2005.

The analogues transitional provision embodied in the Uniform Act on Commercial Companies and Economic Interest Groups to Wit;

Article 919:
All laws repugnant to the provisions of this Uniform Act shall be repealed, subject to their Application transitionally for a period of two years from the date of entry into force of this Uniform Act to the companies which have not harmonized their Articles of Association with the provisions of this Uniform Act.

However, notwithstanding the provisions of Article 10 of this Uniform Act, each Member State may, during a transitional period of two years from the date of entry into force of this Uniform Act, apply its national law in relation to the status of the company.

The article of the Uniform Act afore cited also provoked contention which was adjudicated upon thus;

. In the Case of **STE JOS HASEN ET SOEHNE STE MATCH TRADING LIMITED C/ M.FRANCOIS DOSSOU. In Arret No 174/99 of 30th September 1999**, the learned judges held that the application of the UACCEIG. Could be deferred to after the expiry of the two year transitional period.

However the maxim of the learned Judges of the Civil and Commercial Bench of D.JAMENA Chad was at compelling variance with the decision of the Court of Appeal of Cotonou

D'JAMENA, 1ST Civil and Commercial Bench ARRET CIVI L No459/2000/29/9/2000.

RATIO: *The uniform on Commercial Companies and Economic Interest Groups is applicable as of the date of enforcement even in relation to matters which were pending in the courts before its enactment.*

The disparity in the decisions aforementioned reiterates the problematic application of harmonized laws in conformity with the uniformity sought by the Regional legislators. However the CCJA was seized to opine on the issue of Raione Temporis in relation to the transitional period accorded by the legislators. It was stated that it was the duty of the judge to identify the applicable law in relation to the peculiar circumstances in line with the intention of the legislators of the Uniform Acts. This final appellate jurisdiction called on the judges to apply both the exegetical and the teleological methods of construction of the law. The learned judges of the final appellate jurisdiction stated that the transitional period was aimed at not vitiating acts executed in consonance with the previously applicable law.

The contentions in most cases turned on the applicable law in relation to acts concluded before the enactment of the Regional laws, which were unequivocally governed by the previously applicable law, while any acts after the enactment are invariably within the ambit of the Uniform Act albeit the transitional period. The latter interpretation was held to be more in conformity with the spirit and intent of the legislators of the Ohada Uniform Acts.

The very learned jurist who commented on the OHADA 'Triate et actes uniformes commentes et annotes' 4th edition also opined that the immediate applicability of the Uniform Acts irrespective of the transitional provisions, depends on the intention of the legislators in relation to the specific Uniform Act. The applicability also depends on the particular provision.

A judge should seek to attain the intention of the legislators falling which the law becomes a caricature of itself. In appreciation of the fact that the exegetical method is a dominant

mode of construction for newly enacted legislation, an examination of the intention of the legislators in relation to some of the Uniform Acts with parallel provisions will lend clarity to the issue.

The decisions concerning the issues related to the applicability of the Uniform Act on General Commercial Law are not at variance because this Uniform Act covers a number of disparate subjects that do not fall naturally within the ambit of the other more specific Uniform Acts. The regulation of the status of commercial operators and the position of business transactions was elicited by the dire need for the creation of business security within the Region. In appreciation of the requisite publicity of the details of the existing economic operators sought to be attained, this Act was declared by the courts to be immediately enforceable without any dissenting decisions.

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The intention of the legislators in the Uniform Act on Commercial Companies and Economic Interest Groups in relation to the application during the transitional period was succinctly stated by the jurist who commented in the OHADA 'Triate et actes uniformes commentes et annotes' thus;

'That the reform cannot produce all its effect pending the expiry of the transitional period provided for the harmonization. That the transitional period is aimed at permitting companies which existed prior to the Act to harmonize their status in consonance with provisions of the enacted legislation. However while the existing provisions are applicable in the interim, any acts effected posterior to the date of the Uniform Act must be in conformity with the provisions of same.'

Now to the Act of instance the crux of the matter. It is stated in the OHADA 'Triate et actes uniformes commentes et annotes' in page 669 in the preamble of the Uniform Act on Cooperative Societies;

'That Cooperative Societies which were initially created to foster moderate economic activity have ascended to considerable importance in relation to the volume of their financial activities. That consequently they have proceeded to command a compelling effect on the economy of the Region. In appreciation of the fact that some of the cooperatives financial portfolio competes with that of some big banks; the existing legislation was found wanting and inapt for the Regional restructure plan envisaged by the legislators of OHADA and the related Regional Treaties.

That the legislators of this Uniform Act in same spirit with the intention of the legislators of the Uniform Act on Commercial Companies and Economic Interest Groups, were desirous of attaining transparency in the functioning of these institutions. To quote the learned jurist verbatim and in same language for fear of distorting the content;

‘ les cooperative ne pouvant plus evoluer en vase clos, avec des regles et modes de fontionement specifiques alors meme qu’elle constituent dorenavant des maillons essentials de la vie economique’

to paraphrase; these institutions could no longer operate in fractions in consideration of their compelling economic importance.

The prelude to this Uniform Act also expounded upon the subsumption of the Corporative Societies to the regulatory credit bodies such as COBAC, UMAC AND CEMAC. Noteworthy are the provisions of Regulation No01/02/CEMAC/ UMAC/ COBAC 2002. The impact of the activities of these bodies on the public and the Member State was also emphatically reiterated.

The last pertinent issue referred to was the relationship of the Co-operative Societies Vis-A-Vis their Umbrella unions. The role of the latter was therein expatiated to include;

1) Accompanying the respective Co-operative Societies through the process of the modification of the articles of association.
2) To ensure transparency in the process.
3) To supervise the principal acts directly affecting the Members, third parties and the repercussions on the Member State.

In the light of the above analysis, this court takes judicial notice of the existence of a union serving as an umbrella to the Cooperative Society of instance. This court also takes judicial notice of the widely publicized harmonization process engaged by the union. It is anathema that some five months to the expiry of the transitional period, some Cooperatives Societies are still bickering over the applicable law. The gravity is compounded by the fact that the institutions before this court handle the finances of thousands of members.

A close perusal of the harmonization procedure as embodied in the provisions of articles 390 to 395 evidences the exacting changes prescribed by the Act in relation to the articles of association. The process of amending the articles will entail a complete review in consonance with at least 300 articles of this Act. The respondents seem totally oblivious of the provisions and the applicability of this Act, a situation which might lead to the forceful dissolution of the Cooperative Society or the withdrawal of their license by the regulatory bodies if they do not comply in toto to the provisions of the Uniform Act within the next five months.
It behooves this court to reiterate the purport of harmonization in order to emphasis the point;

‘Harmonization entails the convergence of various legal systems, laws or regulations, policies or practices which governments or organizations agree in an amicable manner to unify; it should bring some certainty in the law. The process of harmonization should also

include practical and predictable rules for the determination of the applicable law in the realization of practical problems on a uniform basis.'

If this interlocutory ruling is akin of an epistle it is aimed at asserting the import and the compelling compliance of the Regional harmonization process. It is incumbent on the umbrella body to ensure this process, a role which is conferred upon them in article 144 of the Uniform Act on Cooperative Societies of instance. Mindful of the intention of the legislators of the OHADA Treaty which was the creation of economic stability, the courts must ensure its application for fear of the resultant economic instability.

The aphorism of a contention on all fours with the present situation is a relevant citation herein. In the case of ST Bois Tropicauz d'Afrique BTA, SAC VS HAPPI SIMON PROSPER, the President of the Court of First instance Ndokoti Doula stated that where the defendant failed to established the non harmonization of the articles of the company in conformity with the Uniform Act on Commercial Companies and Economic Interest Groups, her application predicated upon the previously applicable law must be dismissed.

Having cited a plethora of case law, the opinion of the CCJA in Avis No 0001/2001/CP of April 3rd 2001, the commentaries of the very learned jurist who opined on the construction of the applicable law during the transitional period in OHADA 'Triate et actes uniformes commentes et annotes' in the pages cited above ; it has been unequivocally established that the applicable law in relation to any acts posed posterior to the date of enforcement of the Uniform Act on Cooperative Societies are the provisions therein embodied. Thus the applicable law is the Uniform Act on Cooperative Societies enacted on the 15th day of December 2010.

The objection of the learned gentleman of counsel for the respondent also evoked other breaches of adjective law which deemed to have rendered this application incompetent before this court. Having established the applicable law, this court shall proceed to examine the other issues seriatim in consideration of the applicable law.

THE JURISDICTION OF THIS COURT

Barrister Amazee Anthony strenuously sought to establish the fact that the jurisdiction of this court was ousted by the provisions of section 79 of Law No 92/006 of 1992 relating to Co-operative Societies and Common Initiative Groups. Apart from the fact that this court has held that same law is abrogated in favour of the Uniform Act of instance, a pertinent observation is the fact that section 79 did not oust the jurisdiction of the courts. It reads that the competent Minister may order an investigation in the case of the commission of acts in derogation of the present law {1992}, which may be communicated to the courts for adjudication. The oldest principle of legal construction inured jurist to read 'may' as optional while 'shall' is mandatory.

Recalling that the purport of harmonization is to create common simple rules aimed at treating problems in a uniform manner, there is no gain saying that the only common body among all the Member States is the courts. Thus the legislators of this act in relation to all contentions vested the courts with the competence to entertain contentions. Uniformity can only be attained where the adjudicating body applies a common law in this case the UACS. On the other hand 17 Ministers of 17 Members States cannot arrive at the same conclusion for the obvious reason that different Member States apply different internal policies.

If they were vested with the powers to entertain contentions; it would have smacked of the harmonization intended by the legislators. The only reference to the competent minister embodied in the UACS is found in article 78 which enjoins the prior authorization of the latter in relation to those Cooperative Societies which are financial institutions

Embodied in the UACS, is a section dedicated to the transitional period, same section in article 393 vest the court wherein the cooperative society is located with the jurisdiction to entertain contentions borne of the harmonization process. However, the contention herein is actually in relation to disputes between members; article 117 of the UACS vest the national courts with the competence to entertain same.

The issue of the competent body to entertain disputes after the enforceability of the Uniform Acts was severally raised before the CCJA. Fortunately the Regional Appellate Court has had the opportunity to unequivocally rest this point. The position of the law was asserted in in Arret No 024/2000; the maxim of the most learned judges and the final court of review was to the effect that any suit instituted before the National courts after the enactment and resultant enforceability of a Uniform Act as per articles 9 and 10 of the Treaty as amended in 2008, shall be adjudicated upon by the CCJA. In this case the competence of the CCJA was challenged on the basis that the suit was instituted in the National Court on the 23rd of January 1998 during the pendency of the transitional period. The court held that the UAGCL was enforceable as of the 1st of January of same year 90 days after its enactment and publication in the OHADA official Journal; thus the only competent court of final review was the CCJA as opposed to the Supreme Court of the Member State. There is no gainsaying that if the only competent court of review is the CCJA the decisions which are reviewed can only emanate from a national court.

This matter reiterated the provisions of article 13 as read with article 14 of the OHADA Treaty of the 17th of April 1993 Port Louise as amended on the 17th of October 2008 at Quebec. These articles provide for the competent jurisdiction after the enactment of the Uniform Acts, article 13 is in relation to the sole competence of the National trail courts while article 14 stipulates that the CCJA is the only competent court of review.

A citation of a National Court of Appeal in relation to the application of the UACCEIG is the dictum of the Court of appeal Douala in the year 2000; the learned judges in an Arret of the 15th of May 2000 in the case of Societe Soccia Precite stated that the only competent

body to entertain contentions borne of disputes over the provision of the Act afore mentioned was the National courts of the place of activity of the company. The learned judges further asserted that it was incumbent on the judges to apply the provisions of the UACCEIG albeit the period provided for transition.

Article 117 of the UACS also provides for arbitration and conciliation. Noteworthy is the fact that the process of arbitration and conciliation is subject to the consent of both parties in relation to the submission to the arbitral body. The proviso for alternative dispute resolutions does not by any means exclude the courts.

THE MODE OF COMMENCEMENT

On this ground counsel for the respondent submitted that the applicant herein, seized the court for an order of Mandamus and Prohibition as provided for in article 18 (1) (c) of Law number 2006/015 //29/12/2006. Counsel submitted that this law has been amended or 'swallowed' to quote the learned gentleman verbatim by Law no *2011/027* **OF** *14 DEC 2011* To Amend And Supplement Certain Provisions Of Law No 2006/15 Of 29 December 2006 on Judicial Organization.

This court is ad idem with counsel for the respondent to the effect that the Law of 2011 did not swallow the law of 2006, it rather amended certain provisions. Article 18 (1)(c) of the 2006 law was not among the amended provisions thus it is still applicable. In like manner the further amendment of the law on Judicial Organization in the year 2012 amended some provisions of the law of 2011 as opposed to abrogating same. If section 18 (1)(c) cited by counsel for the applicant had been amended, this court would have been inclined to subscribe to the submissions of Barrister Amazee for the respondent in relation to this ground of the objection.

Counsel also stated that the prayer for an order of Mandamus or Prohibition is subject to the prior authority of the court. It behooves this court to emphasize that an application pursuant to article 18 (1)(c) of the 2006 law on Judicial Organization as amended in 2011and 2012 in some provisions is diametrically opposed to the prerogative writs previously applicable in the common law jurisdictions. Noteworthy is the fact that the grant of the prerogative writs was vested in the courts of review as opposed to the trial courts which are vested with the powers to make these orders; a fact which highlights and compounds the dichotomy. This ground of objection is totally off course herein.

WHAT IS THE MODE OF COMMENCEMENT PROVIDED FOR IN ARTICLE 18 (1)(c) of Law number 2006/015 //29/12/2006.

Article 18 (1)(c) stipulates that the court shall be seized by an application, this mode of commencement has haunted common law jurists since it is alien to the previously applicable modes of commencement known to the common law jurist over which we are nostalgic. In

the civil law procedure from which the OHADA Uniform Acts adjective law are culled, the court sits either in ' refere heur a heur, or refere ordinaire' in any case it is the judge sitting in urgent matters. The court may either be seized exparte where the issue for determination does not require an adversary hearing or on notice
where the issue is very contentious. In the common law jurisdictions where the issues in contention require an adversary hearing such as in the present case a motion is apposite without adhering to any strict rules of evidence as provided for in the evidence ordinance of 1948 which is not applicable in this procedure. The dictum in the Court of Appeal of the North West Region in the case of CANWR/ 40/2010 Fonkouen Ngompe Meke vs AGF Cameroon and 3 others has rested this issue. The mode of commencement in relation to applications predicated upon article 18 (1)(c) of the law in issue can be ascertained by referring to the meaning of then word 'requete' which is embodied in the French version of this law;
Requete;

REQUETE
'Is a request directed to a Magistrate without putting the other party on notice, where the situation to be treated is urgent or where the situation does not require or permit the procedure to be adversary. In response a provisional order is issued by the court which is executed immediately. The decision can be retracted pursuant to an objection. Lexique des Termes Juridiques 18th edition.

Where a matter is commenced on notice which was meant to be exparte, it does not overreach the affected party; the latter would have been more affected if the situation was reversed. In any case the practice in the civil law courts is to use the word 'requete' indiscriminately for applications exparte and on notice. Noteworthy is the fact that neither article 117 nor 223 of the UACS which provide for this manner of relief by members of the Cooperative Society prescribes any particular mode of commencing the claims of instance. This court has no quarrel with the mode of commencement employed by the counsel for the applicants.

The civil law conception of the judge in charge of urgent applications is predicated upon the urgency of a matter in relation to the repercussion on the public or the commercial entity as the case may be. These decisions are essentially enforceable irrespective of an appeal.

LOCUS STANDI AND CAUSE OF ACTION
In relation to this ground of the objection Barrister Amazee for the respondent queried the locus standi of the applicants as well as the existence of a cause of action by the latter. Though the issue of the absence of a cause of action was not pleaded in the objection, this court shall examine both issues.

It is trite law that the institution of a civil suit is predicated on then locus standi of the party suing and the accrual of a cause of action by the latter. The aforementioned conditions are

an indispensable prerequisite to the institution of an action both conditions are reciprocally complementary.

The learned counsel submitted that the capacity to sue in relation to Cooperative Societies is solely vested is the chairman of the institution. That the applicants who are bereft of a duly executed power of attorney from the chairman cannot be heard in their personal capacity. The UACS draws the dichotomy between suits aimed at protecting the interest of the Cooperative Society in general from suits aimed at protecting or preserving the rights of a member which are individual actions or suits between members per se. A purview of the respective sections is instrumental in ascertaining the difference.

Representative actions are provided for by **article 128 of the UACS;**

'*These are suits aimed at redressing the wrongful acts or decisions of corporate managers or executives. The transgression affects the cooperation in general and the capacity to sue is vested in the legal representative within the ambit of the category of cooperative societies provided for in the Uniform Act*.'

In this case since the cooperative's corporate governance is vested in a Board of Directors, the President of the board is duly vested with the capacity to sue. However, Article 129 of the UACS also vest any aggrieved member or members with the capacity to seize then court in these category of actions.

Individual actions are provided for in **article 124 of the Uniform Act of** instance, same article stipulates;

'These are actions aimed at redressing a wrong suffered by 3rd parties or any member of the cooperative society as a result of the acts of the corporate executives charged with governance.' This suit shall be instituted by the aggrieved individuals or individual.

In the present case, the applicants are suing as members of the board in a bid to redress the alleged wrongful decision of the president and the other members of the board. Within the scope of article 124 of the UACS the applicants are emphatically vested with the locus standi and a cause of action. The cause of action being, their wrongful suspension from the board. Thus contrary to the citation of counsel for the respondent in the case of MCFAOY to the effect that the adjudication of the issues embodied in the present application was tantamount to 'something standing on nothing', the hearing of this application which is in consonance with the provisions of the UACS thus stands on something'.

THE DECISION OF THE BOARD OF DIRECTORS ON THE 10th of OCTOBER 2012.

Barrister Mulu for the respondent referred this court to annex D which was exhibited in the notice of preliminary objection. Same document is the decision of the suspension of the board members who are applicants herein. The decision to suspend the applicants was a decision of the board of directors. In common law practice, the examination of the validity of the decision would have been an issue to be treated after the ruling on the preliminary objection. However the adjective common law provisions are not of strict application in relation to the applicable procedure as prescribed by the OHADA Uniform Acts. In fact the common law procedure is not applicable at all. The required expediency in the adjudication of commercial matters did not envisage procedural bottlenecks, the need for expediency in commercial transactions have culminated in the frontload of all issues for determination even in the legal system in England wherefrom the common law was inherited. This is evident in the part 8 procedure applicable in her majesty's legal system.

The applicable adjective law herein is culled from civil law wherein procedural obligations are strictly within the context of the substantive legal issues. The very learned court of Appeal of the North West Region has emphatically asserted that the rules of evidence are inapplicable in matters related to the OHADA Uniform Act. It was further stated by Romer L.J in the case of Everrete v Ribbands 1952 Q.B. law reports 198 AT PAGE 206 thus' where there is a point of law which , if decided in one way, is going to be decisive of litigation, advantage ought to be taken to have the case disposed of at the close of the pleadings' in this context at the close of the submissions.

In the present case where this court has ruled that the applicable law is the OHADA Uniform Act on Cooperative Societies; Where the decision to suspend the applicants was not in consonance with the provisions of the applicable Act; where the document evidencing the queried decision has already been tendered to the court and extensively addressed by the learned gentlemen for the respondent; what is the purport of proceeding with the hearing? Would it be for the applicants to file the counter affidavit?

It is this court's considered opinion that the position of the court in the applicable law already determines the outcome and there is no need to perpetuate the litigation. In consideration of the instability of this credit union caused by the wrangling and bickering amongst the board members; In further consideration of the fact that this institution is a financial body; this court finds it apposite to dispose of the matter at this stage.

The UACS extensively treats all aspects of cooperate governance; the legislators of this Act were desirous of absolute transparency and the eradication of corporate managerial dictatorship. Thus the replacement of a board member is only permitted by the general assembly in a 2/3rd majority as stipulated by the provisions of article 242 as read with article 253 of the Act of instance. There is absolutely no provision for the suspension of a

board member. Thus neither the board members nor the president are vested with the powers to suspend or revoke a board member.

The management of Cooperative Societies is vested in the Board of Directors whose acts are in the interest of all the members. Though they are voted by a simple majority in a general assembly, the 2/3rd majority for revocation is aimed at ensuring a totally democratic management. The legislators were conscious of the fact that it is relatively easy for some Board Members who may be guided by personal interest to manage the Cooperative Society in derogation of the interest of all the members, could easily attain a simple majority in order to oust the recalcitrant members. The creation of Cooperative Societies was predicated on the absolute representation of the members thus the provisions in article 102 of the UACS which is to the effect that the voting rights are equal irrespective of the number of shares, this provision is in sharp contrast to the voting rights of shareholders in the UACCEIG which is essentially predicated upon the share capacity. This court is opined that it is a trite principle that the ascension to an office predicated upon elections by vote cannot exited by same procedure.

The Act does however vest the board with the latitude to exclude members a decision which must be ratified by the general assembly within 10 days. The applicants herein were rather excluded as board members and not as members; noteworthy is the fact that the latter could not have been excluded as members without the revocation of their membership of the Board of Directors in Consonance with the OHAD Uniform Act.

Artcile 60 of the bye laws which provide for the suspension of Board Members by the Board is not in conformity with the UACS. Article 68 of the Uniform Act of instance reiterates the obligation of the conformity of the internal regulations {by laws} with the provisions of the Uniform Act.

If the Board of Directors is desirous of excluding any member of the board the latter shall proceed to execution in a General Assembly wherein they must ensure the 2/3rd majority.

Consequently this court observes that the suspension of the applicants from the board was null and void ab initio. The inclusion of other members Board members was also a nullity where the latter were not elected by a simple majority at a General Assembly meeting with a simple majority in consonance with the provisions of article 223 of the UACS, was also in derogation of the UACS and consequently void ab initio. This leads to the conclusion that that the governance of this credit union has arrived at a stalemate. If the applicants and respondents cannot sit in the board to arrive at any decisions in the interest of all the members, then the umbrella body should exercise the powers conferred upon them in article 144 of the UACS.

To the observations of the prelude to this Uniform Act, a teleological construction of the intention of the legislators was succinctly stated in the prelude of the comprehensive analysis of the law in the book ' LE DROIT DE MICRO FINANCE DANS L'ESPACE OHADA' by the very learned professor Moussa SAMB thus;

' cooperative societies were evolving in a dysfunctional manner with fractional ineffective rules and regulations; that the security of the savings of the members was far from guaranteed, the scandal of ICC in Benin is a pertinent example. The insecurity was compounded by the fluid managerial executives who were either oblivious of the regulations or simply flaunted same.'

This very learned author concluded by stating that the malfunctioning of these institutions eluded their regulatory authority or bodies for a uniform and harmonized rules in the UACS. This excerpt highlights the intention of the legislators of the UACS and reiterates the provisions of article 397 in relation to its immediate application. This is the law.

Consequently this court makes the following orders;

1} THE RESPONDENT IS HEREIN PROHIBITED FROM CONVENING AND PRESIDING OVER ANY BOARD OF DIRECTORS MEETINGS OF AZIRE COOPERATIVE CREDIT UNION (AZICCUL) WITH THE ILLEGALLY COOPTED MEMBERS IN ATTENDANCE AND PARTICIPATING.

2} THE SUSPENSION OF THE 3RD AND 4TH APPLICANTS HEREIN AS MEMBERS OF THE BOARD OF DIRECTORS OF AZIRE COOPERATIVE CREDIT UNION (AZICCUL) IS NULL AND VOID ABINITIO THUS THEY DO NOT NEED TO BE REINSTATED BY THE COURT BECAUSE LEGALL THEY ARE STILL MEMBERS.

3} ALL DECISIONS OF THE BOD OF AZICCUL SINCE THE 15TH OF SEPTEMBER 2012 TAKEN WITH THE PARTICIPATION OF ILLEGALLY CO-OPTED MEMEBERS ARE IMPLICITLY NULL AND VOID.

4} IN CONSIDERATION OF THE SCOPE OF APPLICABLILITY OF THE ORDERS BY THE OHADA JUDGE OF URGENT APPLICATIONS; IN FURTHR CONSIDERATION OF THEN IMPORT OF THE INSTITUTION TO THE PUBLIC AND THE NEED TO PROTECT THE FUNDS OF THE MEMBERS; THIS COURT DEEMS IT APPOSITE TO ORDER PROVISIONAL EXECUTION OF THIS RULING IRRESPECTIVE OF AN APPEAL.

THIS RULING IS DELIVERED THIS 15TH DATY OF OCTOBER 2010.

REGISTRAR IN ATTENDANCE PRESIDING JUDGE.