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AFRICAN UNION

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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

FIDÈLE MULINDAHABI

V.

REPUBLIC OF RWANDA

APPLICATION No. 006/2017

JUDGMENT

(JURISDICTION AND ADMISSIBILITY)

4 JULY 2019

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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The Court composed of: Ben KIOKO, Vice-President; Rafâa BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 8(2) of the Rules of Court (hereinafter referred to as "the Rules"), Judge Marie - Thérèse Mukamulisa, member of the Court and a national of Rwanda did not hear the Application.

In the matter of

Fidèle MULINDAHABI
representing himself

versus

REPUBLIC OF RWANDA
not represented

after deliberation,

renders the following judgment in default:

I. THE PARTIES

1. The Applicant, Fidèle Mulindahabi, a national of the Republic of Rwanda (hereinafter referred to as "the Respondent State) residing in Kigali, complains that he has been a victim of violations in connection with the exercise of his urban transport activity.

2. The Respondent State became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 25 May 2004. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 11 January 2013, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations. However, on 29 February 2016, the Respondent State notified the African Union Commission of its withdrawal of the said declaration. On 3 January 2016, the Court issued an order indicating that the effective date of the Respondent State's withdrawal would be 1 March 2017.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant alleges that before 2013, he worked in the urban passenger transport sector, and on 18 June 2013, he approached the Services Control Authority in Rwanda to request a transport license, but his request was turned down on the grounds that licenses are granted to companies and not to individuals.

4. He also claims to have contacted STELLA transport services agency which prepared a licence application for him, placing the logo and telephone number of the agency as well as the telephone number of the control authority on the bus so that passengers may contact them in the event of a problem.

[1] Ruling of the Court on Application No. 003/2014 on 3/6/2016 – *Ingabire Victoire Umuhoza v. Rwanda*, regarding the withdrawal by the Respondent State of the declaration it made under Article 34(6) of the Protocol.

5. The Applicant asserts that the licence was denied because STELLA agency was not the owner of the bus. As a result, in partnership with others, he founded the Simba Express Ltd.

6. On 16 November 2013, the Vehicle Control Authority issued him a ticket for having pasted a telephone number on the rear screen of the vehicle. The yellow card (a temporary card issued to the purchaser of a new vehicle) was impounded subject to payment of the fine and rectification of the telephone number. The Applicant alleges that the documents were not returned to him even after he paid the fine, corrected the telephone number and replaced the Stella logo with that of his new company, Simba Express Limited.

7. The Applicant asserts that any vehicle without a yellow card or a record of the ticket attesting that the yellow card has been impounded is prohibited from circulation. Accordingly, the Applicant stopped using the bus pending a solution to his problem. On 28 February 2014, his vehicle was confiscated because it was parked near the passage way of the presidential convoy. The Vehicles Control Authority ordered the cancellation of his membership of Simba Express Ltd, thus preventing him from continued exercise of his activity as a transporter.

B. Alleged violations

8. The Applicant claims that the Respondent State:

> "i. violated his right to property provided under Article 17(2) of the Universal Declaration of Human Rights and Article 14 of the Charter;
>
> ii. failed to access the requisite internal redress mechanism pursuant to Article 2(3)(c) of the International Covenant on Civil and Political Rights (ICCPR)".

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. The Application was received at the Registry of the Court on 24 February 2017 and served on the Respondent State on 31 March 2017 with a request to the latter to file within (30) days a list of its representatives, and its response to the Application within sixty (60) days from the date of receipt of the notification pursuant to Rules 35(2)(a) and (4)(a) of the Rules of Court.

10. On 9 May 2017, the Registry received a letter from the Respondent State on the withdrawal of the declaration it made under Article 34(6) of the Protocol, and notifying the Registry that it would not participate in any proceedings before the Court. It therefore requested the Court to desist from reporting any information on the cases concerning the Respondent State.

11. On 22 June 2017, the Court replied to the above-mentioned Respondent State's letter noting that "as a judicial body and in accordance with the Protocol and the Rules, the Court shall communicate all the documents of the proceedings to the parties concerned. Accordingly, all the documents of the proceedings in matters related to Rwanda before this court must be served on the Respondent State, until the final decisions of those cases" .

12. On 30 June 2017, the Application was transmitted to the States Parties to the Protocol and to the Executive Council through the Chairperson of the African Union Commission in accordance with Rule 35(3) of the Rules.

13. On 25 July 2017, the Court initially granted the Respondent State forty-five (45) days extension to submit its Response. On 23 October 2017, the Court granted a second 45-days extension, indicating that it would proceed with a judgment in default after the expiry of this extension if a Response was not submitted.

14. In accordance with Rule 63 of the Rules, the Court decided at its Forty-Ninth Ordinary Session held from 16 April 16 to 11 May 2018, to rule on both the merits of the case and on reparation in a single decision. Accordingly, on 12 July 2018, the Applicant was requested to submit his claims on reparation within (30) thirty days, but he did not respond.

15. On 12 October 2018, the Registry notified the Respondent State that at its 50th Ordinary Session, the Court decided to grant the latter a final 45 days extension and that, after that deadline, it would enter a ruling in default in accordance with Rule 55 of its Rules in the interest of justice. The notification was sent by *courier* and received on 16 October 2018 by the Respondent State.

16. Although the Respondent State received all the notifications, it did not respond to any of them.

17. Consequently, the Court will enter a judgment in default in the interest of justice and in conformity with Rule 55 of the Rules[2].

18. On 28 February 2019, the written procedures were closed and the parties were notified accordingly.

IV. PRAYERS OF THE PARTIES

19. The Applicant prays the Court to:

"i. order the Respondent State to pay damages for the prejudices he suffered;

ii. order the Respondent State to return his vehicle to him or compensate him with a similar vehicle;

iii. declare that the State of Rwanda has violated the human rights legal instruments that it has ratified.

[2] Application No. 003/2014. Judgment of 07/12/2018 (Reparation), *Ingabire Victoire Umuhoza v. Rwanda*, §§ 14, 15 and 17.

20. The Applicant did not make a detailed request for reparation.

21. The Respondent State refused to participate in the proceedings and did not make any prayers.

V. JURISDICTION

22. Pursuant to Article 3(1) of the Protocol, "The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned." Furthermore, in accordance with rule 39(1) of its Rules, "the Court shall conduct preliminary examination of its jurisdiction..."

23. Having conducted a preliminary examination of its jurisdiction, and noting that nothing on file indicates that it does not have jurisdiction, the Court therefore holds that:

    i. it has personal jurisdiction as the Respondent State is party to the Protocol and deposited the declaration prescribed in Article 34(6) of the Protocol which enabled the Applicant to seize the Court in accordance with Article 5(3) of the Protocol. Moreover, the Application was filed within one (1) year from the time set by the Court to give effect to the withdrawal of the declaration by the Respondent State;

    ii. it has material jurisdiction in as much as the Applicant alleges violation of Articles 1 and 14 of the Charter, Article 2(3)(c) of the International Covenant on Civil and Political Rights, Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, and Article 17(2) of the Universal Declaration of Human Rights. All these instruments have been ratified by the

Respondent State and the Court has the power to interpret and apply them by virtue of Article 3 of the Protocol.

iii. it has temporal jurisdiction, since the alleged violations are continuing in nature.

iv. it has territorial jurisdiction given that the facts of the case occurred in the territory of a State party to the Protocol, namely, the Respondent State.

24. Based on the above, the Court holds that it has jurisdiction to hear this case. .

VI. ADMISSIBILITY

25. According to Article 6(2) of the Protocol: "The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

26. In accordance with Rule 39 (1) of its Rules, "The Court shall conduct preliminary examination of its jurisdiction and the admissibility of the application in accordance with articles 50 and 56 of the Charter, and Rule 40 of these Rules".

27. Rule 40 of the Rules, which essentially restates the content of Article 56 of the Charter provides that: "pursuant to the provisions of Article 56 of the Charter to which Article 6(2) of the Protocol refers, for an Application to be admissible, the following conditions shall be met:

1. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. comply with the Constitutive Act of the Union and the Charter ;
3. not contain any disparaging or insulting language;
4. not be based exclusively on news disseminated through the mass media;
5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

6. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
7. not raise any mater or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union".

28. The Court notes that the admissibility requirements set forth in Rule 40 of the Rules are not in contention between the parties, the Respondent State having not participated in the proceedings. However, in accordance with Rule 39 (1) of the Rules, the Court shall conduct a preliminary examination of its jurisdiction and the admissibility of the Application.

29. It is clear from the case file that the Applicant's identity is known as well as his nationality. The Application is not incompatible with the Constitutive Act of the African Union and the Charter. It does not contain disparaging or insulting language, nor is it based exclusively on news disseminated through the mass media.

30. With regard to the exhaustion of local remedies, the Applicant asserts that he contacted the highest political and administrative authorities in the State, including the police, the Public Prosecution, the Ministry of Transport, the Ministry of Internal Security, the Ministry of Justice, the Parliament, the Senate, the President, the National Commission for Human Rights and Civil Society to find a solution to his problem, but all to no avail.

31. The Applicant further submits that "seizure of judicial bodies was not contemplated in view of the fact that the presidential guard is supposed to be involved in it and so, has no chance of reaching a judicial outcome. Furthermore, this case is inadmissible today, in view of the timeframes provided under article 339 of Act No. 18/2004 of 20 June 2006, concerning the Code of Civil, Commercial, Social and Administrative Procedure."

32. As it previously affirmed, the Court holds that: "... the local remedies to be exhausted by applicants are the ordinary judicial remedies[3]", unless it is obvious that these remedies are unavailable, ineffective, and insufficient or that the procedures therein are unduly prolonged[4]. It follows, therefore, that the non-judicial remedies exercised by the Applicant in the instant case are irrelevant as regards the exhaustion of local remedies.

33. In this case, the Applicant clearly stated that he had not exhausted the domestic remedies, claiming that:

> i. such remedies would not be feasible because a member of the Republican Guard was involved.
>
> ii. the time limit for filing a case before national jurisdictions elapsed upon the completion of the proceedings before the administrative and political authorities.

34. With regard to the first allegation, the Court holds that the Applicant alleges that the proceedings before the Respondent State's judicial authorities are not feasible, without adducing evidence in support of this allegation. The Court, therefore, dismisses allegation[5].

35. With regard to the second allegation, the Court notes that the Applicant did not file his case before the national courts, as he claims to have sought to settle the dispute before the administrative and political authorities. However, there was nothing preventing him from exercising both judicial and non-judicial remedies at

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[3] Application No. 007/2013. Judgment of 3/6/2016 – *Mohamed Abubakari v. United Republic of Tanzania,* § 64. See also Application No. 005/2013. Judgment of 20/11/2015 - Alex Thomas v. Tanzania, § 64 and Application No. 006/2013. Judgment of 10/3/2016 – *Wilfred Onyango Ngani & 9 Others v. United Republic of Tanzania,* § 95.

[4] Application No. 004/2013. Judgment on 5/12/2014 (Merits) – *Lohé Issa Konaté v. Burkina Faso,* § 77. See also Application No. 003/2012. Ruling (Admissibility and Jurisdiction) – *Peter Chacha v. Tanzania*, § 40.

[5] *Alex Thomas v. Tanzania,* Ibid, § 140.

the same time, and should therefore have exercised the requisite judicial remedies so as to exhaust the local remedies.

36. In light of the foregoing, the Court holds in conclusion that the applicant has not exhausted the local remedies available to him in the Respondent State, and his failure to do so does not fall within the exceptions set out in Rule 40(5) of the Rules.

VII. COSTS

37. The Court notes that Rule 30 of the Rules provides that: "Unless otherwise decided by the Court, each party shall bear its own costs."

38. In view of the circumstances of this case, the Court decides that each party shall bear its own costs.

VIII. OPERATIVE PART

39. For these reasons,

The Court:

unanimously,

i. *Declares* that it has the jurisdiction to hear this case;

ii. *Declares* that the Application is inadmissible;

iii. *Rules* that each party shall bear its own costs.

Signed:

Ben KIOKO, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

and

Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 60(5) of the Rules, the separate opinion of Judge Chafika BENSAOULA is attached to this judgment.

Done at Arusha, this 4th day of July 2019 in Arabic, English, and French, the French text being authoritative.

2019-07-04

Judgement on Jurisdiction and Admissibility in the Matter of Fidèle MULINDAHABI Versus Republic of Rwanda Delivered on 04 July 2019

African Court on Human and Peoples' Rights

African Court on Human and Peoples' Rights