016/2017
28/03/2019
(000557-000555) ON

000557

African Court on Human and Peoples' Rights

In the Matter of Dexter Johnson

V

The Republic of Ghana

Dissenting Opinion attached to the Judgment of 29 March 2019

I concur with the opinion of the majority of the judges with regard to the admissibility of the Application, the jurisdiction of the Court and the operative part of the judgement.

However, I am of the view that the manner in which the Court considered the admissibility of the Application is inconsistent with:

- the prayers of the Respondent and
- the provisions of Articles 56 of the Charter, 6 (2) of the Protocol and Rules 39 and 40 of the Rules.

- **Inconsistency with the prayers of the Respondent**:

In terms of Rule 39 of the 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 the Rules".

This clearly implies that:

- ✓ **If the parties raised objections relating to jurisdiction and admissibility** the Court shall decide:
  - ➢ If one of the objections is founded the Court will render a judgement....because they are cumulative.
  - ➢ If on the contrary, none of them is founded, the Court **will be obliged to discuss** the other issues on admissibility not in dispute between the parties and make a finding.
- ✓ **If the conditions are not in discussion between the parties, the Court** will be obliged to do so in the manner in which they are presented pursuant to Article 56 of the Charter and Rule 40 of the Rules.

To me, it is illogical for the Court to select one of the conditions, notably, reasonable time for instance, whereas the identity could pose a problem and is therefore not covered, or any other conditions enumerated before.

In the subject matter of this Dissenting Opinion, it is evident that the Respondent "prayed the Court to be guided by Articles 56 (5) of the Charter, 6 (12) of the Protocol and Rule 40 of the Rules"; this prayers simply means that the Court **is required to ensure** that each condition under Rule 40 is covered.

.../...

In determining the prayer of the Respondent as seen in paragraph 43 of the judgement "that the Respondent simply stated that on admissibility the Court should consider Articles 56 (5) of the Charter, 6 (2) the Protocol and Rule 40 of the Rules" she did not raise any particular objection to the admissibility of the Application, the Court misinterpreted the statement of the Respondent.

- **Provisions of Articles 56 of the Charter, 6 (2) of the Protocol and Rules 39 and 40 of the Rules**

It should be noted that in its paragraph 45, in trying to "determine" whether the Application meets the required conditions under paragraph 44 of the judgment, the Court simply stated the conditions of the above-mentioned articles without analysing them (paragraph 45 and 46 of the judgement) .

Regarding the assessment of reasonable time, the Court held that the time of 6 years and 2 months which elapsed since the Supreme Court rendered its judgment in **May 2011** and the date of seizure of the Court through an Application dated 27/05/2017 is reasonable time because after the date of the judgement in 2011 the Applicant wrote twice to the President of the Republic in quest of presidential clemency (December **2011** and April **2012**). He wrote a letter to the HRC on 18/07/2016 which resulted in the findings of 27/03/**2014**.

Even though the Court does not consider that these are remedies which should be exhausted (paragraph 42) in terms of Article 56 (5) and 6 of the Charter, this seizure was considered as "a factor which could be taken into consideration to assess the reasonableness of time....." and in its paragraph 50, the Court finds that "the time of 6 years and 2 months which elapsed between the dismissal of the appeal lodged by the Applicant at the Supreme Court and the filing of the Application before this Court is reasonable time".

In terms of Rule 40 (6) of the Rules, it is clearly stated that applications must 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 which it shall be seized of the matter".

It is evident that the Legislator provided 2 options in terms of determining reasonable time.

- **the date of exhaustion of local remedies,** laid down by the Court from the date the Supreme Court rendered its judgement in March 2011, which is a time lapse of 6 years and 2 months from the date the Application was filed, that is 27/05/2017.

- the **date retained by the Court for reasonable time to start running being the date it is seized of the matter**. Even though the Court has laid down the date to determine reasonable time as being the date the Supreme Court rendered the judgment (March 2011), **it took into consideration facts which took place after that date** (2011, 2012 and 2014) as factors "which could be taken into consideration to determine the reasonableness of time of seizure provided under Article 56 (6). In reference to (Application 003/2015 of the judgement of 28/09/2017 Gombert and others v. Cote d'Ivoire) and the jurisprudence in the matter.

- I am of the view that the interpretation of the above-mentioned article is erroneous and is inconsistent with the spirit of the law because the Articles of the Charter and of the Rules **refer clearly to the date retained by the Court and not the facts retained……**

- In my opinion by retaining the date the judgement was rendered by the Supreme Court and the date the Application was filed (2017), by taking into consideration the facts which took place after the judgement was rendered by the Supreme Court, the Court went beyond the meaning of the article because in doing so it failed to retain any date as the date of reasonable time for it to be seized, On the contrary it mixed up the two choices provided to it by the above-mentioned articles.

- It would have been more logical to consider the date or the opinion of the HRC and therefore the time frame of 3 years would have been more reasonable because the Legislator recognises the fact that the Court has powers to do so.

Thus, if in its jurisprudence the Court interpreted **local remedies** which should be exhausted by the Applicant **as ordinary remedies;** this jurisprudence is not binding in regard to the determination of reasonable time because, in my opinion, the Court could determine reasonable time from the date an Application is filed for an extraordinary remedy or the day a judgement is rendered as an extraordinary remedy. In this manner, the Court would have applied the second rule under **Articles 56 of the Charter 6 (2), the Protocol and Rules 39 and 40 of the Rules**.

Bensaoula Chafika

Judge at the African Court on Human and Peoples' Rights

2019-03-28

Dissenting Opinion of Judge Bensaoula CHAFIKA in the Matter of Dexter Eddie JOHNSON Versus The Republic of Ghana Dated 28 March 2019

African Court on Human and Peoples' Rights

African Court on Human and Peoples' Rights