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AFRICAN UNION

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UNION AFRICAINE

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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. 007/2017

JUDGMENT  
(JURISDICTION AND ADMISSIBILITY)

4 JULY 2019



*Yone*  
*Sukam*  
*A*

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*The ii of Sukam A*



**The Court composed of:** Ben KIOKO - Vice-President; Rafaâ 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

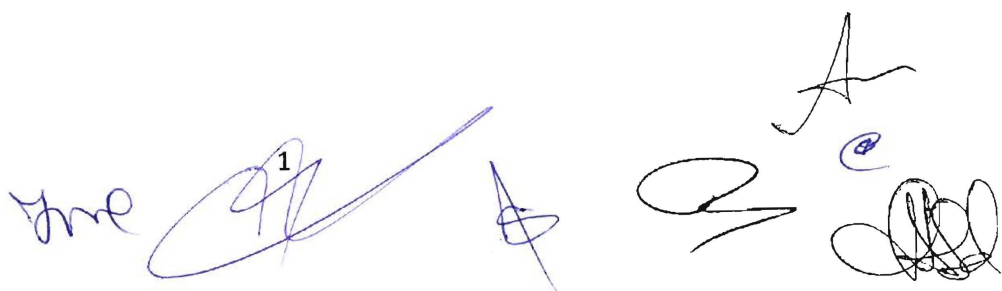
Fidèle MULINDAHABI  
*representing himself*

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. 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.<sup>1</sup>

## II. SUBJECT MATTER OF THE APPLICATION

### A. Facts of the matter

3. The Applicant alleges that his Toyota mini bus vehicle was unjustly impounded by RAWMAGANA police from 28 January 2009 to 7 May 2009. After the end of the period, the police service admitted that the confiscation was illegal and provided him compensation in the amount of 34,200 Rwandan Francs.

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

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4. The Applicant submits that on 7 May 2009, immediately after the hand over of the impounded bus, he drove it directly to the garage to repair it. On 31 May 2009, the vehicle was again confiscated by soldiers of the presidential guard.
5. He also submits that the police first fabricated an offence of driving under influence, and then re-adjusted it to the offence of non-presentation of the driver's license. In the Applicant's view, this contradiction shows that the vehicle was confiscated arbitrarily.
6. He further alleges that even if one of these two offences was committed, the penalty for the offense would not be the confiscation of the vehicle, in accordance with the provisions of articles 24, 25 and 26 of Act No. 34/1987 of the Rwandan Traffic Police Act.
7. The Applicant alleges that on 8 May 2010, he made a complaint to the President of the Republic, who was then visiting Kigali. The President ordered the Police Commissioner to follow up on the case. During the investigation, the police noticed the involvement of the presidential guard and the investigation into matter was stopped.
8. The Applicant asserts that on 6 April 2011, his vehicle was sold by auction, a fact confirmed by the Attorney General's letter No. 1535/D11/A/ONPJ/INSP dated 19 July 2011.
9. The Applicant also stated that by letter No. 0873/SEN/SG/DC/AA/ME/2015 dated 11 June 2015, the Senate wanted to force him to accept the auction value of the vehicle without further compensation. When he expressed dissatisfaction with the contents of the offer in the Senate's letter on 16 June 2015, he was imprisoned for allegedly insulting and defaming the President of the Respondent State.



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**B. Alleged violations**

10. 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**

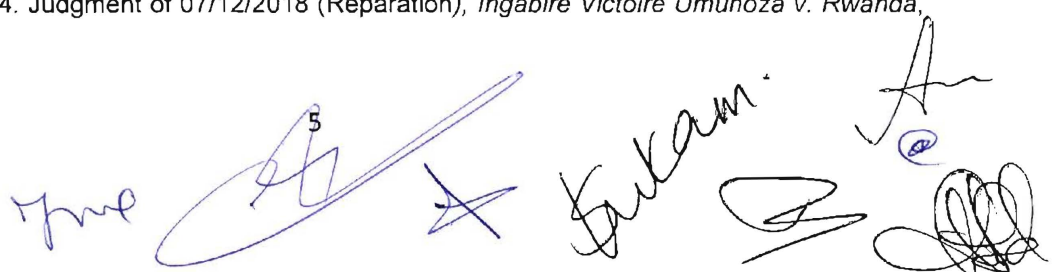
11. The Application was received at the Registry of the Court on 24 February 2017 and served on the Respondent State on 31 March 2017 with a request to the latter to file within (30) days a list of its representatives, and its response to the Application within sixty (60) days from the date of receipt of the notification pursuant to Rules 35(2)(a) and (4)(a) of the Rules.
12. 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. The Respondent State accordingly requested the Court to desist from transmitting to it any information on the cases concerning it.
13. On 22 June 2017, the Court sent a reply to the Respondent State indicating 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".

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14. 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.
15. 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.
16. 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.
17. 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 the interest of justice in accordance with Rule 55 of its Rules. The notification was sent by courier to the Respondent State, which received the same on 16 October 2018.
18. Although the Respondent State received all the notifications, it did not respond to any of them.
19. Consequently, the Court will enter a judgment in default in the interest of justice and in conformity with Rule 55 of the Rules<sup>2</sup>.

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



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

#### IV. PRAYERS OF THE PARTIES

21. 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.
22. The Applicant did not make a detailed request for reparation.
23. The Respondent State refused to participate in the proceedings and did not make any prayers.

#### V. JURISDICTION

24. 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 a preliminary examination of its jurisdiction "...
25. 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:

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- 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 (ICCPR), Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 17(2) of the Universal Declaration of Human Rights (UDHR). 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.

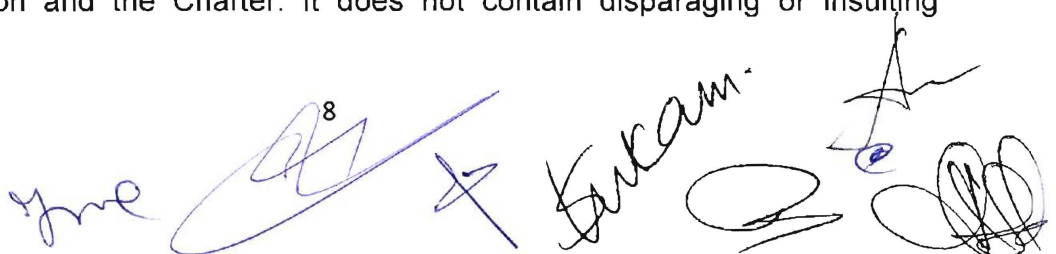
26. Based on the above, the Court concludes that it has jurisdiction to consider this case.

## VI. ADMISSIBILITY

27. 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."

*One*   *Aukam*   

28. 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 the Rules".
29. 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 matter 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".
30. 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.
31. 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



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language, nor is it based exclusively on news disseminated through the mass media.

32. 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.
33. 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."
34. As it previously held, the Court is of the opinion that "... the local remedies to be exhausted by applicants are the ordinary judicial remedies<sup>3</sup>", unless it is obvious that these remedies are unavailable, ineffective, insufficient or that the procedures therein are unduly prolonged<sup>4</sup>. 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.
35. In the instant case, the Applicant clearly stated that he had not exhausted the domestic remedies, claiming that:

<sup>3</sup> 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

<sup>4</sup> 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.

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The bottom of the page features several handwritten signatures and initials in blue ink. On the left, there is a signature that appears to be 'me'. In the center, there is a large, stylized signature with a small '9' above it. To the right, there is a signature that reads 'Burkam'. Further right, there are several other signatures and initials, including one that looks like 'A' and another that is a circular scribble.

- 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 has elapsed upon the completion of the proceedings before the administrative and political authorities.
36. With regard to the first allegation, the Court holds that the Applicant affirms 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 the allegation<sup>5</sup>.
37. 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 the same time, and should therefore have exercised the requisite judicial remedies so as to exhaust the local remedies.
38. 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 exhaust local remedies does not fall within the exceptions set out in Rule 40(5) of the Rules.

## VII. COSTS

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

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<sup>5</sup> *Alex Thomas v. Tanzania*, Ibid, § 140.

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

### VIII. OPERATIVE PART

41. For these reasons,

The Court:

*unanimously*

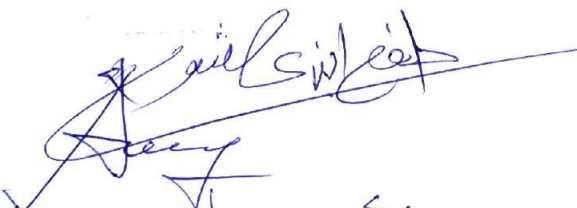
- i. *Declares that it has jurisdiction;*
- ii. *Holds that local remedies have not been exhausted;*
- iii. *Declares that the Application is inadmissible;*
- iv. *Rules that each party shall bear its own costs.*

**Signed:**

Ben KIOKO, Vice-President;



Rafaâ BEN ACHOUR, Judge;



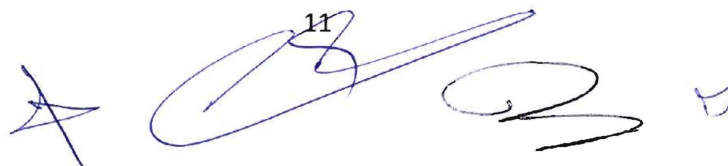
Ângelo V. MATUSSE, Judge;



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 in the Year Two Thousand and Nineteen, in Arabic, English and French, the French text being authoritative.



