


AFRICAN UNION		AFRICAN UNION
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF
HOUNGUE ÉRIC NOUDEHOUEYOU

V.

REPUBLIC OF BENIN

APPLICATION NO. 032/2020

RULING

22 SEPTEMBER 2022



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The Court composed of: Imani D. ABOUD, President, Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI - Judges; and Robert ENO, Registrar.

In the Matter of:

Houngue Éric NOUDEHOUEYOU

Represented by Advocate Nadine Dossou SAKPONOU, Advocate at the Benin Bar

Versus

REPUBLIC OF BENIN

Represented by Mr Iréné ACOMBLESSI, Judicial Agent of the Treasury

after deliberation,

renders this Ruling:

I. THE PARTIES

1. Mr. Houngue Éric Noudehouenou, (hereinafter, "the Applicant") is a national of Benin. He alleges, in particular, the violation of his right to property in connection with a civil judgment rendered against him by the Cotonou Court of First Instance (hereinafter, " the Cotonou CFI judgment").

2. The Application is filed against the Republic of Benin (hereinafter, "the Respondent State"), which on 21 October 1986 became a party to the African Charter on Human and Peoples' Rights (hereinafter, "the Charter") on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter, "the Protocol") on 22 August 2014. The Respondent State further deposited, on 8 February 2016, the Declaration provided for in Article 34(6) of the said Protocol by virtue of which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter, "the Declaration"). On 25 March 2020, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal has no effect on pending cases and on new cases filed before the entry into force of the withdrawal, that is one year after its deposit, which is on 26 March 2021¹.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that the Applicant alleges that in a civil procedure between Collectivité HOUNGUE Gandji represented by HOUNGUE Clément and HOUNGUE Gabriel Akomagnon, plaintiff, and AKOBANDE Bernard, AMASSE Hilaire, KOUTO Gabriel, Mrs Anne Pogle, née Kouto and HOUENOU Eleuthère, defendants, before the Cotonou Court of First Instance, he had filed a voluntary intervention. Collectivité HOUNGUE Gandji sought confirmation of their ownership of Sixteen Hectares Forty-One Ares and

¹ *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 003/2020, Order, (5 May 2020), (Provisional measures), § 4-5 and Corrigendum of 29 July 2020.

Eighty-Four Centiares (16ha 41 84ca) situated in the Agla district of Cotonou, while the Applicant intervened in the relation to the confirmation of ownership of a two-and-a-half-hectare (2.5 ha) parcel of that land.

4. He maintains that, in the said case, the Cotonou CFI on 5 June 2018, rendered a judgment “without his knowledge”, the operative part of which reads:

The Court,
For these reasons

Ruling publicly, in adversarial proceedings, in civil, land and property law matters and at first instance;

(...)

Finds that Mrs Anne Pogle née Kouto and Gabriel Kouto are the presumed owners of plot "S" of lot number 3037 of Agla subdivision plotted under number 1392 and "R" of Lot No. 3037 of Agla estate, plotted under number 1462 F;

Finds that DJA-VAC association represented by Koty Bienvenue has acquired an estate of 4ha 62a 58ca from collectivité Houngue Gandji;

- *Confirms Pedro Julie's ownership of the parcels identified in the survey as 403h and EL 404h in the Agla subdivision;*
- *Confirms Mrs Anne Pogle née Kouto's ownership of Plot "S" of lot 3037 of Agla subdivision plotted under 1392 F;*
- *Confirms Kouto Gabriel's ownership of plot "R" of Lot 3037 of Agla subdivision plotted as 1462 F;*
- *Confirms DJA-VAC ownership of an area of 4ha 62a 58ca;*
- *Dismisses the claims of Trinnou D. Valentin, Houenou Eleuthère, Alphonse Adigoun and Houngue Éric and orders them to pay the costs;*
- *Notifies the parties that they have one (1) month to file an appeal.*

5. The Applicant contends that by the said decision, he was "arbitrarily" deprived of his property rights over his two-and-a-half-hectare (2.5 ha) estate located in Cotonou.

B. Alleged violations

6. The Applicant alleges violation of the following rights:
 - i. The right to property, protected by Article 14 of the Charter;
 - ii. The rights to equality before the law and equal protection of the law, protected by Article 3(1) and (2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights (hereinafter "the ICCPR");
 - iii. The right to have one's cause heard, protected by Articles 7 of the Charter, 14(1) of the PDCIP and 8 of the Universal Declaration of Human Rights (hereinafter "the UDHR").

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 15 October 2020 together with a request for provisional measures. It was served on the Respondent State on 20 October 2020, for its responses within, ninety (90) days and fifteen (15) days, respectively, from receipt.
8. On 16 November 2020, the Respondent State filed its response to the request for provisional measures. Although the response was filed out of time, the Court decided in the interest of justice, to deem it as properly filed. On 27 November 2020, the Court issued a Ruling dismissing the request for provisional measures. It was served on the Parties on 8 December 2020.
9. On 16 December 2020, the Applicant filed a second request for provisional measures, which was served on the Respondent State on 17 December 2020

for its response within fifteen (15) days. The Respondent State did not file its response. By a Ruling of 29 March 2021, the Court dismissed the request for provisional measures. The said Ruling was served on the Parties the same day.

10. On 8 June 2021, the Applicant filed a third request for provisional measures which was served on the Respondent State for its response within fifteen (15) days. The Respondent State did not file its response. On 22 November 2021, the Court issued a ruling by which it ordered stay of execution of the judgment of the Cotonou CFI. This Ruling was served on the Parties on 30 November 2021.
11. Pleadings were filed within the time limits set by the Court.
12. Pleadings were closed on 22 August 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicant prays the Court to:
 - i. Declare that it has jurisdiction;
 - ii. Find and draw all the consequences of the fact that the Applicant is unable to produce the certificate of non-appeal in the docket before the Appeal Court insofar as, in violation of Article 30 of the Protocol and Article 2(3)(c) of the International Covenant on Civil and Political Rights, the Respondent prevented him from doing so by not executing the decisions of 6 May 2020 - Application No. 004/2020, 25 September 2020, and 4 December 2020, Application No. 003/2020 - *Houngue Eric Noudehouenou v. Republic of Benin*;

- iii. Exempt the Applicant from the exhaustion of local remedies on the grounds that the exercise of all local remedies was impeded by a violation of the decisions of this Court, on the grounds of lack of reasonable prospect of success due to the existence of impediments to the rights of defence and the right to be present at the trial, on the grounds that the procedures were unduly prolonged, and on the grounds of the unsatisfactory and ineffective nature of the local remedies, in the instant case;
- iv. Declare the Application admissible;
- v. Find that Article 14 of the Charter applies to the instant case and that his property rights in respect of his 2.5-ha-estate situated at Agla in the Commune of Cotonou are protected by the Article 14 of the Charter;
- vi. Find that the Respondent State has effectively violated his human rights protected by Articles 3, 7(1) and 14 of the Charter; 2(3), 14(1) and 26 of the ICCPR; 8 of the UDHR;
- vii. Find that the Respondent State has violated Article 7(1)(a) of the Charter in that fourteen (14) years without a final verdict is already a violation of the right to be tried within a reasonable time, within the meaning of Rule 50(2)(e) of the Rules of Court, Articles 7(1)(d) and 56(5) of the Charter;
- viii. Declare and rule that by preventing the Applicant from producing the certificate of no-appeal to this Court, the Respondent violated his right to an effective remedy and the right to obtain provisional measures, in view of the Ruling of 19 March 2021, which dismissed the measure requested by the Applicant for lack of said certificate.

- ix. Note and draw the legal consequences of the fact that the Respondent State has not provided, before this Court, any evidence that he was informed of the date of closure of pleadings, the date of delivery of Judgment No. 006/2DPF/-18 of 5 June 2018 of the Court of Cotonou, or any evidence that this contentious judgment was notified to him, or any proof that he is not thus arbitrarily deprived from the right of appeal, the time limit for which has expired since 5 July 2018, or any proof that the Respondent State annulled this contentious judgment as required by Article 547 of the Code of Procedure, or proof that this judgment against him is not final, or any proof of execution of the previous decisions of this Court rendered in his favour ;
- x. Order all reparation measures it deems appropriate, in particular to order the Respondent State to:
- Cease without delay, any disruption of the peaceful enjoyment of his property right;
 - Annul Decision No. 006/2DPF/-18 of 5 June 2018 of the Cotonou Court of First Instance as soon as this Court renders its judgment
 - Pay him the financial damages for loss of income on his property right of which he was arbitrarily deprived by the decision of the Cotonou Court of First Instance, to the tune of 1,250 CFA francs per m² and per year, multiplied by the area of 2.5h over the period from 5 June 2018, until the date of effective enforcement of the decision of this Court;
 - Pay him the following amounts: Seven Million (7,000,000) CFA francs as cost of legal representation before the Cotonou Court of First Instance, Fourteen Million (14,000,000) CFA francs as cost of legal representation before this Court and One Million Five Hundred (1,500,000) CFA francs for postage and travel expenses before this Court, payable on presentation of an invoice;
 - Pay him an amount of money as the Court shall determine, as reparation for moral damage;

- Pay him compound interest at the legal rate per year on the financial compensation awarded, until it is paid in full;
- Pay him an amount of Three Hundred Million (300,000,000) CFA francs for each month of non-execution of the non-financial measures;
- Pay the costs of the proceedings.

14. In response, the Respondent State prays the Court:

Primarily, to

- i. Note that the Applicant did not appeal the contested Judgment No. 006/2DPF/-18 of 5 June 2018;
- ii. Find that the Applicant did not pursue the legal remedies in respect of the civil procedure;
- iii. Hold that the Applicant did not exhaust local remedies;
- iv. Consequently, declare the Application inadmissible;
- v. Hold that the courts are not required to give notice of an adversarial judgment;
- vi. Hold that the submission alleging failure to notify the judgment is irrelevant;
- vii. Note that the Applicant was represented by Mr. Laurent BOGNON during the proceedings;
- viii. Find that the proceedings were thus adversarial in relation to the Applicant;

Accordingly,

- ix. Find that the submission of unavailability of remedies is specious
- x. Rule out the possibility of a cassation appeal;
- xi. Note that the Constitutional Court of Benin has the power to recognize the right to compensation for damage resulting from human rights violations;
- xii. Find that based on such a decision, a person may be awarded damages before a court of ordinary law;
- xiii. Accordingly, find that the Applicant's interpretation of the provisions of Article 410 of the Penal Code is erroneous and subjective;
- xiv. Declare that this article in no way prohibits the exercise of remedies;
- xv. Accordingly, reject the plea alleging the threat of deprivation of liberty;
- xvi. Find that all the grounds for exemption from exhaustion of remedies are specious;

- xvii. Hold that the Applicant is subject to compliance with the requirement of exhaustion of local remedies;
- xviii. Finally, declare the Application inadmissible for failure to exhaust local remedies;
- xix. Find that the case was brought before the Court more than two (2) years after the judgment in question was handed down;
- xx. Hold that procedure in respect of the matter before the Court has been unduly prolonged;
- xxi. Consequently, declare the Application inadmissible;

In the alternative,

- xxii. Note that the Applicant was represented in the proceedings by Laurent BOGNON, Esquire.;
- xxiii. Find that all acts done in the course of the impugned proceedings are enforceable against the Applicant;
- xxiv. Find that the contested judgment is indeed adversarial;
- xxv. Hold that the Court of First Instance of Cotonou is under no obligation to notify the parties of such a judgment;
- xxvi. Find and rule that the alleged human rights violations are ill-founded;
- xxvii. Accordingly, dismiss all his requests and submissions;
- xxviii. Dismiss the request for damages;

V. JURISDICTION

15. The Court notes that Article 3 of the Protocol provides:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

16. Under Rule 49 (1) of the Rules of Court² , "The Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules".
17. Based on the above provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.
18. The Court notes that the Respondent State does not raise any objection to its jurisdiction. Having established that nothing on record indicates that it lacks jurisdiction, the Court finds that it has:
 - i. Material jurisdiction, insofar as the Applicant alleges a violation of the right to equality before the law, the right to equal protection of the law, the right to have one's cause heard and the right to property, protected by Articles 3(1) and (2), 7 and 14 of the Charter, corresponding to Articles 2(3), 14(1) and 26 of the ICCPR, respectively³, instruments ratified by the Respondent State.
 - ii. Personal jurisdiction, in so far as the Respondent State is a Party to the Charter, the Protocol and has deposited the Declaration. The Court recalls, as indicated in paragraph 2 of this Ruling, that on 25 March 2020 the Respondent State deposited the instrument of withdrawal of the Declaration. In this regard, the Court reiterates its position that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases pending at the time the instrument of withdrawal was deposited or on new cases brought before the Court before the withdrawal took effect. Since the withdrawal of the Declaration took effect on 26 March 2021, one (1) year after the deposit of the instrument

² Rule 39(1) of the Rules of Procedure of 2 June 2010.

³ The Respondent State became a Party to the ICCPR on 12 March 1992.

of withdrawal, it therefore has no effect on the instant Application which was filed on 15 October 2020.

iii. Temporal jurisdiction, insofar as the alleged violations occurred after the entry into force of the above-mentioned instruments, in relation to the Respondent State.

iv. Territorial jurisdiction, insofar as the facts of the case and the alleged violations took place in the territory of the Respondent State.

19. Consequently, the Court finds that it has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

20. Article 6(2) of the Protocol provides that “[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.

21. Rule 50(1) of the Rules ⁴ provides that “The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules”.

22. Rule 50(2) of the Rules, which essentially restates the provisions of Article 56 of the Charter, reads as follows

Applications to the Court shall comply with all of the following conditions:

a. Indicate their authors even if the latter request anonymity;

⁴ Rule 39 of the Rules of Procedure of 2 June 2010.

- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted 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 seised with the matter; and
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

23. The Court notes that the Respondent State raises two objections to admissibility based on (a) non-exhaustion of local remedies and secondly (b) the fact that the Application was not filed within a reasonable time.

A. Objection based on non-exhaustion of local remedies

24. The Respondent State contends, firstly, that the Applicant did not appeal the judgment of the Cotonou Court of First Instance. In this regard, it points out that Article 412 of its Land and Property Code (LPC) provides that "*the decision rendered shall be subject, in accordance with ordinary law, to opposition, appeal, third-party opposition, appeal or review, as the case may be*".

25. The Respondent State submits that under Article 621, (2) (1), of the Code of Civil, Commercial, Social, Administrative and Auditing Procedure (hereinafter "the CPC") in the Republic of Benin, an appeal must be lodged within one (1)

month, except in commercial matters, where the time limit for lodging an appeal is fifteen (15) days. The Respondent State argues that this remedy of civil appeal was available to the Applicant.

26. The Respondent State further argues that, there was a criminal remedy available to the Applicant to hold the representatives of the Houngue Gandji community liable by using three (3) options.
27. The Respondent State asserts that firstly, the Applicant could have filed a complaint with the public prosecutor, pursuant to Article 38 of the Code of Criminal Procedure (hereinafter "the CCP"), under which "*the public prosecutor shall receive complaints and denunciations and shall determine the action to be taken thereon*". Secondly, he could have initiated civil proceedings, on the basis of Article 90 of the same code, which provides: "*any person claiming to have been injured by a crime or offence may file a complaint with civil party status with the president of the court, who shall refer the matter without delay to an investigating judge*". Thirdly he could have filed referral at the criminal court, as provided for in Article 443 of the CCP, which provides "*the civil party who initiates the public prosecution must, if he or she has not obtained legal aid and on penalty of inadmissibility of the summons, deposit with the Clerk of the court the sum presumed necessary for the costs of the proceedings. The court shall determine the amount and the time limit for payment of the deposit the first the case is called*".
28. The Respondent State further explains that these judicial remedies are available, effective and satisfactory, in accordance with this Court's judgment in *Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher Mtikila v. United Republic of Tanzania*.
29. The Respondent State further asserts, that the Applicant's submission is contradictory, as he was represented by Mr. Laurent BOGNON, who filed a

voluntary intervention and thus, received a mandate *ad litem* to represent him before the domestic courts for the purpose of carrying out the procedural acts on his behalf.

30. The Respondent State further submits that its constitution provides for a remedy before the Constitutional Court in case of human rights violations, which was also available to the Applicant. The Respondent State notes that this remedy is available, effective and satisfactory, especially since the Constitutional Court sanctions human rights violations and recognises the right to reparation.

*

31. In reply, the Applicant submits that the objection raised should be rejected and that the Court should exempt him from the requirement of exhaustion of local remedies. He contends, to that effect, that these remedies are unavailable insofar as he was arbitrarily deprived of them, that there is an absence of effective remedies and that he faces an impediment in exercising them.
32. As regards the unavailability of local remedies, the Applicant underlines that although domestic law provides for the remedy of appeal, he was arbitrarily deprived of it. This was "since he was not invited to the deliberations" and owing to the failure to notify the Cotonou Court of First Instance's decision to him. According to Article 81(1), of the CCP, "judgments shall be notified to the parties themselves" and that, according to Article 83 of the CCP, "*the act of notifying or serving a judgment on a party must, under penalty of nullity, clearly state the time limit for opposition, appeal or cassation in the event that one of these remedies is available, as well as the methods by which the appeal may be exercised*".
33. He further submits that regarding the appeal, until the proceedings were instituted before this Court, he had no reason to exercise any local remedy as

long as the judgment of the Cotonou Court of First Instance had not been executed. He states that, by law, specifically Article 547 of the Code of Criminal Procedure read together with Articles 56, 101, 122, 123(1), and 540 of the CCP, and in the light of the bailiff's summons produced in the pleadings, the judgment had lapsed.

34. He explained that the words "subject to the special provisions" of Article 621 (1) of the CPC indicate that the appeal is not automatically obligatory and that there are exceptions thereto. The said exceptions apply notably when the decision was rendered without his knowledge, without any prior summons to appear and without any notification of the judgment.
35. With regard to the cassation appeal, the Applicant underlines that this remedy is ineffective insofar as it is a matter of assessing the merits of the case and examining the evidence relating to his property rights. He states that, whereas in these two matters the Supreme Court has already ruled that it has no jurisdiction, this remedy is therefore not effective even if it is available.
36. Regarding the remedy before the Constitutional Court, the Applicant submits that in its Decision DCC 04-051 of 18 May 2004, the said court found a violation of the right to a fair trial and the right to appeal insofar as the Cotonou Court of First Instance (CFI) disposed of a case without his knowledge and without notifying its decision to him. Despite these findings, the Constitutional Court did not award any reparations, therefore this remedy is unsatisfactory.
37. With regard to the automatic deprivation of liberty, the Applicant argues that, if he challenged the decision of the CFI before the domestic courts, as he is doing before this Court, he would have exposed himself to an illegal and arbitrary deprivation of his liberty. The Applicant refers in this regard, to Article

410⁵ of the CCP which prohibits, under penalty of deprivation of liberty, criticising judicial decisions in the exercise of remedies even in matters of human rights violations, except in the case of review. The Applicant recalls that the review remedy, is an extraordinary remedy, whereas "*before the Court, the remedies to be exhausted are ordinary remedies*".

38. The Court notes that, in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court, applications must be filed after the exhaustion of local remedies, if any, unless the proceedings in respect of such remedies are being unduly prolonged.
39. The Court underlines that the local remedies to be exhausted are those of a judicial nature, which must be available, that is, they must be available to the applicant without impediment, effective and satisfactory in the sense that they are " found satisfactory by the complainant or are capable of redressing the complaint ".⁶
40. The Court also underlines, regarding the effectiveness of local remedies, that it is for the Applicant to take all necessary steps to exhaust, or at least to attempt to exhaust, local remedies. It will not suffice for an applicant to simply question the effectiveness of those remedies.⁷

⁵ Article 410 (1), provides: "Anyone who publicly, by acts, speech or writings, seeks to discredit a judicial act or decision, under conditions likely to undermine the authority of justice or its independence, shall be liable to one (1) month to six (6) months' imprisonment and a fine of One Hundred Thousand (100,000) to One Million (1,000,000) CFA francs, or one of these two penalties only"; article 410, paragraph 2 "The foregoing provisions may not, under any circumstances, be applied to purely technical comments in specialized journals, or to acts, speech or writings calling for the review of a conviction."

⁶ *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema dit Ablassé, Ernest Zongo, Blaise Iboulo and Mouvement burkinabè des droits de l'homme et des peuples v. Burkina Faso*, Judgment, (5 December 2014), (Merits), 1 AfCLR 219, § 68; *Ibid. Konaté v. Burkina Faso* (Merits), § 108; *Sébastien Germain Marie Ajavon v. § Republic of Benin*, ACtHPR, Application No. 027/2020, § 73.

⁷ *Komi Koutché v. Republic of Benin*, ACtHPR; Application No. 020/2019, Judgment of 25 June 2021, § 92;

41. The Court notes that to determine whether the requirement of exhaustion of local remedies has been met, it is necessary that the domestic proceedings to which the Applicant was a party should have been completed at the time of filing the Application before it⁸, which presupposes that all possible proceedings in respect of the said procedure have been completed.
42. The Court notes, in this regard, that the Applicant was a party to the domestic civil proceedings that gave rise to the judgment of the Cotonou Court of First Instance. On this issue, the Court notes that in the Respondent State's judicial system, civil proceedings end, in principle, taking into account existing remedies, with the judgment of the Judicial Chamber⁹ of the Supreme Court¹⁰.
43. In the circumstances, the Court observes that in the present case, although the Respondent State submits that several remedies are available and effective, the Court must first determine if the appeal was exhausted, since it is the most immediate remedy available within the framework of the civil proceedings which gave rise to the judgment of the Cotonou CFI. The Court notes that the examination of the other remedies is subject to whether or not there is need to exhaust the appeal remedy.

i. Civil Appeal

44. The Court notes that in the judicial system of the Respondent State, the appeal in civil matters is governed by the provisions of the CPC and the CFD.

⁸ *Idem*, § 61; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, ACtHPR, Application No. 027/2020, Judgment of 2 December 2021 § 74; *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 010/2018, Judgment of 25 September 2020, § 41.

⁹ Article 40 of Law 2004-07 of 23 October 2007 states: "the Judicial Chamber shall rule on cassation appeals (...) against rulings and judgments handed down at last instance by all the courts of the judicial order (...).

¹⁰ Article 1 of Law 2004-07 of 23 October 2007 states: "In accordance with Article 131 of the Constitution (...) the Supreme Court is the highest court of the State in judicial matters (...)

45. The Court further notes that, it emerges from Articles 397¹¹ 412¹² of the CFD, 608¹³ and 621¹⁴ and 623¹⁵ of the CPC, that in contentious matters, the appeal against any civil judgement rendered in first instance in matters of land and property, is filed by any interested party. For contested judgments, the time limit for appeal is one month, from the date of pronouncement. It follows that the appeal is an available remedy. Furthermore, within the meaning of Article 621¹⁶ of the CPC, the appeal seeks to have the Court of Appeal amend or annul a judgment handed down by a lower court. It follows that the appeal is an effective and satisfactory remedy.
46. The Court takes note that, the judgment of the CFI, referred to in paragraph 3 of this Ruling is a civil judgment in matters of land and property ownership, rendered in adversarial proceedings and at first instance.
47. The Court finds on the basis of the said judgment, that the Applicant was represented by an Advocate of the Benin Bar. The Court considers, in this respect, that the mandate of legal representation carries with it the power and duty "*to undertake on behalf of the principal, the acts of the proceedings*"¹⁷ , "*to advise the party and to represent its defence (...)*"¹⁸ and "*to assist, unless otherwise provided for or agreed*".¹⁹

¹¹ Article 397 of the CFD provides: "The provisions of the Code of Civil, Commercial, Social, Administrative and Accounts Procedure, insofar as they are not contrary to the provisions of the articles below, are applicable to litigation relating to the protection of rights *in rem* relating to immovable property."

¹² Article 412 of the CFD provides: "The decision rendered (in real estate matters) is subject, in accordance with the common law, to opposition, appeal, third party opposition, appeal or review, as the case may be."

¹³ Article 608 of the CPC provides: "The time limit at the expiry of which an appeal may no longer be lodged runs from the date of delivery, in the case of contested decisions; from the date of notification or service in the case of decisions by default and decisions deemed to be adversarial".

¹⁴ The appeal is aimed at having the Appeal Court reform or amend a judgment rendered by a lower court. Subject to specific provisions, in contentious matters, the time limit for filing an appeal is one (1) month.

¹⁵ Article 623 of the CPC states: "The right of appeal is available in all matters, even those of a minor nature, against judgments of the first instance, unless otherwise provided for."

¹⁶ Article 621 of the CPC states: "The appeal is aimed at having the Court of Appeal amend or annul a judgment rendered by a lower court".

¹⁷ Article 20 of the CPC.

¹⁸ Article 21 of the CPC.

¹⁹ Article 22 of the CPC.

48. The Court notes that in the instant case, the Applicant acknowledges that he did not appeal the judgment of the CFI. Even more importantly, he states that he could not exercise this remedy, because firstly, he was not served with the said judgment and secondly, he could have been deprived of his liberty based on Article 410 of the Penal Code.
49. As regards the Applicant's first argument that he was not served with the said judgment, the Court notes that the Applicant was represented by a lawyer during the civil proceedings that resulted in the judgment of the CFI. It follows that the lawyer had an obligation, within the meaning of Articles 20 to 22 of the CPC, to perform all the necessary procedural acts and to keep his client abreast with the progress of the proceedings, including the date of the delivery of the judgment.²⁰
50. The Court considers that, in any event, the judgment of the CFI was adversarial²¹, so that the time limit for appeal ran from the date of its delivery, that is, from 5 June 2018.
51. Regarding the second argument that the Applicant would be deprived of his liberty under Article 410²² of the Criminal Code if he lodged an appeal, the Court underlines that this provision penalises the discrediting of a judicial decision, by acts, speech or writing. It cannot be applied to the exercise of the remedies provided by law. The Court therefore considers that this argument is inapplicable.

²⁰ "When the judgment cannot be delivered immediately, the delivery shall be postponed, for purposes of further deliberation, to a reasonable date not exceeding two (2) months and which the president shall indicate to the parties.

²¹ Article 536 of the CPC provides: "The judgment is adversarial, when the parties appear, in person or by proxy, according to the procedures specific to the court before which the case is brought.

²² Article 410, paragraph 1, provides: "Anyone who publicly, by acts, speech or writings, seeks to discredit a judicial act or decision, under conditions likely to undermine the authority of justice or its independence, shall be liable to one (1) month to six (6) months' imprisonment and a fine of One Hundred Thousand (100,000) to One Million (1,000,000) CFA francs, or one of these two penalties only"; article 410, paragraph 2 "The foregoing provisions may not, under any circumstances, be applied to purely technical comments in specialized journals, nor to acts, words or writings calling for to the review of a conviction."

52. In view of the foregoing, the Court considers that the remedy of a civil appeal is an available, effective and satisfactory one which the Applicant should have exhausted, but he did not.

ii. Other remedies

53. Having noted that the Applicant did not file an appeal, in the civil courts, the Court finds that the he did not exhaust local remedies. Consequently, the Court considers it superfluous to rule on the other aspects of the objection to admissibility raised by the Respondent State as the remedies in the constitutional and criminal courts do not arise.

54. In view of the foregoing, the Court holds that the Applicant did not exhaust local remedies.

B. Other admissibility requirements

55. Having found that the present Application does not meet the requirement of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, and in view of the cumulative nature of the admissibility requirements²³ , the Court considers it superfluous to rule on the compliance with the other admissibility conditions.

56. Accordingly, the Court declares the Application inadmissible and dismisses it.

VII. COSTS

57. Each Party prays that the other be ordered to bear the costs.

²³ *Mariam Kouma and Ousmane Diabaté v. Republic of Mali*, (21 March 2018), (jurisdiction and admissibility), 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda*, (11 May 2018), (Jurisdiction and Admissibility), 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS v. Republic of Mali*, (28 March 2019), (Jurisdiction and Admissibility), 3 AfCLR 73, § 39.

58. Rule 32(2) of the Rules provides that "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any ".

59. The Court decides that, in line with this provision, it orders that each Party shall bear its own costs.

VIII. OPERATIVE PART

60. For these reasons,

THE COURT

Unanimously

On Jurisdiction

i. *Declares* that it has jurisdiction.

On Admissibility

ii. *Upholds* the objection based on non-exhaustion of local remedies;

iii. *Declares* the Application inadmissible.

On Costs

iv. *Orders* that each Party shall bear its own costs.

Signed:


Imani D. ABOUD, President;





Blaise TCHIKAYA, Vice-President;





Ben KIOKO, Judge; 


Rafaâ BEN ACHOUR, Judge; 

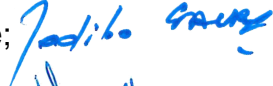
Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 


Chafika BENSAOULA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

Dennis D. ADJEI, Judge; 

And Robert ENO, Registrar. 

Done at Arusha, this Twenty-Second Day of September in the year Two Thousand and Twenty-Two, in the English and French languages, the French text being authoritative.

