


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

THE MATTER OF

ISSIAKA KEÏTA AND OTHERS

v.

REPUBLIC OF MALI

APPLICATION NO. 005/2019

JUDGMENT

5 SEPTEMBER 2023



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The Court composed of: Imani D. ABOUD, President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Denis D. ADJEI - 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 9(2) of the Rules of Court¹ (hereinafter referred to as "the Rules"), Judge Modibo SACKO, Vice President of the Court and a national of Mali did not hear the Application.

In the Matter of:

Issiaka KEÏTA and Others

Represented by Yacouba TRAORE, Secretary General of the National Federation of Mines and Energy

Versus

REPUBLIC OF MALI

Represented by Issaka KEÏTA, Advocate at the Bar of Mali;

after deliberation,

renders this Judgment:

¹ Rule 8(2) of the Rules of the Court dated 2 June 2010.

I. THE PARTIES

1. Mr. Issiaka KEÏTA and one hundred and twenty-four (124) others (hereinafter referred to as “the Applicants”) are former workers of the Bays Water Constructing and Mining company (hereinafter referred to as “BCM”). They allege a violation of their rights as a consequence of their dismissal.
2. The Application is filed against the Republic of Mali (hereinafter referred to as “the Respondent State”), which became a 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 20 June 2000. The Respondent State also deposited, on 19 February 2010, the Declaration provided for under Article 34(6) of the Protocol, by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations with Observer Status before the African Commission on Human and Peoples’ Rights.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicants aver that on 4 July 2012, they signed an agreement with BCM in the presence of the Regional Director of Labour of Kayes. There are minutes on nine (9) items discussed.² They further aver that owing to the refusal of

² The points are as follows: 1. Immediate cessation of the ITS regularized on pay slips from May 2012; 2. Increase in the monthly dirt allowance from one thousand (1,000) to ten thousand (10,000) CFA francs; 3. Allocation to each worker of a monthly production or output bonus equal to 40% of each worker’s basic salary; 4. Allocation to each worker of a monthly inconvenience allowance equal to 25% of their basic salary; 5. Increase in monthly housing allowance from thirty-five thousand (35,000) to seventy thousand (70,000) CFA francs for married workers each month, and from twenty thousand (20,000) to forty thousand (40,000) CFA francs for single workers; 6. Payment of overtime allowance as soon as work resumes after leave; 7. Milk allowance increased from ten thousand (10,000) to twenty thousand (20,000) CFA francs; 8. Unblocking of step advancement; 9. Application of a table relating to hazard allowance.

BCM to implement the content of this agreement, they went on strike and were dismissed by BCM on 15 August 2012.

4. They further aver that they challenged their dismissal both before the Regional Directorate of Labour of Kayes administrative and the judicial authorities, including the Supreme Court of the Respondent State but to no avail.

B. Alleged violations

5. The Applicants allege violation of the following rights:
 - i. The right to non-discrimination, protected by Article 2 of the Charter;
 - ii. The right to full equality before the law and equal protection of the law, protected by Article 3 of the Charter;
 - iii. The right to have one's cause heard, in particular,
 - The right to bring a case before competent domestic courts against acts violating basic rights as recognised and guaranteed by conventions, laws, regulations and customs in force, protected by Article 7(1)(a) of the Charter;
 - The right to be tried within a reasonable time by an impartial court, protected by Article 7(1)(d) of the Charter.
6. The Applicants also allege violation of the duty to guarantee the independence of the courts under Article 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was received at the Registry on 21 February 2019.

8. It was served on the Respondent State on 13 August 2019 for its Response within sixty (60) days from the date of receipt.
9. On 23 August 2023, the Court issued a Ruling to amend the title of the application as follows: *Issiaka KEITA and others versus the Republic of Mali*. The said Ruling was served on the parties on 28 August 2023.
10. The Parties filed all their pleadings within the time permitted by the Court. On 29 August 2023, the Registry informed the Parties of the closure of pleadings

IV. PRAYERS OF THE PARTIES

11. In their Application, the Applicants pray the Court to:
 - i. Declare that it has jurisdiction;
 - ii. Declare the Application admissible;
 - iii. Order the State of Mali to restore their rights, which have been blithely violated.
12. In their Reply, they pray the Court to:
 - i. Rule on the admissibility of the Application;
 - ii. Find that their complaints are justified and well-founded;
Accordingly,
 - iii. Find alleged human rights violations and abuses against the Respondent State;
13. As for the Respondent State, it prayed the Court to:
 - i. Consider the admissibility of the application;

- ii. Find that the prayers of the Applicants lack merit.

14. On reparations, the Applicants pray the Court to:

- i. Order the Respondent State to pay the sum of Twenty Million (20,000,000) CFA francs to each employee, for damages, and the sum of Five Billion (5,000,000,000) CFA francs as salary arrears in respect of July 2012 to December 2018;
- ii. Order the issuance of work certificates for each Applicant, under penalty of Two Million (2,000,000) CFA francs for each day of delay;
- iii. Order provisional implementation of the decision;

15. The Respondent State prays the Court to dismiss the Applicants' prayers for reparations.

V. JURISDICTION

16. The Court notes that Article 3 of the Protocol provides as follows:

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 instruments ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

17. Pursuant to Rule 49(1) of the Rules,³ “the Court shall conduct a preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and the Rules”.
18. Based on the above-mentioned provisions, the Court must, in each Application, conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.
19. The Respondent State does not raise any objections to its jurisdiction.
20. Having found that nothing on the record shows that it lacks jurisdiction, the Court finds that it has:
 - i) Material jurisdiction insofar as the Applicants alleges violation of human rights protected by the Charter, to which the Respondent State is a party.
 - ii) Personal jurisdiction, insofar as the Respondent State has deposited the Declaration which entitles individuals and non-governmental organisations with Observer Status before the Commission to initiate cases directly with the Court.
 - iii) Temporal jurisdiction, insofar as the alleged violations were committed after the entry into force of the Protocol 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.

³ Rule 39(1) of the Rules of the Court of 2 June 2010.

21. Accordingly, the Court holds that it has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

22. Article 6(2) of the Protocol provides that:

The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

23. Rule 50(1) of the Rules⁴ 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.

24. Rule 50(2), which essentially restates Article 56 of the Charter, provides as follows:

Applications filed before the Court shall comply with all of the following conditions:

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

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

- 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 African Union or the provisions of the Charter.
25. The Court observes that the Respondent State does not raise any objection to the admissibility of the Application. Nevertheless, it must examine whether the requirements of the above-mentioned provision are met.
26. In this regard, in line with Rule 50(2)(a), the Applicants have clearly stated their identities.
27. Furthermore, the Application is not in any way inconsistent with the Constitutive Act of the African Union and the Charter and as required under Rule 50(2)(b), given that one of the objectives of the Constitutive Act of the African Union, as stated in its Article 3(h), is the promotion and protection of human and peoples' rights.
28. Furthermore, the Application does not contain any language that is disparaging or insulting to the Respondent State, its institutions or the African Union, as required under Rule 50(2)(c).
29. The Application is also not based exclusively on news disseminated through the mass media, and thus, complies with the requirement under Rule 50(2) (d).

30. Regarding exhaustion of local remedies, the Applicants aver that they complied with this requirement by bringing a case before the Respondent State's Constitutional Court which is the highest court of the country.
31. The Court observes, from the record, that the same facts and grievances were brought by the Applicants before the Kita Court of First Instance which rendered its judgment on 5 June 2013 (hereinafter referred to as the judgment of the Court of Kita.) The judgment was overturned by the Kayes Court of Appeal on 12 December 2013 (hereinafter referred to as the "judgment of the Court of Appeal of Kayes") and the Applicants then appealed to the Supreme Court. On 10 December 2014, the Supreme Court quashed this judgment, and then referred the case and the parties before the Bamako Court of Appeal.
32. The Court further notes that on 31 August 2017, the Court of Appeal of Bamako rendered a judgment in favour of the Applicants. Following a case at the Cassation court brought by BCM, the Supreme Court sat in a joint chamber and annulled the said judgment on 17 April 2018 without referring it to another court.
33. The Court observes that the Applicants' case has been litigated all the way to the Supreme Court, which is the highest Court in the Respondent State's judicial system. The Applicants, therefore, exhausted local remedies, thereby meeting the requirement under Rule 50(2)(e).
34. With regard to the requirement of filing an application within a reasonable time, as required under Rule 50(2)(f), the Court starts reckoning the time for referral from 17 August 2018, which is the date when the joint chambers of the Supreme Court rendered its decision. Between this date and the date this Application was filed with the Court, that is, 21 February 2019, ten (10) months and four (4) days elapsed. The Court considers this period to be reasonable. Consequently, the Court finds that this requirement has been met.

35. Finally, the Court notes that in accordance with Rule 50(2)(g), there is no indication that the instant Application concerns a matter already settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the Charter.
36. In view of the foregoing, the Court finds the Application admissible.

VII. MERITS

37. The Applicants allege violation of the right to have one's cause heard in several respects (A); as well as the violation of the obligation to guarantee the independence of the courts. They also allege the violation of the rights to equality before the law and equal protection of the law (B) as well as violation of the right to non-discrimination.

A. Alleged violation of the right to have their cause heard

38. The Applicants allege the violation of their right to have their cause heard, in particular, the right to bring cases before domestic courts for any act violating their fundamental rights (i), the right to be tried within a reasonable time (ii) by an impartial tribunal. They also allege (iii) violation of the obligation to guarantee the independence of the courts. In light of the connection between the independence and impartiality of courts, the Court considers that it is more appropriate to deal with the last two alleged violations in the same part⁵ (iii).

⁵ *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*, Judgment (merits and reparations) (2020) 4 AfCLR 133 § 176

i. Violation of the right to seize domestic courts

39. The Applicants submit that following a strike staged after BCM's refusal to implement the terms agreed on 4 July 2012, they were dismissed on 15 August 2012 upon authorisation by the Kayes Regional Director of Labour. They further submit that this authorisation was revoked by the National Labour Directorate, which should have led to their reinstatement.
40. They underscore that as they were not reinstated, they filed a case before the Kita Court of First Instance for wrongful dismissal and requested the payment of various sums as damages and interest. By judgment No. 04 of 5 June 2013 (hereinafter "the judgment of the Kita Court"), the Kita Court of First Instance ruled the dismissal unlawful and ordered BCM to pay the total sum of Eight Billion (8,000,000,000) CFA Francs.
41. The Applicants further state that this ruling was overturned by Judgment No. 23 of 12 December 2013 of the Kayes Court of Appeal. Following a cassation appeal against the said judgment, the Supreme Court, by Judgment No. 32 of 10 December 2014 (hereinafter referred to as the "first judgment of the Supreme Court" or the "Cassation judgment with referral"), set aside the judgment and referred the case and the parties to the Bamako Court of Appeal.
42. They aver that while the case was pending before the said court, BCM filed a motion seeking to revoke the first judgment of the Supreme Court. This appeal was dismissed on 27 June 2016, thereby allowing the Bamako Court of Appeal to continue hearing the case.
43. The Applicants further note that pursuant to judgment No. 100 of 31 August 2017 (hereinafter referred to as "judgment of the Bamako Court of Appeal"), the said Court awarded each of the workers the sum of Twenty Million (20,000,000) CFA francs as damages.

44. They note that in compliance with the Bamako Court of Appeal of judgment of 31 August 2017, they initiated enforcement proceedings before Ivorian courts since their former employer was domiciled in Cote d'Ivoire.
45. They further aver that against all expectations, the judgment of 31 August 2017 was quashed by the joint chambers of the Supreme Court on 17 April 2018 (hereinafter referred to as the "second judgment of the Supreme Court" or the "judgment delivered by the joint chambers the Supreme Court"), and that they initiated proceedings to have the judgment set aside.
46. The Respondent State submits that the case should be dismissed since, in its view, the Applicants do not prove their allegations. It argues that its judicial system enables the Applicants to bring their case before the competent national courts to have their rights upheld and recognized. It further maintains that Malian laws, which are compatible with the Charter and the ICCPR, enable the Applicants to choose their defence counsel and to exercise all possible remedies.
47. To this end, Respondent State underscores that it adopted and promulgated Law No. 92-020 of 23 September 1992 on the Labor Code, amended by Law No. 2017-021 of 12 June 2017, governing relations between workers and employers, establishes courts to adjudicate disputes relating to employment contracts. According to the Respondent State, this law offers, among other guarantees, proper administration of justice

48. The Court notes that Article 7(1)(a) of the Charter provides that:

Every individual shall have the right to have his cause heard.

This comprises (a) the right to an appeal to competent national organs against any act violating his fundamental rights recognized and guaranteed to him by conventions, laws, regulations and customs in force

49. The Court observes that this clause enshrines the right to an effective remedy, which guarantees everyone the right to bring, before the national courts, an arguable grievance, that is, any alleged violation of a substantive or procedural right⁶ that is internationally protected.⁷
50. The Court recalls that in order to establish the violation of their right to an effective remedy, the Applicants rely on the various domestic procedures without specifying the precise nature of the violations. In effect, their claims are vague and general. At most, they described the various proceedings they initiated before the domestic courts.
51. In the circumstances, the Court finds that the Applicants fail to establish the existence of any impediment, either factual or legal, which prevented them from bringing the complaints they raise before domestic courts. The Court emphasises that nothing in the record reveals the existence of such an impediment, which, moreover, is corroborated by the fact that the Applicants did indeed bring their case before competent domestic courts.
52. In any case, the mere fact that they did not win their case does not suffice to establish the alleged violation.
53. In light of the foregoing, the Court holds that the Respondent State did not violate the Applicants' right to an effective remedy, protected by Article 7(1)(a) of the Charter.

⁶ See, ECHR, *Kudla v. Poland*, Judgment of 26 October 2000, §§ 151-156.

⁷ See, ECHR, *Powell and Rayner c. United Kingdom*, Judgment of 21 February 1990, §§ 31-33; ECHR, *Kazantzis v. Cyprus*, inadmissibility decision of 7 August 2003, Communication No.972/2001, §6.6 ECHR, *Faure v. Australia*, findings of 31 October 2005, Communication No.1036/2001.

ii. Alleged violation of the right to be tried within a reasonable time

54. The Applicants submit that their right to be tried within a reasonable time was violated insofar as the procedure for claiming damages against their former employer was unduly prolonged. They aver that seven (7) years elapsed between the summons of 6 November 2011 before the Court of First Instance of Kita and the second judgment of the Supreme Court.
55. They further point out that more than two (2) years elapsed between the date of the first Supreme Court judgment, on 10 December 2014, and the date of the Bamako Court of Appeal ruling, on 31 August 2017. They emphasise that before the Bamako Court of Appeal, the hearing was adjourned for their former employer to produce the trial judgment and for the two parties to file their pleadings at trial and at appeal. The Applicants further submit that despite the fact that the parties produced these various items, the hearing was adjourned several times, such that the case was not disposed of until six (6) months later.
56. Finally, the Applicants aver that at the time of filing the present Application, the proceedings for a stay of execution against the second judgment of the Supreme Court of Mali were still pending.
57. For its part, the Respondent State submits that the Applicants do not prove that domestic courts unduly prolonged the proceedings.
58. It further submits that termination proceedings before its Supreme Court are complex owing to the large number of Applicants and the complex nature of the legal issues in question.

59. Article 7(1)(d) of the Charter provides: “Every individual shall have the right to have his cause heard. This right comprises the right to be tried within a reasonable time”
60. The Court emphasises that the reasonableness of time is, in principle, assessed taking into account the complexity of the case, the conduct of the Applicant and that of the domestic judicial authorities.⁸
61. The Court recalls that for the Applicants, the alleged violation is based on three facts: first, the duration of seven (7) years for the proceedings from first instance to the judgment of the joint chambers of the Supreme Court; secondly, the duration of two (2) years between the first judgment of the Supreme Court and the judgment of the Bamako Court of Appeal⁹; and thirdly, the fact that the stay of proceedings before the Supreme Court was in force at the time of filing the instant Application before this Court.
62. On the first issue, the Court notes that during the period of seven (7) years, which the Applicants describe as unduly long, six (6) decisions were handed down: the judgment of the Court of First Instance of Kita delivered on 5 June 2013, the judgment of the Court of Appeal of Kaye delivered on 12 December 2013, the judgment of cassation and referral of the Supreme Court of Mali delivered on 10 December 2014, the judgment of the Supreme Court of Mali delivered on 27 June 2016 on BCM Loulo’s Application for a revocation, the judgment of the Court of Appeal of Bamako following the referral of the of 31 August 2017, the judgment of the Supreme Court delivered in joint chambers on 17 April 2018.

⁸ *Wilfried Onyango Nganyi and others v. United Republic of Tanzania*, Judgment (merits) (2016), 1 AfCLR 507, § 136. *Alex Thomas v. United Republic of Tanzania*, Judgment (merits) (2015) 1 AfCLR 465, § 104. *Norbert Zongo v. Burkina Faso*, Judgment (merits) (2014), 1 RJCA 219, §§ 92 à 97.

⁹ Under Article 173 (c) of Organic Law 2016 - 046 of 23 September 2016 establishing the organization, rules and functioning of the Supreme Court and the procedure followed before it, “a petition to set aside a judgment may be lodged when the challenged judgment is vitiated by an error not attributable to the interested party and which has affected the Court’s decision in the case”.

63. The Court emphasises that these proceedings, which began with a referral to the Kita Court of First Instance, relate to two hundred and seventy-nine (279) Claimants, sought to determine whether their dismissal following a strike was lawful and to examine subsequent claims. In addition, a number of incidental claims, including procedural objections, were raised at first instance. These two factors illustrate the complexity of the procedure before the domestic courts.
64. Furthermore, the Applicants do not show that there was any delay attributable to their former employer or to the judicial authorities during the various domestic proceedings.
65. With regard to the second issue, which is the period of two (2) years that elapsed between the referral judgment of the High Court and the judgment of the Bamako Court of Appeal, the Court notes that the opposing party, namely the former employer, had filed an application seeking to quash the judgment of the Supreme Court. It was on these grounds that the Court of Appeal ordered a stay of proceedings, at the request of BCM- The Supreme Court handed down its decision on the stay of proceedings on 27 June 2016. The Court considers that the existence of this procedure, which justified the stay of proceedings, had an impact on the duration of the proceedings before the Bamako Court of Appeal.
66. Thirdly, with regard to the proceedings staying execution which were pending at the time of filing the present Application, the Court notes that the judgment against which it was brought, namely the second judgment of the Supreme Court, was delivered on 17 April 2018.
67. The Court also notes that the motion for stay of proceedings was filed on 11 May 2018, that is, 24 days after the judgment to which it related. In addition, the Applicants paid the required fee and filed their pleadings on 6 August 2018,

that is, two (2) months and twenty-six (26) days after lodging their appeal. The Court emphasises that the fact that the Applicants did not complete these formalities until two (2) months after filing their motion for a stay of execution may have had an impact on the duration of the proceedings.

68. The Court finds that in such circumstances, the Applicants' case was heard within a reasonable time.

69. Consequently, the Court finds that the Respondent State did not violate the Applicant's right to be tried within a reasonable time guaranteed under Article 7(1)(d) of the Charter.

iii. Right to be tried by an independent and impartial tribunal.

70. The Applicants contend that considering the unfolding of the proceedings before the domestic courts, the Respondent State failed in its duty to guarantee the independence of the courts and that their right to be tried by an impartial tribunal was violated.

71. The Applicants further submit that the Supreme Court, without referral, quashed the Kayes Court of Appeal's judgment without their knowledge, pursuant to Judgment No. 17 of 17 August 2018, and this, without any legal basis or reasoning.

72. For its part, the Respondent State submits that the Application be dismissed. It raises the same arguments as those raised in respect of the alleged violation of the Applicants' right to seize domestic courts.

73. The Court notes that Article 26 of the Charter provides that:

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter

74. Article 7(1)(d) of the Protocol provides:

Every individual shall have the right to have his cause heard. This comprises [...] the right to be tried within a reasonable time by an impartial court or tribunal.

75. The Court emphasises that the above two provisions enshrine the obligation to guarantee the independence of the Courts and the right to be tried by an impartial Court. The Court will examine these two aspects in turn, noting that in the instant Application the Applicants' allegations concern all the courts that heard their case, namely the Kita Court, the Kayes Court of Appeal, the Bamako Court of Appeal and the Supreme Court.

a. Independence of the Courts that heard the Applicants' case

76. The Court notes, in line with its jurisprudence, that:

The notion of judicial independence essentially implies the ability of courts to discharge their functions free from external interference and without depending on any other authority.¹⁰

...

¹⁰ *Ajavon v. Benin*, § 277.

It has two main aspects: the institutional and the individual. Whereas institutional independence pertains to the status and relationship of the judiciary with the executive and legislative branches of Government, individual independence pertains to the personal independence of judges and their ability to perform their functions without fear of reprisal.¹¹

77. The Court notes that the Applicants base their allegation on two grounds: first, on the proceedings before domestic courts and the fact that the Supreme Court, without their knowledge, and without any legal basis or stating its reasoning, quashed the judgment of the Bamako Court of Appeal.
78. As regards the first plea, the Court emphasises that it is vague and unclear. In effect, the Applicants do not put forward any specific arguments that would warrant an examination of the alleged violation.
79. On the second plea, the Court notes that nothing in the second judgment of the Supreme Court indicates that it was delivered without their knowledge, as the Applicants assert. More decisively, it emerges from the said judgment that the judges of the Supreme Court examined the two arguments put forward by the appellants as well as the response brief submitted by the Applicants. On each ground, the Supreme Court proffered reasons for its ruling before quashing the judgment of the Court of Appeal of Bamako.
80. On the whole, the Court considers that the nothing in the record supports the Applicants' arguments. The Applicants do not question the institutional independence of the Respondent State's Supreme Court or the individual independence of its judges.

¹¹ *Ibid. Ajavon v. Benin*, § 278

81. Consequently, the Court dismisses the Applicants' claims and holds that the Respondent State did not violate its obligation to guarantee the independence of the Supreme Court.

b. On the impartiality of the Courts that heard the Applicants' case

82. The Court notes that according to the dictionary of international public law, impartiality is the "absence of bias, prejudice and conflict of interest in a judge [...] in relation to the parties appearing before him".¹²

83. The Court states that in line with its jurisprudence, the impartiality of a judge is presumed and that incontrovertible evidence is required to rebut this presumption.¹³

84. The Court notes that the Applicants advance the same arguments for both the alleged violation of the guarantee of the independence of the Courts and the alleged violation of the right to be tried by an impartial tribunal.

85. The Court emphasises that since the impartiality of the judges is presumed, the Applicant does not produce any irrefutable evidence of such a nature as to call it into question. In fact, their first allegation was not backed with any evidence on record, while the second was vague. Accordingly, the Court holds that the Applicants' allegation is unfounded.

86. Accordingly, the Court finds that the Respondent State did not violate the Applicants' right to be tried by an impartial court.

¹² Dictionary of international public Law, under the supervision of Jean Salmon, Bruylant, Bruxelles, 2001, p. 562.

¹³ *Alfred Agbesi Woyome v. Republic of Ghana*, Judgment (merits and reparations) (2019) 3 AfCLR 235, § 128; ; *Ibid. Ajavon v. Benin*, § 293.

B. Alleged violation of the right to equality before the law and to equal protection of the law

87. The Applicants allege violation of the right to equality before the law and to equal protection of the law. In support of this allegation, they argue that in its second ruling, the Supreme Court erred by relying exclusively on the opinion of the labour inspector.

88. In response, the Respondent State points out that the Applicants do not provide evidence in support of their allegations. It stresses that their case was examined by the competent courts. To this end, it emphasises that its Labour Code guarantees the proper administration of justice.

89. The Court notes that Article 3 (1) of the Charter provides as follows:

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

90. This provision enshrines the rights to equality before the law and to equal protection of the law, which are inseparable from the right to non-discrimination.

91. The Court emphasises that the right to equality before the law means that “all persons shall be equal before the courts and tribunals”,¹⁴ that is, the authorities responsible for enforcing or applying the law must do so without discrimination in the situations in question.

¹⁴ *Kijiji Isiaga v. United Republic of Tanzania*, (merits) (2018) 2 AfCLR 218, § 85; *Oumar Mariko v. Republic of Mali* (merits) (Judgment of 24 March 2022) §101.

92. As for the right to equal protection of the law, it means that:

The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁵

93. The Court also recalls that, in accordance with its jurisprudence, the right to equality before the law and equal protection of the law does not mean that all cases must necessarily be dealt with by the courts in the same manner, since the manner of dealing with each case may depend on its peculiar circumstances.¹⁶

94. The Court recalls that the Applicants base their allegation on the misapplication of the law by the Supreme Court.

95. The Court emphasises that the Applicants have failed to show that they were victims of unequal treatment before the law or unequal protection by the law when compared to other persons.

96. In view of the foregoing, the Court dismisses the Applicants' allegations as unfounded. Consequently, the Court finds that the Respondent State did not violate the Applicants' rights to total equality before the law and to equal protection of the law, protected under Article 3 of the Charter.

¹⁵ *Ibid. Mariko v. Mali*, § 101.

¹⁶ *Beneficiaries of the late Norbert Zongo et Others v. Burkina Faso* (merits) (2014) 1 AfCLR 219, § 167.

C. Alleged violation of the right to non-discrimination

97. The Court notes that on these issues the parties advance the same arguments as those for the alleged violation of the rights to full equality before the law and to full protection of the law.

98. The Court notes that Article 2 of the Charter provides that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

99. The Court recalls its jurisprudence that:

There is an interconnection between the rights to equality before the law and equal protection of the law, on the one hand, and the right to non-discrimination, on the other, insofar as the entire legal structure of both national and international public policy is based on this principle, which transcends any standard.¹⁷

100. The Court emphasises that it is for the Applicant claiming to have been the victim of discriminatory treatment to prove it and that general assertions that a right has been violated do not hold.¹⁸

¹⁷ *Tiekoro Sangaré et Others v. Republic of Mali*, AfCHPR, Judgment (merits) (23 June 2022) § 55.

¹⁸ *Ibid. Sangaré v. Mali* § 56.

101. The Court notes that, in the present case, the Applicants base their argument on the fact that the law was misapplied by the Supreme Court. Such a statement cannot constitute proof of discriminatory treatment.

102. The Court thus considers that the Applicants have not proved a violation of the right to non-discrimination.

103. Accordingly, the Court finds that the allegation is not established and that the Respondent State did not violate the Applicants' right to non-discrimination.

VIII. REPARATIONS

104. The Applicants seek the payment of the sum of Twenty Million (20,000,000) CFA francs to each of them, for damages, and Five Billion (5,000,000,000) CFA francs as salary arrears in respect of July 2012 to December 2018. They also request to be issued work certificates, under penalty of Two Million (2,000,000) CFA francs for each day of delay, all to be provisionally enforced.

105. In response, the Respondent State submits that the claim be dismissed, contending that it cannot be held liable for the violation of any of the Applicants' rights.

106. The Court notes that Article 27(1) of the Protocol provides that:

If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

107. The Court has consistently held that reparations are only awarded when the responsibility of the Respondent State for an internationally wrongful act is determined and a causal link is established between the wrongful act and the alleged harm.¹⁹

108. The Court emphasises that the burden of proof of the causal link lies, in principle, with the Applicant, who must provide the particulars on which the claim is based.²⁰

109. The Court further emphasises that it cannot order reparation measures based on allegations for which no human rights violation has been found.

110. In the circumstances, the Applicants' claim for reparation is ill-founded. Consequently, the Court dismisses the Applicants' request for reparations.

IX. COSTS

111. The Applicants request that the Respondent State be ordered to pay costs.

112. On its part, the Respondent State submits that the request be dismissed.

113. The Court notes that under Rule 32(2) "Unless otherwise decided by the Court, each party shall bear its own costs, if any".

¹⁹ Ibid. *Ajavon v. Benin* § 139; *Houngue Éric Noudehouenou v. Republic of Benin*, (2020), 4 AfCLR 749 § 117.

²⁰ Ibid. *Mariko c. Mali* § 174 ;

114. The Court considers that, in the instant case, there is no reason to depart from the principle laid down in the aforementioned provision. Consequently, it orders that each party shall bear its own costs.

X. OPERATIVE PART

115. For these reasons,

THE COURT

Unanimously,

On jurisdiction

- i. *Declares* that it has jurisdiction;

On admissibility

- ii. *Declares* the Application admissible;

On merits

- iii. *Finds* that the Respondent State did not violate the Applicants' right to be to non-discrimination under Article 2 of the Charter;
- iv. *Finds* that the Respondent State did not violate the Applicants to equality before the law and equal protection of the law, protected under Article 3 of the Charter;
- v. *Finds* that the Respondent State did not violate the Applicants' right to seize domestic courts in respect of any violation of their fundamental rights, protected under Article 7(1)(d) of the Charter;
- vi. *Finds* that the Respondent State did not violate the right of the Applicants to be tried within a reasonable time, protected under Article 7(1)(d) of the Charter;

- vii. *Finds* that the Respondent State did not violate the Applicants' right to be tried by an impartial tribunal, protected under Article 7(1)(d) of the Charter;
- viii. *Finds* that the Respondent State did not violate its obligation to guarantee the independence of the courts and, under Article 26 of the Charter;

Reparations:


Pecuniary reparations

- ix. Dismisses the Applicants' request for reparation as ill-founded;


Costs


- x. *Orders* each party to bear its own costs.


Signed:


Imani D. ABOUD, President; 


Ben KIOKO, Judge; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 


Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. Ntsebeza, Judge; 

Denis D. ADJEI, Judge 

and Robert ENO, Registrar. 

Done at Arusha, this Fifth Day of September 2023, in English and French, the French text being authoritative.

