


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

THE MATTER OF

MAULIDI SWEDI alias MSWEZI KALIJO

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 026/2017

RULING

7 NOVEMBER 2023



TABLE OF CONTENTS

TABLE OF CONTENTS	i
I. THE PARTIES.....	2
II. SUBJECT OF THE APPLICATION.....	3
A. Facts of the matter.....	3
B. Alleged violations.....	4
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT	4
IV. PRAYERS OF THE PARTIES.....	4
V. JURISDICTION.....	5
A. Objection to material jurisdiction.....	6
B. Other aspects of jurisdiction	8
VI. ADMISSIBILITY	9
A. Objections to the admissibility of the Application	11
i. Objection based on non-exhaustion of local remedies.....	11
ii. Objection based on failure to file the Application within a reasonable time	13
B. Other conditions of admissibility	16
VII. COSTS.....	16
VIII. OPERATIVE PART	17

The Court composed of: Modibo SACKO, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, and Dennis 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 Court (hereinafter referred to as "the Rules"),¹ Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Maulidi SWEDI alias Mswezi KALIJO

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Dr. Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
- ii. Ms. Pauline Fridoline MDENDEMI, State Attorney, Office of the Solicitor General;
- iii. Ms. Sarah MWAIPOPO, Acting Deputy Attorney General and Director of the Constitutional Affairs and Human Rights Division, Office of the Attorney General;
- iv. Mr. Zachariah ELISARIA, Senior State Attorney, Office of the Attorney General.
- v. Ms. Nkasori SARAKEYA, Principal State Attorney, Office of the Attorney General;

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

- vi. Mr. Benedict T. MSUYA, Second Secretary, Legal Officer, Ministry of Foreign Affairs, East African Community, and Regional and International Cooperation;
- vii. Mr. Michael LUENA, Principal State Attorney, Office of the Attorney General;
and
- viii. Mr. Veritas MLAY, State Attorney, Office of the Attorney General.

After deliberation,

renders this Ruling:

I. THE PARTIES

1. Maulidi Swedi alias Mswezi Kalijo (hereinafter referred to as “the Applicant”) is a national of Tanzania who, at the time of filing the Application, was serving a thirty- (30) year prison sentence at Uyui Central Prison, Tabora, having been convicted and sentenced for the offence of armed robbery. He alleges violation of his rights during the proceedings before national courts.
2. The Application is filed against the United Republic of Tanzania (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 10 February 2006. Furthermore, on 29 March 2010, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive applications from Individuals and Non-Governmental Organisations (hereinafter referred to as “NGOs”). On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 22

November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.²

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that, on the night of 10 April 2004, the Applicant and two others, who are not parties before this Court, broke into a shop in the village of Nkuge, which is situated in the Nzega District in the Tabora Region. They allegedly stole cash and an assortment of goods from the shop at gun point and shot the owner during the robbery, injuring him slightly.
4. The three robbers were arrested and convicted for the crime of armed robbery and sentenced to thirty (30) years imprisonment by the District Court of Nzega on 21 September 2005 (Criminal Case No. 62/2004).
5. They then filed an appeal before the High Court in Tabora (Criminal Appeal Case No. 35, 36 and 37 of 2006), which ordered the transfer of the case to the Tabora Resident Magistrate's Court for an appeal hearing by a Resident Magistrate with Extended Jurisdiction. On 11 June 2008, the Resident Magistrate's Court with Extended Jurisdiction of Tabora (Criminal Appeal No. 42, 43 and 44 of 2006) dismissed their appeal.
6. They filed a further appeal to the Court of Appeal sitting at Tabora (Criminal Appeal No. 185, 186 and 187 of 2008), which dismissed their appeal in its judgment of 29 June 2011.

² *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

B. Alleged violations

7. The Applicant alleges the violation of the following rights:
 - i. The right to non-discrimination, guaranteed under Article 2 of the Charter;
 - ii. The right to equality before the law and to equal protection of the law, guaranteed under Article 3(1) and (2) of the Charter; and
 - iii. The right to a fair trial, guaranteed under Article 7 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 31 August 2017, after which the Registry requested the Applicant to specify the violations he alleges as well as the claim for reparations with supporting evidence. On 6 June 2018, the Applicant filed an amended Application with the supplementary information.
9. On 29 August 2018, the Registry served the amended Application on the Respondent State.
10. The Parties filed their pleadings on merits and reparations within the time stipulated by the Court.
11. Pleadings were closed on 30 September 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. In the Application, the Applicant prays the Court to:
 - i. Restore justice where it was overlooked and quash both the conviction and sentence imposed upon him and set him at liberty;

- ii. Grant reparations pursuant to Article 27(1) of the Protocol; and
- iii. Grant any other order legal remedy it may deem fit and just to grant in the circumstances of his application.

13. In its Response, with regard to jurisdiction and admissibility of the Application, the Respondent State prays the Court to:

- i. Find that the Court is not vested with jurisdiction to adjudicate this Application as a criminal appellate court;
- ii. Find that the Application had not met the admissibility requirements that are prescribed in Article 56(5) and (6) of the Charter, Article 6(2) of the Protocol and Rule 40(5)³ and (6)⁴ of the Rules of Court;
- iii. Declare the Application inadmissible; and
- iv. Dismiss the Application.

14. With regard to the merits of the Application, the Respondent State prays the Court to:

- i. Find that the Respondent State did not violate the Applicant's rights as guaranteed under Articles 2, 3 and 7 of the Charter; and
- ii. Find that the Respondent State did not violate any of the Applicant's rights provided for under the Charter.

V. JURISDICTION

15. The Court observes 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, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

³ Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.

⁴ Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
16. The Court further observes that pursuant to Rule 49(1) of the Rules, it “shall conduct a preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules.”⁵
17. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.
18. In the present Application, the Court notes that the Respondent State raises an objection to its material jurisdiction. The Court will first examine this objection before considering other aspects of jurisdiction, if necessary.

A. Objection to material jurisdiction

19. There are two aspects to the objection of the Respondent State to the material jurisdiction of the Court. Firstly, the Respondent State argues that, under Article 3(1) of the Protocol and Rule 26(1)⁶ of the Rules of Court, this Court is not vested with jurisdiction to quash both conviction and sentence passed by a State Party’s domestic courts. The Respondent State claims that the present Application is calling upon this Court to sit as a domestic supreme appellate court which is contrary to the jurisdiction of this Court.
20. Secondly, the Respondent State asserts that the Court does not have jurisdiction to grant the relief of setting the Applicant at liberty.
21. For these reasons, the Respondent State prays that the Application be dismissed.

*

⁵ Rule 39(1), Rules of Court, 2 June 2010.

⁶ Corresponding to Rule 29(1) of the Rules of 25 September 2020.

22. In his Reply, the Applicant submits that the Court has material jurisdiction to adjudicate this matter because the violations levelled against the Respondent State concerns rights protected in Articles 2, 3 and 7 of the Charter.

23. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged, are protected by the Charter or any other human rights instrument ratified by the Respondent State.⁷

24. The Court emphasises that its material jurisdiction is thus predicated on the Applicant's allegation of violations of human rights protected by the Charter or any other human rights instrument ratified by the Respondent State.⁸ In the instant matter, the Applicant alleges violation of Articles 2, 3 and 7 of the Charter.

25. With regard to the first aspect of the objection, the Court recalls its established jurisprudence that it is not an appellate body with respect to decisions of national courts.⁹ However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned".¹⁰ Accordingly, the Court would not be sitting as an appellate court if it were to consider the Applicant's allegations. The Court, therefore, dismisses objection on this aspect.

⁷ *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.

⁸ *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Kalebi Elisamehe v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 265, § 18.

⁹ *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

¹⁰ *Kennedy Ivan v. United Republic of Tanzania*, (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania, supra*, § 33.

26. With regard to the second aspect of the Respondent State's objection, the Court notes that it concerns the claim that it does not have jurisdiction to grant an order for release. The Court recalls Article 27(1) of the Protocol which provides that "[i]f 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." Therefore, the Court has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation has been established.¹¹ The Court, therefore, dismisses the objection on this aspect.
27. For these reasons, the Court dismisses the objection raised by the Respondent State on both aspects and holds that it has material jurisdiction to hear this Application.

B. Other aspects of jurisdiction

28. The Court observes that no objection has been raised with respect to its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.
29. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.¹² Since any such withdrawal of the Declaration takes effect twelve (12) months after the notice of withdrawal is deposited, the effective date for the Respondent

¹¹ *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017, Ruling of 24 March 2022 (admissibility), § 27.

¹² *Cheusi v. Tanzania* (judgment), *supra*, §§ 35-39.

State's withdrawal was 22 November 2020.¹³ This Application having been filed before the Respondent State deposited its notice of withdrawal is thus not affected by it. The Court, therefore, finds that it has personal jurisdiction to examine the present Application.

30. In respect of its temporal jurisdiction, the Court notes that the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the Court observes that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.¹⁴ For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.
31. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In these circumstances, the Court holds that it has territorial jurisdiction.
32. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

33. Pursuant to Article 6(2) of the Protocol, “[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.

¹³ *Ingabire Victoire Umuhoza v. United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

¹⁴ *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

34. In line with Rule 50(1) of the Rules,¹⁵ “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.”
35. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of 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;
 - 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 seized 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.
36. In the present Application, the Court notes that the Respondent State raises two objections to the admissibility of the Application. The Court will now consider these objections before examining other conditions of admissibility, if necessary.

¹⁵ Rule 40 of the Rules of Court, 2 June 2010.

A. Objections to the admissibility of the Application

37. The first objection of the Respondent State relates to the requirement of exhaustion of local remedies and the second relates to whether the Application was filed within a reasonable time.

i. Objection based on non-exhaustion of local remedies

38. The Respondent State argues that the Applicant is raising before this Court an allegation which he never raised before the domestic courts. The Respondent State submits that the Applicant is raising the grievance that he was denied legal aid for the first time in his Application before this Court.

39. The Respondent State contends that the Applicant could have raised this issue before the Respondent State's domestic courts, these courts could then have appropriately addressed it in accordance with the Respondent State's Constitution and criminal procedural law. The Respondent State, therefore, considers that since the Applicant did not pursue this avenue, he is now estopped from raising the same in this Court.

*

40. In his Reply, the Applicant objects to the submissions by the Respondent State. He asserts that he has gone through all remedies available in the Respondent State's judicial system. He submits that the Respondent State's Court of Appeal, being the highest court of the land, dismissed his appeal in its entirety on 29 June 2011, thereby bringing to finality the local judicial remedies available to the Applicant.

41. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies. The rule

of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.¹⁶

42. The Court recalls its position where it held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.¹⁷
43. In the instant case, the Court notes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 29 June 2011. Therefore, the Respondent State had the opportunity to address the violations alleged by the Applicant arising from the Applicant's trial and appeals.¹⁸
44. With regard to the Respondent State's contention that the Applicant did not raise the issue of legal aid during domestic proceedings, the Court is of the view that this alleged violation occurred in the course of the domestic judicial proceedings that led to the Applicants conviction and sentence to thirty (30) years' imprisonment. The allegation forms part of the "bundle of rights and guarantees" relating to the right to a fair trial which was the basis of the Applicant's appeals.¹⁹ The domestic judicial authorities thus had ample opportunity to address the allegation even without the Applicant having raised it explicitly. It would, therefore, be unreasonable to require the Applicant to file a new application regarding his fair trial rights to the High Court, which is a court lower than the Court of Appeal.²⁰

¹⁶ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

¹⁷ *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017 Ruling of 24 March 2022 (admissibility), § 51.

¹⁸ *Ibid*, § 52.

¹⁹ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 62.

²⁰ *Ibid*, §§ 60-65.

45. In light of the foregoing, the Court dismisses the Respondent State's objection based on the non-exhaustion of local remedies.

ii. Objection based on failure to file the Application within a reasonable time

46. The Respondent State claims that the Application was not filed within a reasonable time after the local remedies were exhausted and that the Court should, therefore, find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules.²¹ Accordingly, the Respondent State argues that the Application should be declared inadmissible and be dismissed.

*

47. In his Reply, the Applicant submits that while it is true that this Application was filed in this Court nearly six (6) years after local remedies were exhausted on 29 June 2011, it was still filed within a reasonable time considering his situation and specifically his incarceration.

48. The Applicant further avers that this Court, the Charter, the Protocol thereto, its Rules and Practice Direction were all unknown at Uyui Central Prison, in Tabora, where the Applicant is incarcerated, before May 2017 when the Court and its instruments became known.

49. The Applicant claims that the first application to be lodged at the Registry of this Court, from Uyui Central Prison, was lodged on 13 June 2017, the proof of which can be found at the Registry of this Court.

50. In light of these reasons, the Applicant submits that this Application, determined on a case-by-case basis, is filed within a reasonable time after the revelation of the Court and its instruments at Uyui Prison in Tabora, in May 2017. The Applicant, therefore, contends that the Application meets the admissibility requirements and holds that this application is admissible.

²¹ Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

51. Pursuant to Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, in order for an application to be admissible, it must be “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 seized with the matter”.
52. In the present case, the Court notes that between the date that the Court of Appeal dismissed the Applicant’s appeal on 29 June 2011 and when the Applicant filed the Application on 13 August 2017, a period of six (6) years, two (2) months and two (2) days elapsed.
53. The Court further notes that Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, does not set a fixed time limit within which it must be seized. However, the Court has held that “the reasonableness of the time limit for referral depends on the particular circumstances of each case and must be determined on a case-by-case basis”.²²
54. In this regard, the Court has considered as relevant factors, the fact that an applicant is incarcerated,²³ their indigence, the time taken to utilise the procedures of the application for review at the Court of Appeal, or the time taken to access the documents on file,²⁴ the limited awareness about the existence of the Court, the need for time to reflect on the advisability of seizing the Court and determine the complaints to be submitted.²⁵
55. Importantly, the Court has confirmed that it is not enough for applicants to simply plead that they were incarcerated, are lay or indigent, for example,

²² *Beneficiaries of late Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 56; *Alex Thomas v. Tanzania* (merits), § 73.

²³ *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 52; *Alex Thomas v. Tanzania* (merits), § 74.

²⁴ *Nguza Viking and Johnson Nguza v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 61.

²⁵ *Beneficiaries of late Norbert Zongo and Others v. Burkina Faso* (preliminary objections), § 122.

to justify their failure to file an Application within a reasonable period of time.²⁶ Even for lay, incarcerated or indigent litigants there is a duty to demonstrate how their personal situation prevented them from filing their Applications in a timelier manner.

56. The Court notes the Applicant's claim that until May 2017, this Court, its Protocol, its Rules and its Practice Direction, were all unknown at Uyui Prison, where he was serving his custodial sentence prior to the filing of the Application.
57. The Court also takes note of the Applicant's submission that the first Application originating from Uyui Prison in Tabora was Application No. 017/2017 – *Abdallah Sospeter Mabomba and Others v. United Republic of Tanzania* and that this Application was filed two (2) months and eighteen (18) days after that.
58. The Court finds, however, that this argument is insufficient to persuade it that the Applicant diligently pursued his case and that he was not in a position to know about the Court prior to the filing of Application No. 017/2017 – *Abdallah Sospeter Mabomba and Others v. United Republic of Tanzania*. The Court, therefore, does not consider this element to be a determining factor that would justify such a long time to submit his Application before this Court.
59. In the instant case, and although the Applicant was, at the material time, incarcerated, he hasn't provided the Court with compelling arguments and sufficient evidence to demonstrate that his personal situation prevented him from filing the Application in a more timely manner.
60. In view of the foregoing, the Court finds that the filing of the Application six (6) years, two (2) months and two (2) days after exhaustion of local remedies is not a reasonable time within the meaning of Article 56(6) of the

²⁶ *Layford Makene v. United Republic of Tanzania*, ACtHPR, Application No. 028/2017, Ruling of 2 December 2021 (admissibility), § 48.

Charter and Rule 50(2)(f) of the Rules. The Court, therefore, upholds the Respondent State's objection in this regard.

B. Other conditions of admissibility

61. Having found that the Application has not satisfied the requirement in Rule 50(2)(f) of the Rules, the Court need not rule on the Application's compliance with the admissibility requirements set out in Article 56(1), (2), (3), (4), and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions are cumulative.²⁷

62. In view of the foregoing, the Court declares the Application inadmissible.

VII. COSTS

63. The Applicant and the Respondent State did not make any submissions on costs.

64. The Court notes that Rule 32(2)²⁸ of the Rules of Court provides that: "unless otherwise decided by the Court, each party shall bear its own costs, if any".

65. The Court notes that in the instant case, there is no reason to depart from this principle. Accordingly, the Court decides that each Party shall bear its own costs.

²⁷*Jean Claude Roger Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 61; *Dexter Eddie Johnson v. Republic of Ghana*, ACtHPR, Application No. 016/2017, Ruling of 28 March 2019 (jurisdiction and admissibility), § 57.

²⁸ Rule 30(2) of the Rules of Court, 2 June 2010.

VIII. OPERATIVE PART

66. For these reasons:

THE COURT,

Unanimously,

On jurisdiction

- i. *Dismisses* the objection to its jurisdiction.
- ii. *Declares* that it has jurisdiction.

On admissibility

- iii. *Dismisses* the objection based on non-exhaustion of local remedies;

By a majority of Nine (9) for, and One (1) against (Justice Chafika BENSAOULA)

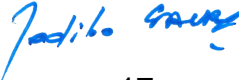
- iv. *Finds* that the Application was not filed within a reasonable time;
- v. *Declares* that the Application is inadmissible.

Unanimously,


On costs


- vi. *Orders* that each Party shall bear its own costs.


Signed:


Modibo SACKO, Vice 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; 

Dennis D. ADJEI, Judge; 

and Robert ENO, Registrar. 

Done at Algiers, this Seventh Day of November in the Year Two Thousand and Twenty-Three in English and French, the English text being authoritative.

