COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Case

TAHIROU DJIBO AND OTHERS

V.

NIGER STATE

Suit No. ECW/CCJ/APP/51/18/REV

Judgment No. ECW/CCJ/JUD/07/22

Judgment

ACCRA

22nd March 2022

SUIT No ECW/CCJ/APP/51/18/REV

JUDGMENT No. ECW/CCJ/JUD/07/2022

Between,

Tahirou Djibo, Amadou Madougou, Abdoulaye Soumaila and Sidikou Abdou .... **APPLICANTS**

AND

The Republic of Niger …………………………………… **RESPONDENT**

COMPOSITION OF THE COURT PANEL

Hon. Justice Gberi-BE OUATTARA - Presiding

Hon. Justice Dupe -ATOKI - Member

Hon. Justice Januária Tavares Silva Moreira COSTA - Member/Rapporteur

Assisted by:

Dr. Athannase ATANNON – Deputy Chief Registrar

I. REPRESENTATION OF PARTIES

Me. Idrissa Tchernaka ………………………… Counsel for the Applicants

L´Agent Judiciaire de L´Etat (AJE)……….. by the Respondent State

II. *COURT'S JUDGMENT*

1. This is the Court's Judgment, read virtually in a public hearing, according to Article 8 (1) of the 2020 Practical Instructions on Electronic Case Management and Virtual Sessions of the Court.

III. *DESCRIPTION OF THE PARTIES*

2. The Applicants are Niger nationals and heads of households in the farming community of the site called Gountou Yena, residing in Niamey.

3. The Respondent is the Republic of Niger, an ECOWAS Member State, and signatory to the African Charter.

IV. INTRODUCTION

4. In this process, after having been rendered, on July 8th, 2020, Judgment No. ECW/CCJ/JUD/13/2020, which judged the merits of the case, the Applicants came, pursuant to article 92 of the Rules of the Court, to request the Revision of the Judgment rendered, alleging that the Court based its decision on the title deed No. 18 which they did not have the opportunity to examine; that the Court did not take into account the destruction of their personal property and the deprivation of their occupation rights which might have been recognized although the Court denies that they own the disputed parcel and, finally, that the Court on the issue of discrimination ignores the

content of the citizen Mainassara's parcel title, which demonstrates unambiguously that his plot is within the limits of the same Title Deed No. 18 as the disputed plot.

IV. PROCEEDINGS BEFORE THE COURT

5. By application registered in the Registry of this Court on October 5th, 2020 (Doc.1), supported by seven annexures, the Applicants came to request the Revision of Judgment No. ECW/CCJ/JUD/1/20, rendered on July 8th, 2020 in the above-referenced case, of which the Respondent was served on October 8th, 2020.

6. The Respondent State lodged its defense (Doc. 2) on November 18th, 2020, and the Applicants were served on November 19th, 2020.

7. In response to the Respondent's defense, the Applicants came to present their Reply (Doc. 3), which was filed on December 30th, 2020, and served on the Respondent on January 20th, 2021.

8. On September 20th, 2021, a virtual hearing was held for the hearing of the parties, in which the parties made their oral submissions.

9. The Judgment of the case was adjourned to March 22nd, 2022.

VI. APPLICANT'S CASE

a. *Summary of Facts:*

10. To substantiate their claim, the Applicants alleged that:

11. On October 19th, 2018, they presented to the ECOWAS Court of Justice against the State of Niger an application filed with the Registry of the Court as Case No. ECW/CCJ/APP/51/18. **(Annexure A1)**

12. After its hearing on February 7th, 2020, the Court delivered Judgment No. ECW/CCJ/JUG/13/2020 on July 8th, 2020, served on the Applicants' counsel on July 14th, 2020, by DHL mail.

13. The Court rejected all claims of the parties, stating that:

> "*The Defendant has not violated the property right. The Applicants have failed to prove their property rights over the disputed properties.*"
>
> *It dismissed all other reliefs sought which were depending on whether the violation of the property right was established*".

14. That it is following this decision that they present an application for Revision of Judgment No. ECW/CCJ/JUG/13/2020 based on the following grounds:

15. They became aware of the first ground for the Revision on July 29th, 2020, the day they were able to determine that Defendant never presented to the Court the title deed No. 18.

16. That they took cognizance of the second and third grounds for Revision on July 14th, 2020, the day they were notified, by letter, of the Court's Judgment and obtained new evidence on the third ground for Revision on September 9th, 2020.

17. They concluded then that the application was submitted within the prescribed time limit.

18. And, among the alleged grounds for Revision, they invoke:

a. The lack of communication of Title Deed No. 18

19. To support their claim, they allege that:

20. In its Judgment, the Court declares that the Applicants' property right is challenged by a "title deed *presented by the state*."

21. According to the investigator hired by the Applicants, this title deed is not included in the process; apparently, the Court based its Judgment on something neither it nor the Applicants have ever seen. On the other hand, if

the State of Niger presented this title deed No. 18 to the Court, this document was never communicated to the Applicants, who did not have the opportunity to refute it.

22. In any case, the adversarial principle was not respected.

23. The Court rendered its decision in this proceeding based on the existence of Title Deed No. 18 to dismiss the Applicants' property right claims.

24. In the initial application, the Applicants demonstrated that the State did not raise this so-called title during several years of litigation; that it never presented this title during the litigation; that Gountou Yena's ancestors have no memory of the expropriation of their lands, and that despite active research in the colonial archives of Dakar, no trace of such title has been found.

25. The Respondent has never produced any document that would have challenged this evidence.

26. The status of this document is essential because, if it does not exist or is not valid, the State never had the right to dispose of the disputed parcel through title deed No. 30637, the parcel title that it claims to derive from title No. 18;

27. According to State documentation, the Applicants, who are the customary occupants and owners, could not, therefore, be deprived of their land without the provided protections.

28. According to the rule established by this Court in the case *Mohammed El Tayyibah v. Sierra Leone*, if the Respondent submitted this disputed title deed, the document should have been disclosed to the Applicants.

29. If the Respondent did not gather it to the case file, the Court should not have based its Judgment on such Title Deed No. 18 without ordering the Respondent to disclose it to the Court and to the Applicants to give them the opportunity to refute it.

30. Against all expectations, the Court dismissed the Applicants' reliefs sought based on a never disclosed document.

31. Hence the need for a revision of the Judgment rendered.

b. The right to compensation for destroyed property

32. The Applicants consider that the Court did not examine their rights to personal property and housing.

33. The Court could not simply ignore the Applicants’ rights to be compensated for the damages suffered because of the destruction of the property built on the Gountou Yena site, even if the Court dismissed their claim of property right over such lands.

34. The Court did not consider the "illegal act" or "irregularity" committed by the State at the time of the destruction of the plantations and the works carried out, at a high cost, by the Applicants.

35. It is not disputed that the State forcibly evicted the Applicants from the lands they occupied, destroying all their property without following the relevant procedures, without compensating the Applicants for the damage suffered.

36. In fact, the Respondent admits this in its response.

37. But, the Judgment assumes that failure to recognize the Applicants' property rights nullifies all of their other rights, such as the right to be compensated.

38. Even if the Applicants could not be recognized as owners of the land, they still had property rights such as legal and peaceful occupation and ownership of personal property such as crops and houses and should have been compensated.

39. This would have served as an alternative and independent basis for a judgment in favor of the Applicants and could have been resolved despite the decision to deny their property rights.

40. It is undeniable that the Applicants are entitled to compensation for the destruction of property at the site and their economic interests in the peaceful occupation of the site.

41. Dismissing the Applicants' property right should not affect their right to compensation for their personal property, which was unjustly destroyed.

42. Since the State does not dispute that it destroyed the Applicants' personal property and deprived them of their economic interests in the Gountou Yena site, the Court would necessarily have ordered compensation for those properties had it considered them.

c. Title Deed No. 25096 of the citizen Mainassara and Title Deed No. 30637, assigned to Summerset, have the exact origin.

43. In their appeal to the Court, the Applicants demonstrated that Mr. MAINASARA Amadou Oumarou, the purchaser of a parcel of land adjacent to the land in Gountou Yena and which had a legal significance identical to the land in dispute, benefited from preferential and discriminatory treatment in relation to this portion, because of his economic wealth and his proximity to the political power.

44. The elements of the Title Deed No. 25096, issued to Mainassara, expressly declare that the land results from a SUBDIVISION of Title Deed No. 18.

45. A careful reading of the provisions of Title Deed No. 25096 proves that it is the same geographical area; and that Mainassara's title deed was established based on customary possessions certificates identical to those presented by the Applicants.

46. That all the statements mentioned above are also corroborated by the PARCEL part of the Title Deed No. 25096, issued to Mainassara in which it can be read: *"According to the demarcation act drawn up in Niamey on 08/28/2011, the Director of Land and Registration Affairs, requested the subdivision of a land with an area of 01 ha 05 to 49 ca, to be extracted from TP N° 18…"*

47. The Court will note that the two title deeds attached to the case file all refer to a so-called TP No. 18, which has not been communicated to the Applicants to date. There is no doubt that Mainassara's title deed is, in fact, in the famous title deed No. 18[1].

48. Concerning the precarious origin of the Title Deed that served as the basis for the issuance of TP No. 25096, reference should also be made to the following mentions: *"According to the certificate of customary possession No. 012/CNII, dated 20/07/2009 in Niamey, registered on 31/08/2011, f 18, No. 31/1R4, signed by Ms. Ibrahim Diama, Mayor of Municipal Council of Niamey II".*

49. It expressly results from the declarations of title deed No. 25096 that Mr. Mainassara acquired his land from a customary owner named ADAMOU DJIBO. That is how, in the ORIGIN OF PROPERTY part, the following mention can be read "*the land specified above belongs to Mr. DJIBO ADAMOU for having acquired it on 20/07/2009 from the Mayor of Niamey Municipal Council II, as certified by customary possession No. 012/CNII"*. In the demarcation plan attached to the Mainassara Title Deed, we can also read the mention "*Land owned by Mr. ADAMOU DJIBO"* (Customary Owner).

50. The Applicants presented a title deed identical to that of Mainassara. However, curiously, the State annulled all the property titles in the area,

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[1] idem

except for the customary possession certificates of Mainassara, whose origin is identical to that of the Applicants.

51. The Mainassaras PT expressly states that it was created based on a precarious title, which the State does not recognize in relation to the Applicants.

52. To declare established the violation of the right against discrimination, it is not forcibly necessary to agree with the Applicants regarding the property right; it suffices to recognize that two parties who had the same legal rights - customary possession - were treated very differently, apparently due to different political and economic influence and without legitimate justification.

53. Consequently, the Applicants' allegations of discrimination remain and are sustained.

b. Pleas in Law

54. To support their claim, the Applicants rely on article 92 of the Rules of Procedure of the Community Court of Justice;

55. They further rely on the jurisprudence of this Court.

c. Form of Orders Sought

56.The Applicant concluded by praying the Court to:

i. Declare established that, between the date of notice of the decision and the date of submission of the application for Revision, no more than three months have elapsed.

ii. Declare the discovery of new elements verified, namely that the Title Deed No. 18 above mentioned in Judgment No. ECW/CCJ/JUG/13/2020, issued by the Court on 7/8/2020, was not communicated to the Applicants and is not in the case file.

iii. Declare as established that the Applicants are entitled to compensation for the destruction of their personal property.

iv. Declare as established that the Applicants' claim for compensation for the violent and illegal destruction of their property has not been examined by the Court.

v. Declare as established, based on the documents attached to the case file, TP No. 25096 of the citizen Mainassara and TP No. 30637, issued to Summerset, have the same origin.

vi. Declare as established that the citizen Mainassara and the Applicants received from the State differentiated treatment, hence the discriminatory attitude of the State.

vii. Consequently, to deem admissible the application for Revision presented by Tahirou Djibo and 3 Others against Judgment No. ECW/CCJ/JUG/13/2020, rendered on July 8th, 2020, and grant it.

VII. DEFENDANT'S CASE

a) *Summary of Facts:*

57. In its quest to beautify the city of Niamey through the "Niamey NYALA" project, the authorities of the Republic of Niger have undertaken significant projects (construction of buildings, roads, beautification of the city...).

58. Thus, the company Summerset Continental Hotel, planning to build a luxury hotel in Niamey, contacted the authorities to have land and carry out its project.

59. A 10,000 m² site, located in Gountou Yéna, was chosen for the works.

60. Such parcel of land, which is at the center of this dispute, is owned by the State of Niger, and for its acquisition, the company Summerset applied to the Ministry of Urbanism and Housing.

61. By Decree No. 379/MF/DGI/DADC of September 12th, 2013, the Minister of Finance, guardian of the State's assets, assigned the land to Summerset as a temporary concession.

62. Summerset company then took all the necessary measures to acquire ownership of the land definitively.

63. Moreover, it had, through parceling of Title Deed No. 18 in the name of the State of the Republic of Niger, the creation, in its name, of Title Deed No. 30637.

64. Having become the permanent owner of this land, the Summerset company ordered the various occupants to vacate the site, to no avail.

65. Given the applicants' resistance, Summerset brought an action against them before the Judge hearing applications for interim measures.

66. To counter this action, the Applicants filed an appeal against the company before the Niamey Special High Court, claiming the land in dispute, following notification by the bailiff dated April 14th, 2014.

67. In their application submitted before the Court, they wrongly maintained that the land at issue is not titled and asked such jurisdiction to order an expert opinion on the very existence of the title deed.

68. The State of Niger was called upon to join a party in the ongoing process.

69. On July 23rd, 2014, by interlocutory decision, the Niamey Court ordered an expert report on the situation of TP No. 30637 in relation to TP No. 18.

70. The expert report attests that the land in dispute, which is the subject of title deed No. 18, has been registered in the name of the State of Niger since 1940.

71. On March 16th, 2016, pursuant to Decision No. 85, the Special High Court of Niamey issued the decision whose provision is as follows:

"…With regards to the form:

- *The plea of lack of jurisdiction and the preliminary objection of inadmissibility of the action brought by the State of Niger and the Summerset Continental Hotel are hereby dismissed;*
- *The Court declares itself competent;*
- *It deems the Applicants' action admissible;*
- *It Considers the cross-claims of the State of Niger and the Summerset Continental Hotel Society to be on a regular stand;*

  On the merit:
- *Dismisses all Applicants' reliefs sought.*
- *Declares that the land under dispute is the property of the State of Niger;*
- *Declares The Summerset Hotel Continental the beneficiary of a concession by the State of Niger, which became definitive with the creation of title deed No. 30,637 by the Republic of Niger;*
- *Orders the destruction of the plantations and the eviction of all occupants of the land granted and the immediate continuation of the works for which the concession was granted."*
- … ";

72. On March 24th, 2016, the Applicants appealed against this decision, and the case is still pending at the Niamey Court of Appeal.

73. At this time, the Applicants chose to appeal to this Court to claim that the Republic of Niger violated all human rights texts.

74. Pursuant to Judgment No. ECW/CCJ/JUD/13/2020 of July 8th, 2020, the Court decided that:

"a) It declares that it entertains jurisdiction to hear the case, which it deems admissible.
b) The Applicants' property rights have not been violated by the Defendant State; the Applicants could not prove their property right over the said property.
c) All other claims, which are dependent on the merits of the violation of the property right, are dismissed as unfounded….
75. It is the Revision of this Decision that the Applicants seek from the Court.

On the Preliminary Objection:

Inadmissibility Exception of the Application for Revision

76. The Respondent maintains that:

77. The Applicants' application for Revision is based on Article 92 of the Rules of Procedure of the ECOWAS Community Court of Justice, which provides that: ***"An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge."***

78. Based on this text, the Applicants appealed to this Court, relying on three grounds that, in their opinion, militate in favor of the Revision of the Decision rendered on July 8th, 2020 by the Court, alleging:

1- That they were not aware of Title Deed No. 18, which substantiates the ownership of the State of Niger over the disputed land;

2- That the Court's Decision did not take into account the destruction of personal property and the deprivation of their occupation right;

3- That the contested decision with regard to discrimination ignores the content of the citizen Mainassara parcel title, which demonstrates, without ambiguity, according to them, that his plot is within the limits of the same title deed;

79. In the instant case, all parties agree that the litigation was initiated before the national courts. They exchanged documents following the sacrosanct principle of an adversarial process, and the Applicants cannot now usefully claim that they were unaware of the Niger State Title Deed.

80. However, for the legal text relied on above to be applied, the Applicants would have to demonstrate that they were aware of new elements that they did not have the opportunity to discuss before the courts.

81. The doctrine and jurisprudence unanimously admit that the application for Revision tends to portray the final decision so that it can be re-judged in matters of fact and law;

82. It is common knowledge that the application for Revision is, inter alia, open if, for example:

- there is a fraud, by one of the parties, likely to determine the judge's conviction;
- whether it was judged based on documents judicially recognized or declared false after the Judgment;
- whether, after the Judgment, decisive documents were found that had been withheld by one of the parties.

83. That the instant case by the Applicants do not fit in any of the points listed above;

84. In the instant case, the Court is asked to rule on the Title Deed No. 18 of the Republic of Niger (upon which we shall recall later, as the Court did not base its decision on this title, as they allege), the right to compensation and alleged discrimination;

85. That a simple reading of this decision allows us to see that these are not facts of which they have just taken legal cognizance;

86. That their intention is none other than to reopen the case in which their reliefs sought were rejected;

87. Therefore, they do not meet the requirements to request the Revision of Judgment No. ECW/CCJ/JUD/13/2020 of July 8th, 2020;

88. That, from the aforementioned, the application for Revision by Tahirou Djibo and others must be deemed inadmissible;

On the merit

89. It further argued that:

a. The alleged lack of communication of Title Deed No. 18

90. That, on this first point, the Applicants base their argument that the title deed No. 18 would not have been communicated to them and that they did not have the opportunity to refute it, according to their statements;

91. According to them, the Court relied on this title to pronounce its decision;

92. This is not the case;

93. That after the State of Niger's defense, the Applicants had to reply and at no time discussed the issue of ownership by the Republic of Niger;

94. Contrary to their arguments in the application for Revision, the Court ruled that they did not prove their property right and consequently it dismissed it (page 25 of the decision);

95. In any case, since the initiation of proceedings that they initiated in the national courts, the Applicants have never ignored the existence of this title that substantiates ownership, unlike them, who have not proved their ownership, as was pointed out before this Court;

96. It concluded that this plea is inoperative and must be dismissed by the Court.

b. The right to compensation for destroyed property

97. That, on this point, the Applicants consider (wrongly) that the Court did not take into account their right to compensation;

98. They claim, in essence, that even if their property right has not been recognized, they must be awarded compensation for their property that was destroyed;

99. In matters of law, compensation is understood to be financial compensation intended to repair damage;

100. On this last point, the Applicants seek compensation for the damage they claim suffered. They seek a revision of the Judgment.

101. In matters of law, to claim compensation for the damage suffered, it is necessary to bring together three elements: an irregularity, a damage, and a causal link between the irregularity and the damage.

102. But here, they cannot demonstrate that if there was damage, it was the fault of the Republic of Niger.

103. The Applicants were evicted from land over which they had no rights or title and refused to release of their own volition.

104. Summerset and the State of Niger used legal remedies (recourse to the courts, authorization to fell trees) to evict them.

105. The compensation claim remained unfounded and was rejected.

106. The Court cannot review its decision at this point.

c. On the origin of TP No. 25096 of Mr. Mainassara and No. 30637 of Summerset

107. The Applicants try to make believe that Mr. Mainassara Amadou, who had land adjacent to the land of Gountou Yéna, would have received "preferential and discriminatory treatment";

108. That the parties also debated, once again, on this point and the Court ruled in this regard, which cannot be the object of Revision of the Decision rendered;

109. In the instant case, the Applicants allege that they were discriminated against based on their economic position.

110. Further, in an attempt to mislead this Court, they wrongly maintain that they were the only ones to have been dispossessed of their land and that other persons, who acquired portions of land from the people of Gountou Yenna, were not affected.

111. In the instant case, it is evident, for two reasons, that there was no discrimination at any time.

112. On the one hand, and contrary to their claims, the fact that some people are not affected is logically explained because they are people who are outside TP No. 18 or who have not purchased portions of land in TP No. 18 (the exclusive property of the State of Niger) which was parceled and attributed to the Summerset Company.

113. The disputed land covers an area of one hectare of 14 ares and 36 centiares (1ha 14 to 36 ca), and at no time did the State authorize a third person to consider himself the owner of this land or a portion of it.

114. On the other hand, it results from the applicants' documents that, to succeed with the case, title deeds (proof of customary possession) were issued to them by the traditional authorities of an area (the land at dispute, as a reminder, covers an area of an acre of 14 ares and 36 centiares (1ha 14 to 36 ca) that belongs to the State since 1935. However, since 1935 the State has never, at any time, authorized a third person to consider himself the owner of that land or a portion of it. As a legal consequence, this had the legal annulment of these various title deeds, irregularly established to serve their cause.

115. There was no discrimination in the instant case.

116. The application for Revision should be, purely and simply, dismissed.

b) Pleas in Law

117. The Respondent relies on article 92 of the Rules of the Court as its defense.

c. Form of Orders Sought:

118. The Respondent sought from the Court:

1) With regards to the form, to:

i. Declare inadmissible the action brought by Tahirou Djibo and others, as no violation of human rights by the State of Niger has been established;

2) On the merit, to:

ii. Dismiss the application for Revision;

iii. Order the Applicants to pay the expenses.

The Reply

119. By means of Reply, the Applicants responded to the preliminary objection of inadmissibility raised by the Respondent, reiterating the arguments set out in the Originating Application.

VIII – JURISDICTION

120. Having the Court assumed its jurisdiction to judge the case under the terms of Article 9 (4) of Additional Protocol A/SP.1/01/05 on the Court of Justice of the Community, the same remains in the case of Revision, under the provisions of articles 92, 93 and 94, all of the Court's Rules of Procedure

IX – ADMISSIBILITY

121. In the instant case, the Respondent invoked the inadmissibility of the Revision requested by the Applicants, arguing that:

122. The facts relied on by the Applicants are not facts of which they have just taken legal cognizance;

123. That the Applicants' intention is none other than to reopen the process in which their reliefs sought were dismissed;

124. And that, therefore, they do not meet the requirements to request Revision of Judgment No. ECW/CCJ/JUD/13/2020 of July 8th, 2020;

125. The Applicants responded in reply to these arguments, concluding as in the Originating Application.

The Court's Analysis

126. Revision of a judgment is a means of a particular revision procedure, which allows the parties, in very limited circumstances, to obtain the re-examination of a final decision due to the emergence of a fact that may decisively influence the decision of the case.

127. The application for Revision is governed by the provisions of article 25 of the Protocol A/P.7/1/91 on the Court of Justice and articles 92, 93, and 94 of the Rules of Procedure of the Court of Justice.

128. Article 25 of Protocol A/P.1/07/91 establishes that:

1. *"An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence."*
2. *The proceedings for Revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to Revision and declaring the application admissible on this ground." (2)*
3. *(...).*
4. *No application for Revision may be after five (5) years from the date of decision; (4)*
5. *(...).*

129. In turn, Article 92 of the Court's Rules of Procedure states that "*An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge*."

130. And in article 94, it is stated that "*Without prejudice to its decision on the substance, the Court, in closed session, shall, after hearing the parties and having regard to the written observations of the parties, give in the form of a judgment its decision on the admissibility of the application.*" **(1)**

"If the Court finds the application admissible, it shall proceed to consider the Substance of the application and shall give its decision in the form of a judgment under these Rules…" **(2)**

131. From the rules transcribed above, it appears, first of all, that it is up to the Court to decide by Judgment whether the present application for Revision is admissible or not.

132. To do this, the Court must verify whether the conditions that authorize the parties to use this exceptional revision procedure are met, or more precisely, whether the conditions for its admissibility are met.

133. And as this Court concluded, "*The conditions of an application for revision such as provided for in Article 25 of the Protocol A/P/P1/7/91 are related to the discovery by the Applicant of a new fact, of nature as exerting a decisive influence on the decision, the ignorance of this fact not being due to the negligence of the Applicant.*" (See case *MRS TOKUNBO LIJADU OYEMADE V. COUNCIL OF MINISTERS & 4 ORS*, in the ***decision rendered on November 17th, 2009, for Application Revision in Judgment No. ECW/CCJ/JUD/02/08, Reported in LR2009-*** §29)

134. These conditions or assumptions of admissibility are to be verified cumulatively, and the lack of one of them, by itself, determines the inadmissibility of the application.

135. This is the understanding of this Court in the Judgment mentioned above while stating that: *"The Revision of a court decision is an exceptional procedure and subject to strict interpretation. The Court ensures that the conditions of admissibility provided for Revision are fulfilled before everything else. The default of one of the conditions renders the application inadmissible independently of the appreciation of the other conditions."* (see §31)

136. This Court listed the conditions for the admissibility of an application for Revision in the case *MUSA SAIDYKHAN V. THE REPUBLIC OF THE GAMBIA, RULING No. ECW/CCJ/APP/RUL/03/12, REPORTED IN 2012 CCJELR*, in this way: **"***The first condition to be met to succeed with a review application is that the application must have been filed within five years of*

the date on which the Judgment that is being sought to be reviewed was delivered. The second condition is that the party applying for a review must file his application within three months of discovering the fact/facts upon which his application is based. The final condition is that the application must be premised on the discovery of some fact/facts that is/are decisive, which fact/facts was/were unknown to the Court or the party claiming Revision provided that such ignorance was not due to negligence." (see §64)

137. In the instant case, it is, therefore, necessary to verify whether, in the instant case, the conditions for the admissibility of an Application for Revision are met, which pursuant to the provisions of Article 25 of Protocol A/P.1/7/91 and 92 of the Court's Rules of Procedure, are as follows:

a) *The application made within five years after the decision was pronounced and within three months from the day on which the applicant became aware of the fact on which the application for Revision is based;*
b) *The need to rely on a fact that is considered new;*

138. The Judgment, which is the subject of the application for Revision, was delivered on July 8th, 2020, and served on the Applicants on July 14th, 2020, as they admit, and the present application for Revision was lodged on October 5th, 2020, that is, almost three months after the date of its delivery, so the Court considers that the temporal condition is met.

139. As for the second condition, the need to rely on a fact considered new, and it should be recalled that, as stated in article 25 of the Protocol mentioned above, such new fact discovered by the party must be able to "*exerting a decisive influence on the decision, the ignorance of this fact not being due to the negligence of the Applicant, provided that this lack of knowledge is not the result of negligence*."

140. The Court now proceeds to analyze the grounds relied on by the Applicants in support of their application for Revision.

a. Lack of communication of Title Deed No. 18

141. The Applicants claim:

142. The Court rendered its Judgment in this proceeding based on the existence of Title Deed No. 18 to dismiss the Applicants' property right claims.

143. In the Judgment rendered, the Court stated that the Applicants' property right is challenged by a "*Title Deed presented by the State*."

144. According to the investigator hired by the Applicants, this Title Deed is not included in the proceedings; that the Court based its Judgment on something, neither it nor the Applicants have ever seen.

145. And if, on the other hand, the Republic of Niger presented this title deed No. 18 to the Court, this document was never communicated to the Applicants, who, consequently, did not have the opportunity to refute it.

146. That the adversarial principle was not respected.

147. If the Respondent has not gathered it, the Court should not have based its Judgment on such Title Deed No. 18 without ordering the Respondent to disclose it to the Court and the Applicants, to give them the opportunity to refute it.

148. Against all expectations, the Court dismissed the Applicants' reliefs sought based on a never disclosed document.

149. Thus, they concluded the need for a revision of the Judgment delivered.

150. In its turn, the Defendant, in its response, argued that the plea relied on is inoperative and must be dismissed by the Court.

The Court's Analysis

151. The Applicants claim that in the Judgment, whose Revision they are now requesting, this Court decided to reject their claims, based on the existence of Title Deed No. 18, in favor of the Defendant, which was never presented in the records; They further added that, if this document was attached to the records, it was never notified to them to comment on it, and, therefore, the principle of adversary proceedings was violated.

152. The Applicants considered the situation invoked as a *new fact* of which they took legal cognizance on July 29th, 2020, the day they were able to find out that the Respondent did not attach the said document to the case file.

153. This understanding of the Applicants reveals a misunderstanding of the Judgment handed down by this Court and whose Revision they are now requesting.

154. This Court has not taken any decision, based on the existence of Title Deed No. 18, as the Applicants intend to make-believe.

155. It was the Applicants who, in their application initiating proceedings, reported to this Court, that before the national authorities, they claimed the property right of the land in question based on customary titles, and that a

decision was rendered on it, in which it was made reference to the existence of a Title Deed No. 18 in favor of the Respondent. This fact was admitted by the Respondent, who confirmed a pending legal dispute between it and the Applicants regarding the establishment of property rights in the land in question before the Niamey Appellate Court. (See § 223 to 229 of the Judgment).

156. In no part of the Judgment rendered by this Court, it confirmed or based its decision on the aforementioned Title Deed No. 18.

157. As the parties admitted that there was a judicial dispute between them pending before the Niamey Appellate Court, in which each of them claimed the right to the land in question, this Court limited itself to the conclusion as set out in paragraphs 250 to 257, which is now transcribed:

"250. It is clear from these documents that the facts alleged by the applicants and confirmed by the Respondent State have been established, in so far as the latter admits that there is a dispute between it and the applicants, concerning ownership of the land in question, still pending before the Court of Appeal of Niamey, in which both claim ownership of the said land.

251. Given these facts, it should be concluded that, in the national jurisdiction, the applicants have not yet obtained recognition of the property right, which they intend to claim here, based on a customary title, derived from possession, which shows itself contradicted by a title deed No. 18, exhibited by the State, being pending the judicial dispute.

252. In other words, the property right claimed by the applicants is not yet an existing asset under their ownership.

253. And on the other hand, it is not among the competencies attributed to this Court to settle conflicts related to a property claim. Such jurisdiction is reserved for national courts.

254. Therefore, it remains to be concluded that the applicants, in the instant case, do not demonstrate that they are the owners of the land in question, as they had to do.

255. Therefore, this Court understands that, as the applicants have not demonstrated their status as the owner of the land in question, they cannot enjoy the protection granted by Article 14 of the African Charter.

256. And in that sense, the alleged violation of the property right must be dismissed."

158. These conclusions do not result in any decision taken by this Court, based on Title Deed No. 18.

159. The meaning of the Decision of this Court was based only on the fact that, in the dispute established between the parties before the national courts, the definition of the holder of the property right over the land in question is still pending since it is not among the powers of this Court, the resolution of such dispute.

160. This means that even if the Respondent had gathered to the case file the aforementioned title deed No. 18 - a fact that did not even occur - this would not influence the decision taken by this Court, as it was based only on the existence of litigation pending, at the national level, to determine the existence or not of the Applicants' property right.

161. As the document mentioned above was not included in the records, the violation of the adversarial principle cannot be invoked here.

162. Thus, the Court understands that this first plea invoked by the Applicants does not substantiate any *new fact*, *whose existence could have a decisive influence on the cause,* which, pursuant to article 25 of Protocol A/P1/7/91, can justify an application for Revision.

163. Therefore, the Court considers this plea unjustified and rejects it.

b. The right to compensation for destroyed property

164. In support of this second plea, the Applicants claim that:

165. The Court did not examine their rights to personal property and housing; That the Court could not ignore their rights to compensation for damages suffered as a result of the destruction of the property built on the Gountou Yena site, even if the Court dismisses their claim to their property right over those lands; That against all their expectations, the Judgment assumes that the non-recognition of the Applicants' property rights nullifies all of their other rights, such as the right to be compensated; That even if Applicants could not be recognized as owners of the land, they still had property rights, such as legal and peaceful occupation and ownership of personal property, such as plantations and houses, and should have been compensated; That since the State does not dispute that it destroyed the Applicants' personal property and deprived them of their economic interests in the Gountou Yena site, the Court would necessarily have ordered compensation for those properties, had it considered them.

c. **Title Deed No. 25096 of the citizen Mainassara and Title Deed No. 30637, assigned to Summerset, have the same origin.**

166. As a third plea, the Applicants maintain, in essence, that they demonstrated that Mr. MAINASARA Amadou Oumarou, purchaser of a parcel of land adjacent to the land of Gountou Yena and which had a legal significance identical to the land in dispute, benefited from treatment preferential and discriminatory in relation to that portion, because of his economic wealth and his proximity to political power; That the elements of Title Deed No. 25096, issued to Mainassara, expressly declare that the land results from a SUBDIVISION of Title Deed No. 18; That a careful reading of the provisions of Title Deed No. 25096 proves that it is the same geographical area; That Mainassara's title deed was, in fact, established on the basis of customary possession certificates, identical to those presented by the Applicants; That in order to declare the violation of the right against discrimination verified, it is not necessarily necessary to agree with the Applicants regarding the property right; it suffices to recognize that two parties who had the same legal rights - customary possession - were treated very differently, apparently due to different political and economic influence and without legitimate justification.

167. The Applicants concluded that their allegations of discrimination prevail.

168. In its response, the Respondent, in turn, upheld these two grounds invoked above by the Applicants as unfounded to determine the Revision of the Judgment rendered.

The Court's Analysis

169. The Court will carry out a joint analysis of the last two pleas invoked by the Applicants.

170. From the analysis of the arguments raised above, it can be concluded that the Applicants seek to contest the Judgment, in the cited parts, understanding that the Court failed to assess the facts and apply the law by omitting decisions regarding the sought reliefs, namely reparation for the destroyed property and finding that the Respondent violated the Applicants' right not to be subjected to discrimination.

171. But for no reason.

172. As the Applicants admit, the Court, in the Judgment issued, established that, *"since the applicants have not demonstrated their ownership of the land in question, they cannot enjoy the protection granted by article 14 of the African Charter and that in this sense the alleged violation of the property right must be dismissed. Consequently, the need to ascertain whether or not there has been interference by the defendant State over the alleged property right and the nature of such interference is impaired.*

173. Given the Court's conclusion that the Applicants have not proved their property right, all other claims, as they are dependent on the establishment of the violation of the property right, are thus dismissed." (see §255 to 258).

174. Effectively, for the Court to determine the Respondent's conviction to repair damages caused to the Applicants, it required, first of all, that the Court finds the violation of the Applicants' property right. Without violation of the right, there is no right to reparation.

175. On the other hand, so that the Court could verify whether the position of the Applicants was the same as that of another owner to which they referred and be able to conclude that they would be facing "*same cases treated differently*," it was crucial for the Applicants to demonstrate their position as owner, which did not happen.

176. Given this clarification and in light of the above, it is evident that the Court, because of the reliefs sought by the Applicants, did not omit to take any decision regarding any of the reliefs sought by the Applicants. The Court made it clear that "***all other reliefs sought, as they depend on the establishment of the violation of the property right, are thus dismissed***."

177. Therefore, no pronouncement is omitted in the decision, which would authorize the Revision of the Judgment.

178. On the other hand, considering that, with their arguments, the Applicants intend to question the assessment of the facts and the application of the law carried out in the Judgment, it should be noted that this has nothing to do with the intended Revision.

179. This Court highlighted in the case *OCEAN KING NIGERIA LTD V. REPUBLIC OF SENEGAL, in the decision on the Revision of Judgment No. ECW/CCJ/JUD/07/11-REV, dated February 12th, 2014 (not reported): "It is elementary law that issues of misconstructions/misapplications of law are issues of law and have nothing to do with facts at all. Article 25 (1) explicitly states that reviews are founded on the discovery of facts of a decisive nature and not on law issues. Issues of law are grounds of appeal and not review…"* (See §26, page 12).

180. The Court acknowledges that it is legitimate for the Applicants to disagree with the Court's analyses and conclusions.

181. However, there is no jurisdictional mechanism that authorizes the Court to review its own decisions because the party disagrees with them.

182. Such a mechanism, which would be that of an ordinary appeal, was not provided for in the Rules of Procedure of this Court.

183. And this is evident from the Protocol on the Court of Justice, which provided in its article 19 that: *"The decisions of this Court (...), are, subject to the provisions of this protocol relating to the revision, **immediately enforceable and not subject to appea**l", meaning that they are final and binding.*

184. Therefore, in the instant case, in addition to the disagreement manifested by the Applicants with regards to the analysis and conclusions reached by the Court in the rendered Judgment, it was concluded that the Applicants do not invoke any new fact that could serve as grounds for their application for Revision, under articles 25 of Protocol A/P.1/7/91 and 92 of the Court's Rules of Procedure.

185. Thus, the Court concludes that the Applicants' claim is unfounded; therefore, it must be deemed inadmissible**.**

X - THE COSTS:

186. The Respondent seeks for the Applicants to be condemned to bear the costs. The Applicants did not make comments in this regard.

187. As stated in article 66 of the Rules of Court, "a *decision as to costs shall be given in the final judgment or in the order, which closes the proceedings*." *(1). The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings. (2)*"

188. Given the circumstances of the case, under article 66, the Court considers that each of the parties should bear its own costs.

XI – OPERATIVE CLAUSE:

189. Therefore, for the reasons stated above, this Court:

On Jurisdiction:

i. Declares that it entertains jurisdiction to examine the cause.

On admissibility:

ii. Declares that the application is inadmissible and consequently dismisses it.

On the Costs:

iii. Determines that the parties shall bear their own costs.

Signed by:

Hon. Justice Gberi-BE **OUATTARA**- Presiding ____________________

Hon. Justice Dupe **ATOKI** - **Member**______________________________

Hon. Justice Januária T. S. M. **COSTA** -Member/Rapporteur ____________

Assisted by:

Dr. Athannase **ATANNON - Chief Registrar Deputy** ________________

190. Done in Accra, on March 22nd, 2022, in Portuguese and translated into French and English.