

AFRICAN UNION

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**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

BERNARD ANBATAAYELA MORNAH

V.

**REPUBLIC OF BENIN,
BURKINA FASO,
REPUBLIC OF COTE D'IVOIRE,
REPUBLIC OF GHANA,
REPUBLIC OF MALI,
REPUBLIC OF MALAWI,
REPUBLIC OF TANZANIA,
REPUBLIC OF TUNISIA**

APPLICATION N° 028/2018

Case Summary

I. THE PARTIES

1. Bernard Anbataayela Mornah (hereinafter referred to as “the Applicant”) is a Ghanaian national and the National Chairman of the Convention of People’s Party a political party from Ghana. The Applicant brings his Application in respect of the readmission of the Morocco to the African Union without it being requested to stop its alleged occupation of the Republic of Western Sahara.
2. The Application is filed against the Republic of Benin, Burkina Faso, the Republic of Côte d’Ivoire, the Republic of Ghana, the Republic of Mali, the Republic of Malawi, the United Republic of Tanzania and the Republic of Tunisia.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant submits that the subject of his Application is the sovereignty, territorial integrity and independence of Western Sahara, also known as Sahrawi Arab Democratic Republic (hereinafter referred to as “the SADR”).
4. It arises from the file as alleged by the Applicant that the territory known as Western Sahara was colonized by Spain until 1976. After Spain’s departure in February 1976, the Applicant alleges that Morocco and Mauritania occupied Western Sahara, which met violent resistance from the Saharawi people. Resultantly, Mauritania was forced to relinquish its claim to any part of Western Sahara. Morocco, however, the Applicant argues that, remains in occupation of part of Western Sahara to date.
5. In 1984, the SADR was admitted as a member State of the Organisation of African Unity (hereinafter referred to as “the OAU”) and subsequently became a founding member of the African Union (hereinafter referred to as “the AU”). In protest against this, Morocco left the OAU.
6. In 1992 an UN-supervised referendum on independence of Western Sahara was promised but when Morocco objected to the proposed electoral register, which it alleged was biased in favour of secession, the referendum was aborted. The

Applicant alleges that Morocco occupies the part of Western Sahara that harbours one of the world's richest fisheries stock, abundant phosphate rock mines and oil reserves which it has been exploiting to the detriment of the Sahrawi people.

7. In January 2017 Morocco applied for membership of the AU and was admitted.¹ The Applicant avers that media reports suggest that Morocco's admission to the AU was not as a result of a unanimous decision. It seems to be the case that there were thirty nine (39) votes in favour of the readmission and nine (9) against.²
8. According to the Applicant, notwithstanding Morocco's admission to the AU, it has not, at the same time, shown any intention of giving up its occupation of Western Sahara. Further, although the SADR has been recognized by the AU as the legitimate government in exile and no less than eighty-four (84) countries have accorded it diplomatic recognition, parts of Western Sahara remain occupied by Morocco.

B. Alleged Violations

9. According to the Applicant, the SADR, as a member State of the AU, is subject to all obligations and rights that are stated in the Charter. The specific rights pointed out by the Applicant include the rights covered under Articles 1 (the general obligation to recognise all rights, duties and freedoms enshrined in the Charter); 2 (non-discrimination); 7 (fair trial); 13 (participation in political activities); 19 (equality of all peoples), 20 (self-determination); 21 (right to dispose of natural resources) and 23 (peoples' right to peace). The Applicant also makes specific mention of provisions of the Constitutive Act of the AU which it believes have a bearing on the resolution of this matter. By way of illustration, the Applicant avers that the conduct of the Respondents amounts to a contravention of Articles 3 (objectives of the AU) and 4 (principles of the AU) of the Constitutive Act of the AU.
10. The Applicant is aggrieved that when Morocco applied for readmission to the AU it was admitted without being required to end its "colonization and occupation" of

¹ The Guardian: "Morocco rejoins African Union after more than 30 years", available at: <https://www.theguardian.com/global-development/2017/jan/31/morocco-rejoins-african-union-after-more-than-30-years> (Accessed 19 November 2018).

² <https://africanarguments.org/2017/02/02/how-did-morocco-manage-to-rejoin-the-african-union-after-33-years-in-the-cold/> (Accessed 5 December 2018).

Western Sahara. Specifically, the Applicant argues that the following issues require determination:

- a. "Whether the Defendants individually and/or collectively are not under a legal obligation to defend the sovereignty, territorial integrity and independence of Western Sahara in accordance with Articles 3 and 4 of the Constitutive Act of the African Union; Articles 1, 13 and 20 of the African Charter on Human and Peoples Rights; Articles 1 and 2 of the International Covenant on Civil and Political Rights and Articles 1 and 2 of the International Covenant on Economic, Social and Cultural Rights.
- b. Whether the Defendants individually and/or collectively are not under a legal obligation to prevent Morocco from further violating the human rights of the people of Western Sahara to dispose of their wealth and natural resources, to their economic, social and cultural development and peace guaranteed by Articles 19, 21, 22, 23 and 24 of the African Charter on Human and Peoples Rights, and similar provisions in common Article 1 of both the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.
- c. Whether the Defendants individually and/or collectively are not under a legal obligation to call an emergency session of the Assembly of the African Union and to sponsor a resolution for the adoption of legal, political and other measures by the African Union to restrain Morocco from further occupying parts of the territory of Western Sahara in any manner whatsoever and howsoever. "

III. PRAYERS OF THE APPLICANT

11. The Applicant prays the Court for:

- a. "A declaration that the failure of the Defendants individually and/or collectively to defend the sovereignty, territorial integrity and independence of Western Sahara is illegal as it directly violates Articles 3 and 4 of the Constitutive Act of the African Union; Articles 1, 13 and 20 of the African Charter on Human and Peoples Rights; Articles 1 and 2 of the International

Covenant on Civil and Political Rights and Articles 1 and 2 of the International Covenant on Economic, Social and Cultural Rights.

- b. A declaration that the failure of the Defendants individually and/or collectively to prevent Morocco from violating the human rights of the people of Western Sahara to dispose of their wealth and natural resources, to their economic, social and cultural development and peace guaranteed by Articles 19, 22, 23 and 24 of the African Charter on Human and Peoples Rights, and similar provisions in common Article 1 of both the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights. [sic]

- c. An order of this Honourable Court compelling and mandating the Defendants individually and/or collectively to call an emergency session of the Assembly of the African Union and to sponsor a resolution for the adoption of legal, political and other measures by the African Union to restrain Morocco from further occupying parts of the territory of Western Sahara in any manner whatsoever and howsoever.”