DISSENTING OPINION OF JUSTICE BEN KIOKO

THE MATTER OF

HOUNGUE ERIC NOUDEHOUENOU v REPUBLIC OF BENIN

APPLICATION NO. 032/2020

1. I agree with the Majority Ruling, on the most part, in the findings and conclusions reached in the matter of Mr. Houngue Eric Noudehouenou, (hereinafter referred to as "the Applicant") against the Republic of Benin, in which he seeks provisional measures for stay of execution of a judgment delivered on 5 June 2018 against him in a civil case by the Cotonou Court of First Instance (hereinafter referred to as the "Cotonou CFI").

2. The Applicant alleges that following a civil proceeding in which he had voluntarily intervened, the Cotonou CFI delivered the judgment without his knowledge on 5 June 2018. According to him, this judgment, which was never served on him, deprived him of his right to property.
3. The Applicant prays the Court to:
    i. Order the Respondent State to remove "the obstacles to the exercise of his right to evidence" and to "ensure the enjoyment of his right to search for, obtain and produce all documents (...) for the exercise of his right to appeal and his right to defence in the proceedings concerning him" before this Court;

    ii. Order the Respondent State to "stay the execution of the judgment of the Cotonou Court of First Instance until the Court delivers its final judgment";

iii. In the alternative, "grant it the benefit of the Court's legal aid fund for all acts and procedures that the Court deems necessary to suspend the judgment of the Cotonou Court of First Instance, in view of the continued violations of the decisions of the Court by the Respondent State.

4. I am in agreement with the reasons advanced by the majority for granting prayer no: (ii) for a stay of execution of the order of the Cotonou Court of First Instance (CFI) of 24 February 2020 authorizing the sale of the Applicants property pursuant to the judgment of the CFI of 5 June 2018 and for the Respondent to report to the Court within 15 days. Similarly, I agree with the Court's decision not to issue an order granting the request for legal aid as this is a matter falling within the administrative jurisdiction of the Court, which cannot be dealt with through a Court order.

5. However, I have a divergence of opinion with the majority with respect to prayer (i) in which the Court has rejected the request for an order to exercise the right to evidence.

6. Having carefully perused the detailed Request submitted by the Applicant and I find that the reasoning in the majority Ruling with respect to prayer (i) problematic. As indicated in Paragraph 22 of the Ruling, the Applicant has submitted that by failing to comply with three Orders for provisional measures[1] and four judgments[2] of this Court, the

[1] These are the following Ruling for provisional measures: Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, Ruling on provisional measures of 5 May, 2020 - Application No. 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin, in which the Court ordered "the Respondent State to take all necessary measures to effectively remove all administrative, judicial and political obstacles to the Applicant's candidacy in the forthcoming communal, municipal, district, town or village elections for the benefit of the Applicant"; Application No. 004/2020 - Houngue Eric Noudehouenou v. Republic of Benin – Ruling for Provisional measures of 6 May 2020, in which the Court ordered the Respondent State to "to stay the execution of the judgment of 25 July 2019 of the Court for Repression of Economic Crimes and Terrorism against the Applicant (...)"; Application No. 002/2021, Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin – Ruling for Provisional Measures of 29 March 2021 in which the Court ordered the Respondent State to "stay of execution in respect of Judgments of the Supreme Court of the Respondent State N°209/CA (COMON SA v. Ministry of Economy and Finance and two (2) others) and N°210/CA (Société JLR SA Unipersonnelle v. Ministry of Economy and Finance) of 5 November 2020, and N°231/CA (Société l'Elite SCI v. Ministry of Economy and Finance and two others) of 17 December 2020 until the decision of the Court on the merits";

[2] These are the following judgments: Application 059/2019 - XYZ v. Republic of Benin, Judgment of November 27, 2020, the operative part of which reads, inter alia, "Orders the Respondent State to take necessary measures to bring

Respondent State has made it "*absolutely impossible for him to obtain documents*" that he requires to prosecute his case before this Court in order to overturn the decision that deprived him of his property.

7. Basically, what the Applicant is seeking is what in common law is referred to as discovery of documents. The discovery of documents is intended to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weaknesses of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at trial. It is also in the interest of justice since discovery ultimately allow the Court to establish the truth of the allegations before it.

8. What I find troubling is that the majority have not appreciated that it is in the interest of justice that a party should have access to documents, which a party needs to prepare for his case unless there is a valid reason to withhold them. In the instant case, no valid reason has been adduced by the Respondent state, which in fact did not respond to the request.

9. In its brief consideration of this prayer, the Court has in five paragraphs dismissed this prayer by noting that the measure requested by the Applicant applies to all the procedures that he has initiated and that are pending before this Court; the measure

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the composition of COS-LEPI into conformity with the provisions of Article 17(1) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy before any election "; Application 003/2020 - Houngue Eric Noudehouenou v. Republic of Benin - Judgment of December 4, 2020, the operative part of which reads as follows: Orders the Respondent State to take all measures to repeal Law 28 No. 2019-40 of 1 November 2019 revising Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws related to the election in order to guarantee that its citizens will participate freely and directly, without any political, administrative or judicial obstacles, in the forthcoming presidential election without repetition of the violations found by the Court and under conditions respecting the principle of presumption of innocence;; Orders the Respondent State to comply with the principle of national consensus enshrined in Article 10(2) of the ACDEG for any constitutional revision; Orders the Respondent State to take all measures to repeal Inter-Ministerial Decree 023MJL/DC/SGM/DACPG/SA 023SGG19 dated 22 July 2019; Orders the Respondent State to take all necessary measures to ensure cessation of all effects of the constitutional revision and the violations which the Court has found "; Application 010/2020 - XYZ v. Republic of Benin - Judgment of November 27, 2020 and Application 062/2019 - Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin. These two judgments have, in part, a similar operative part: "Orders the Respondent State to take all legislative and regulatory measures to guarantee the independence of the Constitutional Court, in particular with regard to the process for the renewal of their term of office (...), to take all measures to repeal Law No. 2019-40 of 1 November 2019 amending Law No. 90-032 of 11 December 1990 on the Constitution of the Republic of Benin and all subsequent laws, in particular Law 2019-43 of 15 November 2019 on the Electoral Code, and to comply with the principle of national consensus set forth in Article 10(2) of the ACDEG for all other constitutional revisions".

requested is to enable the Applicant exercise certain rights "in the procedures concerning him before this Court, where he has three Applications, which are pending'.[3] Furthermore, the Court concludes that it cannot grant the measure requested for two reasons, in view of their generality, whose application, the Applicant intends to extend to all the pending procedures to which he is a party before this Court; and that, in any event, the Applicant has not demonstrated, even for the instant Application, that the requirements of Article 27(2) of the Protocol are met. Accordingly, the Court dismisses the prayer for the measure requested.

10. Having carefully gone through the Application, I find that the reasoning of the Court ignores the detailed submission made by the applicant with respect to the evidence he seeks to collect, why he requires such evidence, the jurisprudence he relies upon with respect to the right to evidence as well submissions on the requirements of Article 27 of the Protocol.

a. Evidence that the Applicant wishes to search for, obtain and produce before this Court

11. According to the Applicant, the respondent is withholding evidence that would allow this court to assess the truthfulness of the allegations made. In this regard, he seeks a Court order to access the following pieces of evidence:
    i. obtaining and producing any document issued by the bodies of the respondent before the Court of Cassation, for example, the applicant could not and cannot obtain from the Court of Cotonou the certificate of non-appeal[4]
    ii. The expert commission order in Exhibit 6, the expert report as carried out by ASSOSSOU Pedro d'Assomption and its use by CRIET which was used to

[3] Applications Nos. 004/2020, 020/2020, 028/2020.
[4] The Request para 28

condemn the applicant to 10 years in prison with a fine of the billion to be paid to the CNCB.[5]

iii. **"**due to lack of financial means and accessibility to the Court of Cotonou, due to the non-execution of the decisions of the Court by the defendant, it is impossible for the applicant to identify the current occupants of his domain who are availing themselves of the ongoing execution of judgment n ° 006 / 2DPF / -18 of 05 June 2018 of the TPI of Cotonou referred to the Court of Cassation, in order to submit the list of these persons and the numbers of the plots in the applicant's domain which they occupy in violation of his fundamental rights", from the Court;[6]

iv. Indeed, the applicant cannot make the list of occupants because to do so, he must first obtain an order authorizing entry of the domain from the Court of Cotonou because without this order, he will be arrested for violation of the home. arbitrarily deprived the applicant by the contested judgment referred to the Court, then on the basis of this order, the applicant must request the services of a bailiff and the police to carry out the service of the said order and identification of the names and surnames of the occupants of their domain.

v. the certificate of life and charge on the filiation of his three children[7]

vi. to produce the documents of filiation of the other members of his family who are affected, including his three brothers and four sisters. as well as his adoptive mother and his wife who were illegally placed in detention by the defendant on the count of this case and who on this count alone deserves comfortable reparation;[8]

vii. The correspondence exchanged between FISC Consult Sari Company and CNCB and which formed part of the allegations made against him in the CRIET judgment.[9] The letters of the Fisc Consult Sari company that the applicant signed in his capacity as manager of Fisc Consult, the Court will easily observe that the company had done everything to avoid undue expenses at the CNCB;[10]

[5] Ibid para 76
[6] Ibid para 51
[7] Ibid para 87
[8] Ibid para 87.1
[9] Ibid para 57 and 57.1
[10] Ibid para 57

viii. "The signed sale agreements followed by the affixing on it of the fingerprints of the legal representatives of the HOUNGUE GANDJI Collectivity (exhibit n ° 2) and the bailiff's exploits attesting to the sale of the 2.5 hectares located in Agla to the applicant by the HOUNGUE GANDJI Collectivity (exhibits n ° 3 and 5) produced at the Court to prove his right of ownership, the applicant wants to produce"[11]

12. The applicant also seeks evidence, in the possession of the Respondent State, which was never notified to him and yet served to convict him to a sentence to ten years in prison, in violation of his presumption of innocence because "*by virtue of the principle of the presumption of innocence, the right to have 'the necessary facilities' for the preparation of the defence should be understood as ensuring that individuals cannot be sentenced on the basis of evidence to which they or their lawyers do not have full access*":[12] This evidence which he requests the Court to order the Respondent to produce is itemised as follows:

i. In the judgment of July 25, 2019 rendered by CRIET, the Respondent cited an extract from the judgment of July 25, 2019 in his brief of April 30, 2020. This extract is unknown to the applicant;[13]

ii. The audit report carried out by the Ministry of Public Transport since the defendant cited it in his judgment of March 20, 2019 as confirming offenses against the applicant;[14]

iii. The minutes of the interrogations of the Applicant during the police investigation and the investigation as well as the evidence which he submitted there since the Respondent affirmed on page 18 of his judgment of March 20, 2019, that the

[11] Ibid para 55

[12] *Human Rights Committee. Onoufriou v. Cyprus. doc. UN CCPR / C / 100 / D / 1636/2007. 20W. §6.11; Concluding Observations, Canada, doc. UN CCPR / C / CAN / CO / 5. 2006. § 13. See CP! Prosecutor v Katanga and Ngudjolo (ICC-01 / 04- 01 / 06-2681-Red2), Trial Chamber i. Decision on the Prosecution's Request for the Non-Disclosure of Information, a Request to lift a Rule 81 (4) Redaction and the Application of Protective Measures pursuant to Regulation 42, March 14, 2011. §27. Johannesburg Principles, Principle 20 (,)*

[13] The Request para 32.1

[14] Ibid para 32.2

facts against the Applicant were established during these interrogations and he was sentenced to 10 years in prison;[15]

iv. The forensic expert report carried out by Sieur ASSOSSOU Pedro d'Assomption which would have evoked the pecuniary responsibilities advanced on pages 21 and 22 of the judgment of March 20, 2019 of the CRIET;[16]

v. The Appointment letter by which the public authority appointed the applicant "fiscal advisor of the CNCB" and of the act of taking up his post at the CNCB;[17]

vi. Proof that all of the evidence listed above was served on the applicant at least during the period of his unlawful detention from 20 February 2018 to 31 October 2018.[18]

vii. Other documents in its physical archives in relation to the said fields, including the surveys and work of the IGN (National Geographic Institute), the list of persons previously identified by the IGN in relation to the areas of the collectivity HOUNGUE GANDJI, the QIP numbers (district, block, plot) of the plots making up the applicant's domain, photos and with GPS location from IGN.[19]

13.. In conclusion, the applicant requests that "***by virtue of the obligation of loyalty in search of the truth, of the applicant's human rights referred to in the case, of Articles 26 of the Protocol, 39 (2), 41 and 45 of the Rules, please the Court to order the defendant to produce before it, and without delay, the entire judgment of July 25, 2019 of CRIET, the audit report carried out by the Ministry of Transport, the minutes of interrogation of the applicant during the police investigation and the investigation as well as the evidence that he submitted, of the forensic expert report carried out by the Sieur ASSOSSOU Pedro d'Assomption, evidence of the quality of tax adviser of the CNCB attributed to***

[15] ibid para 32.3
[16] Ibid para 32.4
[17] Ibid Para 32.5
[18] Ibid para 32.7
[19] Ibid para 55.4

the Applicant, the advice he provided and the irregular nature of the payments resulting therefrom, and notification of the evidence of such evidence to the applicant before his sentence to 10 years in prison".[20]

b. Why is it necessary to search & obtain this evidence?

14. Citing the jurisprudence of the Court, the Applicant asserts that "it should be remembered that the Court has always held that "fair trial requires that the conviction of a person to a criminal sanction and in particular to a heavy prison sentence, be based on solid and credible evidence"[21]. Based on this, he contends he has a right to see the evidence that was used to convict him.

15. He also contends that the execution of the Court's order, in disregard of the Court order suspending execution, "constitutes a means of asphyxiating the applicant and preventing him from properly defending himself before this Court. …. because the Respondent does not want the plaintiff to defend himself and does not want the truth to be revealed".[22]

16. The Applicant contends that **"*since t*he case-law of the Court has imposed the burden of proof on the applicant, it must also be taken into account that it is in principle that the right to evidence is a prerequisite to the burden of proof and that Consequently, if, prior to imposing the burden of proof on the Applicant, the Court does not order the Respondent to remove the obstacles which it has arbitrarily imposed on the Applicant's right to evidence, in violation of the**

[20] The Request Para 36
[21] *Mohamed Abubakari v. United Republic of Tanzania (Merits), § 174; Armand Gue hie United Republic of Tanzania (merits and reparations), § 105. See also* Kijiji Isiaga v. United Republic of Tanzania § 66 and 67
[22] The request Para 85

decisions of the Court, the burden of proof imposed on the applicant by the case-law of the Court subjects him to risks."[23]

17. Thus, in the view of the Applicant the Court cannot deny him an order for access to evidence and subsequently decide that he failed to prove his allegations. Indeed the applicant cautions with respect to "**the future decisions of the Court looming on the horizon, the Applicant having seized it, there is an urgent need for the Court to order the Respondent to remove all obstacles which it has arbitrarily imposed on the Applicant's right to evidence, and this in order to prevent the applicant from being subjected to the risk of inhuman and degrading treatment within the meaning of Articles 4 (2) and 7 of the ICCPR, *otherwise, in the light of the Court's case-law, his future decisions will be unfairly prejudicial to the applicant for lack of proof of his claims because of the constraints arbitrarily imposed on his right to evidence*** *and on his rights protected by Articles 4 (2) and 7 of the ICCPR stem only from violations of the Court's decisions of 06 May 2020, application n ° 004/2020, 25 September 2020 and 04 December 2020, application n ° 003/2020."* [24]

c. Jurisprudence Relied upon by the applicant

18. According to the Applicant,[25] "the 'right to evidence' includes the right to seek evidence, the right to obtain evidence and the right to adduce evidence. In this regard, the Applicant relies on the judgment G. Goubeaux, according to which, "it is a right to obtain evidence, which is exercised against the adversary or third parties; it is a right to produce evidence, which is addressed, this time to the judge."[26]

[23] Ibid para 74
[24] Ibid Para 75
[25] Ibid paragraphs 22 to 26.
[26] in C. PERELMAN and P. FORIERS - The proof ..., op. cit, p. 281. See also Fred DESHAYES, contribution to a theory of proof before the European Court of Human Rights, § 105; ECHR, Ruiz Mateos v. Spain, 23 June 1993, series A no.262, § 67

19. Relying on Articles 2 and 17 of the ICCPR, 26 (1) and 28 (2) of the Protocol and the case law of the Court, the applicant further argues that in the present case, he "continues to suffer irreparable damage from violations of his fundamental rights on account of the fact that the respondent has made it impossible for him to enjoy his right to evidence in violation of the decisions of the Court".[27]

20. The Applicant recalls the decision of the court in Application n ° 062/2019, in which it stated as follows: "*The Court considers that the non-execution of the judgment of March 29, 2019 generates prejudice against the Applicant to the extent that, without a clean criminal record, it is impossible for him to submit his candidacy on the list of his party*".[28] He adds that "*it is indisputable that the non-execution of the decisions of 06 May, Application n ° 004/2020, 25 September and 04 December 2020, request n ° 003/2020 rendered in favour of the applicant, is generating prejudices to the applicant's right to evidence subject to this provisional measure*".

21. The Applicant asserts that **"Evidence is necessary for the success" of the claims before the judge.** Distinct from the "right of evidence", the "right to evidence" is protected by the right to a fair trial, by the interests of justice and by the particular nature of the international trial before the Court, which is intended to protect people. **The right to evidence therefore appears to be a complementary or corollary right to the right to a fair trial "*[29]***.

22. He also contends that according to pro-victim international case law on the right to evidence, the right to a fair trial before the Court requires that the applicant actually

[27] Ibid paragraph 27.3 and 27.4
[28] Order of April 17, 2020, application n ° 062/2019, Sebastien G. AJAVON v Benin, § 67.
[29]Fred DESHAYES, contribution to a theory of proof before the European Court of Human Rights, § 105; ECHR, Ruiz Mateos v. Spain, 23 June 1993, series A no.262, § 67

enjoy **"a reasonable opportunity to present his case - including his evidence in conditions which do not place him. in a situation of clear disadvantage compared to its adversary".[30] He also notes that in** KOMI KOUTCHE v Republic of Benin ***the Court ruled "that it is also empowered to order an interim measure which it considers to be in the interest of justice or of the parties"[31].***

23. According to the Applicant, the interest of justice is the manifestation of the truth, and in the matter of human rights, the interest of justice is to ensure the effective protection of all human rights including the right to the truth to deliver justice effectively; as such, the international doctrine of human rights recognizes that "**the right to evidence is an indispensable condition for the achievement of international justice**"[32]

24. The Applicant has also made an assertion, which I fully agree with, that ***"the violation of Article 30 of the Protocol by the Respondent cannot allow the Court to allow the Respondent to continue to deprive the Applicant of his right to Evidence, nor to impose the burden of evidence to the applicant if the Respondent does not remove the obstacles to the applicant's right to evidence".***

d. Have the requirements of article 27 of the Protocol been met?

25. As indicated above, the Ruling of the Court merely says that *"the Applicant* ***has not demonstrated, that the requirements of Article 27(2) of the Protocol are met****".* I do not think it is proper for a Court to make a general finding that cannot be easily understood by the parties or by a reader.

[30] ECHR, October 27, 1993, Bombo Beheer BV v / Netherlands, serie A, n ° 274, § 33; CEDH, May 13, 2008, NN and TA v / Belgium , n ° 65097/01, §42), or, in other words that the applicant can effectively enjoy the "right to evidence" (ECHR, October 10, 2006, LL v. France, n ° 7508/02, § 40).
[31] Decision of November 02, 2019, request n ° 020/2019, case of KOMI KOUTCHE v Republic of Benin.
[32] JC WITENBERG - The theory of evidence before international courts, RCADI, 1936-II, p. 22.

26. Article 27(2) of the Protocol provides that in cases of **extreme gravity** and **urgency** and when necessary to avoid **irreparable harm** to persons, the Court shall adopt such provisional measures as it deems necessary. The question that arises is which aspect of Article 27 has not been met.? Is the Court saying that all three aspects of **extreme gravity, urgency and irreparable harm** have not been met?

27. I am of the view that this finding is not borne by the submissions made by the Applicant, which have devoted extensive parts of the Request to show why there is extreme gravity, urgency and irreparable harm**, by way of facts, arguments and even jurisprudence. Indeed, Paragraphs 59 to 182.11 of the Request is devoted to an expose of these three aspects.** Nothing can be further from the truth than the finding that the Request is general in nature. Furthermore, from the. brief summary hereinabove, it is clear to me that these three aspects have been proved beyond a reasonable doubt leave lone on a balance of probability.

28. It is telling that the Applicant also avers that ***"on*** account of the constraints arbitrarily imposed on his right to evidence, by way of violation of the previous decisions of the Court, there are irreparable damages under Article 28 (2)[33] of the Protocol, owing to the infringements of the applicant's right to evidence, since if the application is dismissed for lack of evidence, "**he will no longer be able to raise the same violations before another body such as the African Commission, the ECOWAS Court of Justice and the UN Human Rights Committee so that manifestly, the prejudices at issue are irreparable and justify the Court ordering the requested measure."**[34]

[33]"The judgment of the Court is taken by majority; it is final and cannot be appealed. "
[34] The Request para 92

e. Does it matter if the Applicant indicates that these measures are ap applicable to all pending applications?

29. This is one aspect of the Ruling of the Court that is deeply troubling. The Court has neither demonstrated why this is a problem nor has it explained why the orders cannot be examined in relation to the Application in which it was submitted. Indeed, the Court has not examined the formulation of the request where the Applicant has tried to link the pending application.

30. Having gone through the Request, out of 182.11 paragraphs (46 pages), it is only in one paragraph, under '**Conclusion on the interim measures requested from the Court'** where the Applicant could be said to have tried to link the provisional measures to the pending applications:

> *to order the defendant to remove all obstacles to the applicant's right to evidence and to ensure the applicant the enjoyment of his right to search, obtain and produce all administrative, judicial and legal documents. civil status for the exercise of his right to appeal and his rights of defence* ***in the pending proceedings concerning him, including in particular the present case***

31. This statement is neither here nor there because in his prayers, the Applicant did not link the provisional measures to all the pending applications. Even if the Applicant did so, which in my view he did not, being a human rights court, the Court cannot properly dismiss the prayer on a procedural basis; rather, it should have proceeded to consider the request within the context of the instant Application.

f. Conclusion

32. There is no doubt in my mind that the documents the Applicants wishes to have access to would be relevant for the determination of the matter at the merits stage. The Applicant has asserted that he needs the documents now to prepare for his case before the Court. If it turns out at the merits stage that the documents were necessary,

will the Court dismiss the matter for lack of documentary evidence, which it failed to order access to?

33. The court should draw inspiration from the following contention by the Applicant:

> **In these circumstances, if the Court does not order the requested measure by requiring the Respondent to remove the obstacles sheltered from the applicant's right to evidence, the applicant's right to a fair trial before the Court will continue to be infringed, all the more so as according to the case-law of the Court, its decisions will continue to conclude that the applicant has not proved his allegations (see for example § 35**[35]of the Order of November 27, 2020, Request n ° 028/2020, §§ "29 and 30,"[36] the order of 29 March 2021, Request n ° 032/2020) while in the particular circumstances of the applicant, the latter is unable to enjoy his right to seek evidence, his right to obtain the evidence and his right to produce said evidence before the Court because the Respondent continues to violate the decisions of the Court of May 06, 2020, Request n ° 004/2020, September 27 and December 04, 2020, Request n ° 003 / 2020 rendered in favour of the applicant.

34. A court of law, and more so a human rights court, cannot shut the door to discovery of evidence, which on the one hand, will lead to the establishment of the truth, and on the other, lead to irreparable damage to a party before it. The Court has previously ruled against the Applicant for lack of evidence. The Applicant has finally appreciated where the problem is, and is now requesting the court to order access to required documentary evidence. I see no valid reason why the majority rejected the request.

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[35] "... Moreover, he does not provide proof of the intimidation to which members of his family are the object. It notes that the Complainant is making hypothetical allegations. "

[36] "On the other hand, the only suspensive appeal which could, in this case, be lodged is the appeal. The absence of this appeal must, in principle, be attested by a certificate of non-appeal, issued by the registry of the court before which it should be filed. However, in the present case, the Applicant has not provided such proof. It follows from the foregoing that the judgment of the CFI of Cotonou is not enforceable, so that the risk of realization of the prejudice invoked is not imminent. It follows that the condition of urgency required by Article 27 (2) is not fulfilled. "

Signed:

Ben KIOKO, Judge;

Done at Dar es Salaam, this Twenty Second Day of November in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.