

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

P.O Box 6274 Arusha, Tanzania Telephone: +255 732 979 509 Fax. +255 732 979 503

IN THE MATTER OF

LOHÈ ISSA KONATE

V.

BURKINA FASO

APPLICATION № 004/2013

JOINT DISSENTING OPINION OF JUSTICES

RAMADHANI, TAMBALA AND THOMPSON

1. We have had the privilege of reading the Order of Provisional Measures in draft. We are however having great difficulty agreeing with the reasoning of the majority for refusing the first request by the Applicant, that is, "his immediate release". Surely the Applicant is not saying that he be released without more. He is asking that he be released provisionally pending the determination of his Application before this Court.
2. There is no reason why this cannot be done, especially when the Respondent that has been served with the Application which incorporates the request for provisional measures has not raised any objection.
3. The granting of this leg of the request for provisional measure will in no way touch or prejudice the substantive application. If the Application is refused the Applicant will simply be sent back to jail to complete his sentence.

4. Failure to grant this leg of the application will cause irreparable harm. Admittedly, every case has to be judged on its own merits, but generally it can be said that personal freedom cannot be compensated by monetary damages. In the present case, the Applicant's release from prison will aid, to a great extent, his request for medication and healthcare

Signed:

Justice Augustino S. L. Ramadhani

Justice Duncan Tambala

Justice Elsie N. Thompson

Dated at Arusha this 4th day of October, 2013

Dr. Robert Eon
Registrar

