

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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

IN THE MATTER OF

FIDÈLE MULINDAHABI

V

REPUBLIC OF RWANDA

APPLICATION 008/2017

ORDER

28 SEPTEMBER 2017



8

The Court composed of: Sylvain ORÉ – President, Ben KIOKO – Vice-President; Gérard NIYUNGEKO, El Hadji GUISSÉ, Rafâa Ben ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE, Ntyam O. MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, 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 and Rule 8 (2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Marie-Thérèse MUKAMULISA a national of Rwanda, abstained from the hearing.

In the Matter of:

FIDÈLE MULINDAHABI

representing himself

v.

REPUBLIC OF RWANDA

not represented

after deliberation,

unanimously issues the following Order:

I. THE PARTIES

1. The Applicant, Fidèle Mulindahabi (hereinafter referred to as “the Applicant”) is a citizen of the Republic of Rwanda.
2. The Application is filed against the Republic of Rwanda (hereinafter referred to as “the Respondent”) which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 22 July 1983 and to the Protocol establishing the Court on 6 June 2003, and made the declaration on 22 June 2013 accepting the jurisdiction of the Court to receive cases from individuals and non-governmental organizations.

II. SUBJECT OF THE APPLICATION

3. The Applicant alleges that on 18 May 2008, the Minibus Taxi Drivers Union (ATRACO) impounded the Toyota Hiace Vehicle with registration No. RAA 798J belonging to a certain Isaac Twumvibarura for non-payment of contributions; the yellow card of the vehicle was also seized for overload.
4. He further alleges that he recommended to Mr. Twumvibarura to refer the matter to the local courts, which he did by bringing the case before the Nyarugenge Regional Court on 4 August 2008.
5. The Applicant affirms that he handed over to “Kigali Safari” Transport Agency, of which Mr. Twumvibarura was the manager, his vehicle with registration No. RAB 762A to be used for lucrative purposes; that he did not receive any proceeds in exchange for the use of the vehicle handed to Mr. Twumvibarura who ended up selling the said vehicle in Burundi. He added that all attempts vis-à-vis the police with a view to resolving the issue proved unsuccessful.
6. He submits that, as a result, he and his family, became victims of intrigues and fraud without protection from the State of Rwanda, blaming the latter for failure to exercise due diligence and for the absence of appropriate measures to protect his right to property.

7. The Application is founded on the alleged violation of Articles 1 and 14 of the Charter, and Article 17 of the Universal Declaration of Human Rights.
8. The Applicant prays the Court to:
 - 1) "Declare that the State of Rwanda has violated the relevant human rights instruments that it has itself ratified;
 - 2) Rule that the State of Rwanda was in the wrong for having impounded the vehicle RAA 798J;
 - 3) Order criminal proceedings allowing the Applicant to pursue the case concerning vehicle No. RAA 798J for and on behalf of Twumvibarura;
 - 4) Order the State of Rwanda to deliver another vehicle to him in replacement of the vehicle with registration No. RAA 798J;
 - 5) Order provisional measures especially the payment of the school fees of the his children;
 - 6) Order the payment of damages for the seizure of the vehicle with registration No. RAA798J;
 - 7) Order the State of Rwanda to pay damages for failure to protect him from the violations arising from the actions of Mr. Twumvibarura".

III. PROCEDURE

9. The Application was received at the Registry on 27 February 2017.
10. By a letter dated 3 April 2017, on instructions by the Court at its 44th Ordinary Session held from 6 to 24 March 2017, the Registry asked the Applicant to produce within thirty (30) days the from date of receipt, the Judgments rendered by the local Courts in Rwanda in respect of his allegations.
11. By a letter dated 4 May 2017, the Applicant while acknowledging receipt, sought the Registry's clarifications regarding the request to transmit to the latter, copies of the Judgments rendered by the local Courts, given that he had filed eight (8) such Judgments before the Court.

12. By a letter dated 12 May 2017, the Registry notified the Applicant that the clarification sought by the latter was in connection with Application 008/2017.
13. By e-mail of 5 and 6 June 2017 the Applicant successively forwarded to the Registry copies of: Judgment RC035/08/TGI/NYGE rendered on 27 January 2011 by the HUYE Commercial Court; and Judgment RC 0039/08/HC/KIG rendered on 6 January 2012 by the Kigali High Court in a civil suit.

IV. THE COURT'S ASSESSMENT

14. After review of the Judgments tendered as part of the pleadings, the Court notes that the said Judgments have nothing to do with the Application No. 008 pending before it.
15. Judgment RC0357/08/TGI/NYGE in effect lists as Parties to the case *La Banque Populaire du Rwanda* (Applicant) and Twumvibara Isaac (Respondent), and the subject of the dispute as being a loan granted to Twumvibara Isaac by *La Banque Populaire du Rwanda*.
16. In Judgment RC 0039/08/HC/KIG, Twumvibara is the Appellant and ATRACO Company the Respondent; it mentions the State of Rwanda, *La Banque Populaire du Rwanda* as well as a Bailiff of *La Banque Populaire* as persons seeking to be joined in the proceedings. The said Judgment is in respect of an appeal lodged against Judgment 0357/08/TGI/NYGE delivered by the Nyarugenge Regional Court.
17. Rule 34(4) of the Rules of Court on Commencement of Proceedings provides that "...the Application shall specify the alleged violation, evidence of exhaustion of local remedies or of the inordinate delay of such local remedies as well as the orders or the injunctions sought..."
18. The Court notes that, although the Applicant has produced copies of the Judgments in respect of exhaustion of local remedies at the Registry's request,

the said Judgments do not show that the Applicant is a Party to the cases concerned.

19. The Court notes that at this stage of the proceedings, the Applicant has not produced evidence as to the exhaustion of local remedies within the meaning of Rule 34(4) of the Rules.
20. It further notes that an Application must, *inter alia*, indicate proof of exhaustion of local remedies as set out in Rule 34 of the Rules.
21. In the instant case, the Application indicates that local remedies have been exhausted; yet the evidence produced shows that there has been no such compliance in terms of the requirements set out in Rule 34(6) of the Rules.
22. In view of the foregoing, the Court finds that the Application is not compliant with the provisions of Rule 34 of the Rules in regard to exhaustion of local remedies.
23. For these reasons,

The COURT,
Unanimously,

- i. *Dismisses* the Application for failure to comply with the requirements set forth in Rule 34 (4) of the Rules;
- ii. Accordingly *orders* that the Application be struck off the cause list.

Done at Arusha this Twenty-Eighth Day of the Month of September 2017 in English and French, the French text being authoritative.

Signed:

Sylvain ORÉ, President

Robert ENO, Registrar

