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JUDGMENT SUMMARY

LAURENT MUNYANDILIKIRWA v. REPUBLIC OF RWANDA
APPLICATION NO. 023/2015
RULING ON JURISDICTION AND ADMISSIBILITY

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 2 December 2021

Dar es Salaam, 2 December 2021: The African Court on Human and Peoples' Rights (the Court) delivered the Ruling on jurisdiction and admissibility in the case of *Laurent Munyandilikirwa v. Republic of Rwanda*.

Laurent Munyandilikirwa (the Applicant) is a national of Rwanda, a human rights lawyer and former President of the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR), a non-governmental organisation (NGO) working to promote and ensure the protection of human rights in Rwanda. He alleged that he served LIPRODHOR as President from December 2011 to until he was forced to go into exile after having been 'illegally' ousted from his position in July 2013. The Applicant asserted that members of what he claims to be "the legitimate board" of LIPRODHOR, including him, who were in charge of overseeing the overall work of the organisation, were illegally removed by a group of other individuals within the organisation in contravention of the bylaws of LIPRODHOR and the Rwandan organic laws. He alleged that, by failing to prevent and sanction such illegal conduct through independent and impartial court, the Republic of Rwanda ("the Respondent State") violated his rights to freedom from discrimination, the right to equality and equal protection of the law, fair trial, the right to receive information and freedom to express his opinions, freedom of association and assembly and the right to work.

The Respondent State did not participate in the proceedings after withdrawing its Declaration under Article 34 (6) of the Protocol on the Establishment of the African Court on Human and Peoples' Rights (the Protocol) pertaining to the individual complaint mechanism. However, the current Board of LIPRODHOR filed submissions through its lawyer and Mr. Maina Kiai, the United Nations Special Rapporteur on Freedom of Association and Assembly intervened as *amicus curiae* and made submissions.

At the outset, the Court dealt with the Respondent State's withdrawal of the aforesaid Declaration and its impact on the instant application. The Court recalled its order delivered on 03 June 2016 where it held that such withdrawal did not have impact on pending cases or new cases filed before the date when the withdrawal took effect, that is, 1 March 2017. On this basis and having confirmed that the Respondent



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State consciously failed to participate in the proceedings, the Court decided, in accordance with Rule 63 of the Rules of Court (the Rules), to proceed with the determination of the matter.

As regards its jurisdiction, the Court held that since the Application involves alleged violations of rights provided under the African Charter on Human and Peoples' Rights (the Charter) and other human rights instruments to which the Respondent State is a Party, it has material jurisdiction by virtue of Article 3 of the Protocol.

In respect of its personal jurisdiction, it noted that the Respondent State is a Party to the Protocol and has deposited the Declaration prescribed under Article 34(6) of the Protocol and this Declaration allowed individuals, such as the Applicant, to file the application as per Article 5(3) of the Protocol. It reiterated that the withdrawal of the Declaration by the Respondent State did not affect the instant application.

The Court further held that it had temporal jurisdiction because the alleged violations were committed in 2013, after the Respondent State became a party to the Charter, that is, on 21 October 1986, to the Protocol on 25 May 2004 and deposited the Declaration required under Article 34 (6) thereof on 22 January 2013; and lastly, that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State. The Court therefore, concluded that it had jurisdiction to consider the Application.

On the issue of the admissibility of the Application, the Court had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50(2) of the Rules, had been met. As regards the identity of the Applicant, the compatibility of the application with the Constitutive Act of the Union and the Charter and that the application was not written in disparaging or insulting language or is not based exclusively on news disseminated through the mass media, the Court found that the Application satisfies such requirements.

On the other hand, regarding the requirement of exhaustion of local remedies specified under Rule 50 (2) (e) of the Rules, the Court observed that the rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their respective jurisdiction before an international human rights body is called upon to determine the State's responsibility for the same. In the instant case, the Court took note of the Applicant's contention that he sought redress for his grievances at the internal dispute resolution organ of LIPRODHOR, as required by the organic laws of the Respondent State and the Statute of LIPRODHOR, before he filed his case before the *Tribunal de Grande Instance* of Nyarugenge and later at the High Court of Kigali. However, the Court further noted from the record that both domestic courts dismissed his case on the ground of



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technicality, stating that the Applicant failed to exhaust the internal dispute resolution mechanism in LIPRODHOR before seizing both domestic courts.

The Court further took note of the Applicant's contention that he had in fact exhausted the dispute resolution procedure established by the Statute of LIPRODHOR. The Court then examined the decision of the relevant rules of the aforesaid Statute, the Rwandan Organic Law No. 04/2012 governing national Non-governmental Organisations and the decision of the internal dispute resolution committee which the Applicant filed to demonstrate that he pursued the internal dispute resolution mechanism.

The Court noted that in accordance with Article 27 of Rwandan Organic Law No. 04 of 9 April 2012 and Article 19 of the Statute of LIPRODHOR "any conflict that arises within a national non-governmental organisation shall first be resolved by the organ charged with conflict resolution" before a party files a case to the competent ordinary court. The Court further took note that the French version of the said provision of the Statute requires that once the internal dispute resolution body reached a particular decision, the same shall be sent to the General Assembly of LIPRODHOR for adoption. This requirement is absent in the Kinyarwanda and English versions, which are equally authoritative in the Respondent State.

Nevertheless, the Court observed that in the decision of the internal dispute resolution committee, adduced by the Applicant himself, it was indicated that the Committee would send its decision to the General Assembly for adoption after hearing the other parties who were involved in the 'illegal ousting' of the Applicant and his other Board members. The Court noted that the Applicant however took his matter to the *Tribunal de Grande Instance* on 25 July 2013 despite the fact that the Committee had summoned the other parties for a hearing on 2 August 2013. In other words, by the time the Applicant decided to take his matter to the Tribunal, the process in the internal dispute resolution organ was not finalised. The Court observed that it is for this same reason that both Tribunal de Grande Instance and the High Court of Rwanda also dismissed the Applicant's case.

As a result, the Court found that the Applicant failed to properly exhaust local remedies, as he did not meet the requirement specified under Article 27 of Organic Law 004/2012, which prevented ordinary courts of the Respondent State from entertaining a matter arising from national NGOs before it is dealt with by internal dispute resolution bodies of the same. In this regard, the Court underscored that for purpose of exhaustion of local remedies under Rule 50 (2) (e) of the Rules, it is not sufficient that an applicant formally accessed ordinary courts or attempted to do so. This is particularly the case in contexts where ordinary



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courts are unable to consider the merits of a matter as a result of the applicant's own failure to fulfil some procedural requirements to access the ordinary courts.

Concerning the Applicant's assertion that domestic remedies were ineffective, the Court held that it was not enough for him to cast aspersion on the ability of the domestic remedies of the State to justify his exemption from the obligation to exhaust the local remedies.

The Court subsequently noted that the conditions of admissibility of an Application in Rule 50 (2) of the Rules are cumulative, such that if one condition is not fulfilled then the Application is inadmissible. Having found that in the present Application, the Applicant failed to fulfil the requirement of exhaustion of local remedies as enshrined in Rule 50(2) (f) of the Rules, the Court consequently held that the Application is inadmissible.

On costs, the Court ordered that each Party should bear its own costs.

Justice Rafaâ BEN ACHOUR and Justice Ben KIOKO issued Dissenting Opinions on the issue of exhaustion of local remedies.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <https://www.african-court.org/cpmt/details-case/0232015>

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.