

Dissenting Opinion of Judge Rafaâ Ben Achour

Application No. 023/2015, *Laurent Munyandilikirwa v. Republic of Rwanda*

1. I do not agree with the Court's near-unanimous decision that found Application No. 023/2015 *Laurent Munyandilikirwa v. Republic of Rwanda* inadmissible on the ground that the Applicant failed to exhaust local remedies.

2. Contrary to the near-unanimous ruling of the Court, I am convinced that the Applicant exhausted all normal, available, effective legal and other remedies. (I). Besides, the Court relied on a provision in the Respondent State's law in one of the three versions of Article 19 of the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR), to the exclusion of the other two equally authentic versions of the said law in English and Kinyarwanda (II).

I. The Applicant exhausted all local remedies

3. It should be noted that this Application was filed in response to a decision taken on 21 July 2013 based on a vote at a "consultation meeting", which meeting was subsequently qualified as a General Assembly of the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR), and as a result of which LIPRODHOR's Board of Directors, chaired by the Applicant since 1994, was ousted and replaced by another Board¹.

4. The Applicant challenged the decision before several bodies. In accordance with the provisions of the law on NGOs² and LIPRODHOR statute, he first referred the matter to the LIPRODHOR's internal dispute resolution body, complaining about a vote held during a consultation described as a General Assembly and the election of a new Board of Directors (a). As LIPRODHOR failed to comply with the decisions of the internal dispute resolution body, he turned to the Respondent State's courts for redress (B).

¹ Officially, the "consultation meeting" was convened to discuss LIPRODHOR's decision to leave the Rwandan Collective of Leagues and Associations for the Defence of Human Rights (CLADHO), an umbrella organization of eight human rights associations including LIPRODHOR.

² Organic Law No. 04/2012 of 9 April 2012 on the organization and functioning of national non-governmental organizations.

a. Referral to LIPRODHOR's internal dispute resolution body

5. The law on NGOs provides:

“Any conflict that arises in the domestic non-governmental organisation or among its organs shall be first resolved by the body in charge of conflict resolution....

In case this procedure fails, the concerned party may file a case to the competent court of Rwanda³”.

6. The Applicant submits that, in accordance with the provisions of Article 27 of the above-mentioned Law on NGOs and LIPRODHOR statute, he referred the matter to LIPRODHOR's internal dispute resolution body on 22 July 2013.

7. That same day, the Applicant and members of the ousted board of directors filed an application with the Rwandan Governance Office in which they denounced “the illegal meeting wrongly described as a General Assembly and the illegitimacy of the newly elected Board of Directors”⁴.

8. On 23 July 2013, LIPRODHOR's internal dispute resolution body issued a decision in favour of the Applicant, in which it held that the 21 July secret meeting (described as a General Assembly) was held in contravention of the organization's statute, and that the board of directors chaired by the Applicant should continue to operate as the functioning leadership of LIPRODHOR⁵

³ *Idem*.

⁴ Paragraph 34 of the Initial Application.

⁵ In the said Minutes, the Committee found that the meeting of 21 July 2013 contained the following:

...we consider that the means followed to resolve the problem have not respected the statutes and the Rules of the League. We also believe that the body which is the Board of Directors is empowered to take the decision to continue working with CLADHO or to withdraw, on the understanding that it represents the members who elected it.

For these reasons, we seek:

- 1)The summon of the member who chaired the meeting of 21/07/2013, namely Mr. Gahutu Augustin and the members elected to different administrative positions during this meeting, on 02/08/2013.
- 2)We request the Board of Directors elected by the General Assembly at the meeting of 9-10/12/2011 to continue to discharge its functions.

9. However, and in spite of the internal dispute resolution organ's decision, and in spite of the decision having been notified, the Rwandan Governance Board, the government body responsible for the oversight and registration of civil society⁶, on 24 July 2013 decided to ignore the findings of the internal dispute resolution body and hastily sent a letter to LIPRODHOR, by which letter it officially approved the ouster of the Board of Directors chaired by the Applicant, and legally recognized the new Board of Directors elected on 21 July 2013 as LIPRODHOR's functioning board .

10. That was the first essential phase of the recourse to local remedies. It was fully accomplished.

b. Referral to the Respondent State's courts

11. In accordance with Article 27(2) of the law, which provides "[i]n case that procedure fails, the concerned party may file a case with the competent court of Rwanda" and, faced with a legal stalemate, on 25 August 2013, the Applicant and other members of the LIPRODHOR's ousted Board filed an application before the *Tribunal de Grande Instance* of Nyarugenge against the board elected on 21 July 2013 and installed at the head of LIPRODHOR by the Rwandan Governance Office. The Applicants prayed the Court to place an injunction on the installation of a new Board of Directors, and to order the unfreezing of LIPRODHOR's banks accounts which had been frozen at the request of the newly elected Board of Directors.

12. On 8 August 2014, the *Tribunal de Grande Instance* of Nyarugenge dismissed the complaints on the ground that the Applicants should have named LIPRODHOR as the defendant rather than the members of the newly elected Board and that the Applicant and his members did not obtain a decision from the internal dispute resolution body before seizing the court.

3)To forward the conclusions of the Committee to the Members, after hearing both parties, for adoption by the General Assembly of LIPRODHOR.

⁶ Article 5(1) of Law No. 56/2016 of 16/12/2016 establishing the Rwandan Governance Office determining its responsibilities, organisation and functioning: « 1 regularly monitor service, delivery and compliance with the principles of good governance in the public and private sectors as well as in non-governmental organizations".

13. On 24 February 2015, the Applicants lodged an appeal before the High Court of Kigali. On 23 March 2015, the High Court partially upheld the judgement of the *Tribunal de Grande Instance* of Nyarugenge, based on the fact that the co-applicants had failed to attempt to resolve the dispute through LIPRODHOR's internal dispute resolution body.

14. The Applicant's experience before LIPRODHOR's internal dispute resolution body and before the judicial authorities shows that he exhausted the available internal remedies provided by law. However, the Court found otherwise, wrongly agreeing with the position of LIPRODHOR's counsel who argued that the Applicant seized the *Tribunal de Grande Instance* prematurely, and this, after the decision of the internal dispute resolution body, he should have referred the matter to LIPRODHOR's General Assembly. Apart from the fact that it did not exist Recourse to this General Assembly, is by definition ineffective as the Assembly had already endorsed the *fait accompli*.

15. Unfortunately, this Court based its decision on an uncertain text of questionable legality, that is, the French version of Article 19 of the LIPRODHOR Statutes which provides: "[in the absence of a settlement by this body, the concerned party may submit the dispute to the competent Rwandan court after a decision is rendered by the General Assembly". The Court affirms that: "Nonetheless, the Respondent States' Courts were not able to make determination on the merits of his case because of the Applicant's own failure to meet the requirement of exhaustion of the internal dispute resolution mechanism of LIPRODHOR"⁷. The Court further held that: "a mere attempt to access ordinary judicial remedies is not sufficient to meet the requirement of exhaustion of local remedies within the terms of Rule 50 (2) (e) of the Rules. This is particularly important when an applicant fails to fulfil procedural or substantive legal requirements to access domestic courts, which is the case in the instant Application"⁸. The fact that the domestic courts did not raise this issue is not binding on the Court.

16. I am of the view that the Court did not need to take into consideration the provisions of LIPRODHOR's statute because the text, which is strictly internal to the NGO, does not have to add any procedural requirement to a statutory provision that is clear. The Organic Law simply requires that only one condition be met before recourse to the competent jurisdictions,

⁷ § 90 of the Judgement.

⁸ § 91 of the Judgement.

i.e., recourse to the internal dispute resolution body. The Applicant met all legal provisions. The internal legal text of an organization cannot in any way contradict the law and cannot institute proceedings not provided for by lawmakers. That Article 19 of Article 19 of the Statute of LIPRODHOR was taken into consideration is questionable from a second point of view, which I set out briefly below.

17. Moreover, it makes little sense to insist that the Applicant return before the General Assembly, that is, before the same body that decided to oust the Board of Directors chaired by the Applicant, because that body had refused to comply with the decision of the internal dispute resolution organ and had sanctioned the Applicant and his counsel. This is an ineffective remedy which, according to the Court's jurisprudence⁹, does not even need to be attempted.

II. Consideration of the French version of Article 19 of LIPRODHOR's statute

18. The Court ignored the Organic Law on NGOs and relied on a clause in Article 19 of the French version of the LIPRODHOR statute that does not appear in the English and Kinyarwanda versions. In this regard, "The Court also submits that Article 19 of the LIPRODHOR statute exists in three languages: English, French and Kinyarwanda. The English and French versions are identical but the French version has an additional clause that gives a role to the General Assembly of LIPRODHOR's in the process of a dispute resolution. The relevant part of the provision is produced in French:

Tout litige qui surgit au sein de la ligue entre les organes ou entre les membres et la ligue doit être réglé préalablement réglé par l'organe de résolution des conflits avant d'être soumis à l'Assemblée Générale.

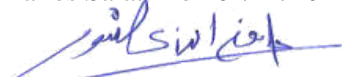
À défaut de règlement par cet organe, la partie intéressée peut soumettre le litige à la juridiction rwandaise compétente après décision de l'Assemblée Générale.

⁹ See for example: ACtHPR. *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin*, Application No. 065/2019, Judgement of 29 March 2021, § 75 where "The Court emphasises that the local remedies required to be exhausted must be available, effective and adequate".

19. The Court however observes that the Statute does not contain any provision dealing with potential divergences between the different versions and, like similar laws enacted in the Respondent State, uses the three languages, all equally authentic.
20. If all the versions are equally authentic, then the question that arises is why did the Court give precedence to the French version to the detriment of the other two versions of the Statute?
21. To answer this question, the Court uses a reasoning which, in my view, lacks probative force. Indeed, the Court refers to a hypothetical linguistic practice within LIPRODOHR, disregarding the provisions of the Rwandan constitution on the equality of languages. According to the Court, and “as far as the practice of LIPRODHOR is concerned, it may indeed be the case that Kinyarwanda is generally used as the default language of communication and business. Nonetheless, it appears from the Minutes of the Internal Dispute Resolution Committee, which the Applicant himself relies on for his Application, that the Committee used the French version of the Statute”¹⁰.
22. Moreover, instead of diving into the analysis of this linguistic practice of LIPRODOHR, the Court could have given the Applicant the benefit of the doubt owing to the contradictions between the versions of the Statute.
23. In addition to the arguments in the first section, the Court could have based its decision on the two most favourable versions, which moreover, are in accordance with the law or, at any rate, it could have noted that, given the contradiction in the texts and considering their legal nature, it would concentrate only on legal provisions which do not give rise to any doubt.

24. By finding Application No. 023/2016 inadmissible, the Court leaves the questions raised by the Application on freedom of association unanswered. This is highly regrettable.

Done in French in Dar es Salaam on 02/12/2021


Judge Rafaâ Ben Achour



¹⁰ § 84 of the Judgement.

