

<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS</b> <b>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THE MATTER OF**

**YAYA KONE**

**V.**

**REPUBLIC OF MALI**

**APPLICATION No. 001/2021**

**JUDGMENT**

**2 DECEMBER 2021**



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**The Court composed of:** Imani D. ABOUD, President, Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, 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 (hereinafter referred to as "the Protocol") and Rule 9(2)<sup>1</sup> of the Rules of Procedure of the Court (hereinafter referred to as "the Rules"), Judge Modibo SACKO, a member of the Court and a national of Mali did not hear the Application.

In the Matter of:

Yaya KONE

*Represented by:*

Mme Alifa Habib KONE, Advocate at the Bar of Mali.

Versus

REPUBLIC OF MALI

Represented by:

- i. Mr. Yousouf DIARRA, Director General of State Litigation, and
- ii. Mr. Daouda DOUMBIA, Deputy Director General of State Litigation.

after deliberation,

*Renders this Judgment:*

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<sup>1</sup> Formerly Rule 8(2) of the Rules of 2 June 2010.

## **I. THE PARTIES**

1. Mr. Yaya KONE (hereinafter referred to as "the Applicant") is a national of Republic of Mali, and a lawyer responsible for managing Human Resources at a mining company, Société des Mines de Loulo SA (hereinafter referred to as "SOMILO SA"). He challenges his conviction for an offence of false accusation ("dénonciation calomnieuse") which he claims was wrongful.
2. The Application is filed against the Republic of Mali (hereinafter referred to as "the Respondent State") which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986, and to the Protocol on 10 May 2000. On 19 February 2010, the Respondent State deposited with the Chairperson of the African Union Commission, the Declaration provided for in Article 34(6) of the Protocol, by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-governmental Organizations (hereinafter referred to as "the Declaration").

## **II. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. It emerges from the record that on 13 June 2013, the Applicant acting on behalf of his employer SOMILO SA, filed a complaint before the Gendarmerie (police) of Kéniéba alleging that a roll of electric cable belonging to SOMILO SA had been stolen by an unknown person. In his complaint, the Applicant indicated that the said cable was found in the warehouse of Mr. Aliou Diallo, a contractor of EMBC, a service provider of SOMILO SA.
4. Following his complaint, the Gendarmerie conducted investigations and referred the matter to the Public Prosecutor, who filed charges against four suspects including Mr. Aliou Diallo before the Civil Court of Kéniéba.

5. On 19 November 2013, by Judgment No. 223, the Civil Court of Kéniéba found Mr. Abdramane Traore, one of the four suspects, guilty of theft and sentenced him to six months' imprisonment and acquitted the other suspects, including Mr. Aliou Diallo. Subsequently, the latter and the Public Prosecutor filed a case of false accusation against the Applicant before the Criminal Court of Kéniéba.
6. On 22 July 2014, by Judgment No. 146, the Criminal Court convicted the Applicant of the offence of false accusation and sentenced him to six (6) month suspended imprisonment and a fine of One Hundred Seventy-Five million (175,000,000) CFA francs to be paid to Mr Diallo as reparation for moral and material prejudice. The said judgment also stated that SOMILO SA would be fully liable for the above-mentioned pecuniary sentence against its employee-defendant (the Applicant).
7. On 17 April 2014, the Applicant, representing his company, appealed against the judgment No. 223 of 19 November 2013 of the Civil Court of Kéniéba before the Court of Appeal of Kayes.
8. On 16 March 2015, the Court of Appeal of Kayes by Judgment No 25 overturned the decision of the Civil Court of Kéniéba. The court further sentenced Mr. Traore to a fine of Five Hundred Seventy Nine Million Nine Hundred Seventy Nine Thousand and Nine Hundred Sixty-Six (579, 979,966) CFA francs to be paid to SOMILO SA as damages.
9. On 18 and 19 March 2015, the Public Prosecutor with some lawyers representing SOMILO SA filed a cassation appeal before the Supreme Court against the Kayes Court of Appeal's Judgment No. 25 of 16 March 2015. By its judgment N° 77 of 21 November 2016, the Supreme Court dismissed the said appeal as inadmissible.
10. On 8 May 2017, following an appeal filed by the Applicant and SOMILO SA, the Court of Appeal of Kayes by Judgment No. 18, upheld Decision No. 146

of 2014 of the Civil Court of Kéniéba and the amount to be paid by SOMILO SA to Mr Aliou Diallo.

11. On 19 February 2018, following an appeal lodged by the Applicant and SOMILO SA against the judgment of the Court of Appeal of Kayes No. 18 of 8 May 2017, the Supreme Court, by its Judgment No. 21, set aside and annulled the said judgment and, in the interest of justice, referred the case and the parties to the Court of Appeal of Kayes, for the said court to consider the matter with a recomposed bench of judges.
12. On 18 March 2019, by its judgment No. 26, the Court of Appeal of Kayes confirmed Judgment No. 146 of 22 July 2014. The same Court increased the fine to the sum of two hundred million (200,000,000) CFA francs, to be paid as compensation for the damage Mr Aliou Diallo suffered as a result of the offence of false accusation. The said Court further declared SOMILO-SA civilly liable for the Applicant and guarantor of the civil sentence pronounced against him.
13. On 28 November 2019, the Supreme Court dismissed by its judgment No. 101, the appeal of the Applicant and SOMILO-SA against judgment No. 26 of 18 March 2019 of the Court of Appeal of Kayes.
14. On 19 October 2020, the Supreme Court also dismissed by its judgment No. 126, the appeal of the Minister of Justice of the Respondent State seeking a review of judgment No. 26 of 18 March 2019 of the Court of Appeal of Kayes.
15. The Applicant subsequently filed the instant Application before the Court challenging those aforesaid judgments which were ruled against him and SOMILO-SA.

## **B. Alleged violations**

16. In the Application, the Applicant alleges the following violations of his rights:

- i. The right to equality before the law and equal protection of the law guaranteed under Articles 3(1) and (2) of the Charter.
- ii. The right to a fair trial guaranteed under Articles 7 of the Charter, and Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup>.

### **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

17. The Application together with a request for provisional measures was received on 25 November 2020.

18. On 7 January 2021, the Application, and the Request for Provisional Measures and the additional evidence were transmitted to the Respondent State. On 11 February 2021, the Registry received and notified the Applicant of the Respondent State's response to the Request for Provisional Measures.

19. On 15 February 2021, the Applicant filed supplementary pleadings, which were transmitted on the same day to the Respondent State for its response within ten (10) days of receipt. The Respondent State did not file the said response.

20. On 23 February 2021, the Applicant filed his reply to the Respondent State's response on the request for provisional measures. On 15 April, 2021, the Respondent State submitted its response to the main Application, which was notified to the Applicant on the same day for his reply, if any.

21. On 10 May 2021, the Applicant submitted his reply to the Respondent State's Response to the Main Application, which was transmitted to the Respondent State on the same day for its information.

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<sup>2</sup>The Respondent State became a party to the ICCPR on 16 July 1974.

22. On 5 October 2021, the Court issued an order to the effect that the request for provisional measures would be considered together with the Application on the merits.

23. On 12 October 2021, the proceedings were closed, and the Parties were duly notified.

#### **IV. PRAYERS OF THE PARTIES**

24. The Applicant prays the Court to:

- i. Declare that it has jurisdiction to examine the human rights violations mentioned [paragraph 16 above];
- ii. Consequently, find that the judgments [of the domestic courts] constitute a violation of the Applicant's human rights, insofar as it violates the Charter, the Constitution of the Respondent State, as well as Law No. 01-79 of 20 August 2001 on the Criminal Code of the Respondent State;
- iii. Order the Respondent State to cease the said violations, by annulling the aforementioned decisions of conviction, through the prohibition of any mention of the conviction in any official document of the Respondent State;
- iv. Order the Respondent State to publish the various judgments in two media outlets.

25. As compensation for the financial, moral and professional harm suffered, the Applicant requests that the Respondent State be ordered to pay reparation for the harm suffered as follows:

- i. Ten Million (10,000,000) CFA francs as reparation for the financial loss suffered;
- ii. One Hundred and Fifty Million (150,000,000) CFA francs for the moral harm suffered by the Applicant, his wife and two (2) children;
- iii. Five Hundred Million (500,000,000) CFA Francs for the professional harm suffered by the Applicant;

- iv. Order the impugned parties jointly and severally to pay all costs.

26. Regarding provisional measures, the Applicant requests the Court to:

- i. Order the cessation of all enforcement proceedings of the judgments of conviction pending the Court's consideration of the merits of the instant Application;
- ii. Order the Respondent State to stay the execution of the judgment of conviction and, more specifically, the seizure of his property for the purpose of the said enforcement;
- iii. Request the Respondent State to report back to the Court within one month on the measures taken to stay the execution of the judgment.

27. For its part, the Respondent State prays the Court for the following:

- i. As a matter of form, to rule as appropriate;
- ii. On the merits, find that the Applicant has not proved the alleged violations;
- iii. Consequently, dismiss his application and all the claims that follow.

## **V. JURISDICTION**

28. The Court recalls that Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

29. The Court observes that pursuant to Rule 49(1) of the Rules, it “shall preliminarily ascertain its jurisdiction... in accordance with the Charter, the Protocol and these Rules.”<sup>3</sup>

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<sup>3</sup> Formerly, Rule 39(1), Rules of Court, 2 June 2010.

30. On the basis of the above-cited provisions, the Court must preliminarily ascertain its jurisdiction and dispose of objections to its jurisdiction, if there are any. In the instant case, the Respondent State has not raised any preliminary objections. However, the Court should still satisfy itself that it has jurisdiction to examine the Application.
31. As regards material jurisdiction, the Court finds that it has material jurisdiction insofar as the Applicant alleges a violation of Articles 3(1) and (2) and 7 of the Charter to which the Respondent State is a party.
32. With regard to its personal jurisdiction, the Court finds that it has personal jurisdiction insofar as the Respondent State is a party to the Charter the Protocol and has deposited the Declaration provided for in Article 34(6) that allows individuals and Non-Governmental organisations with Observer Status with the African Commission on Human and Peoples' Rights to file cases directly before the Court.
33. With regard to its temporal jurisdiction, the Court observes that all the violations alleged by the Applicant are based on the Kayes Court of Appeal's judgment No. 26 of 18 March 2019, upheld by two judgments of the Respondent State's Supreme Court, namely Judgment No. 101 of 28 November 2019, and Judgment No. 126 of 19 October 2020, that is, after the Respondent State became a Party to the Charter and the Protocol and had deposited the Declaration.
34. The Court thus, holds that it has temporal jurisdiction.
35. With respect to its territorial jurisdiction, the Court notes that the violations alleged by the Applicant occurred in the territory of the Respondent State and therefore, it falls within the territorial domain of the Court's jurisdiction.
36. In view of the foregoing, the Court concludes that it has jurisdiction to consider the instant Application.

## VI. ADMISSIBILITY

37. Article 6(2) of the Protocol provides that "[t]he Court shall rule on the admissibility of cases, taking into account the provisions of Article 56 of the Charter".

38. Rule 49(1) of the Rules of Court further provides that "The Court shall ascertain (...) the admissibility of an Application in accordance with the Charter, the Protocol and these Rules".

39. Rule 50(2) of the Rules<sup>4</sup>, which restates in substance Article 56 of the Charter, provides:

Applications filed before the Court shall comply with all of the following conditions:

- a. Indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

40. The Court notes that the Respondent State does not contest the admissibility of the Application. Nonetheless, pursuant to Rule 50(1) of the Rules, it shall

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<sup>4</sup> Formerly Rule 40 of the Rules of 2 June 2010.

examine whether the abovementioned admissibility requirements set out in Rule 50(2) of the Rules are fulfilled.

41. The Court notes that the requirement specified in Rule 50(2)(a) of the Rules has been met, as the Applicant has clearly stated his identity.
42. The Court notes that the requests made by the Applicant are intended to protect his rights protected in the Charter. It notes that one of the objectives of the Constitutive Act of the African Union, as set out in Article 3(h), is the promotion and protection of human and peoples' rights. Accordingly, the Court finds that the Application is consistent with the Constitutive Act of the African Union and the Charter, and therefore, finds that it meets the requirement of Rule 50(2)(b) of the Rules.
43. The Court further notes that the Application does not contain any words that are disparaging or insulting to the Respondent State, its institutions or the African Union; thus, it complies with the requirement of Rule 50(2)(c) of the Rules.
44. As regards the requirement specified in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated in the mass media.
45. The Court further notes that the requirement to exhaust local remedies under Rule 50 (2)(e) of the Rules must also be satisfied prior to bringing a case before it. However, an exception may be made to this requirement if local remedies are not available, are ineffective, insufficient or if proceedings before the domestic courts are unduly prolonged. Furthermore, the remedies to be exhausted must be ordinary judicial remedies<sup>5</sup>.

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<sup>5</sup> *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 65, § 56 *Kijiji Isiaga v United Republic of Tanzania*, (merits), (21 March 2018), 2 AfCLR 218, § 45. *Benedicto Daniel Mallya v. United Republic of Tanzania*. ACTHPR .Application No. 018/2015, Judgment of 26 September 2019 (merits), § 26.

46. The Court notes that in the instant case, the Applicant exercised the available remedies, twice before the Supreme Court by Appeal No. 005 of 8 May 2017 against the judgment of the Court of Appeal of Kayes No. 18 of 8 May 2017. The Criminal Division of the Supreme Court by Judgment No. 21 of 19 February 2018 referred the case and the parties before a reconstituted bench of the Court of Appeal of Kayes. Subsequently, the Applicant filed Appeal No. 008 of 20 March 2019 before the Supreme Court on 28 November 2019 against Judgment No. 26 of 18 March 2019 of a reconstituted bench of Court of Appeal of Kayes. The Criminal Division of the Supreme Court by its Judgment No. 101 of November 28, 2019 dismissed the said Applicant's appeal. Finally, on 19 October 2020, the Supreme Court by Judgment No. 126 of 19 October 2020, dismissed the appeal by the Respondent State's Minister of Justice seeking a review of Judgment No. 26 of 18 March 2019.

47. In this regard, the Court notes that in the judicial system of the Respondent State, the appeal before the Supreme Court is the final judicial procedure that the Applicant could have recourse to get redress for his grievances. In accordance with Article 159 of Law No. 2016-046 of 23 September 2016 on the organic law establishing the structure, operating rules of the Supreme Court and the procedure thereof: "Where an appeal in cassation is dismissed, the party who lodged the appeal shall not be eligible to file a new appeal against the same judgment." Article 186 of the same law also provides that: "Where an appeal to the Supreme Court has been dismissed, the party who lodged the appeal may no longer appeal to the Supreme Court against the same judgment or ruling, under any pretext and by any means whatsoever".

48. In view of the foregoing, the Court therefore finds that the Applicant has exhausted all local remedies.

49. Rule 50(2)(f) of the Rules further requires that applications be submitted to the Court within a reasonable time after all local remedies have been exhausted or from the date on which the Court considers that the time limit for bringing the case before it has begun to run. The Court notes in the instant case that, after filing the appeal in cassation against the judgment of the Court

of Appeal of Kayes before the Supreme Court, the Supreme Court of the Respondent State rendered its judgment N° 101 of 29 November 2019. The same court then rejected the Minister of Justice's appeal by judgment no. 126 of 19 October 2020. The Applicant then filed the Application before the Court on 25 November 2020.

50. The Court notes that between the date of filing of the Application before it, that is, 25 November 2020 and the date of the last judgment issued in the case by the Respondent State's Supreme Court, that is, Judgment No. 126 of 19 October 2020, one (1) month and six (6) days elapsed. The Court finds that this period is reasonable.

51. Finally, the Court notes that the instant Application does not concern a case that has already been settled by the Parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or any legal instrument of the African Union. It therefore meets the requirement of Rule 50(2)(g) of the Rules.

52. In view of the foregoing, the Court finds that the Application meets the admissibility requirements set out in Article 56 of the Charter and Rule 50(2) of the Rules. Accordingly, the Court declares the Application admissible.

## **VII. MERITS**

53. The Applicant alleges that the Respondent State violated his right to equality before the law and equal protection of the law and the right to a fair trial.

**A. Alleged violation of the right to equality before the law and equal protection of the law**

54. The Applicant argues that the judgment acquitting Aliou Diallo<sup>6</sup> violates the principles of a fair trial. He further submits that the libel trial seems to have been "organized" in such a way that the civil party, that is, the Applicant's employer, could not appear before the Justice of the Peace of Kéniéba to testify.

55. He further contends that contrary to all fair trial principles, the procedures that led to his conviction consistently had one thing in common, namely, partiality and the violation of those procedures guaranteeing him equal treatment with Mr. Alou Diallo as well as the right to a fair trial.

56. The Applicant is of the opinion that he is wrongfully being prosecuted on criminal charges. He states that he did not commit the acts with which he is charged. He further contends that he is not the complainant since he only represented his employer, in whose name and on whose behalf the complaint was lodged. He elaborates that it is in the name and on behalf of his employer, which is a legal entity whose Managing Director is mandated to represent it legally, in accordance with the provisions of the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Act on commercial companies and the Economic Interest Grouping (EIG) and not in the name of the Applicant.

57. The Applicant contends that in order to prevent him from appearing to defend his interests before courts, an imaginary summons before the Court of First Instance of Kéniéba was "fabricated" giving the impression that he was regularly summoned but deliberately refused to appear. He asserts that he was deprived of his right to a double degree of jurisdiction provided for by international human rights instruments since Judgment No. 25 of 16 March 2015 of the Court of Appeal of Kayes on his employer's appeal expressly

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<sup>6</sup> Judgment No. 223 of 19 November 2013 of the Civil Court of Kéniéba.

recognizes that the fraudulent summons that was served on 27 June 2013 on the Applicant's employer bears the "erroneous date of 13 August 2013" prevented the civil party from appearing in the first instance, not to mention that this squarely constitutes forgery, an offence that has not been prosecuted and punished by the State.

58. The Respondent State considers that the Applicant cannot be unaware that false accusation is an offence provided for and punished by Article 247 of the Criminal Code. It submits that the facts reported by the Applicant, which led to the complaint of false accusation, were assessed by a competent court.

59. The Respondent State further submits that the Applicant has focused on the position of the Court of Appeal of Kayes' Public Prosecutor, who requested his acquittal. In this regard, the Respondent State recalls that the Public Prosecutor is a party to the criminal trial in the same way as the plaintiff and the defendant. While the Applicant can make requests, the decision belongs to the judge, that is, to the court's appreciation, with the understanding that libel procedure is initiated through the complaint of an individual.

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60. The Court observes that the right to equal protection of the law and equality before the law is guaranteed by Article 3 of the Charter, which reads as follows:

- i. Every individual shall be equal before the law;
- ii. Every individual shall be entitled to equal protection of the law.

61. The Court notes that Article 247 of the Criminal Code of the Respondent State provides that:

Whoever makes false accusation verbally or in writing to public authorities against one or more individuals, shall be liable for imprisonment of one month to three years and a fine of twenty-five thousand (25,000) to three hundred thousand (300,000) CFA francs.

False accusation is the intentional spread of false statements, likely to expose someone to the subject of an administrative sanction or to legal proceedings.

62. The Court notes that the case record shows that the courts of the Respondent State examined all the Applicant's grounds of appeal on nine (9) occasions<sup>7</sup>. In its Judgments No. 21 of 19 February 2018, No. 101 of 28 November 2019 and No. 126 of 19 October 2020, the Supreme Court, which is the highest court of the Respondent State, amply examined the Applicant's grievances on both the nature and the elements that constitute an offence of false accusation under the Respondent State's Criminal Code.

63. The Court observes that it was the Applicant who signed the complaint for the theft of the electric cable as a lawyer, in charge of human resources at SOMILO SA, against any perpetrator, accomplices and/or receivers of the theft of the electric wire roll. In the said complaint, it is mentioned that the roll was hidden under bags of lime in the yard of Mr. Aliou Diallo, representing the company EMBC, which at the time had the contract to purchase industrial waste from SOMILO SA.

64. The Court has consistently held that "it is incumbent on the Party purporting to have been a victim of discriminatory treatment to provide proof thereof"<sup>8</sup>. In the instant Application, the Applicant has not indicated the circumstances in which he was subjected to wrongful differential treatment, as compared to other persons in a similar situation.<sup>9</sup> In particular, the Applicant has not proven that during his trial before the said courts, he was the victim of manifestly unequal treatment or that he was given unequal protection before the law in relation to SOMILO SA and Mr. Aliou Diallo.

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<sup>7</sup> Kéniéba Tribunal Judgment No. 223 of 19 November 2013;  
Kéniéba Tribunal Judgment No. 146 of 22 July 2014;  
Court of Appeal of Kayes Judgment No. 25 of 16 March 2015;  
Supreme Court Judgment No. 77 of 21 November 2016;  
Court of Appeal of Kayes Judgment No 18 of 8 May 2017;  
Supreme Court Judgment No. 21 of 19 February 2018;  
Court of Appeal of Kayes Judgment No 26 of 19 March 2019;  
Supreme Court Judgment No 101 of 28 November 2019;  
Supreme Court Judgment No. 126 of 19 October 2020.

<sup>8</sup> *Mohamed Abubakari v. United Republic of Tanzania*, (merits), (3 June 2016) 1 AfCLR 599, §153.

<sup>9</sup> *Ibid*, § 154.

65. The Court further notes that the national courts have dealt extensively with the issues raised and have characterised the facts as false accusation committed with a bad faith on the side of the Applicant. In this regard, the Court finds that there is nothing manifestly erroneous in the assessment of the domestic Courts which would require its intervention. Furthermore, the Court recalls that "general statements to the effect that this right has been violated are not enough. More substantiation is required"<sup>10</sup> .

66. As regards the Applicant's contention that he was not summoned to appear before Kéniéba Tribunal, the Court notes from the record that the Court of Appeal of Kayes established that the summons were issued in the name of the Applicant and delivered to him accordingly.

67. The Court therefore concludes that the Respondent State did not violate the Applicant's right to equality and equal protection of the law.

## **B. Alleged violation of the right to a fair trial**

68. The Applicant alleges bias and violation of fair trial procedures insofar as he was convicted on the basis of a denunciation by Mr. Aliou Diallo. He argues that, not a single piece of evidence was produced to confirm that Mr. Aliou Diallo was mentioned in the complaint filed by him on behalf of his company, nor did the Applicant ever name Aliou Diallo a suspect when he was interrogated at the gendarmerie, let alone during the robbery trial.

69. The Applicant contends that he should not have been prosecuted for two reasons; first, because in the instant case, the offence of false accusation as provided for in Article 247 of the Respondent State's criminal code was not constituted either in substance or in intent and, secondly, the Office of Public Prosecutor asserted that it was sparing the Applicant this manifestly wrongful prosecution, given that the Applicant obviously acted in his capacity as an employee, in the name of and on behalf of a legal entity, that is his employer.

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<sup>10</sup> *Alex Thomas v. United Republic of Tanzania*, (merits), (20 November 2015) 1 AfCLR 465, § 140.

70. The Respondent State argues that a court of law is sovereign in assessing the facts and applying the law to them. Thus, the Court of Justice of the Peace of Kéniéba dismissed three defendants, including Aliou Diallo, from the case for complicity of robbery. It further submits that the Applicant does not dispute that the civil party was summoned.
71. The Respondent State contends that the Applicant above all does not provide evidence that the judgment date was unknown to him or his employer. It argues that a summon is a document drawn up by a judicial officer, for the purpose of informing a person that the trial in which he or she is a party is to be held on a certain date. It further submits that in the case in point, a copy of the summons was not placed in the docket of the instant case for the Court and the Respondent to determine whether there was deception regarding the date on which the Court of Kéniéba was to render judgment.
72. The Respondent State further states that the Court cannot rely on the mere fact that the Court of Appeal of Kayes cancelled the summons to find a violation of a principle of criminal procedure. In any case, the Respondent State questions why the Applicant did not file a complaint against the bailiff if he was convinced that the summons to the civil party was a forgery.
73. The Respondent State also submits that an analysis of the judgments in the docket of the instant procedure shows that the Court of Appeal of Kayes annulled the trial judgment based on the failure to summon SOMILO-SA as civilly liable and guarantor of the pecuniary sentences (Judgment No. 26 of 18 March 2019).
74. Finally, the Respondent State contends that the Court of Appeal of Kayes independently considered that the complaint drafted by the Applicant, even if it was in the name and on behalf of his employer, and this did not anonymise the identity of M. Aliou Diallo and that the latter's acquittal was never challenged. Thus, the Respondent State argues that there is no legal basis for imputing to its domestic courts any violation of a principle of equality of arms in the criminal proceedings.

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75. The Court notes that Article 7(1) of the Charter provides: "Every individual shall have the right to have his cause heard".

76. The Court notes that the right to be heard is an important element of the right to a fair trial. The right entails that individuals are given the opportunity to take their grievances before a judicial or administrative authority for redress, including through appeal to a higher judicial or administrative organ of a State. In criminal proceedings, the right to be heard also requires that an accused is given a fair hearing and conviction should be only based on solid evidence.

77. In the instant case, the Court notes from the records that, starting from the moment of the alleged theft of the wire cable of his employer, the Applicant was able to file his matter, on several occasions, before the competent national courts of the Respondent State. He was also able to appeal against those decisions which he considered unfavourable to him and his company. Furthermore, the domestic courts relied for his conviction on the preliminary investigation reports and his original complaints filed before the gendarmerie of Kéniéba. The Court further notes that the Applicant adduced no evidence to show that the Courts were partial or displayed bias in the proceedings that led to his conviction. The Applicant's allegations that he was not given a fair hearing and that his conviction was not based on proper evidence thus lacks merit.

78. As regards the Applicant's allegation that the enforcement of the decision requiring his company to pay compensation to Mr Aliou Diallo is pending and that this leaves the possibility of a recourse action against him, the Court notes that the Applicant did not provide any evidence that the said enforcement will affect him or his tenure in the company. In this vein, the Court observes from the analysis of the decisions of the national courts that the common feature in those judgments rendered by the domestic courts is the assertion of joint and several liability of the Applicant and his employer. In fact, the Court of Appeal of Kayes in its judgment of 18 March 2019 clearly

stated that it was SOMILO AS, the Applicant's employee, which should pay the compensation to Mr Aliou Diallo. In view of this, the Court finds that the Applicant's contention that he would be obliged to pay compensation to Mr. Diallo lacks merit.

79. Accordingly, the Court concludes that the Respondent State did not violate the Applicant's right to a fair trial.

### **VIII. REPARATIONS**

80. Article 27(1) of the Protocol provides "If the Court finds that there has been violation of a human and peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation of reparation".

81. The Court notes that in the instant case no violation has been found against the Respondent State and therefore there is no reason to order any reparation. Accordingly, the Court dismisses the Applicant's request for reparations.

### **IX. COSTS**

82. The Applicant requests that the Court order the Respondent State to pay all costs.

83. The Respondent State has not made submissions on cost.

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84. According to Rule 32(2) of the Rules<sup>11</sup>: "Unless otherwise decided by the Court, each party shall bear its own costs, if any".

85. Considering the circumstances of this case, the Court decides that each Party shall bear its own costs.

## **X. OPERATIVE PART**

86. For these reasons,

THE COURT,  
Unanimously,

*On jurisdiction*

- i. *Declares* that it has jurisdiction

*On admissibility*

- ii. *Declares* the Application admissible.

*On merits*

- iii. *Finds* that the Respondent State has not violated the Applicant's right to equality before the law and equal protection of the law under Article 3 of the Charter;
- iv. *Finds* that the Respondent State has not violated the Applicant's right to a fair trial under Article 7 of the Charter;

*On reparations*

- v. *Dismisses* the claim for reparations

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<sup>11</sup> Formerly Rule 30(2) of the Rules of 2 June 2010.

*On costs*

vi. *Orders* that each Party shall bear its own costs.

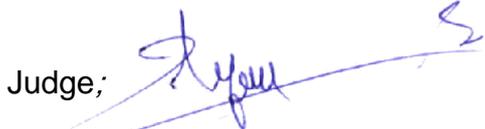
**Signed:**

Imani D. ABOUD, President; 

Blaise TCHIKAYA, Vice-President; 

Ben KIOKO, Judge; 

Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

M.-Thérèse MUKAMULISA, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

and Dr Robert ENO, Registrar 

Done at Dar es Salaam, this Second Day of December in the year Two Thousand and Twenty-One in English and French, the French text being authoritative

