

**DECLARATION OF JUDGE RAFAA BEN ACHOUR**  
**ORDER**

***HOUNGUE ERIC NOUDEHOUENOU V. REPUBLIC OF BENIN***

**02 December 2021**

**APPLICATION N° 032/2020**

1. Pursuant to Rule 70(3) of the Rules of the Court, I hereby declare that I disagree with the majority ruling of the Court that "Dismisses the request for an order to remove "the obstacles to the exercise of his right to evidence" and to "ensure the enjoyment of his right to search for, obtain and produce all documents (...) for the exercise of his right to appeal and his right to defence in the proceedings concerning him" before this Court.

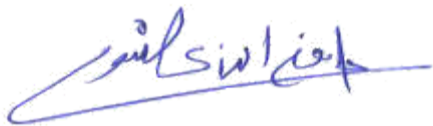
2. However, I agree with the dissenting opinion expressed by Judge Ben Kioko concerning the Court's dismissal of the above-mentioned request.

3. In my view, the Court's reasoning for dismissing the request is unpersuasive and fails to take into consideration some of the elements of the case. The Applicant submits that by failing to comply with three Rulings for provisional measures and four judgments of this Court, the Respondent State has made it "*absolutely impossible for him to obtain documents*" that he requires to prosecute his case before this Court in order to overturn the decision that deprived him of his property". The Respondent State has provided the Court with no valid justification to contradict the Applicant's claims although the documents sought by the Applicant are readily available with the Respondent State.

4. Moreover, the Court holds that “the Applicant has not demonstrated that the requirements of Article 27(2) of the Protocol are met”, which is far from certain.

5. As a matter of fact, the three requirements of Article 27(2) (extreme gravity, urgency and irreparable harm) have been met and were amply highlighted by the Applicant who devoted extensive parts of his request to them. Stating that the request is general in nature does not reflect the facts and jurisprudence provided by the Applicant.

6. As Judge Kioko cites all these facts in his dissenting opinion, it is not necessary for me to go over them again. With this dissenting opinion, I am only expressing my dissent, endorsing and supporting the opinion of my distinguished colleague.



**Judge Rafaâ Ben Achour**

Done in Dar-Es-Salaam, on 02 December 2021

