

DECLARATION OF JUDGE TUJILANE ROSE CHIZUMILA

HOUNGUE ERIC NOUDEHOUEYOU V. REPUBLIC OF BENIN

APPLICATION N° 004/2020

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 requests for provisional measures relating to obstacles to medical care and protection, to unfreeze the Applicant's bank account and to remove obstacles to his presence before the Cotonou Court. "

1. In this regard, I agree with the dissenting opinion expressed by Judge Ben Kioko concerning the Court's dismissal of the above-mentioned requests.

2. In my view, the Court's reasoning for dismissing the requests is unpersuasive and fails to take into consideration some important elements of the case.

3. In the Request of 19 July 2021, the Applicant prayed for the following provisional measures:

Order the Respondent State to take all appropriate measures to remove all obstacles to his right to health, in particular the obstacles to obtaining his file from the CNHU in complete freedom and all obstacles to medical consultations, medical examinations, hospitalisation, medical follow-up and the surgery he has been waiting for since 2018, and secondly to ensure the effective protection of his doctors against any prosecution or arrest, failing that, to provide him with the means and a host country where he will receive proper medical unimpeded by the Respondent State.

4. In its ruling,

"the Court notes that the Applicant alleges that he is currently suffering from serious health problems requiring urgent treatment and that he is under the care of a personal physician. However, the Applicant has not provided the Court with any evidence of his poor health other than mere assertions. He therefore has not sufficiently demonstrated the urgency and irreparable harm he faces, as required by Article 27 of the Protocol.

The Court recalls that urgency, consubstantial with extreme gravity, means a “real and imminent risk that irreparable harm will be caused before it renders its final judgment.”

The court emphasizes that the risk in question must be real, which excludes the purely hypothetical risk and justifies the need to repair it immediately. The Court therefore considers that there is no basis to order the measure requested.”

5. I do not agree with this reasoning which did not take into consideration the Applicant's extensive and detailed submissions on this issue, in which he explained clearly and step by step, why he cannot receive the needed medical attention as he has an arrest warrant hanging over his head; the connection between his inability to obtain any medical care and the fact that he does not have an identity document, a right that was taken away by “the decision of the *Inter-Ministerial Order no. 023/MJUDC/SGM/DACPG/SA/023SGG19 of 22 July 2019, which prohibits the issuance of official documents (civil documents and other official documents) to the Applicant, in violation of his human rights protected by the Charter and the UDHR*”.¹ Furthermore, the Court notes that Article 27(2) of the Protocol provides that: “in cases of extreme gravity or urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it considers necessary.”

6. With reference to Article 27(2) of the Protocol, the Court notes that it has the duty to decide, in each individual case whether, in the light of the particular circumstances of the case, it should exercise the jurisdiction conferred on it by the above provision.

7. With regard to irreparable harm, the Court considers that there must exist a “reasonable probability of materialization” having regard to the context and the personal situation of the applicant¹

¹ The request of 20 July 2021, paragraph 67

7. In light of the foregoing, I am of the strong view that the requests for provisional measures based on 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. The finding that the detailed explanations by the Applicant are “mere assertions” as indicated in the ruling of the majority, does not reflect the facts and the jurisprudence cited by the Applicant.

8. 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.

Signed:



Judge Tujilane Rose Chizumila

Done at Arusha, this 17th Day of December in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.

