

003/2014
18/03/2016
(001476-001457)DN

001476

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

INGABIRE VICTOIRE UMUHOZA

V.

REPUBLIC OF RWANDA

APPLICATION 003/2014

ORDER



The Court composed of: Augustino S. L. RAMADHANI; President, Elsie N. THOMPSON, Vice-President; Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSÉ, Ben KIOKO, Rafâa Ben ACHOUR, Solomy Balungi BOSSA, Angelo Vasco MATUSSE – Judges; and Robert ENO - Registrar.

In the matter of:

INGABIRE VICTOIRE UMUHOZA

V.

THE REPUBLIC OF RWANDA

after deliberation,

delivers the following Order:

Subject Matter of the Application

1. The Court received, on 3 October 2014, an Application by Ingabire Victoire Umuhoza, (hereinafter referred to as “the Applicant”), instituting proceedings against the Republic of Rwanda (hereinafter referred to as “the Respondent”).
2. The Applicant is a Rwandan citizen and leader of the opposition party *Forces Democratiques Unifiées*, (FDU Inkingi).
3. The Applicant alleges, *inter alia*:
 - a. That in 2010, after spending nearly 17 years abroad, she decided to return to Rwanda to contribute in nation-building, and among her priorities was the registration of the political party, FDU Inkingi.

- b. That she did not attain this objective because as from 10 February 2010, charges were brought against her by the judicial police, the Prosecutor and Courts and Tribunals of the Respondent.
 - c. That she was charged with spreading the ideology of genocide, aiding and abetting terrorism, sectarianism and divisionism, undermining the internal security of a state, spreading rumours which may incite the population against political authorities, establishment of an armed branch of a rebel movement and attempted recourse to terrorism.
4. On 30 October 2012 and 13 December 2013, the Applicant was successively sentenced to 8 and later 15 years imprisonment by the High Court and the Supreme Court of Rwanda, respectively.

Procedure

5. By letter dated 23 January 2015, the Respondent filed its Response to the Application and by letter dated 14 April 2015 the Applicant filed her Reply to the Respondent's Response to the Application.
6. By letter dated 4 January 2016, the Court notified Parties that the Application had been set down for public hearing on 4 March 2016.
7. By letters dated 10 February 2015, 26 January 2016 and 1 March 2016, respectively, Advocate Gatera Gashabana, the representative of the Applicant, wrote to the Court inquiring whether the Applicant could physically attend the public hearing and whether video conferencing technology could be used to allow the Applicant to follow the proceedings of the Court in the Application. By letters dated 26 January 2016 and 2 March 2016, the Registry of the Court informed the Applicant that the Court did not deem the presence of the Applicant at the public hearing necessary and that it did not have the capacity to facilitate the use of video conferencing technology, respectively.

8. By letter dated 29 February 2016, Advocate Gatera Gashabana, the representative of the Applicant wrote to the Registry of the Court requesting an adjournment of the public hearing.
9. By letter dated 1 March 2016, Dr. Caroline Buisman, the representative of the Applicant reiterated the Applicant's request for adjournment of the public hearing, adding however that the representatives of the Applicant were willing to discuss procedural matters.
10. By letter dated 1 March 2016 received on 2 March 2016, the Respondent notified the Court of its deposition of an instrument of withdrawal of its Declaration made under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"). The letter further stated:

"The Republic of Rwanda requests that after deposition of the same, the Court suspends hearings involving the Republic of Rwanda including the case referred above until review is made to the Declaration and the Court is notified in due course."
11. By letter dated 2 March 2016, the Registry of the Court served on the Applicant the Respondent's letter dated 1 March 2016, and served on the Respondent the Applicant's letters dated 29 February and 1 March 2016 respectively. The Registry of the Court further informed the Parties that the public hearing scheduled for 4 March 2016 would proceed as earlier indicated.
12. By letter dated 3 March 2016, the Office of Legal Counsel and Directorate of Legal Affairs of the African Union Commission notified the Court of the submission of the Respondent's instrument of withdrawal of its Declaration made under Article 34(6) of the Protocol, which was received at the African Union Commission on 29 February 2016.
13. By letter dated 3 March 2016, the Respondent acknowledged receipt of the Court's letter of 2 March 2016. The letter further stated:

“Without prejudice to the foregoing, I respectfully request the Hon. Court, if not granting the Respondent’s request made on 2nd March 2016, to allow the Respondent being heard on its request before a Court Order can be made.”

14. At the public hearing on 4 March 2016, the Applicant was represented by Advocate Gatera Gashabana and Dr. Caroline Buisman. The Respondent did not appear.
15. The Court heard the representatives of the Applicant on procedural matters in which they requested the Court to:
 - i. Reject the *amicus curiae* brief submitted by the National Commission for the Fight Against Genocide.
 - ii. Order the Respondent to facilitate access to the Applicant for her representatives.
 - iii. Order the Respondent to facilitate access to video conferencing technology for the Applicant to follow the proceedings of the Court on this matter.
 - iv. Order the Respondent to comply with the Court’s Order of 7 October 2015 to file pertinent documents.
16. The representatives of the Applicant also expressed their willingness to submit arguments on the issue of the Respondent’s withdrawal of its Declaration made under Article 34(6) of the Protocol.

The Decision of the Court

17. The Court expresses regret that the Respondent did not appear before it at the public hearing to put forward its arguments.
18. The Court notes that both Parties have requested to be heard on the issue of the effect of the Respondent’s withdrawal of its Declaration made under Article 34(6) of the Protocol.

19. The Court also notes that the Applicant at the public hearing requested the Court to issue Orders on the procedural matters stated in paragraph 15 above.

For these reasons, the Court by majority of nine to two, Justices Fatsah OUGUERGOUZ and Rafâa Ben ACHOUR dissenting:

20. **Orders** that the Parties file written submissions on the effect of the Respondent's withdrawal of its Declaration made under Article 34(6) of the Protocol, within fifteen (15) days of receipt of this Order.
21. **Decides** that its ruling on the effect of the Respondent's withdrawal of its Declaration under Article 34(6) of the Protocol shall be handed down at a date to be duly notified to the Parties.
22. **Orders** the Applicant to file written submissions on the procedural matters stated in paragraph 15 above, within fifteen (15) days of receipt of this Order.

In accordance with Rule 60(5) of the Rules of Court, the dissenting opinions of Justices Fatsah OUGUERGOUZ and Rafâa Ben ACHOUR, are appended to this Order.

Done at Arusha, this Eighteenth Day of March in the year 2016, in English and French, the English version being authoritative.

Signed:


Augustino S. L. RAMADHANI, President

Robert ENO, Registrar.

