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

THE MATTER OF

FIDÈLE MULINDAHABI

V.

REPUBLIC OF RWANDA

APPLICATION No. 004/2017

JUDGMENT

26 JUNE 2020

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The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD- Judges; and Robert ENO, Registrar.

Pursuant to the provisions of 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 8(2) of the Rules of Court (hereinafter referred to as "the Rules"), Judge M-Thérèse MUKAMULISA, member of the Court and a national of Rwanda, did not hear the Application.

In the matter of*:*

Fidèle MULINDAHABI
self-represented

versus

REPUBLIC OF RWANDA
unrepresented

After deliberation,

renders the following Judgment in default:

I. THE PARTIES

1. Fidèle Mulindahabi (hereinafter referred to as "the Applicant") is a national of the Republic of Rwanda who was previously employed by the public corporation - *Energy, Water and Sanitation Authority* (hereinafter referred to as "EWSA").

2. The Application is filed against the Republic of Rwanda (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 25 May 2004. It also deposited on 22 January 2013, the Declaration prescribed under Article 34(6) of the Protocol by which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 29 February 2016, the Respondent State notified the Chairperson of the African Union Commission of its intention to withdraw the said Declaration. The African Union Commission transmitted to the Court, the notice of withdrawal on 3 March 2016. By a Ruling dated 3 June 2016, the Court decided that the withdrawal by the Respondent State would take effect from 1 March 2017.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It is apparent from the record, that, on 17 November 2009, following his success in a recruitment test, the Applicant signed an employment contract for the position of Head of the Planning and Strategy Section at the State-owned *Rwanda Electricity Corporation and Rwanda Water and Sanitation Corporation* (hereinafter referred to as “RECO & RWASCO”), which later became the *Energy, Water and Sanitation Authority* (EWSA). On 13 April 2010, the Applicant was dismissed without notice.

4. The Applicant alleges that he was recruited in accordance with the procedures established by Law No. 22/2002 of 9 July 2002 on the General Rules and Regulations governing the Rwandan Civil Service. He therefore considers that he was a civil servant and that his dismissal should be governed by the applicable law in that regard.

[1] See *Ingabire Victoire Umuhoza v. Republic of Rwanda* (Jurisdiction) (2016) 1 AfCLR 540 § 67.

5. The Applicant further alleges that he initially filed administrative appeals before the competent authority of RECO & RWASCO, the Public Service Commission, the Ministry of Public Service and Labour as well as the Presidency of the Republic. Dissatisfied with the decisions arising from his appeals, he lodged an application for annulment of the termination decision before the High Court. Considering the Applicant as a civil servant, the High Court declared that the termination was not in accordance with the applicable law due to the lack of notification to the Applicant of the reasons for his dismissal. Dissatisfied with the damages awarded, the Applicant lodged an appeal before the Supreme Court. EWSA also filed an appeal with the same court.

6. By Judgment RADA 0015/13/CS of 8 November 2013, the Supreme Court found that the Applicant was not a civil servant but rather an employee under contract pursuant to Law No. 13/2009 of 27 May 2009 which regulates labour matters in Rwanda. It however, upheld the High Court's decision to award damages to the Applicant due to the fact that the latter had not been heard prior to the termination of the employment contract. Aggrieved by the decision, the Applicant lodged an appeal before the Supreme Court for review of its Judgment. By Judgment of 27 January 2017, that Court dismissed the application for review.

B. Alleged violations

7. The Applicant alleges that the termination of his appointment is illegal and unconstitutional. He submits that by failing to resolve his problem to date and for lacking fairness, independence and impartiality, the Respondent State violated his rights as expressed hereunder:

   i. the right to have one's cause heard under Article 7(1) of the Charter and Article 10 of the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR");

ii. the right relating to the independence of the courts guaranteed under Article 26 of the Charter;

iii. the right to equality before the law and the courts guaranteed by Article 3 of the Charter, Articles 14(1) and 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as " the ICCPR") and Article 7 of the UDHR;

iv. the right to work, guaranteed under Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "the ICESCR");

v. the right to a remedy and to ensure that competent authorities enforce such remedies when granted, guaranteed under Article 2(3) of the ICCPR; and

vi. the recognition of rights and the commitment by all States Parties to adopt legislative or other measures to give effect to those rights, as provided under Article 1 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 24 February 2017. The Respondent State as well as the other entities mentioned in the Protocol were notified.

9. At the request of the Registry, the Applicant filed additional submissions within the time frame set by the Court.

10. On 11 May 2017, the Registry received a correspondence from the Respondent State requesting the Court to cease all proceedings concerning it. The Respondent State also informed the Court that it would no longer participate in proceedings in cases concerning it. On 22 June 2017, the Registry acknowledged receipt of the said correspondence and informed the Respondent State that it

would nonetheless be notified of all the documents in matters relating to Rwanda in accordance with the Protocol and the Rules.

11. On 3 October 2017, the Registry drew the parties' attention to the provisions of Rule 55 of the Rules, under which the Court may render a Judgment in default where a party fails to file any response.

12. On 28 November 2017, the Registry informed the parties of the closure of pleadings on the merits of the Application.

13. On 6 July 2018, the Registry informed the parties that the Court decided to combine Judgment on the merits of the Application and reparations, and granted the Applicant thirty (30) days to file submissions on reparations.

14. On 6 August 2018, the Registry received the Applicant's submissions on reparations and on 9 August 2018, transmitted the same to the Respondent State, with a request to file its Response within thirty (30) days. The Respondent State did not file any Response thereto.

15. On 4 October 2018, the Registry notified the parties that in the interest of proper administration of justice, the Court reaffirmed its position to combine Judgment on the merits and reparations in default if it did not receive any observations from the parties within thirty (30) days of the notification.

16. Pleadings in respect of reparations were closed on 19 March 2020 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

17. In his Application, the Applicant prays the Court to take the following measures:

    i. Recognize that the Rwandan national institutions and courts have violated relevant legal human rights instruments that the country had ratified;

ii. Review Judgment RADA0015/13/CS, ruling No. RS/REV/AD 0003/15/CS of which dismissed the request for review, and annul all the decisions taken, i.e. the Judgments and the dismissal decision contained in letter Ref: No. 11.07.025 /1385/10/DIR-DRH/k.h of 13 April 2010; and hence order that things return to the *status quo ante* and thus order his reinstatement in service as stated in paragraph 28 of RAD0124/07/HC/KIG; order the payment of his wages as if I had not been dismissed in the same manner as in paragraph 30 of Judgment RADA0006/12/CS;

iii. Order the payment of damages for the defamation contained in the letter Ref. No. 11.07.025/1385/10/DIR-DRH/k.h of 13/04/2010 and for the fact of failing to me a certificate for the services rendered;

iv. Order the payment of other damages representing the cost of the proceedings and the suffering endured;

v. Order interim measures for the protection of the family in danger;

vi. Order any other measure in accordance with the law...[2]

18. The Respondent State did not participate in the proceedings before the Court in the present case. It therefore made no submission in this regard.

V. NON APPEARANCE OF THE RESPONDENT STATE

19. Rule 55 of the Rules provides that:

> "1. Whenever a party does not appear before the Court, or fails to defend its case, the Court may, on the application of the other party, pass Judgment in default after it has satisfied itself that the defaulting party has been duly served with the application and all other documents pertinent to the proceedings.
>
> 2. Before acceding to the application of the party before it, the Court shall satisfy itself that it has jurisdiction in the case, and that the application is admissible and well founded in fact and in law."

20. The Court notes that the afore-mentioned Rule 55 in its paragraph 1 sets out three conditions, namely: i) the default of one of the parties; ii) the request made by the other party; and iii) the notification to the defaulting party of both the application and the documents on file.

[2] Reproduced *in extenso* from the Applicant's submissions

21. On the default of one of the parties, the Court notes that on 11 May 2017, the Respondent State indicated its intention to suspend its participation in the Court's proceedings and requested the cessation of transmission of documents relating to the proceedings in the pending cases concerning it. The Court notes that, by these requests, the Respondent State voluntarily refrained from exercising its defence.

22. With respect to the other party's request for a Judgment in default, the Court notes that in the present case it should, in principle, have given a Judgment in default only at the request of the Applicant. However, the Court considers that, for the sake of proper administration of justice, the decision to rule in default falls within its judicial discretion. In any event, the Court renders Judgment in default *suo motu* where the conditions laid down in Rule 55(2) are fulfilled[3].

23. Lastly, with regard to the notification of the defaulting party, the Court notes that the Application was filed on 24 February 2017. It further notes that from 29 March 2017, the date of transmission of the notification of the Application to the Respondent State, to 19 March 2020, the date of closure of the pleadings, the Registry notified the Respondent State of all the pleadings submitted by the Applicant. The Court thus concludes that the defaulting party was duly notified.

24. On the basis of the foregoing, the Court will now determine whether the other requirements set forth under Rule 55 of the Rules are fulfilled, that is: whether it has jurisdiction, whether the application is admissible and whether the Applicant's claims are founded in fact and in law.[4]

VI. JURISDICTION

25. Article 3(1) of the Protocol provides as follows:

[3] See *African Commission on Human and Peoples' Rights (Saïf Al-Islam Kadhafi) v. Libya* (Merits) (2016) 1 *AfCLR* 153, §§ 38-42.
[4] *Ibid, §* 42.

> 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.

26. Furthermore, Article 39(1) of the Rules stipulates that: **"**The Court shall conduct preliminary examination of its jurisdiction…."

27. After a preliminary examination of its jurisdiction and having found that there is nothing on file indicating that it does not have jurisdiction in this case, the Court finds that it has:

i. material jurisdiction, insofar as the Applicant alleges the violation of the rights protected by the Charter and other relevant human rights instruments ratified by the Respondent State, namely, the ICCPR and ICESCR to which the Respondent State is a party[5] as well as the UDHR.[6]

ii. personal jurisdiction, insofar as, as stated above, the effective date of the withdrawal of the Declaration by the Respondent State is 1 March 2017.[7]

iii. temporal jurisdiction, insofar as the violations alleged in the Application were committed as from 13 April 2010, that is, after the entry into force of the Charter for the Respondent State (31 January 1992), the ICCPR and ICESCR (16 April 1975) and the Protocol (25 January 2004); and the said alleged violations have continued to date.

iv. territorial jurisdiction in as much as the facts of the case and the alleged violations occurred in the territory of the Respondent State.

28. In view of foregoing, the Court holds that it has jurisdiction to hear the instant case.

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[5]The Respondent State became a party to ICCPR and ICESCR on 16 April 1975.
[6] See *Anudo Ochieng Anudo v. United Republic of Tanzania* (Merits) (2018) 2 AfCLR 248, § 76; *Thobias Mang'ara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania* (Merits) (2018) 2 AfCLR 314, §33.
[7] See paragraph 2 of this Judgment.

VII. ADMISSIBILITY

29. Pursuant to the provisions of Article 6(2) of the Protocol: "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

30. Furthermore, under Rule 39 of the Rules: “the Court shall conduct preliminary examination ... and the admissibility of the application in accordance with Articles 50 and 56 of the Charter, and Rule 40 of these Rules”.

31. Rule 40 of the Rules, which essentially restates the provisions of Article 56 of the Charter provides that:

> “Pursuant to the provisions of article 56 of the Charter to which article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:
>
> 1. disclose the identity of the Applicant notwithstanding the latter’s request for anonymity;
> 2. comply with the Constitutive Act of the Union and the Charter;
> 3. not contain any disparaging or insulting language;
> 4. not be based exclusively on news disseminated through the mass media;
> 5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> *6.* be filed 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
> 7. not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

32. The Respondent State having failed to take part in the proceedings, the admissibility conditions will be examined on the basis of the Applicant's observations and other information on file. The conditions invoked by the Applicant and also those not invoked, will be examined.

A. Conditions of admissibility invoked by the Applicant

33. The Applicant focusses exclusively on the condition of exhausting the local remedies, arguing that the available administrative and judicial remedies have been exhausted.

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34. The Court going by the record, notes that, the Applicant filed a suit in respect of the letter of dismissal of 13 April 2010 before the Kigali High Court of Justice under number RAD 0157/10/HC/KIG.

35. On 25 January 2013, the High Court ruled that the dismissal was unlawful and ordered EWSA to pay the Applicant damages in the amount of six million Rwandan francs (RWF 6,000,000).

36. The Court notes that Sections 28 and 29 of the Organic Law No. 0312012 of 13 June 2012 on the organisation and functioning of the Supreme Court, the highest court in Rwanda, confers jurisdiction on the latter to adjudicate "appeals against the Judgments rendered in the first instance by the High Court ..."

37. The Court also notes that, in the present case, the Applicant lodged a cassation appeal against the Judgment of the High Court before the Kigali Supreme Court under appeal number RADA 0015/13/CS. The Supreme Court dismissed the said appeal by Judgment of 8 November 2013.

38. Accordingly, the Court holds that the Applicant has exhausted the domestic remedies.

B. Other conditions of admissibility

39. The Court notes that, from the record, the condition laid down in Article 56(1) of the Charter is fulfilled since the Applicant provided his full identity. The condition laid down in paragraph 2 of the same Article is also fulfilled since no request from the Applicant or any information on file is incompatible with the Charter of the Organisation of African Unity (OAU) or with the Charter. The Application does not contain any disparaging or insulting language towards the State concerned, which makes it consistent with the requirement of Article 56(3) of the Charter. Regarding the condition contained in paragraph 4 of this Article, the Court notes that the Application is not based exclusively on news disseminated through mass media. The Applicant bases his claims on legal grounds in support of which official documents are tendered.

40. With regard to compliance with the requirements of Article 56(6) of the Charter, this Court reiterates that for an application to be admissible, it must be submitted "within a reasonable period from the time local remedies are exhausted or from the date the (Court) is seized with the matter".

41. The Court notes, in this regard, that the Judgment of the Supreme Court dismissing the Applicant's appeal was rendered on 8 November 2013 whereas the Application was filed at the Registry on 24 February 2017. As the period between these two dates is three (3) years, one (1) month and sixteen (16) days, the Court will decide whether this period is reasonable in terms of Article 56(6) of the Charter.

42. The Court recalls, in reference to its jurisprudence, that determination of reasonable time must be done on a case-by-case basis, taking into consideration the circumstances of each case.[8] Furthermore, where the remedies to be

[8] See *Ally Rajabu and Others v. United Republic of Tanzania*, AfCHPR, Application No. 007/2015, Judgment of 28/11/2019 (Merits and Reparations), § 50; *Armand Guehi v. United Republic of Tanzania* (Merits and

exhausted are ordinary judicial remedies, the time used by the Applicant to exhaust other remedies may be taken into account in determining the reasonableness of the period envisaged under Article 56(6) of the Charter.[9] This is particularly the case where the law affords the Applicant the possibility of exhausting such remedies.[10]

43. In the instant case, the Court notes that after the dismissal of his appeal on 8 November 2013 by the Supreme Court, the Applicant seized the same Court with an application for review. By a new Judgment dated 27 January 2017, the Supreme Court dismissed the said application.

44. The Court considers that between the aforementioned dates, the Applicant spent time awaiting the decision on his application for review. Considering that the application for review was the Applicant's prerogative, the latter cannot be penalized for attempting to exercise that remedy. The time taken to exercise that remedy must thus be taken into account. In the circumstance, the Court finds that the above-mentioned time used by the Applicant to file this Application is reasonable in terms of Article 56(6) of the Charter.

45. In view of the aforesaid, the Court holds in conclusion that the Application meets the condition of admissibility set out in Article 56(6) of the Charter.

46. Lastly, as regards compliance with the condition laid down in Article 56(7) of the Charter, the Court notes that there is nothing on record indicating that the present Application concerns a case which has been settled in accordance with either the principles of the United Nations Charter, the OAU Charter or the provisions of the Charter.

Reparations) (2018) 2 AfCLR 477, §§ 55-57; *Norbert Zongo and Others v. Burkina Faso* (Preliminary Objections) (2013) 1 AfCLR 197, § 121

[9] See *Jean-Claude Roger Gombert v. Republic of Côte d'Ivoire* (2018) 2 AfCLR 270, § 37.

[10] See *Ally Rajabu and Others v. United Republic of Tanzania,* (Merits and Reparations), § 51; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (Merits) (2018) 2 AfCLR 287, § 58

47. Based on the foregoing, the Court finds that the Application meets all the conditions set out in Article 56 of the Charter and accordingly declares it admissible.

VIII. MERITS

48. The Applicant alleges the violation of the right to a fair trial, right to equality before the law, right to equal protection of the law and the right to work, under Articles 1, 3, 7(1) and 26 of the Charter, Articles 2(3)(c), 14(1) and 26 of the ICCPR; Article 6(1) of ICESCR and Articles 7 and 10 of the UDHR. He further alleges that the Respondent State failed to honour its obligation to recognize the rights, duties and freedoms enshrined in the Charter and to adopt the necessary measures to give effect to them.

A. Alleged violation of the right to a fair trial

49. The aspects of the right to a fair trial raised in the instant Application relate to the right to defence, the right to a reasoned Judgment and the right to be tried by an impartial court.

i. Right to defence

50. The Applicant alleges that, for having concluded in RADA0015/13/CS that he was a contracted staff and ignored his findings as well as the contrary findings of the Public Prosecutor's Office, the Supreme Court violated his right to defence. He further submits that the Supreme Court violated Article 18(3) of the Respondent State's Constitution for having claimed that it delayed the processing of the cases under its responsibility, since neither his employer nor the Supreme Court had communicated to him a report on his conduct and performance.

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51. The Court notes that Article 7(1)(c) of the Charter provides that: “Every individual shall have the right to have his cause heard… the right to defence, including the right to be defended by counsel of his choice".

52. The Court notes that the Applicant alleges the violation of his right to defence on the grounds that the Rwandan Supreme Court did not take into account some of the evidence he adduced and that the report on his performance was not communicated to him.

53. The Court reiterates, as it found in *Armand Guehi v. United Republic of Tanzania* Judgment, that it is not an appellate body for decisions rendered by national courts, but rather exercises its jurisdiction in the review of compliance of national procedures with human rights conventions ratified by the State concerned.[11]

54. The Court further recalls that once the evidence produced by the parties has been duly received and examined in law and in equity, the domestic courts' proceedings and decisions cannot be regarded as a violation of the right to a fair trial.[12]

55. On the issue of considering the evidence adduced by the parties, the Court notes, as is apparent from the record that; in determining the status of the Applicant, the Supreme Court referred to both the labour law of Rwanda, the Civil Procedure Code and the Law on the General Rules and Regulations governing the Rwandan civil service. In particular and contrary to the Applicant's allegations, the Supreme Court considered the arguments regarding dismissal for lateness in the processing of files. The Court notes that in addition to applying the provisions invoked by the Applicant, the Supreme Court extensively relied on the pleadings of the parties to the proceedings as set out in the Judgment RADA 0015/13/CS of 8 November 2013.[13]

[11] *Armand Guehi v. United Republic of Tanzania* (Merits and Reparations) § 33; *Mohamed Abubakari v. United Republic of Tanzania* (Merits) (2016) 1 AfCLR 599 § 29.
[12] See *Armand Guehi v. United Republic of Tanzania* (Merits and Reparations) § 106.
[13] See Judgment RADA 0015/13/CS of 08/11/2013, §§ 9-13.

56. It was on these grounds that the Supreme Court decided that the Applicant was a contracted staff and not a civil servant.[14] Moreover, in decision No. RS/REV/AD/0003/15/CS of 27 January 2017, issued in review of the above-mentioned first decision, the Supreme Court re-examined the Applicant's claims on the basis of standards that he himself invoked.[15]

57. In view of the foregoing, the Court considers that the Applicant's right to defence has not been violated given that all the evidence was duly examined.

58. With regard to communication of the report on the Applicant's performance, the Court recalls that the right of the accused to be duly informed of the charges levelled against him goes *in tandem* with his right to defence.[16] The Court notes in particular that access to evidence and other information on record is a fundamental component of the right to defence.[17]

59. In the instant case, the Court notes that the Judgments of both the High Court and the Supreme Court made reference to, and considered the complaint of, non-disclosure of the Applicant's misconduct arising from his slow handling of the files under his responsibility, thus tarnishing the image of the company.[18] The Court notes, in particular, that the Supreme Court having relied on the right invoked by the Applicant himself, concluded, with reasons, that the employer is not bound to explain the reasons for the termination of a contract during the probation period.[19]

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[14] *Ibid* 14-17
[15] See Judgment No. RS/REV/AD/0003/15/CS of 27/1/2017 §§ 6-13.
[16] See *Mohamed Abubakari v. United Republic of Tanzania*, § 158. See also *Pélissier and Sassi v. France*, ECHR, No. 25444/94 of 25/3/1999, § 52; See also *Yvon Neptune v. Haiti* (Merits, Reparations and Costs), Inter-American Court of Human Rights, 6/5/2008, §§ 102-109
[17] See African Commission on Human and Peoples' Rights '*Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa'* (2001) Guidelines N(2)(d), N(2)(e)(2) (1-5); *International Pen and Others (on behalf of Saro-Wiwa) v. Federal Republic of Nigeria* Communications 137/94, 139/94, 154/96 and 161/97 (2000) AHRLR 212 (ACHPR 1998) §§ 99-101; *Jean-Marie Atangana Mebara v. Republic of Cameroon*, Communication 416/12 (18th Extra-ordinary Session, 29 July to 8 August 2015) §§ 107-109.
[18] See Judgment RAD 0157/10/HC/KIG of 25/01/2013 §§ 5-7; Ruling No. RADA 0015/13/CS of 08/11/2013, §§ 18-28.
[19] See Ruling RADA 0015/13/CS of 08/11/2013 §§ 24-26.

60. In any event, the Court notes that, in this case, the grounds for termination of the contract are explicitly mentioned in the termination letter which the Applicant does not deny having been aware of.[20] Moreover, the Applicant does not dispute the fact that the domestic courts found a violation and awarded him damages for the fact that he was not heard prior to the decision to dismiss him.

61. In view of the foregoing, the Court finds that there has been no violation of the right to defence and holds in conclusion that the Respondent State did not violate Article 7(1)(c) of the Charter.

ii. Right to a reasoned Judgment

62. The Applicant submits that, for having failed to invoke contrary reasons to counter those he invoked in regard to his professional status, the Supreme Court violated his right to a reasoned decision.

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63. The Court notes that Article 7 of the Charter which guarantees the right to a fair trial does not expressly provide for the right to a reasoned Judgment. The Court notes, however, that the *African Commission's Guidelines on the Right to a Fair Trial* provide for "an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions" as a component of the right to a fair hearing.[21]The motivation of judicial decisions, stemming from the principle of proper administration of justice, therefore makes it incumbent on the judge to clearly base his reasoning on objective arguments.

64. The Court notes, on this point, that in application of the above Guidelines, the Commission considered in *Kenneth Good v. Botswana* that the right to a reasoned decision derives from the right to seize a competent national court as provided

[20]See the statement of facts by the Applicant in this Application §§ 20-21.
[21] African Commission 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001), Principles A(2)(i). (Emphasis by the Court).

under Article 7(1)(a) of the Charter[22]. The European[23] and Inter-American[24] Courts of Human Rights have also found a violation of the right to a reasoned decision on the basis of the corresponding provisions of their respective conventions which they have the duty to interpret.

65. In the present case, the Court notes that the High Court examined at length the Applicant's plea concerning his status and concluded that the Applicant should have been accorded the status of a state employee and not that of a contracted staff.[25] The same is true for the Supreme Court, which in both Judgments not only relied on the Applicant's pleadings, but also examined them extensively before concluding that the trial judge had misapplied the law on this point.[26]

66. In these circumstances, the Court considers that the Applicant's allegation that the domestic courts failed to state the reasons for their decisions, is unfounded.

67. Accordingly, the Court finds that there has been no violation of Article 7(1)(a) of the Charter.

iii. Right to be tried by an impartial court

68. The Applicant alleges that the Supreme Court was not impartial because of the enmity between two (2) of the three (3) judges of the court. According to the Applicant, among the members of the bench was Judge Marie Josée Mukandamage, who also sat in a case against the ATRACO Minibus Taxi Drivers' Union in which the Applicant allegedly filed a motion before the Senate against the judges.

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[22] See *Kenneth Good v Botswana* Communication 313/05 (2010), AHRLR 43 (ACHPR 2010) §§ 162, 175. Also see *Albert Bialufu Ngandu v. Democratic Republic of Congo*, Communication 433/12 (19th Extra-ordinary Session, 16 to 25 February 2016), §§ 58-67.
[23] See for example, *Baucher v. France*, ECHR (2007); *K.K. v. France*, ECHR, 10/10/2013, Application No. 18913/11, § 52.
[24] See for example, *Barbani Duarte and Others v. Uruguay*, 13/10/2011, §§ 183-185.
[25] See Judgment, RADA 0157/10/HC/KIG of 25/01/2013, § 4.
[26] Judgment, RADA 0015/13/CS of 8/11/2013, §§ 9-17; See Judgment No. RS/REV/AD/0003/15/CS of 27/1/2017 §§ 6-13.

69. The Court notes that Article 7(1)(d) of the Charter provides that: "Every individual shall have the right to have his cause heard. This right comprises… the right to be tried within a reasonable time by *an impartial court* or tribunal."

70. The Court recalls that, impartiality within the meaning of Article 7(1)(d) of the Charter must be understood as the absence of bias or prejudice in the consideration of a case in court.[27] As such, bias cannot be presumed and must be irrefutably proven by the party alleging it.[28] Similarly, the Court considers that it cannot accept allegations of a general nature which are not founded on concrete evidence[29].

71. With regard in particular to the influence alleged by the Applicant in his Application, the Court recalls that "the declarations of a single judge cannot be considered as sufficient to influence the opinion of the entire bench". The Court further considers that "…the Applicant failed to illustrate how the judge's remarks at the Ordinary Bench later influenced the decision of the Review Bench".[30]

72. Noting that in this case the Supreme Court was composed of a panel of three (3) judges, the Court considers that the mere fact that a judge sat in a previous case to which the Applicant was admittedly a party cannot suffice to influence the entire bench in another case. From the record, it is apparent that the Applicant made reference to enmity between two (2) judges but only explicitly mentioned Judge Marie Josée Mukandamage**.** In addition, he did not demonstrate how the simple presence of this judge and her role in the sitting influenced the decision of the other judges in rendering the impugned decision. Neither did he adduce any evidence to show the alleged impartiality, especially because, in light of the record, he did not request withdrawal of the Judge concerned even though the

[27]See *Alfred Agbesi Woyome v. Republic of Ghana* , AfCHPR, Application No. 001/2017. Judgment of 28/6/2019 (Merits and Reparations) § 126; *Ingabire Victoire Umuhoza v. Rwanda* (Merits) (2017) 2 AfCLR 165, §§ 103 and 104.
[28] *Alfred Agbesi Woyome v. Republic of Ghana*, (Merits and Reparations), § 128.
[29] See Alex Thomas v. United Republic of Tanzania (Merits) (2015) 1 AfCLR 465, § 124
[30] See Alfred Agbesi *Woyome v. Ghana* (Merits and Reparations), § 131.

law provided him the option to do so.[31] The Applicant's allegations are therefore unfounded.

73. Accordingly, the Court finds that Article 7(1)(d) of the Charter has not been violated.

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

74. The Applicant alleges that his designation as a "contracted staff" by the Supreme Court, different from that granted to other officials in the same situation, constitutes a discriminatory differential treatment that violates the principle of equality before the law.

75. The Applicant further submits that, the fact that the Supreme Court found the dismissal unlawful without ordering its annulment and his reinstatement, constitutes a breach of equality before the law since the same court had, in two (2) previous cases, ordered the reinstatement of two (2) employees of the company together with the payment of wages accruing to them. According to the Applicant, without providing sufficient justification as to why his case was not treated in the same way, the Supreme Court failed to respect the prohibition of any form of discrimination before the law.

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76. The Court notes that Article 3 of the Charter guarantees the right to equality before the law and equal protection of the law in the following terms: "1..Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.”

[31] See Law No. 21/2012 of 14/6/ 2012 on the Code of Civil, Commercial, Social and Administrative Procedure. Articles 99-105 (repealed in 2018 and replaced by Law No. 22/2008 of 29/4/2018 on the Code of Civil, Commercial, Social and Administrative Procedure; see Articles 103-109 available in the legislative database of the International Labor Organization https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=94327&p_lang=en (accessed on 13/6/ 2020

77. The Court notes, that Article 3 of the Charter is closely related to Article 2 which prohibits discrimination.[32] The Court also recalls that a cross-reading of the right to equal protection of the law and the prohibition of discrimination implies that the law provides for all and sundry, and that the law applies to all equally without discrimination, that is, without distinguishing between persons or situations on the basis of one or several unlawful criteria[33]. Within the narrower context of judicial proceedings, the right to equality before the law presupposes that "all are equal before the courts and tribunals".[34]

78. The Court notes, however, that the enjoyment of rights and freedoms on equal terms does not in all cases imply identical treatment.[35] The Court reiterates that the Applicant having alleged discriminatory treatment, must provide proof thereof.[36] As it has established in its case-law, the Court notes besides, that, to find that there has been a violation of Article 3 of the Charter, the Applicant must prove either that he has been discriminated against by the judicial authorities, or that the national legislation allows for discriminatory treatment against him in comparison with the treatment meted out to other persons in a similar situation.[37]

79. In the present case, the Court notes, in light of the national legislation, that no discriminatory treatment has been allowed against the Applicant; nor has he proven that his situation was the same or similar to that of other people such that he merits similar treatment.

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[32] See *Werema Wangoko Werema and Waisiri Wangoko Werema v. United Republic of Tanzania* (Merits) (2018) 2 AfCLR 520, § 86; *Tanganyika Law Society, Legal and Human Rights Center and Reverend Christopher Mtikila v. United Republic of Tanzania* (Merits) (2013) 1 AfCLR 34, § 105.
[33] See *Actions for the Protection of Human Rights v. Republic of Côte d'Ivoire - Actions pour la Protection des Droits de l'Homme* (2016) 1 AfCLR 668, § 147.

[34] See *Kijiji Isiaga v. United Republic of Tanzania* (Merits) (2018) 2 AfCLR 218, § 85.
[35]Human Rights Committee, General Comment 18, Article 26: Principle of equality, Compilation of general comments and General recommendations adopted by the treaty bodies, U.N. Doc. HRI\GEN \1\ Rev.1 (1994), § 8.
[36]See also *Kennedy Owino Onyachi and Others v. United Republic of Tanzania* (Merits), 2 AfCLR 65 § 142.
[37] See *Alex Thomas v. United Republic of Tanzania* (Merits), § 140; Kijiji Isiaga v. *United Republic of Tanzania*, § 85; and *Sébastien Germain Ajavon v. Republic of Benin,* ACHPR, Application No. 013/2017, Judgment of 29/3/2019 (Merits), § 221.

80. With regard to reinstatement, the Court notes that in its two (2) judgments, the Supreme Court examined the allegations of discrimination and concluded that its case-law cited by the Applicant was not applicable to him given that his dismissal occurred during his probationary period. The Supreme Court dismissed the claim for reinstatement as unfounded with regard to the reason for the dismissal.[38] Accordingly, the Court finds that, in the circumstances of the case, the Supreme Court applied the principle of distinction in a manner that is consistent with the right to equality as guaranteed by the Charter.

81. With regard to the allegation of violation of the right to equality before the law stemming from the failure to annul the dismissal and to reinstate him, following the finding of irregularities in the dismissal, the Court notes, as it held earlier, that the Supreme Court examined the relevant grounds and held in conclusion that whereas the dismissal procedure had not respected the right to be heard, the reinstatement was not applicable in the Applicant's case. Moreover, and as a result, the Supreme Court upheld the decision of the lower court on the merits to award the Applicant damages for the prejudice suffered. The Court therefore finds that there has been no violation of the right to equality before the law.

82. In view of the foregoing, the Court finds that there has been no violation of Article 3 of the Charter.

C. Alleged violation of the right to work

83. The Applicant alleges that RECO & RWASCO wrongfully dismissed him by disregarding his status as a state official, dismissal which in particular requires the prior opinion of the Public Service Commission as stipulated in Articles 22 (3) and (5) and 93 of Law No. 22/2002 of 09/07/2002 on the General Rules and Regulations of the Rwandan Civil Service.

[38]Judgment RADA 0015/13/CS of 08/11/2013, §§ 29-31; See Judgment No. RS/REV/AD/0003/15/CS of 27/1/2017, §§ 29-37.

84. He contends that by noting the unlawfulness of the dismissal without ordering his reinstatement and the payment of the real value of unpaid wages and other prejudice suffered, the High Court prevented him from practicing his profession.

85. The Applicant further submits that in the dismissal letter he was defamed to the extent that he was unable to find a new job. He claims, in addition, that the institution did not issue him with a certificate for the services rendered as requested by potential employers in his search for a new job. The Applicant further claims that, being the only one who succeeded in the written tests for recruitment at the Kigali University Hospital and Rwanda Housing Authority, he should have been hired. However, according to him, the only reason he was not hired was the defamatory nature of the dismissal letter issued by RECO & RWASCO.

86. He alleges that these acts constitute a violation of Article 6(1) of ICESCR.

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87. The Court notes that the Applicant alleges the violation of the right to work as guaranteed by Article 6(1) of ICESCR which states that:

> The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

88. The Court notes that the same right is protected under the Charter in Article 15 which states that: "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

89. The Court notes that, in comparison to Article 15 of the Charter, the provisions of Article 23 of UDHR which have acquired the character of customary international law[39], contain a more exhaustive and detailed enumeration of the different

[39]At least in its provisions relevant in this case. See *Anudo Ochieng Anudo v. Tanzania* (Merits), § 76. See also, Diplomatic and Consular staff of the United States in Teheran (*United States v. Iran*) (1980) ICJ

aspects of the right to work.[40] The Court considers, with reference to its case-law[41], that it is clear from a cross-reading of the above-mentioned provisions of the ICESCR, the UDHR and the Charter that, the Charter tacitly covers the different aspects enumerated in the other two instruments. This is so because enshrined in the Charter are the two common conditions governing the right to work, that is, access and enjoyment.

90. In the present case, the Applicant alleges the violation of his right to work on three grounds: unfairness of his dismissal in violation of the law; unlawful dismissal decision without reinstatement or award of damages; and the prejudice caused to his image by the content of the dismissal letter.

i. Wrongful dismissal

91. The Court considers, with reference to *the Guidelines on Socio-Economic Rights in the Charter*, that "the Respondent State has an obligation ... to provide protection against arbitrary, unjust dismissal and other unfair professional practices".[42]

92. In the instant case, the Court notes that the Applicant alleges that the RECO & RWASCO enterprise acted wrongfully in dismissing him without prior notice from the Public Service Commission as provided by the General Rules and Regulations governing the Public Service. The Court further notes that the question under consideration is intrinsically linked to that of the Applicant's

page 3, Collection 1980; South West Africa (*Ethiopia v. South Africa*; *Liberia v. South Africa*) (Preliminary Objections) (Separate opinion of Judge Bustamente), ICJ, Collection 1962, page 319

[40]Article 23 of UDHR states :

> "1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
> 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
> 4. Everyone has the right to form and to join trade unions for the protection of his interests."

[41]See *Armand Guehi v. United Republic of Tanzania (*Merits and Reparations); *Mohamed Abubakari v. Tanzania*, §§ 137-138; and *Anudo Ochieng Anudo v. United Republic of Tanzania* (Merits), §§ 110-111.

[42]See African Commission on Human and Peoples' Rights "Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 24 October 2011, Guideline 58.

employment status. It observes in this regard that, as it concluded earlier, the Supreme Court, after examining the pleadings filed by the Applicant, concluded that he was a contracted staff and could not therefore be governed by the Law on the General Rules and Regulations of the Rwandan Civil Service. The Supreme Court therefore found that the prior notice was not applicable as alleged by the Applicant.

93. In the circumstances, this Court holds that the dismissal could not have been wrongful for the reason advanced by the Applicant. The Court therefore dismisses the allegation of wrongful dismissal.

ii. Illegality of dismissal without reinstatement or compensation

94. This Court notes that the Applicant alleges that his rights were violated because the High Court declared his dismissal unlawful without ordering his reinstatement or the payment of adequate compensation.

95. In this regard and in light of the case law of the Inter-American Court of Human Rights, this Court considers that the right to work implies security of employment which requires that persons enjoy effective legal protection where the grounds raised to justify their dismissal are arbitrary or contrary to the law[43]. The Court considers that, invariably, where these conditions are not met, the dismissal necessarily gives rise to a right to compensation. This is the principle on which the ECOWAS Community Court of Justice relied when it held that:

> in matters of termination of employment contract, ... *early termination pronounced by one of the parties, without the agreement of the other, except for cases of serious fault, force majeure or hiring of the employee under fixed term contract, entitles the other party to damages*…[44].

[43]See *Lagos del Campo v. Peru*, Application No. 12.795, Judgment of 31/8/2017 (Preliminary Objections, Merits, Reparations and Costs)
[44]*Claude Akotegnon v. ECOWAS*, Judgment No. ECW/CCJ/APP/20/17 of 29/6/2018, § 42.

96. On the High Court's refusal to order the Applicant's reinstatement in his job, the Court based on its previous findings, considers that the said decision was upheld by the Rwanda Supreme Court in accordance with domestic law. Since the Court has also found that the said decisions are consistent with the applicable international law, there is no need to revisit them.

97. On the lack of compensation for the prejudice caused by the dismissal, this Court notes that in its two Judgments, the Supreme Court of Rwanda amply referred to and examined the Applicant's pleadings as mentioned above. The Supreme Court had concluded that he suffered prejudice as a result of the dismissal and upheld the payment of compensation as ordered by the High Court. In particular, on the insufficiency of the compensation awarded by the High Court, the Supreme Court, on the basis of his status, his relation with the management of the company and other factors related to the circumstances of the case, dismissed the Applicant's prayer for a review of the *quantum* and an increase of the compensation.

98. The Court therefore finds that the allegation of dismissal without compensation is unfounded, and therefore dismisses it.

iii. Prejudice arising from the disparaging and defamatory wording of the termination letter and failure to issue a certificate of service

99. The Court notes that, according to the Applicant's allegations, the disparaging and defamatory wording used by RECO & RWASCO Company in the dismissal letter had a significant adverse effect on him in obtaining a new job. To buttress this allegation, the Applicant submits that, having been declared successful in the written tests for positions at the Kigali University Hospital and the Rwanda Housing Authority, he was not retained after the interview. This was because his former employer failed to issue him with a Certificate of Service as requested by the would-be employers, and that this was prejudicial to him in his quest for a new job.

100. The Court reaffirms, as it did earlier, that the onus is on the Applicant to prove his allegations and that the said allegations should not be limited to general statements. In the instant case, the Court notes that the record shows, that the letter of dismissal refers to grounds such as "bad behaviour characterized by delayed services which gives the institution a bad name"; the letter further refers to "bad behaviour characterized by clashes between you and the line superiors" and concludes that these issues "do not enable the institution to fulfill its mission". The Court considers that even if such terms influenced the Judgment of a potential employer, the Applicant would still have to prove that the alleged prejudice has taken place in this case.

101. In this regard, the Court considers that the mere fact that the Applicant was not retained after the written phase of two recruitment tests cannot constitute proof of the alleged prejudice caused by the wording of the dismissal letter. Notably, in spite of the dismissal letter, the Applicant affirms that he was selected in the written phase for the different positions he mentioned. In this case, the Applicant should have shown that he was not hired for the jobs to which he refers as a result of the communication of the letter of dismissal to the prospective employers. As this is not the case, the Court holds that the Applicant’s allegation is unfounded.

102. With regard to failure to issue him a certificate of service, the Court notes that the Applicant has not alleged that the employer was under the obligation to issue him the said certificate without him requesting for it. He also fails to prove that he applied for the said certificate and was denied by the employer; nor has he established a causal link between the denial and the fact that he did not obtain the jobs he sought. The Court finds that the Applicant failed to prove the violation of his right to work on the basis of this allegation.

103. In view of the aforesaid, the Court finds that there has been no violation of Article 15 of the Charter.

D. Alleged violation of Article 1 of the Charter

104. The Applicant submits, in general terms, that the Respondent State violated Article 1 of the Charter on the obligation to recognize the rights, duties and freedoms enshrined in the Charter and undertake to adopt legislative or other measures to give effect to them.

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105. Pursuant to the provisions of Article 1 of the Charter, "The Member States of the Organisation of African Unity … shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them."

106. In reference to its established jurisprudence, the Court reiterates that:

> when (the Court) finds that any of the rights, duties or freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated.[45]

107. Given that none of the violations alleged by the Applicant has been proven in the instant case, the Court finds that there has been no violation of Article 1 of the Charter.

IX. REPARATIONS

108. Article 27(1) of the Protocol states that:

[45] See *Alex Thomas v. United Republic of Tanzania* (Merits), § 135; See also *Norbert Zongo and Others v. Burkina Faso* (Merits) (2014) 1 AfCLR 226, § 199 ; *See also Kennedy Owino Onyanchi and Others v. United Republic of Tanzania,* § 159*; Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania,* § 135.

If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

109. Considering that no violation has been established, the Court does not need to pronounce itself on reparations.

X. COSTS

110. The Applicant prays the Court to order the Respondent State to bear the costs. He further sought the payment of Three Million Rwandan francs (RWF 3,000,000) for the costs incurred on the proceedings before the Court.

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111. The Court notes, in this respect, that Rule 30 of the Rules provides that "Unless otherwise decided by the Court, each party shall bear its own costs".

112. The Court reiterates, as in its previous Judgments, that compensation may include the payment of legal costs and other costs incurred in international proceedings[46]. The Applicant must, however, justify the amounts claimed[47].

113. The Court notes that the Applicant has not adduced evidence of the costs incurred in these proceedings. It accordingly rejects the said costs.

114. In view of the aforesaid, the Court decides that each party shall bear its own costs.

[46]See *Norbert Zongo and Others v. Burkina Faso* (Reparations) (2015) 1 AfCLR 265, §§ 79-93 and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (Reparations) (2014) 1 AfCLR 74, § 39.
[47] See *Norbert Zongo and Others v. Burkina Faso* (Reparations) (2015) § 81 and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (Reparations) § 40.

XI. OPERATIVE PART

115. For these reasons:

THE COURT,

Unanimously and *in default:*

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. Declares the Application admissible.

On the merits

iii. *Finds* that the Respondent State has not violated the Applicant's right to equal protection of the law and equality before the law as enshrined in Article 3 of the Charter;

iv. *Finds* that the Respondent State has not violated the Applicant's right to have his cause heard as enshrined in Article 7(1) of the Charter;

v. *Finds* that the Respondent State has not violated the right to a reasoned Judgment protected under Article 7(1)(a) of the Charter;

vi. *Finds* that the Respondent State has not violated the Applicant's right to defence under Article 7(1)(c) of the Charter;

vii. *Finds* that the Respondent State has not violated the Applicant's right to be tried by an impartial tribunal guaranteed by Article 7(1)(d) of the Charter;

viii. *Finds* that the Respondent State has not violated the Applicant's right to work, guaranteed under Article 15 of the Charter;

ix. *Finds* that the Respondent State has consequently not violated the provisions of Article 1 of the Charter;

On reparations

x. *Dismisses* the Applicant's prayer herein.

On costs

xi. *Rejects* the Applicant's prayer herein.

xii. *Decides* that each party shall bear its own costs.

Signed:

Sylvain ORÉ, President;

Ben KIOKO, Vice President;

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Bensaoula CHAFIKA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 60(5) of the Rules, the joint Separate Opinion of Judge Rafaâ BEN ACHOUR and Judge Blaise TCHIKAYA is attached to this Judgment.

Done at Arusha, this Twenty-Sixth Day of June in the year Two Thousand and Twenty in English and French, the French text being authoritative.