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. 010/2017

RULING

26 JUNE 2020

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

Pursuant to 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"), Justice M-Thérèse MUKAMULISA, a 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 Ruling in default:

I. THE PARTIES

1. Fidèle Mulindahabi (hereinafter referred to as “the Applicant”), is a national of the Republic of Rwanda, residing in Kigali, and the owner of four (4) transport mini-buses.

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 provided for 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. The Applicant states that he owns a Toyota Hiace minibus in respect of which he alleges he alleges to have paid his membership dues to ATRACO Minibus Drivers' Union on 5 January 2008.

[1] See *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (2016) 1 AfCLR 562 § 67.

4. He further states that although the ATRACO agent received the One Thousand Six Hundred Rwandan francs (RWF 1600) payment for the membership dues, the agent informed the officials in the town of Gitarama (Muhanga) that the Applicant had not paid any money.

5. According to the Applicant, on 7 January 2008, the ATRACO representative in Gitarama ordered the coordinator of the southern region, "Mongoose Alexis", to confiscate his minibus. The minibus was subsequently severely damaged by heavy rains and mud.

6. The Applicant alleges that on 8 January 2008, ATRACO decided to prohibit the movement of his four (4) public transport vehicles of Registration Numbers RAA147H, RAA660R, RAA016Z and RAB762A.

7. On 18 January 2008, the Applicant filed an application before the Court of First Instance, "Banyarengigi", to seek compensation from ATRACO.

8. The Applicant alleges that on 14 February 2008, after ATRACO was informed that it was the subject of a complaint he had filed; it served letter No. 1996/SA/ATRACO-02/2008 on the former driver of the minibus, informing him of his deregistration on 7 January 2008 for non-payment of what was described as a tax and for having parked the minibus. He was therefore, required to take the vehicle back without compensation, failing which the vehicle would be transferred to the nearest police station.

9. By a letter dated 19 February 2008, the driver responded to the above mentioned letter, stating that the charge of non-payment of the tax had not been established, as he had receipts showing that he had paid one thousand six hundred Rwandan francs (RWF 1,600). With regard to parking the vehicle, the driver responded that he was not responsible for the fact that the vehicle had been impounded.

10. The Applicant states that since 25 March 2008, the vehicle was parked at Nyarenambu Police Station, thus relieving ATRACO of its responsibility for the vehicle. Even so, according to the Applicant, the question arises as to who is responsible for the poor condition of the vehicle, as no inspection was carried out on the vehicle when ATRACO seized it and when it was transferred to the police station.

11. The Court of First instance delivered judgment No. RC0025/08/TGI/NYGE, stating that ATRACO could not return a vehicle which was not in its possession and therefore should not pay for the damage caused to that vehicle.

12. On 5 October 2009, the Applicant filed an appeal with the Supreme Court, being Appeal No. RCA0028/09/HC/KIG, in which the Attorney General sought to intervene. Nevertheless, the Attorney General's application to intervene was dismissed on the ground that he was a third party in the case.

13. The Applicant filed application No. RADO115/09/HC/KID against the Attorney General, claiming that the police had confiscated his minibus in order to force him to pay a fine to ATRACO. On 7 October 2011, the court dismissed the application for lack of merit.

14. On 4 November 2011, the Applicant filed an appeal for review before the Supreme Court, basing his appeal on the violation of the provisions of Articles 182 and 184 of Law No. 18/2004 of 20 June 2004 on Civil, Commercial and Administrative Procedures in Rwanda. The Supreme Court, by decision No. RC0063/12/PRE of 15 October 2012, dismissed the appeal.

B. Alleged violations

15. The Applicant contends that the Respondent State:
    i. violated his right to property protected under Article 17(2) of the Universal Declaration of Human Rights (hereinafter referred to as “the UDHR”) and Article 14 of the Charter.
    ii. violated "his right to a fair trial and public hearing by a competent, independent and impartial tribunal, in a fair and public hearing of his case, in the determination of any dispute concerning his rights and obligations in a suit at law", guaranteed by Article 10 of the UDHR and Article 14(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”).
    iii. has taken no steps to ensure that the competent authorities implement the judgments rendered in his favour in accordance with Article 2(3)(c) of the ICCPR.
    iv. violated his right to have his cause heard under Article 7(1)(a) and (d) of the Charter.
    v. has failed to guarantee the independence of the courts and the establishment and development of relevant national institutions for the promotion and protection of the rights and freedoms protected under Article 26 of the Charter.
    vi. violated his rights to full equality before the law and equal protection of the law, enshrined under Article 7 of the UDHR, Article 26 of the ICCPR and Article 3 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

16. The Application was filed on 24 February 2017 and on 31 March 2017, the Registry transmitted it to the Respondent State and all the other entities mentioned in the Protocol.

17. On 9 May 2017, the Registry received a letter from the Respondent State reminding the Court that it had withdrawn its Declaration under Article 34(6) of the Protocol and that it would not participate in any proceedings before the Court. The Respondent State therefore requested the Court to cease communicating any information relating to cases concerning it.

18. On 22 June 2017 the Court acknowledged receipt of the Respondent State's 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.

19. On 25 July 2017, the Court granted the Respondent State an extension of forty-five (45) days to file its Response. On 23 October 2017 the Court granted a second extension of forty-five (45) days indicating that it will render a judgment in default after the expiration of this extension if the Respondent State did not file its Response.

20. On 17 July 2018, the Applicant was requested to file his submissions on reparations within thirty (30) days thereof. The Applicant filed his submissions on reparations on 6 August 2018 and these were transmitted to the Respondent State by a notice dated 7 August 2018, giving the latter thirty (30) days to file the response thereto. The Respondent State failed to respond, notwithstanding proof of receipt of the notification on 13 August 2018.

21. On 16 October 2018, the Respondent State was notified that it was granted a final extension of forty-five (45) days to file the Response and that, thereafter it would render a judgment in default in the interest of justice in accordance with Rule 55 of its Rules.

22. Although the Respondent State received all these notifications, it did not respond to any of them. Accordingly, the Court will render a judgment in default in the interest of justice and in accordance with Rule 55 of the Rules.

23. On 28 February 2019, pleadings were closed and the parties were duly notified.

24. On 2 April 2020, the Applicant filed, a judgment dated 14/12/2018 under number RC 00113/2018/TB/KICU issued by the Kicukiko District Court, and the Court decided that it was immaterial to this Application due to the lack of nexus with the current case.

IV. PRAYERS OF THE PARTIES

25. The Applicant prays the Court to:

i. find that Rwanda has violated the human rights legal instruments it has ratified;
ii. revise the judgment in case No. RADA0015/09/CS and annul all the orders contained therein;
iii. order the Respondent State to repair and return to it the Toyota Hiace minibus with registration number RAA624, or pay compensation in the amount of Forty Million Three Hundred and Forty-Nine Thousand One Hundred Rwandan francs (RWF 40,349,100);
iv. order the Respondent State to pay him a daily compensation of One Hundred and Nine Thousand Three Hundred and Eighty Rwandan francs (RWF 109,380) from 7 January 2008 until the date of settlement of the case;
v. order the Respondent State to pay him compensation of Two Hundred and Fifty-five million Four Hundred and Fifty-Six Thousand

Nine Hundred and Ninety Rwandan francs (RWF 255,456,990) for having destabilised his activities and banned the movement of his four (4) vehicles;

vi. order the Respondent State to pay him compensation in the amount of Fifty-one Billion Two Hundred and Twenty Six Million Five Hundred and Twenty Nine Thousand Seven Hundred and Twenty Five Rwandan francs (RWF 51,226,529,725) for the returns on reinvestment;

vii. order the Respondent State to compensate him at the rate of 7.4% for the loss of expected profits;

viii. order the Respondent State to pay him an amount of Forty Million Rwandan francs (RWF 40,000,000) for the moral prejudice suffered;

ix. order the Respondent State to pay Eight Million Rwandan francs (RWF 8,000,000) for legal costs.

x. order the Respondent State to pay the cost of counsel's fees for the proceedings before the domestic courts and this Court.

26. The Respondent State did not participate in the proceedings before this Court. Therefore, it did not make any prayers in the instant case.

V. NON APPEARANCE OF THE RESPONDENT STATE

27. Rule 55 of the Rules of Court 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.

28. 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.

29. On the default of one of the parties, the Court notes that on 9 May 2017, the Respondent State had indicated its intention to suspend its participation and requested the cessation of any transmission of documents relating to the proceedings in the pending cases concerning it. The Court notes that, by these requests, the Respondent State has voluntarily refrained from asserting its defence.

30. With respect to the other party's request for a judgment in default, the Court notes that in the instant case it should, in principle, have given a judgment in default only at the request of the Applicant. However, the Court considers, that, in view of the proper administration of justice, the decision to rule by default falls within its judicial discretion. In any event, the Court shall have jurisdiction to render judgment in default *suo motu* if the conditions laid down in Rule 55(2) of the Rules are fulfilled.

31. Finally, as regards the notification of the defaulting party, the Court notes that the application was filed on 24 February 2017. The Court further notes that from 31 March 2017, the date of transmission of the notification of the Application to the Respondent State, to 28 February 2019, the date of the closure of the pleadings, the Registry notified the Respondent State of all the pleadings submitted by the Applicant. The Court concludes thus, that the defaulting party was duly notified.

32. On the basis of the foregoing, the Court will now determine whether the other requirements under Rule 55 of the Rules are fulfilled, that is: it has

jurisdiction, that the application is admissible and that the Applicant's claims are founded in fact and in law.[2]

VI. JURISDICTION

33. Pursuant to Article 3(1) of the Protocol, "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". Furthermore, Rule 39(1) of the Rules provides that "the Court shall conduct a preliminary examination of its jurisdiction ..." .

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

    i. Material jurisdiction by virtue of the fact that the Applicant alleges a violation of Articles 7(1)(a)(d) and 26 of the Charter, Articles 2(3)(c) and 14(1) of the ICCPR to which the Respondent State is a party and Article 10 of the UDHR[3].

    ii. Personal jurisdiction, insofar as, as stated in paragraph 2 of this Ruling, the effective date of the withdrawal of the Declaration by the Respondent State is 1 March 2017.[4]

    iii. Temporal jurisdiction, in so far as, the alleged violations took place after the entry into force for the Respondent State of the

[2] *African Commision on Human and Peoples' Rights v. Libya* (merits) (2016) 1 AfCLR 153 §§ 38-42.
[3] See *Anudo Ochieng Anudo v. United Republic of Tanzania,*(merits) (2018) 2 AfCLR 257, § 76; *Thobias Mang'ara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 325, § 33.
[4] See paragraph 2 of this Judgment.

Charter (31 January 1992), of the ICCPR (16 April 1975), and the Protocol (25 May 2004).

iv. Territorial jurisdiction, since the facts of the case and the alleged violations occurred in the territory of the Respondent State.

35. From the foregoing, the Court finds that it has jurisdiction to hear the instant case.

VII. ADMISSIBILITY

36. 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".

37. Furthermore, under Rule 39(1) of its Rules: "[t]he Court shall conduct preliminary examination of its … the admissibility of the application in accordance with articles 50 and 56 of the Charter, and Rule 40 of these Rules".

38. Rule 40 of the Rules, which restates the provisions of Article 56 of the Charter, sets out the conditions for the admissibility of applications as follows:

> 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 the exhaustion 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 of 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.

39. The Court notes that the conditions of admissibility set out in Rule 40 of the Rules are not in contention between the parties, as the Respondent State having decided not to take part in the proceedings did not raise any objections to the admissibility of the Application. However, pursuant to Rule 39(1) of its Rules, the Court is obliged to determine the admissibility of the Application.

40. It is clear from the record that the Applicant is identified. The Application is not incompatible with the Constitutive Act of the African Union and the Charter. It is not written in disparaging or insulting language and is not based exclusively on information disseminated through the mass media. There is also nothing on the record to indicate 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.

41. With regards to the exhaustion of local remedies, the Court reiterates, as it has established in its case law, that the local remedies which the Applicants

are required to exhaust are ordinary judicial remedies[5], unless they are non-existent, ineffective and insufficient or the procedure for exercising them is unduly prolonged.[6]

42. Having regard to the facts of the case, the Court notes that the Applicant filed his complaint before the Court of First Instance, which dismissed it on 5 October 2009; he appealed against that decision to the Supreme Court, which, by judgment of 4 November 2011, upheld the decision of 7 October 2011 delivered by the Court of First Instance. The Applicant filed an application for review of this decision, which was dismissed by the Supreme Court by decision of 15 October 2012. The Court concludes, therefore, that the Applicant exhausted the available local remedies.

43. With regard to the obligation to file the application within a reasonable time, the Court notes that Article 56(6) of the Charter does not set any time-limit for the filing of applications before it. Rule 40(6) of the Rules, which essentially restates the provisions of Article 56(6) of the Charter, simply requires the Application to "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".

44. It emerges from the record that local remedies were exhausted on 15 October 2012, when the Supreme Court delivered its judgment. It is therefore that date which must be regarded as the starting point for calculating and assessing the reasonableness of the time, within the meaning of Rule 40(6) of the Rules of Court and Article 56(6) of the Charter.

[5] *Mohamed Abubakari v. Tanzania* (merits) (2016) 1 AfCLR 599 § 64. See also *Alex Thomas v. Tanzania* (merits) (2015) 1 AfCLR 465 § 64, and *Wilfred Onyango Nganyi and Others v. Tanzania* (merits) (2016) 1 AfCLR 507 § 95.
[6] *Lohé Issa Konaté v. Burkina Faso* (merits) (2014) 1 AfCLR 314 § 77. See also *Peter Joseph Chacha v. Tanzania* (admissibility) (2014) 1 AfCLR 398 § 40.

45. The present Application was filed on 24 February 2017, four (4) years, three (3) months and nine (9) days after the exhaustion of local remedies. The Court must, therefore, decide whether or not this period is reasonable within the meaning of Charter and the Rules.

46. The Court recalls that **"…**the reasonableness of a time-limit for filing a case depends on the particular circumstances of each case, and must be assessed on a case-by-case basis…"[7]

47. The Court has consistently held that the six-month time limit expressly provided for in other international human rights instruments cannot be applied under Article 56(6) of the Charter. The Court has therefore adopted a case-by-case approach to assessing the reasonableness of a time limit within the meaning of Article 56(6) of the Charter.[8]

48. The Court considers that, in accordance with its established jurisprudence on the assessment of reasonable time, the determining factors are, *inter alia*, the status of the Applicant[9], the conduct of the Respondent State[10] or its officials. Furthermore, the Court assesses the reasonableness of the time limit on the basis of objective considerations.[11]

49. In the case of *Mohamed Abubakari v. Tanzania*, the Court held as follows: the fact that an Applicant was in prison; he indigent; unable to pay for a lawyer; did not have the free assistance of a lawyer since 14 July 1997; was illiterate; could not have been aware of the existence of this Court

[7] Beneficiaries of the *late Norbert Zongo, Abdoulaye Nikiema dit Ablassé, Ernest Zongo and Blaise Ilboudo & Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso* (preliminary objections) , § 121.
[8] *Norbert Zongo ibid*. See also the judgment in *Alex Thomas v. Tanzania* (merits), §§ 73 and 74.
[9] *Alex Thomas v. Tanzanie (*merits) (2015) 1 AfCLR 482, §74.
[10] *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 248 § 58.
[11] As the date of deposit of the Declaration recognising the Court's jurisdiction, in accordance with Article 34(6) of the Protocol.

because of its relatively recent establishment; are all circumstances that justified some flexibility in assessing the reasonableness of the timeline for seizure of the Court. [12]

50. Furthermore, in *Alex Thomas v Tanzania*, the Court justified its position as follows:

> Taking into account the situation of the Applicant, who is an ordinary, indigent and incarcerated person, and considering the time it took him to obtain a copy of the record of proceedings and the fact that he attempted to use extraordinary remedies such as the application for review, the Court concludes that all these factors are sufficient elements to explain why he did not bring the application before the Court until 2 August 2013, three (3) years and five (5) months after the filing of the declaration under Article 34(6). For these reasons, the Court concludes that the application was filed within a reasonable time after exhaustion of local remedies, in accordance with section 56(5) of the Charter.[13]

51. It is also clear from the Court's case-law that the Court declared admissible an application brought before it three (3) years and six (6) months after the Respondent State deposited the Declaration under Article 34(6) of the Protocol accepting the Court's jurisdiction, having concluded that: “the period between the date of its referral of the present case, 8 October 2013, and the date of the filing by the Respondent State of the Declaration of recognition of the Court's jurisdiction to hear individual applications, 29 March 2010, is a reasonable time within the meaning of Article 56(6) of the Charter.[14]
52. In the instant case, the Applicant was not imprisoned, there were no restrictions on his movements after the exhaustion of local remedies, he

[12] *Mohamed Abubakari v. Tanzania* (merits) *op.cit*, § 92.
[13] *Alex Thomas v. Tanzania* (merits), § 74.
[14] *Mohamed Aubakari v. Tanzania* (merits), § 93

was not indigent, and his level of education not only enabled him to defend himself, as evidenced by this Application filed on 24 February 2017, but also enabled him to become aware of the existence of the Court and the proceedings before it within a reasonable time. Moreover, the Respondent State deposited the Declaration recognising the Court's jurisdiction four (4) years, three (3) and nine (9) days before the exhaustion of local remedies.

53. In light of the foregoing, the Court considers that the period of four (4) years**,** three (3) months and nine (9) days that elapsed before the Applicant filed his Application is unreasonable within the meaning of Article 56(6) of the Charter and Rule 40(6) of the Rules. Consequently, it finds that the Application is inadmissible on this ground.

VIII. COSTS

54. The Court notes that Rule 30 of its Rules provides that: “Unless otherwise stated, each party shall bear its own costs".

55. Taking into account the circumstances of this case, the Court decides that each party shall bear its own costs.

IX. OPERATIVE PART

56. For these reasons,

THE COURT:

Unanimously and in default,

i. *Declares* that it has jurisdiction;

ii. *Declares* the Application inadmissible;

iii. *Declares* that each party shall bear its own costs.

Signed:

Sylvain ORE, President;

Ben KIOKO, Vice President;

Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, 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 Justices Rafaâ BEN ACHOUR and 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.