AFRICAN UNION		UNION AFRICAINE
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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. 011/2017

RULING

26 JUNE 2020

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The Court composed of: Sylvain ORE, President; Ben KIOKO, Vice-President; Rafaâ 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:

MULINDAHABI Fidèle
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, who claims to have been the victim of violations by the Respondent State of the right to an adequate standard of living for himself and his family.

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 as at 23 March 2013, his house had been damaged by heavy rains, and that he subsequently tried to repair the damage in order to be able to shelter his family. However, that, some neighbours who did not want him to undertake the repairs sent confidential reports to the authorities claiming that no local authority could go to his house to assess the situation as the Applicant threatened to attack such persons with a machete.

4. The Applicant submits that on the basis of these false confidential reports, the local authority representative of Nyarugenge District in the municipality of Kigali went to his home accompanied by a crowd of people. The representative proceeded to inspect his house and take

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

photographs of all the rooms, without any permission, and in the end asked the Applicant to stop the repair work.

5. The Applicant states that he officially submitted a letter to the Ministry in charge of natural disasters requesting that the verbal decision of the municipal authority's representative ordering him to stop the repair work, be annulled and that he be allowed to continue repairing his house. Nevertheless, intelligence officers were sent to stop the work and asked the Applicant to report to the police the following day, that is, 1 May 2013 at 10:00 am. .

6. The Applicant submits that instead of reporting to the police, he wrote a letter to the President of the Republic on this matter and the threats ceased. However, a journalist who had discreetly taken photos of the house, posted them on the Internet.

7. He further avers that he filed a lawsuit before the Nyarugenge High Court, Kigali, seeking compensation for the damage suffered, based on Article 258 of the Civil Code. His case was registered under number RAD0027/13/TGI/NYGE. However, it was dismissed for lack of evidence.

8. The Applicant contends that he appealed the above-mentioned judgment to the Supreme Court, by appeal No. 0006/14/HC/KIC. On 23 May 2014, the Supreme Court issued its judgment confirming the judgment of the High Court.

B. Alleged violations

9. The Applicant contends that the Respondent State:

    i. Violated his right to an adequate standard of living provided under Article 14 of the Charter.

ii. Violated, in the determination of his rights and obligations, his right to a fair and public hearing by a court, provided for under Article 10 of the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR") and Article 14(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”).

iii. Failed to ensure the execution by the competent authorities of the judgments rendered in favour of the Applicants under Article 2(3)(c) of the ICCPR.

iv. Violated his right to take legal action within the meaning of Article 7(1)(a)(d) of the Charter.

v. Failed to guarantee the independence of the courts and to provide for the establishment and improvement of competent national institutions for the promotion and protection of the rights and freedoms guaranteed by Article the Charter as required by Article 26 thereof.

vi. Violated the right to equality before the law and equal protection of the law enshrined in Article 3 of the Charter, Article 26 of the ICCPR and Article 7 of the UDHR.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was filed on 24 February 2017 and on 31 March 2017 transmitted it to the Respondent State as well as the other entities mentioned in the Protocol.

11. On 9 May 2017, the Registry received a letter from the Respondent State reminding the Court of the withdrawal of its Declaration under Article 34(6) of the Protocol and informing the Registry that it would not participate in any proceedings before the Court. The Respondent State

also requested the Court to cease from transmitting to it any information relating to any pending cases concerning it.

12. 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.

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

14. On 17 July 2018, the Applicant was requested to file submissions on reparations within thirty (30) days thereof. The Applicant filed the submissions on reparations on 6 August 2018 and these were transmitted on to the Respondent State on 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.

15. 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..

16. 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.

17. Pleadings were closed on 28 February 2019 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

18. The Applicant prays the Court to take the following measures:

i. Find that the Republic of Rwanda has violated relevant human rights instruments that it has ratified.

ii. Review the judgment in case No. RADA006/14/HC, annul all decisions taken and order the Republic of Rwanda to provide him with a house to replace the one that was damaged, photographed and published on the Internet.

iii. Order the Respondent State to pay him compensation of Fifty Million Rwandan francs (RWF 50,000,000) for the purchase of a new house.

iv. Order the Respondent State to pay him an amount of Forty-Five Million Rwandan francs (RWF 45,000,000) as compensation for the non-pecuniary damage he and nine (9) members of his family suffered over a long period of time.

v. Order the Respondent State to pay him damages in the amount of Forty Million Rwandan francs (40,000,000 RWF) for the publication of images on the Internet which caused prejudice to his family.

vi. Order the Respondent State to pay him damages in the amount of Twenty-Two Million Rwandan francs (22,000,000 RWF) for the acts of theft against his home.

vii. Order the Respondent State to pay him an amount of Six Million Rwandan Francs (6,000,000 RWF) as legal fees and costs of proceedings before the domestic courts and the African Court.

viii. Order the Respondent State to pay him an amount of Five Hundred Thousand Rwandan Francs (500,000 RWF) as lawyers' fees and legal costs.

19. 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

20. 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.

21. The Court notes that the above mentioned Rule 55 of the Rules sets out three conditions, namely:

i) failure to appear or defend the case by one of the parties,
ii) a request made by the other party and
iii) the notification to the defaulting party of both the application and the documents on file.

22. 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.

23. 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.

24. 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 written 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.

25. 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

26. Pursuant to Article 3(1) of the Protocol, "[t]he 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"; and "the Court shall apply the provision of the Charter and any other relevant human rights instruments ratified by the States concerned." Furthermore, Rule 39(1) of the Rules provides that: "[t]he Court shall conduct a preliminary examination of its jurisdiction ..."

[2] *African Commision on Human and Peoples' Rights v. Libya* (merits) (2016) 1 AfCLR 153 §§ 38-42.

27. 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 14 of the Charter, Articles 2(3)(c) and 14(1) of the ICCPR to which the Respondent State is a party and Article 7 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 Charter (31 January 1992), of the ICCPR (16 April 1975), and the Protocol (25 January 2004).

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

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

[3] 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.
[4] See paragraph 2 of this Judgment.

VII. ADMISSIBILITY

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

30. Furthermore under Rule 39(1) of its Rules, "[t]he Court shall conduct a preliminary examination of … 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 of Court, which in substance restates 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 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 mater 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 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 the Rules, the Court is obliged to determine the admissibility of the Application.

33. It is apparent 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.

34. With regard to the exhaustion of local remedies, the Court reiterates as it has established in its case law that "the local remedies that must be exhausted by the Applicants are ordinary judicial remedies"[5], unless they are manifestly unavailable, ineffective and insufficient or the proceedings are unduly prolonged.[6]

35. Referring to the facts of the matter, the Court concludes that the Applicant filed is complaint before the Court of First Instance, which dismissed his complaints by judgment dated 27 December 2013. He appealed against this decision to the Supreme Court, which upheld the judgment of the High Court by its judgment of 23 May 2014. The Court, therefore, holds in conclusion that the Applicant has exhausted the available local remedies.

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[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 9 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.

36. With regard to the obligation to file an application within a reasonable time, the Court notes that Article 56(6) of the Charter does not set a time limit for the filing of cases before it. Rule 40(6) of the Rules, which 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".

37. It emerges from the record that local remedies were exhausted on 23 May 2014, with the judgment of the Supreme Court. This is, therefore, the date which must be regarded as the starting point for calculating and assessing the reasonableness of the time, within the meaning of the provisions of Rule 40(6) of the Rules and Article 56(6) of the Charter.

38. The Application was filed at this Court on 24 February 2017, two (2) years, nine (9) months and nine (9) days after the exhaustion of domestic remedies. The Court must therefore determine whether this period is reasonable within the meaning of the Charter and the Rules..

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

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

[7] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo & Mouvement Burkinabè des droits de l'homme et des peuples v. Burkina Faso* (preliminary objections) *(*2013) 1 AfCLR 197, § 121.
[8] *Norbert Zongo ibid.* See also the judgment in *Alex Thomas v. Tanzania* (merits) *op.cit* § 73 and 74.

41. 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]

42. 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 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]

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

> Considering the Applicant's situation, that he is a lay, indigent, incarcerated person, compounded with the delay of providing him with Court records, and his attempt to use extraordinary measures, that is, the application for review of the Court of Appeal's decision, we find that these constitute sufficient grounds to explain why he filed the application before this Court on 2 August 2013, being three (3) years and four (4) months after the Respondent made the declaration under Article 34(6) of the Protocol. For these reasons, the Court finds that the application has been filed within a reasonable time after the exhaustion of local remedies as envisaged by Article 55 (6) of the Charter.[13]

44. 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)

[9] *Alex Thomas v. Tanzania* (merits) *op.cit* § 74.
[10] *Anudo Ochieng Anudo v. Tanzania* (merits), *op.cit* § 58.
[11] As the date of deposit of the Declaration recognising the Court's jurisdiction, in accordance with Article 34(6) of the Protocol.
[12] *Mohamed Abubakari v. Tanzania* (merits) *op.cit*, § 92.
[13] *Alex Thomas v. Tanzania* (merits) *op.cit*, § 74.

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]

45. In the instant case, the Applicant was not imprisoned or subject to any restriction of movement after the exhaustion of local remedies, nor was he indigent, and his educational background not only enabled him to defend himself as evidenced by the Application filed on 24 February 2017, but also made him aware of the existence of the Court and the proceedings before it within a reasonable time. Moreover, the Respondent State also deposited the Declaration recognising the Court's jurisdiction four (4) years, three (3) months and nine (9) days before the exhaustion of local remedies.

46. In light of the foregoing, the Court holds that the period of two (2) years and nine (9) months that elapsed before the Applicant filed the Application before it is not a reasonable time within the meaning of Article 56(6) of the Charter and Rule 40(6) of the Rules. Consequently, Court finds that the Application is inadmissible on this ground.

VIII. COSTS

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

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

[14] *Mohamed Aubakari v. Tanzania* (Merits), § 93

IX. OPERATIVE PART

49. For these reasons, THE COURT:

Unanimously and in default,

i. *Declares* that it is has jurisdiction*;*

ii. *Declares* the application inadmissible *;*

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

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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.