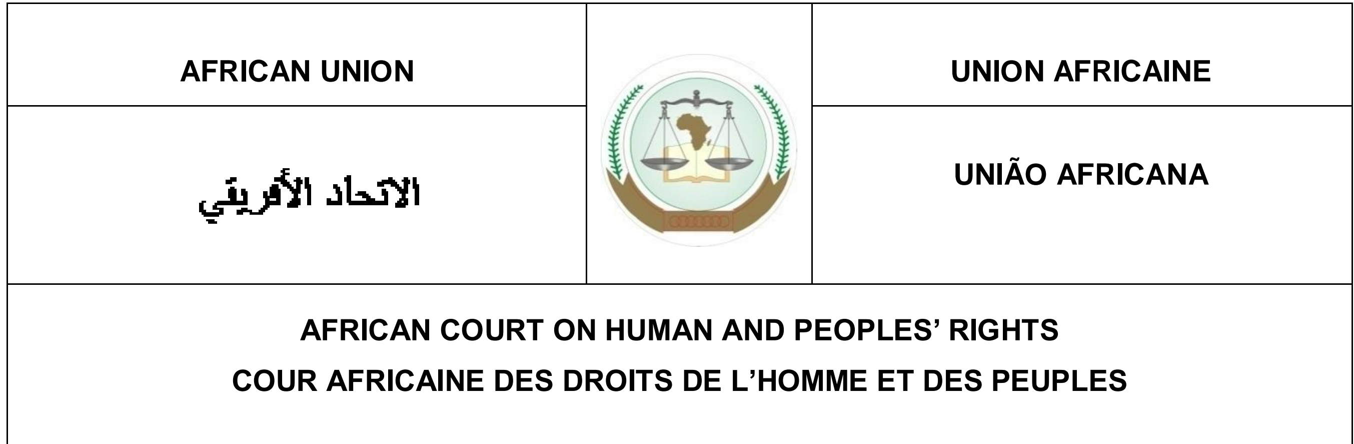

THE MATTER OF

FIDÈLE MULINDAHABI

V.

REPUBLIC OF RWANDA

APPLICATION NO. 005/2017

RULING

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 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"), Judge M-Thérèse MUKAMULISA, a member of the Court and a national of Rwanda, did not hear the Application.

In the matter of:

FIDELE 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, an owner of vehicle no. PAA0162.

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 alleges that on 3 March 2013, his vehicle No. PAA0162 was involved in a traffic accident with a Toyota Carina ERAB620A insured by CORAR Insurance Company, which was found to be at fault for the accident.

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

4. On 25 March 2013, the Applicant wrote to CORAR Insurance Company, requesting payment of one million Rwandan francs (RWF 1,000,000), as an advance, to repair his house, which had been destroyed by a natural disaster.

5. On 5 April 2013, CORAR Insurance Company granted the Applicant one million Rwandan francs (RWF 1,000,000) as an advance payment. The repair of his vehicle was completed on 18 June 2013. On 23 June 2013, the Insurance Company paid him the cost of repairing the vehicle, amounting to One Hundred and Ten Thousand and Eight Hundered Rwandan francs (RWF 110,800) as well as the cost of transporting the vehicle from the scene of the accident to the garage and the cost of processing the police documents .

6. On 12 August 2013, the Applicant wrote to CORAR Insurance Company requesting compensation for the loss of income suffered during the three (3) months that his vehicle was in the garage for repairs. The company replied that it did not owe him anything, as the advance of one million Rwandan francs (RWF 1,000,000) that had been paid to him for the repair of the vehicle had instead been used to renovate his house, which is the reason why the vehicle had remained in the garage for an extended period of time.

7. The Applicant filed a lawsuit against CORAR Insurance Company, alleging loss of income and the case was registered at the registry of the Court of First Instance under number Rc0865 / 13 / TGI / NYGE. On 4 February 2014, the Court of First Instance dismissed his complaints on the grounds that he had used the money paid to him by CORAR Insurance Company to carry out repair work on his house, even though he had indicated that he was not able to repair his house because he had not obtained the authorisation from the competent authorities to do so.

8. The Applicant appealed to the Supreme Court, which was registered in the Court Registry under number RCA0087 / 14 / HC / KIG; on 24 November 2014, the Supreme Court delivered its judgment confirming the judgment of the Court of First Instance on the same grounds.

9. With regard to the house, the Applicant submits that, he had maintained that he had not carried out any repairs in contradiction to the judgment where the, Court concluded (with regard to the vehicle) that he had used the advance payment made to him by CORAR Insurance Company to repair the house, and this violates his right to a fair trial.

B. Alleged violations

10. The Applicant contends that the Respondent State is responsible for :
    i. violating his right to a fair trial by an independent and impartial tribunal to determine his rights and obligations 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").

    ii. Failure to ensure that the competent authorities execute the judgment rendered in favour of the Applicant pursuant to Article 2(3)(c) of the ICCPR.

    iii. Failure to guarantee his right to have his case heard under Article 7(1)(a)(d) of the Charter.

    iv. Failure to ensure the independence of the judiciary and the availability, establishment and improvement of competent national institutions for the promotion and protection of the rights and freedoms guaranteed by the Charter and provided for in Article 26 thereof.

v. Failure to guarantee the right to equality before the law and equal protection of the law, in accordance with Article 7 of the Universal Declaration of Human Rights, Article 26 of the ICCPR and Article 3 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

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

12. 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.

13. 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 .

14. On 25 July 2017, the Court granted an Respondent State an initial 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 would render a default judgment after the expiration of this extension if the Respondent State failed to file a Response.

15. On 19 July 2018, the Applicant was given thirty (30) days to file his submissions on reparations but no response was received,.

16. On 18 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.

17. Although the Respondent State received all the 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.

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

IV. PRAYERS OF THE PARTIES

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

    i. find that Rwanda has violated the human rights instruments to which it is a party.
    ii. revise the judgment in case No. RCA0087 / 14 / HC / KIG and annul all the judgments rendered.
    iii. order the Respondent State to comply with human rights law.

20. The Applicant did not file any specific claim for compensation.

21. 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

22. 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.

23. 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.

24. 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.

25. 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

26. Lastly, with regard to 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 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.

27. 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.

VI. JURISDICTION

28. 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, under Rule 39 (1) of its Rules, "the Court shall conduct a preliminary examination of its jurisdiction ...".

29. 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[2].

[2] 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.

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.[3]

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.

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

VII. ADMISSIBILITY

31. 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".

32. Furthermore, under Rule 39(1) of the Rules "The Court shall conduct preliminary examination of … the admissibility of the application in accordance with articles 50 and 56 of the Charter, and Rule 40 of these Rules".

33. 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:

[3] See paragraph 2 of this Judgment.

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'srequest 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 obviousthat this procedure is unduly prolonged;

6. be filed within a reasonable time from the date local remedies wereexhausted or from the date set by the Court as being thecommencement of the time limit within which it shall be seized withthe matter; and;

7. not raise any mater or issues previously settled by the parties inaccordance with the principles of the Charter of the United Nations,the Constitutive Act of the African Union, the provisions of the Charteror of any legal instrument of the African Union ".

34. 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.

35. It is clear from the record that the Applicant is identified. The Application is not incompatible with the Constitutive Act of the African Union or the Charter. It does not contain disparaging or insulting language and is not

based exclusively on information disseminated through the 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.

36. With regard to the exhaustion of local remedies, the Court reiterates that, as it has established in its case-law: "... the remedies which must be exhausted by the Applicants are ordinary judicial remedies"[4], unless it is clear that such remedies are not available, effective and sufficient or that the procedure provided for exhausting them is unduly prolonged.[5]

37. Having regards to the facts of the case, the Court finds that the Applicant had instituted a case before the Court of First Instance, which dismissed it in a judgment delivered on 4 February 2014. He then appealed against the decision to the Supreme Court, which upheld the decision of the Court of First Instance on 24 November 2014. The Court, therefore, finds that the Applicant has exhausted the available local remedies.

38. With regard to the conditions for filing applications within a reasonable time, the Court notes that Article 56(6) of the Charter does not specify any time limit within which a case must be brought before it. Rule 40(6) of the Rules of Court, 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.

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[4] *Mohamed Abubakari v. Tanzania* (merits) (2016) 1AfCLR 599 § 64. See also *Alex Thomas v. Tanzania* (merits) (2015) 1 ACCR 465 § 64 and *Wilfred Onyango Nganyi v. Tanzania* (merits) *op.cit.*, § 95.
[5] *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.

39. It emerges from the record that local remedies were exhausted on 24 November 2014, 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, as provided for in Rule 40(6) of the Rules and Article 56(6) of the Charter.

40. The present Application was filed on 24 February 2017, two (2) years and three (3) months 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.

41. 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 ..."[6]

42. 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 what constitutes a reasonable time limit, within the meaning of Article 56(6) of the Charter.[7]

43. 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[8], the conduct of the Respondent State[9] or its officials. Furthermore, the Court assesses the reasonableness of the time limit on the basis of objective considerations.[10]

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[6] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema dit Ablasse, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso* (preliminary objections) (2013) 1AfCLR 197, § 121.
[7] *Norbert Zongo ibid*. See also *Alex Thomas v. Tanzania* (merits) *op.cit*, §§ 73 and 74.
[8] *Alex Thomas v. Tanzania* (merits) (2015) 1 AfCLR 465, § 74.
[9] *Anudo Ochieng Anudo v. Tanzania* (merits) (2018), § 58.
[10] As the date of deposit of the Declaration recognising the Court's jurisdiction, in accordance with Article 34(6) of the Protocol.

44. 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. [11]

45. 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 by the delay in 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 theApplication before this Court on 2 August 2013, being three (3) yearsand five (5) months after the Respondent made the declaration under Article 34(6) of the Protocol. For these reasons, the Court finds that theApplication has been filed within a reasonable time after the exhaustionof local remedies as envisaged by Article 56(5) of the Charter.[12]

46. 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

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

March 2010, is a reasonable time within the meaning of Article 56(6) of the Charter.[13]

47. In the instant case, the Applicant was not imprisoned and his freedom of movement was not restricted after exhaustion of local remedies; he is not indigent and his level of education not only enabled him to defend himself, as evidenced by this Application filed on24 February 2017, but also enabled him to be aware of the existence of the Court and the procedure for bringing the case within a reasonable time. Moreover, the Respondent State deposited the Declaration recognising the Court's jurisdiction two (2) years and three (3) months before the exhaustion of local remedies. Finally, during this period, the Applicant has not pursued any extraordinary judicial remedies, such as an application for review.

48. In light of the foregoing, the Court concludes that the period of two (2) years and three (3) months that elapsed before the Applicant brought his Application is unreasonable within the meaning of Article 56(6) of the Charter and Rule 40(6) of the Rules.

VIII. COSTS

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

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

[13] *Mohamed Aubakari v. Tanzania* (merits), § 93

IX. OPERATIVE PART

51. For these reasons,

The Court:

Unanimously and in default,

i. *Declares* that it is has jurisdiction;

ii. *Declares* the Application inadmissible;

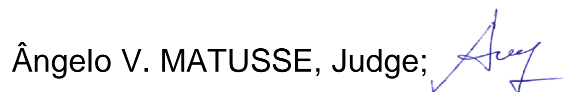
iii. *Declares* that each party shall bear its own costs.

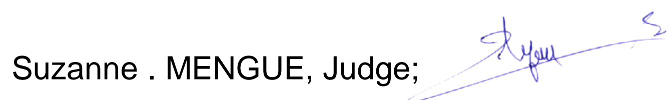
Signed:

Sylvain ORÉ, President;

Ben KIOKO, Vice-President;

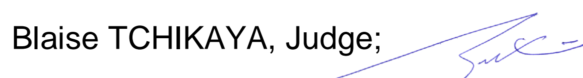
Rafaâ BEN ACHOUR, Judge;

Ângelo V. MATUSSE, Judge; 

Suzanne . MENGUE, Judge; 

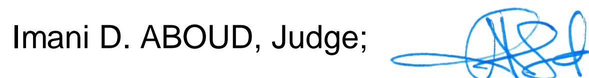
Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge; 

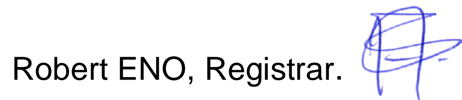
Stella I. ANUKAM, Judge;

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 are 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.