

001/2017
28/08/2019
(005040 - 005032)JF

005040

Judgment

ALFRED AGBESI WOYOME

V.

REPUBLIC OF GHANA

APPLICATION No. 001/2017

Dissenting Opinion

of

Judge Rafaâ Ben Achour

1. In the instant case, *Alfred Agbesi Woyome v. Republic of Ghana*, I subscribe to all the reasoning and the Operative Part except one issue and its consequence on the claims for reparation.
2. As a matter of fact, I do not share the majority opinion of the Court on "the question as to whether judge Dotse's remarks call to question the impartiality of the Review Bench of the Supreme Court"¹. According to the Court, the views expressed by one of Respondent State's Supreme Court judges about the Applicant were "unfortunate, and went beyond what can be considered as an appropriate judicial comment"², and that, consequently, "the Respondent State has not violated the Applicant's right to be heard by an impartial tribunal guaranteed under Article 7(1)(d) of the Charter"³.

¹ §§ 122 – 132

² § 129 of the judgment

³ § 132 of the judgment

3. Indeed, I believe that the Court should have found that Article 7(1)(b) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") has been violated, the remarks of the judge in question having cast a perception of bias not only on the author of the remarks but also on the entire judicial bench.
4. It is to be recalled that in his concurring opinion of 14 June 2013, at the hearing before the Ordinary Chamber of the Supreme Court, judge Dotse found that the applicant had formed an alliance with others. The Court "notes from the record that it is not in contention between the Parties that judge Dotse in his concurring opinion at the Ordinary Bench had referred to the Applicant as having formed an alliance with another party, Waterville Holding Ltd, to "create, loot and share the resources of the country as if a brigade had been set up for such an enterprise", further referring to the Applicant as being at the center of the "infamous Woyome payment scandal".⁴
5. Analyzing the effects of Honorable Justice Dotse's remarks on the impartiality of the Review Bench of the Supreme Court, this Court rightly began by laying down relevant criteria to resolve this issue. It emphasizes that "to ensure impartiality, any Court must offer sufficient guarantees to exclude any legitimate doubt."⁵ However, the Court notes that the impartiality of a judge is presumed and undisputable evidence is required to refute this presumption. In this regard, the Court shares the view that "the presumption of impartiality carries considerable weight, and the law should not carelessly invoke the possibility of bias in a judge"⁶, that "whenever an allegation of bias or a reasonable apprehension of bias is made, the adjudicative integrity not only of an individual judge but the entire administration of justice is called into question"⁷. The Court then seems to move in the direction of bias when it stated in paragraph 129 of the judgment that "...although the said statements were unfortunate, and went beyond what can be considered as an appropriate judicial comment, they however did not give an impression of preconceived opinions and do not reveal bias".

⁴ § 124 of the judgment

⁵ *Findlay v United Kingdom* (1997) 24 EHRR 221 § 73. See also *Nsongurua J Udombana*, "The African Commission on Human and Peoples' Right and the Development of Fair Trial Norms in Africa" 2006, African Human Rights Law Journal Vol 6/2.

⁶ *Wewaykum Indian Band v Canada* 2003 231 DLR (4th) 1 (Wewaykum).

⁷ §128 of the judgment