

Application No. 001/2015

Matter of Armand Guehi

v.

United Republic of Tanzania

Intervention of the Republic of Cote d'Ivoire

Individual opinion appended to the Judgment of 7 February 2018

1. I share the opinion of the majority of the judges as regards admissibility of the Application, the jurisdiction of the Court and the operative part.
2. It is my opinion, however, that with regard to the intervention made by the Republic of Côte d'Ivoire, the Court should have given further consideration to the question of admissibility of the Application in form and on the merits.
3. Indeed, although Article 5(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights stipulates that: "when a State Party has an interest in a case, it may submit a request to the Court to be permitted to join", it emerges from a reading of Rule 53 of the Rules of Court that:
 1. The Application for intervention provided for under Article 5(2) shall be filed as soon as possible, and in any case, **before the closure of the written pleadings.**
 2. The Application shall state the names of the Applicant's representatives, specify the case to which it relates and set out:
 - **The legal interest which, in relation to the State applying to intervene, has been affected.**
 - **The precise object of the intervention.**
 - **The basis the jurisdictional basis which, in relation to the State applying to intervene, exists between it and the parties to the case.**

3. The Application shall be accompanied by a list of the supporting documents attached thereto and shall be duly reasoned.
 4. A certified true copy of the Application for leave to intervene shall be notified forthwith to the parties to the case, who shall be entitled to submit their written observations within a time limit to be set by the Court, or by the president if the Court is not in session. The Registrar shall also notify copies of the Application to any other concerned entity mentioned in Article 35 of this Rule.
 5. If the Court rules that the Application is admissible, the Court shall fix a time limit within which the intervening State shall submit its written observations. Such observations shall be notified by the Registrar to the parties to the case who shall be entitled to file written observation in reply within the timeframe fixed by the Court.
 6. The intervening State shall be entitled, in the course of the oral proceedings, if any, to present its submissions in respect of the subject of the intervention.
4. In view of these two joined Articles, it is clear that there are requirements governing the admissibility of the Application for leave to intervene, namely:
- **Interest in the case, subject of the intervention;**
 - **Deadline for filing the Application “as soon as possible, in any case before the closure of the written procedure”**
 - **Content of the Application;**
 - **Reason for the Application;**
 - **Supporting documents.**
5. The procedure on which the Application to intervene relies must meet the same procedural requirements as a main Application...notification by the Court to the parties for written observations if it is in session...otherwise by the President, the intervener being entitled to be heard in the event of an oral hearing.
 6. This request shall also be forwarded to the entities concerned as set out in Rule 35(3) of the Rules.
 7. It emerges from a reading of the Judgment rendered by the Court on 7/12/2018, which is the subject of this individual opinion, that in its section on The Parties,

the Court considered the intervening State as a party to the trial because “it is authorized to intervene”.

8. And it does not appear at any time from the reading of the said judgment that the admissibility of this Application has been decided or addressed - contrary to paragraph 5 of Rule 53 of the Rules.
9. Moreover, paragraph 12 of section III - "**Summary of the Procedure before the Court**", misinterpreted the nature of the proceedings by certifying that on 21/01/ZO15... and in accordance with Articles 5.1(d) and 5.2 of the Protocol and Rules 33(1)d and 53 of the Rules, the Registry served the Application on the Republic of Côte d'Ivoire as the State which is the Applicant's country of origin.
10. While the case file shows that the intervening State - the Republic of Côte d'Ivoire - requested to intervene on 1 April 2015 and hence that the intervention of the Ivorian State is voluntary since it is stipulated in this same paragraph that the Court authorized the latter to do so and that it filed its observations and responses on the briefs of the parties.
11. It emerges from both paragraphs 15 and 16 of the Judgment that the adversarial principle was observed since the submissions of the intervening State were served on the Respondent, as a reading of the Judgment shows that the Respondent State responded to the claims and the arguments of the intervening State and the latter also responded to the Respondent State's responses, and made counter claims.
12. It also emerges from the intervening State's claims and replies that, in addition to its Application concerning admissibility of its Application and the jurisdiction of the Court as concerns him, he expressed support for the Applicant's claims and allegations (paragraphs 23, 30, 49, 83 and 92 of the Judgment).
13. However, at no time in the Judgment does it emerge that the Court responded to these claims, which constitutes, in my humble opinion, a procedural irregularity both with regard to the intervening State's request to declare its Application for intervention **admissible**, and its claims on the merits upholding the Applicant's allegations, if only by taking the claims into consideration in its decision on the prayers of the Applicant because they are similar to those of the intervening State.
14. In my opinion, if the Court considered that by responding to the Applicant it was also responding to the intervening State, it should have expressly said so throughout the Judgment up to the operative part.

In conclusion

15. Being a sort of **"remedy recognized for third parties"** that have an interest in a case pending before the Court, as provided under the provisions regarding form and the merits by both the Rules and the Charter, the Court should have examined the Application for intervention the same way it examined the Applicant's prayers in the body of the Judgment, in the operative part, under jurisdiction and admissibility and on the merits.
16. And this, even if on the merits, the State of Côte d'Ivoire intervened on the side of the Applicant and therefore supported the latter in his allegations and claims.

Done in Tunis on 7 December 2018



Judge Bensaoula Chafika

