

ISSIAKA KEÏTA AND OTHERS V. REPUBLIC OF MALI

APPLICATION NO. 005/2019

JUDGMENT ON MERITS AND REPARATIONS

5 SEPTEMBER 2023

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

On 5 September 2023, the African Court on Human and Peoples' Rights (the Court) sitting in Arusha delivered a judgment in the matter of *Issiaka Keïta and Others v. Republic of Mali*.

On 21 February 2019, Issiaka KEÏTA and 124 other persons (the Applicants) filed an Application against the Republic of Mali (the Respondent State).

The Applicants alleged violation of their rights following their dismissal by the Bays Water Constructing and Mining (BCM) company, namely, the right to non-discrimination, protected by Article 2 of the African Charter on Human and Peoples' Rights (the Charter); the rights to full equality before the law and to equal protection of the law, protected by Article 3 of the Charter; the right to have their cause heard, particularly the right to appeal to competent national organs against violations of their fundamental rights, protected by Article 7(1)(a) of the Charter; and the right to be tried within a reasonable time by an impartial court or tribunal, protected by Article 7(1)(d). They also alleged a breach of the obligation to guarantee the independence of the courts, pursuant to Article 26 of the Charter.

The Applicants prayed the Court to: declare that it has jurisdiction; declare the application admissible; order the Respondent State to reinstate their rights; declare that their grievances are well-founded; declare that the Respondent State violated their their human rights; order the Respondent State to award each employee 20,000,000 CFA francs in damages, and 5.000,000,000 CFA francs in respect of wages due from July 2012 to December 2018; order that each Applicant be issued with a certificate of employment, subject to a penalty of 2,000,000 CFA francs per day of delay, and order the provisional enforcement of the decision to be rendered.

JUDGMENT SUMMARY

The Respondent State did not contest the Court's material, personal, temporal or territorial jurisdiction. After considering these aspects, the Court declared that it had jurisdiction.

The Respondent State also did not challenge the admissibility of the Application. The Court considered the relevant requirements and declared the Application admissible.

The Applicants alleged that their right to have their cause heard was violated in several respects. Regarding the alleged violation of the right to an appeal to the national organs against acts violating their fundamental rights, the Applicants stated that they instituted proceedings, the last of which was the appeal of the Court of Cassation's Judgment of 31 August 2017 in their favour. The Respondent State submitted that the case be dismissed, arguing that the Applicants had duly seised all the competent national courts. The Court recalled in accordance with its settled case-law that the right to an effective remedy is enshrined in Article 7(1)(a) of the Charter, which provides that anyone with a tenable grievance, i.e., any alleged violation of a protected right, is entitled to appeal to the national courts. The Court noted that the Applicants instituted the necessary proceedings before the national courts and that nothing on record indicated that there had been any obstacle to this exercise. The Court held that the Respondent State did not violate the Applicants' right to be heard by the national courts.

On the alleged violation of the right to be tried within a reasonable time, the Applicants submitted that the proceedings relating to their claim for damages against their former employer were unduly long (seven years). Dismissing the allegation, the Respondent State argued that the Applicants had failed to prove that the proceedings exceeded the reasonable time-limit, especially given the complex nature of some of the proceedings. In line with its established case-law, the Court recalled that the reasonableness of the time-limit is, in principle, assessed taking into account the complexity of the case as well as the conduct of the parties and of the national judicial authorities. The Court also recalled the various stages of the proceedings followed by the Applicants, from the referral of the case to the Kita Court of First Instance to the judgment of the joint chambers of the Supreme Court. It noted the complexity of some of the proceedings and found that the judicial

JUDGMENT SUMMARY

authorities could not be held responsible for any delays. The Court therefore ruled that the Respondent State did not violate the Applicants' right to be tried within a reasonable time.

Regarding the alleged violation of the right to be tried by an independent and impartial court, the Applicants submitted that the conduct of the proceedings before the national courts showed that the national courts were not impartial and that the Respondent State failed in its obligation to guarantee their independence. The Respondent State on the other hand dismissed the allegation. In accordance with its settled case-law, the Court held that the concept of judicial independence, which has two aspects - individual and institutional - implies that the courts can carry out their duties without external interference and without depending on any authority, whereas impartiality is the absence of bias, prejudice or conflict of interest on the part of a judge vis à vis the parties. It specified that the impartiality of a judge is presumed. The Court observed that there was no objective evidence adduced to support the Applicants' submissions. Accordingly, the Court held that the Respondent State did not violate the Applicants' right to be tried by an impartial court or its obligation to guarantee the independence of the courts.

The Applicants also alleged violation of other rights besides the violation of the right to a fair trial. Regarding the alleged violation of the rights to equality before the law and to equal protection of the law, they submitted that the Supreme Court incorrectly applied the law by relying exclusively on the opinion of the labour inspector. Refuting this argument, the Respondent State pointed out that the Applicants' case was examined by the competent courts in accordance with the Labour Code, which guaranteed the proper administration of justice. In line with its settled case-law, the Court held that the rights to equality before the law and equal protection of the law did not mean that all cases had to be dealt with by the courts in the same manner, as the treatment of each case depended on particular circumstances. The Court emphasised that the Applicants failed to prove that they were subjected to unequal treatment before the law or to unequal protection of the law. The Court therefore held that the Respondent State did not violate the Applicants' rights.

Regarding the alleged violation of the right to non-discrimination, the Parties submitted the same arguments as those relating to the alleged violation of the rights to equality before the law and to equal protection of the law. In line with its case-law, the Court recalled the link between the rights



JUDGMENT SUMMARY

to equality before the law and to equal protection of the law, on the one hand, and the right to non-discrimination, on the other, as this principle underpins the entire legal structure of both national and international public policy and transcends all norms. The Court held that the Applicants' contention that the law was incorrectly applied was unfounded and that, in any event, they did not adduce any evidence to show that they were subjected to discriminatory treatment. The Court therefore held that the Respondent State did not violate the Applicants' right to non-discrimination.

Regarding reparations, the Court recalled that they could be awarded only if the responsibility of the State for an internationally wrongful act has been established. It emphasised that the Respondent State has not been found liable for any violation of the Applicants' rights and, consequently, dismissed their prayers for reparations.

Lastly, the Court ordered each Party to bear its own costs.

Further information:

Further information on this case, including the full text of the African Court's Judgment is available on the website: <https://www.african-court.org/cpmt/details-case/0052019>

If you have any other questions, please contact the Registry by e-mail at registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court created by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes brought before it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For more information, please visit our website www.african-court.org