

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

THE MATTER

DOUMBIA MOUSSA

V.

THE REPUBLIC OF COTE D'IVOIRE

APPLICATION NO. 029/2019

RULING

13 NOVEMBER 2024



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The Court composed of: Imani D. ABOUD, President, Modibo SACKO, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA - Judges; and Robert ENO, Registrar.

The Matter of:

Moussa DOUMBIA

Represented by Mr. Ruyenzi SCHADRACK, Advocate of the Rwandan Bar

Versus

REPUBLIC OF COTE D'IVOIRE

Represented by Ms Kadiatou Ly SANGARE, Judicial Officer of the Treasury

After deliberation,

Renders the following Judgment:

I. THE PARTIES

1. Mr Doumbia Moussa (hereinafter referred to as “the Applicant”) is an Ivorian national. At the time of filing this application, he was serving a 20 years’ imprisonment term for robbery with violence committed at night. He alleges notably, the violation of his right to a fair trial in the proceedings before domestic courts.
2. The application is filed against the Republic of Côte d’Ivoire (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 31 March 1992, and to the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 25 January 2004. On 23 July 2013, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 29 April 2020, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases or new cases filed before the withdrawal comes into effect one year (1) after its deposition, in this case, on 30 April 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that the Applicant was arrested and detained on 17 October 2014 and subsequently charged with gang robbery with violence by the use of a firearm. On 31 October 2014, he was convicted and sentenced to 20 years' imprisonment with hard labour by the Court of First Instance of Abidjan. The Applicant appealed to the Court of Appeal in Abidjan which, by judgment No. 511 of 22 June 2016, upheld the judgment of the trial court. The Applicant avers that he admitted the charges against him at all stages of the proceedings.
4. The Applicant further avers that “for reasons beyond his control”, he did not file a cassation appeal against the judgment of the Court of Appeal in Abidjan. However, he contends that he was unaware of the existence of this

¹ *Kouadio Kobena Fory v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 034/2017 (2 December 2021) (merits and reparations) 5 AfCLR 682, § 2; *Suy Bi Gohoré Émile and Others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 397, § 67; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 69.

remedy as he was not assisted by counsel and that, in any event, an appeal “would not prosper in the current legal and judicial system of the Respondent State”.

B. Alleged violations

5. The Applicant alleges violation of the following rights:

- i. The right to a fair trial, in particular:
 - The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force, protected under Article 7(1)(a) of the Charter;
 - The right to defence, including the right to be defended by counsel of his choice, protected by Article 7(1)(c) of the Charter, and respect for the adversarial principle;
 - The right to a reasoned judgment, protected by Article 7(1) of the Charter;
 - Respect for the principle of proportionality of punishment, provided for by Article 15(1) of the ICCPR;
- ii. The right to the respect of the dignity of all persons deprived of their liberty, guaranteed by Article 5 of the Charter and Article 10(1) of the ICCPR.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 22 July 2019 and served on the Respondent State on 29 August 2019. On 20 September 2019, the Respondent State submitted the names of its representatives.
7. The Parties filed their pleadings and procedural documents within the time stipulated by the Court.
8. Pleadings were closed on 28 October 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

9. The Applicant prays the Court for the following:

- i A presidential pardon;
- ii Due and proper reduction of the 20-year prison sentence to a shorter prison term;
- iii Parole;
- iv Amicable settlement; and
- v Financial compensation for the damage suffered as a result of the unfair court decisions against him; and
- vi Order the Respondent State to pay him the following amounts: Three Million (3,000,000) CFA francs for legal prejudice, Three Million (3,000,000) CFA francs for material prejudice and Four Million (4,000,000) CFA francs for moral prejudice.

10. The Respondent State prays the Court to:

- i Primarily, declare the application inadmissible;
- ii In the alternative, declare the application unfounded and accordingly dismiss it.

V. JURISDICTION

11. The Court notes that Article 3 the Protocol provides:

- 1. The jurisdiction of the Court shall extend to all 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.
- 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

12. Under Rule 49(1) of the Rules of Court “The Court shall ascertain its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules”.
13. Based on the above-cited provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.
14. The Court notes that in the instant case, the Respondent State does not raise any objection to its jurisdiction. Nonetheless, pursuant to Rule 49(1) of the Rules, the Court must ensure that its jurisdiction is established on all aspects.
15. Having found that nothing on the record indicates that it lacks jurisdiction, the Court holds that it has:
 - i. Material jurisdiction, insofar as the Applicant alleges violation of human rights protected by the Charter and the ICCPR, to which the Respondent State is a party.²
 - ii. Personal jurisdiction, insofar as the Respondent State deposited the Declaration on 23 July 2013, as indicated in paragraph 2 of this Judgment. On 29 April 2020, it deposited the instrument of withdrawal of the said Declaration. In this respect, the Court recalls its jurisprudence that the withdrawal has no retroactive effect, and does not have any bearing on pending or new cases filed before the withdrawal came into effect, that is, on 30 April 2021. This Application filed on 22 July 2019, that is, prior to the withdrawal of the Declaration, it therefore not affected.
 - iii. Temporal jurisdiction, as the alleged violations occurred after the Respondent State became a party to the Protocol.³

² The Respondent State became a party to the International Covenant on Civil and Political Rights (“ICCPR”) on 26 March 1992.

³ *Fory v. Côte d’Ivoire*, *supra*, § 32; *Kouassi Kouame and Baba Sylla v. Republic of Côte d’Ivoire*, ACtHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 24.

- iv. Territorial jurisdiction, as the alleged violations occurred in the territory of the Respondent State.

16. In light of the foregoing, the Court declares that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

17. Under 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.”
18. Pursuant to Rule 50(1) of the Rules, “[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol, and these Rules.”
19. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

Applications filed before the Court shall comply with all of the following conditions:

- a. indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Not contain any disparaging or insulting language directed against the State concerned and its institutions of the African Union;
- d. Not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. 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

- g. Do not deal with cases which have been settled in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.
- 20. The Court notes that the Respondent State raises two objections to the admissibility of the Application. The first objection is based on non-exhaustion of local remedies, and the second, on failure to file the Application within a reasonable time. The Court will consider these objections before examining other admissibility requirements, if necessary.

A. Objection based on non-exhaustion of local remedies

- 21. The Respondent State submits that the Application is inadmissible for failure to exhaust local remedies, arguing that it was not afforded the opportunity to remedy the alleged violations insofar as those violations were never brought before its domestic courts.
- 22. It further submits that the Applicant did not exercise the appropriate remedies and therefore could not validly bring the matter before this Court.
- 23. For his part, the Applicant prays that the objection be dismissed. He contends that the rule of exhaustion of local remedies is not absolute and must be interpreted with flexibility.
- 24. The Applicant further submits that he appealed the judgment of the Abidjan Court of First Instance but, “for reasons beyond his control”, did not appeal the judgment of the Court of Appeal of Abidjan before the *Cour de Cassation*. However, the Applicant avers that he was unaware of the existence of this remedy as he was not assisted by counsel and that, in any case, an appeal to the *Cour de Cassation* “would not be successful under the current legal and judicial system of the State in question”.

25. The Court notes that under Article 56(5) of the Charter and Rule 50(2) of the Rules, applications must be filed after exhaustion of local remedies, if any, unless it is clear that the proceedings thereof are unduly prolonged.
26. The Court emphasises that the local remedies to be exhausted are judicial remedies. They must be available, that is, they can be exercised without hindrance, and they must be effective and satisfactory, in the sense that they are capable of remedying the situation in question.⁴ In line with the Court's established jurisprudence, the only exception to this rule is where such remedies do not meet these requirements or are unduly prolonged.⁵
27. Moreover, the Court has consistently held that it examines the question of exhaustion of local remedies taking into account the circumstances of each case and having regard to the remedies available under the judicial system of the Respondent State.⁶
28. In the present case, the Court notes that the Applicant acknowledges that he did not appeal the judgment of the Court of Appeal of Abidjan before the *Cour de cassation* because he was not represented by counsel and was unaware of the existence of the remedy which, in any case, is ineffective.
29. The Court notes that it has consistently held that in the judicial system of the Respondent State, the appeal procedure before the *Cour de Cassation* is an available, effective and satisfactory remedy.⁷

⁴ *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, §108; *Sébastien Germain Marie Ajavon v. Republic of Benin* (jurisdiction and admissibility) (2 December 2021) 5 AfCLR 623, § 73.

⁵ *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 44; *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

⁶ *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (merits) (29 March 2019) 3 AfCLR, 130, § 110.

⁷ *Oulai Marius v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 032/2019, Judgment of 4 December 2023 (jurisdiction and admissibility), § 34; *Goh Taudier and Others v. Republic of Côte d'Ivoire*, ACtHPR, Applications Nos. 017/2019, 018/2019 and 019/2019 (joinder of cases), Judgment of 4 June 2024 (jurisdiction and admissibility), § 38.

30. Furthermore, and in line with its established jurisprudence, the Court emphasises on the one hand that the lack of representation by counsel and on the other, ignorance of the existence of a remedy cannot be grounds for dispensing with the exercise of local remedies.⁸ The Court also considers that it is not enough to allege that a remedy is ineffective; one must also attempt to exercise it.
31. In view of the foregoing, the Court finds that the Applicant did not exhaust local remedies such that the application does not meet the related admissibility requirement.
32. Accordingly, the Court upholds the Respondent State's objection and holds that the Applicant did not exhaust local remedies.

B. Other admissibility requirements

33. The Court recalls that the admissibility requirements are cumulative such that if one requirement is not met, the application is inadmissible.⁹ Having found that local remedies were not exhausted, the Court considers it superfluous to rule on the other admissibility requirements laid down in Article 56(1),(2),(3),(4),(6) and (7) of the Charter and Rule 50(2)(a),(b),(c),(d),(f),(g) of the Rules.
34. Accordingly, the Court holds that the Application is inadmissible.

VII. COSTS

35. None of the Parties made submissions on costs.

⁸ *Taudier and Others v. Côte d'Ivoire*, *ibid*, §§ 34-35.

⁹ *Aminata Soumaré v. Republic of Mali*, ACtHPR, Application No. 038/2019, Judgment of 5 September 2023 (jurisdiction and admissibility), § 47; *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 002/2019, Judgment of 22 September 2022 (jurisdiction and admissibility), § 49; *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthé v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Marius v. Côte d'Ivoire*, *supra*, § 36; *Taudier and Others v. Côte d'Ivoire*, *supra*, § 40.

36. The Court notes that under Rule 32(2) of the Rules “unless otherwise decided by the Court, each party shall bear its own costs, if any”.
37. The Court observes that in the instant case, there is no reason to depart from this provision and accordingly decides that each Party shall bear its own costs.

VIII. OPERATIVE PART

38. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

- i. *Declares* that it has jurisdiction.


On admissibility


- ii. *Upholds* the Respondent State’s objection based on non-exhaustion of local remedies;
- iii. *Declares* the Application inadmissible.

On costs

- iv. Orders each Party to bear its own costs.


Signed by:


Imani D. ABOUD, President; 


Modibo SACKO, Vice President; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 

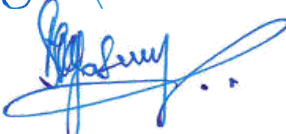
Chafika BENSAOULA, Judge; 


Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge; and 

Robert ENO, Registrar. 

Done at Arusha, this Thirteenth Day of November in the Year Two Thousand and Twenty-Four, in English and French, the French text being authoritative.

