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JUDGMENT SUMMARY

AKWASI BOATENG & 351 OTHERS V. REPUBLIC OF GHANA

APPLICATION NO. 059/2016

RULING ON JURISDICTION

27 NOVEMBER 2020

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

Date of Press Release: 27 November 2020

Arusha, 27 November 2020: The African Court on Human and Peoples' Rights (the Court) delivered its Ruling on Jurisdiction in the case of *Akwasi Boateng & 351 Others v. Republic of Ghana*.

Akwasi Boateng and Three Hundred and Fifty-One (351) others (the Applicants) claim to be an indigenous people and members of the Twifo Hemang Community, living in the Central Region of Ghana comprising seven (7) villages with forty-eight (48) Chiefs. They filed the Application against three (3) Respondents, the 1st Respondent being, the Republic of Ghana; the 2nd Respondents being J. E. Ellis and Emmanuel Wood, two (2) merchant families and the 3rd Respondent being, the Chief of Morkwa, Ackwasie Symm *alias* Kenni of Morkwa, a former chief of a neighbouring community.

The Applicants alleged that following boundary disputes which arose in 1884 between them and the Morkwa Community, in 1974, the 1st Respondent forcefully confiscated their lands. They alleged that between the period 1974 and 1992, the 1st Respondent enacted a number of five (5) laws, on the compulsory acquisition of their land and barred their access to a judicial remedy for the claims to their land. The laws are: The State Lands-Hemang Acquisition- Instrument, 1974 (Executive Instrument, 61) issued on 21 June 1974; The Hemang Acquisition- Instrument, 1974 (E.I 133); The Hemang Lands (Acquisition) Decree 1975 (NRCD 332); The Hemang Land (Acquisition) (Amendment) Law, 1982 (PNDC Law 29); and The PNDC Law 294 – Hemang Lands (Acquisition and Compensation Act) 1992.

The Applicants allege that the 2nd Respondents connived with the 1st Respondent to deprive them of their land, thus creating a shortage of land, threatening their existence and that of the future generations and descendants. The Applicants claimed that this action deepened their alienation, abject poverty and under-development.



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The Applicants alleged that their lands require special protection, as they still live on and derive their livelihood from it. Moreover, that since its compulsory acquisition, the 1st Respondent did not make improvements to it, instead, it used the land as a subject of political campaigns to the detriment of the Community.

The Applicants alleged further that the Respondents violated their rights under Articles 14 and 22 of the African Charter on Human and Peoples' Rights (the Charter) which provides for their right to property and economic, social and cultural development, respectively. Consequently, they sought reparations, including orders to the Respondents to produce documents in connection with the lands for study by the Court; release of their land; abrogation of all instruments relating to their land, including the *PNDC Law 294 - Hemang Lands (Acquisition and Compensation Act) 1992*, that vests the ownership of their land in the 1st Respondent and payment of all royalties accrued from the time the 1st Respondent compulsorily acquired their land and prohibited them from contesting ownership of their land.

Before dealing with the objections raised by the 1st Respondent on its material and temporal jurisdiction, the Court considered the issue of personal jurisdiction, noting that, Articles 5 and 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) only envisages applications filed by individuals and Non-Governmental Organisations (NGOs) against State Parties to the Protocol. The Court also noted that the primary duty bearers of upholding human rights are States and therefore, found that in this regard no action can be instituted against the 2nd and 3rd Respondents, the families of J. E. Ellis and Emmanuel Wood and the Morkwa Chief, respectively, as they are individuals and not State Parties to the Protocol. Accordingly, the Court found that the only Respondent that is properly before it is the Republic of Ghana (Respondent State), which is, Party to the Protocol and the Charter and which deposited the Declaration under Article 34(6) of the Protocol by which it accepted the jurisdiction of the Court to receive cases from individuals and NGOs.

Regarding the objection to the material jurisdiction of the Court, the Respondent State argued that the Applicants have not specified the rights under the Charter alleged to have been violated. The Court found, unanimously, that, the allegations are based on rights protected by the Charter and held that it has material jurisdiction to consider the Application. The Court consequently dismissed the Respondent State's objection.

Regarding the Respondent State's objection to the temporal jurisdiction of the Court that the alleged violations predate its ratification of the Protocol in 2004, the Court noted that the applicable dates, in relation to the Respondent State, are those of entry into force of the Charter and of the Protocol as well as



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the date of depositing the Declaration required under Article 34(6) of the Protocol. The Court also noted that, the acts complained about, that is, promulgation of the five (5) laws between 1974-1992, resulting in the compulsory acquisition of the disputed land were enacted at specific points in time, albeit in a successive manner. These acts had immediate effects with regard to ownership of the land in that the beneficiaries became the new *bona fide* owners thereof. Furthermore, these laws were not of general application, rather they were enacted to resolve the specific disputes of the Applicants' Community land as raised by some of its members of the community. The said laws, indeed, put an end to the specific land disputes of the Twifo Hemang Community. The Court therefore, determined that the Respondent State's actions were instantaneous acts. Since these acts occurred before the Respondent State became a party to the Charter and to the Protocol and deposited the Declaration under Article 34(6), the Court lacked temporal jurisdiction to consider the matter. The Court therefore upheld the Respondent State's objection that it lacks temporal jurisdiction in the present matter.

Accordingly, by a majority of Ten (10) for and One (1) against, Justice Chafika BENSAOULA Dissenting, the Court held that it lacks temporal jurisdiction to consider the Application.

The Court ordered that each Party should bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <https://en.african-court.org/index.php/56-pending-cases-details/997-app-no-059-2016-akwasi-boateng-and-351-others-v-republic-of-ghana>

For any other queries, please contact the Registry by email registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to 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 further information, please consult our website at www.african-court.org.