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PRESS RELEASE
JUDGMENT SUMMARY

KENNEDY GIHANA AND OTHERS V. REPUBLIC OF RWANDA
APPLICATION NO. 017/2015
JUDGMENT ON MERITS AND REPARATIONS
28 NOVEMBER 2019

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

Date of Press Release: 28 November 2019

Zanzibar, 28 November 2019: Today, the African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of *Kennedy Gihana and Others v Republic of Rwanda*

The Seven (7) Applicants, Messrs Kennedy Alfred Nurudiin Gihana (First Applicant), Kayumba Nyamwasa (Second Applicant), Bamporiki Abdallah Seif (Third Applicant), Frank Ntwali (Fourth Applicant), Safari Stanley (Fifth Applicant), Dr. Etienne Mutabazi (Sixth Applicant) and Epimaque Ntamushobora (Seventh Applicant) are all of Rwandese origin, who at the time of filing of the Application, were living in South Africa.

The Applicants alleged that the Republic of Rwanda (the Respondent State), had since 14 May 2012, invalidated their passports without officially notifying them or giving them an opportunity to appeal the decision of the said invalidation.

The Applicants alleged that the invalidation of their passports was an arbitrary deprivation of their nationality, that it rendered them stateless and significantly impacted on the enjoyment of a number of their universally accepted, fundamental human rights, specifically, the rights to: participation in political life, freedom of movement, citizenship, liberty, family life and work, protected under Articles 6, 12, 13 and 18 of the African Charter on Human and Peoples' Rights (the Charter). The Applicants prayed the Court to order reparations, particularly the reinstatement of their passports and compensation.

The Court observed that, as per Article 3(1) 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), it had to determine whether it has jurisdiction over the Application. The Court first considered the Respondent State's objections on jurisdiction.

The first objection related to the personal jurisdiction of the Court. The Respondent State argued that Kayumba Nyamwasa (Second Applicant) and Safari Stanley (Fifth Applicant) lacked standing before the Court because they were convicted in Rwanda for genocide-related crimes and crimes of threatening state security, respectively, and are fugitives of justice as they absconded from Rwanda after their convictions. While acknowledging that it made a Declaration pursuant to Article 34(6) of the Protocol, the Respondent State argued that in doing so, it did not envisage that persons convicted of serious crimes such as those two Applicants would be allowed to file matters before the Court. The Court held that, Article 5(3) of the Protocol read together with Article 34(6) thereof provides for access to the Court for individuals regardless of their status and the nature of the crimes they are alleged to have committed or to have been convicted of. Furthermore, the Respondent State deposited its Declaration on 22 January 2013 without reservations. The Court found therefore that it has jurisdiction to consider the claims by those two (2) Applicants and by the other five (5) Applicants. That objection was therefore dismissed.

The Respondent State raised an objection that the allegations in the Application were vague and did not disclose a *prima facie* case or any prejudice. The Respondent State also argued that the Applicants did not provide evidence to support the allegation that it declared their passports invalid or they suffered the alleged prejudice. The Court held that this objection properly relates to the material jurisdiction of the Court. The Court found that, since the Application alleges violations of rights provided for in the Charter and other human rights instruments to which the Respondent State is a Party, it had material jurisdiction by virtue of Article 3 of the Protocol. That objection was also dismissed.

The Court further held that it had temporal jurisdiction because the alleged violations were continuous in nature; and lastly, that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State which is a Party to the Protocol. The Court, therefore, concluded that it had jurisdiction to consider the Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol and Rule 39 of the Rules of Court (the Rules), had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 40 of the Rules, had been met. The Court then considered the four (4) objections raised by the Respondent State, relating to the non-disclosure of the Applicants' identities, the

incompatibility of the Application with the Constitutive Act of the African Union, the use of insulting and disparaging language and the non- exhaustion of local remedies.

On the first objection based on the non-disclosure of the Applicant's identities, the Respondent State argued that the Application does not meet the admissibility requirement under Article 56 (1) and Rule 40(1) of the Rules because it refers to the invalidation of the passports of 'other Rwandan nationals' whose identities were not specified. The Court dismissed this objection on the ground that since the seven (7) Applicants who have filed the Application are clearly identified, the reference in the Application to other Rwandan nationals does not negate this fact. The Court found that there has been compliance with this admissibility requirement.

On the second objection regarding the incompatibility of the Application with the Constitutive Act of the African Union (Constitutive Act), the Respondent State argued that the crimes for which Kayumba Nyamwasa (Second Applicant) and Safari Stanley (Fifth Applicant) were convicted are against the principles set out in Article 4(o) of the Constitutive Act, therefore the Application has not complied with Article 56 (2) of the Charter and Rule 40(2) of the Rules. The Court found that even though, the First and Fifth Applicants were alleged to have been convicted of crimes which touch on some of the principles in Article 4(o) of the Constitutive Act, the Court is not called upon to determine the legality or otherwise of such convictions. The Court considered that the provision in Article 56(2) of the Charter and Rule 40(2) of the Charter addresses the nature of an application and not the applicant's status. The Court further found that the prayer for reinstatement of the Applicants' passports did not require it to make a decision that would undermine the principles laid down in Article 4 of the Constitutive Act or any part thereof. The Court consequently dismissed this objection.

Thirdly, the Respondent State argued that the Application contains disparaging and insulting language directed at the Rwandan Judiciary and it should be declared inadmissible for failure to meet the requirements of Article 56(3) of the Charter and Rule 40(3) of the Rules. The Court held that the language used by the Applicants to express their perceptions about the Judiciary in Rwanda, considered in its ordinary meaning, is not in itself disparaging. The Court also found that the Respondent State had failed to demonstrate how the Applicants' language was aimed at unlawfully and intentionally violating the integrity of the Rwandan judiciary and polluting the minds of the public. The Court also dismissed the objection raised in this regard.

The Respondent State's last objection related to the Applicants' failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 40(5) of the Rules. On this point, the Respondent State argued that the Applicants' claims that

they could not exhaust local remedies in Rwanda because these are not available and effective, lacked merit because they had made no attempt to use them. The Respondent State stated that, Rwandan courts are independent and the remedies they grant are not only available, but they are also effective. Furthermore, the Respondent State averred that the laws and procedures in Rwanda do not require a petitioner's appearance in person in order to institute proceedings and that a petitioner can mandate a Counsel to pursue a claim on their behalf. The Respondent State contended that the Applicants could have filed an application for judicial review of the administrative decision to invalidate their passports even from their location in South Africa.

In assessing whether the Applicants had exhausted local remedies, the Court considered whether the said remedies were available to them. The Court considered that, availability relates to the remedy not only existing in law, but that it should be able to be utilised without impediment. With regard to the Applicants in this case, the Court noted that, the Second and Fifth Applicants faced charges of serious crimes and fled from the Respondent State's territory. They claimed to fear for their security. The Court noted that, in addition, all the Applicants are outside the Respondent State's territory and their travel documents invalidated without formal notification by the Respondent State. The Court held that, it was reasonable, in view of the manner in which the Applicants learnt of the invalidation of their passports, for them to have been apprehensive about their security and fear for their lives. The serious nature of the crimes that two of the Applicants were charged with may also have resulted in difficulties in all the Applicants designating Counsel to file a claim on their behalf before the domestic courts. In view of the impediments the Applicants faced in utilising local remedies, the Court found that the local remedies were not available for the Applicants to exhaust. The Court therefore dismissed the objection relating to the exhaustion of local remedies.

The Court also satisfied itself that the Application had complied with all the other conditions of admissibility set out under Article 56 of the Charter and Rule 40 of the Rules and declared the Application admissible.

On the merits, the Court noted that the Applicants' allegation relating to the revocation of their passports raised two issues, namely: was the revocation of their passports arbitrary? If so, was it tantamount to revocation of their nationality? The Court also considered whether the Applicants' rights to freedom of movement, political participation, liberty, family life and work were violated as a consequence of the arbitrary revocation of their passports.

On whether the revocation of the Applicants' passports was arbitrary, the Court noted that the Respondent State had not provided proof that its action in this regard was based on the Applicants' use of the passports in an inappropriate manner, this being the only circumstance set out in Article 34 of the Law on Immigration and Emigration in Rwanda warranting such revocation. The Court further noted that the Respondent State failed to demonstrate that the revocation of the Applicants' passports was for the purpose of the protection of national security, law and order, public health or morality as provided in Article 12(2) of the Charter and Article 12(2) and (3) of the International Covenant on Civil and Political Rights to which the Respondent State is a Party. Having failed to discharge this burden, the Court therefore found that the Respondent State's revocation of the Applicants' passports was arbitrary.

Having found that the Respondent State's revocation of the Applicants' passports was arbitrary, the Court then turned to the question whether such revocation was tantamount to the arbitrary deprivation of the Applicants' nationality. The Court noted that, a passport is, first and foremost, a travel document, required for travel outside one's country or to return to the said country and to go to, or leave a foreign country. It is also an identification document in a foreign country. A passport may also prove nationality, due to the presumption that, when one carries a passport of a specific state, he or she is a national of that state and it is incumbent upon the entity claiming otherwise to rebut this presumption.

The Court further noted that, according to the Law on Immigration and Emigration in Rwanda, a passport is one of the travel documents that may be issued in the Respondent State. The Court also noted further that, for people such as the Applicants who are living outside their country, the passport is their main identification document and not having a valid passport exposes them to challenging situations, such as difficulty in securing employment, renewing their residence permit, accessing education and health services in the country they are residing in and restrictions in travel to their own country and other countries. In such circumstances, the revocation of a passport is not tantamount to a revocation of nationality or their citizenship, rather it impedes the full and effective enjoyment of their civic and citizenship rights as Rwandan nationals. The Court therefore found that the claim that the revocation of the Applicants' passports is tantamount to the arbitrary deprivation of their nationality and citizenship had not been established and therefore dismissed it. Furthermore, having dismissed this claim, the Court also found that, since the Applicants are still Rwandan nationals, their claim that the arbitrary revocation of their passports rendered them stateless, became moot.

The Court then considered the allegations relating to the rights violated as a consequence of the arbitrary revocation of the Applicants' passports.

The Court found that the Respondent State had, by depriving the Applicants of their travel documents, consequently prevented them from returning to their country and traveling to other countries. The Court therefore found that the Respondent State had violated the Applicants' right to freedom of movement as provided under Article 12(2) of the Charter.

The Court further noted that the arbitrary revocation of the Applicants' passports prevented them from returning to the Respondent State thus severely restricting their right to freely participate in the government of their country. The Court therefore found that the Respondent State had violated the Applicants' right in this regard as provided under Article 13(1) of the Charter.

The Court found that, in view of the Applicants' general statements regarding the alleged violations of their rights to liberty, family life and to work and their failure to demonstrate how the Respondent State's arbitrary revocation of their passports resulted in such violations, the alleged violations of Articles 6, 15 and 18(2) were not established.

Having found that the Respondent State had arbitrarily revoked the Applicants' passports and as a consequence, violated their rights to freedom of movement under Article 12(2) of the Charter and their right to freely participate in the government of their country under Article 13(1) of the Charter, the Court then considered the issue of reparations.

On pecuniary reparations, the Court considered the issues of material and moral prejudice. The Court did not award compensation for material prejudice as the Applicants had not proved this claim. On moral prejudice, there is a presumption that human rights violations necessarily cause such prejudice and this need not be proved. The Court found that the arbitrary revocation of the Applicants' passports since 14 May 2012 meant that they had been unable to leave their country of residence and to travel back to their country of origin and to other countries. This has adversely affected their social, physical and political connections with their country of origin, causing the Applicants emotional anguish and despair and occasioning them moral prejudice which entitled them to reparations. The Court, in exercising its discretion, awarded an amount of Rwandan Francs Four Hundred and Sixty Five Thousand (RWF 465,000) to each of the Applicants as fair compensation for the moral prejudice caused. The Respondent State is required to pay the said amount, free from tax, within six (6) months of the notification of this Judgment, failing which it will be required to pay interest on arrears

calculated on the basis of the applicable rate of the Central Bank of Rwanda throughout the period of delayed payment, until the amount is fully paid.

On non-pecuniary reparations, the Court found that the reinstatement of the Applicants' passports is an appropriate measure for the Respondent State to take in order to make restitution to the Applicants for the violations found. The Court consequently ordered the Respondent State to reinstate the Applicants' passports within six (6) months from the date of notification of this Judgment.

The Court ordered the Respondent State to submit a report on the status of implementation of this Judgment within six (6) months from the date of notification thereof.

The Court ordered that each Party should bear its 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: <http://en.african-court.org/index.php/56-pending-cases-details/882-app-no-017-2015-kennedy-gihana-and-others-v-republic-of-rwanda-details>

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