

TANZANIA / JUDGMENT

bocoum v republic of mali

2020 afchpr 17 23 october 2020

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AFRICAN UNION UNION AFRICAINE 5 JUHI UNIAO AFRICANA AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES THE MATTER OF BABAROU BOCOUM V. REPUBLIC OF MALI APPLICATION NO. 023/2020

RULING

(PROVISIONAL MEASURES) 23 OCTOBER 2020 The Court composed of: Sylvain ORE, President; Ben KIOKO, Vice-President; Rafaa BEN ACHOUR, Angelo V. MATUSSE, Suzanne MENGUE, M-Therese MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Judges and Robert ENO, Registrar. In the matter of Babarou BOCOUM Represented by Barrister Mariam DIAWARA and Barrister Issa K COULIBALY, Lawyers in the Mali Bar Association and Mr Philippe ZADI, a Lawyer based in France. Versus REPUBLIC OF MALI Represented by

- i. Mr. Youssouf DIARA, Director General, State Litigation Service; ii. Mr. Daouda DOUMBIA, Deputy Director General, State Litigation Service; and iii. Mr. Gaoussou KEITA, Assistant Director, General Affairs. After deliberation, Issues the following Ruling: I. THE PARTIES
1. Babarou BOCOUM (hereinafter referred to as "the Applicant") a Malian national, is a businessman and Secretary for Political Affairs of the African Solidarity Party for Democracy and Independence (SADI). 1
2. The Application is brought against the Republic of Mali (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 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 25 January 2004. The Respondent State also deposited, on 19 February 2010, the Declaration provided for under Article 34(6) of the Protocol by which it accepts the Court's jurisdiction to receive applications from individuals and Non-Governmental Organizations (hereinafter referred to as "NGOs"). II. SUBJECT OF THE APPLICATION

3. This Application for provisional measures, filed on 16 June 2020 is a follow-up to the Application instituting proceedings filed with the Registry on 15 June 2020. In the Application instituting proceedings, the Applicant stated that he is a citizen listed in the biometric database of the civil status Registry of the Respondent State, enjoying his civil and political rights, not subject to any prohibition provided by law and that he is not subject to any judicial deprivation of his rights.
4. However, he alleges that as he was not registered on the voters' list for lack of annual revision of the said list in violation the Electoral Law, he was deprived of his voter status and unable to vote in first and second rounds of the legislative elections of 29 March 2020.
5. The Applicant further asserts that the legislative poll was held in violation of the Respondent State's international commitments under Protocol A/SP1/12/01 on Democracy and Good Governance, additional to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (hereinafter referred to as "ECOWAS Protocol on Democracy and Good Governance"), the International Covenant on Civil and Political Rights (hereinafter 2 referred to as "the ICCPR"), the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), the African Charter on Democracy, Elections and Governance (hereinafter referred to as "the ACDEG") and the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR").

ALLEGED VIOLATIONS

6. In his Application instituting proceedings, the Applicant alleges the violation of the following rights and obligations:
 - i. The obligation to hold elections on the dates or periods provided for in the Constitution and the Electoral Law pursuant to Article 2(2) of the ECOWAS Protocol on Democracy and Good Governance; ii. The right to vote and to be elected at genuine periodic elections by universal and equal suffrage and by secret ballot, ensuring the free expression of the will of the electorate as guaranteed in Article 25(b) of the ICCPR; iii. The obligation to create a credible electoral dispute resolution mechanism under Article 17 of the ACDEG and Articles 3 and 7 of the ECOWAS Protocol on Democracy and Good Governance; iv. The obligation to establish an independent and impartial electoral body under Article 17 of the ACDEG and Articles 3 and 6 of the ECOWAS Protocol on Democracy and Good Governance;
 - v. The right to equality of all before the law and equal protection of the law as guaranteed in Articles 3 and 10(3) of the ACDEG, Article 3 of the Charter, Article 1 of the UDHR and Article 26 of the ICCPR; and vi. The obligation to establish transparent and reliable voters' lists with the participation of political parties and voters under Article 5 of the ECOWAS Protocol on Democracy and Good Governance.
7. The Application instituting proceedings was filed at the Registry on 15 June 2020.

8. The request for provisional measures was received on 16 June 2020. On 22 June, the Registry sent the Applicant a letter seeking additional information on his request for reparation and granted him fifteen (15 days) within which to respond thereto. The Applicant failed to respond to the request.
9. On 13 July 2020, the Registry served the request for provisional measures on the Respondent State granting it fifteen (15) days to respond. On 27 July 2020, the Registry served the Respondent State the Application instituting proceedings.
10. On 5 August 2020, the Respondent State submitted its response to the request for provisional measures. The Registry acknowledged receipt of the response on 11 August 2020 and transmitted it to the Applicant on the same day for information.
11. On 17 September 2020, the Applicant filed a Reply to Respondent State's observations on the request for provisional measures.
12. On 22 September 2020, the Registry transmitted the said Reply to the Respondent State for information. V. PRIMA FACIE JURISDICTION
13. When an application is filed before it, the Court shall conduct a preliminary examination of its jurisdiction pursuant to Articles 3, 5(3) and 34(6) of the Protocol and Rule 39 of the Rules of Court (hereinafter referred to as "the Rules"). 4
14. However, with respect to provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but only that it has prima facie jurisdiction.¹
15. Article 3(1) of the Protocol provides that: The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation or application of the Charter, this Protocol or any other relevant human rights instrument ratified by the States concerned.
16. Under Article 5(3) of the Protocol: The Court may entitle relevant Non-Governmental organisations (NGOs) with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol.
17. The Court notes, as set out in paragraph 2 of this Ruling that the Respondent State is a party to the Charter and the Protocol and has also made the Declaration accepting the Court's jurisdiction to receive applications from individuals and NGOs in accordance with Article 34 (6) read jointly with Article 5(3) of the Protocol.
18. In the instant case, the Applicant alleges violations of provisions of the Charter, the ICCPR, the ACDEG, the ECOWAS Protocol on Democracy and Good Governance and the UDHR. These are instruments that the Court has jurisdiction to interpret and apply under Article 3(1) of the Protocol.

19. The Court concludes, therefore, that it has prima facie jurisdiction to entertain the request for provisional measures. 1 *Suy Bi Gohore Emile and Others v. Republic of Cote d'Ivoire*, ACtHPR, Application No. 044/2019, Order of 28 November 2019 (provisional measures), § 18; *African Commission on Human and Peoples' Rights v. Libya* (provisional measures) (15 March 2013) 1 AfCLR 193, § 10; *Amini Juma v. United Republic of Tanzania* (provisional measures) (3 June 2016) 1 AfCLR 658, § 8. 5 VI. PROVISIONAL MEASURES REQUESTED
20. The Applicant prays the Court to:
 - i. Order the Respondent State to take all necessary measures, available to it under domestic law, to safeguard the Applicant's electoral rights which he was unable to exercise during the legislative elections held as a result of Decree No. 2020-0010/PRM of 22 January 2020 convening the Electoral College, opening and closing of the electoral campaign for the ballot of 29 March 2020; ii. Defer any legislative activity that is inconsistent with the provisions of Articles 1(b) and 2(2) of Protocol A/SP1/12/01 on Democracy and Good Governance (...); and iii. Report to the Court within 15 days of notification of the order indicating these provisional measures.
21. In his Reply, the Applicant however prays the Court to dismiss the request for provisional measures.
22. In support of the request, he affirms that following demonstrations and the deployment of the armed forces, the President of the Republic dissolved the parliament and handed in his resignation. According to the Applicant, these circumstances make a request for provisional measures moot, especially as the National Assembly had been dissolved and a new electoral register would be prepared for subsequent elections.
23. Accordingly, the Court takes note of the Applicant's request and declares that his application for provisional measures is moot.
24. For the avoidance of doubt, this Ruling is provisional in nature and in no way prejudices the findings of the Court as to its jurisdiction, the admissibility of the Application and the merits thereof. 6 VII. OPERATIVE PART
25. For these reasons, THE COURT, Unanimously, Declares that the request for provisional measures has become moot. Signed: Sylvain ORE, President; Robert ENO, Registrar; Done at Arusha, this Twenty Third Day of October in the Year Two Thousand and Twenty in English and French, the French text being authoritative. 7

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