

TANZANIA / JUDGMENT

ayed v tunisian republic application no 0082019 2025 afchpr 9 5 february 2025

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AFRICAN UNION UNION AFRICAINE UNIÃO AFRICANA UNIÓN AFRICANA UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE
L'HOMME ET DES PEUPLES THE MATTER OF BRAHIM BEN ABDELHAMID BEN MABROUK
AYED V. TUNISIAN REPUBLIC APPLICATION NO. 008/2019

JUDGMENT

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PART	16 i The Court, composed of: Imani
	D. ABOUD, President; Modibo SACKO, Vice- President; Suzanne MENGUE, Tujilane R.
	CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA
	Dennis D. ADJEL, Duncan GASWAGA and Robert ENO, Registrar. In accordance with Article 22 of
	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") and Rule
	9(2) of the Rules of Procedure of the Court (hereinafter referred to as "the Rules"), 1 Judge Rafaâ
	BEN ACHOUR, a Tunisian national, did not hear the Application. In the matter of Brahim Ben
	Abdelhamid Mabrouk AYED Self-represented Versus TUNISIAN REPUBLIC represented by: Ali

Abbas, Director General of State Litigation after deliberation, renders this Judgment: I. THE PARTIES

1. Mr Brahim Ben Abdel Hamid Ben Mabrouk AYED (hereinafter “the Applicant”) is a Tunisian national and a security officer. The Applicant alleges human rights violations in connection with the manner in which the 1 Article 8(2) of the Rules of Court of 2 June 2010. 2 Public Prosecutor at the Ariana Court of First Instance handled a complaint he lodged against a civil servant for fraud.
2. The Application is filed against the Republic of Tunisia (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 on 5 October 2007. The Respondent State, on 2 June 2017, deposited with the Chairperson of the African Union Commission the Declaration provided for in Article 34(6) of the Protocol (hereinafter “the Declaration”), by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples’ Rights. II. SUBJECT OF THE APPLICATION A. Facts of the matter
3. It emerges from the Application that on 14 July 2017, the Applicant lodged a complaint with the Prosecutor of the District Court of Ariana (hereinafter the Prosecutor’s Office) against a public official named Al-Fadhel bin Al- Amin Al-Obeidi. In the said complaint, the Applicant accused the official of fraud and dishonesty, alleging that he made him believe that he could get him recruited as a secondary school teacher in exchange for an amount of Two Thousand (2,000) Tunisian dinars. The Applicant was interviewed by the Ariana Governorate police who provided him the record of the hearing on 18 October 2017.
4. On 9 March 2018, the Applicant submitted a request to the Tunis Court of Appeal Public Prosecutor seeking an update on any action taken by the Public Prosecutor’s Office in respect of his complaint. The Applicant avers that he did not receive any feedback to his request. He further avers that 3 on 11 April 2018, he referred the matter to the Inspector General of the Ministry of Justice and still did not receive any response. On 31 May 2018, the Ariana Court of First Instance Public Prosecutor heard the Applicant and his lawyer, but no further action was taken regarding the complaint. Finally, he avers that on 19 September 2018, he lodged a complaint with the Public Prosecutor of the Cassation Court who did not take any action.
5. On 2 October 2019, the Applicant was informed that the Ariana Court of First Instance Public Prosecutor had since February 2018 forwarded his initial complaint of 14 July 2017 file to the Prosecutors’ Office of the Ibn Arous Governorate Court of First Instance. B. Alleged violations
6. The Applicant alleges violation of the following rights:

- i. Right to non-discrimination, protected by Article 2 of the Charter; ii. Right to equality before the law and right to equal protection before the law, protected by Article- 3 of the Charter and Article 7 of the Universal Declaration of Human Rights (UDHR); iii. Right to a fair trial, protected by Article 7 of the Charter, Article 8 of the UDHR, and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR);2 iv. Right to information, protected by Article 9(1) of the Charter;
- v. Right of access to the public services, protected by Article 13(2) of the Charter; vi. Right to the enjoyment of the highest attainable standard of mental health, protected by Article 16(1) of the Charter; and vii. Obligation to guarantee the independence of courts, provided under Article 26 of the Charter. 2 The Respondent State became a party to the ICCPR on 18 March 1969. 4 III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
7. The Application was filed on 20 February 2019 and served on the Respondent State on 17 May 2019 for its response within 90 days. At the expiry of these time-limit on 16 August 2019, the Respondent State, which was unrepresented, did not file a response.
8. On 6 August 2019, 18 March 2020 and 11 December 2020, the Registry drew the Respondent State's attention to Rule 63(1) of the Rules under which the Court may render judgment by default where a party fails to appear or to present its case within the prescribed time-limit, and then granted it an additional period of 45 days.
9. On 21 January 2021, the Registry received two correspondences from the Respondent State, the first dated 26 August 2019 and the second dated 23 April 2020, stating that it had not received the Application.
10. On 28 January 2021, the Registry once again served the Application and attachments thereto to the Respondent State, with a request to submit the names of its representatives and to file its Response to the Application within 30 and 90 days respectively.
11. A reminder was sent to the Respondent State on 29 October 2021 but it failed to comply.
12. Pleadings were closed on 11 March 2022 and the Parties were duly informed.
13. On 5 April 2022, the Registry received a letter from the Respondent State in which it acknowledged receipt of the Application on 3 February 2021 and indicated that it had sent its response by email on 2 April and 30 November 2021. 5
14. On 26 May 2022, the Registry notified the letter to the Applicant for its observations on the Respondent State's letter and on the re-opening of pleadings.
15. On 30 May 2022, the Applicant filed his observations objecting to the reopening of pleadings.
16. On 7 June 2022, the Court ordered that the proceedings be reopened and admitted the Respondent State's Response received out of time.

17. On 15 June 2022, the Respondent State's Response was notified to the Applicant for his reply.
18. On 12 July 2022, the Applicant filed his reply , which was notified to the Respondent State on 14 July 2022.
19. Pleadings were closed on 16 August 2023 and the Parties were duly informed. IV. PRAYERS OF THE PARTIES
20. The Applicant requests the Court to:
 - i. Declare that it has jurisdiction; ii. Declare the Application admissible; iii. Hold that the violations alleged are founded; iv. Order measures to prevent the continuation of injustices and violations already committed by the Public Prosecutor's Office and to remedy them;
 - v. Afford him legal aid to enable him attend the hearings and to cover travel and accommodation costs, as he is indigent; vi. Order the Respondent State to take appropriate measures to avoid reprisals against him for having sought justice before the African Court; and 6 vii. Render a decision on the phenomenon of States Parties to the Protocol exceeding legal time-limits, which adversely affects the rights of victims in Africa.
21. The Respondent State prays the Court to:
 - i. Declare that it lacks jurisdiction; ii. Declare that the Applicant did not exhaust local remedies; iii. Declare that the Respondent State did not violate any human rights; and iv. Declare the present Application inadmissible in its form and on the merits. V. JURISDICTION
22. Article 3 of the Protocol states:
 1. The Court shall have jurisdiction in all cases and 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.
23. Under Rule 49(1) of the Rules “the Court shall make a preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules”.³
24. On the basis of the aforementioned provisions, the Court must, in each application, examine its jurisdiction and rule on any objections thereto.
25. In the present case, the Respondent State raises an objection based on jurisdiction on the grounds that the Application does not contain any 3 Article 39(1) of the Rules of Court of 2 June 2010. 7 allegations of human rights violations. The Court will rule on this objection before examining the other aspects of its jurisdiction, if necessary. A. Objection to the Court's material jurisdiction

26. The Respondent State contends that, in accordance with Articles 3 and 26 of the Protocol, the Court's jurisdiction is limited primarily to taking measures to put an end to and prevent violations committed against African citizens, and to deter governments and their systems, thereby safeguarding the rights of African citizens enshrined in international covenants, foremost among which are the Charter and its Protocol establishing the Court.
27. The Respondent State avers that, in accordance with the Charter, the rights involved may be grouped into four limbs, namely the right to liberty, the right to equality, the right to justice and the right to dignity. It is the Respondent State's contention that the concept of human rights violation should be understood as depriving individuals of their fundamental rights and, possibly, treating them as if they were less than human and undeserving of life and dignity, including genocide, torture, starvation and slavery. The concept also refers, according to the Respondent State, to the violation of economic, social and cultural rights when the State does not respect its obligations to ensure the enjoyment of these rights without discrimination, such as failing to guarantee the right to work in order to ensure a decent life.
28. The Respondent State further submits that the Applicant's complaints against one Al-Fadil bin Al-Amin Al-Obeidi cannot be regarded as a violation of human rights for which it is responsible. According to the Respondent State, the Applicant does not prove a violation of his rights. * 8
29. The Applicant on his part avers that the Respondent State distorts the facts of the matter by reducing them to a debt transaction between two private entities.

* * *

30. The Court notes that, under Article 3(1) of the Protocol, it has jurisdiction to hear all cases brought before it, provided that they concern an alleged violation of the rights protected by the Charter, the Protocol or any other human rights instrument ratified by the State concerned.⁴
31. The Court further notes that the Respondent State's main contention is that the Applicant has failed to substantiate his allegations of human rights violation. In the Court's view, whether or not the alleged violations have been substantiated cannot be determined at the stage of ascertaining the Court's jurisdiction.
32. The Court observes that in the present case, the Applicant alleges violation of the rights protected by Articles 2, 3, 7, 13(2), 16(1) and 26 of the Charter and Article 14(1) of the ICCPR, human rights instruments to which the respondent State is a party.⁵
33. Accordingly, the Court dismisses the objection based on material jurisdiction.
34. The Court therefore holds that it has material jurisdiction to hear the present Application. 4 Boukary Waliss v. Republic of Benin, AfCHPR, Application No. 021/2018, Judgment of 3 September 2024 (merits and reparations), § 20; Frank David Omary and Others v. United

Republic of Tanzania (admissibility) (28 March 2014), 1 AfCLR 358, § 80; Safinaz Ben Ali and Lamia Jendoubi v. Republic of Tunisia, AfCHPR, Application No. 09/2023, Judgment of 3 September 2024 (jurisdiction and admissibility), §§ 25-27. 5 Alex Thomas v. United Republic of Tanzania (merits) (20 November 2015) 1 AfCLR 465, § 45; Kennedy Owino Onyachi and Another v. United Republic of Tanzania (merits) (28 September 2017) 2 AfCLR 65, § 34-36; Jibu Amir Alias Mussa and Another v. United Republic of Tanzania (merits and reparations) (28 November 2019), 3 AfCLR 629, § 18; Masoud Rajabu v. United Republic of Tanzania, (merits and reparations) (25 June 2021) 5 AfCLR 282, § 21. 9 B. Other aspects of jurisdiction

35. The Court observes that no objections have been raised on the other aspects of its jurisdiction. Nevertheless, in accordance with Rule 49(1) of the Rules, it must satisfy itself that conditions relating to all aspects of its jurisdiction are fulfilled before proceeding to examine the substance of this Application. In this regard, the Court holds that it has:
 - i. Personal jurisdiction insofar as, as indicated in paragraph 2 of this Judgment, the Respondent State is a party to the Charter and to the Protocol, and has deposited a Declaration by virtue of which it accepts the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations.
 - ii. Temporal jurisdiction given that the facts of the case occurred after the Respondent State became a party to the Protocol.
 - iii. Territorial jurisdiction, insofar as the violations alleged by the Applicant occurred on the territory of the Respondent State.
36. In the light of the foregoing, the Court holds that it has jurisdiction to rule on the present Application. VI. ADMISSIBILITY
37. Under Article 6(2) of the Protocol, “the Court shall rule on the admissibility of applications, taking into account the provisions of Article 56 of the Charter”.
38. Pursuant to Rule 50(1) of the Rules of Court, “the 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”.
39. The Court notes that Rule 50(2) of the Rules, which restates the provisions of Article 56 of the Charter, reads as follows: 10 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. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
 - d. Are 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. Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and;
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the Charter.
- 40. The Court notes that the Respondent State raises an objection based on non-exhaustion of local remedies. The Court will rule on the said objection before examining the other admissibility requirements, if necessary. A. Objection to admissibility based on failure to exhaust local remedies
- 41. The Respondent State submits that the Application is inadmissible for failure to exhaust local remedies, insofar as the case is still pending before the domestic courts.
- 42. It submits, in effect, that the Applicant should have exhausted the said remedies since notarial deed attached to the Application affords the Applicant an avenue to initiate civil actions in domestic courts to recover his debt, but he failed to do so. * 11
- 43. The Applicant on his part submits that the objection should be dismissed, pointing out that he does not know the outcome of his complaint. He further contends that the Respondent State's submission on the civil remedy lacks merit insofar as he already initiated criminal action, in particular complaints lodged with the Public Prosecutor of the Ariana Court of First Instance and with the Public Prosecutor of the Tunis Court of Appeal and the Public Prosecutor of the Tunis Cassation Court. It is the case, he submits, that under article 7 of the Code of Criminal Procedure (CCP), civil action is stayed when criminal proceedings are pending before court.
- 44. Furthermore, the Applicant asserts that this Court has already heard a similar case in Application No. 009/2016, between Epoux Diakité and the Republic of Mali.⁶ He states that in the said case, the Court held that the CCP of the Republic of Mali permitted the Applicants to lodge a civil party complaint with the investigating judge, but the parties concerned did not do so. He notes that the Court therefore found that they did not exhaust local remedies and, consequently, upheld the Respondent State's objection to admissibility.
- 45. Finally, the Applicant submits that the difference between his case and the case of Epoux Diakité v. Mali is that he can bring a civil action before the investigative judge only if the Public Prosecutor does not take the necessary action.⁷

- 46. The Court notes that, in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, applications must be filed before it after exhausting local remedies, if any, unless it is clear that the proceedings relating to those remedies are unduly prolonged. The requirement of exhaustion of local remedies seeks to afford the Respondent State the 6 Epoux Diakité v. Republic of Mali (jurisdiction and admissibility) (28 September 2017) 2

AfCLR 118. 7 Article 36: "The closure of the case by the public prosecutor does not prevent the injured party from initiating public proceedings on his own responsibility. In this case, the injured party may either request that an investigation be opened or summon the accused directly to appear before the court by filing a civil action. 12 opportunity to address allegations within its jurisdiction before an international human rights body is seized to determine the State's responsibility in this regard.⁸

47. The Court notes that local remedies which the applicant is required to exhaust are judicial remedies, which must be available, that is, they must be available to the Applicant without let or hindrance, and effective in the sense that they are "capable of satisfying the complainant".⁹
48. The Court notes that the present case involves a debt between private parties, as it emerges from paragraph 3 above. In an attempt to recover this debt of 20 October 2014, the Applicant filed a complaint on 14 July 2017 with the Public Prosecutor at the Ariana Court of First Instance for fraud. He then on 8 March 2018, lodged another complaint with the Public Prosecutor at the Tunis Court of Appeal. Finally, on 19 September 2018, he referred the matter to the Public Prosecutor of the Cassation Court before filing this Application with the Court on 20 February 2019.
49. The Court also notes that, according to the Applicant, the Public Prosecutor's Office did not address his complaint with the required diligence and the domestic judicial proceedings were unduly prolonged. The Respondent State counters that the Applicant's case is still being examined by the Public Prosecutor's Office and the domestic courts. It further contends that the Applicant has the avenue of bringing an action before the civil courts to recover his debt. 8 African Commission on Human and Peoples' Rights v Republic of Kenya (Merits) (26 May 2017) 2 AfCLR 9, §§ 93 to 94. 9 Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiéma alias Ablassé, Ernest Zongo and Blaise Ilboulido & The Burkinabé Human and Peoples' Rights Movement v. Burkina Faso, Judgment (merits) (28 March 2014), 1 AfCLR 219, § 68; Lohé Issa Konaté v. Burkina Faso Application No. 004/2013 (merits) § 108; Sébastien Germain Marie Aikoue v. Republic of Benin, Judgment (admissibility) (2 December 2021), 5 AfCLR 623, § 73. 13
50. The Court notes that, with regard to the second question concerning the alleged lack of local remedies available to the Applicant in the present case to lodge his complaint and thus recover his debt, the Court refers to Article 36 of the Respondent State's CPC: Closure of a case by the Public Prosecutor does not prevent the injured party from initiating public proceedings on his own responsibility. In this case, the injured party can either request that an investigation be opened or summon the accused to appear in court. Article 206 of the same CCP reads: A case is referred to the Court of First Instance:

- by direct summons from the Public Prosecutor's Office when the latter considers that there is no need for a preparatory investigation, from the administrations and financial authorities in cases where the law authorises them to bring a public action directly, or from the injured party when the Public Prosecutor's Office refuses to prosecute ex officio. In this case, the prosecution shall summon the other parties. [...]
- 51. The Court notes that Article 36 of the CCP provides the Applicant an avenue to access justice as an injured party, either by requesting that the case be referred for investigation or by bringing the case directly before the court. The provision also entitles the Applicant to bring the case directly before the court of first instance if the Public Prosecutor fails to do so, and to summon the other party before the court. This Court considers that the Applicant could have made use of this remedy.
- 52. The Court considers that as the Applicant neither completed the criminal proceedings nor initiated civil proceedings before the national courts, this Application was filed prematurely.
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- 53. In the light of the foregoing, the Court upholds the Respondent State's objection to admissibility and declares the Application inadmissible for non- exhaustion of local remedies. B. Other admissibility requirements
- 54. Having found that the Application does not satisfy the admissibility requirement relating to the exhaustion of local remedies under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court, and given that these requirements are cumulative, 10 the Court considers it superfluous to examine the other admissibility requirements.
- 55. Consequently, the Court declares the Application inadmissible. VII. COSTS
- 56. None of the Parties submitted on costs.

* * *
- 57. Under Article 32(2) of the Rules, "Unless the Court decides otherwise, each party shall bear its own costs".
- 58. The Court notes that the proceedings before it are not costly and that neither Party has requested that the costs be borne by the other.
- 59. In the circumstance, the Court considers that there is no reason to depart from the provision of Rule 32(2) of the Rules and accordingly decides that each Party shall bear its own costs. 10 Yacouba Traoré v. Republic of Mali, AfCHPR, 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; Collectif des anciens travailleurs (ALS) v. Republic of Mali (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 73, § 39. 15 VIII. OPERATIVE PART

60. For these reasons, THE COURT Unanimously, Jurisdiction
- i. Dismisses the objection based on material jurisdiction. ii. Declares that it has jurisdiction. Admissibility iii. Upholds the objection to admissibility based on non-exhaustion of local remedies; iv. Declares the Application inadmissible. Costs
- v. Orders that each Party shall bear its own costs. Signed by: Imani D. ABOUD, President Modibo SACKO, Vice-President Suzanne MENGUE, Judge Tujilane R. CHIZUMILA, Judge 16 Chafika BENSAOULA, Judge Blaise TCHIKAYA, Judge Stella I. ANUKAM, Judge Dumisa B. NTSEBEZA Judge Dennis D. ADJEI, Judge Duncan GASWGA. Judge and Robert ENO, Registrar Done at Arusha, this Fifth Day of February in the Year Two Thousand and Twenty-Five in Arabic, English and French, the Arabic text being authoritative. 17

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