

TANZANIA / JUDGMENT

letuya and others v republic of
kenya ruling application no 0102024
2024 achpr 9 16 october 2024

COURT
ACHPR

DECIDED
16 October 2024

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AFRICAN UNION UNION AFRICAINE UNIÃO AFRICANA AFRICAN COURT ON HUMAN AND
PEOPLES’ RIGHTS COUR AFRICAINE DES DROITS DE L’HOMME ET DES PEUPLES THE MATTER
OF JOSEPH LETUYA AND 14 OTHERS V. THE REPUBLIC OF KENYA APPLICATION NO. 010/2024

RULING

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PART 6 i The Court composed of:
Imani D. ABOUD, President; Modibo SACKO, Vice President; Rafaâ BEN ACHOUR, Suzanne
MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM,
Dumisa B. NTSEBEZA, Denis D. ADJEI, and Duncan GASWAGA – Judges; and Robert ENO,
Registrar. In the Matter of: Joseph LETUYA and 14 Others represented by Roy KOIMETT, Koimett
& Company, Advocates Versus REPUBLIC OF KENYA represented by The Solicitor General After
deliberation, renders this Ruling: I. THE PARTIES

1. Joseph LETUYA, Patrick Kibet KUERSOI, Nahashon K. KIPTO, Elasco RONO, Stephen
PANDUMUNYE, William Kiplagat KALEGU, Joseph K. SANG, Parsoloi SAITOTI, Kiprono
SIGILAI, Zakayo LESINGA, James RANA, Julias SITONIM, Charles K. NDARAYA, Daniel Kibet
CHESOT, William Seroney TIWAS (hereinafter referred to as “the Applicants”) allege that
they are members of the Ogiek Community and the legitimate owners of the lands located
within Nakuru County or at the outskirts of the Mau 1 Forest in the Republic of Kenya
(hereinafter referred to as “the Respondent State”).

2. The Respondent State became a Party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter") on 25 July 2000 and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter "the Protocol") on 4 February 2004. It has not deposited the Declaration required under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") through which States accept the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (NGOs). II. SUBJECT OF THE APPLICATION A. Facts of the matter
3. It emerges from the Application that in 2012, the Applicants instituted proceedings in the Respondent State's Environment and Land Court (hereinafter referred to as "the ELC") against the Respondent State in connection with their eviction from their ancestral land.¹ Pursuant to this suit, the ELC found violations of the rights to life, dignity, non-discrimination, and economic and social rights. It ordered, notably, the National Land Commission to open a register of the members of the Ogiek Community and to identify land to which such members may be resettled.
4. According to the Applicants, the reliefs ordered in the Judgment of this Court in Application 006/2012, on the merits as well as on reparations,² have 1 Joseph Letuya & 21 Others v. Attorney General & 5 Others [2014] eKLR. 2 African Commission on Human and Peoples' Rights v. Republic of Kenya (merits) (26 May 2017) 2 AfCLR 9 and African Commission on Human and Peoples' Rights v Republic of Kenya, ACTHPR, Application No. 006/2012, Judgment of 23 June 2022 (reparations). "barely" been given effect to and that the Respondent State has recommenced the eviction of the Ogiek people. B. Alleged violations
5. The Applicants allege the violation of the following:
 - i. The right to have one's integrity respected, as protected under Article 4 of the Charter. ii. The right to have one's dignity respected, and to be free from inhuman or degrading punishment and treatment, as protected under Article 5 of the Charter. iii. The right to freedom of conscience, and the profession and free practice of one's religion, as protected under Article 8 of the Charter. iv. The right to freedom of movement and residence, as protected under Article 12(1) of the Charter.
 - v. The right to property and to ensure that this right is not encroached upon except in the interest of public need or in the general interest of the community, in accordance with appropriate laws, as protected under Article 14 of the Charter. vi. The right to freely engage in the cultural life of one's community, as protected under Article 17(2) of the Charter. vii. The right to economic, social, and cultural development, as protected under Article 22(1) of the Charter. viii. The right to national and international peace and security, as protected under Article 23(1) of the Charter. ix. The right to the recognition of their rights, duties, and freedoms which are contained within the Charter, and the concomitant duty of the Respondent State to adopt measures to give effect to the aforementioned, as provided for under Article 1 of the Charter.

- x. The right to the promotion and protection of recognised communal morals and traditional values, as provided for under Article 17(3) of the Charter. III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
- 6. The Application was filed at the Registry on 6 June 2024.
- 7. On 12 September 2024, the Registry acknowledged receipt of the application and notified the Applicants of its registration. The Respondent State was also notified of the filing of the Application on the same date. IV. PRAYERS OF THE APPLICANTS
- 8. The Applicants pray the Court to:
 - i. Deem the Application urgent and to expedite its determination. ii. Order a temporary injunction, pending the determination of this application, restraining the Respondent State and/or its agents from evicting the Ogiek people, tearing down structures, selling, transferring, leasing, allocating land, tampering with boundaries, engaging in construction in respect thereto or dealing with the property belonging to the Applicants in any other way; and iii. Order a permanent injunction in the same terms as those indicated in (ii) above, pending resettlement. V. JURISDICTION
- 9. The Court recalls that Article 3 of the Protocol provides as follows:
 - 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the States concerned.
 - 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
- 10. The Court further recalls that pursuant to Rule 49(1) of the Rules of Court of 2020 (hereinafter referred to as “the Rules of Court”), it “shall conduct [a] preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules.”³
- 11. The Court notes that while, in the instant application, the Applicants’ submissions suggest that their case is ancillary to Application No. 006/2012, this earlier referred to application was already determined both on the merits and reparations.⁴ As such, an application that has already been determined cannot form a cause of action for a subsequent independent application, which would inevitably stand as a new application.
- 12. Given the above, the Court considers that the instant application is new, which necessitates that the Court determine its jurisdiction as a preliminary issue.
- 13. At the outset, the Court notes that the Applicants have filed their application against a Respondent State which has not deposited the Declaration.

14. In accordance with Article 5 of the Protocol, as read together with Article 34(6) of the Protocol and Rule 39(1) of the Rules, applications brought by individuals directly to the Court cannot be heard in the absence of the Declaration.
15. This application's failure to fulfil the requirements of personal jurisdiction entails that the Court need not examine other aspects of its jurisdiction.
16. Based on the foregoing, the Court, dismisses this Application for lack of personal jurisdiction. 3 Rule 49(1) of the Rules of Court of 1 September 2020. 4 The Court's judgment on the merits was delivered on 26 May 2017 while the judgment on reparations was delivered on 23 June 2022 – see <https://www.african-court.org/cpmt/details-case/0062012>. VI.

OPERATIVE PART

17. For the above reasons THE COURT, Unanimously Declares that it lacks jurisdiction. Signed: Iman D ABOUD, President; Modibo SACKO, Vice President; Rafaâ BEN ACHOUR, Judge; Suzanne MENGUE, Judge; Tujilane R. CHIZUMILA, Judge; Chafika BENSALOULA, Judge; Blaise TCHIKAYA, Judge; Stella I. ANUKAM, Judge; Dumisa B. NTSEBEZA, Judge; Dennis D. ADJEL, Judge; Duncan GASWAGA, Judge; and Robert ENO, Registrar. Done at Arusha, this Sixteenth Day of October, in the Year Two Thousand and Twenty- Four in English and French, the English text being authoritative.

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/joseph-letuya-and-14-others-v-republic-of-kenya-jurisdiction-achpr-2024

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