

TANZANIA / JUDGMENT

bahanla v burkina faso application no 0162019 2024 afchpr 18 3 september 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
LOMPO BAHANLA V. BURKINA FASO APPLICATION NO. 016/2019

RULING

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PART	11 i The Court composed of: Modibo
SACKO, Vice President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R.	
CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA,	
Dennis D. ADJEI – Judges; and Robert ENO, Registrar. The Matter of: Bahanla LOMPO	
Represented by: Shadrack RUYENZI, Advocate at the Rwanda Bar; Versus BURKINA FASO	
Represented by the Judicial Agent of the Treasury; After deliberation, renders this Ruling: I. THE	
PARTIES	

1. Mr LOMPO Bahanla (hereinafter referred to as “the Applicant”) is a national of Burkina Faso who, at the time of the events, was a member of the military, assigned to the presidential security regiment. He was sentenced to death for murder on 30 June 2015 by the Ouagadougou Court of Appeal. In application of Article 900-1 1 of the Burkinabe Penal Code, 2 his death 1 Article 900-1 of the Burkinabè Code of Criminal Procedure “Death sentences

handed down under the previous legal regime are automatically commuted to life imprisonment”. 2 Law No. 025-2018/AN of 31 May 2018 on the Penal Code of Burkina Faso. 1 sentence was automatically commuted to life imprisonment. At the time of filing the present Application, he was serving the said sentence in prison in Ouagadougou, Burkina Faso. He alleges violation of his rights in connection with domestic legal proceedings.

2. The Application is filed against Burkina Faso (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 “the Protocol”) on 28 July 1998 following the deposit of the fifteenth instrument of ratification. Furthermore, on 28 July 1998, the Respondent State deposited the declaration provided for in Article 34(6) of the Protocol (hereinafter “the Declaration”), by virtue of which it accepts the Court’s jurisdiction to receive applications from individuals and Non-Governmental Organisations having observer status with the African Commission on Human and Peoples’ Rights. However, the Declaration took effect after the entry into force of the Protocol, that is, on 25 January 2004. II. SUBJECT OF THE APPLICATION A. Facts of the matter
3. It emerges from the Application that on 9 March 2013, at around 10 pm, the Bogododo Gendarmerie Brigade was informed that one Bernadette TIENDREBEOGO had been shot dead at her home. Eye witness statements identified the Applicant as the suspect.
4. Apprehended and questioned the next day, the Applicant admitted having shot Ms. TIENDREBEOGO with his service Kalashnikov. He avers that, furious that his victim called him “filthy” at her home, he returned to work and took his service weapon after which he returned to Ms. TIENDREBEOGO’s home and shot her. 2
5. On 11 March 2013, having completed the preliminary investigation, the Burkina Faso public prosecutor requested that a judicial investigation be opened against the Applicant. In the same month of March, the investigating judge charged him with murder and on 14 August 2013 issued an order (hereinafter “investigating judge’s order”) transferring the docket to the Public Prosecutor of the Ouagadougou Court of Appeal. On 11 September 2013, the latter referred the case to the Indictments Chamber seeking to indict the Applicant.
6. On 9 April 2014, the Indictment Chamber handed down a judgment committing the Applicant to trial on the charge of murder before the Criminal Division of the Ouagadougou Court of Appeal (hereinafter, “Indictment Division judgment”).
7. By judgment No. 20 of 30 June 2015 (hereinafter “Judgment of the Criminal Chamber”), the Criminal Chamber of the Ouagadougou Court of Appeal found the Applicant guilty of murder and sentenced him to death. The said sentence was subsequently commuted to life imprisonment pursuant to Article 900-1 of the Penal Code.

8. The Applicant avers that he appealed to the Supreme Court on 5 July 2015, pointing out that at the time of filing the present Application, the appeal was still pending. B. Alleged violations
9. The Applicant alleges violation of the following rights:
 - i. The right to bring an action before domestic courts to challenge any act violating fundamental rights, protected by Article 7(1)(a) of the Charter; ii. The right to life, protected under Article 4 of the Charter; iii. The right to human dignity, protected under Article 5 of the Charter.
10. 3 III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
The Application was filed at the Registry on 23 April 2019. On 4 June 2019, it was served on the Respondent State, which filed its Response on 22 August 2019.
11. On 9 September 2019, the Applicant filed his submissions on reparations, which were notified to the Respondent State.
12. The Parties filed their pleadings within the time limits set by the Court.
13. On 17 May 2024, the Registry requested the Applicant's lawyer to submit a brief explaining the status of the domestic proceedings within a period of fifteen days. The request was sent to the lawyer's chambers but he did not respond.
14. Pleadings were closed on 14 June 2024 and the Parties were duly notified. IV. PRAYERS OF THE PARTIES
15. In his Application, the Applicant prays the Court to find violation of the rights enumerated in paragraph 9 of this judgment and to order the Respondent State to take the following measures:
 - i. Issue a presidential pardon; ii. Commute his death sentence and that of all the other death row inmates to a prison term; iii. Parole; iv. An out-of-court settlement;
 - v. Financial compensation for the loss suffered.
16. In his pleadings filed on 2 October 2023, the Applicant seeks to be awarded the following sums:
 - i. Three Million (3,000,000) CFA francs in respect of material prejudice; ii. Four Million (4,000,000) CFA francs for moral prejudice.
17. 4
In its Response, the Respondent State prays the Court to:
 - i. In the main, declare the Application inadmissible for non-exhaustion of local remedies; ii. In the alternative, dismiss the Applicant's claims as unfounded.
18. V. JURISDICTION
The Court notes that Article 3 of the Protocol provides:

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 instrument ratified by the States concerned.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
 19. Under Rule 49 (1) of the Rules of Court, 3 “[t]he Court shall conduct a preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules.”
 20. Based on the above-cited provisions, the Court must, in every application, preliminarily ascertain its jurisdiction and rule on the objections thereto, if any.
 21. The Court notes that the Respondent State does not raise any objection to its jurisdiction.
 22. Having found that nothing on record indicates that it lacks jurisdiction, the Court finds that it has:
 - i) Material jurisdiction, insofar as the Applicant alleges the violation of human rights protected by the Charter, to which the Respondent State is a Party. 3 Rule 39(1) of the Rules of Court of 2 June 2010. 5 ii) Personal jurisdiction insofar as the Respondent State has deposited the Declaration. iii) Temporal jurisdiction, insofar as the alleged violations were committed after the entry into force of the above-mentioned Protocol in relation to the Respondent State. iv) Territorial jurisdiction, insofar as the facts of the case occurred in the Respondent State’s territory.
 23. Accordingly, the Court declares that it has jurisdiction to entertain the instant Application.
- #### VI. ADMISSIBILITY
24. Article 6(2) of the Protocol provides: The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.
 25. Under Rule 50(1) of the Rules of Court 4: The Court shall ascertain the admissibility of an Application [...] in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules.
 26. Rule 50(2), which restates Article 56 of the Charter, provides: Applications filed before the Court shall comply with all of the following conditions:
 - a. Indicate their authors, even if the latter request anonymity;
 - b. comply with the Constitutive Act of the African Union and the Charter;
 - c. Not contain any disparaging or insulting language; 4 Rule 39 of the Rules of 2 June 2010. 6
 - 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, the Constitutive Act of the African Union or the provisions of the Charter.
27. The Court notes that the Respondent State has raised an objection to admissibility based on non-exhaustion of local remedies. The Court will first consider this objection (A) before examining other admissibility requirements (B), if necessary. A. Objection based on non-exhaustion of local remedies
28. The Respondent State raises an objection to the admissibility of the Application for non-exhaustion of local remedies, on four grounds.
29. First, the Respondent State submits that the cassation appeal brought by the Applicant is still pending. It points out that in its judicial system, this remedy is effective and that the Applicant, who does not prove that it is unduly prolonged, should have awaited its outcome before submitting the present Application.
30. Next, the Respondent State asserts that since the passing of Constitutional Law No. 072-2015/CNT of 5 November 2015 amending the Constitution, any citizen may refer a matter to the Constitutional Court, either directly or by way of a constitutional procedure, in a matter that concerns him. It concludes that the Applicant could have brought the same violations before the Constitutional Court as those alleged in the present Application. 7
31. The Respondent State further submits that nothing prevents the Applicant from bringing an action for liability before the administrative or judicial courts, if he considers that the judicial service malfunctioned to his detriment.
32. Lastly, the Respondent State submits that up to the time of filing the present Application, the Applicant had not made any request for parole, pardon or amnesty.
33. In reply, the Applicant submits that the objection should be dismissed. In support, he argues that in the judicial system of the Respondent State, the cassation appeal is not an effective remedy. He further submits that a period of approximately five years elapsed between the filing of his cassation appeal and the filing of the present Application, which is unduly long.
34. He further points out that the rule of exhaustion of local remedies is subject to very broad interpretation. In this regard, he cites the case of *De Wilde, Ooms and Versyp v. Belgium*, in which the European Court of Human Rights decided on 18 June 1971 that “there is nothing to prevent States from waiving the benefit of the rule of exhaustion of domestic remedies”.

* * *

35. 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 after exhaustion of local remedies if any, unless it is clear that the proceedings in respect of such remedies are unduly prolonged.⁵
36. The Court underscores that the local remedies to be exhausted are ordinary judicial remedies. These must be available, that is, they can be used without hindrance by the Applicant, effective and sufficient, in the sense that they 5 Ghaby Kodeih and Nabih Kodeih Republic of Benin, ACtHPR, Application No. 008/2020, Judgment of 23 June 2022 (jurisdiction and admissibility), § 49; Houngue Éric Noudehouenou v. Republic of Benin, ACtHPR, Application No. 032/2020, Judgment of 22 September 2022 (jurisdiction and admissibility), § 38. 8 are “capable of satisfying the complainant” or of remedying the disputed situation.⁶
37. The Court notes, moreover, that exhaustion of local remedies is assessed at the time the proceedings are brought before it and that compliance with this requirement means that the Applicant must await the outcome of pending remedies before seizing the Court⁷. The only exception to this rule is where the procedure in respect of the remedy is unduly prolonged. 8
38. The Court emphasises that it has consistently held that, in the Burkina Faso judicial system, a cassation appeal is a remedy to be exhausted insofar as it is available, effective and satisfactory.⁹
39. The Court notes that, according to the Respondent State, the remedies to be exhausted are as follows: the cassation appeal pending at the time of filing the present Application, the remedy before the Constitutional Court, the liability proceedings before the administrative or judicial courts and the applications for parole, pardon or amnesty. The Court will examine each of these remedies.
40. On the cassation appeal, the Court emphasises that although the Applicant does not provide written proof of the remedy, the Respondent State does not contest its existence. In this regard, the Court notes that the appeal was filed on 5 July 2015 and was pending at the time of its referral on 23 April
2019. The Court notes that it has consistently held that in the Burkina Faso judicial system, a cassation appeal is an available, effective and satisfactory remedy. Accordingly, it considers that the Applicant did not exhaust local remedies pending at the time of filing the Application.¹⁰ 6 Beneficiaries of Late Norbert Zongo, Aboulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabè des droits de l’homme et des peuples v. Burkina Faso, Judgment (5 December 2014), (merits) 1 AfCLR 219, § 68 ; Ibid. Konaté v. Burkina Faso (merits), § 108. 7 Yacouba Traoré v. Republic of Mali, Judgment (admissibility) 4 AfCLR 672, § 41 and 42. 8 Ghaby Kodeih and Nabih Kodeih v. Republic of Benin, ACtHPR, Application No. 008/2020, Judgment of 23 June 2022 (jurisdiction and admissibility), § 49; Houngue Éric Noudehouenou v. Republic of Benin, ACtHPR,

Application no. 032/2020, judgment of 22 September 2022 (jurisdiction and admissibility), § 38. 9 Ibid. Beneficiaries of the late Norbert Zongo v. Burkina Faso § 66; Ibid. Konaté v. Burkina, §§ 91-92. 10 Oulaï Marius v. Republic of Côte d'Ivoire, Application No. 032/2019, ACtHPR, Judgment of 4 December 2023, (jurisdiction and admissibility), § 34. 9

41. The Court therefore holds that the Application does not meet the requirement under Rule 50(2)(e).
42. In light of the foregoing, the Court considers that it is not necessary to examine the other arguments advanced by the Respondent State in support of its objection based on non-exhaustion of local remedies, namely, referral to the Constitutional Court, filing a liability suit with the courts and the request for parole, pardon or amnesty. B. Other admissibility requirements
43. Having found that the Application does not comply with Rule 50(2)(f) of the Rules, and given the cumulative nature of the admissibility requirements,¹¹ the Court considers that it is superfluous to rule on the admissibility requirements under Article 56(1), (2), (3), (4), (6) and (7) of the Charter, as restated in Rule 50(2)(a), (b), (c), (d), (f) and (g) of the Rules.¹²
44. Accordingly, the Court declares the Application inadmissible. VII. COSTS
45. Both Parties pray that costs be borne by the other Party.

46. The Court notes that under Rule 32(2) of the Rules, “unless otherwise decided by the Court, each party shall bear its own costs, if any”. ¹¹ Mariam Kouma and Ousmane Diabaté Republic of Mali (jurisdiction and admissibility) (21 March 2018), 2 AfCLR 237, § 63; Rutabingwa Chrysanthé Republic of Rwanda (jurisdiction and admissibility) (11 May 2018), 2 AfCLR 361, § 48; Collectif des anciens travailleurs ALS v. Republic of Mali, ACtHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39. Goh Taudier and Others v. Republic of Côte d'Ivoire, ACtHPR, Consolidated Applications Nos. 17/2019, 018/2019 and 019/2019, Judgment (jurisdiction and admissibility), 4 June 2024. ¹² Ibid. 10
47. The Court considers that, in the present case, there is no reason to depart from the principle laid down in this provision. Accordingly, each party must bear its own costs. VIII. OPERATIVE PART
48. For these reasons, THE COURT, Unanimously Jurisdiction
 - i. Declares that it has jurisdiction to hear the present Application. By a majority of nine votes to one, with Judge Chafika BENSAOULA dissenting. Admissibility ii. Upholds the objection to admissibility based on non-exhaustion of local remedies; iii. Declares the Application inadmissible. Costs iv. Orders that each Party shall bear its own costs. Signed by: Modibo SACKO, Vice President; ¹¹ Ben KIOKO, Judge Rafaâ BEN ACHOUR, Judge; Suzanne MENGUE, Judge; Tujilane R. CHIZUMILA, Judge; Chafika BENSAOULA, Judge; Blaise TCHIKAYA,

Judge; Stella I. ANUKAM, Judge; Dumisa B. NTSEBEZA, Judge; And Robert ENO, Registrar. In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules of Court, the declaration of Judge Chafika BENSAOULA is attached to this Judgment. Done at Arusha, this third day of September in the year two thousand and twenty-four, in English and French, the French text being authoritative. 12

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