

TANZANIA / JUDGMENT

watumbulwa v democratic republic of congo communication 255 of 2004 2012 achpr 113 22 october 2012

COURT
ACHPRDECIDED
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AFRICAN UNION UNION AFRICAINE UNIÃO AFRICANA African Commission on Human & Commission Africaine des Droits de l'Homme & des Peuples Peoples' Rights 31, Bijilo Layout Annex, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 4410505/4410506; Fax: (220) 4410504; E-mail: au-banjul@africa-union.org; Website: <http://www.achpr.org> Communication 285/2004: Mr Kizila Watumbulwa/ Democratic Republic of the Congo Summary of the Facts:

1. The complaint was filed at the African Commission on Human and Peoples' Rights (the Commission) by Professor Nyabirungu Mwene Songa, a Lawyer at the Kinshasa Bar, on behalf of Mr Kizila Watumbulwa against the Democratic Republic of the Congo (the DRC or the Respondent State).
2. The communication is about a dispute that was settled by the Supreme Court of the Democratic Republic of the Congo over a building situated at N° 13 Avenue de la Cathédrale in the city of Bukavu, South Kivu Province, and recognized as the property of Mr Lucio Noca, an Italian national residing in Bukavu.
3. The building was the residence of the Complainant, Mr Kizila, who at the time of the incident, was the Regional Director of the Interdisciplinary Centre for Development and Continuing Education (CIDEP), a higher education institute, who concluded a lease agreement with Mr Eugène Kasilembo Kyakenge, who presented himself as the buyer of the property which was formerly managed by the state-owned National Insurance Company (SONAS).
4. The Complainant alleges that he was surprised to receive a summons to appear before the Bukavu High Court for a matter brought against him by Mr Kafwa Kasongo who claimed to be the new owner of the building and requested for an eviction order to be issued.
5. The judge granted the request which was executed in an inhuman, humiliating and degrading manner. The Complainant's furniture and belongings were scattered on the street and he was only able to recover them with the help of his neighbours and some passers-by.

6. The Complainant lodged an appeal which was dismissed by both the High Court and the Supreme Court. Articles alleged to have been violated
7. The Complainant alleges that Articles 3 and 7 of the African Charter have been violated. Procedure:
8. The complaint was received at the Secretariat of the Commission on 12 February 2004, and the latter acknowledged receipt on the same day.
9. At its 35th Ordinary Session held from 21 May to 4 June 2004 in Banjul, The Gambia, the Commission decided to be seized of the communication and requested the Secretariat to inform the relevant parties of its decision.
10. By a letter and a note verbale dated 18 June 2004, the Secretariat of the Commission informed the parties of the Commission's decision and requested them to submit their written observations on the admissibility of the communication.
11. The Complainant submitted his written observations on the admissibility of the communication to the Secretariat of the Commission during its 36th Ordinary Session. The Secretariat provided the representatives of the Respondent State present at the session with a copy of the complaint and the written submissions.
12. At its 37th, 38th, 39th and 40th Ordinary Sessions, the Commission considered the communication and, due to the lack of submissions from the Respondent State, decided to defer its consideration on admissibility.
13. By letters and notes verbales sent on 23 December 2004, 28 June 2005, 10 October 2005, 30 December 2005, 23 March 2006, 1 July 2006 and 23 April 2007, the Secretariat of the Commission constantly informed the parties to the communication of the decisions of the Commission. In each note verbale sent, the Secretariat always reminded the Respondent State to submit on admissibility.
14. At its 41st Ordinary Session held in Accra, Ghana, from 16 to 30 May 2007, the Commission, due to the lack of a response from the Respondent State, considered the communication on the basis of the facts in its possession and declared it admissible.
15. By a letter and a note verbale dated 20 June 2007, the parties were informed of the decision of the Commission and requested to submit on the merits of the communication.
16. Between June 2007 and 31 May 2012, the Secretariat sent more than five letters reminding the parties, in particular the Complainant, to submit arguments on the merits in order to enable the Respondent State to prepare its submission on the merits of the communication.
17. The parties were also informed of the Commission's decision to defer its consideration of the communication due to the lack of the Complainant's submissions on the merits.

18. By a letter dated 31 May 2012 addressed to the Complainant, the Secretariat reiterated its previous requests and notified him that should he fail to submit a response by 31 July 2012, the Commission would be obliged to take an appropriate decision.
19. Given the long and unjustified lack of response on the part of the Complainant, the Commission decided to take a decision on the matter. Analysis of the Commission
20. Rule 108 (1) of the Rules of Procedure of the Commission stipulates that once a communication has been declared admissible, the Commission shall set a period of sixty (60) days for the Complainant to submit observations on the merits.
21. Rule 113 of the same Rules stipulates that when a deadline is fixed for a particular submission, either party may apply to the Commission for extension of the period stipulated. The Commission may grant an extension which shall not exceed one (1) month.
22. To date, the Complainant has not submitted his observations on the merits and has not replied to the Commission's requests to submit on the merits of the communication, including the one sent to him by the Secretariat on 31 May 2012. He has also not requested an extension of the deadline to submit his observations. Decision of the Commission
23. In view of the foregoing, the Commission finds that there is a lack of interest on the part of the Complainant and decides to strike out the Communication for lack of diligent prosecution. Done at the 52nd Ordinary Session of the Commission held from 9 to 22 October 2012 in Yamoussoukro, Côte d'Ivoire.

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