

TANZANIA / JUDGMENT

kone v republic of mali application no 0012021 2021 afchpr 16 5 october 2021

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5 October 2021

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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 YAYA KONE V. REPUBLIC OF MALI APPLICATION NO. 001/2021 ORDER (PROCEDURE) 5 OCTOBER 2021 The Court, composed of: Imani D. ABOUD, President, Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Judges; 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)1 of the Rules of Procedure of the Court (hereinafter referred to as "the Rules"), Judge Modibo SACKO, a member of the Court and a national of Mali, did not hear the Application. In the Matter of: Yaya KONE Represented by Mr. Alifa Habib KONE, Advocate registered at the Bar of Mali of SCP D'AVOCATS DO-FINI CONSULT Versus REPUBLIC OF MALI Represented by:

- i. Mr. Youssouf DIARRA, Director General of State Litigation and; ii. Mr. Daouda DOUMBIA, Deputy Director General of State Legal Affairs. After deliberation, Issues the following Order: 1 Former Rule 8(2) of the Rules of 2 June 2010. 1 I. THE PARTIES
1. Yaya KONE (hereinafter referred to as "the Applicant") is a national of Mali and a lawyer. He alleges that he was unjustly sentenced to a six (6) month suspended prison term and ordered to pay Two Hundred Million (200,000,000) CFA francs in damages to Mr. Aliou DIALLO, for libel.
2. The Application is filed 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 on 10 May 2000. The Respondent State also deposited, on 19 February 2010, the Declaration provided for in Article 34(6) of the Protocol, by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-governmental Organisations (hereinafter referred to as "the Declaration"). II. SUBJECT OF THE APPLICATION

3. The Application concerns the conviction of the Applicant by the Court of Appeal of Kayes by judgment No. 26 of 18 March 2019, to six (6) months suspended imprisonment and to a fine of Two Hundred Million (200,000,000) CFA francs as reparation to Mr. Aliou DIALLO for libel. The said judgment was upheld by the Supreme Court of the Respondent State by its judgments No. 101 of 28 November 2019 and No.26 of 19 October 2020.
4. As provisional measures, the Applicant requests that this Court order the cessation of all proceedings for the enforcement of the above-mentioned conviction by the Court of Appeal of Kayes, the stay of the enforcement of the judgment of conviction and more specifically the seizure of property for purposes of enforcement. 2 III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
5. The Application was received together with the request for provisional measures on 30 November 2020 and registered on 5 January 2021.
6. On 7 January 2021, the Application, the request for provisional measures and supporting evidence were served on the Respondent State for its Response. On 11 February 2021, the Registry received and also transmitted to the Applicant, the Respondent State's response to the request for provisional measures.
7. On 15 February 2021, the Applicant filed supplementary information and this was transmitted to the Respondent State for its observations within ten (10) days of receipt thereof. The Respondent State did not file the said observations.
8. On 23 February 2021, the Applicant's filed submissions on the Respondent State's response to the request for provisional measures. On 15 April 2021, the Respondent State's filed the Response to the main Application and this was transmitted to the Applicant on the same date for his Reply, if any.
9. On 10 May 2021, the Applicant filed the Reply to the Respondent State's Response on the main Application and this was transmitted to the Respondent State on the same date, for its information. IV. PROVISIONAL MEASURES REQUESTED
10. The Applicant requests the Court to grant provisional measures in the form of the cessation of all proceedings by way of enforcement of the judgment of Kayes Appeal Court No. 26 of 18 March 2019 and of the Supreme Court No. 101 of 28 November 2019 and No. 26 of 19 October 2020 on the conviction and the seizure of property for enforcement, pending this Court's decision on the merits of the Application. 3
11. The Applicant considers that, at the time he filed the instant Application with the Court, the measures to enforce the sentence of Two Hundred Million (200,000,000) CFA francs were ongoing and that his employer would be enjoined under civil liability. The Applicant argues that this would warrant the Court issuing provisional measures to order the cessation of the said enforcement, as a matter of urgency, to avoid a recourse action being brought against him by his employer.

12. The Respondent State considers that the Applicant has not demonstrated that there is any risk or that there are exceptional circumstances, neither has he demonstrated that provisional enforcement of the three judgments against him has been initiated.
13. The Court notes that the measures requested are the same as those on the merits and are likely to prejudge its decision on the merits of the Application.
14. Consequently, in the interests of the proper administration of justice, the Court decides to consider the request for provisional measures together with the merits and that the situation requires it to expedite the determination of the Application on the merits. V. OPERATIVE PART
15. For these reasons, THE COURT, Unanimously, Decides to consider the request for provisional measures together with the Application on the merits. 4 Signed: Imani D. ABOUD, President; And Robert ENO, Registrar. Done at Arusha this Fifth Day of October in the year Two Thousand and Twenty-One in the English and French languages, the French text being authoritative. 5

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