

TANZANIA / JUDGMENT

# traore and others v republic of mali application no 0222018 2023 afchpr 41 7 november 2023

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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 YOUSOUF TRAORE AND 9 OTHERS V. REPUBLIC OF MALI APPLICATION No. 022/2018

## JUDGMENT

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PART ..... 20 i The Court composed of: Imani D. ABOUD, 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. 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 Court (hereinafter referred to as “the Rules”), 1 Judge Modibo SACKO, Vice President of the Court and national of Mali, did not hear the Application. In the matter of: Youssouf TRAORE and 9 Others Represented by: Mr. Youssouf TRAORE, representing himself and the other Applicants Versus REPUBLIC OF MALI Represented by:

- i. Mr. Youssouf Diarra, Director General, State Litigation; ii. Mr. Ibrahima KEITA, Director General, State Litigation; and iii. Mr. Yakouba KONE, Deputy Director, National Procedure. After deliberation, 1 Rule 8(2), Rules of Court, 2 June 2010. 1 Renders this Judgment, I. THE PARTIES
1. Messrs Youssouf TRAORE, Diakaridia COULIBALY, Mery SIDIBE, Diatigui Coulibaly, Karim DIARRA, Mamadou KAMATE, Diasse COULIBALY, Boubacar DEMBELE, Issiaka KONE, Landry DAKOUA (hereinafter referred to as “the Applicants”), Malian nationals, are all former workers of the LAS- Mali and ETS KLENE Laboratories group. They allege violation of their right to a fair trial in the proceedings before national courts.
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 20 June 2000. It 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 having observer status with 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 between 2004 and 2009, the Applicants were recruited by the ALS-Mali laboratory group under a fixed-term contract. The purpose of the said contract was the taking of rock and soil samples in the mining areas, their placement, classification and mechanical preparation for the purposes of chemical analysis in the laboratory. 2
4. According to the Applicants, while other employees had their contracts expressly renewed upon expiry, on 19 July 2010, the Applicants received notification of their dismissal without cause or prior notice.

5. On 23 May 2011, the Applicants brought an action before the Labour Court of Bamako against the ALS-Mali Laboratories Group and ETS KLENE with the intent not only to claim their rights and seek damages for the prejudices suffered, but also, to obtain the payment of workers' benefits.
6. On 14 November 2011, the Bamako Labour Court dismissed the Applicants claims on the grounds, firstly, that Article L20 of the Labour Code cannot apply to seasonal workers hired for the duration of an agricultural, commercial, industrial or artisanal season and, secondly, that the refusal on the part of the employer to renew the previous contract cannot in this case amount to unfair dismissal.
7. On 6 June 2012, the Applicants appealed to the Social Chamber of the Bamako Court of Appeal which, by Judgment No. 55 of 21 March 2013, upheld the Labour Court's judgment in its entirety.
8. On 10 August 2013, the Applicants lodged an appeal before the Social Chamber of the Supreme Court of Mali which was dismissed by judgment No. 38 of 15 November 2016. B. Alleged violations
9. The Applicants allege violation of their right to a fair trial guaranteed by Articles 7(1) and 26 of the Charter as well as Articles 2(3) and 14 of the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR") as they were not accorded a fair treatment before the law. 3 III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
10. The Application was received at the Registry on 11 September 2018 and served on the Respondent State on 10 October 2018.
11. The Parties filed their pleadings within the time limit set by the Court, after several extensions of time.
12. Pleadings were closed on 18 February 2020 and the Parties were duly notified.
13. Pleadings were reopened on 13 July 2023 and the Parties were requested to submit certain relevant documents within fifteen (15) days.
14. At the expiration of the aforementioned time limit, the Parties did not submit the requisite documents. On 3 August 2023, the Registry notified the parties of the second and final closure of the pleadings. IV. PRAYERS OF THE PARTIES
15. The Applicants pray the Court to re-establish their rights to a fair trial as enshrined in Articles 7(1) (a) (b) and 26 of the Charter; and Articles 2 (3) and 14 (1) of the ICCPR.
16. As regards reparations, the Applicants seek the following remedies from the Court:
  - i. Payment of salaries accruing to the Applicants from 2009 to 2018, as well as severance pay, unspent leave allowance, salary in lieu of notice, compensation for the irregularities and damages; ii. Reimbursement of all medical expenses for their spouses and children from 2009 to 2018; 4 iii. Payment of damages in the amount of twenty (20) million CFA Francs per

worker, that is, a total amount of two hundred million (200,000,000) CFA Francs for the ten (10) workers as reparation for moral and material damages; iv. Issuance of work certificates for seventy-one (71) persons, including the eleven (11) people expressly mentioned in this Application, subject to a penalty of one hundred thousand (100,000) CFA Francs per person and per day of delay;

- v. Severance medical visits for the workers concerned subject to a penalty of one hundred million (100,000,000) CFA Francs) for the ten (10) former employees; vi. Payment of half of the entitlements mentioned upon the delivery of judgment by this Court.
17. For its part, the Respondent State prays the Court to:
- i. Declare that it lacks jurisdiction *rationae materiae*; ii. With respect to form, declare the Application inadmissible; iii. On the merits, declare the Applicants ill-founded in their claims, purposes and submissions; dismiss the claims outright, and iv. Order the Applicants to pay costs. V. JURISDICTION
18. The Court notes that Article 3 of the Protocol provides that:
- 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. 5
19. According to Rule 49(1) of the Rules, “[t]he Court shall conduct preliminary examination of its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protocol and these Rules.”
20. Based on the above provisions, the Court must conduct an examination of its jurisdiction and rule on objections thereto, if any.
21. The Court notes that, in the instant case, the Respondent State raises an objection to its material jurisdiction. The Court will, therefore, consider the said objection before examining other aspects of its jurisdiction, if necessary. A. Objection to material jurisdiction
22. The Respondent State argues that the Court lacks jurisdiction to entertain the present Application insofar as it does not clearly indicate the alleged violation of human rights and merely cites the articles of the Charter allegedly violated.
23. The Respondent State further submits that the presentation of the Application does not allow the State of Mali nor this Court to identify with precision the human right or rights violated, contrary to Rule 40(2) of the Rules.
24. The Respondent State also argues that this Court is not a labour court empowered to censure the decisions of national courts but rather it is a court responsible for finding and redressing cases of human rights violation.

25. The Respondent State submits in conclusion that this Court lacks jurisdiction to adjudicate the matter.
26. The Applicants, for their part, submit that the Court has jurisdiction to hear this Application, insofar as they have complied with Rule 40 of the Rules and Article 56 of the Charter. 6

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27. The Court recalls its jurisprudence, that under the terms of Article 3(1) of the Protocol, it has jurisdiction to examine all cases brought before it insofar as they allege violation of the rights protected by the Charter or any other human rights instrument ratified by the State concerned.<sup>2</sup> Consequently, it is not necessary for the Applicant to enumerate explicitly the specific provisions allegedly violated; instead, he needs only indicate that these alleged violations pertain to the rights enshrined within the Charter or any other instrument to which the Respondent State is a Party.<sup>3</sup>
28. In the instant Application, this Court notes that the Applicants clearly allege violation of their rights to a fair trial guaranteed by Articles 7(1) (a) and (d) and 26 of the Charter, and Articles 2(3) and 14 (1) of the ICCPR. It follows, therefore, that the Respondent State's objection on these points cannot stand.
29. Furthermore, although it is for national courts to examine issues of evidence, this Court has jurisdiction to examine the relevant proceedings before national courts to determine whether they comply with the standards prescribed in the Charter or in any other instrument ratified by the State concerned.<sup>4</sup> In so doing, it cannot be considered that this Court censures the decisions of national courts. The Respondent State's objection on this point is also dismissed. 2 *Alex Thomas v. United Republic of Tanzania (merits)* (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania (merits)* (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Saidi Ally Mang'aya v. United Republic of Tanzania (merits and reparations)* (28 November 2019) 3 AfCLR 629, § 18; *Abdallah Sospeter Mabomba v. United Republic of Tanzania, AfCHPR, Application No. 017/2017, Judgment of 22 September 2022 (jurisdiction and admissibility)*, § 21. 3 *Peter Joseph Chacha v. United Republic of Tanzania (admissibility)* (28 March 2014) 1 AfCLR 398, § 118. 4 *Kennedy Ivan v. United Republic of Tanzania (merits)* (March 2019), 3 AfCLR 48, § 26; *Armand Guéhi v. United Republic of Tanzania (merits and reparations)* (7 December 2018), 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania (merits)* (23 March 2018), 2 AfCLR 287, § 35. 7

30. Finally, with regard to the Respondent State's objection on the ground that this Court lacks jurisdiction in the present case to examine claims for benefits and indemnities relating to employment contracts, the Court recalls that it has jurisdiction under Article 27(1) of the Protocol to grant any reparation once a violation has been found. As this issue relates to the merits of the case, the Court considers that it is premature to examine it at this stage, and, therefore, reserves the same for merits and reparations.
  31. In view of the foregoing, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to hear the instant Application. B. Other aspects of jurisdiction
  32. The Court observes that no objection has been raised to its temporal, personal or territorial jurisdiction. It therefore holds that it has:
    - i. Temporal jurisdiction, insofar as the facts of the case occurred after the State became a Party to the Protocol. ii. Personal jurisdiction, insofar as the Respondent State is a Party to the Protocol and has deposited the Declaration provided for in Article 36(4) of the Protocol which allows the Applicant to seise the Court directly. iii. Territorial jurisdiction insofar as the alleged violations occurred on the territory of the Respondent State.
  33. In view of the foregoing, the Court holds that it has jurisdiction to hear this Application. 8
- #### VI. ADMISSIBILITY
34. Article 6(2) of the Protocol provides that: "[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".
  35. In accordance with Rule 50(1) of the Rules, "[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Articles 56 of the Charter, Article 6 (2) of the Protocol and these [...] Rules".
  36. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows: Applications filed with the Court must meet 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 set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and

9. 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 Constitutive Act of African Union or the provisions of the Charter. 9
37. In the present Application, the Respondent State raises two objections to admissibility; one, based on non-exhaustion of local remedies, and the other based on the failure to specify the provisions allegedly violated. The Court will consider these objections before examining other conditions of admissibility, if necessary. A. Objection based on non-exhaustion of local remedies
38. The Respondent State submits that the Applicants indicate, without providing proof, that all the local remedies under the law of procedure of Mali, were exhausted after the Social Chamber of the Supreme Court rendered Judgment No. 38 of 15 November 2016, dismissing their cassation appeal.
39. The Respondent State argues that the Applicants voluntarily refrained from exercising the internal legal remedies provided for by Article 173 of Law No. 2016-046 of 23 September 2016 on the organic law pertaining to the organization, the operating rules of the Supreme Court and the procedure followed before it, which provides that: “judgments rendered by the Judicial Section of the Supreme Court are subject only to the following procedures:
- a. An action for rectification may be exercised against decisions tainted by a material error likely to have had an influence on the judgment of the case;
  - b. An appeal for interpretation may be exercised against obscure or ambiguous decisions;
  - c. A request for rectification judgment may be exercised when the impugned judgment is tainted by an error not attributable to the interested party and which affected the solution proffered for the case by the Court”.
40. The Applicants, for their part, argue that local remedies were exhausted insofar as the Supreme Court, which is the highest court with jurisdiction in this case, rendered its decision. 10

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41. The Court notes that under Article 56(5) of the Charter, the provisions of which are restated in Rule 50(2)(e) of the Rules, any application before it must satisfy the requirement of exhaustion of local remedies. The rule of exhaustion of local remedies aims to afford States the opportunity to address human rights violations within their jurisdiction before an international human rights body is seized to determine the responsibility of the State in this regard.<sup>5</sup>
42. In the instant case, the Court notes that, following their dismissal, the Applicants brought an action against the ALS-Mali Laboratories Group and ETS KLENE, before the Bamako Labour Court – an action which turned out to be unsuccessful as per judgment No.196 of 14 November 2011. They subsequently appealed to the Court of Appeal of Bamako which by

judgment No. 55 of 21 March 2013, upheld the said judgment. Finally, the Supreme Court of Mali, the highest court in the Malian judicial system, seized with a cassation appeal, dismissed the Applicants' appeal by judgment No. 38 of 15 November 2016.

43. The Court notes that the Applicants have exhausted all the relevant local remedies; and that the Respondent State had the opportunity to address the alleged violations.
44. Consequently, the Court dismisses the objection based on non-exhaustion of the local remedies and holds that the Applicants exhausted local remedies. B. Objection based on the failure to specify the provisions allegedly violated
45. The Respondent State argues that Rule 41(f) of the Rules requires the Application to include, among others, a concise and clear statement of the 5 African Commission on Human and Peoples' Rights v. Republic of Kenya (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94. 11 alleged violation(s) and not sufficient to merely cite provisions of the Charter allegedly violated.
46. The Respondent State further avers that the articles cited in the Application refer to one or more human rights, the express enunciation of which would have enabled the Respondent State to know precisely the violation for which it is allegedly liable and to defend itself better. It consequently concludes that the Application is flawed in its presentation and deserves to be declared inadmissible.
47. The Applicants submit that the Respondent State's arguments have no legal basis and are unfounded insofar as the alleged violations are clearly indicated in their Application. In this regard, they rely on the provisions of Article 7(1)6 and 267 of the Charter.
48. The Court notes that in making a determination on its material jurisdiction, it has already considered the objection based on failure to specify the provisions allegedly violated. The Court, therefore, does not find it necessary to examine the same objection to the admissibility of the Application.
49. The Court consequently dismisses the Respondent State's objection on the ground that the Applicant did not sufficiently elaborate on the alleged violation. 6 Every individual shall have the right to have his cause heard. This comprises:
  - a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force [...];
  - d) The right to be tried within a reasonable time by an impartial court or tribunal. 7 States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter. 12 C. Other conditions of admissibility

50. The Court notes that the Parties do not contest the Application's compliance with the requirements of paragraphs (1), (2), (3), (4), (6) and (7) of Article 56 of the Charter, restated in sub-paragraphs (a), (b), (c), (d), (f) and (g) of Rule 50(2). Nonetheless, the Court must satisfy itself that these requirements are met.
51. It emerges from the record that the condition set out in Rule 50(2) (a) relating to disclosure of identity is met, the Applicants having clearly indicated their identity.
52. The Court also notes that the Applicants' prayers seek to protect their rights guaranteed by the Charter. It notes, in this respect, that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, the Application does not contain any grievance or claim incompatible with any provision of the said Act. The Court therefore holds that the Application satisfies the requirements of Rule 50(2)(b) of the Rules.
53. The Court finds that the condition set out in Rule 50(2)(c) is also met, insofar as the Application is in no way inconsistent with the Constitutive Act of the African Union or with the Charter.
54. With respect to the condition set out in Rule 50(2)(d), the Court notes that it has not been established that the arguments of fact and of law developed in the Application are based exclusively on information disseminated through mass media. This requirement is therefore satisfied.
55. As regards Rule 50(2)(f) of the Rules on the filing of the Application within a reasonable time after exhaustion of local remedies, the Court observes that the Supreme Court dismissed the appeal lodged by the Applicant by decision of 15 November 2016. This Application having been filed on 11 13 September 2018, a period of one (1) year, nine (9) months and twenty-seven (27) days elapsed between the two acts. In accordance with its jurisprudence,<sup>8</sup> the Court considers this timeframe manifestly reasonable and finds that the requirement set out in Rule 50(2)(f) of the Rules is met.
56. Lastly, with regard to the condition set out in Rule 50(2)(g) of the Rules, the Court finds that the Application does not concern a matter which has already been settled 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. The Application therefore satisfies this requirement.
57. In light of the foregoing, the Court considers that the Application meets all the conditions of admissibility under Article 56 of the Charter, as restated in Rule 50 of the Rules, and therefore declares it admissible. VII. MERITS
58. The Applicants allege a violation of their right to a fair trial by the Respondent State. Specifically, they allege violation of:

- i. The right to referral to competent national courts of any act violating the fundamental rights recognized and guaranteed for them by conventions, laws, regulations and customs in force;
  - ii. The right to be tried within a reasonable time by an impartial court; iii. The obligation of State Parties to the Charter to guarantee the independence of the courts and to allow the establishment and improvement of appropriate national institutions responsible for the promotion and protection of the rights and freedoms guaranteed by this Charter.
59. The Court will examine each of these allegations. 8 Niyonzima Augustine v. United Republic of Tanzania, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), §§ 56-58. 14 A. Alleged violation of the right to bring complaints before competent national courts
60. The Applicants argue that it is clear that no appeal is possible before domestic courts because if the Supreme Court had wanted to apply the law, it would have referred the case and the parties to a differently constituted Court of Appeal. According to the Applicants, this argument is confirmed by the Respondent State's contention that this Court lacks appellate jurisdiction to review decisions of domestic courts.
61. The Respondent State submits that the Applicants have indeed exercised their right to seize the national courts by taking their matter through the trial court (Bamako Labour Court), the Bamako Court of Appeal and the Supreme Court. The Respondent State points out that their former employer was ordered by the Supreme Court to pay entitlements and damages to other workers involved in similar disputes.
62. Over and above all that, the Respondent State argues that the Applicants cannot ignore the fact that the Supreme Court, the highest court of the land, has oversight over the application of the law by the lower courts which cannot have a different case law other than the one developed by the Supreme Court. On the contrary, it is for the lower courts to align themselves with and comply with the jurisprudence of the Superior Court.
63. The Respondent State, therefore, concludes that the Application should be declared unfounded and the Applicants' case be dismissed accordingly.
- \* \* \*
64. The Court notes that under Article 7(1) of the Charter: "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force..." 15
65. The Court also notes that Article 2(3) of the ICCPR provides: States Parties to this Covenant undertake:
- a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

- b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - c. To ensure that the competent authorities shall enforce such remedies when granted.
66. The Court reiterates that this right requires States to put in place appeal mechanisms and take the necessary measures to facilitate the exercise of this right by individuals, particularly by communicating to them the judgments or decisions against which they wish to appeal.<sup>9</sup>
67. The Court refers to Article 1 of Law No. 2011-037 of 15 July 2011 on the judicial organization of Mali, which provides: Justice is rendered on the territory of the Republic of Mali by, among others, a Supreme Court, Courts of Appeal, labour courts, etc.
68. The Court further notes, from the Applicants' submissions on record, that the competent courts, at different levels of the Malian judiciary, namely, the Bamako Labour Court, the Bamako Court of Appeal and the Supreme Court of Mali, were seized by the Applicants and copies of the decisions rendered by these national courts are available in the record. <sup>9</sup> *Mgosi Mwitwa Makungu v. United Republic of Tanzania (merits)* (7 December 2018) 2 AfCLR 550, § 57. <sup>16</sup>
69. The Court finds that at each stage of the proceedings before the national courts, the Applicants obtained judicial decisions, without any impediment. It can, therefore, not be considered that the Applicants did not enjoy their right to a fair trial simply because their prayers were not granted by the said courts.
70. In view of the foregoing, the Court dismisses this allegation and finds that the Respondent State did not violate Articles 7(1)(a) of the Charter and Article 2(3) of the ICCPR. B. Alleged violation of the right to be tried within a reasonable time
71. The Applicants submit that their right to trial within a reasonable time was violated without presenting any concrete arguments in support of this allegation.
72. The Respondent State disputes this allegation, arguing that the Applicants erred on the merits of their claim, given that no violation is attributable to the Respondent State.
- \* \* \*
73. The Court notes that, under Article 7(1) of the Charter: "Every individual shall have the right to have his cause heard. This comprises: (d) the right to be tried within a reasonable time by an impartial court or tribunal ...".
74. The Court recalls the general procedural rule that a party who alleges a fact must provide proof thereof.

75. The Court observes that, in the present Application, the Applicants merely allege violation of the right to be tried within a reasonable time without substantiating the allegation. This, notwithstanding, the Court notes that, as it emerges from the record, the following timelines were observed in respect of various domestic proceedings involving the Applicants: five (5) months and fourteen (14) days between the seizure of the Labour Court of Bamako 17 and the judgment of the said court; nine (9) months and fifteen (15) days between the filing of the appeal and the judgment of the Court of Appeal; and finally, three (3) years and (3) days between filing of the cassation appeal and the judgment of the Supreme Court.
76. The Court considers that, in view of the nature of the proceedings, the above stated time limits cannot be said to be unreasonable in the circumstances of the present Application.
77. Accordingly, the Court finds that the Respondent State did not violate the Applicants' right to be tried within a reasonable time guaranteed in Article 7(1) (d) of the Charter. C. Violation of the obligation to guarantee the independence of the courts
78. The Applicants make a general allegation, without substantiation, that the Respondent State violated its obligation under the Charter to guarantee the independence of the courts.
79. The Respondent State submits that, in the instant case, there is no dysfunction in the administrative or judicial services of the State of Mali that is prejudicial to the Applicants.

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80. The Court notes that according to Article 26 of the Charter "States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter".
81. The Court further notes that the Applicants have not specified the facts justifying a violation of this right before the national courts. 18
82. Accordingly, the Court finds that the alleged violation of Article 26 of the Charter is not established. Consequently, the Court does not find the Respondent State liable. VIII. REPARATIONS
83. The Applicants pray the Court to re-establish their right to a fair trial. They also request the Court to order the Respondent State to make the following reparations:
- i. Payment of the salaries accruing to the Applicants from 2009 to 2018, as well as severance pay, unspent leave allowance, salary in lieu of notice, compensation for the irregularities and damages; ii. Reimbursement of all medical expenses for their spouses and children from 2009 to 2018; iii. Payment of damages in the amount of twenty million (20,000,000) CFA Francs per worker, that is, a total amount of two hundred million (200,000,000) CFA Francs for the ten (10) workers as reparation for moral and material damages; iv. Issuance of work certificates for seventy-one (71) persons, including the eleven (11) people expressly mentioned in this Application, subject to a penalty of one hundred thousand (100,000) CFA

Francs per person and per day of delay;

- v. Severance medical visits for the workers concerned subject to a penalty of one hundred million (100,000,000) CFA Francs for the ten (10) former employees; vi. Payment of half of the entitlements mentioned upon the delivery of the judgment by this Court.
- 84. The Respondent State argues that the Applicants' claims should be dismissed outright, but has not made submissions in response to the measure sought by the Applicants. 19
- 85. Article 27 (1) of the Protocol provides: "If the Court finds that there has been violation of a human or peoples' right, the Court shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."
- 86. The Court considers that, having found no violation of the Applicants' rights, their request for reparations is unfounded. Accordingly, the Court dismisses the Applicants' request for reparations. IX. COSTS
- 87. The Applicants did not submit any request on costs.
- 88. The Respondent State submits that the costs of the proceedings be borne by the Applicants.
- 89. The Court notes that Rule 32 of its Rules provides that: "Unless otherwise decided by the Court, each party shall bear its own costs, if any".
- 90. In the instant case, the Court finds no reason to depart from the above stated provision and, therefore, decides that each Party should bear its own costs. X. OPERATIVE PART
- 91. For these reasons THE COURT Unanimously 20 On jurisdiction
  - i. Dismisses the objection to its material jurisdiction; ii. Declares that it has jurisdiction. On admissibility iii. Dismisses the objections to admissibility of the Application; iv. Declares the Application admissible. On the merits
  - v. Holds that the Respondent State did not violate the right of the Applicants to seize the competent national courts protected by Article 7(1) (a) of the Charter; vi. Holds that the Respondent State did not violate the right of the Applicants to be tried within a reasonable time protected under Article 7(1) (d) of the Charter; vii. Holds that the Respondent State did not violate the right of the Applicants as regards the independence of the courts provided for in Article 26 of the Charter. On reparations viii. Dismisses the Applicants' prayer for reparation. On costs ix. Orders that each party should bear its own costs. Signed: Imani D. ABOUD, President; 21 Ben KIOKO, Judge; ~~ Rafaâ BEN ACHOUR, Judge; cl~ !N·l el Suzanne MENGUE, Judge; Tujilane R. CHIZUMILA, Judge; ~~~ Chafika BENS AOULA, Judge; ~ Blaise TCHIKAYA, Judge; ~ Stella I. ANUKAM, Judge; ~ - Dumisa B. NTSEBEZA, Judge; ~ a ) . Dennis D. ADJEI, Judge; \~~ and Robert ENO, Registrar. <fr Done at Algiers this Seventh Day of the month of November Two Thousand and Twenty-Three, in English and French, the French text being authoritative. 22

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| <b>CASE PAGE</b>       | <a href="https://chat.esheria.ai/case-law/tanzania/youssouf-traore-and-9-others-v-republic-of-mali-righttofairtrial-tanzlii-2023">https://chat.esheria.ai/case-law/tanzania/youssouf-traore-and-9-others-v-republic-of-mali-righttofairtrial-tanzlii-2023</a>                                                                                                         |

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