

UGANDA / JUDGMENT

Ogwuche and Others v Republic of Cote
D'Ivoire and Others (Application No.
005/2024) [2025] AfCHPR 19 (17 June 2025)
[2025] AfCHPR 19

COURT

African Court on Human and Peoples Rights

BEFORE

Aboud J, Ben Achour J, Bensaoula VP, Chizumila J,
Gaswaga J, Mengue J, Ntsebeza J, Tchikaya J

CASE / FILE NUMBER

Application No. 005/2024

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| | UNIÃO AFRICANA | | UNIÓN AFRICANA | | UMOJA WA AFRIKA | | AFRICAN COURT ON
HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES
PEUPLES | |

APPLICATION No. 005/2024

CHIEF FESTUS A. OGWUCHE & 25 OTHERS

V.

THE REPUBLIC OF COTE D'IVOIRE & 14 OTHERS

RULING

(JURISDICTION)

17 JUNE 2025

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- xxv. LIBERTADOR JOSELP
- xxvi. CAMPAIGN FOR SOCIAL JUSTICE AND CONSTITUTIONAL DEMOCRACY IN AFRICA

Represented by:

CHIEF FA OGWUCHE, Crownfield Solicitors

Versus

- i. REPUBLIC OF CÔTE D'IVOIRE
- ii. REPUBLIC OF GUINEA
- iii. BURKINA FASO
- iv. REPUBLIC OF LIBERIA
- v. REPUBLIC OF GHANA
- vi. REPUBLIC OF BENIN
- vii. REPUBLIC OF NIGER
- viii. REPUBLIC OF GAMBIA
- ix. FEDERAL REPUBLIC OF NIGERIA
- x. REPUBLIC OF TOGO
- xi. REPUBLIC OF SENEGAL
- xii. REPUBLIC OF MALI
- xiii. REPUBLIC OF CABO VERDE
- xiv. REPUBLIC OF SIERRA LEONE
- xv. REPUBLIC OF GUINEA BISSAU

After deliberation,

Issues this Ruling:

I. THE PARTIES

- 1. The Application is filed by Chief Festus A. Ogwuche and 25 others (hereinafter referred to as "the Applicants") who are nationals of various member States of the Economic Community of West African States (hereinafter referred to as "the ECOWAS"). Also among the Applicants is a Non-Governmental Organization (hereinafter referred to as an "NGO") listed as the Campaign for Social Justice and Constitutional Democracy in Africa.
 - 2. The Application is filed against the following 15 States:
 - i. The Republic of Côte d'Ivoire, which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 31 March 1992 and to the Protocol on 25 January 2004. It deposited the Declaration under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") on 23 July 2013 through which it accepted the jurisdiction of the Court to accept cases from individuals and NGOs. On 29 April 2020, the Republic of Côte d'Ivoire deposited, with the African Union Commission (hereinafter "the AUC"), the instrument of withdrawal of its Declaration. The Court has held that this withdrawal had no bearing on pending cases or on new cases filed before it came into effect, one year after its deposit, that is on 30 April 2021.[1](#page-4-1)
 - ii. The Republic of Guinea became a Party to the Charter on 21 October 1986. It is not a Party to the Protocol and, resultantly, has not deposited the Declaration.
 - iii. Burkina Faso became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. Burkina Faso deposited the Declaration on 28 July 1998 thereby accepting the jurisdiction of the Court to accept cases from individuals and NGOs. [2](#page-4-2)
- ¹ *Suy Bi Gohore Emile and others v. Republic of Côte d'Ivoire* (15 July 2020) 4 AfCLR 406, § 68.
- ² *Beneficiaries of Late Nibert Zongo and others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 49.
- iv. Liberia became a Party to the Charter on 21 October 1986. It is not a Party to the Protocol and has, resultantly, not deposited the Declaration.
 - v. The Republic of Ghana became a Party to the Charter on 1 March 1989 and to the Protocol on 16 August 2005. It deposited the Declaration on 10 March 2011 thus accepting the jurisdiction of the Court to accept cases from individuals and NGOs.

- vi. The Republic of Benin became a Party to the Charter on 21 October 1986, and to the Protocol on 22 August 2014. On 8 February 2016 it deposited the Declaration. On 25 March 2020, the Republic of Benin deposited, with the AUC, the instrument of withdrawal of its Declaration. The Court has held that this withdrawal had no bearing on pending cases or on new cases filed before it came into effect, one year after its deposit, that is on 26 March 2021. [3](#page-5-0)
- vii. The Republic of Niger became a Party to the Charter on 21 October 1986, and to the Protocol on 26 June 2004. On 7 April 2022 it deposited the Declaration thereby accepting the jurisdiction of the Court to accept cases from individuals and NGOs.
- viii. The Republic of the Gambia became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It deposited the Declaration on 3 February 2020 thereby accepting the jurisdiction of the Court to accept cases from individuals and NGOs.
- ix. The Federal Republic of Nigeria became a Party to the Charter on 21 October 1986 and to the Protocol on 9 June 2004. It has not deposited the Declaration.
- x. The Republic of Togo became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It has not deposited the Declaration.
- xi. The Republic of Senegal became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It has not deposited the Declaration.

³ *Sebastien Germain Marie Aïkoue Ajavon v. Republic of Benin* (judgment) (29 March 2021) 5 AfCLR 94, § 2.

- xii. The Republic of Mali became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It deposited the Declaration through which it accepted the jurisdiction of the Court to accept cases from individuals and NGOs on 19 February 2010.
- xiii. The Republic of Cabo Verde became a Party to the Charter on 6 August 1987. It is not a Party to the Protocol and has, therefore, not deposited the Declaration.
- xiv. The Republic of Sierra Leone became a Party to the Charter on 21 October 1986. It is not a Party to the Protocol and has, therefore, not deposited the Declaration.
- xv. The Republic of Guinea Bissau became a Party to the Charter on 21 October 1986 and to the Protocol on 2 November 2021. It deposited the Declaration on 2 November 2021 thereby accepting the jurisdiction of the Court to accept cases from individuals and NGOs.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

- 3. The Applicants allege that following an extraordinary summit of the Heads of States and Governments, the Chief Justices of ECOWAS member States, acting in their capacity as the "Community's Judicial Service Commission", proposed an amendment to Protocol A/P.1/7/79 on the ECOWAS Community Court of Justice to incorporate the requirement of exhaustion of domestic remedies as a prerequisite for the admissibility of cases.
- 4. The Applicants contend that the proposal to incorporate the requirement for the exhaustion of domestic remedies would procedurally and substantively deprive them of their fundamental rights enshrined in the Charter and other international human rights instruments.

B. Alleged violations

- 5. The Applicants allege the following violations under the Charter:
 - i. The obligation of States to recognize and implement the rights, duties, and freedoms enshrined in the Charter, as provided under Article 1 of the Charter;
 - ii. The right to have one's cause heard, including the right to appeal, presumption of innocence, legal defence, and trial within a reasonable time, as provided under Article 7 of the Charter;
 - iii. The right to self-determination and to freely determine political status and economic, social, and cultural development, as protected under Article 20(1) of the Charter;
 - iv. The right of colonized or oppressed peoples to free themselves from domination, as provided under Article 20(2) of the Charter;
 - v. The right of oppressed peoples to receive assistance in their liberation struggle against foreign domination, as protected under Article 20(3) of the Charter.
- 6. The Applicants also allege the following violations under the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR") and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "the ICESCR"):
 - i. The right to self-determination, as protected under common Article 1 of the ICCPR and the ICESCR;
 - ii. The obligation of States to adopt necessary legislative or other measures to give effect to recognized rights, as provided under Article 2(2) of the ICCPR and;
 - iii. The right to an effective remedy for violations of fundamental rights, as provided under Article 3 of the ICCPR.

- 7. The Applicants further allege the following violations under the Universal Declaration on Human Rights (hereinafter referred to as "the UDHR"):
- i. The right to an effective remedy for acts violating fundamental rights, as protected under Article 8;
- ii. The right to a fair and public hearing by an independent and impartial tribunal guaranteed under Article 10;
- iii. The right to a social and international order in which rights and freedoms can be fully realized enshrined under Article 28 and;
- iv. The prohibition against engaging in activities that undermine the rights and freedoms in the Declaration, as enshrined under Article 30.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 8. The Application, together with a request for provisional measures, was filed on 23 May 2024.
- 9. On 28 July 2024, the Registry informed the Applicants of the registration of the Application and requested them to provide further information in relation to the decision(s) complained of.
- 10. On 12 August 2024, the Registry requested the Applicants to provide proof of the registration status of the NGO, Campaign for Social Justice and Constitutional Democracy in Africa, one of the Applicants, as well as its observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission").
- 11. In an email response submitted on 13 August 2024, the Applicants, through their counsel, indicated that the NGO Campaign for Social Justice and Constitutional Democracy in Africa did not have observer status before the Commission. They further indicated that they were "readily disposed to having the name withdrawn and subsequently struck out from the list of parties..."
- 12. On 11 September 2024, the Registry wrote the Applicants reminding them to provide information relating to the decisions complained of. The Applicants were also invited to review, within 30 days, the list of Respondents to the Application in light of the provisions of Article 5 of the Protocol.
- 13. On 9 October 2024, the Applicants filed "documentary materials" that they indicated were in support of their Application. They also indicated that "appropriate applications for regularization of our processes" would be filed. The envisaged applications for regularization of process, however, have not been filed.

IV. ON THE COURT'S JURISDICTION

- 14. Article 3 of the Protocol provides thus:
 - 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
- 15. The Court notes that Article 5 of the Protocol provides as follows:
 - 1. The following are entitled to submit cases to the Court:
 - a. The Commission;
 - b. The State Party which has lodged a complaint to the Commission;
 - c. The State Party against which the complaint has been lodged at the Commission;
 - d. The State Party whose citizen is a victim of human rights violation;
 - e. African Intergovernmental Organizations.
 - 2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
 - 3. The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals, to institute cases directly before it, in accordance with Article 34(6) of this Protocol.
- 16. Article 34(6) of the Protocol provides thus:

At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State Party which has not made such a declaration.

- 17. The Court also notes that Rule 90 of the Rules, provides that:

Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice.

- 18. In respect of the Applicants, the Court notes that the NGO Campaign for Social Justice and Constitutional Democracy in Africa was included as an Applicant. This NGO, however, and as confirmed by the Applicants' counsel, does not have observer status before the Commission. It is thus not in a position to commence, or be Party, to an Application before this Court as per the dictates of Articles 5(3) and 34(6) of the Protocol.

- 19. As for the Respondent States to this Application, the Court notes that out of all the Respondents cited only the following are parties to the Protocol and have deposited the Declaration: Burkina Faso, Republic of Ghana, Republic of Niger, Republic of Gambia, Republic of Mali and Republic of Guinea

Bissau. *Prima facie*, therefore, the Court has personal jurisdiction over these States.

- 20. The Court also notes that the Federal Republic of Nigeria, Republic of Togo and Republic of Senegal are parties to the Protocol but have not deposited the Declaration. The Court, therefore, manifestly lacks personal jurisdiction over these States.
- 21. As for the Republic of Côte d'Ivoire and Republic of Benin, the Court recalls that these States formally withdrew their Declaration. The withdrawals became effective on 30 April 2021 and 26 March 2021, respectively. The Court, therefore, lacks jurisdiction over these States.
- 22. With regard to the Republic of Cabo Verde, Republic of Sierra Leone, Republic of Liberia and Republic of Guinea, the Court notes that these States are not parties to the Protocol and have thus not deposited the Declaration. Resultantly, the Court has no jurisdiction over them.

**

- 23. Given the totality of the above circumstances, and for purposes of judicial efficiency and the proper administration of justice, the Court, *suo motu*, invokes Rule 90 of its Rules and decides to strike out the NGO Campaign for Social Justice and Constitutional Democracy in Africa as an Applicant in this matter.
- 24. In the same vein, the Court also decides to strike out the following States, as Respondents, in this matter: Republic of Benin, Republic of Côte d'Ivoire, Republic of Cabo Verde, Republic of Guinea, Republic of Liberia, Federal Republic of Nigeria, Republic of Togo, Republic of Senegal and Republic of Sierra Leone.
- 25. As a result of the Court's decision above, this Application will only proceed as against the following States, which are Parties to the Protocol and have also deposited the Declaration: Burkina Faso, Republic of Gambia, Republic of Ghana, Republic of Guinea Bissau, Republic of Mali, and Republic of Niger.
- 26. Given the striking out of the Respondent States listed above, it is necessary to change the title of the Application. This change, however, will not adversely affect either the procedural or substantive rights of the Applicants. [4](#page-12-0) Consequently, the Court decides that this Application be henceforth renamed as Application No. 005/2024 – *Chief Festus A. Ogwuche & 24 Others v. Burkina Faso and 5 Other States.* The Court further decides that the renamed Application be served on the relevant Respondent States as identified herein earlier.

V. OPERATIVE PART

27. For these reasons:

THE COURT

Unanimously,

- i. **Holds** that the following States are struck out of this Application as Respondents: Republic of Benin, Republic of Côte d'Ivoire, Republic of Cabo Verde, Republic of Guinea, Republic of Liberia, Federal Republic of Nigeria, Republic of Togo, Republic of Senegal and Republic of Sierra Leone;
- ii. **Holds** that the Application shall proceed only in respect of the Respondent States that have ratified the Protocol and deposited the Declaration being: Burkina Faso, Republic of Gambia,

⁴ **Karata Ernest and Others v. United Republic of Tanzania** (procedure) (27 September 2013) 1 AfCLR 356, § 8.

Republic of Ghana, Republic of Guinea Bissau, Republic of Mali, and Republic of Niger;

- iii. **Holds** that this Application is henceforth renamed as **Chief Festus A. Ogwuche & 24 Others v. Burkina Faso & 5 Other States;**
- iv. **Holds** that the renamed Application be served on the States earlier identified as the correct Respondents to this Application.

Signed:

Chafika BENS AOULA, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Imani D. ABOUD, Judge;

Dumisa B. NTSEBEZA, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar

Done at Arusha, this Seventeenth Day of June in the Year Two Thousand and Twenty-Five in English and French, the English text being authoritative.

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