

UGANDA / JUDGMENT

Soumare v Republic of Mali

(Application 038/2019) [2023]

AfCHPR 23 (5 September 2023)

[2023] AfCHPR 23

COURT

African Court on Human and Peoples Rights

BEFORE

Aboud P, Adjei J, Anukam J, Ben Achour J,
Bensaoula J, Chizumila J, Kioko J, Mengue J,
Ntsebeza J, Tchikaya J

CASE / FILE NUMBER

Application 038/2019

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||| ![(data:image/png;base64...)] | UNIÃO AFRICANA ||| ||| AFRICAN COURT ON HUMAN
AND PEOPLES' RIGHTS ||| COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES |||
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THE MATTER OF

AMINATA SOUMARE

V.

REPUBLIC OF MALI

APPLICATION NO. 038/2019

RULING

5 SEPTEMBER 2023

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The Court, composed of: Imani D. ABOUD, President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, 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]](#footnote-1) Judge Modibo Sacko, a Malian national and Vice-President of the Court did not hear the Application.

The matter of

Aminata SOUMARÉ

represented by

Mr Kasongo Mayombo, Advocate of the Bar of the Democratic Republic of Congo, Member of the law firm “*Contentieux et Affaires Internationales*”

Versus

REPUBLIC OF MALI

represented by

Me Kadidia Sangaré, Advocate of the Bar Association of Mali

After deliberation,

Hereby renders the followings Ruling:

THE PARTIES

Ms Aminata Soumaré (hereinafter referred to as "the Applicant") is a Malian national. She was Director of a multi-service communication agency responsible for managing the image of the President of the National Transitional Council of Mali. The Applicant alleges the violations of her rights during proceedings before domestic courts.

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. On 19 February 2010, the Respondent State also deposited 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 Organizations (hereinafter referred to as "the Declaration").

SUBJECT OF THE APPLICATION

Facts of the matter

The Applicant alleges that, on 19 April 2012, she was abducted and held for three (3) weeks. She affirms that during the said period, she was raped and tortured.

She further avers that, on the night of her abduction, she was interrogated by police officers at the "office of the National Police" in relation to some militants and others who were plotting a coup.

The Applicant further affirms that on 27 April 2012, the Inspector General and Head of the Police Investigation Department requested a specialist neurologist to assess her health condition.

She states that on 17 May 2012, she was detained for attempted offences against State security and criminal enterprise. She was held there without trial for six (6) months in degrading and inhumane conditions.

The Applicant avers that, on 22 June 2012, her lawyer filed an application for bail before the Investigating Judge of the Trial Court of the Third District of Bamako, which was dismissed on 25 June 2012, on the grounds that the charges against her were serious and that the application was premature. On 19 July 2012, a new application for bail was filed and was also dismissed on 30 July 2012.

On 16 October 2012, the Applicant's medical report was filed. On 17 October 2012, the Applicant applied to the President of the Indictment Division of the Bamako Court of Appeal for permission to travel abroad to seek medical treatment. Her request was granted on 22 November 2012 and was accorded a period of two (2) months to this effect, with effect from the day of her exiting the national territory.

The Applicant subsequently travelled to a neurology hospital in New York for treatment. On 13 March 2013, the Investigating Judge of the Trial Court of the Third District of Bamako issued an acquittal order for insufficient evidence.

On 10 November 2014, the Applicant seized the President of the Malian Section of the International Federation for Human Rights (FIDH-Mali) to denounce the violations she suffered during her detention.

On 28 May 2018, the Applicant seized the Justice, Truth and Reconciliation Commission established within the framework of transitional justice process in Mali following the events of May 2021. The said Commission issued her Receipt No. 65665657 which enabled her to access free medical and psychological assistance provided by the National Medical Assistance Agency.

Finally, the Applicant maintains that on 18 February 2019, she filed a complaint dated 16 February 2019 with the investigative judge for the violation of her rights during her detention.

Alleged violations

The Applicant alleges violation of the following rights:

The right to a fair trial, protected by Article 7 of the Charter;

The right to an effective remedy, as provided for in Article 8 of the Universal Declaration of Human Rights (UDHR);

The right of access to a judge and to justice, protected by Article 7(1) of the Charter and Article 10 of the UDHR;

The obligation to ensure the safety of prisoners in criminal proceedings;

The right to life and integrity of the person, protected by Article 4 of the Charter and Article 6 of the International Covenant on Civil and Political Rights (ICCPR);

The right to protection of the dignity of an imprisoned person protected by Article 5 of the Charter and Article 10(1) of the ICCPR;

The right to equality of arms;

The adversarial principle between the parties and the right to have one's cause heard.

SUMMARY OF THE PROCEDURE BEFORE THE COURT

The Application was filed at the Registry of the Court on 2 July 2019. It was served on the Respondent State on 14 August 2019 for its response within Sixty (60) days.

On 26 August 2019, the Applicant filed at the Registry a request for provisional measures, which was also served on the Respondent State.

The Parties filed all additional pleadings and procedural documents within the time limits set by the Court.

Pleadings were closed on 28 September 2021 and Parties were duly informed.

PRAYERS OF THE PARTIES

The Applicant prays the Court to:

Declare the Application admissible;

Order the Respondent State to pay appropriate compensation and provide adequate medical care to remedy the rights violated;

Order that criminal proceedings be instituted against the perpetrators of acts of torture, rape and violence who assaulted her;

Make an order as to all other convictions to be made by the Respondent State;

Grant compensation for all material and moral damages suffered and all other damages resulting from ill-treatment;

Grant reparation for the pain and loss of gain suffered;

Grant reparation for the loss of opportunity to have a better life through her communication work with high-level economic operators;

Order medical care because she is in a foreign country;

Grant reparation for the loss of schooling of her three-year-old daughter who is cared for by her relatives;

Order the Respondent State to pay her the sum of Forty-Five Million (45,000,000) CFA francs as compensation for the material damage suffered;

Order the Respondent State to pay her the sum of Ten Million (10,000,000) CFA francs for non-pecuniary damage;

Order the provision of emergency medical care;

Order urgent measures to put an end to the psychological pressure to which she is subjected by the security services of the Respondent State.

For its part, regarding jurisdiction and admissibility, the Respondent State prays the Court to:

Find that the preliminary objection raised by the Respondent State is admissible;

Find that the preliminary objections raised by the Respondent State are well founded;

Declare the Application inadmissible.

On the merits, the Respondent State prays the Court to dismiss the Application as unfounded.

JURISDICTION

The Court notes that Article 3 of the Protocol provides as follows:

The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol, and any other relevant Human Rights instruments ratified by the States concerned.

In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Rule 49(1) of the Rules provides that “the Court shall conduct a preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and the [...] Rules”.^{[[2]]}(#footnote-2)

Based on the above-mentioned provisions, the Court must, in each Application, conduct a preliminary examination of its jurisdiction and rule on objections thereto, if any.

The Court notes that the Respondent State does not raise any objection to its material jurisdiction.

Having noted that nothing on the record shows that it does not have jurisdiction, the Court finds that it has:

Material jurisdiction, insofar as the Applicant alleges violation of human rights protected under Articles 4, 5 and 7 of the Charter, Articles 8 and 10 of the UDHR and Article 6 of the ICCPR, instruments to which the Respondent State is a party.^{[[3]]}(#footnote-3)

Personal jurisdiction, insofar as the Respondent State is a party to the Protocol and has deposited the Declaration.

Temporal jurisdiction, insofar as the violations alleged occurred after the Respondent State became a party to the Protocol.

Territorial jurisdiction, insofar as the alleged violations occurred in the territory of the Respondent State.

In view of the foregoing, the Court finds that it has jurisdiction to hear the present Application.

ADMISSIBILITY

Article 6(2) of the Protocol provides that, “the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.

Pursuant to Rule 50(1) of the Rules of Court, “the Court shall conduct preliminary examination of the admissibility of an Application filed before it in accordance with the Charter, the Protocol and these Rules”.

Rule 50(2) of the Rules, which restates in substance the provisions of Article 56 of the Charter, provides as follows:

Applications to the Court shall comply with the following conditions:

disclose the identity of the Applicant notwithstanding the latter’s request for anonymity;

comply with the Constitutive Act of the Union and the Charter;

not contain any disparaging or insulting language;

not be based exclusively on news disseminated through the mass media,

be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

be filed 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

not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

In the instant case, the Respondent State raises an objection to the admissibility of the Application, based on non-exhaustion of local remedies. The Court will rule on the said objection before considering other aspects of its jurisdiction, if necessary.

Objection based on non-exhaustion of local remedies

The Respondent State submits that the Applicant did not exhaust available local remedies. It submits that she was required to lodge her complaint with the local judicial authorities and that, if her complaint was dismissed at first instance, she could appeal. According to the Respondent State, if the Applicant had seized the judicial authorities, local remedies could have been considered to have been exhausted.

The Respondent State asserts that an Act on civil, commercial, social and criminal proceedings has been in force since 2001. According to the Respondent State, the provisions set out therein allow for the exercise of local remedies, which are guaranteed to be effective, sufficient and available.

The Respondent State further contends that the Applicant merely alleges that she filed several complaints that were dismissed, without providing any evidence to buttress her allegations or indicating the authority she seized and the decision rendered. The Respondent State further submits that evidence is required to determine whether local remedies have been exhausted. According to the Respondent State, no evidence was included in the file to indicate any action taken by the Applicant locally, whether at first instance or before the appellate courts, whereas she had the opportunity to do so since she was assisted by counsel.

*

The Applicant did not respond on this point.

The Court recalls that, in accordance with Article 56(5) of the Charter, the provisions of which are restated in Rule 50(2) of the Rules, applications shall be considered if they “are filed after exhausting local remedies, if any, unless it is obvious that the procedure is unduly prolonged”.

The Court notes that the rule of exhaustion of local remedies seeks to afford States the opportunity to examine allegations of human rights violations within their jurisdiction before an international body is seized to determine the State’s responsibility in that regard. ^{[[4]](#footnote-4)}

The Court underscores that the local remedies to be exhausted must be ordinary judicial remedies. ^{[[5]](#footnote-5)} Moreover, such remedies must not only be provided for in the judicial system of the Respondent State but must also be effective, ^{[[6]](#footnote-6)} in the sense that they are capable of remedying the situation at issue ^{[[7]](#footnote-7)} and sufficient to remedy the Applicant’s situation.

With regard to the existence of remedies, the Court notes that under Section 62 of the Code of Criminal Procedure of the Respondent State provides that: “Any person who claims to be injured by a crime or misdemeanour may, by lodging a complaint, bring a civil action before the competent investigating judge”.

The Court notes that this text provides for the civil party action, a remedy available to any persons who consider themselves as victim of a crime or misdemeanour. The Court notes that, in the present case, there is no legal or factual impediment to the exercise of this remedy by the Applicant. The Court therefore considers that the remedy is available.

With regard to the effective and satisfactory nature of the remedies, the Court notes that Section 89 *et seq.* of the Code of Criminal Procedure spell out the procedure to be followed in a civil party action. More importantly, the judge shall “in accordance with the law, carry out all acts of information that he deems useful for the manifestation of the truth”.

Furthermore, Section 112 of the said law stipulates that: “Counsel for the accused and the civil party, during the investigation and after having communicated the procedure to the registry, may make written submissions at the hearing of new witnesses, set up witness confrontations, expert examinations and undertake any investigative acts they deem useful for the defense of the accused and the interests of the civil part. The judge must give reasons for the order refusing to carry out the additional investigative measures requested of him. The accused and the civil party may, by themselves or through counsel, appeal against this order ...”.

It emerges from the aforementioned provisions that the investigating judge may conduct all investigative proceedings requested by the accused or the civil party who also has the right to appeal the decision of a judge who refuses to carry out the requested investigative acts.

The Court notes that bringing a civil party action enables the victim to participate in the proceedings and to request the investigating judge directly to carry investigation.

In light of these provisions, the Court considers that the remedy before the investigating judge in the Respondent State's judicial system is effective and satisfactory and that the Applicant could have pursued it if only to have her complaint examined. ^{[[8]](#footnote-8)}

The Court notes that the complaint lodged by the Applicant with the President of the Malian Section of the International Federation for Human Rights on 10 November 2014 does not constitute a remedy within the meaning of Article 56(5) of the Charter, since the Federation is not a court.

With regard to the Applicant's assertion that she filed a complaint before the investigating judge and was a civil party, the Court notes that the Application only includes the text of the complaint, written and signed by her. However, the Applicant does not provide proof that the said complaint was actually registered before the competent investigating judge. Nor did she submit any decisions issued by domestic judicial authorities in relation to the complaint. It emerges from the foregoing that the Applicant has not provided proof of the local remedies she claims to have pursued before domestic courts prior to filing the present Application.

In light of the foregoing, the Court finds that the application does not meet the admissibility requirements set out in Article 56(5) of the Charter. It therefore upholds the Respondent State's objection.

Other conditions of admissibility

The Court recalls that the admissibility requirements of an application are cumulative so that if one of them is not fulfilled, the entire application is inadmissible. ^{[[9]](#footnote-9)}

In the instant case, as the application does not meet the requirement of exhaustion of local remedies under Article 56(5) of the Charter, there is no need to consider the other admissibility requirements.

Accordingly, the Court declares the application inadmissible.

REQUEST FOR PROVISIONAL MEASURES

The Court notes that on 26 August 2019, the Applicant filed a request for "provisional measures to put an end to continuous irreparable harm ensuing from the acts of torture and rape in breach of Article 27 of the Protocol".

Having already declared the application inadmissible for non-exhaustion of local remedies, the Court considers that the request for provisional measures is moot.

COSTS

None of the Parties made any submissions on costs.

**

The Court recalls that under Rule 32(2)[[10]](#footnote-10) of its Rules, “unless otherwise decided by the Court, each party shall bear its own costs”.

The Court considers that there is no need, in the instant case, to depart from those provisions. It therefore decides that each Party shall bear its own costs.

OPERATIVE PART

For these reasons,

THE COURT

Unanimously

On jurisdiction

Declares that it has jurisdiction.

On admissibility

By majority of nine (9) for and one (1) against, Justice Chafika Bensaoula having filed a declaration,

Upholds the Respondent State’s objection to admissibility;

Declares the application inadmissible.

On the request for provisional measures

Finds that the request for provisional measures is unfounded.

On costs

Orders each Party to bear its own costs.

Signed

Imani D. ABOUD, President;

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;

Dennis D. ADJEI, Judge;
and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the declaration of Justice Chafika Bensaoula is appended to the present Judgment.

Done at Arusha, this Fifth day of September in the year two thousand and twenty-three, in Arabic, English and French, the French text being authoritative.

1. Rule 8(2), Rules of Court, 2 June 2010. [↑](#footnote-ref-1)
2. Rule 39(1) of the Rules of Court, 2 June 2010. [↑](#footnote-ref-2)
3. The Respondent State became a party to the International Covenant on Civil and Political Rights on 16 July 1974. [↑](#footnote-ref-3)
4. *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits), ACtHPR, Application No. 006/2012, Judgment of 26 May 2017, §§ 93 and 94. [↑](#footnote-ref-4)
5. *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 96. [↑](#footnote-ref-5)
6. *Sébastien Germain Ajavon v. Republic of Benin* (4 December 2020) (merits and reparations) 4 AfCLR 133, § 86. [↑](#footnote-ref-6)
7. *Mamadou Diakité and Another v. Republic of Mali* (jurisdiction and admissibility) (28 September 2017) 2 AfCLR 118, § 42. [↑](#footnote-ref-7)
8. *Ibid.*, §§ 44-51. [↑](#footnote-ref-8)
9. *Yacouba Traoré v. Republic of Mali*, ACtHPR, Application No. 002/2019, Judgment of 22 September 2022 (jurisdiction and admissibility), § 49; *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018), 2 AfCLR 237, § 63; *Rutabingwa Chrysanthé v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des anciens travailleurs ALS v. Republic of Mali* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 73, § 39. [↑](#footnote-ref-9)
10. Article 30(2) of the Rules of Court of 2 June 2010. [↑](#footnote-ref-10)

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