

**Kalilou and Ibrahim v Côte d'Ivoire (joinder of cases) (2019)  
3 AfCLR 533**

*Applications 036/2019, 037/2019, Konate Kalilou and Doumbia Ibrahim v Republic of Côte d'Ivoire*

Order, 26 September 2019. Done in English and French, the French text being authoritative.

Judges: KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA, ANUKAM and ABOUD

Recused under Article 22: ORE

The Applicants had all been sentenced to twenty (20) years imprisonment for robbery, were represented by the same lawyer and made the same claims in relation to violations of the Charter. The Court decided to join the cases.

**Procedure** (joinder of cases, 7)

Separate opinion: BENSAOULA

**Procedure** (joinder of cases, 13)

1. Considering the Application dated 10 June 2019, received at the Registry of the Court on 22 July 2019, from Mr Konate Kalilou (hereinafter referred to as "the Applicant") filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State");
2. Considering the Application dated 10 June 2019, received at the Registry of the Court on 22 July 2019, from Mr Doumbia Ibrahim filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State");
3. Considering that Rule 54 of the Rules of Procedure of the Court, provides: "The Court may, at any stage of the pleadings, of its own volition or in response to an application of one of the parties, order the joinder of interrelated cases and pleadings where it deems it appropriate in fact and in law";
4. Considering that, while the Applicants are different as above stated, they are represented by the same lawyer, and the Applications are filed against the same Respondent State, which is the Republic of Côte d'Ivoire;
5. Considering that the facts supporting the Applications are similar, since they originate from the trial of Applicants and their sentences, without representation by counsel, to twenty (20) years imprisonment by the Divo Court of First Instance for ganging up to commit armed robbery with violence; this 20-year sentence was

reduced after appeal to a fixed term of imprisonment of fifteen (15) years by judgment No 141 of 21 March 2013 of the Second Criminal Chamber of the Daloa Court of Appeal, the judge of the second instance confirming judgment No. 342 of 14 June 2012;

6. Considering that in both proceedings, the Applicants allege that the Respondent State has violated their rights to a fair trial, equality and dignity, the right of access to justice and the right to an effective remedy as set out in the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights and that the reliefs sought are similar in nature;
7. Considering therefore that the facts in support of the Applications, the alleged violations and the measures requested are similar and taking into account the identity of the Respondent State; and
8. Mindful of all of the above, a joinder of cases and pleadings in relation to these Applications is appropriate in fact and in law, and for the good administration of justice pursuant to Rule 54 of the Rules.

## I. Operative Part

9. For these reasons,  
The Court,  
*Unanimously,*  
Orders:

- i. the joinder of cases and proceedings in the Applications filed by the Applicants against the Respondent State;
- ii. that henceforth the Applications be referred to as "Consolidated Applications 036/2019 and 037/2019 – *Konate Kalilou and Another v Republic of Côte d'Ivoire*;
- iii. that consequent upon the joinder, this Order and the pleadings relating to the above referred Matters shall be served on all the Parties.

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## Separate opinion: BENSAOULA

1. I share the opinion of the majority of the Judges as to the jurisdiction of the Court and the joinder of cases and proceedings

with regard to the applications filed by the Applicants against the Respondent State.

2. On the other hand, I think that the manner in which the Court dealt with the joinder runs counter to the notion of joinder.
3. Article 54 of the Rules of Court provides that “The Court may at any stage of the pleadings either on its own volition or in response to an application by any of the parties, order the joinder of interrelated cases and pleadings where it deems it appropriate, both in fact and in law”.
4. The Rules do not state anything about what is meant by joinder of cases or the procedure to be followed for such joinder.
5. It appears from the case file that the four [sic] Applicants referred to above seized the Court with separate applications dated 28 June 2019, entered on the cause list under different numbers.
6. That the four Applicants were sentenced by the same court of first instance to 20 years’ imprisonment, a sentence upheld on appeal.
7. That the Applicants all have claims against the Republic of Côte d’Ivoire.
8. That, in fact and in law, the joinder is in order in the instant case.
9. However, although the Court, in its Judgment (cover page and facts) made the distinction between each application regarding the merits and, by citing the number of each application, it reproduced the four numbers in the operative part, insisting on the fact “That henceforth the Applications be referred to as “Consolidated Applications 036/2019 and 037/2019 - Konate Kalilou and Doumbia Ibrahim v. Republic of Côte d’Ivoire”.

In my opinion, this is wrong for the following reasons:

10. According to Dictionnaire de droit international, the joinder decision is a “decision by which a court brings together two or more proceedings that were instituted separately.”
11. In other words, the purpose of the joinder leads us to conclude that in the event of joinder of proceedings, the joined case becomes part of the principal case since the cases are related. Since the ancillary case becomes part of the principal to make it a single procedure, the number of the principal is retained and becomes the first case in the operative part. The reasoning may include the different case numbers depending on the role, for purposes of explaining their existence and the reasons for the joinder. In the operative part, however, it is no longer necessary to list out the various case numbers. The number of the first case alone is valid.
12. The purpose of joining related cases is to make them one case and to treat all claims as though they were only one. As such, after being a set of applications bearing different numbers, the case becomes one bearing a single number in accordance with

the principle of the good administration of justice.

13. Unfortunately, in view of the silence of the internal instruments and regulations of the various international human rights jurisdictions, although these courts render joinder decisions in their operative parts, they remain silent regarding the various details relating thereto.

In the light of the foregoing, I think the operative part of the joinder order is erroneous for two reasons:

To state that “That henceforth the Applications be referred to as “Consolidated Applications...” does not make sense for the simple reason that the joinder decision is an order which does not rule on the merit and which will be attached to the procedure for a good administration of justice. This will in no way not change the title of the case which will remain “the applicants v. Republic of Côte d’Ivoire”.

And that listing out all the numbers of all the joined applications “Nos. 036/2019 and 037/2019 - Konate Kalilou and Doumbia Ibrahim v. Republic of Côte d’Ivoire “ is meaningless after the joinder decision because for a good administration of justice, the Court has decided that for the merits of the case it will rule by a single judgment and that it is against this good administration of justice to join cases and maintain all the numbers of the joined cases.

It would have been more logical to name the case after the number of the first application to which the others were joined, and the parties referred to as applicants against the Respondent State.