

**Collectif Des Anciens Travailleurs de la Semico Tabakoto v Mali (jurisdiction and admissibility) (2020) 4 AfCLR 827**

Application 009/2018, *Collectif Des Anciens Travailleurs de la Semico Tabakoto v Republic of Mali*

Ruling (jurisdiction and admissibility), 27 November 2020. Done in English and French, the French text being authoritative.

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

The Applicants, who are former employees of a mining company, alleged that the Respondent State violated certain of their Charter rights by its failure to act against the mining company for the use of harmful chemicals in mining that resulted in high levels of lead contamination in their blood. The Court upheld the Respondent State's preliminary objection challenging the capacity and standing of the Applicants' legal representatives.

**Jurisdiction** (personal, 21, material, 22, temporal, 23, territorial, 24)

**International law** (general principles of law, 31; authority of a legal representative 32-36)

**Procedure** (preliminary objection, 37)

## I. The Parties

1. Collectif des Anciens Travailleurs de la Semico Tabakoto Company (herein-after referred to as "the Applicants") is an informal group of forty nine (49) former workers of the Ségala Mining Corporation (SEMICO), which has been running activities in the Tabakoto gold mine since 2005. The Applicants are all nationals of Mali and their complaint is about the high level of lead contamination in their blood, resulting from their employment in the said company.
2. The Application is brought against the Republic of Mali (herein-after referred to as "the Respondent State") which became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 10 May 2000. On 19 February 2010, the Respondent State also deposited the Declaration prescribed in Article 34 (6) of the Protocol accepting the Court's jurisdiction to hear cases brought before the Court by individuals and

Non-Governmental Organisations.

## **II. Subject of the Application**

### **A. Facts of the matter**

3. SEMICO is a subsidiary of the multinational company (Endeavor) registered in the Cayman Islands with its headquarters in London, United Kingdom. It is listed on the Toronto Stock Exchange, Canada and it has been running the activities of the Tabakoto gold mine in Mali since 2005.
4. The Applicants state that the mining activity of SEMICO makes use of highly toxic substances such as cyanide, lead, arsenic and acids. As a consequence, high levels of lead were found in the Applicants' blood after tests were conducted.
5. The Applicants' further state that, on 8 December 2016, the National Federation of Mines and Energy Workers (FENAME) filed an application against SEMICO before the Public Prosecutor at the Bamako Court of First Instance, accusing the Federation of unintentionally inflicting bodily harm on the workers and failing to provide assistance to persons in danger, contrary to Articles 207, 208, 220 and 221 of Law No. 0179 of 20 August 2001 on the Malian Penal Code.
6. The Applicants aver that on 13 December 2016 the Public Prosecutor received the above-mentioned application and an investigation was opened by the police in the sixth district of Bamako. The workers and the company's doctor were heard, and an official report No. (0011 / 6A) was issued on 17 January 2017.
7. It is also the Applicants' allegation that on 13 February 2017 the Public Prosecutor issued Decision No. (082 / RP2017) shelving the case and no further action was taken on the ground that criminal prosecution of legal entities is not provided for in the laws of Mali.
8. On 3 January 2018, the Applicants sent a second reminder to the Public Prosecutor, but did not receive a response.

### **B. Alleged violations**

9. The Applicants allege that the Respondent State violated:
  - i. Their right to bring a matter before a court of competent jurisdiction and to seek effective remedy under Articles 7(1)(a) of the Charter and 2 (3) of the International Covenant on Civil and Political Rights (ICCPR).

- ii. The right to guarantee the independence of the courts as enshrined in Articles 26 of the Charter and 14 (1) of the ICCPR.
- iii. The right of every person to enjoy the best physical and mental health, and the duty to take necessary measures to protect the health of its people and ensure their access to medical care in case of illness, as stipulated in Article 16 of the Charter.
- iv. The right of the people to a satisfactory, comprehensive and appropriate environment for their development, as stipulated in Article 21 of the Charter.

### **III. Summary of the Procedure before the Court**

10. The Application was filed on 20 February 2018 and served on the Respondent State on 28 May 2018.
11. On 25 July 2018, the Registry received the Response of the Respondent State, which it served on the Applicants on 27 July 2018, giving them a thirty (30) day deadline to file their Reply. The Applicants did not file a Reply.
12. Pleadings were closed on 9 April 2019 and the Parties were duly notified.

### **IV. Prayers of the Parties**

13. The Applicants pray the court to:
  - i. Find the Respondent State guilty and order it to pay all medical expenses for the spouses and the children of each employee from 2013 until the end of the proceedings in the matter.
  - ii. Compel the Respondent to pay the arrears of contributions to the National Social Welfare Institute (INPS) from the date of layoff until the end of 2017 in order to update the contributions.
  - iii. Pay 20 million CFA francs (20,000,000) to each worker, or a total of nine hundred and eighty million francs CFA (980,000,000) for the 49 workers, as reparation for the damage suffered.
14. The Respondent State prays the Court to:
  - i. In terms of form, rule on the admissibility of the Application of the Group of Former Workers of SEMICO Tabakoto;
  - ii. On the merits: to find that the Application has no merit and reject all the prayers of the Applicants.

### **V. Jurisdiction**

15. The Court recalls that Article 3 of the Protocol provides as follows:
  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.
16. The Court notes that Rule 49(1) of the Rules<sup>1</sup> provides that: “[t]he Court shall ascertain its jurisdiction ...”
17. Based on the aforementioned provisions, the Court must, in every Application, conduct an examination of its jurisdiction and dispose of objections to its jurisdiction, if any.
18. In this Application, the Respondent State has raised one objection to the Court’s jurisdiction relating to the Court’s lack of personal jurisdiction. The Court will now address this objection before ruling on the other aspects of its jurisdiction.

**A. Objection based on lack of personal jurisdiction:**

19. The Respondent State contends that, to be able to take legal action before the courts, the Applicant must be a natural person who is able to exercise his civil rights or a legal entity under public or private law. It further contends that the group of former workers, who are Applicants in the instant case, have no legal personality or, at least, proof of their legal existence that would allow them to bring an action, whether as applicants or as respondents. The Respondent State submits, therefore, that the Application is filed in the name of an entity that does not have any legal status.
20. The Applicants did not respond to the Respondent State’s objection.

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21. The Court notes that Article 5(3) of the Protocol permits individuals to bring applications against States that have deposited the Declaration. The Court finds, therefore, that the Applicants’ right to commence this action is guaranteed by Article 5(3) of the Protocol.<sup>2</sup> Consequently, the Respondent State’s objection in

1 Formerly, Rule 39(1) of the Rules of 2 June 2010.

2 *Collectif des anciens travailleurs du laboratoire ALS v Republic of Mali*, AfCPHR, Application 042/2016, Ruling of 26 March 2019 (jurisdiction and admissibility), §17.

relation to the Court's personal jurisdiction is dismissed.

## **B. Other aspects of jurisdiction**

22. The Court recalls that its material jurisdiction is established so long as the Applicants allege violations of provisions of the Charter or any other human rights instrument ratified by the Respondent State.<sup>3</sup> In the instant case, the Applicants allege violation of Articles 7 (1), 16, 24, and 26 of the Charter and Articles 2 (3), 17 (1) of the International Covenant on Civil and Political Rights which have been ratified by the Respondent State<sup>4</sup>. The Court, therefore, finds that it has material jurisdiction to hear the Application.
23. In respect of its temporal jurisdiction, the Court notes that the alleged violations occurred after the entry into force of the Charter and Protocol, and after the Respondent State had deposited the Declaration. The Court holds, therefore, that it has temporal jurisdiction to hear the Application.
24. With regard to its territorial jurisdiction, the Court notes that the alleged violations occurred in the territory of the Respondent State, and that it therefore has territorial jurisdiction.
25. In light of the foregoing, the Court holds that it has jurisdiction to hear the instant Application.

## **VI. Preliminary objection**

26. The Respondent State has raised an objection relating to the Applicants' representation before the Court. The Court considers it apposite to address this objection first.

### **A. Objection to the mandate of the Applicants' representative before the Court**

27. The Respondent State raises objection as to the admissibility of the Application, challenging Mr. Yacouba Traoré's mandate of 22 November 2016, authorising him to represent the Applicants. The Respondent State avers that this mandate does not give the representative the authority to represent the group of former workers before this Court. It rather gives him the right to represent them only before the Criminal Court of 2<sup>nd</sup> District of the Bamako

3 Article 3 (1) of the Protocol.

4 The Respondent State became a Party to the International Covenant on Civil and Political Rights on 16 July 1974

region

28. The Applicants did not respond to the Respondent State's objection.

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29. The Court notes that Article 10 (2) of the Protocol provides that, "Any party to a case shall be entitled to be represented by a legal representative of the party's choice ...."
30. The Court also notes that Rule 31 (1) of the Rules states that, "Every party to a case shall be entitled to be represented or to be assisted by counsel and/or by any other person of the party's choice."
31. The Court recalls that international adjudication draws, in large part, from the general principles of law as contained in national laws,<sup>5</sup> and the provisions of Article 10 of the Protocol are part of this practice.
32. According to the general principles of law, legal representation must take place within the scope of the terms agreed with the agent, and if the agent oversteps his mandate, the effects shall not apply to the principal, in accordance with the provisions of the agency agreement.
33. If the mandate is worded in general terms and is not precise, then it does not give any powers to the agent except within the purview of management work. In the case of acts of disposal such as contentious matters, a special mandate is required.
34. The Court notes in the present case, even if Mr. Yacouba Traoré signed and filed the Application on behalf of the Collective of Former Workers, nothing in the file indicates that he holds a mandate authorizing him to represent Collective or its members.
35. Furthermore the Court notes that on 22 November 2016, the Applicants mandated Mr. Yacouba Traoré of the National Federation of Mines and Energy (FENAME) to represent them before the Bamako Court, but not before the African Court. In the circumstances, it is clear that Yacouba Traoré does not have any

5 M. Mahoué, *The African Charter on Human and People's Rights and the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights*, comments on article by article, Edition Brulant, 2011, p1313.

mandate to represent the Applicants before this Court.

36. In light of the foregoing, the Respondent State's objection relating to the mandate of the Applicants' representative is upheld.

## VII. Admissibility

37. The Court recalls that admissibility of applications is governed by the requirements contained in Article 56 of the Charter, which are reiterated in Rule 50 of the Rules. The Court also recalls that by virtue of Rule 49(1) of the Rules, it must, in every application, ascertain the admissibility of an application. In the present case, however, having upheld the Respondent State's preliminary objection, the Court holds that it is unnecessary to examine the admissibility requirements as stipulated in Article 56 of the Charter.

## VIII. Costs

38. Neither party made submissions on costs.  
39. Pursuant to Rule 32 (2) of the Rules of Court,<sup>6</sup> "Unless otherwise decided by the Court, each party shall bear its own costs, if any".  
40. In the light of the foregoing, the Court decides that each Party shall bear its own costs.

## IX. Operative part

41. For these reasons:

The Court,

Unanimously,

*On jurisdiction*

- i. *Dismisses* the objection to lack of personal jurisdiction;
- ii. *Declares* that it has jurisdiction.

*On the preliminary objection*

- iii. *Upholds* the objection relating to the mandate of the Applicants' representative to bring proceedings before the Court;
- iv. *Declares* that the Application is inadmissible.

*On costs*

- v. *Orders* that each Party shall bear its own costs.

6 Formerly, Rule 30 of the Rules of 2 June 2010.