

Traore v Mali (admissibility) (2020) 4 AfCLR 665

Application 010/2018, *Yacouba Traore v Republic of Mali*

Ruling: Admissibility, 25 September 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 Applicant brought this action alleging that the circumstances of his dismissal from employment amounted to a violation of his rights guaranteed under the Charter. The Court declared the case inadmissible for non-exhaustion of local remedies.

Admissibility (exhaustion of local remedies, 39-42, 47, 50)

I. The Parties

1. Mr Yacouba Traore, (hereinafter referred to as “the Applicant”), of Malian nationality, is former Chief Chemist and former staff representative of the Australian Laboratory Service (ALS) Group Mali SARL. He alleges violation of his human rights as a result of the dismissal from his job, which he deems unlawful.
2. The Republic of Mali (hereinafter referred to as the “Respondent State”) 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 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”) on 20 June 2000. In addition, on 19 February 2010, the Respondent State made the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”) accepting the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations (NGOs).

II. Subject of the Application

A. Facts of the matter

3. The Applicant contends that he was recruited by the ANALAB Exploitation, a member company of ALS Mali SARL Laboratory Group, in 2006 as Chief Chemist to determine the gold content of

ores. Considering that he was not classified in the corresponding professional category and that his salary was below that category, he made claims for reclassification which led to reprisals, including an assignment in Bamako, allegedly, for purpose of training.

4. The Applicant argues that in Bamako, the reprisals continued and resulted in summons before the disciplinary board, layoffs and sabotage of his work by colleagues, under the instigation of the employer.
5. In this regard, he claims to have been unfairly dismissed on 31 August 2012, whereas his capacity as staff representative required his employer to seek prior authorisation from the Regional Director of labour, in accordance with Article L 277 of the Labour Code.
6. He avers that, following his dismissal, he referred the matter to the national director of labour for a hierarchical appeal, then to the Bamako Labour Court, which declared his dismissal unlawful by Judgment No. 007/JGT/2013 of January 7, 2013, in spite of which the situation has not changed.
7. The Applicant further contends that, on the side lines of these labour proceedings, on 22 February 2017, he filed a complaint with the Bamako Public Prosecutor for forgery and use of forged documents against the former National Director of Labour, the former Regional Director of Labour in Bamako and an employee of the Bamako labour service who were accomplices in his dismissal.
8. The said complaint was dismissed, as the Public Prosecutor considered that there had been no criminal law offence

B. Alleged violations

9. The Applicant alleges infringement of the following rights:
 - i. The right to respect for life and physical and moral integrity, enshrined in section 4 of the Charter; and
 - ii. The right to work under fair and satisfactory conditions, enshrined in Article 15 of the Charter.

III. Summary of the Procedure before the Court

10. The Application was filed at the Registry on 20 February 2018.
11. On 28 February 2018, the Registry requested the Applicant to indicate whether local remedies had been exhausted, to which

the Applicant responded in the affirmative on 27 March 2018.

12. The Parties filed their pleadings on merits and reparations within the time stipulated by the Court and these were duly exchanged.
13. On 16 June 2019, the Registry informed the parties of the close of proceedings.

IV. Prayers of the Parties

14. The Applicant makes the following prayers:
 - i. Reimbursement of arrears of contributions to the National Institute for Social Security (INPS) from August 2012 to 31 January 2017;
 - ii. Payment of the sum of eighty million (80,000,000) CFA francs as damages, in accordance with the letter of 2 October 2012 filed with the Labour Court;
 - iii. Payment of the sum of eight million (8,000,000) CFA francs as a reminder of the housing bonus, in accordance with the provisions of the mining Union agreement and the minutes of 08 December 2011, signed between FENAME and the mining operators;
 - iv. Reimbursement of his children and spouse's medical costs from his unlawful dismissal until the Court's decision;
 - v. Payment of the remaining overtime, amounting to one million (1,000,000) CFA francs, in accordance with the employer's commitments, under the aegis of the Ministry of Mines;
 - vi. Issuance of a work certificate in due and proper form subject to a penalty of one hundred thousand (100,000) CFA francs for each day of delay from the date of the Court's decision;
 - vii. Provisional Execution of the Judgment to take place, up to half of the sums allocated.
15. For its part, the Respondent State prays the Court to:
 - i. Declare the Application inadmissible;
 - ii. Dismiss the Applicant's Application as ill-founded;
 - iii. Award costs against the Applicant.

V. Jurisdiction

16. 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, the (...) 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.
17. The provisions of Article 3 of the Protocol are reflected, in substance, in Rule 26 of the Rules of Court (hereinafter referred

to as “the Rules”).

18. Furthermore, under Rule 39 (1) of the Rules, “[t]he Court shall conduct a preliminary examination of its jurisdiction ...”
19. The Court notes that, in the instant case, none of the material, personal, temporal and territorial aspects of its jurisdiction are disputed by the parties. However, the Court is required to satisfy itself that it has the jurisdiction to deal with the case.
20. As regards its material jurisdiction, the Court has consistently held that Article 3(1) of the Protocol confers on it the power to consider any application containing allegations of violations of rights protected by the Charter or by any human rights instrument ratified by the Respondent State concerned.¹
21. In the instant case, the Applicant alleges the violations of human rights guaranteed in the provisions of the Charter, which the Respondent State has ratified.
22. Accordingly, the Court has material jurisdiction.
23. In addition, the Court notes that when it receives an Application lodged by an individual, its personal jurisdiction is dependent on the Declaration made by the Respondent State in accordance with Articles 5(3) and 34(6) of the Protocol. In the instant case, the Respondent State made the said Declaration on 19 February 2010. It follows that the Court has personal jurisdiction.
24. Furthermore, as regards its temporal jurisdiction, the Court notes that the alleged violations took place after the entry into force of the Charter and the Protocol, and after the Declaration was made by the Respondent State. Consequently, the Court has temporal jurisdiction.
25. As to its territorial jurisdiction, the Court notes that the alleged violations took place in the territory of a Member State of the African Union. It follows that the Court has territorial jurisdiction.
26. In light of the foregoing, the Court declares that it has jurisdiction.

VI. Admissibility

27. 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”.
28. Furthermore, under Rule 39 of the Rules of Court: “The Court shall conduct a preliminary examination (...) of the conditions of admissibility of the application, as provided for in Articles (...) 56

¹ *Peter Joseph Chacha v United Republic of Tanzania*, (admissibility) (28 March 2014), 1 AfCLR 398 § 114.

of the Charter, and Rule 40 (...) of the Rules”.

29. Rule 40 of the Rules, which restates in substance Article 56 of the Charter, reads as follows:

Pursuant to the provisions of article 56 of the Charter to which article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:

1. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. comply with the Constitutive Act of the Union and the Charter;
3. not contain any disparaging or insulting language;
4. not be based exclusively on news disseminated through the mass media;
5. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. 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
7. 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.

30. The Respondent State raises an objection to admissibility of the Application based on the failure to exhaust local remedies.

A. Objection based on non-exhaustion of local remedies

31. Referring to Rule 34(4) of the Rules, the Respondent State points out that the Applicant has not adduced any evidence of exhaustion of local remedies, as the filing of copies of decisions rendered by national courts cannot legally satisfy this requirement.

32. It argues that only the production of certificates of no appeal, issued by the Registrar of the Labour Court, the Court of Appeal or the Supreme Court of Mali that can attest to this, in accordance with the Malian Code of Civil, Commercial and Social Procedure.

33. The Respondent State further submits that the copy of the Application notified to it is not accompanied by the certificate of absence of the application for a stay of execution in respect of Judgment No. 36 of 12 September 2017 handed down by the Supreme Court of Mali.

34. The Respondent State also contends that the Applicant voluntarily refrained from exercising certain legal remedies available in the Code of Civil Procedure of Mali, in particular the reversal of judgment against Supreme Court decision No. 36 of

12 September 2017, or under the Code of Criminal Procedure of Mali, in particular, the filing of a civil claim before the examining magistrate against the decision to dismiss his complaint against the labour administrators of 22 February 2017, which was notified to him on 29 January 2018 by the Public Prosecutor of the Republic.

35. For his part, the Applicant seeks the dismissal of the objection on the grounds that, with regard to the labour procedure, a post-Cassation judgment was handed down on 1 March 2018 by the Bamako Court of Appeal, a judgment that was not available at the time of the filing of the Application before this Court. However, on 2 May 2018, he filed the copy of the said judgment in the Court's Registry.
36. With regard to the criminal proceedings for forgery and use of forged documents initiated against the administrators on duty at the Regional Directorate and National Directorate of Labour, he recalls that the case was closed.
37. He concludes that he has exhausted local remedies, which makes his Application admissible.

38. The Court recalls that, in accordance with Articles 56(5) of the Charter and Rule 40(5) of the Rules, applications must be filed after the exhaustion of local remedies, if any, unless it is obvious that the procedure is unduly prolonged.
39. The Court holds that the requirement of exhaustion of local remedies prior to bringing a case before an international human rights court is an internationally recognised and accepted rule.²
40. He adds that the local remedies to be exhausted are ordinary judicial remedies, which must be available, that is, they can be used without hindrance by the Applicant,³ effective and sufficient, in the sense that they are "capable of satisfying the complainant" or of remedying the disputed situation.⁴

2 *Diakit  v Republic of Mali*, (jurisdiction and admissibility) (28 September 2017), 2 AfCLR 118, § 41; *Loh  Issa Konat  v Burkina Faso*, (merits) (5 December 2014), AfCLR, 1AfCLR 314, § 41.

3 *Ibid*, § 96.

4 *Ibid*, § 108.

41. Furthermore, the Court underscores that, in principle, the determination of whether local remedies are exhausted should be made on the date the case is brought before it.⁵
42. The Court further explains that compliance with the requirement implies that the Applicant not only initiates but also awaits the outcome of internal remedies in the national courts.
43. The Court points out that, in the instant case, to challenge his dismissal, on 2 October 2012, the Applicant took his case before the Bamako Labour Court which handed down Judgment No. 007/JGT/2013 of 7 January 2013.
44. Following an appeal of the Judgment, the Bamako Court of Appeal issued a reversal decision on 25 July 2013, against which the Applicant filed an appeal in cassation.
45. The Court notes that, on 12 September 2017, the Supreme Court reversed and annulled the impugned overturning Judgment and referred the case and the parties to the Bamako Court of Appeal, otherwise composed. Indeed, the supreme national jurisdiction held that the dismissal of the Applicant had taken place without the labour inspector's authorisation, in violation of Article L. 277 of the Labour Code. According to the Supreme Court, the appeal judges had legitimised a dismissal which the law described as "void as of right".
46. However, the Court notes that the Applicant did not wait for the post-Cassation ruling to be handed down by the Court of Appeal before it filed its Application against the Respondent State.
47. In fact, on 20 February 2018, the date on which the Application was filed with the Court, local remedies were still pending before the Bamako Court of Appeal.
48. The Bamako Court of Appeal rendered its decision only on 1 March 2018, that is, five (5) months and ten (10) days after the judgment of cassation was handed down.
49. The Court is of the view that this lapse of time is a reasonable period and attests that the procedure for local remedies was not unduly prolonged in terms of Rule 40(5) of the Rules. Accordingly, nothing justifies the Applicant's filing of his Application before the post-cassation judgment of the Court of Appeal.
50. The Court therefore notes that the Applicant filed his Application while local remedies were still pending and had not been exhausted.

5 *Baumann v France*, N°33592/96, ECHR, 22 May 2001, § 47.

51. The Court observes that the conditions of admissibility laid down in Article 56 of the Charter and Rule 40 of the Rules are cumulative,⁶ so much so that it suffices for one of them not to be complied with for the Application to be declared inadmissible.
52. It follows that, without having to consider the other conditions set out in Article 56 of the Charter and Rule 40 of the Rules, the Court declares the Application inadmissible.

VII. Costs

53. The Applicant did not submit on the costs of proceedings. For its part, the Respondent State prayed that the Applicant be ordered to bear the costs.
54. Rule 30 of the Rules provides that: “Unless otherwise stated by the Court, each party shall bear its own costs”.
55. The Court considers that in the present case, there is no reason to depart from the principle laid down in that text. Accordingly, each party shall bear its own costs.

VIII. Operative part

56. For these reasons

The Court,
Unanimously,
On Jurisdiction

- i. *Declares* that it has jurisdiction.

On admissibility

- ii. *Declares* the Application inadmissible.

On costs

- iii. *Orders* that each party shall bear its own costs.

6 *Jean Claude Roger Gombert v Republic of Côte d'Ivoire* (jurisdiction and admissibility), (22 March 2018), 2 AfCLR 270 § 61; *Dexter Eddie Johnson v Republic of Ghana* Application, ACtHPR, No. 016/2017, Judgment of 28 March 2019 (jurisdiction and admissibility) § 57.