

Woyome v Ghana (review) (2020) 4 AfCLR 397

Application 001/2020, *Alfred Agbesi Woyome v Republic of Ghana*

Ruling (review), 26 June 2020. Done in English and French, the English text being authoritative.

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

In his initial action, the Applicant had alleged that his rights had been violated because he was denied justice in the Supreme Court of the Respondent State. In its judgment on the merits, the Court had held that no violations had been found. The Applicant sought a review of that initial judgment on the grounds that relevant new evidence, which was not available to him had been discovered. The Court dismissed the application.

Jurisdiction (jurisdiction to review, 19)

Procedure (admissibility, 26, 27; onus to demonstrate discovery of new evidence, 28; nature of new evidence required, 36, 37)

Provisional measures (moot request for, 45)

I. The Parties

1. Mr. Alfred Agbesi Woyome (hereinafter referred to as “the Applicant”), is a national of the Republic of Ghana. He is also a prominent business man, a Board chairman and Director in three (3) companies, namely; Waterville Holding (BVI) company, Austro-Investment Company and M-Powapak Gmb Company.
2. The Respondent State is the Republic of Ghana, which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 1 March 1989 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 16 August 2005. It also deposited on 10 March 2011, the Declaration under Article 34(6) of the Protocol, through which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. On 4 March 2020, the Applicant filed an Application for Review of the Court’s Judgment (hereinafter referred to as “initial Judgment”)

in the matter of *Alfred Agbesi Woyome v Republic of Ghana*.¹ The Application, contained a request for Provisional Measures to stay the auction and sale of the Applicant's properties pending the determination of the Application for Review.

4. According to the Applicant, "on or about 9 January 2020", he discovered "information" that was not in his knowledge at the time of the delivery of the initial Judgment which affects the basis of the Supreme Court decision dated 29 July 2014.
5. Furthermore, he submits that the "information" relates to "another agreement between the Government of Ghana and Shanghai Construction Group for the construction of two stadia at Tamale and Sekondi"; which he claims, proves that the Respondent State violated his rights protected under Articles 2 and 3 of the Charter.

III. Brief background of the matter

6. By the initial Application 001/2017, filed on 16 January 2017, the Applicant alleged that he was denied justice in the Supreme Court of the Respondent State in violation of his rights protected under the Charter.
7. According to the Applicant, the truncation of the judicial process by the Review Bench of the Supreme Court of the Respondent State and its assumption of jurisdiction in his case violated his rights to have his cause heard and to non-discrimination protected under the Charter. He also alleged that the Review Bench, as constituted, was impartial and that the comments of one of the Judges, displayed bias.
8. On 28 June 2019, the Court rendered the judgment on the initial Application wherein it held:
 - i. Finds that the Respondent State has not violated Article 2 of the Charter on the right to non-discrimination;
 - ii. Finds that the Respondent State has not violated Article 3 of the Charter on equality before the law and equal protection of the law.
 - iii. Finds that the Respondent State has not violated Article 7 (1) of the Charter on the right to have one's cause heard by a competent tribunal.
 - iv. Finds that the Respondent State has not violated Article 7 (1) (d) of the Charter on the right to be tried by an impartial tribunal in respect to the composition of the Review Bench of the Supreme Court.

1 Application 001/2017. Judgment of 28 June 2019 (Merits), *Alfred Agbesi Woyome v Republic of Ghana*.

- v. Finds that the Respondent State has not violated Article 7 (1) (d) of the Charter in respect to the remarks made by Justice Dotse in his concurring opinion before the Ordinary Bench of the Supreme Court.
9. The Court therefore dismissed the Applicant's initial Application. The initial Judgment is the subject of this Review.

IV. Summary of the Procedure before the Court

10. The Application for Review containing a request for Provisional Measures together with a supporting affidavit and exhibits were filed on 4 March 2020 and transmitted to the Respondent State on 24 March 2020. The Respondent State was requested to respond to the request for Provisional Measures within seven (7) days of receipt thereof and to respond to the Application for Review within thirty (30) days of receipt thereof.
11. On 26 May 2020, the Applicant filed a supplementary affidavit to his request for Provisional Measures which was served on the Respondent State on 5 June 2020 and it was given seven (7) days to file any observations thereon.
12. The Respondent State did not file its Response to the Application for Review and to the request for Provisional Measures or observations on the supplementary affidavit.
13. Pleadings were closed on 16 June 2020 and the Parties were duly notified.
14. The Court resolved to consider both the Application for Review on the one hand and the request for Provisional Measures, on the other hand jointly in this Judgment.

V. Prayers of the Parties

15. The Applicant prays the Court to:
 - i. Review its Judgment of 28 June 2019 and "find that the Republic of Ghana violated his rights to non-discrimination, equality before the law and equal protection of the law guaranteed by articles 2 and 3 of the African Charter";
 - ii. Issue an Order for Provisional Measures in the interest of justice, for the Respondent State to cease auctioning and selling off his property in order to forestall any irreparable damages to him.
16. The Respondent State did not file its Response to the prayers of the Applicant.

VI. Jurisdiction

17. In dealing with any Application filed before it, the Court must conduct a preliminary examination of its jurisdiction pursuant to Articles 3 and 5 of the Protocol.
18. Rule 26(1) of the Rules of Court (hereinafter referred to as “the Rules”) provides: “Pursuant to the Protocol, the Court shall have jurisdiction: ... (e) to review its own judgment in light of new evidence in conformity with Rule 67 of these Rules.”
19. In the instant case, the Court notes that the Application herein is for review of its own judgment in light of alleged new evidence and thus finds that it has jurisdiction.

VII. On the request for provisional measures

20. The Court notes that the Applicant requested for an Order for Provisional Measures “pending the hearing and determination of the Application for Review.”
21. The Court recalls that in accordance with Article 27(2) of the Protocol and Rule 51(1) of the Rules, it is empowered to order Provisional Measures” in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons”, and “which it deems necessary to adopt in the interest of the parties or of justice”.
22. Furthermore, Rule 67(5) of the Rules provides that: “an application for review shall not stay the execution of a judgment unless the Court decides otherwise.” The Court notes that, the Applicant requested for an Order for Provisional Measures “pending the hearing and determination of the review” is effectively to stay the execution of its initial Judgment.
23. The Court observes that, the Applicant by his own admission in his supporting affidavit, indicated that he has been unable to come to an agreement with the Respondent State on a payment plan for the judgment debt that he owes it. Having failed to secure such an agreement, the Applicant seeks to use the Court to forestall the proceedings going on in the national courts.
24. The Court considers it desirable to determine both the request for Provisional Measures and the Application for Review in the same decision. The Court will first consider the Application for Review and later decide on the request for Provisional Measures.

VIII. Admissibility of the Application for review

25. Article 28(3) of the Protocol empowers the Court to review its

decisions under conditions to be set out in its Rules.

26. The Court recalls that Article 28(3) of the Protocol requires that the process of review must be without prejudice to Article 28(2) of the Protocol; that is, such a process may not be used to undermine the principle of finality of judgments. It is against this background that the Applicant's Application for review shall be considered.²
27. Rule 67(1) of the Rules, provides that the Court may review its judgment:

... in the event of the discovery of evidence, which was not within the knowledge of the party at the time judgment was delivered. Such application shall be filed within six (6) months after that party acquired knowledge of the evidence so discovered.

In addition, Rule 67(2) provides that:
[T]he application shall specify the judgment in respect of which revision is requested, contain the information necessary to show that the conditions laid down in sub-rule 1 of this Rule have been met, and shall be accompanied by a copy of all relevant supporting documents. The application as well as the supporting documents shall be filed in the Registry.
28. Under Rule 67 of the Rules, therefore, the onus is on an applicant to demonstrate, in his application, the discovery of new evidence of which he had no knowledge of at the time of the Court's judgment as well as the time when he came to know of this evidence. Further, the application for review must be submitted within six (6) months of the time when the applicant obtained such evidence.³
29. The Court will examine the requirements of Article 28(3) of the Protocol and Rule 67(1) of the Rules in tandem, beginning with the issue of the time limit.
30. As regards the filing of the Application within six (6) months of the discovery of new evidence; the Court notes that the Applicant alleges that he discovered the evidence on or about 9 January 2020. The Court further notes that the Application was filed on 4 March 2020; that is one (1) month and twenty-four (24) days after the discovery of alleged new evidence.
31. Therefore, the Court concludes that the Application has been filed within the stipulated time and in accordance with Rule 67(1) of the Rules.

2 *Urban Mkwandawire v Malawi* (review and interpretation) (2014) 1 AfCLR 299 § 14.

3 *Thobias Mang'ara and Shukrani Mango v United Republic of Tanzania*, AfCHPR, Application 002/2018, Judgment of 4 July 2019 (Review), § 14. *Chrystanthe Rutabingwa v Republic of Rwanda*, AfCHPR, Application 001/2018, Judgment of 4 July 2019 (Review), § 14.

- 32.** As regards the condition of the discovery of new evidence, the Court notes that this Application for Review is submitted in respect of the initial Judgment of 28 June 2019. In the circumstances, the Court will limit its consideration to the supporting documents that accompanied the Application which would allegedly prove the violations of Articles 2 and 3 of the Charter.
- 33.** The Court observes that the supporting documents filed, include, an agreement between the Respondent State and the Shanghai Construction Group and other exhibits in relation to execution proceedings brought against the Applicant in the national courts.
- 34.** The Court also notes that to support his allegations, the Applicant attached the following exhibits:
- i. AAW1 Agreement for the Design and Construction of Stadia in Sekondi-Takoradi & Tamale for the CAN 2008 Tournament signed between the Republic of Ghana and Shanghai Construction Company;
 - ii. AAW2 – Letter dated 5 July 2019 from the Applicant to the Attorney General requesting to pay his judgment debt in instalments;
 - iii. AAW3 – Letter dated 22 July 2019 from the Deputy Attorney General to the Applicant rejecting the proposal of judgment negotiation;
 - iv. AAW4 – Notice of Motion for stay of execution dated 31 July 2019 originating from the Former Attorney General Martin Amidu against the Applicant and two others;
 - v. AAW5 – Supreme Court’s decision of 16 October 2019 on the notice of motion filed by Martin Amidu;
 - vi. AAW6 – Supreme Court’s Order of 8 June 2017 for temporary charge;
 - vii. AAW7 – an Article published on *Ghanaweb* on 14 January 2020, regarding the Supreme Court fining the Applicant’s lawyer;
 - viii. AAW8 – Copy of an Auction sale advertisement published in *Ghanaian Times* on 3 February 2020;
 - ix. AAW9 & AAW10 – Copies of the writ issued at the High Court by the Applicant and the application for interlocutory injunction at the High Court both dated 5 February 2020;
 - x. AAW11 – Copies of the injunction case dated 5 February 2020 filed by the Applicant against the Auctioneer in the High Court; and
 - xi. AAW12 – Copy of an affidavit sworn by Modesta Legibo on 4 May 2020 in relation to the above mentioned High Court proceedings.
- 35.** The Court recalls that in its initial Judgment of 28 June 2019, it found that the Respondent State had not violated the Applicant’s rights under Articles 2, 3 and 7 of the Charter as regards the decision of the Review Bench of the Supreme Court of the Respondent State. The Court also notes that the Applicant bases

his Application for Review on paragraphs 138 and 139 of the initial Judgment. In the aforementioned paragraphs, the Court held:

In the instant case, the Court holds that the Applicant has not demonstrated or substantiated how he has been discriminated against, treated differently or unequally, resulting into discrimination or unequal treatment based on the criteria laid out under Article 2 and 3 of the Charter...In view of the foregoing, the Court finds that the Applicant's rights to non-discrimination, his right to equality before the law and to equal protection of law as guaranteed under Articles 2 and 3 of the Charter were not violated by the Respondent State.⁴

36. In relation to supporting documents, the Court recalls that although, produced for the first time before it, the evidence that is required under Article 28(3) of the Protocol is evidence that exerts influence on its initial decision.⁵
37. The Court further recalls that substantiation does not constitute "new evidence" that would not have been in the foreknowledge of the Applicant at the time of filing.⁶
38. The Court refers to the Inter-American Court of Human Rights case, where it held:
The application for judicial review must be based on important facts or situations that were unknown at the time the judgment was delivered. The judgment may therefore be impugned for exceptional reasons, such as those involving documents the existence of which was unknown at the time the judgment was delivered; documentary or testimonial evidence or confessions in a judgment that has acquired the effect of a final judgment and is later found to be false; when there has been prevarication, bribery, violence, or fraud, and facts subsequently proven to be false, such as a person having been declared missing and found to be alive.⁷
39. The Court notes that having filed an Application for Review containing a request for Provisional Measures, the Applicant also attached supporting documents to both requests. In this regard, the Court further notes that the supporting documents adduced by the Applicant in relation to his Application for Review is an agreement for the design and construction of stadia in Sekondi-Takoradi & Tamale for the CAN 2008 tournament signed between the Respondent State and Shanghai Construction Group Company, marked exhibit "AAW1". The Applicant relies on this

4 *Alfred Agbesi Woyome v Ghana*, *op.cit.*, § 138 and 139.

5 *Frank David Omary & ors v Tanzania* (review) (2016) 1 AfCLR 383 § 49.

6 *Thobias Manga'ra v Tanzania* *op.cit.* § 25.

7 *Genie Lacayo v Nicaragua*, (Application for judicial review of the judgment of merits, reparations and costs), IACHR Series C no 45, § 12.

document to support his assertion that he has discovered new “evidence” in form of an agreement between the Respondent State & anor Company in relation to the construction of the stadia for the CAN 2008.

40. The Court observes therefore, that the rest of exhibits adduced, that is, “AAW2 – AAW12”; were adduced in support of the request for Provisional Measures as they relate to on-going execution proceedings against the Applicant in the national courts. These exhibits will not be considered herein in the determination of the admissibility of the Application for Review as they have no connection with the same.
41. As regards the agreement between the Respondent State and the Shanghai Construction Group Company, the Court observes that this information had indeed not been brought to its attention at the time of the initial Judgment. Nevertheless, it is inconceivable that the said contract between the Shanghai Construction Group and the Respondent State which was in the public domain since 2005 was not within the Applicant’s knowledge at the time of the delivery of the initial Judgment. In addition, the said agreement would also have been brought forth given the media frenzy in the Respondent State surrounding the tender process for the construction of the stadia for the CAN 2008. Thus, the Court finds that the supporting document adduced herein is neither “new” nor “evidence” as contemplated by Article 28(3) of the Protocol and Rule 67(1) of the Rules.
42. The Court further notes that, the supporting document submitted by the Applicant has no correlation with its initial Judgment which is the subject of this review. In other words, it is not related to his claims that the truncation of proceedings and assumption of jurisdiction by the Respondent State’s Supreme Court and the conduct of the Review Bench of the Supreme Court resulted in violations of his rights under Articles 2 and 3 of the Charter.
43. In light of the foregoing, the Court finds that the supporting document adduced does not constitute new evidence which was not within the knowledge of the Applicant at the time the initial Judgment was delivered, as contemplated by Article 28(3) of the Protocol and Rule 67(1) of the Rules.
44. Therefore, the Court, dismisses the Application for Review and declares it inadmissible.
45. As regards the request for Provisional Measures, the Court holds that, having found the Application for Review inadmissible, the request for those measures becomes moot.

IX. Costs

46. The Parties did not make any submissions on costs.
47. In terms of Rule 30 of the Rules “unless otherwise decided by the Court, each party shall bear its own costs.”
48. In the circumstances of this case, the Court therefore rules that each Party should bear its own costs.

X. Operative part

49. For these reasons,
The Court,
Unanimously,

- i. *Declares* that the supporting document submitted by the Applicant does not constitute new evidence;
- ii. *Declares* that the Application for Review of the Judgment of 28 June 2019 is inadmissible and is dismissed;
- iii. *Declares* that the request for Provisional Measures is moot.
- iv. *Decides* that each Party shall bear its own costs.