

Chrysanthe v Rwanda (jurisdiction and admissibility) (2018) 2 AfCLR 361

Application 022/2015, *Rutabingwa Chrysanthe v Republic of Rwanda*

Judgment, 11 May 2018. Done in English and French, the French text being authoritative.

Judges: ORE, KIOKO, NIYUNGEKO, GUISSSE, BEN ACHOUR, MATUSSE, MENGUE, CHIZUMILA and BENSALOULA

Recused under Article 22: MUKAMULISA

The Applicant commenced this Application challenging the manner of his dismissal by the Respondent State. The Court declared the case inadmissible as the Applicant had failed take the case to the Supreme Court without any explanation.

Admissibility (exhaustion of local remedies, 45, 46; conditions are cumulative, 47)

I. The Parties

1. The Applicant, Rutabingwa Chrysanthe, is a citizen of the Republic of Rwanda.

2. The Respondent State, the Republic of Rwanda, became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "Charter") on 21 October 1986 and to the Protocol on 25 May 2004. The Respondent State also deposited the Declaration prescribed in Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations on 22 January 2013. On 29 February 2016, the Respondent State notified the African Union Commission of its withdrawal of the aforesaid Declaration, and the African Union notified the Court on 3 March 2016 of the same. The Court issued an Order on 3 June 2016 indicating that the Respondent State's withdrawal will take effect on 1 March 2017.¹

II. Subject of the Application

A. Facts of the matter

3. The Applicant was recruited by Decision of the Council of

1 See the Court's Order on this matter dated, 3 June 2016 on the Respondent State's withdrawal of the declaration made by virtue of Article 34(6) of the Protocol.

Ministers dated 17 September 1999, to serve as an Audit and Evaluations Expert at the Privatisation Secretariat under the auspices of the Ministry of Finance, and was on 27 February 2001, dismissed by Decision No. 116/PRIV/BR/RU of the Executive Secretary, for disclosure of confidential documents. The Applicant believes that the decision to dismiss him was unfair and unconstitutional.

4. By an Application dated 19 April 2013, registered as No. 003/2013, the Applicant initially seized the Court for alleged violation of Articles 10 and 11 of the Constitution of Rwanda.

5. Following a promise of amicable settlement from the Respondent State, the Applicant, by a letter dated 21 April 2014, received at the Registry on 22 April 2014, informed the Court that he had met with a representative of the Republic of Rwanda on the matter; and that at the end of the discussion, he decided to abandon the procedure, and consequently requested the Court to strike the case off its Cause List.

6. By an Order dated 14 May 2014, the Court acceded to the Applicant's request and ordered that the Case be struck off its Cause List. The Parties were notified of the Order on 15 May 2014.

7. By a new Application dated 10 November 2014, the Applicant seized the Court with an application alleging violation of Articles 10 and 11 of the Constitution of Rwanda.

B. Alleged violations

8. The Applicant alleges that his dismissal is illegal and unconstitutional, and that having failed to solve his problem up to now, the Respondent State has violated the following rights guaranteed under the Charter:

- "i. enjoyment of the rights and freedoms recognized and guaranteed under Article 2 of the Charter;
- ii. right to equality and equal protection before the law under Article 3 of the Charter;
- iii. right to respect for his life under Article 4 of the Charter;
- iv. right to have his cause heard under Article 7 of the Charter;
- v. right of access to the public service of his country, the right to work in equitable and satisfactory conditions and to receive equal pay for equal work under Article 15 of the Charter;
- vi. right to equal protection of the law and to non-discrimination under Articles 14(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR);
- vii. right of every individual to enjoy just and favourable conditions of work under Article 7 (a) of the International

Covenant on Economic, Social and Cultural Rights (ICESCR).”

III. Summary of the procedure before the Court

9. The Application which was received at the Registry on 10 November 2014, was served on the Respondent State on 6 October 2015. The latter was requested to transmit its Response to the Application within 60 days, pursuant to Rules 35(2) and 37 of the Rules.

10. On 13 January 2015, the Registry transmitted the Application to the Chairperson of the African Union Commission and, through the latter, to all the other States Parties to the Protocol, pursuant to Rule 35(3) of the Rules.

11. On 7 December 2015, the Respondent State submitted its Response which was transmitted to the Applicant on 15 January 2016.

12. On 4 March 2016, the Applicant filed his Reply which was transmitted to the Respondent State.

13. On 15 March 2016, the Registry notified the Applicant of the Respondent’s filing of the instrument of withdrawal of the Declaration it made under Article 34(6) of the Protocol, and requested his observations.

14. On 29 March 2016, the Applicant submitted its Reply to the issue of Rwanda’s withdrawal of its Declaration, a reply transmitted to the Respondent State on 21 April 2016.²

15. On 31 May 2016, the Registry notified the Parties of the closure of written pleadings.

IV. Prayers of the Parties

16. In the Application, the Court is requested to:

- “i. nullify Decision No. 116/PRIV/BR/RU on the dismissal on the grounds that the said decision did not follow the established procedure, and is unjust and unconstitutional;
- ii. reimburse the salaries unpaid since 8 February 2014 on the basis of the gross salary of 300,000 Rwanda Franc (RWF) with effect from the date of dismissal (27 February 2001) up to the day of reinstatement;
- iii. order the State to provide him with residential accommodation in lieu of the one he had to sell to meet his needs;

2 *Supra* para 2.

- iv. iv. reinstate him in the public service pending his attainment of the retirement age of 65 or place him on early retirement; [and]
 - v. v. grant the additional prayer for an Order to pay him the sum of US\$ 1,000,000 (one million US dollars) in reparation for all the damages and humiliation he suffered”.
- 17.** In its Response, the Respondent State prays the Court to:
- i. declare the Application inadmissible;
 - ii. dismiss the Application as manifestly baseless;
 - iii. order the Applicant to pay the costs;
 - iv. make all such Order(s) as it deems fit”.

V. Jurisdiction

18. In terms of Rule 39(1) of the Rules of Court, “the Court shall conduct preliminary examination of its jurisdiction...”.

19. The Court notes that its material, personal, temporal and territorial jurisdiction has not been contested by the Respondent State and nothing on the record indicates that the Court does not have jurisdiction. The Court thus holds that:

- i. it has material jurisdiction because the Application alleges violations of the rights guaranteed by international human rights instruments ratified by the Respondent State³;
- ii. it has personal jurisdiction given that the Respondent State is a Party to the Protocol and deposited the Declaration contemplated in Article 34(6) which enables individuals and NGOs to directly access the Court under Article 5(3) of the Protocol;⁴;
- iii. it has temporal jurisdiction insofar as the alleged violations are of a continuing nature;
- iv. it has territorial jurisdiction given that the facts of the Matter occurred in the territory of a State Party to the Protocol, that is, the Respondent State.”

20. From the foregoing considerations, the Court finds that it has jurisdiction to hear the instant case.

3 See para 2 of this judgment.

4 See para 2 of this Judgment.

VI. Admissibility

21. The Respondent State raises a preliminary objection based on Rule 67 of the Rules, and two preliminary objections on the admissibility of the Application based on Article 56(5) and 6 of the Charter.

A. Preliminary objection based on Rule 67 of the Rules

22. In its Response, the Respondent State, raises preliminary objection based on Rule 67 of the Rules, arguing that the Court has already made a ruling on the initial application under Application No. 003/2013 which must not be re-opened, unless reintroduced under the conditions set out in Article 28(2) and (3) of the Protocol.

23. The Respondent State alleges that the Application dated 10 November 2014 is inadmissible as per Rule 67 of the Rules on the grounds that the Court's Order of 14 May 2014 was final, and could not be reviewed save under the conditions set out in Rule 67 of the Rules.

24. The Respondent State also argues that in Application 003/2013 brought against it, the Order of 14 May 2014, striking the case off the Cause List was issued at the request of the Applicant. It adds that the Court having already made a ruling thereon, cannot re-open the matter.

25. The Respondent State maintains in conclusion that the Applicant has not adduced any evidence to demonstrate that the Application of 10 November 2014 fulfils the conditions set down in Rule 61 and 67 of the Rules on the review of a judgment.

26. The Applicant did not make any submission on these assertions by the Respondent State.

27. Article 28(3) of the Protocol stipulates that: "without prejudice to Sub-Article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules".

28. Rule 67 of the Rules provides that: "pursuant to Article 28(3) of the Protocol, a Party may apply to the Court to review its judgment in the event of discovery of evidence, which was not within the knowledge of the Party at the time judgement was delivered. Such Application must be filed within six (6) months after that Party acquired knowledge of the evidence so discovered".

29. The Court notes that by Order of 14 May 2014, it struck out Application No. 003/ 2013, filed by the same Applicant.

30. The Court further notes that that the same Applicant filed a new Application on 10 November 2014, which was registered in the Court's Register as Application No. 022/ 2015 versus Rwanda.

31. The Court therefore holds that what is before it is the Application No. 022/2015 versus Rwanda and that in this case, Article 28 of the Protocol and Rule 67 of the Rules do not apply.

32. The Court therefore dismisses the objection to the admissibility of the Application based on Rule 67 of the Rules.

B. Objections based on the conditions outlined under Article 56 of the Charter and Rule 40 of the Rules

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

34. Pursuant to Rule 39 of the Rules, the Court shall conduct preliminary examination of its jurisdiction and the admissibility of the Application in accordance with Articles 50 and 56 of the Charter, and rule 40 of the Rules.

35. Rule 40 of the Rules, which substantially reproduces the content of Rule 56 of the Charter, provides 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”.

36. The Respondent State raises two objections to the admissibility of the Application based on the conditions under Article 56 of the Charter, namely, the non-exhaustion of local remedies under Article 56(5), and that the Application was not filed within a reasonable time as required under Article 56(6) of the Charter.

C. Objection based on the alleged non-exhaustion of local remedies

37. The Respondent State submits that, according to the Declaration made by Rwanda to entitle individuals to directly bring cases before the African Court, the individuals must first exhaust all the local remedies before the competent bodies and courts of the Republic of Rwanda.

38. According to the Respondent State, the requirement of exhausting local remedies is a general principle founded on the conviction that a State must be given the possibility to repair the violations of its obligations in matters of human rights through internal mechanisms prior to such violations being brought before an international body.

39. The Applicant does not make any submissions to challenge the Respondent State's objection to the admissibility of the Application on the ground that he did not exhaust local remedies.

40. The Court notes from the records that the Applicant brought two different cases before the domestic Courts.

41. On 22 May 2002, the Applicant filed an action before the Kigali Court of First Instance for compensation in case No. *RC 37604/02*, in the amount of 3,383,600 RWF for improper dismissal. On 30 July 2003, the Kigali Court of First Instance issued its Judgment in the civil suit action brought by Rutabingwa Chrysanthé and declared that the same was admissible and well founded, and consequently awarded him compensation in the amount of 2,474,727 RWF.

42. On 23 January 2006, Rutabingwa Chrysanthé seized the Kigali High Court of Justice with another civil suit referenced *R. Ad /0011/06/ HC/KIG* for annulment of Decision 361/PRIV/SV/AM of 27 February 2001, in respect of his dismissal.

43. On 21 July 2006, the Kigali High Court of Justice found that the Application for annulment of Decision 361/PRIV/SV/AM of 27 February 2001, filed by Rutabingwa Chrysanthé was not in conformity with the law and therefore declared the Application inadmissible.

44. The Court notes that Organic Law No. 03/2012 of 13 June 2012 on the organization, functioning and jurisdiction of the Supreme Court, which is Rwanda's highest court, in its Article 28, confers jurisdiction on the Supreme Court to hear "appeals against judgments rendered in first instance by the High Court ...".

45. The Court notes that, in the instant case, the Applicant did not bring this Application before the Supreme Court. The Court notes also that the Applicant did not give any reason for not doing so.

46. Consequently, the Court declares that the Application of 10 November 2014 is inadmissible on the ground that the Applicant has not exhausted local remedies.

47. The Court notes that, pursuant to the provisions of Article 56

of the Charter, admissibility conditions are cumulative, and as such, where any one of them has not been met, it is the entire Application that cannot stand. This is the case with the present matter. The Application is consequently inadmissible.

48. Having declared the Application inadmissible on the ground of failure to exhaust local remedies, the Court need not pronounce itself on the Respondent State's objection relating to the failure to file the Application within a reasonable time.

VII. Costs

49. The Court notes that, in the instant case, the Respondent State has prayed the Court to order the Applicant to pay costs, and the Applicant did not submit on this issue.

50. According to Rule 30 of the Rules "unless otherwise decided by the Court each Party shall bear its own costs". The Court decides that each Party shall bear its own costs.

VIII. Operative part

51. For these reasons,
The COURT,
unanimously:

- i. *Declares* that it has jurisdiction;
- ii. *Dismisses* the Respondent State's objection based on Rule 67 of the Rules;
- iii. *Rules* that the objection on non-exhaustion of local remedies is founded;
- iv. *Declares* the Application inadmissible;
- v. *Rules* that each Party shall bear its own costs.