Chrysanthe v Rwanda (review) (2019) 3 AfCLR 400

Application 001/2018, *Rutabingwa Chrysanthe v Republic of Rwanda*

Judgment of 4 July 2019. Done in English and French, the French text being authoritative.

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

Recused under Article 22: MUKAMULISA

The Applicant filed an Application for review following the Court's Judgment on merits, which was dismissed as inadmissible on the ground of lack of exhaustion of local remedies. In his Application for review, the Applicant requested the Court to review its Judgment claiming that he had exhausted local remedies. The Court found that the Application for review was inadmissible as the Applicant had not provided new evidence that warranted review as required under the Rules of Court, and dismissed the request for review.

Review (conditions for review 13-15, failure to provide new evidence, 17-18, time for filing of Application for review, 19)

I. The Parties

1. Mr Rutabingwa Chrysanthe (hereinafter referred to as "the Applicant") filed an Application on 10 November 2014 against the Republic of Rwanda (hereinafter referred to as the "Respondent State") alleging the violation of his rights guaranteed by the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") as well as the Rwandan Constitution and Labour Code. On 11 May 2018, the Court rendered its Judgment on the merits in the matter.

II. Subject matter of the Application

2. Following the Court's judgment of 11 May 2018 on the merits, in the matter of *Rutabingwa Chrysanthe v Republic of Rwanda*, the Applicant on 11 July 2018, filed an Application for Review of that judgment attaching thereto the letter of the General Secretariat of the Rwandan Parliament dated 26 February 2014, in which he denounced a plot against him on the part of the State with the aim of dissuading him from bringing the matter before this Court.

3. The Applicant challenges the Court's decision to dismiss his case on the ground that he failed to exhaust local remedies. He asserts that the subject of the Judgment of the First Instance Court of

Kigali was changed by the Respondent State, as he never sought compensation before the Court of First Instance but, rather, requested reinstatement before both the Tribunal of First Instance and the High Court of Justice of Kigali.

4. He alleges that the Court, in paragraph 43 of its Judgment, made reference to the High Court Judgment, which relied on Law 18/2004 passed on 20 June 2004, without indicating that this law was enacted subsequent to his dismissal, and hence could not apply to his case by virtue of the principle of non-retroactivity of a law.

5. He contends that, the Court also infringed the principle of non-retroactivity, not only by referring in paragraph 44 of the Judgment, to Organic Law 03/2012 of 13 June 2012 which confers on the Supreme Court of Rwanda jurisdiction to adjudicate "appeals against judgments rendered at first instance by the High Court ..."; but also by declaring at paragraph 46 that the Application is inadmissible for failure to exhaust local remedies. According to him, this law was enacted subsequent to his case, having been adopted six (6) years after his seizure of the High Court.

III. Brief background of the matter

6. By an Application filed before this Court on 10 November 2014, the Applicant alleged that he was dismissed on 27 February 2001 by Decision 116/PRIV/BR/RU of the Executive Secretary of the Privatisation Board for disclosure of confidential documents. Believing that the decision to dismiss him was unfair and unconstitutional, he then filed an Application before this Court which was registered as Application 022/2015.

7. In its Judgment delivered on 11 May 2018, the Court declared the Application inadmissible for failure to exhaust the local remedies.[1]

IV. Summary of the procedure before the Court

8. Further to his Application for Review, on 27 September 2018, the Applicant tendered before the Court a letter dated 5 March 2001 used in the hierarchical appeal filed with the Ministry of the Economy and a memorandum of understanding as evidence for payment of his wages, as concluded after the Court of First Instance's decision condemning the Executive Secretariat for

1 Application 022/2015. Judgment of 11 May 2018 (Merits), *Rutabingwa Chrysanthe v Republic of Rwanda*.

Privatization for wrongful dismissal.

9. On 8 November 2018, the Court acknowledged receipt of the Applicant's request for review and served the same on the Respondent State, indicating that the latter had thirty (30) days to submit its Response to the Court. The Respondent State failed to respond to the various procedural documents sent.

10. On 19 December 2018, the Applicant enquired on the status of his request, attaching thereto a copy of the mediation remedy before the Ombudsman dated 11 March 2003. The Court acknowledged receipt thereof on 18 January 2019 and assured the Applicant that his request was under consideration.

11. On 22 May 2019, the Court notified the parties of the closure of pleadings and that it would proceed with a judgment on the Application.

V. Applicant's Prayer

12. The Applicant requests the Court to review the decision of 11 May 2018 on the ground that he exhausted local remedies and hold the Respondent State liable for the violations raised in his original complaint.

VI. On the conditions for review of the Judgment

13. Article 28(3) of the Protocol empowers the Court to review its decisions under conditions to be set out in its Rules. Rules 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".

14. The onus is thus 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 and the exact time when he came to know of this evidence. The Application must be submitted within six (6) months of the time when the Applicant obtained such

evidence.

15. It is recalled that the review requested and the evidence adduced concern the conclusions of the initial Judgment which, in its Operative Part, states that the Application is inadmissible for non-exhaustion of local remedies. The Applicant essentially raises three grounds in support of his Application:

i. A challenge to paragraph 40 of the Judgment, which states that "the Court notes from the records that the Applicant brought two different cases" before the domestic Courts; to paragraph 41 which states that "on 22 May 2002, the Applicant filed an action before the Kigali Court of First Instance for compensation in case No. RC 37604/02"; and to paragraph 42 of the Judgment which indicates that "on 23 January 2006, Chrysanthe Rutabingwa seized the Kigali High Court of Justice with another civil suit referenced R.Ad/0011/06/HC/KIG for annulment of the Decision in respect of his dismissal";

ii. A challenge to paragraph 43 which states that: "on 21 July 2006, the High Court of Justice found that the Application for annulment of Decision 361/PRIV/SV/AM of 27 February 2001, filed by Chrysanthe Rutabingwa was not in conformity with the law and therefore declared the Application inadmissible". The paragraph in question simply reiterated the Decision of the High Court which, according to the Applicant, had violated the principle of non-retroactivity.

iii. Violation of the principle of non-retroactivity in paragraph 44 by invoking Organic Law No. 03/2012 of 13 June 2012, which confers on the Supreme Court of Rwanda jurisdiction to hear "appeals against Judgments rendered at first instance by the High Court ...". The Court subsequently found that he had not appealed to the Supreme Court; and, consequently, in paragraph 46 held that: "the Application of 10 November 2014 is inadmissible on the ground that the Applicant has not exhausted local remedies". The Applicant believes that the law under reference was passed six (6) years after the Judgment of the High Court, and, therefore, cannot apply to his case.

16. The Court recalls that, in its Judgment of 11 May 2018, it declared the Application inadmissible for failure to exhaust local remedies.

17. The Court notes that the Applicant failed to provide new evidence that he exhausted local remedies. No information contained in the submissions tendered by the Applicant constitute "evidence" of which the Court was not aware at the time of its judgment.

18. The Court finds that the information provided does not constitute new "evidence" within the meaning of Rule 67(1) of the Rules.

19. As the Applicant has failed to provide evidence to justify the review of the judgment, the Court shall not consider the six (6) month deadline for filing a review provided in Rule 67(1) of the Rules. Therefore, the Court sees no merit in the request for review of the

judgment of 11 May 2018.

VII. Costs

20. The Court notes that the Applicant did not make submissions on costs. However, Rule 30 of the Rules of Court provides that "Unless otherwise decided by the Court, each party shall bear its own costs".

21. The Court therefore rules that each Party should bear its own costs.

VIII. Operative part

22. For these reasons,

The Court,

unanimously,

i. *Declares* that the information submitted by the Applicant does not constitute new "evidence";

ii. *Declares* that the Application for the review of Judgment of 11 May 2018 is inadmissible and is dismissed;

iii. *Decides* that each Party shall bear its costs.