

Ayed v Tunisia (order) (2022) 6 AfCLR 223

Application 008/2019, *Ibrahim Ayed v Republic of Tunisia*

Order, 7 June 2022. Done in Arabic, English and French, the Arabic text being authoritative.

Judges: ABOUD, TCHIKAYA, KIOKO, MENGUE, MUKAMULISA, CHIZUMILA, BENSOUALA, ANUKAM, NTSEBEZA and SACKO

Recused under Article 22: BEN ACHOUR

The Applicant claimed to have been the victim of a scam by an official of the Respondent State and filed two separate complaints before domestic courts of the Respondent State. While the domestic complaints were pending, he brought this Application alleging that his Charter guaranteed rights had been violated. After several extensions of time and the closure of pleadings, the Respondent State sent communication suggesting that it had earlier sent its submissions to the Court. Applying discretion under its Rules, the Court ordered that the pleadings in the case to be reopened.

Procedure (reopening of pleadings in the interests of justice, 12-14)

I. The Parties

1. Ibrahim Ayed (hereinafter referred to as “the Applicant”) is a Tunisian national. He alleges that in 2014, he was scammed by an official who, after learning that the Applicant had obtained a university degree and was unemployed, promised to use his influence to appoint him as a secondary school teacher.
2. The Application is filed against the Republic of Tunisia (hereinafter “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter “the Charter”) on 21 October 1986 and to the Protocol on 5 October 2007. On 16 April 2017, the Respondent State also deposited the Declaration provided for in Article 34(6) of the Protocol, by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. It emerges from the Application that, the Applicant paid an amount of Two Thousand (2000) Tunisian Dinars to Al-fadhil ben Al amin Ali Al Obeidi, a public health nurse, for him to be assigned to the Ministry of Education as a secondary school teacher, after the latter had learned that he, Ibrahim Ayed, had obtained a Master’s degree. According to the agreement between the two, in the

event that the Applicant was not assigned as a teacher, Al Obeidi would be obliged to return the said amount, within two and a half months, which was recorded as a debt to the Applicant.

4. The Applicant avers that the said agreement having caused him harm, he filed two complaints before domestic courts, the first one with the Court of First Instance of Ariana on 14 July 2017 relying on Articles 87 and 291 of the Respondent State's Criminal Code while the second complaint was filed with the Public Prosecutor of the Court of Appeal of Tunis on 8 March 2018. The case was pending at the time the Applicant brought the matter before this Court.

III. Summary of the Procedure before the Court

5. The Application was received by the Registry on 1 March 2019. On 17 May 2019, the Application was served on the Respondent State. On 24 June 2019, the Application was transmitted to the other entities provided for in the Rules.
6. On 6 August 2019, the Respondent State was reminded of the expiry of the time-limit granted to it to designate its representatives and to file its Response to the Application and was granted an additional forty-five (45) days from the date of receipt of the notification to do so.
7. Thereafter, the Respondent State was reminded several times on 18 March 2020, 11 December 2020, 28 January 2021 to file the Response to the Application but it failed to do so.
8. On 29 October 2021, the Respondent State was granted a further forty-five (45) days to respond to the Application, failing which a default judgment will be rendered in the matter. The Respondent State did not respond.
9. Pleadings were closed on 11 March 2022 and Parties were duly informed.
10. On 5 April 2022, the Registry received a letter from the Respondent State indicating that, the Respondent State had filed by its Response on 2 April 2021 and 30 November 2021
11. On 26 May 2022, the Registry of the Court requested the Applicant's observations on the Respondent State's letter and on 30 May 2022, the Applicant indicated that the Court has discretion to determine whether or not to reopen the pleadings in accordance with Rule 46(3) of the Rules.

IV. On the reason for reopening of pleadings

12. The Court observes that Rule 46(3) of the Rules of Court provides

that “[t]he Court has the discretion to determine whether or not to reopen pleadings”. Furthermore, Rule 44(2) provides: “[A]fter the Respondent State has filed its Response; the Applicant may file a Reply thereto within forty-five (45) days”. The Court further notes that under Rule 90 of the Rules, “[n]othing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice”.

13. It emerges from the proceedings in the instant case, as summarised above, that the Respondent State’s Response entails crucial submissions on which the Court will be called upon to rule. Therefore, it is in the interest of justice that the attention of both parties be drawn to the procedure applicable under Rule 46(3) as read together with Rule 44(2) of the Rules.
14. In view of the foregoing, it is in the interest of justice to reopen the pleadings and allow the Applicant forty-five (45) days to reply to the Respondent State’s response.

V. Operative part

15. For these reasons,

The Court

Unanimously,

- i. *Orders* the reopening of pleadings in Application No 008/2019 *Ibrahim Ayed v Republic of Tunisia* and deems in the interest of justice, that the Respondent State’s Response is properly filed.
- ii. *Orders* the Applicant to submit the Reply to the Respondent State’s Response within forty-five (45) days of receipt thereof.