

Baedan & Anor v Côte d'Ivoire (ruling) (2022) 6 AfCLR 217

Application 2019/2020, *Baedan Dogbo Paul and Baedan M'Bouke Faustin v Republic of Côte d'Ivoire*

Ruling, 1 April 2022. Done in English and French, the French text being authoritative.

Judges: ABOUD, TCHIKAYA, KIOKO, BEN ACHOUR, MENGUE, MUKAMULISA, CHIZUMILA, BENSOUOLA, ANUKAM, NTSEBEZA and SACKO

The Applicants, who are citizens of the Respondent State, brought this Application alleging that their ancestral land had been compulsorily acquired by the Respondent State without any payment of compensation. The Applicants alleged further that despite an order of the domestic court in their favour, the Respondent State failed to pay compensation in violation of some of their Charter protected rights. At the close of pleadings, the Respondent State claimed that it had not been served with the originating Application in this matter. Applying its Rules, the Court ordered that pleadings be reopened to enable the parties finalise their submissions.

Procedure (reopening of pleadings in the interests of justice, 11-12)

I. The Parties

1. Baedan Dogbo Paul and Baedan M'Bouke Faustin (hereinafter "the Applicants"), are Ivorian nationals. They allege violation of their right of ownership of a parcel of land located in Abidjan and of their right to compensation following the expropriation of the said parcel of land.
2. The Application is filed against the Republic of Côte d'Ivoire (hereinafter "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter") on 31 March 1992 and to the Protocol on the Establishment of an African Court on Human and Peoples' Rights (hereinafter "the Protocol") on 25 January 2004. On 23 July 2013, the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and non-governmental organisations having observer status with the Commission. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal has no bearing on pending cases and on new

cases filed before the entry into force of the withdrawal one year after its deposition, that is, on 30 April 2021.

II. Subject of the Application

3. The Applicants aver that in 1980, the Respondent State expropriated a large parcel of ancestral land belonging to the Baedan family in Abidjan Yopougon Kouté and proceeded to build the Yopougon University Hospital in 1980 and then Cité Policière BAE in 1998.
4. The Applicants further aver that in 2003, following compensation proceedings brought by members of the Baedan family before the Yopougon Court of First Instance, the said court, by judgment of 13 January 2003, granted their claim and ordered the Respondent State to pay them an amount of 812,488,000 CFA francs as compensation for the loss of their customary rights. The Applicants state that up to the date of the filing of the instant Application with this Court, the Respondent State has not paid the sum and request the Court to find a violation of their property rights and their right to compensation.

III. Summary of the procedure before the Court

5. The Application was filed with the Registry of the Court on 14 May 2020 and served on the Respondent State on 30 June 2020.
6. On 29 September 2021, the Court requested the Respondent State to submit its Response to the Application within Forty-five (45) days, failing which the Court would enter judgment by default.
7. By correspondence dated 26 October 2021, the Respondent State stated that it never received Application No 2019/2020: *Baedan Dogbo Paul and Baedan M'bouke Faustin v Republic of Côte D'ivoire* and requested that the Application be served on it.
8. On 9 February 2022, pleadings were closed and the Registry of the Court duly notified the parties.
9. On 15 February 2022, the Legal Officer of the Treasury, representing the Respondent State, reaffirmed that he never received the Application in respect of the matter at bar and reiterated his request that the Application be notified to him in order to properly defend the interests of the Respondent State.

IV. Request to be served the Application

10. The Court notes that Rule 46(3) of the Rules of Court provides that "The Court has the discretion to determine whether or not to

reopen pleadings”.

11. The Court also notes that the records show that acknowledgement of receipt was issued only for the notifications of 29 September 2021 and 9 February 2022 delivered by DHL. On the other hand, receipt of the notification of the Application initiating proceedings on 30 June 2020 was not acknowledged and the Respondent State has expressly stated that it did not receive notification of the Application. Based on these findings, the benefit of the doubt regarding the receipt of the Application inures to the Respondent State.
12. The Court notes that under Rule 46(3) of the Rules it may order the reopening of proceedings and allow a party to file its pleadings where the interest of justice so requires. In the instant case, the Court considers that it is appropriate, in the interest of justice and respect for the principle of adversarial proceedings, to adjourn the proceedings and order the reopening of the hearing in order to allow the Respondent State to file its Response.

V. Operative part

13. For these reasons,

The Court

Unanimously,

Orders

- i. That the proceedings in respect of Application 019/2020: *Baedan Dogbo Paul and Baedan M'bouke Faustin v Republic of Côte d'Ivoire* be reopened;
- ii. That the Respondent State make available the complete list of its representatives within Thirty (30) days and file its Response and submissions on reparations within Ninety (90) days from the date of receipt of this Ruling.