

Traoré v Mali (ruling) (2022) 6 AfCLR 773

Application 002/2019, *Yacouba Traoré v Republic of Mali*

Ruling, 22 September 2022. Done in English and French, the French text being authoritative.

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

Recused under Article 22: SACKO

The Applicant is a national of the Respondent State and a former employee of a company operating in the Respondent State. The Applicant claimed that he was a member of a workers' union that signed a memorandum of understanding with his former company. In his Application, he alleged that the Respondent State violated his human rights following the non-performance of the memorandum of understanding. Upholding the Respondent State's objection, the Court held that the Applicant had not exhausted local remedies. Accordingly, the Court declared the Application inadmissible.

Jurisdiction (material jurisdiction, 22-26)

Admissibility (exhaustion of local remedies, 38-48; cumulative nature of requirements, 49)

I. The Parties

1. Mr. Yacouba Traoré (hereinafter referred to as "the Applicant") is a Malian national. He is a former employee of the ANALABS Morila Laboratory where he worked as a laboratory chemist supervisor in Sikasso (Mali). He alleges a violation of his rights following the non-performance of a memorandum of understanding signed between Laboratoire d'analyse ANALABS and a workers' union.
2. The Application is filed against the Republic of Mali (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 20 June 2000. On 19 February 2010, 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.

II. Subject of the Application

A. Facts of the matter

3. The Applicant avers that on 7 March 2006, ANALABS and a group of workers, of which he was a member, signed a Memorandum of Understanding approved by the Sikasso Labour Inspector. Under the terms of the memorandum, the employer, on the one hand, owed each of the nine (9) “retrenched workers”, whose contracts had been terminated, an amount of Five Hundred Thousand (500,000) CFA francs in settlement of their meal and overtime allowances. On the other hand, the employer “reserved the right to investigate the reality and extent of the supposedly unpaid overtime” of the workers retained in the company.
4. The Applicant further avers that owing to the non-performance of the said memorandum, on 19 January 2012, he referred the matter to the Bamako Labour Court which, by Judgment No 123/JGT of 21 May 2012, declared that it lacked jurisdiction and referred him to the Sikasso Labour Court for further proceedings.
5. He submits that by Judgment No 010/JMT/2013 rendered on 4 November 2013, the Sikasso Labour Court declared the action statute-barred. He states that he appealed this judgment before the Bamako Court Appeal which, by Judgment No 60 of 2 April 2015, upheld the judgment.
6. He states that he further appealed the judgment of the Bamako Appeal Court but “the docket has not been found after several searches with the President of the Social Chamber” of the Supreme Court.

B. Alleged violations

7. The Applicant alleges a violation of his right to have his cause heard, in particular,
 - i. The right to bring an action before the competent national courts for any act violating fundamental rights, protected by Article 7(1)(a) of the Charter;
 - ii. The right to be tried within a reasonable time, protected by Article 7(1)(d) of the Charter

III. Summary of the Procedure before the Court

8. The Application was received at the Registry on 14 January 2019. It was served on the Respondent State, on 21 January 2019 for

its response within sixty (60) days of receipt.

9. All pleadings and documents were filed within the time prescribed by the Court.
10. Pleadings were closed on 24 August 2022 and the Parties were duly notified.

IV. Prayers of the Parties

11. The Applicant prays the Court to find that the Respondent State violated his right to have his cause heard, in particular
 - i. His right to be tried by a competent court; and
 - ii. His right to be tried within a reasonable time.
12. As regards reparations, the Applicant prays the Court to order the Respondent State to:
 - i. Provide him medical care, in accordance with the terms of the memorandum signed by ANALABS under the aegis of the Regional Inspection of Sikasso;
 - ii. Pay the arrears of social security contributions to l'Institut National de Prévoyance Sociale (INPS);
 - iii. Pay him an amount of Ten Million (10,000,000) CFA francs, as arrears of overtime payments and meal allowance;
 - iv. Pay him an amount of Thirty Million (30,000,000) CFA francs, as a productivity bonus, in accordance with the enforceable copy of the judgment of 15 February 2015;
 - v. Pay him the sum of forty million (40,000,000) CFA francs as damages.
13. The Respondent State prays the Court to:
 - i. Determine what is right;
 - ii. Dismiss the Applicant's requests.

V. Jurisdiction

14. The Court notes that Article 3 of the Protocol provides as follows:
 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
15. Under Rule 49(1) of the Rules of Court¹ "The Court shall ascertain its jurisdiction [...] in accordance with the Charter, the Protocol

1 Rule 39(1) of the Rules of Procedure of 2 June 2010.

and these Rules.”

16. Based on the above-mentioned provisions, the Court must, for each application, examine its jurisdiction and dispose of on any objections thereto.
17. The Court notes that the Respondent State has raised an objection to the Court’s material jurisdiction. The Court will rule on this objection before considering the other aspects of its jurisdiction.

A. Objection based on material jurisdiction

18. The Respondent State raises an objection to the material jurisdiction of the Court, arguing that the Applicant regards this Court as an appellate court in relation to the decisions of domestic courts.
19. It contends that the Applicant’s requests sufficiently demonstrate that he is disregarding the jurisdiction of the Court, which he considers to be a court of third instance, responsible for settling his problems with his former employer.
20. The Applicant submits that the objection to the Court’s material jurisdiction should be dismissed. He argues, to this end, that he does not confuse the domestic courts with this Court given that he filed the present Application because of the malfunctioning of the Malian justice system.
21. He notes that the Court’s jurisdiction is derived from Article 3(1) of the Protocol and that where the rights of a national of a State Party to the Charter are violated, it is for the Court to establish the law.

22. The Court notes that pursuant to Article 3(1) of the Protocol, it has jurisdiction over “all cases and disputes submitted to it concerning the interpretation and application of the Charter, this [...] Protocol and any other relevant Human Rights instrument ratified by the States concerned.”
23. The Court underlines that it has material jurisdiction where the Applicant alleges violations of human rights protected by the Charter or by any other human rights instrument to which the

Respondent State is a party.²

24. In the present case, the Court notes that the Applicant alleges a violation of his right to bring proceedings before the domestic courts against any act violating his fundamental rights, and **his** right to be tried within a reasonable time, protected by Articles 7(1)(a) and 7(1)(d) of the Charter respectively, an instrument to which the Respondent State is a party.³
25. Furthermore, the Court underlines, in accordance with its jurisdiction, that it is not an appellate court in relation to the decisions domestic courts. However, “that does not preclude it from assessing whether domestic proceedings were conducted in accordance with international standards set out in the Charter and other international human rights instruments ratified by the State concerned.”⁴
26. In the light of the foregoing, the Court dismisses the objection to its material jurisdiction and declares that it has material jurisdiction to hear the present Application.

B. Other aspects of jurisdiction

27. The Court notes that no objection has been raised to its personal, temporal and territorial jurisdiction.
28. Having found that nothing in the records indicates that it lacks jurisdiction the Court finds that it has:
 - i. Personal jurisdiction, insofar as the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration, by virtue of which the Court can receive Applications directly from individuals and non-governmental organizations having observer status before the Commission;
 - ii. Temporal jurisdiction, insofar as the alleged violations occurred after the entry into force of the instruments referred to in point (i) of this paragraph in relation to the Respondent State;
 - iii. Territorial jurisdiction, insofar as the facts of the case and the alleged violations took place in the territory of the Respondent State.
29. Consequently, the Court finds that it has jurisdiction to hear the present Application.

2 Sébastien Germain Marie *Aïkoué Ajavon v Republic of Benin*, ACTHPR, Application No 027/2020, Judgment of 2 December 2021, § 37.

3 The Respondent State became a Party to the Charter on 21 October 1986.

4 *Ibid.* Note 3, § 46.

VI. Admissibility

- 30.** Article 6(2) of the Protocol provides: “the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
- 31.** In accordance with Rule 50(1) of the Rules:⁵ “The Court shall ascertain the admissibility [...] of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these [...] Rules”.
- 32.** Rule 50(2) of the Rules, which essentially restates the provisions of Article 56 of the Charter, provides as follows:
Applications filed before the Court shall comply with all of the following conditions:
 - a. Indicate their authors even if the latter request anonymity
 - b. Are compatible with the Constitutive Act of the African Union and with the Charter;
 - c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
 - d. Are not based exclusively on news disseminated through the mass media,
 - e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
 - f. Are submitted 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 seised with the matter, and
 - g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.
- 33.** The Court notes that the Respondent State raises an objection to the admissibility of the Application based on non-exhaustion of local remedies. The Court will rule on this objection before examining, if necessary, the other admissibility requirements.

A. Objection based on non-exhaustion of local remedies

- 34.** In support of its objection based on non-exhaustion of local remedies, the Respondent State submits that, contrary to the Applicant’s assertion that he filed an appeal before the Cassation Court, the document he tenders to that effect cannot be considered

5 Rule 39 of the Rules of Procedure of 2 June 2010.

as evidence of such a remedy.

35. According to the Respondent State, this document addressed to the Chief Registrar of the Bamako Appeal Court and dated 4 June 2015 is labelled “received on 05-06-011” [sic] with a signature, which means that it was “received four years before its establishment”.
36. It further submits that a remedy cannot be proved by simply producing a letter, even if it purports to be from a law firm. According to the Respondent State, remedies are regulated by various procedural codes depending on the subject matter and that the “copy and paste” letter produced by the Applicant cannot constitute proof of the remedy he claims to have initiated.
37. The Applicant submits that the objection based on non-exhaustion of domestic remedies be dismissed. He further submits that he filed a cassation appeal against the judgment of 2 April 2015 and that the notice of appeal was received and registered on 5 June 2015.

38. The Court notes that, in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court, applications must be filed after the exhaustion of local remedies, if any, unless it is clear that the proceedings in respect of such remedies are unduly prolonged.
39. The Court underlines that the local remedies to be exhausted are those of a judicial nature, which must be available to the Applicant without impediment, effective and satisfactory in the sense that they are “found satisfactory by the complainant or are capable of redressing the complaint”.⁶
40. The Court further states that it has consistently held that in the judicial system of the Respondent State, the cassation appeal is

6 *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema dit Ablassé, Ernest Zongo, Blaise Iboulido and Mouvement burkinabé des droits de l'homme et des peuples v Burkina Faso*, Judgment (merits) (5 December 2014), 1 AfCLR 219, § 68; *Ibid. Konaté v Burkina Faso* (merits), § 108; *Sébastien Germain Marie Ajavon v Republic of Benin*, ACTHPR, Application No 027/2020, § 73.

an ordinary remedy to be exhausted.⁷

41. The Court notes that in the present case, the question it is called upon to decide is whether the Applicant has lodged a cassation appeal or, at the very least, whether the document he relies on can be regarded as sufficient proof of that appeal.
42. The Court emphasizes, in this regard, that the form and time limit for the cassation appeal are provided for in Articles 629-1⁸ and 630 of the Code of Civil, Commercial and Social Procedure⁹ as well as Articles 133 and 134 of the Organic Law on the Supreme Court¹⁰ of the Respondent State.
43. The Court notes that it emerges from these texts that the cassation appeal comprises two (2) phases, namely i) on the one hand, the signed statement of appeal together with a copy of the decision. It contains, under penalty of nullity, the following information: the surname, first name, address, nationality, date and place of birth, if the appellant is a natural person; the surname, first name and address of the Respondent or, if it is a legal person, its name and registered office, and an indication of the decision being appealed and, ii). the filing of the statement of appeal at the Registry of the court which handed down the decision. This filing shall be attested to by the report of the Registry.
44. The Court notes that in the present case, in support of his request for the dismissal of the objection based on admissibility for non-exhaustion of local remedies, the Applicant has produced a document entitled "Statement of appeal" which he claims to have filed with the Registry of the Bamako Appeal Court.
45. The Court notes, however, that the Applicant has not produced any evidence to prove that he filed a statement of cassation appeal at the Registry of the Bamako Appeal Court. The document

7 See, in this regard, *Yacouba Traoré v Republic of Mali*, ACtHPR, Application No 027/2020, § 43-48, Judgment of 25 September 2020; *Moussa Kanté and thirty-nine (39) others v Republic of Mali*, ACtHPR, Application No 006/2019, Judgment of 25 June 2021, § 36-41.

8 This article provides: "The statement of appeal is made by a document containing, under penalty of nullity: 1° – a) if the applicant in cassation is a natural person: his surname, first name, domicile, nationality, date and place of birth; b) if the plaintiff is a legal person: its form, name, registered office and the body which legally represents it; 2° – the surname, first names and domicile of the Respondent or, if it is a legal person, its name and registered office; 3° – an indication of the decision challenged; 4° – an indication of the judgment; 1° Within two months of the notification of the decision if it is contradictory; 2° within the same time limit which shall only run from the day the appeal is no longer admissible if the decision is rendered by default.

9 Decree No 99-254 of 15 September 1999.

10 Law n°2016-046 of 23 September 2016 on the organic law on the organisation, the rules of functioning of the Supreme Court and the procedure followed before it.

produced by the Applicant contains handwritten notes, without any official stamp of the Registry of the Bamako Appeal Court.

46. More importantly, the Court notes that nothing in the records of cassation appeal proves that the said appeal was actually lodged.
47. Based on the foregoing, the Court considers that no evidence has been provided indicating that a cassation appeal against the Appeal Court judgment of 2 April 2015 was filed.
48. Accordingly, the Court declares that the objection based on admissibility raised by the Respondent State is well founded and finds that the Applicant did not exhaust local remedies.

B. Other admissibility requirements

49. Having concluded that the present Application does not meet the requirement of Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, and having regard to the cumulative nature of the admissibility requirements,¹¹ the Court considers it unnecessary to rule on the other admissibility requirements.
50. Accordingly, the Court declares the Application inadmissible and dismisses it.

VII. Costs

51. Neither party made a submission in respect of costs.

52. The Court notes that under Rule 32(2) “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any”.
53. The Court considers that, in the present case, there is no reason to depart from the principle laid down in this provision.
54. Consequently, the Court decides that each party shall bear its own costs.

¹¹ *Mariam Kouma and Ousmane Diabaté v Republic of Mali* (21 March 2018) (jurisdiction and admissibility) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthé v Republic of Rwanda* (Jurisdiction and Admissibility) (11 May 2018), 2 RJCA 373, § 48; *Collectif des anciens travailleurs ALS v Republic of Mali* (Jurisdiction and Admissibility) (28 March 2019), 3 AfCLR 73, § 39.

VIII. Operative part

55. For these reasons,

The Court

Unanimously,

On jurisdiction

- i. *Dismisses* the objection to its material jurisdiction;
- ii. *Declares* that it has jurisdiction.

On admissibility

- iii. *Upholds* the objection based on non-exhaustion of local remedies;
- iv. *Declares* the Application inadmissible.

On costs

- v. *Orders* that each Party shall bear its own costs.