

Woyome v Ghana (provisional measures) (2017) 2 AfCLR 213

Application 001/2017, *Alfred Agbesi Woyome v Republic of Ghana*

Order, 24 November 2017. Done in English and French, the English text being authoritative.

Judges: ORE, KIOKO, NIYUNGEKO, GUISSÉ, BEN ACHOUR, BOSSA, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA and BENSAOULA

Order for provisional measures where the Applicant's property was at risk of being sold in execution of a domestic court judgment.

Provisional measures (*prima facie* jurisdiction, 18; irreparable harm, 26)

I. The Parties

1. The Application is filed by Mr Alfred Agbesi Woyome, (hereinafter referred to as “the Applicant), a national of Ghana, against the Republic of Ghana (hereinafter referred to as “the Respondent State”).

2. The Respondent State became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 1 March 1989 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 16 August, 2005. It deposited on 10 March 2011 a Declaration under Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations.

II. Subject of the Application

3. On 30 June 2017 the Applicant filed a matter which was subsequently registered as Application No. 001/2017. The Application arose arising from engineering financial services the Applicant alleges to have provided to the Respondent State pursuant to an agreement for securing funds for the rehabilitation of the Accra and Kumasi Sports Stadia for the Confederation of the African Cup of Nations Tournament of 2008.

4. The Applicant alleges that, by not respecting the terms of the agreement regarding the afore-mentioned services, the Respondent State violated the following rights provided under the Charter:

- a. Enjoyment of rights and freedoms recognised in the Charter without distinction (Article 2 of the Charter);
- b. Equality before the law and equal protection of the law

(Article 3 of the Charter); and

c. Right to fair trial (Article 7 of the Charter).

5. In the course of the proceedings before this Court on 4 July 2017, the Applicant applied for Provisional Measures to order the Respondent State to stay the execution of a judgment of 8 June 2017 by the Supreme Court requiring him to refund Ghana Cedi 51,283,480.59 to the Respondent State, following a finding that the procurement process relating to which the payments were made for the services was unconstitutional.

6. The Respondent State argues that the question to be determined is whether it is entitled to recover debts owed by the Applicant as provided for under the laws of Ghana. It avers that the issue is not whether alleged irreparable breaches of human rights can be legitimately raised following its efforts to recover the sums in question, and not whether this action would amount to a breach of Ghana's obligation under the Charter, Articles 5(3) and 34(6) of the Protocol the Rules and Article 40 of the 1992 Constitution of the Republic of Ghana.

III. Procedure

7. The Application dated 5 January 2017 was received at the Registry on 16 January 2017.

8. The Application was served on the Respondent State by notices dated 28 April 2017 and 8 June 2017 notifying the Respondent State to file the list of representatives and the Response to the Application within thirty (30) and sixty (60) days of receipt respectively. The second notice was necessitated by the Respondent State's Attorney General's letter received on 31 May 2017 informing the Registry of the Court that they had received only the notice without the Application and attachments thereto.

9. By an application dated 30 June 2017 and received at the Registry on 4 July 2017 the Applicant applied for interim measures.

10. On 16 August 2017 the Respondent State filed a request for extension of time up to 31 August 2017 to file its Response to the Application, stating that the Applicant had filed international arbitration proceedings against the Respondent State in another forum on the same subject matter.

11. On 4 September 2017 the Respondent State filed its Response to the Application, and this was transmitted to the Applicant by a notice dated 12 September 2017 giving him thirty (30) days from date of receipt, within which to file the Reply. The Applicant filed the Reply to the Response on 12 October 2017. The Reply was transmitted to the Respondent State for information, by a notice dated 18 October 2017.

12. On 4 September 2017 the Applicant filed a Supplementary Affidavit in support of an Application for Interim Measures and this was transmitted to the Respondent State by the above-mentioned notice dated 12 September 2017.

13. On 28 September 2017 the Applicant filed another “*Urgent Request for Interim Measures*” alleging that, in spite of the service of the Application for interim measures, the Respondent State has persisted in pursuing the retrieval of the amount of Ghana Cedi 51,283,480.59 from him with the full and active support of the Supreme Court and its Registry in clear violation of the letter and spirit of the Protocol and Rules of Court (herein after referred to as “the Rules”).

14. The Applicant states that the Registry of the Supreme Court of the Respondent State has initiated proceedings for execution of judgment against him and is in the process of seizing immovable properties from various locations in Accra, Ghana, some of which belong to his relatives.

15. This second request was transmitted to the Respondent State by a notice dated 2 October 2017 giving the Respondent State until 11 October 2017 to respond thereto.

16. The Respondent State filed the Response to this request on 13 October 2017 and the Court decided, in the interest of justice, to deem it as properly filed. The Response was transmitted to the Applicant by a notice dated 18 October 2017 and granting him seven (7) days from the date of receipt within which to respond. On 31 October 2017 the Applicant filed his Reply to the “Respondent State’s Affidavit in Opposition to the Application for Interim Measures”.

IV. Jurisdiction

17. In dealing with an Application, the Court has to ascertain that it has jurisdiction on the merits of the case.

18. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.¹

19. Article 3(1) of the Protocol provides that: “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

1 See Application No. 002/2013. Order for Provisional Measures 15/3/2003, *African Commission on Human and Peoples’ Rights v Libya* and Application No. 006/2012. Order for Provisional Measures 15/3/ 2013, *African Commission on Human and Peoples’ Rights v Kenya*; Application No. 004/2011. Order for Provisional Measures 25/3/2011, *African Commission on Human and Peoples’ Rights v Libya*.

concerned”.

20. The Court notes that the rights alleged to have been violated are guaranteed under Articles 2, 3 and 7 of the Charter.

21. As indicated in paragraph 2 of this Order, the Respondent State, became a Party to the Charter on 1 March 1989 and to the Protocol on 16 August 2005 and deposited on 10 March 2011 a Declaration accepting the competence of the Court to receive cases from individuals and Non-Governmental Organisations.

22. In light of the foregoing, the Court concludes that it has *prima facie* jurisdiction to hear the Application.

V. On the provisional measures requested

23. Under Article 27(2) of the Protocol, “In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.” In accordance with Rule 51(1) of the Rules, “Pursuant to Article 27(2) of the Protocol, the Court may, at the request of a party, the Commission or on its own accord, prescribe to the Parties, any interim measure which it deems necessary to adopt in the interest of the Parties or of justice”.

24. It is for the Court to decide whether to issue provisional measures depending on the circumstances of each case.

25. The Court notes from the record before it that, the Respondent State is in the process of execution of a court judgment against the Applicant by seizing his property.

26. The Court finds that the situation raised in the present Application is of extreme gravity and urgency on the basis that, should the Applicant’s property be attached and sold to recover the amount of Ghana Cedi 51, 283, 480.59, the Applicant would suffer irreparable harm if the Application on the merits is subsequently decided in his favour. The Court finds that the circumstances require that an order for provisional measures be issued, in accordance with Article 27(2) of the Protocol and Rule 51 of the Rules, to preserve the *status quo*, pending the determination of the main Application.

27. For the avoidance of doubt, this order shall not in any way prejudice any findings the Court shall make regarding its jurisdiction, the admissibility and merits of the Application.

28. For these reasons,

The Court,

Unanimously,

Orders the Respondent State to:

i. stay the attachment of the Applicant’s property and to take all appropriate measures to maintain the *status quo* and to avoid the

property being sold until this Application is heard and determined.

ii. report to the Court within fifteen (15) days from the date of receipt of this Order on the measures taken to implement this Order.