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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

IN THE MATTER OF

M'BA JEAN ROGER

V.

BURKINA FASO

APPLICATION NO. 015/2019

RULING

13 NOVEMBER 2026

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS • The Registrar • LE GREFFIER ARUSHA TANZANIA • COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES •

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The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI and Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In the matter of:

Jean Roger M'BA

Represented by:

Advocate Schadrack RUYENZI, an advocate and a member of the Rwanda Bar

Versus

BURKINA FASO

Represented by:

Mr YAO Lamoussa, Judicial Agent of the State

After deliberation,

renders this Ruling:

I. THE PARTIES

1. Mr Jean Roger M'BA (hereinafter referred to as "the Applicant") is a national of Cameroon. At the time of filing the present Application, he was serving a life sentence[1] at the Ouagadougou Remand and Correctional Centre,

[1] The death sentence was commuted pursuant to Article 900-1 of the Burkinabè Penal Code of 31 May 2018, which provides: "Death sentences imposed under the previous law shall, by law, be commuted to life imprisonment".

having been tried and convicted for murder, aggravated robbery, forgery and the use of forged public documents[2] on 16 June 2011. He alleges violation of his rights in connection with the proceedings before Burkinabe courts.

2. The Application is filed against Burkina Faso (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "'the Charter"') on 21 October 1986 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 "the Protocol") on 25 January 2004. It also deposited, on 28 July 1998, the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepts the Court's jurisdiction to receive applications from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples' Rights.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that the Applicant was sentenced to death for murder, aggravated robbery, forgery and the use of forged public documents by the Criminal Chamber of the Court of Appeal of Bobo-Dioulasso, Burkina Faso, by Judgment No. 7 of 16 June 2011.

4. The Applicant avers that he appealed the said judgment before the Cassation Court on 20 June 2011. He further avers that he filed supplementary pleadings on 9 January 2012 but the appeal was dismissed

[2] Article 6 of the Penal Code (Law No. 043/96/ADP of 13 November 1996, applicable at the time of the events) provides: "In the event of a conviction for multiple crimes or misdemeanors, only the most severe penalty shall be imposed".

by judgment of the Criminal Chamber of the Respondent State's Cassation Court rendered on 24 January 2013.

B. Alleged violations

5. The Applicant alleges violation of the following rights:

   i. The right to life, protected by Article 4 of the Charter;
   ii. The right to respect for human dignity, protected by Article 5 of the Charter;
   iii. The right to have one's case heard, protected by Article 7 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 23 April 2019. It was served on the Respondent State on 4 June 2019 with a request to submit the names of its representatives and to file its Response within 30 and 60 days respectively.[3]

7. On 16 July 2019, the Respondent State submitted the list of names and contact details of its representatives.

8. On 22 June 2019, the Respondent State requested a one-month extension of time to file its Response.

9. On 20 January 2020, the Registry requested the Applicant to submit, within eight days, a certified copy of the judgment of the Cassation Court. The Applicant did not respond.

10. On 26 February 2024, pursuant to Rule 42(5)(b) of the Rules, the Registry transmitted the Application to the Republic of Cameroon requesting it to indicate, within 30 days, whether it wanted to intervene in the case, given

[3] Article 37 of the Rules of 2 June 2010 (applicable at the time the Application was served on the Respondent State).

that the Applicant was a national of that State. The Republic of Cameroon did not respond.

11. On 16 April 2026, the Registry drew the Respondent State's attention to Rule 63 of the Rules of Court concerning the Court's power to render a judgment in default and granted it an additional 45 days to file its Response.

12. On 27 May 2026, the Permanent Mission of Burkina Faso to the African Union in Addis Ababa acknowledged receipt of the notice regarding Rule 63 of the Rules and requested that the said documents in the record be sent to it for onward transmission to the Judicial Agent of the State.

13. By email dated 13 May 2026, the Registry transmitted the Application and procedural documents to the Permanent Mission of Burkina Faso in Addis Ababa, together with the acknowledgement of receipt issued by the Respondent State's legal representative in respect of the Application. The Respondent State did not file a Response.

14. Pleadings were closed on 20 August 2026 and the Parties were duly informed.

IV. PRAYERS OF THE PARTIES

15. The Applicant prays for an order compelling the Respondent State to:

    i. Grant him a presidential pardon;
    ii. Commute his death penalty and that of all persons sentenced to the same penalty to prison sentence;
    iii. Grant him parole;
    iv. Repatriate him to his country of origin;
    v. Grant him Amnesty;
    vi. Grant him an out-of-court settlement;

vii. Pay him financial compensation for the harm he suffered as a result of the 'unjust' judicial decisions handed down against him.

16. The Respondent State did not make any submission.

V. ON THE DEFAULT BY THE RESPONDENT STATE

17. Rule 63(1) of the Rules provides:

> Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter judgment in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

18. The Court emphasises that the aforementioned Rule 63(1) sets out three requirements for rendering a judgment in default, namely: (i) the application and procedural documents have been served on the defaulting party, in this case the Respondent State; (ii) absence of representation or a Response from the Respondent State;[4] and (iii) a request made by the adverse party or a decision taken by the Court on its own initiative.

19. With regard to the first requirement, the Court recalls, as stated in paragraph 6 above, that on 4 June 2019, the Application and the procedural documents were served on the Respondent State for its Response within 60 days. The Respondent State did not comply. On 16 April 2026, the Registry drew the Respondent State's attention to the effects of Rule 63 of the Rules and re-sent the Application and the procedural documents, giving it additional 45 days to file its Response. The first requirement under Rule 63 is, therefore, met.

[4] *Laurent Gbagbo v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 025/2025, Judgment of 26 January 2025 (jurisdiction and admissibility), § 16.

20. With regard to the second requirement, the Court notes that, although the Respondent State received the Application and the procedural documents, it failed to defend the case. The Court therefore finds that the Respondent State defaulted.

21. As for the third requirement, the Court emphasises that the Applicant has not submitted any request seeking a judgment in default. However, it decides, on its own motion, in the interests of justice, to enter a judgment in default.[5]

22. In view of the foregoing, the Court considers that the requirements under Rule 63(1) of the Rules are met and decides to deliver a decision in default.

VI. JURISDICTION

23. The Court notes that Article 3 of the Protocol provides:

> 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.

24. Under Rule 49(1) of the Rules, "The Court shall ascertain its jurisdiction … in accordance with the Charter, the Protocol and these Rules".

25. Based on the aforementioned provisions, the Court, in every application, must conduct a preliminary examination of its jurisdiction and rule on any objections thereto, if any.

[5] *Léon Mugesera v. Republic of Rwanda* (judgement) (27 November 2020) 4 AfCLR 834, §§ 13-18; *Guillaume Kigbafori Soro and Others v. the Republic of Côte d'Ivoire*, AfCHPR, Application No. 012/2020, judgment of 26 June 2025 (merits and reparations), § 21.

26. As the Respondent State failed to defend its case, no objection to the Court's jurisdiction is on record.

27. Having found that there is nothing in the record to suggest that it lacks jurisdiction, the Court considers that it has:

    i. Material jurisdiction, insofar as the Applicant alleges violation of human rights protected by the Charter, which is a human rights instrument to which the Respondent State is a Party;[6]
    ii. Temporal jurisdiction, insofar as the alleged violations occurred after the Respondent State became a Party to the Protocol; [7]
    iii. Personal jurisdiction, insofar as the Respondent State deposited the Declaration;
    iv. Territorial jurisdiction, insofar as the alleged violations took place on the territory of the Respondent State, which is a Party to the Protocol.[8]

28. In view of the foregoing, the Court considers that it has jurisdiction to hear the present Application.

VII. ADMISSIBILITY

29. 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.

[6] *Soro and Others v. Côte d'Ivoire*, *supra*, § 27(i).
[7] *Idd Kiture v. United Republic of Tanzania*, AfCHPR, Application No. 010/2019, judgment of 5 June 2026 (merits and reparations), § 29.
[8] *Soro and Others v. Côte d'Ivoire*, *supra*, § 27(iv).

30. Under Rule 50(1) of the Rules,[9] which essentially restates the provisions of Article 56 of the Charter:

> 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 seized 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 Charter of the Organization of African Unity or the provisions of the Charter

31. As the Respondent State failed to defend its case, no objection has been raised to the admissibility of the Application. Nevertheless, the Court must satisfy itself that all admissibility requirements under Article 6(2) of the Protocol and Rule 50(1) of the Rules are met.

32. The Court notes, from the record, that the Applicant has clearly stated his identity, in accordance with Rule 50(2)(a) of the Rules.

[9] Rule 39 of the Rules of 2 June 2010.

33. The Court observes that the Applicant's requests seek to protect his rights guaranteed by the Charter and the Constitutive Act of the African Union. Indeed, one of the objectives of the Constitutive Act, as set out in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, there is nothing in the Application that is incompatible with the said Constitutive Act. Consequently, the Court considers that the Application meets the requirement of Rule 50(2)(b) of the Rules.

34. The Court further notes that the language in which the Application is drafted is neither disparaging nor insulting to the Respondent State, its institutions or the African Union, so that it complies with Rule 50(2) of the Rules.

35. Furthermore, the Court considers that the Application complies with Rule 50(2)(d) of the Rules insofar as it is not based on news reports disseminated in the mass media, but rather on judicial documents issued by the courts of the Respondent State.[10]

36. With regard to the exhaustion of local remedies, the Court recalls its jurisprudence that the remedies to be exhausted in order to comply with the requirement of Rule 50(2)(e) of the Rules are judicial remedies,[11] unless it is clear that they are unduly prolonged.[12] These remedies must be available, effective and satisfactory.[13]

37. The Court emphasises that, within the meaning of Article 127(1)[14] of the Respondent State's Constitution,[15] the Cassation Court is the highest court in the judicial system. Furthermore, the Court has consistently held that, in the Burkinabe judicial system, in criminal matters, a Cassation appeal is a

[10] *Kouassi Kouamé Patrice and Baba Sylla v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 015/2021, judgment of 22 September 2022 (merits and reparations), § 55.
[11] *Kouadio Kobena Fory v. Republic of Côte d'Ivoire* (merits and reparations) (2 December 2021) 5 AfCLR 682, § 47; *Soro v. Côte d'Ivoire*, *supra*, § 38.
[12] *Soro v. Côte d'Ivoire*, *ibid,* § 38.
[13] *Ibid,* § 38.
[14] Article 127(1) of the Constitution of 11 June 1991 provides: *'The Court of Cassation is the highest court of the judicial system*'.
[15] The Constitution of 11 June 1991.

remedy that must be exhausted, as it is available, effective and satisfactory.[16]

38. In the present case, the Court notes that, following his conviction by the Criminal Division of the Bobo Dioulasso Court of Appeal by judgment of 16 June 2011, the Applicant filed a cassation appeal on 20 June 2011. On 9 January 2012, he filed supplementary pleadings in support of his appeal. By judgment of 24 January 2013, the Cassation Court of the Respondent State dismissed the appeal.

39. In view of the foregoing, the Court considers that the Applicant exhausted local remedies and that, consequently, the requirement under Rule 50(2)(e) of the Rules is met.

40. As regards the requirement that an application be filed within a reasonable time from the exhaustion of local remedies or from the date set by the Court as the start of reasonable time under Rule 50(2)(f) of the Rules, the Court notes that neither the Charter, the Protocol, nor indeed the Rules, specify the time limit for filing an application. Accordingly, it has consistently held that the reasonableness of the time-limit for filing an application depends on the specific circumstances of each case and must, therefore, be assessed on a case-by-case basis.[17]

41. In this regard, the Court has held that, in assessing the reasonableness of the time taken to bring a case before it, it takes into account certain factors.[18] These factors include, by way of example, whether the applicant is literate, has access to legal aid, or is incarcerated with restricted movement and limited access to information.[19]

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[16] *Lompo Bahanla v. Burkina Faso*, AfCHPR, Application No. 016/2019, judgment of 3 September 2024 (jurisdiction and admissibility), § 40.
[17] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) (2014) 1 AfCLR 219, § 92; see also *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[18] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 599, § 92
[19] *Idd Kiture v. United Republic of Tanzania*, Application No. 010/2019, – Judgment of 5 June 2026 (merits and reparations), § 48.

42. The Court emphasises, in this regard, that whilst it is true that Rule 50(2)(f) of the Rules allows applicants sufficient time to consider the appropriateness of bringing proceedings before the Court,[20] the fact remains that the Rule seeks to ensure that "the authorities and other concerned persons are not kept in a situation of uncertainty for a protracted period".[21]

43. The Court reiterates that it is for the Applicant to prove that the time it took him to file his Application is reasonable. In the absence of such proof, the Court has held in several cases brought by detained applicants that the delays of five years and eleven months,[22] five years and four months,[23] and five years and six months[24] were not reasonable. It follows that incarceration is not, in and of itself, a justification in the present matter.

44. In the present case, the Court notes that, as local remedies were exhausted following the Cassation Court's judgment of 24 January 2013, the start date for assessing reasonable time for bringing the case before it must be that date. Between that date and 23 April 2019, when the present proceedings were brought, six years, two months and 29 days elapsed. The question is, therefore, whether this time limit is reasonable within the meaning of Article 56(5) as restated in Rule 50(2)(f) of the Rules.

45. In the instant Application, the Applicant does not state the reasons why he waited six years, two months and 29 days to bring his case before it.

46. The Court notes that the record shows that although the Applicant was assisted by Counsel, he himself submitted a 'statement' in support of his

[20] *Zongo and Others v. Burkina Faso*, *supra*, § 107.
[21] Ibid, § 107
[22] *Hamad Mohamed Lyambaka v. United Republic of Tanzania* (jurisdiction and admissibility) (2020) 4 AfCLR 574, §50. 23
[23] *Godfrey Anthony et al. v. United Republic of Tanzania* (jurisdiction and admissibility) (2019) 3 AfCLR 470, §48.
[24] *Livinus Daudi Manyuka v. United Republic of Tanzania* (jurisdiction and admissibility) (2019) 3 AfCLR 689, §55.

appeal before the Respondent State's Cassation Court. This shows that he is not illiterate.

47. Furthermore, it does not emerge from the record that the Applicant was unaware of the Court's existence or that he was indigent.

48. It follows from the foregoing that not only does the Applicant fail to justify the delay of six years, two months and 29 days, but also that there is nothing on the record to suggest that this delay is reasonable, having regard to the Court's jurisprudence.

49. The Court, therefore, considers that the period of six years, two months and 29 days from the exhaustion of local remedies to the filing of the present Application is not reasonable. Consequently, the requirement under Rule 50(2)(f) of the Rules is not met.

50. Having found that the Application was not filed within a reasonable time after exhaustion of local remedies, the Court considers it unnecessary to examine the other admissibility requirements.

51. Consequently, the Court declares the Application inadmissible for not being filed within a reasonable time.

VIII. COSTS

52. The Applicant does not make any submissions on costs.

53. The Respondent did not make any submissions with regards to costs.

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54. Under Article 32(2) of the Rules: "Unless otherwise decided by the Court, each party shall bear its own costs, if any".

55. In the present case, the Court considers that nothing in the circumstances of the case warrants a departure from this provision and therefore orders that the Applicant bear his own costs. Accordingly, the Court decides that each Party shall bear its costs.

IX. OPERATIVE PART

56. For these reasons:

THE COURT,

Unanimously,

The Respondent State having defaulted,

On jurisdiction

i. *Declares that it* has jurisdiction.

On admissibility

ii. *Finds* that the Application was not filed within a reasonable time;
iii. Consequently, *declares* the Application inadmissible.

On costs

iv. *Orders* each Party to bear its own costs.

Signed:

Blaise TCHIKAYA, President; 

Chafika BENSAOULA, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

Done at Arusha, on the Thirteenth Day of November in the year Two Thousand and Twenty-Six, in French and English, the French text being authoritative.