

African Court on Human and Peoples' Rights

In the Matter of

Kabalabala Kadumbagula and Another

V.

United Republic of Tanzania

Application No. 031/2017

Declaration appended to the Judgment of 4 June 2024

1. I share the majority's position on the admissibility of the Application as regards the second Applicant, Daud Magunga.
2. On the other hand, I do not agree with either the reasoning or the operative part regarding the inadmissibility of the Application in respect of the first Applicant, Kabalabala Kadumbagula, for the simple reason that in similar cases involving the same Respondent State, the Court declared the Application admissible on the grounds that the period between 2010 and 2013 should not be taken into account in computing the period to be considered as reasonable time for bringing an action before the Court.
3. In accordance with Article 56(6) of the Charter and Rule 50(2)(f) of the Rules of Procedure of the Court ("the Rules"), the reasonable time for lodging an Application is determined either from the date on which local remedies are exhausted, in this case, 5 November 2019, or from the date chosen by the Court as the date on which the time-limit for its own referral to the Court begins to run.
4. It emerges from the judgment to which this Declaration is appended that the Respondent State deposited the Declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the Court (hereinafter "the Protocol") on 29 March 2010 and that, consequently, within the meaning of the above-mentioned provisions of the

Charter and the Rules, the reasonable time should run from 29 March 2010 to 27 September 2017, the date on which the Application was filed. The period to be considered should therefore have been 7 years, 5 months and 29 days.

5. It was therefore up to the Court to rule on the reasonableness of this period.
6. On the basis of the lack of evidence and the principle of legal certainty, the majority of the Court held that the time limit was unreasonable and declared the Application inadmissible.
7. I reiterate my position expressed in a number of previous individual opinions and declarations that the majority's position on this issue is not consistent with the principles of justice and equality, in particular in relation to the Applicants in the applications lodged in 2016 and 2017.
8. My position is indeed in line with the Court's seminal case-law in the *Norbert Zongo and Others v Burkina Faso (merits)* judgment of 21 June 2013, in which the Court, ruling on reasonable time, expressly held that the reasonable time for bringing a case before it is determined on the basis of the particular circumstances of each case and must be assessed on a case-by-case basis.
9. As the Court has applied this "case-by-case" principle in numerous judgments, it is appropriate to focus on those issued in respect of Tanzania in cases brought during the same period as the application in the case that is the subject of this declaration.
10. Some emblematic precedents of the Court on this issue include its judgments in the *Christopher Jonas, Amir Ramadhani, and Stephen John Rutakikirwa* cases where the Court considered the time limits of 4 and 5 years reasonable on the basis of factors such as the absence of representation before the national courts, the fact that the applicants were imprisoned, indigent, had no access to information and were unaware of the Court's existence during the period between the deposit of the Declaration by the Respondent State and 2013, given that the Court was still in its infancy.

11. In my view, in order to observe the principles of fairness and justice, in particular on the basis of similarity of the applications and the same Respondent State, the Court was obliged to take into account, in the case that is the subject of the present declaration, the lack of knowledge of its existence and did not include the period between 2010 and 2013 in the calculation of the time-limit whose reasonableness is being examined. Applying such an approach, which is logical and consistent with the harmonisation of case law, would have reduced the time limit in the present case to four years instead of seven, and would have led to the Application being declared admissible.

Judge Chafika Bensaoula



Done at Arusha, this Fourth Day of June in the year Two Thousand and Twenty-Four, the French text being authoritative.

