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

THE MATTER OF

KOUADIO KOBENA FORY

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 004/2021

JUDGMENT

5 FEBRUARY 2025

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

In the Matter of

KOUADIO Kobena Fory,

Self-represented

Versus

REPUBLIC OF CÔTE D'IVOIRE

Represented by

Barrister KOULIBALY Soungalo, Advocate of the Bar of Cote d'Ivoire

After deliberations,

Renders this judgment:

I. THE PARTIES

1. Mr Kouadio Kobena Fory (hereinafter referred to as "the Applicant") is a national of the Republic of Côte d'Ivoire (hereinafter referred to as 'the

Respondent State') and former revenue collector of the Guibéroua Municipality. He alleges a violation of his right to a fair trial in connection with legal proceedings between him and National Union of Treasury Workers (hereinafter referred to as "SYNATRESOR".

2. The Application is filed against the Republic of Côte d'Ivoire (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 31 March 1992 and to the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as the "Protocol") on 25 January 2004. On 23 July 2013, the Respondent State also 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 Court's jurisdiction to receive Applications from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples' Rights. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of the said Declaration. The Court has ruled that this withdrawal has no effect on pending cases or on new cases filed before the entry into force of the withdrawal one (1) year after its deposit, in this case, on 30 April 2021.[1]

[1] *Kouadio Kobena Fory v. République de Côte d'Ivoire*, (merits and reparations) (2 December 2021) 5 AfCLR 682, § 2; *Suy Bi Gohoré Émile et autres v. République de Côte d'Ivoire*, (merits and reparations) (15 July 2020) (merits and reparations), 4 AfCLR 406, § 67.

II. SUBJECT OF THE APPLICATION

A. Facts of the Matter

3. The Applicant avers that in 1995, following a fire outbreak in the premises of the Treasury of Guibéroua Municipality where he worked as Cashier, he was accused of wilfully destroying accounting documents and embezzlement of public funds. He was subsequently relieved of his duties by the Minister of Finance and Economic Planning and sentenced to ten years' imprisonment by the Gagnoa Court of First Instance. He avers that SYNATRESOR, of which he was a member, did nothing to trigger the solidarity, visitation, mutual aid and union action clauses to his benefit. The Applicant contends that things would have been different for him if SYNAT- CI had not failed to honour its trade union obligations towards him.

4. On 13 June 2018, he filed a complaint with the Abidjan Court of First Instance against SYNATRESOR seeking an order compelling SYNATRESOR to pay him the sum of Thirty-Four (34) Billion CFA francs in damages.

5. On 4 June 2020, the Abidjan Plateau Court of First Instance ruled that the defendant, that is, SYNATRESOR, which was legally established only on 17 March 2004, that is, after the events had occurred, could not appear as a defendant. Consequently, the Court declared the Application inadmissible on the grounds that SYNATRESOR lacked standing as defendant.

6. Believing that the decision of the Abidjan Court of First Instance denied him justice, the Applicant brought the present Application before this Court.

B. Alleged Violations

7. The Applicant alleges the violations of his rights as follows:

i. The rights and freedoms protected by Article 2 of the Charter;
ii. The right to equality before the law and equal protection of the law, protected by Article 3 of the Charter;
iii. The right to have his case heard, in particular, the right to have recourse to the national courts against any act which violates the rights recognised and guaranteed by the laws and regulations, protected by Article 7(1)(a) of the Charter;
iv. Freedom of association (Article 11 of ILO Convention 87) and the prohibition on adopting measures restricting this freedom, protected by Article 22(3) of the International Covenant on Civil and Political Rights;
v. The obligation of States to guarantee the independence of courts, provided for by Article 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed at the Registry on 19 February 2021 and served on the Respondent State on 19 June 2021, for its Response within 90 days. At the expiry of this time-limit, the Respondent State did not file its Response.

9. By letter dated 29 October 2021, the Registry informed the Respondent State that the Court would invoke Rule 63(1) of the Rules, which empowers the Court to render judgment by default and granted it additional forty-five (45) days to file a Response.

10. At the expiration of the additional time-limit, the Respondent State still did not file its Response.

11. On 12 April 2022, the Applicant requested the Court to render a judgment by default.

12. Pleadings were closed on 20 April 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicant prays the Court to order the Respondent State to take the following measures:

    i. Pay him, as soon as possible, the sum of Four Hundred and Twenty Million US dollars ($420,000,000) as compensation for the extra-patrimonial harm he suffered and continues to suffer as a result of the violation of his fundamental rights;
    ii. Implement the judgment of the African Court in the present Application, within a maximum period of six (6) months of delivery, failing which, the State shall pay him default interest calculated on the basis of the rate applicable by the Central Bank of West African States (BCEAO), throughout the period of default and until full payment of the sums due;
    iii. Submit, within a maximum period of six (6) months from the date of delivery of the African Court's judgment in the present Application, a report to the African Court on the status of implementation of the extra-patrimonial reparations awarded.

14. The Respondent State did not participate in the proceedings and thus did not make any prayers.

V. DEFAULT BY THE RESPONDENT STATE

15. Rule 63(1) of the Rules provides that:

> 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 a decision 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.

16. The Court notes that the above-mentioned Rule 63(1) sets out three conditions for rendering judgment by default, namely: (i) notification to the defaulting party of the Application and of the procedural documents; (ii) default by one of the parties; and (iii) a request made by the other party or by the Court acting on its own motion.

i. On the notification of the Application and pleadings

17. With regard to the notification of the Application and the pleadings, the Court recalls that in the instant case, the Application was served on the Respondent State on 19 June 2021 and that the latter was given a period of ninety (90) days to file its Response. The Court therefore considers that the Application and the pleadings were duly served on the Respondent State.

ii. On the failure of the Respondent State to file its submissions

18. The Court notes that the Respondent State failed to file its Response to the Application, despite the reminder sent to it on 29 October 2021. The Court finds, therefore, that the Respondent State failed in its obligation to defend itself in the case.

iii. On the judgment by default or at the request of the Applicant

19. Lastly, the Court notes that the Rules empower it to render judgment by default either on its own motion or at the request of the other party. In the instant case,

on 12 April 2022, the Applicant requested the Court to render a judgment by default.

20. In light of the foregoing, the Court renders the present judgment by default, pursuant to Rule 63 of the Rules.[2]

VI. JURISDICTION

21. 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.

22. Under Rule 49(1) of the Rules, "the Court shall conduct preliminary examination of its jurisdiction and the admissibility of the Application in accordance with the Charter, the Protocol and these Rules".

23. Based on the above-mentioned provisions, the Court must, in each Application, conduct a preliminary examination of its jurisdiction and rule on any objections thereto.

24. In the instant case, no objections were raised to the material, temporal, personal and territorial jurisdiction of the Court. Nevertheless, the Court must ensure that all aspects of its jurisdiction are established. Having found that

[2] *African Commission on Human and Peoples' Rights v. Republic of Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38 to 42; *Ingabire Victoire Umuhoza v. Republic of Rwanda,* (reparations) (7 December 2018) 2 AfCLR 202, §§ 14, 15 and 17; *Fidèle Mulindahabi v Republic of Rwanda* (jurisdiction and admissibility) (4 July 2019) 3 AfCLR 389, § 10.

nothing on record shows that it lacks jurisdiction, the Court considers that it has:

i. Material jurisdiction, insofar as the Applicant alleges violation of Articles 2, 3, 7 and 26 of the Charter and Article 22(3) of the International Covenant on Civil and Political Rights (ICCPR)[3], instruments to which the Respondent State is a party.[4]

ii. Personal jurisdiction, insofar as the Respondent State deposited the Declaration provided for in Article 34(6) of the Protocol on 23 July 2013 as indicated in paragraph 2 of the present judgment. On 29 April 2020, it deposited the instrument of withdrawal of the said Declaration. In this regard, the Court reiterates its jurisprudence that the withdrawal of the Declaration has no retroactive effect and has no bearing on cases pending at the time of the deposit of the instrument of withdrawal, nor on new cases filed before the said withdrawal takes effect, in this case, on 30 April 2021. The present Application, having been filed on 19 February 2021, that is, two (2) months and eleven (11) days before the effective date of the withdrawal of the Declaration, is therefore not affected;

iii. Temporal jurisdiction, insofar as the violations alleged by the Applicant occurred after the Respondent State became a party to the Charter and the Protocol.[5]

iv. Territorial jurisdiction, insofar as the facts of the case occurred on the territory of the Respondent State.

25. In light of the foregoing, the Court holds that it has jurisdiction to determine the present Application.

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[3] The Respondent State became a party to the ICCPR on 26 March 1992.

[4] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kouassi Kouame Patrice and Baba Sylla v. République de Côte d'Ivoire*, ACtHPR, Application No. 015/2021, Judgment of 22 September 2022 (merits and reparations), § 23. *Kouadio Kobena Fory v. République de Côte d'Ivoire,* (merits and reparations) (2 December 2021) 5 AfCLR 682, § 26.

[5] *Kouadio Kobena Fory v. Republic of Côte d'Ivoire,* Judgment of 2 December 2021, *supra,* § 27.

VII. ADMISSIBILITY

26. Article 6(2) of the Protocol provides that:

> The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter.

27. In accordance with Rule 50(1) of its Rules:

> 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.

28. As for Rule 50(2) of the Rules, which essentially reproduces the content of Article 56 of the Charter, it 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 the exhaustion of 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 of the Constitutive Act of the African Union, or of the provisions of the Charter.

29. The Court notes that no objection was raised to the admissibility of the Application. Nevertheless, pursuant to Rule 50(1) of the Rules, it must ensure that the requirements under the aforementioned provisions are met.

30. The Court notes that the Applicant alleges that his Application complies with the admissibility requirements under paragraphs (a) to (g) of Rule 50(2) of the Rules.

31. It emerges from the record that the Applicant has been clearly identified by name, in accordance with Rule 50(2)(a) of the Rules.

32. The Court also notes that the Applicant's requests seek to protect his rights under the Charter. It notes that one of the objectives of the Constitutive Act of the African Union, 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 Constitutive Act of the African Union. The Court, therefore, finds that the Application meets the requirement of Rule 50(2)(b) of the Rules.

33. The Court further notes that the Application is not drafted in language that is disparaging or insulting to the Respondent State, which makes it compliant with Rule 50(2)(c) of the Rules.

34. The Court also notes that the Application is not based exclusively on news disseminated through the mass media, but on judicial documents issued by

the domestic courts of the Respondent State. The Court therefore holds that the request complies with Rule 50(2)(d) of the Rules.[6]

35. On the exhaustion of local remedies, the Applicant contends that when the Abidjan Plateau Court of First Instance was seised of his complaint against SYNATRESOR for compensation for the harm he had suffered, the latter, by judgment rendered on 4 June 2020, declared his Application inadmissible on the grounds that SYNATRESOR, which was established on 17 March 2004, had no legal existence in 1996, the year in which the violations alleged by the Applicant occurred.

36. The Applicant contends that such a judgment "rendered in *limine litis*, without any hearing and reflecting a manifest dilatory tactic, left him with no possibility of appeal". He argues that by dismissing his Application in *limine litis* with an inadmissibility decision "which cruelly lacked any legal basis and legal standing, the Court condemned him to remaining without any means of appeal before the second level of jurisdiction, the Court of Appeal".

37. The Court recalls that it has consistently held that the remedies to be exhausted, in order to comply with the requirement of Rule 50(2)(e) of the Rules are ordinary judicial remedies[7], unless these are unavailable, ineffective and insufficient or the related internal proceedings are unduly prolonged[8].

38. In the instant case, the Court notes that the Applicant clearly acknowledges that he did not exhaust local remedies, in this case, by filing an appeal to the Abidjan Court of Appeal, on the grounds that the judgment dismissing his complaint, handed down in *limine litis*, left him no other avenue to appeal the judgment.

[6] *Kouassi Kouame Patrice and Baba Sylla v. Republic of d'Ivoire*, *supra,* § 55.
[7] *Kouadio Kobena Fory v. Republic of Côte d'Ivoire,* Judgment of 2 December 2021, *supra,* § 47.
[8] *Ibid.*

39. The Court notes that the judgment dismissing the Applicant's complaint was rendered at first instance which, in accordance with Article 162(2) of the Ivorian Code of Procedure, is subject to appeal.[9] In the instant Application, the Applicant does not deny that he did not appeal and that in any case, there is no proof of such an appeal in the record.

40. In light of the foregoing, the Court finds that local remedies were not exhausted.

41. Having found that local remedies were not exhausted, and bearing in mind that the admissibility requirements are cumulative, the Court will not examine the last two admissibility requirements under Rule 50(2)(f) and (g) of the Rules.

42. Accordingly, the Court declares the Application inadmissible.

VIII. COSTS

43. The Applicant made no claims for costs.

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44. Pursuant to Rule 32(2) of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs, if any."

45. In the instant case, the Court decides that the Applicant shall bear his own costs.

[9] Under Article 162 al. 2 of the Ivorian Code of Procedure, "All decisions rendered at first instance, whether contested or by default, are subject to appeal".

IX. OPERATIVE PART

46. For these reasons:

THE COURT,

Unanimously,

i. Decides to render this judgment by default.

On jurisdiction

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Declares* the Application inadmissible for non-exhaustion of local remedies.

On costs

iv. *Declares* that the Applicant shall bear his own costs.

Signed:

Imani D. ABOUD, President;

Modibo SACKO, Vice-president;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

Done at Arusha, this fifth day of the month of February of the year Two Thousand and Twenty-five, in French and English, the French text being authentic.