

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE MATTER OF

ALIYU MOHAMMED

V

THE AFRICAN UNION (AU) AND THE AFRICAN UNION COMMISSION (AUC)

APPLICATION NO. 014/2024

JOINT SEPARATE OPINION OF Stella I. ANUKAM and Dennis D. ADJEI

1. The Registrar of the Court brought to the notice of the Court the present Application filed by the Applicant, a Nigerian national, to determine whether it was manifestly unfounded and as a result of which the Registrar has the power to refuse to register it and subsequently inform the Applicant of the reasons thereof.
2. The Registrar was of the candid opinion that the application could be terminated under Rule 48 (2) of the Rules of the Court which provides thus:

“In any case, where the Registry receives an Application from an individual or Non-Governmental Organization, the Registrar shall verify with the AU Commission whether the State against which the Application has been filed is a party to the Protocol or had deposited the Declaration in terms of Article 34(6) of the Protocol. Where the Protocol has not been ratified or the Declaration has not been deposited, the Registrar shall not register the Application and shall inform the Applicant of the reason(s) thereof.”

3. The power given to the Registrar to refuse to register an application submitted by an individual or Non-Governmental organization against a State which has not ratified the Protocol establishing the Court or has not deposited a Declaration to grant individuals and Non-Governmental organizations access to the Court. The Rule 48 (2) has expressly mentioned State Parties and has excluded organs or other bodies which have not been mentioned, and the Latin maxim *expressio unius exclusio alterius* shall be invoked to exclude the Respondents who are not State Parties and therefore not competent to ratify the Protocol or deposit a Declaration.

4. In the case in point, the Applicant filed the Application against non-State international organizations which are not eligible to ratify the Protocol nor deposit a Declaration under Article 34(6) of the Protocol to grant them access to the Court.
5. Article 3 of the Protocol grants access to the Court by entities and individuals who have been specifically mentioned after satisfying the conditions precedent. It provides thus:

“1. The following are entitled to submit case to the Court:

- a) The Commission
- b) The State Party which had lodged complaint to the Commission
- c) The State Party against which the complaint has been lodged at the Commission
- d) The State Party whose citizen is a victim of human rights violations or African Intergovernmental Organizations

2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

3. The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance article 34(6) of this Protocol.”

6. The Respondents in this Application are neither State Parties nor bodies which have been granted access to the Court and are not entitled to submit cases to the Court or for a case to be submitted against them to the Court. The Registrar does not have the power to refuse registration of Application brought against an international organization which is not a party to the Protocol and shall file same and present it to the Court for determination.
7. Whenever a case is filed against an entity which does not have access to the Court as in the case of the Respondents, the Registrar shall bring it to the notice of the Court by invoking its inherent jurisdiction under Rule 90 of the Rules for the Court to determine its personal jurisdiction. The Registrar lacks the capacity to refuse to register an application which is brought against an international organization even where on the face of it, it is manifestly incompetent by the fact that Rule 48(2) of the Rules of Court does not confer such power on the Registrar.
8. The Respondents are legal personalities separate and distinct from the legal personality of their Member States, and international obligations emanating from a treaty ratified by the States Parties cannot be imposed on them except where they

have ratified the treaty or are subject to such obligations by any other means recognised by international law.

9. In the present case, the Respondents have not ratified the Protocol, and it does not make provision for them to ratify it and to grant them access to the Court. Furthermore, there is no international law provision which has imposed such obligations on the Respondents under the Protocol. Article 34 of the Vienna Convention on the Law of Treaties provides that a treaty does not impose obligations or rights on a third organization or third States without its consent and we hold that there are no obligations imposed on the Respondents by the Protocol as it is not a party to it.
10. We recall the case of *Femi Falana v African Union*¹ where the African Court held that African Union cannot be subject to obligations emanating from the Protocol by the fact that it is not a party to it and cannot be sued before the Court on behalf of its Member States.
11. We hold that the Application was properly brought to the notice of the Court by the Registrar under its inherent jurisdiction as the Court is the only entity seised with jurisdiction to determine the jurisdiction of such nature.
12. We proceed to dismiss the Application without examining the personal jurisdiction of the Applicant after having held above that the Respondents cannot be sued before the Court and the Application is dismissed on grounds of absence of personal jurisdiction of the Respondents.

Signed:

Stella I. ANUKAM, Judge 

Dennis D. ADJEI, Judge 

Done at Arusha, this Twelfth Day of February in the year Two Thousand and Twenty-Five the English text being authoritative.



¹ Jurisdiction (2012) 1 AfCLR 118.