

PRESS RELEASE
JUDGMENT SUMMARY

ALFRED AGBESI WOYOME V. REPUBLIC OF GHANA
APPLICATION No. 001/2017
JUDGMENT [MERITS AND REPARATIONS] 28 June 2019

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 28 June 2019

Arusha, 28 June 2019: Today, the African Court on Human and Peoples' Rights (the African Court or the Court) delivered its judgment on the merits and reparations in the case of Alfred Agbesi Woyome v. Republic of Ghana.

The Applicant, Mr. Alfred Agbesi Woyome alleged that, through the judgment of the Review Bench of its Supreme Court, the Respondent State violated his rights under the African Charter on Human and Peoples' Rights (the Charter) specifically: Right to non-discrimination (Article 2); Right to equality before the law and equal protection of the law (Article 3); and Right to have one's cause heard (Article 7). The Applicant also submitted that such violations ought to be rectified pursuant to Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). The judgment of the Review Bench of the Supreme Court of the Respondent State concerned payments related to rehabilitation and construction of stadia for the hosting of the 2008 Edition of the Africa Cup on Nations.

The Respondent State raised four objections to the material jurisdiction of the Court as follows: that the Protocol has not been domesticated; that the Application does not raise human rights claims; that domestic courts have jurisdiction over human rights matters and that the African Court cannot review decisions of the Supreme Court of Ghana. The Court

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unanimously held that it had material jurisdiction over the case because: Article 3 of the Protocol requires only ratification and not domestication for the Court to have jurisdiction. Consequently, whether or not the Respondent State has domesticated the Protocol, is immaterial as it remains bound by the provisions of the Protocol which it voluntarily ratified; the claims in the Application were based on alleged violations of provisions of the Charter, namely Articles 2, 3 and 7; the fact that the Respondent State has procedures on addressing human rights issues at national level does not prevent the Court from exercising material jurisdiction and lastly, although the Court will not interpret the Constitution of the Respondent State, it is however empowered to examine judicial decisions or acts of any State or organs of the State, where human rights violations have been alleged, including instances involving constitutional issues to ensure that they comply with the Charter and other human rights instruments ratified by the State.

On jurisdiction, the Court unanimously declared that it has jurisdiction.

As regards the admissibility of the Application, the Court examined two objections raised by the Respondent State. On the objection of failure to exhaust local remedies, the Respondent State averred that the Applicant could have invoked the human rights jurisdiction of the Supreme Court, and failure to do so denied the Supreme Court the opportunity to determine whether the Applicant's human rights were breached. The Applicant on his part alleged that his rights guaranteed under Articles 2, 3 and 7 of the Charter had been violated by the Supreme Court, the highest and final appellate court of the Respondent State and therefore he has exhausted local remedies. The Applicant further averred that the procedure under Article 33(1) of the Constitution of the Republic of Ghana cannot address his complaint. In his view, the procedure envisaged therein is ineffective due to the constitutional impediment posed in challenging a decision of the Supreme Court, (the highest court) at the High Court.

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In dealing with this objection to admissibility, the Court, relying on its case-law, held that the requirement set out in Article 56(5) of the Charter is that an applicant should exhaust remedies that exist and which are available and can be accessed without impediment. The Court found that, in the circumstances of this case, it would have been unreasonable to require the Applicant to file a claim at the High Court to call into question, a decision of the Supreme Court, whose decisions are binding on subordinate courts. Pursuing such a claim at the High Court would not have been capable of addressing the Applicant's grievances and would have therefore been an ineffective remedy. The Court further found that although local remedies were available they would not have been effective to address the Applicant's grievances. The Court consequently dismissed the Respondent State's objection relating to exhaustion of local remedies.

The Respondent State also raised an objection on the failure of the Applicant to file the case within a reasonable time from the exhaustion of local remedies. It argued that the period of almost three (3) years that the Applicant took after the delivery of the judgment of the Review Bench of the Supreme Court to file this Application is an unreasonable delay as there were no impediments in this regard. In response, the Applicant submitted that the Application was filed within a reasonable time after the exhaustion of local remedies since the decision of the Ordinary Bench of the Supreme Court was delivered on 14 June 2013 and the judgment of the Review Bench of the Supreme Court was rendered on 29 July 2014. Furthermore, the Applicant claimed that before seizing this Court he had to engage with the Commission of Inquiry into inordinate payments made from public funds in satisfaction of judgment debts. He averred that he appealed against the findings of this Commission before the Court of Appeal in June 2016 while the Application before this Court was filed on 5 January 2017. In dealing with this objection, the Court noted that the time the Applicant spent awaiting the determination of criminal proceedings instituted against him by the Respondent State as

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well as the case at the Court of Appeal challenging the findings of the Commission of Inquiry is sufficient justification for filing the Application two (2) years, five (5) months and seventeen (17) days after local remedies were exhausted. The Court concluded that in the circumstances of this case, the Application has been filed within a reasonable time as envisaged under Article 56(6) of the Charter and Rule 40(6) of the Rules. The Court therefore dismissed the objection on admissibility on the ground of failure to file the Application within a reasonable time.

On admissibility, by a majority of Eight (8) for and one (1) against, Judge Suzanne MENGUE dissenting, the Court declared the Application admissible.

Having found that it had jurisdiction and that the Application was admissible, the Court examined the violations alleged by the Applicant. On whether there was a violation of the right to non-discrimination and the right to equality before the law and equal protection of the law, the Court held that the Applicant has not demonstrated or substantiated how he has been discriminated against, treated differently or unequally, resulting in discrimination or unequal treatment based on the criteria laid out under Articles 2 and 3 of the Charter. The Court found that the Respondent State has not violated these provisions.

Furthermore, the Applicant made two allegations which fall under Article 7 of the Charter: namely, the alleged violation of the right to be heard by a competent tribunal and the alleged violation of the right to be tried by an impartial tribunal.

The Court noted that the key issue was whether the Applicant's right to be heard by a competent tribunal was violated as a result of the decision of the Review Bench of the Supreme Court hearing the matter rather than referring it to the High Court. Considering the margin of discretion domestic courts enjoy in interpreting their own jurisdiction, this Court

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holds that, there is nothing erroneous or arbitrary in the Supreme Court Review Bench's interpretation of its own jurisdiction, to question its competence. This is significant given that the Supreme Court is the highest court in the Respondent State. Accordingly, the Court holds that the Applicant's right to be heard by a competent tribunal, guaranteed under Article 7(1) (a) of the Charter has not been violated by the Respondent State.

With respect to the right to be tried by an impartial court, the Applicant alleged a violation on two grounds, namely: that the participation of eight judges at both the Ordinary and Review Benches casts doubt on the impartiality of the Supreme Court and that the remarks made by Justice Cecil Jones Dotse call into question the impartiality of the Review Bench of the Supreme Court.

The Court noted that it is not in dispute between the parties that eight (8) of the judges of the Ordinary Bench also sat in the Review Bench and participated in the consideration of the same matter in question. The point of disagreement between the Parties and the main issue for determination by the African Court is whether the composition of the Review Bench, the majority members who were also part of the Ordinary Bench, casts doubt on the impartiality of the tribunal to the extent that one could not reasonably expect a fair decision. Therefore, the Applicant's contention that the Review Bench was partial is based on a misapprehension that is neither justified nor objective. In view of the above, the Court concluded that the composition of the Review Bench of the Supreme Court by Judges who had participated in the Ordinary Bench does not call into question the impartiality of the Review Bench.

The Court also examined whether the remarks of Justice Dotse disclosed a perception of bias and in light of the circumstances, call into question the impartiality of the Review Bench of the Supreme Court as a whole. The Court observed that the impartiality of a judge is presumed and undisputable evidence is required to rebut this presumption. In the

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instant case, the Court noted that Justice Dotse's statements did not give an impression of preconceived opinions and did not reveal bias. The Court therefore concluded that the Respondent State has not violated the Applicant's right to be heard before an impartial tribunal guaranteed under Article 7 (1) (d) the Charter.

On merits, the Court unanimously found that the Respondent State has not violated Article 2 of the Charter on the right to non-discrimination; that the Respondent State has not violated Article 3 of the Charter on equality before the law and equal protection of the law; that the Respondent State has not violated Article 7 (1) (a) of the Charter on the right to have one's cause heard by a competent tribunal; **by a majority of Seven (7) for and Two (2) against, Justices Gérard NIYUNGEKO and Rafaâ BEN ACHOUR dissenting**, that the Respondent State has not violated the right to be tried by an impartial tribunal in respect of the composition of the Review Bench of the Supreme Court and also finds that the Respondent State has not violated Article 7 (1) (d) of the Charter in respect of the remarks made by Justice Dotse which allegedly call into question the impartiality of the Review Bench of the Supreme Court.

The Applicant made several prayers for reparations. The Court held that since no violation has been established, the issue of reparation does not arise. Consequently, the Applicant's prayers for reparation were dismissed.

On reparations, the Court, by a majority of Seven (7) for and Two (2) against, Judges Gérard NIYUNGEKO and Rafaâ BEN ACHOUR dissenting, rejected the reliefs sought by the Applicant.

On costs, the Court unanimously decided that each Party shall bear its own costs.

[Further Information](#)

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Further information about this case, including the full text of the decision of the Court, may be found on the website at <http://en.african-court.org/index.php/56-pending-cases-details/1056-app-no-001-2017-alfred-agbes-woyome-v-republic-of-ghana-details>. For any other queries, please contact the Registrar by email to registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.