

54<sup>th</sup> Ordinary Session

**Summary of the Complaint**

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Communication on 25 September 2013 from Pastor Key Mwand, (the Complainant). The Communication is submitted in accordance with the provisions of Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the African Charter or the Charter) against the Democratic Republic of Congo, hereafter referred to as the Respondent State or DRC.<sup>1</sup>
2. The Complainant submits that he is a Congolese citizen who deals in the supply of premium motor fuel under the name of KADI LIFT SERVICES, a corporation registered under number 3784 in DRC.
3. The Complainant alleges that he entered into a contract with Mr. Kyola Mashamba, who was a lawyer by profession and was the Legal Advisor and Attorney of GECAMINES (*la Générale des Carrières et des Mines*), a Congolese State mining company, for the supply of 28000 liters of vehicle premium motor fuel.
4. The Complainant further alleges that the parties agreed to put their concluded contract to writing in order to have a convenient record, and on 5 February 1996 in Lubumbashi (DRC) an Act of Debt Transfer Agreement or "*Convention de cession de créance*" which stands for a contract of sale was issued between him (the seller) and Mr. Kyola Mashamba (the buyer) who was in partnership with GECAMINES.
5. The Complainant avers that the agreement intended to create obligations between him, Mr. Kyola Mashamba and GECAMINES which is owned by the Congolese Government, as previously said.
6. The Complainant claims that the amount of \$ 17,000.00 was to be collected by the seller (him) in installments from GECAMINES in the lapse of a period of 30 days under the contract of sale which is a tool of the trade or negotiable instrument and a guarantee of the full payment of the sum of \$ 28,000.00. He notes that he

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<sup>1</sup>The Democratic Republic of Congo ratified the African Charter on 20 July 1987.

promised to be paid two months later the balance of \$ 10,500.00, but the promise was just in vain.

7. He submits that to the date, the Respondent State through GECAMINES has failed to honor the contract of sale and has used its influence to stop his business as a result of which he had to flee from DRC because of persecutions. The Complainant further submits that the Respondent State' negative influence caused him to suffer material, moral, emotional and financial damages and exile (loss of properties, family, money and livelihood).
8. The Complainant claims that he brought the case before the High Court of Lubumbashi for "fraud, breach of contract and prevention for specific performance." According to him, although evidences were secured and the accused were identified, the judges refused and neglected to deliver a verdict against the Respondent State. Also, no remedy was granted and no relevant Court Order was issued after the Court sessions. He therefore alleges that the Respondent State delayed and hindered the Court process from 1999-2012.
9. The Complainant avers that he instituted an action against GECAMINES in Zambia and also in South Africa where he is currently exiled and where the company is represented.

#### **Articles alleged to have been violated**

10. The Complainant makes reference to the African Charter, but does not allege any particular Articles of the Charter. Rather, he refers to Articles 2, 3, 6(1), 7, 9, 14(1) and 17 of the International Covenant on Civil and Political Rights.

#### **Prayers**

11. The Complainant prays the African Commission on Human and Peoples' Rights (the Commission) to :
  - Hold that his rights under international human rights instruments ratified by DRC, in this instance the African Charter, have been violated by the Respondent State.

## **Procedure**

12. The Communication was received by the Secretariat on 25 September 2013 and registered as Communication 457/13 - Pastor Key Mwand v Democratic Republic of Congo. The Secretariat acknowledged receipt of the Complaint on 18 October 2013.

## **Analysis of the Commission on Seizure**

1. The Commission finds that the Complaint does not clearly establish the link between GECAMINES and the Respondent State and how the latter has been involved in the violations. Moreover, the Complainant does not allege any particular Articles of the African Charter. Rather, he refers to Articles 2, 3, 6(1), 7, 9, 14(1) and 17 of the International Covenant on Civil and Political Rights.

## **Decision of the Commission on Seizure**

2. The Commission decides not to be seized of this Complaint because of the abovementioned reasons.

**Done in Banjul, The Gambia, at the 54<sup>th</sup> Ordinary Session of the African  
Commission on Human and Peoples Rights held from 22 October to 05 November  
2013**