



DECISION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS ON MERITS

Communication 747/21 Jacobus Stephanus Van Heerden & Anor v The Republic of South Africa

SUMMARY OF THE COMPLAINT

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received the Complaint on the 23rd September 2019.
2. The Parties in this Communication are as follows: The 1st Complainant is Jacobus Stephanus Van Heerden, a male South African National and the sole Shareholder and Director of Amour Technology Systems (Pty) Ltd (ATS), a Company registered in South Africa which is the 2nd Complainant. The 3rd Complainant is Liberty Fighters Network, a Voluntary Association in South Africa and the Representative of the 1st and 2nd Complainants. The Complainant indicated in their Observations on Admissibility & Merits that the 3rd Complainant is the Representative of the first two Complainants and does not have an interest in the matter.
3. The Complaint presented against the Republic of South Africa (the Respondent State) is in respect of the decision of the High Court of South Africa in Case Number 31884/2015, which was subsequently appealed and upheld by the Supreme Court of Appeal in matters bearing numbers SCA 354/19, and the Constitutional Court in CCT162/19. (Herewith would worth-the-while to indicate the parties to these matters)
4. The Complainants allege that the Respondent State's Courts issued adverse rulings against them because they were self-actors.
5. They further allege that the Courts in the Respondent State never gave reasons for their rulings but simply issued arbitrary and prejudicial orders.
6. The matter arose from a business dispute between 2nd Complainant and DCD-Group Limited (Pty) (DCD). The former referred the dispute to arbitration on the 13th December 2013 but withdrew this reference on the 3rd July 2014





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7. On the 2nd September 2014, DCD submitted the same dispute to the arbitration and ATS participated in those proceedings. After ATS failed to pay its share of the arbitration fees, on 5th March 2015, DCD informed ATS that the arbitration had lapsed. The Arbitrator indicated that they would be bound by a court order.
8. DCD presented this dispute to the High Court culminating in Case number 31884/2015. The application was set down for a hearing in December 2015. However, at the hearing, Judge Tolmay refused for the 1st Complainant Mr. Van Heerden to represent the 2nd Complaint, and ordered the latter to file an application for legal aid.
9. This culminated in the set down of 3 Applications which were all heard and decided by Judge Niewenhuizen, being the Representation, Main and Joinder Applications.
10. The Representation Application was heard first and dismissed. In this Application, the First Complainant sought Legal Aid for the 2nd Complainant following the Judge's refusal for the former Complainant would therefore not be represented in the Main Application.
11. The Main Application was heard next, here the Court sought to determine whether the Arbitration instituted by DCD had lapsed by way of the 2nd Complainant failing to pay their portion of the Arbitration Fees. The Court upheld DCD's plea that the Arbitration had lapsed and ordered the 2nd Complainant to pay Costs. The Court also decided that an order in terms of a notice of motion would follow.
12. On the Joinder Application, DCD sought to join the 1st Complainant, Mr. Van Heerden to the Main Application to pay Costs for the 2nd Complainant in his capacity as sole sponsor of the 2nd Complainant's litigation in the matter. The Court upheld DCD's relief and joined Mr. Van Heerden to the Main Application so as to enforce the cost order made against 2nd Complainant in his name.
13. The Complainants filed a complaint against the Judge Janse Van Niewenhuizen before the Judicial Services Commission (JSC) on the grounds that she was biased and did not decide their matter with independence and Impartiality. The Complaint was dismissed by the Tribunal of the JSC. The Complainants filed an appeal against that dismissal which was also dismissed. The JSC took the view that the Complaint by the Complainants concerned the merits of their High Court Case Number 31884/2015 and was best dealt with judicially via appeal of the decision itself in the superior courts.
14. Following their dismissal in the JSC, the Complainants then followed the JSC's guidance and appealed Judge Niewenhuizen's decision. The Complainants filed an application for leave to appeal the decision of the High Court in the





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Supreme Court of Appeal, being the aforementioned SCA 354/19 . On the 30th May 2019, the Supreme Court of Appeal dismissed the application on the grounds that it had “no prospect of success in an appeal and there is no other compelling reason why an appeal should be heard”.

15. The Complainant then approached the Constitutional Court on an urgent basis under CCT162/19 seeking to appeal the decision of the High Court on the 3 applications. The Constitutional Court dismissed the application on the grounds that it was not urgent; it did not engage the Court’s jurisdiction and bore no prospects of success.
16. The Complainants allege that their experience is part of a larger scale of judicial corruption in which the courts treat self-representing litigants unfairly. They allege that as a result of this judicial maltreatment, they have suffered financial losses and have had their rights violated.

ARTICLES ALLEGED TO HAVE BEEN VIOLATED

17. The Complainants submit that the Respondent State has violated Articles 2, 3, 5, 7, 9, 13, 19, 20, and 26 of the African Charter on Human and Peoples’ Rights (the Charter).

PROCEDURE

18. The Complaint was seized by the Working Group on Communications under the 2010 Rules of Procedure of the Commission at the 33rd Extraordinary Session held in The Gambia between the 12th and 19th July 2021;
19. On the 15th December 2021, the Secretariat informed the Respondent State of the seizure of this matter and transmitted the Complaint and seizure decision to the Respondent State;
20. On the 17th October 2022, the Complainants submitted their observations on Admissibility and Merits of the Communication;
21. The Complainant’s observations on Admissibility and Merits were on the 18th October 2022 transmitted to the Respondent State
22. The Secretariat of the African Commission on Human and Peoples’ Rights (the Commission) wrote the Respondent State repeatedly throughout 2022 requesting their submission of the Observations on Admissibility and Merits, to no avail
23. On the 7th of June 2023, the Secretariat re-transmitted the Complainants’ submissions to the Respondent State;





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24. Following the 77th Ordinary Session, the Secretariat wrote the Respondent State again to submit its observations on Admissibility and Merits;
25. The Respondent State wrote the Secretariat requesting for an extension of 30 days to submit its observations on Admissibility and Merits
26. On the 8th February 2024, by Note Verbale ACHPR/COM/747.21/135/2024, the Secretariat informed the Respondent State of the Commission's decision to grant an extension of 30 days for the Respondent State to file its Observations on Admissibility and Merits;
27. On the 8th March 2024, the Respondent State submitted its observations on the Admissibility and Merits of the Communication.
28. On the 8th March 2024, the Respondent State's submissions were transmitted to the Complainants
29. On Monday the 15th April 2024, the Secretariat received a Rejoinder of the Complainants and the same was transmitted to the Respondent State on the 15th April 2024.
30. On the 26th of June 2024, the Secretariat wrote to the parties to request further information regarding the situation giving rise to the alleged violations in accordance with Rule 116(4) of the 2020 Rules of Procedure.
31. On the 26th of June 2024, we received the Complainants' additional submissions. The same was acknowledged on the same day.
32. By Note Verbale ACHPR/COM/747.21/736/2024, the Secretariat reminded the Respondent State of its request for information transmitted on the 26th of June 2024.
33. On the 8th of August 2024, by Note Verbale ADD-18/2/AU/ACHPR/2/8/8/24/7109, the Respondent State transmitted its additional submissions request by the Secretariat. The Secretariat acknowledged receipt of the submissions.

PRAYERS

34. The Complainants have requested the Commission for the following remedies:-

- i. *Constitutional Court provide full and satisfactory reasons to the main Complainants why their application under case number CCT162/2019 was dismissed as per the order made on 29 July 2019 by;*





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- ii. *In the alternative and addition to paragraph 8.1 supra, that the Constitutional Court set aside the order made under case number CCT162/2019 and to enroll the matter for a proper hearing with oral arguments by those parties;*
- iii. *In the further alternative to paragraphs 8.1 and 8.2 supra, that either the Commission or as a referral to the African Court hears the matter under CCT162/2019 as an institution, or Court, of Appeal in relation to human rights violations as prohibited by the Charter;*
- iv. *That it be declared that the State Party violated the human and peoples' rights of the main Complainants, and those represented by LFN as its members, by utilizing practices in the SCA and Constitutional Court of the State Party to selectively choose cases to proceed with hearings before them and to arbitrarily dismiss cases having constitutional and human rights merits;*

ADMISSIBILITY

THE SUBMISSIONS FROM THE COMPLAINANT ON ADMISSIBILITY

35. The Complainants submit that they have adhered to all the conditions set out in Article 56 of the Charter on Admissibility. They submit that their Communication indicates the authors; is compatible with the Charter; is not written in disparaging or insulting language directed against the State Party and its institutions or to the AU; Is based on actual events experienced by the Complainants and not based on news disseminated through the mass media; has been sent after exhausting local remedies at the Constitutional Court; has been submitted within a reasonable period of only two (2) months from the time the Constitutional Court judgment was delivered and does not deal with any matter which has been settled by the State Party.¹

36. The Complainants extensively argued that by being dismissed at the Constitutional Court, they exhausted all remedies and that any other alternative remedy suggested would not be effective.²

THE SUBMISSIONS OF THE RESPONDENT STATE ON ADMISSIBILITY

¹ Complainants' Observations on Admissibility & Merits, para 15

² Complainants' Observations on Admissibility & Merits, para 16-20





37. The Respondent State submits that the Complainants have not exhausted local remedies because the decision of the JSC was never appealed at the High Court but rather sent straight to the Supreme Court of Appeal.³
38. The Respondent State further postulates that the alleged denial of Legal Representation for the 2nd Complainant was not a denial of justice but rather in-line with established legal practice in the Republic of South Africa which confers the power of legal representation exclusively to Legal Practitioners within the Legal Practitioners Act (No. 28 of 2014).⁴ The Respondent State submits that there is no record of the 1st Complainant being a Legal Practitioner in terms of the Act. They further aver that Legal Aid provided by the Respondent State is only in respect of Criminal matters and not civil disputes.⁵
39. The Respondent State also made additional submissions on the lack of exhaustion of local remedies, reiterating that the rule requires that the Complainants approach the international forum as a last resort and not a court of first instance. They cited *Nyikadzino (Represented by the Zimbabwe NGO Forum) v Zimbabwe*⁶ to argue that the aforementioned principle of complementarity would be contravened if the Commission usurped South Africa's role to adjudicate matters on the merits in terms of South African Law.⁷
40. The Respondent State further submits that the local remedies in South Africa were available, effective and sufficient and therefore the Complainants had an obligation to exhaust them.⁸ They argue that the remedies were available and this is trite as the South African Constitution and democratic system is celebrated the world over. They emphasize that their Bill of rights in Article 31 provides for the right to seek remedy from competent judicial organs, which judicial organs they state provide for a robust system of adjudication and appeal.⁹
41. The Respondent State submits that its remedies are effective and sufficient as they are independent and impartial, citing the Commission's decision in *Gabriel Shumba v Zimbabwe*.¹⁰ They propound in addition that the remedies

³ Respondent State's Observations on Admissibility & Merits, para 9-12

⁴ Respondent State's Observations on Admissibility & Merits, para 16

⁵ Respondent State's Observations on Admissibility & Merits, para 17

⁶ Communication 340/07

⁷ Respondent State's Observations on Admissibility & Merits, para 22-24

⁸ Respondent State's Observations on Admissibility & Merits, para 25

⁹ Respondent State's Observations on Admissibility & Merits, para 27-29

¹⁰ Respondent State's Observations on Admissibility & Merits, para 30-33





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in the Republic of South Africa have not been unduly prolonged. They submit that any delays in the present case would have been a result of the Complainants failing to observe South African procedural Law.¹¹

42. The Commission observes that the Respondent State does not contest any of the other grounds for admissibility as enshrined in Article 56 of the Charter.¹²

THE COMMISSION'S ANALYSIS ON ADMISSIBILITY

43. A Communication submitted in terms of Article 55 must satisfy the seven requirements in Article 56 of the Charter in order to be declared admissible.

44. The Commission recalls that the conditions outlined in Article 56 of the Charter are cumulative and should all be adequately fulfilled for a communication submitted in conformity with the terms of Article 55 to be admissible. Consequently, non-fulfillment of any one of these conditions is liable to render a communication inadmissible.¹³ The Commission now considers the submissions of the parties in light of these requirements seriatim.

Article 56(1) of the Charter

45. Article 56(1) of the Charter states that "Communications relating to Human and Peoples' Rights... received by the Commission shall be considered if they indicate their authors even if the latter request anonymity..." The requirement here is that complainants or authors of complaints proffer their identity¹⁴ and contact details¹⁵ to enable the Commission to adequately process the communication through assurances of continued interest in the matter.¹⁶ In the present case, the Communication is brought by Jacobus Stephanus Van Heerden and Amour Technology Systems (Pty) Ltd (The Complainants). Liberty Fighters Network, represented by one Mr. Reyno De Beer are the Representatives. The Commission notes that there was a misunderstanding

¹¹ Respondent State's Observations on Admissibility & Merits, para 34-35

¹² Respondent State's Observations on Admissibility & Merits, para 36-39

¹³ Communication 304/2005 - FIDH & Others v Senegal (2006) ACHPR para 38

¹⁴ Communication 308/05 : Michael Majuru v Zimbabwe, 24 November 2008, para 71.

¹⁵ Communication 70/92_9: Ibrahima Dioumessi, Sekou Kande, Ousmane Kaba v Guinea, 7 October 1995, para 11.

¹⁶ Communication 277/2003-Spilg and Mack & Ditshwanelo (on behalf of Lehlohonolo Bernard Kobedi) v Botswana, 12 October 2013, para 97.





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about whether or not the Liberty Fighters Network was a party to these proceedings or merely a representative, which misunderstanding has been cleared out by the Complainants' observations¹⁷. The records and the Secretariat's correspondence will accordingly reflect this clarification. The parties are adequately identified, the Communication duly complies with Article 56 (1) of the Charter.

Article 56 (2) of the Charter

46. Article 56(2) of the Charter states that "Communications...received by the Commission shall be considered if they are compatible with the Charter of the Organization of African Unity or with the present Charter." In *Communication 709/19 - Senator Jean-Pierre Bemba Gombo v. Democratic Republic of Congo*, the Commission interpreted Article 56(2) of the Charter to require compatibility with the Constitutive Act of the African Union or the Charter, and with the four (4) aspects of its competence, namely competence *ratione personae, materiae, temporis* and *loci*.¹⁸ Concerning the former, the Commission notes that this Communication seeks the protection of human rights which is one of the objectives of the Constitutive Act of the African Union, provided for in Article 3 (h) thereof. Furthermore, nothing in the Complainants' submissions and Complaint reveals any incompatibility with the Charter. Concerning jurisdiction, the Commission is satisfied that the Respondent State is party to the Charter; the Complaint alleges prima facie violations of rights protected by the Charter; the Complaint is brought in respect of violations that occurred after [the] Respondent State's ratification of the Charter.¹⁹ It follows that the Complainants have satisfied Article 56(2) of the Charter.

Article 56 (3) of the Charter

47. Article 56(3) of the Charter states that "Communications ...received by the Commission shall be considered if they are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity (AU)". In *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Republic of Zimbabwe*, the Commission held that "in determining whether a certain remark is disparaging

¹⁷ Complainants' Observations on Admissibility & Merits, page 4, para 7

¹⁸ Para 26-29

¹⁹ Communication 266/03, 27 May 2009, para 71





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or insulting and whether it has dampened the integrity of the judiciary, the Commission has to satisfy itself whether the said remark or language is aimed at unlawfully and intentionally violating the dignity, reputation or integrity of a judicial officer or body and whether it is used in a manner calculated to pollute the minds of the public or any reasonable man to cast aspersions on and weaken public confidence on the administration of justice."²⁰

48. Having analyzed the submissions of the Complainants, the Commission has not come across any language that appears to be aimed at unduly impairing the esteem of either the Respondent State or the African Union. In light of the foregoing the Commission finds that Article 56(3) of the Charter has been complied with.

Article 56 (4) of the Charter

49. Article 56(4) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they are not based exclusively on news disseminated through the mass media". In shedding more light to this provision, the Commission averred that "the issue therefore should not be whether the information was gotten from the media, but whether the information is correct' and whether the complainant tried to verify the truth"²¹ This interpretation from *Jawara* was adopted with approval in *Ahmed Ismael and 528 Others v. the Arab Republic of Egypt*.²² In the present Communication, the Complainants have presented evidence in the form of court documents. The Commission is of the opinion that the Complainants have not relied exclusively on news disseminated through the mass media and thus this communication satisfies the provision of Article 56(4) of the Charter.

Article 56[5] of the Charter

50. Article 56(5) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged." The Commission requires exhaustion of local remedies where they are 'available, effective and sufficient to redress the alleged violation.'²³ An

²⁰ Communication 284/03, 3 April 2009, para 91.

²¹ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 25 and 26.

²² Communication 467/14, 27 May 2016.

²³ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.





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available remedy is one where 'the petitioner can pursue it without impediment'.²⁴ An effective remedy will be one that 'offers a prospect of success.'²⁵ A remedy will be sufficient 'if it is capable of redressing the complaint.'²⁶

51. The Commission recalls that an effective remedy will be one that 'offers a prospect of success',²⁷ and 'upon success, the appropriate relief is one that is capable of adequately and timely redressing the specific violation suffered'.²⁸ It should also be noted that a prospect of success of a remedy need not be 'certainty or guarantee of a favourable outcome for the complainant' but simply an assurance of full and fair examination of the legal issues and arguments.²⁹ In determining the propensity of a remedy to offer real prospects of success the Commission will assess the nature of the complaint, the 'general legal and political context' of the remedies, and the complainant's personal circumstances.³⁰

52. The Complainants argue that they exhausted local remedies when they approached the Constitutional Court which is the highest Court in the Respondent State. The Respondent State contends that the Complainants did exhaust local remedies because they did not file their appeal against the decision of the JSC in the High Court but rather approached the Supreme Court of Appeal and then subsequently, the High Court.

53. It is prudent here for the Commission to clarify a misunderstanding of the facts that has occurred between the parties. It appears that the Respondent State is of the impression that the dispute here arises from the JSC decision and not the High Court decision on the three applications. The Commission is of the view that the principal dispute arises from the High Court decision and the litigation that ensued from that point rightly commenced with an application for leave to appeal in the High Court.

²⁴ Communication 317 / 2006 – The Nubian Community in Kenya vs The Republic of Kenya, 30 May 2016, para 55.

²⁵ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

²⁶ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

²⁷ Communication 147/95-149/96: Sir Dawda K. Jawara v Gambia (The), 11 May 2000, para 31.

²⁸ Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016.

²⁹ Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016.

³⁰ Communication 445/13- Human Rights Council and Others v. Ethiopia, 19 May 2016.





54. The Commission will now turn to examine whether the litigation that happened in High Court case file 31884/2015, in the Supreme Court case of SCA 354/19 and Constitutional Court case of CCT162/19, and which is the source of this Communication is indicative of the fact that local remedies had been exhausted.

55. The Commission notes that the Complainants filed an application for leave to appeal at the Constitutional Court, being the highest Court in the Respondent State. The Commission further notes that this application was dismissed on substantive grounds, which is that it did not bear any prospects of success, in addition to the other two grounds of lack of urgency and jurisdiction. The dismissal of an application for leave to appeal on the grounds that it bears no prospects of success is peremptory, it has the effect of extinguishing the claim and bringing finality to the procedure. The Commission takes the opinion that the Complainants exhausted local remedies.

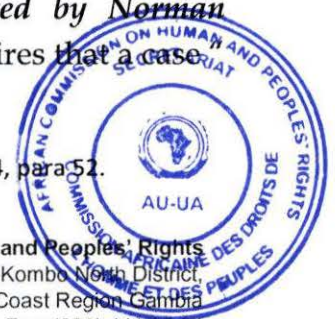
Article 56(6) of the Charter

56. Article 56(6) of the Charter states that Communications relating to human and Peoples' Rights... shall be considered if they: are submitted within a reasonable period from the time local remedies are exhausted, or from the date the Commission is seized with the matter." The Complainants in this case received judgment from the Constitutional Court on the 29th July 2019 and their Complaint was received by the Secretariat on the 23rd September 2019. The Commission considers this to be a reasonable time and finds that the Communication complies with Article 56(6) of the Charter.

Article 56(7) of the Charter

57. Article 56(7) of the Charter states that "Communications relating to human and Peoples' Rights... shall be considered if they: do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the 25 Organization of African Unity or the provisions of the present Charter." The rule is based on the *non bis in idem* and *res judicata* rules.³¹ The Commission has previously found in *Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others* that the provision requires that a case

³¹ Communication 260/02 : Bakweri Land Claims Committee v Cameroon, 4 December 2004, para 52.





no longer be under consideration under an international dispute-settlement procedure"³² Further, that the other international body must have decided the case on the merits and there is a 'final settlement' by that body.³³ The settlement must, as the Commission has previously stated, a human-right adjudicatory body.³⁴ In the present case, there is no evidence to suggest that this matter was settled by another international adjudicatory body. It thus complies with sub-Article 7 of the Charter.

COMMISSION'S DECISION ON ADMISSIBILITY

58. In view of the foregoing, the Commission declares the present Communication admissible in accordance with Article 56 of the African Charter and consequently as the parties have already made their submissions on the merits the Commission will proceed to consider the merits and render its decision thereon in due course.

MERITS

THE SUBMISSIONS OF THE COMPLAINANTS ON THE MERITS

59. It is the view of the Complainants that the Respondent State's Constitutional Court, as the highest court or institution of appeal in the State Party failed to adequately and reasonably address their case which violates their rights under the Charter.³⁵ The Complainants argue that their rights were violated by the Respondent State by virtue of the Courts:

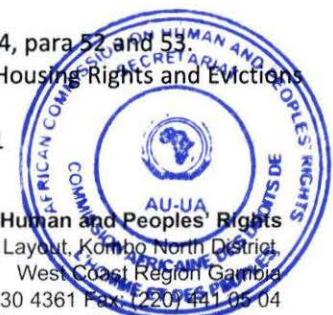
- (i) *Failing to consider that the main Complainants were self-represented lay litigants and that their case should have been "...construed generously and in the light most favorable to the litigant";*
- (ii) *Adjudicating the matter on a mere procedural technicality, to wit "urgency";*
- (iii) *Failing to have considered that the matter should proceed on a normal basis if urgency is not established;*
- (iv) *Failing to adjudicate the constitutional questions and referencing them in the judgment;*

³² Communication 409/12, 30 April 2014, para 112.

³³ Communication 260/02 : Bakweri Land Claims Committee v Cameroon, 4 Dec 2004, para 52 and 53.

³⁴ Communication 279/03-296/05 : Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, 27 May 2009, para 103.

³⁵ Complainants' heads of arguments on the admissibility and merits (2022) Para 21





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- (v) *Failing to adjudicate the additional points and referencing them in the judgment; Failing to have requested the record before the SCA before making its judgment as the main Complainants kindly have requested it to do;*
- (vi) *Failing to provide adequate reasons for its judgment.³⁶*

60. It is alleged that by barring the 2nd Complainant to represent the 1st Complainant; by rejecting the 2nd Complainant's application for legal representation in High Court Case Number 31884/2015; by joining the 1st Complainant to the financial obligations of the 2nd Complainant in the proceedings before the High Court in Case Number 31884/2015, and by the Supreme Court and Constitutional Court's dismissal of the application of the Leave to appeal the High Court's decision in Case Number 31884/2015, the Respondent State through their judiciary treated the Complainants differently because they were self-actors in violation of their rights to freedom of discrimination enshrined in Article 2, equality enshrined in Article 3 of and to independence of the courts under Article 19.³⁷ The Complainants submit that the Courts failed to recognize that they were self-actors and therefore ought to have been exempted from what they believe to have been overly technical decisions from the Courts of the Respondent State.³⁸

61. The First Complainant submits that he was "treated disrespectfully by the courts which directly affected his dignity."

62. It is the contention of the Complainants that by denying the 2nd Complainant to be represent the 1st Complainant and joining the former to the latter's obligation to pay legal costs, the courts denied their right to be heard in violation of Article 7 of the Charter.³⁹ They also submit that the decision by the Supreme Court of Appeal and the Constitutional Court to dismiss their application for leave to appeal without reasons (in their opinion) instead of adjudicating the Constitutional Issue which they claim to have been raising, also violated their right to be heard under Article 7.⁴⁰

63. The Complainants aver that their rights to information in Article 9 of the Charter were violated when the SCA and Constitutional Courts of the Respondent State did not provide reasons or provided otherwise insufficient

36 Complainants' Submissions (2022) Para 21

37 Complainants' Observations on Admissibility and Merits (2022) 15-16, 19-20

38 Complainants' Observations on Admissibility and Merits (2022) p10, para 21

39 Complainant's Observations on Admissibility and Merits (2022) para 45 and 46

40 Complainant's Observations on Admissibility and Merits (2022) para 21



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reasons to dismiss the application for leave to appeal the decision of the High Court in Case Number 31884/2015.⁴¹

64. In addition, it is the opinion of the Complainants that their discrimination as self-representing litigants denied them equal access to the public service and property in their countries in violation of their rights protected in Article 13(2) and (3) respectively.⁴² The Complainants further allege that they are unable to exercise their right to freely determine their political status and freely choose the policy for their economic and social development as enshrined in Article 20 of the Charter. This, they argue, is due to the difficulty of amending the impugned Constitution which they opine to enable the mistreatment of self-actors by courts.

THE RESPONDENT STATES' SUBMISSIONS ON THE MERITS

65. The Respondent State argues that South Africa has one of the most progressive constitutions in the world in which all the rights enshrined in the Charter are protected. They submit that the Constitution apportions powers, duties and obligations to the organs of the State, including the Courts.

66. South Africa submits that the 2nd Complainant was not denied legal representation by the High Court's refusal to allow the 1st Complainant to represent it as opined by the Complainants. It is submitted that Mr. Jacobus Van Heerden, the 1st Complainant could not have represented the 2nd Complainant as he was and is not a Legal Practitioner with the right of appearance to represent the 2nd Complainant before the Courts of South Africa.

67. The Respondent State contends that the Complainants were not denied legal aid in the manner they assert. According to the Respondent State, legal aid is granted in terms of the Legal Aid South Africa Act (Act No. 39 of 2014) under which legal aid may only be provided in criminal matters and not the civil litigation that the Complainants were embroiled in.

68. South Africa contends that the Superior Courts' dismissal of the Complainant's leave to appeal without a hearing or full judgment is a long-standing practice of the judiciary of the Republic. The Respondent State submits that the Supreme

⁴¹ Complainants Observations on Admissibility and Merits (2022) para 47-48

⁴² Complainants' Observations on Admissibility and Merits (2022) para 49 and 50



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Court of Appeal and Constitutional Court dismissed their application to leave to appeal, on the basis that the order of the High Court was correct and the Complainants' appeal did not have any reasonable prospects of success.

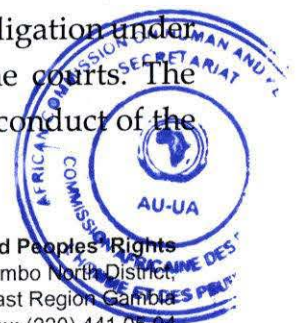
69. Further to this, the Respondent State contends that under South African law, there is a long-established practice that applications for leave to appeal may be dealt with summarily, without an oral hearing or comprehensive judgment. This, the Respondent State argues, is to avoid clogging the court roles with vexatious matters. South Africa submits that to require hearings and reasoned judgments in applications for leave to appeal would defeat the whole purpose of the requirement for leave to be obtained in the first place.

FINDINGS OF THE COMMISSION ON MERITS

Alleged violation of Article 7 and 26

70. The Commission notes that the principal issue behind this Communication is the conduct of the Courts, being High Court Case Number 31884/2015, SCA 354/19 and Constitutional Court case of CCT162/19. The Complainants take issue primarily with 4 things (a) The High Court's refusal to allow the 1st Complainant to represent the 2nd Complainant in Case Number 31884/2015; (b) the High Court's dismissal of the 2nd Complainant's application for legal aid; (c) the High Court's joining of the 1st Complainant to the order on costs made against the 2nd Complainant; and (d) the Supreme Court of Appeal's dismissal of the Complainants' application for leave to appeal Case Number 31884/2015 in SCA 354/19, which was again upheld in Constitutional Court case of CCT162/19. The principal allegation here is that the Respondent State violated the Complainants' right under Article 7 and 26 of the Charter by their courts not acting impartially in the abovementioned decisions. The Commission also notes that the allegations on the violation of Articles 2, 3, 5, 9, 13, 19 and 20 of the Charter are all based on the argument of judicial impropriety, and as such are dependent on the Commission's findings on this principal allegation.

71. The Commission is tasked to determine whether these acts violate the Complainants' right for their cause to be heard, specifically the guarantee of impartiality of the courts. The Commission will also determine whether, these four allegations amount to a violation of the Respondent State's obligation under Article 26 of the Charter to guarantee the independence of the courts. The Commission will address the alleged violations arising from the conduct of the





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Courts as they anchor the Complainant's entire case and determine whether the other rights cited were indeed violated.

72. Article 7 of the Charter reads as follows:

1. *Every individual shall have the right to have his cause heard. This comprises:*

a. *the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force;*

b. *the right to be presumed innocent until proved guilty by a competent court or tribunal;*

c. *the right to defence, including the right to be defended by counsel of his choice;*

d. *the right to be tried within a reasonable time by an impartial court or tribunal.*

2. *No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*

73. Article 26 of the Charter provides that:

State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

74. The impartiality of a Court or Tribunal is an essential element of the right to be heard under Article 7(1)(d). The Commission recalls the findings of the African Court on Human and Peoples' Rights (the African Court) in *Amini Juma v United Republic of Tanzania* that:

"...to ensure impartiality, any court must offer sufficient guarantees to exclude any legitimate doubt. However, the Court observes that the impartiality of a judicial authority is presumed, and indisputable evidence is required to refute this presumption. In this regard, the Court shares the view that "the presumption of impartiality carries considerable weight, and the law should not carelessly invoke the possibility of bias in a judge" and that "whenever an allegation of bias or a reasonable apprehension of bias is made, the adjudicative integrity not only of an individual judge but the entire





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*administration of justice is called into question. The Court must, therefore, consider the matter very carefully before making a finding*⁴³

75. In the Commission's *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (Guidelines on Fair trial)⁴⁴ it is stated that:

(a) *A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats, or interference, direct or indirect, from any quarter or for any reason.*⁴⁵

76. The Guidelines further state that:

(c) *The impartiality of a judicial body could be determined on the basis of three relevant facts:*

- 1. that the position of the judicial officer allows him or her to play a crucial role in the proceedings;*
- 2. the judicial officer may have expressed an opinion which would influence the decision-making;*
- 3. the judicial official would have to rule on an action taken in a prior capacity.*

77. It is the view of the Complainants that the High Court did not act impartially as a court or tribunal to denying the 1st Complainant from representing the 2nd Complainant in Case Number 31884/2015. In fact, the Complainants believe the Court targeted them as self-actors and that this falls part of a broader judicial practice in the Respondent State in which unrepresented litigants are treated unjustly.

78. The Commission notes from the facts of the matter as pleaded by the Respondent State that the 1st Complainant was not permitted to represent the 2nd Complainant in the Court because the High Court as he is not a Registered Legal Practitioner in the Respondent State. The Respondent State submitted that in terms of S24(1) of the Legal Practice Act (Act No. 28 of 2014), this would not have been possible under South African Law. Further to this, the Commission notes that in terms of South African Law in general, a company cannot conduct a case in court except by the appearance of counsel on its

43 Application 024/2016 (judgment) (2021) 5 AfCLR 113

44 (2003)

45 Article 5





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behalf.⁴⁶ Further, that this is an age-observed rule which is said to have originated from as far back as the 17th century. What is clear for the Commission is that this is a general legal standard which is in the Respondent State's Statute Book and forms part of practice. This legal configuration of right of appearance for companies is well within the margin of appreciation of the Respondent State as a sovereign. The only question left to be answered in considering whether the court did not act impartially in applying this rule in HC 31884/2015, is whether it was only applied to the Complainants or whether it was applied uniquely in such a manner that would raise concern. This is a law of general application which would be applicable to anyone. The Complainants also have not placed any evidence before the Commission that would establish a trend of differential application. It is therefore the position of the Commission that the Court applied the law to the Complainants as they would any company appearing before it. The High Court's refusal of the 1st Complainant to represent the 2nd Complaint therefore cannot amount to a violation of the right to be heard under Article 7 of the Charter.

79. The Complainants also allege that the High Court's dismissal of the 2nd Complainant's application for legal aid was in violation of Article 7 of the Charter in that it was discriminatory. The Commission notes from the observations and evidence of the Respondent States that provision for legal aid in the South African Courts is made for criminal matters and not civil matters. What is clear from the facts of this case is that the principal dispute between the 1st and 2nd Complainant and DCD as litigated in the High, Supreme and Constitutional Courts was a civil matter. Furthermore, the 2nd Complainant was not being prosecuted in HC 31884/2015, and therefore could not have been eligible for legal aid under the Respondent State's Legal Aid South Africa Act. The Commission therefore notes that the Courts acted independently and impartially in dismissing the 2nd Complainant's legal aid application in HC 31884/2015, accordingly no violation of Article 7 can be found.

80. The Commission now turns to consider whether the High Court's joinder of the 1st Complainant to the order on costs made against the 2nd Complainant violated Article 7 and 26 of the Charter. From the relevant judgment, it appears the Court made a decision based on law observed in the Respondent State in which a person who is not a party to litigation but funds or stands to benefit from said

⁴⁶ Yates Investment (Pty) Limiters v Commissioner for Inland Revenue (120/55) [1955] Supreme Court of Appeals 76 (5 November 1955)





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litigation may be joined for the purposes of obtaining costs from them.⁴⁷ From the legal precedent cited by the Court and its reasoning, it is clear to the Commission that this appears to be established law not arbitrary practice imposed exclusively on the 1st Complainant. Furthermore, the Commission notes that the Complainants have not established any bias in which the Court deviated from conventional practice. Accordingly, no violation of the alleged articles can be discerned from the High Court's joinder of the 1st Complainant to the order of costs against the 2nd Complainant.

81. The Commission now turns to consider whether the Supreme Court of Appeal's dismissal of the Complainants' application for leave to appeal Case Number 31884/2015 in SCA 354/19, which was again upheld in Constitutional Court case CCT162/19 violated the Complainants' rights under Article 7 and 26 of the Charter. The Complainants allege that the dismissals occurred without reasons. The Commission notes from the evidence submitted by the Complainants, being the Order of the Supreme Court of Appeal, that the Court indeed stipulated why the application was dismissed.⁴⁸ From the second page of the judgment in question, one can glean that the "*The application for leave to appeal is dismissed with costs on the grounds that there is no reasonable prospect of success in an appeal and there is no other compelling reason why an appeal should be heard.*" This too is confirmed by the Respondent State in their pleadings on the merits, an averment that the Commission finds to be persuasive.

82. However, the Commission considers that what the Complainants claim to be absence of reasons in this case is the absence of a full judgment such as the one provided by the High Court in case number 31884/2015. The Commission notes that whilst the dismissal was indeed not communicated in a lengthy judgment, the reasons for the decision were indeed provided, nonetheless. The Respondent State argues that under South African law, Superior courts may dismiss applications for leave to appeal by issuing an order without a comprehensive judgment as that would have been addressed in the Court aquo. The Commission is persuaded by this position, as the Respondent State postulates, it would defeat the purposes of requiring leave to appeal if Courts would dedicate their time and resources belaboring points which would have been addressed in the lower courts. The Commission considers that the Supreme Court of Appeal dismissed the Complainants' leave to appeal with

47 HC 31884/15 Para 13-19

48 Case No; 354/19 Annexure "B" page 2





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legitimate cause, providing reasons and acting in accordance with the law of the Respondent State.

83. It is clear to the Commission that the Complainants are dissatisfied with the outcomes of the litigation primarily because of their misunderstanding of the law in the respondent State, which ignorance can neither be a defense nor excuse. In the foregoing, the Complainants in their pleadings opine that they should have been indulged a greater deal of lenience because they were self-actors. The Commission considers this to be the very corollary of the allegations raised by the Complainants. One cannot allege that the courts were biased against them because they were not given the special treatment they desired. That would cause the Courts to act with the bias they accuse them of exhibiting. Whilst its generally accepted that Courts should not strictly enforce superfluous technicalities in a way that would fundamentally encumber the access to justice for people representing themselves, the facts presented before the Commission do not fit those circumstances. The Commission is not convinced that the Complainants were the victims of undue treatment by the Courts on account of their status as self-actors.

84. The Complainants have not demonstrated that the a) The High Court's refusal to allow the 1st Complainant to represent the 2nd Complainant in Case Number 31884/2015; (b) the High Court's dismissal of the 2nd Complainant's application for legal aid; (c) the High Court's joining of the 1st Complainant to the order on costs made against the 2nd Complainant; and (d) the Supreme Court of Appeal's dismissal of the Complainants' application for leave to appeal Case Number 31884/2015 in SCA 354/19, which was again upheld in Constitutional Court case of CCT162/19 were discriminatory decisions not based on the objective evidence, arguments and facts presented before the Courts of the Respondent State. The Complainants were heard by the Courts, they did access justice, to the extent that they complied with the Laws of the land, which in the Commission's opinion would have been applied similarly on other litigants. Consequently, the Commission finds that Article 7 has not been violated.

Alleged violation of Articles 2, 3 and 19

85. The Complainants allege that their rights to equality and freedom from discrimination to equality before the law and equal protection of the law as well as their peoples' rights to equality was violated by a) The High Court's refusal





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to allow the 1st Complainant to represent the 2nd Complainant in Case Number 31884/2015; (b) the High Court's dismissal of the 2nd Complainant's application for legal aid; (c) the High Court's joining of the 1st Complainant to the order on costs made against the 2nd Complainant; and (d) the Supreme Court of Appeal's dismissal of the Complainants' application for leave to appeal Case Number 31884/2015 in SCA 354/19, which was again upheld in Constitutional Court case of CCT162/19.

86. Article 2 of the Charter states that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth, or other status.

Article 3 states that:

1. *Every individual shall be equal before the law.*
2. *Every individual shall be entitled to equal protection of the law.*

87. Article 20

All peoples shall be equal: they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

88. Article 2 of the Charter prohibits unfair discrimination⁴⁹ and guarantees equal enjoyment of the rights and freedoms guaranteed in the Charter without distinction, including the rights to be heard under Article 7 which forms the backbone of this Communication. The Commission in its seminal decisions of *Kenneth Good v Republic of Botswana*⁵⁰ (*Kenneth Good*) and *Egyptian Initiative for Personal Rights and Interights v Egypt*⁵¹ (*Egyptian Initiative*) held that discrimination occurs where like cases receive different treatment which is objectively and unreasonably unjustified. To these ends, in *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*, the Commission reiterated that the burden to prove these elements

49 Communication 734/19- J represented by ISLA and KELIN v The Republic of Namibia, Merits, para 186

50 Communication 313/05, para 219

51 Communication 323/06, para 121 & 137





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lay squarely on the Complainants, without which a violation of the right may not be found.⁵²

89. In the present case, the Commission notes that the Respondent State has not met their burden to establish discrimination, beyond alleging discrimination on the basis of dissatisfaction with the outcomes of their case. In *Peter Odiwuor Ngoge v The Republic of Kenya*,⁵³ the Commission reiterated that it may not make a finding of discrimination based on bare factual assertions that do not meet the legal threshold. Moreover, the Commission has already found that the Complainants enjoyed their rights to be heard under Article 7. It is therefore untenable considering these circumstances to conclude that the Complainants were victims of discrimination in violation of Article 2 of the Charter.

90. Regarding the alleged violation of Article 3 of the Charter, the Commission recalls its jurisprudence in *Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development (on behalf of Andrew Barclay Meldrum) v Republic of Zimbabwe*²⁰ (*Meldrum*) that Article 3 guarantees fair and just treatment of individuals within the legal system of a given country, whereby every individual is equal before the law and guaranteed equal protection of the law.²¹ Article 3(1) entitles individuals to equal application of existing laws and to have the same procedures and principles applied under the same conditions.⁵⁴ The principle that all persons are equal before the law means that existing laws must be applied in the same manner to those subject to them and Judges and administration officials may not act arbitrarily in enforcing laws.⁵⁵ Equal protection of the law under Article 3(2) refers to the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness.⁵⁶ Similarly, the Complainants bear the burden to prove differential application of the law and provision of access to justice in each case.

91. The Commission notes that in HC Case 31884/2015, SCA 354/19, and CCT162/19, the Complainants were subjects of established law, objectively

⁵² Communication 341/07, para 147

⁵³ Communication 432/12, Merits Decision, para 84

⁵⁴ Meldrum Merits decision, para 96

⁵⁵ Meldrum, Merits Decision, para 96

⁵⁶ Meldrum, Merits Decision, para 100





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applied to their circumstances regardless of their assumed vulnerability as self-actors. The Commission notes that in all these decisions, the Courts interpreted and applied existing legislation in accordance with the historical judicial precedent cited in all the cases. This means that and as clearly demonstrated by the Respondent State, any other person claiming legal aid in a civil case would have been denied; any other juristic person approaching the courts without a lawyer would have been dismissed; any other person who isn't a registered legal practitioner would have been barred from representing another person; any other non-party funder would have been joined to the bear the costs of litigation in which they have a manifest financial interest; and any other prospective appellant whose appeal had no prospects of success would have been summarily dismissed with no need for a comprehensive judgment. In any event, the Complainants fall far off from satisfying their legal burden to demonstrate that the way in which the Courts of the Respondent State applied the law was only specific to them, and in a manner that objectively and reasonable unjustifiable.

92. The Commission is of the view that to the extent that they complied with existing law as applied to everyone else, the Complainants enjoyed access to the courts, were held to the same legal standards and procedures with other litigants similarly situated with them and were not victims of arbitrary application law by judicial officers. Accordingly, the Commission does not find a violation of Article 3 of the Charter.
93. The Commission now turns to consider allegations of the violation of Article 19. It must be recalled that Article 19 of the Charter is a Peoples' right and not an individual right. In the case of *Kelvin Gunme and others v The Republic of Cameroon*, it was held that before the Commission can find a violation of peoples, it must satisfy itself that the Complainants are themselves peoples.⁵⁷ No evidence has been put before the Commission to suggest that the Complainants, being one individual from South Africa (the 1st Complainant) and one juristic person (the 2nd Complainant) are a people within the meaning conferred by the Charter. Accordingly, in line with its findings in the case of *Legal Resources foundation v Zambia*,⁵⁸ The Commission believes that recourse to Article 19 of the Charter was mistaken. The section dealing with peoples cannot apply in this instance."⁵⁸

57 Communication 323/06, Merits decision, para 166-179

58 Communications 211/98, para 73





94. On the allegations of the violation of Articles 2; 3 and 19, the Commission decides that there have been no violations.

Alleged violation of Article 5

95. The First Complainant also submits that he was “treated disrespectfully by the courts which directly affected his dignity.” Article 5 of the Charter provides that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman, or degrading punishment and treatment shall be prohibited.

96. The Commission recalls its decision in *Sudanese Civilians in South Kordofan and Blue Nile (represented Sudan Democracy First Group, REDRESS, Human Rights Watch, INTERIGHTS and Enough Project) v Sudan* that Article 5, a completely non-derogable right,⁵⁹ guarantees respect for the dignity inherent in the human person and the recognition of his or her legal status, and further prohibits all forms of exploitation and degradation of man or woman, including slavery, slave trade and torture, cruel, inhuman or degrading punishment and treatment.⁶⁰

97. The Commission notes at the offset that it has been established prior that the Complainants were not disrespected by the Courts and on that basis alone the claim falls.⁶¹ Furthermore, the Commission visits its findings in *Civil Liberties Organization, Legal Defense Centre and Legal Defense and Assistance Project v. Nigeria* reiterating that allegations of the violation of Article 5 require proof and that burden befalls the Complainants.⁶² The Commission finds that there is no violation of Article 5 of the Charter.

Alleged violation of Article 9

98. The Complainants aver that their rights to information in Article 9 of the Charter were violated when the SCA and Constitutional Courts of the Respondent State did not provide reasons or provided otherwise insufficient

59 Article 19 v Eritrea (2007) AHRLR 73 (ACHPR 2007) para 98

60 Communication 402/11 & 420/12 (2023) para 120

61 The findings on the alleged violation of Articles 7 and 26 of the Charter above.

62 Communication 218/98 (2001), para. 45





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reasons to dismiss the application for leave to appeal the decision of the High Court in Case Number 31884/2015.⁶³ Article 9 of the Charter provides that:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

99. The Commission notes that these allegations, while being raised under the abovementioned right, invoke Article 7 of the Charter as they speak to the Complainants to receive information from the Courts in a judicial context. The Commission recalls its analysis above on the Complainants' right to have their cause heard where it found that the Complainants were indeed informed of the reasons for the dismissal of their application for leave to appeal by the Supreme Court of Appeal and the Constitutional Court. The Commission finds no violation of Article 9.

Alleged violation of Article 13 and 20

100. The Complainants have argued that they were discriminated as self-representing litigants and denied equal access to the public service and property in their countries in violation of their rights protected in Article 13(2) and (3) respectively.⁶⁴ Article 13 of the Charter reads:

1. *Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*
2. *Every citizen shall have the right of equal access to the public service of his country.*
3. *Every individual shall have the right of access to public property and services in strict equality of all persons before the law.*

101. In its decision on *Civil Liberties Organization (in respect of Bar Association) v Nigeria*,⁶⁵ the Commission stated a general principle on this right, to the effect that:

Competent authorities should not enact provisions which would limit the exercise of this freedom. Competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

63 Complainants Observations on Admissibility and Merits (2022) para 47-48

64 Complainants' Observations on Admissibility and Merits (2022) para 49 and 50

65 Communication 101/93, para 15





102. The Commission once again recalls its findings regarding Articles 2, 3 and 7 of the Charter that the Complainants were not discriminated against. Furthermore, from the facts presented before it, the Commission cannot identify any element of this case which invokes the rights enshrined in Article 13. On that basis, there can be no violation of the right to Article 13.

103. Regarding the allegations on the violation of Article 20, which provides that:

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the state parties to the present Charter in their liberation struggle against foreign domination, be it political, economic, or cultural.

104. The Commission recalls its reasoning above on the alleged violation of Article 19 that individuals appearing before the Commission in their individual capacities are not the subject of Peoples' rights. In view of the foregoing, the Commission finds no violation of Article 20 of the Charter.

FINDINGS OF THE COMMISSION ON REMEDY

105. The Commission notes that the Complainant's prayers were all based on the main allegations of malfeasance by the Courts of the Respondent State, which allegations have been found to bear no merit. Accordingly, in the absence of violations, the Commission may not grant any of the prayers of the Complainants. Therefore, all the Complainant's prayers are dismissed.

DECISION OF THE COMMISSION ON MERITS AND REMEDY

106. For all these reasons, the Commission declares that:

- i. The Respondent State has not violated Articles 2, 3, 5, 7, 9, 13, 19, 20 and 26 of the Charter.





- ii. The prayers of the Complainant are all dismissed

**Done at the 81st Ordinary Session of the Commission held in Banjul, The Gambia
from the 17th of October to the 6th of November 2024.**



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