THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

MODIBO BATHILY AGAINST THE REPUBLIC OF CÔTE D'IVOIRE.

Suit No: ECW/CCJ/app/17/23 *Judgment No. ECW/CCJ/JUD/ 07 /25*

JUDGMENT

ABUJA

On 14 February 2025

SUIT N°: ECW/CCJ/APP/17/23

JUDGMENT N°: ECW/CCJ/JUD/07/25

MODIBO BATHILY **APPLICANT**

V.

THE REPUBLIC OF COTE D'IVOIRE **DEFENDANT**

BEFORE THEIR LORDSHIPS:

Hon. Justice Dupe ATOKI Presiding

Hon. Justice GBERI-Bè OUATTARA Judge Rapporteur/Member

Hon. Justice Edward Amoako Asante Member

ASSISTED BY: Mr Athanase ATANNON Registrar

I. *REPRESENTATION OF PARTIES:*

Maître Alphonse VAN, Lawyer at the Court in Abidjan, residing in Cité des Cadres, Villa No. 83, Rue des Jardins, Commune de Cocody, Abidjan, République of Côte d'Ivoire, cell No. +225 07 59 31 35 62, e-mail: cabinetvan@yahoo.com Counsel to the applicant

Judicial Agent of the State Counsel for the Defendant

II. *JUDGEMENT OF THE COURT*

This current judgment is the one rendered by the Court, in virtual public hearing, pursuant to Article 8(1) of the 2020 Practice Directions on Electronic Case Management and Virtual Hearings.

III. *DESIGNATION OF THE PARTIES*

1. The applicant is Modibo Bathily born on 25 May 1970 in Danané, Republic of Côte d 'Ivoire. He is a Malian citizen, a company director and resides at 1, Avenue ORSI, Centre-Ville, Brazzaville, Republic of Congo (hereinafter referred to as "the applicant").

2. The defendant is the Republic of Côte d'Ivoire, a member state of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments relating to the protection of human rights (hereinafter referred to as "the defendant").

IV. *INTRODUCTION*

3. The purpose of the present application is to establish the violation of the right to property of Modibo BATHYLI, guaranteed by Article 14 of the African Charter on Human and Peoples' Rights and by Article 17 of the Universal Declaration of Human Rights. The applicant also requests that the Defendant State be ordered to compensate him for the damage which he has suffered as a result of the violation of his right to property by the Defendant State.

The Defendant State concludes that the application is inadmissible and, if necessary, that it should be dismissed as ill-founded.

V. *PROCEDURE BEFORE THE COURT*

4. On 27 April 2023, the Applicant filed at the Registry of the Court an Application against the Respondent for infringement of his right to property. (Exhibit No. 1)

5. By a separate application filed at the Registry on the same day as the main application, the Applicant requested that the Court order interim measures. (Exhibit 2)

These motions were served on the Defendant on 28 February 2023.

6. On 22 May 2023, the Respondent filed at the Registry a Statement of Defence to the Application for Interim Measures. On the following day, 23 May 2023, the defendant filed a statement of defence to the main application at the Registry. These two pleadings were served on the applicant on 23 May 2023 (Exhibits 3 and 4).

7. On 10 August 2023 the applicant lodged at the Registry a reply to the defendant's statement of defence in the main proceedings. On the same day, he also filed a reply to the defendant's statement of defence in response to the application for interim measures.

These two reply briefs were served on the defendant on the same day, 5 September 2023. (Exhibits 5 and 6)

8. On 10 October 2023, the defendant filed with the Registry a rejoinder in response to the reply to the main application and a rejoinder in response to the reply to the application for interim measures. The applicant was served with these rejoinders on 11 October 2023.

The case has had an adjournment to a date to be determined.

VI. ARGUMENTS *OF THE APPLICANT*

a) *Statement of facts*

9. On 27 April 2023, the applicant filed an application with the registry in which he requested this Court to declare that the Republic of Côte d'Ivoire violated his right to property in a building located in Abidjan, Commune de Marcory, quartier Zone 4 C, lot no. 70 bis, and consequently to order the Republic of Côte d'Ivoire to pay him the sum of one billion (1 000 000 000) CFA francs in damages. He further requests that the Court order the defendant to take all necessary measures to restore his ownership of the property in question.

10. In support of his claim, the applicant states that the late AHOUANGONOU Jacob died, leaving twenty-five (25) children to inherit his estate, which includes, in particular, a built-up urban plot of 2800 square metres located in Abidjan, Commune de Marcory, Zone 4 C district, forming lot No.70 bis of Titre Foncier number 6658 of the Bingerville land registry.

11. He states that Maitre Clémence Sérime-Lasme, a notary in Abidjan, was appointed by contradictory civil judgment no. 650 / civ5/ A, delivered on 28 October 2008 by the Court of Appeal of Abidjan, to liquidate and distribute the estate of the deceased Jacob AHOUANGONOU, a group of heirs consisting of 7 children of the deceased Jacob AHOUANGONOU and 10 heirs of the deceased AHOUANGONOU Marcellin, himself heir of the late AHOUANGOUANOU Jacob, decided to sell him the property through another notary, Maître Hawa Touré, for the price of 480,000 000 (four hundred and eighty million) CFA francs. As a result, Maître Clémence Serime-Lasme applied to the First President of the Abidjan Court of Appeal to order her colleague Maître Hawa Touré, who was resisting, to hand over to Maître Clémence Serime-Lasme without delay all the deeds in his possession and the sum of 480,000,000 CFA francs representing the sale price of the property, which he had paid into his accounts, and to authorise Maître Clémence Serime-Lasme, in his capacity as notary in charge of the estate, to proceed with the regularisation of the sale and sharing the distribution of the sum among the heirs.

12. The applicant reports that by summary order No. 03 issued on 21 January 2013, the First President of the Abidjan Court of Appeal granted all these requests in full and Maitre Serime-Lasme regularised the sale by deed dated 22 May and 27 September 2013.

However, believing that the building was sold without their consent, another group of heirs of the late Marcellin AHOUANGONOU brought an action before the Abidjan Court of First Instance seeking the annulment of the deed of sale executed on 22 May and 27 September 2013.

13. By judgment No.999 of 27 July 2015, the Abidjan Court of First Instance declared their claim for annulment of the deed of sale of the disputed building inadmissible and dismissed their claim for ownership of the said building (Exhibit No.2: the judgment); this judgment was upheld in all its provisions by judgment No.537 of 22 July 2016 delivered by the Abidjan Court of Appeal (Exhibit No.3: the judgment).

14. The applicant submits that, against all expectations, on appeal by the heirs of the late Marcellin AHOUANGONOU, the Judicial Chamber of the Supreme Court of Côte d'Ivoire, now the Court of Cassation, by judgment No.700 /18 of 14 December 2018, dismissed the application for the sale to be declared null and void and declared the sale "null and void and unenforceable", stating that the notarial deed of sale was null and void insofar as it did not specifically mention the identity of the heirs of Marcellin AHOUANGONOU (Exhibit 4: the judgment).

15. He states that the High Court then ordered him to return the property to the estate of the deceased Jacob AHOUANGONOU and that, faced with this confusion, he was forced to lodge an appeal for annulment of Judgment No. 700/18 of the Judicial Division of the Supreme Court, which dismissed the said appeal by Judgment No. 300/20 of 9 April 2020 (annexure No. 5: the Judgment).

16. The claimant also maintains that when the various rulings of the Judicial Chamber of the Supreme Court were served on the Registrar of Land and

Mortgages of Marcory by a group of heirs of the late AHOUANGONOU Jacob with a view to transferring and re-registering their rights in the land register, by letter dated 03 December 2020, the Registrar rejected their request on the grounds that he (the applicant Modibo BATHILY) holds the ownership certificate n 17001866 dated 03 October 2013 which definitively establishes his right of ownership over the property. (Exhibit No.6: the letter from the Curator and Exhibit No.7: the certificate of ownership of 3 October 2013).

17. The applicant further states that, on 7 January 2021, the group of heirs who had initiated the appeal in cassation which gave rise to Judgment No. 700/18 of 14 December 2018 brought an action before the Administrative Court (Conseil d'Etat) for the annulment of the Registrar's decision of 3 December 2020 rejecting their application for the transfer and re-registration in their favour of ownership of the disputed property in the Land Register.

18. As a result, the Administrative Court, in its decision n 326 of 14 December 2002, granted their application, firstly, by annulling the Registrar's decision and, secondly, by ordering the requested transfer, both to the detriment of the applicants.

19. The Applicant further notes that Certificate of Ownership No. 17001866 issued to him on 03 October 2013 was not annulled by the Administrative Court (Conseil d'Etat) or any other competent administrative authority.

20. It therefore concludes that the Defendant State, through the decisions of its highest courts, violated its right to property, a fundamental human right guaranteed by Article 14 of the ACHPR, Article 17 of the UDHR and Article 11 of the Constitution of Côte d'Ivoire of 8 November 2016.

b) ***Pleas - in - law relied on***

21. The legal grounds invoked by the applicants are as follows:

-Violation of the right to property;

Articles 17 of the 1948 Universal Declaration of Human Rights (UDHR), 14 of the 1981 African Charter on Human and Peoples' Rights (ACHPR) and 11 of the Constitution of Côte d'Ivoire of 8 November 2016.

(c) ***Conclusions***

22. The applicant requested as it may please the Court:

- To declare that the defendant State violated its right of ownership over the property it acquired from the estate of the late AHOUANGONOU Jacob and which is the subject of Land Title Number 6658 of the BINGERVILLE Land Registry and located in the Commune of Marcory Quartier Zone 4 C in Abidjan ;

-**Order** the Defendant State, inter alia, to take all necessary measures to:

- restore his right of ownership over the property in question;

- apply without restriction the provisions of article 121 of the colonial decree of 26 July 1932 on the "final and unassailable" nature of the Land Title;

-confirm and preserve the "final and unassailable" nature of his certificate of ownership No. 17001866 of 03 October 2013.

Order the defendant State to pay it the sum of one billion (1,000,000,000) CFA francs as compensation for the material and non-material damage and loss of

financial gain it has suffered as a result of the infringement of its property rights,

-Order the defendant to bear the entire costs.

VII. ARGUMENT *OF THE DEFENDANT*

a) *Statement of facts*

23. In its statement of defence, received at the Court Registry on 23 May 2002,23 the defendant pointed out that there was nothing in the application to show that the applicant had actually been the victim of an infringement of his fundamental right of access to immovable property, let alone that the alleged infringement was attributable to the defendant;

24. He pointed out that, before identifying the defendant as the cause of the alleged violation of the right, the applicant should first have proved that he was entitled to defend himself in the case;

25. The defendant submits that, as a legal person governed by public law, it is under an obligation to guarantee to all other subjects of law their fundamental rights, in particular the specific right of access to immovable property;

26. It argues that the proper fulfilment of this regalian duty is based, on the one hand, on the acceptance of international and sub-regional legal norms and, on the other hand, on the adoption of national legal norms that allow for the protection and punishment of the violation of this right.

27. In the view of the respondent, it is undeniable, as the applicant points out at the outset, that in order to achieve this it has enshrined these rights in the preamble to its Constitution and has acceded to international instruments for the protection of human rights.

28. Whereas, the effectiveness of the conception, protection and sanction of the right to immovable property depends on the accessibility of justice for all citizens, as well as on the efficiency and reliability of the actors of justice ;

29. It argues that this regalian duty in no way implies that an irregularly acquired right in rem in immovable property can escape censure, since clearly such culpable passivity would be the very source of the decline of the right in immovable property to be protected ;

30. The defendant states that at no time did the applicant allege a failure in the Ivorian judicial system that would have affected the recognition of his right to property;

31. According to the defence, the decisions submitted by the applicant set out the factual and legal arguments put forward by the parties, as well as the reasons justifying the provisions of the said decisions, and that the applicant's only complaint was that he had lost his case against the heirs of the deceased AHOUANGONOU Jacob;

32. The defendant concludes that the applicant, who has not identified any proven violation of his human rights, is wrong to hold it responsible for the violation of his right to property, since it is precisely the alleged right to property that has not been proven;

33. As a counterclaim, the defendant asks the Court to order the applicant to pay him damages for abusive and vexatious proceedings.

34. In support of its claim, the defendant submits that, although the possibility of bringing an action before a court is a right, the abuse of that right is also punishable and persons who are victims of such abuse are entitled to claim compensation as a sanction for that abuse ;

35. It is alleged that, under the pretext of violation of his right to property, it was forced to appear before this Court to defend itself, even though it is not the author of the facts alleged by the applicant against it;

36. The defendant states that, in support of his allegations, the applicant has produced court judgments handed down in contradictory proceedings between

himself and the heirs of (the deceased) AHOUANGONOU Jacob, although these documents confirm the latter's right to property in their undivided immovable property to his detriment;

37. The defendant observes that while he refrains from producing the notarised deed that is the subject of the dispute, the applicant relies on a certificate of ownership on the basis of which he requests that the ECOWAS Court compel him to strip the heirs of (the late) AHOUANGONOU Jacob of their right of ownership over their immovable property for his benefit;

38. The defendant asserts that it has not transferred any real estate to the applicant, and that it has not initiated any expropriation proceedings in respect of the real estate at issue, so that it cannot be sued before this Court in respect of a claim to real estate;

39. It therefore considers that the actions of the applicant undermine its honour and credibility and cause it financial damage;

40. The defendant requests that, in order to sanction the actions of the applicant and to compensate for the resulting financial loss, the Court should order him to pay the sum of five hundred million (500,000,000) CFA francs by way of damages.

18. **b)** ***Pleas - in - law relied on***

41. The defendant puts forward as a plea in law the lack of standing to appear before the ECOWAS Court of Justice as defendant;

Code of Civil, Commercial and Administrative Procedure, Article 1.

c) ***Conclusion***

42. The defendant's principal contention is that the application is inadmissible on the ground that the defendant lacks standing to appear before the Court.

In the alternative, it requests that the Court:

Dismiss the application as unfounded;

Declare that it is subjected to abusive and vexatious proceedings brought by the Applicant;

Order the applicant to pay the sum of five hundred million (500,000,000) CFA francs by way of compensation for the moral and financial damage caused to him by the abusive and vexatious proceedings brought against him by the applicant;

Order the applicant to bear the entire cost.

VIII. *JURISDICTION*

43. The applicant alleges that the Republic of Côte d'Ivoire violated his right to property relating to a built-up urban lot with a surface area of two thousand eight hundred square metres (2,800 m2) located in Abidjan, in the commune of Marcory in the Zone 4 C district, forming lot no. 70 bis of land title no. 6658 of the Bingerville land registry.

44. In support of his allegations, he submits to the file Judgment No. 700/18 of 14 December 2018, by which the Judicial Chamber of the Supreme Court of Côte d'Ivoire declared the sale of the property in question null and void and unenforceable on the ground that the notarised deed of sale was null and void inasmuch as it did not expressly mention the identity of the heirs of the late Marcelin AHOUANGONOU (Exhibit no. 4 : the judgment), as well as judgment no. 326 of 14 December 2022, by which the Administrative Court granted the application of the heirs of the deceased Marcelin AHOUANGONOU by annulling the decision of the Registrar refusing the transfer and ordering the requested transfer. (Exhibit 8: the judgment), while the certificate of ownership No. 17001866 issued to him on 03 October 2013 was not annulled by the Administrative Court (Conseil d'Etat) or any other competent administrative authority.

45. None of the parties has submitted observations on the jurisdiction of the Court to hear the case.

ANALYSIS OF THE COURT

46. Although none of the parties has challenged its jurisdiction, the Court, like all national or international courts, must rule on its jurisdiction before any other analysis.

47. The Court would point out in this connection that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Additional Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court, which provides that "*The Court shall have jurisdiction to determine cases of human rights violations that occur in any Member State*"

In the present case, the applicant alleges infringement of his right to property;

48. The Court notes that the right relied on by the applicant is one of the human rights falling within its jurisdiction.Consequently, the invocation of the violation of this right confers on it, in principle, jurisdiction to hear the application in accordance with the provisions of Article 9 paragraph 4 of Supplementary Protocol A/SP.1/01/05/ of 19 January 2005, in accordance with its established case law, especially since the defendant is an ECOWAS Member State.

49. Pursuant to these provisions, the Court on several occasions held that the allegations of human rights violations in an application are sufficient in themselves to establish its jurisdiction without prejudice to the veracity of the facts alleged.

50. It so decided in particular in the cases of Les Etablissements VAMO and KUEKIA Pascal against the Republic of Benin, judgment No. ECW/CCJ/JUD/12/15 of 20 April 2015 and El Hadj Mame Abdou Gaye against the Republic of Senegal, judgment No. ECW/CCJ/JUD/01/12 of 26 January 2012.

It is both necessary and sufficient for the applicant to allege that his human rights have been violated.

51. However, where the Court's jurisdiction does not appear prima facie, that is to say, where its jurisdiction is not obvious, the Court must examine the facts in the light of the texts in order to decide whether it has jurisdiction.

52. In this regard, this Court held in Bakary Sarre and 28 others v. Republic of Mali that "*the jurisdiction of the Court to hear a particular case depends not only on its texts, but also on the substance of the original application.*

The Court will pay close attention to the claims of the applicants, the grounds on which they rely and, where violations of human rights are alleged, the way in which they are presented by the parties.

The Court seeks to ascertain whether the finding of a violation of human rights is the main purpose of the application and whether the pleas in law and evidence adduced tend essentially to establish such violations."

53. In the present case, therefore, the Court must decide, on the basis of the facts submitted by the applicant, whether it has jurisdiction to hear and determine the present action, since its jurisdiction derives from the applicant's application.

54. In this regard, the Court notes that it is clear from the facts of the proceedings that the applicant considers that his right to property in the building which he allegedly acquired for valuable consideration under a notarial deed dated 22 May and 27 September 2013 has been infringed by the defendant because, on appeal by the heirs of the late Marcelin AHOUANGONOU, the Judicial Chamber of the Supreme Court of Côte d'Ivoire, by judgment no. 700/18 of 14 December 2018, declared the sale of the property in question null and void and unenforceable on the grounds that the notarised deed of sale was null and void insofar as it did not specifically mention the identity of the heirs of the late Marcelin AHOUANGONOU

and that, in the light of this judgment, the Administrative Court (Conseil d'Etat), by judgment no. 326 of 14 December 2022, granted the request of the heirs of the late Marcelin AHOUANGONOU by annulling the decision of the Registrar refusing to transfer the property and ordering the requested transfer.

55. The Court finds that it follows from those facts that, as a result of the various decisions of the national courts, the applicant was no longer the owner of the property in question at the time when the matter was brought before the Court.

56. The Court therefore considers that, despite his attempt to situate his loss in terms of a breach of human rights, in particular a breach of the right to property, the applicant is in fact seeking to have the decisions of the national courts set aside.

57. The Court must therefore accept that the case before it does not in any way involve a violation of human rights.

58. The Court recalls that, in accordance with its own settled case-law, it has consistently held that actions brought against decisions of the national courts of the Member States do not fall within its jurisdiction. It is not a court of appeal or cassation against decisions of the courts of the Member States.

59. The ECOWAS Court of Justice decided this in the cases of Jerry Ugokwe against the Federal Republic of Nigeria of 7 October 2005 and Moussa Léo Kéita against the Republic of Mali of 22 March 2007.

60. In another case, Alice Raphaël Chukwudolue and Others v. Republic of Senegal, judgment of 22 November 2007, the Court declared that it had no jurisdiction to hear the case *on the grounds that "the present dispute does not concern a violation of human rights".*

61. In the present case, in the light of the above developments, the Court clearly finds that the purpose of Mr Modibo Bathily's application is rather to induce it to review, and even to condemn, the decisions of the national courts of Côte d'Ivoire. According to its jurisprudence, the Court is obliged to declare that it does not have jurisdiction because the application does not concern a violation of a human right.

XIII. COSTS

62. Pursuant to Article 66, paragraph 2 of the Rules of the Court, the unsuccessful party is ordered to pay the costs, if the other party has applied for it. The Court notes that in the present case the applicant and the defendant have concluded to this effect. Consequently, as the applicant was unsuccessful, the Court ordered the costs to be borne by him.

XIV. OPERATIVE PART OF THE JUDGMENT

For these reasons, the Court adjudicating in public, and upon hearing both parties:

On the Jurisdiction of the Court:

Declares itself incompetent to hear the dispute;

COSTS:

Order the applicant to bear the entire cost.

Thus done and adjudged on the day, month and year above.

And the following having appended their signatures:

Hon. Justice Dupe ATOKI Presiding

Hon. Justice GBERI-Bè OUATTARA Judge Rapporteur/Member

Hon. Justice Edward Amoako Asante Member

ASSISTED BY: Mr Athanase ATANNON Registrar