



## **CASE SUMMARY**

**APPLICATION NO 016/2015**

**KAYUMBA NYAMWASA & OTHERS V. REPUBLIC OF RWANDA**

### **SUMMARY OF FACTS**

1. The Applicants state that they are citizens of the Republic of Rwanda who are currently in exile in South Africa, having fled from Rwanda.
2. They allege that they are against the exercise in Rwanda to amend the Constitution to allow for the current President to run for the third term.
3. They allege that the campaign for the amendment of Article 101 of the Constitution has been conducted in a climate of fear and that any challenges to the amendments of the Constitution will likely not succeed as the judiciary of Rwanda is allegedly not independent, particularly since some judicial officers are also members of the ruling party.
4. The Applicants state that this has been against a backdrop of arbitrary arrest, detentions and trials of leading political figures. Mr. Kayumba Nyamwasa also states that South African Courts have found that his attempted assassination was conducted by persons linked to the State of Rwanda.
5. The Applicants allege that the filing of an application by the 'Green Party' in the courts in Rwanda to challenge the amendment of Article 101 of the Constitution, is a sham since this Party is a creation of the President of the Republic of Rwanda and that the whole exercise is intended to lend legitimacy to the process

of the amendment of the Constitution by ‘allowing’ these constitutional challenges.

## **COMPLAINTS**

6. The Applicants allege violations of;
  - i. Articles 13, 19, 21, 22 of the African Charter on Human and Peoples’ Rights.
  - ii. Article 23 of the African Charter on Democracy, Elections and Governance.
  - iii. Article 6(d) of the Treaty of the East African Community
  - iv. Article 101 of the Constitution of the Republic of Rwanda

## **APPLICANTS’ PRAYERS**

7. The Applicants are praying for Interim measures and prays that the Court:
  - i. *“Order President Kagame and the Republic of Rwanda to strictly abide by and respect the clear wording of article 101 of the Republic of Rwanda Constitution, read with article 13 of the ACHPR and article 23 of the Democracy Charter.*
  - ii. *Order the Senate of Rwanda not to entertain any motion purportedly instigated by the people of Rwanda to repeal article 101 because the people exhausted this power after they banned themselves from ever revisiting article 101*
  - iii. *Order the government of the Republic of Rwanda to comply with article 23(5) of the African Charter on Democracy, Elections and Governance which forbids any change of the constitution to give the president third or other term.*
  - iv. *Order any relief(s) as the Court may deem necessary in the circumstances”*

## **RESPONDENT’S PLEADINGS**

8. The Respondent contends that some of the Applicants, Mr. Safari Stanley and Mr. Kayumba Nyamwasa lack the *locus standi* to bring the Application before this Court because the former is a convict of genocide and a fugitive from justice and

the latter is a convict of serious crimes including threatening state security, sectarianism, setting up an armed criminal gang and deserting the military, and that after he was sentenced to 24 years in prison, he fled and escaped justice. The Respondent alleges that both have International Warrants issued against them. The Respondent contends further that since the two Applicants are convicts of serious crimes, the Respondent does not suppose that the same would be granted *locus standi* before the Court pursuant to the Declaration it made in terms of Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

9. The Respondent also contends that the Application is defective as it does not have a main relief to be determined after the ruling on interim measures.
10. The Respondent contends that the Application is inadmissible as it does not satisfy the conditions of admissibility pursuant to Article 56 of the African Charter on Human and Peoples' Rights and Rule 40 of the Rules of Court.
11. The Respondent contends that the Application is incompatible with the Constitutive Act of the African Union.
12. The Respondent maintains that the Applicants have not exhausted local remedies and that the notion of the dependency of the Rwandan judiciary is a political ploy to harm and disrepute the image of the Rwandan judiciary.

### **RESPONDENT'S PRAYERS**

13. The Respondent prays that the Court:
  - i. Declare that the Application is frivolous, vexatious, tendentious, politically motivated, an abuse of the process of the Court and an attempt to compromise the integrity of the Honourable Court
  - ii. Dismiss the Application without the necessity of summoning the respondents to the hearing in accordance with Rule 38 of the Rules of procedure

- iii. Declare that criminal convicts still eluding justice cannot have locus standi before the Honourable Court
- iv. Declare that the Court has no jurisdiction to hear and deal with the Application on grounds that it is defective and bad in law.
- v. Declare the Application inadmissible on grounds that it falls short of admissibility conditions established by the Charter and Rules.
- vi. Award cost to Respondents.
- vii. Make such an order as it deems fit

### **APPLICANT'S REPLY TO THE RESPONSE**

14. That the Applicants aver that the Court can still proceed with the case despite the lack of *locus standi* by some of the Applicants.
15. The Applicants state that the Court has the mandate to issue interim measures in terms of Rule 51 of the Rules of Court and that this Application raises a matter of extreme urgency such as their situation at hand.
16. The Applicants claim that the application is admissible under provisions of Article 34(6) of the Court's Protocol and that it is also compatible with the Constitutive Act of the African Union through Article 23 of the African Charter on Elections, Democracy and Governance, which Rwanda is a party to.
17. The Applicants claim that local remedies were exhausted with the judgment of the Green Party case by the Supreme Court of Rwanda. The Applicants claim further that it is well settled practice in human rights litigation that local remedies may be exhausted by a party other than one pursuing international remedy under the same matter.

18. The Applicant also alleges that the lack of judicial independence in Rwandan courts made it impracticable and ineffective for them to exhaust local remedies.
19. They argue that imprisonment does not take away one's right to access a court and that the Respondent's Response to the Application does not submit anything against the other five Applicants, save for the two, which it alleges to be convicts.
20. The Applicants also claim that the application does not involve any insulting language, rather just bare facts and criticisms that anger the Respondents.

### **APPLICANTS' PRAYERS IN THE REPLY TO THE RESPONDENT'S RESPONSE TO THE APPLICATION**

- i. The Applicants request for the Court to order the Respondents to submit the judgments as per the Court's disclosure rules and Article 7 of the African Charter on Human and Peoples' Rights
- ii. The Court to declare that it has jurisdiction in terms of the Court's Protocol and the rules of procedure to hear the communication
- iii. The Court to declare the communication duly admissible.
- iv. The Court to simultaneously order the Respondent's Government to abandon plans to hold a referendum on 17 or 18 December 2015 to amend article 101 of the Constitution of the Republic of Rwanda in light of the Article 23(5) of the African Charter on Elections, Democracy and Governance prohibition in this regard.
- v. The Court to declare that even if, but without conceding, that Mr. Kayumba Nyamwasa and Mr. Safari Stanley for the reasons alleged in the Response have no right to seek a remedy before the Court, the other applicants in the communication have that right and by the Respondent not referring to them anywhere in the Response to the Application, seemingly admits that that the case is admissible in respect to these other Applicants.

- vi. The Court to order the Respondent to produce the Gacaca and Military court judgments severally referred to in the Response to enable Mr. Kayumba Nyamwasa and Mr. Safari Stanley study them and make further representations with their rights.
- vii. The Court to order the Respondent to delete, in its Response to the Application, the wording that seems to be threatening the Court against deciding against the Respondent and take necessary measures against the Respondent
- viii. The Court to award costs of this application to the Applicants
- ix. The Court to make such orders and reliefs as it deems necessary