

005/11 Daniel Amare and Mulugeta Amare v. Mozambique and Mozambique Airlines

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

IN THE MATTER OF

DANIEL AMARE AND MULUGETA AMARE

v.

REPUBLIC OF MOZAMBIQUE AND MOZAMBIQUE AIRLINES

APPLICATION No. 005/2011

Decision

The Court composed of: Gérard NIYUNGEKO, President, Sophia A,B AKUFFO, Vice President. Jean MUTSINZI, Bernard M. NGOEPE, Modibo T GUINDO, Fatsah OUGUERGOUZ, Joseph N MULENGA, Augustin() S L RAMADHANI, Duncan TAMBALA. Elsie N THOMPSON and Sylvan ORE -- Judges, and Robert ENO- Acting Registrar,

In the matter of:

DANIEL AMARE AND MULUGETA AMARE

v.

REPUBLIC OF MOZAMBIQUE AND MOZAMBIQUE AIRLINES

Having regard to the above stated application and having deliberated thereon, the Court decides as follows:

1. The Applicants are two individuals whose application dated 21st January 2011, was received by the Court Registry on 16th March 2011 and was registered on 30th March 2011. On the latter date, the Registrar wrote to the Applicants acknowledging receipt of the application and observing that the application did not indicate exhaustion of local remedies.
2. Pursuant to Rule 35 (1) of the Rules of Court, the Registrar transmitted the application to the Judges on 8th April 2011, and thereafter, having regard to 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 ("the Protocol"), the Court, on 10th and 16th June 2011, deliberated on its competence to hear the application.

The Facts

3. In their application, the Applicants allege as follows, namely that: - In or about November 2008, having procured the requisite passports, visas and air tickets, they set out to travel to Maputo, Mozambique via Nairobi, Kenya.

- At Nairobi, they transited from the Ethiopian Airlines to a Mozambique Airline flight to Maputo.
 - However, the flight did not take them to Maputo but landed in Pemba, Mozambique, where they were stranded for a period of twenty six (26) days.
4. The Applicants further allege that: - During that period, they were subjected by the Mozambique Immigration Officials to diverse hardships, including demands for bribes, which they resisted, confiscating of their passports and visas, robbery of \$1000 from them, torture, and deportation to Dar-es-Salaam,

Tanzania.

- Upon intervention of the Tanzanian Immigration Officials, the Applicants were returned to Pemba but thereafter the Mozambique Immigration Officials repatriated them back to Ethiopia.

5. The Applicants contend that the acts of the Mozambique Airline and Immigration Officials are illegal under international conventions and accordingly, they "request the African Union to take necessary measures to the Mozambique Airline and Immigration Officials to refund [them] the robbed money."

6. As the application is made by individuals, the Court *suo motto*, in a letter dated 10th June 2011, asked the Legal Counsel of the African Union Commission whether the Republic of Mozambique had deposited the declaration accepting the Court's competence to hear cases brought under Article 5 (3) of the Protocol. By a Memo dated 13th June 2011, the Legal Counsel of the African Union Commission informed the Court that the Republic of Mozambique had "not yet deposited the declaration under Article 34 (6) of the Protocol."

Applicable Law

7. Article 5 (3) of the Protocol provides that the Court may entitle individuals to institute cases directly before it in accordance with Article 34 (6) of the Protocol, which Article in turn provides, *inter alia*, that "The Court shall not receive cases under Article 5 (3) involving a State Party which has not made a declaration accepting the competence of the Court to receive such cases".

8. As this is an application brought by individuals, and the Republic of Mozambique has not deposited the declaration under Article 34 (6) of the Protocol, the Court concludes that manifestly, it does not have the jurisdiction to hear the application.

9. Article 6 (3) of the Protocol provides that the Court may consider cases or transfer them to the African Commission on Human and Peoples' Rights. The Court observes that in the light of the allegations made in the application, this would be an appropriate matter to transfer to the Commission.

10. For these reasons,

THE COURT, unanimously:

1) Finds that, in terms of Article 34 (6) of the Protocol, it has no jurisdiction to hear the case instituted by Daniel Amare and Mulugeta Amare against the Republic of Mozambique and the Mozambique Airlines. 2) Decides, in terms of Article 6 (3) of the Protocol, that the application be and is hereby transferred to the African Commission on Human and Peoples' Rights.

Done at Arusha, this sixteenth day of June in the year Two Thousand and Eleven, in English and French, the English text being authoritative.

Signed:

Gerard NIYUNGEKO, President

Robert ENO, Acting Registrar