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الاتحاد الأفريقي <i>African Commission on Human & Peoples' Rights</i>		UNIÃO AFRICANA <i>Commission Africaine des Droits de l'Homme & des Peuples</i>
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Communication 623/16

Miles Investments & 2 Others

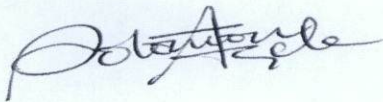
v

Republic of Sierra Leone

Adopted by the

African Commission on Human and Peoples' Rights

During the 67th Ordinary Session done virtually from 13 November to 3 December 2020



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Commissioner Solomon Ayele Dersso
Chairperson of the African Commission
on Human and Peoples' Rights




.....
Ms. Lindiwe Khumalo
Ag. Executive Secretary to the African
Commission on Human and Peoples' Rights

Decision on Strike Out of the African Commission on Human and Peoples' Rights

Communication 623/16 - Miles Investments & 2 Others v. Republic of Sierra Leone

Summary of the Complaint:

1. The Secretariat received a Complaint on 3 May 2016 from the Miles Investments Limited, Ubadire Nathaniel Mwoko, and James Sharpe (the Complainants).
2. The Complaint is submitted against the Republic of Sierra Leone, State Party to the African Charter.
3. The Complainants allege that on 6 January 2006, the Respondent State made a public notice No. 6 in the Sierra Leone National Gazette Bulletin. The notice requested false claimants of ocean-front property along the Western Peninsula to present their ownership documents to the Government since ocean-front property belonged to the Respondent State pursuant to Section 2 of the State Land Act No. 19.
4. The Complainants also allege that on 17 February 2007, James Johannes Sharpe and Intercontinental Investment Corporation (an Ohio State Corporation) incorporated Miles Investments Limited in the territory of the Respondent State, and later transferred the latter's shares to Ubadire Nathaniel Nwoko.
5. The Complainants further allege that on 29 March 2007, the Respondent State through its Ministry of Trade and Industry gave permission to Miles Investments Limited to establish an industrial ice factory in the Western Area of its territory.
6. The Complainants allege that on 14 April 2007, Miles Investments Limited requested for land from the Respondent State through the Tokeh Village Area Committee (Local Government) and the Ministry of Trade and Industry.
7. The Complainants aver that on 5 July 2007, the Ministry of Trades and Industry directly requested for land from the Ministry of Lands, Survey, and Environment on behalf of Miles Investments Limited.
8. The Complainants allege that on 30 April 2008, the Ministry of Lands, Planning and the Environment issued an offer letter to Miles Investments Limited to lease 'State Lands' for 21 years renewable for another 21 years.
9. The Complainants further allege that on 1 May 2008, Miles Investment Limited accepted the lease offer by the Respondent State through the Ministry of Lands,



Country Planning and Environment and paid National Revenue Authority a total lease fee of Le 2,500,000 for the first year.

10. The Complainants also allege that on 1 July 2008, Miles Investments Limited started producing and distributing the bars within the Western Area within the territory of the Respondent State.
11. The Complainants further allege that on 22 October 2008, the High Court in Case No. CC281/08 issued an interlocutory injunction without the participation of Miles Investments Limited in the hearings with the effect that the company was restricted from doing anything on the land leased from the Respondent State.
12. The Complainants allege that on 8 January 2009, Miles Investments Limited Managing Director, James Johannes Sharpe appeared before the High Court Justice Konoyima to inform him that he had not been served with the court documents in order for the company to defend itself.
13. The Complainants also allege that the Judge rebuffed the excuse given and jailed James Johannes Sharpe for four hours for contempt of Court having considered the evidence of service that had been made available before the Court.
14. The Complainants further allege that James Johannes Sharpe after his release wrote to the Chief Justice and in 2009, Justice Konoyima was removed from the case and Justice Charm was assigned the case after 31 months coinciding with the absence of the Complainants who had travelled to the United States for four months.
15. The Complainants allege that on 20 June 2011, the High Court ruled in favour of Witness Basseem Mohamed's family estate (Estate of Jamil Sahid Mohamed) with respect to the land leased by the Complainants without the Complainants' presence in Court.
16. The Complainants also allege that between 2008 and 2015, the Respondent State took no action to defend its ownership of the land it had leased to the Complainants despite several attempts made by the Complainants to that effect.
17. The Complainants further allege that Miles Investments Limited had borrowed money from Ohio via another company to finance its Tokeh Ice Project within the territory of the Respondent State.
18. The Complainants allege that about USD 200,000 was owing to third parties in the United States as at October 2008 when the project was stopped by the High



Court without the intervention of the Respondent State despite several reminders.

19. The Complainants also allege that the amount was borrowed at an annual interest rate of 14.99% APR for 84 months and that they are unable to service the loan since its operations had been stopped.
20. The Complainants further allege that on February 2012, James Johannes Sharpe was invited by officials from the Respondent State's Ministry of Lands to discuss the case and the officials made verbal commitments to overturn the High Court's decision concerning the land leased by the Complainants.
21. The Complainants allege that the Respondent State acted with intent to cause financial loss to the Complainants by failing to respond to the cases filed at the High Court as well as the communications sent by the Complainants concerning the same issue.
22. The Complainants also allege that their staff quarters and part of the factory building had been knocked down with Bulldozers by Basseem Mohamed and his legal team without proper court proceedings.

Articles alleged to have been violated:

23. The Complainants allege violation of Articles 3, 7(1) (c), and 14 of the African Charter.

Prayers:

24. The Complainants request the African Commission on Human and Peoples' Rights (the Commission) to:
 - i. To declare that the Sierra Leone High Court Order Case No. CC281/08 of 29 June 2011 which purported to have transferred the Respondent State's right to beach land property to which Miles Investments Limited have contractual rights without appropriate national and international law foundations is a violation of Articles 3, 7(1)(c), and 14 of the African Charter;
 - ii. To declare that the transfer of the Miles Investment Limited's contractual property right to Sierra Leone State Land leased, and right to its off-grid ice producing properties unlawfully. Especially to a third party who is a competitor in ice business in Sierra Leone, in violation of Article 14 of the African Charter;
 - iii. To enjoin the Republic of Sierra Leone to restore the contractual right to property leased from the Respondent State, by reinstating the Sierra Leone State's title deed of the beach land property referenced in Sierra Leone High Court Order dated 20 June 2011 in Case No. CC281/08, and prove to Witness Basseem Mohamed and



Estate of Jamil Said Mohamed that beach properties does not belong to private citizens in the Western Area of Sierra Leone; unless the title is derived from the Sierra Leone State;

- iv. To prescribe to the Respondent State to grant Miles Investments Limited, compensation based on Sierra Leone laws that are in tune with international laws, as compensation for damages suffered by Miles Investments Limited (United States Direct Investment Abroad), the minimum sum USD 1,074,841 with the continuation of the lease agreement.
- v. To prescribe to the Respondent State to recover any amount paid to Miles Investment Limited as compensation, from Witness Basseem Mohamed and Estate of Jamil Said Mohamed as guaranteed in the 'Promissory Estoppel', so as to restrain the family from future tortious unlawful interference.

Procedure:

- 25. The Secretariat received the Complaint on 3 May 2016 and acknowledged receipt of the same on 6 May 2016.
- 26. On **15 July 2016**, the Secretariat informed both Parties of its decision to be seized of the Communication during the Commission's 20th Extra-Ordinary Session held from 9 to 18 June 2016 in Banjul, The Gambia. It also requested the Complainants to submit their arguments on the Admissibility of the Communication within two months as required by Rule 105(1) of the Rules of Procedure (2010).
- 27. On **21 November 2017**, the Complainants were informed about the deferment of consideration on Admissibility by the Commission pending submissions on Admissibility, and that the Communication will be struck out if no submissions were received.
- 28. On **15 May 2018**, the Complainants were again reminded to make submissions on Admissibility.
- 29. On **30 July 2018**, the Complainants forwarded a correspondence to the Secretariat requesting amongst others: that the Communication should not be struck out; that submissions on Admissibility will be made; and attaching an affidavit in support of damage claims.
- 30. On **21 November 2018**, the Complainants were informed that the Commission decided to grant them 30 additional days to make submissions, failing which the Communication will be struck out for lack of diligent prosecution.



31. On 7 August 2019, the Complainants were informed that since they have not submitted despite various reminders and additional 30 days, the Communication will be struck out.
32. Consideration for striking out was deferred during the 65th and 66th Ordinary Sessions of the Commission.
33. The Communication was deferred at the 64th to 66th Ordinary Sessions of the Commission.
34. The Commission decided to strike out the Communication for want of diligent prosecution during its 67th Ordinary Session.

Analysis of the African Commission on Strike Out:

35. Rule 105(1) of the Commission's Rule of Procedure (2010) provides that when the Commission is seized of a Complaint, it shall request the Complainant to present evidence and arguments on the admissibility of the Communication within two (2) months.
36. Rule 113 of the Commission's Rule of Procedure (2010) also provides that when a deadline is fixed for a particular submission, either Party may apply to the Commission for an extension of the stipulated period and the Commission may grant the said application.
37. In this case, the Complainants were requested to present evidence and arguments on the admissibility of the Communication within two (2) months from the date of notification of the seizure decision which had expired on 15 September 2016. However, the Complainants did not present any evidence and arguments within the stipulated time. The said period was extended by the Commission for a period of 30 calendar days and same had expired on 21 January 2019.
38. Almost two years have lapsed since the expiry of the extended period and no evidence and arguments have been submitted by the Complainants on the Admissibility of the Communication.
39. In light of the above, the Commission finds that the Complainant has not shown any interest in prosecuting this Communication and therefore does not have sufficient information upon which to determine the Admissibility of the said Communication.
40. Consequently, the Commission takes note of its following jurisprudence, *Communication 594/15- Mohammed Ramadan Mahmoud Fayad Allah v The Arab Republic of Egypt*, *Communication 612/16 – Ahmed Mohammed Ali Subaie v The Arab Republic of Egypt*, *Communication 412/12- Journal Echos du Nord v The*



Republic of Gabon and Communication 387/10- Kofi Yamagnane v Togo, which were similarly struck out for want of diligent prosecution.

Decision of the African Commission on Strike Out

41. In the light of the analysis made above, the Commission decides to strike out this Communication against the Republic of Sierra Leone, for want of diligent prosecution.

Done at the 67th Ordinary Session, held virtually from 13 November - 3 December 2020



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