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

In the case of

MAMOUROU KONE **against** **the REPUBLIC OF COTE D'Ivoire.**

Application No: ECW/CCJ/APP/66/21 *Judgment No. ECW/CCJ/JUD/28/24*

JUDGMENT

ABUJA

10th July 2024

SUIT N°: ECW/CCJ/APP/66/21

JUDGMENT N°: ECW/CCJ/JUD/ /24

MAMOUROU KONE **APPLICANT**

v.

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

1 Translato: M. UKO

COMPOSITION OF THE COURT:

Hon. Justice Gberi-Bè **OUATTARA** - Judge -Rapporteur/Presiding

Hon. Justice DUPE ATOKI - Member

Hon. Hon. Justice Claudio Monteiro GONÇALVES - Member

ASSISTED BY: Dr. Yaouza OURO-SAMA - Chief Registrar

I. *REPRESENTATION OF THE PARTIES:*

LA SOCIETE CIVILE PROFESSIONNELLE D'AVOCAT (SCPA)
KAKOU-DOUMBIA-NIANG and partners Counsel for the applicant

The Minister of Economy and Finance
Through the Judicial Officer of the Treasury, assisted by
Maître Fofana Na Mariam, Counsel for the defendant

II. JUDGEMENT OF THE COURT

This is the judgment of the Court delivered virtually in open Court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

III. DESIGNATION OF THE PARTIES

1. The applicant is Mamourou Kone, Professor of Medicine, an Ivorian national, born on 02 February 1956 in Grand-Bassam, with an address in Abidjan Riviera-Palmeraie, (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 these proceedings is to examine the application by which the applicant seeks a finding of the violation by the defendant of his right to a fair trial and his right to property;

The Defendant requests that the Court declare the application ill-founded.

V. PROCEDURE BEFORE THE COURT

4. On 29 September 2021, Mamourou Kone filed an application before the Community Court of Justice, ECOWAS against the Republic of Côte d 'Ivoire for violation of his fundamental rights.

This application was served on the defendant on 22 November 2021.

5. On 20 December 2021, the Court received the defendant's statement of defence.

This statement of defence was served on the applicant by the Registry of the Court on 21 December 2021.

6. On 21 January 2022, the applicant filed a reply with the Court.
The applicant's reply was served on the defendant on 25 January 2022.

7 On 24 February 2022, the defendant submitted a rejoinder to the Court, which was served on the applicant on 28 February 2022.

8 The case was slated for a virtual hearing on 3 May 2023, but due to connection difficulties encountered by the lawyers, it was postponed to 11 July 2023 for hearing of the parties.

9 At the hearing on 29 January 2024, the parties, who were all represented, were finally heard and the case was adjourned for judgment by the Court.

VI. ARGUMENTS OF THE APPLICANT

a) Summary of facts

10. Mamourou Kone lodged an application with the ECOWAS Court of Justice for violations of his human rights against the defendant.

11. He states that on 23 May 2018, the defendant's Administrative Chamber of the Supreme Court delivered Judgment No. 154 by which it granted an application that he had filed before it, in the context of a dispute between him and Kolo Touré Abib.

12. The applicant explains that, under the terms of this judgment, the Administrative Chamber of the Supreme Court declared null and void letter No. 08-1262/MCUH/DDU/AH/SA of 10 November 2008 acknowledging his withdrawal letter No. 08-1263/MCUH/DDU/AH/SA of 10 November 2008 from the Minister of Construction, Housing, Sanitation and Urban Planning reallocating plot No. 65 lot 4, *Riviéra 4 Extension Golf Complémentaire* to Kolo Touré Abib and Final Concession Order (ACD) No. 16-1604/MCLAU/DGUF/DDU/COD-AE1/K2A, dated 15 February 2016 issued to Kolo Touré Abib on the one hand, and on the other hand, ordered the removal from the land register of the land titles arising from the Final Concession Order of 15 February 2016. (Exhibit 1)

13. He maintains that following this judgment, Kolo Touré Abib, who claims to have rights to the disputed land, filed an application with the Administrative Chamber of the Supreme Court on 12 October 2018, for the purpose of setting aside Judgment No.154 of 23 May 2018 and based his application on Article 39 of Law n°94-440 of 16 August 1994 amended by Law n°97-243 of 25 April 1997 determining the composition, organisation, powers and functioning of the then Supreme Court.

14. He specifies that on 27 December 2018, the Organic Law n 2018-976 determining the composition, organisation and functioning of the *Conseil d'Etat* was adopted, newly created as the highest jurisdiction in administrative matters, was passed.
This newly-created Court has applied the provisions of the former law No. 94-440 of 18 August 1994, amended by law No. 97-243 of 25 April 1997, to the current proceedings, despite the repeal of this law by the law of 27 December 2018.

15. He claims that on 18 November 2020, the *Conseil d'Etat* delivered judgment No.318 in which it took the same decision as the Administrative Chamber of the Supreme Court. **(Exhibit 6)**

16. Dissatisfied with this decision, Kolo Touré Abib again appealed to the *Conseil d'Etat* for a revision of judgment No. 318 by an application registered at the registry of the *Conseil d'Etat* on 17 December 2020 and based this new application on the provisions of paragraphs 1 and 2 of Article 79 of Law No. 2018-978 of 27 December 2018 as follows:

> *"An application for revision may be lodged with the Conseil d'Etat:*
> *against judgments delivered on the basis of false documents*...Exhibit 7

17. The applicant points out that Kolo Touré Abib had already exercised the right of withdrawal, whereas the right of revision provided for in the *Conseil d'Etat* Law is nothing more than the right of withdrawal that existed under the former 1997 Law, which has now been repealed. (Exhibit 3)

18. He asserts that after having received notification of the application for revision lodged by Kolo Touré Abib, and by which he was requested to file his statement of defense, his Counsel, by letter-application of 29 January 2020, referred the matter to the President of the *Conseil d'Etat* for an order to dismiss the application for revision

as manifestly inadmissible, and in doing this, pursuant to Article 59 of the new law N°2018-976 of 27 December 2018 which provides that: "When it appears, from the application, that the solution is already certain, the President of the *Conseil d'Etat,* the President of the Litigation Section or the President of the Chamber seized may, by Order: ...

- Dismiss manifestly inadmissible applications. Exhibits 8-9)

19. He argues that no action was taken on his letter -application of 29 January 2020 and that he had to produce his statement of defence, invoking the inadmissibility of Kolo Touré Abib's appeal on the grounds of *res judicata* and, in the alternative, requesting its dismissal (Exhibit 15).

20. He asserts that on 26 April 2021, he addressed an application to the President of the *Conseil d'Etat* and, once again, reiterated his request for an order to dismiss the manifestly inadmissible application for revision lodged by Kolo Touré Abib; that this application also remained without action.

21. The applicant states that the *Conseil d'Etat* continued to investigate the case with the President of the 4th Chamber of the Litigation Division, who appointed himself Judge-Rapporteur.

22. By letter dated 04 May 2021, the Registry of the *Conseil d'Etat* served on him, the Judge-Rapporteur's report dated 22 April 2021, and gave him 15 days in which to submit his written observations (Exhibits 12-13).

23. The applicant further alleges that on 19 May 2021, he produced written observations on the basis of the report dated 22 April 2021 clearly biased in favour of Kolo Touré Abib since it mentions that he has not filed any written submissions whereas his counsel filed a statement of defence received by the registry the *Conseil d'Etat* on 1 February 2021 (Exhibit 14).

24. He also points out that on 18 May 2021, he lodged a complaint with the President of the *Conseil d'Etat*, protesting and denouncing serious violations of his right to information regarding the setting of the date on which the case would be heard at the public hearing, because it was on reading the report of 22 April 2021 that he

discovered that the case had been called for public hearing of the *Conseil d'Etat* on 28 April 2021, even though he had not been served of any notice of this date (Exhibit 15).

25. He indicates that he also protested against the report of 22 April 2021 which mentions that he did not file any pleadings whereas his counsel filed a statement of defence received by the registry of the *Conseil d'Etat* on 1 February 2021 (Exhibit14).

26. The applicant notes that, taking into account the behaviour of the Judge-Rapporteur in the conduct of the investigation of the case, which raises legitimate suspicions of bias, he requested that the case be reassigned to another Chamber.

27. He adds that his Counsel also requested that they be allowed to make oral observations, in the event that the proceedings should continue without a dismissal order for manifest inadmissibility of the application for revision initiated by Kolo Touré Abib.

28. The applicant reveals that, against all expectations, he received a second report, still dated 22 April, by letter dated 22 May 2021 for his written observations and that this new report took into account his statement of defence.

29. On 7 June 2021, he filed his pleadings at the registry of the *Conseil d 'Etat* under number 1483 (Exhibit 18).

30. He notes that a third report, still dated 22 April, was communicated to him, in an extraordinary manner, by a letter from the registry dated 28 June 2021 giving him a new period of 15 days to file his written observations (Exhibit 19-20)

31. He states that on 15 June 2021, he again filed his written observations with the registry of the *Conseil d'Etat* and his counsel requested, on this occasion, to be authorized to examine the file of the proceedings, in order to ensure that all the procedures done and required are included therein and especially to know which of the reports is in the file of the proceedings (Exhibit 22) but no response was given to them by the Judge-Rapporteur.

32. The applicant further reports that at the hearing on 23 June 2021, the case was adjourned to 20 June 2021.

33. He asserts that his counsel, having realized that the latter date was not in line with the *Conseil d'Etat's* schedule of hearings, sent a letter to the President of the Chamber on 24 June 2021, who is also Judge-Rapporteur in the proceedings in question, asking him to confirm the date of the hearing. (Exhibits 23-24 and 25). In the same application, his counsel reminded him that their letter of 16 June 2021 requesting permission to take a closer look at the file of the proceedings had remained unanswered. This new mail also met the same fate.

34. The applicant notes that on 30 June 2021, and not in accordance with the schedule of hearings, the 4th Chamber held an exceptional hearing with only two (02) other proceedings (Exhibit 26), and this despite the fact that on normal hearing dates, the dockets of the Chambers of the *Conseil d'Etat* are fully booked (Exhibit 27-28).

35. He maintains that the 4th Chamber delivered Judgment No.250, which reads as follows:

"*Article 1: the application for revision No. CE-2020-143 REV of 17 December 2020 is admissible and well-founded;*

Article 2: Judgement no. 318 of 18 November 2020 of the Conseil d'Etat is revised;

Ruling de novo

Article 3: Application No.2016-304 REP of 9 November 2016 is inadmissible;

Article 4: the final concession order of 15 February 2016 issued to Mr Kolo Touré Abib by the Minister of Construction, Housing, Sanitation and Urban Planning is restored to its full and complete effect and it is ordered to be registered in the Cocody Land Register...;

46 In order to declare the application for revision of Mr Toure Kolo Abib admissible: the Conseil d'Etat wrongly held that

... Article 79 of Law 2018-679 of 27 December 2018 makes no distinction on the subject of judgments likely to be challenged by way of revision ; "(Exhibit 29)

36. The applicant states that following this judgment, and even though the 4th Chamber had been relieved of jurisdiction, his counsel sent a letter of protest to the President of the said Chamber, with a copy to the President of the Conseil d'Etat, pointing out all the violations of his human rights committed by this Court during the investigation of the case.
He considers that all the violations of his human rights have seriously violated his right to property.

b) The Pleas in law invoked

37. The applicant invokes the following pleas in law:

The violation of the right to a fair trial by supporting: the violation of his right to be heard fairly and publicly, the violation of his right to an impartial judicial body and his right to legal certainty.
Violation of the right to property;

He cites as the basis of these violations, Articles 6, paragraphs 1 and 2 of the Ivorian Constitution, Articles 8 and 10 of the Universal Declaration of Human Rights (UDHR), Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 1, paragraphs a and c and 3 of the African Charter on Human and Peoples' Rights (ACHPR).

He also cites various other texts produced by the African Commission on Human and Peoples' Rights, namely the resolution on the Right to a Remedy and a Fair Trial, adopted on the occasion of its 11th session in March 1992; the resolution on the Right to a Fair Trial and Legal Assistance, adopted on the occasion of its 26th session, held in November 1999; the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, which base the right to a fair hearing on essential principles including that of equality of arms in the conduct of proceedings, whether administrative, civil, criminal or military; the right to an effective remedy.

(c) Orders Sought

17. The applicant requested that it may please the Court:

As to form:

- Declare that it has jurisdiction;
- Declare the application admissible;

As to merit

- Find the violation by the defendant of his fundamental rights;
- Order the defendant to pay him the sum of Three billion, Eighty-three million, Six hundred thousand (3,083,600,000) CFA francs as damages for all causes of damages;

Order the defendant to bear the costs;

VII. ARGUMENT OF THE DEFENDANT

a) Summary of the facts

39. In a statement of defence received at the Registry of the Court on 20 December 2021, the defendant states that, after having allocated to Mamourou Kone Plot No. 65, Lot 4 of the *Riviéra 4 Extension Golf Complémentaire*, known as "Opération liberté", in the Cocody Commune, with a surface area of 7,334 square metre, in accordance with allocation letter No. 13175/MCU/DDU dated 16 August 2005 from the Minister of Construction, Housing, Sanitation and Urban Planning by letter N°08-1262/MCUH/DDU/AH/SA dated 10 November 2008, the Minister of Construction, Housing, Sanitation and Urban Planning acknowledged the applicant's withdrawal from the allocation of the plot in question.

40. The defendant notes that following this withdrawal, by letter N 08-1263/MCUH/DDU/AH/SA dated 10 November, the Minister of Construction, Housing, Sanitation and Urban Planning reallocated the said plot to Kolo Touré Abib and on 15 February 2016, issued an Order of Final Concession to formalise this reallocation.

41. The defendant alleges that the applicant, believing himself to have been deprived of his property, lodged an application with the Administrative Chamber of the Supreme Court on November 09, 2021 for the annulment of Final Concession Order No. 161604/MCLAU/DGUF/DDU/COD-AE1/K2A on the grounds of ultra vires.

42. He reports that on 23 May 2018, by judgment No. 154, the Administrative Chamber of the Supreme Court upheld the applicant's claims by ordering the removal from the land register of the land titles arising from the Order of Final Concession awarded to Kolo Touré Abib. Thus, on 12 October 2018, Kolo Touré

Abib initiated an appeal in order to set aside, against judgment No. 154 and the Administrative Chamber issued judgment No. 318 on 18 November 2020 by which it practically reaffirmed the provisions of judgment No. 154 of 23 May 2018.

43. The defendant points out that on 27 December 2008, Organic Law N 2018-978 was passed, creating the *Conseil d'Etat,* the new High Administrative Court to replace the Administrative Chamber of the Supreme Court.

44. He claims that on 17 December 2020, Kolo Touré Abib again appealed to *Conseil d'Etat* for revision of judgment No.318 of 18 November 2020 in favour of Mamourou Kone.

45. The defendant further states that on 30 June 2018, the *Conseil d'Etat,* by judgment No. 250, ordered the re-registration in the land register of the Final Concession Order obtained by Kolo Touré Abib, after having declared admissible his appeal for revision.

46. It further specifies that it was following this decision by the *Conseil d'Etat* that the applicant, believing his rights to be violated, referred the matter to the Community Court of Justice, ECOWAS.

a) Pleas in law

47. The defendant considers that the applicant's claims are unfounded and maintains that it has not committed any violation of his rights. To do so, it invokes the rules of procedure before the *Conseil d'Etat.*

b) Orders Sought

48. The defendant requests that the Court exonerate it.

VIII. JURISDICTION

49. The Court recalls that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court of Justice, which

provides that: *"The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State".*

50. It follows from this provision that, for the Court to assume jurisdiction, the application must relate to a violation of human rights committed in the territory of one of the Member States and by that State.

51. The Court has always affirmed that the mere mention of the violation of human rights in the application suffices for it to retain jurisdiction (Judgment No. ECW/CCJ/Jud/57/23 of 15 December 2023: Mohamed BAZOUM and two others v. Republic of Niger, §28).

52. The Court notes that the rights invoked by the applicant are among the human rights falling within its jurisdiction.

53. As the defendant is an ECOWAS Member State, all the conditions are met for the Court to retain jurisdiction in accordance with its settled case law.

IX. ADMISSIBILITY

54. The Court notes that the admissibility of applications before it is governed by the provisions of Article 10 (d) of the Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 relating to the Court, which provides that: "Any person who has suffered a violation of human rights may apply to the Court;

the submission of application for which shall:

i) not be anonymous nor;

ii) be made whilst the same matter has been instituted before another International Court for adjudication".

55. In the instant case, the Court finds that the applicant is indeed identified. The application is therefore not anonymous.

56. Furthermore, there is no evidence that the applicant has referred the same case to another international Court with jurisdiction in human rights matters. In these circumstances, in accordance with its settled case law, the Court can only declare the application admissible insofar as it has satisfied all the textual requirements.

X ON THE MERIT OF THE CASE

57. The applicant alleges **(A)** the violation by the defendant of his right to a fair trial under Articles 7 of the ACHPR, 10 of the UDHR and 14 of the ICCPR and **(B)** his right to property under Article 14 of the African Charter on Human and Peoples' Rights (ACHPR).

Before any decision, the Court will examine one by one all the claims of the applicants.

A ON THE VIOLATION OF THE RIGHT TO A FAIR TRIAL

58. The Court points out that the concept of a fair trial encompasses a number of individual rights. These include the right to defence, adversarial proceedings, *res judicata,* equality of arms, right to an effective remedy, presumption of innocence, and right to be tried within a reasonable time.

59. The right to a fair trial is a fundamental right. It is governed especially by Article 14 of the ICCPR, which states that *"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....."*

60. Article 6 of the European Convention on Human Rights abounds in the same sense by providing that: *"In the determination of his civil rights and obligations or*

of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

61. The Court observes that in the instant case, the applicant submits that the defendant violated his right to a fair trial by invoking, (a) the violation of his right to a fair and public hearing (b) his right to an impartial judicial proceeding and (c) his right to legal certainty.

a) ON THE VIOLATION OF THE RIGHT TO A FAIR AND PUBLIC HEARING

62. The Court notes that in order to claim that the defendant violated his right to a fair and public hearing, the applicant alleges that the *Conseil d 'Etat* did not respond to his letter-applications in which he sought the dismissal of the manifestly inadmissible application for revision. He infers that this Court has thus denied him the right to avail himself of the provisions of Law N°2018-976 of 27 December 2018 governing the *Conseil d'Etat* and that by having acted in this way, the *Conseil d'Etat* has clearly broken the principle of equality of arms of the parties to the proceedings.

63. He also maintains that the Judge Rapporteur had the case enlisted on the cause list on 28 April 2021 without informing him, let alone his lawyers, and that the *Conseil d'Etat* had set the judgment date for the revision proceeding for 30 June 2021, although this date was not on the cause list of the Court

64. The *applicant believes that the sole purpose of this manoeuvre by the Conseil d'Etat* was to limit the publicity of the hearing.

65. The defendant argues that the *Conseil d'Etat*, as a High Special Jurisdiction, judges on the basis of documents and, exceptionally, calls for oral observations from the parties. Like any other Court, it is sovereign in its assessment of whether or not to allow the parties to make oral observations.

It concludes that the applicant's claim is rejected.

ANALYSIS OF THE COURT

66. The Court recalls that in accordance with Article 14 of the ICCPR, "everyone has the right to a fair and public hearing by a Court of competent jurisdiction".

67. The Court emphasises that this right implies the possibility for any person to benefit from fair treatment, that is to say not to be the victim of an inequality in the handling of the procedure which concerns him on the one hand, and on the other hand, to be able to present his arguments during a public hearing.

68. The Court notes that fair treatment refers to respect for the principles of adversarial proceedings and equality of arms between the parties. Judgment ECW/CCJ/JUG/03/16 of 16 February 2016 delivered by this Court in the case between Ibrahim SORY TOURE and Issiaka BOANGOURA and the Republic of Guinea, is a perfect illustration of this. Indeed, it affirmed that: *"Whereas equality of arms is one of the inherent elements of the concept of fair trial; whereas the concept of equality of arms requires that each party be availed a reasonable opportunity to plead its cause under conditions which do not put one party in an unfavourable situation with respect to the opposing party, and demands an arrangement of fairness and balance among the parties; whereas the principle of adversarial proceedings signifies the possibility for the parties to take notice of, and comment on all the points of evidence produced, and on all the observations submitted, such as to direct the decision of the court; (...) whereas violation of the principle of adversarial proceedings would imply that an accused person was not given notice of, and did not make any submission on the points of evidence upon which his accusation was based; (...) » §96.*

69. The Court notes that in the instant case, it is common ground that the applicant filed a defence following the service made on him of the report of the Judge-Rapporteur. The Court considers that the production of this pleading is incontrovertible proof that contradiction was observed in the handling of the proceedings and that, moreover, the *Conseil d'Etat* cleared up the question of the admissibility of the application for revision by judgment No. 250, in which it held that the application was admissible.

70. The Court finds that in the light of all the foregoing, there was no breach of equality or violation of the adversarial principle insofar as the applicant defended himself through the filing of his defence.

71. With regard to the question of the public hearings, the Court notes that it must be assessed according to the nature of the Courts. The Court notes that the publicity of hearings is more accentuated before the criminal Courts than before the civil, administrative or commercial Courts where the procedure is essentially written. It also points out that there can be exceptions to the principle of open hearings, and one such exception is, in camera hearing which a Court, even a criminal Court, may order for certain reasons.

72. The Court recalls that civil, administrative or commercial Courts usually judge on the basis of documents, even if they may allow the parties to make oral observations at the hearing. The Court points out that these Courts are not under any obligation to admit parties to make oral observations if they consider that these are not necessary, let alone indispensable, for the proper administration of justice ; they are therefore sovereign in their assessment and use of this power to admit or not to admit parties to make oral interventions.

73. The Court notes with the defendant that the *Conseil d'Etat* is a special Court which judges on the basis of documents but which may, at its discretion, allow the parties to make oral observations, but that apart from this hypothesis, no provision

of the organic law governing this High Court obliges it to allow the parties to make oral observations during a hearing.

74. The Court points out that this is merely an option and not an obligation, so that by not allowing the applicant to make oral observations, the *Conseil d'Etat* in no way violated the applicant's right to be heard in public.

75. The Court notes that the scheduling of the deliberation of the case by the *Conseil d'Etat* at a hearing date which does not conform to its hearing schedule cannot, on its own, suffice to conclude that there has been a breach of the principle of the public nature of hearings, insofar as the public nature of debates refers to their accessibility to the public. The Court notes that the closed session was not ordered and that the courtroom was accessible to anyone wishing to attend the hearing.

76. The Court therefore concludes that in the present case, there is nothing in the proceedings to suggest that the *Conseil d'Etat* did not wish the public to have access to the courtroom on 30 June 2021 in order to follow the deliberations.

77. The Court further notes that the *Conseil d 'Etat* held a hearing on 28 April 2021 in the case between the applicant and Kolo Toure Abib, at which the Judge-Rapporteur presented his report and the *Conseil d 'Etat* fixed the date for judgment on 30 June 2021. The Court considers that the fact that the hearing was held in public is conclusive proof that there was no breach of the principle of public hearings, especially as the applicant has not provided any evidence that the hearing schedule had not been posted ahead of time;

78. Lastly, the Court stresses that the fact that only two (02) cases were scheduled for hearing in the case between the applicant and Kolo Toure Abib does not constitute a violation of the principle of public hearings, insofar as compliance with this principle does not depend on the number of cases scheduled for hearing, but rather on the arrangements made to ensure that the hearing is accessible to the public.

79. In view of all the foregoing, the Court finds that the defendant did not violate the applicant's right to a fair and public hearing.

b) ON THE VIOLATION OF THE RIGHT TO AN IMPARTIAL COURT

80. The Court notes that, according to the applicant, the President of the *Conseil d'Etat* and the Judge Rapporteur, who is also President of the 4th Chamber of the *Conseil d'Etat,* were not impartial in their handling of the proceedings between the applicant and Kolo Toure Abib.

81. He bases his allegations on the fact that the President of the *Conseil d'Etat* has not acted on his requests to dismiss the application for revision as manifestly inadmissible and on his request to inspect the exhibits in the proceedings, on the one hand, and on the other, on the attitude of the Judge Rapporteur concerning the fact that he mentioned in his first report that he had not submitted any written pleadings, whereas this information proved to be inaccurate, and that he set a date for the hearing without informing him in advance. To these arguments, he adds the fact that the *Conseil d'Etat* has set the case for judgment at a date that does not conform to its timetable.

82. He concludes that these actions lead him to doubt the impartiality of the President of the *Conseil d'Etat* and the Judge-Rapporteur.

83. The defendant did not comment on this alleged violation of the right to an impartial judicial body.

ANALYSIS OF THE COURT

84. The Court recalls that under Article 14 (1) of the ICCPR, everyone has the right to a fair and public hearing by a competent, independent and impartial Court.

85. It follows from this provision that the Court before which the case is brought for discussion, must be impartial.

86. The Court notes that the principle of the impartiality of the Court implies that it must demonstrate neutrality in its handling of the proceedings and assure the parties that their arguments will be examined objectively.

87. In the instant case, the applicant challenges the neutrality of the *Conseil d'Etat,* especially its President and the Judge-Rapporteur, by invoking a whole series of attitudes mentioned above.

88. The Court notes, however, that the attitudes invoked to conclude that there has been a violation of the principle of the impartiality of the Court are no more than inferences that the applicant makes in order to conclude that the highest administrative Court did not demonstrate neutrality in its handling of the proceedings between him and Kolo Touré Abib.

89. The Court notes that he has not adduced any material evidence of a breach of the principle of impartiality and that he has not produced any tangible evidence that would enable the Court to be convinced of the partiality of the President of the *Conseil d'Etat* or the Judge-Rapporteur in the handling of the proceedings.

90. The Court considers that it cannot be satisfied with mere deduction or supposition to find a violation of human rights but that its decision must be based on unequivocal evidence produced by the applicant , in accordance with its own well-established case law, as evidenced by judgment ECW/CCJ/JUG/17/15 of 06 October 2015 (Kodjovi gbelengo Djelou v. Republic of Togo §32) where it held that: *"all cases of human rights violation brought before it by an applicant must be described in specific terms, with sufficiently convincing and unequivocal evidence"*.

91. In view of the foregoing, therefore, the Court finds that the applicant has not adduced any evidence to corroborate his allegation that the *Conseil d'Etat* violated

the principle of impartiality. It therefore concludes that the applicant's right to an impartial judicial proceeding was not violated by the defendant.

c) ON THE VIOLATION OF THE RIGHT TO LEGAL CERTAINTY

92. The applicant contends that the *Conseil d'Etat,* by failing to dismiss the application for revision lodged by Kolo Touré Abib following the adoption of Organic Law n 2018-976 establishing the *Conseil d'Etat,* has seriously breached the principle of legal certainty.

93. The applicant further asserts that in declaring this appeal admissible, the *Conseil d'Etat* violated the principle of *res judicata* insofar as it had rendered judgment N°318 of 18 November 2018 and by which it had declared null and void the Final Concession Order n°161604/MCLAU/DGUF/DDU/COD-AEI/K2A of 15 February 2016 of the Minister of Housing Construction and Sanitation, and Urban Planning, issued to Mr Toure Kolo Abib on plot n°65 lot n°4 with a surface area of 7334m², of the *Riviéra 4 Extension Golf Complémentaire*, subject of Land Title n°116620 of the Riviera Land District, following an appeal for revocation lodged by Kolo Touré Abib. He adds that this judgment had cleared the dispute between him and the latter and which concerns the validity of the aforementioned final concession order.

94. Finally, the applicant declares that judgment No. 250, delivered on 30 June 2021, by which the *Conseil d'Etat* declared admissible Kolo Touré Abib's appeal for revision and ordered the reinstatement of the final concession order in the land register, violates the principle of legal certainty and, therefore, his right to legal certainty.

95. The defendant did not comment on this allegation.

ANALYSIS OF THE COURT

96. The Court recalls that legal certainty is a principle of law whose aim is to protect citizens against legal uncertainty, i.e. the negative side-effects of the law, especially, the inconsistency or complexity of laws and regulations, or their too frequent changes.

97. The Court notes that legal uncertainty is one of the many challenges faced by actors in the justice system. Indeed, the interpretation of laws is often subject to conflicting interpretations, which can result in conflicting decisions rendered by different Courts or even by the same Courts at different times. This situation produces unpredictable and inconsistent results, which undermines confidence in the judicial system and the legal certainty of citizens by putting them in a precarious situation as to the effectiveness of their rights.

Legal uncertainty must be taken seriously and resolved comprehensively.

98. The Court considers, however, that legal certainty is an element of security and that, as such, it has its basis in Article 2 of the Declaration of 1789, which places security among the natural and imprescriptible rights of man in the same way as freedom, property and resistance to oppression.

99. The Court recalls that the principle of legal certainty has been developed by Courts such as the European Court of Human Rights or the Court of Justice of the European Community, which, in several judgments, have tried to give it content. Thus, in the case of (Michaux v. MONACO, ECHR, of 18 January 2024), the ECHR affirmed that: *"The concept of the principle of legal certainty refers to the idea of a stable, comprehensive and predictable legal framework that excludes any arbitrariness.*

However, in the instant case, the Court notes that "no crystallized legal situation" was annulled by the Monegasque Courts to the detriment of the applicant, no final judgment in her favour having been called into question. Moreover, the file shows neither divergent or contradictory jurisprudence, nor elements of arbitrariness in the decisions of the Monegasque Courts".

100. The Court notes that in the instant case, the applicant Mamourou Kone benefited from two judgments delivered in his favor by the Administrative Chamber of the Supreme Court, namely Judgment No. 154 of 23 May 2018 and Judgment No. 318 of 18 November 2020, both of which had ordered the cancellation of the Final Concession Order awarded to Kolo Touré Abib.

101. Following a legislative reform which led to the creation of the *Conseil d'Etat,* Kolo Touré Abib lodged an appeal for revision of judgment N 318 before the said *Conseil d'Etat* which, by judgment No. 250 of 30 June 2021, ordered the reinstatement of his Final Concession Order in the land books, a decision which calls into question the rights of Mamourou Kone recognized and enshrined by judgments No. 154 and 318 of the Administrative Chamber of the Supreme Court.

103. The Court points out that, as the European Court of Human Rights (ECHR) has held, there is a violation of the principle of legal certainty when a crystallized legal situation is extinguished by a court.

104. The Court notes that, in the instant case, the applicant does not contend that the decisions delivered in his favour by the Administrative Chamber of the Supreme Court have become final and thus *res judicata* before being challenged by the *Conseil d'Etat.*

105. The Court notes that, in the instant case, an application for revision is provided for in the Organic Law governing the *Conseil d'Etat*, and it was on the basis of this application that judgment No. 250 was delivered.

106. The Court further notes that the applicant has not provided any evidence to support his claim that the *Conseil d'Etat's* decision was arbitrary or manifestly violated any of his fundamental rights in the handling of the proceedings that led to the delivery of judgment No. 250 of 30 June 2021 in favour of Kolo Touré Abib.

107. Moreover, the Court observes that it is not apparent from the proceedings that the application for revision was filed out of time or in an irregular manner, so that

the existence of such evidence could justify the complacent nature of Judgment No. 250 and justify a breach of the principle of legal certainty.

108. The Court, in accordance with its case law, can only base a violation of human rights on sufficient and convincing evidence.

109. In the light of the foregoing, therefore, the Court finds that the applicant has not provided sufficiently convincing and unequivocal evidence to substantiate his allegation of violation of the principle of legal certainty by the *Conseil d 'Etat* and that, consequently, the defendant has not violated the applicant's right to legal certainty.

B- ON THE VIOLATION OF THE RIGHT TO PROPERTY

110. The applicant alleges that all the violations of his rights as a result of the malfunctioning of the public justice system have infringed his right to property.

111 He argues that by judgment No. 250 delivered on 30 June 2021 in completely abnormal and illegal conditions as described, the *Conseil d'Etat* has removed from his estate lot No. 65, plot 4 of the *Riviéra 4 Extension Golf Complémentaire* named *"Opération liberté"*, Cocody Commune, with a surface area of 7334 square metres.

112. The defendant did not comment on this allegation of infringement of the right to property.

ANALYSIS OF THE COURT

113. The Court recalls that the applicant alleges a violation of his right to property under Article 14 of the African Charter on Human and Peoples' Rights as follows:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

114. The Court notes that in legal terms, the right to property is the right to enjoy and dispose of things in the most absolute manner. This right applies to property of all kinds, whether movable or immovable. It includes the right to use the thing, to hand it over to someone else, modify it, destroy it or dispose of it.

115. The Court notes that the right to property is considered one of the most fundamental human rights. It guarantees each individual the right to own his property and to use it according to his will. It is an absolute, definitive right by virtue of which the owner may use the thing to which it relates (*usus),* enjoy the fruits of the thing (*fructus)* and even dispose of it (*abusus*).

116. The Court notes that in the instant case, it is clear from the documents in the proceedings, especially the application to set aside of judgment No. 154, delivered on 23 May 2018, as well as the application for revision of judgment No. 318/20 delivered on 18 November 2020, filed by the applicant himself, that Touré Léopold Vincent, the developer of the land parcel subdivision project called *Liberté de la Riviéra 4 Extension Golf Complémentaire*, received several plots of land in compensation, including plots No. 65 lot 4 with a surface area of 7, 334 square metres and n°59 of lot 4 with a surface area of 2,000 square metres.

117. It states that Touré Léopold Vincent, wishing to sell his plots, made a proposal to Mamourou Kone, who decided to acquire plot n°65 lot 4 with a surface area of 7,334 square metres, and although he did not pay the full sale price, a letter of allocation was issued to him. After several unsuccessful reminders from the assignor for payment of the remainder of the plot purchase price, the defaulting Mamourou Kone requested that plot n°65 lot 4, with a surface area of 7,334 square metres, be replaced by plot n°59 lot 4, with a surface area of 2,000 square metres, the purchase price of which he could afford. The parties have therefore decided to use the procedure to stand down followed by reallocation to consolidate the ownership of each of them over the plot that ultimately belongs to them. Touré Léopold Vincent

therefore proposed the sale of plot 65 lot 4 to Kolo Touré Abib and sold plot 59 lot 4 to Mamourou Kone.

118. It is also mentioned in the documents cited that Kolo Touré Abib subsequently applied for and obtained the Final Concession Order for plot 65 lot 4, and that Mamourou Kone in turn consolidated his right to plot 59 lot 4 by obtaining a Final Concession Order (Arrêté de Concession Définitive - ACD).

119. The Court therefore finds that the applicant has never been the owner of plot 65 lot 4, with a surface area of 7,334 square metres, which he claims, insofar as, under Ivorian law, ownership of a plot of land can only be obtained by an A C D. He enjoyed only a right of use over the said plot, conferred on him by the letter of allocation issued to him, which he used to obtain plot 59 lot 4, which he subsequently became the owner of.

120. The Court concludes that the defendant could not have violated to his detriment a right which the applicant never held. Therefore the Court finds that the defendant did not violate the applicant's right to property.

XI ON THE CLAIM FOR COMPENSATION FOR THE ALLEGED DAMAGES

121. The applicant explains that the loss he has suffered as a result of the loss of ownership of plot No. 65, lot 4 with a surface area of 7 334 m2 is, according to expert opinion, Two billion, Nine hundred and Thirty-three million Six hundred thousand (2,933,600,000) CFA francs. He adds that in addition to these material and financial losses, he has suffered serious moral prejudice which he evaluates at One hundred and Fifty million (150,000,000) CFA francs, bringing the total amount of compensation he is seeking to Three billion Eighty-three million Six hundred thousand (3,083,600,000) CFA francs.

122. The defendant refutes the allegations of the applicant and asks the Court to dismiss all his claims.

ANALYSIS OF THE COURT

123. The Court recalls that its jurisdiction over human rights violations allows it not only to find such violations but also to order redress where appropriate.

124. Nevertheless, the Court specifies that damages are awarded to the victim of damage only to compensate for the damage that the latter has actually suffered through the fault of the perpetrator of the harmful act.

125. As a result, the victim must justify his or her status as a victim and prove the prejudice for which he or she seeks compensation.

126. The Court notes that reparation may consist of restitution, compensation, rehabilitation or satisfaction, and that it is only ordered when the Court finds that the applicant's rights have been violated.

127. The Court notes that in the instant case, no violation could be attributed to the defendant. Consequently, the applicant must be dismissed of all his claims for damages.

XII. COSTS

128. Under Article 66, paragraph 2 of the Rules of the Court, the unsuccessful party is ordered to bear the costs, if the other party has applied for it. The Court notes that, in the instant case, the applicant applied for compensation, unlike the defendant, who did not. Accordingly, the Court held that, as the applicant had been unsuccessful, each party should bear its own costs.

XIII. OPERATIVE CLAUSE

For these reasons, the Court, sitting in open Court and having heard both parties:

Regarding the Jurisdiction of the Court:

Declares that it has jurisdiction to hear the dispute;

Regarding the admissibility of the application

Declares the application admissible;

On merits

Declares that the defendant did not violate the applicant's rights to a fair trial;

Declares that the defendant also did not violate the applicant's alleged right to property;

Dismisses therefore the applicant of all his claims;

AS TO COSTS:

Orders each party to bear its own costs.

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

And the following hereby append their signatures:

Hon. Justice Gberi-bè **OUATTARA** - Presiding /Judge Rapporteur

Hon. Justice DUPE ATOKI - Member

Hon. Justice Claudio Monteiro GONÇALVES - Member

ASSISTED BY: Dr. Yaouza OURO-SAMA – Chief Registrar