

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

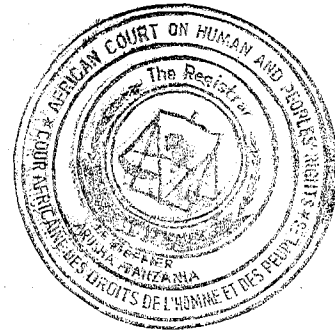
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

In the Matter of

Lohé Issa Konaté

v.

Burkina Faso



Application No. 004/2013

JUDGMENT

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a signature with a star in the middle, and initials 'NG' on the right.

The Court composed of: Augustino S. L. RAMADHANI, President, Elsie N. THOMPSON, Vice President, Sophia A. B. AKUFFO; Bernard M. NGOEPE, Gérard NIYUNGEKO, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSSE, Ben KIOKO and Kimelabalou ABA, Judges; and Robert ENO, Registrar.

In the matter of:

Lohé Issa Konaté,

*Represented by:*

Yakaré-Oulé (Nani) Jansen - Counsel  
John R.W.D Jones Q.C.

v.

Burkina Faso,

*Represented by:*

Antoinette OUEDRAOGO, Counsel  
Anicet SOME, Counsel

After deliberation,

*Delivers the following Judgment:*

Handwritten signatures and initials at the bottom of the page. From left to right: a large signature, a signature with a horizontal line through it, the number '2', a signature 'u', the initials 'NG', and a circled signature.

## 1. Subject of the Application

1. The Court is seized of this matter by way of an Application dated 14 June 2013 and filed by Barristers John R.W.D Jones, Q.C and Yakaré-Oulé (Nani) Jansen, acting on behalf of Lohé Issa Konaté, a Burkinabé national and Editor-in-Chief of *L'Ouragan* Weekly published in Burkina Faso; the Application was received at the Registry on 17 June 2013 and registered as No. 004/2013.
2. Attached to the Application is a request for provisional measures on which the Court ruled by Order dated 4 October 2013.

### A. Facts of the case

3. Prosecution for defamation, public insult and contempt of Court was initiated against the Applicant following the publication, in *L'Ouragan* on 1 August 2012, of an article written by him and titled "*Contrefaçon et trafic de faux billets de banque – Le Procureur du Faso, 3 policiers et un cadre de banque, parrains des bandits*" ("Counterfeiting and laundering of fake bank notes – the Prosecutor of Faso, 3 Police Officers and a Bank Official – Masterminds of Banditry") as well as an Article by Roland Ouédraogo titled "*Le Procureur du Faso: un torpilleur de la justice*". (The Prosecutor of Faso – a saboteur of Justice"). The Applicant had published a second article written by himself in another issue of *L'Ouragan* dated 8 August 2012; that article was titled "*Déni de justice – Procureur du Faso: un justicier voyou?*". ("Miscarriage of Justice – the Prosecutor of Faso: a rogue officer").
4. Having been accused in all three above-mentioned articles, the Prosecutor, Placide Nikiéma, filed a complaint for defamation, public insult and contempt of Court, against the Applicant and Mr. Ouédraogo. It is on these grounds that criminal proceedings were brought and damages sought, against the Applicant, before the Ouagadougou High Court.

5. On 29 October 2012, the Ouagadougou High Court sentenced the Applicant to a twelve (12) month term of imprisonment and ordered him to pay a fine of 1.5 Million CFA Francs (an equivalent of 3000USD), the same court ordered the Applicant to pay the Complainant damages of 4.5 Million CFA Francs (an equivalent of 9000USD) as damages and interest, and court costs of 250,000 CFA Francs (an equivalent of 500USD).

6. Further, as additional penalties, the Court ordered that *L'Ouragan Weekly* be suspended for a period of six (6) months and for the operative provisions of the judgment to be published in three successive issues of *L'Evenement*, *L'Observateur Paalga*, *Le Pays* and *L'Ouragan Newspapers* and, in the case of the latter, in its first issue upon its resumption of activity and for a period of four months, at the cost of the Applicant and Mr. Roland Ouedraogo.

7. On 10 May 2013, the Ouagadougou Court of Appeal confirmed the judgment of the Ouagadougou High Court.

8. The Applicant alleges that *L'Ouragan* is a private Weekly with "an independent editorial policy focussing mainly on political and social issues"; that the paper "has been the object of various legal proceedings in Burkina Faso due to its style in news reporting".

#### **B) Alleged violations**

9. The Applicant submits in his Application that "the jail term, huge fine, damages as well as the court costs violate his right to freedom of expression which is protected under various treaties to which Burkina Faso is a Party"; he also alleges notably the violation of his rights under Article 9 of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), and Article 19 of the International Covenant on Civil and Political Rights (hereinafter, referred to as "the Covenant").

Handwritten signatures and initials are present at the bottom of the page. On the left, there is a large, stylized signature. In the center, there is a signature with a large 'R' and a signature with a large 'A'. To the right, there is a signature with 'NG' and another signature with a circle around a letter. At the bottom center, the number '4' is written. At the bottom right, there is a signature with 'AT'.

10. Article 9 of the Charter provides as follows:

- "1) Every individual shall have the right to receive information.
- 2) Every individual shall have the right to express and disseminate his opinions within the laws and regulations".

11. Article 19 of the Covenant, for its part, provides that:

- "1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order or of public health or morals".

12. The Applicant also refers to the violation of Article 66 (2) (c) of the Revised Treaty of the Economic Community of West African States (ECOWAS) of 24 July 1993, (hereinafter referred to as "the Revised ECOWAS Treaty") in which State Parties undertook to protect the rights of Journalists, which according to him is, "the profession in the exercise of which the Applicant's rights were violated"

Handwritten signatures and initials are present at the bottom of the page. On the left, there is a large, stylized signature. In the center, there is a signature that appears to be 'R. [unclear]'. To the right, there are initials 'XG' and a circled '19'. At the bottom center, the number '5' is written. On the far right, there are more initials, possibly 'A7'.

13. On the merits, the Applicant prays the Court to:

“1. Declare in law that his punishment, especially his conviction as well as his being ordered to pay a huge fine, civil damages and court costs are in violation of the right to freedom of expression;

2. Note that Burkina Faso laws on defamation and insult are repugnant to the right to freedom of expression or, failing this, declare that the jail term for defamation is a violation of the right to freedom of expression, and order Burkina Faso to amend its laws accordingly;

3. Order Burkina Faso to compensate him, in particular, for loss of income and profit and to award him damages for the moral prejudice suffered”.

14. The Applicant reiterates his prayers in his Reply dated 18 November 2013.


## **II. Procedure before the Court**

15. The Court was seized of the matter by an Application dated 14 June 2013. By letter dated 10 July 2013, addressed to Counsel for the Applicant, the Registrar acknowledged receipt of the Application, pursuant to Rule 34 (1) of the Rules of Court (hereinafter referred to as “the Rules”).

16. In his Application, the Applicant, who was promptly imprisoned after judgment was delivered by the Ouagadougou High Court on 29 October 2012, also sought provisional measures which “involve requiring Burkina Faso to have him released immediately or, alternatively, provide him with adequate medical care”.

17. Pursuant to Rule 35 (2) of the Rules, the Registrar forwarded a copy of the Application to the Respondent State by letter dated 10 July 2013, addressed to the Minister of Foreign Affairs of Burkina Faso, via the Embassy of Burkina Faso in Addis-

47

  
6

NG



Ababa, Ethiopia. In the same letter, the Registrar requested the Respondent State to provide, within thirty (30) days of receipt of the Application, the names and addresses of its representatives, in conformity with Rule 35 (4) of the Rules and to respond to the Application within (60) days, as required under Rule 37 of the Rules.

18. Pursuant to Rule 35 (3) of the Rules, by another letter of the same date, the Registrar forwarded a copy of the said Application to the Chairperson of the African Union Commission and through her, to the Executive Council of the African Union and to all the other States Parties to the Protocol on the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter, referred to as "the Protocol").

19. By Note Verbale dated 18 July 2013, the Embassy of Burkina Faso and Permanent Mission to the African Union in Addis Ababa, Ethiopia, acknowledged receipt of the letter from the Registrar dated 10 July 2013.

20. On 26 November 2013, a request to appear as *Amici Curiae* was submitted by the following non-governmental organizations: Centre for Human Rights, *Comite Pour la Protection des Journalistes*, Media Institute of Southern Africa, Pan African Human Rights Defenders Network, Pan African Lawyers' Union, Pen International and National Pen Centres (Pen Malawi, Pen Algeria, Pen Nigeria, Pen Sierra Leone and Pen South Africa), Southern Africa Litigation Centre and World Association of Newspapers and News Publishers.

21. The *Amici Curiae* Briefs were submitted to the Registry of the Court on 12 February 2014.

22. On 16 September 2013, the Respondent State submitted its Response.

The bottom of the page contains several handwritten signatures and initials. On the left, there is a large, stylized signature. In the center, there is a signature that appears to be 'R. D.' with a large flourish. To the right of this, there is a signature that looks like 't' with a long horizontal line extending to the right. Further right, there are initials 'NG' and a circled 'e'.

23. On 4 October 2013, the Court ruled on the Applicant's request for provisional measures by Ordering the Respondent State to provide "the medical care and medication required in view of his health situation."

24. On 18 November 2013, the Applicant submitted his Reply.

25. The Court having decided to hold a Public Hearing, the said hearing was held at the Seat of the Court in Arusha on 20 and 21 March 2014, in the course of which the Parties and the representatives of organizations appearing as *amici curiae* made their oral submissions and observations.

For the Applicant:

- Yakare-Oule (Nani) Jansen, Counsel
- John R.W. D. Jones, Q. C.

For the Respondent State:

- Antoinette OUEDRAOGO, Counsel
- Anicet SOME, Counsel

Appearing as *Amici Curiae*: Centre for Human Rights, *Comite Pour la Protection des Journalistes*, Media Institute of Southern Africa, Pan African Human Rights Defenders Network, Pan African Lawyers Union, Pen International and National Pen Centres (Pen Malawi, Pen Algeria, Pen Nigeria, Pen Sierra Leone and Pen South Africa), Southern Africa Litigation Centre and World Association of Newspapers and News Publishers.

Donald DEYA, Advocate

Simon DELANEY, Advocate

The bottom of the page contains several handwritten signatures and initials. On the left, there is a large, stylized signature that appears to be 'A'. In the center, there is a signature that looks like 'R' followed by a large flourish. To the right of this, there is a signature that looks like 't' with a long horizontal line extending to the right. Further right, there are initials 'NG' and a circled 'D'.