

## Application No. 001/2011

### Femi Falana v African Union

#### Summary of facts

1. By a letter dated 14 February 2011, the applicant, a Nigerian human rights lawyer, filed an application stating that he has made several efforts to get the Government of Nigeria to deposit the declaration required under Article 34(6) of the Protocol to the African Charter on Human and People's Rights on the establishment of an African Court on Human and Peoples' Rights (Protocol Establishing the Court). Since these efforts have failed, he has decided to file an application against the African Union (AU) as representative of its fifty three (53) Member States, asking the Court to find Article 34(6) of the Protocol Establishing the Court inconsistent with Articles 1, 2, 7, 13, 26 and 66 of the African Charter on Human and Peoples' Rights (African Charter). According to the applicant, the requirement to make a declaration to allow access to the Court is a violation of his right to be heard guaranteed under Article 7 of the African Charter.

#### Relief sought

2. The applicant is seeking the following relief:

**A DECLARATION** that Article 34(6) of the Protocol on the Establishment of the African Court is illegal, null and void as it is inconsistent with Articles 1,2,7,13,26 and 66 of the African Charter on Human and Peoples' Rights.

**A DECLARATION** that the Applicant is entitled to file human rights complaints before the African Court by virtue of Article 7 of the African Charter on Human and Peoples' Rights.

**AN ORDER** annulling Article 34(6) of the Protocol on the Establishment of the African Court forthwith.

### **Procedure**

3. The application was received at the Court's Registry on 20 February 2011.
4. Pursuant to Rule 35 (2) (a) of the Rules of Court, the application was served on the African Union by letter dated 28 March 2011, and addressed to the Chairperson of the African Union Commission (AUC). The AUC was also advised to acknowledge receipt of the application, communicate the names of its representatives within 30 days and respond to the application within sixty (60) days.
5. Pursuant to Rule 35 (3) of the Rules of Court, by letter dated 28 March 2011 addressed to the Chairperson of the AUC, the application was notified to the Executive Council of the AU and State Parties to the Protocol Establishing the Court.
6. Vide letters dated 29 April 2011, which were received at the Registry on 18 May 2011, the AUC acknowledged receipt of the application, notified the Court of its legal representative and filed its defence. These documents were sent to the applicant on 18 May 2011.

### **Summary of Respondent's reply**

7. The Respondent maintains that the Court has no competence to entertain the matter, that the application is inadmissible as the applicant has no *locus standi* before the Court and that it (the Respondent) is not a party to the African Charter

and the Protocol Establishing the Court. The Respondent also maintains that the applicant has not exhausted domestic remedies and that the obligations of State Parties to the African Charter and the Protocol Establishing the Court under these two instruments cannot be inferred on the Respondent.

### **Summary of Applicant's reply**

8. In his response to the defence, the applicant maintains that it is the Respondent which adopted the African Charter and the Protocol Establishing the Court and that the Respondent is being sued as a corporate community on behalf of its Member States. The application relates to the legal validity of the Respondent's power to enact Article 34(6) of the Protocol Establishing the Court contrary to the provisions of the African Charter as well as provisions of the Constitutive Act of the AU, its own constitutive instrument, which require that it respects human rights.
9. The applicant avers that his application is in line with the provisions of the African Charter which require him to perform duties to his family, society, the state and other legally recognized communities and the international community. The applicant further maintains that since the respondent cannot be sued in any domestic forum, the exhaustion of domestic remedies does not arise, therefore the application should be considered under an exception to the principle. He added that the domestication by Nigeria of the African Charter and the Constitutive Act of the AU, should be construed as giving the applicant direct access to the Court.

### **Hearing**

10. The matter has been set down for consideration during the Court's 22<sup>nd</sup> Ordinary Session scheduled for 12-23 September 2011. The Court will decide on the date for hearing and notify the parties accordingly.

For further information, please contact:

The Registrar

African Court on Human and Peoples' Rights

P.O Box 6274 Arusha,  
Tanzania

Telephone: +255 732 979506/9 or direct line - +255 732 979 994

Fax: 255 732 979503

Email [registrar@african-court.org](mailto:registrar@african-court.org)

Web site: [www.african-court.org](http://www.african-court.org)