

Case summary

By Paul Purnell QC, 20 December 2011

Application 005/2011 Daniel Amare & Mulugeta Amare v. Mozambique Airlines & Mozambique

Background

In November 2008, the two Applicants – both citizens of Ethiopia - intended to fly to Maputo, Mozambique, with appropriate documentation. In Nairobi, Kenya, they transferred from the Ethiopian flight to a Mozambique Airlines flight to Maputo. However, the plane landed in Pemba, North Mozambique. There, the Applicants alleged that they were subjected to robbery, detention and torture by Mozambique Immigration Officials over a 26 day period. They were then deported and eventually returned to Ethiopia.

The Application

The Application was received at the Registry of the the African Court on Human and Peoples' Rights (the "**AfCHPR**") on 16 March 2011 and registered on the 30 March 2011. The Applicants alleged that the acts of Mozambique Airlines and state Immigration Officials were illegal under international conventions and accordingly, they requested "the African Union to take necessary measures to the Mozambique Airline and Immigration Officials to refund us the robbed money".

The Decision

The Court rejected the Application on the grounds of lack of jurisdiction, as the application had been brought by individuals against a State which had not deposited the Article 34(6) declaration allowing individuals direct access to the court. The Court then referred the Application to the African Commission on Human and Peoples' Rights pursuant to Article 5 (3) of the Protocol.

The Court noted that the applicants had not addressed the requisite exhaustion of domestic remedies, nor had they alleged that any specific human right enshrined in the African Charter had been breached.

Comment

First, the facts as submitted by the Applicants, and summarised by the AfCHPR, are deficient in particulars.

Secondly, there is no evidence or indication in the summary of the Application that domestic remedies had been exhausted in this case.

It would appear that there are in fact two distinct possibilities for bringing a claim in the present case:

(i) Filing a claim against Mozambique Airlines, which as carrier had the responsibility to deliver the individuals to the appropriate destination. This would be a matter for domestic civil action; or

(ii) Bringing a possible action for wrongful detention and mistreatment in Mozambique by State officials on the basis of a breach of a particular African Charter right. Upon exhaustion of such a domestic remedy, they could have requested the African Commission to petition the AfCHPR on their behalf (see *African Commission on Human and Peoples' Rights v. The Great Socialist People's Libyan Arab Jamahiriya* (Provisional Measures)). This is the only route through which the case could come before the Court, given that Mozambique has not made the Article 34(6) declaration. The Commission retains discretion as to whether or not to forward the case to the AfCHPR.

The case is currently before the African Commission, which faces a serious backlog of issues requiring its attention. It is unlikely that the Commission will address this case in the near future. Notwithstanding this practical consideration, the claim has little chance of success even before the African Commission, given the Applicants' failure to particularise those rights the Commission is mandated to protect.

To date, it does not appear that the Applicants have requested the African Commission to use its jurisdiction to re-submit the case to the AfCHPR, either as currently drafted, or in any amended form.