
AFREWATCH requests the Kipushi tribunal to administer justice with independence in the legal case of Public ministry, Mamadou Mbolela and others vs. Mawazo and others, the Compagnie Minière du Sud Katanga (CMSK) and the DRC

The appeal hearing will begin on the 7 December 2015 at the tribunal of Kipushi, in the province of Haut-Katanga, in the case Public ministry, Mamadou Mbolela and others vs. Mawazo and others, the Compagnie Minière du Sud Katanga (CMSK) and the DRC recorded RPA 2258. Afrewatch requests the judges to be independent while examining the matters.

As a reminder, on the 24 and 25 November 2009, the Congolese National Police, with the logistics support of CMSK, expelled the populations of Kawama (living in the localities of Lukuni-Gare, Bikwano and Sampasa), by demolishing their properties. During these operations between 387 and 421 were destroyed¹ including household furniture; and many casualties were identified.

Following this humanitarian crisis, a legal case was filed at the high court of Lubumbashi which, unfortunately, will remain unexamined due to political pressures² despite the victims' efforts.

It is only on the 11 November 2014, following several discussions between NGOs and the Ministry of Justice that the high court, through its notification n°3355/RMP.1160/PG.025/NMM/IMA/2014, transferred the matter to the attention of the tribunal of Kipushi where it will be recorded as RP 0103. In its accusation, the high court prosecute Mr Kalunga Mawazo, Mr Nawezi Luzambo Georges, Mr Nkulu Kitwa, Mr Monga Kayela and Mr Kapinga Mudiayi for demolishing houses, crops, farms equipments etc. As police officers and CMSK are among the accused, the tribunal takes legal action against the DRC and CMSK as subject to civil liability as well.

On the 23 April 2015, during the 4th hearing, the advocates of the accused and the DRC declared that the limitation period during which the allegations and facts occurred has expired since the timing of demolition is 5 years³.

But according to the advocates of the victims and the content of the file, the limitation period has not yet expired since the last instruction in the case was made on the 23 February 2010 while the tribunal was approached on the 15 November 2014.

¹ Amnesty International Report : « Comment une compagnie minière a étouffé la vérité sur les expulsions forcées en République Démocratique du Congo » London, 2014, pp.12 et 13.

² Judge Augustin Nzey, presiding over the legal case, was victim of pressures and was pushed to retirement.

³ Articles 110 and 112 of the penal code book II: whosoever destroys, using any means, in part or entirely, properties, bridges, roads, railways, telecommunications properties that belong to anyone will be sentenced to a maximum of 5 years in prisons...will be submitted to the same punishment any person who destroys trees, crops, farm equipments or any other property belonging to anyone.

Surprisingly the tribunal did not justify its ruling made on the 28 April 2015 by concluding that the limitation period already expired and that the case was inadmissible.

After analysing the matter, AFREWATCH notices that:

- The tribunal decision was in violation with the constitution of the DRC⁴ and the Article 87 of the Code of Penal procedure⁵ which require that a judge justify his ruling;
- The ruling is in violation with the Article 26 of the book I of the Penal code⁶ which deals with the question of the limitation period of a legal case

Based on the above, AFREWATCH recommends:

a) To the DRC and CMSK

- To avoid putting pressure on judges and anyone who can assist the court in its work;

b) To the DRC

- To guarantee the principle of separation of powers;
- To continue supporting the judiciary action using legal means

Lubumbashi, 3rd December 2015

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⁴ Article 21 of the DRC constitution: Any ruling should be written and justified. It is made during a public hearing. Anyone can appeal against a court decision according to the law.

⁵ Article 87 of the Penal Code of procedures: rulings should contain the names of judges who made them; and of any public ministry officer, the accused, persons subject to civil liability.

⁶ Article 26 of the Penal Code of procedures: the limitation period can be interrupted under instructions or prosecutions made within 1, 3 or 10 years from the day the crime was committed.