

90/93 Paul S. Haye v. The Gambia

Facts:

1. In November 1987, the complainant hired Edward Gomez, an attorney, to register a company for him. Complainant paid to Mr. Gomez a sum of D7150 in fees, but the company was never registered. In March 1990, complainant sued Mr. Gomez for the return of the money. Mr. Gomez filed a counter-claim, but before the suit could be heard the judge who had been scheduled to hear the case resigned. After inquiries to discover when the suit would be heard, complainant was told to await notice by the court.
2. On 2 October 1991, a mini-van belonging to the complainant was seized. He was informed that after failure to appear in court on 28 May 1991, a default judgment was entered in favour of Mr. Gomez, and the mini van was seized to satisfy the judgement. Complainant filed a motion for leave to appeal the judgment to the Gambia Court of Appeal on the grounds that he never received notification of the 28 May court date. This motion was heard by the same judge who made the original judgment, and was denied. Therefore the complainant alleges that he has no further domestic remedies available.

Argument

3. Complainant alleged violation of his rights under Article 7 to have his cause heard. The Supreme Court judge had absolute discretion to disallow an appeal of his own judgment. Questions also arise over the adequacy of the procedure of service (notification of hearing date).

Decision

4. At its 16th session the Commission declared the case inadmissible for non exhaustion of local remedies. The complainant by reason of his own default and/or negligence, did not seek to appeal to the Court of Appeal of The Gambia against the decision of the Supreme Court referring his application for leave to appeal to the Court of Appeal. Upon the complainant being notified of this decision he wrote back urging the Commission to review its decision on the same grounds he had advanced before. As no new grounds are raised or shown, the Commission finds no reason to disturb its previous decision which is accordingly re-affirmed.