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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

AJAYE JOGOO

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 014/2018

RULING

26 JUNE 2025

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The Court composed of: Modibo SACKO, President; Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to 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") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, member of the Court and a national of Tanzania, did not hear the Application.

In the matter of:

Ajaye JOGOO

Represented by:

Donald DEYA, Executive Director, Pan African Lawyers Union (hereinafter referred to as "PALU").

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General; and
iii. Ms Nkasori SARAKIKYA, Director of Human Rights, Ministry of Constitution and Legal Affairs.

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. Ajaye Jogoo (hereinafter referred to as "the Applicant") is a national of the Republic of Mauritius and the Director of Cimexpan Limited, a Mauritian company. He alleges, *inter alia*, the violation of his right to a fair trial and his right to property in connection with proceedings before Tanzanian national courts. The violations allegedly occurred at a time when the Applicant was residing in the United Republic of Tanzania.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration with the Chairperson of the African Union Commission. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect one year after its deposit, in this case, on 22 November 2020.[1]

[1] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. The Applicant alleges that, on the basis of a Memorandum of Understanding between the Republic of Mauritius and the Revolutionary Government of Zanzibar signed in 1999, the Minister of Economic Planning of Zanzibar made a public expression of interest inviting Mauritian companies to invest in Zanzibar. In that regard the Applicant, under his company, Cimexpan Limited, signed a concession contract with the Government of Zanzibar in a joint venture for the construction of a "Nyamanzi Free Zone Park".

4. On 21 September 2001, however, the Government of Zanzibar revoked the concession contract citing the inability of the Applicant to secure funding to the tune of United States Dollars, One Hundred and Fifty Million (USD150, 000, 000) for the joint venture. The Applicant alleges that following the revocation of the concession contract, he was on 26 September 2001, unlawfully deported to the Republic of Kenya.

5. The Applicant alleges that he travelled back to Zanzibar from Kenya and he was arrested once again, on the grounds that he was an illegal immigrant. He further alleges that his passport was stamped with a "Prohibited Immigrant label No. 00000455". The Applicant further avers that he was arraigned before the Mwanakwerekwe District Court (Case Reference No. 152 of 2002), on 22 January 2002, and that the hearing of the case was conducted in Swahili, a language that he does not understand. He alleges that on 4 February 2002, the Mwanakwerekwe District Court ordered that the Applicant be released on bail for three months, following which, he should be deported to the Republic of Mauritius. The Applicant avers that he was thus deported to the Republic of Mauritius at the end of the three-month period.

6. On 25 August 2004, the Applicant wrote a letter to the Respondent State, requesting it to waive the Prohibited Immigrant status (hereinafter referred

to as “PI status”) on his passport and that he be allowed to enter the Respondent State so as to recover his personal assets.

7. On 15 October 2004, the Ministry of Investment and Planning of the Revolutionary Government of Zanzibar informed the Applicant that his PI status would not be waived but rather he should appoint an advocate who would go to Zanzibar and ascertain his property and dispose of them , if necessary.

8. Unable to return to the Respondent State, the Applicant filed a case in 2009, before the Southern Africa Development Tribunal (hereinafter referred to as “SADC Tribunal”) to challenge the deportation order and further alleged that he had been tortured and ill-treated during his detention in Tanzania. In the matter before the SADC Tribunal, the Respondent State raised three preliminary objections, including the Applicant’s failure to exhaust local remedies. On 11 June 2010, the SADC Tribunal dismissed the Applicant’s case for failure to exhaust local remedies.

9. The Applicant claims that he did not receive any more correspondence from the Respondent State until 2017, when he sent a request to the Respondent State's consulate in the Republic of Mauritius and the Republic of Mauritius' Consul in Tanzania. In this request, he requested the Ministry of Home Affairs to remove the PI status on his passport.

10. The Applicant further alleges that, at the time of filing the present Application, 17 years had lapsed while his rights are continually being denied.

B. Alleged violations

11. The Applicant alleges violation of his following rights:

    i. Right to non-discrimination, protected under Article 2 of the Charter;

ii. Right to equality before the law and equal protection of the law, protected under Article 3 of the Charter;
iii. Right to a fair trial as protected under Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights ("hereinafter referred to as "ICCPR");
iv. Right to receive information, protected under Article 9(1) of the Charter and Article 19 of the ICCPR;
v. Right to physical and mental health, protected under Article 16 of the Charter and Article 12 of the International Covenant on Economic, Social and Cultural rights (hereinafter referred to as "ICESCR"); and
vi. Right to property, protected under Article 14 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

12. The Application was filed on 28 May 2018, but was incoherent and lacked substantive information, including on whether local remedies were exhausted.

13. On 16 July 2018 and 3 August 2018, the Applicant was requested to clarify aspects of his claim and to submissions on reparations within 30 days of receipt of the notification, but he did not do so.

14. On 26 February 2019, the Applicant was granted legal aid and the PALU was appointed as his counsel.

15. After several reminders on 20 January 2020, 17 February 2021, 24 May 2021 and 13 July 2021, the Applicant filed an amended Application on 19 July 2021 and this was served on the Respondent State on 30 July 2021.

16. The Respondent State was reminded to file its Response to the Application on 3 March 2022 and 10 August 2022. However, the Respondent State did not file any Response.

17. Pleadings were closed on 4 July 2024 and the Parties were duly notified.

18. Pleadings were reopened on 19 September 2024 for the Application to be transmitted to the Republic of Mauritius for purposes of its intervention should it wish to do so.[2] On 29 November 2024, the Respondent State was also granted 30 days extension of time to file its Response after filing a request to that effect.

19. Upon the expiry of the above stated deadlines, neither the Republic of Mauritius nor the Respondent State filed any submissions. Pleadings were closed on 10 February 2025 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

20. The Applicant prays the Court for:

    i. A declaration that the Application meets the admissibility requirements;
    ii. A declaration that the Respondent State violated [his] right to fair trial; and
    iii. A declaration that the Respondent State is causing an inordinate delay in [his] case.

21. The Respondent State did not participate in the present proceedings and therefore did not make any prayers.

V. ON THE DEFAULT OF THE RESPONDENT STATE

22. Rule 63(1) of the Rules of Court provides that:

> Whenever a party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter decision in default after it has satisfied itself that the defaulting party has been

[2] In accordance with Article 5(2) of the Protocol and Rule 42(5)(b) of the Rules.

duly served with the Application and all other documents pertinent to the proceedings.

23. The Court notes that Rule 63(1) of the Rules sets out three conditions under which it may render judgment in default, namely: i) notification to the Respondent State of both the application and the documents on file; ii) default of the Respondent State; and iii) application by the other party or the Court's decision to render a judgment in default on its own motion.

24. With regard to the first condition, namely, notification of the Respondent State, the Court recalls that the Application was served on the Respondent State on 30 July 2021. Furthermore, from the service of the Application on the Respondent State to the close of pleadings, the Registry transmitted all the pleadings submitted by the Applicant to the Respondent State, and the record bears proof of delivery of those notifications. The Court thus finds that the Respondent State was duly notified.

25. In respect of the second condition, the Court notes that, in the notice of service of the Application, the Respondent State, was granted 60 days to file its Response. However, it failed to do so within the time allocated. The Court further sent two reminders to the Respondent State on 3 March 2022 and 10 August 2022 and, on 29 November 2024, granted the Respondent State 30 days extension of time. Notwithstanding these reminders and extension of time, the Respondent State did not file its Response. The Court thus finds that the Respondent State has failed to defend its case within the prescribed time.

26. Finally, on the third condition, the Court notes that it can render judgment in default either *suo motu* or upon request of the other party. The Applicant having not requested for a default judgment, the Court decides *suo motu*, for the proper administration of justice to render this judgment in default.

27. The required conditions having thus been fulfilled, the Court renders this judgment in default.[3]

VI. JURISDICTION

28. Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

29. In accordance with Rule 49(1) of the Rules "[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules".

30. The Court notes that there is no objection to its jurisdiction and nothing on record indicates that it lacks jurisdiction. Nevertheless, it is obligated to determine if it has jurisdiction to consider the Application.

31. With regard to its personal jurisdiction, the Court notes, as earlier stated in this judgment, that the Respondent State is a party to the Protocol, and that, on 29 March 2010, it deposited the Declaration under Article 34(6) of the Protocol with the African Union Commission. However, on 21 November 2019, it deposited an instrument withdrawing its Declaration. In line with the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively. It only takes effect one year after the notice of such withdrawal

[3] *Bernard Ambataayela Mornah v. Republic of Benin and 7 Others (Burkina-Faso, Republic of Côte d'Ivoire, Republic of Ghana, Republic of Mali, Republic of Malawi, United Republic of Tanzania and Republic of Tunisia)*, ACtHPR, Application No. 028/2018, Judgment of 22 September 2022 (merits and reparations), §§ 45-50; *Léon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, §§ 13-18; *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42.

has been deposited. In this case, the effective date was 22 November 2020.[4] In view of the above, the Court holds that it has personal jurisdiction as the withdrawal does not affect the present Application, which was filed on 25 July 2016.

32. As regards its material jurisdiction, the Court notes that the Applicant alleges violation of Articles 2, 3, 7(1), 9(1), 14 and 16 of the Charter, to which the Respondent State is a party. Therefore, the Court's material jurisdiction is established.

33. The Court notes that its temporal jurisdiction is determined from the date of entry into force of the Protocol.[5] The Court observes that the alleged violations occurred between 2002 and 2017. Furthermore, the Court notes that, the alleged violations, which started before 2006 when the Respondent State ratified the Protocol, continued after the ratification of the Protocol by the Respondent State. Consequently, the Court's temporal jurisdiction is established.

34. The Court further finds that it has territorial jurisdiction as the facts of the case occurred on the territory of the Respondent State, which is a party to the Charter and the Protocol.

35. From the foregoing, the Court holds that it has jurisdiction to hear the instant case.

VII. ADMISSIBILITY

36. Article 6(2) of the Protocol provides that, "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

[4] *Cheusi v. Tanzania* (judgment), *supra,* §§ 37-39.
[5] *Ligue Ivorienne des Droits de l'Homme and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 041/2016, Judgment of 5 September 2023 (merits and reparations), § 58.

37. Pursuant to Rule 50(1) of the Rules,[6] "[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules."

38. Rule 50(2) of the Rules,[7] which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> a. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b. comply with the Constitutive Act of the African Union and the Charter;
> c. not contain any disparaging or insulting language;
> d. not be based exclusively on news disseminated through the mass media;
> e. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
> g. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union."

39. The Court notes that the admissibility requirements set out in Rule 50(2) of the Rules are not in contention between the Parties, as the Respondent State did not take part in the present proceedings. However, pursuant to Rule 50(1) of the Rules, the Court is required to determine if the Application fulfils all the admissibility requirements as set out in Rule 50(2).

[6] Rule 39(1), Rules of Court, 2 June 2010.
[7] Rule 40, Rules of Court, 2 June 2010.

40. The Court observes that the Applicant has indicated his identity, and holds that the condition set out in Rule 50(2)(a) of the Rules is met.

41. The Court notes that the Applicant's claims seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is the promotion and protection of human and peoples' rights. The Court, therefore, finds that the Application is compatible with the Constitutive Act of the African Union and the Charter, and thus holds that it meets the requirement of Rule 50(2)(b) of the Rules.

42. The Court further notes that the Application does not contain any disparaging or insulting language with regard to the Respondent State, its institutions and the African Union, which makes it consistent with the requirement of Rule 50(2)(c) of the Rules.

43. With respect to the requirement set out under Rule 50(2)(d) of the Rules, the Court notes that the Application is not exclusively based on news disseminated through the mass media. The Applicant mainly relies on correspondences between him and the Respondent State as well as some documents from the proceedings before national courts, and thus the Application complies with Rule 50(2)(d) of the Rules.

44. With regard to the requirement of exhaustion of local remedies provided for under Rule 50(2)(e) of the Rules, the Applicant submits that the procedure in the national courts was unduly prolonged. He also alleges that a case was instituted against him and is on-going but did not give details on this case.

45. According to the Applicant, his PI status in the Respondent State made it impossible for him to exhaust local remedies. The Applicant cites the decision of the African Commission on Human and Peoples' Rights in *Gabriel Shumba v. Zimbabwe* and argues that local remedies were unavailable, insufficient and ineffective for him, as he was barred from the

Respondent State and would have risked criminal sanctions had he attempted to exhaust local remedies.

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46. Article 56(5) of the Charter whose provisions are restated in Rule 50(2)(e) of the Rules, provides that any application filed before the Court shall fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or unless the domestic proceedings thereof are unduly prolonged.[8]

47. The rule of exhaustion of local remedies aims at providing states the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the State's responsibility for same.[9] Moreover, for local remedies to be exhausted, the Applicant must have presented before domestic courts, at least, in substance, the violations that he alleges before this Court.

48. In the instant case, the Applicant did not submit any evidence of exhaustion of local remedies but he presented two arguments. First, he argues that there was a case pending against him that was unduly prolonged and second, he avers that his PI status was an impediment that he could not surmount in order to exhaust local remedies.

49. As regards the pending case against him, the Applicant did not substantiate his claim. The Applicant, however, contends that he was denied the right to a fair trial in the District Court and he alleges that he was detained arbitrarily for three months. On the record, the Court observes that the Applicant had been charged and found guilty of disobeying a deportation order under the Tanzania Immigration Act, 1995. He was, therefore, brought before the

[8] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.
[9] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

Mwanakwerekwe District Court for the latter to decide whether he should be placed in remand or granted bail pending deportation. The Applicant was represented by Counsel Khamis who prayed for bail and that the Applicant be allowed to remain in the Respondent State for three months so as to finalise his transactions.

50. On 1 February 2002, the District Court made a ruling, granting the Applicant cash bail at Tanzanian Shillings Fifty-Thousand (TZS 50,000) and allowed the Applicant to remain within the territory of the Respondent State for three months and to report to the police station every Monday. He was also informed of his right to appeal.

51. The Court observes that between 1 February 2002 and 5 June 2002, a period of four months elapsed during which the Applicant, who was on bail, could and should have appealed the decision of the District Court granting him bail for three months and confirming his deportation. Nevertheless, the Applicant did not provide reasons as to why he did not challenge his deportation order while he was on bail.

52. As regards the PI status making it impossible for the Applicant to seize the courts of the Respondent State, the Applicant does not demonstrate that he tried to file cases in the Respondent State through a legal representative and was denied the same and is therefore casting aspersions on the Respondent State.

53. In light of the foregoing, the Court finds that the Applicant failed to exhaust local remedies, so that the Application does not comply with Article 56(5) of the Charter as restated in Rule 50(2)(e) of the Rules.

54. Having found that the Application does not satisfy Rule 50(2)(e) of the Rules, the Court does not need to rule on the admissibility requirements set

out in Article 56(6) and (7) of the Charter as restated in Rule 50(2)(f) and (g) of the Rules, as the admissibility requirements are cumulative.[10]

55. In view of the foregoing, the Court declares the Application inadmissible.

VIII. COSTS

56. The Applicant did not make any submissions on costs.

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57. The Court notes that Rule 32(2) of its Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs."

58. In the instant case, there is no justification that warrants a departure from Rule 32(2) of the Rules. Accordingly, the Court holds that each Party shall bear its own costs.

IX. OPERATIVE PART

59. For these reasons,

THE COURT,

Unanimously and in default:

[10] *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 237, § 63; *Rutabingwa Chrysanthe v. Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 361, § 48; *Collectif des Anciens Travailleurs du Laboratoire ALS v. Republic of Mali* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 73, § 39.

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* the Application inadmissible.

On costs

iii. *Orders* each Party to bear its own costs.

Signed:

Modibo SACKO, President;

Chafika BENSAOULA, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

Done at Arusha, this Twenty-Sixth Day of June in the Year Two Thousand and Twenty-Five in English and French, the English text being authoritative.