

**PRESS RELEASE**  
**JUDGMENT SUMMARY**

**OSCAR JOSIAH v. UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 053/2016**

**JUDGMENT ON MERITS**

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS IN A HUMAN RIGHTS  
CASE ARISING FROM TANZANIA

Date of Press Release: 28 March 2019

**Arusha, 28 March 2019:** Today, the African Court on Human and Peoples' Rights (the African Court or the Court) delivered judgment in the case of *Oscar Josiah v. United Republic of Tanzania*.

The Applicant, Mr. Oscar Josiah, who is a convict on a death row, alleged violations of his rights to equality before the law and equal protection of the law, and to a fair trial as provided for in Article 3 (1) and (2), and Article 7 of the African Charter on Human and Peoples' Rights (the Charter), respectively. The Applicant also submitted that such violations ought to be rectified pursuant to Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol).

The Respondent State, the United Republic of Tanzania, objected to the jurisdiction of the Court and to the admissibility of the Application. It argued that the Application involves matters of evidence, which were determined with finality by its domestic courts and the African Court does not have jurisdiction to consider the Application, as doing so would make the African Court an appellate court. The Respondent State also disputed the admissibility of the Application, averring that the Applicant seized the Court without having fully exhausted local remedies, notably, the constitutional petition procedure available at the High Court and the review procedure that he could have pursued at the Court of Appeal.

The Court held, unanimously, that it had jurisdiction to hear the case and that the case was admissible. The Court observed that, according to Article 3(1) of the Protocol and Rule 26 (1) (a) of its Rules, the material jurisdiction of the Court extends to all applications involving alleged violations of rights protected by the Charter, **the Protocol** and other relevant human rights instruments ratified by the State concerned.

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Although it does not have appellate jurisdiction to uphold or reverse judgments of domestic courts simply on the basis of how they evaluated evidence in trials, the Court underscored that this does not prevent it from verifying the adherence of national courts to international human rights standards in the process of such evaluation. The Court, therefore, concluded that it had jurisdiction to examine the Application.

On the issue of admissibility, the Court held that the Application fulfilled the requirements specified under Article 56 of the Charter and Rule 40 of its Rules. In this regard, the Court rejected the Respondent State's contention that the Applicant could have pursued the constitutional petition and review procedure available at the High Court and Court of Appeal. The Court held that both procedures at the High Court and the Court of Appeal, as structured in the Respondent State's judicial system, are extraordinary remedies which the Applicant was not required to exhaust before seizing it.

After having established that it has jurisdiction and the Application is admissible, the Court examined the merits of the allegations that the Respondent State violated Article 7 of the Charter, by determining two issues.

The first issue concerned the affirmation of Applicant's conviction by Court of Appeal of Tanzania in the face of alleged manifest errors relating to the assessment of evidence. The Court recalled its established jurisprudence where it observed that national courts enjoy a wide margin of discretion in deciding the probative value of evidence and that it cannot assume the role of the domestic courts in this regard. However, the Court noted that, this does not preclude it from assessing how domestic courts evaluate the evidence to ensure compliance with international human rights standards. Accordingly, after examining the record on file, the Court held that the manner in which the Court of Appeal examined the Applicant's grounds of appeal relating to evidence did not occasion a miscarriage of justice to him.

The second issue was whether the Respondent State has violated the Applicant's right to defence under Article 7 (1) (c) of the Charter with regard to the non-provision of legal assistance. The Court noted that the right to defence includes the right to free legal assistance. The Court observed that the Applicant had defence counsel at the trial and appellate proceedings, he was able to testify and call witnesses in his defence and the Court of Appeal addressed all his grounds of appeal, as submitted by his defence counsel. The Court also noted that the Applicant did not indicate how the Respondent State violated his right to defence and therefore, dismissed his allegation for lack of substantiation/proof.

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With regard to the allegation that the Respondent State has violated the Applicant's right to equality and equal protection of the law under Article 3 (1) and 2 of the Charter, the Court noted that the right to equality and equal protection of the law is duly recognised in the Constitution of the Respondent State. The Court also took note that the manner in which the Court of Appeal assessed evidence did not disclose any infringement on the Applicant's rights to equality before the law and to equal protection of the law. In this vein, the Court found no evidence that the Applicant was treated differently, as compared to other persons who were in a situation similar to his. Accordingly, the Court dismissed the Applicant's claim that his rights under Article 3(1) and (2) of the Charter were violated.

Overall, the Court held that the Respondent State did not violate the Applicants' right to a fair trial enunciated in Article 7 of the Charter, and the right to equality before the law and equal protection of the law provided for under Article 3 of the Charter. In relation to reparations, the Court noted that as no violation was established, the issue of reparation did not arise. The Applicant's prayers for reparations were therefore dismissed. The Court ordered that each party should bear its own costs.

### **Further Information**

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <http://en.african-court.org/index.php/56-pending-cases-details/968-app-no-053-2016-oscar-josiah-v-united-republic-of-tanzania-details>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org).

*The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at [www.african-court.org](http://www.african-court.org)*