AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

CLEOPHAS MAHERI MOTIBA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 055/2016

JUDGMENT

22 SEPTEMBER 2022

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The Court composed of: Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI – 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[1] (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Cleophas Maheri MOTIBA

Represented by Advocate Nelson Sidney NDEKI, Pan African Lawyers Union

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Mr Gabriel P. MALATA, Solicitor General, Office of the Solicitor General;
ii. Ambassador Baraka LUVANDA, Director Legal Affairs, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation;
iii. Ms Nkasori SARAKIKYA, Assistant Director, Division of Constitutional Affairs and Human Rights, Principal State Attorney, Attorney General's Chambers;
iv. Ms Sylvia MATIKU, Principal State Attorney, Attorney General's Chambers;
v. Mr Elisha SUKU, Foreign Service Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation;

[1] Rule 8(2) of the Rules of Court, 2 June 2010.

vi. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

after deliberation,

renders this Judgment:

I. THE PARTIES

1. Cleophas Maheri Motiba (hereinafter referred to as "the Applicant") is a national of Tanzania and also a former employee of the Ministry of Finance, who claims that his rights were violated when his employment was "unlawfully terminated".

2. The Application is filed against the United Republic of Tanzania (hereinafter, "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter, "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, "the Declaration"), by virtue of 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 with the Chairperson of the African Union Commission an instrument withdrawing its Declaration. The Court held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that the Applicant was employed as a civil servant, on a permanent and pensionable basis, by the Respondent State's Ministry of Finance in one of the Revenue Departments[3] as a "Finance Manager Officer". However, in 1995, the Government of the Respondent State converted its Revenue departments to form an independent public corporate entity known as the Tanzania Revenue Authority (herein after referred to as "TRA") by virtue of the TRA Act No. 11 of 1995 which came into force vide *Government Notice No. 419 of 1995*.

4. The Applicant alleges that all employees, including him, who were part of the previous Revenue Departments were assimilated into the TRA as its employees and not as civil servants. Subsequently, TRA undertook a screening of all its staff as a result of which, on 14 April 1996, the Principal Secretary, Ministry of Finance,[4] recommended the termination of two categories of staff, in public interest. The two categories consisted of those who had a bad record in revenue collection and with doubtful integrity, and those whose performance was affected by advanced age, long sickness and low education.

5. The Applicant avers that he was one of those who was unlawfully "terminated" by TRA yet he did not fall into any of the two categories. He further avers that at the time of the "retrenchment", he was barely 40 years old and was a graduate of the University of Dar es Salaam with a Bachelor's degree in Commerce and Management. Furthermore, that no legal procedure was followed in "terminating" his employment, no reasons were

[3] The Ministry of Finance had 3 departments namely: Sales Tax and Inland Revenue Department, Income Tax Department and Customs and Exercise Department.
[4] The Applicant has used the titles 'Principal Secretary, Ministry of Finance', 'Principal Secretary, Treasury' and 'Principal Secretary, Establishment' in his pleadings, interchangeably but the title 'Principal Secretary, Ministry of Finance' will be used as this is the title used in the domestic court's decisions, except where there is a quotation of the Applicant's pleadings using another title.

given to support his "termination" other than that the Government had decided to reduce its workforce as a means of reducing its expenditure and increasing office productivity.

6. The Applicant states that after being served with the "termination letter" dated 25 June 1996,[5] he wrote a letter of protest to the Principal Secretary, Ministry of Finance on 14 August 1997, to which he received a response on 9 January 1999.[6] Furthermore, that the Principal Secretary, Ministry of Finance had no power or authority to retrench him, because he was no longer a civil servant, since his contract was transferred to TRA by virtue of the TRA Act, which came into existence on 7 August 1995. He also states that the Respondent State "paid him Ex-gratia, the terminology found in Government Retrenchment Circular to Civil Servants".

7. The Applicant avers that being aggrieved with the reply to his letter of protest to the Principal Secretary, Ministry of Finance, on 1 October 1999, he and six (6) other affected, employees, who are not before this Court, filed a case before the High Court at Dar es Salaam – *Civil Suit, Case No. 361/1999*. The suit was filed against three (3) entities, that is, the Principal Secretary, Ministry of Finance, the Attorney General and TRA. Before the suit could be determined on the merits, the 3rd respondent (TRA) raised two preliminary objections to the effect that the suit was bad in law for misjoinder of parties and revealed no cause of action against TRA. The High Court, Judge Bubeshi, rendered a Ruling on 28 September 2001 upholding the preliminary objections and struck out TRA as a defendant.

8. The Applicant further avers that in considering the case, Judge Bubeshi also considered the question of whether it was TRA or the Ministry of Finance that was the Applicant's employer. In so doing the Judge held that TRA had come into being on "1 July 1996", therefore the liabilities inherited

[5] Civil Appeal No. 17 of 2003 Judgment dated 27 March 2006, page 1 indicates that the Applicants were terminated on 30 June 1996

[6] The Permanent Secretary's letter is not on file and the Applicant does not divulge the contents of the response nor does he expound on the contents of his protest letter.

did not extend to taking on former employees of the former revenue departments since it had to engage its employees afresh.

9. Aggrieved with the ruling of the High Court, on the preliminary objections, the Applicant appealed to the Court of Appeal in *Civil Appeal No. 17 of 2003,* on two grounds. Firstly, that the trial judge was wrong to hold that the 3rd respondent, TRA, came into being on 1 July 1996 and secondly**,** that the judge erred in holding that Section 28 (2) of the TRA Act did not intend to include the former employees of the revenue departments. The Applicant prayed the Court of Appeal to order TRA to be reinstated as a respondent in the suit.

10. The Applicant states that in a judgment dated 27 March 2006,[7] Judge Mrosso of the Court of Appeal observed "that although the authority existed from 7 August 1995, it was an empty shell, a bus without a passenger". He further observed that "the process of operationalisation commenced with the appointment of Board Members on 20 August 1995 and by 1 July 1996, the Authority was ready to commence business as an Authority". Judge Mrosso also held that Judge Bubeshi erred in holding that TRA came into being on "1 July 1996", rather it came into being on 7 August 1995 as per Section 4 of the TRA Act and that it was only the amendment of Subsection (2) which came into operation on "1 July 1996".

11. On the second ground of appeal, Judge Mrosso held that this ground was misconceived as nowhere in the Ruling did Judge Bubeshi discuss Section 28(2) of the TRA Act, although she discussed Section 25(2) of the Act which was premature. He also held that Judge Bubeshi should have confined herself to considering the two preliminary objections raised by the 3rd respondent, TRA, rather than make a pronouncement on the provisions of the TRA Act, which action would prejudice the trial of the case on the merits.

[7] Date on the judgment is 27 March 2006; however, the cover page reads that the judgment was delivered on 31 March 2006 but hearing was concluded is 20 February 2006 – See page 1 of the judgment.

12. The Court of Appeal, therefore, allowed the appeal on the second ground and ordered that TRA be reinstated as a defendant in the suit because there was no doubt that the plaintiff disclosed a cause of action against the 3rd respondent, TRA, and that it was rightly joined as a party in the suit.

13. The Court of Appeal further observed that the grounds of appeal as presented by the appellants did not clearly capture the crux of the matter, which was striking out TRA as a respondent in the suit. It noted that the appellants could be forgiven for this as the High Court judge had partially and prematurely strayed into the merits of the case. The Court of Appeal observed that it was nearly eight (8) years since the appellants had filed the suit, yet the case had not yet been considered on the merits. It therefore directed that the file be returned to the High Court for the resumption of proceedings by another Judge.

14. On 19 September 2006, the case was returned to the High Court and assigned to Judge Mihayo for resumption of trial in *Civil Case No 361 of 1999*. The Court considered four (4) issues, namely, first, whether TRA existed as of 7 August 1995 and who was the plaintiff's employer; second, who actually retired the plaintiffs and who had the authority to do so; third, whether the plaintiff's retirement was lawful; and, fourth, the type of reliefs that the parties were entitled to. On 15 September 2009, the Judge delivered his judgment against the plaintiffs and dismissed the suit with costs. He observed that, TRA existed from "7 August 1995" but the employer of the plaintiff (Cleophas) remained the Ministry of Finance. Furthermore, that the plaintiffs were neither seconded to, nor employed by TRA. The Judge held that the plaintiffs were retired in public interest by the President vide the *"DOKEZO SABILI"* of *Ref. No TYC/C/115/34* dated 17 /4/1996 (Government Retrenchment Circular) which was assented to on 19 April 1996, as empowered under the relevant laws. The Judge concluded by observing that since the plaintiff and others had no relation to the Ministry of Finance after the functions of the Ministry were subsumed by TRA, the only logical thing to do was to retire the plaintiffs.

15. In October 2010,[8] the Applicant appealed the decision of the High Court before the Court of Appeal sitting at Dar es Salaam in *Appeal No. 27 of 2010*. In its judgment, dated 15 December 2010, the Court of Appeal upheld the decision of the High Court.

16. Dissatisfied with the decision of the Court of Appeal, in 2011[9] the Applicant filed Civil *Application No. 13 of 2011 seeking a* review of the judgment of the Court of Appeal. On 15 February 2013, the Court of Appeal dismissed the application for review for lack of merit.

17. As a last resort, on 15 April 2015, the Applicant filed a complaint with Commission for Human Rights and Good Governance. On 20 April 2015, the Commission informed the Applicant that it had no jurisdiction to take up the matter as per Section 130 (5) of the Constitution of the Respondent State.

B. Alleged violations

18. The Applicant alleges the violation of the following:

    a. The right to work guaranteed under Article 15 of the Charter, by:
        i. unlawfully terminating his employment from the TRA contrary to the provisions of the TRA Act N0.11 of 1995
        ii. the failure of TRA to secure his employment status.

    b. The right to fair trial guaranteed under Article 7 of the Charter by:
        i. violating his right to be tried by an impartial court or tribunal
        ii. violating his right to be tried within a reasonable time
        iii. failing to consider the evidence adduced.

    c. The right to equality before the law and equal protection of the law, guaranteed under Article 3(1) and (2) of the Charter through the

[8] Date is not disclosed.
[9] Date is not disclosed.

decision of the domestic courts to declare that he was not an employee of TRA and by the failure of the High Court to hear his witness.

d. The right to freedom from discrimination guaranteed under Article 2 of the Charter by indiscriminately applying Section 16(2) of the TRA Act with regard to the status of commissioners and employees.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

19. The Application was filed before the Court on 14 September 2016 and served on the Respondent State on 29 January 2017.

20. On 17 January 2017, the Court granted the Applicant's request for legal aid and both parties were informed of the Court's decision.

21. On 13 September 2017, the Respondent State's attention was drawn to Rule 55 on passing judgment in default after reminders to file its Response were sent on 6 February 2017, 9 February 2017 and 28 August 2017.

22. On 25 January 2018, the Court, decided to grant the Respondent State a final extension of forty-five (45) days to file its Response. This notwithstanding, the Respondent State failed to file its Response.

23. Pleadings were closed on 26 June 2018 and the Parties were duly notified.

24. On 17 August 2018, the Respondent State filed its Response to the Application out of time under Practice Direction No. 38 citing the cause of delay as being consultation with various stakeholders. The Court decided in the interest of justice, to re-open pleadings and deem the Response as properly filed. Subsequently, it was notified to the Applicant on 29 August 2018.

25. The Applicant filed his Reply to the Respondent State's Response on 3 January 2019 and his submission on reparations on 20 March 2019. Both documents were notified to the Respondent State on 22 March 2019.

26. On 9 September 2019, the Applicant requested for a judgment in default with respect to reparations after the Respondent State failed to submit its response, after two reminders were sent.

27. Pleadings were once again closed on 8 October 2019.

28. On 18 December 2019, the Respondent State's attention was drawn to Rule 50 of the Rules on filing additional evidence after the close of pleadings[10] but it did not take action.

IV. PRAYERS OF THE PARTIES

29. The Applicant prays the Court for the following measures and orders:

a) A Declaratory Order that the decisions of the Principal Secretary Establishment, BUBESHI J. and Judge MIHAYO and the decision of the Court of Appeal of Tanzania Civil Appeal Number 27/2010 at Dar-es-Salaam did not follow the law and did not consider my basic rights and the breach of the principle of natural justice which I suffered in the process of retrenchment, hence the decisions are a nullity.
b) The whole process of my retrenchment to be declared unfair as it denied me the possibility of obtaining employment elsewhere hence the respondent should be ordered to pay me compensation equivalent to the amount of salaries due me in respect of the period, taking into account the periodic salary increments.
c) I need legal aid because I have no money to employ an advocate. I have no job and my family depends on me so I need an Advocate to represent me in court.

[10] Rule 46(2) and (4) of the Rules of Court, 25 September 2020

d) The courts to appoint experts who can assist the court in order to determine proper my application.
e) The court to call witnesses who will be required by it and by the applicant.
f) Any other enabling provisions of the law in the Constitution of the United Republic of Tanzania in Criminal Appeal Number 60/2000.

30. The Applicant further prayed the Court for reparations as follows:

a. Order the Respondent State to pay the Applicant a sum of Tsh 500,000,000= (USD 200,000) as general damages for violations of the Charter and Constitution and as a result of the inconveniences and hardships suffered by the Applicant following unlawful termination from employment and breach of employment contract.
b. Order the Respondent State to pay the Applicant a sum of Tsh 8,406,300 as special damages for costs and expenses incurred and legal fees in respect of cases before the High Court, Court of Appeal of Tanzania and in this Court.
c. Order the Respondent State to pay the Applicant the pension on the total amount of salaries for the period of 20 years from 1996 to July 2016, when he would attain compulsory retirement age.
d. Order the Respondent State to pay the Applicant salaries for the period of 20 years from 1996 to July 2016.
e. Order the Respondent State to pay the Applicant gratuity based on the total income from employment for the period of 1996 to July 2016.
f. Any other reliefs the Court deems just and equitable to grant in the circumstance in the Application.

31. In its Response, the Respondent State prays the Court for the following Orders with respect to its jurisdiction and the admissibility of the Application:

a. That, the Honourable Court on Human and Peoples' Rights is not vested with jurisdiction to adjudicate the Application.
b. That, the Application has not met the admissibility requirements stipulated under Rule 40(5) and 40(6) of the Rules of Court.
c. That, the Application be declared inadmissible and duly dismissed.
d. That the costs of the Application be borne by the Applicants.

32. With regard to merits of the Application, the Respondent State prays the Court to order:

a. That, the Government of the United Republic of Tanzania did not violate the Applicant's right to equality before the law and equal protection of the law provided under Articles 31(2) and (2) of the African Charter on Human and Peoples' Rights.
b. That, the Government of the United Republic of Tanzania did not violate the Applicant's right to have his cause heard as provided by Article 7(1) of the African Charter on Human and Peoples' Rights.
c. That, the Government of the United Republic of Tanzania did not violate the Applicant's right to be tried within a reasonable time as provided by Article 7(1)(d) of the African Charter on Human and Peoples' Rights.
d. That, the matter has been concluded by the Court of Appeal of Tanzania.
e. That, the Application is totally void of merit.
f. That, the Applicants prayers be dismissed in their entirety.
g. That, the Application be dismissed in its totality for lack of a merit.
h. That, the cost of this Application be borne by the Applicant.

33. With regard to Reparations, the Respondent State prays "[t]he Court to dismiss all of the Applicant's prayers".

V. JURISDICTION

34. Article 3 of the Protocol provides that:

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.

35. The Court observes that pursuant to Rule 49(1) of the Rules, it "[S]hall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[11]

36. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

37. The Court notes that the Respondent State has raised an objection to its material jurisdiction. It will, therefore, consider this objection before examining other aspects of its jurisdiction.

A. Objection to material jurisdiction

38. The Respondent State raises an objection to the Court's material jurisdiction on the grounds that it will be sitting as a court of first instance and as an appellate court should it adjudicate over matters already finalised by the highest court of Respondent State, and prays the Application to be dismissed.

39. The Respondent State avers that the Court will be sitting as a court of first instance if it considers the following allegations: the provision of Article 36(2) of its Constitution was not cited in the Applicants' termination letter; the "failure to include former employees into corporate setting"; the claim that the Applicant's fundamental rights were not affected by retrenchment, since he was working in a corporate body, not the Government; the fact that the TRA should have been responsible for the welfare of its workers; that the failure of TRA to recognise the employment status of its employees was a violation of his rights; that the failure of domestic courts to rule on the failure to take into account Section 25 of the TRA Act No. 11 of 1995, which constituted a violation of the Applicant's rights; that the case took too long to be completed; that both the High Court and the Court of Appeal violated his rights by not considering the evidence produced before them; and the

[11] Rule 39(1), Rules of Court, 2 June 2010.

allegation that it was discriminatory for TRA Commissioners to be deemed as TRA employees while the Applicant remained a government employee.

40. The Respondent State submits that the Court would be sitting as an appellate if it considers the following issues: whether the Applicant was not given reasons for the retrenchment or removal from employment; that TRA was in existence as of 7 August 1995; which entity had the authority to retrench the Applicant and whether the Applicant was retrenched lawfully; the witnesses called by the Applicant were not heard by the High Court; that the Applicant was not an employee of TRA and whether his retrenchment was done in accordance with Section 19(3) of Act No. 16 of 1989 and Section 8(d) of the Respondent State's Pension Act.

41. The Applicant argues that the Court's material jurisdiction is established since the Respondent State is a party to the Charter, the Protocol and also deposited the Declaration under Article 34(6) of the Protocol. He also contends that he is a victim and a citizen of a State Party to the Charter in accordance with Article 5(1) of the Protocol, therefore, the Court has jurisdiction to entertain his Application in accordance with the Protocol.

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42. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.[12]

43. In the present Application, the Court notes that the Applicant has alleged violations of provisions of the Charter, specifically, Article 15 on the right to work, Article 7 on the right to a fair trial, Article 3(1) and (2) on the right to

[12] See, for instance, *Kalebi Elisamehe v. United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020 (merits and reparations), § 18; *Gozbert Henrico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), §§ 38-40

equality before the law and equal protection of the law and Article 2 on the right to freedom from discrimination. The Court notes that these rights are protected by an international instrument to which the Respondent State is a party.

44. The Court recalls that, in accordance with its established case-law, it has jurisdiction to examine relevant proceedings before domestic courts to determine whether they comply with the standards set out in the Charter or any other instrument ratified by the State concerned.[13] Consequently, the claim that the Court would be sitting as a court of first instance in considering the Applicant's allegations is dismissed**.**

45. The Court further recalls that by examining whether or not the Respondent State's conduct is in consonance with the provisions of the earlier mentioned instruments, "the Court will be acting within its powers and neither will it be sitting as an appellate court nor will it be exercising power to revise the decision of the Court of Appeal".[14] Consequently, the Court dismisses the objection alleging that it would be sitting to revise the decision of the Respondent State's Court of Appeal in hearing this Application.

46. As a consequence of the foregoing, the Court finds that it has material jurisdiction to consider the present Application and dismisses the Respondent State's objection.

B. Other aspects of jurisdiction

47. The Court notes that the Respondent State does not dispute its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of

[13] *Ernest Francis Mtingwi v. Malawi* (jurisdiction) (15 March 2013), 1 AfCLR 190, § 14; *Kennedy Ivan v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 26; *Armand Guehi v. Tanzania* (merits and reparations), § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.
[14] *Ernest Karatta, Walafried Millinga, Ahmed Kabunga and 1744 Others vUnited Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 33

the Rules,[15] it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

48. With regard to personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this judgment, that on 21 November 2019, the Respondent State deposited the instrument of withdrawal of the Declaration under Article 34(6) of the Protocol. The Court has held that such withdrawal has no retroactive effect. Therefore, it has no bearing on matters pending before the Court prior to the filing of the instrument withdrawing the Declaration or new cases filed before the withdrawal took effect one (1) year after the notice of withdrawal was deposited, which is on 21 November 2020.[16]

49. Accordingly, this Application having being filed before the Respondent State deposited its notice of withdrawal of the Declaration, is not affected by the said withdrawal. The Court, therefore, concludes that it has personal jurisdiction over this Application.

50. The Court holds that it has temporal jurisdiction over this Application in so far as the alleged violations were committed before the Respondent State became a party to the Charter but continued after it became a party to the Protocol, namely, on the alleged violation of the right to work, when the Applicant's contract was terminated and on the right to a fair trial, the right to equality before the law and equal protection of the law and the right to freedom from discrimination arising out of the litigation process.[17] The Court, therefore, finds, that it has temporal jurisdiction.

51. The Court also holds that it has territorial jurisdiction over this Application given that the alleged violations occurred within the Respondent State's territory.

[15] Rule 39(1) of Rules of Court, 2 June 2010.
[16] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), §§ 35-39. See also, *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.
[17] *Jebra Kambole v. United Republic of Tanzania*, ACtHPR, Application No. 018/2018 Judgment of 15 July 2020 (merits and reparations), § 52 and *Almas Mohamed Muwinda & Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 32 (iii).

52. In light of all the above, Court holds that it has jurisdiction to examine this Application.

VI. ADMISSIBILITY

53. Article 6(2) of the Protocol provides that "[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

54. In line with Rule 50(1) of the Rules,[18] "the 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."

55. Further, Rule 50(2), which restates substantially Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a) Indicate their authors even if the latter request anonymity;
> b) Are compatible with the Constitutive Act of the African Union and with the Charter;
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d) Are not based exclusively on news disseminated through the mass media;
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f) Are submitted 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 seised with the matter; and

[18] Rule 40 of the Rules of Court, 2 June 2010.

g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

56. The Court notes that the Respondent State has raised two objections to the admissibility of the Application. The first objection relates to the requirement of exhaustion of local remedies and the second relates to filing of the Application within a reasonable time. The Court will, therefore, consider these objections before examining other conditions of admissibility.

A. Objection based on non-exhaustion of local remedies

57. The Respondent State avers that although the Applicant alleges that his right to equality before the law was violated, there is no evidence which shows that he instituted a constitutional petition at the High Court of Tanzania as provided for under Article 13 of its Constitution. Furthermore, Article 30(3) of the aforementioned Constitution provides that **"**any person claiming any provision in this Part of this Chapter or any law concerning his right or duty owed to him has been or is likely to be, violated by any person anywhere in the United Republic of Tanzania may institute proceedings for redress in the High Court**"** The Respondent State clarifies that the part of the Chapter referenced is the Bill of Rights duly enshrined in Part III of its Constitution. Furthermore, that the Respondent State enacted the Basic Rights and Duties Enforcement Act to provide the procedure for enforcement of constitutional basic rights, for duties and related matters.

58. Citing the Commission's jurisprudence in *Communication No. 263/02 Kenyan Section of the International Commission of Jurists, Law Society, Kituo cha Sheria vs Kenya*, the Respondent State avers that it was premature for the Applicant to seize the Court before giving it an opportunity to address the alleged violation within the framework of its domestic legal system.

59. The Applicant states that he has met the requirement set out under Rule 40(5) of the Rules of Court.[19] That he instituted a civil case in the High Court of Tanzania, whose decision he also challenged at the Court of Appeal of Tanzania, which is the apex court of the land. Citing the Court's jurisprudence in the Matter of *Kennedy Owino Onyachi and Charles John Mwanini Njoka vs Tanzania*, the Applicant argues that this Court has consistently held that the remedy of filing a constitutional petition before the High Court, as it applies in the judicial system of the Respondent State, is an extraordinary remedy.

60. The Applicant, therefore, submits that the Respondent State's objection in this regard has no legal basis and should be dismissed.

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61. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or the proceedings in respect of the local remedies are unduly prolonged.[20]

62. In the present case, the Court notes that the Applicant approached the highest court in the Respondent State, which dismissed his application for review on the basis of lack of merit in **"**Civil Application No. 27 of 2010**"** on 15 February 2013. The Court also observes that one of the main contentions by the Respondent State is that the Applicant never raised allegations, during the domestic proceedings, relating to the violation of his right to equal protection of the law and non-discrimination.

63. The Court reiterates its jurisprudence where it has held that :

[19] Rule 50(2)(e) of the Rules of Court, 25 September 2020.
[20] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda & Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.

> …where an alleged human rights violation occurs in the course of the domestic judicial proceedings, domestic courts are thereby afforded an opportunity to pronounce themselves on possible human rights breaches. This is because the alleged human rights violations form part of the bundle of rights and guarantees that were related to or were the basis of the proceedings before domestic courts. In such a situation it would, therefore, be unreasonable to require the Applicants to lodge a new application before the domestic courts to seek relief for such claims.[21]

64. In respect of the Applicant's claims before this Court, it is to be noted that while the Applicant did not plead his case before the domestic courts in the same manner that the has done before the Court, it is clear that the alleged violation of his rights was occasioned during the domestic proceedings.

65. A claim for the unlawful termination of his employment contract and subsequent violation of his right to work directly impacts on the realisation of various rights alleged under the bundle of labour rights.

66. In light of this, the Court observes that the Respondent State had the opportunity to address the possible human rights breaches before the domestic courts but it did not.

67. Regarding the filing of a constitutional petition before the Respondent State's High Court, as provided for under Article 13 of the Respondent State's Constitution, the Court has already held that this remedy, in the

[21] *Jibu Amir alias Mussa and another v. United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019, § 37; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, §§ 60-65, *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 54, *Jibu Amir alias Mussa and another v. United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019, § 37; Alex Thomas v. United Republic of Tanzania (merits) (20 November 2015) 1 AfCLR 465, §§ 60-65, *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 54; *Ernest Karatta, Walafried Millinga, Ahmed Kabunga and 1744 Others v. United Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 57.

Tanzanian judicial system, is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing this Court.[22]

68. In light of the foregoing, the Court dismisses the Respondent State's objection based on the non-exhaustion of local remedies.

B. Objection based on failure to file the Application within a reasonable time

69. The Respondent State claims that since the Application was not filed within a reasonable time, the Court should find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules.[23]

70. The Respondent State submits that the judgment of the Court of Appeal was delivered on 28 October 2009, that its instrument accepting the jurisdiction of the Court under Article 5(3) of the Protocol was deposited on 29 March 2010 and that this Application was filed on 14 September 2016. Furthermore, that a period of seven (7) years and eight (8) months elapsed from when it accepted the jurisdiction of the Court to when the Applicant filed his Application at the Court.

71. The Respondent State argues that the Applicant's case was concluded by the Court of Appeal on 15 February 2013, when it ruled on the Applicant's application for review of the Court of Appeal Decision in "*Civil Appeal No 27 of 2010"*. The Respondent State claims that the Applicant then filed his Application before the Court on 14 September 2016, which is three (3) years after the conclusion of his case at the local jurisdiction. It further observes that even though Rule 40(6)[24] of the Rules of Court does not prescribe the time limits within which individuals are required to file an

[22] *Alex Thomas v. Tanzama Judgment*, op.cit, §§ 60-62; Application No.007/2013. Judgment of 03/06/2016, *Mohamed Abubakari v. United Republic of Tanzania,* §§ 66-70; Application No. 011/2015. Judgment of 28/09/2017, *Christopher Jonas v. United Republic of Tanzania*, § 44.
[23] Rule 50(2)(f) of the Rules of 25 September 2020.
[24] Rule 50(2)(f) of the Rules of Court, of 25 September 2020.

application, a period of six months is reasonable time as established in other international jurisdictions.

72. Citing the decision of the African Commission on Human and Peoples Rights in *Michael Majuru vs Zimbabwe (308/05)* and noting the Applicant's non-compliance with Rule 40(6) of the Rules, the Respondent State submits that the Application should be declared inadmissible. The Respondent State argues that the Application should be dismissed with costs, particularly since the Applicant has not stated any reasons that impeded him from lodging his application within six months.

73. Relying on the Court's jurisprudence in *Alex Thomas v Tanzania,*[25] and the European Commission of Human Rights' decision in *Hilton vs United Kingdom*[26] the Applicant submits that there is no fixed period of time within which to seize the Court and that each case should be decided based on its own facts and circumstances. The Applicant avers that he filed the Application on 14 September 2016, which is three (3) years after the Court of Appeal rendered its decision in *Civil Appeal No. 27 of 2010*. Furthermore, that he was not aware of the Court's existence, until 2016 when he heard an announcement by the former President of the African Court regarding the Court being in Arusha, Tanzania. He submits, therefore, that the Respondent State's objection in relation to the admissibility of the application has no legal basis and should be dismissed.

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74. The Court notes that neither the Charter nor the Rules specify the exact time within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely provide that Applications must be filed "…within reasonable time from the date local remedies were exhausted or from the date set by the Court as

[25] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 56.
[26] *Hilton vs United Kingdom*, Application No. 12015/86.

being the commencement of the time limit within which it shall be seized with the matter".

75. The Court has held "…that the reasonableness of the time frame for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[27]

76. The Court considers that the ordinary judicial remedies related to the present matter were exhausted on 15 December 2010, when the Court of Appeal rendered its judgment. However, the Court also recalls its jurisprudence, that "even if the review process is an extraordinary remedy, the time spent by the Applicant in attempting to exhaust the said remedy should be taken into account while assessing reasonableness within the meaning of Article 56(6) of the Charter."[28] In this Application, the Court takes notice of the fact that the Court of Appeal rendered its decision on the Application for review on 15 February 2013 and that the Applicant filed this Application before the Court on 14 September 2016.

77. The Court must thus assess whether the period from 15 February 2013, when the Court of Appeal rendered its decision on the Application for review, to 14 September 2016, when the Applicant seized this Court, that is, three (3) years, six (6) months and 30 days, is reasonable in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

78. The Court recalls that some of the circumstances that it has taken into account in determining the reasonableness of time for filing an application include: the duration of time of the litigation procedure at the domestic courts involving several determinations both by the High Court and the

[27] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (25 June 2013) 1 AfCLR 197, § 121.
[28] See *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 61 and *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 16, § 56.

Court of Appeal;[29] lack of awareness of the existence of the Court,[30] and the use of extraordinary remedies[31] and quasi-judicial proceedings.[32] These circumstances, however, must be proved by an Applicant who seeks to rely on them.

79. The Court observes that a period of two (2) years, ten (10) months and seventeen (17) days had elapsed after the date the Respondent State deposited the Declaration accepting the jurisdiction of the Court to receive cases from individuals to the date the Court of Appeal rendered its decision on the Application for review. The Court surmises that by this time its existence was not well known within the Respondent State as well as across Africa, generally.

80. The Court also takes into account the personal circumstances of the Applicant and his claim that he had exhausted his resources during the litigation procedures at the domestic level, as a result of which he sought free legal representation from the Court.

81. The Court notes that after the decision of 15 February 2013, the Applicant spent more time pursuing extraordinary non judicial remedies when he filed the complaint with the Commission on Human Rights. The proceedings before the Commission, being quasi-judicial in nature, offered remedies that the Applicant was not required to exhaust. Nonetheless, he had a reasonable expectation that the Commission's findings would have resulted in a decision that was favourable to him and thereby dispensing with the need to file the Application before this Court. Although these are extraordinary remedies, the Court takes this into account in computing the reasonableness of the period taken by the Applicant in filing the Application.

[29] *Ernest Karatta, Walafried Millinga, Ahmed Kabunga and 1744 Others v. United Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 65
[30] *Amir Ramadhani v. Tanzania* (merits), § 50; *Christopher Jonas v. Tanzania* (merits), § 54.
[31] *Armand Guehi v. Tanzania* (merits and reparations) § 56; *Werema Wangoko Werema & Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 49; *Alfred Agbes Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.
[32] *Alfred Agbesi Woyome v. Republic of Ghana*, ACtHPR, Application No. 001/2017, Judgment of 28 June 2019 (Merits and Reparations), §§ 83-86.

82. In the circumstances, the Court concludes that the period of three (3) years, six (6) months and 30 days, is not unreasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

83. In light of the above, the Court, dismisses the Respondent State's objection to the admissibility of the Application based on failure to file the Application within a reasonable time.

C. Other conditions of admissibility

84. The Court notes that there is no contention regarding compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d), (e) and (g). Nonetheless, the Court must satisfy itself that these conditions have been met.

85. The record shows that the Applicant has been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

86. The Court also notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. Furthermore, 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. Besides, the Application does not contain any claim or prayer that is incompatible with a provision of the said Act. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and holds that it meets the requirement of Rule 50(2)(b) of the Rules.

87. The language used in the Application is not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules.

88. The Application is not based exclusively on news disseminated through mass media as it is founded on court documents from the municipal courts, the TRA Act*, and* "*DOKEZO SABILI"* of the Respondent State in fulfilment with Rule 50(2)(d) of the Rules.

89. Further, the Application does not concern a case which has already been 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 in fulfilment of Rule 50(2)(g) of the Rules.

90. The Court, therefore, finds that all the admissibility conditions have been met and that this Application is admissible.

VII. MERITS

91. The Applicant alleges a violation of the following rights guaranteed under the Charter: the right to work, Article 15; the right to fair trial, Article 7; and the right to equality before the law and equal protection of the law and the right to freedom from discrimination Article 2.

A. Alleged violation of the right to work

92. The Applicant alleges that his right to work was violated when the Respondent State unlawfully "terminated" his employment and also when it failed to secure his employment status.

i. Unlawful termination of the Applicant's contract

93. The Applicant states that he was a "Finance Manager Officer" employed by the Ministry of Finance on a permanent and pensionable basis in one of its three revenue departments. However, in 1995, the Respondent State converted the revenue departments to an independent public corporate entity known as the Tanzania Revenue Authority (TRA) by virtue of *TRA Act No. 11 of 1995*. As a result, all former employees of the Ministry of Finance, including the Applicant, started serving under the authority of the TRA. Subsequently, TRA undertook a screening of all its staff leading to the unlawful "termination" of the Applicant on 30 June 1996 by the Permanent

Secretary, Ministry of Finance. He alleges that no legal procedure was followed and the only reason given for his "termination" was that the Government had decided to reduce its workforce as a means of reducing the expenditure of its activities in order to increase office productivity.

94. The Applicant avers that the "termination" was done contrary to the principles of natural justice, since he was not informed of his shortcomings, or given an opportunity to defend himself and he did not belong to the two categories of persons to be retrenched. Furthermore, that the Permanent Secretary, Ministry of Finance had no power or authority to retrench him, because he was no longer a civil servant since TRA came into operation on 7 August 1995 and his employment contract was transferred to TRA by virtue of Section 28 (2) No 11 of 1995. He submits that this was contrary to Section 5 (3) (a) of the TRA Act. He also maintains that TRA employees are not civil servants by virtue of Section 2 of the Civil Service Act of 1989.

95. The Respondent State contends that the reasons for the Applicant's "retrenchment/ removal from employment in public interest" were provided in his retrenchment letter which he tendered as evidence as illustrated in the judgment of the "Court of Appeal in *Criminal Appeal No. 27 of 2010 of the judgment of 30 December 2010".* The reasons provided therein were that the Applicant was retrenched from employment in the public interest and because the Government had decided to reduce the number of Government employees in order to minimise Government expenditure and increase office productivity**.**

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96. Article 15 of the Charter provides that "[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work".

97. The Court notes that the Applicant's contention is that even though he did not fall into the two categories of those to be retrenched in the public interest, that is, those who had a bad record in revenue collection, with

doubtful integrity, and those whose performance was affected by advanced age, long sickness and low education, his contract was terminated.

98. The Court observes that in his judgment dated 15 September 2009, Judge Mihayo considered the evidence before the High Court by defence witnesses 1 and 2, which indicated that the plaintiff, and other similarly placed employees, were retired in the public interest by the Principal Secretary, Ministry of Finance on behalf of the President. Furthermore, the Court notes that the Court of Appeal in its judgment dated 27 March 2006[33] in *Civil Appeal No. 17 of 2003* observed that that the High Court considered Exhibit 2, which was the plaintiffs 'Removal Letters' which provided the reasons for removal in paragraph 1, being in the public interest to enable the reduction of the size of the Government workforce as a means of reducing its expenditure on activities and increasing office productivity.

99. The Court observes that in addition to the issuance of the "retrenchment letter", dated 25 June 1996 notifying the Applicant of the "retrenchment" and the procedural steps to be undertaken for a successful "retrenchment" which included the payment of all his entitlements till 30 June 1996, the Applicant was also paid "*kifuta jasho",* a payment amounting to a salary of four months per year of employment up to ten (10) years of service.[34]

100. The Court observes that there is nothing on record to suggest that the Applicant's termination was unlawful and not compliant with the laws, since he was terminated following issuance of a directive from the President of the Respondent State who is empowered to retire public servants in the public interest. Additionally, the Applicant was notified of the termination and reasons for his retrenchment were provided. Finally, he was paid all his entitlements including gratuity as communicated in the "*DOKEZO SABILII*". The Court further observes that the High Court analysed all the evidence

[33] Court of Appeal in its judgment dated 27 March 2006, Page 14, 15, 18.
[34] Page 3, Paragraph 14 of the Application dated 14 September 2016.

produced before it and came to the conclusion that the Applicant was lawfully terminated, and its finding was upheld by the Court of Appeal.

101. The Court, therefore, finds that the Respondent State has not violated the Applicant's right to work provided under Article 15 of the Charter, with regard to terminating the Applicant's employment.

ii. Failure of Tanzania Revenue Authority to secure the Applicant's employment status

102. The Applicant submits that at the time he was "terminated" from employment, he was an employee of TRA by direct transfer after the revenue departments were transformed to form an independent public body and as such TRA had the obligation to protect him. He avers that the Court of Appeal held that direct transfers in accordance with the Government Retrenchment Circular, only take place after an employee has completed his or her secondment as provided in Clause 5 of the Circular. He submits that the court however, overlooked Clause 11, paragraph 11 of the Circular which implies that direct transfers can be effected after secondment or without undergoing the secondment process, which was the applicable procedure in his case.

103. The Applicant further submits that the decisions of the High Court and Court of Appeal on the status of the TRA in relation to his contract of employment violate his rights.

104. The Respondent State disputes this allegation and calls for the Applicant to provide proof thereof. It further argues that the Applicant has not demonstrated how TRA failed to recognize the employment status of its employees. Moreover, that the Applicant never raised this complaint with TRA and therefore, cannot raise this concern at this juncture, especially since the Parties had already agreed in the "Memorandum of Agreed Facts" before the High Court proceedings that *"None of the Plaintiffs complain of their grievances with the TRA".*

105. The Respondent State argues that the Applicant was never an employee of TRA as established by the Court of Appeal in its judgment delivered in *Civil Appeal No. 27 of 2010*, rather he was an employee of the Ministry of Finance. It also cites the section of the Court of Appeal judgment that reads "The plaintiffs were never seconded to TRA and there is no evidence to that effect nor did they remain employees of the Ministry of Finance while doing work that was later taken over by the Authority". It prays the Court to dismiss the Application for lack of merit.

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106. The Court observes that the High Court in its judgment dated 27 February 2009, considered and determined the status of the plaintiffs in relation to the obligations of TRA to its employees. The High Court held that "while it was true that TRA became operational from the effective date of the Act establishing it, this did not mean that the plaintiffs automatically became employees of TRA by virtue of the Act establishing TRA".[35] It further observed that there was no evidence to prove that the employees were seconded to TRA.

107. On its part, the Court of Appeal, in its judgment dated 30 December 2010,[36] held that "going by the terms of the Establishment Circular, clause 11,[37] it was unpersuaded that the appellants at the material time were employees of the TRA". Furthermore, it observed that the circular established three categories of employees, namely, those who were seconded, attached or directly transferred. It observed that the Applicant, (PW 1) had neither a letter of appointment from the Ministry of Finance or TRA, which in itself was an anomaly, as it meant that the Ministry was paying someone who was not its employee. It further observed that by the appellant's own admission, he and his former colleagues complained about their retrenchment to the Ministry of Finance and not to TRA. The Court of Appeal observed that the evidence on record supported the finding of the

[35] Page marked 000536 and 0000535.
[36] Page 10 and 11.
[37] Clause 11 is titled "*Utaratibu wa uhamisho wa moja kwa moja*."

High Court, that the appellants were removed in the public interest by the President vide the "*DOKEZO SABILI"* on 19 March 1996. The Court of Appeal, therefore, concluded "that the appellants were employees of the Ministry of Finance, within the meaning of Section 2 of the Civil Service Act and could be subject to removal in the public interest under Section 19(3) thereof".

108. From the foregoing analysis, it is clear that both the High Court and Court of Appeal made the same finding regarding the status of the Applicant in relation to his alleged employment status by TRA. Moreover, the Applicant did not provide any evidence to demonstrate that he was employed by TRA. Furthermore, the Court observes that in assessing the Applicant's status in relation to TRA, the High Court and Court of Appeal considered all the evidence adduced before them in this regard. The Court also notes that there is nothing on record to indicate that the domestic courts failed to adhere to the established laws and procedures.

109. In view of the above, the Court finds that the Respondent State did not violate the Applicant's' right to work as provided under Article 15 of the Charter in relation to the alleged failure to secure his employment status with TRA.

B. Alleged violation of the right to a fair trial

110. The Applicant alleges that the Respondent State committed three (3) acts which led to the violation of his right to a fair trial, namely: (i) the failure to try him before an impartial court or tribunal; (ii) the failure to try him within a reasonable time; and (iii) the failure to consider his evidence.

i. Alleged violation on the right to be tried by an impartial court or tribunal

111. The Applicant avers that the decisions of the Principal Secretary, Ministry of Finance, Judge Bubeshi of the High Court on the preliminary objections

in *Civil Suit, Case No. 361/1999,* Judge Mihayo of the High Court on the merits in *Civil Case No 361 of 1999* and the decision of the Court of Appeal in *Civil Appeal No 27/2010* did not follow the law. He also states that these decisions did not consider his basic rights and they breached the principle of natural justice, causing him to suffer by upholding the legality of the retrenchment.

112. The Applicant also avers that he challenged the decision of the High Court by filing an appeal at the Court of Appeal in *Civil Appeal No. 17/2003,* because Judge Bubeshi erred by holding that TRA came into operation on 1 July 1996; that TRA should be struck off from the Plaint; and that TRA did not inherit the former employees of revenue departments because they remained civil servants under the Ministry of Finance. Furthermore, after hearing the Appeal arising from the judgment of Judge Bubeshi, the Court of Appeal rendered its judgment to the effect that, the TRA came into operation on 7 August 1995 by virtue of Government Notice No. 419 of 1995. He also held that the Plaintiffs (Appellants) remained employees of the former revenue departments and were not TRA employees by virtue of Section 25(2) of the TRA Act No. 11 of 1995 and that TRA be "returned" to the case as third Defendant/ Respondent.

113. The Applicant states that, after hearing the case on the merits when it was returned to the High Court, Judge Mihayo still upheld the decision of Judge Bubeshi, that TRA came into operation on 1 July 1996. He argues that, this decision was contrary to the decision of the Court of Appeal that former revenue employees remained in the Ministry of Finance as civil servants.

114. The Applicant further alleges that Judge Mihayo held that by virtue of Section 25(2) of the TRA Act N0. 11 of 1995, the Plaintiffs (Appellants) remained "employees of the Government. They were never employed by the Authority". He also held that the Applicants did not have the same status as the Commissioners to be employed by TRA; It was unfair not to allow potential witness, Mr. Nyambere to give his evidence and that the Applicants were retired in the public interest.

115. The Applicant finally avers that the decision on his application for review was unfair because there was no evidence of names attached to the "*DOKEZO SABILI"* submitted in court by the Respondent State.

116. The Respondent State argues that the Applicant never raised this allegation before the domestic courts. It further avers that the Applicant's case at the trial court as well as the Court of Appeal was not based on Section 25 of the TRA Act No 11 of 1995, hence the courts were not moved to adjudicate on whether the Section violated his rights as it did not include issues of contract of employment. Moreover, that the Applicant had the opportunity to raise this allegation during his appeal at the Court of Appeal. Additionally, he could have filed a constitutional petition under the Basic Rights and Duties Enforcement Act Cap 3 for enforcement of the alleged violated rights.

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117. Article 7(1)(d) provides that "[e]very individual shall have the right to be tried…by an impartial court or tribunal."

118. The Court observes that the Applicant's bone of contention is that the domestic courts did not consider his basic rights and breached the principle of natural justice, causing him to suffer a "retrenchment". More specifically, that the relevant judicial hierarchies and the Principal Secretary, Ministry of Finance did not follow the established procedures and law in determining whether or not he was an employee of TRA in his retrenchment.

119. The Court further observes that the retrenchment was communicated to the Applicant through procedures established by law and he was paid four (4) months' salary for every ten (10) years served. The Applicant being dissatisfied with the decision to terminate his employment, proceeded to file a suit before the domestic courts and pursued the judicial remedies available up to the Court of Appeal.

120. The Court notes that the domestic courts followed the procedures laid down by law. Moreover, in line with the Court of Appeal's ruling/judgment on preliminary objections in Civil Appeal No. 17 of 2003, when the case was returned to the High Court for consideration on the merits, it was heard by another Judge.

121. The Court also observes from the decisions of the domestic courts and the record before it, that the domestic courts considered the evidence adduced, heard the testimonies of the parties and the witnesses and relied on the applicable laws in making their decisions. Similarly, the retrenchment of the Applicant was done in line with the provisions of the Civil Service Act, since the Applicant was deemed a civil servant working in the Ministry of Finance.

122. The Court therefore finds that there is no basis to conclude that the decisions of the domestic courts, and of the Principal Secretary, Ministry of Finance, were taken in violation of the prescribed laws and procedures. In these circumstances, the violation of the Applicant's right to be tried by an impartial court or tribunal has not been established.

123. In view of the above, the Court finds that the Respondent State did not violate the Applicant's right to be tried by an impartial court or tribunal as provided under Article 7(1)(d) of the Charter.

ii. Alleged violation of the right to be tried within a reasonable time

124. The Applicant alleges that the Court of Appeal took too long to determine his case. That he filed the case at the High Court in 1999 and it was finalized after fourteen (14) years. During the entire trial, the proceedings were adjourned several times without any justification for a period of more than two months after it was presented for mention. He also avers that there was a time he complained to the High Court judge that the case had taken too long. The Applicant avers that the "last order was rendered on 19/11/2008, but the learned trial High Court Judge recorded that date of judgment as 20/12/2008. Furthermore, the trial Judge recorded the date of closing the

hearing as 27/02/2009, instead of 15/09/2009, which is the correct date. He avers that the court took almost ten months (10) without delivering the judgment that is from "19/11/2008 to 15/09/2009".

125. The Applicant avers that he filed a suit at the High Court on 1 October 1999, that is, *Civil Suit, Case No. 361/1999*. The Applicant further avers that Court of Appeal, considered his application for review and dismissed the Application for lack of merit on 15 February 2013 in Civil Application No. 13/2011.

126. The Respondent State submits that the delay in completing the Applicant's case on merits at the trial court was caused by an appeal filed by the Applicant at the Court of Appeal, challenging the High Court's decision on the preliminary objections raised by the Respondent State. The Respondent State argues that both parties were exercising their fundamental rights to a fair trial in pursuit of justice.

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127. Article 7(1)(d) provides that "[e]very individual shall have the right be tried within a reasonable time …".

128. The Court recalls its decision in *Wilfred Onyango and 9 others v. Tanzania*, where it held that "…there is no standard period that is considered reasonable for a court to dispose of a matter. In determining whether time is reasonable or not, each case must be treated on its own merits."[38] Furthermore it recalls, its earlier jurisprudence, where it held that various factors are considered in assessing whether a case was disposed of within a reasonable time within the meaning of Article 7(1)(d) of the Charter. These factors include the complexity of the matter, the behaviour of the

[38] *Wilfred Onyango Nganyi & 9 others v. Tanzania* (merits), § 135.

parties, and that of the judicial authorities who have a duty of due diligence in circumstances where severe penalties apply.[39]

129. The Court notes that the Applicant's contention with regard to being tried within a reasonable time pertains to the time it took the domestic courts to finalise his case. Consequently, this Court will assess the time when the Applicant filed a suit at the High Court on 1 October 1999, until his case was disposed of by the Court of Appeal on 15 February 2013, following his application for review of the judgment, which is thirteen (13) years, four (4) months and fourteen (14) days.

130. In the instant case, the Court observes that after the Applicant first filed the suit at the High Court in *Civil Suit, Case No. 361/1999* on 1 October 1999, the Respondent State raised objections. The High Court rendered its Ruling on preliminary objections on 28 September 2001. The Court observes that it took the High Court one (1) year, eleven (11) months and twenty (27) days to render a decision on the preliminary objections.

131. The Applicant then appealed the High Court's ruling to the Court of Appeal by filing *Civil Appeal No. 17 of 2003.* The Court of Appeal rendered its judgment on this appeal on 27 March 2006[40] and directed that the case be returned to the High Court to resume the trial on the merits of the case. The Court observes that this Judgment and other records on file do not indicate when the Applicant actually appealed the decision of the High Court. Therefore, the date that the Court will use to compute the time between the two procedures is when the High Court rendered its ruling on 28 September 2001, to the time when the Court of Appeal delivered its judgment on the

[39] See *Armand Guehi v. Tanzania* (Merits and Reparations), §§ 122-124. See also *Alex Thomas v. Tanzania* (Merits), §104 *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (Merits) (2016) I AfCLR 507, § 155; and *Norbert Zongo and Others v. Burkina Faso* (Merits) (2014) 1 AfCLR 219, §§ 92-97, 152; *Gozbert Henerico v. United Republic of Tanzania*, ACtHPR, Application No.056/2016, Judgment of 10 January 2022 (merits and reparations), § 82.

[40] The hearing in matter judgment was concluded on 20/2/2006. The Judgment is dated 27/3/2006 but was delivered on 31/3/2006.

appeal on preliminary objections on 27 March 2006, which is four (4) years, five (5) months and twenty-seven (27) days.

132. As directed by the Court of Appeal, the case was returned to the High Court on 19 September 2006 for determination of the merits of the case. The High Court rendered its judgment on the merits in Civil Case No 361 of 1999 on 15 September 2009. The period that the High Court took to determine this case on the merits was two (2) years, eleven (11) months and twenty (27) days.

133. Still being dissatisfied with the High Court's decision on the merits, the Applicant appealed to the Court of Appeal in Civil *Appeal No.27 of 2010.* The Court of Appeal rendered its judgment on 15 December 2010 and upheld the decision of the High Court. The Court observes that the time frame from when the High Court considered the case on the merits to when the Court of Appeal rendered its decision on the Applicant's appeal is seven (7) months and nineteen (19) days.

134. Still aggrieved with the decision of the Court of Appeal, the Applicant filed an application for "Review in *Civil Application No. 13 of 2011*". The Court of Appeal dismissed the Application for review for lack of merit on 15 February 2013. The Court observes that the Ruling of the Court of Appeal indicates that hearing of the Application was conducted on "11/04/2013", which is an erroneously recorded date, because this date is after the court had rendered its decision on the application for review of its judgment of 15 February 2013. Therefore, for computation purposes, the date which this Court will use is when the Court of Appeal rendered its judgment on the appeal on the merits of the case, which is 15 December 2010 to when the Court of Appeal delivered its judgment on the application for review, on 15 February 2013, which is two (2) years, one (1) month and sixteen (16) days.

135. The Court observes that on average it took less than three (3) years for domestic courts to finalise the different stages of procedures before them. The Court also observes that from the time the Applicant filed his case

before the High Court on 1 October 1999, to the time his case was finally disposed of by the Court of Appeal following the review on 15 February 2013, a period of thirteen (13) years, four (4) months and fourteen (14) days had elapsed. The Court notes that although this time frame is long, it must be contextualised since both the Applicant and the Respondent State pursued the available judicial remedies at the national courts. The Court observes that there is no evidence on record to suggest that either the Applicant or the Respondent State deliberately hampered the judicial procedures.

136. From the foregoing, the Court finds that the Respondent State did not violate the Applicant's right to fair trial as provided under Article 7(1)(d) by not trying the Applicant within a reasonable time.

iii. Alleged violation due to failure to consider evidence

137. The Applicant avers that both the High Court and Court of Appeal failed to consider evidence adduced before them as provided under Section 64(1) of the Evidence Act in *Civil Appeal No 27/2010*. He also states that these courts did not consider the TRA Act No 11 of 1995 and other laws, leading to the violation of his rights.

138. The Respondent State cites the decisions of the High Court and Court of Appeal and avers that both courts considered and concluded all relevant matters of evidence tendered before them. Additionally, that this allegation raised at this point is calling for the Court to sit as a court of first instance as well as an appellate court.

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139. Article 7(1) of the Charter provides that "[e]very individual shall have the right to have his cause heard".

140. The Court has previously held that:

> …domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings. [41]

141. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the assessment of the evidence, was done in consonance with international human rights standards.

142. In relation to the Application before it, the Court observes that the Applicant does not point to the specific evidence adduced before the domestic courts that was not considered. Regardless, it notes that the High Court considered *Government Notice No. 419 of 1995*, and the Applicant's removal letter as part of the evidence. The Court of Appeal also made reference to the evidence adduced at the High Court, and the Applicant's "Removal letters" and "Circular No. 7/95".

143. Accordingly, the Court holds that the Applicant has failed to demonstrate how the domestic courts failed to consider his evidence leading to the violation of his right to be heard as provided under Article 7(1) of the Charter.

144. The Court thus dismisses the Applicant's allegation of a violation of Article 7(1) of the Charter.

[41] *Kijiji Isiaga v. Tanzania,* § 65.

C. Alleged violation of right to equality before the law and equal protection of the law

145. The Court notes that the Applicant has raised two aspects on the violation of his right to equality before the law and equal protection of the law, namely: the decision of the domestic courts that he was not an employee of TRA and the failure of the High Court, to hear his witness. The Court will consider the alleged violations in that order.

i. Decision by the High Court and Court of Appeal that the Applicant was not an employee of Tanzania Revenue Authority

146. The Applicant alleges that he was not treated equally before the High Court and the Court of Appeal, when both courts held that he was not an employee of TRA, simply because he had no appointment letter from either the Ministry of Finance or TRA. Furthermore, that section 64(1) of the Evidence Act states that documents must be proved by primary evidence and defines primary evidence to mean a document produced for inspection of the Court. He avers that he submitted the TRA Act No. 11 of 1995 and other laws as evidence but all these were not considered by the two courts other than during the consideration of *Civil Appeal No. 17/2003* to decide and determine the issue of the termination of his employment contract.

147. The Respondent State submits that the Applicant was never an employee of TRA as established by the Court of Appeal, rather he was an employee of the Ministry of Finance as confirmed in the judgment of the Court of Appeal in Civil Appeal No 27 of 2010. The Court of Appeal upheld the decision of the High Court that the "plaintiffs were never seconded to TRA, there is no evidence to that effect, nor did they remain employees of the Ministry of Finance while doing the work that was later taken over by the Authority". Furthermore, the Respondent State observes that the Applicant never raised this issue before the Court of Appeal.

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148. The Court observes that Article 3(1) and (2) of the Charter provide that:

> 1. Every individual shall be equal before the law
> 2. Every individual shall be entitled to equal protection of the law respectfully.

149. The Court notes that both the High Court and the Court of Appeal, determined the status of the Applicant vis-a-vis the TRA in *Civil Appeal No 27 of 2010.* Both courts also held that the Applicant was an employee of the Ministry of Finance rather than TRA in accordance with the provisions of the TRA Act.

150. The Court notes that the Applicant's rejection of the domestic courts' decision that he was not an employee of TRA does not mean that his right under Article 3 of the Charter was violated in relation to the status of his employment.

151. In view of the above, this Court finds that the Respondent State did not violate the Applicant's right to equality before the law and equal protection of the law as provided under Article 3(1) and (2) of the Charter.

ii. The failure of the High Court to hear the Applicant's witness

152. The Applicant avers that he was not treated equally before the law since his witness was not given an opportunity to address the trial court, simply because his witness was in court during the trial prior to the receipt of his testimony. He avers that the decision of the trial court not to permit his witness to testify was contrary to the decision of the Court of Appeal in Civil Appeal No. 27/2010, where it held that "it is trite law that the presence of a potential witness in Court before the subsequent receipt of his testimony does not by that fact alone render him an incompetent witness under Section 127(1) of the Evidence Act Cap 6 R.E 2002 with respect to that extent, the High Court erred".

153. In response, the Respondent State avers that this issue was addressed by the Court of Appeal in Criminal Appeal No. 27 of 2010 at page 22 of its judgment of 30 December 2010. It avers that the Court of Appeal considered this ground of appeal regarding the trial Judge who refused to allow one Juvenal Nyambele to testify since his evidence could not have been independent and could not have changed anything since the witness was in Court prior to the receipt of his testimony. The Court of Appeal held that the appellants were under an obligation to ensure that the witness was not in court during the trial if they had wanted him to testify. His presence prior to the receipt of his testimony affected his credibility so that the trial Court had no option but to disqualify the witness, who in any case, was not a party to the suit. Furthermore, the appellants had an option to produce the District Commissioner, which option they did not pursue. The Court of appeal concluded that "once the appellants surrendered their opportunity to call and examine the District Commissioner, the author of the Removal Letters, they could not be heard to validly complain".

154. The Respondent State further avers that the Applicant never raised this allegation before the municipal courts, which have the judicial remedy as provided under Article 30(3) of the Constitution of the United Republic of Tanzania and Section 4 of the basic Rights and Duties Enforcement Act.

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155. The Court recalls that Article 7(1) provides that "[e]very individual shall have the right to have his cause heard".

156. The Court observes that the allegation that the High Court failed to hear the Applicant's witness, Juvenal Nyambele**,** was raised as a ground of appeal in Criminal Appeal No. 27 of 2010 in respect of the Court of Appeal Judgment rendered on 30 December 2010. The Court of Appeal considered this ground of appeal and held "that it is trite law that a potential witness in court before the subsequent receipt of his testimony does not by that fact alone render him an incompetent witness under Section 127(1) of the

Evidence Act, as this may affect the weight to be attached to his testimony as credible". The Court of Appeal, therefore, concluded that with respect to this issue, the High Court had erred. The Court of Appeal also observed that once the appellants had surrendered their opportunity to call and examine the District Commissioner, the appellants could not be validly heard to complain. Finally, it observed, with regard to the impugned removal letters (EXH.2), that there was no apparent connection between Juvenal Nyambele and the appellants as he was not a-party to the suit. It therefore held that this ground of appeal was partially made out but in its final analysis dismissed the appeal with costs for lack of merit.

157. The Court observes that the High Court followed procedures established by law in disqualifying the Applicant's witness from testifying but the Court of Appeal held that the ground of appeal was partially made out although it eventually dismissed the Applicant's appeal.

158. In this regard, the Court concludes that the Applicant has failed to demonstrate how the disqualification of his witness was done in disregard of the prescribed procedures under the national laws and how this adversely affected his right to be treated equally before the law.

159. Accordingly, the Court finds that the Respondent State did not violate the Applicant's right to equality before the law or to equal protection of the law as provided under Article 3(1)(2) of the Charter.

D. Alleged violation of the right to non-discrimination

160. The Applicant alleges that the Court of Appeal in *Civil Appeal No 27/2010* held that the commissioners at the Ministry of Finance were deemed to be employees of TRA by virtue of Section 16(2) of the TRA Act, while the Applicant remained a Government employee, which act amounted to an indiscriminate application of Section 16(2) of the TRA Act. He avers that this particular provision is a violation of the Respondent State's Constitution and the Charter. He further avers that he was also an employee of the same

department as the commissioners and therefore ought to have been treated in the same way. He further submits that the principle that all persons are equal before the law must be applied equally under existing laws and in the same manner to those subject to them. Therefore, both he and the commissioners were subject to the same provisions provided for under the TRA Act.

161. The Applicant avers that the Principal Secretary, Ministry of Finance issued "*DOKEZO SABILI*", which was specifically for TRA employees, and it provided for termination of employees at two levels: those who had a bad record in revenue collection with doubtful integrity and those with advanced age, long sickness and low education, were retired in the public interest. He avers that this retrenchment was discriminatory because his employment was terminated although he did not fall under any of these categories.

162. The Respondent State avers that Section 20(3) of the TRA Act is a provision that absorbed all commissioners including the revenue commissioners from the Ministry of Finance to be Commissioners of TRA. That Section 20(3) of the TRA Act states that "[e]very Revenue Commissioner or any other commissioner appointed under revenue law before the commencement of this Act, notwithstanding anything in this Act, shall be deemed to have been appointed under this Act until another appointment is made to fill the appointment of such revenue commissioner of any other commissioner".

163. The Respondent State argues that the Court of Appeal addressed this issue in *Appeal No. 27 of 2010* at page 13 of its judgment when attempting to differentiate the employment status of the commissioners from that of the employees such as the Applicant who was never incorporated into TRA by law or letter of appointment. The Respondent State further avers that the Applicant is raising this issue for the first time before the Court.

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164. Article 2 of the Charter provides that “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”.

165. The Court observes that the national courts followed procedures established by law by considering evidence adduced before them by interpreting the provisions of the TRA Act and “*DOKEZO SABILI”* in terminating the Applicant’s contract. The domestic courts held that the TRA Act provided for the direct absorption of the commissioners to the TRA and not all the Ministry of Finance employees. As a government employee, he was not entitled to the same privileges as the commissioners.

166. Accordingly, the Court finds that the Respondent State did not violate the Applicant's right to non-discrimination as provided for in Article 3(1)(2) of the Charter.

VIII. REPARATIONS

167. The Court notes that Article 27(1) of the Protocol stipulates that “[i]f the Court finds that there has been violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”

168. The Applicant avers that he, his wife and five (5) children are the direct victims of the alleged violations. He cites the Court’s jurisprudence in the *Zongo*[42] and *Mtikila* case and claims reparations in form of compensation and restitution for material and moral damages occasioned by the Respondent State’s agents.

[42] Paragraphs 26, 29, 156.

169. The Applicant claims that he has suffered loss of actual expected income from employment arising from the loss of his salaries from the date at which his employment was unlawfully "terminated". He further claims that he endured emotional distress, inconvenience and economic hardship. He argues that there is a causal link and nexus between the violations caused by the Respondent State and the prejudice he suffered as a result of the Respondent State's violations of the Charter.

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170. In the instant case, the Court has established that the Respondent State did not violate any of the Applicant's rights as alleged.

171. In view of the foregoing, the Applicant's prayers for reparations are dismissed.

IX. COSTS

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

173. The Applicant avers that he incurred litigation costs both before domestic courts and before this Court, which include those incurred in respect of travel, court appearances, accommodation while in Arusha as well as food and personal effects.

174. The Respondent State prays that costs be borne by the Applicant.

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175. The Court reiterates its settled jurisprudence and reaffirms that reparations may include costs and other expenses incurred in international

proceedings. Further, it is up to the Applicant to provide evidence in support of the sums claimed.

176. The Court considers that transport costs incurred for travel within Tanzania, fall under the "categories of expenses that will be supported under the Legal Aid Policy of the Court."[43] Since the Court granted legal assistance to the Applicant on a *pro bono* basis, the sums claimed are unjustified and hence, the prayer is dismissed.

177. Consequently, the Court orders that each Party shall bear its own costs.

X. OPERATIVE PART

178. For these reasons:

THE COURT,

Unanimously,

On Jurisdiction

i. *Dismisses* the objection to its jurisdiction;
ii. *Declares* that it has jurisdiction.

On Admissibility

iii. *Dismisses* the objections to the admissibility of the Application.
iv. *Declares* the Application admissible.

[43] Article 3(a) Legal Aid Policy 2016.

On Merits

v. *Finds* that the Respondent State has not violated the Applicant's right to work, guaranteed under Article 15 of the Charter.

vi. *Finds* that the Respondent State has not violated the Applicant's right to fair trial guaranteed under Article 7(1) and 7(1)(d) of the Charter.

vii. *Finds* that the Respondent State has not violated the Applicant's right to equality before the law or to equal protection of the law guaranteed under Article 3(1) and (2) of the Charter.

viii. *Finds* that the Respondent State has not violated the Applicant's right to non- discrimination guaranteed under Article 2 of the Charter.

On Reparations

ix. *Dismisses* the Applicant's prayers for reparations

On Costs

x. *Orders* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI; Judge

and Robert ENO, Registrar.

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