**HOJA MWENDESHA V. UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 032/2016**

**JUDGMENT ON THE MERITS AND REPARATIONS**

**13 June 2023**

**A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES’ RIGHTS**

In **Arusha, on 13 June 2023**, the African Court on Human and Peoples’ Rights (the Court) delivered a judgment in the matter of *Hoja Mwendesha v. Republic of Tanzania.*

Mr. Hoja Mwendesha (the Applicant) is a farmer and national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a thirty (30)-year-sentence at Msalato Prison in Dodoma, having been convicted of the offence of rape of a thirteen (13) year-old minor. In the Application before the Court, he challenges the violation of his rights in connection with proceedings before domestic courts.

3. It emerges from the records that the Applicant was convicted of the offence of raping and impregnating a thirteen-year-old school girl and subsequently sentenced to thirty (30) years’ imprisonment by the Misungwi District Court.

In his Application, the Applicant alleges that the Respondent State violated his rights under Articles 3(1), and (2), 5, 7(1)(c) of the Charter as a result of the proceedings before the domestic courts.

The Respondent State challenged the jurisdiction of the Court on the grounds that contrary to Article 3(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) and Rule 26(1)(a) of the Rules of Procedure of the Court (the Rules), the present Application requests the Court to sit as an appellate court to consider issues of fact and law previously decided by the Court of Appeal Tanzania. According to the Respondent State, such a review is not within the mandate or jurisdiction of the Court.

The Court noted that it has already established that where allegations of human rights violations relate to the manner in which domestic courts assessed the evidence, it reserves the power to determine whether the said assessment is consistent with international human rights instruments to which the Respondent State is a party, including the relevant provisions of the Charter. Having noted that the Applicant’s allegations relate to the violation of his rights under Articles 3, 5 and 7 of the Charter. The Court found that it had substantive jurisdiction to examine the Application and consequently dismissed the Respondent State’s objection to jurisdiction.

With regard to personal jurisdiction, the Court noted that the Respondent State is a party to the Protocol and that it also deposited, on 29 March 2010, the Declaration provided for in Article 34(6) of the said Protocol, by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and non-governmental organisations having observer status before the African Commission on Human and Peoples’ Rights. The Court also noted that on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, the instrument of withdrawal of its Declaration.

The Court reiterated that, as it held in *Andrew Ambrose Cheusi v. Tanzania*, the withdrawal of the Declaration deposited in accordance with Article 34(6) of the Protocol does not have retroactive effect and does not affect cases pending at the time of deposit of the instrument of withdrawal, as is the case in the instant matter. The Court also recalled that the withdrawal of the Declaration takes effect twelve (12) months after the deposit of the instrument of withdrawal. In the case of the Respondent State, the withdrawal therefore takes effect on 21 November 2020. Consequently, the Court found that it has personal jurisdiction to hear the case.

The Court also assumed temporal and territorial jurisdiction as the violations were committed after the entry into force of the Protocol in respect of the Respondent State and were committed on its territory.

With regard to the admissibility of the Application, the Respondent State raised two preliminary objections to the admissibility of the Application. The first relates to the exhaustion of local remedies while the second relates to the failure to file the Application within reasonable time after the exhaustion of local remedies.

On the first objection, the Respondent State argued that there are available local remedies which the Applicant could have pursued before seizing the Court. According to the Respondent State, the Applicant had the avenue of filing an application seeking review of the judgment of the Court of Appeal. The Respondent State argues that the Applicant also had the avenue to file an application challenging the constitutionality of the judgment under the Fundamental Rights and Duties Enforcement Act.

The Court dismissed the Respondent State’s argument, noting that after the High Court judgment, the Applicant appealed to the Court of Appeal, the highest court in the Respondent State’s judicial system. The Court found that the Applicant exhausted local remedies as the appeal afforded the domestic court ample opportunity to deal with the allegations raised by the Applicant before the High Court. Also, on the issue of review and constitutional challenge, the Court recalled that it had previously ruled that these are extraordinary remedies that the Applicant is not required to exhaust. The Court found that the Applicant exhausted local remedies pursuant to Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

The Respondent State also argued that the Application was inadmissible on the grounds that it was filed late.

On this point, the Court recalled that under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules of Court, there is no fixed time-limit within which a case must be brought before the Court, provided that the time-limit is reasonable taking into account criteria which are examined on a case-by-case basis in line with the Court’s jurisprudence.

In the circumstances, the Court held that the period of six (6) months and eight (8) days is reasonable time to bring the case within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules. The Court therefore dismisses the Respondent State’s objection to the admissibility of the Application. Having regard to the other admissibility requirements not contested by the two Parties, the Court found that the Application complies with them and therefore declared it admissible.

The Applicant alleges that the Respondent State violated i) his right to equality before the law and his right to equal protection before the law; iii) his right to respect for his dignity, and iii) his right to free legal assistance. With regard to the first alleged violation of the right to equality before the law and equal protection of the law, the Court found that the Applicant did not prove his allegation. The Court therefore rejected it.

With regard to the second alleged violation of the right to dignity, the Court also noted that the Applicant did not provide any evidence of such a violation and that there was no evidence on record to indicate such a violation. The allegation was therefore dismissed.

Upon examination of the alleged violation of the right to free legal aid, the Court observed that although the Applicant was charged with rape, a serious offence punishable by a minimum sentence of thirty (30) years’ imprisonment, there is no evidence on record that he was informed of his right to legal aid. Furthermore, the Applicant was not informed that he could access free legal aid even if he could not afford it. The Court further notes that the Respondent State did not dispute that the Applicant is indigent. In view of the foregoing, the Court held that the Respondent State did not fulfil its obligations under Article 7(1)(c) of the Charter, read in conjunction with Article 14(3)(d) of the ICCPR, insofar as it failed to afford the Applicant free legal assistance in the proceedings before domestic courts.

Regarding reparations, the Applicant prayed the Court to grant him reparations for the violations he suffered, to vacate his conviction and sentence, and to order his release. As regards pecuniary reparations, the Court noted that the violation found caused the Applicant moral prejudice and therefore, in the exercise of its judicial discretion, awards the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as fair compensation.

In relation to non-pecuniary reparation, the Court held that in the instant case, there is nothing in the nature of the violation that suggests that keeping the Applicant in prison is a miscarriage of justice or an arbitrary decision. The Applicant also failed to demonstrate further specific and compelling circumstances to justify the measure in respect of bail. Accordingly, the Court dismissed the Applicant’s request for an order quashing his conviction quashed and setting him free.

The Court decided that each party should bear its own costs.

**Additional information**

Further information on this case, including the full text of the African Court’s judgment, is available at

<https://www.african-court.org/cpmt/details-case/0322016>

For any other questions, please contact the Registry by e-mail at 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 Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned. For more information, please visit our website* [*www.african-court.org*](http://www.africancourt.org).