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

THE MATTER OF

CHRIZANT JOHN

V

UNITED-REPUBLIC OF TANZANIA

APPLICATION NO. 049/2016

JUDGMENT

7 NOVEMBER 2023

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

In the Matter of:

Chrizant JOHN

Represented by the East Africa Law Society.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Mr. Stanley KALOKOLA, State Attorney, Office of the Solicitor General;
iii. Ms. Pauline MDENDEMI, State Attorney, Office of the Solicitor General;
iv. Ms. Sarah D. MWAIPOPO, Director, Division Constitutional Affairs and Human Rights, Principal State Attorney, Attorney General's Chambers;
v. Mr. Baraka LUVANDA, Ambassador, Director of Legal Affairs, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation;

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

vi. Ms. Nkasory SARAKIKYA, Assistant Director, Division Constitutional Affairs and Human Rights, Principal State Attorney, Attorney General's Chambers;
vii. Mr. Mark MULWAMBO, Principal State Attorney, Attorney General's Chambers; and
viii. Ms. Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Chrizant John (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania. At the time of filing the Application, he was incarcerated at Butimba Central Prison, Mwanza, having been tried, convicted and sentenced to death for the offence of murder. He alleges violation of his rights during the proceedings before national courts.

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

November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that on 2 January 2010, the Applicant allegedly murdered his stepmother by inflicting a fatal wound to her head with a machete in the context of a land dispute. The Applicant was arrested on 19 April 2011 and charged with murder. The Applicant was tried, and on 26 June 2015, convicted of murder and sentenced to death by the High Court sitting in Bukoba (Criminal Case No. 55/2014).

4. The Applicant then appealed to the Court of Appeal sitting at Bukoba (Criminal Appeal No. 313/2015) which, on 23 February 2016, dismissed the appeal in its entirety.

B. Alleged violations

5. The Applicant alleges violation of the following rights:

   i. The right to equality before the law and to equal protection of the law under Article 3(1) and (2) of the Charter.
   ii. The right to life, guaranteed under Article 4 of the Charter.
   iii. The right to dignity, guaranteed under Article 5 of the Charter.
   iv. The right to a fair trial, guaranteed under Article 7 of the Charter.

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 1 September 2016 and it was served on the Respondent State on 26 September 2016.

7. On 18 November 2016, the Court issued, *proprio motu an* order for provisional measures directing the Respondent State to stay the execution of the death sentence against the Applicant, pending its decision on the main Application.

8. The Parties filed their pleadings on merits and reparations within the time-limit stipulated by the Court.

9. Pleadings were closed on 22 August 2023 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

10. The Applicant prays the Court to:

    i. Find that the Court is vested with jurisdiction to adjudicate over the Application;
    ii. Declare the Application admissible and duly allowed;
    iii. Find that the Respondent State violated the Applicant's rights provided under the Charter;
    iv. Set aside the death sentence imposed on the Applicant by the Respondent State and remove him from death row;
    v. Order the Respondent State to restore the Applicant's liberty by releasing him from prison;
    vi. Order the Respondent State to pay the Applicant reparations in the amount of Twenty Million Tanzanian Shillings (TZS 20,000,000) on account of moral damage suffered;

vii. Order the Respondent State to pay the Applicant reparations in the amount of Thirty Million Tanzanian Shillings (TZS 30,000,000) for loss of income;

viii. Order the Respondent State to pay each indirect victim reparations in the amount of Ten Million Tanzanian Shillings (TZS 10,000,000) for on account of moral damage suffered;

ix. Order the Respondent State to pay reparations in the amount of One Hundred Thousand Tanzanian shillings (TZS 100,000) for costs incurred by the Applicant on transport and stationery;

x. the Applicant Respondent State to amend its laws to ensure respect for the right to life under Article 4 of the African Charter by removing the mandatory death sentence for the offence of murder;

xi. Grant other orders and reliefs that it may deem fit and just in the circumstances of the Applicant;

xii. Order the Respondent State to bear the costs of this Application.

11. With regard to jurisdiction and to the admissibility of the Application, the Respondent State prays the Court to:

i. Find that this Court is not vested with jurisdiction to adjudicate this Application;

ii. Find that the Application does not meet the admissibility requirements provided by Rule 40(5) of the Rules of Court;[3]

iii. Find that the Application does not meet the admissibility requirements provided by Rule 40(6) of the Rules of Court;[4]

iv. Declare the Application inadmissible and duly dismissed.

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

i. Find that the Respondent State did not violate the Applicant's rights provided under Article 3(1) and (2) of the Charter;

[3] Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.
[4] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

ii. Find that the Respondent State did not violate the Applicant's rights provided under Article 7(1) of the Charter;
iii. Find that the Respondent State did not violate the Applicant's rights provided under Article 7(2) of the Charter;
iv. Dismiss the Application;
v. Order that the Applicant continue to serve his sentence;
vi. Dismiss the Applicant's prayer for reparations;
vii. Order the Applicant to bear the cost of this Application.

13. In Response to the Applicant's submissions on reparations, the Respondent State prays the Court to:

i. Dismiss the [Applicant's] prayers in their entirety;
ii. Declare that the interpretation and application of the Protocol and the Charter does not confer criminal jurisdiction on the Court to acquit the Applicant;
iii. Declare that the Respondent State did not violate the African Charter or the Protocol and that the Applicant was treated fairly and with dignity by the Respondent State during the trial and appeal proceedings in its jurisdiction;
iv. Dismiss the Applicant's prayer for reparations;
v. Make any other Order this Court might deem right and just to grant under the prevailing circumstances.

V. JURISDICTION

14. The Court observes that Article 3 of the Protocol provides as follows:

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

15. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[5]

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

17. In the present Application, the Court notes that the Respondent State raises two objections to its material jurisdiction. The Court will first examine these objections before considering other aspects of its jurisdiction, if necessary.

A. Objections to material jurisdiction

18. Firstly, the Respondent State argues that this Application is calling upon the Court to sit as an appellate court and deliberate on matters of evidence and procedure already finalised by its Court of Appeal, and that this is not within the mandate and jurisdiction of the Court.

19. The Respondent State further argues that all the allegations raised before the Court were raised as grounds for appeal before its Court of Appeal. It further submits that the allegation with regard to the death penalty was already concluded by the Respondent State's Court of Appeal in the case of *Mbushuu alias Dominic Mnyaroje and Another v. The Republic [1995] TLR 97*, where it was **"**held that the imposition of the death penalty is not arbitrary, hence a lawful law that is saved by Article 30(2) of the Constitution" of the Respondent State. It is for these reasons that the Respondent State asserts that the Court is not vested with jurisdiction to adjudicate the Application and that the Application should be dismissed.

20. Secondly, the Respondent State claims that the Court does not have jurisdiction to grant the relief of releasing the Applicant. The Respondent State submits that the relief sought by the Applicant to be released from

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

custody is beyond the mandate of the Court, as this Court is not an appellate court and does not have criminal appellate jurisdiction whatsoever, to quash the decision of the Respondent State's national courts and release prisoners from prison. The Respondent State, therefore, considers that the Applicant's prayer should be dismissed.

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21. The Applicant disputes the Respondent State's claims and asserts that the Court has jurisdiction to adjudicate this matter because his claims directly relate to rights guaranteed in the Charter, to which the Respondent State is a party. The Applicant further submits that examining a state's compliance with its international obligations does not amount to the Court sitting as an appellate court. Accordingly, the Applicant is not asking the Court to sit as an appellate court, but rather invoking the Court's jurisdiction under the Charter to determine if the conduct he impugns constitutes a violation of the Charter. Consequently, the Applicant requests the Court to dismiss the Respondent State's the objections.

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22. 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.[6]

23. The Court emphasises that its material jurisdiction is thus predicated on the Applicant's allegation of violations of human rights protected by the Charter or any other human rights instrument ratified by the Respondent State.[7] In the instant matter, the Applicant alleges violation of Articles 3, 4, 5 and 7 of the Charter.

[6] *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.
[7] *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477 § 33; *Elisamehe v. Tanzania*, *ibid*, § 18.

24. With regard to the first objection, the Court recalls its established jurisprudence that it is not an appellate body with respect to decisions of national courts.[8] However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned".[9] The Court would, therefore, not be sitting as an appellate court if it were to consider the Applicant's allegations. Accordingly, the Court, dismisses this objection and holds that it has jurisdiction to hear the instant Application.

25. With regard to the second objection, the Court notes that the Respondent State's objection concerns the claim that the Court lacks jurisdiction to grant an order for release. In this regard, the Court recalls Article 27(1) of the Protocol which provides 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." Therefore, the Court has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation has been established.[10]

26. For these reasons, the Court dismisses the objections raised by the Respondent State and holds that it has material jurisdiction in this Application.

[8] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[9] *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania, supra,* § 33.
[10] *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017, Ruling of 24 March 2022 (admissibility), § 27.

B. Other aspects of jurisdiction

27. The Court observes that no objection has been raised with respect to its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

28. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.[11] Since any such withdrawal of the Declaration takes effect twelve (12) months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.[12] This Application, having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it. The Court, therefore, finds that it has personal jurisdiction to examine the present Application.

29. In respect of its temporal jurisdiction, the Court notes that the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the Court observes that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.[13] For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.

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[11] *Cheusi v. Tanzania* (judgment), *supra*, §§ 35-39.
[12] *Ingabire Victoire Umuhoza v. United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.
[13] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

30. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that it has territorial jurisdiction.

31. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

32. Pursuant to Article 6(2) of the Protocol, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

33. In line with Rule 50(1) of the Rules,[14] "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."

34. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of 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;

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

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 seized with the matter; and

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.

35. In the present Application, the Court notes that the Respondent State raises two objections to the admissibility of the Application. The Court will now consider these objections before examining other conditions of admissibility, if necessary.

A. Objections to the admissibility of the Application

36. The first objection of the Respondent State relates to the requirement of exhaustion of local remedies and the second relates to whether the Application was filed within a reasonable time.

i. Objection based on non-exhaustion of local remedies

37. The Respondent State argues that the Applicant had legal remedies available to him prior to filing the Application before this Court but did not utilise them. The Respondent State asserts that the Applicant could have filed for an Application to review the Court of Appeal's decision under Rule 66 of the Court of Appeal Rules, 2009. The Respondent State also claims that the Applicant had the remedy of filing a Constitutional Petition for enforcement of his basic rights under the Basic Rights and Duties Enforcement Act.

38. The Respondent State submits that it was premature of the Applicant to have instituted this matter before this Court as there were still local remedies available to him. Therefore, the Respondent States contends that

the admissibility requirement under Rule 40(5)[15] is not met so that the Application should be declared inadmissible and be dismissed.

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39. The Applicant disputes the Respondent State's objection and claims that he exhausted all available remedies as his case was heard by the Court of Appeal, which is the court of last resort of the Respondent State, and that judgment was delivered on 23 February 2016. The Applicant also notes that this Court has held on numerous occasions that an Applicant is only required to exhaust ordinary judicial remedies and that an application for review or a constitutional petition, within the Respondent State's legal system, are extra-ordinary remedies that an Applicant is not required to exhaust prior to seizing this Court. Therefore, the Applicant prays the Court to dismiss the Respondent State's objection and find that this matter has been filed before this Court after the exhaustion of local remedies.

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40. 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. The rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.[16]

41. The Court recalls its position where it held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the

[15] Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.
[16] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.[17]

42. In the instant case, the Court notes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 23 February 2016. Therefore, the Respondent State had the opportunity to address the violations alleged by the Applicant arising from the Applicant's trial and appeals.[18]

43. Regarding the Respondent State's contention that the Applicant ought to have filed an application for review of the Court of Appeal's judgment, the Court has previously held that such an application for review is an extraordinary remedy, which applicants are not required to exhaust.[19]

44. Regarding the Respondent State's contention that the Applicant ought to have filed a constitutional petition, the Court has similarly held that that the constitutional petition procedure, within the Respondent State's judicial system, is an extraordinary remedy which applicants are not required to exhaust.[20]

45. The Court, therefore, finds that the Applicant is deemed to have exhausted local remedies since the Court of Appeal of Tanzania, the highest judicial organ in the Respondent State, had upheld his conviction and sentence, following proceedings which allegedly violated his rights.

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

[17] *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017 Ruling of 24 March 2022 (admissibility), § 51.
[18] *Ibid*, § 52.
[19] *Abubakari v. Tanzania* (merits), *supra*, § 78.
[20] *Thomas v. Tanzania* (merits), §§ 63-65.

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

47. The Respondent State claims that since the Application was not filed within a reasonable time after the local remedies were exhausted, the Court should find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules.[21]

48. The Respondent State recalls that the judgment of the Court of Appeal was delivered on 23 February 2016 and that this Application was filed on 1 September 2016. The Respondent State notes that a period of seven (7) months elapsed from when the judgment was delivered to when the Applicant filed his Application before this Court.

49. Relying on the African Commission on Human and Peoples' Rights' decision in *Majuru v. Zimbabwe*,[22] the Respondent State argues that there are developments in international human rights jurisprudence which have established that a period of six (6) months is considered reasonable time.

50. The Respondent State, therefore, submits that a period of seven (7) months cannot be considered to be a reasonable time. Accordingly, the Respondent State argues that this Application does not meet the admissibility requirement provided by Rule 40(6) of the Rules[23] and should be declared inadmissible.

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51. The Applicant argues that the Respondent State's objection is not founded and claims that the period of seven (7) months is a reasonable time given that he is a lay and indigent person who at all times, since his arrest, has been imprisoned with limited movement and limited access to information, including information about the existence of this Court. The Applicant also claims that he filed an Application for Review at the Court of Appeal and

[21] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.
[22] African Commission on Human and Peoples' Rights Communication 308/05 - *Michael Majuru v. Zimbabwe* (2008) AHRLR 146 (ACHPR 2008).
[23] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

that the application is still pending to date. In view of these circumstances, the Applicant submits that, the seven (7) months it took him to seize this court constitute reasonable time and prays the Court to dismiss the Respondent State's objection.

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52. Pursuant to Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, in order for an application to be admissible, it must be "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 seized with the matter".

53. In the present case, the Court notes that between the date that the Court of Appeal dismissed the Applicant's appeal on 23 February 2016 and when the Applicant filed the Application on 1 September 2016, a period of six (6) months and nine (9) days elapsed.

54. The Court further notes that Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, does not set a fixed time limit within which it must be seized. However, the Court has held that "the reasonableness of the time limit for referral depends on the particular circumstances of each case and must be determined on a case-by-case basis".[24]

55. From the record, the Court notes that the Applicant claims that he is a lay and indigent person, that he has been incarcerated since 2011 with only limited access to information, including information about this Court. Considering these circumstances, the Court finds that the Applicant's filing of his Application after six (6) months and nine (9) days, is within reasonable limits.

[24] *Beneficiaries of late Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 56; *Thomas v. Tanzania* (merits), *supra*, § 73.

56. In light of the above, the Court finds that the period of six (6) months and nine (9) days is manifestly reasonable 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.

B. Other conditions of admissibility

57. The Court observes that no objection has been raised with respect to the other admissibility requirements. Nonetheless, in line with Rule 50(1) of the Rules, it must satisfy itself that the Application is admissible before proceeding.

58. From the record, the Court notes that the Applicant has been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

59. 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. Additionally, 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.

60. 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.

61. The Application is not based exclusively on news disseminated through mass media as it is founded on court documents from the domestic courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.

62. 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, in compliance with Rule 50(2)(g).

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

VII. MERITS

64. The Applicant alleges that the Respondent State violated his rights to a fair trial, to life, to dignity, to equality before the law and to equal protection of the law.

65. The Court considers, however, that although the Applicant alleges violations of various rights under the Charter, at the core of his Application is the alleged violation of the right to have his cause heard, protected under Article 7(1) of the Charter. The Court will, therefore, first, consider the alleged violation of Article 7(1) of the Charter, before addressing the other human rights that were allegedly violated.

A. Alleged violation of the right to have one's cause heard

66. The Court observes, from the record, that the Applicant raises five (5) grievances against the domestic courts whose actions or omissions he claims violated his right to be heard as protected under Article 7(1) of the Charter. These grievances are:

i. That the trial court and the appellate court erred in law and in fact to proceed with the defence case while there was no court order to close the prosecution's case.
ii. That the High Court's failure to comply with section 293(2) of the Criminal Procedure Act, was the strong reason that the proceedings,

after the finding of the case to answer, were required to be quashed or expunged and then to order the case to return to the High Court.

iii. That considering the silence of the court's record on whether the postmortem report, which was the exhibit (P1), and the sketch map, which was the exhibit (P2), were shown and/or read to the Applicant in order to know its contents, the trial court and the first appellate court were wrong to convict the Applicant based on those exhibits and that they should have been expunged from the evidence.

iv. That the trial court and the appellate court erred both in law in fact by relying on the visual identification by Veronica John (PW), who was an inconsistent and unreliable witness, to convict the Applicant without considering that Veronica John (PW) framed her evidence in order to implicate the Applicant in this offence, for being evicted from the house of the Applicant's mother.

v. That the trial court and the appellate court did not assign reasons as to why it discarded or disbelieved the defence's evidence.

67. The Court will proceed to examine these five (5) grievances in light of Article 7(1) of the Charter.

i. Allegation relating to the closing of the prosecution's case

68. The Applicant alleges that the trial court and the appellate court erred in law and in fact by proceeding with the defence case while there was no court order to close the prosecution's case.

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69. The Respondent State submits that the Applicant had already raised this issue as his second ground of appeal before the Court of Appeal and that the Court of Appeal had already finalised this contention. The Respondent State references the Court of Appeal's decision where it held that:

> While we appreciate that the trial Court did not indicate that it marked the case close, we hasten to say that actually that is not one of the

> requirements under section 293(1) of the CPA that the trial Court must record that the prosecution case is marked closed, though we think it is good practice to indicate as such. At any rate, the omission did not occasion any injustice to the appellant because the trial was carried to its conclusion and the appellant defended himself. Save for the remark we have made, this ground too is baseless and we dismiss it.

70. The Respondent State also refers to the record of the trial court proceedings, where it was recorded on 15 June 2015 by the trial court:

> I am satisfied that the prosecution case has made out prima facie case which requires the accused to give defence.

71. The Respondent State, therefore, concludes that the Applicant's allegation lacks merit and should be dismissed.

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

73. 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.[25]

74. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the conduct of proceedings as well as the

[25] *Isiaga v. Tanzania* (merits), *supra*, § 65.

assessment of the evidence, was done in consonance with international human rights standards.

75. The record before this Court shows that the Court of Appeal considered the allegation presented in the Applicant's case and found it did not occasion any injustice to the Applicant insofar as the trial was carried to its conclusions and the Applicant defended himself. The Court, therefore, considers that the Applicant failed to demonstrate and prove that the manner in which the trial proceedings were conducted revealed manifest errors requiring this Court's intervention.

76. The Court, therefore, dismisses the Applicant's allegation and finds that the Respondent State has not violated his right to be heard, protected under Article 7(1) of the Charter.

ii. Allegation relating to the Criminal Procedure Act

77. The Applicant faults the Respondent State for its court's failure to comply with Section 293(2) of the Criminal Procedure Act. The Applicant further submits that this failure should have led to the invalidation of the proceedings and to the remission of the case to the High Court.

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78. The Respondent State disputes the Applicant's allegation and asserts that this point had already been finalised by the Court of Appeal in its judgment, as the Applicant raised the same issue as his first ground of appeal before the Court of Appeal.

79. The Respondent State submits that its Court of Appeal duly considered that the provision of Section 293(2) of the Criminal Procedure Act stipulates the rights of the accused person after being found to have a case to answer by the trial court. The Respondent State notes that the Court of Appeal held that the broad purpose of that section is essentially to let the accused know

that he has the right to defend himself, which includes information on how to do so as well as the right to call witnesses, if any.

80. The Respondent State notes that the Court of Appeal referred to page 35 of the Court record where the Applicant's lawyers stated: "My Lord the accused will give sworn evidence and we have one witness. However, I pray for a brief adjournment so that I can communicate with my client."

81. The Respondent State further submits that its Court of Appeal referred to the case of *Bahati Makeja v. Republic* which held that: "It is our decided opinion that where an accused person is represented by an advocate then if a judge overlooks to address him/her in accordance with Section 293 of the CPA the paramount factor is whether or not injustice has been occasioned." The Respondent Stated notes that after such consideration, the Court of Appeal dismissed the ground of appeal for being devoid of merit.

82. The Respondent State also refers to the record of the trial court proceedings, where it was recorded on 15 June 2015 by the trial court:

> I am satisfied that the prosecution case has made out prima facie case which requires the accused to give defence.

83. Respondent State submits that for these reasons the Applicant's allegation lacks merit and should be dismissed.

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84. From the record, the Court notes that the Court of Appeal of the Respondent State considered the same ground the Applicant is raising before this Court.

85. The Court also notes the finding of the Court of Appeal that no injustice was occasioned in the circumstances of the present case, as from the record it

emerges that the Applicant's right to defend himself was communicated to him, a right he duly exercised.

86. The Court, therefore, considers that the Applicant does not provide any proof that the manner in which the proceedings before the domestic courts were conducted led to any serious miscarriage of justice, or led to a violation of the Applicant's right to be heard.

87. In view of this, the Court finds that the Respondent State did not violate the Applicant's right to be heard, protected under Article 7(1) of the Charter.

iii. Allegation relating to inadmissible evidence

88. The Applicant alleges that the trial court and the appellate court were wrong to convict the Applicant based on the postmortem report, that is exhibit (P1), and the sketch map, that is exhibit (P2), as they were not shown to the Applicant and/or read out to him.

89. The Applicant submits that the mere fact that counsel for the accused was given an opportunity to cross-examine those documents does not meet the requirement duly established by the Respondent State's highest court which ruled on several occasions that failure to read out, and explain to the accused the contents of any documents before admission of that document is fatal. He contends that those documents ought to have been expunged from the record.

90. The Applicant refers to *Emmanuel Kondrad Yosipati v. The Republic,* Criminal Appeal No 296 of 2017, where the Court of Appeal stated:

> It is trite principle that where in a trial held with the aid of assessors, a contested statement of an accused person is admitted in evidence, the same must be read over in court so as to enable the accused person and the assessor to understand its contents.

91. The Applicant also cites the case of *Tibashekerwa Gaspar and Another v The Republic*, Criminal Appeal No. 122 of 2012 (Unreported) where the Court of Appeal noted as follows:

> … to have not read those statements in Court deprived the parties and the assessors in particular, the opportunity of appreciating the evidence tendered in Court. Given such a situation, it is obvious that the omission too constituted a serious error amounting to miscarriage of justice and constituted a mis-trial."

92. The Applicant thus submits that the Respondent State's failure to read out the exhibits to the Applicant prejudiced him.

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93. The Respondent State challenges the Applicant's allegation. It submits that the Court of Appeal finalised this matter, which the Applicant had raised as his third ground of appeal, as follows:

> In the circumstance of the instant case however, we rush to agree with Mr. Ngole that since the Republic called PW4 Florence Kayungi, the doctor who conducted deceased's autopsy, and because the evidence of that witness capitalised on exhibit P1 and he explained in detail the deceased's cause of death, also that his advocate was given chance to cross-examine her, it cannot be accepted that the appellant was denied opportunity to know the contents of Exhibit P1. So is also the question of the sketch map because PW3 Insp. Angello was called to testify and clarified/explained the contents of the document … Thus, this ground too lacks merit and is dismissed.

94. The Respondent State submits that the Applicant was made aware of the contents of both Exhibit P1 and P2 which were thoroughly discussed during the trial. The Respondent State further notes that the State provided the Applicant a defence counsel, who duly cross-examined prosecution witnesses on the two exhibits, as proven by the record of the proceedings.

95. The Respondent State, therefore, submits that the allegation lacks merit and should duly be dismissed.

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96. The Court recalls its consideration that domestic courts enjoy a wide margin of appreciation in evaluating the probative value of particular evidence.

97. The Court further notes from the record that the Court of Appeal exhaustively considered the ground presented in the Applicant's case and demonstrated that the Applicant was not denied the opportunity to know the contents of Exhibit 1 and 2, especially considering that the two exhibits and their contents were the subject of detailed engagement during the trial proceedings.

98. The Court, therefore, dismisses the Applicant's allegation and finds that the Respondent State did not violate his right to be heard, protected under Article 7(1) of the Charter.

iv. Allegation relating to the visual identification

99. The Applicant submits that his right to have his cause heard was violated because the court relied on uncorroborated, unreliable and inappropriate evidence based primarily on a testimony of one eyewitness, one Veronica John (PW1), who made the identification in the evening with limited visibility and after being traumatized by the accident.

100. The Applicant also asserts that the Respondent State failed to produce the murder weapon or any evidence of the Applicant's alleged intent to murder, as the proceedings in court reveals that the Applicant did not bear the deceased and the witness any grudge, nor was he party to the land dispute between his own sisters and the deceased.

101. The Applicant further notes that a number of discrepancies rendered the witness untrustworthy, including the words allegedly spoken by the

Applicant. According to the Applicant, the witness, who testified that she had identified the Applicant, asserted that before the Applicant committed the crime, the Applicant uttered words which enabled the identification of the Applicant and which could not be forgotten. However, during the witness statement at the police station, the witness neglected to mention the words which allegedly enabled the identification of the Applicant and which could not be forgotten.

102. The Applicant also argues that the witness framed her evidence in order to implicate the Applicant in this offence for being chased from the house of the Applicant's mother.

103. The Applicant, therefore, submits that the domestic courts had incurably failed to observe some serious misdirection on points of law in the judgment, as the alleged identification by the witness was not watertight.

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104. The Respondent State disputes the allegation and states that the Court of Appeal finalised this matter in its judgment as the Applicant had raised it as his fourth ground of appeal.

105. The Respondent State submits that the Court of Appeal appraised the issue of identification from pages 16-19 of its judgment where it concluded as follows:

> On the basis of the above evidence from PW1 which was corroborated by PW2 and PW7, also when the opinions of the assessors are taken on board, we agree with Mr. Ngole that the condition at the scene of the crime was conducive for positive identification.

106. With regard to the allegation that PW1 was not a reliable or credible witness, the Respondent State notes that the Court of Appeal considered this at pages 21-23 of its judgment and concluded as follows:

> After all these are trivial matters to say the least. Thus, we are convinced that PW1 was truthful, believable and reliable witness. This complaint too is baseless.

107. The Court of Appeal also held that:

> Overall, we find and hold that we have no reasons to fault the finding of the trial court regarding the credibility of Veronica John. In the circumstances the fourth ground too lack merit and we dismiss it.

108. The Respondent State contends that for these reasons, the Applicant's allegation lacks merits and should be dismissed.

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109. The record before this Court shows that the Court of Appeal exhaustively considered the evidence presented in the Applicant's case, in particular as it concerned the credibility of the witness[26] and the conditions allowing for identification.[27] The Court, therefore, considers that the Applicant fails to demonstrate and prove that the manner in which the domestic courts evaluated evidence revealed manifest errors requiring this Court's intervention.

110. The Court, therefore, dismisses the Applicant's allegation and finds that the Respondent State did not violate his right to be heard, protected under Article 7(1) of the Charter.

v. Allegation relating to the defence's evidence

111. The Applicant contends that the trial court failed to accord the deserving weigh to the defence's case advanced by the Applicant.

[26] See pages 19-23 of the judgment of the Court of Appeal (Criminal Appeal No. 313/2015).
[27] See pages 16-19 of the judgment of the Court of Appeal (Criminal Appeal No. 313/2015).

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112. The Respondent State disputes this allegation and states that the allegation that the defence evidence was discarded or disbelieved was considered by the Court of Appeal as the Applicant had raised the allegation as his fifth ground of appeal. The Respondent State further submits that the Court of Appeal considered the matter from pages 24-25 of its judgment and held that:

> In short, the trial court said it did not believe his defence of alibi because it did not cast any doubt on the prosecution case. We are entirely in agreement with that court.

113. The Court of Appeal further stated:

> Even, while we appreciate that the appellant had no duty of proving his defence of alibi, we are however, of the settled mind that since he named his friend one James Washangira to have accompanied him to the Islands, he ought to have called him to testify on his side in order to boost up his defence.

114. For these reasons, the Respondent State argues that the Applicant's allegation lacks merit and should be dismissed.

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115. The Court notes from the record that the domestic courts did consider the Applicant's defence but rejected it as it did not cast any doubt on the prosecution's case.[28] The Court, therefore, considers that the Applicant fails to demonstrate and prove that the manner in which the domestic courts evaluated evidence revealed manifest errors requiring this Court's intervention.

[28] See pages 24-27 of the judgment of the Court of Appeal (Criminal Appeal No. 313/2015).

116. The Court, therefore, dismisses the Applicant's allegation and finds that the Respondent State did not violate his right to be heard, protected under Article 7(1) of the Charter.

B. Alleged violation of the right to life

117. The Applicant alleges that the Respondent State violated his right to life by convicting and sentencing him to death by hanging. The Applicant claims that this is due to the fact that the Respondent State applies the mandatory death sentence without considering the mitigating factors or the circumstances of his case, thereby depriving the Applicant of his right to individualised sentencing as enshrined in, and required by, international law.

118. The Applicant contends that under Article 4 of the Charter, the Respondent State committed itself to respecting and protecting the right to life and that no one may be arbitrarily deprived of it.

119. It is, therefore, the Applicant's submission that the mandatory nature of the imposition of the death penalty as provided for in Section 197 of the Penal Code of the Respondent State constitutes an arbitrary deprivation of the right to life as it does not uphold fairness and due process, in addition to not permitting a convicted person to present any kind of mitigating evidence.

120. According to the Applicant, the said Section of the Penal Code does not give the trial court any discretion to take into account specific and crucial circumstances such as the participation of each individual offender in the crime but to impose the death sentence contrary to the letter and spirit of Article 7(1) of the Charter.

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121. The Respondent State asserts that its Court of Appeal had discussed and decided in the case of *Mbushuu alias Dominic Mnyaroje and Another v. The Republic [1995] TLR 97* that the imposition of the death penalty is not

arbitrary, it is reasonably necessary and is imposed after due process of the law, and, therefore, it is not unconstitutional.

122. The Respondent State further avers that its Court of Appeal has commented on the limitation of individual rights. In the case *DPP v. Daudi Pete [1993] TLR 22,* the Court of Appeal held that because of the co-existence between "the basic rights of the individual and the collective rights of society" it is not abnormal to find limitations on the rights of the individual in every society.

123. The Respondent State further submits that over the past twenty years, it has exercised a *de facto* moratorium on the death penalty.

124. The Respondent State further argues that the contention over the death sentence has formally been decided by its Court of Appeal and that its position is clear that, it is lawful, procedural, constitutional and necessary. The Respondent State maintains, therefore, that this Court would be devoid of jurisdiction to entertain the complaint.

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125. Article 4 of the Charter provides that: "[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

126. The Court considers that the only issue for it to determine in the present matter is whether the mandatory imposition of the death penalty constitutes an arbitrary deprivation of the right to life.

127. The Court recalls its well-established jurisprudence that the mandatory imposition of the death penalty as provided for in Section 197 of the

Respondent State's Penal Code constitutes an arbitrary deprivation of the right to life and, therefore, violates Article 4 of the Charter.[29]

128. In the present matter, the Court does not find any cogent reason to distinguish this matter from its previous decisions and come to a different conclusion.

129. The Court, therefore, holds that the Respondent State violated Article 4 of the Charter due to the mandatory nature of the death penalty on the Applicant, as provided for in Section 197 of its Penal Code, which constitutes an arbitrary deprivation of the right to life.[30]

C. Alleged violation of the right to dignity

130. The Applicant submits that the execution of the death sentence by hanging is inherently degrading. The Applicant claims that hanging is one of the acts that amount to torture and therefore hanging, in whatever manner it is carried out, infringes the dignity of a person only to constitute the violation of the right to freedom from torture and cruel, inhuman and degrading treatment guaranteed under Article 5 of the Charter.

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131. The Respondent State did not submit on this point.

[29] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 114; *Amini Juma v. United Republic of Tanzania,* ACtHPR, Application no. 024/2016, Judgment of 30 September 2021 (merits and reparations), § 130; *Gozbert Henerico v. United Republic of Tanzania,* ACtHPR, Application no. 056/2016, Judgment of 10 January 2022 (merits and reparations) § 150; *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application no. 012/2019, Judgment of 1 December 2022 (merits and reparations), § 80.

[30] The UN Human Rights Committee has declared that "mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1 of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offence". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the death penalty should under no circumstances be mandatory by law, regardless of the charges involved" and that "The mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment". In its resolution 2005/59, adopted on April 20 2005, the United Nations Human Rights Committee called upon all States that still maintain the death penalty "To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions".

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132. Article 5 of the Charter provides that:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

133. The Court recalls that it has previously held that the implementation of the death penalty by hanging, where such a penalty is permitted, is "inherently degrading" and "encroaches upon dignity in respect of the prohibition of … cruel, inhuman and degrading treatment".[31] The Court, therefore, found that, this constitutes a violation of the right to dignity under Article 5 of the Charter. The Applicant in the instant case faces the same penalty.

134. The Court, therefore, finds that the Respondent State violated Article 5 of the Charter.

D. Alleged violation of other human rights

135. The Applicant also alleges that the Respondent State's violated his rights as guaranteed in Articles 3(1) and (2), 7(1)(d) and 7(2) of the Charter.

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136. The Respondent State contends that the Applicant fails to show how the Respondent State violated his rights under Articles 3(1) and (2), 7(1)(d) and 7(2) of the Charter. It, therefore, submits that the allegations should be dismissed for being unsubstantiated and for lack of merit.

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[31] *Rajabu and Others v. Tanzania*, *supra*, §§ 119-120; *Henerico v. Tanzania, supra*, §§ 169-170; *Juma v. Tanzania, supra*, §§ 135-136.

137. The Court notes that the Applicant does not make specific submissions nor provide evidence that he was not treated equally before the law or did not enjoy equal protection of the law (Article 3(1) and (2) of the Charter), that he was not tried within a reasonable time by an impartial court or tribunal (Article 7(1)(d) of the Charter) or that he was condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed (Article 7(2) of the Charter).[32]

138. In these circumstances, the Court finds that there is no basis to find a violation and therefore holds that the Respondent State did not violate Articles 3(1) and (2), 7(1)(d) and 7(2) of the Charter.

VIII. REPARATIONS

139. 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."

140. As per the Court's jurisprudence, for reparations to be granted, the Respondent State should first be responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, where granted, reparations should cover the full damage suffered.

141. The Court reiterates that the onus is on the Applicant to provide evidence in support of his/her allegation.[33] With regard to moral damages, the Court has

[32] *Sijaona Chacha Machera v. United Republic of Tanzania,* ACtHPR, Application No. 035/2017 Judgment of 22 September 2022 (merits), § 82.
[33] *Kennedy Gihana and Others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d); and *Elisamehe v. Tanzania* (judgment), *supra*, § 97.

consistently held that it is presumed and that the requirement of proof is not strict.[34]

142. The Court also restates that the measures that a state can take to remedy a violation of human rights includes restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, considering the circumstances of each case.[35]

143. As this Court has earlier found, the Respondent State violated the Applicant's right to life and to dignity, guaranteed under Articles 4 and 5 of the Charter. The Court, therefore, finds that the Respondent State's responsibility has been established. The prayers for reparations will, therefore, be examined against these findings.

A. Non-pecuniary reparations

i. Restoration of liberty

144. The Applicant prays the Court to order the Respondent State to restore the Applicant's liberty by releasing him from prison.

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145. The Respondent State opposes the Applicant's prayer to be released from prison. It submits that this Cour is not an appellate court as it does not have criminal appellate jurisdiction whatsoever to quash the decision of the Respondent State's national courts and release prisoners from prison.

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[34] *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 136; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55.
[35] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also, *Elisamehe v. Tanzania* (judgment), *supra*, § 96.

146. Regarding the request to be set free, the Court recalls that it has established that it would make such an order, "if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice".[36]

147. In the instant case, the Court finds that the circumstances to order the release of the Applicant are not fulfilled and thus dismisses the Applicant's prayer.

ii. Resentencing

148. The Applicant prays that the Court for an order for the Respondent State to set aside the death sentence imposed on him and to remove him from death row.

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149. The Respondent State did not submit on this point.

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150. Having found that the mandatory imposition of the death sentence on the Applicant violates Article 4 of the Charter, the Court orders the Respondent State to take all necessary measures, through its internal processes and within one (1) year of the notification of this Judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer.[37]

[36] *Juma v. Tanzania, supra*, § 165.
[37] *Rajabu and Others v. Tanzania*, *supra*, § 171 (xvi); *Juma v. Tanzania, ibid*, § 174 (xvii); *Henerico v. Tanzania, supra,* § 217 (xvi); *Mwita v. Tanzania*, *supra*, § 184 (xviii).

iii. Guarantees of non-repetition

151. The Applicant prays the Court to order the Respondent State to amend its laws to ensure respect for the right to life under Article 4 of the African Charter by removing the mandatory death sentence for the offence of murder.

152. The Applicant further prays the Court to grant other such orders and reliefs that it may deem fit and just in the circumstances of the Applicant

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153. The Respondent State did not submit on this point.

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154. The Court has previously dealt with matters similar to this and ordered the Respondent State to undertake all necessary measures to remove from its Penal Code the provision for the mandatory imposition of the death sentence.[38] The Court therefore reiterates this order in the instant case.

155. Regarding the Court's finding that the method of execution of the death penalty by hanging is inherently degrading and, in line with the very rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should therefore be that, in cases where the death penalty is not abolished, methods of execution must exclude suffering or involve the least suffering possible.[39] Accordingly, the Court orders the Respondent State to undertake all necessary measures to remove "hanging" from its laws as the method of imposition of the death sentence.

[38] *Rajabu and Others v. Tanzania*, *supra*, § 163; *Juma v. Tanzania, supra*, § 170; *Henerico v. Tanzania, supra*, § 207; *Mwita v. Tanzania*, *supra*, § 166.
[39] *Rajabu and Others v. Tanzania*, *supra*, § 118.

B. Pecuniary reparations

156. The Applicant claims pecuniary reparations for both the material and moral prejudice, which he alleges is a result of the violations suffered due to the Respondent State's conduct.

i. Material prejudice

157. With respect to material prejudice, the Applicant prays the Court to order the Respondent State to pay Thirty Million Tanzanian Shilling (TZS 30,000,000) for loss of income.

158. The Applicant claims that he had business and sources of income that were affected by the lengthy trial and his imprisonment. He avers that he undertook fishing and farming activities and that his family had to sell all his plantations so as to assist him during the course of his trial and his imprisonment, as they did not have any other source of income. The Applicant further submits that at the moment all his properties have been sold leaving his family struggling with no money.

159. The Applicants avers that he earned at least Two Hundred Thousand Tanzanian Shillings per week from fishing activities and selling lumber, an amount that he used for his family's livelihood. However, due to the conviction, the Applicant contends that his businesses have since collapsed as there is no one capable of running those businesses.

160. The Applicant further prays the Court to grant reparations for transport and stationary costs: postage, printing and photocopying to the tune of One Hundred Thousand Tanzanian Shilling (TZS 100,000).

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161. The Respondent State submits that this claim for monetary compensation has no basis, as the Applicant has not established the nexus between the alleged violations and the harm suffered by the Applicant.

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162. The Court notes that for reparations for material prejudice to be granted, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of the prejudice and proof thereof.[40]

163. The Court notes that the Applicant does not establish the link between the violation established of his rights and his alleged loss of income and the material and transport costs that were incurred during his judicial proceedings. Rather, the Applicant's claims are directly linked to his conviction and incarceration, which this Court did not find unlawful.

164. The Court, consequently, dismisses the Applicant's claims for reparations for material prejudice.

ii. Moral prejudice

165. With respect to moral prejudice, the Applicant prays the Court to order the Respondent State to Pay reparations in the amount of Twenty Million Tanzanian Shilling (TZS 20,000,000) to the Applicant on account of moral damage suffered.

166. The Applicant submits that he has suffered the traumatic effects of more than six (6) years' imprisonment as well as complete disruption of his life due to incarceration. The Applicant alleges that he suffered tremendous emotional distress due to the manner in which the whole trial and sentence process was conducted, contrary to the Charter.

[40] *Kijiji Isiaga v. United Republic of Tanzania*, ACtHPR, Application No. 032/2015, Judgment of 25 June 2021 (reparations), § 20.

167. The Applicant further claims that the many adjournments that he endured broke him mentally and emotionally. His association with a crime so serious has not only lowered the Applicant's social status but that of his family as well. The Applicant asserts that he suffered terrible embarrassment knowing that everyone he knew now associated him with such a serious crime. He alleges that his relatives were also being associated with such a terrible crime. The stigma and victimisation directed at the families continues to affect them.

168. The Applicant further contends that he has spent approximately six years on death row since the sentencing. He submits that being held on death row is a uniquely traumatic experience known to cause anxiety, fear and psychological anguish. He further claims that due to hard living conditions in prison, the Applicant's health has deteriorated over the years. He also submits that his private life has been irreparably disrupted due to long-term imprisonment. As a direct result of the imprisonment, he claims, he has not been able to establish any contact with his wives, children and colleagues.

169. The Applicant further claims that there are several indirect victims of the violations of the Applicant's rights, namely the Applicant's seven (7) children, three (3) wives, mother and stepmother, and he requests the Court to consider that they have also suffered emotional harm and that they are also entitled to moral damages.

170. The Applicant submits that the indirect victims were heavily affected emotionally following the imprisonment of their beloved ones. The Applicant avers that the never-ending trials were emotionally draining and that the stigma that followed having one's relative sentenced of such a crime is unimaginable. He claims that his children were heavily affected by the absence of their father. Furthermore, the frequent travels to visit their loved one in prison was not just financially draining but also emotionally draining. For this reason, the Applicant prays the Court to order the Respondent State to pay each indirect victims Ten Million Tanzanian Shilling (TZS 10,000,000) for moral damages suffered.

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171. The Respondent State submits that this claim for monetary compensation has no basis, as the Applicant does not establish the nexus between the alleged violations and the harm suffered by the Applicant.

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172. The Court notes that most of the Applicant's claims for moral damages for himself and his family are directly linked to his conviction and incarceration, which this Court did not find unlawful. The Court, therefore, dismisses the prayer for moral damages for the Applicant's family due to the alleged prejudice to the Applicants' family members resulting from his incarceration, which this Court did not find unlawful.

173. With regard to the moral damages claimed by the Applicant for himself in relation to the established human rights violations, the Court takes into consideration that it has already decided in favour of the restitution measure requested by the Applicant to set aside the death sentence and remove him from death row, as well as the requested guarantee of non-repetition to order the Respondent State to amend its laws to ensure respect for the right to life under Article 4 of the Charter, by removing the mandatory death sentence for the offence of murder, together with the satisfaction resulting from having established the human rights violations of Article 4 and 5 of the Charter. In these circumstances, the Court decides to grant the Applicant moral damages in the sum of Five Hundred Thousand Tanzanian Shillings (TZS 500,000) for the psychological suffering he endured.

IX. COSTS

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

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

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176. The Court notes that Rule 32(2)[41] of the Rules of Court provides that: "unless otherwise decided by the Court, each party shall bear its own costs, if any".

177. The Court notes that in the instant case, there is no reason to depart from this principle. Accordingly, the Court decides that each party shall bear its own costs.

X. OPERATIVE PART

178. For these reasons:

THE COURT,

Unanimously,

On jurisdiction

i. *Dismisses* the objections 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.

[41] Rule 30(2) of the Rules of Court, 2 June 2010.

On merits

v. *Finds* that the Respondent State did not violate the Applicant's right to be heard under Article 7(1) of the Charter;
vi. *Finds* that the Respondent State did not violate the Applicant's right to equality before the law and to equal protection of the law, under Article 3(1) and (2) of the Charter;
vii. *Finds* that the Respondent State did not violate the Applicant's right to be tried within a reasonable time by an impartial court or tribunal, under Article 7(1)(d) of the Charter;
viii. *Finds* that the Respondent State did not violate the Applicant's right not to be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed, under Article 7(2) of the Charter.

By a majority of Eight (8) for, and Two (2) against, Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA Dissenting with regard to the death penalty

ix. *Finds* that the Respondent State violated the Applicant's right to life under Article 4 of the Charter, in relation to the mandatory imposition of the death penalty;
x. *Finds* that the Respondent State violated the Applicant's right to dignity under Article 5 of the Charter, in relation to the method of execution of the death penalty, that is, by hanging.

On reparations

Non-pecuniary reparations

xi. *Dismisses* the Applicant's prayer for his release from prison;
xii. *Orders* the Respondent State to take all necessary measures, through its internal processes and within one (1) year of the notification of this Judgment, for the rehearing of the case on the

sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer;

xiii. *Orders* the Respondent State to take all necessary measures upon notification of this Judgment, within six (6) months, to remove the mandatory death penalty from its laws;

xiv. *Orders* the Respondent State to take all necessary measures upon notification of this Judgment, within six (6) months, to remove "hanging" from its laws as the method of imposition of the death sentence.

Pecuniary reparations

xv. *Dismisses* the Applicant's prayer for damages for material prejudice;

xvi. *Dismisses* the prayer for reparations for moral prejudice suffered by the indirect victims;

xvii. *Grants* Five Hundred Thousand Tanzanian Shillings (TZS 500,000) for moral prejudice suffered;

xviii. *Orders* the Respondent State to pay the amount indicated under sub-paragraph (xvii) free from taxes within six (6) months, effective from the notification of this Judgment, failing which it will pay interest on arrears calculated on the basis of the applicable rate of the Bank of Tanzania throughout the period of delayed payment and until the accrued amount is fully paid.

On implementation and reporting

xix. *Orders* the Respondent state to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

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

Signed:

Modibo SACKO, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) and (3) of the Rules, the Dissenting Opinion of Judge Blaise TCHIKAYA and the Declaration of Judge Dumisa B. NTSEBEZA are appended to this Judgment.

Done at Algiers, this Seventh Day of November, in the Year Two Thousand and Twenty-Three in English and French, the English text being authoritative.