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

THE MATTER OF

TEMBO HUSSEIN

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 001/2018

JUDGMENT

26 JUNE 2025

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court[1] (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Tembo HUSSEIN

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

Dr. Ally POSSI, Solicitor General, Office of the Solicitor General

After deliberation,

Renders this Judgment:

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

I. THE PARTIES

1. Tembo Hussein (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania. At the time of filing the Application he was on death-row at Uyui Central Prison, Tabora, having been tried, convicted and sentenced to death by hanging for the offence of murder. He alleges the violation of his rights during the proceedings before the national courts.

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

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant was arrested on 27 September 2006 at Masumbwe village within Kahama District in Shinyanga region and charged with the murder of one Angelina Hungwi by inflicting on her multiple

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

cuts with a *machete*. He was convicted of murder and sentenced to death by hanging by the High Court sitting at Tabora on 11 October 2013.

4. The Applicant filed an appeal before the Court of Appeal sitting at Tabora which was dismissed on 15 March 2014.

5. An application for review of the Court of Appeal's decision filed by the Applicant, before the Court of Appeal, was dismissed on 7 August 2017.

B. Alleged violations

6. The Applicant alleges that the Respondent State violated his rights, as follows:

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

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 19 February 2018 and it was served on the Respondent State on 23 July 2018.

8. On 2 March 2018 and on 18 July 2018, the Court requested the Applicant to file more detailed submissions on reparations. The Applicant, however, failed to do so.

9. On 21 January 2019, the Respondent State requested the Court for a six months' extension of time to file its Response. On 20 March 2019, the Court granted an extension of time of four months within which the Respondent State was to file its Response to the Application. The Respondent State was

also reminded of the provisions of Rule 63 of the Rules of Court on decisions of the Court by default.[3]

10. On 11 February 2019, the Court issued an Order for provisional measures *proprio motu* directing the Respondent State to stay the execution of the death sentence against the Applicant, subject to the decision on the main Application.

11. On 24 June 2019, the Application was transmitted to all State Parties to the Protocol and to all other entities listed in Rule 42(4) of the Rules.[4]

12. On 28 August 2019, the Court granted a final extension of time of 45 days to the Respondent State to file its Response to the Application. However, the Respondent State did not file any Response.

13. Pleadings were closed on 29 April 2024 and the Parties were duly notified.

14. On 26 August 2024, the Respondent State filed its Response together with a request to re-open pleadings in this Application, so as to allow it to file its Response. The request to re-open pleadings was notified to the Applicant for its observations within 15 days. The Applicant did not file any observations.

15. On 28 October 2024, the Court issued an Order to re-open pleadings and transmitted the Respondent State's Response to the Applicant for him to submit its Reply thereto, if any, within 30 days. The Applicant did not file a Reply.

16. On 3 February 2025, pleadings were closed and the Parties were duly notified.

[3] Rule 55, Rules of Court, 2 June 2010.
[4] Rule 35(3), Rules of Court, 2 June 2010.

IV. PRAYERS OF THE PARTIES

17. The Applicant prays the Court to:

    i. Restore justice where it was overlooked and quash both the conviction and the sentence imposed on him and set him at liberty;
    ii. Grant any other order that it may deem fit and just to grant in the circumstances of the complainant.

18. The Respondent State prays the Court for the orders that:

    i. The Hon. Court is not vested with jurisdiction (criminal) jurisdiction to adjudicate the Application;
    ii. The Application has not met the admissibility requirements provided in Article 56(6) of the Charter read together with Rule 50(2)(e) of the Rules of the Court, 2020;
    iii. The Application be declared inadmissible.
    iv. The Respondent State has not violated the Applicant's rights provided for in Article 3(1) and (2) of the Charter;
    v. The Application be dismissed in its entirety with costs.

V. JURISDICTION

19. 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.

20. 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."

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

22. In the present Application, the Court notes that the Respondent State raises an objection to its material jurisdiction. The Court will first examine this objection before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

23. The Respondent State contends that this Court is "not a criminal appeal court capable of quashing conviction and sentence imposed on the applicant and set him free from prison". According to the Respondent State, this Court does not have jurisdiction to quash the decision of its High Court.

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24. The Applicant did not reply to the Respondent State's claims.

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25. 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.[5]

26. The Court emphasises that its material jurisdiction is thus predicated on the Applicant's allegation of violations of human rights protected by the Charter

[5] *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.

or any other human rights instrument ratified by the Respondent State.[6] In the instant matter the Applicant alleges violations of Articles 3 and 7 of the Charter which is an instrument that the Respondent State has ratified and which the Court has the power to interpret and apply in accordance with Article 3(1) of the Protocol.

27. Specifically with regard to the objection about the Court exercising criminal appellate jurisdiction, the Court recalls its established jurisprudence that it is not an appellate body with respect to decisions of national courts.[7] 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".[8] The Court would, therefore, not be sitting as an appellate court if it were to consider the Applicant's allegations in the present Application.

28. The Court further notes that the Respondent State's objection concerns the claim that the Court lacks jurisdiction to quash the conviction and sentence imposed on the Applicant and to order his release from prison. In this regard, the Court recalls Article 27(1) of the Protocol which provides that "[if 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 an order to annul a conviction and sentence and, to order the release of an Applicant from prison, provided that the alleged violation has been established.[9]

[6] *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.
[7] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[8] *Kenedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania, supra,* § 33.
[9] *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017, Ruling of 24 March 2022, § 27.

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

B. Other aspects of jurisdiction

30. 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.

31. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that the Respondent State became a party to the Charter on 21 October 1986, the Protocol on 10 February 2006, and on 29 March 2010, deposited the Declaration. However, 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.[10] Since any such withdrawal of the Declaration takes effect 12 months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.[11] 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.

32. 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 Protocol. Furthermore, the Court observes that the Applicant remains convicted based on what he considers an unfair process. Therefore, it holds

[10] *Cheusi v. Tanzania*, *supra*, §§ 35-39.
[11] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

that the alleged violations can be considered to be continuing in nature.[12] For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.

33. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State, which is a party to the Charter and Protocol. In these circumstances, the Court holds that it has territorial jurisdiction.

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

VI. ADMISSIBILITY

35. 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".

36. In line with Rule 50(1) of the Rules, "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."

37. 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;

[12] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

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 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.

38. The Respondent State raises an objection to the admissibility of the Application based on the non-exhaustion of local remedies. The Court will consider this objection before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

39. The Respondent State argues that the Applicant has not exhausted the remedies available within its legal system. It claims that if the Applicant was aggrieved with the conduct of the assessors on how they put questions to him and in relation to the allegations of cross-examination, he ought to have raised it in his appeal before the Court of Appeal. The Respondent State submits that when the Applicant filed his criminal appeal, he did not include that allegation among the grounds for appeal. The Respondent State contends, therefore, that the Applicant cannot raise this ground for determination by this Court as it is not an Appellate Court. The Respondent State submits that the Applicant cannot blame the Court of Appeal for pronouncing judgment on the defective proceedings of the High Court while he himself did not ask the Court of Appeal to consider such an allegation.

40. For this reason, the Respondent State submits that this Application should be declared inadmissible, for failure to meet the admissibility condition in relation to exhaustion of available local remedies.

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41. The Applicant did not respond to this objection.

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42. The Court observes that pursuant to Article 56(5) of the Charter, whose requirements are mirrored 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 with 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.[13]

43. With regard to the exhaustion of local remedies, the Court notes that the Applicant's case had been decided before the High Court of Tanzania, sitting at Tabora on 11 October 2013, and before the Court of Appeal of Tanzania, both on the substantive appeal and on review on 15 March 2014 and 7 August 2017 respectively; the Court of Appeal being the highest judicial authority in the Respondent State.

44. In light of this, the Court considers that the Respondent State had an opportunity to address procedural issues, if any, arising from the Applicant's trial that could result in a violation of the right to a fair trial.[14] The Court notes that, in the instant case, the Court of Appeal was put in a position to examine the manner in which the High Court conducted the proceedings and assess

[13] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[14] *Hussein Ally v. United Republic of Tanzania*, ACtHPR, Application No. 016/2018, Ruling of 22 September 2022 (Jurisdiction and Admissibility), § 48.

whether the right to a fair trial, including the right to be tried by an impartial court or tribunal, was upheld by the lower court.[15]

45. The Court, therefore, finds that local remedies have been exhausted and dismisses the Respondent State's objection in relation to non-exhaustion of local remedies.

B. Other conditions of admissibility

46. 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.

47. 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.

48. The Court also notes that the claims made by the Applicant seek to protect his rights guaranteed by the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stipulated under Article 3(h), is to promote and protect human and peoples' rights. The Application also does not contain any claim or prayer that is incompatible with a provision of the Act. The Court, therefore, holds that the Application is compatible with the Constitutive Act of the African Union and the Charter and thus meets the requirements of Rule 50(2)(b) of the Rules.

49. The Court finds that 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.

50. The Court further finds that the Application is not based exclusively on news disseminated through mass media as it is founded on court documents from

[15] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 42.

the domestic courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.

51. In relation to the requirement for filing applications within a reasonable time, under Rule 50(2)(f) of the Rules, the Court recalls that neither the Charter nor the Rules specify the time frame within which Applications must be filed, after exhaustion of local remedies. The Court underscores, in this regard, that in accordance with its jurisprudence "… the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[16]

52. In the present case, the Court notes that the decision of the Court of Appeal, dismissing the Applicant's appeal, was rendered on 15 March 2014 while this Application was filed on 19 February 2018 – a period of three years, 11 months and four days thus lapsed. However, the Court also notes that the Applicant filed an application for review of the Court of Appeal's decision which was dismissed on 7 August 2017. The period between the dismissal of the Applicant's application for review and filing before this Court, therefore, is six months and 12 days.

53. In its jurisprudence, the Court has consistently held that applicants who file review proceedings against apex court decisions must do so within the applicable statutory frameworks and should not be penalised for utilising an avenue available within the legal system.[17] In the present case, the Court notes, from the record, that the Applicant's application for review bears a serial number from 2014 which indicates that it was filed within the same year after the Court of Appeal had dismissed his appeal.

54. The Court has also taken notice of the fact that the Applicant represented himself before this Court and that he has been incarcerated since 27

[16] *Zongo and Others v. Burkina Faso* (merits), *supra*, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.
[17] *Leonard Moses v. United Republic of Tanzania,* ACtHPR, Application No. 033/2017, Ruling of 5 September 2023, § 55.

September 2006. The Court finds, therefore, that the reasonableness of time for filing, in this case, must be computed from the date on which the Court of Appeal dismissed the Applicant's application for review, that is 7 August 2017. It thus holds that the period of six months and 12 days that it took the Applicant to file this Application is reasonable within the meaning of Rule 50(2)(f).[18]

55. The Court further notes that, in compliance with Rule 50(2)(g) of the Rules, the Application does not concern a case which has already been settled by the Parties in accordance with the principle of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter.

56. In view of the foregoing, the Court finds that the Application meets all the admissibility requirements under Article 56 of the Charter as restated under Rule 50(2) of the Rules and, therefore, holds that the Application is admissible.

VII. MERITS

57. The Court considers that this Application essentially raises the allegation of violation of the Applicant's right to have his cause heard by an impartial court or tribunal. This allegation is twofold, namely, (A) the right to have his cause heard by an impartial court or tribunal, protected by Article 7(1)(d) of the Charter, and (B) the alleged violation of the right to equality before the law and to equal protection of the law, guaranteed under Article 3 of the Charter.

58. Furthermore, the Court notes from the record that the Applicant was mandatorily sentenced to death by hanging under a law that does not allow the judicial officer any discretion, which is an issue that had been previously

[18] Cf. *Sébastien Germain Ajavon v. Republic of Benin*, ACtHPR, Application No. 065/2019, Judgment of 29 March 2021, §§ 86-87.

adjudicated by this Court.[19] While the Applicant did not make any submissions directly on this issue in relation to the right to life and dignity, the Court finds it necessary to examine whether in the instant case the circumstances warrant a finding in respect of the issue of the mandatory imposition of the death penalty by hanging, in relation to (C) the violation of the right to life, protected under Article 4 of the Charter; and, finally, (D) the violation of the right to dignity, guaranteed in Article 5 of the Charter.

A. Alleged violation of the right to be tried by an impartial court or tribunal

59. The Applicant alleges that the Respondent State violated his right to a fair trial as he considers that the trial against him breached one of the principles of natural justice, namely the rule against bias. Specifically, his grievance is that his trial was marred with an uncurable irregularity, in that the assessors who sat with the High Court judge did not properly exercise the right conferred to them by section 177 of the Tanzanian Evidence Act [2002] when putting questions to the witnesses.

60. The Applicant avers that during the trial, the assessors were allowed to cross-examine witnesses instead of asking questions that seek clarification. According to the Applicant, the assessors' role is to aid the judge to arrive at a fair and just decision by asking questions which will help the court to know the truth, but they are not allowed at any time to take sides.

61. The Applicant, therefore, asserts that he was not accorded a fair trial because the assessors were allegedly biased as they cross-examined the witnesses instead of asking questions that sought clarification.

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62. The Respondent State submits that the assessors who sat in the trial court properly exercised their powers conferred to them under Section 177 of the

[19] See *Deogratius Nicolaus Jeshi v. United Republic of Tanzania*, ACtHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations), §§ 109-112.

Evidence Act. According to the Respondent State, the assessors did not cross-examine the Applicant, rather, the questions put to the Applicant by the assessors was for the purpose of seeking clarification from him and help the trial court reach a fair decision.

63. The Respondent State further states that the assessors who sat in the High Court at the Applicant's trial were impartial. Furthermore, the Respondent State maintains that the procedures in the conduct of the Applicant's case in the trial court did not violate article 16(6)(a) of the Constitution of the Respondent State.

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64. The Court notes that pursuant to Article 7(1)(d) of the Charter, every accused individual has the right to be tried by an impartial court or tribunal. The Court observes that the concept of impartiality is an important component of the right to a fair trial. It signifies the absence of actual or perceived bias, or prejudice and requires that judicial officers "must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties".[20]

65. The Court recalls its position in *Makungu Misalaba v. United Republic of Tanzania* that the obligation of impartiality owed by judges extends to assessor bias, or the appearance thereof, which has the potential to cast doubt on the accuracy of the judges' factual findings and the overall credibility of the courts.[21]

66. The Court further notes that section 177 of the Respondent State's Evidence Act provides that:

> In cases tried with assessors, the assessors may put any questions to the witness, through or by leave of the court, which the court itself might put and which it considers proper.

[20] *XYZ v. Republic of Benin* (judgment) (2020) 4 AfCLR 83, §§ 81-82.
[21] *Makungu Misalaba v. United Republic of Tanzania,* ACtHPR, Application No. 033/2016 Judgment of 7 November 2023 (merits and reparations), § 95.

67. The Court further recalls its earlier decisions, where it noted that in the Respondent State's legal system, the role of assessors is limited to asking questions to obtain some clarifications and they "are not statutorily mandated to cross-examine witnesses".[22]

68. The Court notes that nothing in the record placed before it shows that the assessors cross-examined the witnesses.

69. The Court also notes that the Applicant has not provided any proof that the manner in which the proceedings before the trial court were conducted resulted in any manifest error or serious miscarriage of justice to the detriment of the Applicant.

70. In view of this, the Court, therefore, dismisses this allegation and finds that the Respondent State has not violated the Applicant's right to be tried by an impartial court or tribunal protected under Article 7(1)(d) of the Charter with regard to the allegation of bias of the assessors and the allegation that they cross-examined the witnesses.

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

71. The Applicant alleges that the conduct of the courts in the Respondent State violated his rights guaranteed by Article 3 of the Charter which provides for the right to equality before the law and the right to equal protection of the law.

72. The Respondent State contends that the Applicant was treated fairly and was not subjected to any discriminatory treatment in the course of the domestic proceedings. Therefore, it did not violate any provision of the Charter.

[22] *Makungu Misalaba v. United Republic of Tanzania, supra*, § 96; *Dominick Damian v. United Republic of Tanzania* ACtHPR, Application No. 048/2016, Judgment of 4 June 2024 (merits and reparations), § 111.

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73. The Court notes that the burden of proof for a human rights violation lies with the applicant, unless the Court decides otherwise.[23] In the instant Application, the Applicant alleges that the Respondent State violated his rights to equality before the law and equal protection of the law protected under Article 3(1) and (2) of the Charter, without expounding the basis thereof. The Court further notes that the Applicant was able to make use of all the legal remedies available to him and that he was able to defend himself in accordance with the protections provided by law.

74. In these circumstances, the Court finds that the Applicant has failed to prove the alleged violation and holds that the Respondent State did not violate his rights to equality before the law and equal protection of the law protected under Article 3 of the Charter.

C. Violation of the right to life

75. While the Applicant did not make any submissions on the right to life, the Court notes, however, from the record that the Applicant was mandatorily sentenced to death as a result of a law that does not allow any discretion to the judicial officer. The Court, in these circumstances, reiterates its established jurisprudence that the mandatory imposition of the death penalty does not meet the requirement of fairness set out in Article 4 of the Charter owing to its arbitrary imposition, as the judicial officer lacks discretion to take into account the nature of the offence and the circumstances of the offender.[24]

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[23] *Sijaona Chacha Machera v. United Republic of Tanzania,* ACtHPR, Application No. 035/2017, Judgment of 22 September 2022 (merits), § 82; *Yassin Rashid Maige v. United Republic of Tanzania, ACtHPR,* Application No. 018/2017, Judgment of 5 September 2023 (merits and reparations) § 124; *Edison Simon Mwombeki v. United Republic of Tanzania,* ACtHPR, Application No. 030/2018 Judgment of 13 November 2024 (merits), § 68.

[24] *Rajabu and Others v. Tanzania, supra*, §§ 104-114; *Amini Juma v. United Republic of Tanzania,* (judgment) (30 September 2021) 5 AfCLR 431, §§ 120-131; *Gozbert Henerico v. United Republic of Tanzania,* ACtHPR, Application no. 056/2016, Judgment of 10 January 2022 (merits and reparations), § 160; *Dominick Damian v. United Republic of Tanzania*, ACtHPR, Application no. 048/2016, Judgment

76. The Court, therefore, holds that the Respondent State violated the Applicant's right to life protected under Article 4 of the Charter due to the mandatory imposition of the death penalty imposed.

D. Violation of the right to dignity

77. Similarly, whereas the Applicant did not make any submissions on the right to dignity, the Court also notes from the record that the Applicant was sentenced to death by hanging. The Court, therefore, recalls that in the matter of *Ally Rajabu and Others v. United Republic of Tanzania,* this Court stated that many methods used to implement the death penalty have the potential of amounting to torture, as well as cruel, inhuman and degrading treatment given the suffering inherent thereto. This Court held that hanging a person is one of such methods that is inherently degrading.[25] The Court also recalls its position in the matter of *Amini Juma v. United Republic of Tanzania* where it held that the execution of the death penalty by hanging encroaches upon the dignity of a person in respect of the prohibition of torture and cruel, inhuman and degrading treatment.[26]

78. The Court reiterates its position that in accordance with the rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should be that methods of execution must exclude suffering or involve the least suffering possible in cases where the death penalty is permissible.[27] Having found that the mandatory imposition of the death sentence violates the right to life due to its arbitrary nature, the Court holds that, hanging as the method of implementation of that sentence , encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment.[28]

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of 4 June 2024 (merits and reparations), §§ 132-133; *Nzigiyimana Zabron v. United Republic of Tanzania*, ACtHPR, Application 051/2016, Judgment of 4 June 2024 (merits and reparations), § 146.

[25] *Rajabu and Others v. Tanzania* , *supra,* §§ 118-119.

[26] *Juma v. Tanzania, supra,* § 136.

[27] *Rajabu and Others v. Tanzania*, *supra,* § 118.

[28] *Ibid,* §§ 119-120.

79. Given the above, the Court finds that the Respondent State violated the Applicant's right to dignity and the right not to be subjected to cruel, inhuman or degrading punishment and treatment guaranteed under Article 5 of the Charter regarding the imposition of the death sentence by hanging.

VIII. REPARATIONS

80. Article 27(1) of the Protocol provides that "If the Court finds that there has been violation of a human or peoples' rights it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

81. In his Application, the Applicant prays the Court to "restore justice where it was overlooked, quash both the conviction and the sentence imposed on him, set him at liberty and, finally, to grant any other order that it may deem fit and just to grant in the circumstances of the complainant."

82. Having found that the Respondent State has not violated any rights alleged by the Applicant, the Court dismisses the Applicant's prayers for reparations.

83. The Court recalls, however, that it has held that the Respondent State violated the Applicant's right to life and to dignity, guaranteed under Articles 4 and 5 of the Charter, in relation to the mandatory imposition of the death penalty by hanging.

84. The Court, therefore, orders the Respondent State to revoke the death sentence imposed on the Applicant and remove him from death row pending the rehearing of his sentence.[29]

[29] *Damian v Tanzania*, *supra*, §§ 163-164.

85. The Court also orders the Respondent State to take all necessary measures to remove, within six months of the notification of this Judgment, the provision for the mandatory imposition of the death sentence from its laws.[30]

86. The Court further orders the Respondent State to take all necessary measures, within one 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 which upholds the discretion of the judicial officer.[31]

87. Regarding the Court's finding that the method of execution of the death penalty by hanging is inherently degrading,[32] the Court orders the Respondent State to undertake all necessary measures to remove "hanging" from its laws as the method of execution of the death sentence, within six months of the notification of this Judgment.[33]

88. The Court further considers that, in line with its established jurisprudence, and in the peculiar circumstances of this case, publication of this judgment is necessary. Given the current state of law in the Respondent State, threats to life associated with the mandatory death penalty persist in the Respondent State. The Court has not received any indication that necessary measures have been taken for the law to be amended and aligned with the Respondent State's international human rights obligations. The Court thus finds it appropriate to order publication of this judgment within a period of three months from the date of notification.

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[30] *Rajabu and Others v. Tanzania*, *supra*, § 163; *Juma v. Tanzania, supra*, § 170; *Henerico v. Tanzania, supra*, § 207; *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application no. 012/2019, Judgment of 1 December 2022 (merits and reparations), § 166.
[31] *Rajabu and Others v. Tanzania*, *supra*, § 171 (xvi); *Juma v. Tanzania, supra*, § 174 (xvii); *Henerico v. Tanzania, supra*, § 217 (xvi); *Mwita v. Tanzania*, *supra*, § 184 (xviii).
[32] *Rajabu and Others v. Tanzania*, *supra*, § 118.
[33] *Chrizant John v. United Republic of Tanzania,* ACtHPR, Application no. 049/2016, Judgment of 7 November 2023 , § 155.

IX. COSTS

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

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

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91. The Court notes that Rule 32(2) of the Rules of Court provides that: “unless otherwise decided by the Court, each party shall bear its own costs, if any”.

92. In the instant case, the Court notes that proceedings before it are free of charge. Furthermore, the Respondent State does not provide evidence to support its prayer as to costs. In the circumstances, this Court does not find any justification to depart from the above provisions, and therefore rules that each Party shall bear its own costs.

X. OPERATIVE PART

93. 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 objection to the admissibility of the Application;
iv. *Declares* that the Application is admissible.

On merits

v. *Holds* that the Respondent State did not violate the Applicant's right to be tried by an impartial court or tribunal protected under Article 7(1)(d) of the Charter with regard to the allegation of bias of the assessors and the allegation that they cross-examined the witnesses;

vi. *Holds* 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;

By a majority of Eight (8) for, and Two (2) against,

vii. *Holds* 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;

viii. *Holds* that the Respondent State violated the Applicant's right to dignity and the right not to be subjected to cruel, inhuman or degrading punishment and treatment protected under Article 5 of the Charter in relation to the imposition of the death penalty by hanging.

On reparations

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

x. *Orders* the Respondent State to revoke the death sentence imposed on the Applicant and remove him from death row;

xi. *Orders* the Respondent State to take all necessary measures to remove within six months of the notification of this Judgment the mandatory death penalty from its laws;

xii. *Orders* the Respondent State to take all necessary measures within one 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 within six months of the notification of this Judgment to remove "hanging" from its laws as the method of execution of the death sentence;

xiv. *Orders* the Respondent State to publish this judgment, within a period of three months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one year after the date of publication;

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

On costs

Unanimously,

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

Signed:

Modibo SACKO, President;

Chafika BENSAOULA, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules, the Declarations of Judge Rafaâ BEN ACHOUR, Judge Blaise TCHIKAYA and of Judge Dumisa B. NTSEBEZA are appended to this Judgment.

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