

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

GODFREY GABINUS ALIAS NDIRIMBA & 2 OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 056/2019

JUDGMENT

5 JUNE 2026



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The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy 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”), Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Godfrey Gabinus *Alias* NDIMBA; Yusto Elias *Alias* MNGEMA; and Exavery Antony *Alias* MGAMBO

Represented by:

Emmanuel SOOD, Advocate & Managing Partner, Faith Attorneys.

Versus

UNITED REPUBLIC OF TANZANIA

Not represented.

After deliberation,

renders this Judgment.

I. THE PARTIES

1. Godfrey Gabinus *Alias* Ndimba, Yusto Elias *Alias* Mngema, and Exavery Antony *Alias* Mgambo (hereinafter referred to as “the Applicants”) are all Tanzanian nationals. At the time of filing this Application, the Applicants were incarcerated at Lindi District Prison in Lindi Region awaiting the execution of their death sentences after having been tried and convicted of murder. The Applicants allege violation of their rights during proceedings before domestic 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 the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as “the Declaration”). On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal did not have any effect on pending cases as well as new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period one (1) year after its deposit.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges, from the record, that on 8 September 2012, one Joseph Farahani, who had been hospitalised for several days, died in Chimbendenga Village within Nachingwea District in Lindi Region. On the

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

day of his funeral, being 9 September 2012, the Applicants, together with other individuals who are not part of this Application, had an argument with other mourners about the cause of Farahani's death. This was because the Applicants suspected that Farahani had died as a result of witchcraft.

4. Subsequently, during the funeral ceremony for Farahani, the Applicants started a commotion and proceeded to enter the house of one Zainabu Nassoro (hereinafter referred to as "the deceased"), who they suspected of having bewitched Farahani. According to the record, the deceased was removed from her house and beaten until she was unconscious. The Applicants then placed dry grass on top of the deceased, poured petrol and burned her to death.
5. The record indicates that after the death of the victim, the Applicants disappeared from Chimbendenga Village. Subsequently, the police, acting on a tip that the Applicants had returned to the said Village, arrested the Applicants on 23 October 2013. They were subsequently charged and tried for the offence of murder. On 7 June 2017, the High Court of Tanzania, sitting at Mtwara, convicted the Applicants and sentenced them to death by hanging.
6. Dissatisfied with their conviction and sentence, the Applicants appealed to the Court of Appeal of Tanzania sitting at Mtwara. On 28 February 2019, the Court of Appeal dismissed the appeal, in its entirety, for want of merit.

B. Alleged violations

7. The Applicants allege the violation of the following:
 - i. The right to equality before the law, and the right to equal protection of the law, protected under Article 3 of the Charter and Article 7 of the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR");

- ii. The right not to be arbitrarily deprived of one's life, protected under Article 4 of the Charter;
- iii. The right to the respect for one's dignity, protected under Article 5 of the Charter;
- iv. The right to a fair trial, protected under Article 7 of the Charter, and Article 14 of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR");
- v. The duty to recognise and uphold the Charter under Article 1 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 8. The Application was filed on 22 October 2019 and it was served on the Respondent State on 16 November 2020. The Respondent State was given 30 days within which to file its list of representatives and 60 days to file a Response. The Respondent State neither filed its list of representatives nor its Response within the prescribed time limits.
- 9. On 29 September 2021, the Registry informed the Respondent State that the Court would proceed to pass a judgment in default if it did not file its Response within 45 days of the notification, as prescribed by Rule 63 of the Rules.
- 10. Notwithstanding the above-mentioned Notice, the Respondent State did not file a Response to the Application within the time permitted by the Court.
- 11. Pleadings were closed on 7 February 2022 and the Parties were duly notified.
- 12. On 17 July 2023, the Court, *suo motu*, granted the Applicants legal assistance under its legal aid scheme. Advocate Emmanuel Sood of Faith Attorneys was appointed to represent the Applicants.

13. On 9 February 2024, the Applicants, through their counsel, filed an Amended Application. This was transmitted to the Respondent State, on 19 February 2024, for its comments and observations within 30 days of notification.
14. The Respondent State, however, did not file any Response or observations on the Amended Application.
15. Pleadings were closed, again, on 7 October 2024 and the Parties were notified.

IV. PRAYERS OF THE PARTIES

16. The Applicants pray the Court to order the “annulment of criminal proceedings, reversal of the criminal conviction and an immediate release of the Applicants.”
17. The Respondent State did not file a Response to the Application and, therefore, did not make any prayers.

V. ON THE DEFAULT OF THE RESPONDENT STATE

18. The Court recalls that Rule 63(1) of the Rules provides that:

Whenever a party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter a decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

19. Rule 63(1) sets out three conditions on the basis of which the Court may proceed to render judgment in default, namely, i) notification to the defaulting Party of both the Application and other documents pertinent to the proceedings; ii) default of one of the Parties; and iii) request made by the other Party or the discretion of the Court.²
20. In relation to the first condition, which is notification of the Respondent State, the Court observes that the original Application was served on the Respondent State on 16 November 2020. Subsequent to the provision of legal aid to the Applicant, the Respondent State was served with the Amended Application on 19 February 2024. The record also reveals that from the date of service of the original Application on the Respondent State, to the date of the close of pleadings, the Registry transmitted all the pleadings submitted by the Applicants to the Respondent State. In this regard, the Court also notes the proof of delivery of those notifications.
21. In the circumstances, the Court finds that the Respondent State was duly notified of these proceedings.
22. As for the second condition, which is the default by the Respondent State, the Court notes that, in the notice of service of the Application, the Respondent State was requested to file its list of representatives within 30 days and its Response within 60 days of receipt but nothing was filed. On 29 September 2021, the Respondent State was further notified that the Court would issue a judgment in default if it failed to file its Response within 45 days from the date of notification. The Respondent State did not, however, file anything and pleadings were closed effective on 7 February 2022.

² *Shabani Menge v. United Republic of Tanzania*, ACtHPR, Application No. 043/2016, Judgment of 4 December 2023 (merits and reparations), § 15; *Symon Vuwa Kaunda v. Republic of Malawi*, ACtHPR, Application No. 013/2021, Judgment of 5 September 2023 (merits and reparations), § 16; *Yusuph Said v. United Republic of Tanzania*, (admissibility) (2021) 5 AfCLR 545, § 14; *Léon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, § 14.

23. The Court further notes that even upon being served with the Amended Application, on 19 February 2024, the Respondent State did not file any Response within the prescribed 30 days of receipt.
24. In the circumstances, the Court, finds that the Respondent State failed to defend its case within the prescribed time.
25. Finally, on the third condition, the Court notes that it can render judgment in default either *suo motu* or upon request of the other party. The Applicant having not requested for a default judgment, the Court decides *suo motu*, for the proper administration of justice, to render this judgment in default
26. Overall, the Court finds that the conditions for the rendering of a judgment in default have been met. It , therefore, holds that it will render this judgment in default.

VI. JURISDICTION

27. As per Article 3 of the Protocol:
 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 instruments ratified by the States concerned.
 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
28. Pursuant to Rule 49(1) of the Rules, the Court “shall conduct [a] preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules.”

29. Based on the above-cited provisions, the Court must, in every Application, conduct a preliminary examination to ascertain its jurisdiction and rule on objections thereto, if any.
30. The Court notes that there is no objection to its jurisdiction in this case. Nevertheless, it must satisfy itself that it has jurisdiction to consider the instant Application.
31. With regard to material jurisdiction, the Court concludes that it has jurisdiction insofar as the Applicants allege the violation of rights guaranteed under, among others, Articles 4, 5, and 7 of the Charter; and Article 14 of the ICCPR, both being relevant human rights instruments that have been ratified by the Respondent State.³
32. With regard to its personal jurisdiction, the Court notes, as earlier stated in this judgment, that the Respondent State is a party to the Protocol, and that, on 29 March 2010, it deposited the Declaration under Article 34(6) of the Protocol with the African Union Commission. However, on 21 November 2019, it deposited an instrument withdrawing its Declaration. In accordance with the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively.⁴ It only takes effect one year after the notice of such withdrawal has been deposited. In this case, the effective date was 22 October 2019. In view of the above, the Court holds that it has personal jurisdiction as the withdrawal does not affect the present Application, which was filed on 25 July 2016.
33. With respect to its temporal jurisdiction, the Court notes that the alleged violations occurred after the Respondent State ratified the Protocol and continued after the Respondent State had deposited the Declaration.

³ The United Republic of Tanzania acceded to the International Covenant on Civil and Political Rights on 11 June 1976.

⁴ *Cheusi v. Tanzania*, *supra*, § 38. See also *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

Consequently, the Court finds that it has temporal jurisdiction to consider the Application.

34. As for territorial jurisdiction, the Court finds that it has jurisdiction considering that all the violations alleged by the Applicants occurred within the territory of the Respondent State.
35. Considering all of the above, the Court holds that it has jurisdiction to determine the present Application.

VII. ADMISSIBILITY

36. 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.”
37. According to 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.”
38. 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;
- 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.

39. The Court notes that there are no objections to the admissibility of the Application. However, pursuant to Rule 50(1) of the Rules, it is obliged to determine and confirm that all the admissibility requirements are fulfilled before proceeding with the Application.
40. The Court notes that the requirement laid down in Rule 50(2)(a) of the Rules is met insofar as the Applicants have clearly indicated their identities.
41. The Court further notes that by filing the instant Application, the Applicants seek to protect their rights guaranteed under the Charter. It further notes that 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. The Application also does not contain any claim or prayer that is incompatible with provisions of the Constitutive Act. The Court, therefore, considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and thus meets the requirement of Rule 50(2)(b) of the Rules.
42. The Court also 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.

43. It is also the Court's finding that the Application is not based exclusively on news disseminated through mass media as it is based on court records copies of which have been filed by the Applicants. Consequently, the Court finds that the Application fulfils the requirements set out in Rule 50(2)(d) of the Rules.
44. The Court recalls that under Rule 50(2)(e) of the Rules, for an application to be admissible, local remedies must have been exhausted, unless such remedies are unavailable, ineffective, inadequate or that the procedure for seeking the remedies is unduly prolonged.⁵ The requirement under Rule 50(2)(e) of the Rules is satisfied if an applicant takes his grievances before the highest judicial institution of the Respondent State.
45. In the instant Application, the Court notes that the Applicants were convicted, on 7 June 2017, of murder by the High Court, after which they appealed to the Court of Appeal, which is the highest judicial institution within the Respondent State. Their appeal was subsequently dismissed on 28 February 2019. Accordingly, the Court finds that the Applicants exhausted all ordinary local remedies prior to lodging their Application. The requirement of exhaustion of local remedies, in accordance with Rule 50(2)(e) of the Rules, has thus been met.
46. Under Article 56(6) of the Charter, which is restated in Rule 50(2)(f) of the Rules, an application is admissible only if it is "submitted within a reasonable period from the time 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."
47. The Court notes that neither the Charter nor the Rules set a time-limit within which an application must be filed before it. As per 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

⁵ *Habiyalimana Augustino and Muburu Abdulkarim v. Tanzania*, ACtHPR, Application No. 015/2016, Judgment of 3 September 2024 (merits and reparations), § 52.

basis ...”.⁶ In determining whether or not the time-limit for bringing a case before it is reasonable, the Court takes into account factors such as the applicant’s situation, the fact that he or she is in prison, is lay, did not benefit from legal assistance, and is indigent or illiterate, among others.⁷ The Court has also previously held that in circumstances where the time being assessed is relatively short, the applicant will be exempted from proving reasonableness and the said time will thus be said to be manifestly reasonable.⁸

48. The Court observes that, in the present case, the time-limit for assessing reasonableness should be computed from the date that the Court of Appeal’s judgment was delivered, that is on 28 February 2019. The Court notes that the original Application was filed on 24 October 2019, being seven months and 25 days following the delivery of the judgment of the Court of Appeal.
49. In the circumstances, the Court considers the period of seven months and 25 days as being manifestly reasonable in the circumstances of the present Application. The Court finds, therefore, that the requirement under Rule 50(2)(f) of the Rules has been met.
50. Finally, with regard to the requirement in Rule 50(2)(g) of the Rules, the Court notes that the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter, or any legal instrument of the African Union, in fulfilment of Rule 50(2)(g) of the Rules.

⁶ *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92.

⁷ *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations), § 35; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 74; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54; *Amiri Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 50.

⁸ *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), §§ 56-58.

51. Given all the above, the Court concludes that the instant Application meets all the admissibility conditions under Article 56 of the Charter as restated in Rule 50(2) of the Rules. The Court thus holds that the Application is admissible.

VIII. MERITS

52. The Applicants allege that the Respondent State has violated:

- i. The right to equality before the law, and the right to equal protection of the law, protected under Article 3 of the Charter and Article 7 of the UDHR;
- ii. The right not to be arbitrarily deprived of one's life, protected under Article 4 of the Charter;
- iii. The right to the respect for one's dignity, protected under Article 5 of the Charter;
- iv. The right to a fair trial, protected under Article 7 of the Charter, and Article 14 of the ICCPR;
- v. The duty to recognise and uphold the Charter under Article 1 of the Charter.

53. The Court recalls that under Article 3 of the Protocol it is mandated to apply provisions of the Charter and any other relevant human rights instruments ratified by the State concerned. In the present Application, although the Applicants have, in addition to the Charter, cited both the ICCPR and the UDHR, the Court will consider the alleged violations under the corresponding provisions in the Charter except if the provisions of the Charter are deficient in material details.⁹

54. The Court will now address each of the Applicants' allegations individually. However, given that the bulk of the Applicants' allegations centre around

⁹ *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014), 1 AfCLR 398, § 113 and *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465 § 88 and § 114.

the possible violation of the right to a fair trial, the Court will first deal with allegations relating to this right (A); before disposing of the allegations relating to violation of the right to equality before the law and equal protection of the law (B); the right to life (C); the right to dignity (D) and the alleged violation of Article 1 of the Charter (E).

A. Alleged violation of the right to a fair trial

55. In relation to the alleged violation of the right to a fair trial, the Applicants, first, allege a violation due to the supposed failure by the Respondent State to prove their presence at the scene of the crime. Second, the Applicants allege that the evidence against them was fabricated. Third, the Applicants allege that their right to legal representation was violated. Fourthly, the Applicants allege that their right to an effective remedy was violated. Each of these allegations will now be considered separately.

i. Allegation relating to the failure to prove the presence of the Applicants at the scene of the crime

56. The Applicants allege that the prosecution failed to establish their presence at the scene of the crime. According to the Applicants, the prosecution failed to demonstrate that any of them had attended the burial of Joseph Farahani and thus the requirement of joint *mens rea* and *actus reus* was not proved.

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57. The Respondent State did not file a Response.

58. The Court notes that Article 7(1) of the Charter provides that: “Every individual shall have the right to have his cause heard.” The Court has previously held that this right is a significant element of the right to a fair trial. In the context of criminal proceedings, the right to have one’s cause

heard requires an accused to be given a fair hearing, and that “conviction should only be based on solid evidence”.¹⁰

59. Given that the Applicants are challenging the manner in which the High Court of Tanzania dealt with the evidence against them, the Court finds it apposite to begin by reiterating its established position in respect of the role of domestic courts. As the Court has held that:

... domestic courts enjoy a wide margin of appreciation in evaluating the probative value of 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.¹¹

60. The above notwithstanding, the Court has also held that it can determine whether the manner in which domestic proceedings were conducted, which includes the assessment of evidence, is consistent with international human rights standards.¹² This, however, is not to suggest that the Court would take the position of a domestic court sitting on appeal but merely to confirm that the Court can exercise supervisory authority to ensure that domestic proceedings are conducted in a manner that aligns with a State’s international human rights obligations.

61. In the instant Application, the Court notes that the Applicants were convicted based on positive identification by prosecution witnesses PW1 and PW2. Both of these witnesses knew the Applicants before the deceased was murdered, given that PW1 was a brother of the deceased, and the deceased was formerly married to one of the Applicants (Godfrey Gabinus *Alias* Ndimba). The sister of Joseph Farahani was married to another one of the Applicants (Yusto Elias *Alias* Mngema). The last of the Applicants, Exavery Antony *Alias* Mgambo, is the son of PW1’s aunt. PW2 was Joseph

¹⁰ *Yaya Kone v. Republic of Mali* (judgment) (2 December 2021) 5 AfCLR 748, § 76.

¹¹ *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

¹² *Mussa Zanzibar v. United Republic of Tanzania* (judgment) (26 February 2021) 5 AfCLR 39, § 62.

Farahani's grandfather. All of these individuals were present at Joseph Farahani's funeral and were well acquainted with each other.

62. It is evident, from the record, that both the High Court and the Court of Appeal considered the established law on identification and applied it to the evidence that was adduced. The High Court found that because the crime was committed in a series of events "which took a lot of time", the prosecution witnesses, especially PW1 and PW2, had time to observe the commission of the crime. Together with the facts that the prosecution witnesses PW1 and PW2 knew the Applicants very well, and that the crime was committed during the day, the High Court was satisfied that the Applicants had been correctly identified.¹³ The Court of Appeal, having reviewed the manner in which the High Court applied the law on identification, upheld the findings of the High Court and held that the Applicants had been properly and correctly identified.
63. In the instant Application, and being fully mindful that issues relating to identification of suspects is largely a matter to be dealt with by trial courts, the Court does not find any basis for interfering with the findings of the High Court especially in relation to the credibility of the witnesses of the prosecution particularly PW1 and PW2.¹⁴ It is also notable that the domestic courts considered the *alibis* raised by the Applicants and found them wanting.
64. In light of the above, the Court finds that the Applicants were correctly identified and placed at the scene of the crime and thus their right to a fair trial was not violated by the domestic courts' application of the law on identification.

¹³ See page 90 of the judgment of the High Court (Criminal Session Case No. 9 of 2014), and pages 8-11 of the judgment of the Court of Appeal (Criminal Appeal No. 273 of 2017).

¹⁴ See page 90 of the judgment of the High Court (Criminal Session Case No. 9 of 2014).

65. The Court, therefore, dismisses the Applicants' allegation that their right to a fair trial, under Article 7(1) of the Charter, was violated with regard to the identification evidence.

ii. Allegation relating to the fabrication of evidence

66. The Applicants allege that the post-mortem report of the deceased (labelled as Exhibit P2) was fabricated and that it did not conform to the order of the coroner, as required by sections 10(i), 11(1), and 12(1) of the Inquest Act, (hereinafter referred to as "the Inquest Act").

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67. The Respondent State did not file a Response.

68. In assessing the Applicants' allegations, the Court recalls that the onus of proving allegations of human rights violations lies with the party that makes the allegations.¹⁵ It further recalls that Article 7(1) of the Charter requires that an accused person's guilt should only be established based on solid and convincing evidence.¹⁶
69. At the outset, the Court observes that the Applicants have simply alleged that the post-mortem report (Exhibit P2) was fabricated. No specifics of the alleged fabrication have been provided. The Applicants have merely pointed to certain provisions of the Inquest Act to support their allegation that Exhibit P2 was conducted contrary to the Inquest Act, and have not stated how, specifically, the provisions were violated.

¹⁵ *Dadu Sumano Kilagela v. United Republic of Tanzania*, ACtHPR, Application No. 017/2018, Judgment of 3 September 2024 (merits and reparations), § 61.

¹⁶ *Kone v. Mali* (judgment) *supra*, § 76.

70. It is also notable that the doctor who prepared Exhibit P2 was called to testify on behalf of the prosecution as PW 4 and, according to the record, he tendered the post-mortem report without any objection from the Applicants and their counsel. The record also confirms that neither during the trial before the High Court nor during the appeal, did the Applicants raise the issue of fabrication of the post-mortem report.
71. In light of the above, the Court finds that the Applicants have not proven the violation of their right to a fair trial on the basis of the alleged fabrication and erroneous completion of Exhibit P2.
72. Accordingly, the Court dismisses the Applicants' allegation that their right to a fair trial, under Article 7(1) of the Charter, was violated by reason of a fabricated post-mortem report being tendered in evidence during their trial.

iii. Allegation relating to the right to legal representation

73. The Applicants allege a violation of their right to legal representation. They make two specific allegations which are interrelated: first, that their rights were infringed by the Respondent State's failure to provide each of them a separate legal practitioner. In this regard they aver that owing to them being represented by one counsel, the requirements under sections 33(1)(a) and (b) of the Respondent State's Legal Aid Act, 2017¹⁷ (hereinafter referred to as "the Legal Aid Act") and section 310 of the Respondent State's Criminal Procedure Act¹⁸ (hereinafter referred to as "the CPA") were not met.

¹⁷ Sections 33(1)(a) and (b), Legal Aid Act, 2017 provide as follows:

Where in any criminal proceedings, it appears to the presiding judge or magistrate that—

- (a) in the interests of justice an accused person should have legal aid in the preparation and conduct of his defence or appeal as the case may be; and
- (b) his means are insufficient to enable him to obtain legal services, the presiding judge or magistrate, as the case may be, shall certify that the accused ought to have such legal aid and upon such certificate being issued, the Registrar shall assign to the accused a legal aid provider which has an advocate for the purpose of preparation and conduct of his defence or appeal, as the case may be.

¹⁸ Section 310 of the Criminal Procedure Act provides as follows: Any person, accused before any criminal court, other than a primary court, may of right be defended by an advocate of the High Court subject to the provisions of any written law relating to the provision of professional services by advocate.

Second, they contend that their right to cross-examine state witnesses was also compromised due to their lack of individual counsel.

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74. The Respondent State did not file a Response.

75. The Court notes that Article 7(1)(c) of the Charter states as follows:

Every individual shall have the right to have his cause heard. This comprises [...] c) The right to defence, including the right to be defended by counsel of his choice.

76. The Court recalls its jurisprudence which confirms that, interpreted in light of Article 14(3)(d) of the ICCPR, the right to defence includes the right to be granted free legal assistance.¹⁹

77. The Court further recalls that the right to be defended by counsel of one's choice requires that an accused be allowed a lawyer of his or her choosing, and that legal representation be effective.²⁰ The Court notes that "effective assistance of counsel" consists of, first, counsel that is not restricted in his or her representation of the client, and second, counsel that does not deprive a client of effective assistance through "failing to provide competent representation that is adequate to ensure a fair trial or, more broadly, a just outcome."²¹

¹⁹ *Amini Juma v. United Republic of Tanzania* (judgment) (30 September 2021) 5 AfCLR 431, § 90; *Habiyalimana v. Tanzania* (merits and reparations), *supra*, § 95; *Gozbert Henerico v. United Republic of Tanzania*, ACTHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), § 104.

²⁰ *Juma v. Tanzania* (judgment), *ibid*, § 91.

²¹ *Habiyalimana v. Tanzania* (merits and reparations), *supra*, § 97; *Henerico v. Tanzania* (merits and reparations), *supra*, § 107.

78. As for legal assistance provided in terms of a free legal assistance scheme, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that a legal aid lawyer should: ²²

1. Be qualified to represent and defend the accused or a party to a civil case;
2. Have the necessary training and experience corresponding to the nature and seriousness of the matter;
3. Be free to exercise his or her professional judgement in a professional manner free of influence of the State or the judicial body;
4. advocate in favour of the accused or party to a civil case; and
5. Be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.

79. The Court has previously held that with regard to effective legal representation through a free legal assistance scheme, it is not sufficient for the State to merely provide legal counsel.²³ The State must ensure that legal assistance providers “have enough time and facilities to prepare an adequate defence, and to provide robust representation at all stages of the legal process starting from the arrest of the individual for whom such representation is being provided.”²⁴

80. The Court further recalls that the right to be defended by counsel is not an absolute right “when counsel is provided through a free legal assistance scheme.”²⁵ In these circumstances, the Court has held that: ²⁶

In such a case, the important consideration is whether the accused is provided with effective legal representation rather than whether he or she is allowed to be represented by a lawyer of their own choosing.

²² African Commission on Human and Peoples’ Rights’ *Principles and Guidelines on the Right to a Fair Trial and Legal assistance in Africa* (2003) H (e) (1-5).

²³ *Henerico v. Tanzania* (merits and reparations), *supra*, § 109.

²⁴ *Ibid*, § 109; *Habiyalimana v. Tanzania* (merits and reparations), *supra*, § 99.

²⁵ *Habiyalimana v. Tanzania*, *ibid*, § 96; *Henerico v. Tanzania* (merits and reparations), *supra*, § 106.

²⁶ *Habiyalimana v. Tanzania*, *ibid*.

81. The Court has also held that the State is obligated to ensure that an accused has adequate representation, where such representation has been provided for free, and to intervene only in cases where the representation is not adequate. As the Court has held, the State cannot be held responsible for “every shortcoming” on the part of counsel appointed for legal aid purposes²⁷ and that “the quality of the defence provided” by such counsel is essentially a matter between counsel and his/her client.²⁸ The State is only obligated to intervene where there is manifest failure to provide effective representation.
82. As for joint representation of accused persons, the Court has held that this does not automatically result in a conflict of interest.²⁹ As the Court has emphasised, an applicant must, either object to the joint representation or subsequently demonstrate that the conflict of interest actually existed and that such conflict affected his/her representation.³⁰
83. In the instant Application, the Applicants claim that the Respondent State was bound to provide each one of them with an individual advocate. As the Court has earlier alluded to, the Applicants did not have an automatic right to individual advocates. It is also notable that they never raised this matter before the Court of Appeal, in challenging the judgment of the High Court. The Court finds, therefore, that the Respondent State did not violate the Applicants’ rights by assigning them one advocate.
84. The Court notes that the Applicants also allege that, owing to having been represented by one advocate, their legal counsel did not cross-examine the witnesses in a manner that would have elicited information pertaining to the culpability of each of the accused persons.

²⁷ *Ibid*, § 108.

²⁸ *Ibid*.

²⁹ *Juma v. Tanzania* (Judgment), *supra*, § 95.

³⁰ *Ibid*.

85. The Court further confirms that there is nothing on the record to demonstrate that the Applicants informed the High Court or the Court of Appeal of any manifest failure, on the part of their legal counsel, to provide effective representation. While the Applicants had ample opportunity to raise any objections to the way they were being represented before the domestic courts they did not do so. The alleged failure to ask the witnesses of the prosecution certain questions pertaining to the culpability of each of the accused persons, the Court notes, relates to the conduct of the defence which was an issue over which the Applicants never raised any objection.
86. In view of the above, the Court finds that the Respondent State discharged its obligation to provide the Applicants with effective legal representation.
87. Accordingly, the Court dismisses the Applicants' allegation of a violation of Article 7(1)(c) of the Charter by reason of the manner of their legal representation.

iv. Allegation relating to the violation of the right to an effective remedy

88. The Applicants also allege that the Respondent State has violated their right to an effective remedy. In support of this argument, the Applicants resubmit that they were represented by one legal counsel and that counsel failed to ask the witnesses of the prosecution certain questions pertaining to the culpability of each of the accused persons.

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89. The Respondent State did not file a Response.

90. The Court notes that the substance of the Applicants' allegation has already been dealt with earlier in this Judgment when the Court was considering the allegations relation to effective legal representation.

91. The above notwithstanding, the Court reiterates that Article 7(1)(a) of the Charter enshrines the right to an effective remedy,³¹ and that the right guarantees "...the right to bring, before the national courts, an arguable grievance, that is, any alleged violation of a substantive or procedural right that is internationally protected."³²
92. In respect of the Applicants' allegations, as the Court has earlier established, they have failed to show the existence of any impediment, whether factual or legal, that precluded them from raising these complaints before the domestic courts.
93. Accordingly, the Court finds that the right to an effective remedy, protected under Article 7(1)(a) of the Charter, has not been violated and thus dismisses the Applicants' allegations.
94. Given all the above, the Court dismisses all the Applicants' allegations relating to the violation of their right to a fair trial.

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

95. The Applicants submit that the Respondent State violated their right to equality before the law and equal protection of the law. They allege that the violation is based on the following: the prosecution's inability to prove their presence at the scene of the crime; the alleged unlawful admission of evidence in the domestic courts; the failure of the Respondent State to provide the Applicants with individual legal counsel; and the failure of counsel to ask the witnesses of the prosecution certain questions pertaining to the culpability of each of the accused persons.

³¹ *Issiaka Keïta and Others v. Republic of Mali*, ACtHPR, Application No. 005/2019, Judgment of 5 September 2023 (merits and reparations), § 49.

³² *Ibid.*

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96. The Respondent State did not file a Response.

97. The Court recalls that Article 3 of the Charter provides as follows:

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

98. The Court notes that the right to equality before the law, under Article 3 of the Charter, requires that “all persons shall be equal before the courts and tribunals.”³³ As per the Court’s jurisprudence, the principle of equality before the law does not necessarily require that judicial institutions deal with all cases in the same manner, since each case must be treated in accordance with its specific circumstances.³⁴

99. Additionally, the right to equal protection of the law requires that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁵

100. As the Court has constantly reiterated, in respect of allegations of a violation of the right to equality and equal protection before the law, “general allegations do not suffice” and the party alleging a violation of these rights must substantiate his/her allegations.³⁶ The onus, therefore, lies with the

³³ *Isiaga v. Tanzania* (merits), *supra*, § 85; *Amadou Dembele and Others v. Republic of Mali*, ACtHPR, Application No. 023/2017, Judgment of 4 June 2024 (merits and reparations), § 90; *John Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 044/2016, Judgment of 13 February 2024 (merits and reparations), § 106.

³⁴ *Zongo v. Burkina Faso* (merits), *supra*, § 106; *Dembele v. Mali* (merits and reparations), *ibid*, § 91.

³⁵ *Mwita v. Tanzania* (merits and reparations), *supra*, § 105.

³⁶ *Thomas v. Tanzania* (merits), *supra*, § 140; *Kilagela v. Tanzania* (merits and reparations), *supra*, § 61.

Applicant to prove how the conduct of the Respondent State has infringed the guarantees of equality and equal protection of the law.³⁷

101. In the instant Application, two things stand out. First, from the analysis earlier conducted, the Court has not found any fault with the manner in which the domestic courts evaluated the evidence presented against the Applicants including the evidence confirming the Applicants' identities as well as their presence at the scene of the crime. Secondly, the Applicants' submissions have not provided any evidence to substantiate the allegation of a violation of Article 3 of the Charter. The Applicants, therefore, have simply made a general allegation of a violation of Article 3 of the Charter without leading evidence in support thereof.

102. In light of the above, the Applicants have failed to discharge the onus of proving that they have been subject to treatment different from that which other individuals, in the same position as the Applicants, have been subjected to.

103. Accordingly, the Court finds that their rights under Article 3 of the Charter have not been violated and thus dismisses the Applicants' allegations.

C. Alleged violation of the right to life

104. The Applicants allege that their right to life, under Article 4 of the Charter, was violated by the domestic courts imposing the death penalty on them.

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105. The Respondent State did not file a Response.

³⁷ *Thomas v Tanzania, Ibid*, § 140; *Crosperry Gabriel and Ernest Mutakyawa v. United Republic of Tanzania*, AfCtHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), § 115.

106. Article 4 of the Charter provides: “[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”.

107. Article 4 of the Charter protects against the arbitrary deprivation of human life.³⁸ In *Ally Rajabu and Others v. Tanzania*, and subsequent judgments of the Court dealing with the mandatory death penalty in the Respondent State, the Court has consistently held that the mandatory imposition of the death penalty is arbitrary and a violation of Article 4 of the Charter.³⁹

108. In the instant case, the Court finds that the High Court applied the mandatory death sentence, as provided for in Section 197 of the Penal Code of the Respondent State, when sentencing the Applicants. Such mandatory imposition falls foul of the requirement of due process and, accordingly, amounts to an arbitrary deprivation of the right to life.

109. In light of the above view, and consistent with its jurisprudence, the Court holds that the Applicants’ right to life, protected under Article 4 of the Charter, has been violated on account of the mandatory imposition of the death sentence.

D. Alleged violation of the right to dignity

110. The Applicants allege that the Respondent State violated their right to dignity by the mandatory imposition of the death penalty and through the prescribed method of execution in the Respondent State, which is hanging.

³⁸ *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539 § 114; *Juma v. Tanzania* (judgment), *supra*, § 130; *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019 Judgment of 1 December 2022 (merits and reparations), § 80.

³⁹ *Rajabu v. Tanzania* (merits and reparations), *ibid*, § 104; *Romward William v. United Republic of Tanzania*, AfCtHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), § 61; *Dominick Damian v. United Republic of Tanzania*, AfCtHPR, Application No. 048/2016, Judgment of 4 June 2024 (merits and reparations), § 119.

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111. The Respondent State did not file a response.

112. The Court notes that Article 5 of the Charter provides as follows:

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.

113. In its jurisprudence, the Court has held that the implementation of the death sentence by hanging is “inherently degrading” and “encroaches upon dignity in respect of the prohibition of ... cruel, inhuman and degrading treatment.”⁴⁰

114. The Court reiterates its position that, in accordance with the rationale for prohibiting methods of execution that constitute torture or cruel, inhuman and degrading treatment, methods of execution must exclude suffering or must cause the least possible suffering, in instances where the death sentence is permitted by law.⁴¹ The Court, therefore, finds that hanging inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment.

115. Accordingly, the Court finds that the Respondent State has violated Article 5 of the Charter by prescribing hanging as the method of executing the death penalty.

⁴⁰ *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, §§ 119-120; *Henerico v. Tanzania* (merits and reparations), *supra*, § 169; *Damian v. Tanzania* (merits and reparations), *supra*, § 137; *Crosperry v. Tanzania* (merits and reparations), *supra*, § 103; *Juma v. Tanzania* (judgment), *supra*, § 136; *Habiyalimana v. Tanzania* (merits and reparations), *supra*, § 158.

⁴¹ *Habiyalimana v. Tanzania* (merits and reparations), *ibid*, § 159; *Rajabu and others v. Tanzania* (merits and reparations), *ibid*, § 118; *Damian v. Tanzania* (merits and reparations), *ibid*, § 138.

E. Alleged violation of Article 1 of the Charter

116. The Applicants allege that the Respondent State has violated Article 1 of the Charter.

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117. The Respondent State did not file a response

118. The Court recalls that Article 1 of the Charter provides as follows:

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

119. In respect of Article 1 of the Charter the Court has held that:

When the Court finds that any of the rights, duties and freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated.⁴²

120. Having found that the Respondent State has violated Articles 4 and 5 of the Charter, the Court holds that the Respondent State has also violated Article 1 of the Charter.

⁴² *Thomas v. Tanzania* (merits), *supra*, § 135.

IX. REPARATIONS

121. In respect of reparations, the Applicants pray the Court to order the following:

- i. An annulment of the domestic criminal proceedings;
- ii. A reversal of their criminal conviction;
- iii. Their immediate release.

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122. Article 27(1) of the Protocol provides as follows:

If the Court finds that there has been violation of a human and peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

123. The Court recalls that for reparations to be granted, the Respondent State should, first, be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where granted, reparations should cover the full damage suffered.⁴³

124. The Court reiterates that the onus is on an applicant to provide evidence to justify his/her prayers, particularly for material damages.⁴⁴ With regard to moral damages, the Court has consistently held that the requirement of proof is not strict,⁴⁵ since it is presumed that there is prejudice caused when violations are established.⁴⁶

⁴³ *Rajabu and others v. Tanzania* (merits and reparations), *supra*, § 136; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119.

⁴⁴ *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139.

⁴⁵ *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 55.

⁴⁶ *Ibid.*

125. The Court also confirms that the measures that a State must take to remedy a violation of human rights include restitution, compensation, and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.⁴⁷

126. In the instant Application, the Court has established that the Respondent State's conduct has violated the Applicant's right to life and the right to dignity. It is in respect of these violations, therefore, that the Court must assess the reparations due.

A. Pecuniary reparations

i. Material prejudice

127. The Applicants did not make any prayers for reparations for material prejudice. In the circumstances, the Court does not find it necessary to make any orders for reparations for material prejudice.

ii. Moral prejudice

128. The Applicants did not make any prayers addressing the possible moral prejudice that they may have suffered.

129. The above notwithstanding, the Court recalls that reparations for moral prejudice follow from the suffering, anguish and changes in the living conditions that the victim or his family endure because of the human rights violations. As established in this judgment, the Applicants' rights were violated by the imposition of the mandatory death sentence, resulting in psychological and emotional distress. For these reasons, the Applicants are entitled to reparations for moral prejudice.

⁴⁷ *Ingabire Victoire Umehoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20.

130. The assessment of the quantum of reparations in cases of moral prejudice is done in fairness while taking into account the peculiar circumstances of each case.⁴⁸ The practice of the Court, in such instances, is to award a lump sum.

131. In view of the above, the Court finds that the Applicants have endured moral and psychological suffering and decides to grant each one of them an amount of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as moral damages.

B. Non-pecuniary reparations

132. The Applicants pray the Court to order the Respondent State to annul the criminal proceedings that resulted in their conviction, reverse the criminal conviction, and order their release from prison. The Court will now deal with these prayers.

i. Annulment of criminal proceedings, reversal of criminal conviction, and immediate release

133. With respect to the Applicants' prayer for annulment of criminal proceedings, reversal of their convictions and immediate release, the Court recalls that, in line with Article 27(1) of the Protocol, it is empowered to make appropriate orders to remedy the violation(s) established. Orders for annulment of domestic criminal proceedings, reversal of criminal convictions and immediate release, however, can only be made in exceptional circumstances.⁴⁹

⁴⁸ *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 41.

⁴⁹ *Kalebi Elisamehe v. United Republic of Tanzania*, (merits and reparations) (26 June 2020) 4 AfCLR 265, § 112.

134. In respect of the prayer to annul the criminal proceedings and to reverse the convictions, the Court holds that its findings in this judgment have not affected the Applicants' conviction. The prayer is, therefore, dismissed.

135. In respect of the prayer to order the Respondent State to release the Applicants, the Court recalls that in *Gozbert Henerico v. Tanzania*, it held as follows:

The Court can only order a release 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.

136. The Court observes that, in the present matter, the violation of the Applicants' right to life under Article 4 of the Charter did not impact their guilt and conviction. Accordingly, the Court holds that the findings of the Respondent State's High Court and the Court of Appeal, in so far as the guilt of the Applicants is concerned, remain unaffected in the proceedings before this Court.

137. The Court finds, therefore, that no exceptional circumstances justifying an order for the immediate release of the Applicants have been made out. Accordingly, the prayer for the Applicants' release is dismissed.

138. Overall, therefore, the Court finds the Applicants' prayers for annulment of the domestic criminal proceedings, reversal of the criminal proceedings and release from prison to be unfounded. It thus dismisses all these prayers.

139. While the Applicants' prayers for annulment of the domestic proceedings, reversal of criminal proceedings and release are not warranted, the Court observes that the Applicants were sentenced to death under a regime which did not accord the domestic courts discretion on the sentence. Given that the Court has found the mandatory sentencing regime to be inconsistent

with the Charter, it is necessary for it to make an order dealing with this sentencing regime.

140. The Court recalls that it has held that orders such as vacating the death sentence, where they have been imposed under the mandatory regime such as that applicable in the Respondent State, are to be determined on a case-by case basis having due consideration mainly to proportionality between the measure sought and the extent of the violation established.⁵⁰ In the instant Application, given that the provision for the mandatory imposition of the death sentence in the Respondent State's legal framework violates the right to life protected in Article 4 of the Charter, the Court, therefore, orders the Respondent State to vacate the Applicants' death penalty and remove them from death row.

ii. Amendment of the law to ensure respect for life and dignity

141. The Applicants did not make any prayer requesting the amendment of the Respondent State's laws in order to ensure the protection of the right to life and dignity. However, the Court recalls its previous judgments relating to the mandatory imposition of the death penalty, and the fact that it has ordered the Respondent State to adopt necessary measures to amend its Penal Code, by removing the provision of the imposition of the mandatory death penalty.⁵¹ To date, the Court has not received any information from the Respondent State indicating that it has complied with these orders.

142. The Court notes that in this Judgment, it has found that the mandatory imposition of the death penalty violates the right to life, protected under Article 4 of the Charter. Consequently, the Court holds that the Respondent State must, without delay, amend its laws to remove the mandatory death penalty from its statute books.

⁵⁰ *Rajabu and Others v. Tanzania*, *supra*, § 156.

⁵¹ For example, *Ghati Mwita v. Tanzania*, *supra*.

143. Similarly, as per its jurisprudence,⁵² the Court has held that a finding of violation of the right to dignity owing to the use of hanging as a method of execution of the death penalty warranted an order that the said method be removed from the laws of the Respondent State. Considering its findings in this Judgment, the Court orders the Respondent State to take all necessary measures, without delay, to amend its laws and remove “hanging” from its laws as the method of execution of the death sentence.

iii. Rehearing

144. Neither the Applicants nor the Respondent State made any submissions relating to the rehearing of the case against the Applicants.

145. The above notwithstanding the Court has previously ordered, *suo motu*, a rehearing to give effect to a correlated order requiring the mandatory imposition of the death sentence to be removed from the domestic laws of the Respondent State.⁵³ In the instant case, the Court considers it to be in the interest of justice to make an order for the rehearing of the Applicants’ criminal case in so far as the sentence is concerned. The Court reiterates its earlier position, which is that the violations in the case of the Applicants have not impacted the guilt and conviction of the Applicants, and that the sentencing is affected only to the extent of the mandatory nature of the death sentence. The Court, accordingly, finds that a remedy is warranted only in the latter respect.

146. In the circumstances, the Court orders the Respondent State to take all necessary measures, without delay, for the rehearing of the case on the sentencing of the Applicants, through a process that prevents the mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer.

⁵² *Romward William v. United Republic of Tanzania*, ACtHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), § 94.

⁵³ *Habiyalimana v. Tanzania* (merits and reparations), *supra*, § 240.

C. Publication of judgment

147. The Court notes that although the Applicants have not requested the publication of this judgment, the Court is empowered to consider this measure, pursuant to Article 27 of the Protocol. The Court further recalls that it has previously ordered, of its own volition, the publication of its judgments, following a consideration of the circumstances of the cases.⁵⁴

148. The Court considers that for reasons now firmly established in its practice 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 the right to life associated with the mandatory death penalty persist. The Court also notes that it 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.

D. Implementation and reporting

149. The justification provided earlier, in respect of the Court's decision to order publication of the judgment, is equally applicable in respect of implementation and reporting. The Court notes that in its previous judgments on the repeal of the provision on the mandatory death penalty, the Respondent State was directed to implement the decisions within one year of issuance of the same.⁵⁵

150. The Court observes that, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicant and is systemic in nature. The same applies to the

⁵⁴ *Mwita v. Tanzania* (merits and reparations), *supra*, §§ 175-176; *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 165; *Henerico v. Tanzania* (merits and reparations), *supra*, §§ 208-210.

⁵⁵ *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 171; *Henerico v. Tanzania* (merits and reparations), *supra*, § 203.

violation of the right to dignity by reason of using hanging as the method of execution. The Court further notes that its finding in this judgment bears on a supreme right in the Charter, that is, the right to life.

151. In view of the foregoing, the Court deems it necessary to order the Respondent State to report on the implementation of this judgment in accordance with Article 30 of the Protocol. The Court thus orders the Respondent State to submit to it, within six months of notification, a report on the status of implementation of this Judgment. The report should detail the steps taken by the Respondent State to comply with the terms of this Judgment.

152. The Court further notes that the Respondent State has not provided any information on the implementation of its judgments in any of the earlier cases where it was ordered to repeal the mandatory death penalty and the deadlines that the Court set have since lapsed. In view of this fact, the Court still considers that the orders are warranted both as an individual protective measure and as a general restatement of the obligation and urgency behoving on the Respondent State to remove the mandatory death penalty and provide alternatives thereto. The Court holds, therefore, that the Respondent State is under an obligation to report on the steps taken to implement this judgment within six months from the date of notification of this judgment.

153. Given the state of compliance with the Court's judgments by the Respondent State as alluded to above, the Court finds it appropriate to remind the Respondent State of its obligations under Article 1 of the Charter to "recognise the rights, duties and freedoms in the Charter" and to "undertake to adopt legislative or other measures to give effect" to the rights and obligations in the Charter.

154. In so far as the Court's decisions are concerned, the Court draws attention to Article 30 of the Protocol by which the Respondent State, as a State Party, undertook to "comply with the judgment in any case" to which it is a

party “within the time stipulated by the Court” and to guarantee execution of the Court’s decisions. In the circumstances, it is clear that the Respondent State is under an obligation to comply with the Court’s decisions and see to their full execution.

X. COSTS

155. Both Parties did not make any submissions as regards costs.

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

157. Noting that there is no reason to justify a departure from the above provision in the instant case, the Court decides that each Party shall bear its own costs.

XI. OPERATIVE PART

158. For these reasons:

THE COURT

By default,

Unanimously:

On jurisdiction

- i. *Declares* that it has jurisdiction.

On admissibility

- ii. *Declares* that the Application is admissible.

On merits

- iii. *Holds* that the Respondent State did not violate the Applicants' right to a fair hearing under Article 7(1) of the Charter in respect of the identification evidence;
- iv. *Holds* that the Respondent State did not violate the Applicants' right to a fair hearing under Article 7(1) of the Charter in respect of the admission of the post mortem report;
- v. *Holds* that the Respondent State did not violate the Applicant's right to be represented by counsel protected under Article 7(1)(c) of the Charter;
- vi. *Holds* that the Respondent State did not violate the Applicants' right to an effective remedy under Article 7(1)(a) of the Charter by reason of being represented by one legal practitioner;
- vii. *Holds* that the Respondent State did not violate the Applicants' right to equality before the law and equal protection of the law, protected under Article 3 of the Charter;

By a majority of eight Judges for and two Judges against, Justices Blaise TCHIKAYA and Dumisa B. NTSEBEZA dissenting,

- viii. *Holds* that the Respondent State violated the Applicants' right to life, protected under Article 4 of the Charter;
- ix. *Holds* that the Respondent State violated the Applicants' right to dignity, protected under Article 5 of the Charter;
- x. *Holds* that the Respondent State violated Article 1 of the Charter.

Unanimously,

On reparations

On pecuniary reparations

- xi. *Makes* no orders in respect of material prejudice;
- xii. *Grants* each of the Applicants reparations for moral prejudice in the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) free from tax as fair compensation to be paid within six months from the date of notification of this Judgment, failing which the Respondent State will be required to pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations

- xiii. *Dismisses* the Applicants' prayer for annulment of criminal proceedings, reversal of criminal convictions, and immediate release;
- xiv. *Orders* the Respondent State to, without delay, revoke the death sentence imposed on the Applicants and remove them from death row;
- xv. *Orders* the Respondent State to take all necessary constitutional and legislative measures to remove the mandatory imposition of the death penalty from its laws, without delay, upon notification of this Judgment;
- xvi. *Orders* the Respondent State to take all necessary measures, without delay, from the notification of this Judgment to remove hanging from its laws as a method of execution of the death penalty;
- xvii. *Orders* the Respondent State to take all necessary measures, without delay, after the notification of this judgment, for the rehearing of the case on the sentencing of the Applicants through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer;

xviii. *Orders* the Respondent State to publish this judgment, within a period of three months from the date of notification of this Judgment, 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.

On implementation and reporting

xix. *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 implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

xx. *Orders* each Party to bear its own costs.

Signed:

Blaise TCHIKAYA, President; 

Chafika BENSAOULA, Vice President; 

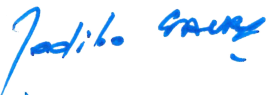
Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

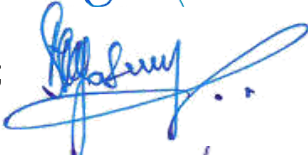
Tujilane R. CHIZUMILA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge; 

and Grace W. KAKAI, Deputy Registrar. 

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

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

