

THE MATTER OF CHACHA JEREMIAH MURIMI AND OTHERS

V

UNITED REPUBLIC OF TANZANIA

APPLICATION NOS 039/2019, 040/2019 & 041/2019

(CONSOLIDATED APPLICATIONS)

JUDGMENT OF 5 JUNE 2026

SEPARATE OPINION BY Dennis D. ADJEI

1. I agree with the majority decision of the Court. Still, I would like to express my separate opinions on three important legal issues regarding the proper approach to be used to determine an allegation of violation of the Applicant's right to be tried within a reasonable time under Article 7(1)(d) of the African Charter on Human and Peoples' Rights (the Charter), the legal effect of commutation of death sentence to life sentence under Article 4 of the African Charter on Human and Peoples' Rights; and the nature of reparations that may be awarded for moral damages.
2. The Applicants submit that they were sentenced to death by hanging and kept in the condemned cells for several years before the death sentence was commuted to life. Therefore, the Respondent State violated their rights due to the mandatory imposition of death. The commutation of the death sentence to life imprisonment took place when the application had been filed, and pleadings had been closed.
3. The Respondent State did not comment on the commutation of the death sentence to a life sentence, but in its pleadings filed after the commutation, submitted that the Applicants were tried and found guilty of murder for killing a

person with albinism and were accordingly sentenced to death by hanging in accordance with its laws.

4. The Court's established jurisprudence on mandatory imposition of death sentence under Article 4 of the Charter is that the State laws on death sentence should provide for alternative sentences to give the judicial officer who hears the matter the opportunity to exercise a discretion as to the appropriate sentence to impose taking into account the circumstances of the case to ensure compliance with Article 4 of the Charter. Article 4 of the Charter provides thus:

"Human 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".

5. The Court's position on mandatory imposition of death sentence as amounting to violation of a person's right to life was settled in *Rajabu and Others v United Republic of Tanzania*¹ where the Court held that the mandatory imposition of death sentence is arbitrary and amounts to violation of right to life, by the fact that human life is inviolable and a person's right to life cannot be arbitrarily taken away.
6. The imposition of the death sentence by hanging by the High Court of Tanzania sitting at Mwanza on 16 October 2015 on the Applicants and which was subsequently affirmed by the Court of Appeal of Tanzania sitting in Mwanza on 4 April 2019 is a violation of the rights of the Applicants irrespective of the action that the Respondent State may subsequently take to commute the death sentence.
7. Even though the Respondent State subsequently commuted the death sentence by hanging to life imprisonment, the violation of the Applicants' rights to life had been established. It shall be followed by reparations in accordance with Article 27(1) of the Protocol to the African Charter on Human and Peoples'

¹ *Rajabu and Others v United Republic of Tanzania* (2019)3 AfCLR 539.

Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), which provides that if the Court finds a violation of a human or peoples' right, it shall make appropriate orders to remedy the violation.

8. The Applicants in their reliefs are seeking their release from prisons if the Court finds a violation. Still, it is not every violation that will require the Court to order for the release of the Applicant as this Court is not an appellate court to rehear the record of appeal from the domestic courts and come to a different conclusion, unless it is demonstrated that the propriety of the domestic proceedings fall short of the standard set by the human rights instruments that the Respondent State has ratified and the falling short of the standards has occasioned serious miscarriage of justice. A finding by the Court of a violation of an applicant's right following the mandatory imposition of the death penalty affects only the sentence following the conviction, as the violation does not relate to the trial on the merits of the case. The violation of the applicant's right based on the imposition of a mandatory death sentence cannot invalidate the trial on the merits to justify their release from prison, as the trial on the merits can be separated from the sentence imposed in violation of an applicant's right. The remedy available to the Court is to order for the applicant to be removed from death row for an appropriate sentence hearing to be determined in a legal regime where the laws of the State concerned give discretion to judicial officers to impose other alternative sentences to mandatory death punishment unless the State has commuted the death sentence imposed by the domestic courts to a life or lesser sentence.
9. The jurisprudence of the Court is that whenever it finds violations based on the mandatory imposition of a death sentence, it orders the Respondent State to remove the applicant from the death row, enact a law that complies with Article 4 of the Charter, and conduct a hearing on the sentence in accordance with the new law. Still, in the case in point, the Court did not make such an order as a result of the commutation of the Applicants' sentence from death to life. The legal regime regarding the mandatory imposition of the death sentence in Tanzania has not been amended. Still, the commutation of the Applicants' sentence from death to life imprisonment shall make any order regarding the

death sentence moot, as the issue is no longer within the competence of the Court, because the death sentence imposed on the Applicants in the case under consideration has been commuted. The Court cannot, in the instant case, make consequential orders emanating from the violation established from the mandatory imposition of a death sentence, as the commutation of the death sentence imposed on the applicants to life imprisonment would render such orders moot.

10. I hold that the Court's established jurisprudence is that, whenever it finds violations arising from mandatory imposition of death sentence, it should order for the applicant to be removed from a death row, change or amend the law to allow judicial officers to exercise discretion to rehear the sentence in a regime that has alternative sentences to death does not apply to cases where the death sentence has been commuted to life or other lesser sentences on grounds of mootness.
11. The Applicant alleges that the Respondent State violated his right to have his cause heard within a reasonable time under Article 7(1) (d) of the Charter and calls for reparation for the violation.
12. The 1st and 2nd Applicants submit that they were kept in custody for nine days after their arrest before they were arraigned before the Resident Magistrate Court, while the 3rd Applicant was also arraigned before the Resident Magistrate after having been in detention for eight days contrary to the section 32 of the Criminal Procedure Act (2002) which provides for a person arrested for an offence to be arraigned before a court of law within 24 hours unless the person is admitted to bail.
13. The Applicants further submit that it took over five years for the trial to commence before the High Court at Mwanza, which said time is manifestly unreasonable and caused them anxiety. The Appellants cite the Canadian Supreme Court case of *R v Jordan*, which held that lower courts should conduct criminal proceedings within 18 months and superior courts within 30 months to

buttress their position and persuade the Court to find violations against the Respondent State.

14. The Respondent State admits that it took them five years to hear the case and render the verdict due to the complexity of the case as the Applicants after killing the person with albinism went to hide in different places and hid the dismembered remains of the deceased in multiple locations and the steps it took to recover the remains of the dead body and match it with the available remains of the deceased. There were requirements for DNA analysis and pathological testing that made it impossible for the Applicants' caution statements to be taken within four hours and for them to be arraigned before the court within 24 hours.
15. The Applicants in their reply submit that they were kept in pre-trial detention for more than five years, and the unreasonable delay cannot be justified by the Respondent State on the sole grounds of investigations and prosecutorial processes.
16. The Court notes that the 1st and 2nd Applicants were arrested on 19 July 2009, while the 3rd Applicant was arrested on 20 July 2009. Committal proceedings commenced on 18 June 2012, and the trial before the High Court commenced on 4 November 2014; the trial was finalised within eleven months. The cumulative time from arrest, investigations, committal proceedings, and trial before the High Court totals five years, three months, and fifteen days.
17. The United Nations Committee of Human Rights, the treaty body for the International Covenant on Civil and Political Rights (ICCPR) in the case of *Saidov v Tajikistan*² when discussing Article 14(3)(c) of ICCPR which is analogous to Article 7(1)(d) of the Charter held that what is reasonable time depends on several factors including the complexity of the case, the conduct of the accused, judicial efficiency, State's diligence, the number of witnesses to testify, availability of witnesses, the nature of the investigations required for the effective prosecution of the case, and whether forensic evidence would be

² Saidov v Tajikistan Communication No. 964/2001, U.N. Doc. CCPR/C/95/D/964/2001.

required, and came to the conclusion it took the Respondent State more than six years when the case was simple and evidence was available for effective prosecution.

18. This Court, in determining a reasonable time within which a case shall be heard, has been held in several decisions, including *Armand Guehi v United Republic of Tanzania* (Merits and Reparations)³ and *Alex Thomas v United Republic of Tanzania* (Merits),⁴ that a standard template for cases cannot be recommended, as two cases are not the same. Its own circumstances shall determine each by taking into consideration matters including but not limited to the complexity of the case, the conduct exhibited by the parties, the actions of the judicial authorities, the State's diligence, and the witnesses to be called.
19. The Committal proceedings in criminal trial in common law jurisdictions filter out weak cases to ensure that sufficient evidence exists for trial, inform the accused about the charges and evidence the State has against him, the issues are narrowed to focus on proceedings, the accused has the opportunity to prepare his case in respect of the evidence to be adduced against him, saves time and resources to avoid unnecessary trials to ensure fairness and efficiency in the trial.
20. The bill of indictment that was submitted to the District Magistrate had 31 witnesses with their statements, including a specialised witness who conducted the DNA analysis of the various parts of the deceased, which were found at different locations. Furthermore, 19 exhibits were presented to the Magistrate during committal, and they show the in-depth investigation conducted by the State for evaluation by the Director of Public Prosecutions before authorisation for the prosecution of the case. The time within which the investigation was completed, given the complexity of the case, clearly demonstrates that the State

³ *Armand Guehi v. United Republic of Tanzania*, 2 AfCLR 477.

⁴ *Alex Thomas v. United Republic of Tanzania*, 1 AfCLR 465.

was diligent in the discharge of its mandate to ensure that the matter was investigated expeditiously.⁵

21. I find and hold that the case was a complex one involving three accused with 31 witnesses, 19 exhibits and 31 statements from the witnesses, excluding the caution statements of the three accused and their charge statements. The committal proceedings were held on 18 June 2012, and the Magistrate had to review every statement in the bill of indictment before finding that, on the totality of the evidence before him, the Applicants had a case to answer and should be committed to stand trial before the High Court.
22. The trial before the High Court involving 31 witnesses, excluding the Applicants, was heard within nine months, and the Applicants were given the same time and facilities for the preparation of their defence, which is manifestly reasonable.
23. The Applicants cited the Canadian Supreme Court case of *R v Jordan*, which prescribes the time frames within which criminal proceedings shall be heard before the trial courts and the appellate courts. I hasten to say that the criminal procedure governing trials is not the same as that on the African continent, as they have easy access to quality forensic experts and equipment, advanced infrastructure, financial and technological resources dedicated to investigations, and legal frameworks and procedures that impact investigation speed within their context.
24. This Court's established jurisprudence provides that the time frame within which a criminal matter shall be heard before trial courts shall be determined on a case-by-case basis, and the Canadian case is not applicable and cannot be used as an international standard or yardstick for the courts within the State Parties of the Protocol. The European Court of Human Rights has also held in several cases including *Eckle v Germany*⁶ and *Golder v United Kingdom*⁷ the

⁵ *Dominick Damian v. United Republic of Tanzania*, ACtHPR, Application No. 048/2016, Judgment of 4 June 2024.

⁶ *Eckle v Germany* (1982) 5 EHRR 1.

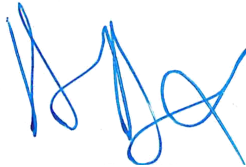
⁷ *Golder v United Kingdom* (1975) 1 EHRR 524.

importance of hearing cases within a reasonable time as justice delayed is justice denied and has not set up a time frame within cases are to be heard to meet reasonableness of time but has provided indicators such as the complexity of the case, diligence exercised by the authorities, and applicant's contribution to delays to determine whether a case was heard within a reasonable time.

25. From the evidence on record, I am satisfied that the case was heard within a reasonable time.
26. The Court, in most cases, has been awarding three hundred thousand Tanzanian Shillings (TZS 300,000) as moral damages. Still, in the case in point, it has awarded one third of that amount to each of the Applicants as moral damages. A moral prejudice is a harm that is not financial, and reparations are awarded to compensate the Applicant for pain, suffering, emotional distress, feelings, dignity or reputation arising from the violation found by the Court. Depending on the circumstances, the violations found can result in reparations, such as compensation, satisfaction, rehabilitation, restitution, and guarantees of non-repetition. Reparations shall be proportional to the gravity of the violations and the harm suffered. They may take different forms, including nominal damages where a right has been violated. Still, if the applicant has not suffered any financial loss, symbolic reparations are ordered where the amount awarded is a token to acknowledge a wrong done but no tangible loss was incurred, and judgment as a satisfaction where the courts award the applicant a sum of money as satisfaction of their relief regardless of the amount awarded.
27. In awarding reparations for moral prejudice in the form of monetary compensation, the courts take into consideration the nature of the violation, its impact on the applicants, and the conduct of the Respondent State. In the case in point, the Respondent State has commuted the death sentence imposed on the Applicants to life imprisonment, and the intangible harm caused by the Respondent State to the Applicants should be addressed by the award of nominal damages of TZS 100,000 for each Applicant to acknowledge the wrong committed, despite the absence of proof of harm suffered by the Applicants.

28. The Court is required to balance the rights of the Applicants against their duties and obligations under Article 27(2) of the Charter which provides that “the rights and freedoms of individuals shall be exercised with due regard to the rights of others, collective security, morality and common interest” but the focus shall be on whether the national proceedings as a whole were fair and did not violate treaty rights, but not the facts before the domestic courts which will amount to re-examining the guilt or innocence of the applicants.
29. The Court has not established a fixed amount to be paid to applicants who suffer moral prejudice arising from violations of their rights during the proceedings before the domestic courts, and it may vary from one case to another depending on the circumstances of each case.
30. I agree with the decision of the majority after having discussed the three aspects of the decision which require clarification.

Dennis D. ADJEI, Judge



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

