

PRESS RELEASE
JUDGMENT SUMMARY

ALEX THOMAS
V.
UNITED REPUBLIC OF TANZANIA
APPLICATION No. 005/2013
JUDGMENT ON REPARATIONS
A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 4 July 2019

Arusha, 4 July 2019: Today, the African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of Alex Thomas v. United Republic of Tanzania.

Mr. Alex Thomas (the Applicant), a national of the United Republic of Tanzania (the Respondent State), filed an Application before the Court on 2 August 2013, alleging that his rights to a fair trial had been violated during criminal proceedings before the courts of the Respondent State on a charge of armed robbery and following which he was convicted and sentenced to thirty (30) years in prison.

In the Judgment it rendered on 20 November 2015 on the merits, the Court found the Respondent State in violation of the Applicant's rights to a fair trial, contrary to Article 7(1)a, (c) and (d) of the African Charter on Human and Peoples' Rights (the Charter) and consequently Article 1 thereof as well as Article 14(3)(d) of the International Covenant on Civil and Political Rights (the ICCPR).

The judgment delivered today pertains to the Court's findings in respect of the Applicant's claims for reparations.

PECUNIARY REPARATIONS:

With respect to pecuniary reparations, the Applicant sought reparation for **material loss**, which he alleged ensued from his arrest, trial and imprisonment and disruption of his

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income generation activities and life plan. The Respondent State refutes the claim on the basis that the Applicant has failed to prove the material prejudice he suffered and the amounts sought are not based on any justifiable computation. The Court denied the Applicant's prayer for material damages due to his failure to establish a link between the violations found and the loss allegedly suffered. The Court also found that he was unable to provide satisfactory evidence as to the loss suffered.

Regarding **non-material loss**, the Applicant claimed reparation for the pain and suffering he endured as a result of his unfair trial and the loss of contact with his wife, son, mother and siblings. He also claimed that he suffered deteriorating health while in prison. The Respondent State refuted these claims because the Applicant was lawfully convicted and there is no proof that it caused the Applicant's suffering, hardship or emotional stress. The Respondent State contended that there is no proof that the Applicant's ill-health was caused by his imprisonment and that nevertheless, he was provided with medical attention while in prison. The Respondent State argued that his family was free to visit him in prison. On the basis that moral prejudice need not be proven and presumptions are made in the Applicant's favour in this regard, which the Respondent State must rebut, the Court found that the Applicant suffered moral prejudice as a result of the violations established and that this entitled him to compensation. Accordingly, the Court using its discretion, awarded the Applicant Tanzanian Shillings Two Million (TZS 2, 000,000) as compensation.

The Applicant also claimed compensation for the moral prejudice suffered by his wife, son, Emmanuel Alex Mallya, mother, Ester Marmo Maley and siblings, Flora Amos Mallya, Anna Elinisa Swai and John Thomas Mallya, as indirect victims, alleging that they also suffered emotional harm and social stigma. He stated that his imprisonment left them without their breadwinner, companion and mentor and that their social conditions deteriorated, particularly since he was the head of the family following his father's death. This claim was challenged by the Respondent State on the basis that the Applicant has not proved the relationship between him and the indirect victims and how he was supporting them. The Respondent State also disputed the amounts claimed because the Applicant is unaware of the whereabouts of his son, his wife is no

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longer in his life and the broken family relations may have existed prior to his conviction. The Court re-affirmed that compensation for non-material loss also applies to relatives of the victims of a human rights violation as a result of the indirect suffering and distress. On the basis of its position in the *Norbert Zongo v Burkina Faso* case, the Court found that the Applicant's wife, son, mother and siblings are indirect victims who might be entitled to claim for moral damages, subject to proof.

The Court ruled that with regard to the Applicant's wife and son, he had failed to demonstrate that they suffered any prejudice, since they stopped being in the Applicant's life soon after the Applicant was convicted. The Court therefore dismissed the Applicant's prayer for compensation for moral prejudice to his wife and son.

As regards his mother and siblings, the Court found that they suffered emotional anguish following the violations against the Applicant and his imprisonment and that their social conditions deteriorated. The Court consequently awarded the Applicant's mother, Ester Marmo Maley, Tanzanian Shillings One Million, Five Hundred Thousand (TZS 1,500,000), his sisters, Flora Amos Mallya and Anna Elinisa Swai and brother, John Thomas Mallya Tanzanian Shillings One Million (TZS 1,000,000) each, as compensation.

NON-PECUNIARY REPARATIONS:

The Applicant **prayed for an order that he be released from prison** because his conviction was the result of an unfair trial and this measure would be appropriate to repair the harm caused to him and to prevent further violations. The Respondent State averred that the Applicant is not entitled to this form of reparation since he was in prison due to his unlawful actions and any prejudice he suffered was of his own doing. The Respondent State argued that, the Court did not order such a measure in the judgment on merits. The Court did not grant the Applicant's prayer to be released from prison as this had become moot following the Applicant's release from prison on 2 June 2018.

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The Applicant also prayed the Court to order the Respondent State to **guarantee non-repetition of the violations** against him and **report every six (6) months on measures taken to implement the judgment** until the Court is satisfied on the full implementation thereof. The Respondent State contended that the violations for which the Applicant sought guarantees are unclear, because the Court already dealt with this matter in the judgment on merits and ordered that the Respondent State to take measures to remedy the violations. The Court observed that though the repetition of the violations established would not re-occur as regards the Applicant because his trial and appeals were completed, it can make an order for guarantees of non-repetition of these violations, generally, particularly where the violations are structural in nature. The Court noted in this regard, that the Respondent State has passed the Legal Aid Act of 2017 which establishes a framework for provision of legal aid to indigent persons in all judicial proceedings. The Court found this to be an adequate measure to guarantee non-repetition of such violations generally and consequently dismissed this prayer.

Finally, the Applicant prayed the Court to order that the Respondent State publish the Judgment on merits in English and Swahili in the national Gazette **as a measure of satisfaction**. The Respondent State argued that the Judgment on the merits was an adequate measure of satisfaction and no further orders are necessary in this regard. The Court found that, though a judgment of the Court can be considered to be an adequate measure of satisfaction, it can order further measures as are necessary. The Court considered that in the circumstances of this case, in order to raise awareness of the Respondent State's obligations to make reparations for the violations established and to enhance implementation of the judgment, it ordered the Respondent State to publish the Judgment on merits and Judgment on reparations, within three (3) months of notification of the Judgment on reparations, on the websites of the Judiciary and of the Ministry of Constitutional and Legal Affairs and ensure that these remain accessible for at least one (1) year.

In respect of **costs**, the Court rejected the Applicant's claim for legal fees related to the proceedings before it on the ground that the Applicants were all afforded legal aid and supported by the Pan African Lawyers Union under the Court's legal aid scheme on a *pro*

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bono basis. The Court also rejected the Applicant's claim for transport and stationery costs, except the transport and accommodation costs relating to his Counsel's attendance at the public hearing of the matter on the merits which was held in Addis Ababa, Ethiopia and which the Court found ought to be covered under its legal aid scheme. The Court consequently ordered that each party shall bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <http://en.african-court.org/index.php/55-finalised-cases-details/858-app-no-005-2013-alex-thomas-v-united-republic-of-tanzania-details> .
For any other queries, please contact the Registrar by email to registrar@african-court.org

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