



ANDREW AMBROSE CHEUSI v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 004/2015

JUDGMENT ON MERITS AND REPARATIONS

26 JUNE 2020

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 26 June 2020

Arusha, 26 June 2020: The African Court delivered its Judgment in the case of *Andrew Ambrose Cheusi v. United Republic of Tanzania*.

Mr. Andrew Ambrose Cheusi (the Applicant) is a national of Tanzania currently serving a thirty (30) year prison sentence, in Ukonga Prison following his conviction for the offence of armed robbery. In addition, the Applicant was convicted on charges of conspiracy to commit a felony and robbery and sentenced to seven (7) and fifteen (15) years imprisonment, respectively, which were later quashed.

He filed the Application alleging violations by the United Republic of Tanzania (the Respondent State) of the right to equality and equal protection of the law under Article 3 of the African Charter on Human and Peoples' Rights (the Charter) and the right not to be subjected to cruel, inhuman and degrading treatment under Article 5 of the Charter on the ground that he was "isolated" during the proceedings, he was beaten up by state agents and denied medical care. He also alleged the violation of his rights to a fair trial as provided under Article 7 of the Charter on the ground that: he was not presented with witness statements; his defence of *alibi* was not considered; he was denied free legal assistance; his appeal was not concluded within a reasonable time; and he was sentenced to a prison term that did not exist at the time the offence he was charged with was committed.

The Respondent State, objected to the jurisdiction of the Court and the admissibility of the Application.

The Court first considered whether it had material jurisdiction over the matter and held that since the Application alleged violations of rights provided for in the Charter to which the Respondent State is a Party, then it had material jurisdiction.



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The Court also found that it had personal jurisdiction over the Parties since on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights (the Protocol) and this Declaration allows individuals to file applications as per Article 5(3) of the Protocol. The Court further decided that the Respondent State's withdrawal of the said Declaration on 21 November 2019 does not affect this Application, as it only takes effect on 22 November 2020.

The Court held that it had temporal jurisdiction because the alleged violations were continuous in nature; and lastly, that it had territorial jurisdiction given that the facts of the matter occurred within the territory of Tanzania which is a Party to the Protocol.

As regards admissibility of the Application, the Court considered two objections raised by the Respondent State. The first objection related to the Applicant's failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 40(5) of the Rules of Court. On this point, the Respondent State argued that the Applicant had not utilised the local remedy of filing a constitutional petition to the High Court of Tanzania, which is a procedure provided for under the Basic Rights and Duties Enforcement Act of Tanzania for the enforcement of the fundamental rights in Part III of the Constitution of Tanzania.

The Court rejected the Respondent State's contention that the Applicant could have filed a constitutional petition at the High Court because this remedy, as structured in the Respondent State's judicial system, is considered an extraordinary remedy which the Applicant was not required to exhaust.

The Respondent State also claimed that the Application is inadmissible because the Applicant took too long to bring his claim to the Court contrary to Article 56(6) of the Charter and Rule 40(6) of the Rules. The Court dismissed this objection on the grounds that the Applicant being in prison with limited access to information, being poor and unable to afford a lawyer, unaware of the existence of the Court and with no legal assistance throughout his trial, his delay in filing his Application was justified. The Court was also satisfied that the record showed that all other conditions of admissibility as set out in Article 56 of the African Charter and Rule 40 of the Rules had been complied with and that the matter was admissible.

The Court then considered whether the Respondent State violated the Applicant's rights under the Charter as alleged; beginning with the right to a fair trial.

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In this regard, the Court examined six aspects of the alleged violation of the right to a fair trial. The Court considered whether this right was violated by: the Respondent State failing to organise an identification parade, the reliance by the domestic courts on the testimony of the prosecution witnesses to find the Applicant guilty, the alleged refusal by the domestic courts to provide the Applicant with witness statements, the alleged failure to consider the Applicant's defence of *alibi* and the alleged sentencing of the Applicant to a sentence that did not exist at the time of the alleged commission of the offence. The Court found that there was nothing on the record to indicate that the domestic courts made manifest errors or occasioned a miscarriage of justice in their determination of the Applicant's matter.

Nevertheless, the Court found that the Applicant should have been provided with free legal assistance once his own lawyer withdrew from representing him, thereby, the Respondent State's failure to do so violated Article 7(1)(c) of the Charter on the right to defence. The Court found that the period of ten (10) years, four (4) months and twenty-three (23) days taken by the High Court to determine the Applicant's appeal for his conviction and sentence on the charge of conspiracy to commit a felony was excessive and therefore, in violation of his right to be tried within a reasonable time guaranteed under Article 7(1)(d) of the Charter. As regards, the alleged violations of the right to equality and the right not to be subjected to cruel, inhuman and degrading treatment, the Court held that the Applicant had not provided proof to justify his allegation.

On reparations, the Court decided that the Applicant had not proved the alleged material losses and thus, the request for compensation for material damage was rejected. For the moral prejudice caused to the Applicant due to the violations found, the Court awarded damages in the sum of Tanzanian Shillings Five Million Seven Hundred Twenty-Five Thousand (TZS 5,725,000) exempt of tax or levies as fair compensation to be paid within six months of the notification of the judgment, failing which, it 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 accrued amount is fully paid.

The Court rejected the Applicant's request for his release from prison and order for guarantees of non-repetition of violations against him on the basis that the Applicant's arrest and conviction were not based on arbitrary considerations and that the violations found would not recur since the proceedings against him had been concluded. However, the Court ordered the Respondent State to publish the judgment within three (3) months of its notification, on the official websites of the Judiciary and the Ministry of Constitutional and Legal Affairs and ensure that the Judgment remains accessible for at least one (1) year after the date of such publication.



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The Court ordered that each party should bear its own costs.

Justice Chafika Bensaoula issued a Separate Opinion in this matter.

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 <https://www.african-court.org/en/index.php/56-pending-cases-details/870-app-no-004-2015-andrew-ambrose-cheusi-v-united-republic-of-tanzania-details>.

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.