


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THOBIAS MANG'ARA MANGO  
AND SHUKURANI MASEGENYA MANGO**

**V**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 005/2015**

**CASE SUMMARY**

## **I. SUMMARY OF FACTS**

1. Tobias Mang'ara Mango and Mr. Shukurani Masegenya Mango are the Applicants in this matter and are both citizens of the United Republic of Tanzania, the Respondent State.
2. The Applicants allege violation of their rights following their arrest, detention and the manner in which their various cases were treated before the domestic courts of the Respondent State in relation to the charges and conviction for armed robbery against them.
3. They were tried at the District Court of Mwanza in Criminal Case No. 672 of 1999, convicted and sentenced on 7 May 2004 to a term of thirty (30) years imprisonment each. The Applicants appealed the conviction and sentences to the High Court of Tanzania in Criminal Appeal No. 201 of 2004 which was dismissed on 31 October 2005 on the basis that the sentence of thirty (30) years imprisonment was lawful. The Applicants further appealed to the Court of Appeal of Tanzania sitting at Mwanza in Criminal Appeal No. 27 of 2006 and this Appeal was dismissed on 12 May 2010. The Court of Appeal found that there was no error in the findings of the District Court and High Court on the substantive matters under appeal and that the appeal lacked merit.
4. The Applicants then filed an Application for Review at the Court of Appeal in Criminal Application No. 8 of 2010 and this was dismissed on 18 February 2013 on the basis that it showed no ground that raised the need for a review of the Court of Appeal's judgment in Criminal Appeal No. 27 of 2006.
5. The Applicants claim that they subsequently filed on 17 June 2013 a Constitutional Petition at the High Court at Mwanza alleging violation of their human rights under the Basic Rights and Duties Enforcement Act which was not heard despite their concerted follow-up.

## **II. ALLEGED VIOLATIONS**

6. The Applicants claim that:
  - i. The principles of law and practice governing the matter of visual identification were neither met nor considered by the Trial Court;

- ii. They were not represented by a Counsel, were denied medical treatment and overstayed in Police custody;
- iii. They were denied a chance to be heard when the presiding Magistrate was changed;
- iv. No actual weapon was discovered or tendered in Court to support the charge of armed robbery and the owner of the *Bureau de Change* mentioned on the Charge Sheet was never called before the Court to testify
- v. The trial proceeded despite them being denied some witness statements and some being provided to them after undue delays;
- vi. The judgments of the Trial Court, first and second Appellate Courts were defective due to the contradiction between the evidence of Prosecution Witness 2 and Prosecution Witness 3;
- vii. The Trial Court tried the case to its finality without considering or according weight to the written submissions;
- viii. The High Court concluded the appeal by relying on misapprehension or misdirected evidence;
- ix. The Court of Appeal relied on misconceived findings to convict them;
- x. Their Constitutional Petition was irregularly rejected and returned to them unprocedurally, with no official letter;
- xi. Their Application for Review at the Court of Appeal was dismissed on grounds that it should have been raised in an Appeal;
- xii. The sentence meted against them following their conviction is contrary to Sections 285 and 286 of the Penal Code of Tanzania as this sentence did not exist at the time the offence was committed and it was harsh; and
- xiii. They have suffered irreparable damage and inhuman treatment due to the violation of their human rights.

7. The Applicants allege violations of their human rights under:

- i. Articles 1, 2, 3, 5, 6, 7, 8 and 10 of the Universal Declaration of Human Rights;

- ii. Articles 3, 7, 7(2), 19, and 28 of the African Charter on Human and Peoples' Rights;
- iii. Articles 107A (2)(e) and 107B; 12(1) and (2); 13(1), (3), (4) and (6)(c); 26(1) and (2); 29(1), (2) and (5); 30(1), (3) and (5) of the Constitution of the United Republic of Tanzania;
- iv. Article 6 of the European Convention on Human Rights.
- v. Article 8 of the American Convention on Human Rights; and
- vi. Sections 285 and 286 of the Penal Code of the United Republic of Tanzania regarding their illegal sentencing to thirty years' imprisonment.

### **III. PRAYERS OF THE PARTIES**

8. The Applicants pray for the following declarations and orders:

- i. A Declaration that the Respondent State has violated the Applicants' rights guaranteed under the African Charter, in particular: Articles 1 and 7.
- ii. A Declaration that the Respondent State violated Articles 2, 3, 5, 7 and 19 of the Charter and Articles 1, 2, 5, 6, 7, 8 and 10 of the Universal Declaration of Human Rights at various stages of the trial process.
- iii. A Declaration that s142 of the Evidence Act (Cap 6 R.E 2002) is incompatible with international standards of the right to a fair trial.
- iv. An Order that the Respondent State takes immediate steps to remedy the violations.
- v. An order for reparations.
- vi. Any other orders or remedies that the Court shall deem fit.

9. The Respondent State prays the Court to rule that:

- i. The Application has not invoked the jurisdiction of the Court.
- ii. The Application be dismissed as it has not met the admissibility requirements stipulated under Rule 40 (5) of the Rules of Court.
- iii. The Application be dismissed as it has not met the admissibility requirements stipulated under Rule 40 (6) of the Rules of Court.
- iv. The Application be dismissed in accordance to Rule 38 of the Rules of Court.
- v. The Respondent has not violated Articles 1, 2, 6 and 7 of the United Nations Declaration of Human Rights and Articles 3, 7, 10, 19 and 28 of the Charter.
- vi. Reparations be denied to the Applicants, they continue serving their sentence and the Application be dismissed in its entirety.