



**PRESS RELEASE**

**JUDGMENT SUMMARY**

**SHUKRANI MASEGENYA MANGO & OTHERS V UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 008/2015**

**JUDGMENT ON MERITS AND REPARATIONS**

**26 SEPTEMBER 2019**

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

**Date of Press Release:** 26 September 2019

**Arusha, 26 September 2019:** Today, the African Court on Human and Peoples' Rights (the Court) delivered its Judgment in the case of *Shukrani Masegenya Mango & Others v United Republic of Tanzania*.

In this case, seven (7) applicants jointly filed a case before the Court. Five of the Applicants (Ally Hussein Mwinyi, Juma Zuberi Abasi, Julius Joshua Masanja, Michael Jairos, Azizi Athuman Buyogela) had been convicted of murder and sentenced to death but subsequently their sentences were commuted to life imprisonment. Two of the Applicants (Shukrani Masegenya Mango and Samwel M Mtakibidya) had been convicted of armed robbery and sentenced to thirty (30) years imprisonment. The Applicants' main grievance was the manner in which the Respondent State has been exercising the presidential prerogative of mercy, particularly in pardoning convicts. The Applicants alleged that the Respondent State was guilty of discrimination in the manner in which it exercised the prerogative of mercy and that this was contrary to, among others, guarantee of non-discrimination in Article 2 and the right to equality in Article 3 of the African Charter on Human and Peoples' Rights (the Charter). The Applicants also alleged that the conduct of the Respondent State was a violation of the Universal Declaration of Human Rights and the Respondent State's Constitution. Two of the Applicants, who had been convicted and sentenced for armed robbery, also alleged that the thirty (30) year sentence that was meted to them was illegal since the sentence was not in existence at the time they were convicted. The Applicants prayed the Court to make an order nullifying the decisions of the Respondent State that violated their rights and also for the Court to order reparations.

The Court observed that, as per Article 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), it had to determine whether it has jurisdiction over the matter. The Court held that it had material, jurisdiction given that the Application invoked violations of human rights

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protected under the Charter and other human rights instruments ratified by the Respondent State. The Court also noted that as regards personal jurisdiction, the Respondent State is a Party to the Protocol and has deposited the Declaration prescribed under Article 34(6) of the Protocol and this Declaration allows individuals, such as the Applicant, to file the application as per Article 5(3) of the Protocol. The Court further 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. The Court therefore determined that it had jurisdiction to consider the matter.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol and Rule 39 of the Rules of Court (the Rules), considered whether the requirements of admissibility as provided under Article 56 of the Charter and Rule 40 of the Rules had been met. The Court held, by a majority of eight (8) for, and two (2) against, Justice Rafaâ BEN ACHOUR and Justice Chafika BENSAOULA dissenting, that the Application was inadmissible in respect of five (5) of the Applicants (Ally Hussein Mwinyi, Juma Zuberi Abasi, Julius Joshua Masanja, Michael Jairos, Azizi Athuman Buyogela, Samwel M Mtakibidya) and admissible in respect of two (2) of the Applicants (Shukrani Masegenya Mango and Samwel M Mtakibidya).

At the outset, the Court noted that although the Application had been filed jointly by seven (7) applicants there were essentially two groups within the Applicants i.e. the five (5) Applicants who had been convicted and sentenced for murder and the two Applicants who has been convicted of armed robbery, who, in addition to complaining about the exercise of the presidential prerogative of mercy, also complained about the legality of their thirty (30) year sentence for armed robbery. The Court held that the Application was inadmissible in so far as it alleged violation of the Applicants' rights by reason of the exercise of the prerogative of mercy since the Applicants could have filed a constitutional petition challenging the manner in which the prerogative was being exercised. The Court noted that Article 56(5) of the Charter requires all Applicants to exhaust available domestic remedies and it is not for an applicant to dismiss the available remedies without attempting to utilise them. The Court, however, found that the Application was admissible in so far as it related to the two (2) Applicants who were challenging the legality of their sentences for armed robbery. The Court reasoned that the challenge to their sentences fell under the umbrella of the Applicants' fair trial rights which had already been raised in the appeals filed by the Applicants before the Court of Appeal. The Court found, therefore, that the two Applicants had complied with all admissibility requirements.



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On the merits, the Court dismissed the claim by the two Applicants by noting that the thirty (30) year sentence for armed robbery was already in place at the time the Applicants were convicted and sentenced. Having found that there were no violations, the Court dismissed the Applicants' prayer for reparations. The Court ordered that each Party should bear their 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/56-pending-cases-details/947-app-no-008-2015-shukurani-mango-and-others-v-united-republic-of-tanzania-details>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org) and [africancourtmedia@gmail.com](mailto:africancourtmedia@gmail.com) The African Court on Human and Peoples' Rights is a continental court established by African countries 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](http://www.african-court.org)