

**ROBERT JOHN PENESSION**  
**APPLICATION No. 013/2015**  
**JUDGMENT ON THE MERITS AND ON REPARATION**  
**28 NOVEMBER 2019**

DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

**Date of Press Release: 28 November 2019**

**Zanzibar, 28 November 2019:** The African Court on Human and Peoples' Rights (hereinafter referred to as "the Court") has delivered its judgment in the case of *Robert John Penession v. United Republic of Tanzania*.

The Applicant, Robert John Penession is an individual who claims to be a Tanzanian citizen. In January 2010, he was the subject of legal proceedings for illegal entry and presence in the territory of the Respondent State. He was subsequently sentenced to a fine of eighty thousand (80,000) Tanzanian Shillings or, in default, to two years in prison, a sentence subsequently upheld by both the High Court and the Court of Appeal. The Applicant maintains that he is Tanzanian by birth just like his parents. The Applicant then on 2 June 2015, filed with this Court an Application alleging that the Respondent State has violated his right to nationality, his right to freedom of movement and his right not to be unlawfully detained. The Applicant also alleges the violation of the Tanzanian Constitution, "Article 59(1) of the Additional Protocol to the 1949 Geneva Convention" and Articles 1 and 12(1) and (2) of the African Charter on Human and Peoples' Rights (Charter). The Applicant prayed the Court to declare that he is a citizen of Tanzania and also to order his release from detention. Furthermore, the Applicant claimed reparation for the material and moral prejudice suffered by himself and by his mother as an indirect victim.

The Respondent State raised two preliminary objections to the Court's jurisdiction, in particular on the form and content of the Application and on the power of the Court to consider matters of evidence. The Respondent State also prayed the Court to reject any form of reparation because, in its view, the Applicant had failed to prove the alleged violations.

**PRESS RELEASE**  
**SUMMARY OF THE JUDGMENT**

The Respondent State also contended that the Applicant was never a Tanzanian citizen and that he possesses the nationality of two other countries, namely: South Africa and the United Kingdom. For the Respondent State, the domestic proceedings were conducted in accordance with the law and the Applicant's rights were respected.

The Court, in accordance with 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 (hereinafter referred to as "the Protocol"), proceeded to examine its jurisdiction in the matter. It held that it had the material jurisdiction given that the complaints concerned the issue as to whether the domestic proceedings were in conformity with international standards as regards the right to a fair trial guaranteed by the Charter and other international human rights instruments ratified by the Respondent State. The Court also held that it has personal jurisdiction in as much as the Respondent State is party to the Protocol and had filed the declaration required under Article 34(6) thereof, whereby it accepted that individuals, in this case the Applicant, could bring cases to the Court, in accordance with Article 5(3) of the Protocol. The Court further declared that it had temporal jurisdiction given that the alleged violations were of continuing nature; and, finally, that it had territorial jurisdiction, the facts of the case having occurred in the territory of Tanzania, a State party to the Protocol. The Court thus held in conclusion that it had jurisdiction to hear the case. As regards admissibility of the Application, the Court, by virtue of Article 6 of the Protocol and Rule 39 of its Rules (hereinafter referred to as "the Rules"), examined whether the Application has complied with the Conditions for Admissibility of Applications laid down in Articles 56 of the Charter and Rule 40 of the Rules. The Court noted, unanimously, that the Application is admissible.

On 19 and 20 March 2018, the Court held a public hearing at which the two parties were present and called witnesses to buttress their arguments.

The Court at its 55th Ordinary Session held in Zanzibar from 4 to 29 November 2019, delivered its judgment on 28 November 2019. On the merits, as regards the right to nationality, the Court held by a majority of six votes for and two against, Judges

**PRESS RELEASE**  
**SUMMARY OF THE JUDGMENT**

Niyungeko and Bensaoula having voted against, that the Respondent State has not been able to demonstrate that the Applicant is not Tanzanian by birth and therefore, the State has violated his right to nationality as recognized by Article 5 of the African Charter and article 15 of the UDHR. As a consequence of this violation of the right to nationality, the Court unanimously held in conclusion that the Applicant's right to liberty and to the security of his person (Article 6 of the Charter), his right to freedom of movement and his right to have a residence of his choice (Article 12 of the Charter) have been violated, all leading to the violation of Article 1 of the Charter.

With respect to reparations, the Court dismissed the Applicant's claim for material reparation on the grounds that the claim was not substantiated by evidence. On the other hand, the Court recognized that the Applicant's unlawful and prolonged detention has undoubtedly had consequences on his moral condition and that of his mother as an indirect victim, and therefore ordered the Respondent State to pay them reparation. The Court also ordered the Respondent State to immediately release the Applicant from prison, pay him the amount of ten million Tanzanian Shillings in reparation of the moral prejudice arising from his unlawful detention; and an additional amount of three hundred thousand Tanzanian Shillings for each month of the unlawful detention. The Court further awarded the amount of five million Tanzanian Shillings to the Applicant's mother for moral damage she suffered as an indirect victim.

More information on this case, including the full text of the African Court's judgment, is available on the website [http://fr.african-court.org/index.php/47-pending-cases-details/requete-no-013-2015-Robert John Penassis c. République Unie de Tanzanie..](http://fr.african-court.org/index.php/47-pending-cases-details/requete-no-013-2015-Robert-John-Penassis-c.-Republique-Unie-de-Tanzanie..)

For any other questions, please contact the Registrar by email at [registrar@african-court.org](mailto:registrar@african-court.org).

*The African Court on Human and Peoples' Rights is a continental jurisdiction created by African countries to ensure the protection of human and peoples' rights in the Continent. The Court has jurisdiction to hear 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 relating to ratified by*



**African Court**  
on Human and Peoples' Rights

Arusha, Tanzania  
Website: [www.african-court.org](http://www.african-court.org)  
Telephone : +255-732-979-509

**PRESS RELEASE**  
**SUMMARY OF THE JUDGMENT**

*the States concerned. For more information, please visit our website [www.african-court.org](http://www.african-court.org).*