



**PRESS RELEASE**  
**JUDGMENT SUMMARY**

**JIBU AMIR MUSA AND SAIDI ALLY MANGAYA v. UNITED REPUBLIC OF TANZANIA**  
**APPLICATION NO. 014/2015**  
**JUDGMENT ON MERITS AND REPARATIONS**

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

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

**Zanzibar, 28 November 2019:** Today, the African Court on Human and Peoples' Rights (the Court) delivered its judgment in the case of *Jibu Amir alias Mussa and Said Ally alias Mangaya v. United Republic of Tanzania*.

Messrs Jibu Amir and Said Ally (the Applicants) are nationals of the United Republic of Tanzania (the Respondent State). They are currently serving a prison sentence of thirty (30) years after being convicted of the offence of armed robbery contrary to Sections 285 and 286 of the Respondent State's Penal Code by the District Court of Temeke at, Temeke, Dar es Salaam on 25 February 2004.

The Applicants alleged that the Respondent State violated their rights under Articles Article 1, 2, 3, 4, 5, 6 and 7(1)(c) and (2) of the African Charter on Human and Peoples' Rights (the Charter) by pronouncing an "improper" sentence on them, failing to inform them of their right to Counsel and by denying them free legal assistance during the trial and appellate proceedings. They thus sought reparations, particularly an order for release from prison and monetary compensation to remedy the alleged violations.

The Respondent State raised objections to the jurisdiction of the Court and the admissibility of the Application. It alleged that the Application contains allegations which would require the Court to sit as a court of first instance. According to the Respondent State, sitting as a court of first instance is not within the jurisdiction of the Court. The Court held that since the Application involves alleged violations of rights provided for in the African Charter on Human and Peoples' Rights (the Charter) and other human rights instruments to which the Respondent State is a Party, it has material jurisdiction by virtue of Article 3 of the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (the Protocol).

The Court 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



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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 the Respondent State which is a Party to the Protocol. The Court, therefore, concluded that it had jurisdiction to consider the Application.

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), had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 40 of the Rules, had been met. The Court then considered the two objections raised by the Respondent State regarding the admissibility of the Application.

The first objection related to the Applicants' 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 Applicants had not utilised the remedy of filing a constitutional petition to the High Court of Tanzania, a procedure provided in 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 Applicants could have pursued the constitutional petition available at the High Court because this remedy, as structured in the Respondent State's judicial system, is considered an extraordinary remedy which the Applicants were not required to exhaust. The Court decided that the Applicants had exhausted local remedies having seized the Court of Appeal, the highest judicial organ of the Respondent State.

With regard to the second objection to the admissibility of the Application, the Respondent State claimed that it is inadmissible because the Applicants delayed in bringing their claim to the Court. The Court dismissed this objection on the grounds that the Applicants being in prison, restricted in their movements, with limited access to information, having had no legal assistance throughout their trial and appeals and having used the review procedure were justified in not having filed their Application earlier.

The Court then satisfied itself that the Application complied with all other conditions of admissibility set out in Article 56 of the Charter and Rule 40 of the Rules and found that the Application is admissible.

The Court then considered whether the Respondent State violated the Applicants' rights under Articles 1, 2, 3, 4, 5, 6 and 7(1)(c) and (2) of the Charter by examining three issues, which it deemed to be central to the Applicants' grievances. The Court limited its assessment to the said three issues and found it unnecessary to examine allegations of violations of Article 1, 2, 3, 4, 5, and 6 of the Charter.



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Accordingly, the first issue it addressed under the right to a fair trial was whether the sentence imposed on the Applicants was illegal and thus, violated their rights under Article 7(2) of the Charter. The Court found that the penalty for armed robbery in the United Republic of Tanzania is thirty (30) years' imprisonment. Therefore, the Applicants were properly sentenced and their rights were not violated in this regard.

Secondly, on the issue that the Applicants were not provided with free legal assistance during their trial and appeals, the Court found that the Respondent should have provided the Applicants with free legal assistance. The Court emphasised that the interests of justice required the provision of free legal assistance as the Applicants were accused of a serious crime which carried a minimum custodial sentence of thirty (30) years imprisonment and that they were indigent, unable to hire their own lawyers. The Court therefore held that the Applicants' right under Article 7(1)(c) of the Charter was violated.

Lastly, the Court determined whether the Respondent State violated the Applicants' right to receive information. The Court observed that this allegation relates more to the right to be informed of the right to Counsel than to the right to information. In this regard, the Court stated that although the right to be informed of one's right to Counsel is not expressly stipulated in Article 7 of the Charter, Article 14 (3) (d) of the International Covenant on Civil and Political Rights and (ICCPR) clearly prescribes that all accused persons have the right to be informed of their right to have legal representation. By interpreting Article 7 (1) (c) of the Charter as read together with Article 14 (3) (d) of the ICCPR, the Court found that the Respondent State has violated the Applicants' the right to be informed of their right to Counsel by failing to inform them as such prior to, or in the course of their trial and appeals.

Having found the violations of these rights, the Court then considered the issue of reparations.

On pecuniary reparations, the Court awarded the Applicants Tanzanian Shillings Three Hundred Fifty Thousand (TZS 350,000) each as fair compensation for the moral prejudice they suffered from the violations as regards the denial of free legal assistance and the right to be informed of their right to counsel. The Respondent State is required to pay this amount free from tax within six (6) months of the notification of the judgment failing which it will 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 amount is fully paid.

On non-pecuniary reparations, the Court dismissed the Applicants' prayer that the Court should order their release. The Court noted that it orders this remedy only in exceptional cases where the detention of an applicant is deemed to be based on arbitrary grounds or that the continued detention would occasion a



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miscarriage of justice. In the present case, the Court held that the the Applicants did not sufficiently demonstrate nor did the Court establish that their conviction and sentencing were based on arbitrary considerations or occasioned a miscarriage of justice to the Applicants.

The Court ordered the Respondent State to submit a report on the status of implementation of the Court's decision within six (6) months from the date of notification of the judgment.

The Court ordered that each Party should bear its 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://www.african-court.org/en/index.php/56-pending-cases-details/879-app-no-014-2015-jibu-amir-mussa-another-v-united-republic-of-tanzania-case-summary-details>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto: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](http://www.african-court.org).*