


<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>		

**BENEDICTO DANIEL MALLYA**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO 018/2015**

**CASE SUMMARY**

## **I. SUMMARY OF THE FACTS**

1. The Applicant, Mr. Benedicto Daniel Mallya, is a national of the United Republic of Tanzania. He was convicted on 16 May 2000 of the rape of a seven (7) year old girl and sentenced to life imprisonment in Criminal Case No. 1142 of 1999 before the District Court of Moshi. He was fifteen (15) years old at the time he was sentenced. He filed this Application before this Court on 1 September 2015 against the Republic of Tanzania.
2. The Applicant alleged that following his conviction, he filed a Notice of Appeal, but was not provided with certified true copies of the record of proceedings and judgment to enable him file his appeal at the High Court. It is only in February 2016, after filing, the Application before this Court, that, the Respondent State provided him with copies of the record of proceedings and the judgment.
3. Furthermore, he alleges that his attempts to file a constitutional petition at the High Court of Tanzania seeking to enforce his constitutional rights under Article 13(6) (a) of the Constitution of the United Republic of Tanzania was hindered by difficulties.
4. On 9 February 2016, the High Court at Moshi, of its own motion, in Criminal Appeal No. 74 of 2015, called for the Applicant's records. Subsequently, on 15 February 2016, the court ordered a hearing of the appeal and ordered that the memorandum of appeal be served on the Applicant. According to the Respondent State, on 22 February 2016, the appeal was considered in the Applicant's presence and the Prosecution did not object to the appeal. The High Court then allowed the appeal, quashed the conviction, set aside the sentence and ordered the Applicant's release on the grounds that the evidence relied on by the District Court of Moshi was flawed. The Applicant alleges that sometime in May 2016, after serving fifteen (15) years and nine (9) months in prison, he was released.

## **II. ALLEGED VIOLATIONS**

- a. That the Respondent State violated his right to have his cause heard, specifically his right to appeal as provided under Articles 7(1) (a) of the African Charter on Human and Peoples' Rights and that his right to a fair and expeditious trial was denied as follows:

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- i. This was a deliberate intention of frustrating the Applicant, disabling him from preparing a proper defence and denying him the right to liberty and to a fair trial.
  - ii. The Applicant was denied the right to be tried within a reasonable time.
  - iii. The Applicant's efforts to seek redress before the municipal courts of the Respondent were fraught and hindered by complexities and unnecessary technicalities.”
- b. That the Respondent State violated his right to equality before the law, provided under Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

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

1. The Applicant, prays for the following reliefs:

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- a. A Declaration that the Respondent State was in violation of Article 7 (1) (a) of the African Charter on Human and Peoples' Rights
- b. An Order for reparations and compensation; and
- c. Any other Order that the Court may deem fit and just to grant.”

2. The Respondent State prays that the Court should grant the following orders:

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1. That, the Application be struck out of the record of the Court for being overtaken by events;

2. That, the Court declares that the Respondent have (sic) acted in good faith;
3. That, the Court refrains from ordering reparations since the act of the Respondent is sufficient reparation;
4. Any other order the Court may deem right and just to grant.”