

**PRESS RELEASE
JUDGMENT SUMMARY**

**LIVINUS DAUDI MANYUKA V UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 020/2015
RULING (JURISDICTION AND ADMISSIBILITY)
28 NOVEMBER 2019**

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 Ruling in the case of *Livinus Daudi Manyuka v United Republic of Tanzania*.

Mr Livinus Daudi Manyuka (the Applicant) is a national of the United Republic of Tanzania (the Respondent State) who, at the time of filing the Application, was a prisoner serving a sentence of thirty (30) years imprisonment for robbery with violence following his conviction by the District Court at Mbinga, Ruvuma Region on 15 May 2000.

The Applicant alleged that the Respondent State had violated Article 2 of the African Charter on Human and Peoples' Rights (the Charter) by unlawfully imprisoning him for a non-existent offence hence curtailing his freedom of movement, association and of access to other amenities of life. The Applicant also argued that the enhancement of his sentence from twenty (20) years to thirty (30) years imprisonment by the High Court of Tanzania was an excessive order which violated his right to equality before the law as provided under Article 3 of the Charter. The Applicant further alleged that the Respondent State had violated Articles 4 and 5 of the Charter through the judgment of the High Court which ordered him to be caned twelve (12) strokes. It was the Applicant's submission that the imposition of caning violates the right to respect, dignity and integrity of the person as protected under the Article 5 of the Charter. The Applicant also alleged that the Respondent State had violated the Charter by not according him "the right to legal representation". The Applicant prayed the Court to find that the Respondent State had violated his rights and order reparations including his release from prison.

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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 Application.

The Court first considered the Respondent State's objections on the material jurisdiction of the Court. The Respondent State argued that the Application was calling on the Court to consider matters of evidence already determined by its domestic courts and that by doing so it would make the Court act as an appellate court yet it lacks such jurisdiction. The Court held that since the Application involved alleged violations of rights provided for in 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. The Court further held that while it is not an appellate body with respect to decisions of national courts, it has jurisdiction to examine whether the proceedings in the national courts were in accordance with the standards set out in the Charter or any other human rights instruments ratified by the Respondent State.

With regard to personal jurisdiction, the Court held that 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 applications 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 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), 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 considered two objections raised by the Respondent State in respect of 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 Applicant had not utilised the remedy of filing a constitutional petition at the High Court of Tanzania, a procedure provided for in the Basic Rights and Duties Enforcement Act of Tanzania for the enforcement of the fundamental

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rights included in Part III of the Constitution of Tanzania. The Court rejected the Respondent State's argument because this remedy, as structured in the Respondent State's judicial system, is considered an extraordinary remedy which the Applicant was not required to exhaust. The Court decided that, having seized the Court of Appeal, the highest judicial organ of the Respondent State the Applicant had exhausted local remedies.

The second objection related to whether the Application had been filed within a reasonable period of time after the exhaustion of local remedies. The key issue for determination here was whether the Applicant had seized the Court within a reasonable period of time, from the moment he exhausted local remedies, as required under Article 56(6) of the Charter. The Court held, unanimously, that the Application was inadmissible because it had not been filed within a reasonable time after the exhaustion of local remedies as envisaged in Article 56 (6) of the Charter. In coming to this conclusion, the Court noted that the Applicant had taken five (5) years and six (6) months from the time the Respondent State had deposited the Declaration under Article 34(6) of the Protocol, before filing the Application. Given the fact that the Applicant had legal representation in the domestic proceedings, both before the High Court and the Court of Appeal, and also the fact that the Applicant had not provided the Court with any information justifying the delay of five (5) years and six (6) months, the Court held that the Application had not been filed within a reasonable time and accordingly dismissed it.

The Court concluded that since the admissibility requirements under the Charter and the Rules are cumulative, an application that fails to meet one of the requirements fails the admissibility test. The Application was, therefore, declared inadmissible. The Court ordered that each Party should bear its own costs. Since the Court held that the matter was inadmissible, the merits of the Application were not considered.

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/884-app-no-020-2015-livinus-dauid-manyuka-v-united-republic-of-tanzania-details>.

For any other queries, please contact the Registry by email registrar@african-court.org

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



African Court
on Human and Peoples' Rights

Arusha, Tanzania
Website: www.african-court.org
Telephone: +255-27-970-430

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