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JUDGMENT SUMMARY

MAJID GOA alias VEDASTUS v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 025/2015

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 judgment in the case of *Majid Goa alias Vedastus v. United Republic of Tanzania*. Mr. Majid Goa alias Vedastus (the Applicant), is a national of the United Republic of Tanzania (the Respondent State), currently serving a prison sentence of thirty (30) years after being convicted of the rape of a twelve (12) year old minor. The Applicant alleged that the Respondent State violated his rights under Articles 2, 3(1) and (2) and 7(1)(c) and (d) of the African Charter on Human and Peoples' Rights (the Charter) by failing to properly examine the evidence against him, by failing to consider his defence of *alibi* and by denying him free legal assistance during the trial and appellate proceedings. He sought reparations to rectify the alleged violations.

The Respondent State objected to the jurisdiction of the Court and the admissibility of the Application. The Court first considered whether it had material jurisdiction over the matter and held that since the Application alleged violations of rights provided for in the Charter to which the Respondent State is a Party then it had material jurisdiction. The Court also found that it had personal jurisdiction over the Parties since on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (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.

Furthermore, the Court considered two objections raised by the Respondent State on the admissibility of the Application. The first objection related to the Applicant's 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 local remedy of filing a



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constitutional petition to the High Court of Tanzania, which is a procedure provided for under 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 Applicant 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 Applicant was not required to exhaust. The Court decided that the Applicant having seized the Court of Appeal, the highest judicial organ of the Respondent State, he had exhausted local remedies.

The Respondent State also claimed that the Application is inadmissible because the Applicant took too long to bring his claim to the Court. The Court dismissed this objection on the grounds that the Applicant being in prison, restricted in his movements, with limited access to information, having had no legal assistance throughout his trial and appeals and having used the review procedure, justified the failure to file his Application earlier. The Court was also satisfied that the record showed that all other conditions of admissibility as set out in Article 56 of the African Charter and Rule 40 of the Rules had been complied with.

The Court then considered whether the Respondent State violated the Applicant's rights under Articles 2, 3(1) and (2) and 7(1)(c) and (d) of the Charter by examining four issues.

The first issue it considered was whether the Applicant's right to a fair trial was violated by the domestic courts allegedly having failed to properly examine the evidence submitted. The Court found that there was nothing on record to indicate that the domestic courts failed to evaluate the evidence presented against the Applicant before finding him guilty.

Secondly, the Court determined whether the domestic courts failed to consider the Applicant's defence of *alibi*, and found that the Applicant did not substantiate his claim in this regard. The Court also, found that the domestic courts had considered this defence and properly disregarded it. In view of this finding, the Court dismissed this allegation.

On the issue of the Applicant lacking free legal assistance during his trials and appeals, the Court found that the Applicant should have been provided with free legal assistance because he was accused of a serious crime which carried a heavy custodial sentence.



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Finally, the Court determined whether the Applicant was treated unequally or discriminated against and found that the Applicant had not substantiated his claims in this regard and thus dismissed the allegation.

The Applicant requested the Court to remedy the violations he alleged by ordering his release from prison. The Court declined to make this order because the Applicant did not sufficiently demonstrate nor did the Court establish that his conviction and sentencing were based on arbitrary considerations leading it to determine that his continued incarceration as being unlawful. The Court however, awarded the Applicant Tanzanian Shillings, Three Hundred Thousand (TZS 300,000) as fair compensation for the moral prejudice he suffered from the denial of free legal assistance during the proceedings at the domestic courts. The Respondent State is required to pay the said amount free from tax within six (6) months of the notification of the judgment and report to the Court on the implementation thereof every six (6) months until full implementation. The Court ordered that each Party bear its 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://www.african-court.org/en/index.php/56-pending-cases-details/888-app-no-025-2015-majid-goja-vedatus-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 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.