

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

SUMMARY OF THE APPLICATION

KALEBI ELISAMEHE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 028/2015

I. THE PARTIES

1. Kalebi Elisamehe (hereinafter referred to as “the Applicant”) is a national of the United Republic of Tanzania who, at the time of filing this Application, was serving a thirty (30) year prison sentence at Tanga, for the rape of a twelve (12) year old girl.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as the “Respondent State”), which became a party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as the “Charter”) on 21 October 1986 and the Protocol on 10 February 2006. It also deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the African Union Commission an instrument withdrawing its Declaration.

II. FACTS OF THE MATTER

3. It emerges from the record that, on 6 March 2004, the Applicant was convicted and sentenced by the District Court of Monduli at Monduli District, (hereinafter referred to as “the District Court”) to a thirty (30) year prison sentence for the rape of a twelve (12) year old minor, in Criminal Case No. 39/2003. He was also ordered to pay the victim one cow valued at Tanzania Shillings Two Hundred Thousand (TZS 200,000) as compensation.
4. The Applicant appealed against the judgment by Criminal Appeal No. 03/2006 before the High Court of Tanzania at Arusha (hereinafter referred to as “the High Court”). He subsequently appealed against the decision of the High Court by Criminal Appeal No. 315/2009 before the Court of Appeal of Tanzania at Arusha (hereinafter referred to as the “Court of Appeal”). The High Court and the Court of Appeal upheld the conviction and the sentence on 9 July 2009 and 24 February 2012, respectively.
5. The Applicant alleges that the judgment of the Court of Appeal was contrary to Rule 66(1) of its Rules due to the court’s failure to evaluate the evidence of PW1 and PW2 to reach a just decision. He states that, the decision was based on prosecution witnesses’ uncorroborated evidence. He further states that, the

investigating officer was never summoned to testify in the course of the trial, the PF3 was not listed as part of the evidence during the preliminary hearing or on the charge sheet and police officer and doctor who were the authors of the documents to be relied on as evidence were never called as witnesses.

6. The Applicant further submits that the burden of proof was shifted to the defence contrary to Section 110(2) of the Evidence Act. He states that there was insufficient evidence to connect the Applicant with the commission of the offence of rape because PW3 who testified before the District Court bore grudges with the Applicant. The Applicant claims that the District Court and Appellate Courts erred in law and in fact when they discarded the Applicant's unshaken defence and believed the prosecution's view.
7. On 9 January 2013, the Applicant allegedly lodged a Notice of Motion for Review of the Court of Appeal's judgment, which was still pending at the time of filing the Application before this Court.

III. ALLEGED VIOLATIONS

8. The Applicant alleges:
 - i. That the Court of Appeal delayed in hearing his Application for Review to date;
 - ii. That he was wrongly deprived of the right to be heard, namely:
 - a) He was deprived of his right to legal assistance throughout the trial and appeals, contrary to Article 13 of the Tanzanian Constitution, Section 310 of Criminal Procedure Act (Cap 20 R.E. 2002) ("CPA"), and Articles 1, 2, 3, 5, 7(1)(b), 13 and 18(I) of the Charter;
 - b) He was wrongly deprived of the right to be heard and to defend himself;
 - c) The charge sheet was defective under Section 132 of the CPA (2002), because of the variance between the charge sheet and evidence; and the charge sheet also bore no stamp or signature of the public prosecutor;

- d) The appellate courts based their decisions on the findings of the lower courts, which, in his view, violates his right to have his sentence reviewed.
- iii. That the decision of the Court of Appeal was contrary to Rule 66(1) of the Court of Appeal Rules due to the following:
- a. “the court failed to evaluate the evidence of PW1 and PW2 to reach a just decision...”;
 - b. the decision was based on uncorroborated evidence by the prosecution witnesses;
 - c. throughout the trial, there was no investigator of the case and the PF 3 form was not listed during the Preliminary Hearing or in the charge sheet nor were the authors of the documents (Police and Doctor) called as witnesses;
 - d. the burden of proof was shifted to the defence contrary to Section 110(2) of the Evidence Act 1967 (Cap. 6 R.E. 2002);
 - e. there was insufficient evidence to connect the Applicant with the offence of rape because of the quarrel with PW3 who testified before the trial court that she bore grudges with the Applicant;
 - f. the “trial Court and Appellate Court erred in law and fact when they discarded the Applicant’s unshaken defence and believed the prosecution’s theory.”

IV. PRAYERS OF THE PARTIES

A. Applicant’s prayers

9. The Applicant prays the Court to “... allow [his] submission of complaints of violations of Human Rights and Justice by quashing decision of Lower courts and set aside the conviction imposed against [him].”
10. On reparations, the Applicant prays the Court to issue an order for pecuniary and non-pecuniary damages.

B. Respondent's prayers

11. The Respondent State prays the Court to:

- i. declare that it has no jurisdiction and the Application has not met the admissibility requirements under Rule 40(5) and (6) of the Rules;
- ii. declare that it has not violated Article 7(1), 7(1)(c) and 7(1)(d) of the Charter;
- iii. dismiss the Application for lack of merit;
- iv. dismiss the Applicant's prayers;
- v. rule that the Applicant shall bear the costs.