



PRESS RELEASE
JUDGMENT SUMMARY

KALEBI ELISAMEHE V. UNITED REPUBLIC OF TANZANIA

APPLICATION No. 028/2015

JUDGMENT ON MERITS AND REPARATIONS

26 JUNE 2020

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

Date of Press Release: 26 June 2020

Arusha, 26 June 2020: The African Court rendered judgment in the case of *Kalebi Elisamehe v. United Republic of Tanzania*. Mr. Kalebi Elisamehe (hereinafter referred to as “the Applicant”), a Tanzanian national who was serving a 30-year prison sentence at Maweni Prison in Tanga, brought a complaint against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”) before the African Court on Human and Peoples' Rights (hereinafter referred to as “the Court”).

The Application was filed with the Court on 23 November 2015. The facts of the case date back to the Applicant's arrest in 2003 for raping a twelve (12) year old girl. On 6 March 2004, he was sentenced to 30 years in prison in Case No. 39/2003 before the Monduli District Court in Arusha. He was also ordered to deliver a cow worth Tanzanian Shillings Two Hundred Thousand (TZS 200,000) to the victim as compensation.

The Applicant appealed against this judgment before the High Court of Tanzania sitting at Arusha (hereinafter referred to as “the High Court”) in Criminal Appeal No. 03/2006. The High Court, on 9 July 2009, upheld the conviction and the sentence imposed on the Applicant. He subsequently appealed the High Court's decision in Criminal Appeal No. 315/2009 before the Court of Appeal



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(hereinafter referred to as “the Court of Appeal”) sitting at Arusha. This appeal was dismissed by the Court of Appeal on 24 February 2012.

The Applicant also claimed to have filed, on 9 January 2013, a notice of motion for review of the judgment of the Court of Appeal, and that this action was pending at the time he filed the Application before this Court.

In his Application, the Applicant alleged a number of violations of his right to a fair trial, in particular: i) the violation of the right to legal assistance, ii) the violation of the right to defence, iii) alleged defectiveness of the charge sheet iv) the failure to review decisions of the lower courts, v) poor assessment of the evidence, and vi) the delay in determining the request for review. In view of these alleged violations, the Applicant prayed the Court to grant him fair compensation under Article 27(1) of the Protocol establishing the African Court on Human and Peoples' Rights (hereinafter referred to as “the Protocol”).

The Respondent State raised an objection on the Court’s material jurisdiction, arguing that by asking the Court to examine the points of law and fact already decided by the national courts, the Applicant invited the Court to sit as an appellate body, which, according to the Respondent State, does not fall within the jurisdiction of the Court as set out in Article 3(1) of the Protocol and Rule 26 of the Rules of Court.

Responding to this objection, the Court noted that Article 3(1) of the Protocol empowers it to examine Applications filed as long as such Applications contain allegations of violation of the rights protected by the Charter or any other human rights instrument ratified by the Respondent State. The Court held that since the Applicant alleged the violation of human rights under the Charter, it therefore has jurisdiction to determine the conformity of any act of the Respondent State or its organs with the afore-mentioned instruments invoked in the proceedings before it.

Although the other aspects of jurisdiction had not been disputed by the Respondent State, the Court also examined them and concluded that its personal, temporal and territorial jurisdiction was established.



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In particular, the Court considered that the Application was not impacted by the Respondent State's withdrawal of the Declaration prescribed under Article 34(6) of the Protocol, which allows individuals and Non-Governmental Organisations (NGOs) to bring cases directly to the Court, given that the withdrawal of the Declaration will not take effect until 22 November 2020. Moreover, the Court 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.

With regard to admissibility of the Application, the Respondent State raised two objections; the first, based on failure to exhaust the local remedies; and the other, on failure to file the Application within a reasonable time. After examining these two objections, the Court dismissed the same and declared the Application admissible.

In its examination of the merits of the case, the Court held that the allegations regarding the alleged defective nature of the charge sheet, the failure to review the decisions of the lower courts, poor evaluation of the evidence, the delay in determining the request for review, have not been established; and that the Tanzanian judicial authorities exercised their prerogatives in accordance with the applicable international standards in the matter.

On the other hand, the Court held that the Respondent State violated the Applicant's right to a fair trial as enshrined in Article 7(1) (c) of the Charter, as interpreted in light of Article 14(3) (d) of the International Covenant on Civil and Political Rights, for having failed to provide him with free legal assistance during the course of the proceedings against him. The Court considered that the fact that the Applicant was indigent, that the offence he was charged with was serious with a heavy penalty of a minimum of 30 years in prison justified the provision of free legal assistance in the interest of justice, whether or not the Applicant requested for it.

Following the finding of this violation, the Court ordered the Respondent State to pay the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as fair compensation for the moral prejudice he suffered as a result. The Court ordered that this amount be paid to the Applicant by the Respondent state, free of tax, within six (6) months of notification of the judgment, failing which the Respondent State would have to pay interest calculated on the basis of the



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prevailing rate of the Central Bank of Tanzania during the entire period of delayed payment until the amount is fully paid.

The Court however dismissed the Applicant's request that the sentence imposed on him be quashed and that he be released from prison. As regards the quashing of the sentence, the Court held such an order was justified only in cases where the violation found vitiated the conviction and the sentence, which is not the case with the Applicant. With regard to the Applicant's request to be released from prison, the Court held that the Applicant had not shown that his conviction was based entirely on arbitrary considerations and that his continued imprisonment would result in a denial of justice.

The Court decided that each party should bear its own costs.

Further information

Further information on the case, including the full text of the judgment of the African Court, is: available at: <https://fr.african-court.org/index.php/47-pending-cases-details/337-requete-no-028-2015-kalebi-elisamehe-c-republique-unie-de-tanzanie-details>

For any other question, please contact the Registrar by email at registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African countries for 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 instruments ratified by the States concerned. For more information, please visit our website www.african-court.org.