

**DISMAS BUNYERERE V UNITED REPUBLIC OF TANZANIA**  
**APPLICATION NO. 031/2015**  
**JUDGMENT ON MERITS AND REPARATIONS**  
**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 judgment in the case of *Dismas Bunyerere v United Republic of Tanzania*.

Mr Dismas Bunyerere (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 armed robbery following his conviction by the District Court at Sengerema, Sengerema, Mwanza on 14 November 2006.

The Applicant alleged that in the course of consideration of his appeal at the Respondent State's Court of Appeal, his right to non-discrimination and the right to equality before the law and equal protection of the law guaranteed under Articles 2 and 3 of the African Charter on Human and Peoples' Rights (the Charter), respectively, were violated. The Applicant prayed the Court to order reparations, particularly compensation, the quashing of his conviction and sentence and his release from prison.

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 objection to its material jurisdiction. The Respondent State had argued that the Application calls on the Court to consider matters of evidence determined by its domestic courts and doing so would make the African Court act as an appellate court, yet it lacks such jurisdiction. The Court held that since the Application involves 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 the 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.

The Court noted that as regards personal jurisdiction, 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 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 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), had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 40 of the Rules, had been met. The Court then considered the two objections raised by the Respondent State regarding 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. 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 rights included under 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.

With regard to the second objection on the admissibility of the Application, the Respondent State had argued that the Application was not filed within a reasonable time as required under Rule 40(6) of the Rules. The Court dismissed this objection on the grounds that the Applicant's incarceration resulted in the restriction of his movements and his access to information about the existence of the Court. Furthermore, the Applicant sought a review of the judgment of the Court of Appeal, though this was a remedy he was not required to exhaust in view of its

extraordinary nature. The Court found that he had an expectation that the said application for review would be determined within a reasonable time but it remained pending even after the time he filed the Application before this Court. These circumstances justified the Applicant's filing of the Application two (2) years, four (4) months and ten (10) days after the exhaustion of local remedies, a period which the Court found to be reasonable within the meaning of Rule 40(6) of the Rules.

The Court then satisfied itself that the Application had complied with all other conditions of admissibility set out under Article 56 of the Charter and Rule 40 of the Rules and found that the Application is admissible.

On the merits, the Court noted that, in addition to allegations of violations of Articles 2 and 3 as specified by the Applicant, the Application also raised allegations of violations of the right to a fair trial under Article 7 of the Charter. The Court first dealt with the two allegations relating to violation of Article 7 of the Charter since the allegations of violation of Articles 2 and 3 were linked to violation of the right to a fair trial.

The first issue for determination in relation to the alleged violation of Article 7 of the Charter was whether, as the Applicant claimed, there was a manifest error by the Court of Appeal regarding the Applicant's identification. The Court dismissed this claim on the ground that the domestic courts' evaluation of the evidence in this regard did not disclose any manifest error or occasion him a miscarriage of justice and there was therefore no violation of Article 7 of the Charter.

The second issue for determination was whether the prosecution's evidence failed to support the invocation of the doctrine of recent possession and consequently, that the Applicant ought to have been convicted of the lesser charge of theft and his sentence commuted from the thirty (30) years he is serving. The Court dismissed this allegation on the ground that the record showed that the doctrine of recent possession was properly applied by the domestic courts since the elements of proof in this regard were established and the matter was determined by the trial and appellate courts with no manifest errors of miscarriage of justice occasioned on the Applicant. The Applicant's conviction and sentencing for armed robbery was therefore not in violation of Article 7 of the Charter.

The Court then considered the Applicant's claim that the Court of Appeal's consideration of the doctrine of recent possession and consequential failure to convict him of a lesser charge of theft violated his right to equality before the law and to equal protection of the law. The Court determined that, following its finding that the alleged

violation relating to the issue of the doctrine of recent possession and the Applicant's conviction on the charge of armed robbery having not been established, the alleged violation of Article 3 of the Charter was similarly not proven.

With regard to Applicant's claim that the handling of his matter by the Court of Appeal violated his right to non-discrimination under Article 2 of the Charter, the Court dismissed this allegation on the basis that the Applicant had not established how the Respondent State acted in a manner that was discriminatory to him or that it treated him differently from other persons in a situation similar to his.

Having found no violations of the Applicant's rights, the Court dismissed all his prayers for reparations. The Court ordered that each Party should bear its 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://en.african-court.org/index.php/56-pending-cases-details/894-app-no-031-2015-dismas-bunyerere-v-united-republic-of-tanzania-details>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto: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 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](http://www.african-court.org)*