

PRESS RELEASE
JUDGMENT SUMMARY

KENEDY IVAN v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 025/2016
JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS IN A HUMAN RIGHTS CASE ARISING FROM TANZANIA

Date of Press Release: 28 March 2019

Arusha, 28 March 2019: Today, the African Court on Human and Peoples' Rights (the African Court or the Court) delivered judgment in the case of *Kenedy Ivan v. United Republic of Tanzania*. The Applicant, Mr. Kenedy Ivan, is a national of the United Republic of Tanzania, currently serving a prison sentence of thirty (30) years after being convicted of the offence of armed robbery. The Applicant alleged violations of the right to a fair trial as provided under Article 7 of the African Charter on Human and Peoples' Rights (the Charter) on the ground that he was found guilty on evidence that was not properly evaluated, that the magistrate who heard his case failed to call his witnesses upon his request and that he was not given free legal assistance during his trials. He also sought reparations to rectify the alleged violations.

The Respondent State, the United Republic of Tanzania, 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

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territorial jurisdiction, given that the facts of the matter occurred within the territory of Tanzania which is a Party to the Protocol.

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 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 Respondent State also claimed that the Application is inadmissible because the Applicant took too long to bring his claim to the African Court. The Court dismissed this objection on the grounds that the Applicant being in prison with limited access to information, being poor and unable to afford a lawyer, unaware of the existence of the Court and with no legal assistance throughout his trial, 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 right to a fair trial by examining three issues.

The first issue it considered was whether this right was violated by the domestic courts allegedly having failed to properly examine the evidence submitted. The Court found that there is nothing in the documents filed by the parties to indicate that the domestic courts failed to evaluate the evidence presented against the Applicant before finding him guilty.



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Secondly, the Court determined whether the domestic courts refused to call the Applicant's witnesses, and found that the Applicant did not provide any proof to show that he had indeed made a request for his witnesses to be called and the domestic courts refused that request.

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

The Applicant requested the Court to remedy the violations he alleged by ordering his release from prison. The Court refused 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 Tanzania 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. Each Party was ordered to bear its own costs.

Separate Opinion

Justice Blaise Tchikaya issued a Separate Opinion in which he expounded on the question of whether the Court can be considered an appellate court from domestic jurisdictions. He discussed the capacity of the Court as an appellate court and the relationship between the jurisdiction exercised by the Court and international treaties.

Justice Tchikaya argues that according to international law, the jurisdiction of international courts is established by a convention and this gives the international court's judgments superiority over judgments of domestic courts. He refers to a position expressed by the Inter-American Court, which states that State parties to an international treaty have "...an obligation to ensure that the effects of the provisions of the Convention shall not be diminished by the

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application of rules that are at variance with its object and purpose.” He then concludes that thus international courts have either an appellate power or the power of simple control over domestic courts.

In terms of jurisdiction of international courts interpreted in light of international instruments, Justice Tchikaya is of the view that the Protocol gives it special jurisdiction recognised by State Parties thereto and is a legal and objective principle. Therefore, the Court has been given power by the Protocol to determine national issues brought before it such as on property, religious freedom and freedom of expression for which States’ laws have provided common provisions.

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/946-app-no-025-2016-kenedy-ivan-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.