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PRESS RELEASE
JUDGMENT SUMMARY

JAMES WANJARA AND 4 OTHERS V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 033/2015

JUDGMENT ON MERITS AND REPARATIONS

25 SEPTEMBER 2020

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

Date of Press Release: 25 September 2020

Arusha, 25 September 2020: The African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of *James Wanjara and 4 Others v. United Republic of Tanzania*.

James Wanjara, Jumanne Kaseja, Chrispian Kilosa, Mawazo Selemani and Cosmas Pius (the Applicants) are nationals of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, the Applicants were serving a thirty (30) years sentence after having been convicted of armed robbery and unlawfully causing grievous harm

In their Application, the Applicants made three allegations: first, that the Respondent State violated their basic rights as guaranteed under article 13(6) (c) of its Constitution by imposing an improper sentence of thirty (30) years imprisonment for the offence of armed robbery; second, that the Respondent State violated their rights as guaranteed under Article 7(1)(c) of the African Charter on Human and Peoples' Rights (the Charter) by failing to provide them with legal representation during the domestic proceedings; and third, that the evidence that was relied upon to convict them was not properly analysed by the domestic courts.

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 had jurisdiction to hear the Application. The Court noted that the Respondent State raised an objection to its material jurisdiction. The Respondent State

argued that the Court was not vested with jurisdiction to deal with the Application since the Applicants were inviting it to sit as an appellate court and adjudicate on matters already considered and concluded by its Court of Appeal.

Regarding this objection, the Court held that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. The Court, however, emphasised the fact that even though it is not an appellate court vis-a-vis domestic courts, it retains the power to assess the propriety of domestic proceedings as against standards set out in international human rights instruments ratified by the State concerned. In relation to the allegations made by the Applicants, the Court held that these were within the purview of its jurisdiction given that they invoked rights protected under the Charter, specifically under Article 7 thereof. The Court thus found that the Applicants' allegations required it to determine whether the manner in which domestic proceedings were conducted was in compliance with international human rights law. In doing so, the Court held, it does not sit as an appellate court with regard to domestic courts but simply examines procedures and processes before national courts to determine whether they are in conformity with the standards set out in the Charter and any other human rights instrument ratified by the State concerned. The Court, therefore, dismissed the Respondent State's objection.

Although other aspects of its jurisdiction were not questioned by either of the Parties, the Court nevertheless examined its personal jurisdiction

The Court found that it had personal jurisdiction since on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol and this Declaration allows individuals to file applications against it as per Article 5(3) of the Protocol. The Court further decided that the Respondent State's withdrawal of the said Declaration on 21 November 2019 did not affect this Application, as the withdrawal will only take effect on 22 November 2020.

In respect of its temporal jurisdiction, the Court noted that although the alleged violations commenced before the Respondent State became a party to the Protocol or made the Declaration under Article 34(6) of the Protocol, the said violations were continuing as of 29 March 2010 when the Respondent State deposited the said Declaration. The Court thus found that it had temporal jurisdiction.

As for its territorial jurisdiction, the Court noted that the violations alleged by the Applicants happened within the territory of the Respondent State. In the circumstances, the Court held that it had territorial jurisdiction to hear the matter.

The Court thus held that it had jurisdiction to examine this Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol, had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 40 of the Rules of Court ("the Rules), had been met. In this connection, the Court considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies, and, second, to the time within which the Application was filed.

In connection to the objection that the Applicant had failed to exhaust local remedies, the Respondent State contended that although the Applicants were alleging that their rights under its Constitution had been violated, there was no evidence that they filed a constitutional petition at its High Court to vindicate their rights. The Respondent State further contended that the Applicants should have exhausted local remedies by filing a constitutional petition instead of prematurely filing their Application before this Court. In response, the Applicants submitted that their Application was filed after exhausting local remedies since it was filed after the Court of Appeal, which is the final appellate court in the Respondent State, dismissed their appeal. The Applicants further submitted that after the Court of Appeal dismissed their appeal, they filed an application for review of the Court of Appeal's decision which was dismissed on 11 March 2013.

In resolving this objection, the Court reiterated the fact that for purposes of exhausting local remedies an Applicant is only required to exhaust judicial remedies that are available, effective and sufficient. The Court also reiterated its position that the remedies of constitutional petition and review before the Court of Appeal, as structured in the Respondent State's judicial system, are extraordinary remedies which the Applicants were not required to exhaust prior to seizing this Court.

Regarding the Respondent State's assertion that certain allegations were raised before this Court for the first time, namely, the illegality of the sentence imposed on the Applicants and the denial of free legal assistance, the Court observed that the alleged violations occurred in the course of the domestic judicial proceedings. According to the Court, the alleged violations formed part of the "bundle of rights and guarantees" that were related to or were the basis of their appeals, which the domestic authorities had ample opportunity to redress even though the Applicants did not raise them explicitly before those courts. In the circumstances, the Court held, that it would be unreasonable to require the Applicants to lodge a new application before the domestic courts to seek relief for these claims. The Court thus held that the Applicants had exhausted local remedies

with respect to these allegations. The Respondent State's objection based on non-exhaustion of local remedies was thus dismissed.

In relation to the objection that the Application was not filed within a reasonable time after the exhaustion of domestic remedies, the Respondent State argued that it had taken over five (5) years for the Applicants to file the case with the Court and that this period was not reasonable. In response, the Applicants contended that subsequent to the Court of Appeal dismissing their appeal on 27 February 2006, they filed applications for review on two occasions, which were both unsuccessful.

In dealing with this objection, the Court observed that neither the Charter nor the Rules set a definite time limit within which an application must be filed before it. Rule 40(6) of the Rules, for example, simply alludes to the fact that applications must be filed within a reasonable time after the exhaustion of domestic remedies or "from the date the [Court] is seized with the matter." The Court emphasised that the reasonableness of a time limit for seizure depends on the particular circumstances of each case and is determined on a case-by-case basis. In the present Application, the Court took cognisance of the attempts by the Applicants to utilise the review procedure before the Court of Appeal. The Court then noted that the Applicants filed their Application before the Court one (1) year and seven (7) months after the dismissal of their last attempt at reviewing the Court of Appeal's judgment. The Court thus held that, considering the time the Applicants spent pursuing the remedy of review before the Court of Appeal, the time lapse of one (1) year and seven (7) months, before they filed their Application before the Court, was reasonable within the context of Article 56(6) of the Charter. The Court, therefore, dismissed the Respondent State's objection alleging failure to file the Application within a reasonable time.

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

On the merits of the Application, the Court first considered whether the Applicants' right to free legal assistance was violated. The Court noted that Article 7(1)(c) of the Charter does not explicitly provide for the right to free legal assistance. Nevertheless, the Court recalled that it has previously interpreted Article 7(1)(c) in light of Article 14 (3) (d) of the International Covenant on Civil and Political Rights (the ICCPR) and determined that the right to defence includes the right to be provided with free legal assistance. In the instant case, the Court noted that the Applicants were charged with a serious offence, that is, robbery with violence, carrying a severe punishment - a

minimum sentence of thirty (30) years' imprisonment. In addition, the Respondent State did not adduce any evidence to challenge the contention that the Applicants were lay and indigent, without legal knowledge and technical legal skills to properly conduct their case in person during the original trial as well as during the appeal before the Court of Appeal. In the circumstances, the Court held that the interests of justice warranted that the Applicants should have been provided with free legal assistance during their trial before the District Court and also during their second appeal before the Court of Appeal. The fact that the Applicants never requested for legal assistance did not absolve the Respondent State from its responsibility. In view of the above, the Court held that the Respondent State violated Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, due to its failure to provide the Applicants with free legal assistance.

In relation to the legality of the Applicants' sentence for armed robbery, the Court noted that the applicable law for the sentencing of convicts of armed robbery, at the time the Applicants were convicted was section 286 of the Respondent State's Penal Code and the Minimum Sentences Act of 1972, as amended in 1989 and 1994. Reading the applicable law together, the Court held that the minimum sentence for armed robbery was thirty (30) years imprisonment. In the circumstances, the Court held that the Respondent State had not violated any provision of the Charter in sentencing the Applicants to this term of imprisonment.

As to the allegation that the evidence relied on to convict the Applicants was not well analysed by the domestic courts, from its perusal of the record, the Court held that the District Court fairly evaluated the evidence before convicting the Applicants and that the appellate courts also fairly considered all the grounds of appeal raised by the Applicants. In the circumstances, the Court held that the evidence in the Applicants' trial was evaluated in conformity with the requirements of fair trial and the procedures followed by the national courts in dealing with the Applicants' appeals did not violate Article 7(1) of the Charter.

Having found a violation of the Applicants' right to free legal assistance, the Court then considered the issue of reparations.

The Court noted that the Applicants made prayers for both pecuniary and non-pecuniary reparations for themselves and also for their dependants as indirect victims.

In respect of the claim for pecuniary reparations due to the material prejudice suffered by the Applicants, the Court held that although affidavits were filed in support of the Applicants' claims for reparation, the claims that each of the Applicants had his own business that generated an income were not corroborated by supporting evidence. The Court, thus, held that the Applicants

had failed to substantiate their claims for loss of income. Additionally, the Court noted that the claims for material reparations were all based on the conviction, sentencing and subsequent incarceration of the Applicants, which the Court had not found to be unlawful. In the circumstances, the Court held that pecuniary reparations were not warranted.

As for the moral prejudice suffered by the Applicants, the Court, having found that the Respondent State violated the Applicants' right to free legal assistance, guaranteed under Article 7(1)(c) of the Charter, the Court applied the presumption that the Applicants suffered some form of moral prejudice. In the exercise of its discretion, the Court awarded each of the Applicants the amount of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) as fair compensation.

In respect of the moral prejudice for indirect victims, the Court noted that all the claims by the indirect victims were premised on the conviction, sentencing and incarceration of the Applicants, which the Court had found to be lawful. In the circumstances, therefore, the Court held that there was no basis for making an award of reparations in favour of the indirect victims. The Court, therefore, dismissed the claims for reparations on behalf of the indirect victims.

As for the claim for non-pecuniary reparations, the Court first considered the Applicants' claim to have their sentence quashed and be set free. With respect to this prayer, the Court emphasised that the quashing of the sentence and the release of an Applicant may be ordered only in special and compelling circumstances. In the instant case, the Court noted that it had only found a violation of the Applicants' right to free legal assistance and that it had not found fault with the proceedings leading to the Applicants' conviction, sentence and incarceration. In the circumstances, the Court dismissed the Applicants' prayer for release.

In respect of the prayer for guarantees of non-repetition, the Court recalled that the objective of ordering guarantees of non-repetition is to prevent future violations. Accordingly, the Court held that guarantees of non-repetition are usually ordered in order to eradicate structural and systemic violations of human rights. Such measures are, therefore, not generally intended to repair individual prejudice but rather to remedy the underlying causes of the violation. In the instant case, the Court noted that the nature of the violation found, that is, the Applicants' right to free legal assistance is unlikely to recur in respect of the Applicants as the proceedings in respect of which it arose had already been completed. The Court, therefore, dismissed the request.

With respect to the prayer for an order for reporting on implementation of the judgment, the Court reiterated the obligation of the Respondent State as set out in Article 30 of the Protocol. The Court

thus held that the Respondent State should file its report on the implementation of the judgment within six (6) months of its notification.

On costs, 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: <https://en.african-court.org/index.php/56-pending-cases-details/896-app-no-033-2015-james-wanjara-and-others-v-united-republic-of-tanzania-details>

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