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JOB MLAMA AND OTHERS v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 019/2016

JUDGMENT ON MERITS

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 *Job Mlama and Others v. United Republic of Tanzania*.

Job Mlama, Ancieth Edward and Shija Madata (the Applicants) are all nationals of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, they were serving a term of twenty (20) years' imprisonment, having been convicted of the offences of sexual exploitation of a child. The Applicants alleged that the Respondent State violated their rights under Articles 2, 3, 6, 7(1)(d) and 7(2) of the African Charter on Human and Peoples' Rights (the Charter) by partially assessing the evidence against them; by convicting them on the basis of a non-existent offence; by denying them bail pending appeal and by maintaining a provision in its laws that promotes sexism. They also sought reparations to redress the alleged violations.

The Respondent State 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.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined its personal jurisdiction. The Court also 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 to the Charter on the Establishment of the African Court on Human and Peoples' Rights (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



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November 2019 did not affect this Application, as the withdrawal will only take effect on 22 November 2020.

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 the Respondent State 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 Applicants' 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 Applicants 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 Applicants 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 Applicants were not required to exhaust. The Court decided that the Applicants, having seized the Court of Appeal, the highest judicial organ of the Respondent State, had thus exhausted local remedies.

The Respondent State also claimed that the Application is inadmissible because the Applicants took too long to bring their claim to the Court. The Court dismissed this objection on the grounds that the Applicants being in prison, restricted in their movements and with limited access to information, had brought their claim within a reasonable time, that is, two (2) years, eight (8) months and ten (10) days from when they exhausted local remedies. 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 Applicants' rights under Articles 2, 3, 6, 7(1)(d) and 7(2) by examining four issues.

The first issue it considered was whether the Applicants' right to a fair trial was violated by the domestic courts allegedly having partially examined the evidence submitted. The Court found that there was nothing



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on record to indicate that the domestic courts partially evaluated the evidence presented against the Applicants before finding them guilty and thus dismissed this allegation

Secondly, the Court determined whether the Applicants were convicted on the basis of a non-existent offence and found that the Applicants had been convicted of an existing offence which had been provided for in the laws of the Respondent State at the time of commission of the crime and thus dismissed this allegation.

On the issue of whether the denial of the Applicants' bail pending appeal violated their rights, the Court found that the denial of bail was necessary and proportionate for the attainment of the objective of preserving the security of a witness. Consequently, it dismissed this allegation.

Finally, the Court considered whether the alleged provisions of the Respondent State's laws promote sexism and found that the Applicants had not substantiated this claim and thus dismissed the allegation.

The Court having found that there were no violations, it dismissed the Applicants' prayers for reparations. Each Party was also ordered to bear its own 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://www.african-court.org/en/index.php/56-pending-cases-details/915-app-no-019-2016-job-mlama-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.