**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**Application 031/2015**

**Dismas Bunyerere**

**v.**

**United Republic of Tanzania**

**Separate Opinion appended to the Judgment of 28 November 2019**

1. I concur with the opinion of the majority of the Judges as regards admissibility of the Application, jurisdiction of the Court and the Operative Part.

2. However, in my thinking, the manner in which the Court treated admissibility with regard to the objection raised by the Respondent State on the filing of the Application within a reasonable time, runs counter to the provisions of Article 56 of the Charter, Article 6(2) of the Protocol and Rules 39 and 40 of the Rules.

3. Under Article 56 of the Charter and Rule 40 of the Rules in their respective paragraph 6, it is clearly stated that applications must be "*submitted* ***within a reasonable time from the date local remedies were exhausted*** *or from* ***the date set by the Court*** *as being the commencement of the time limit within which it shall be seized with the matter*".

4. It is clear from the aforesaid that the legislator laid down two (2) options as to how to determine the starting point of reasonable period:

i. **the date** of exhaustion of local remedies: in the instant case, this date was set by the Court at 29/07/2013 - date of the judgment of the Court of Appeal. Between this date and that of referral of the matter to the Court, there was a time lapse of two (2) years, four (4) months and ten (10) days.

ii. **the date** set by the Court as being the commencement of the time limit within which it shall be seized with the matter: it is noteworthy in this regard that although the Court took into account the date of exhaustion of local remedies to determine the

reasonableness of the time limit[1], **it nevertheless noted certain facts that occurred between the date local remedies were exhausted and that of referral of the matter to the Court, such as the application for review[2]. The Court also noted that the Applicant was incarcerated, which would have restricted his movement and access to information.**

5. **This reasoning on the part of the Court runs counter to the very logic of the exception made by the legislator as to the second prerogative conferred on this Court to set a date as being the commencement of the time limit within which it shall be seized with a matter.**

6. **Indeed, whereas with regard to local remedies, the Court has held that Applicants are obliged to exercise only the ordinary remedies, there would be no contradiction with this position had the Court, based on the fact that the Applicant filed for extraordinary remedy which is application for review in the present case, retained the date of the remedy or the date of the decision as being the commencement of the time limit within which it shall be seized with the matter, instead of determining the reasonable period relying on the review remedy as a fact.**

7. **The Court ought to have justified this option in the following manner: "Notwithstanding the fact that it has considered that the local remedies have been exhausted as evidenced by the Court of Appeal Judgment of 29/07/2013, the Court, in the spirit of fairness and justice, would take as element of assessment, the date on which the application for review was filed, that is 13/09/2013", which would have given a more reasonable time as it is shorter.**

8. By ignoring the **aforesaid date** and simply citing[3] elements to justify reasonable time such as the Applicant being in prison, resulting in restriction of his movements and his access to information, **allegations he never made,** as well as his ignorance of the existence of the Court, especially as it is apparent from the judgment under reference that he defended himself before this Court

[1] Paragraph 47 of the Judgment
[2] Paragraph 48 of the Judgment
[3] Paragraph 48 of the Judgment

and did not need a counsel, Court failed to correctly apply Rule 40(6) of the Rules.

Bensaoula Chafika

Judge at the African Court on Human and Peoples' Rights.