



**PRESS RELEASE  
SUMMARY OF JUDGMENT**

**MHINA ZUBERI V. UNITED REPUBLIC OF TANZANIA  
APPLICATION NO. 054/2016  
JUDGMENT ON MERITS AND REPARATIONS  
26 FEBRUARY 2021**

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

**Date of Press Release: 26 February 2021**

**Arusha, 26 February 2021:** The African Court on Human and Peoples' Rights (the Court) delivered its Judgment in the matter of *Mhina Zuberi v. United Republic of Tanzania*.

Mr. Mhina Zuberi (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, the Applicant was serving a sentence of thirty (30) years imprisonment after having been convicted and sentenced for the offence of rape.

The Applicant alleged violations related to his right to a fair trial: first, that he was not represented by a counsel before domestic courts; second, that he was deprived of his right to call his witnesses; and lastly, that there were errors of fact and law in the assessment of the evidence used for his conviction.

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, preliminarily, determine whether it had jurisdiction to hear the Application.

The Respondent State raised an objection on the Court's material jurisdiction, arguing that by asking the Court to examine the issues that have not been raised before or that have already been decided by the domestic courts, Court would be sitting as an appellate court. According to the Respondent State, this does not fall within the jurisdiction of the Court as set out in Article 3(1) of the Protocol and the Rules of Court.

The Court noted that Article 3(1) of the Protocol empowers it to examine Applications brought to it as long as such Applications contain allegations of violation of the rights protected by the African Charter on Human and Peoples' Rights (the Charter) or any other human rights instrument ratified by the Respondent State. The Court found that, since in his Application, the Applicant alleges the violation of human rights, it



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has jurisdiction to determine the conformity of any act of the Respondent State or its organs with the aforementioned instruments invoked in the proceedings before it.

Although the other aspects of jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them.

The Court held 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 allowed individuals to file applications against it as per Article 5(3) of the Protocol. The Court also noted that it had decided that the Respondent State's withdrawal of its Declaration, on 21 November 2019, did not affect Applications like the present one which had been filed before the withdrawal took effect on 22 November 2020.

In respect of its temporal jurisdiction, the Court held that has jurisdiction because the alleged violations are continuous in nature. 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 the 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 50 of the Rules of Court (the Rules), had been met.

In this regard, the Court considered the objection raised by the Respondent State, relating to the requirement of exhaustion of local remedies. The Respondent State contended that by the Applicant not having filed a constitutional petition at its High Court or requested for review of the Court of Appeal judgment, he had failed to exhaust local remedies. In affirming the principle of exhaustion of local remedies, the Court, asserted that the rule aims at providing States with an opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same. It therefore held that an Applicant is only required to exhaust ordinary judicial remedies. The Court reiterated its position that the remedy of constitutional petition and application for review of the Applicant's conviction and sentence, as framed in the Respondent State's judicial system, are extraordinary remedies that he was not required to exhaust prior to seizing the Court. The Court also noted that the Court of Appeal dismissed the Applicant's appeal on 30 June



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2016 and being the highest Court in the Respondent State, the Applicant had exhausted ordinary judicial remedies. Given the foregoing, the Court dismissed the Respondent State's objection alleging non-exhaustion of local remedies.

The Court also examined the compliance of the Application with all the other conditions of admissibility set out under Article 56 of the Charter and Rule 50 of the Rules before declaring the Application admissible.

With respect to the merits of the Application, the Court first considered whether the domestic proceedings involving the Applicant were flawed due to the alleged error on the assessment of the evidence. While conceding that domestic courts have a significant margin of appreciation in evaluating the probative value of the evidence presented before them, the Court emphasised that it still retains a role in assessing whether the proceedings before domestic courts were conducted in compliance with international human rights standards. In the instant case, the Court, having considered the record of proceedings of the Applicant's trial and appeals before the District Court, the High Court and the Court of Appeal, concluded that there was no basis for a finding that these violated his rights. The Court thus dismissed the Applicant's allegation of a violation of his right to fair trial on the basis of poor assessment of the evidence.

Regarding the Applicant's allegation that he was not assisted to call his witnesses, the Court dismissed it for lack of evidence to support it.

The Court held that the Respondent State had violated the Applicant's right to a fair trial as enshrined in Article 7(1)(c) of the Charter, interpreted in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), by failing to provide him with free legal assistance. The Court considered the fact that the Applicant was destitute and that he was charged with a serious offence which carried a heavy penalty, being a minimum of thirty (30) years in prison. The Court found that these reasons required the Respondent State to provide the Applicant with free legal assistance in the interest of justice, whether or not the Applicant request for it.

In respect of the Applicant's claim for reparations, the Court acknowledged that although Article 27 of the Protocol empowers it to "make appropriate orders" to remedy the violation of human rights, it did not grant the Applicant's prayer to set aside his conviction and sentence and that he be set free, since there were no exceptional and compelling circumstances warranting such an order. Concerning release, the Court held that the Applicant had not shown that his conviction was based entirely on arbitrary considerations and that his continued detention would result in a denial of justice.



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However, having found that the Applicant's right to free legal assistance was violated, contrary to Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, the Court held that there was a presumption that the Applicant suffered moral prejudice. As a result, the Court awarded the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as fair compensation.

Finally, the Court decided that each party should bear its own costs.

**Further information**

Further information on the case, including the full text of the judgment of the African Court, is: available at: <https://www.african-court.org/cpmt/details-case/0542016>

For any other question, please contact the Registrar by email at [registrar@african-court.org](mailto:registrar@african-court.org) and [africancourtmedia.org](http://africancourtmedia.org)

The African Court on Human and Peoples' Rights is a continental court established by African countries for 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 instruments ratified by the States concerned. For more information, please visit our website [www.african-court.org](http://www.african-court.org)