



PRESS RELEASE
JUDGMENT SUMMARY

MASOUD RAJABU v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 008/2016
JUDGMENT ON MERITS AND REPARATIONS

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

Date of Press Release: 25 June 2021

Arusha, 25 June 2021: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Masoud Rajabu v. United Republic of Tanzania*.

Masoud Rajabu (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a prison sentence of thirty (30) years, having been convicted of the rape of a minor. The Applicant alleged that the Respondent State violated his rights under Articles 7(1), 7(1)(c) and 7(1)(d) of the African Charter on Human and Peoples' Rights (the Charter) by convicting him on the basis of insufficient evidence; by delivering judgment in his absence; by failing to provide him with free legal representation and by failing to decide his application for review by the time his was filing his Application. He also prayed for reparations to redress the alleged violations.

The Respondent State objected to the material 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 all aspects of its jurisdiction. In terms of 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 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 found that the Respondent State's withdrawal of the said Declaration on 21 November 2019 did not affect this Application, as the withdrawal took effect on 22 November 2020, while the application was received at the Court on 10 February 2016.



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The Court also held that it had temporal jurisdiction because the alleged violations were continuing 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 Applicant's failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court. On this point, the Respondent State argued that the Applicant did not fully utilize the available local remedies as he only raised two grounds of appeal in the Court of Appeal while he has raised four allegations in his Application to the Court.

The Court rejected the Respondent State's contention noting that the Applicant having seized the Court of Appeal, the highest judicial organ of the Respondent State, had exhausted local remedies. The Court noted that, alleged violations raised, form part of the bundle of rights and guarantees that were related to or were the basis of his appeals in the national courts. Therefore, the Respondent State had the opportunity to redress the alleged violations but failed to do so.

The Respondent State also claimed that the Application was inadmissible because the Applicant did not file the Application within a reasonable time as required by Article 56(6) of the Charter and Rule 50(2)(f) of the Rules. In this regard, the Respondent State deemed the two (2) years and six (6) months it took for the Applicant to bring his claim to the Court as unreasonable. The Court dismissed this objection on the grounds that the Applicant had no representation before the national courts, was incarcerated, restricted in movements with limited access to information. The Court noted that, these circumstances occasioned the delay in bring the matter to the Court.

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 50(2) of the Rules had been complied with.

The Court then considered whether the Respondent State violated the Applicant's rights under Articles 7(1), 7(1)(c) and 7(1)(d) of the Charter by examining four issues.

The first issue was whether the Applicant's right to a fair trial was violated by the domestic courts convicting him on the basis of "insufficient evidence". The Court held that the manner in which the evidence adduced was handled in the national courts did not disclose any manifest error or miscarriage of justice to require its intervention and thus dismissed the allegation.



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Secondly, the Court determined whether the delivery of the judgment in the Applicant's absence was a violation of his right. The Court held that the Applicant had participated in all the proceedings prior to the delivery of the judgment and alluded to the fact that the Applicant was informed about his sentence and his right to appeal. Therefore, the Respondent State did not violate the Applicant's right under Article 7(1)(c).

Thirdly, on the issue of the Applicant lacking free legal assistance during his trials and appeals, the Court found that the Applicant should have been provided with free legal assistance because he was accused of a serious crime which carried a minimum heavy custodial sentence. The Court held, therefore, that the Applicant's rights under Article 7(1)(c) had been violated .

Finally, the Court considered whether the Respondent State had violated the Applicant's right to be tried within a reasonable time for not determining his application for revision as at the time of filing the Application before this Court. The Court found that the Applicant's application for "revision" had been denied within two months and twenty-eight (28) days. In the circumstances, the Court found no violation.

The Applicant requested the Court to remedy the alleged violations by quashing his sentence and ordering his release from prison. The Court declined to make this order because it had not decided that the Applicant's conviction was illegally imposed. The Court however, awarded the Applicant Tanzanian 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.

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/cpmt/details-case/0082016>



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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.