



PRESS RELEASE
JUDGMENT SUMMARY

YAHAYA ZUMO MAKAME AND 3 OTHERS v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 023/2016
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: Today, the African Court on Human and Peoples' Rights (the Court) delivered its judgment on merits and reparations in the case of *Yahaya Zumo Makame and 3 others v. The United Republic of Tanzania*.

The Applicants, three Tanzanian nationals and one Iranian national, together with a co-accused who did not join the proceedings before the Court, were convicted by the High Court of Tanzania of trafficking narcotic drugs and sentenced to twenty-five (25) years imprisonment each. The Applicants were also ordered to pay a fine of Tanzanian Shillings One Billion, Four Hundred Thirty Eight Million, Three Hundred and Sixty-four Thousand and Four hundred (TZS 1, 438,364,400). The Applicants appealed their conviction and sentence to the Court of Appeal which dismissed their appeal in its entirety.

Before this Court, the Applicants contended that their right to fair trial had been violated by the Respondent State. Specifically, they alleged that the legal system in the Respondent State only permits one appeal from a decision of the High Court which, in their view, is contrary to Articles 3 and 7 of the African Charter on Human and Peoples' Rights ("the Charter"), Article 14(1) and (5) of the International Convention on Civil and Political Rights ("the ICCPR") and Article 10 of the Universal Declaration of Human Rights ("the UDHR"). The Applicants also complained about what they thought was a partial evaluation of the evidence by the Court of Appeal. Finally, the Applicants alleged that the Court heard their appeal without due consideration for whether the Fourth Applicant, Mohamedi Gholumgader Pourdard, who is an Iranian national, could understand the proceedings. The Applicants submitted that the failure to provide the Fourth Applicant with an interpreter, violated Article 7 of the Charter, Article 14(3)(a) and 14(3)(f) of the ICCPR and Article 10 of the UDHR.

The Respondent State raised two objections to the Court's material jurisdiction. First, it contended that the Applicants were asking it to sit as an appellate court and deliberate on matters of evidence and procedure already finalised by its Court of Appeal. Second, that the Applicants were inviting the Court to evaluate procedures and evidence already finalised by domestic courts.



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In relation to the objection that the Court was being asked to sit as an appellate court, the Court noted that, in accordance with its established jurisprudence, it is not an appellate body with respect to decisions of national courts. The Court emphasised, however, that this does not preclude it from examining relevant proceedings from national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned. Consequently, the Court dismissed this objection.

As for the objection that the Court lacks jurisdiction since the Applicants were asking it to evaluate the evidence and procedures already finalised by its domestic courts, the Court recalled that it has jurisdiction as long as the rights alleged by an Applicant as having been violated fall under the bundle of rights and guarantees invoked at the national courts. In the present case, the Court noted that the allegations made by the Applicants involved violations of the Charter, the ICCPR and the UDHR, all of which are instruments applicable to the Respondent State. Given this context, the Court found that the allegations raised by the Applicants were within the purview of its jurisdiction and it thus dismissed the objection by the Respondent State.

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). 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 filed before the Court on 13 April 2016.

The Court also held that it had temporal jurisdiction because the alleged violations all arose after the Respondent State became a Party to the Charter and also after it deposited the Declaration; 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.

Further, the Court also considered two objections to the admissibility of the Application which were raised by the Respondent State. First, the Respondent challenged the admissibility of the case alleging that the Applicants had failed to exhaust domestic remedies. The Applicants, for their part, contended that by taking their case to the Court of Appeal, which is the highest court in the Respondent State, they exhausted local remedies and they need not have applied for a review of its decisions since such a review, according to



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the Court's jurisprudence, is an extraordinary remedy. In dismissing this objection, the Court reiterated the fact that an application for review of the Court of Appeal's decision, within the Respondent State, is an extraordinary remedy that an applicant need not exhaust. Additionally, and in respect of the other allegations which the Respondent State contended that the Applicants should have raised domestically, the Court found that these were all part of the bundle of rights and guarantees that were related to or formed the basis of their appeals hence the Respondent State had ample opportunity to resolve the same. The Court, therefore, dismissed the Respondent's objection.

The second objection to admissibility alleged that the Applicants had failed to file the case within a reasonable period of time. The Respondent State submitted that the period of eight (8) months that it took the Applicants to file the Application before this Court, after the Court of Appeal delivered its judgment, was not a reasonable time within the meaning of Rule 40(6) of the Rules of Court (the Rules). The Applicants, for their part, contended that the Application must be considered to have been filed within a reasonable time given the circumstances of the matter and their situation as lay, indigent and incarcerated persons. The Court dismissed this objection finding that the period at stake was not unreasonable given the personal predicament of the Applicants.

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 before declaring the Application admissible.

The Court then had to determine if the Applicants' right to fair trial under Article 7 of the Charter had been violated by the Respondent State.

First, the Court had to decide whether the Applicants' right to fair trial was violated by reason of there being no higher court above the Court of Appeal in the Respondent State. The Court held that the right to an appeal or review of a decision of a lower court as provided for under Article 7 of the Charter and Article 15(5) of the ICCPR simply entails the provision of another level of judicial structures for one to have recourse to beyond the trial court and that the right does not prescribe the number of levels at which an appeal must be processed. The Court thus found that the absence of a higher court, above the Court of Appeal, is not a violation of Article 7 of the Charter or Article 14 of the ICCPR.

Second, the Court considered whether the domestic courts had made wrong findings which had led to the Applicants' conviction. From its perusal of the record, the Court noted that the Court of Appeal had analysed all the grounds of appeal as filed by the Applicants together with the counterarguments raised



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by the State. Given the manner in which the Court of Appeal dealt with the Applicants' appeal, the Court found nothing which could merit its intervention and, therefore, dismissed the Applicants' allegations.

Third, the Court considered whether the acquittal of one of the accused persons by the domestic courts amounted to the application of "double-standards" which prejudiced the Applicants' right to fair trial. The Court noted that this matter was also evaluated by the Court of Appeal but, further, that from its perusal of the record, there was nothing warranting its intervention. The Court thus dismissed the Applicants' allegation on this score.

Lastly, the Court considered whether the Fourth Applicant's fair trial rights were violated due to the lack of a translator. While confirming that an accused person who does not understand the language in which court proceedings are conducted has a right to an interpreter, the Court found that the Applicants herein, who were represented by counsel, led no evidence to suggest that they had alerted the Court of the need for interpretation services. In the circumstances, the Court found no violation of the Fourth Applicant's right to fair trial by reason of the absence of interpretation services.

Having found that the Respondent State had not violated any of the Applicants' rights, the Court dismissed the claims for reparations and ordered each party to 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://www.african-court.org/cpmt/details-case/0232016>

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 https://www.african-court.org/afc_home/.