



African Court
on Human and Peoples' Rights

Arusha, Tanzania
Website: www.african-court.org
Telephone+255-732-979-509
PRESS RELEASE
JUDGMENT SUMMARY

**ERNEST KARATTA, WALAFRIED MILLINGA, AHMED KABUNGA AND 1744
OTHERS V UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 002/2017
JUDGMENT ON MERITS AND REPARATIONS**

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

Date of Press Release: 30 September 2021

Arusha, 30 September 2021: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Ernest Karata, Walafried Millinga, Ahmed Kabunga and 1744 others v. United Republic of Tanzania*.

Ernest Karata, Walafried Millinga, Ahmed Kabunga and 1744 others ("the Applicants) are all nationals of the United Republic of Tanzania ("the Respondent State"). In their Application, the Applicants alleged a violation of their right to the enjoyment of all rights guaranteed in the African Charter on Human and Peoples' Rights ("the Charter") without discrimination - Article 2 of the Charter; the right to equal protection of the law – Article 3(2) of the Charter; the right to property – Article 14 of the Charter; and the right to work under equitable and satisfactory conditions – Article 15 of the Charter. The Applicants also alleged a violation of Articles 6 and 7 of the International Covenant on Economic Social and Cultural Rights ("the ICESCR") in relation to their right to work and the right to just and favourable conditions of work.

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.

In respect of its jurisdiction, the Court noted that the Respondent State raised objections to its material jurisdiction and temporal jurisdiction. In respect of the Court's material jurisdiction, the Respondent State argued that, first, the Court was not vested with jurisdiction to deal with the Application since the Applicants were inviting the Court to sit as an appellate court. Second, the Respondent State alleged that the Court did not have jurisdiction to interpret the East African Community Mediation Agreement of 1984 and the Deed of Settlement. As for the Court's temporal jurisdiction, the Respondent State argued that the Court did not have jurisdiction since the cause of action arose before the establishment of the Court and also that the alleged violations occurred before it accepted the jurisdiction of the Court.

With regard to the Respondent State's objection that the Applicants were inviting it to sit as an appellate court, the Court noted that the Applicants were alleging violations of Articles 2, 3(2), 14 and 15 of the Charter as well as Articles 6 and 7 of the ICESCR, whose interpretation and application falls within the Court's jurisdiction. Given the preceding, and in light of Articles 3 and 7 of the Protocol, the Court held that by examining whether or not the Respondent State's conduct was in consonance with the provisions of the Charter or the ICESCR, the Court would be acting within its powers and it would not be sitting as an appellate court nor would it be exercising power to revise the decision of the Court of Appeal of the Respondent State. Consequently, the Court dismissed the objection alleging that it would be sitting to revise the decision of the Respondent State's Court of Appeal in hearing this Application.

With respect to the Respondent State's objection that the Court did not have jurisdiction to interpret the East African Community Mediation Agreement Act of 1984 and the Deed of Settlement, the Court recalled that the Applicants had alleged a violation of, among others, Articles 14 and 15 of the Charter as well as Articles 6 and 7 of the ICESCR. The Court thus held that it was within its remit to determine whether or not the allegations raised by the Applicants amounted to a violation of the Charter or the ICESCR. In the circumstances, the Court dismissed the Respondent State's objection alleging that it did not have jurisdiction to interpret the East African Community Mediation Agreement Act of

1984 and the Deed of Settlement. The Court thus held that it had material jurisdiction in this case.

With respect to the objection to its temporal jurisdiction, the Court recalled that it has previously held that its temporal jurisdiction is established if, at the time the alleged violation occurred, the Respondent State was a party to the Charter. The Court also confirmed that its temporal jurisdiction is confirmed, for all State parties to the Protocol, if at the time the Protocol entered into force, the alleged violations were continuing.

In the present case, the Court noted that the litigation between the Parties was, initially, concluded by a consent judgment entered on 21 September 2005. It was only when the Applicants thought they were being underpaid that further proceedings were commenced before the High Court on 15 October 2010. These proceedings were concluded when the Court of Appeal dismissed the Applicants' appeal on 25 January 2016. Against this background, the Court noted that as of 15 October 2010, when the litigation which is alleged to have violated the Applicants' rights commenced, the Respondent State was a party to both the Charter and the Protocol and it had also already deposited the Declaration and was thus in a position to be sued before the Court. Additionally, given the continuing nature of the alleged violations, the Court held that its jurisdiction was established and it thus dismissed the Respondent State's objection to its temporal jurisdiction.

Although none of the parties questioned other aspects of the Court's jurisdiction, the Court nevertheless examined all the other aspects of its jurisdiction.

In relation to its personal jurisdiction, the Court recalled that on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalled that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect. The Court observed that the effective date for the Respondent State's withdrawal, therefore, was 22 November 2020, given that any withdrawal takes effect twelve (12) months after its deposit. The Applicants having filed their Application before

the Respondent State deposited its notice of withdrawal, the Court held, their Application was not affected by the said withdrawal. The Court thus held that it had personal jurisdiction to examine the Applicants' case.

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 its territorial jurisdiction was established.

In light of all the above, the Court found that it had jurisdiction to determine the Applicants' case.

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 connection, the Court considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies, and, second, to the time within which the Application was filed.

The Respondent State contended that the Applicants did not exhaust domestic remedies in respect of all the claims that they were raising before the Court. The Respondent State also contended that, in respect of the claims by the Applicants, the remedies within its legal system were available, adequate, satisfactory and effective, hence the Applicants should have exhausted them first. It was also the Respondent State's contention that the Applicants could have challenged the alleged violation of their rights under section 4 of the Basic Rights and Duties Enforcement Act by instituting an action for redress before the High Court. The Respondent State thus submitted that the Application should be declared inadmissible for failure to exhaust domestic remedies

The Court noted that while the Applicants did not plead their case before the domestic courts in the same manner that they had done before the Court, it was clear that the alleged violation of their rights was occasioned during the course of their domestic judicial proceedings. The Court reiterated, therefore, that where an alleged human rights violation occurs in the course of the domestic judicial proceedings, domestic courts are thereby afforded an opportunity to pronounce themselves on possible human rights breaches.

This is because the alleged human rights violations form part of the bundle of rights and guarantees that were related to or were the basis of the proceedings before domestic courts. The Court thus accepted that the Applicants should be deemed to have exhausted local remedies with respect to the allegations covered by the bundle of rights and guarantees.

In respect of the contention that the Applicants should have commenced action under the Basic Rights and Duties Enforcement Act to vindicate their rights before domestic courts, the Court recalled that for purposes of exhausting local remedies, an Applicant is only required to exhaust judicial remedies that are available, effective and sufficient. In the present case, the Court, in line with its jurisprudence, held that given the special nature of the constitutional petition procedure in the Respondent State, the Applicants were not bound to exhaust this procedure as it is an extra-ordinary remedy. In light of the foregoing, the Court dismissed the Respondent State's objection based on non-exhaustion of local remedies.

As for the objection alleging that the Application was not filed within a reasonable time, the Respondent State argued that the Applicants should have filed their Application within six (6) months of the conclusion of the domestic proceedings which they failed to do. Since, according to the Respondent State, the Applicants had provided no reasons for their failure to file the Application within six (6) months the Application ought to have been dismissed.

The Court recalled that neither the Charter nor the Rules set a definite time limit within which an application must be filed before it. According to the Court, both Article 56(6) of the Charter and Rule 50(2)(f) of the Rules, simply allude to the fact that applications must be filed within a reasonable time after the exhaustion of domestic remedies or "from the date the Commission is seized with the matter." Accordingly, the Court held that the reasonableness of a time limit for seizure depends on the particular circumstances of each case and should be determined on a case by case basis. In the present case, the Court noted that the Court of Appeal dismissed the Applicants' appeal on 29 January 2016 and the present Application was filed on 26 January 2017 meaning that a total of eleven (11) months and twenty-eight (28) days lapsed before the Application was

instituted before the Court. The Court held that the period of eleven (11) months and twenty-eight (28) days, before the Application was filed, was reasonable within the meaning of Article 56(6) of the Charter. The Court thus dismissed the Respondent State's objection to the admissibility of the Application based on failure to file within a reasonable time.

The Court also satisfied itself that the Application had complied 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 regard to the merits of the case, the Court, first, considered whether the Applicants' right to non-discrimination, under Article 2 of the Charter, was violated. The Court noted that the Applicants had neither specified the ground(s), among those outlined in Article 2 of the Charter or any other, on the basis of which they alleged to have been discriminated nor did they identify a comparator group, in a similar situation to them, which had been treated more favourably. The Court also recalled that with regard to discrimination, the burden rests with the person who alleges to establish the basis on which the discrimination can be inferred before the defendant is required to demonstrate whether or not the discriminatory conduct can be justified. In the present case, the Court held that the Applicants simply made a general allegation of discrimination which they failed to substantiate. In the circumstances, the Court dismissed their allegation of a violation of Article 2 of the Charter.

Second, the Court considered whether the Applicants' right to equal protection of the law under Article 3(2) of the Charter was violated. The Court observed that the only substantiation made by the Applicants of their allegation was by way of their assertion that the Respondent State had violated their rights under Article 3(2) of the Charter by failing to give protection to their entitlements. Besides this, the Applicants provided no particulars of precisely how their rights under Article 3(2) have been violated. In the circumstances, the Court found that the Applicants had failed to substantiate the alleged violation of Article 3(2) of the Charter. The Court, therefore, dismissed the Applicants' allegations.

Third, the Court assessed whether or not the Applicants' right to property under Article 14 of the Charter had been violated. The Court observed that although the Applicants had not been detailed in their specification of how their right to property had been violated, they argued that their right was violated "when the Court of Appeal of Tanzania, finally issued a judgment which further denied the Applicants their right ... to own property." The Court took particular notice of the fact that the domestic litigation between the parties was, initially, concluded by a consent judgment. The Court, having carefully considered all the records of the proceedings before both the High Court and the Court of Appeal, in their entirety, found that there were no reason(s) for interfering with their findings especially in relation to the alleged violation of the Applicants' right to property. The Court thus dismissed the Applicants' claim of a violation of Article 14 of the Charter.

Fourth, the Court analysed whether the Applicants' right to work under Article 15 of the Charter had been violated. The Court noted that Article 15 of the Charter corresponds to the provisions of Articles 6 and 7 of the ICESCR. Given the substantive congruence between the provisions of the two instruments, the Court held that it would consider the Applicants' claims under Article 15 of the Charter without conducting a separate analysis of the ICESCR. The Court, recalling the progression of the dispute between the Parties before the domestic courts, and especially paying attention to the findings of both the High Court and the Court of Appeal, found that the Applicants had failed to substantiate how the Respondent State violated their right to work, generally, and the right to remuneration specifically. In the circumstances, the Court found that there was no basis for interfering with the findings of the domestic courts and thus dismissed the Applicants' allegations of a violation of the right to work.

In respect of the Applicants' claims for reparations, the Court held that no reparations were due to the Applicants since no violations had been proved.

The Court also ordered that each party should 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/0022017>.

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/wpafc/> .