



**PRESS RELEASE**  
**JUDGMENT SUMMARY**

**KENNEDY OWINO ONYACHI AND CHARLES JOHN MWANINI NJOKA v. UNITED  
REPUBLIC OF TANZANIA  
APPLICATION NO. 003/2015  
JUDGMENT ON REPARATIONS**

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

**Date of Press Release:** 30 September 2021

**Arusha, 30 September 2021:** Today, the African Court on Human and Peoples' Rights (the Court) delivered its judgment on reparations in the case of *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania*.

Messrs Kennedy Owino Onyachi and Charles John Mwaniki Njoka ("the Applicants") are Kenyan nationals and convicts, who alleged that their rights to equality and equal protection of the law, liberty and security, freedom against torture and ill-treatment and their right to a fair trial had been violated by the United Republic of Tanzania ("the Respondent State"). The Applicants asserted that the said violations occurred after they were illegally arrested and extradited from the Republic of Kenya to the Respondent State and were convicted of robbery on the basis of improperly obtained evidence. They also alleged that they were not provided with legal assistance in the domestic proceedings despite them being lay and indigent. By a judgment delivered on 28 September 2017, the Court found that the Respondent State violated Articles 1, 6 and 7(1) (a), (b) and (c) of the African Charter on Human and Peoples' Rights ("the Charter").

Relying on the said judgment, on 30 July 2018, the Applicants filed written submissions on reparations. In their submissions, the Applicants asserted that before their arrest, they had businesses which they lost due to their arrest, conviction and imprisonment. The Applicants contended that, resultantly, their life plans were severely disrupted such that they were not able to realise their plans of growing their businesses. Moreover, the Second Applicant, Mr. Njoka, argued that he had a plan of providing high-quality education to his children but he could not do so as some of his properties were sold



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to pay off his debts. Furthermore, the Applicants alleged that they were sole providers for their family members and their imprisonment not only made them unable to discharge their family obligations but also members of their family suffered material and moral prejudice as a result of them being imprisoned. Accordingly, the Applicants prayed the Court to grant them and their indirect victims, pecuniary and non-pecuniary reparations for the moral and material prejudice that they sustained because of their imprisonment. The Applicants also requested that the Court should order the Respondent State to release them from prison.

On its part, the Respondent State contended that the Court may award reparations to individuals when a State is found to be in violation of human rights and the said violations have caused harm. It asserted that the award of reparations is governed by rules of international law, including the principles of burden of proof, standard of proof and the requirement of a causal link between violations of human rights and a State's wrongful conduct. The Respondent State argued, therefore, that the Applicants had failed to prove that they were entitled to reparations in accordance with the standard of proof required of them. It also averred that the Applicants failed to show a causal link between the established violations of the right to legal representation or their right to liberty and the extent of the harm suffered whether directly or indirectly as a result of such violations. Furthermore, the Respondent State submitted that the life plan of the Applicants was disrupted by their own action; if they had not committed any crime, they would not have been detained and sentenced to serve a thirty (30) year sentence in prison.

In its judgment on reparations, the Court considered the Applicant's prayers for both pecuniary and non-pecuniary reparations and the Respondent State's response thereof.

As regards, pecuniary reparations, the Court reiterated its case law establishing that, for material prejudice, there must be a causal link between the alleged violation and the prejudice suffered and that the burden of proof is on the applicant. As for moral prejudice, the Court recalled that presumptions are made in favour of the applicant and the burden of proof shifts to the Respondent State.



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On this basis, with respect to the Applicants' prayer for pecuniary damages for moral prejudice, the Court recalled its decision on merits where it established that the Respondent State had violated the Applicants' right to liberty and security and the right to a fair trial including the right to be heard, the right to presumption of innocence and the right to free legal assistance contrary to Articles 1, 6 and 7(1) (a), (b) and (c) of the Charter, respectively. On this basis, and in exercising its discretion in equity, the Court awarded the Applicants the amount of Tanzanian Shillings Five Million each (TZS 5,000, 000) as fair compensation.

Regarding the prayer for pecuniary damages for material prejudice, the Court noted that the Applicants did not adduce evidence showing that they suffered any material prejudice as a result of the violations established by the Court nor did they demonstrate a causal link thereof. For this reason, the Court dismissed the Applicants' prayer for pecuniary damages for material prejudice.

The Court also examined if the alleged indirect victims were to be awarded any pecuniary or non-pecuniary reparations. After reviewing the evidence, the Court declined to grant the prayer for both pecuniary and non-pecuniary reparations for indirect victims, as the Applicants did not provide evidence of familial relations with the alleged family members.

Concerning the Applicants' request for release, the Court recalled its decision in the merits of the case where it ordered the Respondent State "to take all necessary measures that would help erase the consequences of the violations established, restore the pre-existing situation and re-establish the rights of the Applicants. Such measures could include the release of the Applicants." The Court observed that to this date, the Respondent State has not reported that it has taken any measures to remedy the consequences of the established violations.

Furthermore, the Court noted that the Applicants are still in jail and that, having been in prison for the last eighteen (18) years, they have served almost two-thirds of their thirty (30) year sentence. Taking these factors into account, and the specific circumstances of the case, including the nature of the established violations and the fact that the Applicants are imprisoned in a foreign country far from their homes and families, the Court held that there were compelling reasons to order the Applicants' release. Accordingly, the Court granted their prayer to be set free from prison.



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On costs, the Court 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/0032015>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org)

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