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JUDGMENT SUMMARY

YUSUPH SAID v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 011/2019
RULING ON JURISDICTION AND ADMISSIBILITY

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 Ruling in default in the case of *Yusuph Said v. United Republic of Tanzania*.

Yusuph Said (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was on death row having been convicted of murder. The Applicant alleged that the Respondent State violated his rights under Articles 3(1) and (2) and 7(1) of the African Charter on Human and Peoples' Rights (the Charter) by failing to properly assess the evidence relied upon to convict him. He prayed for reparations to redress the alleged violations.

The Respondent State did not participate in the proceedings and thus, the Court in consideration of Rule 63 of its Rules of Court (the Rules), determined whether it would rule in default. Rule 63 provides for three conditions, that is, the notification of the defaulting party, the default of one of the parties and a request from one of the parties for a decision in default or the Court to issue it, on its own motion. With respect to the notification of the defaulting party, the Court found that the Application was served on the Respondent State on 30 September 2019 and subsequently, all the other pleadings filed by the Applicant were transmitted to the Respondent State.

As regards the default of one of the parties, the Court held that the Application was served on the Respondent State on 30 September 2019 and it was given sixty (60) days to file its Response but it failed to do so within the time allocated. The Court then sent two reminders to the Respondent State on 9 July 2020 and 11 February 2021, granting it ninety (90) days and forty-five (45) days respectively to file its Response but it has failed to do so. Consequently, the Respondent State defaulted in appearing and defending the case.



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Finally, the Court decided to rule in default on its own motion as there was no request from the Applicant.

The Court then determined whether it had jurisdiction to hear the case. 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.

The Court held that it had material jurisdiction as the Applicant had alleged violations of rights protected under the Charter, to which the Respondent State is a Party.

The Court also held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter and the Protocol and had deposited the Declaration required under Article 34(6) of the Protocol; 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.

The Court also considered whether the Application was admissible. In this regard, it held that, the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

The claims made by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application was compatible with Rule 50(2) of the Rules.

Furthermore, the language used in the Application was not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules and the Application was not based exclusively on news disseminated through the mass media as it is founded on



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court documents from the municipal courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.

As regards the exhaustion of local remedies, the Court noted that, the Applicant was convicted of murder on 20 May 2008 by the Resident Magistrates Court with extended jurisdiction. Furthermore, that he appealed against this decision to the Court of Appeal, the highest judicial organ in the Respondent State, which upheld the judgment of the Resident Magistrates' Court by its judgment of 30 June 2011. Therefore, he was deemed to have exhausted local remedies and fulfilled the requirement of Rule 50(2)(e) of the Rules.

With respect to whether the Application was filed within a reasonable time, the Court noted that the period to be determined as reasonable or not, was the period of eight (8) years and three (3) months.

The Court also noted that, it had previously held the period of five (5) years and one (1) month as reasonable owing to the circumstances of the applicants. In these cases, the Court took into consideration the fact that the applicants were imprisoned, restricted in their movements and with limited access to information; they were lay, indigent, did not have the assistance of a lawyer in their trials at the domestic court, were illiterate and were not aware of the existence of the Court. Furthermore, that where an Applicant filed for a review of his judgment, the Applicant would not be penalised for the time that lapsed while he was awaiting the delivery of judgment on that review.

Moreover, the Court noted that it had previously held that a period of eight (8) years and four (4) months, satisfied the provisions of Rule 50(2)(f) of the Rules, given that there were no remedies to exhaust and therefore reasonable time did not arise. Also, the Court held in that particular instance that the alleged violations were continuing in nature and thus renewed themselves every day. Consequently, the applicant could have seized the Court at any time as long as the alleged violations were not remedied.

In contrast, the Court held that, in the instant case, the Applicant did not give any reasons as to why he could not seize the Court earlier than the eight (8) years and three months (3) it took him



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to do so. Furthermore, that, even though, he is incarcerated, the Applicant did not indicate how his incarceration impeded him in filing his application earlier than he did.

The Court also indicated, that, although, it had previously admitted a case filed after eight (8) years and four (4) months, the present case was distinguishable. This is because, in the present case, local remedies were available and duly exhausted by the Applicant and the violations were not continuing.

The Court thus held that the Application was inadmissible for having not been filed within a reasonable time in accordance with Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

The Court having found that the condition under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules was not fulfilled, it did not need to assess whether the Application satisfied Rule 50(g) of the Rules, as the conditions of admissibility are cumulative.

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/0112019>

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.