



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

**COSMA FAUSTIN v. UNITED REPUBLIC OF TANZANIA**  
**APPLICATION NO. 018/2016**  
**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 *Cosma Faustin v. United Republic of Tanzania*.

Cosma Faustin (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated, having been convicted of murder and sentenced to death. The Applicant alleged that the Respondent State violated his rights under Articles 3(1) and 7(1)(c) of the African Charter on Human and Peoples' Rights (the Charter) by convicting him without taking into account the fact that he had no intention of killing the victim; by failing to provide him with free legal representation and by failing to decide his application for review by the time he was filing his Application before the African Court. 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 them. 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



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Application, as the withdrawal took effect on 22 November 2020, while the application was filed at the Court on 12 April 2016.

The Court also held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the alleged violations are 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.

The Court then 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 never challenged the credibility of the prosecution witnesses before the Court of Appeal of Tanzania. The Respondent further argued that the Basic Rights and Duties Enforcement Act provides for a procedure for enforcement of constitutional basic rights which the Applicant would have utilised to file a constitutional petition in this regard at the High Court of the Respondent State.

The Court rejected the Respondent State's contention, noting that in so far as criminal proceedings against an Applicant have been determined by the highest appellate court of the Respondent State, the Applicant is deemed to have 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. Furthermore, the Court noted that the constitutional petition within the Respondent State's judicial system is an extraordinary remedy which applicants are not required to exhaust before filing their applications before it.

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 four (4) years, five (5) months and four (4) days it took for the Applicant to bring his claim to the Court as unreasonable. The Court dismissed this objection on the grounds that, although the Applicant filed the



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Application four (4) years, five (5) months and four (4) days after the Court of Appeal dismissed his appeal on 8 November 2011, his personal circumstances as someone who was on death row, incarcerated and restricted in his movements with limited access to information on the Rules of this Court, justified the time he took to file the Application.

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 as restated in 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 3(1) and 7(1)(c) of the Charter by examining six (6) issues.

Firstly, the Court noted that the violation alleged by the Applicant did not fall under Article 3 of the Charter, but rather under Article 7(1) of the Charter.

The second issue was whether the Applicant's right to a fair trial was violated by the domestic courts convicting him without considering his defence. The Court held that the manner in which the national courts handled the Applicant's trial, conviction and sentence did not disclose any manifest error or miscarriage of justice to require its intervention and thus dismissed the allegation.

Third, on the issue of the failure to consider the Applicant's defence of provocation, the Court held that the assessment made by domestic courts was not inconsistent with the required international human rights' standards. Therefore, the Court dismissed the Applicant's allegation.

Fourth, on the issue of the failure to consider the Applicant's defence that a quarrel resulted in the victim's death, the Court found that the manner in which the Court of Appeal dealt with the matter did not disclose any manifest error or miscarriage of justice to the Applicant that requires its intervention. Therefore, the Court held that the Respondent State did not violate Article 7 of the Charter.



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Fifth, on the issue of the Applicant not being provided free legal assistance during his trial and appeals, the Court concluded that there was nothing from the record that showed that the Applicant was not adequately represented or that he raised this issue as a complaint before the domestic courts. Moreover, the Applicant did not substantiate this allegation. Therefore, the Court held that the Respondent State did not violate Article 7(1)(c) of the Charter.

Finally, on the issue of whether, by failing to consider the notice of motion for review of the judgment constituted a violation of the duty to administer justice and consequently a violation of Article 3(1)(2) of the Charter, the Court dismissed this allegation on the ground that it did not find evidence in the Applicant's pleadings where it showed that the Applicant was treated differently from others individuals in the similar circumstances.

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 Applicant also failed to elaborate on specific and compelling circumstances to justify the order for his release. The Court also dismissed the Applicant's prayers for reparations.

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/0182016>

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



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*rights instrument ratified by the States concerned. For further information, please consult our website at [www.african-court.org](http://www.african-court.org).*