



PRESS RELEASE
JUDGMENT SUMMARY

BERNARD BALELE v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 026/2016
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 *Bernard Balele v. United Republic of Tanzania*.

Bernard Balele (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a sentence of life imprisonment having been convicted of the offence of rape of a seven (7) year old minor. The Applicant alleged that the Respondent State violated his rights under Articles 3(2), 7(1)(c) and 8(d) of the Charter because the Court of Appeal of the Respondent State had allegedly not considered all the grounds of his appeal separately and instead combined them and because he had no legal representation during the proceedings against him. In a later submission, however, the Applicant specified that his claim concerning the alleged violation of his right to legal representation only concerns the procedure to review the Court of Appeal judgement and not the lack of representation during the trial and appeal procedures.

As reparations the Applicant prayed the Court to restore justice where it was overlooked, quash both the conviction and the sentence imposed upon him and set him at liberty.

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 it therefore had material jurisdiction.

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) of the Protocol. The Court further found that the Respondent State's withdrawal



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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 22 April 2016.

The Court also held that it had temporal jurisdiction because the alleged violations were continuing in nature since the Applicant remains convicted on the basis of what he considers an unfair process; 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.

Furthermore, the Court 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 argues that the Applicant is raising before this Court allegations of violations of fair trial rights, specifically the right to legal representation, which he never raised before the High Court or the Court of Appeal.

The Court rejected the Respondent State's contention noting that the Applicant having seized the Court of Appeal, the highest judicial organ of the Respondent State, had exhausted local remedies. The Court noted that in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.

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 one (1) year, four (4) months and 21 days it took for the Applicant to bring his claim to the Court as unreasonable. The Court dismissed this objection on the grounds that the Applicant is incarcerated, restricted in movements with limited access to information, lay and indigent. In light of these circumstances the Court found that the Application was filed within a reasonable time.

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.

The Court then considered whether the Respondent State violated the Applicant's rights under Articles 7(1) and 3 of the Charter. The Court also noted that the Charter does not have a provision on Article 8(d) of the Charter, therefore this was considered as an error on the Applicant's part.



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The first issue the Court considered, was whether the Applicant's right to have his cause heard was violated. The Court found that the manner in which the evidence was evaluated by the domestic courts did not reveal any manifest errors requiring this Court's intervention. Furthermore, concerning the Applicant's contention that the Court of Appeal did not discuss all three grounds of appeal, the Court noted that the Applicant's different grounds of appeal all relate to the evaluation of the evidence. The Court further noted that from the record before it that the Court of Appeal did evaluate all the evidence available to it before delivering its judgment. Accordingly, the Court held that the Applicant had failed to prove that the Respondent State violated his right to have his cause heard and therefore dismissed his allegation.

Secondly, on the right to free legal assistance, the Court noted that the Applicant specified in his Reply that he alleges the violation of his right to legal assistance in the procedure to seek review of the judgment of the Court of Appeal and not of his right to legal aid during his trial and appeal procedures. However, from the record before it, the Court noted that the Applicant had not provided evidence that he has applied for a review of the Court of Appeal judgment. Without such evidence the Court could not establish that such a procedure is pending and that the Respondent State has failed to provide free legal assistance. The Court, therefore, found that the Applicant had not provided evidence to establish that the Respondent State violated the right to defence, guaranteed under Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, to provide free legal assistance.

Thirdly, on the right to equal protection of the law, the Court noted that the Applicant had not provided any specific argument or evidence that he was treated differently from other persons in similar conditions and circumstances. In these circumstances, the Court found that the Respondent State did not violate the Applicant's right to equal protection of the law provided under Article 3(2) of the Charter.

Having found that the Respondent State did not violate any of the Applicants' rights, the Court dismissed the Applicant's prayers for reparations and 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/0262016>

For any other queries, please contact the Registry by email registrar@african-court.org.



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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.