

**LADISLAUS ONESMO V. UNITED REPUBLIC OF TANZANIA  
APPLICATION NO. 047/2016**

**JUDGMENT ON MERITS AND REPARATIONS  
30 SEPTEMBER 2021**

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 its Judgment in the matter of *Ladislaus Onesmo v. United Republic of Tanzania*.

Mr. Ladislaus Onesmo (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, the Applicant was incarcerated at Butimba Central Prison, in Mwanza, serving thirty (30) years' prison sentence.

The Applicant alleged violations related to his right to a fair trial: first, that "the Court of Appeal had not considered all the grounds then combined to 2 grounds, and that this procedure of the court had isolated him, as it was violating the fundamental right of being heard in the court of law as required by Article 3(2) of the Charter"; second, that "the judgment of the Court of Appeal pronounced on the 15.02.2016 was procured by error where the court had evaluated the evidence of the prosecution side widely"; and lastly, that he was deprived of his right to legal assistance.

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 this regard, the Respondent State objects to the Court's material jurisdiction to adjudicate on the matters raised by the Applicant, arguing that, by praying the Court to re-examine the matters of fact and law examined by its judicial bodies, set aside their rulings and order his release, the Applicant is in fact asking the Court to sit as an appellate body. The Respondent State contends

that in accordance with Article 3(1) of the Protocol and Rule 29 of the Rules and its decision in the matter of *Ernest Francis Mtingwi v. Malawi*, the Court does not have jurisdiction over these issues. This objection to the material jurisdiction of the Court was contested by the Applicant.

In assessing this objection, the Court noted that Article 3(1) of the Protocol empowers it to examine Applications brought to it as long as such Applications contain allegations of violation of the rights protected by the African Charter on Human and Peoples' Rights (the Charter) or any other human rights instrument ratified by the Respondent State. The Court found that, since in his Application, the Applicant alleges the violation of human rights, it has jurisdiction to determine the conformity of any act of the Respondent State or its organs with the aforementioned instruments invoked in the proceedings before it.

Although the other aspects of jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them.

On addressing its personal jurisdiction, the Court has held that it has jurisdiction since on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol and this Declaration allowed individuals to file applications against it as per Article 5(3) of the Protocol. The Court also noted that it had decided that the Respondent State's withdrawal of its Declaration, on 21 November 2019, did not affect applications like the present one which had been filed before the withdrawal took effect on 22 November 2020.

In respect of its temporal jurisdiction, the Court has noted that all the violations alleged by the Applicants are based on the judgment by the Court of Appeal on 15 February 2016, that is, after the Respondent State ratified the Charter and the Protocol, and deposited the Declaration. Furthermore, it was of the Court's view that the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he considers an unfair process.

As for its territorial jurisdiction, the Court has held that it has jurisdiction since the violations alleged by the Applicant occurred within the territory of the Respondent State.

The Court thus held that it had jurisdiction to examine the Application.

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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 regard, the Court considered the objection raised by the Respondent State, relating to the requirement of exhaustion of local remedies. The Respondent State contended that by the Applicant not having requested the review of the Court of Appeal judgment, he had failed to exhaust local remedies. This objection to the admissibility of the Application was contested the Applicant.

In affirming the principle of exhaustion of local remedies, the Court, asserted that the rule aims at providing States with an opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same. It therefore held that an Applicant is only required to exhaust ordinary judicial remedies. The Court reiterated its position that the application for review, as framed in the Respondent State's judicial system, is extraordinary remedy that he was not required to exhaust prior to seizing the Court. The Court also noted that the Court of Appeal dismissed the Applicant's appeal on 15 February 2016 and being the highest Court in the Respondent State, the Applicant had exhausted ordinary judicial remedies. Given the foregoing, the Court dismissed the Respondent State's objection alleging non-exhaustion of local remedies.

The Court also examined the compliance of the Application 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 respect to the merits of the Application, the Court noted that the Applicant's alleged violations are related to the right to a fair trial under Article 7(1) of the Charter and fall under two categories, namely: i) the allegation related to the assessment of the evidence; and ii) the alleged violation of the right to legal assistance.

While conceding the examination of particulars of evidence is a matter that should be left for the domestic courts, considering the fact that it is not an appellate court, the Court was of the view

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that it may evaluate the relevant procedures before the national courts to determine whether they however conform to the standards prescribed by the Charter or all other human rights instruments ratified by the State concerned. In the instant case, the Court, having considered the record of proceedings of the Applicant's trial and appeals before the District Court, the High Court and the Court of Appeal, concluded that the Applicant had the opportunity to participate in all the proceedings and that the Court of Appeal had specifically considered that the alleged violations are related to the right to a fair trial and fall under two categories, namely: i) the allegation related to the assessment of the evidence; and ii) the alleged violation of the right to legal assistance. These allegations fall within the right to a fair trial protected under Article 7(1) of the Charter.

Regarding the Applicant's allegation that he was not assisted to call his witnesses, the Court dismissed it for lack of evidence to support it. The Court held that the Respondent State had violated the Applicant's right to a fair trial as enshrined in Article 7(1)(c) of the Charter, interpreted in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), by failing to provide him with free legal assistance. The Court considered the fact that the Applicant was destitute and that he was charged with a serious offence which carried a heavy penalty, being a minimum of thirty (30) years in prison. The Court found that these reasons required the Respondent State to provide the Applicant with free legal assistance in the interest of justice, whether or not the Applicant request for it.

In respect of the Applicant's claim for reparations, the Court acknowledged that Article 27 of the Protocol empowers it to "make appropriate orders" to remedy the violation of human rights. In the instant case, the Court found that it could not order that the Application to be released because he had not shown that his conviction was based entirely on arbitrary considerations and that his continued detention would result in a denial of justice.

However, having found that the Applicant's right to free legal assistance was violated, contrary to Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, the Court held that there was a presumption that the Applicant suffered moral prejudice. As a result, the Court awarded the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS300,000) as fair compensation.



Finally, the Court decided that each party should bear its own costs.

### **Further information**

Further information on the case, including the full text of the judgment of the African Court, is: available at: <https://www.african-court.org/cpmt/details-case/0472016>

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

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