



PRESS RELEASE
JUDGMENT SUMMARY

THOBIAS MANG'ARA MANGO AND SHUKURANI MASEGENYA MANGO

v.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 005/2015

JUDGMENT ON REPARATIONS

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

Date of Press Release: 2 December 2021

Dar es Salaam, 2 December 2021: The African Court on Human and Peoples' Rights (the Court) delivered its judgment on reparations in the case of *Thobias Mang'ara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania*.

Messrs Thobias Mang'ara Mango and Shukurani Masegenya Mango ("the Applicants") are Tanzanian nationals and convicts, who alleged that their rights to a fair trial and free legal assistance were violated by the United Republic of Tanzania ("the Respondent State"). The Applicants alleged that these violations resulted from the Respondent State's failure to provide them with free legal assistance and with copies of some witness statements. The Applicants also alleged that the Respondent State's delay in providing some witness statements during the criminal proceedings resulted in their conviction for the offence of armed robbery, and consequently, a sentence of thirty (30) years imprisonment.

By a judgment delivered on 11 May 2018, the Court found that the Respondent State violated Articles 1 and 7(1) (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 as a result of their imprisonment, they lost their sources of income, properties and businesses. Mr. Thobias Mang'ara Mango (The First Applicant) claimed that he ran a motorcycle transportation business and exported clothes to Kenya and Uganda. He also claimed that he lost three (3) motorcycles and his business "became bankrupt". Mr Shukurani Masegenya Mango (The Second Applicant) claimed that he had a business known as *Agent of Sunrise Enterprise* which dealt in exporting wild birds to Japan, Israel and other countries and that the product was in high demand. He states that he derived his annual income from this business which he personally managed until he was arrested.



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The Applicants contended that, resultantly, their life plans and goals were severely disrupted such that they were not able to expand their businesses and leave a reputable legacy for their children. 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 that the Respondent State guarantee non-repetition of these violations.

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 First Applicant has failed to provide evidence that he was a breadwinner for his family; that he owned three motorcycles and that he was in the business of 'importing clothes to Kenya and Uganda'; and that he lost the income from managing these properties and businesses. The Respondent State also argued, that the Second Applicant has also failed to provide evidence of any income he earned from, or the ownership of the business, *Agent of Sunrise Enterprise*. Moreover, the Respondent State argued that the Applicants ought to have attached the business licences, agreements or any other document to prove ownership of what they claimed. Furthermore, the Respondent State also argued that there is no link between the losses the Applicants alleged they suffered and the violation of their right to free legal representation.

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.

Regarding the prayer for 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 between the alleged prejudice and the said violations.

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For this reason, the Court dismissed the Applicants' prayer for damages for material prejudice.

With respect to the Applicants' prayer for damages for moral prejudice they suffered, the Court recalled its decision on merits where it established that the Respondent State had violated the Applicants' right to a fair trial and the right to free legal assistance since the Respondent State failed to provide the Applicants with free legal assistance, and delayed in providing them with some witness statements and with copies of some witness statements contrary to Articles 1 and 7(c) of the Charter, respectively. On this basis, and in exercising its discretion in equity, the Court awarded each Applicant the amount of Tanzanian Shillings Two Million Five Hundred Thousand (TZS 2,500,000), as fair compensation.

The Court also examined if the alleged indirect victims were to be awarded damages. After reviewing the evidence, the Court awarded damages for the moral prejudice suffered by the Applicant's brother, Dickson Masegenya Mango; the First Applicant's daughter, Happy Mango and the First Applicant's wife, Dorothea John Magesa in the amount of Tanzanian Shillings One Million (TZS 1,000,000), Tanzanian Shillings One Million Five Hundred Thousand (TZS 1, 500,000) and Tanzanian Shillings Two Million (TZS 2,000,000) respectively, as fair compensation.

The Court declined to grant the prayer for damages for moral prejudice allegedly suffered by the Applicants' alleged mother; the Second Applicant's ex-wife, Florida Shukurani and the Applicants' nieces, Rhoda Simkiwa and Monica Simkiwa due to lack of evidence of familial relations between them and the Applicants. There was also no evidence that the Applicants had been responsible for these alleged indirect victims' upkeep. The Court also dismissed, on the same basis, the request for reparations for the following alleged indirect victims, Yasinta Thobias Mango, Selemani Thobias Mango, Masegenya Shukurani Mango, Harid David, Mohamed Bashir and Wallace Mpangala.

Concerning the Applicants' request for guarantees of non-repetition, the Court noted that the Legal Aid Act promulgated by the Respondent State in 2017 is a remedy which guarantees the Respondent State's non-repetition of failure to provide free legal assistance. Consequently, this prayer was dismissed.

Concerning the Applicants' request for measures of satisfaction, the Court considered that there was nothing in the circumstances of this case warranting it to make such further orders of satisfaction, regarding the publication of the judgments, particularly since the Court has awarded the Applicants compensation for moral prejudice resulting from the violations found.

On costs, the Court ordered that each Party should bear its own costs.



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Further Information

Further information about this case, including the full text of the decision of the African Court, maybe found on the website at <https://www.african-court.org/cpmt/details-case/0052015>

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.