



PRESS RELEASE
JUDGMENT SUMMARY

SADICK MARWA KISASE V. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 005/2016
JUDGMENT ON MERITS AND 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 a judgment in the case of *Sadick Marwa Kisase v. United Republic of Tanzania*.

Sadick Marwa Kisase (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 prison sentence of thirty (30) years, having been convicted of the offence of armed robbery. The Applicant alleged that the Respondent State violated his rights guaranteed under Articles 3(2), 7(1)(c) and 7(1)(d) of the African Charter on Human and Peoples' Rights (the Charter) by convicting him without providing him with free legal representation and by failing to decide his request for review of the judgment of the Court of Appeal, which was still pending at the time he filed 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 on the ground that the issues raised had either been settled by domestic courts or were being raised for the first time before the African Court. Having considered the objection, the Court held that it has material jurisdiction to consider the issues raised given that the Application alleged violations of rights provided for in the Charter to which the Respondent State is a Party.

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 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 13 January 2016.



PRESS RELEASE
JUDGMENT SUMMARY

The Court also held that it had temporal jurisdiction because the alleged violations were 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.

On the admissibility of the Application, the Court considered two objections raised by the Respondent State. 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 challenge the alleged violation of his rights under its Basic Rights and Duties Enforcement Act. The Respondent State also argued that the Applicant has never requested for legal aid in the course of domestic proceedings.

The Court dismissed the Respondent State's objection on this point on the grounds that i) the procedure applied under the Basic Rights and Duties Enforcement Act is an extraordinary remedy which the Applicant is not compelled to exhaust within the meaning of Article 56(5) of the Charter; and ii) the Applicant did not need to have raised the issue of legal aid during the domestic proceedings because the said issue forms part of the bundle of rights and guarantees, and the domestic judicial authorities therefore ought to have been aware of it and addressed same in their consideration of the Applicant's case. The Court consequently found that the Applicant had exhausted local remedies.

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 sixteen (16) months 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 had no representation before the national courts, was incarcerated, restricted in movements with limited access to information. The Court noted that, these circumstances occasioned the delay in bringing the matter to the Court, and therefore 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(2) of the Charter by examining four issues.



PRESS RELEASE
JUDGMENT SUMMARY

The first issue was whether the Applicant's right to a fair trial was violated by the domestic courts which convicted him without examining all his arguments. The Court held that in light of the facts, the Applicant was heard and he had the opportunity to challenge prosecution evidence based on the doctrine of recent possession. The Court also held that the Respondent State's Court of Appeal decided to not consider other arguments made by the Applicant only after demonstrating why the ground relating to the contradictory prosecution evidence was decisive. Therefore, the Court dismissed this claim and found that the Respondent State did not violate the Applicant's right to a fair trial in this respect.

Secondly, the Court determined whether the failure of the Respondent State's Court of Appeal to examine the Applicant's application for review was a violation of his right. The Court held that from the record of the case, there was no evidence that the Applicant submitted an Application for review of the Court of Appeal's judgment. The Court thus, dismissed this claim and found that the Respondent State did not violate the Applicant's right to a fair trial in this respect.

Thirdly, on the issue of the Respondent State's failure to provide free legal assistance to the Applicant in the course of domestic proceedings, the Court found that the Applicant should have been provided with free legal assistance because he was accused of a serious crime which carried a minimum heavy custodial sentence. The Court held, therefore, that the Applicant's rights under Article 7(1)(c) had been violated.

Finally, the Court considered whether the Respondent State had violated the Applicant's right to benefit equally from the protection of the law for not examining his application for review. The Court found that the Applicant did not provide any specific argument or evidence that he was treated differently from other persons in similar conditions and circumstances. Moreover, the Court recalled that, as earlier found, the Applicant did not adduce evidence that he actually filed an application for review. In the circumstances, the Court found that the Respondent State did not violate the Applicant's right to an equal protection of the law.

The Applicant requested the Court to remedy the alleged violations by quashing his sentence and ordering his release from prison. The Applicant also requested the Court to grant him reparation for the violations suffered, including the amount of Tanzanian Shilling Ninety-Eight Million (TZS 98,000,000) for loss of income, mental and stress shock, physical pain and general damages. The Court declined to make the order for release from prison because it had not decided that the Applicant's conviction or sentencing was illegally imposed. The Court however, awarded the Applicant Tanzanian Shillings, Three Hundred Thousand (TZS 300,000) as fair compensation for the moral prejudice he suffered owing to the denial of free legal assistance during the proceedings at the domestic courts. The Court also dismissed the



PRESS RELEASE
JUDGMENT SUMMARY

pecuniary compensation sought for prejudice allegedly ensuing from loss of income, mental and stress shock, physical pain and general damages because the Applicant did not adduce evidence in support of his claims.

The Respondent State was required to pay the aforementioned amount to the Applicant free from tax within six (6) months of the notification of the judgment and report to the Court on the implementation thereof every six (6) months until full implementation.

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/0052016>

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.