



PRESS RELEASE
JUDGMENT SUMMARY

ANUDO OCHIENG ANUDO v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 012/2015

JUDGMENT ON REPARATIONS

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

Date of Press Release: 02 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 *Anudo Ochieng Anudo v. United Republic of Tanzania*.

Anudo Ochieng Anudo (the Applicant) is a Tanzanian national, who alleged that the action by the United Republic of Tanzania ("the Respondent State") to confiscate his passport expelled him from Tanzania violated his right to Tanzanian nationality as well as a number of other fundamental rights.

By a judgment delivered on 22 March 2018, the Court found that the Respondent State violated article 15 of the Universal Declaration of Human Rights, Article 7 of the African Charter on Human and Peoples' Rights (the Charter) and 14 of the International Covenant on Civil and Political Rights (ICCPR) relating to the Applicant's right to be heard.

Relying on the said judgment, on 1 June 2018, the Applicant filed written submissions on reparations. In his submissions, the Applicant asserted that as a result of the violation of his rights, he lost his sources of income owing to loss of his employment, loss of his business and school, the abandonment of his land and the lack of maintenance of two houses under construction, loss of two motor vehicles and one motorcycle and losses related to payment of rent.

Regarding loss of income through loss of employment, the Applicant contended that, he was employed as the Director of an NGO, the "Tanzania Human for Peoples Rights," and he was also the Coordinator of the Fog Water Project at Ped World, that he had a substantial salary that enabled him to support his extended family. He also stated that this income enabled him to carry out other investments.

With regard to loss of income from the business and secondary school, the Applicant alleged that he had a "Sawmill" which brought him income, but which he lost because of his expulsion from the country. He also claimed to have lost all his investments in the business. He further submitted that his timber stock was damaged and that he lost the trust of his clients to the extent that it is virtually impossible for him to recommence that business. Furthermore, the Applicant claimed that he was the proprietor of a secondary school named Kihesa Mgagao Secondary School, which also brought him income.

Regarding loss of income owing to the abandonment and lack of supervision of two



PRESS RELEASE
JUDGMENT SUMMARY

houses under construction, the Applicant alleged that he owned two houses which were under construction and that his expulsion from the country resulted in the houses not being completed as well as the lack of their supervision and maintenance.

With regard to losses related to two motor vehicles and one motorcycle, the Applicant contended that, he owned two cars and a motorcycle and that since his expulsion from the Respondent State, these have not been used or maintained, resulting in damage to them, which damage constitutes a significant loss to him.

Regarding losses related to payment of rent, the Applicant alleged that, he rented a house since 2014 and that since his expulsion, his landlord could not rent out the house because some of his belongings remained in the house and that consequently he has been paying rent in order to safeguard his property.

Furthermore, the Applicant alleged that he was sole provider for his family members and the expulsion not only made him unable to discharge his family obligations but also members of his family suffered material and moral prejudice as a result of his expulsion from the country.

Accordingly, the Applicant prayed the Court to grant him and his indirect victims, pecuniary and non-pecuniary reparations for the moral and material prejudice that they sustained because of his deportation.

On its part, the Respondent State contended that, first, the Applicant, who claimed to have been a Director of the NGO "Tanzania Human for Peoples Rights", did not produce any valid employment contract in support of his claim. The Respondent State also argued that, the alleged contract produced by the Applicant only bears the signature of the president of the said NGO and not that of the Applicant, which would have been proof of existence of a contract.

Second, the Respondent State submitted that, the Applicant did not prove that his "Sawmill" business was functioning, neither did he submit supporting documents showing its annual returns nor accounting records to prove the same. The Respondent State also pointed out that there were no records of the company's accounts showing its financial activities such as payments, salaries, taxes and other levies.

Third, the Respondent State contended that, the Applicant did not prove that he was the owner of the houses under construction. The Respondent State also alleged that, the Applicant failed to produce a title deed and also failed to prove any causal link between the losses claimed and the violations of his rights. The Respondent State further submitted that the Applicant did not have a customary right of occupancy certificate to show ownership of the land and that a mere photograph of a house does not constitute a title deed, nor did the Applicant prove any link between the violation of rights and the alleged deterioration of the condition of the property.

Fourth, the Respondent State contended that, the copies of registration do not prove ownership of the two motor vehicles and one motorcycle as they were not certified with regard to their authenticity. According to the Respondent State, the Applicant's family members, if they exist as



PRESS RELEASE
JUDGMENT SUMMARY

he claimed, could have maintained the said property.

Fifth, the Respondent State alleged that, a copy of the lease agreement relating to the house he allegedly rented was not certified by an attorney. The Respondent State also contended that the Applicant also failed to link the alleged prejudice to the violations of his rights, adding that the Applicant did not submit any receipts issued by the landlord, for payment of the rent for the property.

Finally, the Respondent State contended that, the Applicant did not prove the emotional and psychological harm he and the alleged indirect victim suffered. The Respondent State also alleged that, the Applicant did not provide any evidence of marriage to his wives.

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 to provide evidence in support of the claims made. The Court stated however, that, in deciding whether supporting documents are required with respect to particular claims for damages, human rights bodies and courts must proceed on a case by case basis to determine whether supporting documents are required, and are especially sensitive to the challenges victims may face in obtaining evidence in support of their claims. Such challenges may be due to the destruction or the unavailability of evidence in the relevant circumstances due to the human rights violations themselves, such as where records are lost during displacement or burned during the destruction of a home.

In such cases, courts frequently look to the internal consistency of the evidence, the level of detail, and the plausibility of the claims vis-à-vis the evidence as a whole. The Court stated that, it is also common to award some reparations in equity, even where documentation for damage is incomplete or non-existent, particularly where it is reasonable to conclude that at least some damage must have occurred as a direct result of the violations established. In this specific case, the Court took into account the difficult conditions under which the Applicant was arrested, detained and arbitrary expelled from the territory of the Respondent State.

The Court determined that the loss of the Applicant's employment resulting in his loss of income is the direct result of the violation of his rights, as established by the Court in its judgment on merits of 22 March 2018. With respect to the loss of his employment as the Director of "Tanzanian Human for Peoples Rights" and the Fog Water Project at Ped World, the Court found that, although the Applicant did not produce a copy of the contract of employment, the copies of the salary payment slips paid to him by the said NGO were sufficient to prove an employment relationship between the Applicant and the NGO. The Court considered that, given his illegal expulsion by the Respondent State from its territory and the difficulties in which the Applicant suddenly found himself, it was impossible for him to produce other documentary evidence.

On the basis of the information contained in the two salary payment slips, the Applicant had a total monthly salary of Tanzanian Shillings Three Million Four Hundred Thousand (TZS



PRESS RELEASE
JUDGMENT SUMMARY

3,400,000) as Director of "Tanzanian Human for Peoples Rights" and the Fog Water Project at Ped World.

Since the Applicant did not provide a copy of the contract of his employment, it was not possible to determine the period he would have continued working with these organisations had he not been expelled from the Respondent State's territory. In these circumstances, to assess the quantum to be awarded under this request, the Court exercised its judicial discretion and considered the period running from 1 September 2014, being the date when he was expelled from the Respondent State's territory, until the date of the Judgment on the merits when the violations were established, that is, 22 March 2018. The Court also used the Applicant's last salary of Tanzanian Shillings Three Million, Four Hundred Thousand (TZS 3,400,000) per month for the computation.

On the foregoing basis, the Court awarded the Applicant the sum of Tanzanian Shillings One Hundred and Forty-Six Million Two Hundred Thousand (TZS 146, 200,000) as reparations for the forty-two (42) months and twenty one (21) days, of salary lost from the date of his expulsion from the territory of the Respondent State.

Having considered the proof the Applicant provided, the Court, granted the Applicant's prayer for reparation for material prejudice from the loss of the Sawmill business and awarded him the lump sum of Ten Million Tanzanian Shillings (TZS 10,000,000). The Court also granted the Applicant's prayer for reparation for material prejudice owing to damage caused to two vehicles and one motorcycle and awarded him the lump sum of Three Million Tanzanian Shillings (TZS 3,000,000). The prayer for damages for material prejudice from the loss of income from the school Kihesa Mgagao was dismissed, as the Applicant failed to provide an estimate of the income generated from the school and the proof of such income.

The Court dismissed the Applicant's prayer for reparation for material prejudice allegedly caused by the abandonment of two houses under construction. The Court also, dismissed the request for reparation for material prejudice allegedly resulting from the Applicant's continued payment of rent for a house to store his belongings. The Court dismissed these prayers on the basis that the Applicant had not demonstrated a causal link between the alleged prejudice and the violations established by the Court.

As regards moral prejudice, the Court recalled that presumptions are made in favour of the applicant and the burden of proof shifts to the Respondent State. After reviewing the evidence and in exercising its discretion in equity, the Court granted the Applicant's prayer for reparation for moral prejudice he suffered due to the violations found and awarded him the sum of Twenty Million Tanzanian Shillings (TZS 20,000,000).

The Court also granted the Applicant's prayer for reparation for moral prejudice suffered by the following indirect victims for whom there was evidence of their filiation with the Applicant, and awarded them compensation as follows:

- a. Ten Million Tanzanian Shillings (TZS 10,000,000) to each of his four children Lucas Anudo, Lightness Anudo, Nuru Anudo and Fatuma Anudo, that is, a total of Forty Million Tanzanian Shillings (TZS 40,000,000,000).
- b. Five Million Tanzanian Shillings (TZS 5,000, 000,) each to his father Achok Anudo, and mother Dorka Owuondo, that



PRESS RELEASE
JUDGMENT SUMMARY

is, a total of Ten Million Tanzanian shillings (TZS10, 000, 000).

With regard to non-pecuniary reparations, the Court ordered the Respondent State to take all the necessary steps to restore the Applicant's rights, by allowing him to return to the national territory, ensuring his protection and submitting a report to the Court within forty-five (45) days of notification of the judgment on the implementation of this order. The Court also, ordered the Respondent State to amend its legislation to provide individuals with judicial remedies in the event of a challenge to their citizenship. Moreover, the Court ordered the Respondent State to publish the Judgment on merits of 22 March 2018 and this Judgment on Reparations of 2 December 2021, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and to ensure that these Judgments are accessible for at least one (1) year after the date of such publication. Furthermore, the Court ordered that, the Respondent State must submit to it, within six (6) months of the date of notification of this judgment, a report on measures taken to implement all the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation of the Judgment.

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

Justice M-Thérèse MUKAMULISA, Justice Stella I. ANUKAM and Justice Modibo SACKO issued a Partial Joint Dissenting Opinion regarding the award for material prejudice for the loss of income from the Applicant's employment, the Sawmill business and losses from the two motor-vehicles and one-motorcycle.

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/0122015>

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.