



PRESS RELEASE
JUDGMENT SUMMARY

HAMIS SHABAN alias HAMIS USTADH v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 026/2015
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 judgment in the case of *Hamis Shaban alias Hamis Ustadh v. United Republic of Tanzania*.

Hamis Shaban alias Hamis Ustadh (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 sodomy of a ten (10) year old girl. The Applicant alleged the violation by the Respondent State of 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) for convicting him without providing him with free legal representation and by failing to take into account his interest while hearing his application for review. 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 matter was already settled by the domestic courts.

The Court first considered whether it had material jurisdiction over the matter and held that since the Application alleged violations of rights provided under the Charter to which the Respondent State is a Party, then it 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 as required by its Rules. With respect to 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 2 November 2015.



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The Court also held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol and furthermore, 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.

The Court then considered whether the Application was admissible. In this regard, it considered the objection raised by the Respondent State with regard 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 by petitioning the High Court.

The Court rejected the Respondent State's contention noting that the Applicant had seized the Court of Appeal, the highest judicial organ of the Respondent State. Moreover, the Court noted that, the alleged violations raised, form part of the bundle of rights and guarantees that were related to or were the basis of his appeals in the national courts. Therefore, the Respondent State had the opportunity to redress the alleged violations but failed to do so and thus the Applicant had exhausted local remedies.

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 three issues.

The first issue was whether the Applicant's right to a fair trial was violated by the Court of Appeal dismissing his appeal even though there was missing evidence in the record. The Court held that the manner in which the Court of Appeal conducted its proceedings regarding the assessment of the evidence did not reveal any manifest error, which occasioned a miscarriage of justice to the Applicant. Therefore, the Court dismissed this claim.

Secondly, the Court examined whether the Court of Appeal erred in the determination of his application for review which occasioned injustice. The Court held that from the record of the case, there was nothing to indicate that the Court of Appeal's consideration of the Applicant's application for review resulted in miscarriage of justice. Therefore, the Court dismissed this allegation.



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Finally, the Court determined whether the Applicant was denied free legal assistance as alleged. In this regard, the Court found that the Applicant had not been provided with free legal assistance, even though, he was accused of a serious offence which carried a minimum heavy custodial sentence. The Court held, therefore, that the Applicant's right under Article 7(1)(c) of the Charter had been violated .

The Applicant requested the Court to remedy the alleged violations by granting him reparations commensurate with the period of time he spent in prison, to be calculated based on the national annual income of an average citizen of the Respondent State. The Applicant also requested the Court to quash his conviction and sentence, and order his release. The Court rejected the Applicant's request to quash his conviction and sentence as well as order his release from prison because it had not decided that his conviction 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 from the denial of free legal assistance during the proceedings at the domestic courts.

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/0262015>

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.