



PRESS RELEASE
JUDGMENT SUMMARY

ROBERT RICHARD v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 035/2016
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) today delivered a Judgment in the case of *Robert Richard v. United Republic of Tanzania*.

Robert Richard (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 term of life imprisonment, having been convicted of sodomy. The Applicant alleged that the Respondent State violated his right under Article 7(1)(d) of the African Charter on Human and Peoples' Rights (the Charter) by failing to deliver judgment on his appeal for ten (10) years. He prayed for reparations to redress the alleged violations.

The Respondent State did not participate in the proceedings and the Court, applying Rule 63 of the Rules of Court (the Rules), had to determine whether it could adopt the default procedure. Rule 63 provides for three conditions that must be satisfied before the Court employs the default procedure and these are: first, the notification of the defaulting party, second, the default of one of the parties and, third, there ought to be a request from one of the parties for a decision in default or in the absence of such a request, the Court may rule by default in the interests of justice.

With respect to the notification of the defaulting party, the Court found that the Application was duly served on the Respondent State on 7 September 2016 and subsequently, all the other pleadings filed by the Applicant were transmitted to the Respondent State.

As regards the default of one of the parties, the Court found that the Application was served on the Respondent State and it was given sixty (60) days to file its Response but it failed to do so within the time allocated. The Court noted that subsequently seven reminders were sent to the Respondent State to file its Response but it failed to do so. Consequently, the Court held that the Respondent State defaulted in appearing and defending the case. The Court also noted that in this case it had decided to rule in default on its own motion as there was no request from the Applicant.



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The Court then determined whether it had jurisdiction to hear the case. 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 10 February 2016.

The Court also held that it had material jurisdiction as the Applicant had alleged violations of rights protected under the Charter, to which the Respondent State is a Party.

The Court further held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter and the Protocol and furthermore, the alleged violations were continuing in nature, since they had not been remedied at the time of filing the Application. Lastly, the Court held 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 held that, the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the claims made by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application was compatible with Rule 50(2) of the Rules. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules and also that the Application was not based exclusively on news disseminated through the mass media in fulfilment of Rule 50(2)(d) of the Rules.

As regards the exhaustion of local remedies, the Court noted that the Applicant pursued local remedies by appealing against his conviction and sentence to the High Court in 2008, after which, through letters sent to the High Court Registry on 7 June 2012, 10 May 2013, 20 September 2013, 3 October 2013, 18 November 2013, 16 September 2014 and 3 August 2015, he made a follow-up on his case. However, at the time of filing his Application, that is, 8 June 2016, his appeal had not been determined, after a lapse of seven (7) years. Thus, the Court held that the remedies were unduly prolonged and therefore the Application fell within the exception to the rule on exhaustion of domestic remedies. Given the fact that the local remedies to be exhausted were unduly prolonged, the Court held that the issue of filing the case



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within a reasonable time did not arise and therefore the Application complied with Rule 50(2)(f) of the Rules.

The Court was also satisfied that the case had not been settled in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union and thus satisfied Rule 50(2)(g) of the Rules.

The Court then considered the Applicant's allegation that he was not tried within a reasonable time. In this regard, the Court held that there was no evidence that the matter was complex. The Court then noted that the delay was not attributable to the Applicant as he did not file any motions of adjournment to prolong the process; lastly, the Court found that the delay was attributable to the Respondent State as it did not submit any explanation as to why it took ten (10) years to deliver judgment on the Applicant's appeal, that is, from 15 April 2009 to 26 September 2018 and therefore, the Respondent State was adjudged to have violated Article 7(1)(d) of the Charter.

As regards reparations, The Court awarded the Applicant Tanzanian Shillings Five Million (TZS5, 000,000) for the moral prejudice suffered by the Applicant as a result of violation found of his right to be tried within a reasonable time. The Respondent State is required to pay the said amount, 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.

The Respondent State was further ordered to publish the judgment on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs within a period of three (3) months from the date of notification, and to ensure that the text of the Judgment remains accessible for at least one (1) year after the date of publication.

Each Party was ordered to bear its own costs.

The Vice President, Justice Tchikaya, partially dissented on the amount awarded to the Applicant as compensation. He opposed the award of financial compensation as a punitive measure as in his view, the Judgment itself constituted sufficient reparation.



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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/0352016>

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.