

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS  COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THE MATTER OF**

**ANUDO OCHIENG ANUDO**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 012/2015**

**JUDGMENT**

**(REPARATIONS)**

**2 DECEMBER 2021**



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**The Court composed of:** Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO-Judges; and Robert ENO, Registrar.

Pursuant to Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"),<sup>1</sup> Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Anudo Ochieng ANUDO

Represented by:

- i. Mrs. Janemary RUHUNDWA, Dignity Kwanza
- ii. Ms. Mwajabu KHALID, Asylum Access, Tanzania

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Mr Gabriel P. MALATA, Solicitor General, Office of the Solicitor General;
- ii. Ms Sarah MWAIPOPO, Director, Constitutional Affairs and Human Rights, Attorney General's Chambers;
- iii. Mr Baraka LUVANDA, Ambassador, Head, Legal Unit, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation;
- iv. Ms Nkasori SARAKEYA, Principal State Attorney, Attorney General's Chambers;

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<sup>1</sup> Formerly Rules 8(2) of the Rules of Court, 2 June 2010.

- v. Mr Mark MULWAMBO, Senior State Attorney, Attorney General's Chambers;
- vi. Ms Aidah KISUMO, Senior State Attorney, Attorney General's Chambers; and
- vii. Ms Elisha SUKA, Foreign Service Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

*after deliberation,*

*renders the following Judgment:*

## **I. BRIEF BACKGROUND OF THE MATTER**

1. In his Application filed before the Court on 25 May 2015, Mr. Anudo Ochieng Anudo (hereinafter referred to as “the Applicant”) alleged that the action by the United Republic of Tanzania (hereinafter referred to as “the Respondent State”) to confiscate his passport, declaring him an “illegal immigrant” and expelling him from Tanzania violates his right to Tanzanian nationality and a number of his fundamental rights.
2. On 22 March 2018, the Court rendered judgment on the merits whose operative part at paragraphs (v) to (xi) reads as follows:

(v) *Declares* that the Respondent State arbitrarily deprived the Applicant of his Tanzanian nationality in violation of Article 15 of the Universal Declaration of Human Rights

(vi) *Declares* that the Respondent State has violated the Applicant's right not to be expelled arbitrarily.

(vii) *Declares* that the Respondent State has violated Articles 7 of the Charter and 14 of the ICCPR relating to the Applicant's right to be heard.

(viii) *Orders* the Respondent State to amend its legislation to provide individuals with judicial remedies in the event of dispute over their citizenship;

(ix) *Orders* the Respondent State to take all the necessary steps to restore the Applicant's rights, by allowing him to return to the national territory, ensure his protection and submit a report to the Court within forty -five (45) days.

(x) *Reserves* its Ruling on the prayers for other forms of reparation and on costs.

(xi) *Allows* the Applicant to file his written submissions on other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its submissions within thirty (30) days from the date of receipt of the Applicant's submissions.

3. It is this Judgment on merits that serves as the basis of the present Application for reparations.

## **II. SUBJECT OF THE APPLICATION**

4. On 1 June 2018, the Applicant filed his written submissions on reparations, praying the Court to award him reparations on the basis of its findings in the judgment on the merits.

## **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

5. On 29 March 2018, the Registry of the Court transmitted to the Parties, certified true copies of the Judgment on the merits to the Parties.
6. The Applicant filed his written submissions on reparations on 1 June 2018 and these were served on the Respondent State on 19 June 2018.

7. The Respondent State filed its Response on 5 December 2019 and this was served on the Applicant on 17 December 2019 for a Reply. The Applicant did not file a Reply even after extension of time by the Court on 7 February 2020.
8. Pleadings were closed on 15 July 2020 and the Parties were duly notified.
9. In the course of the 58<sup>th</sup> Ordinary Session (September 2020), the Court decided, in the interests of justice, to reopen pleadings to allow the Applicant file the Reply to the Respondent State's Response.
10. The Parties filed additional pleadings within the time stipulated by the Court.
11. On 21 September 2021 pleadings were closed again and the Parties were duly notified.

#### **IV. PRAYERS OF THE PARTIES**

##### **A. Prayers of the Applicant**

###### **i. Pecuniary reparations**

12. The Applicant prays the Court to apply the principle of equity in calculating the amount to be awarded as damages for the moral and material prejudice he suffered and also, to consider the principle of restitution when calculating these amounts.

13. The Applicant also prays the Court to grant him the following reparations:

- i. The sum of United States Dollars fifty thousand (USD 50,000) for psychological trauma resulting from major depression;

- ii. The sum of United States Dollars one hundred thousand (USD 100,000) for his four children;
- iii. The sum of United States Dollars fifty thousand (USD 50,000) for both his parents;
- iv. The sum of United States Dollars twenty thousand (USD 20,000) for his sister and his grandmother;
- v. The sum of United States Dollars one hundred and thirty-seven thousand, five hundred (USD 137,500) as material damages;
- vi. The sum of United States Dollars four thousand (USD 4000) as transportation and stationery costs.

**ii. Non-pecuniary reparations**

14. The Applicant prays the Court to order the Respondent State to guarantee non-repetition of the violations and to publish the decision in the Official Gazette as a measure of satisfaction.

**B. Prayers of the Respondent State**

15. The Respondent State contends that the Applicant does not provide evidence of material and moral prejudice suffered and accordingly requests the Court to:

- i. Dismiss the Application in its entirety;
- ii. Dismiss the request for guarantee of non-repetition;
- iii. Dismiss the request for just satisfaction, the Court's judgment on the merits being sufficient;
- iv. Dismiss the request for reparations for lack of evidence;
- v. Make any order it deems necessary in the circumstances of this case.

## V. REPARATIONS

16. Article 27(1) of the Protocol provides that: "If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

17. In accordance with its settled case-law, the Court recalls that:

To examine and assess applications for reparation of harms resulting from human rights violations, it takes into account the principle, according to which, the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.<sup>2</sup>

18. The Court also recalls that reparation "...must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."<sup>3</sup>

19. The measures that a State may take to remedy a human rights violation may include restitution, compensation, rehabilitation of the victim, satisfaction and measures to ensure that the violations are not repeated, taking into account the circumstances of each case.<sup>4</sup>

20. With regard to material prejudice, the Court reiterates the general rule that there must be a causal link between the alleged violation and the harm caused and that the burden of proof lies with the Applicant, who must therefore provide evidence to justify the measures requested. As regards moral prejudice, the Court notes that it is presumed in cases of human rights violations,<sup>5</sup> and that, consequently, the

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<sup>2</sup> *Ingabire Victoire Umuhoza v. Rwanda*, Application No 003/2014, ACtHPR, Judgment of 7 December 2018 (reparations) § 19.

<sup>3</sup> *Mohamed Abubakari v Tanzania* (reparations), ACtHPR, Application No 007/2013, Judgment of 4 July 2018 (reparations) § 19; *Alex Thomas v Tanzania*, ACtHPR, Application No 005/2013, Judgment of 4 July 2018 (reparations), § 11; *Lucien Ikili v Tanzania*, ACtHPR, Application No 009/2015, Judgment of 28 March 2019, (merits and reparations), § 118.

<sup>4</sup> *Ingabire Victoire Umuhoza v. Rwanda*, § 20.

<sup>5</sup> *Beneficiaries of the late Norbert Zongo, and others v Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258 § 61; *Lohé Issa Konaté v. Burkina Faso*, (reparations) (3 June 2016) 1 AfCLR 346 § 58.

burden of proof shifts to the Respondent State which is contesting the claims of moral prejudice, to prove the contrary.

21. The Court further restates, as per its case-law, that damages should be awarded, where possible, in the currency in which the loss was incurred. In the instant case, while the Applicant make his claims in United States Dollars, damages will be awarded in Tanzanian Shillings as most of the potential awardees reside on the territory of the Respondent State and the single prejudice forming the basis of all the claims occurred in this State. <sup>6</sup>

22. In the instant case, in its Judgment on the merits, the Court found that the Respondent State violated the Applicant's right not to be arbitrarily deprived of his nationality, contrary to Article 15 of the Universal Declaration of Human Rights, his right not to be arbitrarily expelled and his right to be heard as provided for in Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights.

23. Relying on the above finding of the Court, the Applicant prays the Court to award him pecuniary and non-pecuniary reparations.

#### **A. Pecuniary reparations**

##### **i. Material prejudice**

24. The Applicant prays the Court to grant him reparations under the following heads:

- i. Loss of income owing to loss of employment
- ii. Loss of income from his business and school
- iii. Loss of income owing to the abandonment of his land and the lack of maintenance of two houses under construction

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<sup>6</sup> *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 45; *Amir Ramadhani v United Republic of Tanzania*, Application No. 010/2015. Judgment of 25 June 2021 (reparations), § 14.

- iv. Losses related to two motor vehicles and one motorcycle
- v. Losses related to payment of rent

**a) Loss of income through loss of employment**

25. The Applicant states that he was employed as the Director of an NGO called "Tanzania Human for Peoples Rights," and Coordinator of the Fog Water Project at Ped World, that he had a substantial salary that enabled him to support his extended family and that his income enabled him to carry out other investments. He submits that the loss of his salary had a major financial impact on him and on the members of his family. He further claims to have lost the sum of United States Dollars, seventy-six thousand, five hundred (USD 76,500) which is equivalent to forty-five (45) months' salary from the date of his expulsion to 1 June 2018, when he filed his submissions on reparations before this Court.

26. The Respondent State considers that the Applicant does not prove the material and moral prejudice caused to him or the causal link between the violation of his rights and the alleged prejudice. The Respondent State, therefore describes the request for reparations as speculation. The Respondent State recalls the jurisdiction of the Court according to which it is the Applicant's responsibility to prove the losses claimed, and the causal link between those losses and the violations of rights found.

27. With regard to the material prejudice, the Respondent State argues that the Applicant does not prove his sources of income, and that therefore the Seventy-Six Thousand and Five Hundred (USD 76,500) United States Dollars, which is the amount he purports to have lost, is unfounded.

28. The Respondent State further submits that the Applicant, who claims to have been a Director of the NGO "Tanzania Human for Peoples Rights", does not produce any valid employment contract in support of his claim. The Respondent State notes that the 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. On this same point, the Respondent State notes that there is no evidence of the registration of the said NGO, which is also unknown to the Tanzanian Revenue Authority, the body in charge of taxes. For this reason, the Respondent State raises doubts over the legitimacy of the proof of payment and even the existence of the NGO alleged to have been the Applicant's employer.

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29. The Court recalls that, in order for a claim for material prejudice to be granted, the Applicant must show a causal link between the violation established and the harm suffered, and further, prove the harm suffered with documentary evidence.<sup>7</sup>

30. The Court also recalls its jurisprudence according to which:

[i]t is not sufficient to establish that the Respondent State has violated provisions of the Charter, it is also necessary to provide evidence of the harm for which the Applicant seeks compensation from the Respondent. In principle, a violation of the Charter is not sufficient to establish material harm".<sup>8</sup>

31. However, 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 and are especially sensitive to the "difficulty victims may face in obtaining evidence in support of their claim due to the destruction or the unavailability of evidence in the relevant circumstances."<sup>9</sup> In many cases, such

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<sup>7</sup> *Beneficiaries of Norbert Zongo and others v. Burkina Faso*, § 60; *Christopher Mtikila v. Tanzania* (reparations), § 40; *Lohé Issa Konaté v Burkina Faso*, (reparations), § 15. *Mohamed Abubakari v. Tanzania* (reparations), § 22, *Alex Thomas v. Tanzania* (reparations), § 14.

<sup>8</sup> *Reverend Mitikila v. Tanzania* (reparations) (13 June 2014) 1 AfCLR, §§, 31-32.

<sup>9</sup> International Criminal Court, See *Prosecutor v. Katanga*, Case No. ICC-01/04-01/07, Order for Reparations pursuant to Article 75 of the Statute, § 39. (24 March 2017) § 47

difficulties arise due to the human rights violations themselves, such as where records are lost during displacement or burned during the destruction of a home.<sup>10</sup>

32. Where evidence is unavailable or limited for any of these reasons, courts frequently look to “the internal consistency, the level of detail, and the plausibility of the applications vis-à-vis the evidence as a whole.”<sup>11</sup> It is also common to award some reparations in fairness, even where documentation of damages is incomplete or non-existent, particularly where it is logical that at least some damages would have been incurred as a direct result of the violations established.<sup>12</sup>

33. In the instant case, the Court will take into account the difficult conditions under which the Applicant was arrested, detained and arbitrary expelled from the territory of the Respondent State and is now a refugee in the Republic of Uganda.<sup>13</sup>

34. With respect to the loss of his employment, the Court notes that the Applicant has produced two copies of salary payment slips bearing the name of the employer, which is the NGO "Tanzanian Human for Peoples Rights" and the Fog Water Project at Ped World. The Court notes that in labour law, generally, the relationship between an employee and their employer is evidenced in a written document, that is, the employment contract. However, this is not always the case because a contract may be oral or implied and still be valid<sup>14</sup>. The Court finds that under the circumstances, although the Applicant does not produce copies of the employment contract, this does not negate the existence of a working relationship with his employer. The Court finds that the copies of the salary payment slips are sufficient

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<sup>10</sup> Inter-American Court of Human Rights, Case of the *Mapiripán Massacre v. Colombia*, at § 266.

<sup>11</sup> Inter-American Court of Human Rights, See Case of *Plan de Massacre de Sánchez. v. Guatemala*, (reparations); § § 267 - 278.

<sup>12</sup> *Prosecution v. Katanga*, § 39.

<sup>13</sup> The Applicant submitted a copy of a Refugee Identity Card issued by the Department of Refugees in the Office of the Prime Minister, Republic of Uganda, on 8 February 2019, valid until 8 February 2024.

<sup>14</sup> See Tanzania Employment and Labour Relations Act, Chapter 366 14 (2): “A contract with an employee shall be in writing if the contract provides that the employee is to work outside the United Republic of Tanzania”.

evidence of an employment relationship between the Applicant and the NGO in question.

35. The Court is also convinced that the loss of employment resulting in the Applicant losing his income is the direct result of the violation of his rights, which violations were established by the Court in its judgment on merits of 22 March 2018. It is therefore logical to consider that given his illegal expulsion by the Respondent State from its territory and the difficult circumstances in which the Applicant suddenly found himself, it was impossible for him to produce other documentary proof. The Applicant lost his employment and consequently his source of income. The Court notes that based on 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 3,400,000) in his position as Director of the human rights NGO and Coordinator of the FOG Water Project at Ped World.

36. The Court notes that, the Applicant did not produce a copy of his employment contract as the director of "Tanzanian Human for Peoples Rights and as Coordinator of FOG Water Project at Ped World". It is therefore 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 will exercise its judicial discretion and consider the period running from 1 September 2014 until the date of the Judgment on the merits and will use the Applicant's last salary of Tanzanian Shillings Three Million, Four Hundred Thousand (TZS 3,400,000) for the computation.

37. Accordingly, the Court awards 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 country, that is, 1 September 2014, to the date of the delivery of the Judgment on merits, that is, 22 March 2018.

**b) Loss of income from the business and secondary school**

38. The Applicant claims that he had a "Sawmill" which brought him income, but which he lost because of his expulsion from the Respondent State's territory. He claims to have lost all his investment in the business. He further submits that his timber stock was damaged and that he lost his clients' trust to the extent that it is virtually impossible for him to recommence that business. The Applicant estimates the loss from his sawmill business to be United States Dollars Ten Thousand United States (USD 10000). Furthermore, the Applicant claims that he was the proprietor of a secondary school named Kihesa Mgagao Secondary School, which also brought him income.

39. The Applicant also affirms that he was the owner of the private secondary school named "Kihesa Mgagao Secondary School", which also brought him income.

40. The Respondent State submits that the Applicant does not prove that his business was functioning, neither does he submit supporting documents showing its annual returns nor accounting records to prove the same. The Respondent State points out that there are no records of the company's accounts showing its financial activities such as payments, salaries, taxes and other levies.

41. The Respondent State also submits that the Applicant does not prove that he had income from the secondary school, as he does not provide accounting records to establish income, expenditure and the amount invested to help ascertain his cash flow.

42. The Respondent State considers that the Applicant does not prove either the material damage caused to him or the causal link between the violation of his rights and the alleged prejudice.

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43. The Court notes that to substantiate his allegations, the Applicant produced copies of the Certificate of Business Registration and Tax Certificate for the "Sawmill".

The Court also notes that the Applicant produced a copy of the Certificate of Registration issued to him in respect of Kihesa Mgagao Secondary School as well as a copy of the receipt for payment for this certificate of registration.

44. The Court finds that these documents alone suffice to prove that the Sawmill and Kihesa Mgagao Secondary School were commercial ventures belonging to the Applicant. The Court considers that the accounting records, bank transaction records, and the balance sheet of these firms could have proved if they were profitable or not, as the Respondent State argues. However, the Court can infer from the mere fact that they exist, that the Applicant made investments in them and it was logical for him to have expected income from them. For the Court, taking into consideration the circumstances in which he was expelled from the territory, the normal standard of material evidence cannot be applied to him strictly.

45. The Court, based on the foregoing, and using its discretionary power, grants the Applicant's prayer and awards him a lump sum of Tanzanian Shillings Ten Million (TZS 10,000,000) for the loss of the Sawmill. As regards the loss relating to the secondary school, the Applicant did not provide any financial estimation to support his claim, therefore the Court dismisses **this** prayer.

**c) Loss of income owing to the abandonment, and lack of supervision of, two houses under construction**

46. The Applicant avers 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 their lack of supervision and maintenance. He claims that the lack of maintenance of these building projects resulted in an estimated loss of Fifteen Thousand United States Dollars (USD 15 000).

47. For its part, the Respondent State contends that the Applicant does not prove that he is the owner of the houses in question. It further notes that the Applicant failed to produce a title deed for them and to prove any causal link between the losses

alleged and the violations of his rights. The Respondent State further submits that the Applicant does 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 does the Applicant prove any link between the violation of rights and the condition of the property.

48. The Respondent State further contends that if it is true, as the Applicant asserts, that he had a family, his family could have taken care of the property and other assets, if such property existed at all.

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49. The Court finds that the copies of the payment certificate for the purchase of land, the land purchasing contract and the deed of land ownership constitute sufficient proof that the Applicant is the owner of the land on which the houses were built. However, the Court notes that the Applicant does not prove the loss of income owing to the abandonment of his land, neither does he prove the lack of maintenance of the two houses under construction. The Applicant also produced photos of the houses said to be under construction. However, the Court notes that the Applicant has not proved the loss of income linked to the abandonment of his site and the lack of maintenance of the two houses under construction.

50. The Court further notes that the Applicant has also not produced a detailed evaluation of his investments with regard to the two houses, their current condition, neither does he produce an estimate of income that would have accrued to him had he been able to complete the said houses.

51. Accordingly, the Court dismisses this prayer.

**d) Losses related to two motor vehicles and one motorcycle**

52. The Applicant alleges 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, and that, this damage constitutes a significant loss to him. He estimates the loss incurred to be in the amount of Twelve Thousand United States Dollars (USD 12000).

53. For the Respondent State, the Applicant does not adduce any evidence to show any link between the state of the cars and motorcycle and the violation of human rights. Furthermore, the Respondent State submits that the copies of registration of the cars and motorcycle do not prove ownership as they are not certified to show the authenticity. According to the Respondent State, the Applicant's family members, if they exist as he claims, could have maintained the said property.

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54. The Court notes that, the certified copies of the registration cards for the two cars and motorcycle provide sufficient evidence that the Applicant owned them.

55. The Court finds that the arbitrary expulsion of the Applicant from the territory of the Respondent State under difficult conditions certainly did not allow the Applicant to take measures to maintain and protect his property. The Court considers that this situation is sufficient ground to award reparation for losses related to damages caused to his vehicles and motorcycle. Accordingly, the Court grants the Applicant's prayer and awards him in equity the lump sum of Three Million Tanzanian Shillings (TZS 3,000,000).

**e) Losses related to payment of rent**

56. The Applicant alleges that he rented a house since 2014 and that since his expulsion, his landlord could not rent out the said house because some of his

belongings remained in it and that consequently he has been paying rent in order to safeguard his property. The Applicant estimates the loss from paying the rent, at United States Dollars Two Thousand Three Hundred and Twenty Dollars (USD 2,320) for a period of four (4) years.

57. The Respondent State contests these allegations and contends that a copy of the lease agreement, only, which is also not certified by an attorney and without a title deed to the house, cannot be sufficient proof of the existence of the said house. The Respondent State also contends that the Applicant also fails to link the alleged loss to the violations of his rights, adding that the Applicant does not produce an invoice for payment of rent from the landlord.

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58. The Court finds that the Applicant does not prove the claim that he continued paying rent for the house he lived in prior to his expulsion, in order to safeguard his belongings are still in the house. Such evidence could include invoices issued by the landlord, records of funds transfers to pay the rent as well as receipts issued in respect of such payments. The Court further notes that, in support of his request, the Applicant produced a lease agreement between him and the owner of the house, for the period from 1 May to 31 October 2013. The said contract expired before the Applicant was arrested on 31 October 2013 and before he filed the instant Application with the Court on 24 May 2015. Accordingly, the Court dismisses this prayer.

## **ii. Moral prejudice**

### **a) Moral prejudice suffered by the Applicant**

59. The Applicant asserts that as a direct victim of deprivation of the right to nationality, he suffered emotional and psychological torment after his expulsion. He further

claims to have to have lost his fiancée, who subsequently got married to another man.

60. He further alleges that he suffered psychological trauma resulting from acute depression due to his isolation for four (4) years. He also avers that he suffered extreme physical pain resulting from acts of torture and is seeking reparation amounting to, Fifty Thousand United States Dollars (USD 50,000).

61. The Applicant affirms that he is the sole breadwinner for his immediate family, that is, his wives and children, as well as for his extended family. He asserts that since his forced expulsion from the Respondent State, he has been distressed due to concern whether his family members have food, health care and clothing.

62. The Applicant also avers that at the time of his arrest he was planning to marry a lady of Burundian nationality, but because of his expulsion from the country, the marriage did not take place, which caused him prejudice.

63. The Respondent State contends that the Applicant does not prove the emotional and psychological suffered. It considers that the Applicant does not explain how he arrived at the various amounts claimed for himself as a direct victim, and for his family members and other relatives as indirect victims, nor does he provide any evidence of marriage to his wives.

64. The Respondent State also contends that the Applicant does not provide any evidence of a marriage contract with his alleged fiancée or wife, nor any evidence of prejudice caused.

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65. The Court notes that, moral prejudice is that which results from the suffering, anguish and changes in the living conditions for the victim and his family.

66. The Court also recognises that moral prejudice includes, *inter alia*, pain and suffering, mental suffering, humiliation, loss of enjoyment of life and loss of social or marital relations, and that compensation for non-pecuniary damage is generally calculated on the basis of an assessment of fair compensation.
67. The Court further notes that the Applicant has invoked its jurisdiction in equity and requested compensation amounting to Fifty Thousand United States Dollars (USD 50,000) for the moral prejudice he suffered.
68. In its judgment on the merits, the Court held that there was a violation of the Applicant's right not to be arbitrarily deprived of his right to nationality, that he was arbitrarily expelled from Tanzania and denied his right to be heard. These violations, particularly that related to nationality and his arbitrary expulsion, in and of themselves, affected the Applicant's status in the Respondent State and consequently had an adverse impact on his ability to access services availed to citizens of the Respondent State.
69. The Court also recalls that the Applicant was arrested and then detained in a police station for several days and that his passport was confiscated before he was expelled to Kenya. He was also removed from Kenya following which he lived in a no man's land between Tanzania and Kenya for at least four (4) years in clearly very difficult conditions. The Applicant is now a refugee in Uganda. The Court also notes that the Applicant's intended marriage to a Burundian lady did not take place as planned, since he was expelled from the Respondent State.<sup>15</sup>
70. Under these circumstances, it is undisputed that the Applicant has suffered physically and psychologically from the situation in which he found himself as a result of the Respondent State's wrongful acts. Furthermore, the destabilisation of the Applicant's social and family life as a result of the violations found, invariably caused him distress and anguish which must be repaired.

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<sup>15</sup> *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) ACtHPR. Application No. 012/2015 Judgment of 22 March 2018 (merits) §§, 4-12.

71. The Court therefore awards the Applicant the sum of Twenty Million Tanzanian Shillings (TZS 20,000,000) as fair compensation for the moral prejudice he suffered.

**b) Moral prejudice suffered by indirect victims**

72. The Applicant considers that his expulsion had consequences on the survival of his immediate and extended family, including his parents, siblings and other relatives. He states that before his departure from the country, he was their sole provider ensuring that they had food, health care and clothing.

73. The Applicant submits that his parents (father and mother), children (five children), “three companions” his sister and grandmother were greatly humiliated by unlawful acts committed by the Respondent State, and prays that all of them should be considered as indirect victims.

74. In support of his allegations, the Applicant refers the Court not only to its own jurisprudence but also Principle V (8), of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Law (Human Rights), Serious Violations and Violations of International Humanitarian Law.

75. The Applicant prays the Court to award the following amounts to the indirect victims:

- i. One hundred thousand United States Dollars (USD 100,000) for his five children.
- ii. Fifty thousand US Dollars United States Dollars (USD 50,000) for his parents.
- iii. Twenty thousand United States Dollars (USD 20,000) for his sister and grandmother.

76. The Respondent State prays the Court to dismiss this request on the ground that the Applicant does not prove the marital relationship with his alleged wives, nor does he explain how he arrived at the quantum of the amounts claimed.

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77. The Court notes that it has already held that direct or close family members who have suffered physically or psychologically as a result of the victim's situation also fall within the definition of "victims". They are indirect victims and can claim reparation for the suffering caused to them.<sup>16</sup>

78. The Court has also held that spouses, parents and children are automatically presumed to be indirect victims because they are presumed to have also suffered moral prejudice as a result of the violations against an applicant.

79. However, the Court has stated that an applicant should produce marriage certificate or any equivalent proof regarding filiation to their spouses, birth certificates or any other equivalent evidence as proof of filiation to their children. As for parents, the Court has held that there must be evidence of attestation of the paternity or maternity or any other equivalent proof.<sup>17</sup>

80. For other persons such as siblings, the Court has held that for them to be also considered as indirect victims, the applicant must demonstrate and prove that he or she was responsible for their welfare and provided for them, such that the violations against the Applicant also adversely impacted their social situation. The Applicant must also prove, with relevant documentation, the filiation between him or her and these other persons.

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<sup>16</sup> *Idem*, § 50.

<sup>17</sup> *Idem* § 60; *Mohamed Abubakari v. Tanzania*, § 60; *Alex Thomas v Tanzania* (reparations), § 50; *Wilfred Onyango v. Tanzania*, 1 AfCLR , 507 § 71; *Lucien Ikili v. Tanzania*, § 135.

81. The Court notes in the instant case, that Applicant's children, spouse(s) and parents are presumed to have suffered moral prejudice due to the violations found. Furthermore, the nature of these violations had a direct impact on these indirect victims' family relationship with the Applicant.

82. The Court notes that the Applicant produced copies of the birth certificates of his four (4) children, namely, Lucas Anudo, Lightness Anudo, Nuru Anudo, and Fatuma Anudo, whereas he listed five (5) children as indirect victims. The Applicant has not provided an explanation for the failure to provide a copy of the fifth child's birth certificate. He also provided a copy of his birth certificate which proves his filiation with his father Achok Anudo, and his mother Dorka Owuondo.

83. In view of the foregoing, the Court therefore finds that a lump sum of Ten Million Tanzanian Shillings (TZS 10,000,000) each is fair compensation for the moral prejudice suffered by the Applicant's four children, that is, a total of Forty Million Tanzanian shillings (TZS 40,000,000). The Court further finds that a lump sum of Five Million Tanzanian Shillings (TZS 5, 000,000) each is fair compensation for the moral prejudice suffered by his parents, that is, a total of Ten Million Tanzanian Shillings (TZS 10,000,000).

84. The Court notes that, the Applicant has not provided any document to prove that Pelister Akeyo, Alice Muga are his sister and grandmother respectively. The Applicant has also not provided documentary evidence that, Semi Dagaro and Hawayawezi Kamiliare his companions. and that he was responsible for their upkeep as well as that of his alleged fiancée. Accordingly, this prayer is dismissed.

### **B. Non-pecuniary reparations**

85. The Applicant prays the Court to award him reparations based on the principle of restitution. He also requests the Court to order the Respondent State to guarantee the non-repetition of the violations.

86. The Applicant additionally prays the Court, to order the Respondent State to publish this judgment in the Official Gazette as a measure of satisfaction.

87. Relying on the jurisprudence of the Court in *Lucien Ikili Rashidi v Tanzania* case, the Respondent State prays the Court to dismiss the request for guarantees of non-repetition because the violations are not repetitive or systemic.

88. The Respondent State also considers that the Court's judgment on the merits finding violations of the Applicant's rights already constitutes a form of "reparation and satisfaction".

89. The Respondent State therefore prays the Court to dismiss all of the Applicant's claims for non-pecuniary reparations because they are unfounded and unjustified.

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90. The Court notes that restitution consists of restoring the victim to the situation that existed prior to the wrongful act. Some aspects of restitution are, *inter alia*, restoration of liberty, restoration of identification documents and nationality, facilitation to return to one's place of residence, reinstatement in employment and return of property.

91. In this regard, in its Judgment on merits of 22 March 2018, 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, ensure his protection and submit a report to the Court within forty-five (45) days".<sup>18</sup>

92. With regard to the request for guarantees of non-repetition, the Court recalls its Judgment on the merits in which it ordered the Respondent State "to amend its legislation to provide individuals with judicial remedies in the event of dispute over their citizenship"<sup>19</sup>.

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<sup>18</sup> *Anudo Anudo v Tanzania* (merits) § 132 (ix).

<sup>19</sup> *Ibid* § 132 (viii).

93. However, despite several reminders, the Respondent State has yet to submit any report on the implementation of the orders on restitution of the Applicant's citizenship and amendment of the law to allow for judicial remedies in the event of a challenge to an individual's citizenship.

94. As regards the request for measures of satisfaction, the Court recalls its jurisprudence, in particular in the *Zongo* and *Mtikila* cases,<sup>20</sup> in which it noted that the publication of judgments of international human rights courts as a measure of satisfaction was common practice. On this basis, it therefore ordered the publication of the two judgments on merits and reparations in those cases.

95. In the instant case, in the judgment on merits, the Court found that the arbitrary revocation of the Applicant's nationality and consequently his arbitrary expulsion from the Respondent State<sup>21</sup> was based on the "illegal immigrant" status that he was labelled with by virtue of the notice issued by the Minister of Home Affairs<sup>22</sup>. The Court notes that, in view of these circumstances and the nature of these violations, as well as the need to emphasise on, and raise awareness on the Respondent State's obligations and the reparations required, the Court deems it necessary for the judgment on merits and this judgment on reparations be publicised. The prayer for the Court's judgment to be published is therefore granted.

## VI. COSTS

96. The Applicant requests the Court to order the reimbursement of the transport costs between Babati and other villages, stationery and communications costs and postal charges that he allegedly paid, amounting to Four Thousand United States Dollars (USD 4,000).

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<sup>20</sup> *Beneficiaries of the Late Norbert Zongo and Others v. Burkina Faso*, § 98

<sup>21</sup> *Anudo Anudo v Tanzania* (merits) §§ 73 – 88 and §§ 95-106.

<sup>22</sup> *Ibid* §§ 113-116.

97. On its part, the Respondent State requests the Court to dismiss all of the Applicant's claims for reparations and to order him to bear the costs.

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98. Rule 32(2) of the Rules<sup>23</sup> provides: "Unless otherwise decided by the Court, each party shall bear its own costs, if any."

99. The Court recalls, in line with its previous judgments, that reparation may include payment of legal fees and other expenses incurred in the course of international proceedings.<sup>24</sup> The Applicant must provide justification for the amounts claimed.<sup>25</sup>

100. Although the Applicant provided receipts in respect of payments for courier services by DHL, it is important to note that *Asylum Access, Tanzania* and *Dignity Kwanza* through Mrs. Janemary Ruhundwa and Ms. Mwajabu Khalid, represented the Applicant on a *pro bono* basis under the Court's legal aid scheme. The Court facilitated these representatives' incidental costs under this scheme. The Applicant's prayer for reimbursement of costs is therefore unjustified and is accordingly dismissed.

101. The Court, taking into consideration the provisions of Rule 32(2) of the Rules therefore holds that each Party shall bear its own costs.

## VII. OPERATIVE PART

102. For these reasons,

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<sup>23</sup> Rules of Court, 2 June 2020.

<sup>24</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), §§ 79-93; *Christopher Mtikila v. Tanzania* (reparations), § 39; *Mohamed Abubakari v. Tanzania* (reparations), § 81; *Alex Thomas v. Tanzania* (reparations), § 77.

<sup>25</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), § 81; *Mtikila v. Tanzania* (reparations), § 40.

The COURT,

*Unanimously,*

*Pecuniary reparations*

- i. *Dismisses* the Applicant's prayer for reparation for material prejudice for loss of income from his school, Kihesa Mgagao Secondary School;
- ii. *Dismisses* the Applicant's prayer for reparation for material prejudice supposedly caused by the abandonment of two houses under construction;
- iii. *Dismisses* the Applicant's prayer for reparation for material prejudice allegedly resulting from the Applicant continuing to pay rent for a house to store his belongings;
- iv. *Dismisses* the Applicant's prayer for reparation for moral prejudice allegedly suffered by his sister, grandmother, companions and alleged fiancée;

*By a majority of Seven (7) for, and Three (3) against, Justice M-Thérèse*

*MUKAMULISA, Justice Stella I. ANUKAM and Justice Modibo SACKO, Dissenting:*

- v. *Grants* the Applicant's prayer for reparation for material prejudice for the loss of income from his employment and awards him the sum of One Hundred and Forty-Six Million Two Hundred Thousand Tanzanian Shillings (TZS 146,200,000);
- vi. *Grants* the Applicant's prayer for reparation for material prejudice from the loss of his Sawmill businesses and awards him a lump sum of Ten Million Tanzanian Shillings (TZS 10,000,000);
- vii. *Grants* the Applicant's prayer for reparation for material prejudice owing to damage caused to two motor vehicles and one motorcycle and awards him a lump sum of Three Million Tanzanian Shillings (TZS 3,000,000).

*Unanimously,*

- viii. *Grants* the Applicant's prayer for reparation for moral prejudice he suffered due to the violations found and awards him the sum of Twenty Million Tanzanian Shillings (TZS 20,000,000);
- ix. *Grants* the Applicant's prayer for reparation for moral prejudice suffered by the following indirect victims and awards 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 is, a total of Ten Million Tanzanian shillings (TZS10, 000, 000).
- x. *Orders* the Respondent State to pay the amounts stated under (v, vi, vii, viii and ix) above, free from taxes, effective six (6) months from the date of notification of this Judgment, failing which, it will pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of the United Republic of Tanzania, throughout the period of delayed payment until the amount is fully paid.

*Non-pecuniary reparations*

- xi. *Orders* 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 this Judgment;
- xii. *Orders* the Respondent State to amend its legislation to provide individuals with judicial remedies in the event of a challenge to their citizenship;
- xiii. *Orders* the Respondent State to publish the Judgment on the merits of 22 March 2018 and this Judgment on reparations, on the website of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and to ensure that the these Judgment remain accessible for at least one (1) year after the date of the publication.

*On implementation and reporting*

- xiv. Orders the Respondent State to submit to it, within six (6) months of the date of notification of this Judgment, a report on measures taken to implement 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*

- xv. Orders each Party to bear its own costs.

**Signed:**

Blaise TCHIKAYA, Vice-President:



Ben KIOKO, Judge;



Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



M-Thérèse MUKAMULISA, Judge;



Tujilane R. CHIZUMILA, Judge;



Chafika BENSAOULA, Judge;



Stella I. ANUKAM, Judge;



Dumisa B. NTSEBEZA, Judge;



Modibo SACKO, Judge;



and Robert ENO, Registrar.



In accordance with Article 28(7) of the Protocol and Rule 70 of the Rules, the Joint Dissenting Opinion of Justice M-Thérèse MUKAMULISA, Justice Stella ANUKAM and Justice Modibo SACKO are appended to this Judgment.

Done at Dar es Salaam, this Second Day of December in the year Two Thousand and Twenty, in the English and French, the English text being authoritative.

